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

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GENERAL SUBJECTS

Comparative law

ELJ XV 1/13, 90-93: Philip Morris: Governing Body of the Church in Wales. (Article)

As always, the 2012 meetings of the Governing Body of the Church in Wales addressed issues of relevance both to wider society in Wales and to the domestic life of the Church. The Archbishop's Presidential Address to the April meeting focused on the likelihood of the extension of civil marriage to same-sex partners and the issues raised by the UK government's document *Equal Civil Marriage: a consultation*. If the legislation to allow same-sex civil marriage were passed, the Archbishop said, "I cannot see how we, as a Church, will be able to ignore the legality of the status of such partnerships and we ought not to want to do so". At the September meeting, on the other hand, he concentrated on what he described as "musings on the underlying philosophy of *The Church in Wales Review Report*" and, in particular, on what the Report had to say about the Gospel and the Church as an institution.

REDC 70 (2013), 229-265: Antonio Sánchez Bayón: El Derecho Eclesiástico en las universidades estadounidenses: su estudio mediante jurisprudencia y estudios de casos. (Article)

In his study of ecclesiastical law in the USA S.B. contrasts its relative importance there with its rather low profile in continental Europe. He emphasizes its place as a fundamental part of legal discipline in learning and practice. He traces the teaching and practice of law in the USA, with its pragmatic approach and its study of case law, and gives a list of over 300 cases, specifying which areas of Church-State relationships they deal with. He goes on to deal in more detail with some particular cases under the thematic headings of Faith-based and Community Organizations, Religious Freedom, and International Religious Freedom.

SC 47 (2013), 119-143: Cyril Vasil' – George Gallaro: Remarriage in the Orthodox Church Challenges Catholic Church. (Article)

The growing presence of Orthodox immigrants in Catholic regions requires a study of the discipline which governs marriages between Catholics and Orthodox. These unions are regulated by divine law and also by canon law – Catholic and Orthodox – and can be celebrated in the Catholic Church or the

Orthodox Church. Divine law impediments render these marriages impossible. Since the alleged or so-called “Orthodox divorce” is not recognized by Catholics, it is necessary each time to obtain a declaration of nullity from the Catholic diocesan tribunal.

Compilations

J 73 (2013), 271-297: United States Conference of Catholic Bishops: Complementary Legislation to the Code of Canon Law. (Legislation)

This is a compilation of all current complementary legislation adopted by the USCCB, relating to canons 8, 230 §1, 284, 455 §3, 496, 522, 538 §3, 766, 772 §2, 788 §3, 831 §2, 877 §3, 891, 961 §1, 964 §2, 1062 §1, 1067, 1112, 1126, 1127 §2, 1246 §2, 1253, 1262, 1277, 1292 §1, 1297, 1421 §2, 1425 §4, 1439 §2.

REDC 70 (2013), 329-347: Federico R. Aznar Gil: Boletín de Legislación Canónica particular española, 2012. (Compilation)

A.G. provides listings of particular legislation issued during 2012 by different dioceses of Spain. His division follows the order of the books of the Code. He gives the name of the diocese, title and date of the legislation and its page reference in the appropriate diocesan publication.

Ecclesiology

ELJ XV 2/13, 175-182: Norman Tanner: How Novel Was Vatican II? (Article)

The Second Vatican Council is recognized by the Roman Catholic Church as the 21st ecumenical council. The largest in terms of participants and one of the longest-running, it also covered the widest range of topics and produced the largest volume of documents and decrees. This article, based on the text of the ninth Lyndwood Lecture, examines a number of characteristics of Vatican II in comparison with previous councils, arguing that, while in many ways Vatican II was novel, in its composition, agenda, influence and reception one can discern parallels with past councils back as far as the first ecumenical council at Nicea in 325.

General Subjects (Ecclesiology)

Ius III 2/12, 291-304: Congregation for the Doctrine of the Faith: Note with Pastoral Recommendations for the Year of Faith. (Document)

This is the English text of the Note giving pastoral recommendations for marking the Year of Faith at various levels in the Church.

N XLIX 9-10/12, 449-463: Pope Benedict XVI: Litterae Apostolicae Motu Proprio datae *Porta Fidei*, quibus Annus fidei Inchoatu. (Document)

Latin text of the Pope's Apostolic Letter proclaiming a "Year of Faith" to mark the 50th anniversary of Vatican II and the 20th anniversary of the *Catechism of the Catholic Church*.

N XLIX 9-10/12, 464-479: Pope Benedict XVI: Lettre Apostolique en forme de Motu Proprio *Porta Fidei*, par laquelle est promulguée l'Année de la Foi. (Document)

French text of the Pope's Apostolic Letter proclaiming a "Year of Faith" to mark the 50th anniversary of Vatican II and the 20th anniversary of the *Catechism of the Catholic Church*.

N XLIX 9-10/12, 519-533: Congregazione per la Dottrina della Fede: Nota con indicazioni pastorali per L'Anno della Fede. (Document)

In this Note the Congregation for the Doctrine of the Faith sets out various suggestions and recommendations for a fruitful implementation of the Year of Faith at various levels: universal, conference of bishops, diocese, parishes, communities, associations and movements.

N XLIX 9-10/12, 534-549: Congrégation pour la Doctrine de la Foi: Note avec indications pastorales pour L'Année de la Foi. (Document)

Foregoing text in French.

Ecumenism

ELJ XV 2/13, 183-185: Christopher Hill: Vatican II: Some Ecumenical Reflections on the 2012 Lyndwood Lecture. (Comment)

H. is Anglican Bishop of Guildford and Chairman of the Ecclesiastical Law Society. He writes about the significance of the biennial Lyndwood Lectures as an important ecumenical joint commitment by the Canon Law Society of Great Britain and Ireland and the Ecclesiastical Law Society. H. gives some ecumenical reflections on Professor Tanner's lecture based on the remarks he made following the lecture in October 2012 (see *Ecclesiology*, above).

Family issues

EIC 53 (2013), 79-153: Roberto Senigaglia: Profili funzionali della nuova disciplina della filiazione nel sistema del diritto di famiglia. (Article)

S. analyses from a systematic viewpoint the new Italian regulations on filiation as set out in the law of 10 December 2012, no. 219. He explains the legislator's intention in introducing this law so as to protect the interest of the child, particularly in the case of a minor.

ELJ XV 2/13, 130-143: Catherine Shelley: Beating Children Is Wrong, Isn't It? Resolving Conflicts in the Encounter Between Religious Worldviews and Child Protection. (Article)

This article is based on the author's doctoral thesis entitled *Constructing normative ethics for child protection and children's rights in a multicultural but largely secular society: a defence of children's graced autonomy*. It was previously delivered in June 2012 as part of the Ecclesiastical Law Society's London Lecture series. Responding to the death of Victoria Climbié in London in 2003, the Laming Report stated that cultural differences should never again be a factor in inadequate child protection. Yet since that time there have been further deaths of children involving exorcism and allegations of witchcraft, based in part on particular understandings of Christianity. Situations resulting in forced marriage, cliterodectomy, "honour" killing and corporal punishment are practices often perceived as arising from religious belief, both by those who defend them and by critics. S. explores practices perceived as grounded in religious belief or culture that conflict with current child protection practice and norms about what is harmful to children. The role of religious education, rights to manifest religious belief and different understandings of adoption are also considered as examples of religious difference in understandings about children.

General Subjects (Family issues / Human rights / Law reform)

Engagement with religious difference through a defence of children's rights and autonomy are proposed as one means to resolve conflicts between religious worldviews and what it means to protect children. The aim is to identify and foster reflection and debate about different understandings of what constitutes harm, in order to enhance consensus over child protection where views of what is harmful differ radically.

IE XXV (2013), 409-429: Ilaria Zuanazzi: Per un diritto di famiglia della Chiesa: i rapporti tra genitori e figli. (Article)

Is there a family law within canon law? Despite the scarcity and the fragmentary nature of the provisions in the Codes on the juridical consequences of marriage, it is possible to identify an organic system of law based on the teachings of the Magisterium and other documents dealing with the Christian juridical anthropology of the family. Following this method, Z. reconstructs a fundamental set of rules governing the relationship between parents and children in the Church.

Human rights

Comm 44 (2012), 389-394: Secretaria Status: Interventus Excellentissimi Dominici Mamberti, secretarii pro relationibus cum Statibus necnon moderatoris delegationis Sanctae Sedis apud 67^a sessionem ordinariam conventus generalis Organizationis Nationum Unitarum (ONU). (Address)

Archbishop Mamberti addresses the general assembly of the United Nations on 24 September 2012 on human rights and the rule of law. Referring to Pope Benedict XVI's address to the Bundestag on 22 September 2011 he observes that there is a danger that with the proliferation of norms and procedures the rule of law will yield to a sterile and tautological rule of rules. The rule of law must be understood as an expression of justice as in fact intimated in the preamble and first article of the UN Charter and Universal Declaration of Human Rights. A materialistic view of the person and mechanistic and utilitarian understanding of law risks undermining this.

Law reform

Ang 90 (2013), 165-187: Edward N. Peters: Vasectomy as an irregularity for holy Orders. (Article)

See below, canon 1041.

IE XXV (2013), 55-75: Antonio S. Sánchez-Gil: La presunzione nella vigente normativa canonica: osservazioni critiche. (Article)

See below, canon 1060.

IE XXV (2013), 317-337: Massimo del Pozzo: L'inadeguatezza della nozione di persona giuridica. (Article)

See below, canon 113.

QDE 26 (2013), 150-161: Pierantonio Pavanello: La corresponsabilità nel governo della diocesi durante la sede vacante. (Article)

See below, canon 501.

REDC 70 (2013), 195-227: Carmen Peña García: El matrimonio en el ordenamiento canónico: posibles líneas de reforma legislativa. (Article)

On the 30th anniversary of the 1983 Code, P.G. looks at the experience of its application in those years in the light of some guiding principles emanating from Vatican II which underpin the spirit informing the reform of the Code itself. She suggests some particular reforms which might help to express more adequately the conciliar theology and anthropology. The Council offered a much more personalist presentation of marriage in comparison with that of the CIC/17, and in that light P.G. pays special attention to the introduction of the *bonum coniugum* as an essential end of marriage. Under this heading she deals with the juridical relevance of conjugal love in valid marriage consent and in the consummation of marriage, and its possible repercussions on the understanding of the impediment of impotence. She raises the question, for instance, whether sadomasochistic or other psychosexual aberrations, often dealt with under canon 1095 §3, might not be examined as a form of impotence to consummate marriage in a truly human and conjugal manner. Other areas examined include *error dolosus* (canon 1098), error of quality (canon 1097) and conditional consent (canon 1102 §2). In this latter case, for instance, is it legitimate to make consent and the very existence of marriage itself dependent on elements which are external and alien to it? It is telling that in the CCEO (canon 826) all conditions, including past and present, invalidate marriage. The principle of *ius connubii* might also lead to reform of some other canons, such as the requirement of a new act of consent in convalidation (canon 1157), and the restrictive interpretation of canon 144 concerning the delegation *a iure* of power in cases of error or doubt of law or fact. A final section deals with adaptation to the changes in modern family structures and reform of the canons dealing with

General Subjects (Law reform / Legal theory)

the impediments of consanguinity, affinity, public propriety and relationships derived from adoption (canons 1091-1094), as also of abduction (canon 1089).

SC 47 (2013), 89-117: William L. Daniel: The Competence of the Supreme Tribunal of the Apostolic Signatura over Recourse against the Rejection of a New Proposition of a Cause by the Roman Rota. (Article)

In 1915 the Supreme Tribunal of the Apostolic Signatura was entrusted with competence to judge recourses against a decree of the Roman Rota denying a new proposition of a cause. In subsequent decades there also developed within Rotal praxis the option of making recourse against such a decree to the next *turnus* of the Rota, thus giving rise to concurrent jurisdiction between these two apostolic tribunals. Since different jurisprudential trends had been developing before the Roman Rota, on 27 February 2009 the Rota formally excluded the possibility of recourse to the next Rotal *turnus*. After explaining all of this, D. makes a proposal for legislative reform in this matter (*ius condendum*), suggesting that the Signatura assume competence over the matter only once it has become a *res iudicata* before the Rota.

Legal theory

AkK 181 (2012), 106-128: Judith Hahn: „Gesetz der Wahrheit“. Rechtstheoretische Überlegungen im Anschluss an aktuelle päpstliche Äußerungen zur Rechtsbegründung. (Article)

H. looks at the basis and limitations of validity in canon law, in the light of the Church's situation today. She shows, with reference to the teachings of Benedict XVI, which legal grounds for validity those teachings consider to be necessary for the Church's legal order. Two lines of argument appear throughout the Pope's addresses: the rejection of positivism based simply on higher authority, and the affirmation of the natural law as the proper grounding for laws. In the legislative process it is necessary to identify that natural law which is at the basis of positive law, and by which it is possible to convince everyone who is involved in the process. An important element in relation to the validity of a law is that of consensus, and the need for laws to be accepted by those for whom they are intended: where this does not happen, there is a crisis of legitimacy which needs to be addressed. Thus H. points out the need for the Church's legislative activity to be linked in a binding way to consultation processes.

Comm 44 (2012), 441-444: M. Delgado Galindo: Articulus explanans doctrinam, quam iusnaturalismum dicunt, in lumine allocutionis a

Benedicto XVI apud publicum legislatorum Coetum, qui lingua germanica appellatur Bundestag, prolatae, a Rev.mo Michäele Delgado Galindo conscriptus (die 21 mensis septembris 2012). (Article)

The author reflects a year on from Pope Benedict's address to the Bundestag on the concept of natural law, particularly in the light of the philosophy of law expounded by Hans Kelsen. The text is in Italian and reprinted from *L'Osservatore Romano*.

IE XXV (2013), 289-291: Raymond Leo Burke: "Ecclesia uti speculum iustitiae in mundo": intervento scritto al Sinodo dei Vescovi sulla nuova evangelizzazione, 23 ottobre 2012. (Written intervention)

Given here is the Latin text of the written intervention of the Prefect of the Apostolic Signatura to the Synod of Bishops, 23 October 2012, containing reflections on justice and law in the life of the Church.

J 72 (2012), 577-604: Andrea Ponzone: Theology and Canon Law: The Epistemological Approach of T. Jiménez Urresti. (Article)

P. believes that the Munich and Navarre schools of theology of canon law are polarized and that they overemphasize certain (opposite) aspects. He considers that the "epistemological" approach to the theology of canon law, propounded by Urresti, offers a *via media* between these two approaches. He presents the thought of Urresti, first considering the *Concilium* Project, then the difference between theology and canon law, then the idea of a normative science, and finally the epistemological statute of the science of canon law.

REDC 70 (2013), 107-141: Eutimio Sastre Santos: Historia del Derecho de la Iglesia. Teoría y método de la disciplina. (Article)

The author outlines the structure of a notional manual of History of Church Law, basing his discourse on the understanding that the true literary genre of such a manual is the historical narrative. The Church as a society of salvation is the protagonist of what he calls her juridical-geographical history and therefore incorporates into her life the sources, the institutions and the science of canon law. The nature of the historical narrative posits five basic building blocks for this manual: the place of the action, the protagonist, the actors, the plot, and the technical support. This historical narrative must be able to be read easily. As an annex he provides a suggested framework of five historical periods, ranging from the imperial *ius antiquum* to the eve of the Pio-Benedictine Code of 1917.

It is too soon yet to apply *sine ira et sine studio* the historical narrative to the period beyond that date.

Gianfranco Ghirlanda: Introduzione al diritto ecclesiale. Lineamenti per una teologia del diritto nella Chiesa. (Book)

G. argues that canon law, as the law of the Church, should be in a continuous close relationship with theology, and that the study of ecclesial law is at one and the same time a theological and a juridical study. He aims to break away from a positivist, legalistic approach to the study of canonical norms, and to provide a theological vision of the Church's law. The book is divided into five chapters, dealing with the nature of ecclesial law; law (laws) in the Church; ecclesial law and theology; the guiding principles for the reform of the Code; and "*communio*" as the guiding rule for the organization of the People of God. (For bibliographical details see below, Books Received.)

Relations between Church and State

BV 73 (2013), 85-95: Andrej Naglič: Verska dejavnost med državnim pravom in avtonomno ureditvijo Cerkva in drugih verskih skupnosti (= Religious Activity between National Law and Church Autonomy). (Article)

Religious activity encompasses various external aspects of public and private activity specific to Churches and other religious communities (religious organizations). This activity or rather its external aspects are the subject of both the sovereign national law and the very organization of religious organizations, which, within the constitutional framework of the Republic of Slovenia, enjoy full internal autonomy and freedom of action. It is inevitable that, regarding the normative activity of the State and that of religious organizations, divergences occasionally occur that may lead to conflicts concerning the interrelation between the two parties. Since the activity of religious organizations represents the collective aspect of a constitutionally guaranteed individual human right/fundamental freedom, i.e. the freedom of conscience and religion, the Republic of Slovenia is obliged to start eliminating inconsistencies and conflicts in its relationship with religious organizations. European Union member States are also indirectly committed to this on the basis of the provisions of European Union law, which refers to an open, transparent and regular dialogue with religious organizations. N. highlights the external aspects of religious activity by analysing national sources of law as well as selected autonomous sources of law, especially those of the largest religious organizations which have a substantial impact on Slovenian culture. On this basis, he identifies areas of divergence, which are of crucial importance for the current and future relationship between

Church and State. He indicates possible ways of overcoming such areas of divergence or conflict situations, which would otherwise threaten the implementation of one of the most important human rights/fundamental freedoms guaranteed by the legislation of the Republic of Slovenia.

BV 73 (2013), 307-315: Borut Košir: Prenova zakonodaje Cerkve v luči drugega vatikanskega koncila s posebnim poudarkom na Cerkvi v Sloveniji (= New Church Legislation in the Light of the Second Vatican Council). (Article)

See below, canons 439-446.

Comm 44 (2012), 368-385: Secretaria Status: Informationes diurnariis a Domino Hectore Balestrero datae occasione publici iuris faciendae relationis “Moneyval” respicientis sententiam de normis ad praecavendas et impediendas activitates illegales in rebus finantiariis ac monetariis a Sancta Sede ac Statu Civitatis Vaticanae latis (lingua italica una cum versione anglica). (Press statement)

This briefing was given to the press by the Head of the delegation of the Holy See to the Plenary Session of “Moneyval” that discussed and adopted the Holy See’s First Mutual Evaluation Report on 4 July 2012. From the perspective of the Holy See the process is primarily moral rather than technical. The Vatican’s territory and jurisdiction is small but the Holy See has responsibility for the universal Church and a duty to give a moral lead. B. explains the present system, areas where improvement is needed and the next steps. The Italian text is followed by an English translation which appears to duplicate pp. 375-380 on pp. 380-385 but with an additional sentence.

Comm 44 (2012), 386-388: Secretaria Status: Adhaesio Sanctae Sedis respiciens subscriptionem Conventionis Organizationis Nationum Unitarum (ONU) quoad praecavenda ac reprimenda delicta contra publicos legatos. (Document)

This document marks the adhesion of the Holy See to the *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents* adopted in New York on 14 December 1973, subject to a reservation in regard to article 8.1 and three declarations with regard to arts. 8 and 10. The text is given in English.

Comm 44 (2012), 409-419: Secretaria Status: Conventio inter Sanctam Sedem et Rem Publicam Lituaniae de agnitione qualitatum ad Superiorem Institutionem attinentium. (Document)

This agreement takes forward the 2000 agreement on cooperation between the Holy See and Lithuania in the field of education and culture, and in particular the Lisbon Recognition Convention on the recognition of qualifications and the Bologna Process to improve transparency on higher education qualifications in Europe and facilitate mobility of students and teachers. An annex sets out a table of equivalence for qualifications. The text is given first in English, then in Lithuanian.

Comm 44 (2012), 420-430: Secretaria Status: Conventio inter Sanctam Sedem et Rem Publicam Sinarum de cooperatione in campo Superioris Institutionis ac de recognitione Studiorum, qualitatum, diplomatum et gradum. (Document)

This agreement between the Holy See and the Republic of China (Nationalist China – Taipei) sets out parameters for collaboration in the field of higher education and for the recognition of studies, qualifications, diplomas and degrees. The text is given in English.

Comm 44 (2012), 463-510: Status Civitatis Vaticanae: Actio inquisitoria apud Tribunal Status Civitatis contra dominum Paulum Gabriele instructa: accusatio Promotoris Iustitiae et sententia, qua reus ad iudicium delatus est, die 13 mensis octobris 1012 a iudice instructore pronuntiata. (Documents)

The two documents published here – indictment and sentence – are those that draw to a close the preliminary investigation into the accusations against Paolo Gabriele, a Vatican employee, that he stole and leaked to others the contents of confidential documents. The indictment drawn up by the promoter of justice sets out the history of the investigation, the articles of the Vatican Penal Code said to have been broken, the question of imputability, on which medical advice was obtained from two experts, the accused's responsibility and the involvement of Claudio Sciarpetletti. It ends with a request for the partial closure of this stage, that the case be put before the tribunal for judgment, and that some of the charges against Sciarpetletti be dropped and others brought to trial. The second document is the sentence of the instructing judge which sets out the history, law and facts in the usual way, and then responds to the requests of the promoter of justice, ordering partial closure, the judicial sequestering of the relevant documents, and that both accused be tried on the relevant charges.

Comm 44 (2012), 511-531: Status Civitatis Vaticanae: Sententia Tribunalis Status Civitatis Vaticanae in actione poenali contra Paulum Gabriele reum lata. (Sentence)

This is the definitive sentence at first instance before the Tribunal of the Vatican City State in the penal action against Paolo Gabriele. The case against him is found proven, namely that he had abused the trust placed in him, and had removed items left with him in trust. He was condemned to a penalty of three years' imprisonment, but in view of circumstances that diminished his guilt this was reduced to 18 months.

Comm 44 (2012), 532-547: Status Civitatis Vaticanae in actione poenali contra Claudium Sciarpettelli reum lata. (Sentence)

This is the definitive sentence at first instance before the Tribunal of the Vatican City State in the case against Claudio Sciarpettelli, accused of being Paolo Gabriele's accomplice. He was found guilty of having helped Gabriele evade the investigations and was condemned to four months' imprisonment. In view of his previous good conduct this was reduced to two months, suspended for five years.

ELJ XV 1/13, 4-27: John Baker: The Unwritten Constitution of the United Kingdom. (Article)

B. is Emeritus Downing Professor of the Laws of England, University of Cambridge. This article is the lightly edited text of his British Academy Maccabean Lecture, delivered in 2009. The article, though still topical today, provides a cautionary critique of the direction of travel in the evolution of the United Kingdom's unwritten constitution. There has been much talk of constitutional reform in recent years, but the changes that have actually been taking place have often differed markedly from those that the Government has professed to espouse and have shaken the foundations of the previous system without following any coherent overall plan. Written constitutions are not without shortcomings; the conventions that held the old British constitution in place are in any case difficult to codify or enforce. But a pressing problem with an unwritten constitution is that there is no special mechanism for constitutional change. Recent reforms have therefore become associated with short-term political expediency and spin. The cure is not simple. Matters that have been ignored or marginalized in the recent constitutional revolution include the role of the Prime Minister in the appointment of bishops and archbishops and the ecclesiastical patronage exercised by the Lord Chancellor.

