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AnC 9 (2013), 161-182: Marta Mucha: Zderzenie katolickiej i muzułmańskiej wizji małżeństwa – podstawowe trudności (= The clash between the Catholic and the Muslim vision of marriage – fundamental difficulties). (Article)

M. compares and contrasts the essence of marriage as understood by the Catholic Church and the Muslim concept of a relationship between a woman and a man. She examines whether it is possible to enter into a marriage which is fully compatible with both canon law and Muslim law, and sets out the difficulties that tend to arise in such marriages. She argues that a Muslim man may relate most of the attributes and objectives taught by the Catholic Church to the marriage bond, with the exception of honouring baptism and the Catholic upbringing of his children. Muslim law stipulates that a Muslim's children must be brought up in the faith of their father and urges the father to prevent the Christian mother from exercising any religious influence over their children. Although the Christian mother may obtain a dispensation from the impediment of disparity of cult, undertaking to do her best to baptize her children and bring them up in her own faith, in practice this is impossible because of the father's legal obligation.

ELJ XV 3/13, 267-292: Norman Doe: The Teaching of Church Law: An Ecumenical Exploration Worldwide. (Article)

See below, General Subjects (*Teaching of canon law*).

RDC 61/2 (2011), 21-42: Gabrielle Atlan: Le droit hébraïque, entre transcendance et démocratie. (Article)

According to the Jewish tradition, both the written Law and the oral Law were revealed at the same time to Moses. If they are dissociated, as when any transcendent character is denied to the oral Law (as recorded in writing by the Rabbis), it amounts to a negation of the whole of the Sinaitical revelation. However, the human contribution to the development of the Jewish juridical system is justified through the coexistence of two seemingly contradictory, while fundamental, principles according to which *The Torah comes from Heaven* although *It is not in Heaven.*

RDC 61/2 (2011), 43-66: Bernard Paperon: Justice et corruption en droit talmudique. (Article)

The Jewish juridical system takes its source in the Talmud, which itself takes the Bible as its starting point of reflection. P. gives first a translation of the Talmudic treaty dealing with corruption, both in the form of juridical principles and didactical anecdotes. The law makes a distinction between "brutish" bribes (money, gifts) and more subtle gestures, such as offering some kind of help. It also distinguishes between what is legally forbidden and what is morally unadvisable.

RDC 61/2 (2011), 67-87: Mohammad Nokkari: L'apport de la pensée religieuse musulmane à l'élaboration du droit musulman. (Article)

N. aims to underline the relationship between Muslim religious thought and Muslim law. In its oriental and Semitic meaning, religion encompasses law, which in turn encompasses the realm of religion. N. looks at the juridical sources of Muslim law, which are rooted for the most part in the Holy Scriptures: the Qur'an and the Prophet's Tradition. The other rational sources of Muslim law ought to be deduced from the Holy Scriptures, or at the very least, they ought never to contradict the Holy Scriptures.

Compilations

IC 53 (2013), 773-790: José Ignacio Rubio López: Crónica anual de Derecho Eclesiástico en los Estados Unidos (2012-2013). (Report)

R.L. provides details of the 2012-2013 United States judicial year in respect of cases involving religious freedom and other ecclesiastical law issues. He then turns his attention to government interventions and legislative initiatives.

Ecclesiology

RDC 61/2 (2011), 89-111: Anne Bamberg: Autour de l'idonéité. Propos sur celles et ceux que l'on recrute hâtivement et que l'on renvoie tout aussi vite. (Article)

A study of canons of the CIC/83 referring to the notion of suitability (*idonéité*) shows that the legislator allows room for particular law and case analysis according to specific needs. Bearing in mind the accountability of the various persons involved in the process of making appointments, it is a matter of doing

so in the most suitable and in the fairest fashion, in order to avoid abuses and arbitrariness.

RDC 61/2 (2011), 153-176: Leonard A. Katchekpele: L'Afrique à la Rote: Approche statistique des sentences de 1983 à 2000. (Article)

Canon law within the context of African Churches remains a pressing issue, which K. studies here through marriage nullity cases, notably those coming from Africa to the Roman Rota since the promulgation of the CIC/83. Two different perspectives are followed: that of the place of universal law within the African Churches, and that of the place of those Churches within the universal Church.

REDC 70 (2013), 695-712: Sala de Prensa de la Santa Sede: Sumario de las recomendaciones de la Visita Apostólica en Irlanda, 20.03.12. (Document and commentary)

Given here is the Spanish translation of the English text released by the Press Office of the Holy See, a "Summary of the Findings of the Apostolic Visitation in Ireland", followed by a commentary by Federico R. Aznar Gil (see also *Canon Law Abstracts*, no. 110, p. 59).

Ecumenism and interreligious dialogue

ELJ XV 3/13, 293-315: Jessie Brechin: A Study of the Use of Sharia Law in Religious Arbitration in the United Kingdom and the Concerns That This Raises for Human Rights. (Article)

The use of Islamic norms in the determination of arbitration in England and Wales has become a source of great controversy. Concerns are raised for the human rights of vulnerable parties who may be pressured into arbitrations and who may not be treated fairly under the agreed rules of arbitration or by arbitrators themselves. The Arbitration Act 1996 limits the ability to appeal against arbitration decisions and as such does not safeguard the rights of these parties. As a signatory to the European Convention on Human Rights the UK is under an obligation to uphold human rights standards domestically, and it is argued that the way in which arbitration on religious norms is currently regulated does not comply with this obligation. B. considers some of the possible adaptations or alterations that could rectify the situation, improving parties' experience of religious arbitration and ensuring that the system remains compatible with international human rights obligations.

Ius IV 1/13, 161-164: Congregation for the Doctrine of the Faith: Common Agreement of Pope John Paul II and the Syrian Orthodox Patriarch Mar Ignatius Zakka I Iwas. (Document)

On 24 June 1984 Pope John Paul II and the Syrian Orthodox Patriarch signed a common Declaration of Faith. This includes a shared faith with regard to the sacraments but a recognition that the faith shared by the two Churches is not sufficiently identical to permit concelebration. It encourages cooperation in pastoral care, and in cases where access to their own minister is materially or morally impossible permits mutual access to the sacraments of penance, Eucharist and anointing of the sick.

Ius IV 1/13, 165-170: Congregation for the Doctrine of the Faith: Agreement between the Catholic Church and the Syrian Orthodox Church on Inter-Church Marriage. (Document)

This agreement of 25 January 1994 applies the affirmation of common sacramental faith, agreed by Pope John Paul II and the Syrian Orthodox Patriarch in 1984, to the area of marriage. Both Churches hold a similar faith on the sacredness and indissolubility of marriage. While both hold marriage within their own communion to be the norm, they wish to provide for the pastoral reality of inter-Church marriage. Both Churches should cooperate in allowing the parties to retain membership of their own Communion, providing necessary information and documentation and permitting the couple and their family members to participate in the Eucharist in the Church where the marriage is celebrated. Detailed pastoral guidelines follow, covering the preparation for inter-Church marriages, their celebration and subsequent pastoral care.

Family issues

AnC 9 (2013), 183-197: Tomasz Kornecki: Wybrane aspekty dobra rodziny oraz ochrony praw dziecka na podstawie przepisów Konstytucji Rzeczypospolitej Polskiej z 2 kwietnia 1997 roku oraz nauczania Jana Pawła II skierowanego do rodaków w czasie pielgrzymek do Polski (= Selected aspects of family welfare and protection of children's rights as stipulated in the Constitution of the Republic of Poland of 2 April 1997 and discussed in the teaching of John Paul II addressed to his compatriots during his pilgrimages to Poland). (Article)

The family is the union of two people whose relationship aims, among other things, at having children. The relationship is built up within the basic cell of society, but is also affected by external factors. One of these factors is statutory

law, including the Constitution. The Polish Constitution with its regulations and principles protects both family wellbeing and the rights of the children. These rules, which form the basis of other legislative acts, should be respected and interpreted in an appropriate manner. Pope John Paul II emphasized that family and children are the most important values for humanity. In Papal teaching the protection of the family is frequently discussed, from many different angles. Modern Poland needs the family in order to exist. Hence, K. concludes, one should not only listen to the voice of the Holy Father, but also delve more deeply into the Papal teachings on the family and children in Poland in subsequent research.

Human rights

Comm 45 (2013), 119-121: Secretariat of State: Interventus a Sancta Sede peractus perdurante 23ª Sessione Ordinaria Consilii de iuribus hominis quoad vim christianis illatum. (Statement)

The Papal representative at the Council for Human Rights raises the question of the violation of human rights with regard to freedom of religion, in particular with regard to the Christian community and prospective "anti-blasphemy" laws in Bangladesh.

Comm 45 (2013), 122-125: Secretariat of State: Declaratio ab observatore permanenti Sanctae Sedis apud Organizationem Nationum Unitarum, Genevae sitam, perdurante Sessione 23ª Consilii de iure hominis ad salutem prolata (lingua anglica una cum versione italica). (Declaration)

The Papal representative at the United Nations spells out the Holy See's position on the importance of the availability of health care and medication for all.

Law reform

AA XVIII (2012), 85-133: Carlos Baccioli: Propuestas desde la psicopatología y la psiquiatría para una posible revisión del can. 1095. (Article)

See below, canon 1095.

Legal theory

AnC 9 (2013), 55-73: Piotr Kroczek: Teologiczne podstawy reguł sensu czynności konwencjonalnych i norm kompetencyjnych w prawie kanonicznym i ich konsekwencje dla decyzji prawodawczych (= Theological basis of the rules of sense of conventional acts and norms of competency in canon law and their consequences for legislative decisions). (Article)

K. describes the role of theology and jurisprudence in the work of the Church legislator. The conventional acts and norms of competency presented in canon law, such as those relating to receiving orders, celebrating marriage, imparting blessings, granting dispensations, giving absolution, absolving a partner in adultery, giving judgment, or being a qualified witness for marriage, are reasonable because of the rules of sense underlying them. In canon law the rules in question do not depend on the will of the legislator only, but are built on theological reasoning. The conclusion is that the Church legislator, when drafting law, must take the theological factors into consideration. This limits his freedom in making legislative decisions. For instance, he cannot grant competency for conventional acts to those who are not able to carry out the acts according to theological rules. The article ends with a request to the Church legislator to ensure the theological correctness of laws drafted by him.

AnCrac 44 (2012), 287-296: Piotr Kroczek: Canonical approach to the year of faith. (Article)

K. offers a demonstration of the correlation between faith and Church law from a Catholic perspective. He argues that faith is of the essence for law as a phenomenon and as a set of regulations that play an active role in the life of the community of believers. Faith is a factor in the processes of drafting, interpreting and implementing law. K.'s conclusion is that in the study of Church law greater attention should be paid to faith, especially during the Year of Faith.

IC 53 (2013), 439-492: Eduardo Molano: Sobre la Justicia y el Derecho. Principios de la teoría del derecho natural. (Article)

M. offers an overview of some of the principles of the classical theory of natural law relating to the fundamental ideas of justice and rights. First, he presents justice as an ordering of society and as a virtue. He then explores the various meanings of "right" or "law" ("*derecho*") – the object of justice; subjective right; norm or law; knowledge; jurisprudence – before discussing the interrelationships between natural law and positive law. Finally, he studies the

classical theory of natural law in relation to legal positivism, and considers the need for a constant updating of that theory in order to ensure that it continues to provide the foundation for rights and the law.

IE XXV (2013), 709-728: Massimo del Pozzo: Il legato di Benedetto XVI ai canonisti. (Article)

Del P. examines the contribution of Benedict XVI to canonical science, analysing his main provisions and juridical interventions. The most valuable contribution of the Pope is in respect of the conception of justice in general. The identity crisis of contemporary law is connected to the loss of harmony between nature and reason, and the severing of the roots of classical learning (based on the natural law). The solutions pointed out by Benedict XVI are: to reconnect justice with being; to grasp the language of nature; and to broaden the jurist's perspective, but also involving canonists (one thinks of the defence of the truth of marriage). The synthesis of the Pope's message to ecclesiastical jurists is therefore an invitation to broaden the horizons of juridical rationality beyond the restricted limits of exegetical literalism.

Relations between Church and State

AnC 9 (2013), 5-16: Jan Dyduch: Troska kard. Karola Wojtyły o wolność nauki (= Cardinal Karol Wojtyła's solicitude for freedom of science). (Article)

Karol Wojtyła as Archbishop of Cracow defended freedom of Catholic scientific research: demanding from civil Communist authorities in Poland autonomy for Catholic and Church universities and schools. It was his initiative to establish the Commission for Catholic Science and the Academic Council of the Polish Episcopal Conference. The main aim of these bodies was to protect the independence of Catholic scientific research. Wojtyła, as John Paul II, the Shepherd of the Universal Church, took care of the freedom of science in general.

Comm 45 (2013), 126-128: Secretariat of State: Nuntius publicus diurnariis edocendis emissus absoluto quarto conventu coetus laboris coniuncti inter Sanctam Sedem et Rempublicam Vietnamiensem (lingua anglica una cum versione italica). (Press release)

This is a brief report on the fourth meeting of a joint working party on the relationships between the Holy See and Vietnam and agreement to hold a fifth round of talks.

Comm 45 (2013), 129: Congregation for Eastern Churches: Decretum quoad configurationem territorialem circumscriptionum Ecclesiasticarum in Serbia et Monte Nigro. (Document)

See below, canon 383.

Comm 45 (2013), 146-160: Financial Intelligence Authority: Relatio annualis de informatione ac vigiliantia peractis in rebus finantiariis ac monetariis ad pecuniae male partae collocationem (riciclaggio) necnon pecuniae suppeditationem vel commodationem pro terrorismo praecavendam, impediendam ac reprimendam anno I – 2012. (Report)

The text of the first annual report of the Financial Intelligence Authority (FIA) is a consequence of the measures adopted in 2010 to combat money laundering and the financing of terrorism. The text in English falls into three sections: how the FIA fits within the institutional and economic/financial framework of the Holy See and Vatican City State; its internal organization and functions; statistics on reported suspicious activity and cross-border transfer of cash or bearer securities during 2011 and 2012. (See also *Canon Law Abstracts*, nos. 108, pp. 20-21; 109, pp. 17, 57; 110, p. 16.)

EE 88 (2013), 833-847: José Luis Santos Díez: Acuerdos de la Santa Sede con los Estados. Pontificado de Benedicto XVI (2005-2013). (Article)

In evaluating the importance of the pontificate of Benedict XVI it is quite possible to overlook his pact-making activity with different States. Here S.D. collects together the Concordats established during this period, paying particular attention to the significance of the Holy See's activity in relation to countries lacking this tradition, and looking at the main characteristics and content of the agreements.

EE 88 (2013), 849-871: Jorge Otaduy Guerín: La idoneidad de los profesores de religión católica y su desarrollo jurisprudencial en España. (Article)

See below, canons 804-805.

EE 88 (2013), 873-895: Miguel Campo Ibáñez: La exención del IBI a la Iglesia Católica. Encuadre constitucional y marco regulador. (Article)

C.I. looks at the question of the exemption of the Catholic Church from a local tax in Spain, asking whether this is in accordance with the Spanish Constitution, the current Spanish regulatory framework concerning religious freedom, and the principles that regulate the Spanish non-profit sector framework.

ELJ XV 3/13, 316-325: Frank Cranmer: Methodist Ministers: Employees or Office-holders? (Article)

The issue of whether or not a minister of religion is an employee or an office-holder came before the Supreme Court in an action for unfair constructive dismissal against the Methodist Church (*Preston v. President of the Methodist Conference*, 2013). The Court held by a majority of four to one that, on the basis of the Church's Deed of Union and Standing Orders, the terms of engagement of ministers were not contractual for the purposes of employment law and that a minister's duties were not consensual. The judgment moderates somewhat the impact of the earlier judgment of the House of Lords in *Percy v. Board of National Mission of the Church of Scotland* – and makes the employment status of ministers even more sensitive to the facts of the individual case than it was before.

LJ 171 (2013), 79-94: John Duddington: The Employment Status of the Clergy: *Preston* starts to unravel. (Article)

D. argues that the decision in *Preston v. President of the Methodist Conference* (see preceding entry) on the employment status of a Methodist minister is yet another instance of a failure by the courts to engage properly with the status in employment law of ministers of religion and that the most recent decision in *Sharpe v. Worcester Diocesan Board of Finance Ltd and the Bishop of Worcester* (2013) is a further example of the problems that have arisen through lack of a coherent legal framework in this area. D. suggests that the only solution is a joint approach by all Churches and other religious denominations to the Government with proposals for an agreed legal status for ministers of religion.

ELJ XV 3/13, 326-331: Pasquale Annicchino: Religion and EU Institutions (Comment)

Article 17 of the Treaty on the Functioning of the European Union provides that the EU shall maintain an open, transparent and regular dialogue with Churches, religious associations or communities, philosophical organizations and non-confessional organizations. A. analyses the European Ombudsman's upholding of a complaint by the European Humanist Federation as a result of the European Commission's rejection of its proposal for a "dialogue seminar". The Ombudsman disagreed that such a dialogue might conflict with the competence of national member States in the domain that article 17(1) and (2) reserves to them and found that the Commission had failed to implement article 17(3). The Ombudsman recognized that EU institutions were still engaged in a "learning process" on the application of the new provisions of the Lisbon Treaty, and in this case he saw the opportunity for the Commission to improve its approach to the implementation of article 17, for example by drawing up guidelines on its plans to implement it.

ELJ XV 3/13, 332-334: Christopher Hill: Succession to the Crown Act 2013. (Commentary)

See below, canon 1125.

J 73 (2013), 539-554: John J. Coughlin: Separation, Cooperation, and Human Dignity in Church-State Relations. (Article)

The Catholic understanding of the proper relation between Church and State has developed in the light of three interrelated principles. First, the separation principle requires the State not to interfere with the religious faith of individuals and communities. The principle also functions to ensure that the Church does not unduly influence what properly belongs to the State's secular jurisdiction. Second, the cooperation principle envisions a partnership between Church and State. The principle recognizes that religious organizations often serve as providers of services that further the interests of individuals, communities, and the secular liberal State itself. Third, the principle of human dignity, and its correlative right of religious freedom, stem from the insight that the human person is a profoundly spiritual being. The balance of separation and cooperation remains vital to human dignity and religious freedom in Church-State relations. Separation does not preclude cooperation between Church and State, nor does cooperation necessarily compromise separation.

PS XLVIII 145 (2013), 435-446: Dean Jeanpaul D. Menchavez: Lessons on Marriage from the Speeches to the Roman Rota. (Article)

See below, canon 1055.

PS XLVIII 145 (2013), 449-484: Hyacinth He: Canonical Issues in Pope Benedict XVI's *Letter to the Catholic Church in China* (2007) – Continuation of Part 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*, nos. 110, p. 23; 111, p. 19.)

QDE 26 (2013), 300-332: Matteo Visioli: Le dichiarazioni sull'educazione della Conferenza episcopale spagnola alla luce dei principi conciliari. (Article)

V. examines the response of the Spanish Bishops' Conference to recent Spanish government legislation described as aiming to promote responsible citizenship. He sets the scene by recalling the main principles of *Gravissimum Educationis*, and then looks at the defects that the Spanish bishops have identified, finding it notable that their response has largely been framed in juridical terms. These are the violation of the right of parents to be the primary educators of their children, the denial of the principle of subsidiarity, and restriction of freedom of educative choice and of freedom to direct a school and to teach. V. adds that the Spanish law also contradicts the existing Concordat (and hence international law) and both makes the teaching of religion more difficult while at the same time promoting moral relativism.

RMDC 19 (2013), 224-226: Francisco: Carta apostólica en forma de m. pr., Sobre la jurisdicción de los órganos judiciales del Estado de la Ciudad del Vaticano en materia penal. (Document)

Italian text of a document dated 11 July 2013 and taking effect as from 1 September 2013, setting out the judicial competences in penal matters of the relevant judicial bodies of the Vatican City State.

SC 47 (2013), 341-360: Anne Asselin: Les ministres ecclésiaux laïcs et la révocation de leur office : en quête de justice et d'équité. (Conference presentation)

The Church is in constant search of justice and equity in the world. However, an examination of the Church's own institutions, dioceses, parishes, religious institutes, and other Catholic organizations, reveals that some practices may or may not embrace these values. A. seeks to discover paths that could assist in ensuring fairness and equity within the Church, concentrating on the situation of lay ecclesial ministers, and evaluating whether Church personnel practices are adequate or not. She begins by briefly painting the picture of today's employment situation for lay ecclesial ministers. She then looks at measures provided by canon law and secular law to protect an individual's job, including grievance procedures, and concludes by suggesting avenues for developing and promoting just practices for the Church as an employer: practices that one would hope would espouse the values of justice, equity and compassion.

Religious freedom

EE 88 (2013), 643-669: Almudena Rodríguez Moya: La religión en el lugar de trabajo. (Article)

Traditional management systems fail to respond adequately to the reality of religious pluralism. The labour market reflects this fact. Religious freedom in the workplace is nowadays recognized as a hotly debated topic. R.M., making use especially of Spanish case law, studies how employees can ensure that their rights are being upheld in the area of their religious beliefs.

ELJ XV 3/13, 334-343: M. H. Ogilvie: Niqabs in Canadian Courts: R v NS. (Comment)

O. reviews the Canadian Supreme Court case of R v. NS about whether a Muslim woman should be required to remove a *niqab* (cloth covering the face)

when giving evidence in court. The context was a sexual assault case against her uncle and cousin in which she was the complainant. The Court was split three ways, with the two "yes" and the one "almost always no" being outweighed by the majority. The court agreed that both the right to freedom of religion and the right to a fair trial were engaged, and therefore it was ultimately a balancing test on the facts, to be carried out by the trial court. O. criticizes the decision to avoid a clear decision in principle, and doubts its practical utility. In addition, O. sees a wider problem with the Supreme Court's understanding and implementation of the Canadian Charter of Rights and Freedoms.

FCan VIII/1 (2013), 149-157: João Seabra: Religious freedom in Catholic perspective. (Article)

Does the proclamation of religious freedom by the Second Vatican Council contradict Papal teachings of the 18th and 19th centuries, or does it constitute a doctrinal development? The shift of perspective regarding the foundation of the relationship between political power and individual religious choice – from the duties of the individual and the community, to the truth of the dignity of the human person – conceals a fundamental doctrinal continuity. However there is still a long way to go in working out the juridical consequences of Catholic teaching on freedom of religion as a right to be universally guaranteed.

J 73 (2013), 555-596: Philip Allen Lacovara: The Ultimate Test of Religious Freedom: The Constitution Bars Civil Authorities From Judging How Well, or How Badly, Church Officials Supervise and Assign Priests, Even Sexual Predators. (Article)

The First Amendment guarantees the "free exercise" of religion. This constitutional guarantee creates a "ministerial exemption" under which civil courts are denied jurisdiction to second-guess the decision by authorities in a hierarchical Church about whom to ordain or assign to ministry or to permit to teach religion. Not sufficiently recognized, however, is how this constitutional immunity drawing a vital line between the roles of Church and State limits the power of civil courts and juries to impose financial liability on Churches or clerical superiors for failing to detect or prevent the horrific abuses committed by individual priests or other ministers of religion. Clerical superiors have made some serious and destructive mistakes. But under the Constitution, it is the sole responsibility of the bishop and his advisers to make judgements about whether to retain an accused priest or restore him to ministry, even if he has been accused of child abuse and even if he previously was known to have engaged in such reprehensible and perverted conduct. Civil courts may not second-guess

that decision by threatening or imposing financial liability on the Church (through the bishop or diocese) for any alleged error in making the decision.

LJ 171 (2013), 21-51: Javier Martínez-Torrón: Institutional Religious Symbols, State Neutrality and Protection of Minorities in Europe. (Article)

M.-T. examines religious symbols from the perspective of what is meant by State neutrality in religious matters. He argues that neutrality cannot be a uniform constitutional principle, enforced at the European level, containing a particular notion of how the relations between State and religion should be structured. He states that the judgment of the Grand Chamber in *Lautsi* v. *Italy* (the "crucifix case": see *Canon Law Abstracts*, nos. 109, p. 20; 110, p. 27) was correct but that the Court could have developed the idea that coercion should be the test for a violation of freedom of religion or belief, and not the subjective feeling of offence experienced by some persons in the presence of some religious symbols. In addition to looking at the jurisprudence of the European Court of Human Rights, he also looks at that of continental Europe, with particular emphasis on the approach adopted in Spain and Germany.

