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Every effort is made to report the views of authors objectively and accurately, without attempting to comment on them. If any of our readers discover any inaccuracies, we hope they will point them out to the editor.

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GENERAL SUBJECTS

Comparative law

Canonist 14/2 (2023), 185-221: Donna Miller: The Concept of Moral Certitude in Ecclesiastical Penal Cases involving More Grave Delicts. (Article)

See below, canon 1608.

EIC 63 (2023), 727-742: Lorenza Violini: Principio di rappresentatività, accesso al voto e sistemi elettorali in movimento. Note minime di diritto costituzionale. (Article)

Electoral systems, the right to vote, the criteria for active and passive electorates, and all that surrounds the construction of processes aimed at identifying representative government bodies, make up the apparatus of legal instruments necessary to determine the form of the different levels of government on the European continent. Starting from the fundamental notes characterizing democratic systems, V. delves into the constitutional aspects of electoral systems in the current geopolitical context and with a comparative view. The democratic principle is read in correlation with its practical implementation, represented by electoral law, the stages of its elaboration, and the related processes required to make democratic representation a reality.

EIC 63 (2023), 743-761: Emile Kouveglo: Principio di rappresentatività e accesso al voto nelle associazioni dei fedeli. Profili canonistici. (Article)

The General Decree of the Dicastery for the Laity, Family and Life issued on 11 June 2021 to regulate the exercise of government in international associations of the faithful, insists on the regulation of the duration and number of mandates, the principle of representativeness of the governing bodies, and access to the vote of all *plene iure* members in the process of establishing governing bodies at the international level. K. delves deeper, from a canonical and comparative perspective, into representativeness in its theoretical assumptions and application mechanisms.

ELJ 25 (2023), 330-354: Norman Doe: ‘Legalists and Moralists’ in the Historic Portrayal of the Constitution of the Church of England. (Article)

The Enabling Act 1919 provided for a new National Church Assembly able to make Measures with the same force and effect as an Act of Parliament. The 1919 Act was without question a constitutional moment with far-reaching effects; and it was about law, not morals: legalists triumphed over moralists. However, it was just one stage in a much longer trajectory of thinking about the constitution of the Church of England. D.’s article, which started life as a lecture to the Ecclesiastical Law Society’s day conference on 2 April 2022, takes the story further back – and widens it. It presents the key elements of thinking about the constitution – accidents, continuity, change – in the works of English ecclesiastical lawyers – civilians, common lawyers and clerical jurists – from the Reformation to the Act of 1919. To what extent, if at all, in their understandings of the church constitution, were our historic ecclesiastical lawyers legalists, or moralists, or both? Was the ecclesiastical constitution itself simply a legal category, or did it, and its basics, also have a moral quality? D. explores these questions in relation to: 1. the nature, sources, and purposes of the constitution of the Church of England; 2. legislative, administrative, and judicial power; and 3. the rights of the individual enforceable against the decisions of ecclesiastical government.

ELJ 25 (2023), 355-358: Alison Milbank: Response to “‘Legalists and Moralists’ in the Historic Portrayal of the Constitution of the Church of England’. (Article)

Responding as a theologian to the reflections of Norman Doe (see preceding entry), M. notes how frequently the Anglican theorist, Richard Hooker, is invoked throughout the article. Hooker dates from the Reformation period when a pre-Enlightenment jurisprudence still obtained which combined all three dimensions of law – the political, the moral, and the historical. In M.’s view, what is important about Hooker is that he makes no separation between the legal and the ethical because law is divine in origin, and even in God himself there is a law of his being: “the being of God is a kind of law to his working” in giving his perfection to what he makes and “God is a law both to himself and to all other things beside”. Moreover, the ethical is only realised in what we decide to do and the laws we make. Law in Hooker is even Christological because, just as the Father begets the Logos (the Son), so the law proceeds as his continuing work in creation and history. To walk in God’s ways and obey his laws is to be in union with Christ. Hooker was, of course, working out the meaning of the emerging Church of England in the

Reformation Settlement, but even the pragmatic is itself participatory in the divine law and he appeals back to the natural law tradition for that reason.

ELJ 25 (2023), 359-373: Bradly S. Billings: A Limited Episcopacy? Canon Law and the Ministry of the ‘Episcopal Assistant’ in the Anglican Communion. (Article)

The theologian Paul Avis, in his handbook for those becoming bishops in the Anglican Communion, makes scarcely any reference throughout the course of the treatise to any distinction between a diocesan and a non-diocesan bishop. At one level this is refreshing, eschewing as it does any notion of a hierarchy within the order of bishops. However, on another level it is somewhat odd, for so much of the episcopal polity and praxis articulated throughout assumes the reader is “becoming” a diocesan bishop, and is, consequently, at times irrelevant to those who are “becoming” a bishop in an assisting role.

LJ 191 (2023), 138-149: Andrew Tettenborn: Clergy Abuse – A Hard Path For Claimants. (Article)

The issue of the vicarious liability of Churches and other religious organizations for abuse by officers and others is a complex one. It recently reached the UK Supreme Court in *Trustees of the Barry Congregation of Jehovah’s Witnesses v BXB*, where the scope of vicarious liability for deliberate wrongdoing was considerably limited by their Lordships. T. examines that decision, concentrating not so much on its effect on the law of vicarious liability as a whole, as on its ramifications and implications for religious bodies. He investigates in some detail not only the issue of when wrongdoing by a church officer will be regarded as in the scope of employment (or quasi-employment), but also the difficult question of the structure of religious employment, the issue of who is likely to be regarded as the liable employer, and the practicalities of suits arising out of religious abuse.

RDC 73/1 (2023), 85-98: Frédéric Libaud: Regards croisés sur la fonction d’enseignement de l’Église dans le CIC de 1983 et le CCEO de 1990. (Article)

See below, CIC canons 747-833.

REDC 78 (2021), 881-916: Arturo Calvo Espiga: ¿Secularidad o privacidad? La irónica disolución de la institución matrimonial. (Article)

On the basis of specific historical references, C.E. offers a reflection on the privatization process – leaving aside any hint of secularized paganism – of the marriage institution in Western legal systems.

REDC 78 (2021), 1181-1210: Damián G. Astigueta: El principio *ne bis in idem* en el derecho penal canónico. (Article)

See below, canons 1641-1644.

REDC 78 (2021), 1443-1452: Ángeles Liñán García: La relevancia del derecho comparado en la investigación y docencia universitaria. (Article)

L.G. comments on the interrelation and concordances among the different legal systems and on how to achieve the combination, harmonization, and reception of the various families of law in force (Anglo-Saxon common law, Continental European law, legal systems of the different confessions, etc.), facilitating the legal traffic between them.

Compilations

IC 63/126 (2023), 821-878: José Ignacio Rubio López: Crónica judicial de Derecho eclesiástico en los Estados Unidos de Norteamérica (2021-2023). (Compilation)

R.L. highlights some of the more significant federal cases involving religious freedom decided by the United States Supreme Court in the period 2021-2023.

Ecclesiology

AC 63 (2023), 187-199: Patrick Valdrini: Quarante ans de promulgation du code latin de droit canonique: une évolution vers une plus grande *rationabilitas*? (Article)

See below, canon 204.

FCan XVIII/1 (2023), 121-132: Manuel Joaquim da Rocha: Tribunal Eclesiástico, um contributo para o processo sinodal na Igreja. (Article)

The synodal process that Pope Francis has set in motion in the life of the Church, as an instrument at the service of her communion and mission, affects all the faithful and ecclesial organizations, including ecclesiastical tribunals. This article reflects on how these forums can be enriched by the Church's synodal dimension, helping them to fulfil their evangelizing mission.

Ius 14, 2 (2023), 57-105: Paul Pallath: Consolidation of Roman Primacy and the decline of synodality in the second millennium until the Second Vatican Council. (Article)

In the socio-cultural, political, and ecclesiastical context of the second millennium, the primacy of the Roman Pontiff developed into a full, supreme, and absolute power of universal jurisdiction, culminating in the promulgation of the dogmas of primacy and infallibility at the First Vatican Council. Because of these developments, episcopal power of governance or jurisdiction came to be seen as a concession of the Roman Pontiff, and metropolitan and patriarchal authority as sharing in his supreme power. Synodality and conciliarity virtually disappeared in the West, and decreased considerably in the East.

Ius 14, 2 (2023), 106-120: Varghese Palathingal: The Canonical Spectrum of the Paths of Synodality for a Church *sui iuris* in the Third Millennium. (Article)

The objective of the synodal process is to provide an opportunity for the entire People of God to discern together, aiming at a synodal mode of living. Communitarian metanoia, the convergence of attitudinal traits, the value of relationships, participatory bodies, sharing and participation in sacred things are the means to realize synodality in a cultural ethos. Synodality is reflected in all ecclesial spheres. As a contextual analysis, the *yogam* or assembly of the Saint Thomas Christian Church is a forerunner of synodality.

Ius Comm XI (2023), 285-313: Pablo Eduardo Lamata Molina: Descentralización en la Iglesia: de Juan Pablo II a Francisco. (Article)

L.M. seeks to show how the concept of “decentralization” can be seen throughout history as inadequate for canon law as well as for the Church, if it

is considered exclusively from a sociological or political perspective, as in civil law; or it can become a convenient ecclesial instrument, if considered from a theological and pastoral perspective. This entails a shift away from a situation of apparent contradiction between John Paul II and Francis to a true continuity; a form of government in accordance with the mystery of the Church, and the hierarchical communion between the Roman Pontiff and the episcopal ministry.

J 79 (2023), 373-404: Fredrik Hansen: Sound Decentralization and Institutional Synodality. (Article)

The notions of “sound decentralization” and “synodality” have been advanced by Pope Francis in relation to the diocesan bishop and the particular Church. The teaching of the Second Vatican Council on bishops and, in particular, the diocesan bishop, therefore merits careful consideration, both in itself and in regard to the relationship between diocesan bishops and the Roman Pontiff. Decentralization was part of the post-conciliar debates on subsidiarity and autonomy, which led to an outlining of the hallmarks of “sound decentralization”. Synodality stands in relation to such decentralization; the term “institutional synodality” is a means of both understanding and implementing synodality in the life of the particular Church.

Per 112 (2023), 429-476: Armand Paul Bosso: Le Chiese particolari nel sistema della decentralizzazione. (Article)

See below, canons 368-374.

RDC 73/1 (2023), 7-35: Alphonse Borras: Le processus synodal et la future révision du Livre II du CIC de 1983. (Article)

See below, canons 204-329.

VJTR 87 11/23, 822-842: Reginald Alva: Will the Synod ‘For a Synodal Church’ Awaken a New Dawn of Hope in the Catholic Church? (Article)

Pope Francis officially convoked the synod “For a Synodal Church” in October 2021. This process will continue in a phased manner until the second session of the XVI General Ordinary Assembly of the Synod of Bishops in October 2024. Pope Francis desires all Catholics to be part of this synod and contribute in all possible ways to enrich the Church and awaken a new dawn

of hope in the Church. The Pope noted communion, participation, and mission as the three guiding principles for creating a synodal Church. In the contemporary world the Catholic Church is facing multiple problems both *ad intra* (internal Church issues) and *ad extra* (external issues), and thus needs renewal, reformation, and transformation to respond to the needs of the times. A. examines the significance and role of those three guiding principles in effectively initiating the process of revitalizing the Catholic Church so that it can boldly proclaim the gospel of Jesus Christ.

Family issues

(2023), nr 2, 5-31: Ilaria Zuanazzi: La famiglia nel diritto della Chiesa tra attualità e profezia. (Article)

Z. compares today's culture on the family with the conception of the family according to Christian anthropology in order to emphasize how the values underlying the essential structure of the family as outlined by Christian doctrine and canon law are still capable of responding to the most authentic expectations of today's men and women.

Human rights

EE 98 (2023), 795-830: María Mut: Religión e igualdad en las reservas a la Convención sobre la eliminación de todas las formas de discriminación contra la mujer. (Article)

Despite the significant absence of the United States of America, the vast majority of States in the international community are parties to the Convention on the Elimination of All Forms of Discrimination against Women. However the Convention also has the largest number of reservations aimed at modifying or excluding most of its provisions. After examining these reservations, M. argues that a large part of them have to do with the difficult relationship concerning, on the one hand, the right of equality between men and women, enshrined in the Convention, and, on the other, the right of religious freedom, which it is not expressly reflected in the Convention. The Convention is silent on how both human rights are related and does not articulate any type of measure aimed at balancing them or making them compatible. This affects, both directly and indirectly, the interpretation of the

Convention and the work of the Committee on the Elimination of All Forms of Discrimination against Women.

Law reform

EIC 63 (2023), 649-666: Matteo Visioli: Breve nota sul falso misticismo e la sua rilevanza penale. (Article)

See below, canon 1399*.

FCan XVIII/1 (2023), 101-119: Miguel Falcão: A função da forma canónica do Matrimónio. Uma nova proposta em estudo. (Article)

See below, canon 1108.

J 79 (2023), 459-506: Vincent W. Woo: Historical Development of the Times of Ordinations: A Proposal to Revitalize Ember Saturday Ordinations. (Article)

See below, canon 1010.

REDC 78 (2021), 583-604: Manuel J. Arroba Conde: Retos actuales de la Administracion de Justicia en la Iglesia. (Article)

See below, canon 1400.

Legal theory

BV 83 (2023), 623-635: Vid Žepič: Pope Benedict XVI's Critique of Legal Positivism with Special Regards to the Role of Tradition in Contemporary Legal Systems. (Article)

Pope Benedict XVI's 2011 address to the Bundestag can be interpreted as a comprehensive synthesis of his perspective on the foundations of law as a subsystem within society. He underscored the paramount importance of constitutional democracy and the State, governed by an implementation of the rule of law that is both free and dedicated to upholding human dignity. Furthermore, he exhorted politicians and citizens alike to pursue justice

persistently, to assess the law critically as responsible individuals, and to aspire to higher moral standards. In addition, he cast doubt on the adequacy of scientific legal positivism and scientism in comprehending law and the realm of reason. Stemming from his scepticism concerning the sufficiency of positivism in the formulation and interpretation of law, he emphasized the significance of European “legal heritage”. According to Benedict, this tradition originated from the cultural triangle of Jerusalem, Athens, and Rome, and serves as an indicator of a “rational legal order”. As Pope Benedict’s address was directed towards scholars in the field of jurisprudence and legal historians, Ž.’s analysis of the speech is accompanied by a brief examination of the role of the notion of “legal tradition” within selected European contemporary legal systems.

IC 63/126 (2023), 739-800: Carlos José Errázuriz: La fecundidad teológica de la visión realista del derecho eclesial como bien jurídico: reflexiones a partir de las doctrinas de Jiménez Urresti, Rouco Varela y Hervada. (Article)

E. studies the extent to which the concept of law as a juridical good enables greater understanding of the reality of Church law as ecclesial, that is, the extent to which the use of this notion sheds light on the supernatural dimension of law in the Church. To this end, he presents three conceptions of canon law that illustrate the connection between law and the mystery of the Church: Teodoro Ignacio Jiménez Urresti’s theory, based on law as a human norm; Antonio María Rouco Varela’s theory of law as structure, affirming the properly theological nature of canon law; and two stages of Javier Hervada’s thought: first, his theory of law as order-structure, and second, his theory of the application to canon law of the notion of law as “what is just”. This realist notion of law in the Church has enabled Hervada to acquire a deeper understanding of the relationship between canon law and the mystery of the Church, and between canon law and the law of grace proper to it, highlighting sacrament as law, and the law of the People of God as a law for freedom and other fundamental dimensions.

REDC 78 (2021), 605-618: Enrique de León Rey: Reflexiones sobre la finalidad de los cánones en la Iglesia. (Article)

De. L reflects on old and new canonical questions such as the nature and foundation of canon law and its purpose in the Church and society, the peculiarities of ecclesial law as compared to secular law, the concept of ecclesial common good, the fundamental rights of the faithful, and the need

for a correct exercise of ecclesial *potestas* so as not to discredit the law in the Church.

Relations between Church and State

AC 63 (2023), 7-23: Olivier Échappé: Les personnes vulnérables en droit français. (Article)

É. traces the origins of the concept of “vulnerable persons” in French law. A “wound” can be physical, moral, or economic. From a concern to protect the weak, jurists moved on to consider those lacking capacity to perform certain acts. Roman law dealing with minors and with adults lacking the power of discernment subject to *patria potestas* provides the basis for later developments. Decrees of 3 January 1968 and 5 March 2007 set out the current law on vulnerable persons. A decree of 22 October 2022 (in the context of Covid) sees an extension of the concept into social policy. The French penal code introduced the concept of vulnerable persons in 1980 and again in 1992 in relation to victims of crime and those charged with crimes. It now figures in the jurisprudence of the European Court of Human Rights. In the USA some jurists present it as inherent in human nature.

EE 98 (2023), 769-793: Rafael Palomino Lozano: Los modelos de relación religión-Estado. Pervivencia de un instrumento de estudio en la era postsecular. (Article)

In Law and Religion studies, the analysis and discussion of models of the State-religion relationship (secular State, non-confessional State, theocratic State, officially religious State, etc.) is indispensable. Even though the models may be pedagogically useful for understanding legal relations of an institutional nature, they are insufficient for addressing the complexity of the religious phenomenon in the post-secular era. P.L. highlights some expressions of that complexity that escape explanation by means of these models and concludes that it is necessary to relativize the value of such relationship models, and to consider other relevant legal variables concerning religion and beliefs.

FCan XVIII/1 (2023), 47-60: Pedro Manuel Luís: No quinto aniversário da reforma dos Estatutos dos Centros Sociais e Paroquiais: a relação do Pároco com os órgãos diretivos. (Article)

See below, canon 215.

IE XXXV (2023), 449-471: Matteo Carnì: La riparazione del danno da parte del delinquente e l'eventuale responsabilità civile *ex delicto* dell'ente di appartenenza. (Article)

See below, canon 1729.

IE XXXV (2023), 575-591: Andrea Bettetini: Enti religiosi e Terzo settore nell'ordinamento giuridico italiano. (Article)

B. examines the effect on religious entities of a 2016 reform of the Third Sector which embraces many not-for-profit organizations in the Italian legal system.

IE XXXV (2023), 685-703, 761-768: Paolo Cavana: Prime osservazioni sulla nuova Legge Fondamentale dello Stato della Città del Vaticano. (Document and comment)

C. analyses the new Fundamental Law of the Vatican City State issued by Pope Francis on 13 May 2023. He highlights its rationale, its continuity with the 2000 Fundamental Law, and the main changes introduced by the new legislation. He takes into account obligations of international law recently contracted by the Vatican State, which tend to reduce the absolute powers of its governing bodies, leading to a different understanding of the nature of this small Papal State. The Italian text of the new legislation is given on pp. 761-768.

REDC 78 (2021), 1255-1289: Joaquín Guerrero Peyrona: La difícil ejecución de un decreto eclesiástico: aspectos fundamentales del conflicto jurídico entre las diócesis de Barbastro-Monzón y Lérida sobre bienes artísticos. (Article)

See below, canon 1290.

RGDCDEE 63 (2023): Aurora Mª López Medina: Una Ley imposible de aplicar: 1841 un clérigo liberal ante el subsidio de culto y clero. (Article)

Among the difficulties in the relations between the Church and State in Spain throughout the first half of the 19th century were the problems that arose as a result of the confiscation of Church property (disamortization). While the Constitution of 1837 established that the nation was obliged to maintain the worship and ministers of the Catholic religion, responsibility for this fell on the Church itself, and the town councils and provincial councils, so that financing the parishes and dioceses was a practically impossible task. A liberal clergyman, Valentín Ortigosa, who enjoyed the favour of the governments of the time and was responsible for applying the law in Málaga in 1841, later became a senator and gave an account of these problems in the upper chamber.

RGDCDEE 63 (2023): Miguel Ángel Asensio Sánchez: La relación del estado con las creencias religiosas de los ciudadanos en la Constitución de 1978: libertad religiosa, pluralismo y laicidad. (Article)

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

Religious freedom

ELJ 25 (2023), 283-313: John Witte, Jr: Reclaiming the Blessings of Religious Liberty: Religion and the American Constitutional Experiment. (Article)

Thomas Jefferson once described America's new religious freedom guarantees as a "fair" and "novel experiment". These guarantees, set out in the new American state and federal constitutions of 1776 to 1791, defied the millennium-old assumptions inherited from Western Europe: that one form of Christianity must be established in a community and that the State must protect and support it against all other forms of faith. America would no longer suffer such governmental prescriptions and proscriptions of religion, Jefferson declared. All forms of Christianity had to stand on their own feet and on an equal footing with all other religions. Their survival and growth had to turn on the cogency of their word, not the coercion of the sword, and on the faith of their members, not the force of the law.

IC 63/126 (2023), 699-737: Rafael Palomino Lozano: La autonomía de las confesiones religiosas. Aportes desde el derecho de la Unión Europea. (Article)

The autonomy of religious groups has recently been questioned in the face of so-called sexual rights and the demands of equality and non-discrimination. This circumstance invites a study about the meaning, content and foundation of the autonomy of religious groups, in the context of the law of the European Union.

LJ 191 (2023), 119-137: John Witte, Jr.: A New Great Awakening of Religious Freedom in America. (Lecture)

20 years ago, American religious freedom was in trouble. The United States Supreme Court had weakened the First Amendment considerably, and religious freedom claims were often subordinated to sexual liberty and other rights claimants. States routinely denied funds and benefits to religious parties and removed traditional religious symbols and ceremonies from public life. Leading academics castigated religious group rights claimants given recent charges of sexual abuse and financial fraud in some Churches. In 2000, religious freedom was a second-class right. However, the past decade has seen a great awakening of American religious freedom, led by the United States Supreme Court. In more than two dozen cases since 2012, the Court has strengthened the First Amendment to strike down public regulations and policies that discriminated against religion. It has granted religious individuals and groups exemptions from general laws that substantially burdened religious conscience and strengthened the autonomy of religious groups to govern their own polity and property. The Court has underscored traditional protections against religious coercion and against State hostility towards religion. And it has built strong new protections for the religious worship of prisoners, students, and teachers, and against State efforts to remove religious symbols, ceremonies, and statuary from public life. W. maps this new great awakening of religious liberty, but also warns about some of the ample challenges that remain.

REDC 78 (2021), 299-346: José Miguel Viejo-Ximénez: Restricciones de la libertad de religión: Estado de alarma, libertad de culto y autonomía de las confesiones. (Article)

V.-X. analyses the restrictions on religious freedom put in place by the Spanish government during the first state of emergency in order to contain the COVID-19 pandemic.

RGDCDEE 63 (2023): María Teresa Areces Piñol: Objeción de conciencia a determinados contenidos docentes obligatorios a propósito de la Ley Trans. (Article)

A.P. analyses the articles of the recently passed Spanish Trans Act that may possibly violate the constitutional and conventional right of parents to choose the religious and ethical formation of their children according to their own convictions. She looks at the possibility of parents and teachers invoking conscientious objection regarding the changes in educational content that may be incompatible with their religious convictions.

RGDCDEE 63 (2023): Juan Ferreiro Galguera: Honor de las confesiones religiosas ante la libertad de expresión: especial referencia a los Testigos de Jehová. (Article)

Many religious entities are subject to defamatory accusations of unlawful or criminal acts that harm their reputation and the religious sentiments of their members, and that may affect the freedom of religious choice of others. It is necessary to apply the rules of conflict between freedom of expression and reputation (in this case that of a private legal entity) to see whether freedom of expression prevails or whether we are dealing with unlawful defamatory acts. F.G. analyses this tension based on the activities of a Spanish association and several documentaries published in the media and social networks that denigrate the Jehovah's Witnesses. He examines these facts in the light of constitutional jurisprudence and that of the European Court of Human Rights.

RGDCDEE 63 (2023): Gloria Moreno Botella: La homosexualidad como factor de inhabilitación profesional en el profesorado de religión: el caso Pavez. (Article)

M.B. analyses the conflict between the freedom and autonomy of the Churches to appoint suitable persons to teach the subject of religion, and the

freedom to choose to live according to a sexual option contrary to the teaching of that religion.

RGDCDEE 63 (2023): Miguel Ángel Asensio Sánchez: La relación del estado con las creencias religiosas de los ciudadanos en la Constitución de 1978: libertad religiosa, pluralismo y laicidad. (Article)

The Constitution of 1978 formulated the relationship between the State and the religious beliefs of its citizens around three fundamental principles or categories: religious freedom, pluralism, and secularity. It is frequently understood that religious freedom and secularity are in a position of dialectic confrontation that can only be overcome through the supremacy or subordination of one to the other. A.S. contends that, at least at a theoretical level, no such confrontation exists, because each of these categories occupies its own and differentiated field. Thus, religious freedom is a fundamental right that, as such, is proper to the person; pluralism is an inherent characteristic of democratic societies; and secularity is predicated by and is binding solely on the so-called State apparatus.

