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

Editor: Rev. Paul Hayward
4 Orme Court, London W2 4RL, United Kingdom
e-mail: abstracts@ormecourt.com
http://abstracts.clsgbi.org

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GENERAL SUBJECTS

AA XI (2004), 211-266: J. G. Navarro Floria: Jurisprudencia argentina reciente en materia de derecho eclesiástico. (Article)

N.'s article deals with certain decisions in civil courts in accordance with State ecclesiastical law in Argentina. In each case he provides a short factual background to the case, the relevant section of the court's sentence and his own commentary. The subjects dealt with are the following: the sequestration of non-Catholic places of worship; conscientious objection to working on a religious day of rest; the legal status and scope of non-Christian religious non-working days; religious discrimination (four cases); the presence of religious images in public places; civil responsibility for hurt or damage caused by religious practices (in this case a botched circumcision); gypsy marriages and the *ius connubii* of minors in ethnic and minority cultures; ritual and animal sacrifices.

AC 45 (2003), 23-34: I.-V. Leb: L'église orthodoxe roumaine dans une nouvelle période de l'histoire. (Article)

Twelve years after the Revolution the Romanian Orthodox Church faces an enormous responsibility, that of restoring the hierarchy of moral values to society: the primacy of truth over lies, confidence over doubt, work over laziness, honesty over corruption, sincerity over ambiguity, dignity over servility and the primacy of the spirit over matter. Given this task, a delegation of the Holy Synod asked the President of the Republic on 10 June 1990 for "total ecclesiastical autonomy" and a legal framework within which to carry out its mission. This led to the formulation of article 29 in the Constitution, whose six paragraphs are outlined and commented upon in this article.

AC 45 (2003), 35-42: I. Marga: L'église majoritaire et l'incitation à la societé roumaine. (Article)

Democracy is a constitutive element of the synodal principle, though the Church cannot separate itself from its divine origin. The majority of a synod elects a bishop; however he becomes a bishop only by subsequent ordination. In regard to dogmatic issues, local synodality must take account of the *consensus ecclesiae dispersae*. The Romanian Orthodox Church (historically a majority Church in Romania) finds itself, in the new democratic context, confronted by various groups claiming rights (to abortion, education without religion, etc.). In 1991, under the new Constitution, and in the name of democracy, all Church

representatives were excluded from Parliament, thereby bringing to an end a tradition that goes back to Byzantine times.

AC 45 (2003), 43-54: R. Preda: Une perspective orthodoxe concernant les relations église-état en roumanie: 'neuf thèses'. (Article)

P. complains that the historic Church-State relations that obtained prior to the arrival of Communism are now being "airbrushed" in the name of modernity. Decree 177 of the 1948 law on religion is still theoretically in place; in effect there is a legislative lacuna regarding religion. A new law will have to be based on Romanian cultural and religious realities. Outstanding problems include the following: "proselytising" by Oriental-rite Christians and members of sects, faith schools, and the respective roles of Church and State.

AC 45 (2003), 55-66: S. Frunza: Communautés traditionelles et minorities religieuses entre les 'cultes religieux' et l'état en Roumanie vue par un laï orthodoxe. (Article)

F., a philosopher, argues that Church and State must relate to one another: the State cannot ignore religion, but must take care that its exercise does not impede the rights or freedoms of citizens; total secularisation is undemocratic; religion reminds the State that it is not autonomous or all-powerful. The Church has certain roles – charity, moral education and the promotion of understanding between people – and, in these areas, must be supported by the State. The State must also ensure the equal treatment of all religions. F. considers the issue of differences between majority and minority Churches from the perspective of multiculturalism (drawing on the writings of Charles Taylor).

AC 45 (2003), 67-76: J. Marton: Le rapport entre l'église romano-catholique et l'état roumain entre 1948-51. (Article)

The Communist party set out in 1948 to destroy the Catholic Church in Romania; the 1927 concordat with the Vatican was annulled; faith schools were banned and the State claimed control over the activities of all Churches. Thereafter the Catholic Church was tolerated, but not recognised. Bishops were forbidden to have contact with Rome. When the bishops were all arrested, the State tried to control the activities of the Church by means of collaborationist clergy. However no agreement was ever reached between the Roman Catholic Church and the State.

AC 45 (2003), 77-80: I. I. Furtunae: Le rapport entre les églises et l'état Roumain, un perspective gréco-catholique. (Article)

Even with the birth of a democratic State in Romania, certain Church issues remain unresolved, especially issues of property, and the recognition of the internal structures of Churches; the State does not treat all Churches equally.

AC 45 (2003), 81-92: J.-C. Périsset: Identité ecclésiale et construction européenne. (Article)

P. addresses three questions: is there a role for the Churches in the construction of Europe? If there is, what relationship should there be between the Churches and religious communities with Europe as a unified entity? And with which aspect of Europe: political, economic, social or cultural? Some European leaders want a secular [*laic*] Europe that is open to all religions, rather than a Christian Europe, a problem raised by the desire of Turkey to be admitted to the European Union. The Catholic Church, by reason of its trans-national unity, promotes a certain unification of the peoples of Europe. The "national" character of Orthodox Churches is a challenge in the construction of Europe. The Churches of the Reformation have a strong "national" character. It may be that the Churches in dialogue offer a model of reconciliation. It is also the task of the Churches to ensure that a fortress-Europe does not develop, one that is indifferent to the suffering of the rest of humanity.

AC 45 (2003), 93-102: V. Dima: Le rapport entre les églises et l'état roumain: un perspective adventiste. (Article)

The introduction of religion into schools in Romania has led to the following practice: religion has become one of the important subjects; pupils can obtain a religious education that allows them to understand religious matters; pupils who do not wish to participate in religion classes are free not to do so. Those religions recognised by the State can take advantage of these provisions. For Adventists, who observe the Sabbath, attendance of pupils at school on Saturday is optional. Members of the Armed Forces also enjoy an equivalent right.

AC 45 (2003), 103-110: S. Ionita: Particularités de la vie religieuse en Roumanie: une perspective administrative. (Article)

I. speaks of the Church-State relationship as a partnership for the good of civic society. This relationship requires a law, such as is currently being prepared in

Romania, based on article 20 of the 1991 Constitution. Despite the equality before the law of all recognised religions, the fact that 87% of the population belong to the Romanian Orthodox Church gives that Church a special role. I. lists the contribution of the State to Churches in recent years: the building of 1,200 churches, the repair of significant buildings and the return of buildings confiscated in 1948-1949.

AC 45 (2003), 111-120: P. Erdö: La place de l'église catholique roumaine dans la societé hongroise et son rapport avec l'état. (Article)

Although more than 60% of Hungarians are Roman Catholics – 3% are Byzantine-rite Catholics and 14% are Protestant – the Catholic Church does not have the character of a national Church. This reflects the fact that the "builders of the nation" in 1867 were predominantly Protestant. The new post-1989 Constitution upholds freedom of religion, the equality of all religions under the law and the separation of Church and State. Since 1990 the State has reached agreements with several "historic Churches" and religious communities. The registration of Churches and religious communities – which is optional – confers on them juridical personality in Hungarian law. In 1994 a limited accord was reached between Hungary and the Holy See; in 1997 an agreement on Church property and finance was concluded.

AC 45 (2003), 127-132: S. N. Troïanos: La situation juridique de la 'religion dominante' en Grèce. (Article)

Article 3 of the 1975 Constitution describes the Greek Orthodox Church [GOC] as "the dominant religion in Greece". Its precedents (1844, 1864, 1911, 1925/7 and 1952) provided for the State protection and support of the GOC; its clergy were paid from public funds; there were obligatory religion lessons in public schools; ecclesiastical institutions and seminaries were funded by the State; the Church was exempt from tax; there was also a legal ban on "proselytising". The 1975 law sets out to protect all religions, and the Head of State no longer has to swear to uphold the GOC. The GOC is dominant inasmuch as it is the religion of the vast majority of Greek citizens. The GOC enjoys administrative autonomy from the State, but can only exercise this within the parameters fixed by Parliament.

AC 45 (2003), 133-148: D. Nikolakakis: La diaspora orthodoxe grecque. (Article)

The term *diaspora* refers to the Greek Orthodox émigré community. Prior to 1908, some depended on the Ecumenical Patriarchate, some on the Greek Church, and others on another Orthodox Church. In 1908 the Ecumenical Patriarchate ceded responsibility to the Greek Church, with the exception of Venice under certain terms. This arrangement lasted until 1922, when the Ecumenical Patriarchate [EP] assumed jurisdiction for all *diaspora* communities. This was done to avoid a multiplicity of bishops serving separate national communities and thus damaging the unity of the Church. A "Greek Orthodox archdiocese for North and South America", administered according to a charter of 29 November 1977, is a province within the territorial jurisdiction of the EP. The archbishop, as an exarch of the EP and elected by it, is responsible to the EP, for the correct administration of the archdiocese. Similar arrangements are in place throughout the world.

AC 45 (2003), 149-170: G. D. Papathomas: Face au concept d''église nationale', la réponse canonique orthodoxe: l'église autocéphale. (Article)

In regard to national or autocephalous Churches, P. reflects on the distinction between, e.g., "the Greek Church" and "the Church in Greece". The former connotes exclusivity in a way that is difficult to reconcile with the nature of the Church; the second by contrast unites, since it links the Church, e.g., in Corinth, with the Church in other places. The use of the former is the result of influences in the second millennium, which compromised the earlier canonical ecclesiology. The concept of a "national Church", condemned as heretical at the pan-Orthodox Council in 1872, continues to determine how Orthodox Churches of the *diaspora* are organised; it has also shaped the behaviour of the Churches of Eastern Europe since 1990. The term *diaspora* that refers to distance from the Temple in Judaism has no place in Christian ecclesiology where a person has his ecclesial roots in the place where he is born and baptised.

AC 45 (2003), 171-176: K. G. Papageorgiou: Statut constitutionnel des communautés religieuses des *anciens calendaristes* à l'ordre juridique de Grèce. (Article)

In 1923 the Greek State introduced the Gregorian calendar in Greece, adding 13 days to the Julian calendar that had been in place until then. In 1924 the Greek Orthodox Church [GOC] corrected its system of calculating fixed feast-days, leaving the determination of the dates of moveable feasts unchanged. This change was opposed by a faction of Orthodox Christians who, since that date,

have distanced themselves from the GOC, setting up their own hierarchy and founding their own churches and monasteries. As a result, three metropolitans broke communion with the Church of Greece, proclaiming that it was in schism and declaring its sacraments invalid. The GOC did not retaliate in kind, but there was a *de facto* schism. The three metropolitans mentioned above broke into two groups, each declaring the other schismatic; over time these have splintered further. A decision of the Supreme Court in 1980 declared that in law the "Old Calendarists" still belong to the "dominant" GOC. Prospects for the reconciliation of these Churches with the GOC are not good.

AC 45 (2003), 177-190: N. Ch. Maghioros: L'église catholique romaine et l'état en Grèce: une approche juridico-canonique. (Article)

M. cites canon 368 but refers to the Roman Catholic Church in Greece as "a particular Church under the jurisdiction of the Greek Bishops' Conference". Under the Greek Constitution, only the Greek Orthodox Church and the Jewish and Moslem religions enjoy public juridical personality; other religions enjoy the status of private juridical personality. All ecclesiastics, ordained and seminarians, enjoy exemption from military service; and churches, temples, etc., enjoy exemption from income tax. The status of the Roman Catholic Church was stated in a decision of the Greek Appeal Court in 1994; based on a memorandum of the Greek Senate in 1830, it stated that Roman Catholic bishops enjoy only spiritual and administrative jurisdiction, that is, jurisdiction concerning the internal ordering of their Church. In 1997 the European Court of Human Rights criticised the judgement of the Appeal Court; as a result Greece has decided to recognise as juridical persons Catholic institutions founded before 1946. The status of the Catholic Church in the Greek legal system remains unresolved.

AC 45 (2003), 191-205: A. C. Vavouskos: Le statut juridique des églises protestantes in Grèce. (Article)

The status of Protestant Churches in Greece is governed by article 13 of the Constitution and a 1940 law on the foundation of churches and sanctuaries: they are "recognised religions" which, as such, enjoy juridical personality. V. accepts that the rights of Protestant citizens as members of a "recognised religion" are well protected.

AC 45 (2003), 207-218: M. Tatagia: Le statut juridique de l'église arménienne in Grèce. (Article)

The structures of the Armenian Church are contained in the 1860 National Armenian Constitution, a collection of 99 articles. As a national Church, the Armenian Church maintains and unifies the Armenian people. The Armenian community in Greece does not identify with the Armenian Church, since it has no legal existence, rights or obligations. T. speaks therefore rather of "the religious community of Armenians in Greece". This forms one diocese, which is a subdivision of the Armenian Church; the Armenian Patriarch, on the advice of a provincial assembly, appoints the Metropolitan; he is recognised by the Greek State as the pastor of Greek citizens of Armenian rite. Greek law recognises marriages celebrated in the Armenian rite; the Armenian Church pays the salaries of its clergy. Greece respects the internal autonomy of the Armenian Church and its structures, as laid down in the Treaty of Sèvres (1920).

AC 46 (2004), 43-50: P. Matar: La notion de nation à partir de l'évolution institutionelle du Liban. (Article)

M., who is the Maronite Archbishop of Beirut, traces the origin of the Lebanese nation to the cohabitation of Druzes, Shiite and Sunni Moslems in the eleventh century. This arrangement, based on equality, was promoted by their emirs. At times external forces undermined it, which led to massacres between 1840 and 1860. M. traces the development of power-sharing constitutional arrangements in Lebanon and their breakdown in 1989. Following the recent war, Lebanese Christians, Shiite and Sunni Moslems have committed themselves to living together; institutions that will allow them to do this still remain to be completed.

AC 46 (2004), 51-60: B. Rai: Les régimes juridiques du confessionalisme au Liban. (Article)

According to R., Maronite Bishop of Jbeil (Byblos) in Lebanon, situated in the Arab region of the Middle East and North Africa, Christians, Moslems and Jews have lived together in a culture where Islam is the State religion. The autonomy of the Christian community derives from several factors: the political independence of Mount Lebanon, and the integration of the 17 religious communities (one Jewish, 12 Christian, 4 Moslem) into the political, administrative and judiciary structure of the State. The Taëf Accord (1990), article 95, accepts this and recognises Maronites, Catholic Greek Melkites, Catholic Armenians, Syrian Catholics, Chaldeans and Latins.

AC 46 (2004), 61-66: G. Khodr: Nations et religions: le Liban. (Article)

Lebanon is described in its Constitution as "a religious country". This fact, according to K. (who is the Orthodox Metropolitan of Mount Lebanon), is rooted in history ("history is our present, not just a memory"). Christians are not threatened by a Moslem majority, but by a U.S. perception of Moslems as a source of terrorism. Multi-confessionalism is not the real problem in Lebanon; rather, it is the fact that the State, undermined by corruption, allows its people to live in third world conditions. K. concludes with an exposé of the problems caused by inter-community marriages: a Christian woman who marries a Moslem cannot inherit his property on his death unless she becomes Moslem; Orthodox will not officiate at a "mixed marriage" unless both parties are baptised.

AC 46 (2004), 77-99: G. D. Papathomas: La relation d'opposition entre l'église établie localement et la 'diaspora' ecclésiale. L'unité ecclésiologique face à la 'co-territorialité' et la multijuridiction. (Article)

Prior to the Reformation the canonical criterion for the existence of a local Church was the celebration of the Eucharist subject to the bishop of the place. After the Reformation the existence of several Churches in a territory gave rise to confessionalism. The arrival in Western countries of Orthodox communities added to the development of "national Churches" (something condemned as heretical at the pan-Orthodox Council in 1872). Canon 28 of the Council of Chalcedon (451) shows that the term *diaspora* is ecclesiologically incorrect. P. notes, in addition, that Christian communities in Western Europe are, by ancient tradition, subject to the Bishop of Rome, Patriarch of the West. Current Orthodox ecclesiology, reflected in current canons – Orthodox Church in Cyprus (article 2), Russian Orthodox Church (article 1) – leads to a global ethno-ecclesial jurisdiction; it ignores the existence of other Churches and undermines any possibility of ecclesial communion. P. cites a message read at the enthronement of Bishop Luke of the Serb Orthodox Church in Paris in March 2000 to illustrate this point.