ELJ XV 1/13, 28-58: Duncan Henderson: The Devil's Law Cases. (Article)

There exists a substantial body of legal and historical research on the case of *Fendall v Wilson*, in which the Privy Council famously “dismissed Hell with costs”. However, the case has never been examined in the context of Anglican debate over Hell and the Last Judgment in the second half of the 19th century. Despite its remarkable parallels with *Fendall*, *Jenkins v Cook* has been forgotten by most modern lawyers and has never been examined in parallel with *Fendall*. This article analyses the parts of the two cases that deal with Hell, the Last Judgment, and the Devil in the context of mid-19th-century Anglican doctrinal litigation, and of the controversy over Hell in general and Essays and Reviews in particular. It also reconstructs some of the important factual elements of *Jenkins* that were not recorded in the first instance or appellate judgments. The contextual analysis of the judgments and unrecorded facts shows some surprising and evasive judicial responses to the doctrinal questions of whether Hell and the Devil exist and if so in what form. The article suggests that religious politics, rather than ecclesiastical jurisprudence, are the likelier cause of those responses. The article provides a historical contribution to the growing body of research and comment on the interplay of law and religion, in particular exemplifying some of the difficulties that arise when issues of religious doctrine are brought before purportedly secular courts.

ELJ XV 1/13, 59-68: Burkhard Steinberg: The Peculiars of the University of Cambridge. (Article)

Are the University of Cambridge and its colleges peculiars (exempt from episcopal jurisdiction)? The University has always claimed independence from episcopal authority for itself and its colleges. A struggle was resolved in 1434 by a tribunal set up by the Pope, in which the Prior of the monastery of Barnwell heard both sides and decided that the University and its colleges were to be exempt from the supervision of the Archbishop of Canterbury and of the Bishop of Ely, in whose diocese the University was situated. This became known as the Barnwell Process. It established the University and its colleges as peculiars defined as having an Ordinary other than the diocesan bishop. Colleges founded later but before the Reformation claimed the same privileges. At the Reformation, the authority of the Pope was replaced by that of the King and the Archbishop of Canterbury, but the privileges that the University and its colleges enjoyed continued to apply. Post-Reformation foundations of colleges tended to claim the same exemptions from episcopal jurisdiction, but without documented evidence. S. argues that the continued acceptance by the Bishop of Ely of the University and its colleges as extra-diocesan confirms them to be peculiars within the legal definition.

ELJ XV 1/13, 69-71: Gerhard Robbers: Recent Legal Developments in Germany: Infant Circumcision and Church Tax. (Comment)

During the course of 2012 two significant developments occurred in Germany that are of wider interest for those who study law and religion internationally. This brief note draws attention to a decision from Cologne that was probably wrongly decided, the effect of which will be reversed by amended legislation, and to a directive from the Catholic Bishops' Conference concerning the excommunication of those Catholics who decline to pay their Church tax.

ELJ XV 1/13, 71-74: Michael Nazir-Ali: The Sacramental Significance of the Coronation. (Article)

N., the former Anglican Bishop of Rochester, reflects on the nature of the English Coronation Service, which has changed little since Anglo-Saxon times. Every element is sacramental, and explicitly symbolic of the Christian faith. At the centre of the rite, the new monarch divests himself or herself of all the panoply of worldly power as a gesture of humility before God, is anointed with oil on the hands, breast and head, and subsequently receives Holy Communion. The ceremony as a whole demonstrates an understanding of the Christian nature of constitutional monarchy and the Christian foundations of the British State. N. speculates about various calls for reform of the Service, whenever it may be needed next. He concludes that, whilst it should be ecumenical and welcoming to other faiths and none, it cannot of its nature become a multi-faith service without losing its essential character.

ELJ XV 2/13, 144-157: Nicholas Hatzis: The Church–Clergy Relationship and Anti-discrimination Law. (Article)

In its recent judgment in *Hosanna-Tabor Evangelical Lutheran Church and School v EEOC* (see *Canon Law Abstracts*, no. 110, p. 21) the United States Supreme Court held that the First Amendment precludes the application of anti-discrimination law to the employment relationship between a Church and its clergy. In 2005 the House of Lords had reached the opposite conclusion, ruling, in *Percy v Board of National Mission of the Church of Scotland*, that the decision to dismiss an ordained minister was not a spiritual matter falling outside the scope of anti-discrimination legislation. This article argues that *Percy* largely neglected important aspects of Church autonomy and that the reasoning in *Hosanna-Tabor* offers an opportunity to rethink whether secular law should be allowed to affect a religious group's decision to appoint or dismiss a minister of religion.

ELJ XV 2/13, 158-174: Rob Clucasa and Keith Sharpea: Women Bishops: Equality, Rights and Disarray. (Article)

C. and S. discuss the recent history of the failed draft Bishops and Priests (Consecration and Ordination of Women) Measure in the Anglican General Synod in England, situating this within the broader context of the ordination of women and debates around the Equality Act exceptions for an organized religion. They provide an account of the ways in which equality rights have been implemented in the relevant law; how the Church of England is responding to these rights; and how broader society understands the importance of gender equality and reacts to Synod's rejection of the draft Measure. They analyse these with reference to theories of heteronormativity and scholarship of human rights. In doing so, they aim to explain what is happening in the Church of England and broader society, and draw some conclusions about the current opportunities open to the Church and the State in matters of rights and equality.

ELJ XV 2/13, 186-191: Bob Morris: Succession to the Crown Bill: Possible Untoward Effects? (Comment)

M. asks whether, in the light of early proceedings in the UK parliament, the Succession to the Crown Bill risks any untoward, unintended practical consequences, and considers what, if any, may be among the longer-term, less direct implications for Church establishment in England. The Bill has subsequently become law.

FCan VII/2 (2012), 7-39: Fabio Vecchi: Notas de aprofundamento sobre o Acordo concordatário de 7 de Dezembro de 2011 entre a Santa Sé e a República de Moçambique. (Comment)

The Maputo Concordat of 2011 forms part of the process of democratization begun with the Constitutions of 1990 and 2004. Ideological conflicts, ethnic and tribal claims – remnants of a colonial past – remain the backdrop both of a seminal State legal system and of a concordat based on the principle of Church-State cooperation, which tends to involve local territorial powers in a relationship of constructive dialogue aimed at social stabilization and the recognition of religious freedom. V. argues that the main inspiration for the concordat comes from a courageous episcopate which has provided authentic moral leadership in the country at its historical turning points.

FCan VII/2 (2012), 41-59: Paulo Pulido Adragão: A Lei da Liberdade Religiosa: novo diagnóstico, onze anos depois. (Comment)

P.A. offers an analysis of the Portuguese Law on Religious Freedom, 11 years after its introduction in 2001. It includes critical observations concerning the model and the composition of the board for supervising the enforcement of the law, the *Comissão da Liberdade Religiosa*, its functions, the granting of State aid to religious groups, recent legal developments, and a possible case of derogation from the 2001 Law.

FCan VII/2 (2012), 61-90: José M^a Martí Sánchez: Puntos de fricción entre los Acuerdos de 1979 y la Ley Orgánica de 1980. (Article)

Historical circumstances explain the Spanish ecclesiastical law system. Consensus and a good understanding with the Catholic Church were what inspired it and led to its success. The Constitution, the fundamental Accords with the Holy See and the Organic Law on Religious Freedom share the same principles, which are incorporated into the law and allow room for the particular characteristics of the Catholic Church. The Portuguese and Spanish experience coincide in certain respects: the socio-political aspect, political evolution, etc. But there are also factors that lead to variants in the Portuguese model, the most important element in which is the Law on Religious Freedom, while the Concordat is a schematic one and a relatively minor piece in the system.

FCan VII/2 (2012), 127-142: Miguel Falcão: A nova legislação sobre a assistência religiosa nas Forças Armadas. (Comment)

On 23 September 2009 new legislation on religious pastoral attention in the Portuguese armed and security forces was passed, in accordance with the Concordat between Portugal and the Holy See of 18 May 2004. F. presents the main changes in the new legislation and its relationship to the 2001 Law on Religious Freedom.

IE XXV (2013), 123-130: Antonio Filipazzi: Tre modalità di sovranità territoriale della Santa Sede: dallo Stato Pontificio alla Città del Vaticano. (Article)

D. examines the development of the Holy See's territoriality from the time of the Papal States until 1870 (a period of "difficult" sovereignty); from 1870 until the Lateran Pacts of 1929 (a period of no sovereignty); and from 1929 to the present, when the Holy See has the minimum territory needed as a foundation for sovereignty and for its continued existence.

IE XXV (2013), 535-560: Santa Sede: Segreteria di Stato: Accordo di base tra la Santa Sede e il Montenegro, 24 giugno 2011 (con nota di Fabio Vecchi, *Appunti sull'Accordo di Base del 24 giugno 2011 tra la Santa Sede e il Montenegro*). (Document and comment)

By means of the Basic Accord of 24 June 2011 Montenegro became the fourth country from the former Yugoslavia, alongside Croatia, Slovenia and Bosnia-Herzegovina, to conclude a Concordat with the Catholic Church. The Accord lays down the minimum conditions to guarantee religious freedom, and corresponds to Montenegro's political aim of becoming a new member State of the European Union.

LJ 170 (2013), 7-18: Lord Mackay of Clashfern: Does Establishment have a Future? (Lecture)

M., a former Lord Chancellor, examines the present relationship between the Church of England and the State, referring briefly to historical developments before setting out the challenges to Establishment today: opposition from the secularist lobby, the risk of ministers of religion being lured from loyalty to Our Lord's teaching, and the threat of wishing to be acceptable to public opinion. He then sketches the development of the relationship of the State to the Church in Scotland, which he describes as being one of recognition with a degree of support.

LJ 170 (2013), 19-48: David McLroy: How Does Christianity regard English Law? (Article)

50 years ago it was still possible for Richard O'Sullivan – the Irish-born barrister who practised for many years at the English Bar, and whose interest in the Christian origins of the common law led him to write many articles on the subject and to found the Thomas More Society to bring together Catholic lawyers and others – to describe English law as the practical application of Christian philosophy and ethics. Today, both Christianity in England and English law are complex, diverse and fragmented phenomena. The attitude English Christians have towards English law can be synthesist, conversionist, "social justice" based, separatist or principled pluralist in orientation. There is therefore a range of Christian positions on questions such as the criminal law, access to justice, welfare provision, family law, human rights, life issues and sexual morality. Nonetheless, McL. says that English Christians share a common thankfulness for the lack of corruption in the English legal system and for the stability of British political structures and public order. However, many have anxieties that successive governments are losing a proper sense of the limitations of their powers. If Richard O'Sullivan were writing today he would

be concerned that, step by step, the political classes in Westminster may blunder into legislating away the freedoms which the reasonable Englishman and woman have enjoyed thanks to Christianity's influence on English laws and law-makers. It is to be hoped that in the century to come Christianity will continue to influence English law so that justice is available for all, the poor and the weak are protected, civil society is fostered and freedom of faith and conscience is respected.

LJ 170 (2013), 49-66: Nick Spencer: The Influence of the Bible on English Political Thought. (Article)

The Bible has been the single most influential text in British political life. S. outlines that influence through three distinct phases (pre-Reformation, immediate post-Reformation [*circa* 1535-1560] and post-Reformation), tracing its impact on five fundamental political commitments: nationhood, justice, democracy, equality, and toleration. He concludes by arguing that despite the fact that Christians have been found on both sides of many of the relevant political debates from which a commitment to these virtues emerged, there are hermeneutical principles, evidenced from history, that generate a coherent and authoritative way of reading the Bible politically.

PS XLVII 143 (2013), 109-172 and 329-368: Hyacinth He: Canonical Issues in Pope Benedict XVI's *Letter to the Catholic Church in China* (2007): Review, Analysis and Commentary – Parts Two and Three. (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. (See also *Canon Law Abstracts*, no. 110, p. 23.)

QDE 26 (2013), 206-250: Carlo Redaelli: Ordinamento canonico e ordinamento civile in Italia: i principi conciliari e costituzionale; gli accordi e la prassi. (Article)

R. examines Church-State relations in Italy. He does this in the context of the teachings of Vatican II (especially *Gaudium et Spes* and *Dignitatis Humanae*) and the Italian Constitution, whose key principles are examined. R. identifies the recognition of the State as an autonomous reality and the need for collaboration to promote human flourishing as central. In the light of these he then looks at the 1984 revision of the Lateran Treaty between the Holy See and Italy, and the way their relationship has developed in practice since then. He gives special attention to a number of the problem areas that have arisen: among them particular attention is given to privacy and the handling of the Church's property.

REDC 70 (2013), 143-158: José María Díaz Moreno: Los diez primeros informes sobre la revisión del Concordato de 1953. Contribución a la historia de los Acuerdos vigentes. (Article)

D.M. examines the years in Spain following the Second Vatican Council when in 1968 the Spanish bishops were informed by the Vatican Secretariat of State via the Nunciature that the Holy See had decided to proceed with a revision of the 1953 Concordat with the Spanish State. Among other steps taken, prominent and influential people in the life of the Church in Spain (mostly university professors) were asked for their opinions concerning the advisability of such a revision, and which areas most needed attention or modification. Ten such reports were requested (the authors remain anonymous) and D.M. summarizes the main points in each under such headings as: guiding principles for initiating conversations with the government; the Church as a perfect society; the appointment of bishops; the temporal patrimony of the Church; the theory of Concordats; the spirit of Vatican II; freedom of religion; and the confessional nature of the State. These reports were then studied by a Commission set up by the Nunciature. D.M. synthesizes its conclusions: it was not the opportune moment for a new Church-State agreement; nevertheless a modification of the existing Concordat was needed; the majority of respondents considered necessary a prior reciprocal renunciation by both parties of mutual privileges and concessions. These reports reflect Spanish thinking on the issues raised at a particularly important historical period and helped prepare the ground for the present 1976 Accords between the Catholic Church and the Spanish State (in the elaboration of which D.M. himself contributed).

REDC 70 (2013), 289-301: Discurso del Santo Padre Benedicto XVI al Cuerpo Diplomático acreditado ante la Santa Sede, 7 enero 2013. Texto y

comentario en español de José M^a Rodríguez-Veleiro. (Document and commentary)

Given here is the Spanish text of Pope Benedict XVI's 2013 address to the Diplomatic Corps accredited to the Holy See. Among other subjects he emphasizes the need to work for peace through dialogue, drawing special attention to the situation in the Middle East and the Holy Land. He also speaks of the importance of education as part of the work of peace.

Religious freedom

FCan VII/2 (2012), 91-126: Mário Rui de Oliveira: A liberdade religiosa no contexto das concordatas. Considerações a propósito do Acordo entre a Santa Sé e a República Federativa do Brasil. (Article)

After presenting definitions of the concepts of freedom of conscience and of worship, the article goes on to look at the Catholic understanding of religious freedom, starting from the conciliar Declaration *Dignitatis Humanae*. The teaching on religious freedom provides the framework within which the current system of concordats is examined.

IE XXV (2013), 35-54: Roberto Mazzola: Pluralismo religioso in Europa e giurisprudenza della Corte di Strasburgo. (Article)

M. focuses on the importance given to religious pluralism in the case law of the European Court of Human Rights (ECtHR) in Strasbourg. He examines the way in which the ECtHR interprets the principle of pluralism and its connection with models of democracy. Religious pluralism in contemporary societies clashes with those social dynamics that are hostile to cultural and religious diversity: hence the importance of the ECtHR in protecting the democratic principles established in national constitutions. However, the ECtHR's aspirations to be the guardian of the principles enshrined in the European Convention on Human Rights often runs up against technical difficulties (including the ECtHR's own internal procedures) as well as the reluctance of some member States to follow its rulings.

IE XXV (2013), 153-166: José T. Martín de Agar: Insegnamento della religione e coerenza di vita. La sentenza Fernández Martínez vs. Spagna. (Comment)

This comment on a judgment of the European Court of Human Rights (Third Section), 15 May 2012, points out that it is for the religious authority to make judgments as to the suitability of a teacher of religion in State schools. Civil law, in its turn – including laws deriving from an agreement with the religious authorities – renders such competence effective. Judgment as to suitability cannot be arbitrary or incapable of being appealed against; it must respect the fundamental rights of the parties involved: teachers, parents, students, and religious confessions. In this regard the civil judicial authority may rule on the appropriate balance to be achieved among these various rights. Specific obligations on a teacher of religion to embrace religious belief and behave in accordance with such belief do not represent an unlawful interference in that person's private life, nor do they constitute discrimination or violation of the person's freedom of belief, conscience and religion. They form part of the loyalty and good faith requested of anyone working in an organization "the ethos of which is based on religion or belief" (Directive 78/2000/CE, art. 4.2).

ELJ XV 2/13, 191-203: Mark Hill: Religious Symbolism and Conscientious Objection in the Workplace: An Evaluation of Strasbourg's Judgment in *Eweida and others v United Kingdom*. (Comment)

The judgment of the European Court of Human Rights in *Eweida and others v United Kingdom* related to two pairs of cases. The first pair concerned a British Airways check-in clerk and a nurse, each of whom complained that dress codes at their respective places of work prevented them from openly wearing a small cross on a chain around their neck. In the second pair, a registrar of marriages and a relationship counsellor refused to offer their respective services to same-sex couples on the basis that homosexual acts were incompatible with their religious beliefs. Having failed to obtain relief in the domestic courts, all four applicants took their claims to Strasbourg, which heard oral argument in September 2012. Judgment was pronounced on 15 January 2013. H.'s comment considers the broad thrust of the judgment, particularly the threefold manner by which the Court has clarified and embedded the right to freedom of religion, the practical outcome in the individual cases, and the likely effect of the judgment upon future litigation in the domestic courts of the United Kingdom. (See also the following entry.)

LJ 170 (2013), 67-76: Frank Cranmer: Accommodating Religion in the Workplace – or Maybe Not: A Note on Chaplin, Eweida, Ladele and McFarlane. (Comment)

On 15 January 2013 the European Court of Human Rights handed down a judgment in the conjoined cases of Ms Shirley Chaplin, Ms Nadia Eweida, Ms Lillian Ladele and Mr Gary McFarlane, all of which related to the right to manifest one's religion under article 9 (thought, conscience and religion) and/or article 14 (discrimination) of the European Convention on Human Rights. C. offers a comment on the decisions which were not the same in each case, since the four applications were treated as individually fact-sensitive.

SC 47 (2013), 5-24: Francis G. Morrissey: La liberté religieuse et l'intérêt public. (Article)

M. discusses religious liberty and the public interest first by acknowledging rights and obligations in civil society and the Church. He next considers religious liberty as a path towards peace, and addresses both the public dimension of religion and the ethical foundation for political choices in accord with the freedom of religion. He explains the "public interest" by focusing on practical aspects of the common good. He concludes that there are three particular points of public interest for the Church in its relation to the public order: human life, marriage and the family, and religious liberty.

HISTORICAL SUBJECTS

Classical period

AkK 181 (2012), 90-105: Szabolcs Anzelm Szuromi: Medieval Canon Law Manuscripts in the National Library of St Petersburg. (Article)

Weissenau Abbey, which existed from 1145 until the secularization of 1802-1803, was an exempt monastery of Premonstratensian canons regular in the region of the former free imperial city of Ravensburg in Oberschwaben. The medieval canon law manuscripts are in four different categories: Erm. lat., Lat F. v. II, Lat. O. v. II and Lat. Q. v. II. Here S. concentrates on the collections Erm. lat and Lat. F. v. II. which contain some notable canon law manuscripts from the 7th to the 14th centuries. The manuscripts of the Norbertine abbey of Weissenau were brought to different places during the Napoleonic wars. Some 28 manuscripts are in St Petersburg. The manuscript Ermit. Lat. 26 is a textual witness of the *Liber Extra* and in its first part contains the complete text of the Bull *Rex pacificus* of Pope Gregory IX (1227-1241). On the basis of the medieval manuscripts it is clear that there was in Weissenau a blossoming, lively and powerful culture of canon law. This can be traced back to its well-appointed library and also its good relationship with Emperor Frederick I Barbarossa.

Ang 90 (2013), 189-216: Rafael Ramis Barceló: El pensamiento jurídico de Santo Tomás y de Ramon Llull en el contexto político e institucional del siglo XIII. (Article)

R.B. compares the legal thought of Thomas Aquinas and his contemporary Ramon Llull (Raimundus Lullus). He begins by setting out some of the particular features of the political context of the time, before comparing the references to law in the writings of both authors. Despite the differences between them, they both shared a vision of law that accepted the schemas of Aristotelian ethics and the background of the *ius commune*.

ELJ XV 1/13, 75-80: Richard Helmholz: Notable English Ecclesiastical Lawyers I – Roger, Bishop of Worcester (c. 1134–1179). (Article)

In the first of a series of short articles on notable English ecclesiastical lawyers, H. questions the once common view that England was behind the rest of Europe in knowledge of and respect for the canon law. He demonstrates that, in fact, England was in the vanguard of the development of the *ius commune*. His first

subject, a 12th century Bishop of Worcester, was a highly active Papal judge delegate (with at least 130 cases to his name). He was also almost certainly involved in the early English collections of decree talks which can be seen to be the direct predecessors of the *Quinque compilationes antiquae*, and, subsequently, the Gregorian Decretals.

J 72 (2012), 515-543: Brandon T. Parlopiano: The Burden of Proving Insanity in the Mediaeval *Ius Commune*. (Article)

P. considers proofs of insanity in 12th century Decretalists and their successors over the next 300 years.

REDC 70 (2013), 81-106: Florencio Hubeñák: La influencia de Dionisio Areopagita en la *Civitate Dei*. (Article)

H.'s subject is the influence on the structure of medieval Christendom of the mysterious and complex figure of Dionysius the Areopagite. He first attempts to clarify who he might have been and which works might be genuinely attributed to him, before proceeding to examine the *Corpus Dionysiacum*. He brings out particularly the concept of hierarchy in the Dionysian understanding of the universe, where all power resides in God as the Supreme Being and is then reflected in the heavenly realm in the different rankings of the angelic bodies which is then further mirrored on earth in the hierarchical orders of the Christian Church. The whole order of the universe was held together by the clear differentiation between the grades and rankings of various bodies in such a way that each is directly dependent on the body immediately superior to it. H.'s final thoughts concern the way in which the writings of Dionysius became accepted and spread in Western Christendom.

SC 47 (2013), 25-60: Emmanuel Petit: Le mariage civil des catholiques à la lumière des fictions du droit matrimonial. (Article)

Merely civil marriage of Catholics is unknown to the canonical order. This position was reaffirmed during the two codifications of 1917 and 1983. However, a new line of cases, called invalid convalidations, gave a new urgency to the question. Rotal jurisprudence and authors were divided on the possible convalidation of civil marriage for those who are bound to the canonical form. P. seeks to contribute to this debate with a historical study. The simple convalidation of marriage, analysed in the light of the decretal *Tanta* of Alexander III, and especially the approval of clandestine marriages, show that any subsequent marriage convalidates in itself acts of the past. The *sanatio in radice* follows the same logic.

16th-19th centuries

EE 88 (2013), 321-359: Fernando Millán Romeral: La sacramentalidad del matrimonio: algunas notas desde la historia de la teología. (Article)

M.R. focuses on the theological controversy over the sacramentality of marriage which took place at the time of the Reformation (Luther, Henry VIII, Calvin and Trent). He begins with a study of the subject in the thought of the Church Fathers and medieval theology. He then goes on to study two subsequent developments of the subject: the application of the notion of sacrament to marriage in *Sacrosanctum Concilium*, no. 59, and possible ways forward for ecumenical dialogue as outlined in the 1976 report entitled *Theology of marriage and the problems of mixed marriage*.

EIC 53 (2013), 155-178: Cecilia Pedrazza Gorlero: Contro il Gigante che fece guerra al Cielo: spunti per un contributo alla lettura della *Réponse* di Pierre Grégoire al *Conseil sur le fait du Concile de Trente* di Charles Du Moulin. (Article)

The *Réponse au conseil donné par Charles Du Moulin sur la dissuasion de la publication du Concile de Trente en France*, written by the Toulouse jurist Pierre Grégoire in 1584, is one of the most interesting documents on the reception of the decrees of the Council of Trent in France. This article aims at reviewing the contents of the *Réponse* in the light of various writings dedicated to it, in order to contextualize it within Grégoire's thought, with particular emphasis on its complementarity as regards Grégoire's overall work.