LJ 171 (2013), 52-69: Daniel J. Hill – Daniel Whistler: Religious Symbols and the European Court of Human Rights. (Article)

The authors of this article, drawing on their monograph *The Right to Wear Religious Symbols* (2013), examine the development of the case law of the European Court of Human Rights and the now-defunct gateway body, the European Commission of Human Rights, concerning the right to wear religious symbols, showing how the case law (which they study up to the case of *Eweida v. United Kingdom*: see following entry) exhibits a change over time.

LJ 171 (2013), 70-78: Michael Bartlet: Conscience in the courts – another view of *Eweida*. (Article)

Defeat in the Strasbourg Court of Human Rights is seldom welcomed by any government. Yet the decision in *Eweida v. United Kingdom* (see *Canon Law Abstracts*, no. 111, pp. 22-23) has "delighted" the British Prime Minister who applauded that "the principle of wearing religious symbols at work has been upheld." The decision marks a watershed for the protection of freedom of conscience, and B. suggest that future governments may be less delighted by some of its implications.

Social issues

ELJ XV 3/13, 259-266: Grace Davie: Belief and Unbelief: Two Sides of a Coin. (Article)

It is widely recognized that the process of secularization takes place differently in different parts of the world. Less often appreciated is the wide variety of "secularities" (and indeed of "secularisms") that emerge as a result. D., who is Professor of the Sociology of Religion *Emerita* of the University of Exeter, gave a paper to the residential conference of the Ecclesiastical Law Society in Birmingham on 20 April 2013 on which the text of this article is based. She looks at this question systematically, and tries to identify at least some of the factors that must be taken into account if we are to understand unbelief as well as belief. In so doing she builds on her earlier work relating to patterns of religion in modern Europe.

IE XXV (2013), 729-751: Iñigo Martínez-Echevarría: The Protection of the Christian Inspiration of Medical, Educational and Charitable Institutions: the Obamacare Case. (Article)

In recent years, within the context of both civil law and common law, it has been possible to detect a general trend towards creating legislative scenarios of artificial discrimination, which are causing serious damage to many institutions of Christian inspiration operating in education, healthcare and social services. M.-E. attempts to illustrate the main juridical aspects of these dynamics through the analysis of the Obamacare case, developed in the United States after the approval of legislation that requires insurers – or employers who cover their employees – to include the provision of contraception and sterilization in their health insurance plans.

Teaching of canon law

ELJ XV 3/13, 267-292: Norman Doe: The Teaching of Church Law: An Ecumenical Exploration Worldwide. (Article)

D. presented this paper at the Fourteenth Colloquium of Anglican and Roman Catholic Canon Lawyers, on the teaching of canon law, held in Rome, 26-27 April 2013. Religion law – that is, the law of the State on religion – has been taught for generations in the law schools of continental Europe, though its introduction in those of the United Kingdom is relatively recent. By way of contrast, within the Anglican Communion there is very little teaching about Anglican canon law. The Church of England does not itself formally train clergy

or legal officers in the canon and ecclesiastical laws that they administer. There is no requirement that these be studied for clerical formation in theological colleges or in continuing ministerial education. The same applies to Anglicanism globally – though there are some notable exceptions in a small number of provinces. This is in stark contrast to other ecclesiastical traditions: the Catholic, Orthodox, Lutheran, Methodist, Reformed, Presbyterian, Baptist and United Churches all provide training for ministry candidates in their own systems of Church law, polity or order. However, no study to date has compared the approaches of these traditions to the teaching of Church law today. D. seeks to stimulate an ecumenical debate as to the provision, purposes, practices and principles of the teaching of Church law across the ecclesiastical traditions of global Christianity. He does so by presenting examples of courses offered (institutions, purposes, subjects, methods and levels), the educative role of Church law itself, requirements under Church law for Church officers to study the subject, and parallels from the secular world in terms of debate in academia and practice on the nature of legal education, particularly the role played in it by the Critical Legal Studies movement.

HISTORICAL SUBJECTS

General

Per 102 (2013), 483-497: Carlo Fantappiè: Storia del diritto canonico in epoca moderna: problemi e prospettive. (Article)

In this presentation to a study day organized by the St Pius X Faculty of Canon Law in Venice, F. considers some of the problems associated with the study of the history of canon law today. He traces the roots of these problems to certain events and attitudes of the past, before examining a few contemporary phenomena that provoke difficulties in the field. He concludes by offering some perspectives for the future.

1st millennium

LW 116/4 (2010), 231-239: Deepak J. Tauro: Religious Tolerance and Intolerance in the IV and V Centuries – An Evaluation of the Edict *De Fide Catholica*. (Article)

In the light of an analysis of various legislative provisions issued during the reign of the Emperor Theodosius I (379-395 AD), T. asserts that the edict *De Fide Catholica* (380) came to be seen as a precedent for several subsequent acts which were seen as negative, such as the battle against the pagans and the heretics, and later on even the medieval Crusades. The negative consequences came to be attributed to the Christian religion and not to the politics of the State or to the political groups who had a vested interest in making use of religion or religious symbols. One might even go so far as to say that the legislation itself was often geared to the vested interests of those in authority, and religion was a handy way of achieving such goals.

RDC 61/2 (2011), 7-19: Francesco Amarelli : Christianisme et institutions juridiques romaines: influences réciproques, attractions, appropriations. (Article)

A. supports the idea of the reciprocal influence of Christianity and Roman juridical institutions, rather than a linear, unidirectional tendency reflecting the influence of Christian thinking over the ancient juridical experience. Christianity and the Empire benefited from mutual influences: the former as it gradually

transformed the Roman State and its law, the latter as it left a deep mark within Christian thinking, notably on the level of law.

RMDC 19 (2013), 79-106: Jesús Gaona Moreno: El juicio de Cristo. Aspectos Romano y Judío. (Article)

According to the Gospel accounts and historical data, the trial of Christ has two aspects, Roman and Jewish. G.M. undertakes an examination of both these aspects: the elements of the Roman trial, and the faculty which the Jews had to judge Christ and condemn Him to death.

SC 47 (2013), 467-478: Szabolcs Anzelm Szuromi: The Paleo-Christian Characteristics of the Catholic Priesthood and Their Effect on Medieval (9th-12th Century) Structures of Priestly Formation. (Conference presentation)

In the ancient conciliar canons and patristic writings, when these dealt with the formation of clerics, the recognition of vocation and the formation of proper spirituality was inseparable from the acquisition of doctrinal and disciplinary knowledge. Obviously, the early sources are only of a short, definitive character, and the Fathers of the Church speak of it within those longer portions of texts that describe the life and scope of the duties of clerics. On this basis S. attempts to reconstruct the model of priestly formation that certainly influenced the relevant ecclesiastical practice and further canonical norms of the 9th-12th centuries. Within the whole *Decretum Gratiani* the formation of clerics is developed in greatest detail in C. 12 q. 1 c. 1. It can be observed that the medieval collections primarily and in great majority used the ancient canonical material to describe the provision for the recruitment of clerical vocations, priestly formation, the human characteristics required for priestly ordination, and the requisite ecclesiastical, theological, Biblical and exegetical knowledge.

Classical period

IC 53 (2013), 621-654: Nicolás Álvarez de las Asturias: La formación del vínculo matrimonial de Graciano a Alejandro III: ¿tan sólo una cuestión histórica? (Article)

During the 12th century, as a result mainly of developments in theological studies of the sacramentality of marriage and the compilation of the *Decretum Gratiani,* it became possible to define the doctrine concerning the formation of the marriage bond. This period is traditionally seen as marked by the

controversy between two radically different schools of thought (the canonical and the theological), based on two completely contrasting views on the formation of the marriage bond (consummation in canon law, consent in theology). The purpose of this article is to explore the historical sources so as to correct such an overly-simplistic explanation, and at the same time to reflect on ideas dating from that historical period which may shed further light on the current canon law of marriage.

SC 47 (2013), 467-478: Szabolcs Anzelm Szuromi: The Paleo-Christian Characteristics of the Catholic Priesthood and Their Effect on Medieval (9th-12th Century) Structures of Priestly Formation. (Conference presentation)

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

16th-19th centuries

AA XVII (2012), 195-241: Juan Guillermo Durán: Los concilios hispanoamericanos y las comunidades indígenas (Siglo XVI). El método de socialización: aplicaciones y denuncias de agravios. (Article)

D. focuses his attention on the ecclesiastical councils and synods held in the Spanish territories of Central and South America in the 16th century. What differentiated them from their counterparts on the European continent was their need to deal with the new phenomenon of the indigenous population and the establishment among them of a solid foundation for their formation in the Christian and Catholic way of life. Great emphasis, therefore was put not only on the work of evangelization but also on their human development. This was reflected in the promotion of education and the so-called reductions or mission, and the fair treatment of the native peoples and their property. Appeals were also made directly to the Spanish Crown for the upholding of conciliar decrees, especially those defending the rights of local indigenous communities. Norms were also drawn up for confessors for their guidance in dealing with abuses in these matters.

ELJ XV 3/13, 344-348: Richard Helmholz: Notable Ecclesiastical Lawyers III – Hugh Davis (1632–1694). (Article)

In the third article in this series, H. looks at the career and work of the post-Restoration civilian Hugh Davis. Davis is a neglected but not insignificant representative of his profession in that period. His life and work stand as

testimony to the participation by civilians in the life of the nation and in larger legal currents of the times. Davis was the author of a treatise called *De jure uniformitatis ecclesiasticae* (1669) which, despite its title, was written in English. Begun in the heady years following the restoration of episcopacy, the treatise marshalled the traditional learning of the *ius commune*, combining it with the newer methods of the natural law school to defend and advance the cause of uniformity within the English Church. Typical of a traditionally-minded English civilian of the period, he cites almost no authorities from the English common law, but relied heavily on the civil law jurists and the canonists, including Gratian, Panormitanus and even St Thomas Aquinas. The text exhibits some of the scars of the Civil War and Interregnum without relying on them or even dealing with them directly. Davis looked beyond. Composed within the designedly irenic traditions exemplified by Richard Hooker, his treatise also belongs within that great movement of thought in which John Locke and Thomas Hobbes were the main English contributors.

Ius IV 1/13, 101-120: Maria Teresa Fattori: Benedict XIV and His Sacramental Polity on the Eastern Churches (1740-1758) – Part I. (Article)

F. looks into the method employed in the letter *De Sacramentis* and sets out Benedict XIV's systematic presentation of the sacraments for the Eastern Catholics. She also discusses the authority of the minister and the multiplication of grace through the sacraments of penance, anointing of the sick, holy orders and matrimony.

RDC 62/1 (2012), 95-110: Hélène Brunet de Courrèges: Les irrégularités *pro defectus* et la réception des ordres sacrés: quelle tradition? (Article)

Every candidate to sacred orders has to submit to various conditions. When these are not fulfilled, the candidate may be declared unsuitable, unless a dispensation is given to regularize his situation. When it is a case of having been born out of wedlock or a physical challenge, the dispensation touches on a delicate matter, the future priest's dignity. Studying these types of irregularities over a long period of time shows the stability of the Church's tradition as well as the frequent revisions in this peculiar field of the reception of sacred orders.

RDC 62/1 (2012), 111-125: Jeanne-Marie Tuffery-Andrieu: La nouvelle Église gallicane et la tradition, de 1795 à 1801. (Article)

The separation of Church and State was proclaimed by the "*Constitution de l'An III*", in its articles 352 and 354. They drew upon the dispositions of the "*decret 3 ventôse an III*" (21 February 1795). The Constitutional Church, which assumed

the title of Gallican Church, was organized in a different context. It was the fruit of the local and national synods summoned by the Gallican Church, and relied heavily on Tradition to justify its decisions in numerous fields, such as the struggle against the "*decadi*" or the use of French within the liturgy.

Second Vatican Council and revision of the CIC

Comm 45 (2013), 61-103: Pontifical Council for Legislative Texts: Dies Studii, ad commemorandum XXX anniversarium promulgationis Codicis Iuris canonici, de themate *Il Codice: una riforma voluta e richiesta dal Concilio* die 25 mensis ianuarii 2013 habitus. (Report)

As part of its role in promoting the study of canon law, the Pontifical Council for Legislative Texts organized a study day. A congratulatory letter from Pope Benedict XVI is followed by an introduction by the Secretary on the renewal of canon law desired by Vatican II. The President of the Council then presents a paper on the evolution of canon law after the promulgation of the Code in 1983 and the role of the Council in such developments. Cardinal de Paolis then speaks of the Code as the final document of Vatican II, the incorporation of the ecclesiology of the Council, the ten guiding principles, the Apostolic Constitution *Sacrae Disciplinae Leges*, and various discourses by the Pope and formative figures such as Cardinals Castillo Lara and Casaroli.

Comm 45 (2013), 165: Pontifical Commission for the Revision of the Code of Canon Law: Coetus studiorum "De Iure Poenali" (Sessio III): Litterae N. 855/67 quibus enixe rogatur ut Relator Pius Ciprotti quaestiones praevias *de poenis in specie* quam primum mittat. (Report)

The secretary of the study group on the revision of penal law invites the Relator to circulate a list of preliminary questions for consideration with regard to particular offences.

Comm 45 (2013), 166-168: Pontifical Commission for the Revision of the Code of Canon Law: Coetus studiorum "De Iure Poenali" (Sessio III): Litterae Relatoris Pii Ciprotti quibus transmittuntur "Quaestiones praeviae *de poenis in specie* quae solvendae videntur antequam canonum schema redigatur". (Report)

The Relator comments that there are a number of general questions outstanding but that some would be better deferred until after consideration of particular offences. He lists eight questions which include such matters as whether

penalties should be confined to those listed in the Code, excluding particular law or precept; the understanding and effect of certain penalties, e.g. interdict or suspension; and the distinction between censures and vindictive penalties.

Comm 45 (2013), 169-186: Pontifical Commission for the Revision of the Code of Canon Law: Coetus studiorum "De Iure Poenali" (Sessio III): Animadversiones Consultorum factae ad quaestiones praevias "de poenis in genere" quae solvendae videntur antequam canonum schema redigatur. (Report)

This report sets out the responses of three consultors to the draft canons that had been circulated.

Comm 45 (2013), 187-209: Pontifical Commission for the Revision of the Code of Canon Law: Coetus studiorum "De Iure Poenali" (Sessio III): Relatio introductiva Relatoris ad schema canonum "De delictis et poenis in specie". (Report)

The three consultors respond to each of the questions raised by the Relator.

Comm 45 (2013), 210-228: Pontifical Commission for the Revision of the Code of Canon Law: Coetus studiorum "De Iure Poenali" (Sessio III): Relatio introductiva Relatoris ad schema canonum "De delictis et poenis in genere". (Report)

The Relator sets out in narrative form the guiding principles adopted in the revision of the dispositions on penal law, the provenance of each title and canon and its significance.

Comm 45 (2013), 229-238: Pontifical Commission for the Revision of the Code of Canon Law: Coetus studiorum "De Iure Poenali" (Sessio III): Relatio Sessionis III. (Report)

This is a report of the discussion of the above documents in the session meeting 29 May – 3 June 1967.

CODE OF CANONS OF THE EASTERN CHURCHES

History

RDC 62/1 (2012), 151-161: Marc Aoun: La «latinisation» du droit des Églises orientales catholiques et la recomposition des traditions. (Article)

The process of "latinization" undergone by laws and institutions in the Eastern Catholic Churches, especially the Maronite Church, began in the Middle Ages and increased more rapidly in the 16th century. This process has inevitably led to the revision of many Eastern multisecular traditions (which themselves originate from a revision of their original traditions) in the wake of Lateran IV (1215), Florence (1439), and especially the Council of Trent (1545-1563).

CCEO 1-6

ITS 50 (2013), 359-384: A. Rayappan: The Influence of Vatican II on the General Norms of the Code of Canon Law. (Article)

See below, CIC canons 1-203.

CCEO 29-38

SC 47 (2013), 361-405: Jobe Abbass: L'incidence sur l'église latine des canons 29-38 du CCEO traitant de l'inscription. (Article)

Based upon the Holy See's official Explanatory Note regarding CCEO canon 1 in which the Pontifical Council for Legislative Texts indicated that "the Latin Church is implicitly included by analogy each time that the CCEO explicitly uses the term 'Church *sui iuris*' in the context of interecclesial relations", A. studies CCEO canons 29-38 on ascription, to determine the extent to which these Eastern canons expressly intend to regard or oblige even the Latin Church. Since all of CCEO canons 29-38 contain the expression "Church *sui iuris*", the study examines the canons in the light of the Explanatory Note and with the help of their legislative history as reported in *Nuntia.* By way of CCEO canon 1, the legislator has implicitly set up an interrelationship of the Eastern and Latin Codes, and the authoritative conclusion reached in the Explanatory Note assuredly confirms it. However, other canons also effectively create a complementary interrelationship of the Codes. In cases where the meaning of Latin canons remains doubtful, recourse can be made to parallel passages in the Eastern Code as an aid to resolving those ambiguities (CIC/83 canon 17). Also, if legislative gaps are evident in the Latin Code, those lacunae can be filled, in

individual cases, with Eastern laws made in similar matters (CIC/83 canon 19). Where applicable, A. applies these interpretative rules in the commentaries offered here regarding CCEO canons 29-38.

CCEO 155

Comm 45 (2013), 129: Congregation for Eastern Churches: Decretum quoad configurationem territorialem circumscriptionum Ecclesiasticarum in Serbia et Monte Nigro. (Document)

See below, CIC canon 383.

CCEO 776

Ius IV 1/13, 3-10: C. Thunduparampil: Sacrament of Marriage and Canon Law. (Article)

T. considers the reasons why Catholic or Christian marriage is considered a sacrament. He then looks at Pope Francis's teaching on Faith and the Family in his Encyclical *Lumen Fidei*. This serves as an introduction to this issue of *Iustitia* which is dedicated to various aspects of marriage, including the applicability of *Dignitas Connubii* to Eastern Tribunals, but especially to issues arising from inter-Church marriage between Eastern Catholics and Orthodox Christians.

CCEO 780-781

Ius IV 1/13, 143-160: S. Kadamthodu: Kerala Agreement on Inter-Church Marriages and Dissolution of Marriage Bond. (Article)

K. considers the question of the dissolution of marriage and how this takes place in the Malankara Syrian Orthodox Church, and then the implications of the Decree of the Apostolic Signatura in relation to this Church and the joint consideration of inter-Church marriages. He also mentions how through a verification process Orthodox sentences on marriage can be acknowledged by the Catholic Church.

CCEO 780-781

Ius IV 1/13, 165-170: Congregation for the Doctrine of the Faith: Agreement between the Catholic Church and the Syrian Orthodox Church on Inter-Church Marriage. (Document)

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

CCEO 784

Ius IV 1/13, 121-142: Deepa: The Importance of the Pre-Nuptial Enquiry according to CIC c. 1067 and CCEO c. 784 in the Kerala Context. (Article)

See below, CIC canon 1067.

CCEO 802

Ius IV 1/13, 143-160: S. Kadamthodu: Kerala Agreement on Inter-Church Marriages and Dissolution of Marriage Bond. (Article)

See above, CCEO canons 780-781.

CCEO 813-816

Ius IV 1/13, 11-41: G. Ruyssen: Catholic-Orthodox Marriage in Canon Law. (Article)

The increasing number of Catholic-Orthodox marriages in India constitutes a canonical and pastoral reality. R. first analyses which type of norms regulate the celebration of Catholic-Orthodox marriages with regard to canonical form, impediments and vices of consent. In the second part of the article he analyses, according to the type of norms, the validity of Orthodox marriages as judged by Catholic ecclesiastical tribunals, in case an Orthodox party decides to remarry a Catholic, since the Orthodox is bound by a prior matrimonial bond and since the Catholic Church does not recognize Orthodox judgments on marriage nullity.

CCEO 822

Ius IV 1/13: N. Schöch: The prevalent Intention of the Spouses and the Error on the Essential Properties of Marriage and Sacramentality (CIC c. 1099). (Article)

See below, CIC canon 1099.

CCEO 834

Ius IV 1/13, 11-41: G. Ruyssen: Catholic-Orthodox Marriage in Canon Law. (Article)

See above, CCEO canons 813-816.

CCEO 839

Ius IV 1/13, 11-41: G. Ruyssen: Catholic-Orthodox Marriage in Canon Law. (Article)

See above, CCEO canons 813-816.

CCEO 909-995

ITS 50 (2013), 359-384: A. Rayappan: The Influence of Vatican II on the General Norms of the Code of Canon Law. (Article)

See below, CIC canons 1-203.

CCEO 1152

IE XXV (2013), 641-661: Joaquín Llobell: Sull'interruzione e sulla sospensione della prescrizione dell'azione penale. (Article)

See below, CIC canon 1362.

CCEO 1185-1377

Ius IV 1/13: 69-99: S. Thengumpally: The Possible Application of *Dignitas Connubii* by the Tribunals of the Oriental Catholic Churches. (Article)

T. deals with two main points: 1. general notions of *Dignitas Connubii* (DC) exposing the genesis, purpose, juridical status and binding force of the Instruction; 2. the applicability of DC to the tribunals of the Oriental Catholic Churches, highlighting its significance for the tribunals of the Oriental Catholic Churches and its similarity to the procedural norms of the CCEO. While bringing to light points of mutual complementarities and divergences in DC and the CCEO T. also reflects on the possibility of an Instruction in the manner of DC for the Oriental Churches.

CCEO 1401-1487

Comm 45 (2013), 239-259: Pontifical Commission for the Revision of the Eastern Code of Canon Law: Coetus Studii "De Delictis et Poenis" (Sessio I diebus 18-23 mensis Novembris 1974 habita). (Report)

The first session of the Study Group on the revision of penal law in the Eastern Code focused on matters of general principle. Given the diverse traditions of the different Eastern Churches, which penal laws should form the basis for discussion? What could be drawn from the material prepared under Pius XII, including the four promulgated sections? What guidance did Vatican II offer? What was the current discipline in the Orthodox Churches? Annexes include a summary of the headings prepared between 1945 and 1948, and also an outline prepared by a minority group during the meeting.

CCEO 1401-1487

Comm 45 (2013), 260-279: Pontifical Commission for the Revision of the Eastern Code of Canon Law: Coetus Studii "De delictis et Poenis" (Sessio II diebus 16-21 mensis Iunii 1975 habita). (Report)

The second session of the study group began by looking at some specific offences, primarily related to the faith and unity of the Church; it then examined more general considerations such as the nature of offences and penalties, before returning to more specific issues such as offences against the unity of the Church.

CCEO 1447

REDC 70 (2013), 713-718: Congregación para la Doctrina de la Fe: Declaración sobre el estatuto canónico de los «presuntos obispos griego-católicos de Pidhirci», Rvdos. Sres. Elías A. Dohnal, O.S.B.M., Markian V. Hitiuk, O.S.B.M., Metodej R. Spirik, O.S.B.M y Tobert Oberhauser (22 febrero 2012). (Document and commentary)

See below, CCEO canon 1459.

CCEO 1452

REDC 70 (2013), 713-718: Congregación para la Doctrina de la Fe: Declaración sobre el estatuto canónico de los «presuntos obispos griego-católicos de Pidhirci», Rvdos. Sres. Elías A. Dohnal, O.S.B.M., Markian V.

Hitiuk, O.S.B.M., Metodej R. Spirik, O.S.B.M y Tobert Oberhauser (22 febrero 2012). (Document and commentary)

See below, CCEO canon 1459.

CCEO 1459

REDC 70 (2013), 713-718: Congregación para la Doctrina de la Fe: Declaración sobre el estatuto canónico de los «presuntos obispos griego-católicos de Pidhirci», Rvdos. Sres. Elías A. Dohnal, O.S.B.M., Markian V. Hitiuk, O.S.B.M., Metodej R. Spirik, O.S.B.M y Tobert Oberhauser (22 febrero 2012). (Document and commentary)

This is the Spanish translation of the Declaration of the Congregation for the Doctrine of the Faith (CDF) concerning five Greek-Catholic monks, expelled from their Order, who have had themselves invalidly ordained as bishops and established a so-called "Ukrainian Greek-Catholic Orthodox Church". They have been excommunicated under the provisions of the relevant canons of the Eastern Catholic Churches. The aim of the present Declaration by the CDF is to make their canonical status more widely known throughout the Church. A commentary by Federico R. Aznar Gil highlights some of the differences between the CIC/83 and the CCEO regarding excommunication.