AC 46 (2004), 141-158: C. K. Papastathis: Le statut du Mont Athos. (Article)

The final version of the 1979 agreement on the accession of Greece into the EU deals with the specific status of Mount Athos [MA], which is enshrined in the Greek Constitution, article 105. Although MA was never a sovereign territory, the Greek State – whether Ottoman or Byzantine – accorded it many privileges and limited itself to the maintenance of order and financial issues. In 1878 its

administrative autonomy acquired international recognition. A series of agreements followed the first Balkan war (1912), culminating in the Charter of MA, approved by its authorities in 1924 and the Greek authorities in 1927. Under these provisions the number of monasteries on MA is limited to twenty; each monastery composing and approving its own rule, which is the basis of its autonomy. All residents of MA, monks or others, enjoy Greek citizenship, regardless of their national origin.

AC 46 (2004), 159-168: K. G. Papageorgiou: Le cadre nomocanonique des relations du patriarchat œcuménique avec l'église semi-autonome de Crète. (Article)

For historical reasons, the Church in Greece is divided into five ecclesiastical regimes, each of which enjoys varying degrees of administrative independence from the Ecumenical Patriarchate: the autocephalous Church of Greece, the new territories of the Ecumenical Patriarchate (Northern Greece), Mount Athos, the semi-autonomous Church of Crete, and the Dodecanese islands. Crete has enjoyed political autonomy since 1899; in 1900 canonical autonomy – based on canon 17 of the Fourth Ecumenical Council (451) and canon 38 of the Council of Trullo – was worked out with the Ecumenical Patriarch. This remained in place until 1961 when a new Charter (137 articles) came into force. Crete became more subject to the jurisdiction of the Ecumenical Patriarch, and its status is semi-autonomous.

AC 46 (2004), 169-184: J. Getcha: Le droit d'appel au Patriarche de Constantinople au sein de l'église orthodoxe. La pensée de A. Kartachev et sa repércussion dans les œuvres des théologiens orthodoxes contemporains. (Article)

Kartachev, a professor of the St Petersburg Academy before the Russian revolution, took an active part in the Moscow Synod in 1917-1918. Author of a history of the Ecumenical Councils and a history of the Russian Church, he wrote an article on "the practice of the right of appeal to the patriarchs of Constantinople" in 1936. He distinguished three periods. 1) In the period before the Council of Chalcedon, the fact that the Patriarch resided in the capital of the Empire made him equivalent in power to the Emperor. 2) The Council of Chalcedon formalised the authority of the Patriarch in canons 9, 17 and 28; the Code of Justinian refers to him as "the head of all the other Churches". In the seventh century the rise of Islam led to the decline of the Churches of Alexandria, Antioch and Jerusalem and contributed to the stature of Constantinople. 3) Under the Ottoman Empire, Jerusalem, Antioch and Alexandria depended on Constantinople, and the right of appeal ceased in

practice. During the nineteenth century it revived. In the second part of this article, G. outlines the views of contemporary scholars – Troïtsky, L'Huillier, Schmemann, Wagner, Grigorios – on this right of appeal. The Patriarch, unlike the Pope, is a *primus inter pares* and the right of appeal to him is exercised in a conciliar fashion. The right arose in particular historical circumstances; the Moscow Patriarchate now refuses to recognise it, describing it as a form of Oriental papacy.

AkK 172 2/03, 353-379: L. Müller: Kirchenrecht als kommunikative Ordnung. (Article)

In this article M. considers canon law as communicative order. The article is divided into three major parts: canon law as system of command; the process of legal theory; and Christian community as a field of communication. In the first part of the article, the ideas of the canonist Hans Barion (1899-1973) on canon law are briefly explained. Not only ecclesiology but also legal theory should be taken into account when the relationship between the lawgiver and the subjects is considered. In the second part M. evaluates the various theories of John Rawls, Niklas Luhmann, and Jurgen Habermas, and then deals with law, justice and practice. In the third part, Church community as a field for communication, M. deals with various ideas such as communion, communication and canon law, the lawgiver and the Christian community, and finally, reasons for canonical decisions.

CLSN 140/04, 70-74: N. Kavanagh: Offences against Religion in the UK. (Article)

K. examines a recent legislative proposal in the United Kingdom for a new offence of incitement to religious hatred. In his article he looks at the existing blasphemy law (which protects the Christian religion) and the European Convention on Human Rights. His conclusion is that there is no need for new legislation, that the existing blasphemy laws should be retained, and that all offences with a religious or racial element should be dealt with under offences against the person or public order.

CpR LXXXVI 1-2/05, 135-159: A. Pardilla: La langage canonique concernant le programme de vie des religieux à la lumière de la Bible. (Article)

P. presents the biblical foundations and background of several concepts central to the canonical language used in the description of religious life: consecration, the following of Christ, perfection, radicalism, community, and mission.

For XIII/02-XIV/03, 5-8: Pope John Paul II: Service to life grows out of communion of persons. (Address)

This is the text of an address on the occasion of the twentieth anniversary of *Familiaris Consortio.* The family is a natural institution willed by God with a true communion of persons at its heart, and cannot be changed by human beings. This understanding is under attack from legislation in some countries and various international forums. Christian families are the top priority of the Church.

For XIII/02-XIV/03, 16-19: Pope John Paul II: Means to Exercise Authority in a Pastoral Way. (Address)

This is the text of an address given to canonists marking the twentieth anniversary of the promulgation of the Code. The Code and the Council must be taken together to develop sound juridical culture. Canon law is not just a collection of legislative texts but deals with divine realities. Positivism and hermeneutical reductionism are to be avoided. Canon law exists to protect both persons and communities, including the common good. The exercise of the means of governance thus finds its true meaning as pastoral service.

For XIII/02-XIV/03, 26-31: Pope John Paul II: Legislate and live perennial values. (Address)

This address was given to mark the seventh centenary of the Sapienza University in Rome. The Pope praises the study of Roman law and juridical science. The human person is the foundation and goal of social life. Human dignity ultimately derives from God's creation of humanity in his own image, whence flow fundamental human rights, and the most fundamental of all is the right to life itself. There are many other human rights that should be guaranteed in law, and must also be understood in context.

For XIII/02-XIV/03, 32-35: Pope John Paul II: Rebuilding Europe needs strong families. (Address)

This address was given to the Presidents of Episcopal Commissions for the Family and Life of Europe in June 2003. The Pope emphasises the fragility of families due to the spread of mentalities favouring contraception, abortion and divorce, and the importance of countering these.

For XIII/02-XIV/03, 36-44: Congregation for the Doctrine of the Faith: Considerations regarding proposals to give legal recognition to unions between homosexual persons. (Note)

See below, canon 1055.

For XIII/02-XIV/03, 45-51: Pontifical Council for the Family: Twenty Years since *Familiaris Consortio*: The Anthropological and Pastoral Dimension. (Symposium)

The concluding comments of various pro-life and family movements reviewing the past twenty years. Areas addressed include: preparation for marriage; Christian and catechetical formation; sex education; family rights; integral vision of the human person; openness to life; refugee families; pastoral care at parish level.

For XIII/02-XIV/03, 52-61: Pontifical Council for the Family: Pastoral care of the family: couples in difficulty. (Symposium)

The conclusions of the 15th Plenary Assembly of the Pontifical Council. The Council identifies reasons for the spread of the divorce mentality, and its consequences, and proposes pastoral remedies: formation for pastoral care of marriages; human and affective formation of young people; parish formation of the young; support for newly-weds; Feast of the Holy Family for celebrations of family life; successful marriage commitment; children from broken homes.

For XIII/02-XIV/03, 62-83: Pontifical Council for the Family: Cloning: the disappearance of direct parenthood and denial of the family. (Presentation)

On behalf of the Council its President, Cardinal Alfonso López Trujillo, discusses issues involved in cloning. Having set the stage with the meaning of cloning, both reproductive and therapeutic, and the international legislative

framework, he indicates the main objections: irrefutable probability of the human character of the embryos; the dignity of the human embryo; this dignity obtains even when it consists of only one cell; the personality of the embryo; cloning as contrary to the dignity of life and procreation; and cloning as contrary to the dignity of the family.

For XIII/02-XIV/03, 84-88: World Meeting of Families, Manila 2003. Theological Congress: Christian Family is Good News for Third Millennium. (Summary)

The Congress sets out various ways in which the Christian Family is Good News, but also identifies challenges that need addressing.

For XIII/02-XIV/03, 98-115: Presidents of the Episcopal Commissions for the Family and Life of Europe: Challenges and Possibilities at the Beginning of the Third Millennium. (Report)

This document summarises the work of this fourth meeting in Rome, 11-14 June 2003. Singled out for attention are: cohabitation and divorce; legal recognition of *de facto* unions; privatisation of family life; contraception; abortion; medically assisted procreation; euthanasia. The report then moves on to hopeful signs, and the mission ahead.

For XIII/02-XIV/03, 146-157: A. López Trujillo: The Family in the Pontificate of John Paul II. (Address)

T. summarises the anthropology of the family in the teaching of Pope John Paul II, and then identifies pastoral, social and political priorities.

IC XLIV 88/04, 649-677: À. Seglers Gómez-Quintero: La «acomodación» de las festividades religiosas y la nueva protección por discriminación indirecta en la orden laboral. (Article)

The author examines two decisions of Canadian courts regarding the accommodation of religious celebrations in workers' employment (the first involving a convert to the Seventh Day Adventist Church who was forced to work on Saturday, the second regarding the harassment of an Orthodox Jew for praying on an Air France flight), and then reviews the jurisprudence of Spanish constitutional courts and European Union decisions with regard not only to employment on religious holidays, but also to multiculturalism in general.

IC XLIV 88/04, 735-751: Guadalupe Codes Belda: La posición del Consejo de Estado ante la denegación de inscripción de una Fundación en el Registro de Entidades Religiosas (Notas al dictamen n. 993/2002). (Commentary)

C. reviews the role of the Spanish Council of State in entering religious entities in the *Registro de Entidades Religiosas*; the question is raised whether a secular governmental entity has any right to determine whether or not a canonically-erected ecclesiastical body should be recognised.

IC XLIV 88/04, 755-769: T. Rincón-Pérez: El Derecho administrativo como rama autónoma de la ciencia canónica. (Review)

R. reviews Miras-Canosa-Baura, *Compendio de Derecho Administrativo Canónico* (Pamplona: EUNSA, 2001); in the second part of the review, he tries to make a general evaluation of the work insofar as it deals with an autonomous branch of canonical science. The reviewer believes that this work presents a way of doing canon law quite distinct from the traditional exegetical method.

IE XVI 3/04, 741-770: J.-P. Schouppe: L'emergence de la liberté de religion devant la Cour Européenne des droits de l'homme (1993-2003). (Article)

Article 9 of the European Convention on Human Rights protects freedom of thought, conscience and religion. S studies the concept of religious liberty according to article 9 in the light of the jurisprudence of the Court. If at the level of doctrine, freedom of thought and conscience are granted a certain priority by Strasbourg, freedom of religion is *de facto* given considerable importance. Describing recent events as an *éclosion* or "opening out" of religious freedom, S. distinguishes its individual, collective and, as he calls it, "institutional" dimensions. These dimensions have an internal aspect (the freedom to change one's religion, etc.), and an external aspect (the manifestation of one's beliefs). S. gives details of a number of cases heard by the Court involving individual, collective and institutional aspects of freedom. He concludes with some reflections pointing towards a concept of "institutional" religious freedom.

INT 10 2/04, 232-240: N. Lüdecke: Recta collaboratio per veram aequalitatem. Kanonistische Bemerkungen zum Schreiben der Kongregation für die Glaubenslehre über die Zusammenarbeit von Mann und Frau in der Kirche und in der Welt. (Commentary)

L. comments on the Congregation for the Doctrine of the Faith's 2004 *Letter to the Bishops of the Catholic Church on the Collaboration of Men and Women in the Church and the World.* He sets out the context of the document, and its intention, and then provides a summary of its themes. He also draws out eight points from the document for consideration.

ME CXXVIII 1/05, 454-463: E. C[olagiovanni]: La missione forense ecclesiale. (Article)

C. considers the role of the administration of justice in a wider context than simple implementation of law. It is part of the interaction between, and integration of, the individual and society. As such it is affected by contemporary values and ideologies such as nihilism and consumerism. He looks at how this is affected by Christian hope and eschatology and the tension in the Christian life between the "already" and the "not yet".

QDE 18 (2005), 103-106: P. V. Aimone: www.ulrichrhode.de (Article)

A. comments on a canon law website of interest.

QDE 18 (2005), 213-218: D. Mogavero: Il sito della Conferenza Episcopale Italiana: www. chiesacattolica.it (Article)

M. comments on the website of the Italian Bishops' Conference.

REDC 2004, número especial: F. Cantelar Rodríguez: Índices 1966-2003. (REDC special volume)

C. has provided a full set of indices for the *Revista Español de Derecho Canónico* covering the years 1966 to 2003. (Indices for 1946, the first year of publication, to 1965 were published as volume no. 22 in 1967). The present volume bears no number but is simply described as *número especial*, and is published jointly by the Canon Law Faculty of the Pontifical University of Salamanca with the collaboration of the *Consejo Superior de Investigaciones Científicas*, Madrid. It is divided into a general index (by year of publication),

analytical index, and author and book review indices. C. has thus provided a research tool for accessing almost forty years of canonical writing and jurisprudence during years of crucial development.

REDC 62 157/04, 549-599: Pietro Lo Iacono: Impegno politico, facoltà di critice e tutela dei Diritti nell'ordinamento canonico (traendo spunto dalla rimozione di un parroco). (Article)

Lo I. considers the right of critical dissent by members of the Church from certain elements of Church teaching or hierarchical decisions. Such a right must be held in balance by the duty to maintain a relationship of communion with the Church; this supreme duty, therefore, circumscribes the right of dissent. Criticism and dissent is permissible insofar as it does not harm ecclesial communion or the deposit of the faith. He then examines the position of parish priests in this matter. Given their status as the direct and principal collaborators with their bishop, any radical or generalised criticism of the institutional Church is incompatible with their ministry. In such circumstances it may be necessary to take measures to remedy the situation, even by the possible removal of a parish priest. Such a removal should be seen not so much as a punishment but rather a safeguarding of the *salus animarum*, which is the *lex suprema Ecclesiae*. In this vein he discusses the case of a well-known rebellious Italian parish priest (though his anonymity is maintained), active in left-wing politics, publications and broadcasts and in open rejection of important elements of the Church's teaching on sexual morality, as well as in direct attacks on both the local and universal hierarchy.

REDC 62 157/04, 657-694: Silvia Lombardini: Nullità del matrimonio concordatario e divorzio nella recente giurisprudenza e nella riflessioni dottrinali. (Article)

This article considers the relationship between ecclesiastical and civil jurisdictions in Italy concerning declarations of nullity of those marriages celebrated under the terms of the 1929 Concordat and the Accord of 1984. Italian courts must decide which law (civil or canon) to apply in these cases, and they overwhelmingly opt for civil law in order to respect the wishes of those who have abandoned or rejected the Catholic faith since the time of their marriage. Another matter concerns the possibility of an ecclesiastical declaration of nullity following a civil divorce; in this case there must exist in both actions an identity of *petitum* and of *causa petendi*. L.'s conclusion is that a new marriage law should be established to better coordinate the processing of canonical and civil marriage in the light of the widespread secularisation of Italian society.