ELJ XV 2/13, 204-207: Richard Helmholz: Notable English Ecclesiastical Lawyers II – Richard Zouche (1590-1661). (Article)

In the second article in this series, H. examines the life and career of the greatest English civilian of the seventeenth century. Zouche was Regius Professor of Civil Law at Oxford and an Advocate of the Court of Arches, and held a number of ecclesiastical appointments until his appointment as judge of the High Court of Admiralty in 1641. He wrote extensively on the canon and civil law, and gained a deserved international reputation. Unfortunately for him, his career coincided with the English Interregnum, for the duration of which the canon law courts were abolished. He was also a Royalist, both of which may go some way to explain why he is not better known. H. examines his writings on various aspects of the *ius commune*, including his contribution to ecclesiastical law.

REDC 70 (2013), 13-39: Giovanni Minnucci: *Pro Decio contra Ripam*. Note sul dibattito intorno al valore giuridico del Decreto di Graziano all'inizio dell'Età moderna. (Article)

M. deals with the juridical value and authenticity of the *Decretum Gratiani* as reflected in the views and debate between Filippo Decio and Gianfrancesco Sannazari della Ripa in the early 16th century.

REDC 70 (2013), 41-65: Luis E. Rodríguez-San Pedro Bezares: *El canonista Diego de Covarrubias y Leyva (1512-1577) y la Universidad de Salamanca*. (Article)

R.B. examines the relationship between the canonist Diego de Covarrubias and the University of Salamanca. Covarrubias arrived in Salamanca in 1523 at the age of ten or eleven from his native Toledo as the Renaissance period was under way. The article examines what little is known of his time as a student of humanities and law, and the likely professors under whom he would have studied. Another section deals with his career as a teacher and professor of law at the University until 1548 when he was named judge in residence for Burgos and auditor of the Royal Chancellery of Granada. He was successively bishop of Ciudad Rodrigo and Segovia, and in 1572 was named President of the Council of Castile, the highest governmental post in the land. He had already been appointed by royal decree Visitor to the University of Salamanca. By accepting the post he was acknowledging the increasing centralizing influence of the royal prerogative over the ever-weakening Papal control over the University.

REDC 70 (2013), 159-193: Carlos Salinas Aranedo: *El Concilio Plenario de América Latina y su proyección en la codificación del Derecho Canónico de 1917*. (Article)

In 1899, just four years before the beginning of the codification process which was to lead to the CIC/17, there took place in Rome a Plenary Council of the Latin American Church which fully half of the continent's episcopate attended. S.A. looks at some of the principal themes reflected in its decrees and considers the influence they had on the subsequent preparatory work on the new Code of Canon Law. The preparatory Commission made use of various elements contained in the Plenary Council's decrees, and, in its worldwide canvassing of the opinions of bishops, also received responses from Latin America, including from many who had participated in the recent Council, all of which contributed to the process of codification. In some cases the Council's decrees simply provided a stimulus or inspiration in certain areas of Church life, and in other cases parts of its decrees were taken almost verbatim by the Commission as

canons of the future Code. Some of the *fontes* used by the Council for its decrees were also used by the Code.

Second Vatican Council and revision of the CIC

Comm 44 (2012), 548: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum “De Iure Poenali” (Sessio II): Litterae N. 725/66 quibus convocatur II sessio Coetus Studii de iure poenali necnon quibus in adnexo ad Consultores *Praevium schema canonum* a Relatore parato transmittitur. (Report)

This is the text of the letter convoking the second session of the study group on Penal law to meet on 9 January 1967.

Comm 44 (2012), 549-560: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum “De Iure Poenali” (Sessio II): de delictis in genere: *Praevium schema canonum* a Relatore paratum. (Report)

This is the text of a preparatory schema drafted by Pio Ciprotti covering general norms on delicts and the application and remission of penalties, a total of 51 canons.

Comm 44 (2012), 561-565: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum “De Iure Poenali” (Sessio II): Adnotationes ad Schema praevium canonum de delictis in genere a Relatore missae. (Report)

Notes are provided for each of the above draft canons connecting them with those in the CIC/17 and with some observations or questions.

Comm 44 (2012), 566: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum “De Iure Poenali” (Sessio II): Novus textus propositus pro can. 21 a Relatore missus. (Report)

Here Ciprotti proposes two alternative versions to draft canon 21 relating to excusing causes.

Comm 44 (2012), 567-578: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum “De Iure Poenali” (Sessio II): Relatio Sessionis II^{ae}. (Report)

This reports the discussion and observations on the draft canons made by the Consultors present at the meetings between 9 and 13 January 1967.

Comm 44 (2012), 579-590: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum “De Iure Poenali” (Sessio II): Praevium canonum schema, a Pio Ciprotti paratum et postea emendatum a Consultoribus Coetus diebus 9-14 mensis Ianuarii 1967 habiti. (Report)

Ciprotti prepared a revised schema in the light of the discussions held 9-14 January 1967 but also added a number of changes on his own initiative.

Comm 44 (2012), 591: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum “De Iure Poenali” (Sessio II): Adnotationes ad Schema, emendatum in Coetu Consultorum 9-14 mensis Ianuarii 1967, a Relatore missae. (Report)

Ciprotti provides a few additional notes on the revised draft canons.

EIC 53 (2013), 205-239: Constantino-M. Fabris: Il Popolo di Dio. I. I diritti dei fedeli. I diritti dei fedeli laici. (Article)

See below, canons 208-231.

IE XXV (2013), 339-361: Fabiana Falcone: Actio e ius: L’evoluzione del concetto nell’ordinamento canonico tra il Codice del 1917 e il Codice del 1983. (Article)

F. explains the progressive emergence – based on the CIC/17 and in part on the debates over the nature of civil trials – of a concept of “action” no longer identified with that of “right”, but rather in the service of such right. In this perspective the action corresponds to a demand for justice in harmony with the *salus animarum* which characterizes canon law.

CODE OF CANONS OF THE EASTERN CHURCHES

General

Ius III 2/12, 217-246: S. Kokkaravalayil: The Inspiration of Vatican II for the Revision of the Eastern Canon Law. (Article)

K. considers how and whether in all areas Vatican II has been an inspiration as well as the criterion for the codification of the CCEO. He argues that many of the characteristic features of the CCEO are rooted in conciliar teaching and that for this reason its provisions must be interpreted and applied in the light of and in harmony with the theology taught by the Council. Examples of this are the Church's self-understanding and the principle of subsidiarity, a pastoral and ecumenical approach, legitimate diversity, and the place of the faithful, especially laity, bishops and patriarchs.

Ius III 2/12, 247-264: G. Gallaro: The Common Canonical Heritage of the Christian East Revisited By Vatican II. (Article)

Canon 2 sets the parameters for the interpretation of the CCEO in the context of the ancient law of the Eastern Churches, the canonical collections, and norms of Roman Imperial legislation, but also allows for these to be supplemented by other sources such as the canons of Western Councils, decrees and instructions of the Roman Pontiff and Curia, the canons of the four *motu proprio*s, canons and decrees of Eastern Synods and the Constitutions and Decrees of Vatican II. G. emphasizes that the Sacred canons of the first millennium, confirmed at Nicaea in 787, are the common heritage of the whole Greek and Latin Church and that such common roots have an extraordinary ecumenical import.

Ius III 2/12, 265-274: C. Thunduparampil: Vatican II as the First Source of CCEO Canons. (Article)

T. sets out an index of 262 canons, most of which cite Vatican II as their primary source, and notes that 15 of its 16 documents appear as sources of the canons. The index appears in two columns with the canons in sequence to the left and the Vatican II source to the right.

Ius III 2/12, 275-290: G. Nedungatt: Second Edition of *Index Analyticus CCEO* in English Translation. (Review Article)

The revised translation of the CCEO published by the Canon Law Society of America in 2001 incorporated (unacknowledged) the second edition of this work by Ivan Žužek, and it was republished in an Indian edition in 2003, but this time with acknowledgement although still not mentioning the author's name. N. seeks to redress this by setting out the importance of Žužek's contribution and explaining how each edition came to be produced. He focuses on two words, "culture" and "charism", to illustrate the usefulness of the Index.

CCEO 1

J 72 (2012), 641-665: Jobe Abbass: Transfer to Another Church *Sui Iuris*, Including the Latin Church (CCEO c. 32 §2). (Article)

See below, CCEO canon 32.

CCEO 28

Ius III 2/12, 169-192: Paul Pallath: The Fundamental Rights of the Churches in the Communion of Catholic Churches. (Article)

P. attempts to gather together and articulate some of the fundamental rights of the Churches enshrined in Vatican II and the Codes of Canon Law. He highlights the rights to existence and equality, and argues that extrinsic growth requires that each Church should be enabled to extend the territorial reach of its activity wherever needed, without being obliged to remain within a certain territory. Evangelization is not a right limited to the Latin Church.

CCEO 32

J 72 (2012), 641-665: Jobe Abbass: Transfer to Another Church *Sui Iuris*, Including the Latin Church (CCEO c. 32 §2). (Article)

A. notes that there have been two approaches to interpreting CCEO canon 32 §2, a minority one which excluded the Latin Church and a majority one which included it within the ambit of the canon. There follows the legislative history of the canon. A. concludes with a commentary on the Explanatory Note of the Pontifical Council for Legislative Texts which ended this dispute, favouring the majority viewpoint. An appendix includes an English translation of the (Italian) Explanatory Note.

CCEO 55-101

EIC 53 (2013), 179-204: Giulio Vincoletto: Note sul rapporto giuridico-canonico tra il Romano Pontefice e i Patriarchi cattolici orientali. (Article)

V. studies the relationship between the Roman Pontiff and the Oriental Patriarchs from the perspective of the CCEO in comparison with previous legislation. He shows the present law to be a more suitable discipline, thanks to the theological doctrine of Vatican II, both with regard to the role of the Patriarchs in the universal Church and more especially with regard to the function of unity pertaining to the Petrine Office.

CCEO 57

Ius III 2/12, 169-192: Paul Pallath: The Fundamental Rights of the Churches in the Communion of Catholic Churches. (Article)

See above, CCEO canon 28.

CCEO 178

Ius III 2/12, 193-216: M. Kuchera: The Influence of Vatican II on CCEO Title VII, Eparchies and Bishops. Chapter I: Bishops, c. 178. (Article)

K. compares the key canon on bishops in the CCEO with the corresponding canon 381 §1 of the CIC/83. His historical analysis of the way in which episcopal authority has been seen falls into three sections: Vatican I; 1870-1962; Vatican II – a move from seeing the bishop as the vicar of the Pope to receiving his authority directly from Christ. An important element in this was to avoid the danger of interposing the hierarchical structure of patriarchates in such a way that the authority of bishops in the Eastern Churches seemed less than that in the West where there was no such structure.

CCEO 193

IE XXV (2013), 131-152: Jacob Mandiyil: La situazione giuridica e pastorale dei fedeli delle Chiese cattoliche Orientali in Germania. (Article)

See below, CIC canon 383.

CCEO 413-1036

SCL VIII (2012), 141-174: Rose McDermott: The Vigilance of the Diocesan or Eparchial Bishop: Diocesan/Eparchial Right Institutes/*Sui iuris* Monasteries/Hermits/Ascetics/Virgins/Widows. (Article)

See below, CIC canons 579-699.

CCEO 780

Comm 44 (2012), 357-359: Pontificium Consilium de Legum Textibus: *Nota explicativa quoad pondus canonicum divortii orthodoxi.* (Document)

See below, CIC canon 1059.

CCEO 876

Comm 44 (2012), 439-440: Articulus explanans consilium cremandi cadavera a Sancto Synodo Ecclesiae Orthodoxae Dacoromaniae captum (die 1 mensis augusti 2012). (Article)

A recent decision by the Synod of the Romanian Orthodox Church upheld those taken in 1928 and 1933 to maintain the ban on cremation. Only the bishop can grant a dispensation and permit a vigil service and only for objective reasons such as money or government pressure, not as a matter of choice. Priests who ignore this will be subject to sanctions. This is in Italian and reprinted from *L'Osservatore Romano*.

CCEO 916

IE XXV (2013), 131-152: Jacob Mandiyil: La situazione giuridica e pastorale dei fedeli delle Chiese cattoliche Orientali in Germania. (Article)

See below, CIC canon 383.

CCEO 920

IE XXV (2013), 317-337: Massimo del Pozzo: L'inadeguatezza della nozione di persona giuridica. (Article)

See below, CIC canon 113.

CCEO 936-978

Comm 44 (2012), 592-629: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Orientali Recognoscendo: Coetus Studiorum Specialis “De Normis Generalibus et De Officiis” (Sessio I diebus 10-14 mensis Martii 1980 habita). (Report)

This reports the discussion of the study group on general norms and ecclesiastical office of the Commission for the Revision of the Eastern Code held 10-14 March 1980. The first part concentrates on provision to office but most of the discussion was on laws, customs and administrative acts.

CCEO 1007-1054

Comm 44 (2012), 341-356; also SCL VIII (2012), 13-22: Pope Benedict XVI: Litterae Apostolicae Motu Proprio datae, *Intima Ecclesiae natura, de caritate ministranda* (lingua latina una cum versione italica). (Document)

See below, CIC canons 1254-1310.

CCEO 1007-1054

Comm 44 (2012), 450-455: I. Ignatio Arrieta: Articulus explanans Litteras Apostolicas, Motu Proprio datas, *Intima Ecclesiae natura, de caritate ministranda*, ab Ex.mo Ioanne Ignatio Arrieta conscriptus (dies 2 mensis decembris 2012). (Article)

See below, CIC canons 1254-1310.

CCEO 1357

Comm 44 (2012), 357-359: Pontificium Consilium de Legum Textibus: *Nota explicativa quoad pondus canonicum divortii orthodoxi.* (Document)

See below, CIC canon 1059.

CCEO 1401-1487

SCL VIII (2012), 87-114: Thomas Green: Penal Law: An Eastern Perspective (CCEO 1401-1487). (Article)

G. begins by mentioning the impact of *Sacramentorum Sanctitatis Tutela* and subsequent amendments on penal law in both Latin and Eastern Churches, and

also the circulation of a draft revision of Book VI of the Latin Code. The purpose of the article is to provide a broader basis for the reflection of Latin canonists. He looks first at the history of the drafting of Eastern Penal Law. Three emphases were the abolition of *latae sententiae* penalties, greater emphasis on canonical warnings, and a focus on positive actions such as almsgiving or pilgrimage rather than deprivation of some right. In general this schema was welcomed although some questioned its strongly medicinal thrust and the abolition of *latae sententiae* penalties. The author then offers some comparative reflections on the Eastern and Latin Codes in the general area of offences and penalties, and penalties for specific delicts, highlighting key differences, and finally the judicial and administrative processes.

CCEO 1488-1546

Comm 44 (2012), 592-629: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Orientali Recognoscendo: Coetus Studiorum Specialis “De Normis Generalibus et De Officiis” (Sessio I diebus 10-14 mensis Martii 1980 habita). (Report)

See above, CCEO canons 936-978.

CODE OF CANON LAW
BOOK I: GENERAL NORMS

3

Comm 44 (2012), 395-396: Secretaria Status: Informationes quoad Ordines Equestres a Secretaria Status die 16 mensis octobris 2012 datae. (Document)

This short note in Italian and English lists the Equestrian Orders of the Holy See and recognizes the Sovereign Military Order of Malta and that of the Holy Sepulchre of Jerusalem. Other orders, whatever their historical origin, are not recognized by the Holy See, and the note warns against the inappropriate use of sacred spaces that may give credence to such groups.

8

J 73 (2013), 271-297: United States Conference of Catholic Bishops: Complementary Legislation to the Code of Canon Law. (Legislation)

See above, General Subjects (*Compilations*).

16

J 72 (2012), 604-640: John M. Huels: Classifying Authentic Interpretations of Canon Law. (Article)

H. begins by mentioning Lawrence Wrenn's book on the subject of authentic interpretations and how he is still impressed by it but disagrees with many of its concrete conclusions. He considers the juridical nature of authentic interpretation and the role of the Pontifical Council for Legislative Texts. He then offers an attempt at an "objective" approach to classifying authentic interpretations, emphasizing the objective meaning of the words of the law. He concludes by offering some examples.

17

SCL VIII (2012), 7-12: Pope Benedict XVI: Allocution to the Roman Rota. (Allocution)

Pope Benedict draws on the theme of the Year of Faith in his address to the Rota. Two different forms of positivism must be avoided in interpreting and applying the Church's law. One is a narrow focus on the wording of a text. The

other is to attend to the theological and pastoral foundations and goals of the text to the point where the text becomes emptied of its meaning. Legal hermeneutics must be in syntony with the signification of the law. Even when regulating human matters laws contain a nucleus of the Natural Law and Divine Positive Law. Establishing the proper meaning of the words considered in their text and context is no longer a mere logical exercise. It takes place in the context of the faith and life of the Church. Here lies the importance of Pontifical Magisterium, particularly in the Rotal addresses and the jurisprudence of the Rota as a source of hermeneutical unity.

19

Comm 44 (2012), 397-401: Secretaria Status: Allocutio ab Eminentissimo Card. Tharcicio Bertone, Secretario Status, die 8 mensis novembris 2012, occasione inaugurationis Anni Academici 2012-2013 Rotae Romanae prolata. (Address)

The Secretary of State addresses the Roman Rota on the occasion of the opening of the *Studio Rotale* for 2012-2013. He explores the very practical role of this school in jurisprudence and the practice of the Holy See, and outlines its history.

34

J 73 (2013), 89-130: John J.M. Foster: Canonical Reflections on *Universae Ecclesiae*, the Instruction on the Application of *Summorum Pontificum*. (Article)

See below, canon 838.

87

IE XXV (2013), 239-260: Supremo Tribunale della Segnatura Apostolica: Alcuni decreti riguardanti la concessione di dispense (con nota di Pawel Malecha, *Le dispense dalle leggi processuali alla luce di recenti documenti della Segnatura Apostolica. Alcune considerazioni pratiche*). (Documents and comment)

Collected here are a number of decrees concerning the granting of dispensations: 1. a decree of refusal of a pontifical commission on account of the absence of a just and reasonable cause (cf. canon 90 §1); 2. a decree of dispensation (and refusal of dispensation) from the necessary academic qualification (cf. canons 1421 §3, 1435); 3. a decree of dispensation from the necessary academic qualifications for the ministry of a tribunal of an Eastern Church (cf. CCEO

canon 1099 §2); 4. a decree of alteration of a dispensation under canon 1435; 5. a decree of revocation of a dispensation from the necessary academic qualifications (cf. canon 1435); 6. a refusal of a decree of dispensation from the requirement of double conforming sentences. In his comment, M. points out that these decrees were published in *Acta Apostolicae Sedis*, and for methodological reasons were chosen as examples of the more frequent dispensations requested of and examined by the Apostolic Signatura. M. first of all considers the concept of dispensation in general, the faculty to dispense which the Apostolic Signatura possesses, and the need for a just and reasonable cause in order to grant any kind of dispensation. He then looks at the principal areas in which the Signatura exercises its faculty to dispense from procedural laws, namely, dispensation from the required academic degree in canon law, dispensation from the obligation of double conformity, and dispensation from the norm of canon 1614. Finally, by means of three examples (dispensation from the judicial citation, dispensation from the publication of the acts, and dispensation from the trial itself), M. shows the limits of dispensation which are established by the law itself.

94

AkK 181 (2012), 152-203: Stefan Ihli: Die Jurisdiktionsgewalt des Diözesanbischofs über kirchliche Rechtsträger. Grundsätzliche Überlegungen zum Urteil des Delegationsgerichts der Apostolischen Signatur. (Article)

See below, canon 1286.

113

IE XXV (2013), 317-337: Massimo del Pozzo: L'inadeguatezza della nozione di persona giuridica. (Article)

The original notion of “juridical person”, which came about within the canonical sphere (the *persona ficta* of Sinibaldo dei Fieschi, the future Pope Innocent IV), has become lost in the modern legal culture. Its identification with the “subject of rights”, and the attribution of personality by the authority, distort the realistic and traditional notion. It was not the traditional concept, but the civil patrimonial understanding of the phrase which was uncritically received into the codifications in force today. Thus the expression “juridical person” turns out to be incorrect in its modern usage; it neither correctly describes the phenomenon, nor delineates it. To call this reality a “person” is erroneous, and to call it “juridical” is not specific. The scant significance of this concept and the diversity of its ecclesial contexts call for a move away from this extraneous and

misleading conceptualization to one which grasps and respects the character proper to transpersonal canonical entities. The return to classical praxis from contemporary dogmatism is a secure antidote to the dangers of widespread positivism, technicalism and abstraction.

128

IE XXV (2013), 79-91, 107-119: Tribunale Apostolico della Rota Romana: *Penale e riparazione dei danni*, Decreto, 23 gennaio 2008, McKay, Ponente (con nota di Adolfo Zambon, *Sul risarcimento del danno. Alcune riflessioni a partire da due coram McKay*). (Decree and comment)

See below, canons 1729-1731.

128

IE XXV (2013), 92-119: Tribunale Apostolico della Rota Romana: *Penale e Iurium: riparazione dei danni*, Sentenza definitiva, 23 luglio 2010, McKay, Ponente (con nota di Adolfo Zambon, *Sul risarcimento del danno. Alcune riflessioni a partire da due coram McKay*). (Sentence and comment)

See below, canons 1729-1731.

134

Per 101 (2012), 417-440: Yuji Sugawara: *Ordinari per i membri degli istituti religiosi*. (Article)

See below, canon 596.

144

REDC 70 (2013), 195-227: Carmen Peña García: *El matrimonio en el ordenamiento canónico: posibles líneas de reforma legislativa*. (Article)

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

BOOK II, PART I: CHRIST'S FAITHFUL

207

Cla n.s. 4, 53 (2013), 291-318: Fernando Prado Ayuso: El ministerio ordenado de los religiosos y el magisterio postconciliar. (Article)

In her conciliar and the post-conciliar development the Church has not formulated a systematic and explicit doctrine on the relationship between religious life and the ordained ministry. Nevertheless, the Church has dealt with this theme in various ways. If we look carefully we can find some indications on specific issues. This article attempts to give systematic form to what the Church pronounces on this subject in her Magisterium. The conciliar and the post-conciliar documents describe this relationship and recognize it as a different and specific form of life in the Church and its harmonic tension between the universal and the particular dimension. A glance at canon law and the liturgy helps us discover more details on this theme and on the thinking of the Church's Magisterium. The article also takes into account certain documents (especially on formation) published by the episcopal conferences of different countries that deal with what the Church desires and hopes for from the future (and present) religious ordained ministers. This broad perspective gives us a more complete vision of what the Church has said on this "open issue".

208-231

EIC 53 (2013), 205-239: Constantino-M. Fabris: Il Popolo di Dio. I. I diritti dei fedeli. I diritti dei fedeli laici. (Article)

F. offers a broad analysis of the abundant bibliography relating to the canonical topic of "The People of God". He examines in particular the theme of the rights of the faithful in Church law, with special reference to the rights of the lay faithful. Discussions concerning the recognition of the rights of faithful in general and the laity in particular have characterized canonical scholarship during the 19th and 20th centuries, and most especially in the light of the innovations of Vatican II. F. offers a panoramic overview of the relevant canonical literature, linking it to the innovations introduced by subsequent juridical reforms.

209

AkK 181 (2012), 39-56: Helmuth Pree: Kirchliche Leitungsgewalt – Aspekte ihrer Reichweite und Anwendung. (Article)

See below, canon 212.