CCEO 1462

REDC 70 (2013), 713-718: Congregación para la Doctrina de la Fe: Declaración sobre el estatuto canónico de los «presuntos obispos griego-católicos de Pidhirci», Rvdos. Sres. Elías A. Dohnal, O.S.B.M., Markian V. Hitiuk, O.S.B.M., Metodej R. Spirik, O.S.B.M y Tobert Oberhauser (22 febrero 2012). (Document and commentary)

See above, CCEO canon 1459.

CCEO 1488-1546

ITS 50 (2013), 359-384: A. Rayappan: The Influence of Vatican II on the General Norms of the Code of Canon Law. (Article)

See below, CIC canons 1-203.

CODE OF CANON LAW
BOOK I: GENERAL NORMS

1-203

ITS 50 (2013), 359-384: A. Rayappan: The Influence of Vatican II on the General Norms of the Code of Canon Law. (Article)

To a great extent the CIC/83 and the CCEO reflect the mind and will of the teachings of Vatican II and give juridical expression to them. The juridical quality is visible more in the first book of the CIC/83 and the corresponding titles of the CCEO than in the other parts of the Code. The influence of the Council on the first and last books of the CIC/83 is not as significant and pronounced as on the other books. However, a number of the canons in Book I do have Vatican II documents as their authentic sources, and R. pays particular attention to the canons dealing with those who are subject to the Code (CIC/83 canon 1, CCEO canon 1), the dispensing power of the diocesan bishop (CIC/83 canon 87, CCEO canon 1538); the power of governance (CIC/83 canons 129-144, CCEO canons 979-995), persons capable of holding the power of governance (CIC/83 canon 129, CCEO canon 979), and ecclesiastical offices (CIC/83 canon 145, CCEO canon 936). He also makes brief references to Book I in respect of passive subjects of merely ecclesiastical laws (canon 11), canonization of civil law (CIC/83 canon 22, CCEO canon 1504), general decrees and instructions (canons 29-34), and equality and communion (CIC/83 canons 101 and 104, CCEO canon 914). His conclusion is that even if the changes in the General Norms are not great in number, those changes which have been effected are significant. The office of the diocesan bishop has been presented more positively thanks to clear insights offered by *Lumen Gentium* and *Christus Dominus*. The new definition of ecclesiastical office inspired by *Presbyterorum Ordinis*, no. 20, and the opening for the cooperation of the laity in the exercise of the power of governance, inspired by *Lumen Gentium* and *Apostolicam Actuositatem*, are epoch-making. The recognition of the dignity of the laity and the offices that can be assigned to them go a long way to building a vibrant and participatory Church. The principle of subsidiarity and the concern for human dignity, fundamental equality and ecumenism have also influenced a number of norms. Thus, while retaining the juridical quality of the law, most of the guiding principles for the revision of the Code have been effectively implemented in the canons on General Norms.

16

AA XVIII (2012), 273-284: Hugo Adrián von Ustinov: Hermenéutica jurídica y comunión en la fe católica. Apostillas al discurso de Benedicto XVI a la Rota Romana, el 21 de enero de 2012. (Commentary)

U.'s commentary on the 2012 address of Benedict XVI to the Roman Rota focuses on that Pontiff's reference to the hermeneutic of "renewal in continuity", and its application to the field of canon law. Just like the *lex orandi*, so also the *lex agendi* (the Church's law) must be a reflection of the *lex credendi*, that is, founded on, and a faithful embodiment of, the Church's faith. There can be no opposition between an *ecclesia amoris* and an *ecclesia iuris*, since both find their inspiration in the same divine will. U. also comments on the binding nature of the Roman Pontiff's addresses to the Rota. The present discourse makes two references to that binding character of the Magisterium in canonical matters when it speaks on the Church's law. U. notes that such teaching is not simply moral encouragement but is juridically binding, to such an extent that its rejection or non-observance could provide legitimate grounds of appeal. (See also *Canon Law Abstracts*, nos. 109, p. 42; 110, pp. 47-48.)

16

Per 102 (2013), 379-402: A. Stankiewicz: *Sentire cum Ecclesia* e l'interpretazione della legge canonica. (Article)

Commenting on the 2012 address to the Roman Rota of Pope Benedict XVI, the former dean of the Apostolic Tribunal offers some reflections on how the law of the Church must be interpreted. Beginning with some fundamental hermeneutical presuppositions, S. underlines the necessity for any interpreter of canon law to have the "*sentire cum Ecclesia*" of which the Pope speaks in his address. This is not to be reduced to a knowledge and understanding of the Church but is an attitude that must be radically informed by love. Only by reading and understanding the legal texts within the context of faith and of communion with the Church can one arrive at a right interpretation of any norm, and avoid arbitrariness that might be based on an erroneous "humanitarian principle".

17

Per 102 (2013), 353-377: Éric Besson: Quelques considérations sur l'interprétation de la loi avec le cas de l'interprétation donnée par la Signature Apostolique en matière de réparation des dommages. (Article)

See below, canon 1445.

87

EE 88 (2013), 767-813: Carmen Peña García: «Facultades especiales» del Decano y novedades procesales en la Rota Romana: ¿hacia una renovación de las causas de nulidad matrimonial? (Article)

See below, canon 1443.

111-112

SC 47 (2013), 361-405: Jobe Abbass: L'incidence sur l'église latine des canons 29-38 du CCEO traitant de l'inscription. (Article)

See above, CCEO canons 29-38.

129

AnC 9 (2013), 17-38: Piotr Skonieczny: *Potestas sacra* według Klausa Mörsdorfa – założenia teologiczne, struktura, sposób przekazywania i charakter (= *Potestas sacra* according to Klaus Mörsdorf: theological principles, structure, mode of transmission and nature). (Article)

This article is a short presentation of the theory of ecclesial power (*Kirchengewalt*) as found in the Second Vatican Council, according to Klaus Mörsdorf: its theological principles, structure, mode of transmission and nature. The description *of potestas sacra* is an opportunity for S. to re-examine the concept of "sacred power" in the Second Vatican Council. S. himself agrees with Mörsdorf's views, even if not all of these were applied in the present canon law.

192-195

SC 47 (2013), 341-360: Anne Asselin: Les ministres ecclésiaux laïcs et la révocation de leur office : en quête de justice et d'équité. (Conference presentation)

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

193

AkK 181 (2012), 386-443: Martin Rehak: Jurisdiktionsprimat und Absetzung von Bischöfen. Systematische Nachbetrachtungen. (Article)

See below, canon 416.

BOOK II, PART I: CHRIST'S FAITHFUL

204

FCan VIII/1 (2013), 37-67: Alfredo Leite Soares: Sacerdócio comum e sacerdócio hierárquico. (Article)

The awareness that the Church of Jesus Christ is a priestly people springs from her faith in the one and everlasting Priest, Jesus Christ. It is on Christ, then, that the Church bases both the common and the hierarchical dimensions of her priestly nature. This is the root that determines both the ontological-sacramental and the ecclesiological-structural dimensions of the priesthood of the People of God, an expression of its ministerial nature, as priesthood of the offering of a holy life and as priesthood of the sacramental services. Both the common and the hierarchical dimensions of the priesthood of Jesus Christ make themselves visible in the common priesthood of the faithful and in the hierarchical priesthood which, though differing in essence, are inseparable, convergent and constitutive of the Church ministry.

204-746

Per 102 (2013), 403-446: Gianfranco Ghirlanda: Il libro II del Codice di Diritto Canonico alla luce del Vaticano II. (Article)

G. examines the relationship between the teaching of Vatican II and the CIC/83, with particular reference to the structure and contents of Book II. After a brief thematic analysis of the Book, G. concludes that the Code faithfully translates into juridical norms and texts the teaching of the Council concerning the People of God, at times even making use of the actual text of the conciliar documents. However, he underlines the fact that the doctrine of the Council and the norms of the 1983 Code do not in fact constitute a break in the tradition of the Church. Instead, he sees the same truth finding new expressions in a different age.

207

Per 101 (2012), 541-566: Gianfranco Ghirlanda: La formazione dei seminaristi e dei religiosi in ordine alla relazione fra preti diocesani e religiosi. (Article)

G. notes that neither in the documents of Vatican II nor in the Code of 1983 is there any mention made of the need to educate seminarians about consecrated life or the need of religious to understand the reality of the life and ministry of diocesan clergy. He points out that this was indicated clearly in other

documents, e.g. *Mutuae Relationes*, *Vita Consecrata* and *Pastores Dabo Vobis*. He then proceeds to identify what he considers to be the principal components of any such education of seminarians and young religious: a) the Church as the People of God, an organic communion that is hierarchically structured; b) the ecclesial nature of religious life, something that exists in the Church by the will of Christ himself; c) the autonomy of life and governance that is proper to religious institutes; d) the centrality of the pastoral ministry of the bishop in the life of the particular Church. G. then elaborates on each of these points, teasing out the content of what needs to be explained and transmitted, indicating that each of them is firmly based on the doctrine of Vatican II and the Magisterium of the Holy See. By way of conclusion, he stresses that neither a purely practical experience of religious life nor a purely theoretical knowledge is sufficient.

208-231

Alvaro del Portillo: Faithful and Laity in the Church: The Bases of their Juridical Status. (Book)

This work arose out of the lengthy *votum* which del P. presented to the group of consultors of the Pontifical Commission for the Revision of the Code of Canon Law responsible for examining the *schema* of canons on the rights and duties of the faithful and laity in the Church. Del P. tackles a problem which was very much to the fore in the deliberations of the Second Vatican Council: the theological and canonical identity of these two concepts – "faithful" and "lay person" – which were generally treated as synonymous in ecclesiastical parlance but which were ontologically distinct. This *votum* was to have a decisive impact on the preparation of the project for the new ecclesiastical legislation. In his foreword to the book, Cardinal Julián Herranz, Emeritus President of the Pontifical Council for Legislative Texts, states that del P. pondered over the question of whether a specific vocation and juridical condition of the lay person was added to his vocation and general juridical condition as a baptized "faithful"; and the response which del P. gave in his *votum* was "decidedly positive. The lay person's vocation", Herranz continues, "is certainly that of the Christian faithful, the *christifidelis* – the baptismal calling to holiness and apostolate – but it is lived out in the midst of the structures and ordinary circumstances of secular life … del Portillo had very much in mind the ecclesiology of Vatican II and especially the Constitution *Lumen gentium*, which considered 'secularity' – a concept very different from and even opposed to that of the 'secularization' of sacred persons or things – as a specific theological component of the identity of the lay Christian: ... '[T]he laity, by their very vocation, seek the kingdom of God by engaging in temporal affairs and by ordering them according to the plan of God. They live in the world, that is, in each and all of the secular professions and occupations' (*Lumen gentium*, 31) …

[L]ay Christians who are in full ecclesiastical communion have all the rights and duties that correspond to them as 'faithful', but it was also necessary to specify certain rights and duties that pertain to them as 'lay faithful'. It comes as no surprise therefore that that weighty and extensive *votum* should have had such an impact on the definitive formulation of the canons on the faithful and the laity, both in the current 'Code of Canon Law' promulgated in 1983, and indirectly in the later 'Code of Canons of the Eastern Churches' promulgated in 1990." This Second English Edition of del P.'s work has been updated to include an extensive set of footnotes demonstrating the relationship between the proposals made by the author and the canons of the CIC/83 and the CCEO. (For bibliographical details see below, Books Received. See also *Canon Law Abstracts*, no. 109, pp. 46 and 148 for details of the French edition.)

213

SC 47 (2013), 407-466: Dominique Le Tourneau: Le canon 213 sur le droit aux biens spirituels et ses conséquences sur les droits et les devoirs fondamentaux dans l'église. (Article)

The right to the Word and the sacraments institutionalized by canon 213 of the CIC/83 is not only a fundamental right of all the faithful, but also a right necessary for the fulfilment of a truly Christian life. However, it is still largely unknown by pastors and their faithful. Le T., relying heavily on canonical doctrine, studies first the content of the right to the Word and the sacraments, distinguishing between the right to the Word of God and the duty to preach, before discussing the right to the sacraments and the duty to administer them. In the second part he considers the extension of the duty–right to spiritual things in general, which requires examining the legal relation existing between the faithful and pastors in respect of spiritual goods, before addressing specific pastoral structures that allow the hierarchy to fulfil its duty so that the faithful may enjoy the means of salvation in accordance with their canonical status. In his conclusion Le T. emphasizes that these spiritual goods should be distributed *abundanter* because one cannot envisage holiness *a minima,* and he identifies the consequences for the lives of believers in Christ. He also notes the frequent evocation of other fundamental rights and duties which are dependent on the proper application of canon 213.

217

QDE 26 (2013), 264-272: Mauro Rivella: Per una lettura giuridica degli *Orientamenti pastorali* della CEI sull'educazione. (Article)

See below, canon 793.

220

AkK 181 (2012), 444-466: Thomas Meckel: Das Beichtgeheimnis und das Seelsorgegeheimnis im Spiegel der Grundrechte der Christgläubigen. (Article)

See below, canons 983-984.

221

REDC 70 (2013), 547-564: Luis A. García Matamoro: El proceso judicial penal cc. 1721-1728 CIC 83. (Conference presentation)

See below, canons 1721-1728.

223

IC 53 (2013), 517-546: Jesús Bogarín Díaz: El *favor libertatis* como clave hermenéutica del canon 223. (Article)

B.D. studies the limitations on the rights of freedom in current canon law. He focuses especially on canon 223, analysing the *iter* of its formation, and identifying problems of interpretation in the light of the clarifications from the Pontifical Council for Legislative Texts. He also offers proposals for the future, bearing in mind the principle of maximum freedom as outlined in *Dignitatis Humanae*, no. 7.

226

QDE 26 (2013), 264-272: Mauro Rivella: Per una lettura giuridica degli *Orientamenti pastorali* della CEI sull'educazione. (Article)

See below, canon 793.

226

QDE 26 (2013), 273-299: Eugenio Zanetti: Comunità o figure di educatori nella Chiesa. (Article)

See below, canon 515.

227

REDC 70 (2013), 637-652: María J. Roca: Ámbito de libertad y límites en las declaraciones emitidas por las Asociaciones públicas de los fieles. (Article)

See below, canon 315.

231

SC 47 (2013), 341-360: Anne Asselin: Les ministres ecclésiaux laïcs et la révocation de leur office : en quête de justice et d'équité. (Conference presentation)

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

237-239

RMDC 19 (2013), 47-78: Mario Medina Balam: Identidad y funciones propias del oficio de Rector del Seminario. (Article)

The figure of the rector of the seminary appeared once the Council of Trent had established the seminary as an institution devoted exclusively to the integral formation of future priests. In this article M.B. looks at the seminary in the light of the teaching of Vatican II (the juridical nature of the seminary, and the need for a seminary in each diocese); the nature of the office of seminary rector; the seminary rector's profile, including the qualities to be expected of all who are involved in the work of formation, as well as those qualities specifically required of the rector; the functions of the rector in relation to the seminary in general, the diocesan bishop, others involved in formation, and the students; and the specific formation of the seminary rector (initial and ongoing formation).

241

RDC 61/2 (2011), 113-138: Justin-Sylvestre Kette: Changer les mentalités en matière d'admission des personnes handicapées physiques au sacrement de l'ordre. (Article)

Some physically challenged candidates to the seminary and to sacred orders have to face difficulties related to their disabilities. Those in favour of blocking their candidacy mention various issues, despite the fact that physical disabilities are no longer part of the irregularities impeding the reception of holy orders. No one is entitled to create new irregularities in this matter.

251-252

Per 102 (2013), 1-31: Diego E. Pombo Oncins: Il riferimento a San Tommaso nei canoni 251 e 252 §3 del CIC alla luce del magistero della Chiesa. (Article)

P. studies the references to St Thomas Aquinas in the CIC/83. Beginning from the pre-Vatican II Magisterium, he traces the central importance accorded to the doctrine of St Thomas in the documents of Vatican II and how this has come to be integrated into the canons of the Code. The latter part of the article is devoted to the theme of how his teaching is to be found in the Papal Magisterium after the Vatican Council and before the promulgation of the Code. P. concludes that, while he is not presented nor to be understood as the exclusive or sole teacher of Catholic doctrine, St Thomas Aquinas nevertheless occupies a pre-eminent place. Consequently, as the two canons (251 and 252 §3) indicate, his teaching must be given special emphasis in the philosophical and theological education of clerics.

273-274

AA XVIII (2012), 135-148: Ariel David Busso: Los deberes y derechos derivados de la obediencia del clérigo diocesano. (Article)

B.'s article deals with the obligations and rights of diocesan clerics arising from the promise of obedience. After outlining the theological and ecclesiological basis for the promise made at their ordination by deacons and priests, he examines in more detail their obligation to accept and faithfully fulfil the office committed to them by their Ordinary, their right to obtain an office, the obligation of residence in the diocese, and the obligation of ongoing formation. A final section looks at the case of a diocesan cleric who joins an institute of consecrated life.

290

REDC 70 (2013), 603-623: José San José Prisco: El proceso de nulidad de la Ordenación. (Conference presentation)

See below, canons 1708-1712.

294-295

REDC 70 (2013), 719-723: Papa Francisco: Modificación del artículo 5 de las Normas Complementarias a la Constitución Apostólica de Benedicto XVI *Anglicanorum Coetibus*. (Document and commentary)

Given here is the Spanish translation of the modification to article 5 of the Supplementary Norms to the Apostolic Constitution *Anglicanorum Coetibus*. This allows a person baptized in the Catholic Church but who has not yet received the other sacraments of Christian initiation and who returns to the practice of the faith "as a result of the evangelizing mission of the Ordinariate" to be received into the Ordinariate and complete his or her Christian initiation there with the sacraments of Confirmation and Eucharist. In his commentary José San José Prisco highlights the fact that the Ordinariate is now seen to form part of the New Evangelization. This is the real thrust of the modification, rather than increasing its numbers, although this too could come about given the large number of those baptized as Catholics in infancy who have never had any further connection with the Church. However, Catholics who have received all the sacraments of Christian initiation are not free to join the Ordinariate at their own request or wish.

302

J 73 (2013), 439-462: Rose McDermott: Associations of the Faithful Becoming Religious Institutes or Societies of Apostolic Life: Responsibilities of Diocesan Bishops (Canon 579). (Article)

See below, canon 579.

315

REDC 70 (2013), 637-652: María J. Roca: Ámbito de libertad y límites en las declaraciones emitidas por las Asociaciones públicas de los fieles. (Article)

Public associations of the faithful are able to issue statements, express views, hold press conferences, etc., on a wide range of issues. For many people the status of such interventions is unclear and can be mistaken for the official views of the hierarchy and the Catholic Church. This is particularly sensitive when these interventions concern issues of public, political or social concern. R. looks at the limitations placed on all the faithful in making public statements of a doctrinal or moral nature, and then examines the greater restrictions on public associations of the faithful. These enjoy a closer connection with the hierarchy, working as they do "in the name of the Church". While the exact meaning of the

phrase is a matter of debate, it can be said, negatively, that it does not mean acting in the name of the hierarchy. The question still remains: do their interventions compromise the hierarchy? While it is true that some public associations of the faithful, by mandate of the hierarchy, may be more closely associated with the same, one cannot conclude that they speak for it, for although they speak or act in the name of the Church, they do not do so with the authority of the Church. If an association of the faithful is to be involved in activities or in issuing statements on particular social or political issues (e.g. the suitability of strike action, or of public demonstrations) it is preferable that it be constituted as a private, not a public association.

323

Comm 45 (2013), 112-113: Secretariat of State: Rescriptum ex audientia SS.mi respiciens consociationem publicam fidelium quae appellatur "Hermanas de San Juan y Santo Domingo". (Document)

On 24 February 2012 Pope Benedict XVI appointed Mgr Henri Brincard as Pontifical Commissioner with powers of governance over the religious communities of the Brothers of St John and the Apostolic Sisters of St John. This rescript rejects a recourse made by certain members of these institutes on 11 February 2012 and suppresses a new public association founded in Córdoba on 29 June 2012, evidently with a view to circumventing these measures.

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

330

Comm 45 (2013), 46-48; Pope Francis: Allocutio Summi Pontificis ad Legatos cum publica auctoritate apud Sanctam Sedem coram admissos, die 22 mensis martii 2013 prolata. (Address)

In his address to the members of the diplomatic corps Pope Francis explains the reasons for his choice of name – love for the poor but also a zeal for peace. He sees bridge building as a fundamental role of religion alongside the struggle against both material and spiritual poverty.

331

AkK 181 (2012), 487-512: Yves Kingata: Benedikt XVI als kirchlicher Gesetzgeber. Ein Überblick über die legislative Tätigkeit des Papstes. (Article)

K. considers Benedict XVI as a legislator, and examines the content and implications of the canonical questions addressed by him. K. highlights the aspects of the Church's mission that are of primary interest to the ecclesiastical lawgiver.

332

AnC 9 (2013), 39-54: Piotr Majer: Rezygnacja papieża z urzędu (= Resignation of a Pope from his office). (Article)

The resignation from office of Pope Benedict XVI on 11 February 2013 came as a shock to many, since in the history of the Church there are few examples of decisions such as this, the last one occurring over 600 years ago. For canonists the act is a novelty only *de facto* and not *de iure*, since a provision concerning resignation by the Pope has existed in canon law since 1299. M. provides an interpretation of canon 332 §2 of the CIC/83 which deals with resignation by the Roman Pontiff from office. M. sets out and analyses the historical circumstances of this norm, the reason for such a decision, the conditions required for the validity of the resignation (freedom of decision and proper announcement), the constitutive character of the resignation, its irrevocability, and the status of Pope Emeritus in the Church.

332

Comm 45 (2013), 44-45: Pope Benedict XVI: Declaratio qua Summus Pontifex Benedictus XVI suo munere Episcopi Romae, Successoris Sancti Petri, renuntiavit die 11 mensis februarii prolata (lingua latina una cum versione italica). (Document)

Addressing the Cardinals gathered in Consistory for the announcing of three canonizations Pope Benedict XVI declares his intention to renounce his position as Bishop of Rome and Supreme Pontiff with effect from 8.00 p.m. on 28 February 2013.

332

EE 88 (2013), 815-832: Antonio Ciudad Albertos: Renuncia de Benedicto XVI a la Sede Petrina. Aspectos canónicos. (Article)

"Well aware of the seriousness of this act, with full freedom I declare that I renounce the ministry of the Bishop of Rome, Successor of Saint Peter … in such a way, that as from 28 February 2013, at 20:00 hours, the See of Rome … will be vacant and a Conclave to elect the new Supreme Pontiff will have to be convoked". These surprising words of Benedict XVI on 11 February 2013 lead C.A. to reflect on what is involved in a resignation from the Petrine office, and what are the necessary elements to make such a resignation valid.

332

IE XXV (2013), 797-807: Benedetto XVI: *Declaratio* del Santo Padre sulla sua rinuncia al ministero di vescovo di Roma, successore di san Pietro (con *nota* di Fernando Puig, *La rinuncia di Benedetto XVI all'ufficio primaziale come atto giuridico*). (Declaration and commentary)

Given here are the Latin and Italian texts of Pope Benedict XVI's announcement that he would be renouncing the ministry of the Bishop of Rome, Successor of St Peter, with effect from 28 February 2013. In his commentary, P. looks at various aspects of the juridical act of renunciation made orally by Benedict XVI before the Cardinals gathered in Consistory on 11 February 2013. P. shows that the act of resignation fulfilled all the conditions for validity and lawfulness.