SC 38 1/04, 5-36: L. Örsy: The Church of the Third Millennium. An Exercise in Theological and Canonical Imagination: In Praise of *Communio*. (Article)

The Church is in its optimal state when *communio* is fully practised by all its members. *Communio* is an internal invisible reality created by the Spirit through the sacraments. The internal reality demands external visible structures. From the sacraments of initiation arises the first and all-pervading general *communio* of the faithful. From the sacrament of orders arises the *communio* of "clergy". From the sacrament of matrimony arises the *communio* of a "domestic church". From freely-given charisms arises the *communio* of the religious institutions. The best and most the Roman Catholic Church can do to promote the union of the Christian churches is to be a *communio* through and through – a paradigm of divine design. The ecumenical work among the separated Churches is a ministry of healing; its goal is to restore and repair the inwardly-torn *communio* of the universal Church of Christ.

SC 38 1/04, 173-190: E. Haddad: L'économie dans les Églises orientales. (Article)

See below, Code of Canons of the Eastern Churches.

SC 38 1/04, 191-214: K. McKenna: Richard Burtsell: Canonical Advocate. (Article)

See below, Historical Subjects.

SC 38 2/04, 301-328: F. G. Morrisey: Some Themes To Be Found in the Annual Addresses of Pope John Paul II to the Roman Rota. (Article)

M. surveys the twenty-six Rotal addresses of Pope John Paul II which span the years of 1979-2005. While the addresses reflect a wide variety of topics, M. has chosen to concentrate on three major themes which are frequently discussed in them: 1) the place of law in the Church; 2) the elements of a canonical trial; and 3) certain issues which relate to the adjudication of marriage nullity cases. These constitute an important part of the canonical legacy of this Pope. When the canonist reflects on these Rotal themes, the more comprehensive and unified these teachings appear.

HISTORICAL SUBJECTS

AC 46 (2004), 21-42: B. Basdevant-Gaudemet: Église et pouvoir imperial: IV-VI siècle; quelques aspects du jeu des autorités. (Article)

B.-G. traces the development of imperial laws regarding religion, beginning with the Code of Theodosius (438), whose law falls into three categories: laws protecting the Christian faith, laws favouring the Church and its clergy, and ecclesiastical discipline (often provisions already made in a Council). The laws of Justinian fall into three categories: the first are aimed at protecting the unity of the faith; the second cover all elements of ecclesiastical discipline (cf. the *Digest*, 533); the third concern the involvement of clergy in civil society. She outlines the doctrine of Eusebius of Caesarea, Ossius, Ambrose and Gelasius on the role of the Emperor in Church affairs. Though Emperors – often addressed as *sacratissimi* or *sacrosancti* – convened the first four ecumenical Councils, bishops made the doctrinal decisions.

AC 46 (2004), 169-184: J. Getcha: Le droit d'appel au Patriarche de Constantinople au sein de l'église orthodoxe. La pensée de A. Kartachev et sa repércussion dans les œuvres des théologiens orthodoxes contemporains. (Article)

See above, General Subjects.

CpR LXXXV 3-4/04, 311-339: M. T. Guerra Medici: La Badesa, il Vescovo e il Conte. (Article)

G. traces the history of the rights and privileges of the abbess of the Cistercian nuns of the monastery of Saint Benedict in Conversano from the first abbess, Dameta (1266-1271) until the abolition of the abbey's privileges by Pius VII in 1810. The mitred abbess of this community for most of its history enjoyed significant feudal rights and exemption from the jurisdiction of the Bishop of Conversano in Castille. After the reforms of Trent, however, the abbess became involved in increasingly complicated and costly litigation with both the Bishop of Conversano and the Count of Conversano to retain those privileges, in both ecclesiastical and civil courts.

CpR LXXV 3-4/04, 341-388: E. Sastre Santos: León XIII (1878-1903) y la identidad de los «Nuevos Institutos» de votos simples femeninos. (Article)

S. studies the period of the development of the "new forms" of religious life, particularly the origins of the new institutes of simple vows under Leo XIII. The first section of the study reviews the form of religious life in the juridical system of the Council of Trent and thereafter (1563-1917), its protection of the theological foundation of religious life, and the juridical-ecclesial character of institutes in the Tridentine system. The second section presents the transformation of institutes of simple vows from the Tridentine juridical system, focusing on the factors leading to the transformation of the old institutes of simple vows (socio-political, ecclesial, and internal) and their place in liberal society (1830-1917). The third section studies the approval of the "new institutes" of simple vows as a new form of religious life for women during the pontificate of Leo XIII; S. presents several "novelties": those of theology (the necessary profession of simple vows), governance (the superioress general), juridical-ecclesial (the diocesan right/pontifical right distinction), territorial (centralised organisation), and "mentality" (the nun/sister distinction). An epilogue notes the reaction of the "old regular" institutes of solemn vows to these new female institutes of simple vows. The article concludes with a substantial documentary appendix, listing significant documents from the pontificate of Leo XIII regarding the "new institutes".

IC XLIV 88/04, 539-588: P. Gherri: Note metodologiche sui rapporti tra Teologia e Diritto canonico nell'Alta Scolastica e loro reflessi sull'attuale Teologia del Diritto canonico. (Article)

G. claims that the recent creation of the "Theology of Canon Law" as a new academic discipline requires the investigation of the connection between the science of theology and canonical science, since the latter has taken an entirely different point of departure in the last fifty years. Concentrating on the methodology of canon law in the Scholastic period, G. presents three hypotheses: first, that from the ninth to the twelfth century, a significant portion of the canonical *auctoritates* were scriptural or from the Fathers of the Church; second, that there was a link of "instrumental dependence" on the part of teachers of canon law in the high Scholastic period on the canonical collections (principally patristic, biblical, and conciliar), which is seen in the utilisation of these *fontes*, but in a different dialectic; third, that the supposition that the late Scholastics used canon law as a *locus theologicus* is erroneous.

IC XLIV 88/04, 589-647: A. Riobó Serván: Libertad religiosa y Derecho bajo el comunismo: la experiencia checoslovaca. (Article)

R. divides the period after the Second World War into three parts and studies legislation and government actions toward the Church in Czechoslovakia. In the period of transition (1945-1948), the government's main concern was Church control of education. In the period of Stalinism and following (1948-1968), a variety of laws and actions to impede the normal activities of the Church were enacted, particularly regarding the economic support of the Church, regulation by a special government agency, destruction of the Greek Catholic Church, suppression of religious orders, etc. In the final period (1968-1989), changes introduced by the movement of 1968 did not result in a lasting legal modification of the relation between the Church and State until the very end of the period and the downfall of Communism.

IE XVI 1/04, 21-40: O. Condorelli: "Ecclesia", "civitas" e giurisdizione episcopale: interpretazioni e applicazioni del c. 9 del Concilio Lateranense IV nei secoli XIII-XV. (Article)

Relations between Rome and the Church at Byzantium entered into an intense phase after the foundation of the ephemeral Latin Empire of the West, 1204-1261. Following the canon *Quoniam in plerisque partibus* of the Fourth Lateran Council (1215), Innocent III attempted to deal with the problem of reconciling the unity of diocesan jurisdiction and the diversity of rites and languages. In this context, the principle "one bishop for one city", which had already been proposed as far back as the time of the First Council of Nicea, was henceforth maintained on the strength of the symbolism of mystical marriage, of Paul's doctrine on the Mystical Body of Christ, and of the timeliness of a monarchic model for the universal Church. C. studies the interpretation made of the *Quoniam* canon: there is an absolute identification between bishop and *civitas*, the latter term evoking a personal element but nevertheless making a stable connection to the territory of the *dioecesis.* While the *civitas* is seen as a community of the faithful, the bishop emerges as a figure that represents the unity of the faith in Christ. Thus there is a close connection between the bishop, the *civitas*, and the place in which the community – *ecclesia* – resides. C. analyses St Cyprian's thought, the perspective taken by Pope Innocent, the criterion proposed by Nicolò Tedeschi, and other sources. C. concludes that it was necessary to wait until the Second Vatican Council for a better understanding of the relationship between territoriality and personality of ecclesiastical circumscriptions, and between *ecclesia* and *civitas*.

IE XVI 1/04, 41-65: C. Fantappiè: Per la storia della codificazione canonica (a cento anni dal suo avvio). (Lecture)

On the occasion of the first centenary of the start of the official process of the codification of canon law, F. dismisses as a costly error the consideration that research into the origins of the codification of canon law is of greater interest to historians than to jurists, and justifies his decision to bring the matter up at this moment. He writes first on the premises or the remote preparation of the Code, and the deep reasons that moved Pius X to call for the codification. With a good deal of detail he puts together the cultural and doctrinal contributions towards the task from 1904 to 1917. In the final portion of the lecture, F. refers to the ideas which the codifiers had in mind: the Code was a response to the problems regarding the content and form of canon law from Trent to the First Vatican Council, a means to dialogue in view of the emerging civil codifications, and a balanced blending of past and present canonical material. F. also sets out some considerations regarding the method of composition, and the idea that the Code was seen as representing an updating of the "form" of the law, while leaving the "substance" unaltered.

IE XVI 1/04, 67-109: C. Garcimartín: Relaciones Iglesia-Estado en Irlanda: una aproximación desde la Constitución. (Article)

G. studies Church-State relations in Ireland on the evidence of the Constitution of 1937. She first introduces its remote and recent precedents, with special reference to events such as the Act of Union of 1800, the establishment of St Patrick's College, Maynooth, in 1795, the Roman Catholic Relief Act of 1829, and the Irish Church Act of 1869. Political circumstances made it necessary to propose no fewer than 27 modifications to the Constitution that had been approved in 1922, and it was De Valera himself who took personal charge of checking the drafting of the 1937 Constitution. Article 44 was the key article as far as Church-State relations were concerned, and it was not easy to find a formula to support the desired balance between a recognition of the special place of the Catholic Church and the prevention of unnecessary controversy with the Protestants. G. goes on to study the special type of Church-State separation in Ireland, and then explains the conviction prevalent in Ireland that a Concordat or agreement would add nothing to the relationship: neither the Church nor the State have ever considered it necessary. She analyses article 44, especially regarding its recognition of the divinity, and the prohibition of State financing of religious confessions. Finally, she sets out the characteristics of the present-day "laicism" of the Irish State.

IE XVI 1/04, 227-238: N. Álvarez de las Asturias: L'università di Bologna alle origini della cultura europea. In merito alla giornata di studio presso l'ISTUB. A Bologna 18 ottobre 2003. (Article)

While Haskins' view, as published in 1927, to the effect that there was a true twelfth century "Renaissance", has never been challenged, a good deal of his conclusions are being amply corrected at present. In particular a study day organised by the *Instituto per la Storia dell'Università di Bologna* (ISTUB) has put together seven essays that look into different aspects of research during the first five centuries of the University, from the twelfth to the end of the sixteenth century. They deal with the rediscovery of the *Digesto* – always considered as the moment of the birth of the new science of law – in the most ancient copies dating from the seventh to the ninth century; Gratian's Decree, in the twelfth century; the work of Giovanni di Legnano, doctor *in utroque iure*, in the fourteenth century; the Pontifical activity in the University of Bologna, also in the fourteenth century; and the work of Ugo Boncompagni, later Pope Gregory XIII, in the sixteenth century. Á shows how much of our interpretation of the medieval centuries has been reductive and mistaken.

J 64 (2004), 39-63: B. E. Daley: Universal Love and Local Structure: Augustine, the Papacy, and the Church in Africa. (Article)

D. surveys the Church in which Augustine lived and its ties to the Church of Rome. He takes notice of the letters of Augustine recently recovered. He also sets the Church of that time over against Novatianism, Donatism and Pelagianism. Augustine saw that the "alternative to an ecclesial structure that takes the international character and historically apostolic roots of the Church seriously was Donatist particularism." "The Pope's role in the Latin West seems to have been understood as an application of the Nicene Canon rather than an inheritance from Peter." "Augustine's vision is more mystical than canonical. The real importance of Rome for the universal Church is to see the members love each other more purely, and more effectively in Christ."

J 64 (2004), 64-81: C. Gallagher: Collegiality in the East and in the West in the First Millennium. A Study based on the Canonical Collections. (Article)

G. points out that there were some appeals from the East to the Bishop of Rome but says that there is little evidence that this acknowledges a Roman primacy as claimed by Leo the Great or Pope Gelasius. None of the Popes of the first millennium thought it their duty to make laws for the Eastern Churches of Constantinople, or Antioch, or Alexandria. The Eastern Churches held for Church government by the five Patriarchs and General Councils. In the West

the development of the monarchical government led to the failure of the mission to Constantinople in 1054. The Pentarchy assumed collective responsibility inside the Empire. The rise of Islam and the control of the Mediterranean made it more difficult to see the Pentarchy as a practical reality, though it was still alive in Constantinople in the twelfth century. G. concludes that in the first millennium there was doctrinal and ecclesial union between Constantinople and Rome, and different administrative, discipline, and liturgical usage could co-exist with complete unity in the faith of Jesus Christ. Agreements are now being reached concerning theological formulae that shattered the unity of the Christian community.

J 64 (2004), 208-223: Margaret O'Gara: Three Successive Steps towards Understanding Papal Primacy in Vatican I. (Article)

O'G. adverts to two mistakes: one is that of seeing the collegiality of bishops and the primacy of the Bishops of Rome as two items in competition to be kept in equilibrium; the other is that of considering the primacy of Rome as representing the past, and collegiality as representing the present. The three successive steps are: 1. focusing on the text of *Pastor Aeternus* on Papal primacy; 2. focusing on discussions about the text of *Pastor Aeternus*; and 3. focusing on world views behind the discussions about the text of *Pastor Aeternus*. Here she is enthusiastic about scholarly approaches of writers like Tillard, Congar, Rahner, Potmeyer, Lafont, *et al.* She concludes that with the use of world views Vatican I may be more open than is often thought.

J 64 (2004), 247-283: G. Routhier: The First Stage of an Unfinished Process of Reversing the Centralized Government of the Catholic Church. (Article)

R. considers that Pope John XXIII saw Vatican II as a means to free the primacy of the Church from the tutelage of the Curia. Throughout the preparatory period of the Council and in the Council this struggle by the various groups continued. The creation of the Synod of Bishops in October 1965 was not the end of the struggle. The post-Conciliar period was characterised by a complex interplay of forces. The principles enunciated in *Christus Dominus* reassured no one, he says. Vatican II remains an "initial moment". It remains pertinent and it is necessary to revisit it, given its continuing relevance.

J 64 (2004), 361-384: K. Pennington: Representation in Medieval Law. (Article)

P. begins with Brian Tierney's work on *Representatio.* He describes representation as "an agency that is one of the most jurisprudential contributions that medieval jurists of the *Jus Commune* made to Western legal thought". As Tierney and others had shown, the development of the juristic concept of agency during the twelfth and thirteenth centuries had a profound effect on medieval institutions. P. gives a long account of the developments in representation within the Church and the political developments that assisted or harmed the process. "After the age of conciliarism had passed the Church and Canon Law had changed. By the seventeenth century canonists no longer thought of the Church as an independent body. The Head and Body metaphor remained a part of ecclesiological rhetoric but the Body's rights and duties atrophied".

National Genealogical Society Quarterly 93 6/05, 126-147: G. L. Findlen: The 1917 Code of Canon Law: A Resource for Understanding Catholic Church Registers. (Article)

This article is not written for canonists but genealogists. F. illustrates how the 1917 Code can prove to be a good aid in researching family history as it interprets the law behind the facts. He does this by pointing out how the Code may in some cases offer a wealth of information which genealogists may be looking for in certain church records. It is interesting to note how the Code of 1917 can help elucidate details about ancestors' and forebears' lives.

QDE 18 (2005), 31-54: A. Perlasca: I vicari generali ed episcopale. (Article)

See below, canons 475-481.

RDC 53 2/03, 285-310: M. Smyth: Veuves, vierges consacrées, diaconesses en Gaule antique: un example de conflit entre coutume ecclésiastique et autorité législative. (Article)

As early as the Church's first centuries of existence in Gaul, the question of the ecclesiastical status of widows, consecrated virgins and deaconesses evoked a variety of conflicts and led to a number of legislative decisions, which S. looks at in this article.