RGDCDEE 63 (2023): Víctor Moreno Soler: El factor religioso en la lucha contra las injerencias extranjeras: quo vadis, Europa? (Article)

In recent times, States have become increasingly worried about the interference that other foreign powers might be carrying out within their countries. Among State and non-State actors, religious communities emerge as a possible instrument through which such foreign interference might be exercised. As a result, specific measures have been adopted to counter this challenge. M.S. addresses the legal framework within which countries have dealt with this phenomenon, examining the scope and effects of these regulations on the exercise of religious freedom. He focuses on what makes the phenomenon dangerous or harmful to our societies.

Social issues

FCan XVIII/1 (2023), 133-142: José Joaquim Almeida Lopes: A inconstitucionalidade da lei da eutanásia. (Article)

Through a historical analysis of the projects for drafting the Constitution of the Portuguese Republic, A.L. presents the way in which this same

Constitution declares that human life is inviolable, and is understood as a fundamental right, corresponding to which is the fundamental duty of protection to be applied by the State and all citizens, especially those who practise medicine. He concludes that the Law of 25 May 2023 allowing euthanasia and medically assisted suicide in Portugal is unconstitutional.

Ius Comm XI (2023), 225-244: Antonio M^a Rouco Varela: El Discurso de San Juan Pablo II sobre Europa en la Catedral de Santiago de Compostela el 9.XI.1982. La actualidad prepolítica 40 años después. (Address)

R.V. recalls the words of St John Paul II in Santiago de Compostela at the end of his first apostolic journey to Spain in 1982, when he asked Europe to rediscover itself and be itself, to discover its origins and revive its roots, to revive those authentic values that made its history glorious and its presence in the other continents beneficial. Four decades later, the problems facing Europe and the whole of humanity are of enormous cultural, anthropological, and spiritual scope. An adequate response requires clarifying the relationship between law, nature, and reason, and reformulating it in its intimate truth and in its universal ethical value, considering the increasingly complex horizon of interculturality.

Teaching of canon law

REDC 78 (2021), 1443-1452: Ángeles Liñán García: La relevancia del derecho comparado en la investigación y docencia universitaria. (Article)

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

HISTORICAL SUBJECTS

1st millennium

AnC 19 (2023) 2, 105-124: Marek Story: Sakrament małżeństwa w dziewiętnastej księdze Dekretu biskupa Burcharda z Wormacji (*The sacrament of marriage in Book XIX of the Decree of Bishop Burchard of Worms*). (Article)

Penitential handbooks, which were written in the late Christian era and the early Middle Ages, are a testimony to the formation of penitential practice in the Church. In the light of the 19th book of the Decree of Bishop Burchard of Worms, S. sets out a number of inappropriate behaviours affecting the sacrament of marriage which led to severe punishments, some of them difficult to implement. Bishop Burchard, in view of the widespread collapse of customs in terms of marital fidelity, obliged confessors to pay attention during confession to the issue of indissolubility of marriage, since there were cases of polygamy or even of murder of a spouse in order to enter into a new relationship. Pastors were also to strive to eliminate, through penance, penitents' inappropriate sexual behaviour with family members, such as cohabitation with a sister-in-law or stepmother, or persuading a spouse to be unfaithful. During the celebration of the sacrament of penance, priests were to be vigilant concerning impediments to marriage, which included consanguinity, affinity, or abduction of the woman in order to enter into marriage with her. Stress was also to be placed on the importance of engagement in the period leading to marriage.

J 79 (2023), 459-506: Vincent W. Woo: Historical Development of the Times of Ordinations: A Proposal to Revitalize Ember Saturday Ordinations. (Article)

See below, canon 1010.

REDC 78 (2021), 657-708: Beatriz García Fueyo: *Confirmatio donationis, inter vivos facta*, en el Derecho Romano, y su recepción hasta la Edad Moderna. (Article)

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

Classical period

IC 63/126 (2023), 821-878: Sentencia del Tribunal de la Rota Romana sobre derechos y daños, *coram* Pinto, de 26 de marzo de 1999; José Miguel Viejo-Ximénez – Amado Quintana Afonso: A propósito de la sentencia *coram* Pinto de 26 de marzo de 1999. Notas sobre la responsabilidad contractual y la responsabilidad aquiliana en Derecho canónico. (Sentence and comment)

The Rotal sentence *coram* Pinto of 26 March 1999 allows an exploration, from a historical perspective, of the scope and meaning of the canonization of civil law in relation to obligations and liability. The canonization of civil laws concerning compensation for damages is supported by canonical tradition. The sources of canon 128 of the CIC/83 are not to be found in the CIC/17, but in the chapters of the title *De (iniuriis et) damno dato* of the *ius novum* of the decretals, as well as in the rules of the *ius romanum* which the decretists used in interpreting the rubric in a systematic way.

IE XXXV (2023), 531-551: Thierry Sol: La déposition au XIIe siècle: une peine perpétuelle? (Article)

S. focuses on the perpetual nature of the penalty of deposition and the possibility of dispensation from it. Can a deposed cleric be restored to his office? Under what conditions? Distinction 50 of Gratian's Decree does not allow clear principles to be identified. This is why the decretists sought to reconstruct the logic underlying the application of deposition, between *rigor iuris* and leniency. S. studies especially the interpretations of Rufin and the *Summa Lipsiensis*.

Ius 14, 2 (2023), 57-105: Paul Pallath: Consolidation of Roman Primacy and the decline of synodality in the second millennium until the Second Vatican Council. (Article)

See above, General Subjects (*Ecclesiology*).

J 79 (2023), 459-506: Vincent W. Woo: Historical Development of the Times of Ordinations: A Proposal to Revitalize Ember Saturday Ordinations. (Article)

See below, canon 1010.

RDC 73/1 (2023), 135-180: Frédérique Cahu: Les manuscrits de la collection canonique de Grégoire IX conservés en France. (Article)

C.'s research into the Decretals of Gregory IX, promulgated in 1234, consists in defining the various aspects that make up the manuscript, and helps to date and locate it. The catalogue includes a codicological study of the text, decoration, and history of the manuscripts. His research has enabled him to date and locate 74 illuminated manuscripts kept in France.

REDC 78 (2021), 165-213: Jaime Justo Fernández: ¿En qué fecha del año se ha de reunir el Sínodo Diocesano? Un caso concreto: Ourense (1215-1563). (Article)

Lateran Council IV ordered the annual celebration of the diocesan synod, but did not set a specific date in the year on which it was to meet. It was therefore for the bishop to decide. F. shows that in some dioceses such as Ourense (Spain) the custom arose of celebrating the diocesan synod on a specific date each year, and this custom was subsequently codified, becoming part of the diocesan law, although the date was also determined by the liturgical calendar: hence the diversity of dates on which it actually met. This finding makes it possible to know more about the date of celebration of those synods in Ourense that are of uncertain, inadequate, or non-existent dating, a line of inquiry that F. proposes to apply to other dioceses.

REDC 78 (2021), 657-708: Beatriz García Fueyo: *Confirmatio donationis, inter vivos facta*, en el Derecho Romano, y su recepción hasta la Edad Moderna. (Article)

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

REDC 78 (2021), 1291-1323: Víctor Martínez Patón: El origen de la responsabilidad penal de las personas jurídicas en el Derecho Canónico. (Article)

The CIC/83 has rejected the possibility of attributing penal responsibility to juridical persons. Nevertheless canon law always recognized that corporations could be the subjects of penal responsibility. M.P. analyses the grounds on which canon law previously recognized corporate criminal liability, on the basis of biblical sources and authors from the 12th and 13th centuries.

16th-19th centuries

FCan XVIII/1 (2023), 151-158: Sagrada Congregação do Concílio: Parisien., 28 de março de 1857. (Decision and comment)

See below, canon 1142.

Ius 14, 2 (2023), 57-105: Paul Pallath: Consolidation of Roman Primacy and the decline of synodality in the second millennium until the Second Vatican Council. (Article)

See above, General Subjects (*Ecclesiology*).

J 79 (2023), 459-506: Vincent W. Woo: Historical Development of the Times of Ordinations: A Proposal to Revitalize Ember Saturday Ordinations. (Article)

See below, canon 1010.

REDC 78 (2021), 215-297: Eutimio Sastre Santos: La *consultazione americana votorum*. Los votos solemnes y la clausura en los Estados Unidos de América (1842-1864). (Article)

S. analyses the *consultazione americana votorum* concerning the juridical question of the nature of simple and solemn vows and the enclosed life of various institutes of religious life in the United States around the middle of the 19th century.

REDC 78 (2021), 621-655: José Antonio Calvo Gómez: Rodrigo Antonio de Orellana y el cisma liberal en la Diócesis de Ávila (1821-1822). (Article)

C.G. studies the schism that took place in the diocese of Ávila between 1821 and 1822. The physical and intellectual illness of the bishop and the consequences of Colonel Rafael del Riego's liberal policy complicated the situation. The nuncio, Giacomo Giustiniani, and the Vatican Secretary of State, Cardinal Ercole Consalvi, intervened in an attempt at a solution. The problem of ecclesial communion was only partly resolved with the death of the bishop in July 1822. The government's proposal to appoint a successor in the person of José Antonio García Tejero, who had led the schism, reopened the debate on the relationship between Church and State in contemporary Spain.

REDC 78 (2021), 657-708: Beatriz García Fueyo: *Confirmatio donationis, inter vivos facta*, en el Derecho Romano, y su recepción hasta la Edad Moderna. (Article)

There are many institutions of Roman law that were taken over by medieval canon law, some of which were incorporated into the codified law of the 20th century. The reception of Roman law did not mean a complete and literal transcription of the Roman rules, since in many cases they were modified by the law of the Church in order to adapt them to the reality of its spiritual purpose and to that of Christian society with different values and juridical schemes. G.F. studies an adaptation that took place to the *donatio inter vivos*, which had been irrevocable since classical times, in the light of a notarial deed of 1604 which was drawn up by a bishop and which was later declared null and void as being made within 40 days of the date of his death (see following entry).

REDC 78 (2021), 709-768: Justo García Sánchez: Actos jurídicos, documentados notarialmente, otorgados por el Obispo Civitatense, los días 6-7 de diciembre de 1604 (Inaplicación parcial de la voluntad del disponente). (Article)

Throughout the year 1604, the bishop of Ciudad Rodrigo, Martín de Salvatierra, made various donations in favour of private individuals and ecclesiastical institutions, and died on 13 December 1604. On the 6th of the same month and year, in full use of his mental faculties, he issued a notarial deed of exceptional importance, because with it he distributed practically all his personal or private patrimony, and many other goods that were under his

ecclesiastical administration, by means of a plurality of *inter vivos* donations, which had multiple beneficiaries, but from which his closest cognates and other blood relatives, as well as some pious works, such as the two seminaries, benefited greatly. By means of a second deed, issued the following day, and authorized by a local public notary, he made a nuncupative (oral) will, without institution of an heir, but including precise clauses for his burial and funeral, suffrages and alms, very much in accordance with the spirit of the good prelate and the applicable canonical regulations. G.S. chooses to leave the judgement of the bishop's conduct in abeyance, as he had not been able to locate, until now, the inventory of the heir who accepted the inheritance, nor the inventory which, almost certainly, must have been drawn up by the Apostolic Chamber, as a result of its request to the Nuncio declaring the nullity of the donations contained in the notarial deed of the 6th, prior to patrimonial ownership passing to the bishop's heirs.

REDC 78 (2021), 769-812: Miguel A. González García – Jaime Justo Fernández: *Iter Arreptum*. Una tipología notarial no tenida en cuenta. (Article)

The authors study some cases of “*yterarretum*” recorded in the central decades of the 16th century in Astorga (Spain). These refer in principle to journeys which people made to the Roman curia in *de facto* appeals in their lawsuits and causes, or simply as pilgrims. However, from unpublished documentation the motive of the journeys to Rome often seems to be that of obtaining ecclesiastical benefits or privileges.

REDC 78 (2021), 813-836: Carlos Salinas Araneda: *Tesis de Derecho Canónico Matrimonial defendidas en la Real Universidad de San Felipe, de Santiago de Chile, durante el período indiano, 1758-1810*. (Article)

This paper conjecturally reconstructs the contents of the theses pertaining to the canon law of marriage defended in the Royal University of St Philip, Santiago de Chile, during the years 1758 and 1810, of which, as with the rest of the theses presented in that university during the Spanish colonial period, only the titles have been preserved. To this end, reference is made to the law of the time, as well as the doctrine of the authors that dealt with the topics in question.

RGDCDEE 63 (2023): Aurora Mª López Medina: Una Ley imposible de aplicar: 1841 un clérigo liberal ante el subsidio de culto y clero. (Article)

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

1917 Code

Ius 14, 2 (2023), 57-105: Paul Pallath: Consolidation of Roman Primacy and the decline of synodality in the second millennium until the Second Vatican Council. (Article)

See above, General Subjects (*Ecclesiology*).

J 79 (2023), 459-506: Vincent W. Woo: Historical Development of the Times of Ordinations: A Proposal to Revitalize Ember Saturday Ordinations. (Article)

See below, canon 1010.

20th century

IE XXXV (2023), 507-530: Sebastián Terráneo: Il delitto de *corruptio impuberum* presso il Sant'Uffizio (1922-1965). (Article)

This is an archival study that analyses the response of the Holy Office regarding sexual crimes committed by clerics against prepubescent minors. T. demonstrates how criminal behaviour is interpreted and evaluated and how it evolves over time. The conclusion that emerges from this study is that, since 1922, there has been an attempt to give a canonical response regarding the punishment of this delict. That intention began to suffer setbacks in the mid-1950s, eventually being eclipsed with the transformation of the Holy Office into the Sacred Congregation for the Doctrine of the Faith.

Second Vatican Council and revision of the CIC and CCEO

IC 63/126 (2023), 663-698: Juan Damián Gandía Barber: Derecho «canónico y litúrgico» en las «actas» de la redacción del Codex Iuris Canonici. (Article)

In the drafting of the sections on “The Other Acts of Divine Worship” and on “Sacred Places and Times” in the current Code, it was necessary to define and distinguish between canon and liturgical law in order to decide which canons were to be retained and which ones might form the basis on which the new text of the Code would be written. G.B. explores the documents that deal with this subject: some of these are already known through the publication of the proceedings, but G.B. also presents fragments of other previously unpublished documents, from the “minutes” stored in the archive of the Dicastery for Legislative Texts.

J 79 (2023), 433-458: Marco Benini: From the Liturgical Movement to Pope Francis’s *Desiderio desideravi*: Frederick McManus and His German Colleagues United in Liturgical Formation and Reform. (Article)

The 2023 McManus Lecture, delivered at the Catholic University of America, honoured the prominent canonist and liturgist Monsignor Frederick R. McManus by highlighting his liturgical expertise and merits for the liturgical renewal. McManus notably cooperated with his German colleagues in Trier: Johannes Wagner as the head of the German Liturgical Institute, and Balthasar Fischer, the first chair of liturgical studies in Germany. Based on their letters kept in the archive of the Liturgical Institute in Trier, one can see how these important figures of the liturgical renewal became acquainted at international liturgical study meetings in 1956-1960, cooperated as consultants for the drafting of *Sacrosanctum Concilium*, engaged in the liturgical reform of the Mass and the baptismal rites, and worked together in promoting liturgical studies. These three protagonists were part of the larger context of the liturgical movement as it existed between Germany and the United States in the early liturgical movement, in which Virgil Michel and immigrants brought ideas from Europe (in particular Germany) to the United States and adapted them. While the relationship was at first one of influence and support, in the later liturgical movement it became one of cooperation. Pope Francis has recalled our attention to the liturgical movement in the Apostolic Letter *Desiderio desideravi* of 29 June 2022, on the liturgical formation of the People of God, which demonstrates the enduring relevance

of these three protagonists and the liturgical formation to which they have contributed.

MFS 29 (2023), 233-264: Patrick Connolly: The Current Canonical Legislation of the Catholic Church on Marriage with Particular Reference to the Major Changes of the Last Century. (Article)

See below, canons 1055-1057.

REDC 78 (2021), 53-163: Julio García Martín: Consideraciones sobre la parroquia y el párroco. (Article)

See below, canons 515-552.

REDC 78 (2021), 1357-1388: Diego Zalbidea González: La responsabilidad penal de las personas jurídicas en el CIC de 1917 y en la legislación actual. (Article)

See below, canon 1376*.

José Fernández San Román: La interpretación auténtica de 5 de julio de 1985 sobre la dispensa de la forma canónica matrimonial (can. 87 §1). Documentación preparatoria y comentario respecto al debate sobre su naturaleza declarativa (Article in M. D'Arienzo – V. Buonomo – O. Échappé (eds.), *Lex rationis ordinatio. Studi in onore di Patrick Valdrini*, Vol. II, Luigi Pellegrini, Cosenza, 2022, pp. 685-703)

See below, canon 87.

CODE OF CANONS OF THE EASTERN CHURCHES

General

RDC 73/1 (2023), 99-114: Diane Laugel: La biritualité du clergé oriental en Occident. Normes, pratiques et perspectives. (Article)

The settlement of Eastern Catholic communities in Europe leads to an increasingly frequent coexistence between the Latin and Eastern rites. Aware of this new situation, the Magisterium of the Church has sought to regulate the relationship between the rites, offering a more comprehensive response than that provided for in the CIC/83. The Swiss, Belgian, and German pastoral realities take into account bi-rituality as one of the possible answers. L. considers the procedure of requesting a rescript to this effect from the Dicastery for the Oriental Churches. Such an approach on the part of bishops promotes the encounter between the rites and opens up new perspectives.

Historical

Ius 14, 2 (2023), 57-105: Paul Pallath: Consolidation of Roman Primacy and the decline of synodality in the second millennium until the Second Vatican Council. (Article)

See above, General Subjects (*Ecclesiology*).

RDC 73/1 (2023), 115-133: Michel Appietto: La contribution du Pape Benoît XIV à la modernisation et à la codification du droit des Églises catholiques de rite oriental. (Article)

Benedict XIV (Prospero Lambertini), who reigned from 1740 to 1758, is widely recognized as one of the greatest canonists of the post-Tridentine area. He made considerable efforts to adapt Latin canon law to the requirements of modern normative efficiency, more than a century before the 1917 codification. In this respect, his work still deserves special attention. A. points out how he also contributed actively to the rationalization of Eastern Catholic canon law, guided by a particular attention to the relationship between general and particular legislations. Benedict XIV still remains an inspiring source for canonists through his use of methodological principles based on strong

historical research. Against all forms of positivism and abstract legalism, this methodology corresponds to the intrinsic nature of canon law.

CCEO 23

Ius 14, 2 (2023), 41-56: Benny Sebastian Tharakunnel: Balancing the Rights of the Victims and the Accused in Cases of Sexual Abuse of Minors and the Vulnerable by Clerics. (Article)

See below, CIC canon 1398*.

CCEO 27-28

CLSN 204/23, 18-26: Casimir Zielinski: Inter-ritual Concelebration: East and West around one Altar. (Article)

See below, CCEO canons 700-702.

CCEO 584-666

RDC 73/1 (2023), 85-98: Frédéric Libaud: Regards croisés sur la fonction d'enseignement de l'Église dans le CIC de 1983 et le CCEO de 1990. (Article)

See below, CIC canons 747-833.

CCEO 700-702

CLSN 204/23, 18-26: Casimir Zielinski: Inter-ritual Concelebration: East and West around one Altar. (Article)

The Divine Liturgy manifests the Church united with its pastor, around a single altar, in breaking the bread and opening the scriptures. The Catholic Church is a communion of various particular Churches with their own traditions and rituals. A strong idea, which emerged from the Second Vatican Council, was concelebrating the Divine Liturgy, wherein various ritual Churches join in one united celebration of the Saving Mysteries. Z. explores how this desire is translated into practice in multiple canons of the CCEO. He begins by defining what a *sui iuris* Church is, offering a short history of concelebration covering legislation on the subject whilst also mentioning the bi-ritual indult and the fourth Eucharistic prayer in the Missal of Paul VI.

CCEO 776

MFS 29 (2023), 233-264: Patrick Connolly: The Current Canonical Legislation of the Catholic Church on Marriage with Particular Reference to the Major Changes of the Last Century. (Article)

See below, CIC canons 1055-1057.

CCEO 817

MFS 29 (2023), 233-264: Patrick Connolly: The Current Canonical Legislation of the Catholic Church on Marriage with Particular Reference to the Major Changes of the Last Century. (Article)

See below, CIC canons 1055-1057.

CCEO 1449

EIC 63 (2023), 591-623: Pierpaolo Dal Corso: I nuovi delitti di natura economica: analisi e criticità. (Article)

See below, CIC canons 1376*-1377*.

CCEO 1453

Ius 14, 2 (2023), 8-23: Biju Varghese Perumayan: New Provisions of Canon Law on the Sexual Abuse of Minors and Vulnerable Adults: A Textual Study with Pastoral Perspective. (Article)

See below, CIC canon 1398*.

CCEO 1453

Ius 14, 2 (2023), 24-40: Shaji Jerman: Policies for the Protection of Minors and the Vulnerable in the Institutions of the Church in India. (Article)

See below, CIC canon 1398*.

CCEO 1453

Ius 14, 2 (2023), 41-56: Benny Sebastian Tharakunnel: Balancing the Rights of the Victims and the Accused in Cases of Sexual Abuse of Minors and the Vulnerable by Clerics. (Article)

See below, CIC canon 1398*.

CCEO 1463

EIC 63 (2023), 591-623: Pierpaolo Dal Corso: I nuovi delitti di natura economica: analisi e criticità. (Article)

See below, CIC canons 1376*-1377*.

CCEO 1466

EIC 63 (2023), 591-623: Pierpaolo Dal Corso: I nuovi delitti di natura economica: analisi e criticità. (Article)

See below, CIC canons 1376*-1377*.

CODE OF CANON LAW BOOK I: GENERAL NORMS

7-8

ADC 12 (julio 2023), 295-309: Carlos Ramiro Alonso García: ¿En qué norma se regula el delito canónico de pornografía infantil? Un alegato a favor de la cláusula “*contra bonos mores*”. (Article)

See below, canon 1398*.

20-21

ADC 12 (julio 2023), 295-309: Carlos Ramiro Alonso García: ¿En qué norma se regula el delito canónico de pornografía infantil? Un alegato a favor de la cláusula “*contra bonos mores*”. (Article)

See below, canon 1398*.

23-28

AC 63 (2023), 187-199: Patrick Valdrini: Quarante ans de promulgation du code latin de droit canonique: une évolution vers une plus grande *rationabilitas*? (Article)

See below, canon 204.

87

José Fernández San Román: La interpretación auténtica de 5 de julio de 1985 sobre la dispensa de la forma canónica matrimonial (can. 87 §1). Documentación preparatoria y comentario respecto al debate sobre su naturaleza declarativa (Article in M. D’Arienzo – V. Buonomo – O. Échappé (eds.), *Lex rationis ordinatio. Studi in onore di Patrick Valdrini*, Vol. II, Luigi Pellegrini, Cosenza, 2022, pp. 685-703)

The authentic interpretation of 5 July 1985, confirming that, other than in urgent cases of danger of death, the bishop may not dispense two Catholics from canonical form, is in line with the will of the Commission for the Revision of the Code and, above all, in accordance with the will of the legislator to preserve the pontifical reservation of dispensation from the

canonical form of marriage in ordinary cases. Being declarative of something that was implicit, it is in some way in continuity with the norms in force at the time of reception of the teachings of the Second Vatican Council. This study presents the unpublished preparatory documents.

94

REDC 78 (2021), 1391-1441: Francisco José González Díaz: Intervencionismo e inferencias de la autoridad eclesiástica en el derecho de asociación: Estudio de casos. (Article)

G.D. examines what the freedom or right of association in the Church entails, and the faculties of the ecclesiastical authority with respect to the associations of the faithful (vigilance, visitation, governance), highlighting that such competences cannot hinder the right of association, much less limit it, replace it, or reorder it according to the authority's own whim. Rather the ecclesiastical authority should encourage and protect it. To this end, G.D. analyses the *ius statuendi* in canon 94 §1 and the need to reconcile the right of association with the faculties that correspond to the ecclesiastical authority, in order to seek a balance that guides the relationship of the members of an association with the hierarchy, in an exercise of ecclesial co-responsibility which Pope Francis calls synodality, inviting one and the other to walk together in the evangelizing mission that we all have as members of the Church, the People of God.