335

Comm 45 (2013), 29-38: Pope Benedict XVI: Litterae Apostolicae Motu Proprio datae *Normas Nonnullas* de nonnullis mutationibus in normis ad

electionem Romani Pontificis attinentibus (lingua latina una cum versione italica). (Document)

This *motu proprio* of 22 February 2013 makes a number of changes to the norms for the election of the Roman Pontiff as set out in *Universi Dominici gregis* of 1996 and the variations set out in the Apostolic Letter of 11 June 2007. The most significant areas covered are to allow the Conclave to commence earlier than the 15th day if all the eligible Cardinals are present, tightened security elements, and new provisions as to the how to proceed if the ballot process has difficulty in producing a two-thirds majority. (See also *Canon Law Abstracts*, no. 111, p. 46.)

335

RMDC 19 (2013), 212-219: Benedicto XVI: M. pr. *Normas nonnullas*, sobre algunas modificaciones de las normas relativas a la elección del Romano Pontífice. (Document)

Spanish text of the document referred to in the preceding entry.

335

IC 53 (2013), 547-572: Antonio Viana: Posible regulación de la Sede Apostólica impedida. (Article)

The resignation of Benedict XVI on health grounds has prompted discussion of the regulation of the conditions and procedures in place should the See of Rome be impeded by Papal infirmity. Such regulation is provided for by both the ClC/83 and the CCEO but has not yet been applied. V. looks into the historical precedents and the sensitive issues that arise in relation to this matter.

360

Comm 45 (2013), 9-20: Pope Benedict XVI: Litterae Apostolicae Motu proprio datae *Ministrorum institutio* quibus commutatur Constitutio Apostolica *Pastor bonus*, simulque competentia de Seminariis a Congregatione de Institutione Catholica ad Congregationem pro Clericis transfertur (lingua latina una cum versione italica). (Document)

This *motu proprio* of 16 January 2013 transfers responsibility for seminaries from the Congregation for Catholic Education to that for Clergy. Eleven articles spell out the changes to the various articles in *Pastor Bonus*, principally nos. 93-94 and 112-113, although responsibility for the academic curricula for

philosophy and theology remains with the Congregation for Catholic Education in consultation with that for the Clergy. The document begins by setting out in some detail the history of the Congregations responsible for this area from 1725 to the present day. The rationale for the change is a desire to ensure continuity between pre-ordination and post-ordination formation.

360

Comm 45 (2013), 140-143: from *L'Osservatore Romano*: Colloquium percontatorium (intervista) quo explanantur Litterae Apostolicae *Ministrorum institutio* motu proprio a Summo Pontifice datae, ab Em.mo Mauro Piacenza concessum ac a Mario Ponzi, conscriptum. (Interview)

See preceding entry. This is the text of an interview with the prefect of the Congregation for the Clergy prepared by Mario Ponzi, in which he explains the rationale behind transferring responsibility for seminaries from the Congregation for Catholic Education to that for the Clergy. Vatican II in *Optatam Totius* emphasized the importance of clergy formation. Continuity before and after ordination is an important factor and is something the change is intended to secure.

360

IC 53 (2013), 735-754: Carta apostólica en forma de Motu Proprio *Ministrorum institutio*, 16-I-2013 / Valentín Gómez-Iglesias: El Motu Proprio *Ministrorum institutio* (16-I-2103): anotaciones a su proemio o parte narrativa. (Document and commentary)

Spanish text of the document referred to in the preceding entries. In his commentary, G.-I. looks at priestly formation up to the Council of Trent, competence for seminaries in the Roman Curia up to the CIC/17, seminaries in the reform of the Curia under Paul VI; the systematic placement of the canons on seminaries in the *iter* of the revision of the CIC; and competence for seminaries under John Paul II and Benedict XVI.

360

RMDC 19 (2013), 204-211: Benedicto XVI: M. pr. *Ministrorum institutio*, con la que se transfiere la competencia sobre los seminarios de la Congregación para el Educación católica a la Congregación para el Clero. (Document)

Spanish text of the document referred to in the preceding entries.

360

Comm 45 (2013), 21-28: Pope Benedict XVI: Litterae Apostolicae Motu Proprio datae *Fides per doctrinam* quibus, mutata Constitutione Apostolica *Pastor bonus,* competentia de Catechesi ex Congregatione pro Clericis ad Pontificium Consilium de Nova Evangelizatione Promovenda transfertur (lingua latina una cum versione italica). (Document)

Since Vatican II there has been considerable reflection on the relationship between evangelization and catechesis. In the light of the creation of the Pontifical Council for the New Evangelization (*Ubicumque et semper*, 21 September 2010), this *motu proprio* of 16 January 2013 transfers responsibility for catechesis from the Congregation for the Clergy to the Pontifical Council for the New Evangelization, deleting article 94 of *Pastor Bonus.*

360

Comm 45 (2013), 144-145: from *L'Osservatore Romano*: Articulus quo explanantur Litterae Apostolicae motu proprio *Fides per doctrinam* a Summo Pontifice datae, ab exc.mo Salvatore Fisichella, conscriptus. (Article)

See preceding entry. In this short article F. explains the rationale behind passing responsibility for catechesis to the Pontifical Council for the New Evangelization. Proper catechetical formation is an essential element in the transmission of the faith. Evangelization is not possible without an adequate formation in the faith.

360

RMDC 19 (2013), 197-203: Benedicto XVI: M. pr. *Fides per doctrinam*, con la que se transfiere la competencia sobre la catequesis de la Congregación para el Clero al Consejo pontificio para la promoción de la Nueva Evangelización. (Document)

Spanish text of the document referred to in the preceding entries.

360

Comm 45 (2013), 58-60: Pope Francis: Chirographum Summi Pontificis Francisci quo instituitur Pontificia Commissio quae de "Instituto Operum Religionis" referre debet. (Document)

Pope Francis sets up a Pontifical Commission to report on the legal structure and activity of the Institute for Works of Religion, popularly known as the "Vatican Bank".

360

Comm 45 (2013), 118: Secretariat of State: Nuntius Secretarius Status. (Announcement)

In this brief notice the Secretary of State announces that Pope Francis has set up a working party of eight Cardinals to assist him in reflecting on the governance of the universal Church and with a view to the revision of the Apostolic Constitution *Pastor Bonus.*

360

Comm 45 (2013), 146-160: Financial Intelligence Authority: Relatio annualis de informatione ac vigiliantia peractis in rebus finantiariis ac monetariis ad pecuniae male partae collocationem (riciclaggio) necnon pecuniae suppeditationem vel commodationem pro terrorismo praecavendam, impediendam ac reprimendam anno I – 2012. (Report)

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

360

IE XXV (2013), 685-708: Sergio F. Aumenta: L'indole pastorale della Curia Romana. (Article)

Many people have the impression that the role of the Roman Curia has expanded to the point that it has become too cumbersome, overshadowing both the ministry of the Pope and the principle of episcopal collegiality. The Curia is not perceived as an instrument at the service of the Petrine ministry, but almost as an unnecessary burden. Moreover, in the episcopate there are pressing demands for a more collegial governance of the universal Church. The Curia is seen as a symbol of Roman centralization and authoritarianism, standing between the Pope and the bishops. The future structure of the Curia, following its planned reform, would be a consequence of the resolution of the real problem, namely

the relationship between the *munus Petrinum* and episcopal collegiality. Looking back on the history of the Roman Curia, it is necessary to distinguish between outdated aspects and those that remain fundamental. From the early centuries of Christian history, the Bishop of Rome benefited from collaborators who assisted in handling matters of governance. But the true birth of the Roman Curia in the modern sense was the Bull *Immensa Aeterni Dei* (22 January 1588), whereby Pope Sixtus V created 15 Congregations of Cardinals. The Sistine reform was a significant step towards the centralization of power in the Papacy, as opposed to the greater collegiality ensured by the Consistory, in which, during the Middle Ages, the Cardinals would meet three times a week with the Pope to deal with the most important affairs of government. After the fall of the Papal States, a reorganization of the Curia was enacted by Pope Pius X with the Apostolic Constitution *Sapienti consilio* (29 June 1908). At the conclusion of the Second Vatican Council, the Apostolic Constitution of Pope Paul VI *Regimini Ecclesiae Universae* (REU) (15 August 1967) aimed at a reform of the Curia which would implement the Church's teachings. In addition to confirming the presence of diocesan bishops as members of the Congregations, REU introduced: a) the coordination of the work of the dicasteries; b) the internationalization of the staff of the Curia; c) temporary appointments; and d) the presence of lay people. Five years after the promulgation of the CIC/83, Pope John Paul II promulgated the Apostolic Constitution *Pastor Bonus* (28 June 1988), which from its very title emphasized the pastoral character of the Petrine ministry, from which four characteristics of the Roman Curia derive: the Curia is ecclesial, ministerial, vicarious and collegial. After an assessment of the 1988 reform, 25 years after its entry into force, A. seeks to identify some prospects for the future: a greater role for the laity, not only in purely executive functions; a broader application of the principle of subsidiarity; a reaffirmation of the priority of the Holy See over the Vatican City State; the limitation of the Curia to those bodies exercising power of governance (whether executive or judicial, and with a clear definition of these two areas); a Secretariat with tasks of coordination and mediation of Papal decisions; a reform of the Synod of Bishops; and collegiality and coordination between the offices of the Curia.

362-367

Comm 45 (2013), 49-52: Pope Francis: Allocutio summi Pontificis ad communitatem Pontificiae Academiae Ecclesiasticae coram admissos die 6 mensis iunii 2013 habita. (Address)

In his address to the staff and students at the Pontifical Academy in Rome where training is provided for those entering the service of the Holy See, Pope Francis speaks of the ministry and role of Papal diplomats. This calls for a particular

kind of internal freedom, not least from self-seeking or ambition. It is a ministry at the service of the Church, not a career structure.

362-367

Comm 45 (2013), 53-57: Pope Francis: Allocutio ad eos qui partem habuerunt in celebratione eventus "Giornate dei Rappresentanti Pontifici" occasione *Anni Fidei* die 21 mensis iunii 2013 prolata. (Address)

Pope Francis speaks to those taking part in a gathering for Papal diplomats about their role in building the Church, in particular the bonds between the local Church and the universal Church. Their role is not so much to be intermediaries as mediators. Personal contact and relationship with the Pope is an important element in this. He mentions the personal challenges they face. It is a nomadic life and there can be a temptation to spiritual worldliness.

368

Per 101 (2012), 567-596: Giacomo Incitti: Il Consiglio del Governo nell'*Anglicanorum coetibus* e la dimensione collegiale del governo diocesano. (Article)

According to I., the constitution and functioning of the "council of government" in the Personal Ordinariates set up under *Anglicanorum Coetibus* offers a very important point of reflection on the government of the particular Churches. Beginning from a review of Vatican II's teaching on the *presbyterium* and its role within the diocese, I. passes on to consider the same juridical reality as it exists in the CIC/83. By way of conclusion, he notes that, after decades of fears and lack of movement, the intervention of the Congregation for the Doctrine of the Faith in its Norms for Personal Ordinariates is offering an opportunity to the particular Churches to reclaim and reinvigorate the collegial dimension of government that, in his view, belongs not to a tradition but to the very constitution of the Church as willed by Christ.

383

Comm 45 (2013), 129: Congregation for Eastern Churches: Decretum quoad configurationem territorialem circumscriptionum Ecclesiasticarum in Serbia et Monte Nigro. (Document)

In 2003 the Holy See erected an exarchate for Byzantine Catholics living in Montenegro and Serbia. However the Convention entered into by the Holy See and Montenegro in 2011 and taking effect on 21 June 2012 excluded

circumscriptions extending beyond the border of that country. This decree limits the exarchate to Serbian territory and entrusts the care of Byzantine-rite Catholics in Montenegro to the Latin-rite Bishop.

393

IC 53 (2013), 493-515: Juan Ignacio Arrieta: La colegialidad en la gestión del patrimonio eclesiástico. (Article)

A. analyses the juridical status of the ecclesiastical offices and bodies involved in the management of the diocesan ecclesiastical patrimony. He identifies their respective functions so as to shed light on the way in which they ought to work together, with a view to achieving a collegial approach and sense of communion in respect of the ecclesiastical patrimony, while at the same time respecting the responsibilities which the law assigns to specific offices.

401

AkK 181 (2012), 386-443: Martin Rehak: Jurisdiktionsprimat und Absetzung von Bischöfen. Systematische Nachbetrachtungen. (Article)

See below, canon 416.

416

AkK 181 (2012), 386-443: Martin Rehak: Jurisdiktionsprimat und Absetzung von Bischöfen. Systematische Nachbetrachtungen. (Article)

R. examines the internal limitations on the exercise of juridical primacy. He explores the question of whether, in the light of the theology of the episcopal order, it is appropriate to seek the dismissal of a bishop from office using administrative procedures. To dispense with the publication of the acts (mandatory in the judicial procedure) would violate the right of defence of the accused party. According to canonical tradition, such right of defence is granted by the *ius divinum naturale*. R. argues in favour of the desirability of binding juridical regulations on this matter, and for procedural norms for dismissing a bishop from office.

489

Per 101 (2012), 669-672: Supremum Signaturae Apostolicae Tribunal: Decretum generale exsecutorium de actis iudicialibus conservandis. (Document)

This is the text of the decree of the Apostolic Signatura of 13 August 2011 which gives the moderators of marriage tribunals the faculty to authorize the limited destruction of the judicial acts of marriage nullity cases. There are two conditions qualifying the permission: that the case has been concluded for more than 20 years, and that certain specified documents must be preserved. (See also *Canon Law Abstracts*, nos. 109, p. 132; 110, pp. 65-66.)

489

Per 101 (2012), 673-706: G. Paolo Montini: La conservazione degli Atti dopo la conclusione della causa di nullità matrimoniale. Commento al Decreto generale del Supremo Tribunale della Segnatura. (Article)

M. comments at length on the general executive decree of 13 August 2011 issued by the Supreme Tribunal of the Apostolic Signatura concerning the conservation of the acts of matrimonial causes and the possibility of the destruction of some of them. He traces the origins of the decree through a variety of decisions made by the Signatura, and the argument by analogy with canon 489 concerning the secret archive of the diocese, taking account of the provisions of canon 1475. M. then moves on to consider the nature of the intervention by the Apostolic Signatura and how it has been understood by commentators. Finally, he concludes by indicating four different situations where more precise particular norms will be required.

492-494

IC 53 (2013), 493-515: Juan Ignacio Arrieta: La colegialidad en la gestión del patrimonio eclesiástico. (Article)

See above, canon 393.

515

AA XVIII (2012), 29-70: Alejandro W. Bunge: La Iglesia y la parroquia del Concilio ante la Nueva evangelización: raíces y frutos de la novedad. (Lecture)

This presentation was originally delivered in a course of lectures at the Faculty of Canon Law of the Pontifical Catholic University of Argentina entitled *The Parish and the New Evangelization*. B. has a brief historical introduction to some of the theological and social developments prior to Vatican II before examining the Council's teaching on the nature of the Church, particularly as expressed in *Lumen Gentium*. He goes on to examine the meaning of the "New Evangelization" and the part the parish must play in exercising its proper missionary task.

515

Per 102 (2013), 33-53; 185-209: Roch Pagé: La paroisse d'aujourd'hui et celle de demain. (Article)

P. undertakes a study of the parish, starting out from the experience of several countries that, in the past five decades, have seen a dramatic fall-off in the number of priestly vocations. This reality has had a serious impact on the institution of the parish and has led many to ask some radical questions, such as: what exactly is the parish?; what exactly is its purpose?; can that purpose be achieved in some other way? Having examined the stark reality, taking his cue from a few initiatives in different places, P. tries to imagine what the future might be for the parish. The parish system as it existed in the past may be finished, but the Church as a community gathered around the Eucharist is not dead. Citing Jn 12:24, he finishes by asking: who knows what shape the reborn Church might have?

515

QDE 26 (2013), 273-299: Eugenio Zanetti: Comunità o figure di educatori nella Chiesa. (Article)

Z. examines the communities and organizations mentioned in the Pastoral Guidelines of the Italian Bishops' Conference for 2010-2020 (*Educare alla vita buona del Vangelo*), stressing how each element is called to act in a collective rather than an individualistic way. He sees the parish as an educative community, in which the parish priest promotes the work of all: this task will be especially important in cases where the pastoral care of a parish is entrusted in part to non-priests because of a shortage of priests. Z. also reflects on the work

of catechists in a parish. He examines the teaching role of families, and especially of parents. In this context he looks at the complex situations that can arise as a result of broken homes. He then looks at schools, which he argues should be seen as educative communities which unite a variety of groups around this task to promote communion. Teachers receive a special focus because of their importance for the task of education. Z. concludes by looking at the role of educative teams in a seminary, and at the importance of modern means of social communication for education.

517

QDE 26 (2013), 273-299: Eugenio Zanetti: Comunità o figure di educatori nella Chiesa. (Article)

See above, canon 515.

519

AA XVIII (2012), 71-81: Mauricio Landra: La secretaría parroquial: puerta de la parroquia. El párroco y sus colaboradores en la secretaría parroquial. (Lecture)

L.'s subject concerns the "parish office" and those who work there. Whether they be assistant priests, religious, or lay persons, they collaborate with the parish priest in the practical work of organizing, administering and coordinating many of the functions and activities of the parish. L. emphasizes the need for care in appointing only suitable candidates to such posts since they are effectively delegates of the parish priest. He gives some necessary qualities and some practical suggestions for the smooth running of the parish office.

529

QDE 26 (2013), 273-299: Eugenio Zanetti: Comunità o figure di educatori nella Chiesa. (Article)

See above, canon 515.

536-537

IC 53 (2013), 493-515: Juan Ignacio Arrieta: La colegialidad en la gestión del patrimonio eclesiástico. (Article)

See above, canon 393.

569

J 73 (2013), 645-679: Ordinariat militaire du Canada – Statuts commentés. Military Ordinariate of Canada – Annotated Statutes. (Documents)

The Statutes of the Military Ordinariates of Canada, annotated by Roch Pagé, are published here in the two official languages of the Military Ordinariate, French and English, with the explicit permission of the Military.

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

579

J 73 (2013), 439-462: Rose McDermott: Associations of the Faithful Becoming Religious Institutes or Societies of Apostolic Life: Responsibilities of Diocesan Bishops (Canon 579). (Article)

All baptized persons possess a natural and constitutive right to associate in their efforts to promote the mission of the Church (*Presbyterorum Ordinis*, no. 8; *Apostolicam Actuositatem*, no. 8; canon 298 §1). Some of these associations eventually become religious institutes or societies of apostolic life. Canon 302 addresses clerical associations, anomalies among associations. The members exercise sacred ministry, a function belonging within the hierarchical structure of the Church. Likewise, clerical associations differ significantly from canon 278 assuring clerics the right to associate. Because the moderators of clerical associations cannot issue dimissorial letters (canon 1019), nor can the associations incardinate members (canon 266), these associations place weighty responsibility on diocesan bishops. McD. reviews the process for an association to become a religious institute or society of apostolic life, while raising significant issues around canon 302.

603-604

J 73 (2013), 493-512: Sean O. Sheridan: Consecrated Virgins and Hermits. (Article)

S. considers from a canonical perspective two types of persons who live consecrated life as individuals – hermits and consecrated virgins. Canon 603 pertains to the "eremitic or anchoritic life", pursuant to which the canonical hermit professes in the hands of the diocesan bishop the evangelical counsels and lives according to an approved plan of life. Canon 604 describes the consecrated virgin as one who perseveres in a state of perpetual virginity although she does not publicly profess the evangelical counsels. A woman whom God calls to live as a consecrated virgin aspires also to performing works of penance and mercy, while she focuses on a life of prayer. S. concludes his discussion of hermits and consecrated virgins with case studies that provide a practical application of these canonical principles.

630

Per 102 (2013), 211-240; 3/13: 447-482: J.L. Sanchez-Girón Renedo: La cuenta de conciencia al superior: relación entre carisma y derecho. (Article)

According to canon 630 §5, superiors are not to induce in their subjects a manifestation of conscience. Instead, they are to foster with them a relationship in which such a manifestation might be made spontaneously. S.-G.R. points out that, unlike other religious institutes, the Society of Jesus has the manifestation of conscience of a subject to his superior as something that is obligatory. It does so by Papal privilege since it touches on the charism of the religious institute. He stresses that the purpose of the manifestation in the Society of Jesus is to assist in the proper discernment of the will of God for the individual. In his study, he examines how this phenomenon is also found in the proper legislation of several other religious institutes and notes that it does not attain the same charismatic centrality as is found in the Jesuits. In these institutes, strictly speaking, the manifestation of conscience is not obligatory but a recommendation.

684-685

QDE 26 (2013), 333-358: Juan Miguel Anaya Torres: La separazione dall'istituto di vita consecrata: III. L'istituzione canonica del passaggio. (Article)

A.T. begins by contrasting the competing values of stability in the community and the freedom of the Spirit. He traces the law on the passage of religious from one institute to another from the CIC/17, through the revision process, to look at the present law. Perhaps the most significant change is that passage no longer requires the intervention of the Holy See, but can be effected by the decision of the two superiors general of the different institutes (though proper law may add additional requirements). There is also a simplified procedure for transfer between two monasteries. A. concludes with an examination of an Authentic Interpretation in 1987 which established that the possibility of passage is only open to the perpetually professed. The article concludes with an appendix offering a formulary of sample documents.

665

EE 88 (2013), 671-698: Teodoro Bahíllo Ruiz: Religiosos ausentes y exclaustrados. Problemática subyacente al ejercicio de algunos derechos y obligaciones. (Article)

A religious who is given permission for absence from his or her community or an indult of exclaustration is in a particular situation affecting a number of rights and duties relating to the vow of poverty (limited and dependent use of goods), participation in the life of the institute (the exercise of his or her active and passive vote within the institute), and the carrying out of the apostolate (permissions, prohibitions and sanctions). B.R. stresses the difference between absence and exclaustration. Absent religious continue to be fully religious, and should live in full accordance with their membership and communion with the institute. Exclaustrated religious continue to be religious but the indult separates them temporarily from the life of the institute. If the exemptions sought in relation to the vows of poverty and obedience and participation in the life of the institute are more significant, it is clear that an indult of exclaustration is the right solution. In order to avoid absent religious losing their religious identity through their way of living poverty or organizing the practice of the apostolate, it is necessary to set out clearly appropriate ways of life and practices in the document granting permission for absence or the indult of exclaustration.

670

SC 47 (2013), 479-526: Jurisprudence – Just and Equitable Subsidy to an Exclaustrated Religious (Mexico). Competence of the Roman Rota. I: Decree *coram* Bruno, 5 February 1992; II: Decree *coram* Pompedda, 25 November 1992; III. Decree *coram* López-Illana, 26 January 2001; IV. Decree *coram* Boccafola, 6 June 2002; V. Decree *coram* Erlebach, 10 March 2006; VI. Sentence *coram* Arellano Cedillo, 18 October 2011. (Decrees and sentence)

In view of a chronic depressive neurosis suffered by G., a professed religious, the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life CICLSAL) in 1984 granted her exclaustration *ad nutum Sanctae Sedis* for as long as the necessity lasted, and stipulated that her institute should provide her with whatever was necessary by way of maintenance and sustenance. In 1988 an agreement was reached whereby the institute agreed to pay G. a daily sum of $10 for two years. On 15 May 1991 G. presented a *libellus* to the Rota claiming that the institute was not complying with its duty. On 5 February 1992 the Rota declared itself incompetent to deal with the matter, because it was being pursued before the CICLSAL and the administrative recourse before that Congregation had not reached its conclusion. G.'s curator appealed to a different

turnus of the Rota, which on 25 November 1992 overturned the decree of 5 February 1992, on the basis of a distinction it drew between the administrative nature of the decree of the CICLSAL, and the subjective right deriving from the same decree; on the strength of this latter right the Rota admitted the *libellus*, and on 23 July 1993 the Rotal *ponens* increased the amount of the daily allowance to $15; by a further decree of 13 December 1999 this was increased to $25 per day. A further *turnus*, however, rejected the distinction between the administrative recourse and G.'s subjective right as being too abstract in this case, and on 26 January 2001 once more declared the incompetence of the Rota to deal with the matter. Another *turnus*, asked to deal with the question of whether G. had the right to appeal against the decree of 26 January 2001, declared that she did have such a right, and that the decree of 26 January 2001 should be overturned, as it was wrongly based on the assumption that the claim arose out of the original decree of the CICLSAL (against which G. was not in fact aggrieved); her subjective right to sustenance was clearly distinguished from that decree. On 10 March 2006 another *turnus* declared that the two decrees of 23 July 1993 and 13 December 1999 concerning the living allowance were valid (although the decree of 13 December 1999 no longer had any force as from 15 June 2001, because on that date the CICLSAL had revoked G.'s exclaustration). A final *turnus* was asked to resolve through a definitive sentence the amount of the daily allowance to be paid to G., which it fixed at $27.