RDC 53 2/03, 311-336: L. Kéry: *Non enim homines de occultis, sed de manifestis iudicant.* La culpabilité dans le droit pénal de l'Église à l'epoque classique. (Article)

K. studies how the distinction between crime and sin developed in the twelfth and thirteenth centuries, and how penal guilt came to be distinguished from both theological guilt (internal) and responsibility (purely external). Penal guilt depended upon imputability, in other words, the punishable internal will, but it presumed at least a first step towards the carrying out of the action.

RDC 53 2/03, 337-360: M. Conetti: Les pouvoirs du collège des cardinaux dans les pamphlets de Jacopo et Pietro Colonna contre Boniface VIII. (Article)

In the thirteenth century, Jacopo and Pietro Colonna, Cardinals and also members of the most powerful Roman house at the time, published three tracts against Pope Boniface VIII. At the origin of these attacks lay a political conflict between rival families and also an ecclesiological question about the function of the Cardinals. The Colonnas attacked the Pope for having illegitimately ascended to power, and for the way in which he exercised his power. They demanded that the College of Cardinals should participate in the Papal *plenitudo potestatis*. At the time, however, they were the only ones to support such a position.

RDC 53 2/03, 393-408: A. G. Gherasim: Regard comparatif sur les sources du droit de l'Église des huit premiers siècles en Occident et en Orient. (Article)

G. studies the extent to which the sources of canon law are identical for East and West.

REDC 62 157/04, 473-548: J. García Sánchez: Datos inéditos de la biografía de Juan Gutiérrez Vázquez, legista salmantino del siglo XVI. (Article)

G. throws new light on some aspects of the life of the sixteenth-century Spanish canonist Juan Gutiérrez Vázquez, a renowned authority in Europe on matters legal and canonical for almost three centuries. Among other things G. includes the contract Gutiérrez had with his publisher, Francisco López, for the exclusive rights to the publication of his many writings for a period of twenty years. Also included for the first time in print is the full text of his last will and testament.

REDC 62 157/04, 601-646: R. Román Sánchez: Expedientes de dispensa matrimonial en la diócesis de Salamanca (1871-1889). (Article)

R. presents a juridical-canonical study of marriage dispensations in the diocese of Salamanca between 1871 and 1889, a total of over four thousand. He examines the social, religious, demographic and legislative context (both canonical and civil) prevalent at the time, and goes on to analyse the appropriate norms in their substantive content and procedural application. He points out the much greater influence of canonical legislation as against civil ordinances and the concern of the Church to facilitate the required dispensations in order to maintain or restore legitimate canonical status to the faithful.

REDC 62 157/04, 695-730: J. López Estévez: La estructura sistemática del tratado de Jean Bruneau (c. 1480-1534) sobre el matrimonio. (Article)

L. analyses *De Sponsalibus et Matrimoniis* of the French canonist Jean Bruneau, published in Paris in 1521. In describing its content he pays special attention to references to and quotations from legal sources, and from this he reconstructs the author's juridical culture and understanding as well as the exact meaning of his words and terms. He then goes on to attempt to specify the concrete problems Bruneau had set out to solve, thereby providing the context of his work and so identifying its own unique and original elements. In another section he examines the work's formal composition. The overall format is that of *conclusiones*, a structure more akin to works of theology but which gives Bruneau's treatise a high degree of order and homogeneity. On a more detailed level within each of the *conclusiones* a variety of methods is used according to the matter under discussion (traditional scholastic method, appeal to authorities, etc.). Overall he uses the distinction "betrothal – marriage" in preference to the more classical division "definition – cause – impediment". He concludes that the work is a compromise between the old and the new; while it owes much in its formal structure to the works of earlier times, it nevertheless reveals a search for fresh and original ways and methods.

SC 38 1/04, 173-190: E. Haddad: L'économie dans les Églises orientales. (Article)

See below, Code of Canons of the Eastern Churches.

SC 38 1/04, 191-214: K. McKenna: Richard Burtsell: Canonical Advocate. (Article)

The present experience of canonical advocacy for clergy accused of sexual misconduct has certainly occupied the minds of canonists. M. provides an historical treatment of canonical advocacy with the life and works of Richard Burtsell, a priest from the Archdiocese of New York and an advocate for priests. M. illustrates the context of Catholicism in the United States in the nineteenth century, which gave rise to a variety of tensions between bishops and their priests. Special attention is given to three landmark cases in which Burtsell acted as advocate: those of priests Edward McGlynn, Louis Lambert, and Burtsell himself. In conclusion, different canonical themes are underlined in Burtsell's book, *The Canonical Status of Priests in the United States* (1887), which contributed to the development of canonical guidelines concerning legitimate administrative recourse, appeal, and the right of defence and consultation.

SC 38 2/04, 439-460: R. Jacques: Les droits et devoirs des fidèles: aperçus historiques. (Article)

J. posits that the subject of rights and duties of the faithful must be understood from the broader historical perspective. Such an historical exposition will help contextualise this theme more properly. Thus, J. cites examples from Justinian's *Digest* and the works of other jurists, especially from the Middle Ages, such as Gratian. He also cites examples concerning the right to marriage, natural law, personal liberty, and property rights, to illustrate their evolution. Various references are given from the 1917 and 1983 Codes and from Papal teachings. The evolution of personal rights in civil society is briefly examined. This historical trajectory will establish a necessary foundation and perspective to understand the emergence of the notion of rights of persons in the Church. J. observes that a lucid examination of the theoretical complexities and the potential of the *ius vigens* as represented in the two Codes leads to the conclusion that the Church has not yet established appropriate structures for the protection and vindication of rights. With time and experience and historical awareness, canonists will be better positioned to assist in the development of these structures.

Mary Lyons: Governance Structures of the Congregation of the Sisters of Mercy: Becoming One. (Book)

See below, canon 582.

CODE OF CANONS OF THE EASTERN CHURCHES

AC 46 (2004), 67-76: E. Raad / J.-P. Durand: Régimes matrimoniaux canoniques et civils: comparaisons entre le Liban et la France. (Article)

The authors outline the canonical provisions regarding marriage in force in Lebanon. Each Church regulates the marriages of its subjects, which are then recognised in civil law (there are 12 Christian communities, 5 Moslem and 1 Jewish). There is no provision for civil marriage; citizens must marry in accordance with the relevant religious law. However civil marriage between Lebanese citizens abroad is recognised in Lebanon.

AC 46 (2004), 259-268: A. Kaptijn: Le statut juridique des enfants mineurs nés des marriages mixtes catholiques-orthodoxes. (Article)

In recent years requests have been made for the reception into full communion with the Catholic Church of minors who were baptised in the Orthodox Church. The Congregation for Eastern Churches [CEC] has stated that "reception" was not necessary as it considers these minors to be Catholics and members of the (Eastern) Church to which the Catholic parent belongs. The Congregation for the Doctrine of the Faith approved this practice. The CEC sent the response to the Pontifical Council for Legislative Texts requesting that it be published. K. considers the ecclesiological and ecumenical implications of this response.

Ang 82 (2005), 451-478: L. Lorusso: L'ambito d'applicazione del Codice dei Canoni delle Chiese Orientali. Commento sistematico al can. 1 del CCEO. (Article)

In an article written for the benefit of Latin-rite students, L. begins by setting out the reasons for having two Codes in the Catholic Church. He deals with the notions of unity and diversity in the ecclesial communion; the concepts of rites and Churches *sui iuris*; the difficulties encountered in finding a suitable title for the Code (in the end decided upon as *Codex Canonum Ecclesiarum Orientalium*); and a comparison of the structure of the two Codes. The second part of the article involves an examination of canon 1 of the CCEO in the light of preceding legislation. L. looks at the background to canon 1, which sets out the scope of application of the CCEO, and at the juridical relationship of the two Codes to one another. He ends by providing details of the individual Eastern Churches.

ETJ 9 1/05: J. Valiamplackal: Formation of Priests according to the Code of Canons of the Eastern Churches. (Article)

V. examines what the Eastern Code has to say about clerical formation in general. He undertakes a study of the relevant canons in order to identify and distinguish the aspects of admission and formation of the candidates destined for the priesthood. He accomplishes the task of clarifying the implication of the CCEO on the formation of clerics. He also examines the recent directories and charters on priestly formation, with special attention to the formation of clerics of the Syro-Malabar Major Archiepiscopal Church. The topics covered in the article are recruitment and admission, formation of priests, and a specific look at the general guidelines offered by such a programme. V. emphasises the fact that the Eastern legislation upholds the principle of ecclesial and inter-Church collaboration in the field of clerical formation. He also highlights the area of cultural, ecumenical, missionary and inter-religious formation as an essential part of the pastoral formation of clerics. According to V. the Church in India, especially the Eastern Catholic Churches *sui iuris*, should assiduously put into practice what the CCEO envisioned on the formation of clergy.

IE XVI 1/04, 111-132: P. Gefaell: Tribunali delle Chiese *sui iuris* non patriarcali. (Lecture)

G. attempts to expound briefly the characteristics and peculiarities of the tribunal system of the non-Patriarchal Eastern Catholic Churches. He shows the various aspects of collaboration between the *sui iuris* Churches, especially the possibilities of coordination with the Latin judiciary structure. He deals separately with the tribunals of first, second, and third or further instance. Within the first instance tribunals, specifically the eparchial tribunals, he examines: the limitations of the native right of the eparchial bishop to establish a tribunal of his own; the competent authority to permit the eparchial bishop to commission a single judge to deal with causes that are to be dealt with by a collegial tribunal; and some cases of inter-ecclesial collaboration in eparchial tribunals. G. then looks briefly into first instance tribunals serving under several eparchies; the final two sections are dedicated to the second and third instance tribunals respectively.

RDC 53 2/03, 393-408: A. G. Gherasim: Regard comparatif sur les sources du droit de l'Église des huit premiers siècles en Occident et en Orient. (Article)

See above, Historical Subjects.

SC 38 1/04, 173-190: E. Haddad: L'économie dans les Églises orientales. (Article)

The exercise of the principle of "economy" is difficult to define precisely and systematically. This principle relates more fundamentally to the pastoral life of the Church rather than doctrinal or juridical issues. H. explains how the principle of economy is distinguished from theology, building upon the foundations of the Orthodox in this regard. He offers an historical trajectory on the understanding of this principle, beginning with the patristic era to the nineteenth century. Thus there is a diversity in the understanding and usage of this principle. He also reflects on the distinctions between the terms "economy", "dispensation", and "exception." The discussion also identifies certain themes which are discussed from an ecumenical stance, with a special consideration of the sacrament of marriage from the perspectives of the Orthodox and the Eastern Code.

D. Motiuk: Eastern Christians in the New World: An Historical and Canonical Study of the Ukrainian Catholic Church in Canada. (Book)

M. offers a canonical and historical overview of the Ukrainian Catholic Church in Canada, highlighting the growth of the first parish communities, the appointment of its first bishop and the establishment of the Metropolitan See of Winnipeg. He examines relations with the Latin Church, various decrees of Bishop Nykyta Budka, Bishop Basil Ladyka, and the Ukrainian Catholic Conference in Canada; he also explores the role played by the Ukrainian bishops from Canada in re-establishing synodal governance in the Ukrainian Catholic Church as a whole. He looks at the rights and duties of clerics, addressing among other things the controversial issue of ordaining married men to the priesthood in Canada. Finally he examines divine worship and the administration of the sacraments. A significant portion of the work collects into one volume the major sources of the particular law of the Ukrainian Catholic Church in Canada. (For bibliographical details see below, Books Received.)

BOOK I: GENERAL NORMS

2

Ang 82 (2005), 139-186: B. Esposito: Il rapporto del Codice di Diritto canonico latino con le leggi liturgiche. Commento esegetico-sistematico al can. 2 del *CIC/83*. (Article)

Following a brief "excursus" aimed at explaining the value of the liturgy and the role played in this sphere by the Church authorities concerned, E. examines and explains, according to the systematic-exegetical method, the fundamental concepts enshrined in canon 2. This in turn is followed by a presentation of the relationship that the 1983 Code of Canon Law has with the liturgical laws in use before its promulgation, and the outcome of those that were contrary to it. In the same way, E. also examines the relationship between the present Code and liturgical laws coming into existence after its promulgation. In explaining that canon 2 opts in favour of a "relative autonomy" enjoyed by liturgical norms in the context of juridical canonical ordinances, E. highlights the indubitable advantage of such an option which better allows the faithful to experience liturgical life by helping them to avoid living it merely in an external and superficial manner. In this way liturgical norms, in their role of safeguarding what the Church has received from its Founder and in promoting the different functions of those who participate, are aimed at helping all, both the lay faithful and the ordained ministers, to undergo the process of transformation from mere passive spectators of liturgical actions to fervent disciples of Christ. The study ends with an examination of some specific cases.

3

IE XVI 1/04, 67-109: C. Garcimartín: Relaciones Iglesia-Estado en Irlanda: una aproximación desde la Constitución. (Article)

See above, Historical Subjects.

16

AA XI (2004), 379-394: H. A. von Ustinov: El art. 158 de la Constitución Apostólica "Pastor Bonus". (La competencia del Pontificio Consejo para los textos legislativos para examinar la concordancia entre normas particulares y la legislación universal). (Article)

U. sketches the historical developments leading to the apostolic constitution *Pastor Bonus* of 28 June 1988 on the reform of the Roman Curia, which

included an updating of the previous Commission for the authentic interpretation of the 1917 Code by its replacement with the Pontifical Council for the Interpretation of Legislative Texts. U. concentrates his attention on no. 158, one of the paragraphs establishing the Council's competencies, and examines who may be the interested parties eligible to approach the Council to determine whether local laws are consonant or not with universal law. As regards the juridical nature of the Council's activity, it is neither strictly judicial (it does not emit a judgement) nor legislative (it does not, in this context, make or extend laws); its decision might best be termed a *dictamen*, a qualified and authoritative opinion which, although not strictly binding, cannot be lightly set aside. It would still be possible, but probably not advisable, to have recourse to the Apostolic Signatura. U. finally mentions some areas where the Pontifical Council has been involved in accordance with no. 158 of *Pastor Bonus*.

23-28

RDC 53 2/03, 241-266: E. Dieni: La coutume dans le droit canonique de la postmodernité. Quelques idées sommaires. (Article)

Custom has been at the centre of a debate involving two ecclesiological conceptions since Vatican II. One of these conceptions insists that law should stem from authority, while the other asserts that the community creates law in the form of custom. Custom no longer has an important place in modern law but it cannot really be ignored. It can be considered as an *extra ordinem* source of law, in other words a source which is not regulated by written law.

49

QDE 18 (2005), 181-193: M. Mosconi: L'azione del vescovo a tutela del celibato dei chierici: il ricorso al precetto penale. (Article)

See below, canon 277.

63

SC 38 2/04, 411-438: W. Kowal: The Power of the Church to Dissolve the Matrimonial Bond in Favour of the Faith. (Article)

See below, canons 1141-1142.

86

IE XVI 3/04, 711-739: J. M. Huels: Constitutive Law and Juridic Institutes (c. 86). (Article)

In the first part of this study H. seeks to understand the meaning of "constitutive" law in canon 86 by explaining the key terms of the text; in the second part, he investigates parallel places, aiming at a better knowledge of the legislator's mind. All throughout his study he distinguishes between texts that refer to juridical acts and those referring to juridical institutes. He puts forward some clear and well-chosen examples. He gives ample treatment to the antecedents since the 1917 Code, with separate sections dedicated to some of the early commentators; he also pays special attention to the 1967 apostolic constitution *Regimini Ecclesiae Universae*. He warns that the term *mens legislatoris* refers to an "objective mind" and not to any kind of subjective intention which, at any rate, would not be open to our knowledge. He concludes that constitutive laws establish the *essential* elements of juridical acts or the *necessary* requirements of juridical institutes, and suggests that a large number of the canons of the Latin and Eastern Codes are constitutive laws, although he realises that this statement requires a comprehensive analysis of the canons and other norms of universal law, which he describes as "a worthy subject for further investigation".