212

AkK 181 (2012), 39-56: Helmuth Pree: Kirchliche Leitungsgewalt – Aspekte ihrer Reichweite und Anwendung. (Article)

Acts of the ecclesiastical power of governance are, to the extent that they are *ius divinum*, fruit of the participation of the sacred Pastors in the *potestas* of Christ and cannot be understood simply as extrinsic formalities or human conventions. Laws, judgments and administrative decisions made in the context of *potestas regiminis* which are simply left to the faithful to accept or not. They establish rights and duties that preserve the Church's *communio*. With regard to expressing opinions, the limitations in canon 212 §3 apply. Incitement to disobedience as against ecclesiastical authorities violates the basic obligation on all the faithful to preserve communion with the Church in accordance with canon 209 §1. Furthermore, clerics who act in this manner also breach their duty to act with reverence and obedience towards the Pope and their Ordinary according to canon 273. Church teaching and directives do not contravene the faith, morals or law of the Church. They therefore offer no basis for a member of the faithful to dissent in conscience. Thus the appeal to conscience is not sufficient for calling into question the binding force of disputed directives issued by the ecclesiastical power of governance.

220

IE XXV (2013), 79-91, 107-119: Tribunale Apostolico della Rota Romana: Penale e riparazione dei danni, Decreto, 23 gennaio 2008, McKay, Ponente (con nota di Adolfo Zambon, Sul risarcimento del danno. Alcune riflessioni a partire da due coram McKay). (Decree and comment)

See below, canons 1729-1731.

220

IE XXV (2013), 363-385: Montserrat Gas Aixendri: Apostasía y tratamiento jurídico de los datos de carácter personal. La experiencia jurídica europea. (Article)

See below, canon 535.

220

QDE 26 (2013) 77-90: Fabio Marini: L'ufficio del parroco tra segreto e riservatezza. (Article)

M. examines how the role of the parish priest requires a particular attention to individuals not merely in their context but also with respect to what is most precious and intimate to them; this task naturally requires attention to privacy. The Church respects this in a general way in canon 220 (and in the Italian context by special particular laws on privacy). The parish priest has to pay attention to privacy when making parochial decisions in collaboration with others, and in this context may require secrecy to be observed. Even apart from the seal, proper secrecy should surround the confessional; secrecy is also relevant to pre-marital enquiries and to a secret marriage. Parish records and files are another ambit requiring proper secrecy. Overall, because the pastoral role involves caring for people in a way that deals with what is most personal to them, it should be covered by appropriate confidentiality.

221

FCan VII/2 (2012), 155-173: Dominique Le Tourneau: L'interprétation du droit fondamental des fidèles a être jugés selon le droit (c. 221 §3). (Article)

After explaining the nature of the principle of legality – *nullum crimen, nulla poena, sine lege praevia* – Le T. examines the application of the principle to canon 221 §3, and the questions to which it gives rise, including the fact that it is not always respected even by the Code itself. He then turns his attention to the counter-principle contained in canon 1399, which is almost universally opposed by canonical authors, and studies the scope of its application. He argues that it would be easy to do without this norm and have recourse instead to the penal precept.

230

J 73 (2013), 271-297: United States Conference of Catholic Bishops: Complementary Legislation to the Code of Canon Law. (Legislation)

See above, General Subjects (*Compilations*).

231

AkK 181 (2012), 152-203: Stefan Ihli: Die Jurisdiktionsgewalt des Diözesanbischofs über kirchliche Rechtsträger. Grundsätzliche Überlegungen zum Urteil des Delegationsgerichts der Apostolischen Signatur. (Article)

See below, canon 1286.

231

J 73 (2013), 181-210: Anne Asselin: Lay Ecclesial Ministers and Removal from Office: Seeking Justice and Fairness. (Lecture)

A. begins by describing the situation of lay ministers in the Church today from the point of view of personnel policies. She then considers whether the Church should follow the practices of the US secular workplace, where employees can be fired “at will”, but also where there are serious and considered contracts, job descriptions, grievance procedures, etc. She concludes by considering the application of administrative recourse to lay employees.

249

REDC 70 (2013), 303-310: Benedicto XVI: Carta Apostólica en forma de Motu Proprio «Latina lingua» con la cual se instituye la Pontificia Academia Latinitatis. Texto y comentario de José San José Prisco. (Document and commentary)

See below, canon 360.

265-272

FCan VII/2 (2012), 143-153: Joaquim de Assunção Ferriera: Significado da Incardinação. (Article)

This article examines the notion of incardination, examining its basis and providing a brief historical overview of its development, first in the period prior to the Council of Trent (especially the Councils of Chalcedon, 451 AD, and Lateran III, 1179 AD), then in the period from Trent to Vatican II, and lastly in the period between Vatican II and the CIC/83. It then goes on to describe the different types of incardination, the conditions for its lawfulness and validity, permissions for transfer, and the competent authority.

273

AkK 181 (2012), 39-56: Helmuth Pree: Kirchliche Leitungsgewalt – Aspekte ihrer Reichweite und Anwendung. (Article)

See above, canon 212.

284

J 73 (2013), 271-297: United States Conference of Catholic Bishops: Complementary Legislation to the Code of Canon Law. (Legislation)

See above, General Subjects (*Compilations*).

284

REDC 70 (2013), 323-328: Carta Circular sobre el traje eclesiástico, a los Eminentísimos y Excelentísimos responsables de los Dicasterios, Tribunales y Oficinas de la Santa Sede y del Vicariato de Roma, 15 de octubre de 2012. Texto y comentario de José San José Prisco. (Document and comment)

This letter was sent to the heads of dicasteries of the Curia on 15 October 2012 from the office of the Secretary of State and signed by Card. Bertone. It draws attention to the need for all those clerics involved in work at the various dicasteries, tribunals and offices of the Holy See and Vicariate of Rome to wear appropriate clerical dress, as also those, particularly bishops, who visit the said offices. In his comment S.J.P. refers to some of the previous exhortations made in the same vein and points out that any contrary custom in this matter is *contra legem* and cannot attain the force of law (canon 24 §2).

312-320

SCL VIII (2012), 407-416: Augustine Mendonça: What Procedure is to be Followed When All Members of a Public Clerical Association of Diocesan Right decide to Found a new Religious Institute in Another Diocese? (Article)

A bishop finds a public clerical association of the faithful to administer various works of charity within the diocese. After several years the members feel called to start a new religious institute in a different diocese. M. considers the procedures that must be followed by the members of the society in order to do this, the rights and obligations of both diocese and members, and what happens to the society in the diocese of foundation. Implicitly one is speaking of the members legitimately departing from the society, and the future of its assets and of the society itself after the departure of its members. Any move of clerical members would require the process of excardination/incardination to be followed. When the society ceases to exist either through legitimate suppression or after the passage of 100 years the allocation of temporal goods will take place according to its own statutes and universal law. Unless otherwise indicated they would devolve upon the diocesan bishop as founder. The society could only open a branch in another diocese with permission of both bishops. Two routes are possible: formal suppression accompanied by dispensation from any bonds and excardination followed by the founding of a new institute; or individual resignations, dispensations, excardination followed by the receiving bishop erecting the new public association or the forming of a clerical association. The founding bishop has the right to demand complete accounts as he will become legally responsible for the assets and obligations once all the members have left.

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

332

BV 73 (2013), 77-84: Borut Košir: Spremembe v izvedbi konklava ob odstopu papeža Benedikta XVI (= Changes in Conclave Law at Resignation of Benedict XVI). (Article)

The office of Roman Pontiff is the most important office in the Church and carries the greatest responsibility. Therefore the Popes have often amended the provisions relating to the situation of *sede vacante* and to the way in which the conclave is conducted. Until the resignation of Pope Benedict XVI, the Apostolic See had always, with very few exceptions, become vacant through the death of the ruling Pope. The resignation of the Roman Pontiff is foreseen in canon 332 §2 of the CIC/83. K. deals with the amendments introduced by Pope Benedict XVI to the Apostolic Constitution *Universi Dominici Gregis* issued by Pope John Paul II in 1996. The latest changes were due mainly to the fact that resignation had hitherto been an unusual and unexpected manner of making the Apostolic See vacant.

332

J 73 (2013), 29-88: Kurt Martens: *Tu es Petrus, et super hanc petram aedificabo Ecclesiam meam. An Analysis of the Legislation for the Vacancy of the Apostolic See and the Election of the Roman Pontiff.* (Article)

See below, canon 335.

335

J 73 (2013), 29-88: Kurt Martens: *Tu es Petrus, et super hanc petram aedificabo Ecclesiam meam. An Analysis of the Legislation for the Vacancy of the Apostolic See and the Election of the Roman Pontiff.* (Article)

M. begins by explaining how a vacancy in the Apostolic See can occur, such as by death or resignation. He then considers the historical evolution of the current norms from 1059 (when the election was reserved to Cardinal bishops) through to the present day. There follows a consideration of *Universi Dominici Gregis*, covering both powers and offices during the vacancy and the Papal election. This last section explains in detail all that must be done to organize and complete the election.

349

J 73 (2013), 29-88: Kurt Martens: *Tu es Petrus, et super hanc petram aedificabo Ecclesiam meam. An Analysis of the Legislation for the Vacancy of the Apostolic See and the Election of the Roman Pontiff.* (Article)

See above, canon 335.

360

Comm 44 (2012), 327-330: Pope Benedict XVI: *Litterae Apostolicae Motu Proprio datae Pulchritudinis Fidei quibus Pontifica Commissio de Bonis Culturalibus Ecclesiae coniungitur cum Pontificio Consilio de Cultura (lingua latina una cum versione italica).* (Document)

By this *motu proprio* dated 30 July 2012 Pope Benedict XVI derogates from the provisions of *Inde a Pontificatus* of 25 March 1993; and the roles and faculties mentioned in arts. 99-103 of *Pastor Bonus* are transferred from the Pontifical Commission for the Cultural Goods of the Church to the Pontifical Council for Culture, with which it is now united. The text is given in Latin and then Italian.

360

Comm 44 (2012), 331-340: Pope Benedict XVI: *Litterae Apostolicae Motu Proprio datae, Latina Lingua, de Pontificia Academia Latinitatis condenda quibus statutum adnexum est (lingua latina una cum versione italica).* (Document)

The study of Latin remains important for the life of the Church, but in modern times knowledge of this has become weaker. To adapt to changing circumstances this *motu proprio* dated 10 November 2012 abolishes the *Latinitas* Foundation and in its place creates a Pontifical Academy of Latin under the aegis of the Pontifical Council for Culture. The statutes follow in ten articles. Both are provided in Latin and Italian texts.

360

J 73 (2013), 131-150: Sean T. Doyle: *The Pontifical Commission Ecclesia Dei: Purpose and Competence.* (Article)

D. explains the background to the Pontifical Commission *Ecclesia Dei* and its constitution and faculties. He then considers possible conflicts of competence between the Commission and the Congregations for Divine Worship and for Institutes of Consecrated Life and Societies of Apostolic Life, and between the

Commission and diocesan bishops. He concludes by considering that the jurisprudence of the Apostolic Signatura may be the only way to solve any actual conflicts of competence that arise.

360

QDE 26 (2013) 91-104: Alberto Perlasca: Il segreto pontificio. (Article)

P. reviews the history of the secret of the Holy Office and its replacement with pontifical secrecy, and explains the reasons for such secrecy. He then analyses the 1974 Instruction *Secreta continere*, looking at what was covered and who was obliged to secrecy, and noting the penal sanctions consequent on breach of the Instruction. P. argues that despite the label Instruction this was in fact a penal law, and that it was abrogated by the CIC/83 (despite occasional references to pontifical secrecy). He suggests that the time is ripe for new legislation on the matter.

360

REDC 70 (2013), 303-310: Benedicto XVI: Carta Apostólica en forma de Motu Proprio «Latina lingua» con la cual se instituye la Pontificia Academia Latinitatis. Texto y comentario de José San José Prisco. (Document and commentary)

The Latin text is given of Benedict XVI's Apostolic Letter of 10 November 2012 establishing a Pontifical Academy for the study and promotion of Latin, with commentary by José San José Prisco.

360

Comm 44 (2012), 402-408: Secretaria Status: Normae Commissionis independentis ad perpendendas qualitates personarum laicarum quae suam operam in servitium Sanctae Sedis praestare debent. (Document)

This general decree dated 30 November 2012 establishes an independent commission to evaluate the qualifications and selection process for lay people employed by the Holy See. The norms follow in 12 articles setting out its role, structure and composition. The text is in Italian.

360

Comm 44 (2012), 456-459: T. Bertone: Relatio explanans Ordinationem Praefecturae Rerum Oeconomicarum Sanctae Sedis, ab Em.mo Card. Tharcicio Bertone facta (die 19 mensis decembris 2012). (Briefing)

The Secretary of State was invited by Cardinal Versaldi to join him in presenting the new regulations for the Prefecture of the Economic Affairs of the Holy See. He focuses on the topic of transparency and credibility. The role of the Prefecture is to oversee the financial administration of the Holy See and Vatican City State rather than the universal Church. The positive role spelt out in the Latin text of *Pastor Bonus*, arts. 176-179, had been notably weakened in the Italian translation and this had practical effects. The new regulations emphasize that the role is directive and programmatic and not simply one of vigilance and control. The text is Italian and reprinted from *L'Osservatore Romano*.

360

Comm 44 (2012), 460-462: I. Versaldi: Relatio explanans Ordinationem Praefecturae Rerum Oeconomicarum Sanctae Sedis, ab Em.mo Card. Iosepho Versaldi facta (die 19 mensis decembris 2012). (Briefing)

Cardinal Versaldi sees the new regulations for the Prefecture of the Economic Affairs of the Holy See as returning to its roots and avoiding a purely negative understanding that its role was one of inspection and denunciation. He recalls that in 1981 Pope John Paul II had set up a working party of 15 cardinals to look at the organizational and economic problems of the Holy See and that this reported in 1987 with observations that are still valid. It identified two basic problems: the impact of global and particularly Italian economic problems; and the establishing of new curial bodies. The text is in Italian and reprinted from *L'Osservatore Romano*.

362-367

Comm 44 (2012), 445-449: T. Bertone: Relatio explanans hodiernam gravitatem muneris nuntiorum pontificiorum, ab Em.mo Tharcicio Bertone facta (die 26 mensis septembris 2012). (Note)

The Secretary of State comments on the importance of Papal diplomacy, something that for some is a legacy of the past destined to disappear. It has to balance realism with prophecy. It is about building a more human and more just world in the spirit of the Gospel. The text is in Italian and reprinted from *L'Osservatore Romano*.

372

AkK 181 (2012), 129-151: Robert Weber: Das Volk als Strukturelement der kirchlichen Zirkumskription. (Article)

W. examines the meaning of the term “people” in the Christian context over the centuries as well as in current canon law. The notion of people enriches the idea of the ecclesiastical circumscription in which the faithful are considered not only to be subjects of the Ordinary’s jurisdiction, but are living members of a people entrusted to the guidance of a Pastor. Hence it is necessary to determine which faithful belong to the people of a circumscription and in what way, bearing in mind the possibility that an individual member of the faithful may have a relationship with more than one ecclesiastical circumscription.

381

Ius III 2/12, 193-216: M. Kuchera: The Influence of Vatican II on CCEO Title VII, Eparchies and Bishops. Chapter I: Bishops, c. 178. (Article)

See above, CCEO canon 178.

382

QDE 26 (2013), 162-193: Marino Mosconi: Arriva il nuovo vescovo: l’organizzazione del governo della diocesi all’inizio dell’episcopato. (Article)

M. begins by surveying the theological vision of the bishop’s ministry which underpins his ability to make choices when deciding on his co-workers. He then examines the steps, both formal and practical, necessary to take possession of the diocese, the organization of the bishop’s personal support staff, the selection of vicars and other particular officials required by canon law, and relationships with the various consultative bodies in the diocese (including the possibility of a diocesan synod). M. is concerned to highlight the importance of consultation at this vital initial moment of an episcopal ministry.

383

IE XXV (2013), 131-152: Jacob Mandiyil: La situazione giuridica e pastorale dei fedeli delle Chiese cattoliche Orientali in Germania. (Article)

M. analyses the juridical and pastoral situation of the growing numbers of Eastern-rite Catholics living in Germany. He first looks at the general situation of all Catholic immigrants and foreigners in Germany, before addressing the question of who has jurisdiction over the Eastern Catholics among them. In the

majority of cases it is the local Latin Ordinary who has jurisdiction over these Catholics *extra territorium*, apart from those cases falling within canon 916 §5 of the CCEO. Examining the current situation of Eastern-rite Catholics in Germany, M. points out that at least 11 of the 22 Eastern Churches are represented: Ukrainian Greek Catholic, Syro-Malabar, Syro-Malankar, Chaldean, Syrian, Romanian Greek Catholic, Melkite Greek Catholic, Russian Greek Catholic, Albanian Greek Catholic, Ethiopian and Maronite. The presence and pastoral care of Eastern Catholics in Latin dioceses is an opportunity for mutual appreciation and enrichment.

416

QDE 26 (2013), 134-149: Giuliano Brugnotti: Figura di governo della diocesi *sede vacante* e applicazione del principio *nihil innovetur*. (Article)

B. analyses the various possibilities for the government of a diocese when there is no diocesan bishop. He looks in detail at two particular situations: that of the diocesan bishop who is transferred to a new see, and that of the apostolic administrator of a vacant see. In the case of the transferred bishop he argues that although the see does not become vacant, the powers of the departing bishop are reduced by analogy with the *nihil innovetur* principle. Examination of the roles of an auxiliary bishop, the college of consultors and the diocesan administrator sets the scene for consideration of the apostolic administrator. The current practice of the Congregation for Bishops is to nominate with all the powers of a diocesan bishop: B. argues that this should be interpreted to mean that the situation is parallel with that of a departing diocesan bishop.

418

QDE 26 (2013), 134-149: Giuliano Brugnotti: Figura di governo della diocesi *sede vacante* e applicazione del principio *nihil innovetur*. (Article)

See above, canon 416.

427

SCL VIII (2012), 431-446: Augustine Mendonça: May a Diocesan Administrator *sede vacante* Sign a Long Term Lease on a Piece of Valuable Property Belonging to the Diocese? (Article)

The CIC/83 leaves it to the Conference of Bishops to legislate on requirements for leasing. Local legislation varies on this point. In general a diocesan administrator has the same obligations and power as a diocesan bishop apart

from matters excepted by their very nature or by the law itself (canon 427 §1). There is no explicit exclusion of the power to place extraordinary acts of administration, alienation or leasing, but canon 428 §1 prohibits innovations that might be prejudicial to the rights of the diocese or future bishop. To answer the question one must first look at local legislation. If there is none, one must bear in mind that most local legislation considers leasing analogous to alienation, and sets conditions in terms of financial limits and consultation. The bishop should therefore seek consent from the college of consultors and the finance council and bear in mind the principle of no innovation, unless to take no action would be more harmful than to take action. Certainly a long-term lease would seem ill advised and it would be sensible to consult the Holy See.

428

QDE 26 (2013), 134-149: Giuliano Brugnotti: Figura di governo della diocesi *sede vacante* e applicazione del principio *nihil innovetur*. (Article)

See above, canon 416.

431-446

SCL VIII (2012), 247-278: John Renken: Metropolitans in the Latin Church. (Article)

The placing in the CIC/83 of the sections on regional groupings, including metropolitans, after those on the Roman Pontiff and the particular Church shows that they are not intermediary structures between the Pope and leaders of particular Churches. R. gives a brief historical introduction and summary from the Directory for the Pastoral Ministry of Bishops. He then looks at the office of metropolitan and the common competencies in suffragan dioceses which, beyond the Code, include a number of responsibilities set out in the Ceremonial of Bishops. He then considers special functions and powers that can be assigned to the metropolitan and his right to celebrate in suffragan dioceses. Finally he explores at some length the significance of the pallium.

439-446

BV 73 (2013), 307-315: Borut Košir: Prenova zakonodaje cerkve v luči drugega vatikanskega koncila s posebnim poudarkom na Cerkvi v Sloveniji (= New Church Legislation in the Light of the Second Vatican Council). (Article)

Very soon after the promulgation of the CIC/17, many experts believed that the Code should be revised on account of the rigidity of some of its provisions. At the close of Vatican II, Pope Paul VI established a special commission for the revision of the Code, resulting in the CIC/83, promulgated on 25 January 1983 by the Apostolic Constitution *Sacrae Disciplinae Leges*. The Slovenian Church implemented the new legislation in all areas. In 1993 the Slovenian Conference of Bishops was established in accordance with the new Code. In 2006 three new dioceses were founded, and the diocese of Maribor was elevated to an archdiocese, Maribor thus becoming a metropolitan see. The Church in Slovenia now consists of six dioceses formed into two ecclesiastical provinces headed by metropolitans. An important milestone for the Church in Slovenia, which is also connected to its legal regulation, was the convocation of a plenary council. In 2001, after several years of preparation and meetings, the Slovenian Conference of Bishops adopted the final document of the plenary council. The same year saw the ratification of the Agreement between the Republic of Slovenia and the Holy See on legal issues.

447-448

BV 73 (2013), 307-315: Borut Košir: Prenova zakonodaje Cerkve v luči drugega vatikanskega koncila s posebnim poudarkom na Cerkvi v Sloveniji (= New Church Legislation in the Light of the Second Vatican Council). (Article)

See above, canons 439-446.

455

J 73 (2013), 271-297: United States Conference of Catholic Bishops: Complementary Legislation to the Code of Canon Law. (Legislation)

See above, General Subjects (*Compilations*).

486-491

REDC 70 (2013), 67-80: Maribel Manzano García: Cuadro de clasificación para el Archivo Diocesano de Salamanca. (Article)

M.G. gives a brief background to the Diocese of Salamanca's need to reorganize its archive in order to qualify for the reception of certain funds. Most of the article is simply a listing of the different headings of the proposed classification system with its sections and subdivisions required for the undertaking of the reorganization of its documents.

495-501

SC 47 (2013), 61-88: John E. Okosun: The Collaborative Role of the Presbyteral Council in Diocesan Governance in Law and Statutes. (Article)

O. explores the role of the council of priests as an organism of collaboration in the governance of the diocese. He explains the current law on the council of priests, stressing that its statutes are an important instrument for the realization of the goals of the council. He analyses the statutes of 29 North American archdioceses, and makes recommendations so that they are faithful to the universal law and more effective guides for the functioning of the council and for fostering its collaborative role in the governance of the local Church.

496

J 73 (2013), 271-297: United States Conference of Catholic Bishops: Complementary Legislation to the Code of Canon Law. (Legislation)

See above, General Subjects (*Compilations*).

501

QDE 26 (2013), 150-161: Pierantonio Pavanello: La corresponsabilità nel governo della diocesi durante la sede vacante. (Article)

P. examines the way that consultation operates during the *sede vacante*. He looks at the bodies which remain in being during such a period (the college of consultors and the diocesan finance committee) and those which lapse (the council of priests and the diocesan pastoral council). P. suggests that the need for advice is even greater during the period of a vacant see, and regrets that the possibility of summoning the councils during that lapse was not inserted into the Code. He suggests a number of possibilities within the existing law for

improving the sharing of responsibility and some opportunities for legislative changes to improve matters.

513

QDE 26 (2013), 150-161: Pierantonio Pavanello: La corresponsabilità nel governo della diocesi durante la sede vacante. (Article)

See above, canon 501.

515

J 73 (2013), 211-219: Official Documents of the Holy See: Letter from the Congregation for the Clergy and Procedural Guidelines for the Modification of Parishes and the Closure, Relegation, and Alienation of Churches. (Documents)

Given here is the text of the letter of the Congregation for the Clergy to local Ordinaries dated 30 April 2013, and the procedural guidelines for the modification of parishes, the closure or relegation of churches to profane but not sordid use and the alienation of the same. The Congregation's letter explains that there are separate procedures for (a) the modification of parishes, (b) the relegation to profane use and/or the permanent closure of churches, and (c) the alienation of current or former sacred edifices, and each must be followed carefully and correctly. No process is needed to close a church temporarily, e.g. for repairs. For these procedures it is necessary to distinguish clearly the juridical person of a diocese from the juridical person of a parish, and to avoid ambiguous terms such as "suppression" which could create confusion. In determining whether the required just cause is present in the case of a proposed church modification (cf. canon 515) or the required grave cause in the case of church closure and relegation (cf. canon 1222 §2), each case must be considered separately. Each administrative decision must be enacted by a separate written decree. The guidelines provide details of each procedure.