686

SC 47 (2013), 479-526: Jurisprudence – Just and Equitable Subsidy to an Exclaustrated Religious (Mexico). Competence of the Roman Rota. I: Decree *coram* Bruno, 5 February 1992; II: Decree *coram* Pompedda, 25 November 1992; III. Decree *coram* López-Illana, 26 January 2001; IV. Decree *coram* Boccafola, 6 June 2002; V. Decree *coram* Erlebach, 10 March 2006; VI. Sentence *coram* Arellano Cedillo, 18 October 2011. (Decrees and sentence)

See above, canon 670.

686-687

EE 88 (2013), 671-698: Teodoro Bahíllo Ruiz: Religiosos ausentes y exclaustrados. Problemática subyacente al ejercicio de algunos derechos y obligaciones. (Article)

See above, canon 665.

694-700

EE 88 (2013), 699-729: José Luis Sánchez-Girón Renedo: La expulsión de un instituto religioso en los cánones 694-700 a la luz de la normativa del CIC en materia penal. (Article)

There are several reasons for considering that expulsion from a religious institute under canons 694-696 is not treated by the Code as a canonical penalty (although there are a number of arguments to the contrary). Such an approach, which could be sustained in relation both to elements of a substantive nature and to procedural aspects, would deserve special attention should there ever be an attempt to integrate expulsion from a religious institute into the law of the Church as a canonical penalty.

725

RDC 61/2 (2011), 139-152: Rémy Lebrun: Les fidèles associés à un institut religieux ou à une société de vie apostolique: une réalité en marge du c. 725. (Article)

The CIC/83 makes provision for a secular institute to associate with itself other members of Christ's faithful. This situation originates in the history of canon 725. However, many religious institutes and societies of apostolic life have, over time, built up special relationships with faithful known as "associated lay people". This is especially so with monastic orders, within which these new ways of life, developed towards the end of the 20th century, seem to have drawn their inspiration.

BOOK III: THE TEACHING OFFICE OF THE CHURCH

772

REDC 70 (2013), 637-652: María J. Roca: Ámbito de libertad y límites en las declaraciones emitidas por las Asociaciones públicas de los fieles. (Article)

See above, canon 315.

773-780

QDE 26 (2013), 273-299: Eugenio Zanetti: Comunità o figure di educatori nella Chiesa. (Article)

See above, canon 515.

793

QDE 26 (2013), 264-272: Mauro Rivella: Per una lettura giuridica degli *Orientamenti pastorali* della CEI sull'educazione. (Article)

R., while acknowledging that the Pastoral Guidelines (*Orientamenti pastorali*) published for every ten-year period by the Italian Bishops' Conference are not legal norms, examines the most recent set, which are on education (*Educare alla vita buona del Vangelo*), to show how they illustrate the duties and rights both of the community and of individuals concerning education. R. sees significant parallels with some of the key canons which establish duties and rights in this area: both sources should stimulate the faithful as individuals and as communities to commit themselves to the task of education.

793-806

QDE 26 (2013), 300-332: Matteo Visioli: Le dichiarazioni sull'educazione della Conferenza episcopale spagnola alla luce dei principi conciliari. (Article)

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

793-821

LW 116/5 (2010), 292-310: Jerome Chinganthara: Catholic Education: Perspectives of Canon Law. (Article)

C. examines the concepts of Catholic/Christian education and education in general, before going on to look at the role of the Church as educator, and the provisions of the CIC/83 relating to schools, the freedom of parents to choose schools, the role of religious communities in education, control over schools by Church authorities, Catholic colleges and universities, and ecclesiastical universities and faculties. The Church community as the People of God has a co-responsibility to make her members true citizens of God and of civil society in the present age, to transform the world by adhering to the message of Christ and His Church, thereby enabling them to enjoy a balanced progress in their Christian formation and their preparation for life in the world. The Catholic education of the faithful is an education for dynamic Catholic living. There is an intellectual content of truth to be learned and understood, and together with that knowledge there is a person, Jesus Christ, God the Son, who is to be met and loved. Subject to the authority of the diocesan bishop, the pastor of the parish, because of his ecclesiastical office as pastor, is responsible for the Catholic education of everyone in the parish. The pastor's obligations and rights with respect to the education of children do not supersede the natural obligations and rights of parents who are themselves bound to care for the Christian upbringing of their own children, as is made clear by the Vatican II Declaration on Christian Education *Gravissimum Educationis*, no. 6.

795-796

QDE 26 (2013), 264-272: Mauro Rivella: Per una lettura giuridica degli *Orientamenti pastorali* della CEI sull'educazione. (Article)

See above, canon 793.

803

QDE 26 (2013), 273-299: Eugenio Zanetti: Comunità o figure di educatori nella Chiesa. (Article)

See above, canon 515.

804-805

EE 88 (2013), 849-871: Jorge Otaduy Guerín: La idoneidad de los profesores de religión católica y su desarrollo jurisprudencial en España. (Article)

The Concordat between the Holy See and Spain sets out a framework for the teaching of the Catholic religion at non-university levels in the education system, which is compulsory for educational institutions and voluntary in terms of student attendance. Under the terms of the Concordat, the "nomination" of religion teachers to the relevant administrative authority is a right reserved to the Ordinary of the diocese, so as to ensure the suitability of candidates for the post of religion teacher. The Ordinary's authority to revoke any such statements of suitability, and the State's jurisdictional prerogative in overseeing such decisions, are matters of some dispute. A series of judgments handed down by the Spanish Constitutional Court since 2007 have addressed these issues. The European Court of Human Rights has also done so, in a 2012 judgment relating to Spain. O.G provides a comprehensive account of the question.

816

AnCrac 44 (2012), 275-286: Jan M. Dyduch: Charakterystyka statutu Uniwersytetu Papieskiego Jana Pawła II w Krakowie (= Characteristics of the statutes of the Pontifical University of John Paul II in Cracow). (Article)

The foundation of the Pontifical University of John Paul II on 19 June 2009 required a new set of statutes. These were adopted by the university senate on 23 February 2009 and handed over to Cardinal Zenon Grocholewski, Prefect of the Congregation for Catholic Education, on 26 May 2009. After making certain observations on the statutes, the Congregation approved them on 2 May 2010. The statues regulate the activity of the entire academic community and its individual faculties. They emphasize the evangelizing role of the university, its independence and autonomy with regard to the civil authorities, and the harmony between the canonical norms and the State regulations applicable to universities.

BOOK IV: THE SANCTIFYING OFFICE OF THE CHURCH

838

Comm 45 (2013), 130-133: Congregation for Divine Worship and the Discipline of the Sacraments: Decretum quo Congregatio pro Cultu Divino et Disciplina Sacramentorum statuit nominis Sancti Ioseph mentionem in orationibus Eucharisticis II, II et IV Missalis Romani faciendam (lingua latina una cum versione italica). (Document)

Pope John XXIII added the name of St Joseph to the Roman Canon. Pope Benedict XVI decided to add the name of St Joseph to Eucharistic Prayers II, II and IV of the Roman Missal, a decision confirmed by Pope Francis.

838

N XXXXIX 5-6/13, 217-235: Congregatio de Cultu Divino et Disciplina Sacramentorum: Inserimento del nome di San Giuseppe nelle altre Preghiere Eucaristiche. (Document)

See preceding entry. The text is given in Latin, Spanish, English, Italian, Portuguese, French, German and Polish.

838

RMDC 19 (2013), 220-223: Congregación para el Culto Divino y la Disciplina de los Sacramentos: Decreto, con el que se añade el nombre de San José en las Plegarias eucarísticas II, III y IV del Misal Romano. (Document)

Spanish text of the document referred to in the preceding entries.

838

N XXXXIX 5-6/13, 248-254: M. Barba: Il culto di San Giuseppe nella Tradizione della Chiesa. (Article)

See preceding entries. B. sets out briefly the development of devotion to St Joseph and explains the decision to incorporate his name in Eucharistic Prayer's II, III and IV of the Roman Missal.

838

N XXXXIX 5-6/13, 236-247: Congregatio de Cultu Divino et Disciplina Sacramentorum: Approvazione di Litanie cristologiche: Decretum. (Document)

This decree gives approval to and includes the text of two Christological litanies: the Litany of Our Lord Jesus Christ, Priest and Victim; the Litany of the Most Blessed Sacrament.

838

N XXXXIX 5-6/13, 255-274: M. Barba: L'approvazione di due Litanie cristologiche. (Article)

B. prefaces his explanation of the recent approval of two new Christological litanies by setting out briefly the history of Papal intervention in the approval of popular devotions such as litanies, including that of Loreto, and those of the Holy Name, the Sacred Heart, St Joseph and the Precious Blood. Both the new litanies have their roots in French spirituality of the 17th century. The approval of that in honour of Christ, Priest and Victim, arose from the Year of the Priest decreed by Pope Benedict XVI and subsequent approval of the Feast of Christ the Eternal High Priest. It was included in the *Compendium Eucharisticum* published by the Congregation for Divine Worship and the Discipline of the Sacraments in 2009.

840-848

N XXXXIX 7-8/13, 321-332: Pope Francis: Litterae Encyclicae "Lumen Fidei". (Document)

Here *Notitiae* prints in Latin those sections of the Encyclical *Lumen Fidei* that refer to the Sacraments, nos. 37-49.

840-848

N XXXXIX 7-8/13, 333-345: Pope Francis: Lettera Enciclica "Lumen Fidei". (Document)

Here *Notitiae* prints in Italian those sections of the Encyclical *Lumen Fidei* that refer to the Sacraments, nos. 37-49.

BOOK IV, PART I, TITLE I: BAPTISM

850

N XXXXIX 1-2/13, 54-56: Congregatio de Cultu Divino et Disciplina Sacramentorum: Decretum. (Document)

This decree makes several changes in the wording of the Rite of Baptism for Infants, replacing more general expressions such as "the Christian community" with the more explicit "the Church of God" in nos. 41, 79, 111, 136 and 170 of the Latin text of the *Ordo*. The incorporation of these changes in future vernacular editions is committed to the Conferences of Bishops.

852

AnC 9 (2013), 93-117: Tomascz Jakubiak: Intencja przyjęcia chrztu u dorosłego (= Intention of receiving baptism by an adult). (Article)

See below, canon 865.

865

AnC 9 (2013), 93-117: Tomascz Jakubiak: Intencja przyjęcia chrztu u dorosłego (= Intention of receiving baptism by an adult). (Article)

As far as the reception of baptism is concerned, everyone who has attained the use of reason has the rights and responsibilities of an adult. Those who are not of sound mind, or are incapable of personal responsibility, are considered to be infants. An adult cannot be validly baptized without wanting to be baptized. A person who has attained the use of reason and subsequently lost it must have manifested, while rational, the intention of being baptized, in order to receive the sacrament validly. This manifestation of will constitutes a requirement *ad validitatem* of the celebration of baptism. Most canonists have maintained that a habitual intention is sufficient: that is, an intention once given is considered to remain if not withdrawn; hence actual or virtual intention is not required. Others have added that it is also sufficient for the intention to be implicit, e.g. contained in the explicit intention of doing whatever God or Jesus wants.

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

915

AnC 9 (2013), 139-159: Marek Zaborowski: Ograniczenie prawa wiernego do Eucharystii – kan. 915 *Kodeksu prawa kanonicznego* z 1983 roku (= Restricting the faithful's right to holy Communion – canon 915 of the Code of Canon Law 1983). (Article)

The issue of admitting Catholic faithful to holy Communion has always been a difficult one in the history of the Church. The Church's position as expressed in canon 915 of the CIC/83 seems strict, but is in accordance with her constant and unchanging teaching. Catholics who are under excommunication or interdict after the imposition or declaration of the penalty, and others who obstinately persist in manifest grave sin, should always be aware that it is not the Church that restricts their rights, but it is they who deprive themselves of such rights. This is not a new teaching or a tightening up of ecclesiastical discipline; rather, it is a continuation of the teaching of Christ.

915

IE XXV (2013), 617-639: Héctor Franceschi: Divorziati risposati e nullità matrimoniali. (Article)

See below, canon 1085.

915-916

J 73 (2013), 325-337: Gerhard Ludwig Müller: Testimony to the Power of Grace. On the Indissolubility of Marriage and the Debate Concerning the Civilly Remarried and the Sacraments. (Article)

The problem concerning members of the faithful who have entered into a new civil union after a divorce is not new. The Church has always taken this question very seriously, with a view to helping the people who find themselves in this situation. Marriage is a sacrament that affects people particularly deeply in their personal, social and historical circumstances. Given the increasing number of persons affected in countries of ancient Christian tradition, this pastoral problem has taken on significant dimensions. Today even firm believers are seriously wondering: can the Church not admit the divorced and remarried to the sacraments under certain conditions? Are her hands permanently tied on this matter? Have theologians really explored all the implications and consequences? These questions must be explored in a manner that is consistent with Catholic

doctrine on marriage. In the light of the announcement of an Extraordinary Synod on the pastoral care of the family, to take place in October 2014, M., the Prefect of the Congregation for the Doctrine of the Faith, reflects on the pastoral care of divorced and civilly remarried members of the faithful.

924-925

AnC 9 (2013), 75-92: Jerzy Adamczyk: Choroba celiakii w odniesieniu do sakramentu święceń (= Coeliac disease and the sacrament of holy Oorders). (Article)

See below, canons 1029-1030.

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

959

J 73 (2013), 513-537: Edward N. Peters: Video Communications Technology and the Sacramental Confessions of Deaf Catholics. (Article)

P. outlines the urgent pastoral need to improve access to the sacrament of penance among deaf Catholics and examines whether deaf Catholics should, notwithstanding sacramental and canonical scholarship opposing the use of technology in the sacrament of penance, be allowed to use modern video communications technology to approach remote confessors, accuse themselves of sin, and receive absolution validly and licitly. The chief objections to using video technology in the sacrament of penance – especially in regard to the requirement of a "moral presence" between confessor and penitent – are assessed in the light of recent ecclesiastical and technological developments that suggest that modern video technologies can support such moral presence. Older arguments for allowing hearing Catholics to use communications technology in their celebration of penance under certain circumstances are applied to the current situation of deaf Catholics. Finally, P. offers a canonical mechanism for regulating the video-enabled celebration of the sacrament of penance.

983-984

ACR XC 1/13, 3-21: Brendan Daly: Seal of Confession: A Strict Obligation for Priests. (Article)

After recalling the New Zealand priest killed by the Japanese in 1943 for refusing to break the seal of confession, and regarded widely as a martyr for his fidelity to his priestly obligations, D. gives a potted history of the seal of confession. He considers varied theological opinions until 1682 when the Holy Office declared the seal to be absolute. The juridical formulation of the seal and the penalties for its violation as expressed in both the 1917 and 1983 Codes are then considered. B. asserts that moral impossibility to confess would include a concern that the confessor might break the seal. He also notes the 1983 Code's distinguishing between the seal and the obligation of secrecy; as well as doubts in connection with the violation of the seal. He considers all penalties in relation to direct and indirect violation of the seal and what is under the competence of the Congregation for the Doctrine of the Faith. Finally, he deals with the priest-penitent privilege in the common law system, and its application within New Zealand and Australia.

983-984

AkK 181 (2012), 444-466: Thomas Meckel: Das Beichtgeheimnis und das Seelsorgegeheimnis im Spiegel der Grundrechte der Christgläubigen. (Article)

The seal of the confessional is one of the oldest juridical concepts in the Church. This is clear from the fact that the faithful enjoy a fundamental right to protect their most intimate sphere and their good reputation, according to canon 220 of the CIC/83. The seal of the confessional is rooted in natural law, and as such it should also in the future be protected absolutely – not only by the Church (which enshrines the inviolability of this principle in canon 983 and imposes penalties for the breach of the seal in canon 1388), but also by the State (the German State guarantees this seal in its constitution and also in a number of concordats entered into at the level of the "Lander"). M. examines the extent and the protection of the confidentiality relating to sacramental confessions and to the wider sphere of pastoral care, as enshrined in ecclesiastical and State law. Those employed in pastoral care enjoy, according to German law, a right to refuse to give evidence, in order to protect the aforementioned fundamental rights pertaining to the realm of the seal of the confessional and other forms of private information obtained whilst exercising pastoral care.

988

J 73 (2013), 513-537: Edward N. Peters: Video Communications Technology and the Sacramental Confessions of Deaf Catholics. (Article)

See above, canon 959.

992-997

Comm 45 (2013), 134-135: Apostolic Penitentiary: Decretum Paenitentiariae Apostolicae quo, occasione "XXVIII Mundialis Iuvenum Diei", Indulgentiarum conceditur donum, die 24 mensis iunii 2013 datum. (Document)

To mark the 28th World Youth Day the Apostolic Penitentiary grants indulgences to those taking part in the event, morally present through television or other media, and those supporting it through prayer.

BOOK IV, PART I, TITLE VI: ORDERS

1015

J 73 (2013), 463-492: Phillip J. Brown: Diocesan Institutes and Societies of Apostolic Life: Formation of Members for Holy Orders. (Article)

B. examines the canonical norms for the formation and ordination of priests with respect to candidates from diocesan institutes and societies of apostolic life. Noting that the principal responsibility is always that of a candidate's "proper" bishop (canon 1015), major superiors also always have a significant role to play. For pontifical right institutes and societies the major superior can grant dimissorials for the diaconate and the presbyterate for his members (canon 1019), but for diocesan right institutes and societies it is ultimately for the bishop to ordain or grant dimissorials. Bishops and major superiors should collaborate in all aspects of formation and evaluation of such candidates. B. reviews the relevant canonical norms and offers suggestions about how major superiors and bishops might better collaborate in this ecclesial task.

1019

J 73 (2013), 463-492: Phillip J. Brown: Diocesan Institutes and Societies of Apostolic Life: Formation of Members for Holy Orders. (Article)

See above, canon 1015.

1025

RDC 61/2 (2011), 113-138: Justin-Sylvestre Kette: Changer les mentalités en matière d'admission des personnes handicapées physiques au sacrement de l'ordre. (Article)

See above, canon 241.

1029

J 73 (2013), 463-492: Phillip J. Brown: Diocesan Institutes and Societies of Apostolic Life: Formation of Members for Holy Orders. (Article)

See above, canon 1015.

1029

RDC 61/2 (2011), 113-138: Justin-Sylvestre Kette: Changer les mentalités en matière d'admission des personnes handicapées physiques au sacrement de l'ordre. (Article)

See above, canon 241.

1029-1030

AnC 9 (2013), 75-92: Jerzy Adamczyk: Choroba celiakii w odniesieniu do sakramentu święceń (= Coeliac disease and the sacrament of holy Orders). (Article)

Some of those who suffer from coeliac disease may be unable to receive holy Communion under the form of bread. A. explains the characteristics and phenomenon of coeliac disease. He then discusses the possibilities for receiving holy Communion. Finally he raises the question of the admission of those with coeliac disease to holy Orders.

1040-1041

RDC 61/2 (2011), 113-138: Justin-Sylvestre Kette: Changer les mentalités en matière d'admission des personnes handicapées physiques au sacrement de l'ordre. (Article)

See above, canon 241.

1041

BV 73 (2013), 453-486: Stanislav Slatinek: Poskus samomora in kanonsko pravo (= Attempted suicide and canon law). (Article)

Attempted suicide is a very serious problem in Western Europe. Research shows that Slovenia suffers from a very high suicide rate; girls more often than boys inflict damage upon themselves. The main reason for attempted suicide is depression in childhood and adolescence. Among young men even some candidates for sacred orders and religious life mutilate themselves. According to the Code of Canon Law, whoever has attempted suicide is irregular for the reception of orders and for carrying out ministry, and needs a dispensation from a competent authority (the Apostolic See, Bishop Ordinary, Apostolic Penitentiary). When a cleric runs the risk of causing scandal, he can obtain a temporary dispensation so that he can continue to carry out his ministry until he receives a dispensation from a competent authority. The Church and civil

society are faced with the difficult task of jointly helping those who are in grave danger of taking their own life.

1051

RDC 61/2 (2011), 113-138: Justin-Sylvestre Kette: Changer les mentalités en matière d'admission des personnes handicapées physiques au sacrement de l'ordre. (Article)

See above, canon 241.

BOOK IV, PART I, TITLE VII: MARRIAGE

1055

AnC 9 (2013), 161-182: Marta Mucha: Zderzenie katolickiej i muzułmańskiej wizji małżeństwa – podstawowe trudności (= The clash between the Catholic and the Muslim vision of marriage – fundamental difficulties). (Article)

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

1055

AnCrac 44 (2012), 297-306: Józef Krzywda: Irracjonalność legalizacji związków homoseksualnych wobec jedynej i niepowtarzalnej wartości i iroli małżeństwa i rodziny (= Irrationality of legalization of homosexual partnerships vis-à-vis the unique and irreplaceable value and role of marriage and the family). (Article)

The problem dealt with by K. in this article refers to the legalization of homosexual partnerships which meets strong opposition not only from the Church but also from all who believe that marriage and the family, rooted in the natural divine law, constitute the guarantee of the proper development of individual persons and societies. A common-sense rational argument (*recta ratio*) in favour of respect for the natural law, verified in the entire experience of human society by the existence of marriage and the family, is incompatible with the authorizing and legitimizing of partnerships of persons of the same sex. As Pope John Paul II said, rejection of God as Creator, and as the source of determining what is right and wrong, stands as the root cause of the contesting of the notion of "human nature". Therein lies the essence of the problem of evil. There exists, then, a justified hope that the proposals in question will be disapproved and rejected by all who follow *recta ratio*.

1055

Comm 45 (2013), 39-43: Pope Benedict XVI: Allocutio Summi Pontificis ad Auditores, Administros Advocatosque Rotae Romanae coram admissos die 26 mensis ianuarii 2013 prolata. (Address)

In the context of the Year of Faith Pope Benedict takes as his theme for the annual address to the Rota the relationship between faith and marriage. In order to be a sacrament marriage does not, theologically, require personal faith on the part of the couple entering marriage, but the aspects of intention and faith cannot

be completely separated. Undoubtedly rejection of the faith makes it more difficult to fulfil the obligations of marriage as understood by the Church and can reach a point where the validity of the contract is imperilled. The Pope concludes with a brief reflection on the good of the spouses.

1055

FCan VIII/1 (2013), 69-91: Miguel Falcão: A essência do matrimónio: I. A perspectiva do Concílio Vaticano II. (Lecture)

F. studies the essence of marriage from the perspective of Vatican II. Some interpreted Vatican II's teaching on conjugal love as a turning point in the understanding of marriage, and considered marriage to be dependent on the continuance of love. Navarrete, whose views are set out in some detail in this lecture, attempted along with others to integrate the Council's teaching into the classical doctrine on the essence of marriage. F. refers to the interventions of the Apostolic Signatura against judicial decisions which, taking as their starting point that conjugal love was essential to marriage, regarded a marriage as ended once that love had disappeared. The Signatura has reaffirmed that the essential object of matrimonial consent is the mutual self-giving and acceptance of the spouses. In an address to the Roman Rota in 1976, Pope Paul VI resolved the matter in the similar way to the Signatura, distinguishing between love as a feeling and love as commitment: the feeling may disappear but the commitment endures.

1055

Ius IV 1/13, 3-10: C. Thunduparampil: Sacrament of Marriage and Canon Law. (Article)

See above, CCEO canon 776.

1055

PS XLVIII 145 (2013), 435-446: Dean Jeanpaul D. Menchavez: Lessons on Marriage from the Speeches to the Roman Rota. (Article)

This article is a compilation of selected texts on the institution of marriage gathered from the addresses of Popes John Paul II and Benedict XVI to the Roman Rota. Among the faithful of the Catholic Church the normative value of these addresses has already been thoroughly studied and well-founded. The addresses are valuable tools for the interpretation of the law. M. studies the applicability of the principles contained in the addresses to Philippine law,

noting the similarities between canon law and the Family Code of the Philippines. He looks in turn at the nature of marriage; its indissolubility; the role of the declaration of nullity; the Christian anthropology needed in order to understand the reality of marriage; and some pastoral considerations flowing from the application of these Christian principles.