111

AC 46 (2004), 259-268: A. Kaptijn: Le statut juridique des enfants mineurs nés des marriages mixtes catholiques-orthodoxes. (Article)

See above, Code of Canons of the Eastern Churches.

124

IE XVI 1/04, 321-344: Giovanni Paolo II: Discorso alla Rota Romana, 29 gennaio 2004 (con *nota* di A. S. Sánchez Gil, *Il* favor matrimonii *e la presunzione di validità del matrimonio: appunti per la loro chiarificazione concettuale).* (Document and commentary)

See below, canon 1060. In his address to the Roman Rota, Pope John Paul II spoke of the value of the *favor iuris* in marriage, on the basis of the presumption in canon 124: this canon constitutes the fundamental principle of every juridical order.

128

SC 38 1/04, 111-154: M. Poll Chalmers: The Remedy of Harm in Accord with Canon 128. (Article)

In the 1983 Code, a natural law maxim was given concrete expression in a canonical obligation to remedy the harm one inflicts on someone. Canon 128 encourages a person to voluntarily remedy a harm inflicted and thus provides a legal foundation for someone who has suffered harm to vindicate his or her rights and defend them before the competent ecclesiastical forum. It also allows the Church to apply this principle and impose the remedy for harm inflicted. The article looks at the meaning of canon 128, its nature, and the procedures and methods for reparation. It attempts to show that the canon has been under-utilised up to now as a foundation in requests for remedial action before an ecclesiastical forum. The canon would be better used as a foundational canon with its own applications rather than a simple philosophical and canonical support for other juridical principles.

129

SC 38 1/04, 85-109: A. Asselin: Vingt ans après la promulgation du Code de droit canonique: qu'en est-il du service des laïcs dans l'Église? (Article)

The lack of ordained ministers in several parts of the world has brought about the creation of new ministerial practices, requiring an increased involvement of the laity in the pastoral life of the Church *ad intra*. The practice has often greatly surpassed the forecasts of the universal law and one would have expected new magisterial directives. In fact, these have seemed to be restrictive for the laity rather than encouraging new forms of collaboration between ordained and non-ordained ministers. The restrictions have appeared to stem from an apparent fear of competition between these two forms of ministry. If a new form of collaborative ministry is to see the light, the identity of both ministries – ordained and non-ordained – must be defined and understood. But this does not mean that lay ministry is to be defined and restricted to a mere suppletive role: lay ministry must be recognised as a gift to the Church and must be acknowledged as such. A. first looks into the laity's mission according to the norms of the 1983 Code in relation to the *tria munera*, and underlines a few problem areas. She then suggests a theological perception of lay ministry which confers its uniqueness and, with this perception in mind, proposes new paths to be explored in the development of canonical norms governing the participation of the laity in the life of the Church and the effective consultation of lay people in the decision-making processes.

131

QDE 18 (2005), 6-30: G. Sarzi Sartori: I vicari del vescovo e l'esercizio della «vicarietà» nella Chiesa particolare. (Article)

See below, canons 475-481.

134

QDE 18 (2005), 31-54: A. Perlasca: I vicari generali ed episcopale. (Article)

See below, canons 475-481.

134-135

QDE 18 (2005), 6-30: G. Sarzi Sartori: I vicari del vescovo e l'esercizio della «vicarietà» nella Chiesa particolare. (Article)

See below, canons 475-481.

BOOK II, PART I: CHRIST'S FAITHFUL

207

BEF LXXXI 846/05, 105-110: J. González: Who Are the Lay Faithful in the Church? (Consultation)

The term "laity" is defined in canon 207 in a different way from *Lumen Gentium*, n. 31. Which is right? Both.

210

CpR LXXXV 3-4/04, 269-297: S. Montoya Martín del Campo: La santità all'interno della nuova legislazione canonica. (Article)

Sanctity, M. claims, is the intention and goal of all of canon law, which has as its supreme law the salvation of souls and participates in the salvific identity and mission of the Church. Sanctity orients the end of the canonical system and is present (either explicitly or implicitly) in each book of the Code. M. reviews each book for these traces, as well as each of the states and conditions of the Christian faithful, to see how the right or obligation to tend towards holiness is specified. While there is no "right" to sanctity as such, there is a right and obligation to live a holy life and to promote the continual sanctification of the Church. The vocation to sanctity is intimately connected with the mission of the Church, and with the responsibility entrusted to the Christian faithful in the Church and in the world; this is evident both in the structure of the Code as well as in individual canons.

215

AA XI (2004), 513-534: Tribunal Interdiocesano de Córdoba, Tribunal Eclesiástico Nacional, Rota Romana: Sobre derecho de asociación y derecho a la buena fama. (Sentence)

The treasurer of a public association of the faithful resigned from his post and shortly afterwards a police investigation began into possible fraud or embezzlement. The executive committee then suspended the individual from membership of the association; he petitioned the Interdiocesan Tribunal of Córdoba (Argentina) which upheld his plea on the grounds of his right of association (canon 215) and his right to good reputation (canon 220). The association appealed to the National Appeal Tribunal which upheld the decision of first instance. It then again appealed to the Roman Rota, this time for nullity of sentence of the National Tribunal, an appeal which failed. The text of all

three sentences is given, the Rota appeal having been heard *coram* De Angelis. The association had not acted in accordance with its own statutes, nor had it provided an opportunity for defence. Its action had impugned the petitioner's good name since the police investigation was still under way, and no wrongdoing had been proved in any civil court, still less in the canonical forum.

215

AA XI (2004), 535-540: A. W. Bunge: Comentario a las sentencias sobre el derecho de asociación y a la buena fama. (Commentary)

B. comments on the three sentences on the rights of association and to a good reputation mentioned in the preceding entry. He emphasises the importance given in the present Code to the duties and rights of the faithful emanating from their baptised status, and how their rights are upheld by the tribunals of the Church.

215

IE XVI 1/04, 239-250: M. Rivella: Problematiche attuali circa il riconoscimento delle associazioni di fedeli in Italia. (Lecture)

R considers that the *recognitio* of associations of the faithful is one of the most complex matters in the present ecclesial procedure in Italy: it is a meeting point of the theory of the rights of the faithful and the exercise of such rights in the balance of ecclesiastical communion and discipline. He looks into the pertinent sections in the four documents that the Italian Episcopal Conference has issued since 1981. Concerning *recognitio*, the 1993 text distinguishes between "aggregations", "*de facto* private associations", "recognised private associations", "private associations endowed with juridical personality", and "public associations". R analyses the *iter* for recognition and mentions some of the problems that have arisen. Finally, he lists some of the conditions required for the civil recognition of associations of the faithful in Italy.

220

AA XI (2004), 513-534: Tribunal Interdiocesano de Córdoba, Tribunal Eclesiástico Nacional, Rota Romana: Sobre derecho de asociación y derecho a la buena fama. (Sentence)

See above, canon 215.

220

AA XI (2004), 535-540: A. W. Bunge: Comentario a las sentencias sobre el derecho de asociación y a la buena fama. (Commentary)

See above, canon 215.

220

SC 38 2/04, 369-410: P. Lagges: The Penal Process: The Preliminary Investigation in Light of the *Essential Norms* of the United States. (Article)

See below, canons 1717-1722.

220

SC 38 2/04, 527-574: M. Bradley: The Evolution of the Right to Privacy in the 1983 Code: Canon 220. (Article)

Among the rights and obligations of the faithful in the 1983 Code of Canon Law, canon 220 ensures the right to the protection of privacy. This provision is an innovation in the Church's canonical system. At first, B. presents a definition of this right: the freedom for a person to determine when, how and to what point private information must be safeguarded or communicated. B. examines the historical evolution of the right to privacy in civil law which has had an impact on its canonical development and traces the evolution of canon 220 in canonical tradition, with special attention to twentieth century developments. With its reference to safeguarding privacy, the conciliar document *Gaudium et Spes*, 26, was a turning point. The article also looks at the practical application of this right.

221

SC 38 2/04, 439-460: R. Jacques: Les droits et devoirs des fidèles: aperçus historiques. (Article)

See above, Historical Subjects.

221

Patricia M. Dugan (ed.): The Penal Process and the Protection of Rights in Canon Law. (Book)

See below, canons 1311-1399.

222

IE XVI 1/04, 345-350: Giurisprudenza Civile: Svizzera. Tribunale Federale. Seconda sezione di Diritto pubblico. Sul ricorso di A. – contro la decisione della Chiesa cantonale di Lucerna di obbligarlo a dimettersi dalla Chiesa cattolica affinché sia valida la sua dimissione dalla Chiesa cantonale. Sentenza, Losanna, 18 dicembre 2002 (con *nota* di A. Cattaneo). (Document and commentary)

See below, canon 1262.

230

SC 38 1/04, 85-109: A. Asselin: Vingt ans après la promulgation du Code de droit canonique: qu'en est-il du service des laïcs dans l'Église? (Article)

See above, canon 129.

245-247

QDE 18 (2005), 153-180: A. Migliavacca: Orientamenti e problematiche della formazione al celibato sacerdotale. (Article)

See below, canons 276-277.

247

QDE 18 (2005), 141-152: G. Brugnotto: Il concetto di celibato sacerdotale. (Article)

See below, canon 277.

273

IE XVI 3/04, 825-830: Pontificio Consiglio per i Testi Legislativi: Nota «Elementi per configurare l'ambito di responsabilità canonica del Vescovo diocesano nei riguardi dei presbiteri incardinati nella propria diocesi e che esercitano nella medesima il loro ministero», 12 febbraio 2004. (Document)

See below, canon 1321.

274

SC 38 1/04, 85-109: A. Asselin: Vingt ans après la promulgation du Code de droit canonique: qu'en est-il du service des laïcs dans l'Église? (Article)

See above, canon 129.

276-277

QDE 18 (2005), 153-180: A. Migliavacca: Orientamenti e problematiche della formazione al celibato sacerdotale. (Article)

M. asks whether seminaries are endowed with all the resources necessary to provide candidates for the priesthood with proper formation in the area of celibacy. He studies the various magisterial documents from Vatican II onwards (in addition to some others relating specifically to seminaries in Italy), and sets out the areas of formation for celibacy: spiritual, human (especially in relation to affective and sexual maturity), and pastoral. He goes on to deal with the principal methods and means by which the seminary can provide such formation, offering some suggestions and points for reflection with a view to helping the formation of priests both during and after their seminary training.

277

QDE 18 (2005), 116-140: E. Miragoli: Celibato sacerdotale: responsabilità del vescovo e funzione del diritto particolare. (Article)

Under the 1917 Code there was a uniformity of laws for the whole Church in the area of priestly celibacy, although there were also a number of examples of more particular provisions being established at local level (normally by means of the diocesan synod). The 1983 Code lays emphasis on the duty of the bishop (*statuere debet*) to establish more detailed rules (canon 277 §3). M. looks at some instances where the matter has been studied in diocesan synods since 1983, although it transpires that in none of those cases has there actually resulted anything that could be classed as "more detailed rules". He offers some suggestions as to the sorts of areas in which more detailed norms could be established, such as the ongoing formation and spiritual life of the priest, his relationships with others (especially with those who take care of the priest's domestic arrangements), his use of the Internet and mobile phone, and so on.

277

QDE 18 (2005), 141-152: G. Brugnotto: Il concetto di celibato sacerdotale. (Article)

The 1917 Code dealt with celibacy from the point of view of the obligation on the cleric to observe a virtue (chastity). The 1983 Code, in the light of the doctrine of Vatican II, presents the obligation as founded on a special gift of God which the candidate for ordination embraces and undertakes to observe *in perpetuo*. G. studies how the concept has been explored and explained more deeply in the post-1983 Magisterium. Celibacy may now be defined as a spiritual gift freely accepted in the sight of the Church, involving perfect and perpetual continence for the sake of the Kingdom of Heaven, and signifying the spousal relationship of Christ with his Church by means of the priest's unreserved dedication to the community entrusted to him.

277

QDE 18 (2005), 181-193: M. Mosconi: L'azione del vescovo a tutela del celibato dei chierici: il ricorso al precetto penale. (Article)

M. considers one of the possible ways in which the diocesan bishop can enforce observance of the obligation of priestly celibacy: the penal precept. He sets out situations in which the penal precept may be appropriate, the manner in which it is to be issued, and considerations to be taken into account.

281

Nouvelle Revue Théologique 127 (2005), 226-235: Anne Bamberg: L'*amoris officium* à l'égard des prêtres et évêques d'âge avancé. (Article)

Reflecting on some recent documents which deal with the episcopal ministry, B. discusses the responsibility of the diocesan bishops regarding ageing priests and bishops. Considering subsistence and social welfare in the context of both the particular and the universal Church, it becomes clear that the problems linked with old age require solidarity and creativity in order decently to look after the elderly members of the clergy. A liberal interpretation of the canons and other normative texts is especially required in the exercise of pastoral charity towards *emeritus* bishops.

283

IE XVII 1/05, 199-220: Anne Bamberg: Vacances et obligation de résidence de l'évêque diocésain. Réflexion autour de l'interprétation de canons. (Article)

See below, canon 395.

290

N XL 11-12/04, 618-626: D. Sorrentino: Procedure canoniche e prospettive teologico-spirituali. (Address)

See below, canons 1141-1150.

290

N XLI 3-4/05, 135-203: Congregatio de Cultu Divino et Disciplina Sacramentorum: L'Adunanza "Plenaria" della Congregazione per il Culto Divino e la Disciplina dei Sacramenti. (Report)

See below, canon 1142.

298-311

BEF LXXXI 847/05, 282-284: J. González: Couples for Christ: What is its Present Status? (Consultation)

See below, canons 321-329.

298-329

IE XVI 1/04, 239-250: M. Rivella: Problematiche attuali circa il riconoscimento delle associazioni di fedeli in Italia. (Lecture)

See above, canon 215.

321-329

BEF LXXXI 847/05, 282-284: J. González: Couples for Christ: What is its Present Status? (Consultation)

Couples for Christ is a private international association of the faithful, of pontifical right, recognised by the Pontifical Council for the Laity, according to the decree of approval dated 11 March 2000.

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

331

IE XVI 1/04, 3-20: G. Comotti: Considerazioni circa il valore giuridico delle allocuzioni del Pontefice alla Rota Romana. (Article)

The value of the Pope's annual addresses to the Rota, C. writes, goes beyond their specific relevance in that, taken as a whole, they can be considered as a unitary and coherent disclosure of the Pontiff's mind regarding the administration of justice in the Church in general, and matrimonial law in particular. C. first studies the Pope's expression of his normative will by means of non-typical legislative tools. He then looks at the Pontiff's interpretation of the divine law in the exercise of his magisterial function, in the exercise of his legislative function, and specifically in his addresses to the Rota. C. considers the role of the Magisterium in relation to the ecclesiastical judge's investigation of the divine law; and finally, he examines the extent to which the traditional *magnum pondus auctoritatis*, or the "exemplary value" which has always been acknowledged to Rotal jurisprudence, may be considered a participation in the *munus petrinum.*

331

IE XVI 1/04, 21-40: O. Condorelli: "Ecclesia", "civitas" e giurisdizione episcopale: interpretazioni e applicazioni del c. 9 del Concilio Lateranense IV nei secoli XIII-XV. (Article)

See above, Historical Subjects. The ecclesiological development from the thirteenth century onwards makes the figure of the Roman Pontiff, as the Vicar of Christ, the titular of the *plenitudo potestatis* and the source of every jurisdiction in the Church.