515-552

J 72 (2012), 334-376: Robert W. Oliver: Pastoral Teams and Parish Collaboratives: A Case Study of Diocesan Reorganization. (Article)

O. begins with a history of parish reorganization and rationalization in America in general and in Boston archdiocese in particular, especially the work of the archdiocese's planning commission and the criteria it developed. There are two principal results of the commission: the creation of pastoral teams (clergy,

religious, and laity) and the creation of parish collaboratives (parishes together under a pastoral team). For each of these O. explains the canonical options considered, the theological foundations, and how the options were assessed and analysed. He concludes with a short initial evaluation of how matters are developing in Boston.

522

J 73 (2013), 271-297: United States Conference of Catholic Bishops: Complementary Legislation to the Code of Canon Law. (Legislation)

See above, General Subjects (*Compilations*).

535

IE XXV (2013), 363-385: Montserrat Gas Aixendri: Apostasía y tratamiento jurídico de los datos de carácter personal. La experiencia jurídica europea. (Article)

In recent years campaigns have been mounted in different countries to apostatize from the Catholic Church by asking for the cancellation of personal data in baptismal registers. In this way an act of eminently religious significance – apostasy – has come to acquire importance as before the law of the State. The ways of resolving this conflict have varied from country to country. This article reflects on the conflict between the right to freedom of religion and the right to the protection of personal information. G.A. sustains that the conflict is only apparent, and she analyses the situation especially in Spain and Italy where the conflict has taken on greater proportions. She also makes reference to German law and canon law on data protection.

535

QDE 26 (2013) 77-90: Fabio Marini: L'ufficio del parroco tra segreto e riservatezza. (Article)

See above, canon 220.

538

J 73 (2013), 271-297: United States Conference of Catholic Bishops: Complementary Legislation to the Code of Canon Law. (Legislation)

See above, General Subjects (*Compilations*).

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

579-699

SCL VIII (2012), 141-174: Rose McDermott: The Vigilance of the Diocesan or Eparchial Bishop: Diocesan/Eparchial Right Institutes/*Sui iuris* Monasteries/Hermits/Ascetics/Virgins/Widows. (Article)

The purpose of the article is to examine the authority and pastoral care or vigilance of the diocesan or eparchial bishop for religious institutes, *sui iuris* monasteries, hermits, ascetics and consecrated virgins under his care. McD. looks at the following topics: erection of institutes of diocesan right; approval of changes in constitutions and dispensations from them; affairs of “greater importance”; vigilance over the internal life of such institutes; presiding at elections; canonical visitation; rendering account of temporal goods; consent for alienation; the cloister of *sui iuris* monasteries of nuns; permission for management of goods; transfers; exclaustation; imposed exclaustation; departure during temporary and perpetual profession; dismissal; hermits and ascetics; consecrated virgins or widows.

592

J 72 (2012), 428-452: Rose McDermott: Fostering Communion Between the Apostolic See and Religious Institutes and Societies of Apostolic Life: 2008 Guidelines for the Report in c. 592 §1. (Article)

McD. commences by explaining the history of the relationship between the Holy See and religious institutes prior to the CIC/17, in the CIC/17 itself, the post-Vatican II period, and the 1998 changes. She then comments in detail on the 2008 Guidelines: the institute’s charism; a statistical report; the rules and customs of the institute; the primacy of the Spirit; communion in community; mission and ministry; vocations and formation; relations in the Church; financial status; status of the institute.

596

Per 101 (2012), 417-440: Yuji Sugawara: Ordinari per i membri degli istituti religiosi. (Article)

S. considers the question of the relationship between religious and their Ordinary. It is clear from the Code that the major superiors of clerical institutes

of pontifical right and their vicars are the proper Ordinaries of the members of those institutes. Nevertheless, these religious and all others continue to have a close relationship with the local Ordinary in a variety of matters, such as the establishment of religious houses, apostolic activity, administration of goods, and the discipline of religious life. S. goes on to explore the relationship more particularly in the case of members of clerical institutes of diocesan right, members of lay institutes of pontifical right, and clerics who are members of lay institutes of pontifical right.

603

Anne Bamberg: L’ermite «diocésain» face au risqué d’un droit particulier. À propos de la *propria vivendi ratio* du canon 603 du Code de droit canonique (Article in Marc Aoun, Jeanne-Marie Tuffery-Andrieu (eds.), *Le ius particulare dans le droit canonique actuel. Définitions, domaines d’application, enjeux*, Éditions Artège, Perpignan, 2013, 197-210).

Since each “diocesan” hermit lives his or her plan of life “under the guidance” of the diocesan bishop, B. argues that eremitical life according to canon 603 §2 of the CIC/83 should not be organized into particular law.

603

Anne Bamberg: Im Licht von Theologie und Kirchenrecht. Katholische Eremiten und Gehorsam. (Article in *Geist und Leben* 86 (2013), 313–318).

B. examines the question of the obedience of the hermit, with particular focus on the case of the hermit who chooses to live, according to canon 603 §2 of the CIC/83, “under the guidance” of the diocesan bishop. Neither the obedience that any member of the Catholic faithful owes to the Magisterium, nor that resulting from the evangelical counsels as formulated within an institute devoted to the consecrated life, should prevent the Catholic hermit from progressing on a path of very great liberty in the search for God. The institutional framework provided by the universal legislator is revealed as sufficiently flexible for even quite exceptional vocations to be lived out in full communion with the Church.

BOOK III: THE TEACHING OFFICE OF THE CHURCH

751

J 72 (2012), 544-576: Daniela Knepper: Defecting from the Church by a Formal Act – the German Discussion 1969-2009. (Article)

K. begins by describing the German situation from 1969 to 2006 regarding the German *Kirchensteuer* (the Church tax) and the *Kirchenaustritt* (exit from the Church). She considers how these German civil law institutions relate to canonical institutions, especially the formal act of defection. German dioceses treat all *Kirchenaustritt* as apostasy or schism and impose automatic excommunication. K. considers whether this is actually canonically acceptable, highlighting some of the problems and discussing various interventions of the Pontifical Council for Legislative Texts.

766

J 73 (2013), 271-297: United States Conference of Catholic Bishops: Complementary Legislation to the Code of Canon Law. (Legislation)

See above, General Subjects (*Compilations*).

772

J 73 (2013), 271-297: United States Conference of Catholic Bishops: Complementary Legislation to the Code of Canon Law. (Legislation)

See above, General Subjects (*Compilations*).

773

PS XLVII 143 (2013), 53-76: Enrico C. Eusebio Jr.: Integrated Catechesis: The Redaction History of Cann. 773 and 779 of the 1983 Code of Canon Law. (Article)

Current universal law affirms the central role of catechesis in integrating one's Catholic Christian faith and daily life. Its core objective is formulated as “*ut fidelium fides ... viva fiat explicita atque operosa*” (canon 773), i.e. a living, explicit and active faith, one that is more fully steeped in Catholic teaching and put into practice (canon 779). In order to achieve its goal, the law proposes a single but two-pronged means of catechetical formation: “*per doctrinae*

institutionem et vitae christianae experientiam” (canon 773), a holistic formation in the foundations of doctrine and in the experience of Christian life. E. studies the catechetical canons’ redaction histories from their origin, if any, in the CIC/17, and as they evolved in the schemata of 1977, 1980 and 1982, and finally as canons in the CIC/83. Indispensable in this research are the Code revision proceedings of the Pontificia Commissio Codicis Iuris Canonici Recognoscendo which were published in *Communicationes* from 1969 to 1997. In tracing the catechetical canons’ redaction history, E. aims to show that by proposing the object and means of the Church’s catechesis in canons 773 and 779, the supreme legislator wants to steer the universal Church into a kind of catechetical formation in which the doctrinal, moral and liturgical teachings of the Church have a bearing and influence on, and are not detached or split from, the daily secular life of the Christian.

779

PS XLVII 143 (2013), 53-76: Enrico C. Eusebio Jr.: Integrated Catechesis: The Redaction History of Cann. 773 and 779 of the 1983 Code of Canon Law. (Article)

See above, canon 773.

788

J 73 (2013), 271-297: United States Conference of Catholic Bishops: Complementary Legislation to the Code of Canon Law. (Legislation)

See above, General Subjects (*Compilations*).

831

J 73 (2013), 271-297: United States Conference of Catholic Bishops: Complementary Legislation to the Code of Canon Law. (Legislation)

See above, General Subjects (*Compilations*).

BOOK IV: THE SANCTIFYING OFFICE OF THE CHURCH

838

J 73 (2013), 89-130: John J.M. Foster: Canonical Reflections on *Universae Ecclesiae*, the Instruction on the Application of *Summorum Pontificum*. (Article)

F. begins by explaining the layout of *Universae Ecclesiae*. He then considers the juridical weight of the Instruction, approved *in forma communi* by the Pope. He comments on the document's introduction and the role of the Pontifical Commission *Ecclesia Dei*, and then on the specific norms set out in the document, grouped into nine areas: the competence of diocesan bishops, the notion of the *coetus fidelium*, the notion of *sacerdos idoneus*, the application of liturgical and ecclesiastical discipline, the sacraments of confirmation and holy orders, the use of the *Breviarium Romanum*, the Sacred Triduum, rites of religious orders, and the use of the *Pontificale* and *Rituale*. F. concludes by predicting that the Commission will issue further Instructions in the future with a view to enforcing these competences. (See also *Canon Law Abstracts*, no. 109, pp. 75-76.)

838

PCF XIII (2011), 19-28: Commission *Ecclesia Dei*: Instruction on the Application of the Apostolic Letter *Summorum Pontificum* of His Holiness Benedict XVI. (Document)

In July 2007, Pope Benedict XVI issued *motu proprio* the Apostolic Letter *Summorum Pontificum*, which came into effect on 14 September 2007. That document promulgated a universal law for the Church, establishing new regulations for the use of the Roman Liturgy in effect since 1962. The present Instruction on the application of the Apostolic Letter, signed by William Cardinal Levada, was issued by the Pontifical Commission *Ecclesia Dei* on 30 April 2011. The Introduction explains the context which prompted the Apostolic Letter *Summorum Pontificum*. Section II deals with the responsibilities of the Pontifical Commission *Ecclesia Dei*. Section III deals with specific norms and continues with the competence of diocesan bishops; the role of the *coetus fidelium*, the *sacerdos idoneus*, liturgical and ecclesiastical discipline, confirmation and holy orders, the *Breviarium Romanum*, the Sacred Triduum, the rites of religious orders, the *Pontificale Romanum* and the *Rituale Romanum*.

838

SCL VIII (2012), 31-86: Chad Glendinning: The Preparation and Translation of Liturgical Texts: Juridical Perspectives. (Article)

Canon 838 §3 reflects the change introduced by *Sacrosanctum Concilium*, no. 22, which extended competence over liturgical books within certain limits to conferences of bishops. G. looks first at the relative responsibilities of the Holy See and conferences of bishops in the area of translation and the establishment of ICEL. He then studies in detail the procedures followed in the case of the revised translation of the Roman Missal and in the light of *Liturgiam Authenticam*. He concludes by considering the vexed questions of the composition of new liturgical texts and substantial modifications.

838

SCL VIII (2012), 417-430: Augustine Mendonça: The Competence of a Diocesan Bishop to Issue a Directive Permitting the Use of an Alternative Version of the Lord's Prayer. (Article)

Following its use in some official liturgical booklets, the International Consultation on English Texts (ICET) translation of the Lord's Prayer gained acceptance in a number of dioceses although there is no evidence that it had ever received the *recognitio* of the Holy See. During the course of preparing the revised English translation several conferences of bishops sought approval of this version but this was declined. A bishop has issued a decree authorizing its use in his diocese. Canon 838 limits the authority of the diocesan bishop in this area. The bishop was acting beyond his authority. The argument of contrary custom cannot be sustained since the introduction of the new translation should be considered as abrogating it with the result that it has not been observed for thirty years.

BOOK IV, PART I, TITLE I: BAPTISM

877

J 73 (2013), 271-297: United States Conference of Catholic Bishops: Complementary Legislation to the Code of Canon Law. (Legislation)

See above, General Subjects (*Compilations*).

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

891

J 73 (2013), 271-297: United States Conference of Catholic Bishops: Complementary Legislation to the Code of Canon Law. (Legislation)

See above, General Subjects (*Compilations*).

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

920

IE XXV (2013), 13-33: Massimo del Pozzo: I precetti della Chiesa sui sacramenti: obbligo personale e vincolo sociale. (Article)

The obligation of annual confession and Communion safeguards the devotion of the faithful and the dignity of the sacraments. The origin and historical praxis of the two precepts manifests the social and communal character of these commandments, the laws in question giving specific form to pre-existing fundamental obligations. Del P. looks at how the establishment of a legal minimum contributes to the recognition and building up of the community. What is peculiar to these precepts is their relationship to the *lex gratiae*, and the fact that a person's fulfilment of them also involves having the right interior dispositions. A greater awareness of the centrality of the Paschal Mystery can help overcome the present-day widespread neglect of these precepts and contribute to the rediscovery of the fullness of their meaning, their intimate mutual connection and the responsibility of the various members of the People of God.

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

959-997

Ang 90 (2013), 1-55: Pedro Fernández Rodríguez: El Sacramento de la Penitencia y el Magisterio de la Iglesia en las últimas décadas. (Article)

In his Encyclical *Redemptor Hominis* (4 March 1979), Pope John Paul II said of the sacrament of Penance: “In faithfully observing the centuries-old practice of the sacrament of Penance – the practice of individual confession with a personal act of sorrow and the intention to amend and make satisfaction – the Church is ... defending the human soul’s individual right: man’s right to a more personal encounter with the crucified forgiving Christ ... By guarding the sacrament of Penance, the Church expressly affirms her faith in the mystery of the Redemption as a living and life-giving reality that fits in with man’s inward truth, with human guilt and also with the desires of the human conscience.” In this article F.R. looks at how the CIC/83 deals with the sacrament of Penance, and with sins in so far as they are crimes; the document issued by the International Theological Commission on reconciliation and penance, issued on 29 June 1983; the 1983 Synod of Bishops on penance and reconciliation in the mission of the Church; Pope John Paul II’s post-synodal Apostolic Exhortation *Reconciliatio et Paenitentia* (2 December 1984); the points of the 1992 *Catechism of the Catholic Church* dealing with the reality of sin, the forgiveness of sins and the sacrament of Penance; the Apostolic Letter *motu proprio Misericordia Dei* (7 April 2002) on certain aspects of the celebration of the sacrament of Penance; the sacrament of Penance in the teachings of Benedict XVI (rediscovery of the sacrament of Penance; the Word of God and the sacrament of Penance; complementarity between Eucharist and Penance; addresses to the Apostolic Penitentiary); and the Congregation for the Clergy’s document *The Priest, Minister of Divine Mercy* (9 March 2011). F.R. concludes with some reflections on the Church’s determination in recent times to cleanse the corruption which has come to light among certain of her members, and *proposito* 33 of the Synod of Bishops on the New Evangelization for the transmission of the Christian faith (7-28 October 2012), which invites priests to consider the sacrament of Penance as an essential part of their ministry and of the New Evangelization, in such a way that in every parish a suitable time should be set apart for hearing confessions, while faithfully following the specific norms which rule the administration of this sacrament.

961

J 73 (2013), 271-297: United States Conference of Catholic Bishops: Complementary Legislation to the Code of Canon Law. (Legislation)

See above, General Subjects (*Compilations*).

964

J 73 (2013), 271-297: United States Conference of Catholic Bishops: Complementary Legislation to the Code of Canon Law. (Legislation)

See above, General Subjects (*Compilations*).

983

QDE 26 (2013) 9-54: Renato Coronelli: Il significato ecclesiale del segreto. (Article)

C. examines the laws about secrecy found both in the Code and in other Church documents, so as to identify the essential meaning of the concept of secrecy (cf. canons 127 §3; 172; 377; 699 §1; 1131 1°; 1390 §2; 1454; 1455 §3; 1550 §2). He identifies this duty to keep something secret not as concerned with mysteries or plots, but as a rule imposed on particular individuals in particular cases or circumstances with the intention of protecting basic rights and interests of the faithful (such as the right to a good name or to privacy), guaranteeing the efficient exercise of a Church office, appointment or ministry, and protecting the Church from any sort of illegitimate pressure or attempt to impose conditions on its mission in the world for the benefit of humanity. The law on secrets is analysed in the administrative, procedural and sacramental ambits. In the last case particular attention is paid to the seal of the confessional (canon 983 §1), which is inviolable and represents the highest and most rigorously protected form of secret within the Church.

989

IE XXV (2013), 13-33: Massimo del Pozzo: I precetti della Chiesa sui sacramenti: obbligo personale e vincolo sociale. (Article)

See above, canon 920.

992-997

Comm 44 (2012), 431-438: Paenitentiaria Apostolica: Decretum Paenitentiariae Apostolicae quo dono Sacrarum Indulgentiarum ditantur peculiaria spiritualia incepta per Fidei Annum peragenda, die 5 mensis octobris 2012 datum (lingua latina una cum versione italica). (Document)

This decree sets out various Indulgences that can be gained during the course of the Year of Faith. The text is in Latin and Italian.

BOOK IV, PART I, TITLE VI: ORDERS

1008-1009

AkK 181 (2012), 6-24: Stephan Haering: Die Änderungen der weiherechtlichen Grundnormen des Codex Iuris Canonici durch das Motu proprio *Omnium in mentem*. (Article)

H. explains the changes introduced in 2009 to canons 1008 and 1009 of the CIC/83 by Pope Benedict XVI, describing the context and the purpose of this amendment to the fundamental norms in the CIC concerning ordination. He also examines how these provisions have been accepted in academic debate.

1024

AkK 181 (2012), 204-214: Ariel David Busso: Die Gültigkeit der Priesterweihe und das Priestertum der Frau. (Article)

See below, canon 1378.

1041

Ang 90 (2013), 165-187: Edward N. Peters: Vasectomy as an irregularity for holy Orders. (Article)

Canonists disagree about whether a man who has undergone a vasectomy is irregular for receiving or exercising holy Orders (canons 1041, 5°; 1044 §1, 3°). P. argues, in the light of the interpretation accorded to canon 985, 5°, of the CIC/17, that it does not at present constitute an irregularity; and that the “doubt of law” asserted by some concerning whether vasectomy is an irregularity would itself, if verified, preclude declaring as irregular for Orders a man who has undergone vasectomy. However, a man who has undergone vasectomy is unsuitable for ordained ministry in that he presents a distorted image of *Christum fecundum*, and therefore vasectomy should, upon its proper incorporation into the canonical tradition, be treated as an irregularity.

1044

Ang 90 (2013), 165-187: Edward N. Peters: Vasectomy as an irregularity for holy Orders. (Article)

See above, canon 1041.

BOOK IV, PART I, TITLE VII: MARRIAGE

1055

EE 88 (2013), 321-359: Fernando Millán Romeral: La sacramentalidad del matrimonio: algunas notas desde la historia de la teología. (Article)

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

1055

EE 88 (2013), 361-386: Carlos Martínez Oliveras: ¿Qué se ha de pedir para el acceso al sacramento del matrimonio? Perspectiva dogmática. (Article)

The requirement of faith for the celebration of the sacraments is an issue that has always been present in the theological debate. The peculiar characteristic of marriage as an anthropological reality elevated to the dignity of a sacrament places it in a unique situation, since it is faith, joined with the intention, that gives rise to the complex and inseparable binomial contract-sacrament, and hence the validity and fruitfulness of marriage. Only a suitable pastoral-theological approach that combines theological faith and personal faith will ensure an adequate sacramental union. Thus a marriage contracted between two baptized persons will be able to reflect the love of Christ for His Church and lead to a mature spousal relationship.

1055

EE 88 (2013), 387-413: Carmen Peña García: Dimensión sacramental y celebración canónica del matrimonio: requisitos para el acceso a las nupcias. (Article)

Current society, marked by an increased number of baptized persons who lack faith, are indifferent to religion, or are involved in irregular marriage situations, calls for special pastoral concern to take care in preparing couples for marriage and for access to the religious celebration of marriage. This study aims to offer an overview of the sacrament of marriage from a canonical perspective. It focuses on the requirements concerning preparation for and admission to canonical marriage, and asks whether faith is needed for the celebration of sacramental marriage, and what are the criteria to be followed on the part of the ecclesiastical authorities in deciding whether to admit a couple to the canonical marriage celebration.

1055

EIC 53 (2013), 29-54: Piero Amenta: Matrimonio tra battezzati e disciplina ecclesiale: quale il rilievo della fede personale dei nubendi? (Article)

A. analyses the question of the role of the personal faith of the spouses in connection with the validity of canonical marriage. He addresses the difficult relationship between the marriage contract and the sacrament of marriage, with a view to establishing whether and how the faith of the spouses might determine the validity or otherwise of the matrimonial bond. In seeking a solution to the question he examines the contributions of canonical doctrine and jurisprudence.

1055

IE XXV (2013), 387-407: Andrzej Pastwa: Il matrimonio: comprensione personalistica e istituzionale. (Article)

P. offers a synthetic view of the institution of marriage as seen through the eyes of a canonist-theologian, avoiding on the one hand a purely “positivist” conception of marriage, while attempting on the other to show the close relationship between the law and the Church’s teaching. Taking as his starting point the anthropological-ethical “personalist norm” (K. Wojtyła), he views the marital “unity of the two” through the prism of Genesis 2:24.

1055

REDC 70 (2013), 195-227: Carmen Peña García: El matrimonio en el ordenamiento canónico: posibles líneas de reforma legislativa. (Article)

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

1055

SC 47 (2013), 183-206: Wojciech Kowal: Twenty Years after the Promulgation of the *Catechism of the Catholic Church*: Doctrinal Foundations for Marriage. (Article)

K. deals with the theological foundations of the teaching of the Church on marriage in the *Catechism of the Catholic Church*, approved by Pope John Paul II on 25 June 1992 and promulgated on 11 October of the same year. An analysis of the placement of the treatment of marriage in the structure of the *Catechism* serves as a reminder that the teaching of the Church does not limit itself to Christian marriage but extends to every marriage as intended by God for the whole of humanity. Particular attention is directed to the issues related to the

notion of the marriage covenant and the principle of indissolubility of marriage, in response to some more recent developments in the Church's pronouncements and canonical literature on this subject. Some theological and canonical solutions attempting to redefine the concept of the bond of marriage and, consequently, the understanding of the indissolubility of marriage are presented and critically assessed.