99

AC 63 (2023), 23-40: Bruno Gonçalves: Quelques réflexions autour de la notion de *personne vulnérable* en droit pénal canonique. (Article)

See below, canon 1398*.

128

IC 63/126 (2023), 821-878: Sentencia del Tribunal de la Rota Romana sobre derechos y daños, *coram* Pinto, de 26 de marzo de 1999; José Miguel Viejo-Ximénez – Amado Quintana Afonso: A propósito de la sentencia *coram* Pinto de 26 de marzo de 1999. Notas sobre la responsabilidad contractual y la responsabilidad aquiliana en Derecho canónico. (Sentence and comment)

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

129

AC 63 (2023), 201-219: Denis Baudot: Le pouvoir aujourd’hui dans l’Église: pouvoir des clercs et des laïcs, pouvoir d’ordre et de juridiction. (Article)

B.’s article is inspired by an article of Gianfranco Ghirlanda SJ, *L’origine e l’esercizio della potestà di governo dei vescovi. Una questione di 2000 anni*, in *Periodica* 106/4, pp. 537-631 (see *Canon Law Abstracts*, no. 120, p. 51). He notes the affirmation in the Apostolic Constitution *Praedicate Evangelium* (19 March 2022) that the power of governance in the Church comes, not from ordination, but from a canonical mission. B. refers to a seminal work: Roberto Interlandi, *Potestà sacramentale e potestà di governo nel primo millennio. Esercizio di essa e loro distinzione* (Pontificio Istituto Biblico, 2016: see *Canon Law Abstracts*, no. 118, p. 18). Vatican II used *sacra potestas* (*Lumen Gentium*, no. 27) to describe the spiritual power necessary to govern the Church. *Lumen Gentium*, no. 21, held that to exercise the threefold power (to sanctify, to teach, and to govern) a bishop had to be inserted into hierarchical communion, which occurs when he receives his canonical mission from the Pope (*Lumen Gentium*, no. 22a). Sanctifying power comes from the sacrament of order, whereas the power to teach and govern come from visible communion. The *Nota explicativa praevia* of *Lumen gentium* offers an authentic interpretation of the conciliar teaching. Sacred power derives from ordination; the Pope regulates its exercise for the good of the Church. The Council affirmed the right of the faithful – by virtue of their baptism – to cooperate in the exercise of this threefold *potestas regiminis* (cf. *Presbyterorum ordinis*, no. 2b/c). Canon 129 §2 refers to the lay faithful “cooperating” in the power of governance. *Praedicate Evangelium* extends this to “participation” (Preamble, no. 10). Lay members of the Roman Curia carry out their *munus* by virtue of power of the Pope. A French theologian, Martin Pinet, holds that canon 129 is not faithful to the teaching of Vatican II.

129

IC 63/126 (2023), 621-662: Carmen Peña: La mujer en la Iglesia Católica: situación canónica actual y perspectivas abiertas por la sinodalidad. (Article)

See below, canon 208.

129-133

IE XXXV (2023), 659-668: Péter Erdő: Il sacramento dell'ordine e il potere di governo ecclesiastico. (Article)

E. looks at the sacrament of order and the power of ecclesiastical governance in the teaching of Vatican II, and the influence of the principles of the Council in the post-conciliar ecclesiastical legislation.

145

QDE 36 (2023), 314-336: Enrico Massignani: La distinzione tra ministero istituito e ufficio. (Article)

See below, canon 230.

171

Kevin Otieno Mwandha: Defection from the Catholic Church in Kenya. "Do You Also Want to Leave?" (Jn 6:67). (Book)

This publication is a contextualised study that deals with the phenomenon of defection from the Catholic Church in Kenya. Although the study is of a legal-canonical nature, it is also interdisciplinary because it illustrates the socio-cultural complexity of the Kenyan context from an anthropological and interreligious perspective. The first part offers a brief overview of the religious situation in which the Roman Catholic Church coexists with numerous other Churches, ecclesial communities, Christian sects, and various other religions. The second part precisely outlines the problem of defection from the Catholic Church in Kenya, analysing the variables from a quantitative and qualitative point of view in order to grasp the frequency of the phenomenon, its causes, and its effects. The last part aims to revitalize the pastoral care of the Catholic faithful and to strengthen their membership, following Catholic doctrine and the current canonical norms that provide the parameters for judgement. (For bibliographical details see below, Books Received.)

179

IE XXXV (2023), 625-657: Supremo Tribunale della Segnatura Apostolica: Prot. n. 49980/15 CA, *Nominationis Consilii administrationis*, 6 novembre 2015 (decreto) e 17 giugno 2016 (decreto) [il testo e la

traduzione], con commento di Giovanni Parise, *Necessità di conferma dei membri del Consiglio di Amministrazione di una fondazione e ruolo dell'Autorità Ecclesiastica*. (Documents and comment)

These two decrees of the Apostolic Signatura concern a foundation whose statutes establish that, for the appointment of members of the board of directors to become effective, confirmation is required from the bishop. The case highlights, on the one hand, the role of the ecclesiastical authority in its relationship with a foundation having public legal personality, and on the other, the relationship between a foundation with public legal personality and the civil law. In this case the civil judge recognized the competence of the bishop, and accepted the decision given by the competent canonical bodies.

193

IC 63/126 (2023), 803-820: Supremo Tribunal de la Signatura Apostólica: Sentencia sobre la remisión al estado de cesante, de 15 de enero de 2016; Antonio Viana: La remoción del oficio de vicario parroquial en una sentencia de la Signatura Apostólica. (Decree and comment)

See below, canon 552.

194

Kevin Otieno Mwandha: Defection from the Catholic Church in Kenya. “Do You Also Want to Leave?” (Jn 6:67). (Book)

See above, canon 171.

BOOK II, PART I: CHRIST'S FAITHFUL

204

AC 63 (2023), 187-199: Patrick Valdrini: Quarante ans de promulgation du code latin de droit canonique: une évolution vers une plus grande *rationabilitas*? (Article)

For Gratian, the non-observance of a law gave rise to a *consuetudo contra legem* that was judged as more reasonable. Laws, he argued, are stronger and more effective when they are sustained and recognized by the *mores utentium*. Through a custom, a community expresses its will, even when it is in opposition to a law. The legislator exercises his power of governance when he accepts that a law is not applied. Gratian's sense of the community's capacity to create law by custom was weakened by a later insistence on law as the action of a legislator. The rediscovery in the CIC/83 of the Church as a community of the faithful marks a return to a deeper sense of its identity. The ecclesial institutions in Book II of the Code foster an ecclesiology of participation and responsibility of all the faithful and a vision of synodality. The involvement of the faithful helps ensure that acts of governance and pastoral decisions will be more reasonable.

204-329

RDC 73/1 (2023), 7-35: Alphonse Borras: Le processus synodal et la future révision du Livre II du CIC de 1983. (Article)

Even if there is not yet any official question of revising the Code of Canon Law (in its entirety), the current "synodal process" in reference to the 16th Ordinary General Assembly of the Synod of Bishops leads us not only to question the ecclesiology underlying Book II of the Code, but also, if not above all, to envisage its revision. B. offers some prospects for a revision based not on a "universalist" ecclesiology but on a theology of the People of God and of the communion of the Churches. Such a revision can only be based on a renewed reception of the ecclesiology that emerges from Vatican II, under the impulse of the current pontificate. To bring this revision to fruition, B. suggests 1. reconsidering the introductory canons in the light of the ecclesiology of *communio*; 2. strengthening ecclesial communion at regional level; 3. giving full weight to the *munus regendi* of Christ's faithful; 4. promoting ministerial collaboration and accountability.

207

IE XXXV (2023), 553-574: Massimo del Pozzo: Una rivisitazione in chiave costituzionale della differenziazione del fedeli nel can. 207 CIC. (Article)

Del P. considers the limitations and insufficiencies in the formulation of canon 207. He examines the genesis and wording of the canon and provides an analysis of how it was received by canonical doctrine. The major perplexity regarding the content and placement of the canon stems from the ecclesiological assumption related to the societal vision (*societas perfecta intrinsece disaequalis*) of canon 107 of the CIC/17. Vatican II's reflections on the condition of the faithful and the communitarian perspective of the People of God allow one to go beyond the sense and purpose of the older norm. Apart from the contrast between the logic of bipartition and tripartition, it seems appropriate to overcome any residue of a conception of canonical "states". In line with greater attention to the charismatic factor, del P. points out the need of a normative reformulation that incorporates the variety of vocations, charisms, and ministries in the Church and integrates the personal and institutional profile with the community aspect.

208

IC 63/126 (2023), 621-662: Carmen Peña: La mujer en la Iglesia Católica: situación canónica actual y perspectivas abiertas por la sinodalidad. (Article)

P. begins with a description of the various ways in which women can participate in ecclesiastical activity, highlighting those areas in which there has been most progress in the forty years since the publication of the 1983 Code; and those that open up the most significant possibilities for advancing towards the effective implementation of the principle of gender equality, such as teaching in ecclesiastical faculties and seminaries, the appointment of women as ecclesiastical judges, and the role of women in investigations and criminal proceedings brought against priests. She also offers a reflective evaluation of the future prospects that the current synodal process on synodality opens up in this area, paying particular attention to the reform of the Roman Curia articulated in *Praedicate Evangelium*. She concludes by pointing out some aspects that might be subject to normative reform, such as the clerical status of the judges of Apostolic Tribunals, the cardinalate, and the possible reform of diocesan consultative councils.

208-223

EIC 63 (2023), 667-687: Massimo del Pozzo: La soggettività dei diritti fondamentali nelle comunità carismatiche. (Article)

The rights of the faithful are given particular attention in the current codifications. In charismatic communities, the focus has been mainly on claiming autonomy and respect for the charism and on guaranteeing the freedom, intimacy, and privacy of members. The subjectivity of fundamental rights in such communities, however, has not yet been fully addressed in doctrine. In this contribution, del P. considers possible solutions: communal subjectivity, representative subjectivity, and personal subjectivity. At heart what is involved is the need to recognize additional and more specific rights going beyond those common to all the faithful (canons 208-223), and to determine and differentiate such rights – and the entitlements to which they give rise – more precisely. This calls in the first place for better juridical formation within the movements.

215

FCan XVIII/1 (2023), 47-60: Pedro Manuel Luís: No quinto aniversário da reforma dos Estatutos dos Centros Sociais e Paroquiais: a relação do Pároco com os órgãos diretivos. (Article)

L. analyses the consequences of a 2014 law in Portugal affecting the statutes of parish social centres. He reflects on the new relationship between the parish priest and these institutions and their governing bodies, within the scope of autonomy and religious assistance as a consequence of greater accountability on the part of the laity.

220

AnC 19 (2023) 2, 5-55: Maciej Andrzejewski: Ochrona danych osobowych w sprawach o stwierdzenie nieważności małżeństwa w świetle wybranych zasad procesu (cz. 2) (*Protection of personal data in marriage nullity cases in the light of selected procedural rules: part 2*). (Article)

A. continues his article on the scope of protection of the personal data of those involved in marriage nullity processes in Poland. (For the first part of the article see *Canon Law Abstracts*, no. 131, p. 39.)

220

ELJ 25 (2023), 283-313: Clyde Muropa: Personnel Files, Confidentiality and the Right to Privacy. (Article)

Focusing on the Catholic Church, M. explores the concepts of confidentiality and the right to privacy in contemporary moral and legal thought. The management of church personnel files presents the challenge of observing and maintaining confidentiality and privacy. In most cases, the information contained in personnel files of the clergy, members of religious institutes, and others holding ecclesiastical offices, is confidential, which should safeguard the reputation of all persons involved. From a juridical viewpoint, the Church's innate duty to respect the dignity of the person, as well as the natural right of privacy and good name, forms the foundation of M.'s study. Certain practices in the Church entail the collection, use, or retention of confidential information about individuals for internal purposes, the administration of justice, and the management of archives and documents in the diocesan curia. In the final analysis, the Church has the responsibility both to protect the privacy of all the faithful and to transmit the Gospel message transparently.

220

HPR June-July 2023: Michael J. Mazza: The Importance of the Value of Reputation. (Article)

In a two-part article, M. analyses how the good of reputation is seen in Sacred Scripture, the witness of the early Church, and the Magisterium of the Catholic Church leading up to and flowing from the Second Vatican Council. He highlights the universal appreciation for a good reputation, the impact of defamation on mental health, and the historical significance of maintaining a positive identity within communities. He also discusses the importance of reputation for followers of Christ, citing examples of false accusations against saints throughout history and emphasizing the need to uphold the right to a good reputation, especially for ordained ministers.

220

(2023), nr 2, 47-77: Tomasz Jakubiak: Zabezpieczenie prawa nupturientów do intymności i ochrony dobrego imienia w trakcie bezpośredniego przygotowania do małżeństwa wg dekretu KEP z 8 października 2019 roku (*Protection of engaged couples' right to privacy and a good reputation during their immediate preparation for marriage, as*

enshrined in the Decree passed by the Conference of the Bishops of Poland on 8 October 2019). (Article)

See below, canons 1066-1067.

220

Ius 14, 2 (2023), 41-56: Benny Sebastian Tharakunnel: Balancing the Rights of the Victims and the Accused in Cases of Sexual Abuse of Minors and the Vulnerable by Clerics. (Article)

See below, canon 1398*.

221

ADC 12 (julio 2023), 25-121: Carlos Manuel Morán Bustos: El nuevo orden procesal en los delitos de abusos de menores desde la perspectiva del “justo proceso”. (Article)

M.B. examines the concept of “due process” and the elements that essentially configure it from the perspective of the new procedural order developed in response to cases of abuse of minors among clergy. The reflection is divided into three parts. The first part deals with how the treatment of abuse in the Church has shifted from the devaluation of the juridical to the awareness of the indispensable need for criminal procedural mechanisms. The second part analyses the principles arising from natural law that constitute what is called “due process”. Finally, these principles are studied within the regulation of the various canonical institutions. The principles generally include the presumption of innocence, contradiction, right of defence, impartiality and independence of the judge, equality of the parties, publicity, and right to appeal, along with rational expediency and moral certainty as mechanisms for the specific decision. These principles are instrumental and subsidiary to the pursuit of material truth and the realization of final justice in the specific case. However, canon law has its own moral, theological, and ecclesiological presuppositions derived from divine law that give it its own specificity and purpose. M.B. concludes by defending the need for procedural criminal regulations that primarily allow for the pursuit of truth.

228-230

IC 63/126 (2023), 621-662: Carmen Peña: La mujer en la Iglesia Católica: situación canónica actual y perspectivas abiertas por la sinodalidad. (Article)

See above, canon 208.

230

AC 63 (2023), 167-185: Alphonse Borras: Éléments canoniques et pastoraux pour un discernement dans la mise en œuvre du *motu proprio Spiritus Domini*. (Article)

Pope Francis issued the *motu proprio Spiritus Domini* on 10 January 2021 to amend canon 230 on instituted ministries (lector and acolyte); on 10 May 2021 he issued the *motu proprio Antiquum ministerium* on the ministry of catechist. Both are included in the Roman Ritual, *De institutione catechistarum (editio typica)* of 3 December 2021. *Antiquum ministerium* distinguishes between catechists and those responsible for a community, which may include co-ordination of the ministry of catechists. The foundation document relating to lector and acolyte is *Ministeria quaedam* (15 August 1972). These were conferred for life in order to fulfil an office or a mission in the Church. Canon 230 §1 envisages a permanent ministry. In addition to the possession of a charism, a person must be “suitable” (canon 149 §1) and have the “requisite qualities” (canon 149 §2). For the ministry of catechists, cf. the *Guide for Catechists* issued by the Congregation [now Dicastery] for the Evangelization of Peoples in 1993. (Lay) hospital and prison chaplains or “pastoral animators” could be instituted as lectors or acolytes. As such they acquire a status in the Church; bishops’ conferences should issue a decree clarifying their role, and provide a template for individual dioceses. This will help in the reception of their ministry in the communities they serve. Procedures in place for permanent deacons provide a template for the choice of lectors and acolytes, their formation, their investiture, and their letter of appointment. The persons to be instituted in these ministries will be chosen from among those who already carry out an ecclesial role on a voluntary basis. The irregularities listed in canon 1041 will apply to those being instituted as lectors or acolytes. Following *Spiritus Domini* and *Antiquum ministerium*, a person’s sex is no longer an issue.

230

QDE 36 (2023), 262-284: Roberto Interlandi: Ministeri laicali: istituito o riconosciuto di fatto. (Article)

I. reviews the notions of ministry and lay ministers in the documents of Vatican II. He traces the development of these ideas from the period immediately after the Council through the 1983 Code and the 1997 Interdicasterial Instruction *Ecclesiae de mysterio* to more recent developments under the present pontificate which allowed women to be instituted as acolytes and lectors, and created the possibility of instituting catechists in a stable ministry. He considers the theological and organizational implications and advantages of having instituted ministers rather than these roles simply being exercised.

230

QDE 36 (2023), 285-313: Daniele Mombelli: L'iter formativo per l'istituzione dei ministri lettori, accoliti e catechisti: requisiti e responsabilità per un'esperienza ecclesiale. (Article)

M. begins by identifying the institution of the minister as the key to the formation programme, locating the key aspect of the ministry in its ecclesial character. He reviews the requirements for potential future ministers and those who are involved in formation. He examines the content of that formation, paying attention to both initial and continuing formation.

230

QDE 36 (2023), 314-336: Enrico Massignani: La distinzione tra ministero istituito e ufficio. (Article)

M. compares instituted ministries and ecclesiastical offices as ways of serving in the Church. He offers some initial thoughts about the meaning of the words involved, and then seeks to distinguish between ministry and office on the basis of the means by which they are conferred, their relative independence of each other, and the ecclesial *munus* to which they refer. He then offers a series of distinctions between instituted ministry and office: contrasting who can institute a ministry and who can constitute an office; who confers ministry and office; who can be promoted to ministries and who to offices; stability in the exercise of both; and possible remuneration. He suggests that while the rules surrounding offices are well defined, there is further work to be done in similar respects on ministries.

231

EIC 63 (2023), 689-725: Naonyir Sébastien Somda: La rémunération des Catéchistes Titulaires dans les Églises particulières au Burkina Faso et au Niger. (Article)

S. discusses the condition of the lay faithful in the Church, from the ecclesiology of Vatican II. He sets out to define the mission and rights of the lay catechist, looking specifically at the question of the right to remuneration of lay catechists in the Church in Africa, and more precisely in Burkina Faso and Niger. He calls for the bishops' conference in those countries to implement fair and decent treatment for this ministry.

232-264

VJTR 87 12/23, 918-927: Konrad Noronha: Priestly Formation in Safeguarding: Advancements and Planning. (Article)

Priestly formation prepares seminarians for the priesthood. It includes human, spiritual, intellectual, and pastoral formation. Various norms and procedures have to be followed during the course of formation. Formation in safeguarding involves training individuals to protect children and vulnerable adults from harm. This training helps them with the knowledge and skills to create safe environments for children and vulnerable adults. Clergy and religious need to be trained in the various dimensions of safeguarding throughout formation and ongoing formation.

274

AnC 19 (2023) 2, 75-82: Piotr KroczeK – Weronika Lipińska: Kanoniczne konsekwencje nieodbierania przesyłek poleconych przez proboszcza na przykładzie kazusu (*Canonical consequences of a parish priest's failure to collect registered mail using a case example*). (Article)

See below, canon 1378*.

290

AC 63 (2023), 147-163: Alexandre Bordenave: La perte de l'État clérical: faut-il assumer un plaider coupable canonique? (Article)

The loss of the clerical state is an expiatory penalty, as per canon 290 2°. The delicts in *Normae de gravioribus delictis*, amended and promulgated on 11

October 2021, can be punished by the loss of the clerical state. A rescript can be issued as per canon 290 3°.

305

EIC 63 (2023), 743-761: Emile Kouveglo: Principio di rappresentatività e accesso al voto nelle associazioni dei fedeli. Profili canonistici. (Article)

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

305

IE XXXV (2023), 473-505: Elisa Lisiero: Tipologie di associazioni internazionali di fedeli: un tentativo di classificazione. (Article)

L. examines the international aggregative entities recognized or erected by the Dicastery for Laity, Family and Life and falling under its direct competency. She identifies their principal types, offering a simple and essential categorization which distinguishes between very different realities. This also allows a better understanding of the members' ecclesial situations. Greater space is devoted to movements and new communities, with some specific remarks on plurivocationality, understood as the co-presence of different states of life, and on the common vocation flowing from adherence to the charism that lies at the origin of these realities.

313

IE XXXV (2023), 473-505: Elisa Lisiero: Tipologie di associazioni internazionali di fedeli: un tentativo di classificazione. (Article)

See above, canon 305.

316

Kevin Otieno Mwandha: Defection from the Catholic Church in Kenya. "Do You Also Want to Leave?" (Jn 6:67). (Book)

See above, canon 171.

322-323

Per 112 (2023), 337-347: Marco Billeri: Conflitti tra associazioni private dei fedeli e autorità ecclesiastica. Uno studio sulla tensione tra autonomia e legittima vigilanza. (Extract of thesis)

In this summary of his doctoral thesis published by the Pontifical Gregorian University, B. considers the sometimes problematic relationship between private associations of the faithful and ecclesiastical authority. In particular, he focuses on the conflicts that can arise between the associations and the local bishop. These tensions can arise because of the necessary *recognitio* by the bishop of the associations and because of the duty of vigilance on the part of the Ordinary, both of which are sometimes viewed by the associations as infringements of their autonomy.

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

330-572

RDC 73/1 (2023), 7-35: Alphonse Borras: Le processus synodal et la future révision du Livre II du CIC de 1983. (Article)

See above, canons 204-329.

351

IC 63/126 (2023), 621-662: Carmen Peña: La mujer en la Iglesia Católica: situación canónica actual y perspectivas abiertas por la sinodalidad. (Article)

See above, canon 208.

343

VJTR 87 11/23, 822-842: Reginald Alva: Will the Synod ‘For a Synodal Church’ Awaken a New Dawn of Hope in the Catholic Church? (Article)

See above, General Subjects (*Ecclesiology*).

353

RDC 73/1 (2023), 37-62: Jean-Philippe Goudot: Synodalité cardinalice. (Article)

G. states that the time has come, in the Catholic Church, for “synodality”, a notion as vague as it is frequently used. It can be defined as an asymmetrical communion made of listening and taking responsibility on the part of the “head” within a “body”, a communion which is experienced and shown in assemblies of a liturgical nature. The consistory of cardinals is an excellent example, unfortunately too little known – perhaps even by those it is supposed to serve, the Popes. After a short canonical overview, in particular of the last three Apostolic Constitutions reorganizing the Roman Curia (*Regimini Ecclesiae Universae* of 1967, *Pastor Bonus* of 1988, and *Praedicate Evangelium* of 2022), G. focuses on the liturgical dimension of the consistories (request for suffrage, *clausio* and *aperitio oris*, *Te Deum...*),

which has now almost disappeared. As an epilogue, a particularly tense meeting of cardinals (August 2022) highlights the need for a renewed synodality among cardinals.

360

IC 63/126 (2023), 517-539: Antonio Viana: Novedades de la «Praedicate Evangelium» en cuanto a la terminología, distribución de competencias y actividad administrativa. (Article)

V. sets out some of the main novelties in the new law governing the Roman Curia (19 March 2022) regarding nomenclature, the principles shaping the organization of its activity, and the revised distribution of competences. He notes that the “institutions” of the Roman Curia are at the service of the Pope, of the bishops in the particular Churches, but also of the faithful who are the recipients of their governmental, educational, and charitable activities.

360

IC 63/126 (2023), 541-594: Manuel Ganarin: L’ambito materiale della Curia romana. Insegnamento, liturgia, governo e carità. (Article)

The competence of the institutions of the Roman Curia can be examined from a material point of view to evaluate the legitimacy and impact of the functions assigned to them by Pope Francis’s Apostolic Constitution *Praedicate Evangelium*. G. focuses on the “external” limits of material competence which involve the relationships between the Church and temporal realities, as well as on the “internal” limits which derive from the need to safeguard specific ecclesial juridical goods (such as the *unitas fidei* and the rights of the faithful), proposing a remedy to encourage the revision of the norms in the synodal Church that define the attributions and prerogatives of the apex structures of government.

360

IC 63/126 (2023), 595-617: Pilar Solá-Granell: Los organismos económicos tras la reforma de la Curia Romana. (Article)

The finance institutions in the Roman Curia manage the Holy See’s assets in order to protect its mission at the service of the universal Church as well as its sustainability. Its current structure, as sanctioned in the Apostolic Constitution *Praedicate Evangelium*, is the result of a long process of reform

that began in the pontificate of Benedict XVI and was brought to a conclusion by Pope Francis. S.-G. outlines the reasons for the reform and its constitutive principles, before offering a brief overview of its current organization.