336-341

AA XI (2004), 85-108: A. W. Bunge: La colegialidad episcopal en los pronunciamientos recientes de la Santa Sede. Especial referencia a las Conferencias Episcopales. (Colloquium presentation)

B. sets out to analyse statements of the Holy See on the subject of episcopal collegiality, especially regarding the theological basis of episcopal conferences. Vatican II in *Lumen Gentium* did not see collegiality as the direct foundation for episcopal conferences but viewed them rather as an expression of the *affectus*

collegialis. The 1985 Synod of Bishops moved the question on a little by recognising that episcopal conferences constituted only a partial expression of collegiality since its full expression involves all the bishops in communion with the Pope. The Congregation for the Doctrine of the Faith's letter of 1992 to the bishops of the Catholic Church emphasised the profound meaning and mystery of communion as it affected the universal and particular Church: the universal Church certainly exists in and from the particular Churches, but they too can only exist within and originating from the universal Church. The unity of the episcopate requires the existence of the Bishop who is the Head of the Episcopal College. The *motu proprio Apostolos Suos* of 1998 makes it clear that as the Church is one and indivisible, so also the Episcopal College in its exercise of supreme authority in the Church is one and indivisible, and when bishops jointly pursue pastoral action on a local or national level their action cannot be considered as that of the Episcopal College. Their binding power derives from that of the Apostolic See which has conferred upon episcopal conferences specific competencies. Hence, they cannot limit the authority of a local bishop except with the intervention of the supreme authority. B. comments on the apostolic exhortation *Pastores Gregis* of 2003: the episcopal ministry has a double dimension towards both the universal and the local Church, and the primacy of the Bishop of Rome and of the Episcopal College pertains to the universal Church. Episcopal communion, as distinct from collegiality, however, can be expressed in different ways, including episcopal conferences. The Directory for the Pastoral Ministry of Bishops *Apostolorum Successores* (2004) emphasises the place episcopal conferences have in fostering the *affectus collegialis*. Therefore, although they do not form part of the divine constitution of the Church, nevertheless they contribute to the ecclesial *communio* which undoubtedly is one of the Church's essential constitutive elements. It is along these lines that B. sees the theology of episcopal conferences developing.

336-341

AA XI (2004), 129-181: G. Ghirlanda: Orientaciones para el gobierno de la Diócesis por parte del Obispo según la exhortación apostólica "Pastores Gregis" y el nuevo directorio de los obispos "Apostolorum Successores". (Colloquium presentation)

G. presents an analysis of two complementary documents, the post-synodal apostolic exhortation *Pastores Gregis* (16 October 2003) and the Directory of 22 February 2004 *Apostolorum Successores* for the ministry of bishops. The episcopal ministry is considered first of all in relation to the mystery of Christ, the Trinity and the Church, in the light of both the personal holiness of the bishop and the sanctification of the faithful. The personal holiness of the bishop brings with it a moral authority which helps to ensure that his juridical authority

is efficacious and credible. The true relationship of the bishop with the people of God in his diocese is expressed both in his personal fatherly governance and in the participation of others in consultation and co-responsibility in the organisation of the local Church. G.'s final section looks at the relation between the Roman Pontiff and the College of Bishops, and at the issue of communion with other bishops and other local churches.

336-341

AC 46 (2004), 185-194: L Villemin: Principes de l'église catholique pour un dialogue œcuménique sur l'épiskopé. (Article)

See below, canon 375.

336-341

J 64 (2004), 6-20: Myriam Wijlens: "Peter and Paul Seminar": A Follow-up by Theologians and Canon Lawyers to the Groupe des Dombes' publication *For the Conversion of the Churches.* (Article)

W. points out that if a vision is not followed by action the vision remains just that – a beautiful vision. The Peter and Paul Seminar was founded to start where the *Groupe des Dombes* finished. The focus was on canonical structures of the Church that, in their present form, inadequately express the Church's own theological convictions. W. follows the history of the developments in the working of the Seminar. Four steps were identified to discover what changes were necessary in the Church. In 2002 a first project was for all members to focus on one single subject of personal interest: a second single subject for all members was the collegiality of bishops. In 2004 a further step was taken: a closed meeting on the collegiality of bishops, and then a meeting open to the public on collegiality of the bishops.

336-341

J 64 (2004), 35-38: L. Örsy: A "Notion of Collegiality". (Article)

Ö. who is the founding father of the "Peter and Paul Seminar" points out that no intelligent search is possible unless searchers have a "notion" of what they are looking for. The search for "collegiality" must begin with the mind of the Second Vatican Council. However there was no meeting of minds between a minority and a majority of the Fathers. Nor is the matter fully clarified in the Preliminary Note published in the Council which also needs interpretation. Ö. points out that if one wants to pursue the notion of collegiality one must look

beyond the Council to the whole Christian tradition. He offers a number of propositions not as final conclusions but as initial assumptions for critical examination.

336-341

J 64 (2004), 82-115: G. H. Tavard: Collegiality According to Vatican II. (Article)

T. follows collegiality through the ante-preparatory period of Vatican II, the conciliar sessions, and the final texts. The ante-preparatory period goes from 25 January 1959 to the creation of the preparatory commissions (5 June 1960). Initially there was little mention of collegiality. T. mentions the fate of some theologians who had advanced opinions. The question of collegiality had been mentioned by the four universities of Rome who wanted it more clearly defined. In the second session Pope Paul VI emphasised the hope that "the doctrine regarding the episcopate, its function, and its relation to Peter, would be studied." The Pope in his closing address to the second session laid emphasis on "the great and complex question of the episcopacy in the mind of our Lord and the authentic tradition of the Church." In the third session Paul VI emphasised the importance of "the mind of Christ regarding the nature and function of the successors of the Apostles, that is of the episcopate." T. points out that the Pope "joined centralization and collegiality together without attempting to answer the theological and canonical questions that are raised by the juxtaposition of apparently contradictory orientations." T. sees the principle of episcopal collegiality as flowing from the convergence of three doctrinal convictions: 1. the Lord is present in the bishops' ministry; 2. episcopal ordination makes members of the episcopal body; 3. the Bishop of Rome is the visible head of the episcopal body. In the fourth session the Council had no reason to explain the doctrine of episcopal collegiality again. At the end of the fourth session the decree *Christus Dominus* spoke of creating a Synod of Bishops "representative of the whole Catholic episcopate". The task was to discover how authority in two forms could be implemented canonically without detracting from either of them. There is the further question: how do the conciliar documents relate to Cardinal Montini's insight that all the faithful are also the Church?

336-341

J 64 (2004), 137-167: Eugene Duffy: Episcopal Conference in the Context of Communion: Some Notes on the American Experience. (Article)

The title stresses the importance of an ecclesiology of communion. Communion ecclesiology is fundamental in the documents of Vatican II. During the first 25

years of the Conference of the American Bishops, the bishops were influenced by the democratic culture of the USA but did not sufficiently reflect on the theological grounding for their methodology. The second part of D.'s paper offers a consideration of the theological principles which could have strengthened their ministries of teaching and governance. D. outlines the reorganisation that occurred in the National Conference of the Catholic Bishops (NCCB) to deal with ecclesial issues and the United States Conference of Catholic Bishops (USCCB) which was to deal with public policy issues. Some theologians situate collegiality in the context of communion. D. follows the lead of Tillard who holds that episcopal conferences are not there simply to translate the will of Rome: communion is not simply obedience; it is the "reciprocal exchange of gifts." D. follows the debates between Cardinals Ratzinger and Kasper about the relation of the universal to the local Church. He points out that there is no consistency in magisterial documents about the local Church. He quotes Karl Rahner who says that there has been more insistence in the Church on Magisterium and far less attention to hearing and believing.

336-341

J 64 (2004), 209-224: M. Faggioli: Collegiality after Vatican II. The Decree *Christus Dominus* and the Agenda for Collegiality-Synodality in the 21st Century. (Article)

F. holds that the link with collegiality marks the turning point in the history of *Christus Dominus.* Pope John Paul, he thinks, had a reductionist vision of *Christus Dominus.* F. analyses the major issues: the synods of bishops, the relationship of Rome and the bishops, the relation of the diocese and the diocesan bishop, the creation of new governmental bodies at the crossroads of synods and episcopal conferences. Now, forty years after Vatican II, it is possible to note the actual difference between the idea of a "consultative assembly" and the idea of a core, collegial, stable, and permanent episcopal board envisaged by a large part of the Council Fathers.

342-348

J 64 (2004), 116-136: J. A. Coriden: The Synod of Bishops: Episcopal Collegiality Still Seeks Adequate Expression. (Article)

For C. the synod of bishops is like a child outside wedlock. It is largely dysfunctional, refuses to work effectively and is pleasing to no one. His purpose is not to repeat many diagnoses but rather to recommend a regimen of reform leading to a cure. He traces the history of the synod from the debates in Vatican II, in various documents, and in the Code of Canon Law of 1983. He looks at

the synods of the past forty years and finds elements that are positive, along with others that are negative, and he poses two theological questions: firstly, is the synod an expression of episcopal collegiality?; and secondly, does it represent the entire Catholic episcopate? He considers that some scholars following the Code of Canon Law understand the synod as a moral or affective collegiality or as only a partial expression of episcopal collegiality. He offers twelve proposals for reform.

360

IE XVI 1/04, 3-20: G. Comotti: Considerazioni circa il valore giuridico delle allocuzioni del Pontefice alla Rota Romana. (Article)

See above, canon 331. C discusses the value of the Pontiff's annual addresses to the auditors of the Roman Rota.

360-361

CpR LXXXV 3-4/04, 389-410: D. Andrés Gutiérrez: El exuberante servicio postcodical de la C.I.V.C.S.V.A. en favor de los consagrados (años 1984-2002). (Article)

A. chronicles the activities of the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life after the entry into force of the 1983 Code of Canon Law. Activity is broken down by year, and lists the approval of constitutions, erection of new institutes and federations, revision of statutes, and the work of various offices within the Congregation. This article covers the years 2001-2002.

360-361

CpR LXXXVI 1-2/05, 7-37: D. Andrés Gutiérrez: Imagen de un dicasterio a través de sus 12 nombres. (Article)

The author notes that the (present) Congregation for Institutes of Consecrated Life and Societies of Apostolic Life has had twelve names and twelve structures in its over 400-year history. A. discusses whether the title "Sacred" should be a part of the name of the Congregation, and reviews the matters and persons under the competence of the Congregation. A short note on the difference in number of members and staff between 1918 and 2003 is included. A full and lengthy bibliography of sources on the Roman Curia in general and the Congregation in particular concludes the article.

361

IE XVI 1/04, 251-258: J.-L. Tauran: La Santa Sede e l'etica internazionale. (Lecture)

This is the text of a lecture by Cardinal Tauran at the Pontifical University of the Holy Cross on 15 January 2004, on the occasion of the feast of St Raymond of Penyafort, patron of the Faculty of Canon Law. The *raison d'être* behind the diplomacy of the Holy See, he says, is clearly expressed in Paul VI's *Sollicitudo Omnium Ecclesiarum*: it is an instrument which, at least from the fifth century on, helps strengthen the bonds of union between local Churches and the Bishop of Rome, while also expressing the concern of the Head of the Catholic Church towards all peoples on earth. T. explains the principles which, as promoted by the Church, have developed into a sort of *"corpus"* of international morals. Besides his own experience, he makes use of texts of the Second Vatican Council and of John Paul II, in particular the addresses to the Diplomatic Corps in 1997 and 2003, and to the United Nations in 1995.

368

AC 45 (2003), 177-190: N. Ch. Maghioros: L'église catholique romaine et l'état en Grèce: une approche juridico-canonique. (Article)

See above, General Subjects.

375

AC 46 (2004), 185-194: L. Villemin: Principes de l'église catholique pour un dialogue œcuménique sur l'épiskopé. (Article)

Since episcopal ministry is a constitutive element of the Church (*Christus Dominus*, 11; *Lumen Gentium*, 23), ecumenical dialogue on it focuses on ecclesiology. V. surveys recent theological discussion on the tension between the Church as universal and as particular. *Pastores Gregis*, 44, seeks to reconcile the personal, as well as the collegial and communitarian, dimension of episcopal ministry. V. argues that the collegiality that evolved at Vatican II, to balance the emphasis on Papal primacy at Vatican I, is still distant from the collegiality of the patristic period.

375-411

AA XI (2004), 129-181: G. Ghirlanda: Orientaciones para el gobierno de la Diócesis por parte del Obispo según la exhortación apostólica "Pastores

Gregis" y el nuevo directorio de los obispos "Apostolorum Successores". (Colloquium presentation)

See above, canons 336-341.

376

IC XLIV 88/04, 515-537: A. Viana: Obispos titulares. Elementos de tradición canónica y regulación actual. (Article)

The position of titular bishops has both a positive and a negative aspect: they are true bishops, and have received the sacrament of Orders, but they do not preside over a Church, that is, they do not have their "own" people entrusted to their pastoral care. The institution of titular bishops did not exist in the early Church, where absolute ordination was prohibited. Beginning with Innocent III, V. traces the development of the practice and regulation of ordaining titular bishops, with special attention to Trent and Vatican II. The article concludes with a survey of the provisions of the current Code for titular bishops, in five categories: those who exercise roles in the governance of the Apostolic See, pontifical legates, bishops with interdiocesan functions, retired bishops, and coadjutor or auxiliary bishops.

381

QDE 18 (2005), 6-30: G. Sarzi Sartori: I vicari del vescovo e l'esercizio della «vicarietà» nella Chiesa particolare. (Article)

See below, canons 475-481.

383

IE XVI 1/04, 21-40: O. Condorelli: "Ecclesia", "civitas" e giurisdizione episcopale: interpretazioni e applicazioni del c. 9 del Concilio Lateranense IV nei secoli XIII-XV. (Article)

See above, Historical Subjects. C. studies canon 9 of the Fourth Lateran Council regarding the principle "one bishop in one city".

384

IE XVI 3/04, 825-830: Pontificio Consiglio per i Testi Legislativi: Nota «Elementi per configurare l'ambito di responsabilità canonica del Vescovo

diocesano nei riguardi dei presbiteri incardinati nella propria diocesi e che esercitano nella medesima il loro ministero», 12 febbraio 2004. (Document)

See below, canon 1321.

384

Nouvelle Revue Théologique 127 (2005), 226-235: Anne Bamberg: L'*amoris officium* à l'égard des prêtres et évêques d'âge avancé. (Article)

See above, canon 281.

384

QDE 18 (2005), 116-140: E. Miragoli: Celibato sacerdotale: responsabilità del vescovo e funzione del diritto particolare. (Article)

See above, canon 277.

391

QDE 18 (2005), 6-30: G. Sarzi Sartori: I vicari del vescovo e l'esercizio della «vicarietà» nella Chiesa particolare. (Article)

See below, canons 475-481.

393

IE XVI 3/04, 825-830: Pontificio Consiglio per i Testi Legislativi: Nota «Elementi per configurare l'ambito di responsabilità canonica del Vescovo diocesano nei riguardi dei presbiteri incardinati nella propria diocesi e che esercitano nella medesima il loro ministero», 12 febbraio 2004. (Document)

See below, canon 1321.

395

IE XVII 1/05, 199-220: Anne Bamberg: Vacances et obligation de résidence de l'évêque diocésain. Réflexion autour de l'interprétation de canons. (Article)

After examining the canons concerning vacations of clerics and illegal absences from the diocese, B. looks for ways to solve the difficult problem of bishops

who are too often absent from their office and inflict damage on the faithful and on the diocese.

402

Nouvelle Revue Théologique 127 (2005), 226-235: Anne Bamberg: L'*amoris officium* à l'égard des prêtres et évêques d'âge avancé. (Article)

See above, canon 281.

447-459

J 64 (2004), 284-331: T. J. Green: The Legislative Competency of the Episcopal Conference: Present Situation and Future Possibilities. (Article)

The editor of *The Jurist* notes that the post-conciliar functioning of the episcopal conference raises numerous theological, canonical and historical questions. After a short account of the contribution of the Latin Code to episcopal conferences and Pope John Paul II's *Apostolos Suos*, G. focuses on the legislative competence of episcopal conferences in both documents.