1055-1057

IE XXV (2013), 515-533: Benedetto XVI: Discorso alla Rota Romana, 26 gennaio 2013 (con nota di Montserrat Gas Aixendri, *Fede e intenzione nel matrimonio sacramento*). (Document and comment)

In his final address to the Roman Rota (26 January 2013), Pope Benedict XVI reflects on several aspects of the relationship between faith and marriage, starting with the linguistic root between the Latin terms for faith (*fides*) and covenant (*foedus*). In entering into marriage the intention of the spouses and their personal faith cannot be completely separated from each other, although as John Paul II had pointed out in 2003, failure to take into account the supernatural dimension of marriage could only render the marriage null and void if it were to undermine its validity on the natural level. The Pope considers the challenges posed by contemporary subjectivism and relativism. The basic decision of each person to enter into a lifetime bond influences the basic view of each one according to whether or not he or she is anchored to the merely human level or is open to the light of faith in the Lord. Faith in God, sustained by divine grace, is a very important element for living mutual dedication and conjugal fidelity, although this is not to say that fidelity is not possible in a natural marriage contracted between people who have not been baptized. But closure to God or the rejection of the sacred dimension of the conjugal union certainly makes arduous the practical embodiment of the most lofty model of marriage conceived by the Church according to God's plan, and if it is expressed in a rejection of the obligation of fidelity or of the other essential elements or properties of marriage can even undermine the validity of the pact. The Pope also reflects briefly on the *bonum coniugum*. Faith is important in the realization of the authentic good of the couple, and while there are difficulties in clarifying the essential element of the *bonum coniugum*, and there must not be any facile automatism linking a lack of faith to the invalidity of marriage, one must not disregard the possibility that, precisely because of the absence of faith, the good of the spouses is excluded from the consent itself. In her comment on the address, G.A. considers the relationship between faith and sacrament in marriage; the relationship between lack of faith and matrimonial intent; marriage of non-believers in the CIC/83; and the role of faith in the full realization of Christian marriage.

1057

IE XXV (2013), 167-182: Giuseppe Versaldi: La capacità di sposarsi nelle allocuzioni di Benedetto XVI agli uditori della Rota Romana (2006-2012). (Lecture)

After clarifying the juridical status of the addresses of the Roman Pontiffs to the auditors of the Roman Rota, V. emphasizes the common thread running through Pope Benedict XVI's addresses to the Rota between 2006 and 2012. He wishes on the one hand to set the juridical norms relating to the capacity to contract a valid marriage on solid theological and anthropological principles, so as to free such norms from the risk of being viewed simply from a positivistic perspective; and on the other hand, to highlight the link between these norms and the Church's activity in the field of pastoral marriage care, so as to reject false pastoral solutions that hinder the correct application of canonical legislation. V.'s analysis of the seven addresses shows the specific contribution which Benedict XVI offers in the field of matrimonial law, in keeping with this general Magisterium whereby he attempts to bring about unity among the various ecclesiastical disciplines.

1057

REDC 70 (2013), 195-227: Carmen Peña García: El matrimonio en el ordenamiento canónico: posibles líneas de reforma legislativa. (Article)

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

1059

Comm 44 (2012), 357-359: Pontificium Consilium de Legum Textibus: Nota explicativa quoad pondus canonicum divortii orthodoxi. (Document)

In an explanatory note, Cardinal Coccopalmerio refers to the declaration of the Apostolic Signatura of 20 October 2006 concerning the weight to be given to divorces granted by the Orthodox Church. He first draws attention to the fact that marriages between a Catholic and non-Catholic are governed by canon law as well as divine law and therefore a divorced Orthodox needs to follow the usual procedure in obtaining a declaration of nullity. Where the requirements for the equivalent of canonical form under their own law have not been observed this can be dealt with in the same way as for Catholics as part of the pre-matrimonial enquiry. Where the Orthodox Church has granted a declaration of nullity in the true sense of the word it is important to check that divine law has not been breached. Two possibilities exist. The Catholic appeal tribunal can examine the decision and confirm it by decree or refer it for a full examination

at second instance. Alternatively the judge at second instance, through a documentary process, can decide to confirm the sentence or refer it back to the first instance tribunal for the ordinary process.

1060

IE XXV (2013), 55-75: Antonio S. Sánchez-Gil: La presunzione nella vigente normativa canonica: osservazioni critiche. (Article)

In the CIC/83, besides some general norms on presumptions and a certain number of real presumptions *iuris*, there are several norms which are improperly described as presumptions. Juridical presumptions are characterized as being judgments of qualified probability on uncertain matters which are relevant in the juridical world. This article analyses the differences between the structural elements and the effects of presumptions *iuris* and presumptions *hominis*, as well as the relationship between presumptions *iuris* and the *favor iuris* in canon law. Particular attention is given to the imperfect formulation of canon 1060, in respect of which a new formulation, *de lege ferenda*, is proposed.

1061

Per 101 (2012), 441-462: Janusz Kowal: La consumazione del matrimonio tra la tradizione e il positivismo giuridico. (Article)

This article is the text of a presentation by K. at the 45th Annual Colloquium of the Canon Law Faculty of the Pontifical Gregorian University, held in Brescia in June 2012. He takes his cue from some remarks by Pope Benedict XVI in the course of his allocution to the Roman Rota of that year, in which the Pope warned of the dangers of a positivistic and excessively creative reading of the canons concerning the constitutive act of marriage and its consummation. K. considers briefly the contemporary juridical doctrine concerning the elements necessary for the consummation of marriage.

1062

J 73 (2013), 271-297: United States Conference of Catholic Bishops: Complementary Legislation to the Code of Canon Law. (Legislation)

See above, General Subjects (*Compilations*).

1063-1071

EIC 53 (2013), 5-27: Benedict Ndubueze Ejeh: Il sacramento del matrimonio e la questione dell'apporto della fede nella sua configurazione. (Article)

See below, canon 1099.

1063-1072

EE 88 (2013), 387-413: Carmen Peña García: Dimensión sacramental y celebración canónica del matrimonio: requisitos para el acceso a las nupcias. (Article)

See above, canon 1055.

1067

J 73 (2013), 271-297: United States Conference of Catholic Bishops: Complementary Legislation to the Code of Canon Law. (Legislation)

See above, General Subjects (*Compilations*).

1084

SCL VIII (2012), 279-304: Apostolic Tribunal of the Roman Rota: Male Relative Psychic Impotence (Erectile Dysfunction). Decision *coram* Turnaturi, 22 June 2006 (Poland). (Sentence)

This second instance affirmative decision reverses a negative decision given at first instance. Male impotence can arise in three ways: organic, if the cause is a physical or anatomical defect; functional, if the cause is neurological or circulatory; psychic, if the cause is psychological. Antecedence can be presumed if manifest from the first attempts at intercourse even if not known prior to marriage. Perpetuity arises when in view of the concrete circumstances of persons, places and time it cannot be healed or only through extraordinary remedies such as constitute grave danger to life or health or enormous expense with uncertainty of outcome. Establishing perpetuity is difficult because even in more serious cases of psychic impotence capacity can sometimes return unexpectedly. In general, functional impotence cannot be presumed perpetual. There must be convincing arguments and certain opinions from medical experts. The male respondent admitted non-consummation but blamed the petitioner for her attitude towards him. The *turnus* was satisfied that relative psychic impotence on the part of the man was verified. (See also the following entry.)

1084

SCL VIII (2012), 305-322: Apostolic Tribunal of the Roman Rota: Male Relative Psychic Impotence (Erectile Dysfunction). Decision *coram* Huber, 18 June 2008 (Poland). (Sentence)

This is the third instance hearing of the case referred to in the preceding entry; it upholds the affirmative decision *coram* Turnaturi. The law section notes that repeated unsuccessful attempts at intercourse tend to weaken further the sexual capacity of the man and intensify the dislike of the woman, leading to conflicts that can never be healed and hence perpetuity. It is interesting that no veto is imposed on either party.

1084

SCL VIII (2012), 323-338: Apostolic Tribunal of the Roman Rota: Female Relative Psychic Impotence (Vaginism). Decision *coram* Monier, 22 May 2009 (Poland). (Sentence)

This affirmative decision upholds that given at second instance. Vaginism is a species of functional impotence often arising from hypersensitivity of the womb, or from the first attempt at intercourse or other causes of a psychic nature. One cannot morally demand direct proof of antecedence through pre-matrimonial experience. It suffices to know the causes and to apply them retroactively, since as long as the effect lasts the cause subsists. Primary vaginism arising from psychogenic causes should be considered both antecedent and perpetual, but secondary vaginism arising from anatomical causes can generally be cured by appropriate treatment so that perpetuity can be verified only when this is not possible. Vaginism was identified as a problem by the doctor within days of the wedding. The experts concluded that the disorder could have been curable provided she was treated with affection, but there was repugnance on the part of the wife. The woman became pregnant and had an abortion but this seems to have arisen through her infidelity. If the husband was the child's father then it was due to external introduction of semen rather than consummation of the marriage. There was no veto.

1086

AkK 181 (2012), 25-38: Ernst Freiherr von Castell: Die eherechtlichen Implikationen des *Motu proprio Omnium in mentem*. (Article)

The *motu proprio Omnium in mentem*, by abolishing the formula *actus formalis defectionis ab Ecclesia*, has re-established the importance of the old principle *semel catholicus, semper catholicus*. When applied to the canon law of marriage

this means that should a Catholic renounce membership of the Church, he or she would nevertheless remain bound to the canonical form of marriage. This article addresses the problem of those who contracted civil marriage in the time between the coming into force of the CIC/83 and that of *Omnium in mentem*, and who were non-practising or had formally renounced membership of the Church. The question arises as to whether an *actus formalis* applies in this case. Following a Circular Letter from the Pontifical Council for Legislative Texts, such marriages were declared by the Austrian Bishops' Conference to be invalid, since the "renunciation" of the Church was not accompanied by an acceptance of such a decision on the part of the ecclesiastical authority. However, the unclear terminology used by the German Bishops' Conference has led to these civil marriages either being considered valid (provided no dispensation from form was obtained), or else to the decision being kept open in individual cases. Furthermore the same marriage could be evaluated differently from diocese to diocese in Germany, and also between Germany and Austria – something which the author identifies as a serious problem.

1086

J 72 (2012), 544-576: Daniela Knepper: Defecting from the Church by a Formal Act – the German Discussion 1969-2009. (Article)

See above, canon 751.

1089

REDC 70 (2013), 195-227: Carmen Peña García: El matrimonio en el ordenamiento canónico: posibles líneas de reforma legislativa. (Article)

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

1091-1094

REDC 70 (2013), 195-227: Carmen Peña García: El matrimonio en el ordenamiento canónico: posibles líneas de reforma legislativa. (Article)

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

1095

IE XXV (2013), 167-182: Giuseppe Versaldi: La capacità di sposarsi nelle allocuzioni di Benedetto XVI agli uditori della Rota Romana (2006-2012). (Lecture)

See above, canon 1057.

1095

J 72 (2012), 515-543: Brandon T. Parlopiano: The Burden of Proving Insanity in the Mediaeval *Ius Commune*. (Article)

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

1095

PCF XIII (2011), 189-208: Carlos J. M. Errázuriz: Affective Immaturity and Consensual Incapacity. (Study)

Acknowledging that, up until now, affective immaturity as a common ground for matrimonial nullity has not been satisfactorily clarified despite significant progress, E. sets out, in Part I of his study, to clarify the problems surrounding this ground. He examines canon 1095, and the allocutions of Pope John Paul II to the Roman Rota in 1987 and 1988. He raises the question of the criteria required to determine the empirical evidence of affective immaturity, with the aid of psychological or psychiatric expertise, and then how to translate the diagnostic findings into canonical judgments, using specific canonical concepts. It is in this area that he sees the important contribution of the allocutions of Pope John Paul II. Part II of the study explores five possible solutions to the problem. Underpinning these are an understanding of the meaning of affective immaturity and, even more importantly, an appreciation of the truth and goodness of marriage and of the family, together with objectivity of canonical judgment that is rooted in common sense.

1095 2°

Per 101 (2012), 477-490: Aidan McGrath: Una lettura creativa del canone 1095 2°. Alcuni commenti ad una sentenza rotale recente. (Article)

This article was McG.'s presentation at the 45th Colloquium of the Canon Law Faculty of the Pontifical Gregorian University in Brescia in June 2012. In it, he responds to the issue of "creativity" in reading canon 1095 by commenting on a Rotal decision *coram* Bottone of 6 October 2003. The Rotal judgment criticizes

the first instance tribunal for its over-interpretation of certain facts in the case which involved a marriage of more than 24 years, a duration that produced three children. In essence, from the comments of the Rotal judge, it would appear that the tribunal of first instance had actually made its decision *pro nullitate* before the process was completed.

1095 2º-3º

PCF XIII (2011), 309-323: Decision *coram* Stankiewicz: Incapacity to Assume the Essential Obligations of Marriage: Anti-social Personality Disorder (27 March 1998, Leeds). English trans. by Rev. Augustine Mendonça, JCD. (Jurisprudence)

When her marriage of 22 years ended, the woman petitioner brought a plea of nullity before the Leeds diocesan ecclesiastical tribunal of first instance, on 7 August 1978, on the ground of lack of due discretion in both parties. Having examined the acts of the case, which included a brief expert report on the petitioner, the tribunal decreed, on 25 October 1983, that there was no proof of nullity of marriage on the ground of lack of due discretion on the part of the woman petitioner or of the respondent man. The petitioner appealed against this negative decision to the metropolitan tribunal of Liverpool, acting as a court of second instance. This tribunal introduced a new witness and, on 6 September 1984, confirmed the negative decision of the first instance tribunal. However, the formula of doubt which the second instance sentence used incorporated certain elements of incapacity to assume the essential obligations of marriage into the defect of discretion of judgment in both parties. On 4 September 1990, the bishop of Leeds, on the part of the petitioner, asked the Supreme Tribunal of the Apostolic Signatura to assign a new hearing of the cause to the metropolitan tribunal of Birmingham rather than to the Roman Rota; and if the decision were to be in the affirmative, to assign the ratification or otherwise of it to the metropolitan tribunal of Westminster. On 6 October 1990 the Signatura decreed that the cause should be dealt with at the Roman Rota. On account of confusion found in the sentences of the first and second instance tribunals between lack of due discretion and inability to assume, and because new proofs and a new expert report had been presented, a new formula of doubt was determined, namely, lack of due discretion in both parties and inability to assume the essential obligations of marriage in either or in both parties. Following a supplementary instruction, sentence was pronounced on 21 November 1996. It decreed that “there is proof of nullity of marriage in the case only on the ground of incapacity to assume the essential duties of marriage on the part of the man respondent” (canon 1095 §3). The same man was prohibited from contracting another marriage without consulting the local Ordinary. The decision was appealed against by the defender of the bond, and the cause was examined by the present *turnus*:

Stankiewicz, Giannecchini, and Turnaturi. On 27 March 1998, this *turnus* confirmed the Rotal sentence of 26 November 1996, pronounced as if in first instance, declaring that there was proof of nullity of marriage on account of the respondent's incapacity to assume the essential obligations of marriage. He was also prohibited from contracting a new marriage without consulting the local Ordinary.

1095 3°

Per 101 (2012), 463-476: Paolo Bianchi: L'interpretazione positivista del momento costitutivo del matrimonio. (Article)

Starting from the allocution of Benedict XVI to the Roman Rota in January 2012, B. focuses his attention on certain positivistic and excessively "creative" readings of the canon law concerning the act of matrimonial consent. This article is the text of his presentation at the 45th Colloquium of the Canon Law Faculty of the Pontifical Gregorian University in Brescia in June 2012. B.'s point of reference is the concept of incapacity for marriage set out in canon 1095, in general, and that contained in the third paragraph in particular.

1098

Per 101 (2012), 491-500: Linda Ghisoni: Creatività giuridica e derive positivistiche nell'interpretazione del can. 1098 CIC. (Article)

In his allocution to the Roman Rota in 1984, Blessed John Paul II indicated that further determination was needed in the case of certain canons of the recently promulgated Code of Canon Law; among these was canon 1098. In her presentation at the 45th Colloquium of the Canon Law Faculty of the Pontifical Gregorian University in Brescia in June 2012, G. considers two particular dangers in the interpretation and application of canon 1098: one is a form of interpretative creativity that expands excessively the concept of person, and the other is an example of a positivist reading of the canon that leads to the possibility of separating error from the act of deception itself. All of these considerations come in response to the comments of Pope Benedict XVI in his 2012 allocution to the Roman Rota.

1098

REDC 70 (2013), 195-227: Carmen Peña García: El matrimonio en el ordenamiento canónico: posibles líneas de reforma legislativa. (Article)

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

1099

EIC 53 (2013), 5-27: Benedict Ndubueze Ejeh: Il sacramento del matrimonio e la questione dell'apporto della fede nella sua configurazione. (Article)

The debate on the influence of faith on the sacrament of marriage was at various times revisited by Pope Benedict XVI. Against the background of a widespread culture that is opposed to the fundamental and sacramental values of marriage, this called for a re-evaluation of the traditional theory of the identity and inseparability of contract and sacrament in marriage. This article upholds the continued validity of the theory of identity. However, it affirms that present existential circumstances could lend themselves to fundamental errors concerning marriage as taught by the Church, as opposed to a generalized presumption of the natural predisposition of the spouses towards marriage according to God's plan. Such errors need to be combated through adequate pastoral measures, including a canonical imposition of the obligation of a pre-marriage formation, possibly laid out in a *Ratio Fundamentalis Institutionis Matrimonialis*.

1099

IE XXV (2013), 515-533: Benedetto XVI: Discorso alla Rota Romana, 26 gennaio 2013 (con nota di Montserrat Gas Aixendri, Fede e intenzione nel matrimonio sacramento). (Document and comment)

See above, canons 1055-1057.

1101

EIC 53 (2013), 55-78: Paolo Bianchi: Esclusione della sacramentalità del matrimonio. Aspetti sostanziali e probatori. (Article)

B. examines the topic of the exclusion of the sacramental dignity of marriage, offering possible solutions regarding its canonical configuration and proofs. He examines the principal juridical and doctrinal questions concerning the sacramentality of marriage, indicating their influence on the matrimonial process. He places particular emphasis on the evidential aspects, suggesting a number of possible questions that could be put in order to help establish the exclusion or otherwise of the sacramental dignity of marriage.

1101

SC 47 (2013), 225-236: Exclusion of *Bonum Coniugum* (can. 1101, §2). Sentence *coram* Ferreira Pena, 26 March 2010 (USA). (Sentence)

After 18 years of conjugal life and two children, the spouses separated and later obtained a civil divorce. The male petitioner sought a declaration of the nullity of the marriage on the grounds of 1. grave defect of discretion of judgment in the respondent, but if not that, then partial simulation (intention *contra bonum coniugum*) in the respondent; and 2. inability to assume the essential obligations of marriage in the petitioner, but if not that, then partial simulation (intention *contra bonum coniugum*) in the petitioner. The first instance tribunal gave a negative verdict; the appeal tribunal, without carrying out any further instruction, issued an affirmative decision only on the ground of exclusion of the *bonum coniugum* on the part of both parties. The Rota found that dissensions and altercations between the parties arose a long time after the celebration of the wedding, and were primarily due to financial matters and the different way of living and self-advancement. The difficulties emerged gradually, and the Rota was unable to find the necessary elements in one or both spouses to demonstrate the exclusion of the *bonum coniugum*.

1101

SCL VIII (2012), 339-372: Ecclesiastical Tribunal of Mangalore Diocese (III Instance) Simulation. Decision *coram* Mendonça (India). (Sentence)

The first instance decision was affirmative on the ground of “inadequate consent amounting to simulation”. This was reformulated as “implicit simulation” on appeal, and the decision given was negative. The Signatura granted permission for the Mangalore tribunal to hear the case at third instance, where it was again reformulated, this time as total simulation. The Signatura flagged up three issues: jurisprudence at first instance that did not conform with established Rotal jurisprudence; the unsatisfactory determining of the ground of nullity; different evaluation of the proofs by first and second instance courts. The Signatura seeks to address these by presenting a logical explanation of the doctrinal and jurisprudential principles on the nature of marriage and consent, the importance of determining appropriate grounds of nullity, appropriate doctrine and jurisprudence on total simulation and the proofs required. It is not enough to refer generically to canons 1055 and 1057 in formulating the doubt. Reference must be made to the canons on impediments, defects of consent or canonical form. The decision explains how the ground “inadequate consent” was used for a short period in the jurisprudence of the British Isles from the mid-1970s but was abandoned after the promulgation of the CIC/83. Much is made of the cultural background in the law section, yet this is not picked up in the

application of the law to the facts. The law section then sets out the distinction between total and partial simulation. The evidence did not support allegations that the marriage was arranged and in fact showed that the respondent, in whom inadequate consent was alleged, wanted to enter marriage and to restore conjugal life when it broke down. The real cause of their difficulties was that the respondent developed fibroids and the petitioner's family rejected her.

1102

REDC 70 (2013), 195-227: Carmen Peña García: El matrimonio en el ordenamiento canónico: posibles líneas de reforma legislativa. (Article)

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

1108

SC 47 (2013), 25-60: Emmanuel Petit: Le mariage civil des catholiques à la lumière des fictions du droit matrimonial. (Article)

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

1108

SC 47 (2013), 237-243: William Daniel: Nullity of Marriage *Ob Legitimae Formae Defectum* (c. 1108, §1). Definitive Sentence, 3 May 2011 (USA). (Sentence)

Given here is a definitive sentence prepared for an actual cause of marriage nullity; all the proper and place names have been altered. The case concerns a wedding between two Catholics conducted by a priest of the Priestly Society of St Pius X who lacked faculties or a proper delegation to assist at the marriage; nor was there any foundation for supposing that the faculty to assist at the marriage was supplied by the Church in virtue of canon 144 §2. Hence the marriage was null on account of the defect of canonical form.

1112

J 73 (2013), 271-297: United States Conference of Catholic Bishops: Complementary Legislation to the Code of Canon Law. (Legislation)

See above, General Subjects (*Compilations*).

1117

AkK 181 (2012), 25-38: Ernst Freiherr von Castell: Die eherechtlichen Implikationen des Motu proprio *Omnium in mentem*. (Article)

See above, canon 1086.

1117

J 72 (2012), 544-576: Daniela Knepper: Defecting from the Church by a Formal Act – the German Discussion 1969-2009. (Article)

See above, canon 751.

1124

AkK 181 (2012), 25-38: Ernst Freiherr von Castell: Die eherechtlichen Implikationen des Motu proprio *Omnium in mentem*. (Article)

See above, canon 1086.

1124

J 72 (2012), 544-576: Daniela Knepper: Defecting from the Church by a Formal Act – the German Discussion 1969-2009. (Article)

See above, canon 751.

1126-1127

J 73 (2013), 271-297: United States Conference of Catholic Bishops: Complementary Legislation to the Code of Canon Law. (Legislation)

See above, General Subjects (*Compilations*).

1132

QDE 26 (2013) 77-90: Fabio Marini: L'ufficio del parroco tra segreto e riservatezza. (Article)

See above, canon 220.

1134

SC 47 (2013), 183-206: Wojciech Kowal: Twenty Years after the Promulgation of the *Catechism of the Catholic Church*: Doctrinal Foundations for Marriage. (Article)

See above, canon 1055.

1134-1140

IE XXV (2013), 409-429: Ilaria Zuanazzi: Per un diritto di famiglia della Chiesa: i rapporti tra genitori e figli. (Article)

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

1141

SC 47 (2013), 183-206: Wojciech Kowal: Twenty Years after the Promulgation of the *Catechism of the Catholic Church*: Doctrinal Foundations for Marriage. (Article)

See above, canon 1055.

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

1176

Comm 44 (2012), 439-440: Articulus explanans consilium cremandi cadavera a Sancto Synodo Ecclesiae Orthodoxae Dacoromaniae captum (die 1 mensis augusti 2012). (Article)

See above, CCEO canon 876.

1186

REDC 70 (2013), 311-322: Congregación para la Doctrina de la Fe: Normas sobre el modo de proceder en el discernimiento de presuntas apariciones y revelaciones. Texto y comentario de José San José San Prisco. (Document and commentary)

Given here are the norms issued by the Congregation for the Doctrine of the Faith (CDF) concerning the discernment of alleged visions and revelations. These were originally drawn up in 1978 but their circulation was limited to a relatively small circle of specialists. They have now been officially published (23 May 2012) in various vernacular languages. They give criteria, positive and negative, to be used in these matters, and indicate who are the competent authorities, how they should act and the possible intervention of the CDF.