360

IE XXXV (2023), 669-683, 755-760: Costantino-M. Fabris: La nuova normativa sulle persone giuridiche strumentali della Curia romana. (Document and comment)

F. analyses the recent reform by Pope Francis of the instrumental juridical persons of the Roman Curia, brought about by the motu proprio *Chi è fedele* of 5 December 2022. The provision aims to bring the discipline in this matter into line with the indications contained in the broader framework of the reorganization of the Curia in the Apostolic Constitution *Praedicate Evangelium* and with the canonical and Vatican reforms on economic and financial matters. The Italian text of the motu proprio is given on pp. 755-760.

360

Per 112 (2023), 267-297: Francesco Coccopalmerio: Il Dicastero per i Testi Legislativi (Dicastero per il Diritto Canonico?) nella costituzione apostolica *Praedicate Evangelium*. (Note)

C., the former President of the Pontifical Council for Legislative Texts, reflects on the new Dicastery for Legislative Texts as outlined in *Praedicate Evangelium* nn. 175-182. First of all he analyses each article in sequence, and then subjects them to a re-reading following a logic different from that found in the Apostolic Constitution. After examining five distinct roles or competencies of the new Dicastery, he concludes that a more appropriate and comprehensive nomenclature for the Dicastery should be the “Dicastery for Canon Law”.

368-374

Per 112 (2023), 429-476: Armand Paul Bosso: Le Chiese particolari nel sistema della decentralizzazione. (Article)

B. begins his reflection on decentralization and the particular Churches by calling to mind one of the principles and criteria for the service of the Roman Curia outlined at the beginning of the Apostolic Constitution *Praedicate Evangelium*: “the present reform proposes, in the spirit of a ‘sound

decentralization’ to leave to the competence of Bishops the authority to resolve ... those issues with which they are familiar and that do not affect the Church’s unity of doctrine, discipline and communion ...”. He proceeds to distinguish decentralization from subsidiarity, showing that Pope Francis deliberately opted for decentralization in the Apostolic Constitution. Noting that it is not an exclusively ecclesial notion, B. considers some aspects of decentralization that belong to the constitution of the particular Churches before highlighting some of its juridical implications.

381-402

Ius Comm XI (2023), 245-262: Nicolás Álvarez de las Asturias: “Canonizando” la imagen del obispo diocesano posconciliar: las opciones del Código de 1983. (Article)

The 1983 Code profoundly reformed the legislation on the diocesan bishop, adapting it to the doctrine of the Second Vatican Council. Á. critically analyses the options taken to achieve this, in the light of the specific contribution of canon law to the life of the Church.

384

EE 98 (2023), 729-767: Adam Jaszcz: The Bishop’s Special Solitude for a Presbyter Who Has Served Expiatory Penalties for the Delict «Contra Sextum Cum Minore». (Article)

A grave delict *contra sextum cum minore* committed by a presbyter may result in dismissal from the clerical state. However, in some cases it is possible to impose other expiatory penalties for a determined period. In this case, the offender does not lose the status of a cleric. This means that the incardination may continue, which involves special solicitude on the part of the diocesan bishop, according to canon 384. J. examines the nature of this solicitude when the presbyter has committed a delict against which the Church has declared a ruthless struggle. Guided by the principle formulated by John Paul II of “zero tolerance”, it is necessary to consider the capacity of the punished presbyter to carry out pastoral ministry; recognition of his subjective rights, considering the situation in which he finds himself; and the necessary assistance in terms of personalized spiritual and intellectual formation. This is an important step towards the creation of a professional system for the protection of minors in the Church.

419-430

VJTR 87 9/23, 646-660: Sebastian S. Karambai: The Diocesan Administrator: Election, Powers, and Functions. (Article)

The diocesan administrator, elected by the college of consultors, provides temporary governance to the diocese during the vacancy of the episcopal see. His election, status, powers, and functions, some of the crucial issues of which are ambiguous and confusing, are clarified in this article. Although he can carry out many of the functions of the diocesan bishop, there are several restrictions. He is forbidden to do anything that can be prejudicial to the diocese or to episcopal rights. For making decisions on important pastoral matters, and ordinary and extraordinary administration of temporal goods, he has to consult the pertinent bodies such as the college of consultors, diocesan finance council, and the governing body of the diocesan registered society.

447-459

Ius Comm XI (2023), 263-283: João Vergamota – Paulo Pires: Conferencias Episcopales: naturaleza, misión y retos actuales. (Article)

From its beginnings to the present day, the reality that we designate as the episcopal conference has experienced a surprising development, which, at the same time as highlighting its usefulness in the life of the Church, also raises new questions, especially concerning its canonical and theological nature, and the way of understanding its place in the relationship between the Roman Pontiff and the bishops. The authors provide some pointers for reflection on this topic, enriched by the most recent pronouncements of the magisterium of Pope Francis.

460-468

SC 57 (2023), 551-594: John Anthony Renken: Organs of Synodality and the Revised Penal Law: Effective Means to Safeguard Church Property. (Article)

See below, canons 1376*-1377*.

469

Per 112 (2023), 175-202: Gianfranco Ghirlanda: La Cost. Ap. *In Ecclesiarum communione*: riorganizzazione del Vicariato delle diocesi di Roma. (Presentation)

On 6 January 2023, Pope Francis issued the Apostolic Constitution *In Ecclesiarum communione* by which he reorganized the Vicariate of the diocese of Rome. This Constitution came into force on 31 January 2023. On 2 March of the same year, G. gave this presentation to the clergy of the diocese of Rome at the Pontifical Lateran University on the theme of the changes introduced by the Pope. He begins by recalling two fundamental principles underlying the restructuring: the reality of the Church of Rome as an evangelizing and missionary community, and the importance of synodality and participation. Of the changes introduced, it would appear that the most significant is the episcopal council which meets regularly and is presided over by the Pope himself or by the Cardinal Vicar. The Apostolic Constitution highlights those matters that lie within the competence of the council as well as those for which the consent of the council is needed if the Cardinal Vicar is to act validly. G. then considers the offices and tribunals of the Vicariate. In his view, this reorganization of the Vicariate is to be seen as a kind of model for the reorganization of other diocesan curiae in order to implement more fully some of the important insights of *Christus Dominus*.

482-491

ELJ 25 (2023), 283-313: Clyde Muropa: Personnel Files, Confidentiality and the Right to Privacy. (Article)

See above, canon 220.

483

IC 63/126 (2023), 621-662: Carmen Peña: La mujer en la Iglesia Católica: situación canónica actual y perspectivas abiertas por la sinodalidad. (Article)

See above, canon 208.

492-493

SC 57 (2023), 551-594: John Anthony Renken: Organs of Synodality and the Revised Penal Law: Effective Means to Safeguard Church Property. (Article)

See below, canons 1376*-1377*.

495-514

SC 57 (2023), 551-594: John Anthony Renken: Organs of Synodality and the Revised Penal Law: Effective Means to Safeguard Church Property. (Article)

See below, canons 1376*-1377*.

515-552

REDC 78 (2021), 53-163: Julio García Martín: Consideraciones sobre la parroquia y el párroco. (Article)

The parish is the office that the diocesan bishop entrusts to the pastor. These are two legal institutes of great importance in the Church; however, the previous canonical legislation did not precisely determine the power of the parish priest, giving rise to divergent interpretations. Both institutions were dealt with by the Second Vatican Council, whose principles have been taken into account by the new canonical legislation, which has clarified both the nature of the parish as a juridical person, and the competences of the parish priest to whom it recognizes executive power of government by reason of his office, since he can emanate singular administrative acts regarding the pastoral care and administration of the parish.

536-537

SC 57 (2023), 551-594: John Anthony Renken: Organs of Synodality and the Revised Penal Law: Effective Means to Safeguard Church Property. (Article)

See below, canons 1376*-1377*.

552

IC 63/126 (2023), 803-820: Supremo Tribunal de la Signatura Apostólica: Sentencia sobre la remisión al estado de cesante, de 15 de enero de 2016; Antonio Viana: La remoción del oficio de vicario parroquial en una sentencia de la Signatura Apostólica. (Decree and comment)

The diocesan bishop decreed the cessation of the pastoral activities of an assistant parish priest. The scope of such removal from office and the restrictions imposed on the exercise of pastoral ministry are addressed in this case, the Signatura ultimately determining that in the particular circumstances, the “just reason” required by canon 552 for the removal from office was the loss of the priest’s suitability for the public exercise of the priestly ministry.

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

578

Canonist 14/2 (2023), 260-279: Thien Hong hi Nguyen: The Charism or Patrimony of a Religious Institute and its Apostolate. (Article)

Discovering and recovering its patrimony is challenging for any institute of consecrated life. N. aims to help institutes fulfil the conciliar mandate to rediscover their identity and renew the gift of their founding charism for the good of the entire Church. She also explains elements of a religious institute's patrimony in the context of canon 578 of the CIC/83, which speaks of the "nature, purpose, spirit and character of the institute, and of its sound traditions". These patrimonial elements derive in one way or another from the founder and from the competent ecclesiastical authority which then ratifies these factors. Thus, the founder and the hierarchical Church play a significant role in forming the institute of consecrated life. Sound traditions are also essential in preserving an institute's values and ideals. An institute transmits wholesome traditions, such as prayer, poverty, and community life, from generation to generation. Furthermore, these elements play a significant role and are integral to religious life for individuals and the entire institute. These elements of the institute's patrimony can only be understood effectively when they are together in the same context and in relation to one another.

601

Clar ITVC n.s. 14, 63 (2023), 183-206: Ianire Angulo Ordorika: Abrir la caja de Pandora. Abusos en la Vida Consagrada femenina. (Article)

In his *Letter to the People of God* of August 2018, Pope Francis denounced the existence of a culture of abuse. We must painfully recognize that the problem of abuse within the Church is a structural problem that reaches global crisis dimensions. Moving towards the culture of care that the Pope proposes as an alternative, necessarily implies addressing this issue decisively. In the midst of the global crisis of abuse, little attention has been paid to those forms of abuse that are not sexual in nature, even though they are at the root of sexual abuse. The common factor in all cases of sexual abuse is a relational asymmetry that does not allow us to speak of free consent. The degree of normalization of abusive practices that occurs in religious institutions is very serious, even to the point of being regulated in constitutional documents.

These are abusive dynamics that occur within our institutions. Culture of abuse means that we are not talking about specific behaviours, but about structural elements that facilitate these dynamics, which should be discovered in order to be corrected.

630

Clar ITVC n.s. 14, 63 (2023), 183-206: Ianire Angulo Ordorika: Abrir la caja de Pandora. Abusos en la Vida Consagrada femenina. (Article)

See above, canon 601.

636

Clar ITVC n.s. 14, 63 (2023), 323-346: Michele Miraglia: La suddivisione di competenze tra gestione e vigilanza nell'amministrazione dei beni temporali degli Istituti di Vita Consacrata e delle Società di Vita Apostolica. (Article)

In a world characterized by an ever-increasing specialization of skills and a significant complexity of procedures, the invitation to institutes of consecrated life and societies of apostolic life to address the manner in which their proper law deals with the economic and administrative management of temporal goods becomes more urgent: not so as to overshadow the beauty and spirituality of the foundational charism, but rather to highlight its power of attraction through an authentic testimony of sobriety and transparency. This is a challenge which, drawing strength and inspiration from the recent economic-financial reform of the Holy See, should give renewed impetus to structures that might appear burdensome, but which in fact constitute an opportunity for evangelization and credibility.

662-672

SC 57 (2023), 595-635: Agnès Sory: La protection juridique de la dignité du religieux dans la législation canonique. (Article)

The different forms of abuse, and of dysfunction of authority and of common life, which are increasingly denounced in religious life, constitute forms of violation of the fundamental principle of the dignity of the person. They lead to a disregard for this primordial value of the person, because of the denial of his or her freedom and rights. In this way, they put individuals and the whole community at risk. The institutions of religious life are at the service of the

consecrated person, and their regular functioning requires respect for the person and his or her profound aspirations. Religious consecration does not annihilate the possession of personal rights. The religious is a subject of duties but also of rights, intimately linked to his or her vocation as *Sequela Christi*. This ensemble of obligations and rights is affirmed by universal law and received in the proper law of institutes. Respect for them constitutes a bulwark against possible abuses.

694

Kevin Otieno Mwandha: Defection from the Catholic Church in Kenya. “Do You Also Want to Leave?” (Jn 6:67). (Book)

See above, canon 171.

BOOK III: THE TEACHING OFFICE OF THE CHURCH

747-833

RDC 73/1 (2023), 85-98: Frédéric Libaud: Regards croisés sur la fonction d'enseignement de l'Église dans le CIC de 1983 et le CCEO de 1990. (Article)

The Church must take care to proclaim the reign of God and, consequently, to fulfil her teaching function *ad intra* and *ad extra*. The *munus docendi* is presented in different ways in the CIC/83 (canons 747-833) and the CCEO (canons 584-666). L.'s comparative study reveals a different organization of the subject, but with a common focus on the essential inculturation of the Church's teaching. Nevertheless, beyond a simple formal difference, fundamental specificities exist; they are a source of reciprocal enrichment, a sign of the indispensable complementarity of the two Codes of the Catholic Church.

773

QDE 36 (2023), 337-344: G. Paolo Montini: Il ministero del catechista. Una delibera della Conferenza episcopale austriaca. (Comment)

M. examines the provision for the catechesis of immigrants made by the Austrian bishops through the erection of what was then (2002) an ecclesiastical office and a formation course for catechists. He comments on how this could be a model for provisions made after the creation of the instituted ministry of catechists by Pope Francis in 2021.

781

SC 57 (2023), 447-476: Sakubita Lawrence Like: Obedience and Interculturality in Mission: Composition between Freedom and Authority. (Article)

L. explores the juridical interaction of freedom and authority among the People of God, in carrying out the mission of the Church. With its material object – the essence of mission, obedience, and interculturality – the topic is addressed from the perspective of the classic meaning of *ius* as the *ipsa res iusta*. L. concludes that mission is a good, due in justice, which has obedience as a consequence, whereas interculturality is a concrete and practical

manifestation of obedience. Obedience and interculturality in mission put Christ's faithful, each according to his or her juridical position, in a web of relationships.

785

EIC 63 (2023), 689-725: Naonyir Sébastien Somda: La rémunération des Catéchistes Titulaires dans les Églises particulières au Burkina Faso et au Niger. (Article)

See above, canon 231.

BOOK IV: THE SANCTIFYING OFFICE OF THE CHURCH

838

AnC 19 (2023) 2, 83-104: Dawid Pietras: Dyscyplina sprawowania liturgii z 1962 roku według motu proprio „Traditionis custodes” papieża Franciszka oraz „Responsa ad dubia” Kongregacji Kultu Bożego i Dyscypliny Sakramentów (cz. 2) (*The discipline of celebrating the liturgy of 1962 according to the motu proprio of Pope Francis Traditionis custodes and Responsa ad dubia of the Congregation for Divine Worship and the Discipline of the Sacraments: part 2*). (Article)

By the motu proprio *Traditionis Custodes* of 16 July 2021, Pope Francis reformed the discipline regarding the celebration of the liturgy according to the books of 1962. The motu proprio has been authentically interpreted by the *Responsa ad dubia* of the Congregation for Divine Worship and the Discipline of the Sacraments of 4 December 2021. Bishops are authorized to issue permits for the celebration of the Mass in accordance with the 1962 Roman Missal, and to indicate the places and days of the celebration of this liturgy. The other books have been reserved only for personal parishes and communities which have a special right to use them. The competences have been assumed by the Congregation (now Dicastery) for Divine Worship and the Discipline of the Sacraments and the Congregation (now Dicastery) for Institutes of Consecrated Life and Societies of Apostolic Life. (For the first part of the article see *Canon Law Abstracts*, no. 131, pp. 69-70.)

838

(2023), nr 2, 129-164: Dawid Pietras: The ecclesiastical discipline of the celebration of marriage according to the books of the Roman Rite of 1962 after the Second Vatican Council according to the motu proprio *Summorum Pontificum* and *Traditionis custodes*. (Article)

Through Pope Benedict XVI's motu proprio *Summorum Pontificum* of 7 July 2007, the universal law for use of the 1962 liturgical books entered into force, but only under certain conditions. Bishops received the unrestricted right to use the *Pontificale Romanum* of 1961/62 in the celebration of marriage. Nevertheless, the use of the *Rituale Romanum* of 1952 by priests or deacons when assisting at marriages required the permission of the pastor or rector of the church hosting the ceremony. In addition, members of the clergy whose communities received the special permission necessary from the Apostolic

See or the local Ordinary could also participate as qualified witnesses in a marriage ceremony celebrated according to the earlier rites. However, since 16 July 2021, after the issuance of the motu proprio *Traditionis Custodes*, celebrating a marriage according to the books of 1962 is only possible in personal parishes with the permission of the diocesan bishop. The local Ordinary can also authorize priests of communities that have the special right to celebrate the earlier rites to celebrate such marriages. During the celebration of marriage according to the books of 1962, the current Code's discipline should be maintained, providing it does not violate the shape of the rites contained in these books.

838

J 79 (2023), 405-431: Dawid Pietras: A Canonical Analysis of the February 20, 2023 *Rescriptum ex audientia SS.mi* concerning Implementation of the Motu Proprio *Traditionis custodes*. (Article)

A *Rescriptum ex audientia SS.mi* of the Dicastery for Divine Worship and the Discipline of the Sacraments on the implementation of the motu proprio *Traditionis Custodes* of 16 July 2021 was granted by Pope Francis on 20 February 2023 and was published by the same dicastery. Through this *Rescriptum*, which should be read in terms of the law, the issuing of dispensations from certain norms of the motu proprio regarding the use of the books of the Roman Rite in force in 1962 is reserved to the Apostolic See. Moreover, the dicastery was given the task of examining the dispensations that have already been granted in the specified matter of the motu proprio. The purpose of the *Rescriptum* was to expedite implementation of *Traditionis Custodes*, under which the unique expression of the *lex orandi* of the Roman Rite is the liturgy celebrated according to the books reformed after the Second Vatican Council.

838

SC 57 (2023), 413-445: John G. Lessard: The Use of the Pre-Conciliar Liturgical Books in the Current Law. (Article)

Certain juridical texts issued in the pontificate of Francis raise questions regarding the place of the Holy Mass celebrated according to the 1962 *Missale Romanum*, the competence of the diocesan bishop in liturgical matters, and other subjects surrounding what Benedict XVI called the “Extraordinary Form” of the Roman Rite, or the *usus antiquior*. L. examines these documents

with a particular focus on determining what of Benedict's legislation has been revoked by Francis and what remains unaffected.

838

Réginald-Marie Rivoire: Does *Traditionis Custodes* Pass the Juridical Rationality Test? (Book)

On 16 July 2021 Pope Francis published *Traditionis Custodes*, an Apostolic Letter that aimed at a drastic reduction of the use of the traditional Roman liturgy. In a letter to the bishops published on the same day, the Pope explained at length the reasons for his decision. *Traditionis Custodes* and the accompanying letter aroused consternation among the faithful who were attached to the *usus antiquior*; and R. considers that the *Responsa ad dubia* issued in December 2021 by the Congregation for Divine Worship and the Discipline of the Sacraments, so far from clarifying matters, only intensified the growing dismay and debate. In his view, inaccuracies, difficulties of interpretation, and problems of concrete application of *Traditionis Custodes* have raised many questions among canonists, pastors, and institutes whose proper law binds them to the liturgical forms of the Latin tradition. He undertakes a careful canonical reading of these documents, chiefly from the point of view of their juridical rationality – rationality being one of the essential characteristics of a legal norm, such that strictly speaking, an irrational norm is not a norm and does not bind. He first considers the legal status of the documents; then, the affirmation at the heart of this whole legal apparatus and its *raison d'être*, namely, that the liturgical books promulgated by Paul VI and John Paul II are the sole expression of the *lex orandi* of the Roman Rite. Finally he points out how, according to his understanding, numerous fundamental principles and precepts of canon law are undermined by the new norms. (For bibliographical details see below, Books Received.)

846

CLSN 204/23, 18-26: Casimir Zielinski: Inter-ritual Concelebration: East and West around one Altar. (Article)

See above, CCEO 700-702.

BOOK IV, PART I, TITLE VI: ORDERS

1008-1009

SC 57 (2023), 393-411: Marc B. Caron: Deacons and the Triple *Munera*. (Article)

The Constitution on the Church of Vatican II does not apply the language of teaching, governing, and sanctifying to the ministry of deacons. Instead, *Lumen gentium* defines deacons as exercising “the ministry of the liturgy, of the word, and of charity” (LG 29). However, post-conciliar magisterial teaching and juridical documents at times explicitly describe the ministry of deacons as sharing in the teaching, governing, and sanctifying tasks of ordained ministers. A more nuanced approach has emerged in the contributions of Alphonse Borras and Didier Gonneaud. Like all the Christian faithful, deacons share in Christ’s mission of teaching, governing, and sanctifying as a consequence of their baptismal vocation. While deacons also share in the *munera* of teaching, governing, and sanctifying in virtue of ordination, the manner in which the *munera* are exercised by deacons must be qualified due to the non-collegial nature of the diaconal rank of holy orders.

1010

J 79 (2023), 459-506: Vincent W. Woo: Historical Development of the Times of Ordinations: A Proposal to Revitalize Ember Saturday Ordinations. (Article)

Although canon 1010 of the CIC/83 states the Church’s preference to conduct ordinations on Sundays and holy days of obligation, ordinations are mostly conferred on Saturdays in the United States. In fact, the Church historically restricted ordinations to six designated Saturdays. Four of these six days were ember Saturdays, which were mandatory days of fasting in the Latin Church before Vatican II. W. explains the reasons behind ember Saturday ordinations, particularly the inherent connection between fasting and ordinations. He also delineates the historical development regarding the times of ordinations from the Acts of the Apostles until the CIC/83. The recent revival of ember days in various US dioceses provides an impetus for re-associating ember Saturdays with ordinations. W. suggests ways for priests, diocesan bishops, and conferences of bishops to promote ember Saturday ordinations as a way to foster vocations.

BOOK IV, PART I, TITLE VII: MARRIAGE

1055

BV 83 (2023), 155-170: Sławomir Bukalski – Adam Falewicz: The Conjugal *Communio Amoris* as the Path to Holiness: Perspective of the Exhortation “*Familiaris Consortio*”. (Article)

This article deals with the issues of conjugal *communio amoris* and the implications of this relationship in Christian marriage as a path to holiness. *Communio amoris* in relation to marriage and family comes from the theological thought of John Paul II in the Exhortation *Familiaris Consortio*. The authors look at the conjugal communion of love; conjugal love as the fruit of that communion; and *communio sanctorum* – holiness in marriage as the realization of the communion of love. The history of the Church shows that the holiness of spouses was practised “despite” marriage, “in” marriage, and “thanks to” marriage. The authors place special emphasis on the third model. *Communio amoris* is the principle of sanctification for spouses entering into a sacramental union; it is the path to *communio sanctorum*.

1055

REDC 78 (2021), 1021-1048: Aurora M^a López Medina: La permanente crisis del matrimonio. (Article)

L.M. examines marriage as a legal institution whose purpose is to ensure that both spouses can enter into it freely and achieve its purposes. Starting from some traditionally proposed etymologies for the word marriage, she concludes that the evolution of the marriage institution in our legal system has always been concerned to protect the freedom of women and should continue doing so.

1055

REDC 78 (2021), 1133-1159: Raúl Román Sánchez: La reciprocidad entre fe y matrimonio. Comentario de cuestiones matrimoniales canónicas en el documento “La reciprocidad entre fe y sacramento en las

economías sacramentales” de la Comisión Teológica Internacional (2019). (Article)

R.S. comments on of the 2019 document of the International Theological Commission entitled *The Reciprocity Between Faith and Sacraments in the Sacramental Economy*. He focuses on the references to the sacrament of matrimony, highlighting how they develop the most fundamental questions in the field of canonical marriage law such as the sacramentality of marriage, marriages between “baptized non-believers”, and the inseparability between contract and sacrament.

1055

RGDCDEE 63 (2023): Joan Carreras: El principio de atingencia, el matrimonio igualitario y el ordenamiento jurídico canónico. (Article)

The legal and social recognition of same-sex “marriages” in many countries with a Catholic tradition is generating conflicts in the ecclesiastical sphere. The homosexual faithful are asking the Church to recognize the same rights that they now enjoy in society. C. explores the perennial principles of the canonical marriage tradition and the four principles proposed by Pope Francis in *Evangelii Gaudium*, nos. 222-237, and proposes pastoral solutions to the challenge posed to the canonical order by the claim that homosexual unions contracted by the Catholic faithful should be legitimized.