1055

REDC 70 (2013), 389-413: Raúl Berzosa Martínez: La exclusión del bien de los cónyuges. (Conference presentation)

See below, canon 1101.

1055

RMDC 19 (2013), 107-152 and **189-196: Rogelio Ayala Partida: Fides et foedus: la esencia de la alianza conyugal.** (Article)

Pope Benedict XVI's address to the Roman Rota of 26 January 2013 (see above, pp. 71-72) marked out a line of research in the area of the theological, anthropological and juridical aspects of the relationship between faith and the marriage covenant: between *fides* and *foedus*. While the level of faith in an individual does not in principle have a direct bearing on the validity of the matrimonial pact, it would not be true to say that it is totally irrelevant. A person capable of God and called by God to happiness cannot produce good fruit without a relationship and link with the Creator. So too in marriage it is not possible to produce the supernatural fruit befitting the greatness of the sacrament without a disposition to faith. The disintegration of the family and of society itself finds its roots precisely in the loss of the sense of God, as a result of which the institution of marriage is suffering damage brought about by selfishness, self-centredness, and the error that regards conjugal fidelity, indissolubility and other matrimonial values as contrary to human freedom and dignity. Pastoral care in relation to marriage and the family needs to focus on the remote, proximate and ongoing preparation for the sacrament of marriage. Only in this way will it be possible to form consciences in the truth and to avoid the breakdown of marriage caused by adverse social factors. The challenge facing tribunals is to develop procedures to help discover any dichotomy between faith and life, as an invalidating factor of consent, in accordance with Rotal jurisprudence, constantly keeping in view the social phenomenon which can be a powerful influence in changing the contemporary understanding of the concept of marriage.

1057

Per 102 (2013), 241-277: Piero Antonio Bonnet: Il diritto ecclesiale 'in signo fidei' e l'indissolubilità del matrimonio sacramento. (Article)

In his address to the Roman Rota in 2012, Pope Benedict XVI devoted his attention to the emergence of a trend in canon law that might be defined as "positivistic" or even "juridically creative". Taking these remarks of the Pope as his starting point, B. reviews the fundamental concepts and teaching that underpin the Church's current understanding of the relationship between faith and law and, more specifically, between the consummation and non-consummation, the indissolubility and dissolubility of marriage. In the second part of the article, B. reviews the meaning of the term "consummation" in canonical doctrine and the wider understandings of the term that ultimately touch not on the essence of marriage, its *esse*, but on its *bene esse.*

1061

AnCrac 44 (2012), 307-319: Andrzej Wójcik: Konsekwencje prawne dopełnienia i niedopełnienia małżeństwa w prawie kanonicznym (= Legal consequences of consummation and non-consummation of marriage in canon law). (Article)

See below, canons 1141-1142.

1061

Per 102 (2013), 241-277: Piero Antonio Bonnet: Il diritto ecclesiale 'in signo fidei' e l'indissolubilità del matrimonio sacramento. (Article)

See above, canon 1057.

1063

RMDC 19 (2013), 107-152 and **189-196: Rogelio Ayala Partida: Fides et foedus: la esencia de la alianza conyugal.** (Article)

See above, canon 1055.

1063-1065

EE 88 (2013), 731-752: Aurora María López Medina: La preparación para el matrimonio. Aspectos jurídicos en documentos eclesiásticos. (Article)

In 1996 the Pontifical Council for the Family published some norms for episcopal conferences to follow in drawing up directories to regulate marriage preparation. In 2003 the Spanish Episcopal Conference devoted one of the chapters of its Directory on the Pastoral Care of the Family to this topic. L.M. analyses how the suggestion contained in the Pontifical Council's document have been interpreted in Spain and how they relate to other similar documents, such as Benedict XVI's address to the Rota in January 2011.

1063-1072

AA XVIII (2012), 11-28: José Bonet Alcón: El matrimonio en la parroquia: preparación, celebración, atención pastoral. (Lecture)

This presentation was originally delivered in a course of lectures at the Faculty of Canon Law of the Pontifical Catholic University of Argentina entitled *The Parish and the New Evangelization*. B.A. examines the principal areas covered by the canons dealing with the pastoral care and the prerequisites for the celebration of marriage. He gives practical examples of such pastoral marriage preparation with references to the Apostolic Exhortation *Familiaris Consortio* and the Pontifical Council for the Family's *Preparation for the Sacrament of Marriage*.

1067

Ius IV 1/13, 121-142: Deepa: The Importance of the Pre-Nuptial Enquiry according to CIC c. 1067 and CCEO c. 784 in the Kerala Context. (Article)

Following exhaustive research D. offers a general understanding of pre-nuptial investigation. After explaining the purpose of canons 1067 (CIC/83) and 784 (CCEO), setting out the norms on such investigations, she highlights the challenges and problems involved in conducting the pre-nuptial enquiry, and in the light of this proposes some ways to make these more effective. Issues raised include reverential fear, age, arranged or assisted marriages, differences in religion, culture or caste and the role of marriage brokers.

1077

EE 88 (2013), 753-765: Laura Armentia Espigares: Algunas cuestiones prácticas acerca del veto judicial en las causas de nulidad matrimonial. (Article)

See below, canon 1684.

1085

IE XXV (2013), 617-639: Héctor Franceschi: Divorziati risposati e nullità matrimoniali. (Article)

The divorced who remarry civilly is a phenomenon which is multiplying rapidly in the Church and is something that poses a significant challenge. The many different solutions proposed to the problem, ranging from the most stringent of the last century to the more "pastoral" ones of more recent years, all contradict the fundamental principle of the indissolubility of marriage. While some solutions openly deny the indissolubility of marriage itself, others avoid such an extreme but nonetheless succeed in placing it in serious doubt. In this article F. analyses these situations and proposes possible solutions in the light of the Church's Magisterium, particularly the teaching of the recent Popes, in accordance with the truth of what marriage actually is. Such solutions take into account both mercy and charity, while respecting and defending the truth, which are essential elements of a true pastoral activity that contributes to making the demands of the faith more attractive to the faithful.

1085

Ius IV 1/13, 143-160: S. Kadamthodu: Kerala Agreement on Inter-Church Marriages and Dissolution of Marriage Bond. (Article)

See above, CCEO canons 780-781.

1086

AkK 181 (2012), 467-486: Georg Dietlein – Jan-Gero Alexander Hannemann: Katholisch ohne Kierchensteuer? Bleibende Unklarheiten nach dem Allgemeinen Dekret der Deutschen Bischofskonferenz vom 15. März 2011. (Article)

This article discusses the content, effects and juridical force of the General Decree of the German Bishops' Conference of 15 March 2011, concerning the canonical implications of withdrawal of membership of the Church according to

State law, meaning – since the German State treats Church as a corporate body – withdrawal from that body only, as expressed in the Letter of the Pontifical Council for Legislative Texts of 13 March 2011 with regard to withdrawal of membership of the Church. It also draws attention to the practical consequences of the two approaches in this matter. The authors conclude that an immediate juridical conflict is unlikely, and maintain that precedence should be given to the local Ordinary's judgement with regard to the membership status of a Christian who has withdrawn his Church membership.

1086

FCan VIII/1 (2013), 9-36: José Antonio Fuentes: Matrimonios mixtos y con disparidad de cultos en la actualidad. El matrimonio de cristianos con musulmanes. (Article)

F. highlights the difficulties arising from mixed marriages and marriages involving disparity of cult. Such problems are evident in marriages between Catholics and Muslims. F. explains the basis of the canonical provisions establishing limitations on this type of marriage. He studies the effect of the *motu proprio Omnium in mentem* (26 October 2009) in relation to marriages with disparity of cult and explains the position of the Church on why marriage between Catholics and non-baptized without the necessary dispensation from disparity of cult is invalid. See also above, General Subjects (*Comparative law*).

1091

Per 102 (2013), 279-305: Maurizio Faggioni: Maternità surrogata. Un nuovo impedimento? (Article)

Surrogate parenthood has become a feature of life in many Western societies. F. considers this contemporary phenomenon in its many different forms in the context of a reflection on the need to widen the traditional concepts of consanguinity and affinity. He wonders if the time is not right to establish a new matrimonial impediment precisely concerning the relationships involving children of surrogate mothers and others to whom they might be related. In some cases, there is clearly the possibility of invoking the impediment of consanguinity as it already exists; in others, there is no such clarity. Perhaps the time has come to act in order to prevent unforeseen canonical consequences.

1095

AA XVIII (2012), 85-133: Carlos Baccioli: Propuestas desde la psicopatología y la psiquiatría para una posible revisión del can. 1095. (Article)

B. establishes the principle and gives examples of how some changes have already been made in various canons of the present Code of Canon Law, including some dealing with matrimonial law. He then goes on to look at the possibility of a revision of canon 1095, focusing on the meaning and understanding of "causes of a psychological nature", indicating the differing interpretations, some more ample, some more restrictive, offered by a number of leading canonists. The more "personalist" interpretation of marriage in Vatican II and the developments in the sciences of psychology and psychiatry have led to a greater understanding of the psychological aspects involved in marriage consent. Following John Paul II's recognition in his 1984 address to the Rota that certain generic canons still await further determination, B. proceeds to propose some necessary revisions to canon 1095 due to difficulty in its interpretation, and its indiscriminate and superficial use in many tribunals leading to an increasing abandonment of other grounds of nullity. One of the obvious problems in the use of canon 1095 is the lack of uniformity of criteria among psychologists and psychiatrists, different schools of thought proposing quite varying criteria in the diagnosis and gravity of psychological problems. There is a need, therefore, to find a "common language", a unified understanding of what is meant by personality disorders, their classification and their degree of gravity. Marriage difficulties cannot in themselves be a sufficient cause of nullity, nor can relatively slight psychic anomalies; a personality disorder must be shown clinically to be grave, and that gravity must be such as to produce canonical gravity with specific reference to marriage. Personality disorders may be latent and not manifest at the time of consent, and even in manifest disorders there may be "lucid" periods of considerable duration. These, however, cannot be regarded as a cure but rather recurring episodes in the ongoing development of the disorder. B. proposes that the phrase "due to causes of a psychic nature" be applied to each of canons 1095-1103 dealing with marriage consent, distinguishing "psychological causes" (canons 1096-1099), "psycho-ethical causes" (canons 1101-1103), and "psycho-pathological causes" (canon 1095). He proposes the addition of a fourth paragraph to canon 1095, namely "lack of the will, or the inability to *decide* to assume the essential obligations of marriage". He also suggests that the phrase "the inability to assume" be replaced by "the inability to fulfil".

1095

REDC 70 (2013), 415-464: Alfonso Salgado Ruiz: Inestabilidad emocional y su repercusión en la nulidad. (Conference presentation)

S.R. considers how emotional instability can affect marriage consent and its validity. Emotional instability may be connected to many differing and quite distinct psychopathologies or it may constitute a problem in its own right. The author provides a detailed and technical examination of various personality disorders in which emotional instability may play a part, before examining those specifically characterized by emotionally impulsive and unstable reactions and behaviour. The major part of the article deals with borderline personality disorder and the difficulties it poses for normal healthy interpersonal relationships, particularly of an affective or intimate nature. S.R. ends by considering the relevance of this particular personality disorder to the three paragraphs of canon 1095.

1095

QDE 26 (2013), 359-371: Philippe Hallein: Un compito specifico del difensore del vinculo: controllare le domande proposte al perito (art. 56 §4 *Dignitas connubii*). (Article)

See below, canon 1432.

1095 2º

J 73 (2013), 339-369: Richard F. Reidy: The Grave Defect of Discretion of Judgment Necessary to Establish the Invalidity of Marriage under Canon 1095, 2º. (Article)

Canon 1095 2° provides that "those who suffer from a grave defect of discretion of judgement concerning the essential matrimonial rights and duties mutually to be handed over and accepted" are incapable of marriage because of a lack of capacity to give matrimonial consent. This canon has been frequently relied upon by many tribunals in the adjudication of marriage cases. It has also been the focus of several Papal allocutions to the Roman Rota expressing concern about tribunals granting declarations of nullity "on the pretext of immaturity or psychic weakness." In 2005, the Instruction *Dignitas Connubii* amplified the requirements of canon 1095 2°. R. seeks a proper understanding of a grave defect of discretion of judgement under canon 1095 2º by first examining how discretion of judgement can be defective and then exploring what constitutes such a defect as grave.

1095 2º

REDC 70 (2013), 657-680: Erlebach, Gregorio: Sentencia de la Rota Romana 158/2010, c. Erlebach, 26 de noviembre de 2010, de nulidad de matrimonio. (Sentence)

The point of interest in this sentence is that, owing to a total lack of proper instruction and a negative decision at first instance by the tribunal of the Military Ordinariate of the USA, its treatment at second instance at the Rota raises some searching questions. The original *acta* consisted of written answers to a standard questionnaire by the petitioner and by his two sisters as witnesses. The witnesses, in fact, had no worthwhile evidence to supply and the respondent had no contact with the tribunal. At the Rota a *peritia* was undertaken by an *ex officio* psychological *peritus*, who, as well as his professional report on the petitioner, obtained from him a detailed written account of his childhood, upbringing and the main events of his life (a story of abject poverty, an absent father, emotional abandonment by his mother, adolescent delinquency, drugs and alcohol, until he eventually entered the US army). The additional document, although exceeding the task entrusted to the expert, along with his psychological *peritia* on the petitioner, enabled the Rotal judges, without any further instruction, to reach moral certainty in overturning the negative decision of first instance. The commentary which follows below reflects on some of the issues raised by this sentence.

1095 2º

REDC 70 (2013), 681-693: Rafael Rodríguez Chacón – María J. Roca: Comentario a la Sentencia del Tribunal de la Rota Romana, 158/2010, c. Erlebach, de fecha 26 de noviembre de 2010, dictada en causa procedente del Ordinariato Castrense de los EE. UU. de América. (Commentary)

See preceding entry. The practice in some tribunals for the instruction of a case to consist simply of obtaining from the principal parties and witnesses written answers to a standard questionnaire is strongly criticized (according to the authors the practice is known at the Rota as the "*modus Americanus*"). In the present case none of the evidence from the petitioner or his two sisters provided any basis for the proposed ground of grave lack of discretion. The conduct and passivity of the first instance tribunal in sending such *acta* to the judges without any further instruction can be regarded as gross negligence. The judges at first instance are also to be criticized for giving a negative decision rather than returning the case *dilata et cumpleatur*. At second instance the Rota received more than the requested *peritia* from the expert, namely, the petitioner's own detailed account, provided at the request of the *peritus*, of his childhood and background. The fact that, unusually, no further instruction was undertaken is

probably due to the length of time the case had already taken (12 years) and the fact that the Rotal judges considered that with the two additional documents they could reach moral certainty on the proposed ground. However, the commentary questions whether the admission as evidence of a petitioner's own extrajudicial unsworn declarations can ever provide the necessary guarantees obtained in a proper, focused judicial interrogatory, and whether a court can simply accept as the only evidence (first instance having provided no evidence of any worth) the clinical conclusions of the expert based on the petitioner's own declarations *coram perito*. The Rotal judges seemed willing to accept the truth of those declarations on account of the undoubtedly spiritual and religious motives of the petitioner and his obvious honesty in admitting the serious mistakes he had made in his life. The commentary also questions the expert's inclusion in his report of statements referring directly to the canonical question of the petitioner's grave lack of discretion (a not-unheard-of occurrence in tribunals). This clearly exceeded his remit, although the Rotal sentence does not reprove him. The positive decision in this case is founded on moral certainty based on the purely psychological reasons contained in the *peritia* and the acceptance of the petitioner's honesty in his written declaration. A final commentary reflects on whether at a subsequent trial at third instance a different *turnus* will be able to reach the same moral certainty.

1095 2º

RMDC 19 (2013), 155-186: Decisio R.P.D. Antonio Stankiewicz, Sentencia definitiva del 28 de junio de 2001, en RRDec93 (2009), 426-439. (Sentence)

The male petitioner, aged 23, contracted marriage with the respondent, aged 17, in 1953. The families of both parties were opposed to the marriage, principally because they thought the respondent was not sufficiently mature. There were difficulties from the start, especially in the area of intimate relations; even so the marriage lasted 22 years and produced three children. In 1975 the parties were divorced. In 1988 the petitioner requested a declaration of the nullity of the marriage on the ground of error of person (canon 1097 §1), but the *libellus* was rejected on account of certain remediable defects. In 1990 he presented a new petition based on grave lack of discretion of judgement as a result of lack of interior freedom on the part of the respondent. The first instance tribunal gave an affirmative decision under canon 1095 2º, but this was overturned at second instance. The petitioner appealed to the Rota, which carried out a supplementary instruction of the case, and found that the respondent, though immature at the time of the wedding, did not consider herself to have been pressurized into going through with it. Although it seems she was never really in love with the petitioner, she was nevertheless aware of what she was doing and was ready to accept the demands and duties of being married. In going through with the

wedding she felt that that was what had to be done, and therefore she was going to do it. Not only were there no signs of a disordered personality on her part, but she showed that she had the capacity to cope with the grave disappointment of a totally unsatisfactory sexual relationship with the petitioner. The Rota delivered a negative verdict.

1095 2º-3º

IC 53 (2013), 655-690: José A. Fuentes: Desviaciones de la sexualidad. Parafilias y transexualismo en las causas de nulidad matrimonial canónica. (Article)

F. explores the meaning of sexuality from the perspective of Christian anthropology, encompassing the definition of different sexual disorders. The focus is on paraphilia and transsexualism, two sexual dysfunctions that receive relatively little attention in canon law, especially as regards their potential impact on marriage capacity and marriage nullity. The discussion draws on the diagnoses outlined in the *Diagnostic and Statistical Manual of Mental Disorders*, fourth edition revised (DSM-IV-TR) and the *International Classification of Diseases*, tenth edition (ICD-10). The characteristics common to the most significant paraphilia (fetishism, paedophilia, sadism, masochism, transvestism) are described, as well as their bearing on marriage capacity. The anthropological features of transsexualism and their impact on marriage are likewise addressed. Finally, F. discusses endeavours to reassess sexual disorders as normal. The argument underscores the fact that such dysfunctions cannot be used to justify new models of marriage and family life; rather, in the light of the teaching of the Magisterium and natural law, the true meaning of marriage and the family must be upheld and taught.

1095 2º-3º

Emanuele Albanese: Pornografia e consenso matrimoniale. La fruizione di pornografia oggi e il suo influsso sul consenso matrimoniale canonico. (Book)

See below, canon 1101.

1095 3º

AA XVIII (2012), 287-309: Sentencia c. Defilippi, 26/02/09. (Sentence)

See below, canon 1101.

1095 3º

AA XVIII (2012), 311-328: Hugo Adrián von Ustinov: Una lección de práctica procesal. Comentario a la sentencia coram Ioanne Baptista Defilippi, del 26 de febrero de 2009. (Commentary)

See below, canon 1101.

1095 3º

REDC 70 (2013), 627-635: Ciro Tammaro: Alcune osservazioni sulla natura e la rilevanza della perizia d'ufficio nelle cause di nullità matrimoniale per incapacità ex. can. 1095 nº 3 CIC. (Article)

The use of *periti* in marriage nullity cases heard under canon 1095 is now obligatory with very few possible exceptions. The great advances in psychology and psychiatry have been a valuable contribution in dealing with these cases. However, the interaction between judge and *peritus* is a complex and delicate one. The task of the *peritus* is to establish the existence or otherwise in one or both parties of any psychic anomaly or psychological immaturity at the time of consent, and to specify its nature, gravity and its effect on the decision-making powers and ability of the subject to carry out the essential obligations of marriage. The *peritus* may be a private practitioner chosen by the party or one appointed *ex officio* by the tribunal. The latter is to be preferred since the former may not be working from a sound Christian anthropology and in any case is, to a certain extent, working for the party who has employed him. The tribunal can always appoint its own *ex officio* expert as well. The *peritia* marks the encounter between canon law and science, a dialogue based on the questions for the *peritus* formulated by the judge. Both are dealing with the same evidence but from different observation points; they converge in considering that evidence in the light of the requirements of canon 1095. T. comments that where the *peritus* has been unable to interview the party personally, in his *votum*, based solely on his reading of the acts of the case, it is difficult for him to achieve a sure and firm scientific certainty in his conclusions. He also adds that where psychological immaturity is alleged it must be kept in mind that canonical requirements are considerably more limited than what might be regarded as "normal" in psychology. In the end the decision is the judge's alone based on the whole body of evidence, of which the *peritia* forms only a part, albeit an important part.

1098

IE XXV (2013), 665-681: Tribunale Apostolico della Rota Romana: *Romana*, Nullità del matrimonio, Dolo, Sentenza definitiva, 3 maggio 2012,

Boccafola, *Ponente* (con *nota* di Maria Teresa Romano, *L'applicazione irretroattiva del can. 1098 CIC in una recente sentenza coram Boccafola*). (Sentence and commentary)

The case concerned a marriage which was celebrated in 1970. In 1998 the male petitioner requested a declaration of nullity on the grounds of deceit on the part of the petitioner concerning her sterility. A negative decision was given at first instance. At second instance other grounds – those of grave lack of discretion of judgement and inability to assume the essential obligations of marriage – were added *tamquam in prima instantia*. The second instance tribunal gave an affirmative verdict in relation to deceit, but negative verdicts on the other grounds. The case was referred to the Roman Rota, which gave a negative verdict on all grounds. In relation to the ground of deceit, the Rota held that since the provision of canon 1098 of the CIC/83 was one of positive law, it could not be applied to a marriage celebrated prior to the coming into force of the Code, in accordance with the principle "*leges respiciunt futura non praeterita*". In her commentary on the decision R. expresses her concern that the Rotal *turnus* did not give any attention to doctrinal opinions different from its own on the question of non-retroactivity.

1099

Ius IV 1/13: N. Schöch: The prevalent Intention of the Spouses and the Error on the Essential Properties of Marriage and Sacramentality (CIC c. 1099). (Article)

S. explains how a substantial error regarding the essential content of marriage as a permanent "partnership" between a man and a woman ordered to the generation of offspring by means of some sexual cooperation always invalidates marriage consent, while an accidental error of law renders it null only if: 1. it concerns the essential properties of unity and indissolubility or sacramentality; and 2. it is so intense as to condition the act of the will. The accidental error of law is not applicable to other essential elements of marriage such as the good of spouses or the good of offspring.

1099

Emanuele Albanese: Pornografia e consenso matrimoniale. La fruizione di pornografia oggi e il suo influsso sul consenso matrimoniale canonico. (Book)

See below, canon 1101.

1101

AA XVIII (2012), 287-309: Sentencia c. Defilippi, 26/02/09. (Sentence)

This is the Latin text of a sentence *coram* Defilippi, an appeal heard at second instance. First instance had found in favour of nullity on the ground of the petitioner's exclusion of indissolubility and had rejected the other proposed grounds of inability to assume the essential obligations of marriage also in the petitioner, and the respondent's exclusion of the *bonum coniugum*. The female respondent maintained that the marriage, which had lasted 17 years, was valid, and appealed directly to the Rota. The marriage had been celebrated prior to the CIC/83, but in his *in iure* section D. emphasizes that the present canon 1095 expresses more clearly a principle of natural law and is quite applicable to the present case. The canon refers to the minimum capacity required for marriage, not to a capacity that would be perfect or complete. The essential marriage obligations in question derive from the traditional *tria bona* and the good of the spouses. In dealing with the exclusion of the *bonum sacramenti* he distinguishes three ways in which this can occur, namely, by contracting a so-called trial marriage, by entering a temporary, time-limited marriage and by giving oneself the right to dissolve the marriage in the event of unhappiness or difficulties. As regards the *bonum coniugum* it is important to distinguish between the *right* to the *bonum coniugum* from the actual lived reality of the marriage. This species of partial simulation refers only to the denial to the other party by a positive act of will at the time of consent of the right to the good of the spouses, a truly unusual and rare occurrence. That reprehensible and negative behaviour should occur in the course of the marriage does not necessarily mean that the right to the *bonum coniugum* was excluded. In this particular case both parties gave quite different accounts of the relationship and important events, sometimes not even supported by their own witnesses, so that the credibility, especially of the petitioner, was suspect. It was no surprise that a negative decision was returned on all grounds.