1186

SCL VIII (2012), 23-30: Congregation for the Doctrine of the Faith: Norms Regarding the Manner of Proceeding in the Discernment of Presumed Apparitions or Revelations. (Document)

These norms were originally approved by Pope Paul VI on 24 February 1978 and issued the following day. An introductory note by Cardinal Levada dated 14 December 2011 explains that over the years a number of unofficial translations had been in circulation and the need was felt for official versions to be available in the principal languages. The subject had been raised as a matter of pastoral concern in the Ordinary Assembly of the Synod of Bishops in October 2008 and taken up by Pope Benedict XVI in his post-synodal Exhortation *Verbum Domini*. The norms fall into four sections: the criteria, positive and negative, for judging the character of presumed apparitions or revelations; intervention of the competent ecclesiastical authority; authorities competent to intervene; intervention of the Congregation for the Doctrine of the Faith.

BOOK IV, PART III: SACRED PLACES AND TIMES

1215

J 73 (2013), 5-28: Peter Erdő: The Consent of the Bishop Required for the Construction of Churches: Observations on Canon 1215. (Article)

E. begins with the theological basis and history of episcopal oversight of church construction from Apostolic times through medieval canon law to the CIC/17. He then describes the current canonical regulation of the matter, as found in canon 1215 of the CIC/83.

1222

J 73 (2013), 211-219: Official Documents of the Holy See: Letter from the Congregation for the Clergy and Procedural Guidelines for the Modification of Parishes and the Closure, Relegation, and Alienation of Churches. (Documents)

See above, canon 515.

1246

J 73 (2013), 271-297: United States Conference of Catholic Bishops: Complementary Legislation to the Code of Canon Law. (Legislation)

See above, General Subjects (*Compilations*).

1253

J 73 (2013), 271-297: United States Conference of Catholic Bishops: Complementary Legislation to the Code of Canon Law. (Legislation)

See above, General Subjects (*Compilations*).

BOOK V: THE TEMPORAL GOODS OF THE CHURCH

1254-1310

Comm 44 (2012), 341-356; also SCL VIII (2012), 13-22: Pope Benedict XVI: Litterae Apostolicae Motu Proprio datae, *Intima Ecclesiae natura, de caritate ministranda (lingua latina una cum versione italica)*. (Document)

In his Encyclical *Deus Caritas Est* Pope Benedict noted that bishops have a primary responsibility for the charitable activity of the Church but that this was not mentioned among the responsibilities set out in the Codes. This *motu proprio* seeks to redress this by spelling out the legal responsibilities in this area, especially the position of authority and coordinating role of the diocesan bishop. 15 articles follow in the dispositive part. These clarify the rights of the faithful in establishing charitable bodies and the competent authority at different levels to regulate them. Emphasis is put on maintaining Catholic identity and coordination. Without prejudice to the roles of other dicasteries, supervision of the implementation of this legislation is entrusted to the Pontifical Council *Cor Unum*. The document was signed on 11 November 2012, to take effect on 10 December 2012, with promulgation through *L'Osservatore Romano*. The text is given in Latin, then Italian.

1254-1310

Comm 44 (2012), 450-455: I. Ignatio Arrieta: Articulus explanans Litteras Apostolicas, Motu Proprio datas, *Intima Ecclesiae natura, de caritate ministranda, ab Ex.mo Ioanne Ignatio Arrieta conscriptus (dies 2 mensis decembris 2012)*. (Article)

In this article the author explains the background and purpose of the *motu proprio Intima Ecclesiae Natura*. The Encyclical *Deus Caritas Est* focused on the meaning of charity, and Pope Benedict drew attention to the fact that the Code lacked an adequate mention of the role of the diocesan bishop in the charitable mission of the Church. The Pontifical Council *Cor Unum* in 2008 asked the Pontifical Council for Legislative Texts to set up a study group on this question. Two drafts were circulated to consultative bodies including some bishops' conferences. The norms recognize the diverse nature of charitable works. Norms on the right of association needed to be reformulated in this context. Organizations differ in their origin, some founded by the faithful, others at the initiative of the hierarchy. The greater part of the norms focus on the role and responsibilities of the diocesan bishop. Article 13 addresses the situation where bodies depend on other authorities. The text is in Italian and reprinted from *L'Osservatore Romano*.

1254-1310

IE XXV (2013), 499-514: Benedetto XVI: Lettera Apostolica motu proprio data “Intima Ecclesiae natura” sul servizio della carità, 11 novembre 2012 (con nota di Jesús Miñambres, Connotati giuridici del servizio della carità organizzato). (Document and comment)

See preceding entries. The Italian text of the Apostolic Letter is accompanied by a comment from J. Miñambres which looks at the notion of the service of charity; the organization of the service of charity; the protection of the “Catholic” identity and the management of resources; cooperation and coordination in the activities of the service of charity; and the competence of the Pontifical Council *Cor Unum*.

1262

J 73 (2013), 271-297: United States Conference of Catholic Bishops: Complementary Legislation to the Code of Canon Law. (Legislation)

See above, General Subjects (*Compilations*).

1277

J 73 (2013), 271-297: United States Conference of Catholic Bishops: Complementary Legislation to the Code of Canon Law. (Legislation)

See above, General Subjects (*Compilations*).

1286

AkK 181 (2012), 152-203: Stefan Ihli: Die Jurisdiktionsgewalt des Diözesanbischofs über kirchliche Rechtsträger. Grundsätzliche Überlegungen zum Urteil des Delegationsgerichts der Apostolischen Signatur. (Article)

I. takes as his starting point a sentence of 31 March 2010 issued by a delegated tribunal of the Apostolic Signatura concerning the applicability and binding nature of Church employment regulations (*Grundordnung des kirchlichen Dienstes*) in one particular case. In the context of a critical assessment of the decision and its prior history, he investigates the binding effect of art. 2 of the said *Grundordnung* on juridical persons in canon law, within the ambit of the right of association in the Church and also in relation to subsidiaries and legal entities without ecclesiastical status. He calls for the widest possible application

of Church employment law and for the binding nature of the *Grundordnung* on all legal persons and entities in the Church.

1286

J 73 (2013), 181-210: Anne Asselin: Lay Ecclesial Ministers and Removal from Office: Seeking Justice and Fairness. (Lecture)

See above, canon 231.

1290

J 73 (2013), 181-210: Anne Asselin: Lay Ecclesial Ministers and Removal from Office: Seeking Justice and Fairness. (Lecture)

See above, canon 231.

1292

J 73 (2013), 271-297: United States Conference of Catholic Bishops: Complementary Legislation to the Code of Canon Law. (Legislation)

See above, General Subjects (*Compilations*).

1297

J 73 (2013), 271-297: United States Conference of Catholic Bishops: Complementary Legislation to the Code of Canon Law. (Legislation)

See above, General Subjects (*Compilations*).

1297

SCL VIII (2012), 431-446: Augustine Mendonça: May a Diocesan Administrator *sede vacante* Sign a Long Term Lease on a Piece of Valuable Property Belonging to the Diocese? (Article)

See above, canon 427.

BOOK VI: SANCTIONS IN THE CHURCH

1311

Per 101 (2012), 501-534: Damián G. Astigueta: La pena come sanzione: un contributo su questo concetto. (Article)

When the Pontifical Council for Legislative Texts circulated the second draft of the renewed text of Book VI of the Code, it also sent around some particular questions to be considered. The last of these questions concerned the penal nature of the act of dismissal of a religious from his or her religious institute. In this article, A. uses the question as the starting point for a reflection on the nature of penalties in canon law, and how they are related to other disciplinary acts that are also sanctions, e.g. the aforementioned dismissal of a religious, and the declaration of an irregularity *ex delicto* in conformity with canon 1041 and canon 1044.

1311-1363

AkK 181 (2012), 75-89: Elmar Güthoff: Ein Überblick über die im ersten Teil des Strafrechts des CIC (cc. 1311-1363) geplanten Änderungen. (Article)

G. shows how the *Schema recognitionis Libri VI Codicis Iuris Canonici*, published in 2011 by the Pontifical Council for Legislative Texts, allows a simplification of practice and, as a result, improvements to the existing system of canonical penalties. An unforeseen side-effect is, in G's opinion, that the penal law is made stricter in some aspects.

1311-1363

Comm 44 (2012), 548: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum “De Iure Poenali” (Sessio II): Litterae N. 725/66 quibus convocatur II sessio Coetus Studii de iure poenali necnon quibus in adnexo ad Consultores Praevium schema canonum a Relatore parato transmittitur. (Report)

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

1311-1363

Comm 44 (2012), 549-560: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum “De Iure Poenali” (Sessio II): de delictis in genere: Praevium schema canonum a Relatore paratum. (Report)

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

1311-1363

Comm 44 (2012), 561-565: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum “De Iure Poenali” (Sessio II): Adnotationes ad Schema praeivium canonum de delictis in genere a Relatore missae. (Report)

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

1311-1363

Comm 44 (2012), 566: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum “De Iure Poenali” (Sessio II): Novus textus propositus pro can. 21 a Relatore missus. (Report)

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

1311-1363

Comm 44 (2012), 567-578: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum “De Iure Poenali” (Sessio II): Relatio Sessionis II^a. (Report)

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

1311-1363

Comm 44 (2012), 579-590: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum “De Iure Poenali” (Sessio II):

Praevium canonum schema, a Pio Ciprotti paratum et postea emendatum a Consultoribus Coetus diebus 9-14 mensis Ianuarii 1967 habiti. (Report)

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

1311-1363

Comm 44 (2012), 591: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum “De Iure Poenali” (Sessio II): Adnotationes ad Schema, emendatum in Coetu Consultorum 9-14 mensis Ianuarii 1967, a Relatore missae. (Report)

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

1311-1399

AkK 181 (2012), 57-74: Juan Ignacio Arrieta: Il progetto di revisione del Libro VI del Codice di diritto Canonico. (Article)

A. deals with the reform of Book VI of the CIC/83. The ecclesiastical legislator has set this reform in motion in response to continual changes in society, a series of unedifying events within the Church in recent years, the obvious limitations of the CIC/83, and a certain teleology in the legal system. The principal aim of the reform is the salvation of souls. The purpose of penal law is that of re-establishing justice in love and truth, for the good both of the offender and of the whole body of believers. Through a careful analysis, A. shows the current state of the project: the initial ideas, the manner of proceeding, and the partial results in terms of future regulations still to be approved. He places particular emphasis on the special juridical considerations which apply, and on the collaboration of Church communities in this reform, without however concealing the problems and uncertainties to which such a reform can give rise.

1311-1399

Comm 44 (2012), 360-363: Pontificium Consilium de Legum Textibus: Quaestiones quaedam studio Pontificii Consilii submissae. (Report)

The Pontifical Council for Legislative Texts reports in outline various questions submitted to it during the second six months of 2012. In addition working parties have been set up from canonists working in Rome to consider areas where the Code needs updating. These have met once a month. A more detailed

report is given on the activity of the working party set up to evaluate the responses to the draft revision of Book VI.

1322

J 72 (2012), 515-543: Brandon T. Parlopiano: The Burden of Proving Insanity in the Mediaeval *Ius Commune*. (Article)

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

1362

IE XXV (2013), 92-119: Tribunale Apostolico della Rota Romana: *Penale e Iurium: riparazione dei danni*, Sentenza definitiva, 23 luglio 2010, McKay, Ponente (con nota di Adolfo Zambon, *Sul risarcimento del danno. Alcune riflessioni a partire da due coram McKay*). (Sentence and comment)

See below, canons 1729-1731.

1377

IE XXV (2013), 92-119: Tribunale Apostolico della Rota Romana: *Penale e Iurium: riparazione dei danni*, Sentenza definitiva, 23 luglio 2010, McKay, Ponente (con nota di Adolfo Zambon, *Sul risarcimento del danno. Alcune riflessioni a partire da due coram McKay*). (Sentence and comment)

See below, canons 1729-1731.

1378

AkK 181 (2012), 204-214: Ariel David Busso: Die Gültigkeit der Priesterweihe und das Priestertum der Frau. (Article)

After setting out the requirements for the validity of holy Orders, B. looks at the question of the ordination of women in the light of the Church's Tradition, the Declaration *Inter Insigniores* (15 October 1976), John Paul II's Apostolic Exhortation *Ordinatio Sacerdotalis* (22 May 1994), the Congregation for the Doctrine of the Faith's Decree of excommunication (5 August 2002) and Decree on the attempted ordination of some women (21 December 2002), and the same Congregation's General Decree regarding the delict of attempting sacred ordination of a woman (19 December 2007), later included as art. 5 of the 2010 Substantive Norms concerning the *graviora delicta*.

1382

PCF XIII (2011), 29-34: Pontifical Council for Legislative Texts: Declaration on the Proper Application of Canon 1382 of the Code of Canon Law. (Document)

Canon 1382 states: “Both the bishop who, without a pontifical mandate, consecrates a person a bishop, and the one who receives the consecration from him, incur a *latae sententiae* excommunication reserved to the Apostolic See.” In recent years, several episcopal ordinations have taken place in different countries, without Papal mandate, thus breaking communion with the Roman Pontiff and violating ecclesiastical discipline. In order to clarify the situation and highlight the canonical responsibilities of all the persons involved, the Pontifical Council for Legislative Texts conducted an in-depth study of the matter. Based on this study the Council issued, on 30 April 2011, the present Declaration, which lists and explains clear guidelines for the proper application of canon 1382. It cites related canons as well as the Dogmatic Constitution *Lumen Gentium*, the Decree *Christus Dominus*, CCEO canon 459 §2, and the *Caeremoniale Episcoporum*, nos. 582 and 584.

1389

IE XXV (2013), 92-119: Tribunale Apostolico della Rota Romana: *Penale e Iurium: riparazione dei danni*, Sentenza definitiva, 23 luglio 2010, McKay, Ponente (con nota di Adolfo Zambon, *Sul risarcimento del danno. Alcune riflessioni a partire da due coram McKay*). (Sentence and comment)

See below, canons 1729-1731.

1390

IE XXV (2013), 79-91, 107-119: Tribunale Apostolico della Rota Romana: *Penale e riparazione dei danni*, Decreto, 23 gennaio 2008, McKay, Ponente (con nota di Adolfo Zambon, *Sul risarcimento del danno. Alcune riflessioni a partire da due coram McKay*). (Decree and comment)

See below, canons 1729-1731.

1395

J 73 (2013), 151-180: Thomas J. Green: CDF Circular Letter on Episcopal Conference Guidelines for Cases of Clerical Abuse of Minors: Some Initial Observations. (Article)

G. introduces the Congregation for the Doctrine of the Faith's 2010 Circular Letter and puts it in context. He then describes its structure, highlighting the key points of the letter: support for the victims; protection of minors; formation of future priests and religious; support for priests; and cooperation with the civil authorities. He then explains that the Letter goes on to present a summary of the law on sexual abuse and concludes with suggestions for Ordinaries. He concludes by explaining the noteworthy features of the Letter.

1399

Ius (2012), 548: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum "De Iure Poenali" (Sessio II): Litterae N. 725/66 quibus convocatur II sessio Coetus Studii de iure poenali necnon quibus in adnexo ad Consultores Praevium schema canonum a Relatore parato transmittitur. (Report)

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

1399

Comm 44 (2012), 549-560: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum "De Iure Poenali" (Sessio II): de delictis in genere: Praevium schema canonum a Relatore paratum. (Report)

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

1399

Comm 44 (2012), 561-565: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum "De Iure Poenali" (Sessio II): Adnotationes ad Schema praevium canonum de delictis in genere a Relatore missae. (Report)

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

1399

Comm 44 (2012), 566: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum “De Iure Poenali” (Sessio II): Novus textus propositus pro can. 21 a Relatore missus. (Report)

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

1399

Comm 44 (2012), 567-578: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum “De Iure Poenali” (Sessio II): Relatio Sessionis II^a. (Report)

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

1399

Comm 44 (2012), 579-590: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum “De Iure Poenali” (Sessio II): Praevium canonum schema, a Pio Ciprotti paratum et postea emendatum a Consultoribus Coetus diebus 9-14 mensis Ianuarii 1967 habiti. (Report)

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

1399

Comm 44 (2012), 591: Ex Actis Pontificiae Commissionis Codici Iuris Canonici Recognoscendo: Coetus Studiorum “De Iure Poenali” (Sessio II): Adnotationes ad Schema, emendatum in Coetu Consultorum 9-14 mensis Ianuarii 1967, a Relatore missae. (Report)

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

1399

FCan VII/2 (2012), 155-173: Dominique Le Tourneau: L'interprétation du droit fondamental des fidèles a être jugés selon le droit: c. 221 §3. (Article)

See above, canon 221.

1399

IE XXV (2013), 92-119: Tribunale Apostolico della Rota Romana: *Penale e Iurium: riparazione dei danni*, Sentenza definitiva, 23 luglio 2010, McKay, Ponente (con nota di Adolfo Zambon, *Sul risarcimento del danno. Alcune riflessioni a partire da due coram McKay*). (Sentence and comment)

See below, canons 1729-1731.

BOOK VII: PROCESSES

1403

N XLIX 11-12/12, 611-614: Magister Liturgicorum Celebrationum Summi Pontificis: Nota introduttiva alla pubblicazione del Rito di Canonizzazione. (Document)

On 29 September 2012 Pope Benedict XVI approved a revised rite for canonization, placing this before the commencement of the Mass. The text is prefaced by a brief note from the Papal Master of Ceremonies.

1405

IE XXV (2013), 79-91, 107-119: Tribunale Apostolico della Rota Romana: Penale e riparazione dei danni, Decreto, 23 gennaio 2008, McKay, Ponente (con nota di Adolfo Zambon, Sul risarcimento del danno. Alcune riflessioni a partire da due coram McKay). (Decree and comment)

See below, canons 1729-1731.

1405

IE XXV (2013), 92-119: Tribunale Apostolico della Rota Romana: Penale e Iurium: riparazione dei danni, Sentenza definitiva, 23 luglio 2010, McKay, Ponente (con nota di Adolfo Zambon, Sul risarcimento del danno. Alcune riflessioni a partire da due coram McKay). (Sentence and comment)

See below, canons 1729-1731.

1417

AkK 181 (2012), 152-203: Stefan Ihli: Die Jurisdiktionsgewalt des Diözesanbischofs über kirchliche Rechtsträger. Grundsätzliche Überlegungen zum Urteil des Delegationsgerichts der Apostolischen Signatur. (Article)

See above, canon 1286.

1421

J 73 (2013), 271-297: United States Conference of Catholic Bishops: Complementary Legislation to the Code of Canon Law. (Legislation)

See above, General Subjects (*Compilations*).

1425

J 73 (2013), 271-297: United States Conference of Catholic Bishops: Complementary Legislation to the Code of Canon Law. (Legislation)

See above, General Subjects (*Compilations*).

1439

J 73 (2013), 271-297: United States Conference of Catholic Bishops: Complementary Legislation to the Code of Canon Law. (Legislation)

See above, General Subjects (*Compilations*).

1442-1445

Comm 44 (2012), 397-401: Secretaria Status: Allocutio ab Eminentissimo Card. Tharcicio Bertone, Secretario Status, die 8 mensis novembris 2012, occasione inaugurationis Anni Academici 2012-2013 Rotae Romanae prolata. (Address)

See above, canon 19.

1444-1445

SC 47 (2013), 89-117: William L. Daniel: The Competence of the Supreme Tribunal of the Apostolic Signatura over Recourse against the Rejection of a New Proposition of a Cause by the Roman Rota. (Article)

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

1445

J 73 (2013), 228-235: Kurt Martens: Brief Note on the Apostolic Signatura and the Contentious-Administrative Recourse. (Article)

M. looks at the origins of the Apostolic Signatura and its current competence. He then explains its current composition and the procedures it follows, including a description of the codes used in protocol numbers.

1445

J 73 (2013), 256-269: William L. Daniel: Brief Note on the Judicial Figure of the Secretary of the Supreme Tribunal of the Apostolic Signatura. (Article)

In explaining that the role of the Secretary of the Signatura is a truly judicial one, D. begins by examining the historical development of this role from Renaissance times up to the post-Vatican II reforms. He then comments on the current *lex propria* as it affects the Secretary.

1446

SC 47 (2013), 145-181: Daniel Roseman: Mediation in the Church: A Review of the Literature and of the Key Elements of Mediation. (Article)

R. identifies the key elements of mediation in terms of goals, practices and processes, and then reviews the relevant canons and canonical literature to assess how these key elements are used in ecclesiastical mediation processes. The goals of mediation – the reconciliation of disputants’ interests and the restoration of relationships – are in harmony with canon law and Christian principles. Formal trials and administrative procedures are to be the last resort for resolving disputes in the Church. Canons 1446 and 1713-1715 deal with mediation as an alternative to litigation, and canon 1733 with mediation as an alternative to administrative recourse. Many ecclesiastical disputes lend themselves to mediation, although it is little used in the Church, despite its demonstrated benefits. R. discusses, *inter alia*, the advantages and disadvantages of the apparent preference in the Church for “insider partials” instead of detached outsiders as mediators.

1475

REDC 70 (2013), 269-288: Tribunal Supremo de la Signatura Apostólica. Decreto General ejecutorio sobre la conservación de actas judiciales. Comentario de Raúl Román Sánchez. (Document and commentary)

Given here is the Latin text with Spanish translation of the general executory decree of the Signatura Apostolica (13 August 2011) in answer to many queries on the issue of the conservation and destruction of judicial acts of marriage cases. There must be a period of at least 20 years since the conclusion of the case before any documents can be destroyed, and only then if their conservation constitutes a grave inconvenience. The original text of definitive sentences, decrees of confirmation, other decisions with the force of definitive sentence and interlocutory pronouncements must always be preserved. In his commentary R.S. points out that the permitted use of electronic and similar means of conserving documents, while addressing possible problems of material lack of space for their physical retention, nevertheless is more open to breaches of security and of secrecy. He also regrets the fact that by allowing the destruction of documents a certain element of an important aspect of the Church's own heritage and history is lost.

1481-1482

SCL VIII (2012), 399-406: Apostolic Tribunal of the Roman Rota: Failure to Communicate the Formula of Doubt (cann. 1507, 1508, 1677; DC artt. 126, 127); Gathering of Evidence by the Defender of the Bond (can. 1561; DC art. 166); Failure to Provide an Advocate (cann. 1481-1482; DC artt. 101-103). (Violation of the Right of Defence, can. 1620, 7°; DC art. 270, 7°). Decree *coram* Alwan, 19 May 2009 (India). (Decree)

See below, canon 1620 7°.

1501-1516

IE XXV (2013), 92-119: Tribunale Apostolico della Rota Romana: *Penale e Iurium: riparazione dei danni*, Sentenza definitiva, 23 luglio 2010, McKay, Ponente (con nota di Adolfo Zambon, *Sul risarcimento del danno. Alcune riflessioni a partire da due coram McKay*). (Sentence and comment)

See below, canons 1729-1731.

1505

J 73 (2013), 236-241: Apostolic Signatura: Decree of Rejection of a Complaint of Nullity. (Decree)

The respondent sought the revocation of the decree of admission of the *libellus* in his marriage nullity case or, subordinately, sought a complaint of nullity against the decree of citation. This was rejected by both the presiding judge and the college of judges at the first instance tribunal. The respondent then appealed to the Rota, which ruled that there was no appeal possible against the decision refusing to revoke the decree of admission, but that a party could appeal against the decision on the complaint of nullity, although in this case the appeal was then refused and the original decision confirmed. The respondent then presented a complaint of nullity against the Rotal decision to the Signatura. The Secretary of the Signatura (De Paolis) decreed the rejection *in limine* of the complaint.