1055-1057

MFS 29 (2023), 233-264: Patrick Connolly: The Current Canonical Legislation of the Catholic Church on Marriage with Particular Reference to the Major Changes of the Last Century. (Article)

C. examines how current canon law understands the concept of marriage in itself as distinct from the understanding found in legislation prior to Vatican II. He does so by analysing in detail the “foundational” marriage canons and the connected changes made during the 20th century under the influence of the Council’s teaching. These fundamental or “constitutional” canons are more numerous than the corresponding ones found with other sacraments. Against the historical background of the previous legislation with its reductionism (the CIC/17 and Pius XII’s 1949 *motu proprio Crebrae allatae*), he explores how the concept of marriage now inherent in the law differs, or does not differ, from the previous presentations. He explains why there are different descriptions of marriage in the CIC/83 and the CCEO and how there

are nuances in the way that the conciliar notion of “covenant” is presented in the two Codes. The description of marriage as a *consortium totius vitae* is not found in Vatican II but appears in both Codes, and so C. explains its meaning, as well as the concepts of the ends and properties of marriage. At Vatican II, the Oriental Catholics had an influence on the dropping of “contract” in *Gaudium et spes*, but the Latin Code commission was clearly reluctant to follow this model, and retained the concept. Sacramentality is depicted differently in each Code. Yet while the identification of the natural reality of marriage with the sacrament for the baptized – which has provoked so much debate – is more in agreement with the Latin rather than the Oriental legacy on marriage, both current Codes still retain the principle, albeit in different ways. Finally, there is no doubt that both Code commissions in their formulation of the constitutional canons on marriage did make efforts to reflect fully the teaching of *Gaudium et spes*, and this resulted in major changes, even if the precise outcomes are still subject to debate.

1055-1057

REDC 78 (2021), 1053-1089: María Elena Olmos Ortega: Las causas matrimoniales a la luz de los discursos de los Papas a la Rota Romana (2000-2021). (Article)

O. summarizes the reflections of the addresses of Popes Saint John Paul II, Benedict XVI, and Francis to the Roman Rota from the start of the 21st century, on various questions related to matrimonial causes. She looks at the value of the addresses and Rotal jurisprudence; the concept, ends, goods, and essential properties of marriage; marriage preparation and pastoral assistance for marriages and families; pathology of consent and marriage nullity; guiding criteria of the ecclesiastical tribunals; and the suitability of ecclesiastical judges. The doctrine set out in the addresses, although in principle addressed to the Roman Rota, extends to all ecclesiastical tribunals, as it contains guidelines explaining and clarifying substantive and procedural provisions which all members of the tribunals must know and follow. In addition, all their actions must be inspired by the love of truth, guided by justice and charity, always keeping in mind the *salus animarum*, the supreme law in the Church. The papal reflections can also be useful to anyone who has an interest in understanding the reality of marriage and family.

1056

FCan XVIII/1 (2023), 61-76: João Vergamota: Dissolução do Matrimónio em favor da fé. (Article)

See below, canon 1141.

1060

REDC 78 (2021), 1053-1089: María Elena Olmos Ortega: Las causas matrimoniales a la luz de los discursos de los Papas a la Rota Romana (2000-2021). (Article)

See above, canons 1055-1057.

1063

REDC 78 (2021), 1053-1089: María Elena Olmos Ortega: Las causas matrimoniales a la luz de los discursos de los Papas a la Rota Romana (2000-2021). (Article)

See above, canons 1055-1057.

1066-1067

(2023), nr 2, 47-77: Tomasz Jakubiak: Zabezpieczenie prawa nupturientów do intymności i ochrony dobrego imienia w trakcie bezpośredniego przygotowania do małżeństwa wg dekretu KEP z 8 października 2019 roku (*Protection of engaged couples' right to privacy and a good reputation during their immediate preparation for marriage, as enshrined in the Decree passed by the Conference of the Bishops of Poland on 8 October 2019*). (Article)

Under the Polish Bishops' General Decree of 8 October 2019, couples intending to marry in the Church in Poland are required to attend a premarital canonical and pastoral interview. This is done to prevent the invalid or illicit administration of the sacrament of matrimony. J. discusses the provisions of the Decree as regards the protection of couples' right to privacy and a good reputation. He also offers priests some practical suggestions concerning the premarital interview.

1071

José Fernández San Román: El matrimonio de los comunistas (declaraciones de 1949) y los debates sobre la fe y el impedimento de mixta religión. Documentación y actualidad (Article in L. Danto (ed.), *Personne, droit et justice. La contribution du droit canonique dans l'expérience juridique contemporaine. Actes du 17e Congrès de la Consociatio internationalis studio iuris canonici promovendo*, Du Cerf, Paris 2023, pp. 511-522)

At the beginning of the 20th century, totalitarian ideologies came to power in several countries. Among them, the most widespread has been communism. This situation was also reflected in canon law for marriage. In 1949 the Holy See issued pronouncements that were particularly significant for the question of faith and the sacrament of marriage. These consisted of a Decree of 1 July on the Communists and a Declaration of 11 August on marriage. This study presents the unpublished preparatory documents, including the Pope's response that rejects considering these marriages as mixed marriages.

1071

Kevin Otieno Mwandha: Defection from the Catholic Church in Kenya. "Do You Also Want to Leave?" (Jn 6:67). (Book)

See above, canon 171.

1089

EE 98 (2023), 831-870: Carlos Hurtado de Mendoza Domínguez: El impedimento de raptó del CIC de 1983 (c. 1089) en el contexto del matrimonio forzado. (Article)

The impediment of abduction regulated in the Code of the Latin Church and in the Code of Canons of the Eastern Churches contemplates two of the most radical coercive mechanisms to obtain matrimonial consent: abduction, and detention *intuitu matrimonii*. This study analyses canon 1089 of the CIC/83 with the aim of assessing the suitability of retaining this canonical figure, taking into account the phenomenon of forced marriage, in terms of its causes, the coercive forms it takes, and its consequences, as currently set out in international norms. Several questions arise in this reflection: first, whether the configuration of the impediment, which applies only to the abducted woman, constitutes discrimination and whether it fits within a set of norms having a restorative aim; second, how the active subject of the norm in force

– the one responsible for forcing the woman to marry – is to be interpreted, taking into account the social and cultural contexts of forced marriage; and, finally, whether from the victims’ experience there is a “safe and free place” that guarantees a minimum threshold of autonomy for the ordinary cessation of the impediment, or whether, on the contrary, the set of coercive forces that operate in the unwanted marriage reinforce the presumption of the defect of consent and suggest enquiring into the process of formation of the will to marry, integrating the situations of abduction and detention *intuitu matrimonii* into the norms on *vis vel metus*.

1095

CLSN 204/23, 3-17: Christine A. O’Riley: Trauma, Stress, and Consensual Capacity. (Article)

O’R. examines the psychological ramifications which trauma and/or stress-related disorders may have on consensual (in)capacity specific to canon 1095 vis-à-vis marital consent. Examining the effect of a psychological condition and its bearing, if any, on validly consenting to marriage demands scrutinizing *what* the psychological condition is, *when* the condition came about, and *how* it allegedly affected consensual capacity. Nevertheless, it is conceivable that canon 1095 cases could be argued based on traumatic or stressful circumstances, even if neither party meets the obligatory diagnostic criteria for a “related” psychological condition.

1095

REDC 78 (2021), 1053-1089: María Elena Olmos Ortega: Las causas matrimoniales a la luz de los discursos de los Papas a la Rota Romana (2000-2021). (Article)

See above, canons 1055-1057.

1095 2°-3°

(2023), nr 2, 105-127: Michał Wieczorek: Zdrada a nieważność małżeństwa (*Infidelity vs nullity of a marriage*). (Article)

W. analyses several sentences of the Rota where the main issue is infidelity on the part of one of the spouses. Although infidelity is not a cause of nullity of marriage, it can be taken into account as a relevant circumstance for evaluating the evidence. The analysis contains judgments on the exclusion of

marital fidelity and incapacity to assume the essential marital obligations on account of reasons of a psychic nature, and exclusion of the indissolubility of marriage. The research material allows for a better understanding of infidelity itself but also highlights the proper way to proceed with cases where infidelity is the main line of evidence.

1095 3°

Per 112 (2023), 395-428: Davide Salvatori: Immaturità e perturbazione noogena. Presentazione di una nuova corrente giurisprudenziale della Rota Romana. (Article)

S., a judge of the Apostolic Tribunal of the Roman Rota, presents a new current that has emerged in the jurisprudence of that Tribunal. He does so by analysing and commenting on two recent decisions of the Rota: one *coram* Erlebach, 9 February 2017 (see *Canon Law Abstracts*, no. 125, pp. 80-81), the other *coram* Todisco, 12 May 2020 (see *Canon Law Abstracts*, no. 127, pp. 81-82). At the heart of this new approach is the phenomenon of noögenic neurosis, a concept that finds its foundation in the work of Viktor Frankl and which is characterized by a lack of values, an existential emptiness, and anxiety about everyday life. In both cases, the marriage under examination was declared null on the basis of canon 1095 3°, although the argument in the second sentence also touched on the viewpoint of canon 1095 2°. At the end of his analysis and commentary, S. notes that it is too soon to express a definite opinion on how this trend will be received within the Roman Rota but he can see the possibility of further developments.

1095 3°

REDC 78 (2021), 839-879: Vicente Benedito Morant: El error diagnóstico del TDAH y la incapacidad matrimonial, análisis en dos sentencias recientes. (Article)

The absence of detection of ADHD in the canonical forensic setting is very noticeable. Even doctrinal and jurisprudential treatment is very insignificant. However, despite the concurrence with other disorders, it is important to know this mental disorder and to address it in the canonical field. This practical relevance is pointed out in both judgment decisions analysed and could make a difference between an affirmative or negative decision. In the commentary on both sentences, B.M. studies a factor that is fundamental in this absence of diagnosis, which is the phenomenon of the concurrence of ADHD with other disorders and syndromes (co-morbidity). Associated with

this phenomenon of co-morbidity is the consequence of diagnostic error. Such misdiagnosis means that there is a tendency to detect only the most well-known associated psychic causes, which B.M. studies. However, the detection of ADHD can be essential in some cases to differentiate lack of will from a true incapacity under canon 1095 §3.

1095 3°

REDC 78 (2021), 1161-1178: Raquel Sánchez Ordóñez – José David Urchaga Litago: Importancia y propuestas de valoración desde la psicología de la religiosidad en las causas de nulidad matrimonial. (Article)

The authors assess the significance of religiosity in psychological assessments of marriage nullity. In general, religious people have happier marriages with fewer breakdowns. Religiosity, from a psychological point of view, is not only a quantitative dimension (a person can be more or less religious), but is also qualitative (for example, infantile versus adult or mature religiosity). As examples, three psychological models are presented to evaluate religiosity. Finally, a real case of expert opinion is presented, in the context of marriage nullity, which highlights how the psychological evaluation of religiosity is fundamental for understanding, in part, the decisions the couple make when getting married. In the case in question, the decision to marry is taken out of religious immaturity (from a psychological point of view).

1099

Ius Comm XI (2023), 317-338: Francisco Viscome: La relación entre “exclusión implícita” y el “error determinante de la voluntad” en la reciente jurisprudencia Rotal. (Article)

V. examines the meaning of “implicit exclusion” before analysing a series of recent Rotal decisions on the relationship between implicit exclusion and error determining the will: are these mutually exclusive, or – because of the difficulty in practice of distinguishing clearly between them – should they be treated as equivalent? It is a question of clarifying the relationship between an error of law concerning the essential properties of marriage and the positive exclusion of those same properties. Recent jurisprudence tends to separate error determining the will from implicit exclusion.

1099

REDC 78 (2021), 1053-1089: María Elena Olmos Ortega: Las causas matrimoniales a la luz de los discursos de los Papas a la Rota Romana (2000-2021). (Article)

See above, canons 1055-1057.

1099

REDC 78 (2021), 1133-1159: Raúl Román Sánchez: La reciprocidad entre fe y matrimonio. Comentario de cuestiones matrimoniales canónicas en el documento “La reciprocidad entre fe y sacramento en las economías sacramentales” de la Comisión Teológica Internacional (2019). (Article)

See above, canon 1055.

1101

IM 34 (2023), nr 2, 105-127: Michał Wieczorek: Zdrada a nieważność małżeństwa (*Infidelity vs nullity of a marriage*). (Article)

See above, canons 1095 2°-3°.

1101

Ius Comm XI (2023), 317-338: Francisco Viscome: La relación entre “exclusión implícita” y el “error determinante de la voluntad” en la reciente jurisprudencia Rotal. (Article)

See above, canon 1099.

1101

REDC 78 (2021), 917-958: José M^a Díaz Moreno – Cristina Guzmán Pérez: La *causa simulandi* en la exclusión del *bonum prolis*: supuestos fácticos en la jurisprudencia rotal desde 2013 a 2017. (Article)

This research shows the most relevant *causa simulandi* invoked and accepted by the Roman Rota in relation to exclusion of the *bonum prolis* between 2013 and 2017.

1101

REDC 78 (2021), 1053-1089: María Elena Olmos Ortega: Las causas matrimoniales a la luz de los discursos de los Papas a la Rota Romana (2000-2021). (Article)

See above, canons 1055-1057.

1101

REDC 78 (2021), 1133-1159: Raúl Román Sánchez: La reciprocidad entre fe y matrimonio. Comentario de cuestiones matrimoniales canónicas en el documento “La reciprocidad entre fe y sacramento en las economías sacramentales” de la Comisión Teológica Internacional (2019). (Article)

See above, canon 1055.

1103

José Fernández San Román: Los debates sobre la aplicación del vicio del consentimiento de *vis et metus* a los no católicos (can. 1103). La interpretación auténtica de 23 de abril de 1987: documentación inédita y comentario. (Article in J. Otter – M. Walser (eds.), *Iustitia et Ius. Festschrift für Elmar Güthoff*, EOS Editions Sankt Ottilien, 2023, pp. 19-45)

Debates about fear as a cause of marriage nullity have extended over several centuries. A historical milestone in this regard was the 1987 authentic interpretation that canon 1103 is also applicable to non-Catholics. This study presents the unpublished preparatory documents of the authentic interpretation and proceeds to an analysis of the debates. Canon 1103 corresponds in its general outlines to the principles of natural law. In the Plenary of Cardinals this was considered to be a morally correct thesis, thanks to a deepening in understanding on the occasion of the Second Vatican Council.

1108

FCan XVIII/1 (2023), 101-119: Miguel Falcão: A função da forma canónica do Matrimónio. Uma nova proposta em estudo. (Article)

F. presents and comments on a recent work of Prof. Inés Llorens (*La “diakonia” de la forma del matrimonio. La forma canónica al servicio de la realidad matrimonial*, Ediciones Universidad de Navarra, Pamplona, 2020, 470pp.) on a proposal to reform the current canonical form of marriage. With the Council of Trent, the decree *Tametsi* (1563) introduced the canonical form as a condition for the validity of marriage, with the aim of putting an end to clandestine marriages, which caused uncertainty as to the reality of marriage. The Council also wished to guarantee that engaged couples had the necessary dispositions for the celebration of marriage. This juridical solution of the Council sought to find a balance between juridical certainty and respect for the *ius connubii* as the fundamental right to marriage. It became clear that the very nature of marital consent requires that it be provided clearly to the community. However, the Decree posed a great risk of formalism and legalism, by shifting the centre of attention from the power of the contracting parties to the fulfilment of legal requirements, so that compliance with the norms gained more importance than the marital will of the engaged couple. For this reason, the author of the book in question proposes a reform of the current canonical form which simultaneously respects its function of guaranteeing the social character of marriage and the existence of the marital will in the engaged couples. The proposal is open to consideration by canonical doctrine and the competent legislative authority.

1111

REDC 78 (2021), 21-52: Pierre-Marie Berthe: Les diocèses de France et la fraternité sacerdotale Saint-Pie X: La célébration des mariages dans le cadre de la lettre romaine du 27 mars 2017. (Article)

A letter of the Pontifical Commission *Ecclesia Dei* dated 27 March 2017 authorizes Ordinaries to give permission for marriages of members of the Society of Saint Pius X (SSPX) to be validly and lawfully celebrated in the Catholic Church. B. reflects on the reception of such guidelines, and considers the modalities of their implementation in French dioceses. If the SSPX promotes a wide interpretation of the Roman text allowing the bride and groom to exchange consent before their own pastors, most bishops adopt rules which fit in with these views. Nevertheless, the procedures ensuring the

juridical security of SSPX marriages differ widely from one diocese to another.

1124-1126

IM 34 (2023), nr 2, 79-103: Helena Pietrzak: Problem ograniczenia indywidualnej wolności sumienia i religii w małżeństwach mieszanych (*The problem of limiting individual freedom of conscience and religion in mixed marriages*). (Article)

P. analyses the issue of circumstances that result in the violation or limitation of freedom of conscience or religion in the context of mixed marriages (changing religion, hindering religious practice, etc.). She examines how the issue of conscience and religion is taken into account *ex officio* in the course of the matrimonial process.

1134

MFS 29 (2023), 233-264: Patrick Connolly: The Current Canonical Legislation of the Catholic Church on Marriage with Particular Reference to the Major Changes of the Last Century. (Article)

See above, canons 1055-1057.

1141

FCan XVIII/1 (2023), 61-76: João Vergamota: Dissolução do Matrimônio em favor da fé. (Article)

Canon 1056 presents indissolubility as one of the essential properties of marriage, a property that belongs to it by the very nature of the marriage contract. Thus, any natural marriage is indissoluble. However, as the same canon states, this indissolubility acquires special firmness when marriage is contracted between baptized persons, by reason of the sacrament. Therefore, canon 1141 states that a marriage that is ratified and consummated cannot be dissolved by any human power or by any cause other than death. In other cases, where indissolubility does not acquire this special firmness, it is possible to obtain the dissolution of a valid marriage bond, in favour of the faith. V. reflects on the theological and canonical foundation that supports this possibility, and the canonical procedures necessary to achieve it.

1142

AnC 19 (2023) 2, 125-138: Andrzej Wójcik: Znaczenie dopełnienia małżeństwa naturalnego, czyli (jeszcze) niesakramentalnego (*The significance of consummation of natural, i.e. not (yet) sacramental, marriage*). (Article)

Canon 1142 indirectly introduces the category of consummation of a natural marriage which is not yet sacramental. W. presents the anthropological meaning of this consummation according to the analysis of John Paul II in his theology of the body. The consummation of marriage is an act that may be called by the biblical term of “one flesh”. This act is characterized by anthropological terms: “knowledge”; “reaching the end of the objectivity of the body” and “possession”. The presentation of the content of these terms leads to the conclusion that the meaning of consummation of natural marriage is deeply personalistic and allows for a deeper understanding of what is the subject of the marriage consensus, i.e. the marriage bond.

1142

FCan XVIII/1 (2023), 151-158: Sagrada Congregação do Concílio: *Parisien.*, 28 de março de 1857. (Decision and comment)

Canon 1142 of the CIC/83, which declares the possibility of dissolution of marriages *rati et non consummati*, has as its direct antecedent canon 1119 of the CIC/17, which, among its various sources, presents a decision of the Sacred Congregation of the Council of 28 March 1857, reproduced in Latin and in Portuguese translation here (P. Card. Gasparri, Fontes VI: *Curia Romana S.C. Concilii*, Typis Polyglottis Vaticanis 1932, n° 4152). This document presents the decision taken by the Sacred Congregation – in the *iter* of a process *super ratum* – to send the case back to the Archbishop of Paris who had instructed it, on account of a lack of sufficient testimonial evidence. It proves to be very interesting for understanding the necessary requirements for the dispensation of a marriage *ratum et non consummatum*, in addition to presenting procedures and canonical institutes that, although no longer in force, are important to know and understand, such as the “witnesses of the seventh hand”.

1143-1149

REDC 78 (2021), 1091-1131: Carmen Peña: Potencialidad pastoral de las disoluciones matrimoniales *in favorem fidei* y cuestiones relativas a los requisitos y tramitaciones de estos procedimientos. (Article)

One of the remedies provided by the Church for failed non-sacramental marriages is pontifical dissolution of the bond in favour of the faith. It is, however, an underused solution and a little-known proceeding. P. explores the meaning and pastoral purpose of these dissolutions, and addresses issues such as their foundation, the various factual assumptions of non-sacramental marriage, and the difficulties posed in relation to proofs, the question of whether nullity or dissolution is appropriate in the particular case, the juridical relevance of the sincerity of the promises and declarations concerning removing dangers of defecting from the faith and allowing the Catholic party the freedom to profess his or her own religion and to baptise and educate their children as Catholics, and the possibility of requesting a dissolution without having a specific plan of marriage in mind. P. also proposes that advocates be allowed greater involvement in these proceedings, for the good of the faithful.

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

1166-1204

IC 63/126 (2023), 663-698: Juan Damián Gandía Barber: Derecho «canónico y litúrgico» en las «actas» de la redacción del Codex Iuris Canonici. (Article)

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

1168-1170

Canonist 14/2 (2023), 292-309: Dicastery for the Doctrine of the Faith: Declaration *Fiducia Supplicans* on the Pastoral Meaning of Blessings; Peter Slack: Observations on the Declaration *Fiducia Supplicans*. (Document and comment)

The Declaration *Fiducia Supplicans*, on the pastoral meaning of blessings, was published with the approval of Pope Francis on 18 December 2023, following a meeting with the Prefect and Secretary for the doctrinal section of the Dicastery for the Doctrine of the Faith. Almost immediately, and since then, the declaration has given rise to both positive and negative commentary from conferences of bishops and individual bishops. Responding to these concerns the Dicastery issued a press release on 4 January 2024, under the signature of the prefect and the secretary of the doctrinal section which was published on the website of the dicastery, the Vatican News website and *L'Osservatore Romano*. The Prefect of the Dicastery also gave interviews. Pope Francis addressed the matter in an appearance on an Italian talk show, *Che tempo che fa*, on 14 January 2024. The text of the document in English is accompanied by a comment by S.

BOOK IV, PART III: SACRED PLACES AND TIMES

1205-1253

IC 63/126 (2023), 663-698: Juan Damián Gandía Barber: Derecho «canónico y litúrgico» en las «actas» de la redacción del Codex Iuris Canonici. (Article)

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

1222

J 79 (2023), 507-542: I. Supreme Tribunal of the Apostolic Signatura, decree of the *Congresso, Reductionis in usum profanum ecclesiae X*, prot. n. 46790/12 CA, May 28, 2013; 2. Supreme Tribunal of the Apostolic Signatura, definitive decree of the College *coram* Kasyna, *Reductionis in usum profanum ecclesiae X*, prot. n. 46790/12 CA, June 17, 2014; William L. Daniel: Commentary on a Contentious-Administrative Recourse concerning Reduction of a Church to Profane, Non-Sordid Use (Prot. n. 46790/12 CA). (Decrees and comment)

This controversy concerned the reduction of a church to profane, non-sordid use, following the suppression of the parish that had had that church as its principal sacred place. The suppression of the parish – a personal parish – had been decreed in 2004 by the competent archbishop, while the church remained in place, even if its use became limited on account of the pastoral care of its parishioners being entrusted to their territorial pastors (cf. canon 518). The church was naturally located within the bounds of a territorial parish and thus became a subsidiary church of that parish. The principal church of the parish was the one already extant and in use, and the new parishioners would thereafter receive pastoral care from the parish with that church as the centre of its life. The church of the suppressed personal parish was not regularly available for divine worship, although its use for prayer and divine worship was tolerated and even occasionally permitted by the archbishop. A hierarchical recourse against a decision of the archbishop in 2011 to reduce the church to profane, non-sordid use was made to the Congregation for the Clergy, which rejected the recourse in 2012. A subsequent contentious-administrative recourse to the Apostolic Signatura was rejected by the *Congresso* of the Signatura as lacking any foundation whatsoever; the

recurrents then made a recourse against the *Congresso*'s decision; again, that recourse was rejected by the College of Judges. In his comment, D. presents the facts of the case in a sequential manner and reflects on the issues arising at each stage of the process.