451

IE XVI 3/04, 831-869: Conferenza Episcopale Brasiliana: Statuto della Conferenza episcopale brasiliana, 19 febbraio 2002 (con *nota* di J. I. Alonso Pérez, *"Nova et Vetera" nella Conferenza Nazionale dei Vescovi del Brasile*). (Document and commentary)

This is the text in Portuguese of the new canonical statutes of the Brazilian Episcopal Conference, which received the *recognitio* from the Congregation for Bishops on 12 April 2002 and were promulgated on 22 May 2002. In his commentary, A. analyses the main provisions of the statutes, including a study of the influence of the *motu proprio Apostolos Suos* on the approved text.

459

J 64 (2004), 138-168: Myriam Wijlens: Exercising Collegiality in a Supra-national or Continental Institution such as the FABC, CCEE and ComECE. (Article)

W. makes use of this article to restore a section on the local Church that was omitted in a previous article in *The Jurist* (see *Canon Law Abstracts*, no. 92, p. 41). Here she considers the place of some international conferences: the FABC

(Federation of Asian Bishops' Conferences), the CCEE (Council of the Episcopal Conferences of Europe), and the ComECE (Commission of the Bishops' Conferences of the European Community, which handles issues directly related to the EU, in cooperation with the CCEE). There are various other combinations. These differ from bishops' conferences: they do not assume the areas of competence of bishops' conferences, but their statutes are approved by Rome. After an account of the CCEE, the FABC and the ComECE, W. offers some canonical and theological observations. These concern the juridical status of these institutions of cooperation, and theological questions about cooperation. W. sets out some thoughts on the status of the *Église Régionale.* Among these reflections there is emphasis on the teaching of Vatican II about the place of the faithful in the Church, and the status of the local Church and its relation to the Church Universal. To express the relation between bishops Vatican II had recourse to collegiality. The question of subsidiarity is also a concept deserving examination. W. points out that there is no simple answer to the questions. The main question that concerns all the players is: "How can the Church give itself a structure that will foster the proclamation of the good news most effectively?"

473

QDE 18 (2005), 6-30: G. Sarzi Sartori: I vicari del vescovo e l'esercizio della «vicarietà» nella Chiesa particolare. (Article)

See below, canons 475-481.

473

QDE 18 (2005), 70-78: P. Pavanello: Il consiglio episcopale (can 473 §4). (Article)

P. looks at the background to canon 473 §4 (which provides for the possibility of an episcopal council comprising the vicars general and episcopal vicars), and at the problems it can give rise to in practice. Can anyone other than vicars general and episcopal vicars be part of it? What is its nature and function? How "representative" is it? What is its relationship with the council of priests, and with the diocesan curia? P. suggests that the basic key to understanding the episcopal council is that it is composed of those persons who exercise vicariously the executive power of the diocesan bishop.

475-481

QDE 18 (2005), 6-30: G. Sarzi Sartori: I vicari del vescovo e l'esercizio della «vicarietà» nella Chiesa particolare. (Article)

S. looks at the way the vicar general and episcopal vicar exercise their vicarious executive power in the diocese. He first analyses the power of governance of the diocesan bishop, setting out the theological-canonical characteristics of such power. The vicar general and episcopal vicar have ordinary vicarious power by virtue of their office: they can exercise the diocesan bishop's executive power, in the bishop's name and never contrary to his will and mind; but their power is nevertheless "ordinary", exercised not by virtue of a faculty granted by the bishop but by virtue of the office they hold. S. stresses the need for true unity and communion with the bishop in the exercise of such power.

475-481

QDE 18 (2005), 31-54: A. Perlasca: I vicari generali ed episcopale. (Article)

P. examines the historical origins and antecedents of the vicar general and of the (much more recent) episcopal vicar; the deliberations of Vatican II; the conciliar decree *Christus Dominus*; the *motu proprio Ecclesiae Sanctae*; and the 1973 Directory *Ecclesiae Imago*. After analysing the relationship of the vicar general and episcopal vicar with the diocesan curia, he looks at the specific provisions of the 1983 Code and the 2004 Directory *Apostolorum Successores*. Although there are many points of contact between the two offices, there are also differences: the vicar general helps the bishop govern the whole diocese, whereas the episcopal vicar has responsibility for some particular aspect; the vicar general's task could be described as more "administrative, whereas that of the episcopal vicar is more "pastoral"; etc. The article ends with some specific considerations relating to the episcopal vicar for consecrated life.

475-481

QDE 18 (2005), 55-69: M. Calvi: Vicari episcopali o delegati vescovili? (Article)

C. studies the nature of the office of episcopal vicar, and that of "episcopal delegate" which exists in some dioceses. His view is that, whereas the former is well defined and delineated in the Code, the latter is a much more "open" category, probably as a result of its having arisen primarily from within the particular Church, whose responsibility it is therefore to determine its form and features. However, the use of the term "delegate" can give rise to some confusion, especially where it overlaps with roles that are presented in the Code

as true and proper ecclesiastical offices which transmit ordinary (non-delegated) power.

517

AA XI (2004), 467-476: Diócesis de Quilmes: Estatuto de la parroquia encomendada a diáconos o comunidades religiosas (c. 517 §2). (Particular legislation)

The text is given of the statutes of the Argentinian diocese of Quilmes of 25 March 2003 concerning parishes entrusted to deacons or religious communities in accordance with canon 517 §2.

517

AA XI (2004), 477-487: M. D. Colombo: Comentario al Estatuto de la parroquia encomendada (c. 517 §2), Diócesis de Quilmes. (Commentary)

C. provides a commentary on the statutes mentioned in the preceding entry.

517

SC 38 1/04, 85-109: A. Asselin: Vingt ans après la promulgation du Code de droit canonique: qu'en est-il du service des laïcs dans l'Église? (Article)

See above, canon 129.

517

Therese Guerin Sullivan / Gary D. Yanus: In Time of Need: Parishes and Canon 517, §2. (Book)

The text of this publication is derived from a seminar presented by the authors at the 2004 Canon Law Society Convention in Pittsburgh, Pennsylvania. It addresses the situation in which, owing to a shortage of priests, the diocesan bishop finds it necessary to entrust a share of the sacramental pastoral care of a parish to someone who has not received the status of priest, or to a community of persons not included in canon 519. It describes the roles and responsibilities of the presbyteral moderator (priest supervisor) and the parish life coordinator (parish director). Sample documents are included in the appendices. (For bibliographical details see below, Books Received.)

532

AA XI (2004), 387-430: J. González Greñón: El párroco y la administración de los bienes eclesiásticos. (Article)

See below, canons 1281-1288.

535

ITS XLII 3/05, 77-84: V. G. D'Souza: A Note on Parish Registers and Documents. (Article)

D'S. explains in detail and comments on the canonical requirements for all the different registers which must be kept in parishes.

552

AA XI (2004), 109-128: A. D. Busso: El tiempo de nombramiento de los párrocos. (Colloquium presentation)

See below, canons 1740-1752.

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

573-577

CpR LXXXV 3-4/04, 243-267: A. Pardilla: La vita consecrata, «memoria vivente di Gesù», nel dinamismo dello Spiritu Santo della Pentecoste. (Article)

Consecrated life is by its very nature Christological; P. elaborates on how the religious is a "living memorial of Jesus", basing his treatment principally on the post-synodal apostolic exhortation *Vita Consecrata* (1995) of John Paul II. Religious life is a "living memorial" of the divinely revealed manner of Christ's existence and actions. Furthermore, it is the "living memorial" of the consecrated, obedient, chaste, poor, praying and missionary Christ. It is also the "living memorial" of Christ in the dynamism of the Holy Spirit. P. notes that the constitutions of religious institutes are a synthesis of the spiritual identity of their members, and must reflect the Christological and ecclesiological dimensions of the life of the institute and its members.

577

CpR LXXXVI 1-2/05, 39-56: M. Riondino: La mediazione familiare. (Article)

M. presents an argument that family mediation and counselling is an appropriate apostolate for members of institutes of consecrated life and societies of apostolic life, on the grounds that it is a following of Christ, who went about doing good for all. The main part of this article presents a definition, models and roles for the mediator. Special reference is made to the situation in Italy.

581-582

CpR LXXXVI 1-2/05, 57-81: Rose McDermott: External and Internal Reconfiguration of Religious Institutes (Canons 582 and 581 CIC). (Article)

Encouraged by conciliar and post-conciliar teachings, many institutes have studied their structures to see how best to realign them for community life and external service. M. discusses the theological and canonical considerations prompting external restructuring, particularly mergers and unions, and attempts to identify options for religious institutes which have ceased to flourish (extinction, federation, merger, etc.). In particular, special note is made of how religious institutes prepare for merger or union. The article concludes with a

review of canonical and theological considerations for the internal reordering of governing structures in a religious institute (principally the restructuring of provinces): special attention here is given to ongoing formation, apostolic mobility, and the principle of co-responsibility.

582

Mary Lyons: Governance Structures of the Congregation of the Sisters of Mercy: Becoming One. (Book)

14 July 1994 marked a significant milestone in the history of the Sisters of Mercy, a congregation founded by Catherine McAuley in 1831. On that day, 27 independent diocesan congregations were juridically united as the Congregation of the Sisters of Mercy (Ireland). This study, historical and canonical in nature, examines how the governance structures that operated in the congregation evolved in response to ecclesiastical legislation of the nineteenth and twentieth centuries, and especially to the Second Vatican Council's mandate for adaptation and renewal. In four organically-related chapters L. addresses four questions: 1. What form of governance did the congregation inherit from its historical roots? 2. What factors prompted the changes that had begun to take place in some Irish dioceses as early as 1860? 3. What considerations motivated the eventual move towards a centralised form of government in 1994? 4. What are the implications of this development for the congregation? L. situates the foundation of the Mercy institute in the relevant historical, social, and ecclesiastical background. Then she integrates elements from several sources: the 1917 Code of Canon Law, the 1983 Code of Canon Law, Papal documents, those issued by the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life (under its various titles), and conciliar decrees, together with material from Mercy Congregational archives. She systematically describes the various stages in the creation of new structures in response to the prevailing legislation. The human as well as the juridical factors that such restructuring involved are highlighted. Chapters three and four, in particular, offer a significant contribution to the canonical knowledge in the area of the law as it applies to religious. (For bibliographical details see below, Books Received.)

594-595

Vies Consacrées 76 (2004), 176-188: Anne Bamberg: L'exclaustration imposée. Compétences et responsabilités du Modérateur suprême et de l'Évêque diocésain. (Article)

See below, canons 686-687.

597

QDE 18 (2005), 202-212: A. Rava: L'ammissione di separati e di divorziati negli istituti religiosi. (Article)

See below, canon 643.

603

Geist und Leben 78 (2005), 313-318: Anne Bamberg: Eremiten und geweihtes Leben. Zur kanonischen Typologie. (Article)

This article concerns the typology of hermits according to the 1983 Code of Canon Law and the *Catechism of the Catholic Church.* The author distinguishes between "monastic", "diocesan" and "free" hermits. All three categories are Catholic hermits even if there is no particular institutional bond or no special visibility.

603

Ordenskorrespondenz 45 (2004), 425-433: Anne Bamberg: Kirchlich anerkannte Eremiten/innen. Canon 603 des Codex des kanonischen Rechtes und die Verantwortung des Diözesanbischofs. (Article)

B. presents an interpretation of a theologically very dense canon, putting the accent on assiduous prayer and penance and the silence of solitude. The hermit's plan of life and the "guidance" of the diocesan bishop are to be adaptable and supple, aiming at humble and constant prayer and "silent preaching of the Lord" (*Catechism of the Catholic Church*, no. 921).

636

CpR LXXXV 3-4/04, 195-241: D. Andrés Gutiérrez: Gli Economi degli IVCR/SVA devono esser professi/incorporati (cann. 636/741 §1). (Article)

The text of the 1983 Code lacks any specific requirement that the finance officer (*economus*) in a religious institute or a society of apostolic life be a professed or incorporated member of that institute. A. considers, under ten headings (derived from the categories presented in canons 17 and 19), whether someone who is not a professed or incorporated member of such an institute could be a finance officer; he also distinguishes between an administrator and a finance officer. He concludes that the finance office must be a professed or incorporated member of the institute; this was the case, uninterruptedly, for over five centuries.

643

QDE 18 (2005), 202-212: A. Rava: L'ammissione di separati e di divorziati negli istituti religiosi. (Article)

R. looks at the situation of validly married, but separated or divorced, spouses who wish to enter a religious institute. As their valid marriage subsists (despite any civil decree to the contrary), there is an impediment to their entering the institute. R. examines various possible situations in which a dispensation may be obtainable from the Holy See, and the procedures involved.

645

QDE 18 (2005), 202-212: A. Rava: L'ammissione di separati e di divorziati negli istituti religiosi. (Article)

See above, canon 643.

646

CpR LXXXVI 1-2/05, 83-101: R. J. Folonier: La certeza moral en el juicio de admisión al noviciado en un IVC clerical. (Article)

The novitiate is the beginning of religious life; as a stage in formation it has as its goal that novices may understand better the divine vocation (particularly their own) in their institute, and that their intention and suitability may be tested. F. deals with the case of a novice in a clerical institute and reviews the process of scrutiny of one called to orders, particularly studying the nature of the call as a canonical act, as an act requiring moral certitude, and as an act grounded in positive arguments. After describing the various levels of certitude, particularly certitude in a canonical context, F. argues that (and describes how) a superior can affirm that a candidate does not have a vocation, as well as that a superior can affirm categorically that a candidate does have a vocation.

665

Vies Consacrées 76 (2004), 176-188: Anne Bamberg: L'exclaustration imposée. Compétences et responsabilités du Modérateur suprême et de l'Évêque diocésain. (Article)

See below, canons 686-687.

668

CpR LXXXV 3-4/04, 299-307: S. A. Szuromi: Appunti sulla capacità giuridica di acquisto e di possesso dei membri degli IVCR. (Article)

There are two principal problems regarding property in religious institutes today: the first is the lack of a precise discrimination between ownership and possession, and the second has to do with the abandonment of the legal capacity for ownership in members a religious institute. S. tries to distinguish between ownership and possession, and then notes four particular cases: the religious in temporary vows, the religious in a country where the renunciation of ownership is not recognised or enforceable in civil law, the death of a religious, and the religious on exclaustration.

668

IC XLIV 88/04, 679-704: M. del Mar Leal Adorna: El trabajo prestado por los religiosos. Análisis sobre su consideración canónica y laboral. (Article)

The author reviews the civil status at Spanish law of work done by religious in three categories: work done by the religious for the institute, work done by a religious for a third party, and the departure of religious from the institute.

673-683

CpR LXXXVI 1-2/05, 103-113: D. Andrés Gutiérrez: Relaciones específicas peculiares de los IVCR/SVA de derecho diocesano con los Obispos de Iglesias particulares. Un posible deseable capítulo de Constituciones. (Article)

A. proposes 21 articles to be included in the Constitutions of diocesan-right institutes to govern their relations with the bishops of particular Churches.

678-680

SC 38 2/04, 461-480: Rose McDermott: Ecclesiastical Authority and Religious Autonomy: Canon 679 under Glass. (Article)

Canon 679 often intimidates professors and students, and is not welcomed by the more gentle canonist. The canon reflects the disciplinary power of the diocesan bishop in an urgent crisis concerning a religious, the negligence of the major superior, and the subsequent referral to the Holy See. In this article, M. places canon 679 under scrutiny, particularly in the light of canon 17 for the proper understanding of this ecclesiastical law. The need for a proper

interpretation and application of canon 679 places a responsibility on the diocesan bishop, and also demonstrates the important role of the major superior. Although canon 679 may be invoked only rarely, it signifies the importance of cooperation and collaboration between the diocesan bishop and major superior *urgente gravissima causa*, especially when the welfare of the Christian faithful is threatened.