1505

J 73 (2013), 242-251: William L. Daniel: Brief Note on the Nature and Challenge of the Decree of Admission of the *Libellus*. (Article)

See preceding entry. D. comments on the Signatura's decree and explains the process for decreeing the admission of the *libellus*. He then considers the disputed question about whether the decree of admission is decisional or ordinatory, settling on the view that it is decisional. He explains the canonical options for challenging the decree of admission (since it cannot legally be appealed against), that is, by using the *exceptio nullitatis*.

1507-1508

SCL VIII (2012), 399-406: Apostolic Tribunal of the Roman Rota: Failure to Communicate the Formula of Doubt (cann. 1507, 1508, 1677; DC artt. 126, 127); Gathering of Evidence by the Defender of the Bond (can. 1561; DC art. 166); Failure to Provide an Advocate (cann. 1481-1482; DC artt. 101-103). (Violation of the Right of Defence, can. 1620, 7°; DC art. 270, 7°). Decree *coram* Alwan, 19 May 2009 (India). (Decree)

See below, canon 1620 7°.

1517-1525

SCL VIII (2012), 115-140: Michael Nobel: The Life Span of a Trial. (Article)

N. begins by comparing and contrasting the provisions of the CIC/17 and the CIC/83 with regard to the *litis instantia* and the beginning of the trial. Unlike the latter, the former distinguished between the beginning of litigation and the beginning of the instance. There are also differences with regard to the interruption or suspension of a trial. N. looks in some detail at abatement and renunciation and concludes by referring to those cases where the use of arbitration might be envisaged.

1531

QDE 26 (2013) 55-76: Davide Salvatori: Il dovere di rispondere al giudice e il dovere del segreto come causa esimente: la ratio dei canoni 1531 §2 e 1548 §2 nel rapporto deontologico tra giudice e interrogato. (Article)

S. analyses the relationship between the duty to answer the judge and tell the truth, which is laid down by canons 1531 §1 and 1548 §1, and the obligation of secrecy described in canon 1548 §2. He begins by examining the decretal law on the subject and its reception into the CIC/17, and then looks at the CIC/83. He goes on to ask whether, and if so to what degree, the comparison of canons 1534 and 1546 allows the *ratio* of the exemption contained in canon 1548 §2 to be applied to the rule contained in canon 1531 §2.

1532

QDE 26 (2013) 105-128: Paolo Bianchi: Il giuramento delle parti nel processo canonico (can. 1532). (Article)

B. examines the sources of the present canon 1532 in the canonical tradition, and goes on to look at the particular problems concerning whether the oath should be taken before or after the testimony, and how to respond to those who do not wish to take an oath. He compares this canon with canon 1562 on the oaths of witnesses, and looks at how it is incorporated into *Dignitas Connubii* (art. 167), which allows another possibility, that of promising to tell the truth without taking an oath. B. then surveys the different formulas for the oath currently used in the Italian tribunals, and proposes a model formula.

1548

QDE 26 (2013) 55-76: Davide Salvatori: Il dovere di rispondere al giudice e il dovere del segreto come causa esimente: la *ratio* dei canoni 1531 §2 e 1548 §2 nel rapporto deontologico tra giudice e interrogato. (Article)

See above, canon 1531.

1561

SCL VIII (2012), 399-406: Apostolic Tribunal of the Roman Rota: Failure to Communicate the Formula of Doubt (cann. 1507, 1508, 1677; DC artt. 126, 127); Gathering of Evidence by the Defender of the Bond (can. 1561; DC art. 166); Failure to Provide an Advocate (cann. 1481-1482; DC artt. 101-103). (Violation of the Right of Defence, can. 1620, 7°; DC. art 270, 7°). Decree *coram* Alwan, 19 May 2009 (India). (Decree)

See below, canon 1620 7°.

1562

QDE 26 (2013) 105-128: Paolo Bianchi: Il giuramento delle parti nel processo canonico (can. 1532). (Article)

See above, canon 1532.

1584-1586

IE XXV (2013), 55-75: Antonio S. Sánchez-Gil: La presunzione nella vigente normativa canonica: osservazioni critiche. (Article)

See above, canon 1060.

1596

IE XXV (2013), 79-91, 107-119: Tribunale Apostolico della Rota Romana: *Penale e riparazione dei danni*, Decreto, 23 gennaio 2008, McKay, Ponente (con nota di Adolfo Zambon, *Sul risarcimento del danno. Alcune riflessioni a partire da due coram McKay*). (Decree and comment)

See below, canons 1729-1731.

1614-1615

SCL VIII (2012), 373-398: Apostolic Tribunal of the Roman Rota: Failure to Publish the Sentence/Irremediable Nullity of the Confirmatory Decree (can. 1620, 7°, DC art. 270, 7°). Decree *coram* Erlebach, 30 March 2006 (USA). (Decree)

See below, canon 1620 7°.

1619-1627

J 73 (2013), 236-241: Apostolic Signatura: Decree of Rejection of a Complaint of Nullity. (Decree)

See above, canon 1505.

1619-1627

J 73 (2013), 252-255: Apostolic Signatura: Decree of Rejection of a Complaint of Nullity. (Decree)

The first instance tribunal had decided that the marriage was null on the ground of exclusion of the *bonum sacramenti* in 1997. This was overturned by two conforming Rotal sentences of 2001 and 2008. The petitioner then sought a decree of the nullity of the third instance sentence because (a) the Rota had refused to accept new grounds that he had suggested; (b) the Rota had refused his request to re-interview the respondent; and (c) the Rota had taken too long to draw up the second instance sentence. The Secretary of the Signatura (Daneels) rejected these contentions since (a) there is no right to the admission of new grounds; (b) it is for the judge to decide whether to re-interview anyone; and (c) a delay in the second instance sentence cannot cause the nullity of the third instance sentence.

1620

SCL VIII (2012), 175-246: Augustine Mendonça: Recent Rotal Jurisprudence on Procedural Irregularities Amounting to Nullity of a Decision – II. (Article)

M. continues his review from the previous volume (SCL VII [2011], 183-240: see *Canon Law Abstracts*, no. 108, p. 139) with nine further recent Rotal decrees on procedural matters all of which amount to violation of the right of defence. The issues considered are: 1. failure to publish the sentence/absolute incompetence, *coram* Erlebach, 30 March 2006 (see below, canon 1620 7°); 2.

illegitimate change of grounds/*ultra petita, coram* Sable, 24 April 2008; 3. failure to communicate the formula of doubt/to publish the acts/definitive sentence, *coram* Huber, 17 March 2009; 4. inefficacious notification of decrees of publication of acts/conclusion of case and observations of defender of the bond, *coram* Erlebach, 28 January 2010; 5. failure to cite parties/communicate formula of doubt and also new proposition of the cause, *coram* Arellano Cedillo, 25 March 2010 (see below, canon 1620 7°); 6. inefficacious publication of acts/remediable nullity of sentence based on null acts/failure to issue decrees submitting cause to ordinary examination and concordance of doubt, *coram* Monier, 30 April 2010; 7. failure to issue decree submitting cause to ordinary examination/to cite parties/publish acts/decree conclusion of the cause, *coram* Ferreira Pena 25 June 2010; 8. failure to cite respondent/publish sentence/trial without judicial petition, *coram* Pinto, 9 July 2010; 9. failure to invite the defender of the bond and the parties to submit observations prior to issuing confirmatory decree/confirmatory decree without motives, *coram* McKay, 7 February 2011.

1620 1º, 4º

IE XXV (2013), 92-119: Tribunale Apostolico della Rota Romana: *Penale e Iurium: riparazione dei danni*, Sentenza definitiva, 23 luglio 2010, McKay, Ponente (con nota di Adolfo Zambon, *Sul risarcimento del danno. Alcune riflessioni a partire da due coram McKay*). (Sentence and comment)

See below, canons 1729-1731.

1620 7º

SC 47 (2013), 207-219: Irremediable Nullity of Decisions (can. 1620, 7º; DC art. 207, 7º); New Proposition of the Cause (cann. 1643 and 1644, §1; DC artt. 280 and 290). Decree *coram* Arellano Cedillo, 25 March 2010 (USA). (Decree)

The parties married in 1969 and had two sons. In 1986 they obtained a civil divorce, and in 1998 the male petitioner sought a declaration of nullity on the ground of lack of due discretion in one or both of the parties. The acts of the proceedings revealed no citation of the respondent for the trial, and no decree by which the respondent was declared absent from the trial. Nevertheless the instruction went ahead in her absence, and an affirmative decision was reached. The appeal tribunal to which the cause was forwarded issued a decree of confirmation. The respondent proposed a plaint of nullity of the decisions of both the first and the second instance and asked for a new proposition of the cause. The Rota found that the first instance tribunal had not made any effort to

find the respondent's domicile; for this purpose a mere internet search is not sufficient. Because of the lack of citation, the acts of the process were null. The respondent's absence without any fault on her part meant that she was deprived of all right of defence: she was not able to know the ground that was determined or the witnesses or the proofs. It seems that not even the text of the sentence was sent to her. In the light of the evident irremediable nullity of the first instance sentence, on account of the denial of the right of defence to the woman respondent, the confirmatory decree at second instance was also to be considered irremediably null. Consequently the question of a new proposition of the cause did not arise, as there did not exist two confirming decisions (canon 1644 §1).

1620 7°

SCL VIII (2012), 373-398: Apostolic Tribunal of the Roman Rota: Failure to Publish the Sentence/Irremediable Nullity of the Confirmatory Decree (can. 1620, 7°, DC art. 270, 7°). Decree *coram* Erlebach, 30 March 2006 (USA). (Decree)

The respondent appealed to the Rota at second instance but also enquired about her faculty to see the entire text of the first instance sentence. As she did not comply with the instructions of the judicial vicar the case was sent to the local appeal tribunal which confirmed the decision by decree. Her advocate wrote directly to the Rota, and the *turnus* suspended the execution of the confirmatory decree. Publication must take place as set out in canon 1615. The provisions of the CIC/17 (canon 1877) for the sentence to be read out by the judge, or a notice to be sent that this was available at the Chancery where the party could read it and ask for a copy, no longer apply. If there are potential difficulties then that circumspection allowed in art. 251 of *Dignitas Connubii* should be used. Moreover the text of the sentence must also set out the means by which it can be challenged. It is immaterial whether or not there is an advocate. The party must be informed in person or through the help of a procurator. Once an appeal has been lodged within the time allowed and it has been indicated that the appeal is to the Rota, only the Rota is competent. The local appeal tribunal is absolutely incompetent. It was clear that there were a number of honest mistakes and failures in communication. However, it was also clear that the decree of confirmation issued by the local appeal court was null.

1620 7°

SCL VIII (2012), 399-406: Apostolic Tribunal of the Roman Rota: Failure to Communicate the Formula of Doubt (cann. 1507, 1508, 1677; DC artt. 126, 127); Gathering of Evidence by the Defender of the Bond (can. 1561;

DC art. 166); Failure to Provide an Advocate (cann. 1481-1482; DC artt. 101-103). (Violation of the Right of Defence, can. 1620, 7°; DC. art 270, 7°). Decree *coram* Alwan, 19 May 2009 (India). (Decree)

After a second instance decree of confirmation the female respondent complained to Signatura about alleged irregularities at both first and second instance: that she was not given the opportunity to respond to the petition; that the ground was fixed unilaterally based on the husband's application; that the decree settling the issue was not communicated to her; that her deposition and those of her witnesses were taken by the defender of the bond. The judge of the appeal tribunal had responded to these arguments in the decree of confirmation stating that it was abundantly clear that she had been given the opportunity to defend herself and had in fact done so. The Rotal *turnus* accepts this argument and rejects the plaint of nullity and request for a new proposition. If there were deficiencies they were either of such a nature as not to lead to nullity of sentence or had been sanated. She may not have been informed in the sentence how to appeal or have recourse but in fact had done so and within the requisite time limits.

1622

SCL VIII (2012), 175-246: Augustine Mendonça: Recent Rotal Jurisprudence on Procedural Irregularities Amounting to Nullity of a Decision – II. (Article)

See above, canon 1620.

1629 4º

J 73 (2013), 236-241: Apostolic Signatura: Decree of Rejection of a Complaint of Nullity. (Decree)

See above, canon 1505.

1641

SC 47 (2013), 221-224: Substantial Conformity between Sentences (can. 1641, §1; DC art. 291, §2). Decree *coram* Bottone, 17 November 2011 (Italy). (Decree)

The male petitioner sought a declaration of nullity on the grounds of defect of discretion of judgment on his own part, and subordinately, fear inflicted on him. An affirmative decision was given at first instance on the ground only of defect

of discretion of judgment. At second instance the case was remitted to an ordinary examination, and the appeal tribunal issued a negative sentence on the ground of defect of discretion of judgment on the part of the man, and an affirmative sentence on the ground of fear inflicted on the same man, declaring conformity between the sentences. The woman respondent interposed an appeal against the declaration of conformity of sentences. The Rota declared that defect of discretion of judgment, which proceeds from the very subject, cannot be confused with fear, which proceeds from a free external cause. Although they can produce the same effect, they do not proceed from the same juridical foundation, and therefore there was no conformity of sentences.

1643-1644

SC 47 (2013), 207-219: Irremediable Nullity of Decisions (can. 1620, 7°; DC art. 207, 7°); New Proposition of the Cause (cann. 1643 and 1644, §1; DC artt. 280 and 290). Decree *coram* Arellano Cedillo, 25 March 2010 (USA). (Decree)

See above, canon 1620 7°.

1644

SC 47 (2013), 89-117: William L. Daniel: The Competence of the Supreme Tribunal of the Apostolic Signatura over Recourse against the Rejection of a New Proposition of a Cause by the Roman Rota. (Article)

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

1671

Comm 44 (2012), 357-359: Pontificium Consilium de Legum Textibus: *Nota explicativa quoad pondus canonicum divortii orthodoxi*. (Document)

See above, canon 1059.

1677

SCL VIII (2012), 399-406: Apostolic Tribunal of the Roman Rota: Failure to Communicate the Formula of Doubt (cann. 1507, 1508, 1677; DC artt. 126, 127); Gathering of Evidence by the Defender of the Bond (can. 1561; DC art. 166); Failure to Provide an Advocate (cann. 1481-1482; DC artt.

101-103). (Violation of the Right of Defence, can. 1620, 7°; DC art 270, 7°). Decree *coram* Alwan, 19 May 2009 (India). (Decree)

See above, canon 1620 7°.

1682

PCF XIII (2011), 309-323: Decision *coram* Stankiewicz: Incapacity to Assume the Essential Obligations of Marriage: Anti-social Personality Disorder (27 March 1998, Leeds). English trans. by Rev. Augustine Mendonça, JCD. (Sentence)

See above, canon 1095 2°-3°.

1684-1685

J 72 (2012), 377-427: John P. Beal: The Tribunal *Vetitum*: A Practice in Search of a Theory. (Article)

B. commences by explaining the different types of *vetita*, *monita*, and impediments. He then gives a history of *vetita* up to *Dignitas Connubii*. He discusses whether the judge-imposed *vetitum* is a judicial or administrative act, and concludes that it is judicial. He then examines the procedures for removal of a *vetitum* and remedies for refusal to remove it. He concludes by mentioning some questions that judges should bear in mind: is there sufficient evidence to support the imposition of a *vetitum*?; will it do any good?; has there been adequate notice?; has the subject been informed of the reasons for it and how to remove it?; are the means for remedying the problem accessible?; are tribunal personnel aware of the removal procedures?; does the local Ordinary know and understand his responsibilities?; how are the *vetita* recorded?

1713-1715

SC 47 (2013), 145-181: Daniel Roseman: Mediation in the Church: A Review of the Literature and of the Key Elements of Mediation. (Article)

See above, canon 1446.

1729-1731

IE XXV (2013), 79-91, 107-119: Tribunale Apostolico della Rota Romana: *Penale e riparazione dei danni*, Decreto, 23 gennaio 2008, McKay, Ponente

(con nota di Adolfo Zambon, *Sul risarcimento del danno. Alcune riflessioni a partire da due coram McKay*). (Decree and comment)

This case involved alleged criminal defamation on the part of the prioress of a religious congregation of pontifical right dependent on the Holy See. The Rota decreed that in a contentious case the object of the trial is a disputed fact or right. In a penal case, however, the object of the trial consists of a double aspect: a situation constituting an offence, and once this has been proved, the punishability of the perpetrator of the offence. In the formulation of the doubt this double aspect should be made clear, since the perpetrator of an offence should be punished only in the event of such offence being committed maliciously or at least culpably. A penal action and a contentious action for damages can be dealt with together. However, the two actions can also be dealt with separately (canon 1729 uses the word *potest* and not *debet*). Even though the actions may be connected with one another, they remain independent.

The question of absolute incompetence, proposed by the judge on his own initiative or at the request of one of the parties, should be dealt with at the outset. Whenever absolute incompetence exists, it means that the instruction of the case and the judicial decision are to no effect: in fact, such negligence causes still greater harm to the accused party, owing to the uncertainty of the situation and the expenses unnecessarily incurred.

It is for the Roman Rota alone to give judgment concerning a supreme moderator of a religious institute of pontifical right (cf. canon 1405 §3, 2^o); the incompetence of other tribunals is absolute.

In the event of criminal injury to the good name of another (canon 1390), apart from the penalty provided by law, the judge has the faculty of determining the ways in which reparation can be made; this, however, is different from the imposition of a penalty. The injured party may also intervene in the penal action (canon 1729 §1) in order to request compensation in respect solely of the damage resulting from the criminal defamation, as demonstrated in the penal process.

There is a comment at pp. 107-119 by Adolfo Zambon, on this decree and on the definitive sentence referred to in the following entry.

1729-1731

IE XXV (2013), 92-119: Tribunale Apostolico della Rota Romana: *Penale e Iurium: riparazione dei danni*, Sentenza definitiva, 23 luglio 2010, McKay, Ponente (con nota di Adolfo Zambon, *Sul risarcimento del danno. Alcune riflessioni a partire da due coram McKay*). (Sentence and comment)

In a penal action the promoter of justice should not simply make a generic reference in the *libellus* to the alleged offence, but should indicate at least in summary form the facts alleged to constitute the offence and the proofs to support the allegation. In this case the promoter of justice simply referred to the offence under canon 1389 §1 (abuse of ecclesiastical power); although the judge on his own initiative amended this to include the offence in canon 1377 (alienation of ecclesiastical goods without the prescribed permission), the offence in canon 1389 §1 (malicious abuse of office prejudicial to the ecclesiastical patrimony), the offence in canon 1389 §2 (culpable abuse of office prejudicial to the ecclesiastical patrimony) and canon 1399 (external violation of a divine or canonical law, on account of the special gravity of the violation and the urgent need for the scandal to be repaired).

The Rotal sentence declared that the judge, in formulating the doubt, cannot on his own initiative undertake to examine a cause or freely determine the object of the cause: to examine the case there has to be a request presented by an interested party or by the promoter of justice. Whenever questions are resolved which have not been put by one or other party, the sentence is affected by irremediable nullity (canon 1620 4°). Moreover the terms of the controversy, once fixed, cannot be modified except at the request of one of the two parties, after listening to the other party.

Once the *libellus* has been admitted and the summons lawfully communicated, prescription is interrupted (canon 1512 4°); this however requires that the promoter of justice's *libellus* specify the alleged offence. Lawful communication outside the prescribed time limits for prescription results in abatement of the action.

A contentious action for compensation for harm can – but does not have to – be dealt with cumulatively with the penal action. However, there continue to be two independent processes, requiring two separate judicial decisions. The diocese may be an injured party in an action for compensation; in such a case, the judgment is reserved to the Supreme Tribunal of the Roman Rota, and other tribunals are absolutely incompetent. Connection of the contentious action with the penal case cannot in any way make good the absence of jurisdiction.

The judge's sentence binds only the parties to the case. It is completely beyond the judge's powers to impose an obligation on one of the parties towards a third party who has not taken part in the contentious action. Hence an award of

damages in favour of an injured party who has not taken part in the proceedings is invalid.

There is a comment at pp. 107-119 by Adolfo Zambon, on this sentence and on the decree referred to in the preceding entry.

1732-1739

J 73 (2013), 222-227: Apostolic Signatura: Decree of Rejection of a Recourse. (Decree)

The Signatura (college of five judges) in this decision rejected a recourse against a decision of the Prefect of the Signatura. A brother had been dismissed from his institute, and the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life had rejected his recourse. This led him to have further recourse to the Signatura but this was rejected by the Prefect *in Congresso*, and then further rejected by this Decree.

1732-1739

J 73 (2013), 228-235: Kurt Martens: Brief Note on the Apostolic Signatura and the Contentious-Administrative Recourse. (Article)

See above, canon 1445.

1733

SC 47 (2013), 145-181: Daniel Roseman: Mediation in the Church: A Review of the Literature and of the Key Elements of Mediation. (Article)

See above, canon 1446.

EXCHANGE PERIODICALS

- Angelicum
- Annales Canonici
- Année Canonique
- Anuario Argentino de Derecho Canónico
- Anuario de Derecho Canónico
- Apollinaris
- Archiv für katholisches Kirchenrecht
- Boletín Eclesiástico de Filipinas
- Bogoslovni vestnik
- Claretianum
- Commentarium pro Religiosis et Missionariis
- Communicationes
- De Processibus Matrimonialibus
- Eastern Legal Thought
- Ephemerides Iuris Canonici
- Ephrem's Theological Journal
- Estudio Agustiniiano
- Estudios Eclesiásticos
- Folia Canonica
- Folia Theologica
- Forum
- Forum Canonicum
- Forum Iuridicum
- Idee
- Il Diritto Eclesiastico
- 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
- 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

AkK	Archiv für katholisches Kirchenrecht, Paderborn – Abstracts supplied by publisher.
Ang	Angelicum, Rome – Abstracts supplied by publisher / Editor.
BV	Bogoslovni vestnik, Ljubljana – Abstracts supplied by publisher.
Cla n.s	Claretianum ITVC, new series, Rome – Abstracts supplied by publisher.
Comm	Communicationes, Rome – Rev. Mgr. Gordon Read, Colchester, Essex.
EE	Estudios Eclesiásticos, Madrid – Abstracts supplied by publisher.
EIC	Ephemerides Iuris Canonici, new series, Venice – Abstracts supplied by publisher.
ELJ	Ecclesiastical Law Journal, London – Paul Barber, London.
FCan	Forum Canonicum, Lisbon – Abstracts supplied by publisher.
IE	Ius Ecclesiae, Pisa-Rome – Abstracts supplied by publisher.
Ius	Iustitia: Dharmaram Journal of Canon Law – Rev. Mgr. Gordon Read, Colchester, Essex.
J	The Jurist, Washington – Rev. Paul Gargaro, Barlanark, Glasgow.
LJ	Law and Justice, Worcester – Abstracts supplied by publisher.
N	Notitiae, Rome – Rev. Mgr. Gordon Read, Colchester, Essex.
PCF	Philippine Canonical Forum, Manila – Sr Mary Lyons RSM, Galway.
Per	Periodica, Rome – Rev. Aidan McGrath OFM, Rome.
PS	Philippiniana Sacra, Manila – Abstracts supplied by publisher.
QDE	Quaderni di Diritto Ecclesiale, Milan – Rev. Luke Beckett, Ampleforth, York.
REDC	Revista Española de Derecho Canónico, Salamanca – V. Rev. John McGee, Girvan, Ayrshire.
SC	Studia Canonica, Ottawa – Abstracts supplied by publisher.
SCL	Studies in Church Law, Bangalore – Rev. Mgr. Gordon Read, Colchester, Essex.

Additional abstracts were supplied by Anne Bamberg (Strasbourg).

BOOKS RECEIVED

- Gianfranco GHIRLANDA: *Introduzione al diritto ecclesiale. Lineamenti per una teologia del diritto nella Chiesa*, Gregorian & Biblical Press, Rome, 2013, 223pp., ISBN 978-88-7839-262-5 [see above, General Subjects (*Legal theory*)]