1290

REDC 78 (2021), 1255-1289: Joaquín Guerrero Peyrona: La difícil ejecución de un decreto eclesiástico: aspectos fundamentales del conflicto jurídico entre las diócesis de Barbastro-Monzón y Lérida sobre bienes artísticos. (Article)

G.P. refers to the long history of a conflict that began in the 19th century, and to a legal-ecclesiastical history that began in 1995 and has not yet ended as regards the civil judicial process. It is hardly conceivable that, in an intra-ecclesial matter, the Church is unable to enforce its own decisions according to its internal hierarchy, in which the State does not interfere. The main merit is to have been able to obtain an enforceable civil sentence, since the bishops of Barbastro-Monzón and Lérida arrived in their respective dioceses inheriting a conflict which their predecessors did not dare to take to the civil forum. The civil conflict, with a sentence handed down in first instance and with its provisional execution, enters a new phase that can lead to its final solution after a long journey of almost 30 years.

1290-1298

REDC 78 (2021), 1325-1356: Lourdes Ruano Espina: Zanjada la polémica en torno a la titularidad de los bienes de la Iglesia Católica inmatriculados mediante certificado del Diocesano. (Article)

This article consists of five parts, each one dedicated to the analysis and presentation of the following issues: a. the patrimonial capacity of ecclesiastical entities in the Spanish civil order; b. the ownership and legal regime of the assets of the Church; c. the registration of the real estate of the Catholic Church and ecclesiastical entities in the property registry; d. the study prepared by the Government of Spain in execution of the non-law proposal approved by the justice commission of the Congress of Deputies; e. the report presented by the Spanish Episcopal Conference on unregistered assets by certification, between 1998 and 2015.

BOOK VI: PENAL SANCTIONS IN THE CHURCH

Note: references to the new canons of Book VI are marked with an asterisk.

1311*

AC 63 (2023), 95-111: Nicolas de Boccard: La justice des hommes peut-elle être réellement réparatrice? Le rôle possible des tribunaux ecclésiastiques. (Article)

Canon 1311* §2 lists “the restoration of justice, the reform of the offender, and the repair of scandal” among the duties of those responsible for Church leadership. The revised Book VI contains (with slight variances in terminology) ten references to the repair of scandal, and nine to the repair of harm. While civil penal law aims to repair social order, justice in the Church takes place in a penitential context; it seeks the repentance of the sinner with a view to the holiness of each of its members and of the whole community. A penalty seeks to restore the unity of the community. While restorative justice is available in some countries, such as Canada, it remains subject to punitive justice. The situation of victims in canonical penal trials leaves much to be desired; unless they submit an action for damages, they remain as witnesses, cannot appeal against a decision, and often remain poorly informed of the progress of a case. De B. holds that procedural law, especially in penal cases involving the abuse of minors, is weighted against the accused. He believes that the publication of jurisprudence of the Dicastery for the Doctrine of the Faith would offer guidance to lower tribunals. He argues that the absence of publicity of decisions is a weakness.

1311*

ADC 12 (julio 2023), 123-144: Filippo Iannone: El rol del ordinario en el derecho penal. (Article)

I. begins by recalling who are called Ordinaries in the Church: who is the local Ordinary, those who are not local Ordinaries, and those who are not Ordinaries. He then looks at the duties and obligations of diocesan bishops, including their role as judge, specifically in relation to penal law. He sets out the important clarifications concerning diocesan bishops in the revised Book VI. In the event of an offence, a diligent preliminary investigation must be carried out, and in cases of well-founded suspicion of guilt, the penal

procedure must be initiated. Expiatory penalties are applied or declared only after following a penal process. Certainly, the canonical penal process aims to seek the truth concerning the innocence or guilt of the accused party, and in all cases, the right of defence and the presumption of innocence must be observed. Once guilt is proven and the sanction applied, it must be executed, since Book VI now makes it obligatory under pain of sanction to execute all sentences and executory decrees, not simply the penal ones. However, it should be recalled that penal law seeks the good of souls and is to be applied as an instrument of salvation (canon 1752).

1311*

EIC 63 (2023), 565-589: Costantino-M. Fabris: Effettività della pena e riparazione dello scandalo: novità e prospettive di attuazione alla luce della riforma del Libro VI del Codice di diritto canonico. (Article)

F. analyses the canonical institutes of *reparatio scandalorum* and reparation of harm in the light of the reform of Book VI of the Code of Canon Law desired by Pope Francis. After a brief historical survey of the two institutes, he offers a critical analysis of their current relevance in the canonical penal system.

1311*

LJ 191 (2023), 150-166: John Poland: Clergy Discipline in the Latin Church. (Article)

P. offers an overview of the canonical tools and underlying principles found in the Church's law pertaining to what can generally be described as the discipline of clergy. He addresses the two broad areas of non-penal and penal discipline, starting with a brief look at the subjects involved: the cleric, and the authorities competent for clergy discipline.

1311*-1399*

CLSN 204/23, 27-44: Juan Ignacio Arrieta: The return of Penal Discipline in the pastoral field of Government. (Article)

A. outlines the genesis of the Apostolic Constitution *Pascite gregem Dei* reforming Book VI of the CIC/83, the main causes for the reform, and some of the criteria that guided it.

1311*-1399*

EIC 63 (2023), 389-418: Bruno Fabio Pighin: Il nuovo sistema penale canonico: motivazioni, criteri ispiratori e principali novità del riformato Libro VI del CIC. (Article)

P. takes a comprehensive look at the revised Book VI of the CIC introducing the new canonical penal law promulgated by Pope Francis in 2021. In harmony with this revision, some penal norms of the CCEO were also amended in 2023. P. sets out the reasons for the reform of the Church's penal system, and goes on to outline the process that characterized the drafting of the new legislation on the basis of precise criteria. He highlights the major innovations contained in the two parts of the current Book VI, offering assessments of aspects that he considers to be positive, but also criticisms of various points that in his opinion could be perfected.

1321*

ADC 12 (julio 2023), 25-121: Carlos Manuel Morán Bustos: El nuevo orden procesal en los delitos de abusos de menores desde la perspectiva del “justo proceso”. (Article)

See above, canon 221.

1321*

J 79 (2023), 285-323: Michael J. Mazza: Moral Certainty in Uncertain Times: The Importance of Standards of Proof When Responding to Accusations of Clerical Misconduct. (Article)

See below, canon 1608.

1321*

REDC 78 (2021), 1211-1253: Francisco J. Campos Martínez: La presunción de inocencia y el nuevo derecho penal canónico: Un marco jurídico ineludible. (Article)

C.M. explores the meaning of the presumption of innocence and its multiple ramifications in canonical penal law, both substantive and procedural. He then reflects on the relationship between the accused party's right to the presumption of innocence and the actions of the ecclesiastical authority. Finally, he offers some behavioural guidelines that respect the presumption

of innocence and are often not taken into account, thus violating in one way or another this fundamental right of the faithful.

1321*-1326*

EIC 63 (2023), 445-513: Andrea D'Auria: L'imputabilità penale nel CIC'83 riformato. Alcune innovazioni. (Article)

D'A. examines the question of imputability in the new Book VI, looking in detail at the concepts of offence, juridical imputability, malice, culpability, punishability, and the circumstances of the offence.

1322*

AC 63 (2023), 23-40: Bruno Gonçalves: Quelques réflexions autour de la notion de *personne vulnérable* en droit pénal canonique. (Article)

See below, canon 1398*.

1326*

EE 98 (2023), 695-727: Juan Damián Gandía Barber: Modificaciones introducidas por la reforma del Libro VI en las circunstancias agravantes (c. 1326). (Article)

The reform of Book VI of the CIC has introduced modifications concerning circumstances aggravating the imputability of an offence. After explaining what these modifications are, G.B. sets out the possible reasons behind them, based on the criteria governing the reform, the historical circumstances occurring during the process of codification of the CIC/83, and the commentaries on the CIC/17.

1336*

ADC 12 (julio 2023), 201-233: Davide Cito: La nueva disposición de las penas expiatorias. (Article)

The Apostolic Constitution *Pascite gregem Dei* has replaced the entire Book VI of the 1983 Code of Canon Law, in an attempt to provide an overview of the substantive penal law of the Latin Church. Certainly, this way of acting is unusual and raises a number of questions regarding its study and interpretation, as well as the techniques employed. C. enquires whether it

constitutes a break with the principles that inspired the 1983 text, or whether it is rather a matter of applying and explaining those same principles by furthering the role of penal law within the pastoral action of the Church. He analyses the question in relation to the dispositions concerning expiatory punishments in the new Book VI. To this end, he reviews in a synthetic manner the vicissitudes of canon penal law from the CIC/83 to *Pascite gregem Dei*. He looks at the new elements of Book VI according to the Apostolic Constitution with which it was promulgated, and at the function of penal law in *Pascite gregem Dei*. He then considers the place of expiatory punishments in the new juridical framework, before presenting some conclusions.

1336*

EIC 63 (2023), 515-538: Davide Cito: Le pene espiatorie nel nuovo Libro VI del Codice di Diritto Canonico. (Article)

The Apostolic Constitution *Pascite gregem Dei* replaced the entire Book VI of the Code of Canon Law. In the light of the motivations and purposes of the reform of the penal law, C. examines the provisions in the new Book relating to expiatory penalties, highlighting their renewed centrality within the Church's sanctioning response.

1339*

EIC 63 (2023), 419-443: José Bernal: Los remedios penales en el Libro VI reformado. (Article)

Pope Francis, with his reform of the penal system of the Church, has introduced some changes in the regulation of penal remedies. The penal precept and vigilance have been recovered, which provide new possibilities for preventing crimes and avoiding recourse to penalties, while still continuing to act against transgressions of the law.

1341*

AC 63 (2023), 77-94: Marie-Jo Thiel: La vulnérabilité est-elle reparable? Approches théologique, éthique et spirituelle. (Article)

A canonical penal trial does not respond to the deep need of a victim for healing. T. invokes "restorative justice", which follows retributive justice. She cites a victim who said to a perpetrator, "I forgive you" adding, "I did it

for myself, not for him”. The impact of abuse cannot be erased completely. The challenge is to restore to the abused person a confidence in fruitful relationships and a sense of what is possible in life.

1341*

AC 63 (2023), 95-111: Nicolas de Boccard: La justice des hommes peut-elle être réellement réparatrice? Le rôle possible des tribunaux ecclésiastiques. (Article)

See above, canon 1311*.

1341*

AC 63 (2023), 113-125: Éric Besson: La réparation dans les textes récents du Magistère et la législation canonique. (Article)

John Paul II's *motu proprio Sacramentorum sanctitatis tutela* (2001) established a list of *graviora delicta*; it was the first of a series of legislative texts that culminated in the revised Book VI of the Code, *Pascite gregem Dei* (2021). Justice in Roman law, defined as *constans et perpetua voluntas ius suum cuique tribuere*, had two elements: the acknowledgement of a wound inflicted, and the unjust harm as the ground of an action for reparation. Reparation or *restitutio iustitiae* is a constitutive element of canonical justice. Two other relevant terms are *damnum* (harm, whether material or moral), and *praejudicium* (referring to the consequences to a victim of moral harm). *Damnum* is found thirty times in the Code, *damnum illatum* (harm inflicted) three times, and *damnum reparandum* (the reparation of harm) seven times. *Praejudicium*, which refers to harm to rights or reputation, occurs eight times. Books VI and VII of the Code are at the service of justice. Pope Paul VI called for the revised canon law to be imbued with “a spirit of canonical equity”. This is reflected in the frequent use of “reparation” in the present Code (cf., for example, canon 1347* §2: “suitable reparation for the scandal and harm”). Canon 128 states that the person who “unlawfully causes harm ... is obliged to repair the damage done” (*Quicumque illegitime ... damnum infert, obligatione tenetur damnum illatum reparandi*). There are numerous references to the “repair of scandal” and the repair of “harm and scandal”, and one reference to the harm incurred by a victim. Recent legislation repeats a triple formula: the restoration of justice, the correction of the offender, and the reparation of scandal.

1341*

EE 98 (2023), 729-767: Adam Jaszcz: The Bishop's Special Solicitude for a Presbyter Who Has Served Expiatory Penalties for the Delict «Contra Sextum Cum Minore». (Article)

See above, canon 384.

1341*

EIC 63 (2023), 565-589: Costantino-M. Fabris: Effettività della pena e riparazione dello scandalo: novità e prospettive di attuazione alla luce della riforma del Libro VI del Codice di diritto canonico. (Article)

See above, canon 1311*.

1341*-1342*

ADC 12 (julio 2023), 25-121: Carlos Manuel Morán Bustos: El nuevo orden procesal en los delitos de abusos de menores desde la perspectiva del “justo proceso”. (Article)

See above, canon 221.

1341*-1342*

ADC 12 (julio 2023), 123-144: Filippo Iannone: El rol del ordinario en el derecho penal. (Article)

See above, canon 1311*.

1341*-1342*

Canonist 14/2 (2023), 243-259: Brendan Daly: The Extrajudicial Penal Process. (Article)

Canon law recognizes that a penal trial is the best process for achieving justice for alleged victims and the accused. However, the realities of delays, shortages of qualified personnel, and the number of cases means that out of necessity many cases are dealt with by an extrajudicial process. The Ordinary and/or his delegate and assessors must be careful to uphold the rights of both the accused and the alleged victim. D. examines: competence to deal with cases; prohibition to exercise sacred ministry if the alleged crime is reserved

to the Dicastery for the Doctrine of the Faith (DDF); prohibition to exercise sacred ministry if the alleged crime is not reserved to the DDF; types of penal processes; the decision whether or not to initiate a penal process; the extrajudicial process; the extrajudicial process for alleged crimes reserved to the DDF; procedural differences for an extrajudicial penal process according to the CCEO; possible decisions in a penal process; and when the penal procedure ends.

1342*

Canonist 14/2 (2023), 222-242: Fabio Freda: The Canonical Penal Judicial Process. (Article)

After pointing out the legislator's preference for the judicial process in penal trials (canon 1342*) and contrasting this with the widespread disregard of this provision in practice, F. refers to the risks of depriving the accused of his rights and of the judge not attaining moral certainty in the absence of a true adversarial process. He examines the judicial procedure from the CIC/17 to the CIC/83; the pre-investigation and the decision on the admissibility of the *notitia criminis*; the structure of the judicial process and the role of the promoter of justice; the beginning of the judicial process, precautionary measures and the exercise of the right of defence; the investigatory phase; the decision in the case; the appeal and the peculiarities of the judicial penal process; *res iudicata* and execution of the judgment. He concludes by observing that with the recent reform of Book VI there may have been a missed opportunity to revise procedural matters, especially in relation to the *delicta graviora* and the new offences brought in by the revision of Book VI.

1342*

EIC 63 (2023), 419-443: José Bernal: Los remedios penales en el Libro VI reformado. (Article)

See above, canon 1339.

1353*

ADC 12 (julio 2023), 163-199: G. Paolo Montini: L'effetto sospensivo dell'impugnazione delle decisioni penali. (Article)

Canon 1353* ("An appeal or a recourse against judgements of a court or against decrees which impose or declare any penalty has a suspensive effect")

has not been altered in the reform of the Church's penal law, but, in accordance with canon 17, its interpretation is subject to the context of the new Book VI. M. carries out an analysis of the canon, pointing out that in the judicial sphere the suspensive effect it establishes occurs only in the case of an appeal against a judgement imposing or declaring a penalty, and in the administrative sphere, in the case of a recourse against a decree declaring or imposing a penalty. M. looks into what is meant by an appeal; an administrative recourse; a penalty; a judicial sentence or administrative decree imposing or declaring a penalty; and the terms *a quo* and *ad quem* of the suspension. He also addresses the relationship of canon 1353* with canons 1638, 1722 and 143 §2, as well as with cases of *delicta graviora*, partial appeals and recourses, retroactivity, and the Ordinary's ability to establish precautionary measures.

1362*-1363*

AC 63 (2023), 129-145: Philippe Toxé: La prescription dans le nouveau droit pénal canonique. (Article)

John Paul II's *motu proprio Sacramentorum sanctitatis tutela* (2001) authorized the Congregation (now Dicastery) for the Doctrine of the Faith (DDF) to derogate from the canons on prescription, even when the Ordinary did not request it. The revision of Book VI in 2021 re-orders this material in canons 1362* and 1363*. Prescription for the delicts in canon 1398 §1 reserved to the DDF is extended to 20 years. The new law on prescription does not apply retrospectively. Canons 1362* and 1363* are included in the penal law section, not in the procedural section. Canon 1313* §1, states: "If a law is changed after an offence has been committed, the law more favourable to the offender is to be applied." For the delicts listed in *Sacramentorum sanctitatis tutela*, the DDF was granted the faculty to derogate from the law. Canon 1362* §3 (concerning suspension of prescription during the penal process) resolves a long-standing *dubium iuris*.

1362*-1363*

EIC 63 (2023), 539-564: Giuseppe Comotti: Decorso del tempo e funzione della pena: in margine alla disciplina della prescrizione nel nuovo Libro VI del Codex Iuris Canonici. (Article)

C. compares the reasons for the institute of criminal prescription in secular legal systems with those that inspire the same institute in canon law, and examines their congruence with the purposes of punishment in the

ecclesiastical system. He then examines the regulation of the statute of limitations for criminal actions and prosecutions provided for in the new Book VI of the Code of Canon Law, which introduced the institute of suspension of the statute of limitations. In particular, he considers the question of the temporal effect of the statute of limitations in the light of the principles of the non-retroactivity of criminal law and the application of the *lex favorabilior*, as well as the question of the derogation from the statute of limitations by the Dicastery for the Doctrine of the Faith.

1362*-1363*

RDC 73/1 (2023), 63-83: Ingrid Mallems: La prescription pénale dans le nouveau Livre VI du Code de droit canonique de 1983. (Article)

With the Apostolic Constitution *Pascite gregem Dei* of 15 June 2021, Pope Francis promulgated the new Book VI of the Code of Canon Law on “Penal Sanctions in the Church”. Part I of Book VI, entitled “Offences and Punishments in General”, concludes with canons 1362* and 1363* on the subject of prescription. After defining prescription and delimiting the meaning of penal prescription in particular, M. raises the question of whether prescription is part of the substantive or processual norms, and examines principally prescription periods, including those for offences reserved to the Dicastery for the Doctrine of the Faith, which are subject to special norms.

1371*

ADC 12 (julio 2023), 235-265: Damián G. Astigueta: Delitos contra la verdad y el secreto. (Article)

See below, canons 1390*-1391*.

1371*

ADC 12 (julio 2023), 267-294: Antonio Rella Ríos: El VELM: Remedios procedimentales para atender los casos de denuncias de conductas de abuso sexual. (Article)

Awareness of the seriousness of sexual abuse behaviours have led the Church to establish mechanisms for the reception of complaints and to offer guarantees that complaints will be dealt with appropriately. The *motu proprio Vos estis lux mundi*, the *motu proprio As a loving mother*, and the recent reform of Book VI of the CIC/83, have established a normative framework to

prevent cover-up behaviours. R. presents a summary of the procedural remedies established by the Church to deal with reports of sexual abuse.

1371*

QDE 36 (2023), 347-384: Gianluca Marchetti: La segnalazione di comportamenti illeciti e la *notitia criminis*. (Article)

See below, canon 1717.

1371*-1372*

EIC 63 (2023), 625-648: Damián G. Astigueta: Il nuovo Libro VI e i delitti contro il VI comandamento del Decalogo. (Article)

See below, canon 1398*.

1375

ADC 12 (julio 2023), 145-162: Juan Ignacio Arrieta: Los delitos contra la recta administración del patrimonio. (Article)

A. provides a brief presentation of the penal discipline in patrimonial matters in the CIC/83 and the prevailing drafting criteria; the discipline and juridical interest that the new norms of Book VI aim to protect; and some considerations regarding transitional law. He points out that the philosophy regarding criminal matters in the CIC/83 was substantially different from that of the CIC/17. The approach was intended to be disciplinary and pastoral, taking into account also the principle of decentralization. Although the CIC/83 was drafted with technical rigour, in a synthetic and essential manner, the prevailing principles in the drafting of the canons led to situations of legal uncertainty. Patrimonial offences related to those who impeded the legitimate use of ecclesiastical goods; the sale of ecclesiastical goods without the proper permission; active and passive bribery; and unlawful trafficking in Mass stipends (canons 1375, 1377, 1385 and 1386); while canon 1392 penalized illicit trading or business on the part of clerics and religious. However, it was necessary for canonical penal discipline to protect, on the one hand, ecclesiastical patrimony, its management and conservation and, on the other hand, situations of lack of exemplary character and non-observance of obligations in relation to ecclesiastical patrimony on the part of Church ministers. An attempt has been made to improve the wording of the assumptions of fact of the crimes now regulated in canons 1376* and 1377*,

which can potentially be committed by any person in a position of managing property. In addition, the duties of clergy and consecrated people are protected in canon 1393*. Finally, A. addresses issues of transitional law and prescription.

1376*

IE XXXV (2023), 371-383: Claudio Papale: Il nuovo delitto di furto (can. 1376 § 1, 1°). (Article)

P. analyses the two new offences outlined in canon 1376* § 1, 1°. In particular, he examines in detail the constituent elements of both offences (the active subject, the objective and subjective criminal elements), as well as the disciplinary aspect, highlighting the peculiarities that characterize each of them.

1376*

IE XXXV (2023), 385-405: Diego Zalbidea: La enajenación ilegítima: evolución histórica de la formulación del tipo del delito (can. 1376 §1, 2°). (Article)

Z. deals with one of the new offences against the patrimony of the Church, introduced in the reform of Book VI (canon 1376* §1, 2°). It concerns unlawful alienation, and embraces all alienations made without the requirements for validity or legality. Z. examines the offence in relation to stewardship.

1376*

IE XXXV (2023), 407-428: Paolo Gherri: L'amministrazione invalida o illecita dei beni ecclesiastici (can. 1376 §1, 2°). (Article)

The offence introduced by the new canon 1376* §1, 2° is only on the surface clearly identifiable in juridically terms. Actually, it hides a certain confusion between two very precise technical concepts: administration and representation. Nor is the distinction between invalid administration and invalid acts of administration clear. It is also unclear whether the imputability of the invalid or illicit act should apply to the one who decides the act (administrator) or the one who performs it (agent) or the one who was supposed to authorize it. It seems that this is not a technical (juridical) norm but a principled (political) one.

1376*

IE XXXV (2023), 429-447: Jesús Miñambres: I delitti amministrativi commessi per “grave negligenza” (can. 1376 §2). (Article)

The canonical penal legislation renewed in 2021 introduced new offences in the administration of temporal goods committed out of negligence. M. presents the offences of invalid or unlawful acts of alienation and of administration committed through gross negligence, and that of gravely negligent administration.

1376*

REDC 78 (2021), 1357-1388: Diego Zalbidea González: La responsabilidad penal de las personas jurídicas en el CIC de 1917 y en la legislación actual. (Article)

Z.G. studies the criminal liability of juridical persons in the CIC/17, as well as the abolition of this responsibility in the CIC/83. Subsequently, Vatican City State Law no. VIII, of 11 July 2013, containing supplementary norms on penal matters, has reintroduced it. It does not appear in the recent reform of Book VI.

1376*

SC 57 (2023), 515-549: Lawrence Rasaian: Financial Malfeasance of Pastors: Penalties and Remedies (c. 1376). (Article)

R. analyses the canonical consequences of financial malfeasance by pastors in the administration of ecclesiastical goods of a parish, according to the revised canon 1376*. First, he identifies the owner of parish goods. Second, he examines the administrator of parish goods. Third, he explores the canonical penalties concerning financial malfeasance by pastors or their equivalents as administrators of parish goods. Finally, he enumerates some remedies to protect the ecclesiastical goods of the parish.

1376*-1377*

EIC 63 (2023), 591-623: Pierpaolo Dal Corso: I nuovi delitti di natura economica: analisi e criticità. (Article)

The reform of the Church's penal law also concerns the sensitive issue of the administration of property and money management, aspects that have come

to the fore in recent times, unfortunately in a negative way, on account of the improper and sometimes scandalous actions of certain persons. The legislator has wanted to combat this scourge by introducing new economic offences, which underline his firm intention that, in this area, there needs to be strict compliance with the fundamental principles of transparency and diligence. Dal C. critically analyses the relevant legislation.

1376*-1377*

SC 57 (2023), 551-594: John Anthony Renken: Organs of Synodality and the Revised Penal Law: Effective Means to Safeguard Church Property. (Article)

Pope Francis convoked the entire Church into a synodal experience, the first such event in the history of the people of God. Synodality identifies the common daily life of the missionary disciples (“affective synodality”) who occasionally gather in formal structures to promote the mission of the Church (“effective synodality”). Pope Francis has also revised the penal law of the Church. R. reflects on organs of synodality and the revised penal law as instruments, *inter alia*, to safeguard the property of the Church, essential for evangelization.

1377

ADC 12 (julio 2023), 145-162: Juan Ignacio Arrieta: Los delitos contra la recta administración del patrimonio. (Article)

See above, canon 1375.