1101

AA XVIII (2012), 311-328: Hugo Adrián von Ustinov: Una lección de práctica procesal. Comentario a la sentencia coram Ioanne Baptista Defilippi, del 26 de febrero de 2009. (Comment)

See preceding entry. U. provides a commentary on the salient points of Defilippi's sentence, both on the canonical principles related to the proposed grounds and on the means of proof in this case through the examination of the evidence and its application in reaching a decision.

1101

IC 53 (2013), 693-733: Sentencia del Tribunal de la Rota Romana. *Coram* Defilippi, 13 de octubre / Juan Ignacio Bañares – Jordi Bosch: En torno de la exclusión de la sacramentalidad: Comentario a la Sentencia *coram* Defilippi, de 13 de octubre de 2010. (Sentence and commentary)

The female petitioner, aged 24, met the respondent, aged 29, in 1980. He was a communist and in favour of cohabitation or at most a civil marriage; she categorically demanded a canonical wedding. They were married in 1982, separated in 1985, and were divorced in 1991. In 2001 the petitioner requested a declaration of the nullity of the marriage for total simulation on the part of the respondent, or for exclusion of children on her own part. A negative decision was given on both grounds. On appeal an additional ground of exclusion of sacramentality on the part of the respondent was added as at first instance. The second instance tribunal gave a positive decision in respect of total simulation on the part of the respondent. Concerning the new ground of exclusion of sacramentality, it declared: "*Iam provisum*". Before the Rota the *dubium* was fixed as "total simulation on the part of the respondent". At first and second instance the respondent had been lawfully summoned but had declined to take part in the process. Moreover the Rota considered it unnecessary to carry out any supplementary instruction. The case lasted 13 months before the Rota, and received a negative decision. The commentary on the case asks whether there may not have been a degree of over-elaboration in the drawing up of the sentence, before going on to consider exclusion of sacramentality in relation to total and partial simulation, the question of the need for faith in the contracting parties, the requirements for proof of total simulation, and the difficulties of establishing total simulation on the part of a respondent who obstinately refuses to take part in the process.

1101

REDC 70 (2013), 389-413: Raúl Berzosa Martínez: La exclusión del bien de los cónyuges. (Conference presentation)

Although *Gaudium et Spes* and the Code of Canon Law now recognize the *bonum coniugum* as one of the essential elements of marriage, neither its juridical concept nor its content have been adequately developed. B.M. spends the first part of his presentation commenting on an article by Federico Aznar Gil (in *Estudios Eclesiásticos* 86, 2011, pp. 829-849; see *Canon Law Abstracts*, no. 108, p. 108) on an analysis of the available Rotal jurisprudence on this ground, demonstrating the as yet tentative and differing approaches among Rotal judges. Is it a distinct *bonum* from the traditional Augustinian *bona* or simply a further expression of the same? How is it to be identified in practice? It can be expected

that as more of these cases reach the Rota the concept and content of the *bonum coniugum* will be further clarified. B.N. goes on to examine the views of three Spanish canonists: María del Mar Martín (in *Ius Canonicum* XXXVI 73/97, pp. 271-292; see *Canon Law Abstracts*, no. 80, p. 66), Urbano Navarrete (in *Ius Communionis* 1/1, 2013, pp. 33-63) and Carlos José Errázuriz (in *Ius Ecclesiae* XXII 3/10, pp. 573-590; see *Canon Law Abstracts*, no. 107, p. 81). In a final section he briefly looks at the question of the exclusion of indissolubility in the context of a prevailing "divorce mentality".

1101

Emanuele Albanese: Pornografia e consenso matrimoniale. La fruizione di pornografia oggi e il suo influsso sul consenso matrimoniale canonico. (Book)

The increased accessibility and use of pornography in recent decades has meant that it no longer constitutes simply an improper form of behaviour, but has become a practice capable of producing serious pathological effects in those who use it. A. attempts to assess the possible effect of the use of pornographic material on a person who wishes to enter into marriage, looking at the findings of psychology, psychiatry and neurology so as to identify the most frequent pathologies to which the user may be subject, and going on to examine the relevant decisions of the Roman Rota between 1975 and 2005. The use of pornography can result in the development of a mentality contrary to the various essential elements of marriage; it may not only lead certain individuals to give defective consent but also determine their will towards an object other than that of Christian marriage. The use of pornographic material may give rise to a psychic incapacity for marriage through a grave defect of discretion of judgement linked to a lack of sufficient internal freedom. The pathological enjoyment of pornography may also have a negative influence on a person's capacity to assume the essential obligations of marriage. A. goes on to consider the effect of pornographic pathologies in relation to canon 1098 (deceit) and canon 1084 (impotence), and deals with a number of procedural issues relating to this matter. He asks whether there are circumstances in which a *vetitum* imposed on a person suffering from a pornographic pathology may be removed, and answers in the affirmative, since it is not impossible for such a person to be cured. (For bibliographical details see below, Books Received.)

1117

AkK 181 (2012), 467-486: Georg Dietlein – Jan-Gero Alexander Hannemann: Katholisch ohne Kierchensteuer? Bleibende Unklarheiten

nach dem Allgemeinen Dekret der Deutschen Bischofskonferenz vom 15. März 2011. (Article)

See above, canon 1086.

1117

FCan VIII/1 (2013), 9-36: José Antonio Fuentes: Matrimonios mixtos y con disparidad de cultos en la actualidad. El matrimonio de cristianos con musulmanes. (Article)

See above, canon 1086.

1124

AkK 181 (2012), 467-486: Georg Dietlein – Jan-Gero Alexander Hannemann: Katholisch ohne Kierchensteuer? Bleibende Unklarheiten nach dem Allgemeinen Dekret der Deutschen Bischofskonferenz vom 15. März 2011. (Article)

See above, canon 1086.

1124-1127

FCan VIII/1 (2013), 9-36: José Antonio Fuentes: Matrimonios mixtos y con disparidad de cultos en la actualidad. El matrimonio de cristianos con musulmanes. (Article)

See above, canon 1086.

1124-1129

Ius IV 1/13, 11-41: G. Ruyssen: Catholic-Orthodox Marriage in Canon Law. (Article)

See above, CCEO canons 813-816.

1125

ELJ XV 3/13, 332-334: Christopher Hill: Succession to the Crown Act 2013. (Commentary)

During the passage of the Succession to the Crown Bill through Parliament, concern was expressed in both Houses of Parliament that children of "mixed marriages" are obliged to be brought up as Catholics. Bob Morris, in his commentary on the same legislation (ELJ XV 2/13, pp. 186-191: see *Canon Law Abstracts*, no. 111, p. 16) questioned the absolute nature of this obligation, contrary to an article in the Catholic Herald (31 October 2012). H., then the Anglican Bishop of Guildford, set out for the House of Lords the development of the obligation from the "harsh" obligation in the CIC/17, through the CIC/83 and the 1993 Ecumenical Directory. He concludes that Bob Morris was right to question the alleged absoluteness of the obligation under current canon law: the obligation is always within the unity of marriage and is interpreted with pastoral flexibility.

1141-1142

AnCrac 44 (2012), 307-319: Andrzej Wójcik: Konsekwencje prawne dopełnienia i niedopełnienia małżeństwa w prawie kanonicznym (= Legal consequences of consummation and non-consummation of marriage in canon law). (Article)

W. discusses the legal significance of consummation and non-consummation of marriage in the case of a sacramental marriage and in a marriage in which the category *ratum* does not apply. In the first part of the article he presents a historical perspective on the formation of the category of consummation in a marriage between baptized spouses and its significance for the absolute indissolubility of marriage. Next he discusses consummation of marriage between a baptized party and a non-baptized party and the fact that such consummation has no impact whatsoever on the possibility of marriage dissolution. Furthermore he presents various types of *ratum et non consummatum* marriage and attempts to determine who, depending on the type of marriage, has competence to examine the case and present the petition to the Supreme Pontiff requesting the favour of dissolution of the *ratum et non consummatum* marriage – the Tribunal of the Roman Rota or the Congregation for the Doctrine of the Faith. Finally he discusses the meaning of the legal figure of the *ratum et non consummatum* marriage.

1142

Per 102 (2013), 241-277: Piero Antonio Bonnet: Il diritto ecclesiale 'in signo fidei' e l'indissolubilità del matrimonio sacramento. (Article)

See above, canon 1057.

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

1176

Per 102 (2013), 55-65: Szabolcs Anzelm Szuromi: Le esequie ecclesiastiche a servizio della salvezza delle anime. (Article)

Tracing their more immediate roots in the canons of the CIC/17, S. offers some reflections on the canonical ordering of funerals. Noting that there have been many changes in society's outlook on death and burial, he argues that the Church's response to this reality still has an important role to play. He locates the funeral rites within the overall context of the Church's care for and preparation of those facing death, seeing this as part of a strategy by the ecclesial community to accompany them in the last phase of their life.

1184

Comm 45 (2013), 161-164; New Section of Studies: Decretum Episcopi Iaciensis quo damnatis mafiae criminibus exequiae ecclesiasticae denegandae sunt. (Document)

This decree of the Bishop of Acireale, Sicily, implements a ban on ecclesiastical funerals for those convicted of being members of the Mafia. The canonical basis is particular law of the Sicilian Plenary Council and Conference of Bishops which established a reserved excommunication for those involved in violent crime and homicide. Anyone under a definitive conviction by the State judicial system who has not shown signs of repentance before death is to be denied a Church funeral or funeral Mass, but prayers or a Mass offered for the person's repose are not excluded.

BOOK IV, PART III: SACRED PLACES AND TIMES

1215

Per 101 (2012), 597-626: Péter Erdö: Il consenso del vescovo richiesto per la costruzione delle chiese. Osservazioni al can. 1215 CIC. (Article)

E. notes that canon 1215 requires the prior written permission of the diocesan bishop before a church can be constructed. In this article, he seeks to understand the origin and significance of the norm. In order to answer the questions he poses at the outset, he undertakes a brief overview of the canonical theory and praxis from the third century forward. This long tradition shaped the norms that were introduced into the CIC/17, and subsequently those of the CIC/83. He notes that the theological origin of the need for such permission comes from the very nature of what it means to be a bishop: it is the bishop who is the principal coordinator and supervisor of liturgy and worship in the diocese; it is he who convokes the Eucharistic assembly, and it is he who must approve of the place where the Eucharist is to be celebrated. (See also *Canon Law Abstracts*, no. 111, p. 86.)

1222

J 73 (2013), 597-643: Jurisprudence of the Supreme Tribunal of the Apostolic Signatura: 1. Definitive sentence of the College of Judges, May 21, 2011, Prot. N. 41719/08 CA; 2. Definitive sentence of the College of Judges, May 21, 2011, Prot. N. 42278/09 CA; 3. Decree of the Prefect, November 8, 2011, Prot. N. 44426/10 CA; 4. Decree of the Congresso, May 25, 2012, Prot. N. 46628/12 CA. (Sentences and decrees, with commentary by Kurt Martens)

In separate decisions issued on 21 May 2011, the Apostolic Signatura decided in one case that there had been a violation of canon 1222 §2, in that a decision by the diocesan bishop to reduce a church to profane use lacked the required grave cause, and in another, which also involved the reduction of a church to profane use, that there had been no violation of law either in the procedure used or in the substance of the decision. Also given here are the texts of two decrees, one of them effectively declaring that canon 1222 applies should a bishop wish to reduce an oratory to profane use; the other granting a partial suspension of execution of a decision to reduce a church to profane use. In his commentary, M. deals with the distinct procedures for, on the one hand, the merger, division or suppression of parishes, and on the other, the reduction of a church to profane non-sordid use. He goes on to examine the norm of canon 1222, the procedures to be followed, and the grave causes of canon 1222 §2.

BOOK V: THE TEMPORAL GOODS OF THE CHURCH

1254

QDE 26 (2013), 372-382: Mauro Rivella: L'ente ecclesiastico civilmente riconosciuto. (Article)

R. looks at the nature of an ecclesiastical body (taking a parish as a typical example), and then shows how this fits into the structure of Italian civil law. He offers guidance on its establishment by Church authority and the way to obtain State recognition. Finally he considers how the activities of such bodies should be treated, and pays special attention to changes of activity and suppression.

1254-1310

AkK 181 (2012), 361-385: Helmuth Pree: Das Motu proprio „Intima Ecclesiae natura" (IEN) über den Dienst der Liebe. (Article)

P. presents the content and the guiding principles of the *motu proprio Intima Ecclesiae Natura* (IEN) of 11 November 2012. He further examines the juridical implications of the principle of the "service of love" as a constitutive aspect of the Church. Finally, he draws attention to those juridical questions that had formerly been left unanswered, but which IEN determines, as well as some questions that remain open.

1267

IC 53 (2013), 755-769: María José Roca: Régimen jurídico de la renuncia a un legado con carga modal por parte de una persona jurídica de derecho público. (Article)

R. studies the legal status of the renunciation of a bequest on the part of a public juridical person in the context of Spanish law. As an act of extraordinary administration, written permission from the Holy See is required if the amount of the bequest exceeds that established by the episcopal conference. She explores the possible application of this principle to the renunciation of gifts or offerings.

1278-1279

IC 53 (2013), 493-515: Juan Ignacio Arrieta: La colegialidad en la gestión del patrimonio eclesiástico. (Article)

See above, canon 393.

1290-1298

AnC 9 (2013), 119-137: Paweł Kaleta: Zasady zawierania umowy dzierżawy w *Kodeksie prawa kanonicznego* z 1983 roku (= The rules of lease agreement in the Code of Canon Law 1983). (Article)

K. examines various aspects of leasing in connection with the protection and alienation of ecclesiastical property, and the rights of the juridical person in regard to leasing when the episcopal conference has not established particular norms on the matter.

1295

IC 53 (2013), 755-769: María José Roca: Régimen jurídico de la renuncia a un legado con carga modal por parte de una persona jurídica de derecho público. (Article)

See above, canon 1267.

BOOK VI: SANCTIONS IN THE CHURCH

1336

Per 101 (2012), 627-632: George Nedungatt: Poena expiatoria in CIC. A terminological note. (Article)

N. points out that the CIC/83 made a significant change in canonical doctrine when it abandoned the terminology of the CIC/17 which spoke of "*poenae vindicativae*" and introduced the term "*poenae expiatoriae*". With some reference to the discussions that shaped the final text of the current canons, N. eventually concludes that such descriptive language is not necessary within the Code. He expresses the hope that any future revision of the penal law will follow the lead of the Code of Canons of the Eastern Churches where such categories are not found in the text of the law. These distinctions, he argues, belong in commentaries, text-books and lecture halls, but not in legislative texts.

1341-1353

IC 53 (2013), 573-620: Gerardo Núñez: Procesos penales especiales. Los *delicta graviora*. (Article)

See below, canon 1362.

1342

Per 101 (2012), 633-668: Andrea D'Auria: La scelta della procedura per l'irrogazione delle pene. (Article)

D'A. considers the criteria for deciding whether to institute a judicial process or opt instead for an extrajudicial decree when an Ordinary receives information that a crime has been committed (cf. canon 1717). He examines the relationship between canon 1718 (in which the Ordinary is given a certain discretion about the route to follow) and canon 1342 (in which a number of criteria to guide the choice are explicitly and implicitly presented). The history of the elaboration of both canons is considered in detail, with much attention given to the debates behind the scenes – debates which still have echoes today. While it is true that the Legislator favoured the judicial process, it is clear that the administrative process is not to be dismissed lightly. Indeed, in the light of the extension of certain faculties to some Dicasteries of the Holy See in recent decades, and with the proviso that all necessary safeguards for ensuring the right of defence are in place, the administrative process can, in some cases, be not only preferable but in fact more effective in achieving the threefold purpose of penal law.

1362

IC 53 (2013), 573-620: Gerardo Núñez: Procesos penales especiales. Los *delicta graviora*. (Article)

The *Normae de gravioribus delictis* of 21 May 2010 dealing with offences reserved to the Congregation for the Doctrine of the Faith gather together the accumulated legal experience of recent years, specifying the offences in respect of which the Congregation has competence, and establishing the procedural route to be followed in judicial processes. N. examines the development of administrative and judicial processes at the diocesan and Roman levels. He also deals with certain issues that arise from the application of the rules: the preliminary investigation, the right to defence, publicity, cooperation with the civil authorities, and the awarding of damages.

1362

IE XXV (2013), 641-661: Joaquín Llobell: Sull'interruzione e sulla sospensione della prescrizione dell'azione penale. (Article)

The time limits for prescription of a penal action stipulated in the CIC/83 (canon 1362 §1) and the CCEO (canon 1152 §2) are rather brief. Moreover, the law does not offer clear guidance regarding the interruption and suspension of prescription once the judicial or administrative procedure has commenced. The *favor rei* leads to the conclusion that, in practice, there is no interruption or suspension of prescription, apart from the condemnatory decision (judicial or administrative) once this has become a *res iudicata* (or executable). Apart from being surprising, this situation seems unjust, since true delicts can easily remain unpunished because of prescription, which can occur while the process of first or second instance is pending. Such a situation, causing harm to the *bonum commune Ecclesiae*, can only be modified by the legislator, who could either extend the time limits for prescription of a penal action or clearly establish a rationale for and manner of applying the suspension of prescription.

1364-1399

Comm 45 (2013), 165: Pontifical Commission for the Revision of the Code of Canon Law: Coetus studiorum "De Iure Poenali" (Sessio III): Litterae N. 855/67 quibus enixe rogatur ut Relator Pius Ciprotti quaestiones praevias *de poenis in specie* quam primum mittat. (Report)

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

1364-1399

Comm 45 (2013), 166-168: Pontifical Commission for the Revision of the Code of Canon Law: Coetus studiorum "De Iure Poenali" (Sessio III): Litterae Relatoris Pii Ciprotti quibus transmittuntur "Quaestiones praeviae *de poenis in specie* quae solvendae videntur antequam canonum schema redigatur". (Report)

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

1364-1399

Comm 45 (2013), 169-186: Pontifical Commission for the Revision of the Code of Canon Law: Coetus studiorum "De Iure Poenali" (Sessio III): Animadversiones Consultorum factae ad quaestiones praevias "de poenis in genere" quae solvendae videntur antequam canonum schema redigatur. (Report)

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

1364-1399

Comm 45 (2013), 187-209: Pontifical Commission for the Revision of the Code of Canon Law: Coetus studiorum "De Iure Poenali" (Sessio III): Relatio introductiva Relatoris ad schema canonum "De delictis et poenis in specie". (Report)

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

1364-1399

Comm 45 (2013), 210-228: Pontifical Commission for the Revision of the Code of Canon Law: Coetus studiorum "De Iure Poenali" (Sessio III): Relatio introductiva Relatoris ad schema canonum "De delictis et poenis in genere". (Report)

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

1364-1399

Comm 45 (2013), 229-238: Pontifical Commission for the Revision of the Code of Canon Law: Coetus studiorum "De Iure Poenali" (Sessio III): Relatio Sessionis III. (Report)

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

1388

ACR XC 1/13, 3-21: Brendan Daly: Seal of Confession: A Strict Obligation for Priests. (Article)

See above, canons 983-984.

1388

AkK 181 (2012), 444-466: Thomas Meckel: Das Beichtgeheimnis und das Seelsorgegeheimnis im Spiegel der Grundrechte der Christgläubigen. (Article)

See above, canons 983-984.

1395

J 73 (2013), 555-596: Philip Allen Lacovara: The Ultimate Test of Religious Freedom: The Constitution Bars Civil Authorities From Judging How Well, or How Badly, Church Officials Supervise and Assign Priests, Even Sexual Predators. (Article)

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

1395

REDC 70 (2013), 481-511: Federico Aznar Gil: El delito contra el sexto mandamiento del decálogo cometido por un clérigo con un menor de edad. (Conference presentation)

A.G. considers some of the causes of the recent problems arising from the sexual abuse of minors by clerics and religious, showing how the Church's law has been developed and refined over the years. The perpetrators specifically covered by canonical norms are only clerics and religious; some dioceses also apply norms to lay people working in Church institutions. There is no single definition of what constitutes sexual abuse of a minor, and its classification can vary in different civil legislations. In canon law all actions taught by the Catholic Church as contrary to the Sixth Commandment committed against a minor of eighteen are included, even if consent is given, and regardless of the age of consent in civil legislation. The norms cover not only physical acts but also the acquiring, retention and divulgation of child pornography of minors under the age of fourteen. Prescription has been extended from five to twenty years and the Congregation for the Doctrine of the Faith (now responsible since 2010 for dealing with these cases) can dispense from prescription in any given case. Penalties are described as "any just punishment, not excluding dismissal from the clerical state", according to the gravity of the crime, personal circumstances, degree of culpability, etc. Although the norms do not require that the civil authorities be informed of any accusations made against a cleric or religious, a Guide issued by the Holy See in 2010 indicated that this should be done in accordance with the requirements of civil legislation. Episcopal conferences are to draw up guidelines in order to establish a unitary approach within the same territory in tackling the crime of child abuse, including measures to prevent such crimes in the first place, measures to be followed in dealing with case, and the question of reparation. A.G. provides a bibliography, and a reference to a more extensive one in a previous article of his (cf. REDC 62, 2005, pp. 9-87; see also *Canon Law Abstracts,* no. 97, pp. 105-106).

1395

SC 47 (2013), 295-339: John A. Alesandro: Removal from the Clerical State for the Sexual Abuse of Minors. (Article)

A. deals with the Church's attempt over the last two decades to develop a process for removing from the clerical state a priest who is accused of sexually abusing a minor. He traces chronologically the Church's expansion of the penal law, both substantively and procedurally, with the goal of facilitating the adjudication of more cases. Finding the penal law development insufficient, he analyses the theory underlying criminal law, both secular and ecclesiastical,

concluding that the goal of separating wrongdoers from the clerical state is not best viewed as a penalty but as an executive decision about priestly personnel. This conclusion leads to a second look at the 1992 proposal of the bishops of the United States for a special non-penal process. The fundamental difference of the two approaches rests on the fact that the penal process punishes a past act whereas the non-penal process bases its decision on a prudential judgement about future harm to the Church. A. ends with a set of concluding reflections calling for a serious review and reconsideration of the non-penal approach as a more effective and appropriate process in such matters.

BOOK VII: PROCESSES

1400

SC 47 (2013), 479-526: Jurisprudence – Just and Equitable Subsidy to an Exclaustrated Religious (Mexico). Competence of the Roman Rota. I: Decree *coram* Bruno, 5 February 1992; II: Decree *coram* Pompedda, 25 November 1992; III. Decree *coram* López-Illana, 26 January 2001; IV. Decree *coram* Boccafola, 6 June 2002; V. Decree *coram* Erlebach, 10 March 2006; VI. Sentence *coram* Arellano Cedillo, 18 October 2011. (Decrees and sentence)

See above, canon 670.

1403

Comm 45 (2013), 136-139: Office of Liturgical Celebrations of the Supreme Pontiff: Decretum quo Ritus Canonizationis innovatur. (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. (See also *Canon Law Abstracts*, no. 111, p. 98.)

1403

REDC 70 (2013), 565-602: Alberto Royo Mejía: El proceso de canonización. (Conference presentation)

In his introduction R.M. traces the reforms of Paul VI and John Paul II which have led to the present relatively speedy process of canonization. Although all are called to holiness, God chooses some of the faithful to be models of sanctity for the Church, either by the witness of a martyr's death or by the exercise of heroic virtue. While the former is generally easily proven, proof of the latter requires greater attention and investigation; this has led to the process of beatification and canonization. The first step in the process is the voice of the faithful in recognizing and acclaiming the possible candidate as having had a true fame of holiness. This fame must be shown to be spontaneous (not engineered or manipulated), long-lasting and concerning heroic virtue (not simply an "ordinary" holy life). It is for the diocesan bishop to discern if these criteria have been met. The second voice to be heard is that of God through the favours he grants at the intercession of the candidate for sainthood; miracles worked through his or her intercession can be taken as a sure sign of the divine

will. In the case of martyrdom it must be clear that it was motivated by *odium fidei* rather than by any political or social reasons. The third voice in the process is that of the hierarchy. The diocesan bishop's voice (or that of the appropriate Ordinary) is already part of that process but his brother bishops of the ecclesiastical province are also to be consulted, as is the Holy See. This contributes towards a wider and more objective view of the suitability and the timeliness of the potential saint's canonization. Moral certainty is thereby more assured. R.M. adds an appendix containing separate interrogatories for witnesses concerning the heroic virtue and/or martyrdom of the proposed candidate.