1378*

AC 63 (2023), 57-75: Astrid Kaptijn: Abus de pouvoir, abus d'autorité; un point sur la question. (Article)

Abuses in the exercise of power or office were dealt with in the CIC/17 in canons 2404-2414. Canon 1389 of the CIC/83 dealt with abuses of power, office, and responsibility; it was amended in *Pascite gregem Dei* (2021) as canon 1378*. The equivalent canons in the CCEO remain unchanged. Abuses can occur by omission. They occur often in female congregations, e.g. when a superior retains other roles, such as bursar or mistress of novices, or denies access to medical services, or is guilty of racist behaviour.

1378*

AnC 19 (2023) 2, 75-82: Piotr Kroczek – Weronika Lipińska: Kanoniczne konsekwencje nieodbierania przesyłek poleconych przez proboszcza na przykładzie kazusu (*Canonical consequences of a parish priest's failure to collect registered mail using a case example*). (Article)

The paper deals with the canonical consequences of a parish priest's failure to collect registered mail addressed to the parish, evaluating the disciplinary offences (failure to fulfil his duties faithfully, failure to represent the parish, failure to cooperate with the data protection officer for the Church) and criminal offences (the crime of abuse or neglect of office) that can be attributed to the parish priest.

1378*

REDC 78 (2021), 1357-1388: Diego Zalbidea González: La responsabilidad penal de las personas jurídicas en el CIC de 1917 y en la legislación actual. (Article)

See above, canon 1376*.

1378*

SC 57 (2023), 363-392: Armand Paul Bosso: Le profil des abus dans les ministères cléricaux. (Article)

On the issue of abuses in clerical ministries, a difficulty arises from the vagueness inherent in the concept. Whether it is the abuse of ecclesial authority or the abuse of an ecclesiastical office, as indicated in canon 1378* §1, the facets of the reality are multidimensional. B.'s study is a reflection which, beyond its didactic aspect, concludes with the thesis of the obligation of the correct execution of the functions or offices entrusted to clerics. It is not a question of a moral principle of optional application, but rather of an ecclesial duty legally enforceable in the intersubjectivity of the relationships between clerics, ecclesial communities, and the Church itself as an institution.

1380*

SC 57 (2023), 551-594: John Anthony Renken: Organs of Synodality and the Revised Penal Law: Effective Means to Safeguard Church Property. (Article)

See above, canons 1376*-1377*.

1383*

SC 57 (2023), 551-594: John Anthony Renken: Organs of Synodality and the Revised Penal Law: Effective Means to Safeguard Church Property. (Article)

See above, canons 1376*-1377*.

1385-1386

ADC 12 (julio 2023), 145-162: Juan Ignacio Arrieta: Los delitos contra la recta administración del patrimonio. (Article)

See above, canon 1375.

1390*-1391*

ADC 12 (julio 2023), 235-265: Damián G. Astigueta: Delitos contra la verdad y el secreto. (Article)

A.'s analysis revolves around a series of offences that are considered to offend against the truth and good reputation. These offences, after the reform of Book VI of the CIC/83 brought about by Pope Francis by means of the *motu proprio Vos estis lux mundi*, are included in canons 1390*, which in its first two paragraphs regulates false denunciations; 1391*, which focuses on the composition or use of false documentation; and 1371*, regarding truth and secrecy. Among the offences included in the last-mentioned canon are two new ones: violation of the pontifical secret, and failure to report an offence when required to do so. A. draws attention to the difference between calumny and detraction, in relation first to false denunciation and then to injury to good reputation. He reflects on truth and good reputation as protected juridical goods, in their concrete reality and in their public dimension within the Christian perspective: that which is cultivated by one who bears witness to Jesus Christ.

1392

ADC 12 (julio 2023), 145-162: Juan Ignacio Arrieta: Los delitos contra la recta administración del patrimonio. (Article)

See above, canon 1375.

1393*

EIC 63 (2023), 591-623: Pierpaolo Dal Corso: I nuovi delitti di natura economica: analisi e criticità. (Article)

See above, canons 1376*-1377*.

1393*

SC 57 (2023), 551-594: John Anthony Renken: Organs of Synodality and the Revised Penal Law: Effective Means to Safeguard Church Property. (Article)

See above, canons 1376*-1377*.

1395*

ADC 12 (julio 2023), 267-294: Antonio Rella Ríos: El VELM: Remedios procedimentales para atender los casos de denuncias de conductas de abuso sexual. (Article)

See above, canon 1371*.

1395*

Canonist 14/2 (2023), 280-291: Rocio Figueroa – Aton Hungyo – David Tombs: ‘If people in the church knew’: Purity, Stigma and Victim-Blaming. (Article)

The trial of Bishop Franco Mulakkal in India involved a nun accusing him of raping her multiple times, leading to his arrest and subsequent legal proceedings. In January 2022, despite strong evidence and witness testimonies, Mulakkal was found not guilty, sparking criticism and concerns about discouraging victims from seeking justice. The court cited various reasons for the acquittal, including inconsistencies in the victim's testimony and lack of concrete evidence. The acquittal was met with disappointment and

dismay, especially among women who feared further humiliation if they reported rape without strong evidence. The case highlighted the challenges faced by victims within the Catholic Church, where reporting sexual violations can lead to isolation and expulsion. Following the verdict, the complainant's lawyers announced plans to challenge the decision in the Kerala High Court. The Vatican also requested Mulakkal's resignation to address the divisive situation within the Jalandhar diocese. A letter written by Sister Lissy Vadakkal, one of the key witnesses, which was used to discredit her court evidence, sheds light on the pressures faced by nuns to conceal experiences of sexual violation to avoid repercussions within the Church. The case raises concerns about the treatment of victims and the need for reforms to support those seeking justice within religious institutions.

1395*

EIC 63 (2023), 625-648: Damián G. Astigueta: Il nuovo Libro VI e i delitti contro il VI comandamento del Decalogo. (Article)

See below, canon 1398*.

1395*

Per 112 (2023), 233-265: Conor Steadman: Moral Certitude and the Australian Royal Commission. (Note)

See below, canon 1608.

1395*

QDE 36 (2023), 347-384: Gianluca Marchetti: La segnalazione di comportamenti illeciti e la *notitia criminis*. (Article)

See below, canon 1717.

1398*

AC 63 (2023), 23-40: Bruno Gonçalves: Quelques réflexions autour de la notion de *personne vulnérable* en droit pénal canonique. (Article)

The term “vulnerable adult” (or “vulnerable person”) is not found in the CIC/83, or in the revised Book VI. *Vos estis lux mundi* (2019) defines a vulnerable person as “any person in a state of infirmity, physical or mental

deficiency, or deprivation of personal liberty which, in fact, even occasionally, limits their ability to understand or to want or otherwise resist the offence” (art. 1, §2 b). A judge will reach a decision with the help of expert evidence. The revised canon 1398 refers to “a person who habitually has an imperfect use of reason or ... to whom the law recognizes equal protection” (cf. also canons 99 and 1322).

1398*

ADC 12 (julio 2023), 25-121: Carlos Manuel Morán Bustos: El nuevo orden procesal en los delitos de abusos de menores desde la perspectiva del “justo proceso”. (Article)

See above, canon 221.

1398*

ADC 12 (julio 2023), 267-294: Antonio Rella Ríos: El VELM: Remedios procedimentales para atender los casos de denuncias de conductas de abuso sexual. (Article)

See above, canon 1371*.

1398*

ADC 12 (julio 2023), 295-309: Carlos Ramiro Alonso García: ¿En qué norma se regula el delito canónico de pornografía infantil? Un alegato a favor de la cláusula “*contra bonos mores*”. (Article)

A.G. presents and analyses the discrepancies that exist in the regulation of the offence of child pornography between canon 1398* §1 3° of the reformed CIC/83 and art. 6 2° of the 2021 *Norms regarding delicts reserved to the Congregation for the Doctrine of the Faith* (SST 2021). The lack of harmonization between the two regulations cannot be interpreted in the sense that the legislator is trying to select from among the conducts prohibited in canon 1398* § 1 3° a group of them – those affected by the reservation to the Dicastery for the Doctrine of the Faith – distinguishing them from others that would not be affected by the reservation. Given that SST 2021 was promulgated after the reform of Book VI, this raises doubts as to the validity of the norm in the Code or whether it has been reformed in some sense by the later norm. This circumstance leads to a further discussion of profound doctrinal and jurisprudential interest in order to determine which of the two

wordings used by the legislator is the one that, in effect, typifies the delict of child pornography. This involves looking at the canonical institutions of the promulgation of norms (canons 7-8), their derogation (canons 20-21), and their scope of application.

1398*

AnC 19 (2023) 2, 57-73: Jan Dohnalik: Nowa wersja motu proprio „Vos estis lux mundi”. Znaczenie zmian wprowadzonych przez papieża Franciszka w 2023 roku (*New version of the motu proprio “Vos estis lux mundi”. The significance of the changes introduced by Pope Francis in 2023*). (Article)

D. looks at the new version of the motu proprio *Vos estis lux mundi*, promulgated by Pope Francis on 25 March 2023, highlighting the changes from the 2019 *ad experimentum* version. Art. 1 contains a new formulation of particular categories of victims of sexual abuse. Apart from the category of minors there have been added two more: “a person who habitually has imperfect use of reason”, and “a vulnerable adult”. Regarding pornography there are some significant changes aimed at better protection of minors and vulnerable adults. According to art. 2, dioceses “must provide for institutions or offices that are easily accessible to the public for the submission of reports”. Regarding jurisdiction, “it is the responsibility of the Ordinary of the place where the events are said to have occurred”. Art. 3 confirms the obligation to report the delict, except for cases involving the internal forum. According to art. 4 an obligation to keep silent may not be imposed on the person reporting, or on an alleged victim and witnesses. A major innovation in the document is that its scope now embraces delicts and negligence of “lay faithful who are or who were Moderators of international associations of the faithful” (art. 6). Thus the list of competent dicasteries has been extended in art. 7 to include the Dicastery for the Laity, the Family and Life. The role of the Dicastery for Institutes of Consecrated Life and Societies of Apostolic Life is underlined by the new art. 10. Throughout the document special attention is paid to the legitimate protection of the good name of all persons involved. This may have been the reason for the new provision in art. 18 that “A copy of the acts is to be kept in the Archive of the competent Pontifical Representative”. The most important change is that the new *Vos estis lux mundi* is now a permanent law to be applied in line with other laws of the Church.

1398*

EIC 63 (2023), 625-648: Damián G. Astigueta: Il nuovo Libro VI e i delitti contro il VI comandamento del Decalogo. (Article)

The Church has made some progress in the fight against offences against the sixth commandment. It has deepened its understanding of the malice and extent of this phenomenon and, recognizing the limits of its own law, has brought in legislation that is clearer and more effective. With the latest reform of Book VI, therefore, the Church can be said to have tried to build up a more complex and extensive legal system to deal with all the facets of this problem.

1398*

IE XXXV (2023), 507-530: Sebastián Terráneo: Il delitto de *corruptio imuberum* presso il Sant'Uffizio (1922-1965). (Article)

See above, Historical Subjects (20th century).

1398*

Ius 14, 2 (2023), 8-23: Biju Varghese Perumayan: New Provisions of Canon Law on the Sexual Abuse of Minors and Vulnerable Adults: A Textual Study with Pastoral Perspective. (Article)

The penal norms of both the CIC/83 and the CCEO were revised recently by Pope Francis: the CIC/83 through the Apostolic Constitution *Pascite gregem Dei* on 1 June 2021, and the CCEO through the motu proprio *Vocare peccatores* on 20 March 2023. In the revised texts of the Codes, canons 1398* and 1362* §1, 2° of the CIC and canons 1453* §§5-7 and 1152* §2, 2° of the CCEO deal with the delict of sexual abuse of minors and vulnerable adults. The first part of this paper is a textual study of the latest norms on the delict of sexual abuse of minors and vulnerable adults, the corresponding penalties, and the procedure to be followed in dealing with this crime. The second part presents three pastoral observations regarding the topic: a. the need for clarity about the concept of vulnerable adults; b. the peculiar nature of the relationship among the faithful, clerics, and the ecclesiastical judicial authority; and c. the challenges emerging from the parallel ecclesiastical and civil judicial procedures.

1398*

Ius 14, 2 (2023), 24-40: Shaji Jerman: Policies for the Protection of Minors and the Vulnerable in the Institutions of the Church in India. (Article)

J. systematically studies the policies for the protection of minors and the vulnerable in the context of the Church in India, in the light of the teachings of Pope Francis, the Dicastery for the Doctrine of Faith, and the Catholic Bishops' Conference of India.

1398*

Ius 14, 2 (2023), 41-56: Benny Sebastian Tharakunnel: Balancing the Rights of the Victims and the Accused in Cases of Sexual Abuse of Minors and the Vulnerable by Clerics. (Article)

Cases of sexual abuse of minors and the vulnerable by clerics present a challenging dilemma for the penal system in the Church, as they involve the delicate balance of protecting the rights of the victim and ensuring due process for the accused. T. explores the complexities of this issue and examines various legal, ethical, and psychological considerations involved in achieving a fair and just resolution. By analysing the rights of both parties, as well as relevant laws and precedents in the Church, he aims to provide a comprehensive understanding of the intricate balance required in addressing such sensitive cases.

1398*

NRT 145 (2023), 420-442: Jordi Bertomeu Farnós: Quelques clés du combat de François contre les abus, dix ans après le début de son pontificat. (Article)

The pontificate of Francis has been deeply marked by the crisis of sexual abuse in the Church. But this crisis has a history that is also juridical. The way in which crimes of paedophilia or sexual abuse by clerics have been dealt with has been marked by a form of post-conciliar anti-juridical naivety, which recent Popes have sought to correct, starting with the CIC/83 and the importance assumed by the Congregation for the Doctrine of the Faith. The steps described here show Francis's unequivocal determination to resolve this tragedy once and for all. But Francis has also ambitiously called on the Church as a whole to be a place of healthy and safe relationships for the most vulnerable of the faithful.

1398*

Per 112 (2023), 233-265: Conor Steadman: Moral Certitude and the Australian Royal Commission. (Note)

See below, canon 1608.

1398*

QDE 36 (2023), 347-384: Gianluca Marchetti: La segnalazione di comportamenti illeciti e la *notitia criminis*. (Article)

See below, canon 1717.

1398*

SC 57 (2023), 637-663: Bryan Finley Taylor: The Delict of Child Pornography in Canon Law and U.S. Law. (Article)

The child sexual abuse scandals have been addressed by the Catholic Church with numerous public statements, legal actions, modifications of procedures and practices, and changes to canon law. A related issue that has not received the same level of response or scrutiny from the Church is the delict of child pornography. T. examines secular and canonical legal systems in relation to this delict. First, he reviews the legal and legislative history of child pornography in the United States. Second, he explores this delict in canon law, examining the jurisprudence, possible punishments available, and the current prescription period. Finally, he posits the question of where the Church goes from here in relation to the delict of child pornography.

1398*

SC 57 (2023), 665-682: Yeshica Marianne Umaña Calderón: The Participation of the Victim of Sexual Abuse in Canonical Penal Proceedings. (Article)

This study explores the extent to which the norms governing canonical penal proceedings are adequately adapted to cases in which the offence causes direct harm to the personal sphere of the individual. The first part of the article addresses the current position of the alleged victim in canon law as a witness in penal proceedings and the problems that this role poses for alleged victims, mentioning the rights recognized during the preliminary investigation in accordance with the *Vademecum* on certain procedural issues, as well as the

possibility of receiving compensation for damages. It explores the importance of the terminology used when referring to the victims or the alleged victims in penal proceedings. Finally, it concludes with some proposals that would allow the victims of abuse a true restoration of justice, considering the particularities of canon law and the rights of the accused that must also be recognized.

1399*

EIC 63 (2023), 649-666: Matteo Visioli: Breve nota sul falso misticismo e la sua rilevanza penale. (Article)

“False mysticism” refers to the attempted moral legitimization of an immoral act by means of theological-spiritual reasoning that instrumentalizes the invocation of the name of God, supported by 1. an incorrect reading of Christian revelation; 2. misleading biblical exegesis; and 3. a groundless set of ethics. It is an act with anti-juridical (anti-canonical, or illicit) implications, in the face of which however canonical penal law currently does not seem to offer adequate means for the restoration of justice and the amendment of the allegedly offending party responsible for these acts. V. analyses the phenomenon of false mysticism, its moral gravity, and the current possibilities of its penal prosecution in canon law, identifying a potential juridical solution in the form of penalizing offences against the second commandment.

BOOK VII: PROCESSES

1400

REDC 78 (2021), 583-604: Manuel J. Arroba Conde: Retos actuales de la Administracion de Justicia en la Iglesia. (Article)

A.C. addresses some of the most pressing challenges facing the administration of justice in the Church and in society today, from the credibility crisis that the administration of justice is going through in the Church, to issues to be addressed in the field of matrimonial, penal, and administrative proceedings. He offers some guidelines for the future, together with strategies for overcoming the crisis, in line with the nature of ecclesial law and the social function that corresponds to the Church's procedural activity.

1402

Per 112 (2023), 319-326: Paweł Malecha: La costituzione apostolica *Praedicate Evangelium* apporta novità circa gli Avvocati presso la Curia Romana e gli Avvocati della Santa Sede? (Consultation)

In this brief response to a consultation, M. addresses the issue of the implications – if any – of *Praedicate Evangelium* on the advocates of the Roman Curia and those of the Apostolic See. After analysing articles 238-240 of the Apostolic Constitution, he concludes that there are no significant innovations: the requisites, competences, duties, sanctions, and procedures to be followed are all effectively confirmed and not altered.

1403

Per 112 (2023), 477-511: Emanuele Spedicato: Il Regolamento dei Postulatori. Note sparse di commento. (Note)

On 11 October 2021, the then Congregation for the Causes of the Saints issued a *Regolamento* or regulation to guide postulators of causes in their service to the truth and their cooperation with the Holy See. S. gives an overview of the whole document, highlighting certain innovations and offering comments on the more significant norms.

1438

IM 34 (2023), nr 2, 165-180: Lucjan Świto: Niezdolność do podjęcia istotnych obowiązków małżeńskich oraz symulacja całkowita i częściowa w niepublikowanym wyroku c. Emanuele Saturnino da Costa Gomes z dnia 1 marca 2022 r (*Inability to undertake the essential marital obligations and total and partial simulation in the unpublished judgment of Emanuele Saturnino da Costa Gomes of 1 March 2022*). (Commentary)

See below, canon 1444.

1444

IM 34 (2023), nr 2, 165-180: Lucjan Świto: Niezdolność do podjęcia istotnych obowiązków małżeńskich oraz symulacja całkowita i częściowa w niepublikowanym wyroku c. Emanuele Saturnino da Costa Gomes z dnia 1 marca 2022 r (*Inability to undertake the essential marital obligations and total and partial simulation in the unpublished judgment of Emanuele Saturnino da Costa Gomes of 1 March 2022*). (Commentary)

Ś. comments on an unpublished judgment *coram* Saturnino da Costa Gomes of 1 March 2022. The case in question is an example of the increasingly common practice in Poland of appealing against judgments in first instance directly to the Roman Rota. This phenomenon, unprecedented on such a scale, may raise the question of the *ratio legis* of canon 1444 §1 1° in the context of canon 1438 1°-2°, that is, the order of the degrees of appeal. Without denying the right of the faithful to have their case considered in the Holy See, and even to transfer them there at any stage of the proceedings and at any stage of the dispute, it should be emphasized that the normal appellate tribunal for suffragan dioceses is the metropolitan tribunal, and for the metropolitan tribunal, another diocesan tribunal, approved by the Holy See. Therefore, appealing against first instance judgments directly to the Rota seems to be an extraordinary procedure, demanding special reasons. Reducing the papal tribunal to the role of an ordinary second instance tribunal may raise doubts of a systemic nature.

1445

Ius Comm XI (2023), 341-368: Supremum Signaturae Apostolica Tribunal: Decreto, 28 febrero 2019 – Nulidad de matrimonio; Decreto, 8 marzo 2017 – Nulidad de matrimonio; Decreto, 11 julio 2012 – Nulidad

de matrimonio; Juan Manuel Cabezas Cañavate: Comentario.
(Documents and comment)

In his comment on three decrees of Apostolic Signatura, C. begins by highlighting the significant role played by this supreme Tribunal within the Catholic Church. The Apostolic Signatura operates under its own specific laws, approved through the Apostolic Letter *Antiqua ordinatione* and integrated into the Apostolic Constitution *Praedicate Evangelium*, which governs its functions within the restructured Roman Curia. The Signatura performs three main functions: it acts as the Supreme Tribunal of the Church, handles questions of administrative justice, and oversees disciplinary matters. The decrees under discussion illustrate the Tribunal's function. In decree Prot. N. 53012/17 CG, the Signatura rectified a decision of the Roman Rota, reaffirming the importance of transparency and justice within the Church. This decree involved a matrimonial nullity case where new evidence warranted a re-examination of the case, highlighting the Tribunal's commitment to justice and the truth. Another decree, Prot. N. 52449/17 VT, dealt with procedural errors in notifying a party in a nullity case, and stressed the importance of ensuring all parties' right to defence. The Tribunal mandated that due process be followed to maintain fairness. The final decree, Prot. N. 46273/12 VT, reinforced the principle that a judge's authority ends with the issuance of a sentence, emphasizing the need for procedural correctness and adherence to established legal principles.

1478

AC 63 (2023), 41-55: Anne Bamberg: La partie assistée du fait de sa vulnérabilité dans le procès judiciaire. (Article)

Those unable to defend themselves in Church proceedings – minors, those who lack the use of reason, those barred from the administration of their goods, and those of infirm mind – must be represented, supported, and helped by parents, guardians, or curators. For matrimonial cases, see *Dignitas connubii*, arts. 98-100. B. cites R. Golebiowski, *Il curatore processuale nelle cause di nullità matrimoniali secondo la giurisprudenza rotale: funzione e costituzione* (Gregorian Pontifical University, 2018). In other areas of judicial or administrative procedures those responsible must aid those who are vulnerable on account of youthfulness, mental illness, old age, or language difficulties, e.g. the deaf. The law provides for a “special procurator” (canon 1508 §3), an “arbitrator” (canon 1446 §3) and “serious-minded persons to mediate” (canons 1446 §2, 1733 §1).

1481

Per 112 (2023), 203-231: Jordi Bertomeu-Farnós: Il diritto di difesa e l'assistenza tecnica obbligatoria. Il nuovo articolo 20 §7 delle norme sui *delicta graviora*. (Article)

B.-F. presents a reflection on an important element in the extra-judicial penal process before the Dicastery for the Doctrine of the Faith (DDF), i.e., the defence of the accused. He begins by recalling the general principle of Christ's faithful to have the right to defend themselves as outlined in the Code of Canon Law, distinguishing this right of defence from any technical canonical assistance offered to the accused during the process. After a brief examination of the special self-defence found in international criminal tribunals, he moves on to consider the freedom of the party to appoint a proper advocate or procurator (canon 1481 §1), as well as the obligation to make sure that an accused party in a judicial penal process has professional canonical advice or assistance (canon 1481 §2). The introduction of a requirement for the accused to have such assistance in a canonical penal extra-judicial process that has been authorized by the DDF under *Normae de delictis gravioribus*, no. 20 §7, is, in his opinion, a major innovation and a potential source of serious concern.

1517

Ius Comm XI (2023), 341-368: Supremum Signaturae Apostolica Tribunal: Decreto, 28 febrero 2019 – Nulidad de matrimonio; Decreto, 8 marzo 2017 – Nulidad de matrimonio; Decreto, 11 julio 2012 – Nulidad de matrimonio; Juan Manuel Cabezas Cañavate: Comentario. (Documents and comment)

See above, canon 1445.

1534

J 79 (2023), 325-371: Steven G. Oetjen: The *Ars interrogandi* in the Judicial Examination (cc. 1534; 1558-1571). (Article)

The instruction phase is a crucial part of the canonical judicial process, as it is particularly aimed at uncovering the truth of the controverted matter by providing the judge(s) with the proofs necessary to make a correct judgment. Canon law envisions that most of the proofs in a trial usually come from the judicial examinations of parties and witnesses. The norms governing the judicial examination help to ensure that it is carried out in a way that is just

and aimed at uncovering the truth. Beyond these norms – and in accordance with them – there is also the *ars interrogandi*, the art of questioning in a way that best uncovers the truth. O. seeks to develop the art of questioning in the judicial examination, drawing from both canonical and forensic literature.

1558-1571

J 79 (2023), 325-371: Steven G. Oetjen: The *Ars interrogandi* in the Judicial Examination (cc. 1534; 1558-1571). (Article)

See above, canon 1534.

1564

SC 57 (2023), 477-513: Valère Nkouaya Mbandii: L’interrogatoire des personnes victimes d’abus sexuels dans la procédure pénale canonique: pour une approche interdisciplinaire. (Article)

Taking canon 1564 as a starting point, the article shows that the questioning of victims of sexual abuse by ecclesiastical tribunals requires a specific expertise that takes into account the trauma of these individuals. It identifies a number of methods for questioning victims of sexual abuse and argues for an interdisciplinary approach between canonical penal law and other disciplines or professions.

1608

Canonist 14/2 (2023), 168-184: Lynda Robitaille: Pope Francis and the Art of judging Marriage Nullity Cases. (Article)

See below, canons 1671-1691.

1608

Canonist 14/2 (2023), 185-221: Donna Miller: The Concept of Moral Certitude in Ecclesiastical Penal Cases involving More Grave Delicts. (Article)

The clergy sexual abuse situation in the United States provides the context for M.’s study, with particular focus on (and concern for) cases where the application of a perpetual expiatory penalty is anticipated, in cases that are reserved to the Dicastery for the Doctrine of the Faith. In Part One she

examines the meaning of moral certitude as it has been understood in various sciences and legal systems. In Part Two she analyses the standards by which evidentiary proofs are judged in the ecclesiastical judicial process and in the American civil process, and compares moral certitude with common civil standards. The reason for this analogy is that all systems of law have laid down rules to assist judges in reaching certitude as to the truth or untruth of the matter asserted. Therefore the American civil law of evidence can be of benefit in understanding canonical moral certitude. The second goal of Part Two is to demonstrate that moral certitude itself admits of degrees. Finally, in Part Three she looks first at 21st-century developments in ecclesiastical penal law in order to examine a context, other than marriage cases, in which moral certitude must be applied. Then she urges the application of a higher degree of moral certitude in the treatment of certain ecclesiastical penal cases than that which is required for marriage nullity cases.

1608

J 79 (2023), 285-323: Michael J. Mazza: Moral Certainty in Uncertain Times: The Importance of Standards of Proof When Responding to Accusations of Clerical Misconduct. (Article)

Recent high-profile civil and criminal trials in the United States and elsewhere have reinforced the importance of due process in an age of snap judgments. Similarly, Catholic priests accused of misconduct often seem to be assumed guilty until proven innocent, even within the Church, despite the principle of the presumption of innocence, now contained in canon 1321* §1, and the moral certainty standard of proof in canon 1608. M. reviews the various standards of proof under both civil and canon law, discusses their origin, and highlights their fundamental importance in the current environment. He also scrutinizes the use of certain inferior substitutes to moral certainty currently being employed in canon 1717 preliminary investigations and in decisions to publish the names of accused clerics. Through the lens of well-known secular standards of proof such as “reasonable suspicion”, “probable cause”, “clear and convincing evidence”, and “beyond a reasonable doubt”, he aims to bring more clarity to an environment that stands in need of more precise and uniform language.

1608

Per 112 (2023), 233-265: Conor Steadman: Moral Certitude and the Australian Royal Commission. (Note)

The Australian Royal Commission into institutional child sexual abuse published its final report in December 2017. Among the recommendations made was that the Catholic Church should replace the standard of moral certainty with that of the balance of probabilities when dealing with clergy or religious accused of this crime. In this adapted extract from his licentiate thesis, S. analyses the doctrine concerning moral certainty, the concept of the balance of probabilities in Australian law, and the notion of “unacceptable risk” in all matters related to child abuse. After a consideration of the various responses made to the report of the Royal Commission, he demonstrates that the Australian Bishops have reaffirmed the traditional concept of moral certainty as the standard of proof required in canonical penal processes in which the crime committed was that of the sexual abuse of minors.

1608

Per 112 (2023), 349-394: G. Paolo Montini: La sentenza di assoluzione nel processo penale. (Presentation)

M. notes that in article 84 of the *Vademecum* published by the Dicastery for the Doctrine of the Faith (DDF) concerning procedural matters in cases of the sexual abuse of minors committed by clerics, there are now three possible outcomes in judicial and extrajudicial proceedings: a condemnatory sentence (*constat*); an absolutionary sentence (*constat de non*); and an acquittal (*non constat*). In this presentation to the 56th annual colloquium of the Pontifical Gregorian University’s Faculty of Canon Law in 2022, M. compares and contrasts article 84 with the norm of canon 1608 in which there are only two possible outcomes foreseen: affirmative or negative. He asks if the new practice of the DDF can be applied in other penal processes not reserved to the Dicastery, and his response is negative: outside those cases explicitly reserved to the DDF, the judge needs to attain moral certainty before returning an affirmative decision; if the judge cannot attain that level of certainty, the decision must be negative, i.e., *non constat de delicto patrato*. This is due both to the presumption of innocence and to the structure of the penal process as found in the Code of Canon Law.

1628-1640

IM 34 (2023), nr 2, 181-194: Urszula Nowicka: Prawo strony powodowej do apelacji od wyroku pozytywnego w świetle dekretu coram Erlebach z 8 lutego 2018 r (*The petitioner's right of appeal against an affirmative sentence in the Rotal decree coram Erlebach of 8 February 2018*). (Commentary)

See below, canon 1680.

1641

Per 112 (2023), 327-336: Romanae Rotae Tribunal: Decretum coram R.P.D. Gerardo McKay, R.P.D. Michaële Xaverio Leone Arokiaraj, *Extensore*, diei 2 decembris 2016, in una *Poenalis*: Praejud.: Null. Decisionum (B. 101/2016). (Decree)

See below, canon 1645.

1641-1644

REDC 78 (2021), 1181-1210: Damián G. Astigueta: El principio *ne bis in idem* en el derecho penal canónico. (Article)

The principle *ne bis in idem* does not appear in canonical legislation. Nor is it part of canonical literature. However, it is present at the base of certain juridical institutes and in the practice of law. A. examines how secular law can help reflection on the principle in the canonical realm.

1644

Ius Comm XI (2023), 341-368: Supremum Signaturae Apostolica Tribunal: Decreto, 28 febrero 2019 – Nulidad de matrimonio; Decreto, 8 marzo 2017 – Nulidad de matrimonio; Decreto, 11 julio 2012 – Nulidad de matrimonio; Juan Manuel Cabezas Cañavate: Comentario. (Documents and comment)

See above, canon 1445.

1645

Per 112 (2023), 327-336: Romanae Rotae Tribunal: Decretum coram R.P.D. Gerardo McKay, R.P.D. Michaële Xaverio Leone Arokiaraj,

Extensore, diei 2 decembris 2016, in una Poenalis: Praejud.: Null. Decisionum (B. 101/2016). (Decree)

On 25 January 2012, the interdiocesan tribunal of Y. issued a condemnatory sentence in the case of Rev. N., who had been accused of crimes against the Sixth Commandment with an adult woman in 2004 and 2007, and later in 2010 after the woman had contracted marriage. The accused appealed against the first instance decision. At second instance, the judges confirmed the condemnatory sentence but mitigated the penalty: instead of dismissal from the clerical state, the priest was prohibited for two years from the public celebration of the sacraments, prohibited perpetually from residing in the town of G., and was required to do a 30-day retreat. The promoter of justice at second instance sought recourse against this sentence to the Roman Rota, where the request was rejected because there were two conforming sentences. The promoter then sought and obtained a decree of *restitutio in integrum* from the second instance tribunal which then examined the case again on the basis of new information about the priest's behaviour in other places. The accused then had recourse to the Pope because of what he claimed was the denial of his right of defence. The case was entrusted to the Roman Rota which issued a decree on 5 July 2016. After outlining the nature of a *restitutio in integrum* as an extraordinary challenge to a judicial decision, the Rota declared invalid the decree and the subsequent new sentence of second instance. The *restitutio* was considered invalid for a number of reasons: the "new material" introduced was not really new at all and did not concern the crime under consideration; the decree was given by the President alone and not by a college of judges; and neither party had been cited, so the right of defence was denied. The subsequent sentence was declared invalid because it rested on an invalid act (the decree of *restitutio*) and because the same judges as before heard the case again, against the rule "*ne bis in idem*".

1671-1691

Canonist 14/2 (2023), 168-184: Lynda Robitaille: Pope Francis and the Art of judging Marriage Nullity Cases. (Article)

Pope Francis has repeatedly issued challenges to judges. R. examines some of these challenges, and considers the consequences that arise for the practice of judges. She focuses on the need for proximity between the judge and the faithful; the judge's active role; legislative changes challenging judges; the abolition of the automatic review in second instance; the judge's responsibility to be informed about developments in jurisprudence; some examples of new understandings that are now mainstream, especially

concerning the probative weight of the depositions of the parties; the *contradictorium* and right of defence, ensuring the objectivity of the process; the objectivity of the process and the judge's moral certitude; the goal of proximity, accompaniment, and mercy in relation to the sentence; and consequences arising from an affirmative decision, in relation to obligations to the children, and the prevention of a future invalid marriage (the *vetitum* and the *monitum*).

1673

IC 63/126 (2023), 621-662: Carmen Peña: La mujer en la Iglesia Católica: situación canónica actual y perspectivas abiertas por la sinodalidad. (Article)

See above, canon 208.

1676

Ius Comm XI (2023), 341-368: Supremum Signaturae Apostolica Tribunal: Decreto, 28 febrero 2019 – Nulidad de matrimonio; Decreto, 8 marzo 2017 – Nulidad de matrimonio; Decreto, 11 julio 2012 – Nulidad de matrimonio; Juan Manuel Cabezas Cañavate: Comentario. (Documents and comment)

See above, canon 1445.

1678

IE XXXV (2023), 593-624: Tribunale Apostolico della Rota Romana: Reg. Etrusci seu Fesulana – Nullità del matrimonio – Simulazione parziale del consenso matrimoniale – Esclusione del *bonum sacramenti* – Sentenza definitiva – 14 dicembre 2018 – Heredia Esteban, Ponente, con commento di Simona Maria Serena Salazar, *La confessione giudiziale del presunto simulante dopo la promulgazione del m.p. Mitis Iudex Dominus Iesus*. (Sentence and comment)

This Rotal sentence concerns a case of partial simulation of consent due to the exclusion of the *bonum sacramenti* by the petitioner. The first instance negative verdict had been given in 2014, i.e. before the reform of the matrimonial nullity process by the *motu proprio Mitis Iudex*. On appeal the Rota recognized the petitioner's judicial confession as full evidence under the reformed canon 1678 §1 introduced by *Mitis Iudex*. The petitioner was

considered credible not only by virtue of the constancy and internal coherence of his testimony, but above all because of the presence in the documents of valid elements of corroboration of what he asserted regarding simulation. The Rota proceeded by applying the traditional evidentiary scheme developed by its own jurisprudence for cases of simulated consent: judicial and extrajudicial confession of the alleged simulator; *causa simulandi apta ac proportionata*; weak reasons for contracting marriage; and multiple unequivocal and consistent factual circumstances demonstrating the firm and prevailing positive will of the petitioner, at the time of the celebration of the marriage, of excluding the indissolubility of the conjugal bond. The Rotal decision, confirms that, even after the promulgation of *Mitis Iudex*, for the judicial confession of the alleged simulator to acquire the value of full evidence, the credibility of the party concerned is essential but is not in itself sufficient to found moral certainty as to the invalidity of the marriage, if there is no solid evidence of such credibility *ex actis et probatis*.

1680

IM 34 (2023), nr 2, 181-194: Urszula Nowicka: Prawo strony powodowej do apelacji od wyroku pozytywnego w świetle dekretu coram Erlebach z 8 lutego 2018 r (*The petitioner's right of appeal against an affirmative sentence in the Rotal decree coram Erlebach of 8 February 2018*). (Commentary)

An appeal is an institution that is well known and is often used in Church processes by a party who considers himself/herself aggrieved by the sentence received. For this reason, the party or parties most often oppose a negative sentence. But in the Rotal decree *coram* Erlebach of 8 February 2018 another issue is raised: the petitioner's right of appeal against an affirmative sentence, but issued on a ground of nullity introduced by the respondent.

1683-1687

FCan XVIII/1 (2023), 9-46: João Pedro Bizarro: Exame das primeiras trinta sentenças de “processus brevior” que obtiveram o decreto de executividade do Tribunal da Assinatura Apostólica. (Article)

B. analyses the first 30 sentences to reach the Apostolic Signatura under the brevior process, and the considerations arising from them. The role of the Signatura in these instances is not to examine the merits of the case, but to issue a decree to the State authorities concerned, in accordance with the

relevant Concordats, certifying that the process has followed all the necessary procedural steps and that there are no invalidating factors.

1691

IM 34 (2023), nr 2, 33-45: Rafał Dappa: *Bonum familiae* w kontekście przemówienia papieża Franciszka na rozpoczęcie roku sądowego Trybunału Roty Rzymskiej z dnia 29 stycznia 2021 roku (“*Bonum familiae*” in the context of Pope Francis’s speech at the beginning of the judicial year of the Tribunal of the Roman Rota on 29 January 2021). (Article)

The notion of *bonum familiae*, although not a legal category in itself, appears more and more often in the context of marriage nullity processes. It was also the subject of the papal address to the Roman Rota on 29 January 2021, in which Pope Francis pointed out that there cannot be a hypothetical cause of nullity connected to the *bonum familiae*, although the *bonum familiae* can and should be taken into consideration by canon lawyers in the marriage nullity process. After defining the concept of *bonum familiae*, D. interprets the Pope’s address within the context of canon 1691 §1 CIC/83. At a practical level the parties to a marriage nullity process are to be reminded of their moral and civil obligations to each other and to any offspring.

1697-1706

FCan XVIII/1 (2023), 151-158: Sagrada Congregação do Concílio: *Parisien.*, 28 de março de 1857. (Decision and comment)

See above, canon 1142.

1700

IC 63/126 (2023), 621-662: Carmen Peña: *La mujer en la Iglesia Católica: situación canónica actual y perspectivas abiertas por la sinodalidad.* (Article)

See above, canon 208.

1717

ADC 12 (julio 2023), 267-294: Antonio Rella Ríos: El VELM: Remedios procedimentales para atender los casos de denuncias de conductas de abuso sexual. (Article)

See above, canon 1371*.

1717

Canonist 14/2 (2023), 243-259: Brendan Daly: The Extrajudicial Penal Process. (Article)

See above, canons 1341*-1342*.

1717

J 79 (2023), 285-323: Michael J. Mazza: Moral Certainty in Uncertain Times: The Importance of Standards of Proof When Responding to Accusations of Clerical Misconduct. (Article)

See above, canon 1608.

1717

QDE 36 (2023), 347-384: Gianluca Marchetti: La segnalazione di comportamenti illeciti e la *notitia criminis*. (Article)

After addressing points of terminology, M. begins by looking at the legal position of the one making the report and the possible existence of an obligation to report sexual abuse cases. He then considers the possible offences committed in the light of recent changes in the law, the one offended against, and the one offending. He addresses the question of to whom reports should be made, considering the specific case of the obligations on bishops, and sketches the work of the listening centres run by the Italian Bishops' Conference. He outlines the processes used when receiving a report, and looks at the law relating to the evaluation of a report.

1717-1718

SC 57 (2023), 665-682: Yeshica Marianne Umaña Calderón: The Participation of the Victim of Sexual Abuse in Canonical Penal Proceedings. (Article)

See above, canon 1398*.

1717-1728

Per 112 (2023), 299-317: Paolo Bianchi: Dalla indagine previa al processo penale: che cosa acquisire? (Consultation)

A question is posed: in the preliminary investigation a great amount of material is usually gathered – what part or parts of that material should then be acquired for the penal process and how should it be acquired? In his response to the question, after a thorough analysis of the law and the commentaries on the CIC/17 and CIC/83, as well as some of the more recent legislative measures in this field such as the Dicastery for the Doctrine of the Faith's 2021 *Normae de delictis reservatis*, B. concludes that not everything gathered in the preliminary investigation needs to be included in the penal process; furthermore, elements gathered that are not initially included can be admitted later by the intervention of the promoter of justice, but always with the necessity of bringing these to the attention of the accused party and his or her defender.

1717-1731

Canonist 14/2 (2023), 222-242: Fabio Freda: The Canonical Penal Judicial Process. (Article)

See above, canon 1342*.

1720

Canonist 14/2 (2023), 243-259: Brendan Daly: The Extrajudicial Penal Process. (Article)

See above, canons 1341*-1342*.

1722

Canonist 14/2 (2023), 243-259: Brendan Daly: The Extrajudicial Penal Process. (Article)

See above, canons 1341*-1342*.

1729

IE XXXV (2023), 449-471: Matteo Carnì: La riparazione del danno da parte del delinquente e l'eventuale responsabilità civile *ex delicto* dell'ente di appartenenza. (Article)

C. analyses Italian jurisprudence on the subject of civil liability of ecclesiastical bodies, with particular regard to compensation for damages deriving from property crimes committed by clerics or religious. He also highlights the critical issues regarding the action to be taken by the ecclesiastical body before State jurisdiction or in canon law against the cleric or religious who directly caused the damage.

1741

AnC 19 (2023) 2, 75-82: Piotr Kroczek – Weronika Lipińska: Kanoniczne konsekwencje nieodbierania przesyłek poleconych przez proboszcza na przykładzie kazusu (*Canonical consequences of a parish priest's failure to collect registered mail using a case example*). (Article)

See above, canon 1378*.

EXCHANGE PERIODICALS

- Analecta Cracoviensia
- Angelicum
- Annales Canonici
- Année Canonique
- Anuario Argentino de Derecho Canónico
- Anuario de Derecho Canónico
- Apollinaris
- Bogoslovni vestnik
- The Canonist
- Claretianum ITVC, new series
- Communicationes
- Ephemerides Iuris Canonici, new series
- Ephrem's Theological Journal
- Estudio Agustiniiano
- Estudios Eclesiásticos
- Folia Theologica et Canonica
- Forum Canonicum
- Forum Iuridicum
- Indian Theological Studies
- Immaculate Conception School of Theology Journal
- Irish Theological Quarterly
- Ius Canonicum
- Ius Communiois
- Ius Ecclesiae
- Ius Matrimoniale
- Iustitia: Dharmaram Journal of Canon Law
- Journal of Sacred Scriptures
- The Jurist
- Laurentianum
- Law and Justice
- Louvain Studies
- Periodica
- Philippiniana Sacra
- Quaderni di Diritto Ecclesiale
- Quærens
- Revista Mexicana de Derecho Canónico
- Revue de Droit Canonique
- Revue Théologique de Louvain
- Salesianum
- Studia Canonica
- Teología y Vida
- Vida Religiosa
- Vidyajyoti

ABBREVIATIONS, PERIODICALS, AND ABSTRACTORS FOR THIS ISSUE

AC	L'Année Canonique, Paris – Most Rev. Dr John McAreevey, Co. Down.
ADC	Anuario de Derecho Canónico, Valencia – Abstracts supplied by publisher.
AnC	Annales Canonici, Krakow – Abstracts supplied by publisher.
BV	Bogoslovni vestnik, Ljubljana – Abstracts supplied by publisher.
Canonist	The Canonist, Journal of the Canon Law Society of Australia and New Zealand, Sydney – Editor.
Clar ITVC n.s	Claretianum ITVC, new series, Rome – Abstracts supplied by publisher.
CLSN	Canon Law Society Newsletter, London – Editor.
EE	Estudios Eclesiásticos, Madrid – Abstracts supplied by publisher.
EIC	Ephemerides Iuris Canonici, new series, Venice – Abstracts supplied by publisher.
ELJ	Ecclesiastical Law Journal, London – Abstracts supplied by publisher.
FCan	Forum Canonicum, Lisbon – Abstracts supplied by publisher.
HPR	Homiletic and Pastoral Review (online publication: https://www.hprweb.com) – Editor.
IC	Ius Canonicum, Pamplona – Abstracts supplied by publisher.
IE	Ius Ecclesiae, Pisa-Rome – Abstracts supplied by publisher.
IM	Ius Matrimoniale, Uniwersytet Kardynała Stefana Wyszyńskiego, Warsaw – Abstracts supplied by publisher.
Ius	Iustitia: Dharmaram Journal of Canon Law, Bangalore – Abstracts supplied by publisher.
Ius Comm	Ius Communis: Universidad San Dámaso, Madrid – Abstracts supplied by publisher.
J	The Jurist, Washington – Abstracts supplied by publisher.

Abbreviations, Periodicals, and Abstractors

LJ	Law and Justice, Worcester – Abstracts supplied by publisher.
MFS	Marriage, Families & Spirituality (formerly INTAMS Review), Leuven – Abstracts supplied by publisher.
NRT	Nouvelle revue théologique, Brussels – Abstracts supplied by publisher.
Per	Periodica, Rome – Fr Aidan McGrath OFM, Dublin.
QDE	Quaderni di Diritto Ecclesiale, Milan – Fr Luke Beckett OSB, Ampleforth, York.
RDC	Revue de Droit Canonique, Strasbourg – Abstracts supplied by publisher.
REDC	Revista Española de Derecho Canónico, Salamanca – Abstracts supplied by publisher.
RGDCDEE	Revista General de Derecho Canónico y Derecho Eclesiástico del Estado (online publication: https://www.iustel.com/) – Abstracts supplied by publisher.
SC	Studia Canonica, Ottawa – Abstracts supplied by publisher.
VJTR	Vidyajyoti Journal of Theological Reflection, Delhi – Abstracts supplied by publisher.

ENGLISH-LANGUAGE BOOKS REVIEWED IN THE ABOVE PERIODICALS

- Merlin Rengith AMBROSE: *Right of Defence in Marriage Nullity Trials: A Study based on CIC 1983, DC and MIDI*, LIT Verlag, Germany, 2022, 360pp., ISBN 978-643-91509-2 (reviewed by Timothy Cavanaugh in J 79 [2023], 551-553; also by M. J. Jesu Pudumai Doss in SC 57 [2023], 683-686)
- Marc CARON: *Ceremonial for Priests*, Sophia Institute Press, Manchester, NH, 2023, xiv + 422pp, ISBN 978-1-64413-934-9 (reviewed by Vincent W. Woo in J 79 [2023], 550-551)
- Brendan DALY: *Penal Law in Action*, Paulist Press, New York/Mahwah, NJ, 2023, x + 211pp., ISBN 978-0-8091-5645-0 (reviewed by John A. Renken in SC 57 [2023], 686-687)
- William L. DANIEL (ed.): *Ministerium Iustitiae, vol. II: The Lex propria and More Recent Contentious-Administrative Jurisprudence of the Supreme Tribunal of the Apostolic Signatura*, Wilson & Lafleur, Montreal, 2021, xii + 762pp., ISBN 978-2924974-08-7 (reviewed by Hezron Jhud Cartagena in IE XXXV [2023], 708-710; also by John M. Huels in SC 57 [2023], 687-688)
- John DUDDINGTON: *The Church and Employment Law: A comparative analysis of the legal status of clergy and religious workers*, Routledge, 2023, 281pp., ISBN 9780367553173 (reviewed by Carmen Ferradans Caramés in LJ 191 [2023], 180-183)
- Uwe Michael LANG: *The Roman Mass: From Early Christian Origins to Tridentine Reform*, Cambridge University Press, 2022, 445pp., ISBN 978-1-108-83245-8 (reviewed by Stephen Morrison in CLSN 204/23, 48-50)
- Réginald-Marie RIVOIRE: *Does “Traditionis Custodes” Pass the Juridical Rationality Test?* (first edition), Os Justi Press, Lincoln NE, 2022, 105pp., ISBN 9798362804633 (reviewed by Anselm J. Gribbin in CLSN 204/23, 51-52; see also below, Books Received)

Books Reviewed

- Charles J. SCICLUNA – Myriam WIJLENS (eds.): *Rights of Alleged Victims in Penal Proceedings: Provisions in Canon Law and the Criminal Law of Different Legal Systems*, Nomos, Baden-Baden, 2023, 343pp., ISBN 978-3-7560-0037-1 (reviewed by Brendan Daly in SC 57 [2023], 698-700)

BOOKS RECEIVED

- Kevin Otieno MWANDHA: *Defection from the Catholic Church in Kenya. “Do You Also Want to Leave?” (Jn 6:67)*, Christian World Imprints, New Delhi, 2024, 181pp., ISBN 978-93-95457-97-2 [see above, canon 171]
- Réginald-Marie RIVOIRE: (tr. William Barker): *Does “Traditionis Custodes” Pass the Juridical Rationality Test? (Post-Rescript Revised Edition)*, Os Justi Studies in Catholic Tradition 2, Os Justi Press, Lincoln NE, 2023, vii + 108pp., ISBN 9798362804633 [see above, canon 838]