1419-1445

LW 117/1 (2011), 7-24: Francis Nelson Libera: Different Grades and Kinds of Tribunals in the Catholic Church. (Article)

N.L. provides a brief description of the tribunals in the Church, looking in turn at first instance tribunals (the diocesan judge; auditors and relators; the promoter of justice; the defender of the bond; the notary); second instance tribunals and their role in receiving and determining appeals against decisions made at first instance; and third instance tribunals (the Roman Rota; the Apostolic Signatura).

1432

QDE 26 (2013), 359-371: Philippe Hallein: Un compito specifico del difensore del vincolo: controllare le domande proposte al perito (art. 56 §4 *Dignitas connubii*). (Article)

H. examines the role given by article 56 §4 of *Dignitas Connubii* to the defender of the bond of examining the questions posed to the medical experts and ensuring that their evidence does not go beyond its proper limits. The roots of this provision are seen in the Papal allocutions to the Rota; these help make clear that the article is not a reversion to the earlier law in *Provida Mater*, but is instead, H. argues, aimed at ensuring that the defender of the bond is involved throughout the process, supporting but not replacing the role of the judge. H. also suggests that the same role could be exercised by advocates in the trial.

1443

EE 88 (2013), 767-813: Carmen Peña García: «Facultades especiales» del Decano y novedades procesales en la Rota Romana: ¿hacia una renovación de las causas de nulidad matrimonial? (Article)

A rescript *ex audientia Pontificis* given by the Secretary of State on 11 February 2013 includes the granting of a series of special faculties to the Dean of the Roman Rota for a period of three years, profoundly modifying the procedural rules of that Tribunal. The rescript includes new features as significant as the suppression of the *duplex conformis* for Rotal sentences declaring the nullity of marriage; a prohibition on introducing a new presentation of the case after the marriage of one of the spouses; and a prohibition on appealing against Rotal decisions in matters of nullity of a sentence or decrees. It also grants the Dean of the Roman Rota the faculty to dispense from procedural laws. In this article P.G. analyses the content of the rescript and offers some considerations regarding its foundation and application, as well as the peculiar characteristics of its publication. She also suggests some legislative changes which may help to improve the process for declaring the nullity of marriage, making it more agile, without prejudice to the necessary degree of legal certainty.

1443

REDC 70 (2013), 465-480: Enrique de León Rey: Nuevas facultades de la Rota Romana sobre nulidades matrimoniales. (Conference presentation)

In his introduction L.R questions the timing and the form of the document granting special faculties to the Roman Rota in marriage nullity cases. It was approved by Benedict XVI, at the request of the Dean of the Rota, the very same day as he publicly announced his intention to resign as Bishop of Rome (11 February 2013). The document was made public by the Dean just over a week before the new Pope was elected, that is, *sede vacante*. L.R. asks, why such an unseemly rush? It was issued in the form of a rescript – an administrative act granting a privilege, dispensation or favour to the petitioner. Since when, he asks, can an administrative act change the universal law of the Church and curtail important rights of the faithful? Why were neither the Apostolic Signatura nor the Pontifical Council for Legislative Texts consulted? Having raised these questions L.R. then examines each of the five faculties granted by this rescript. The first, which dispenses from the requirement of a second conforming sentence after a *pro nullitate* Rotal sentence, overrides what has been the constant law of the Church since 1714. The exception had been the special faculties granted to the USA in 1970 which led to an astronomical rise in the number of nullities out of all proportion to those granted in any other part of the world. The aim of the present faculty, presumably the purely practical matter

of speeding up cases at the Rota, is disproportionate to the effect it will have of denying the fundamental right of appeal. In fact, far from reducing the number of cases it could lead to a dramatic increase as more cases may be directed to the Rota immediately after first instance in the hope of a speedier final decision. The second faculty denies recourse for a *nova causae propositio* if one of the parties has remarried. This too is a curtailment of fundamental rights enshrined in the Code and supported by longstanding canonical experience. It was an issue considered in the preparatory commission for the CIC/83 and was firmly rejected as contrary to the principle now enshrined in canon 1643. A similar argument applies to the third faculty, the denial of an appeal against Rotal decisions concerning nullity of sentences or decrees. The penultimate faculty grants the Dean of the Rota the power to dispense from Rotal procedural norms for a grave reason; once again this is a change in the general law of the Church (canon 87 §1) which ought to be brought about only by an equivalent law and not a rescript. The final point in the document is an exhortation to Rotal advocates to act diligently in dealing with the cases entrusted to them so that the time limit of a year and a half might not be exceeded. L.R. comments that the problem of delays is complex and multifaceted and pertains to the Rota itself rather than to the advocates. He concludes that the present faculties may be putting in jeopardy some aspects of the *raison d'être* of the Church's law: the search for truth with justice, and the *salus animarum*.

1445

FCan VIII/1 (2013), 93-147: Mário Rui de Oliveira: O Supremo Tribunal da Assinatura Apostólica e a sua nova *Lex propria*. (Commentary)

This is a commentary on the *Lex propria* of the Apostolic Signatura signed by Benedict XVI on 21 June 2008 and published in the official gazette of the Holy See *Acta Apostolicae Sedis* on 1 August 2008 together with the Apostolic Letter *motu proprio Antiqua ordinatione*. The study is divided into four parts, dealing with the origins of the Apostolic Signatura; the Apostolic Signatura in the CIC/83 and in the Apostolic Constitution *Pastor Bonus*; the background to the *Lex propria*; and some of the innovations it introduces. The commentary is followed by the Portuguese and Latin texts of the *Lex propria*.

1445

Per 102 (2013), 67-93: G. Paolo Montini: Conspectus decisionum quae a Supremo Signaturae Apostolicae Tribunali in ambitu iudiciali ab anno 1968 ad annum 2012 latae atque publici iuris factae sunt. (Article)

M. introduces a brief summary and overview of the 43 published decrees issued by the Apostolic Signatura between 1968 and 2012 concerning judicial matters. He has already published a similar conspectus of the decisions concerning administrative matters in *Periodica* 101 (2012), 199-254. He indicates the basic nature of each decision and gives the bibliographical references not only for the text of the decision but also for any related decisions and commentaries.

1445

Per 102 (2013), 353-377: Éric Besson: Quelques considérations sur l'interprétation de la loi avec le cas de l'interprétation donnée par la Signature Apostolique en matière de réparation des dommages. (Article)

B. offers some considerations concerning the interpretation of law, especially in the light of canon 17. His particular focus is on the awarding of damages. After an analysis of canon 17, he proceeds to illustrate the variety of ways in which the Apostolic Signatura has interpreted the law concerning damages. He quotes from several well-known and previously published decisions of the Supreme Tribunal as well as from the principles used by the Signatura in determining other cases where the decisions have not been published.

1446

Comm 45 (2013), 114-117: Secretariat of State: Homilia ab Eminentissimo Card, Tharcisio Bertone, Secretario Status, die 26 mensis ianuarii 2013, occasione inaugurationis Anni Iudicialis 2013 Tribunalis Rotae Romanae prolata. (Homily)

In his homily for the inauguration of the judicial year at the Rota Cardinal Bertone links the theme of faith with the memorial of Sts Timothy and Titus. The judicial role is not distant from the task of evangelization but a living part of the salvific mission of the Church. Courage is needed. One aspect of the role is to bring peace where so many families are broken apart by conflict.

1475

Per 101 (2012), 669-672: Supremum Signaturae Apostolicae Tribunal: Decretum generale exsecutorium de actis iudicialibus conservandis. (Document)

See above, canon 489.

1475

Per 101 (2012), 673-706: G. Paolo Montini: La conservazione degli Atti dopo la conclusione della causa di nullità matrimoniale. Commento al Decreto generale del Supremo Tribunale della Segnatura. (Article)

See above, canon 489.

1504-1505

J 73 (2013), 371-438: Sean T. Doyle: The *Libellus*: Rejection and Recourse. (Article)

The *libellus* is a fundamental element for the institution of an ecclesiastical trial. Its rejection by a judge can restrict the rights of the faithful to obtain justice from ecclesiastical courts. After briefly reviewing the requirements of a *libellus*, D. discusses the reasons for which a judge can reject a *libellus*, noting certain abuses of this power in practice. He then reviews possible recourses against rejection, both those listed explicitly in the CIC/83 and those established by jurisprudence. He focuses particularly on the availability of *restitutio in integrum* for decrees confirming the rejection of a *libellus*, arguing that nothing in canonical doctrine forbids its application, although its availability in practice is open to debate.

1505

SC 47 (2013), 479-526: Jurisprudence – Just and Equitable Subsidy to an Exclaustrated Religious (Mexico). Competence of the Roman Rota. I: Decree *coram* Bruno, 5 February 1992; II: Decree *coram* Pompedda, 25 November 1992; III. Decree *coram* López-Illana, 26 January 2001; IV. Decree *coram* Boccafola, 6 June 2002; V. Decree *coram* Erlebach, 10 March 2006; VI. Sentence *coram* Arellano Cedillo, 18 October 2011. (Decrees and sentence)

See above, canon 670.

1527

Per 102 (2013), 307-315: Aleksandra Brzemia-Bonarek: Une preuve obtenue d'une manière illicite selon l'Instruction *Dignitas Connubii*. (Article)

B. raises a question about the admissibility during the course of a judicial process of proofs that are illicit. Canon 1527 simply requires that the proofs presented in a cause must be licit, but makes no determination about the value of illicit proofs. Article 157 of the Instruction *Dignitas Connubii*, on the other hand, explicitly rules out the possibility of the introduction or use of such proofs. However, B. argues, in keeping with canon 34 §2 concerning the nature and scope of an Instruction, this cannot be taken as an obligatory norm but rather as a recommendation. The essential value to guide all judicial processes is the quest for truth.

1608

REDC 70 (2013), 681-693: Rafael Rodríguez Chacón – María J. Roca: Comentario a la Sentencia del Tribunal de la Rota Romana, 158/2010, c. Erlebach, de fecha 26 de noviembre de 2010, dictada en causa procedente del Ordinariato Castrense de los EE. UU. de América. (Commentary)

See above, canon 1095 2º.

1620 7°

Per 102 (2013), 317-350: G. Paolo Montini: La nullità insanabile per denegato diritto di difesa (can. 1620 7°) e il difensore del vincolo. (Article)

This is M.'s contribution to the 47th Gregorian Colloquium held in Brescia in June 2012. He considers the recent phenomenon in many parts of the Church of the marginalization of the defender of the bond in marriage nullity cases, noting that his or her intervention in the process is often reduced to a mere procedural formality. Where this is taken to extremes and the defender is effectively excluded from taking part in the process and from exercising the role proper to the office, M. asks whether this can be construed as a denial of the right of defence in the light of canon 1620 7°, thereby leading to the irremediable nullity of sentence. After a careful analysis of the literature and the jurisprudence, he concludes that such an expanded reading of canon 1620 7° is not warranted.

1620 7°

Per 102 (2013), 499-513: Acta Tribunalium Sanctae Sedis. Romanae Rotae Tribunal *coram* Erlebach, Decretum Turni diei 2 maii 2013 (de nullitate sententiarum primi et secundi iudicii gradus). (Decree)

In this decree of the Apostolic Tribunal of the Roman Rota, the *ponens*, E., argues for the nullity of the sentences of the previous two instances *ob denegatum ius defensionis*. What makes this decree interesting is that the denial of the right of defence is located in the omission of the *contradictorium*, i.e. the possibility for the parties to engage in an exchange of views concerning the proofs presented. E. makes a very careful analysis of the chronological sequence and contents of the procedural documents at first instance, and then points out the seriously defective instruction of the case at the same instance.

1643-1644

EE 88 (2013), 767-813: Carmen Peña García: «Facultades especiales» del Decano y novedades procesales en la Rota Romana: ¿hacia una renovación de las causas de nulidad matrimonial? (Article)

See above, canon 1443.

1643-1644

REDC 70 (2013), 465-480: Enrique de León Rey: Nuevas facultades de la Rota Romana sobre nulidades matrimoniales. (Conference presentation)

See above, canon 1443.

1671

Ius IV 1/13, 143-160: S. Kadamthodu: Kerala Agreement on Inter-Church Marriages and Dissolution of Marriage Bond. (Article)

See above, CCEO canons 780-781.

1671-1707

AA XVII (2012), 149-194: Velasio de Paolis: Los fundamentos del proceso matrimonial canónico según el Código de Derecho Canónico y la Instrucción *Dignitas Connubii*. (Article)

In his examination of the canonical process for the declaration of nullity of marriage de P. first scrutinizes the proposal which some have put forward for the use of an administrative process instead of a judicial one. It is claimed this would be more efficient and speedy, and that there would be no need for a second conforming sentence, nor the possibility of a *querela nullitatis*. De P. counters that the canonical process is a search for the truth and that this is best achieved by the judicial process. He suggests that very often the desire for a simple administrative process is a symptom of trying to provide a solution for the divorced and remarried rather than a genuine investigation as to whether a marriage is truly valid or not and warns against the so-called "Catholic divorce" mentality. He goes on to examine the historical development of the matrimonial canonical process leading up to the CIC/83 and the Instruction *Dignitas Connubii*. In the final part of his article he deals specifically with the canonical process for marriage nullity as a judicial process, its contentious nature, and the importance of the *contradictorium* and of a double conforming sentence *ex actis et probatis*. Finally he explains that the faculty which the Apostolic Signatura enjoys in special cases of declaring a marriage null *via administrativa* is in effect, as far as the actual procedure is concerned, a judicial process.

1673

RMDC 19 (2013), 7-45: Luis de Jesús Hernández M.: La competencia del tribunal eclesiástico por los títulos del canon 1673, nn. 3 y 4. Estudio y análisis de los aspectos implicados. (Article)

H. looks at the dispositions of the CIC/17 and subsequent documents on competence for dealing with matrimonial causes, and at the work of revision of the Code, especially that of canon 1964 of the CIC/17. He then analyses canon 1673 of the CIC/83 in the light of decrees issued by the Apostolic Signatura, looking at situations in which competence may be granted to a tribunal lacking any title under canon 1673, to a tribunal in which the petitioner has a domicile, or to a tribunal in which the majority of the proofs may be collected.

1684

EE 88 (2013), 753-765: Laura Armentia Espigares: Algunas cuestiones prácticas acerca del veto judicial en las causas de nulidad matrimonial. (Article)

The question of whether or not to impose a judicial *vetitum*, and when it is appropriate to remove it, is to be decided on the particular facts of each case and not according to general rules. It is essential that the sentence should set out the reasons for imposing a *vetitum* and the procedure for its removal, out of justice and also so that the person concerned may understand why it is imposed as well as its extent and purpose (which will always be a pastoral one). A.E. sets out some practical considerations to be borne in mind when imposing a *vetitum* and suggests some specific measures in relation to its removal.

1697-1706

AnCrac 44 (2012), 307-319: Andrzej Wójcik: Konsekwencje prawne dopełnienia i niedopełnienia małżeństwa w prawie kanonicznym (= Legal consequences of consummation and non-consummation of marriage in canon law). (Article)

See above, canons 1141-1142.

1708-1712

REDC 70 (2013), 603-623: José San José Prisco: El proceso de nulidad de la Ordenación. (Conference presentation)

Since 2011 competence for examining possible cases of nullity of ordination has been transferred from the Congregation for Divine Worship and the Discipline of the Sacraments to a newly established department in the Roman Rota. S.J.P. looks first of all at some possible causes for the invalidity of sacred orders. The first requirement is that the ordaining prelate be himself a validly ordained bishop (although there have been some historical cases where an abbot or superior general has ordained deacons or priests with Papal approval); no priest or doubtfully ordained bishop can ordain. The second requirement is the observance of the essential rites of the sacrament, namely, the laying on of hands and the prayer of consecration. The candidate must be a baptized male. In this context it can be said that although active homosexual behaviour would render a candidate unsuitable for ordination, it would not affect validity. The candidate must freely express his intention to be ordained. Any action or threat which would force him into being ordained against his will would be a simulation of the sacrament and obviously lead to invalidity. More nuanced,

however, is the situation of fear when, although a candidate's will is affected, he nevertheless *chooses*, however reluctantly, to be ordained (*coactus tamen volens*). Only in extreme cases when the overwhelming gravity of the fear is clearly proven might there be any question of an invalid ordination. Fear, however, may be greatly intensified by certain personality disorders or psychic anomalies, but these latter, although possible impediments for orders, would not of themselves invalidate. The judicial process starts at the Rota for initial consideration but may be returned to the local tribunal. The more common process is the administrative one, regulated by *Regulae Servandae* (2011). The Ordinary will designate an instructor and a defender. The former will undertake the necessary investigation and interview the petitioner and witnesses; the latter may also examine them and/or present questions to the instructor to be put them, and provide his comments. Interviews may not be conducted by any method in which the identity of the person cannot be fully established (e.g. telephone, fax, e-mail, etc.). Documentary evidence and, if appropriate, qualified professional evidence should also be sought. Once the defender has made his final observations, the *acta* are sent to the Rota where the decision is made, against which an appeal may be lodged. Nullity of ordination will occur very infrequently and only in extreme cases. The more promising and recommended course of action is that of seeking dismissal from the clerical state and dispensation from the obligation of celibacy.

1713-1716

SC 47 (2013), 341-360: Anne Asselin: Les ministres ecclésiaux laïcs et la révocation de leur office : en quête de justice et d'équité. (Conference presentation)

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

1717-1718

REDC 70 (2013), 513-545: Myriam Cortés Diéguez: La investigación previa y el proceso administrativo penal. (Conference presentation)

In her introduction C.D. provides the background leading to the present norms for dealing with *delicta graviora*, now reserved to the Congregation for the Doctrine of the Faith (CDF). These include the faculty to use the administrative process for the imposition of perpetual penalties, even including dismissal from the clerical state (thus sidestepping the requirements of canons 1342 §2 and 1336 §1, 5º). Only the Ordinary can initiate a penal process, but not before carrying out an initial investigation to establish the likelihood or otherwise of the existence of a delict, circumstances, degree of culpability, etc. This does not

form part of the penal process since even in the face of an evident delict, pastoral measures should first be used, a penal process being the very last resort. Any suitable person chosen by the Ordinary may conduct the investigation. If a penal case is considered justified, the judicial process is to be preferred; an administrative extrajudicial process can be followed only if a just cause renders a judicial process too difficult, in which case the initial decree must explain why this is so. There are limits to the penalties that can be imposed in the administrative process; therefore, if the alleged delict appears to be serious enough for the imposition of a perpetual penalty, the judicial process must be followed. *Delicta graviora* now being reserved to the CDF, the Ordinary is to send the *acta* of the initial investigation and await the decision of the CDF as to whether it will deal with the case itself or remit it to the Ordinary, and whether the judicial or administrative process is to be followed. The latter process begins with the citation of the accused. He is to be informed of the accusation and proofs and be interrogated; he is to be given the right of defence and the opportunity to present any proofs. The person conducting the process (ideally someone with judicial experience) with two assessors is to evaluate the proofs and declarations before a final decree is issued. If the process concerns one of the *delicta graviora* reserved to the CDF the final *votum* of the Ordinary is to be sent to the CDF for its consideration; this is necessary for its validity. In an appendix C.D. provides a series of model documents which can be adapted for communication with the CDF regarding *delicta graviora*.

1717-1731

IC 53 (2013), 573-620: Gerardo Núñez: Procesos penales especiales. Los *delicta graviora*. (Article)

See above, canon 1362.

1718

Per 101 (2012), 633-668: Andrea D'Auria: La scelta della procedura per l'irrogazione delle pene. (Article)

See above, canon 1342.

1721-1728

REDC 70 (2013), 547-564: Luis A. García Matamoro: El proceso judicial penal cc. 1721-1728 CIC 83. (Conference presentation)

G.M. limits his considerations to the penal trial proper (canons 1721-1728), excluding all other aspects dealt with by the other canons or by *Sacramentorum Sanctitatis Tutela*. The penal process as laid out in the Code is the Church's normal ordinary process as distinct from other special penal processes promulgated *ad hoc* by the Holy See. Moreover, in penal matters the judicial process is to be preferred over the administrative as providing greater constitutional guarantees of juridical security in keeping with the provisions of canon 221. Only the Ordinary of the place where the accused is domiciled or where the delict took place can initiate a penal process, in which the promoter of justice then becomes the actor; no private individual(s) can have this role. As distinct from under the CIC/17, only a physical person, member of the faithful, and not any juridical person, can be subjected to a penal trial. G.M. concludes with a commentary on various aspects of the penal process connected with or additional to the ordinary contentious trial. The accused is not required to take the oath: *nemo tenetur edere contra se*. The promoter of justice may at any moment in the trial renounce the case but only with the consent of the accused, since a sentence of innocence would be preferable to the possible suspicion of guilt surrounding the simple renouncement of the process. The sentence must be either one of guilt or innocence, and both the accused and the promoter of justice have the right to appeal or seek a *restitutio in integrum*.

1740-1747

AkK 181 (2012), 386-443: Martin Rehak: Jurisdiktionsprimat und Absetzung von Bischöfen. Systematische Nachbetrachtungen. (Article)

See above, canon 416.

EXCHANGE PERIODICALS

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

ABBREVIATIONS, PERIODICALS AND ABSTRACTORS FOR THIS ISSUE

AA	Anuario Argentino de Derecho Canónico, Buenos Aires – V. Rev. John McGee, Girvan, Ayrshire.
ACR	Australasian Catholic Record, New South Wales – V. Rev. Ian B. Waters, Melbourne.
AkK	Archiv für katholisches Kirchenrecht, Paderborn – Abstracts supplied by publisher.
AnC	Annales Canonici, Krakow – Abstracts supplied by publisher.
AnCrac	Analecta Cracoviensia, Cracow – Abstracts supplied by publisher.
BV	Bogoslovni vestnik, Ljubljana – Mgr. Andrej Saje, Ljubljana.
Comm	Communicationes, Rome – Rev. Mgr. Gordon Read, Colchester, Essex.
EE	Estudios Eclesiásticos, Madrid – Abstracts supplied by publisher.
ELJ	Ecclesiastical Law Journal, London – Paul Barber, London.
FCan	Forum Canonicum, Lisbon – Abstracts supplied by publisher.
IC	Ius Canonicum, Pamplona – Abstracts supplied by publisher.
IE	Ius Ecclesiae, Pisa-Rome – Abstracts supplied by publisher.
ITS	Indian Theological Studies, Bangalore – Editor.
Ius	Iustitia: Dharmaram Journal of Canon Law – Rev. Mgr. Gordon Read, Colchester, Essex.
J	The Jurist, Washington – Abstracts supplied by publisher.
LJ	Law and Justice, Worcester – Abstracts supplied by publisher.
LW	The Living Word, Kerala – Editor.
N	Notitiae, Rome – Rev. Mgr. Gordon Read, Colchester, Essex.
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.
RDC	Revue de Droit Canonique, Strasbourg – Abstracts supplied by publisher.
REDC	Revista Española de Derecho Canónico, Salamanca – V. Rev. John McGee, Girvan, Ayrshire.
RMDC	Revista Mexicana de Derecho Canónico, Pontifical University of Mexico – Editor.
SC	Studia Canonica, Ottawa – Abstracts supplied by publisher.

BOOKS RECEIVED

- Emanuele ALBANESE: *Pornografia e consenso matrimoniale. La fruizione di pornografia oggi e il suo influsso sul consenso matrimoniale canonico*, Pontificia Università Gregoriana, Rome, 2014, 265pp., ISBN 978-88-7839-282-3 [see above, canon 1101]
- Alvaro DEL PORTILLO: *Faithful and Laity in the Church: The Bases of their Juridical Status*, 2nd English edition, Wilson & Lafleur (Gratianus series), Montreal, 2014, xxi + 256pp., ISBN 978-2-89689-061-3 [see above, canons 208-231]