680

AC 46 (2004), 223-236: M. Colrat: Droit de la vie consacré et droit particulier du diocèse: les conseils diocésains pour la vie religieuse. (Article)

Since religious consecration involves, *inter alia*, "the building up of the Church" (canon 573), new relationships are developing between religious and dioceses (cf. *Vita Consecrata*, 46). A total of 53 French dioceses have set up diocesan councils for religious life, whose function – in accord with canon 680 – is to foster cooperation between institutes themselves, and between institutes and diocesan clergy, and also to integrate the work of religious into the mission of the diocese, to the extent that this is possible. Such councils should form part of the governance structure of a diocese (council of priests, diocesan pastoral council, diocesan synod, etc).

686-687

Vies Consacrées 76 (2004), 176-188: Anne Bamberg: L'exclaustration imposée. Compétences et responsabilités du Modérateur suprême et de l'Évêque diocésain. (Article)

B. examines, with particular regard to the question of equity and charity, the rights and duties of the member and of the community, as well as the respective competence and responsibility of the supreme moderator and the diocesan bishop, in the case of involuntary exclaustration.

741

CpR LXXXV 3-4/04, 195-241: D. Andrés Gutiérrez: Gli Economi degli IVCR/SVA devono esser professi/incorporati (cann. 636/741 §1). (Article)

See above, canon 636.

BOOK III: THE TEACHING OFFICE OF THE CHURCH

747

CpR LXXXVI 1-2/05, 115-134: J. García Martín: La legislación canónica, medio de evangelización. (Article)

Basing his consideration on documents of Vatican II, G. presents canon law as a primary means of evangelisation in the Church. Using the ecclesiology of Vatican II as a foundation, the author reviews the instrumental character of canon law, particularly in its exemplarity, its ecclesial finality, and its adaptation to circumstances. This is most evident in three areas: adapted ecclesial structures and offices, the concept of authority as service, and the use of ecclesiastical property.

755

J 64 (2004), 332- 360: Catherine E. Clifford: Emerging Consensus on Collegiality and Catholic Ecumenical Responsibility. (Article)

C. begins with the suggestion made by the Faith and Order Commission of the World Council of Churches, regarding a mutual recognition of each others' orders. This recognition of ministries requires a genuine renewal of forms and structures of ministry in the Churches. She sees collegiality and subsidiarity as part of the emerging consensus. She studies the progress in this field with a number of Churches which are in dialogue with the Catholic Church: "The Conciliar event is a shock to the equilibrium of institutional relationships in the Catholic Church."

755

SC 38 2/04, 509-526: W. A. Brown: The Eucharist and Mixed Marriages: Present Status. (Article)

See below, canons 843-844.

757

BEF LXXX 845, 93-106: J. González: Faculties to Exercise Some Pastoral Functions in the Diocese. (Consultation)

G. enumerates those faculties which are granted to priests and (where appropriate) deacons, by the law itself. He then enumerates those faculties which are to be granted by higher authority, and considers who that higher authority would be in various cases.

777

QDE 18 (2005), 79-102: A. Perlasca: La prima confessione dei fanciulli nel dinamismo dell'iniziazione cristiana. (Article)

See below, canon 914.

793

QDE 18 (2005), 79-102: A. Perlasca: La prima confessione dei fanciulli nel dinamismo dell'iniziazione cristiana. (Article)

See below, canon 914.

796

IE XVI 3/04, 563-594: M. Baldus: Bildungsrechtliche Perspektiven des Religionsunterrichts an öffentlichen Schulen in Europa. (Article)

B. begins with an overall vision of State norms concerning the teaching of religion in government schools within EU countries; these norms exist in all the member States except France. He then reports on the tendencies to be noted in the project of the Constitution of Europe, not yet ratified in some States; this plan includes the right to access to formation, and guarantees both the freedom to establish schools and the right of parents to decide their children's education according to their ideals. It seems that there will be no change in these points and that the teaching of religion is in no danger. A process towards homogeneity in the pertinent State norms is foreseen, but there is a clear public interest in educating young people in those convictions that form the basis of the peaceful coordination to which the teaching of religion must contribute.

812

IE XVI 3/04, 595-618: P. De Pooter: La «mission canonique» et le «mandatum» au sein des universités ecclesiastiques et catholiques. Un jeu de mots ou une distinction plus fondamentale? (Article)

De P. analyses the relevance of the distinction between the *missio canonica* mentioned in *Sapientia Christiana*, which deals with ecclesiastical universities, and the *mandatum* mentioned in the Code and in *Ex Corde Ecclesiae*, which concerns Catholic universities. He first clarifies the terminology in the context of "canonical mission" and "mandate", and after studying the present legislation, he asks: should the terms *mandatum* and *missio canonica* be considered identical? He concludes that the interpretation of these texts remains a practical problem and that, in his opinion, a general executory decree by the pertinent Congregations – for Catholic Education and for the Doctrine of Faith – could resolve the present confusion.

816

For XIII/02-XIV/03, 89-97: Congregation for Catholic Education: Decree: Re-ordering curriculum for study. (Decree)

As of the academic year 2003-2004, the period of study required for degrees in canon law is extended to three years for the licence, and there is a greater insistence on the acquisition of Latin and the necessary theological background in the First Cycle.

823

ACR LXXXII 1/05: Congregation for the Doctrine of the Faith: Statement regarding M. Shinnick. (Document)

As a result of an anonymous delation to the Holy See, the Congregation for the Doctrine of the Faith conducted an examination into the orthodoxy of a book written by S. The statement is the result of the process, which proceeded according to the Congregation's *Regulations for Doctrinal Examination*, 29 June 1997 (*L'Osservatore Romano*, English edition, 3 September 1997, p. 2). S. was required to publish the statement in the *Australasian Catholic Record*, rather than in his own diocesan newspaper, presumably to achieve wider circulation.

BOOK IV, PART I: THE SACRAMENTS

842

AA XI (2004), 489-505: Arquidiócesis de La Plata: "Para que tengan vida". Instrucción pastoral sobre la iniciación cristiana de los niños y el lugar en ella del sacramento de la confirmación. (Particular legislation)

Text of the Instruction of the Archdiocese of La Plata (Argentina) on the Christian Initiation of children and the place of the sacrament of Confirmation in that process.

842

AA XI (2004), 507-509: V. E. Pinto: Comentario a la Instrucción Pastoral "Para que tengan vida" de la Arquidiócesis de La Plata. (Commentary)

P. provides a brief commentary on the Instruction of the Archdiocese of La Plata mentioned in the preceding entry.

843-844

SC 38 2/04, 509-526: W. A. Brown: The Eucharist and Mixed Marriages: Present Status. (Article)

The reception of the Eucharist by baptised non-Catholics has received attention in the two Codes of canon law and in various ecumenical documents. While the norms in CIC canon 844 and CCEO canon 671 establish the circumstances for legitimate expressions of *communicatio in sacris*, the question of mixed marriage and the reception of the Eucharist was also addressed in the 1993 Ecumenical Directory and other specific ecumenical agreements. B. reviews these various documents, and then presents the views of various theologians and canonists which explore future possibilities for a broader sharing of the Eucharist in mixed marriages.

BOOK IV, PART I, TITLES I & II: BAPTISM AND CONFIRMATION

861

BEF LXXX 845, 93-106: J. González: Faculties to Exercise Some Pastoral Functions in the Diocese. (Consultation)

See above, canon 757.

882-887

BEF LXXX 845, 93-106: J. González: Faculties to Exercise Some Pastoral Functions in the Diocese. (Consultation)

See above, canon 757.

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

897

CpR LXXXVI 1-2/05, 163-179: Pope John Paul II: Epistula apostolica *Mane Nobiscum, Domine*. (Documentation)

The Latin text of the apostolic letter *Mane Nobiscum, Domine* (7 October 2004) of John Paul II concerning the Year of the Eucharist.

897

CpR LXXXVI 1-2/05, 181-196: N. Loda: La lettera apostolica *Mane Nobiscum, Domine* di Giovanni Paolo II per l'anno dell'Eucaristia (ottobre 2004-ottobre 2005) e le sue implicanze nella missione. (Commentary)

L. presents a comprehensive commentary on the apostolic letter of John Paul II on the Year of the Eucharist, *Mane Nobiscum, Domine* (7 October 2004). The author studies in particular the implications of this letter for mission and ecumenical relations. Special attention is paid to the 2004 *Suggerimenti e Proposte* issued by the Congregation for Divine Worship and the Discipline of the Sacraments.

897

For XIII/02-XIV/03, 158-183: R. Barrett: The concept of communion-sacrifice in canon 897. (Article)

B. focuses on analogies and similarities between pagan concepts of communion and sacrifice and those to be found in the New Testament, particularly 1 *Cor* 11. He seeks to bring out the Greco-Roman context in which the theology of priesthood and Eucharist developed. This forms the background to the evolution of Eucharistic theology in the Middle Ages, and to the disputes resolved by Trent. The principal source of canon 897 is Paul VI's apostolic letter *Investigabiles Divitias Christi* (1965), and is heavily influenced by the teachings of Vatican II, but B. suggests that the terms *significatur* and *efficaciter* look back to a classical Roman context, and not to reductionist ideas such as transignification, popularised in the 1970s.

897

N XL 9-10/04, 457-476: Ioannes Paulus PP. II: Litterae Apostolicae Motu proprio datae *Mane Nobiscum, Domine*. (Document)

This is the Latin text of the Apostolic Letter marking the beginning of the Year of the Eucharist, dated 7 October 2004. The Letter sets this year in the context of the preparation for the Third Millennium, and takes the text of *Lk* 24:35 as its theme. The Pope comments that in recent years the theme of Eucharist as meal has been made clearer, but attention also needs to be given to Eucharist as sacrifice and the real presence. Jesus in the Eucharist is to be adored as the fount and epiphany of communion, and as the beginning and challenge of mission.

897

N XL 9-10/04, 477-479: Ioannes Paulus PP. II: Allocutiones: In occasione dell'inizio dell'Anno dell'Eucaristia. (Allocution)

This is the text of an allocution opening the Year of the Eucharist.

897

N XL 9-10/04, 480-509: Congregatio de Cultu Divino et Disciplina Sacramentorum: Presentazione della Lettera Apostolica *Mane Nobiscum, Domine*. (Presentation)

Given here are a number of interventions on various aspects of the Year of the Eucharist from Cardinal Arinze (pp. 480-485), Archbishops Sorrentino (pp. 486-489), and Marini (pp. 490-502), and Mgr. Parmeggiani (pp. 503-509).

897

N XL 9-10/04, 510-552: Congregatio de Cultu Divino et Disciplina Sacramentorum: Suggerimenti e Proposte della Congregazione per il Cultu Divino e la Disciplina dei Sacramenti. (Pastoral Aid)

This document sets out various suggestions from the Congregation on ways of making the most of the Year of the Eucharist. The first section sets the frame of reference. The intention is above all one of catechesis on the Eucharist, and encouragement of Eucharistic spirituality. It then looks at the cultural context, mentioning Sunday, the Easter Vigil, Holy Thursday, Corpus Christi, the Liturgy of the Hours, Eucharistic adoration, processions, and congresses. The third section looks at various aspects of Eucharistic spirituality; and the last section offers concrete suggestions at the levels of episcopal conferences,

dioceses, parishes, sanctuaries, religious communities, seminaries, associations and movements, and also in the area of art and architecture.

897

N XL 11-12/04, 553-573: Ioannes Paulus PP. II: Apostolic Letter *Mane Nobiscum, Domine.* (Apostolic Letter)

This is the English text of the *motu proprio* launching the Year of the Eucharist.

897

N XL 11-12/04, 574-617: Congregatio de Cultu Divino et Disciplina Sacramentorum: Año de la Eucaristía. Sugerencias y Propuestas de la Congregación para el Culto Divino y la Disciplina de los Sacramentos. (Pastoral Aid)

This is the Spanish text of the Congregation's suggestions for implementing the Year of the Eucharist.

897

N XLI 1-2/05, 69-79: M. Augé: La Lettera Apostolica *Mane Nobiscum, Domine*. (Article)

A. comments on the Letter inaugurating the Year of the Eucharist, in particular various dimensions of the Eucharist, the two tables of the Word and the Bread, the phrase "celebrate, adore, contemplate", and the Eucharist as an expression of communion and project of solidarity.

898-899

Gregorianum 85 (2004), 689-698: Anne Bamberg: Sourds et silences liturgiques. (Article)

Even if their perception of silence is different, deaf persons know well how to welcome sacred or liturgical silence. They remain very sensitive to interior silence, to the silence of recollection or adoration.

898-899

Lumière et vie 264 (2004), 65-67: Anne Bamberg: Dieu en culture sourde. Témoignage et invitation à l'Église catholique. (Article)

Similar to the article in *Gregorianum* (see previous entry), B. testifies to her experience with deaf culture and its different ways of expressing the Christian faith in art and sign languages.

900-911

BEF LXXX 845, 93-106: J. González: Faculties to Exercise Some Pastoral Functions in the Diocese. (Consultation)

See above, canon 757.

908

IE XVI 1/04, 313-321: Giovanni Paolo II: 1. "Normae substantiales et processuales" promulgate col m.p. "*Sacramentorum Sanctitatis Tutela*" (30 aprile 2001); 2. *Decisioni di Giovanni Paolo II susseguenti la promulgazione del m.p.* "Sacramentorum Sanctitatis Tutela" (7 novembre 2002 – 14 febbraio 2003). (Documentation)

See below, canon 1362. The prohibition in canon 908 on Catholic priests concelebrating the Eucharist with those who are not in full communion with the Catholic Church is included in the Norms of 30 April 2001.

912

SC 38 2/04, 509-526: W. A. Brown: The Eucharist and Mixed Marriages: Present Status. (Article)

See above, canons 843-844.

914

QDE 18 (2005), 79-102: A. Perlasca: La prima confessione dei fanciulli nel dinamismo dell'iniziazione cristiana. (Article)

P. deals with the problem of the place of Confession in relation to the sacraments of initiation. Only in the context of an education in the *virtue* of penance – which tends to be overlooked in giving the sacrament a largely "functional" character – can the proper place of Confession be determined, and

the first Confession of children can thus become a celebration truly expressive of the wider reality of which the sacrament itself forms part. After some general considerations regarding the appropriate age for first Communion, P. looks at how the relationship between Penance and the Eucharist has been debated and dealt with from the time of Pope Pius X to the present. He dwells on canon 914 and the requirement of Confession before first Communion, the purpose of which is not so much to cater for a possible state of mortal sin in the child as to foster, at a tender age, a true Christian spirit of penance and conversion, self-knowledge, contrition and trust in the mercy of the Lord. After referring to certain currents of thought that come to a different conclusion regarding the Penance/Eucharist relationship, P. makes a series of recommendations aimed at ensuring a more fruitful reception of sacramental Confession.

915

RDC 53 2/03, 267-284: R. Sublon: L'interprétation du canon 915 et la question du sujet. (Article)

S. offers some thoughts on the meaning of interpretation, especially in relation to the interpretation of canon 915 by the Pontifical Council for Legislative Texts.

915

SC 38 1/04, 155-172: J. A. Coriden: The Marriage Bond and Ecclesial Reconciliation of the Divorced and Remarried. (Article)

See below, canons 1055-1056.

927

IE XVI 1/04, 313-321: Giovanni Paolo II: 1. "Normae substantiales et processuales" promulgate col m.p. "*Sacramentorum Sanctitatis Tutela*" (30 aprile 2001); 2. *Decisioni di Giovanni Paolo II susseguenti la promulgazione del m.p.* "Sacramentorum Sanctitatis Tutela" (7 novembre 2002 – 14 febbraio 2003). (Documentation)

See below, canon 1362. To consecrate one element without the other, or to consecrate both outside the Eucharistic celebration, is canonically "absolutely wrong" (*nefas*) and is now dealt with by the Norms of 30 April 2001.

937

QDE 18 (2005), 194-201: C. Azzimonti: L'ingresso in chiesa, libero e gratuito, nel tempo delle sacre celebrazioni (can. 1221). (Article)

See below, canon 1221.

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

965-976

BEF LXXX 845, 93-106: J. González: Faculties to Exercise Some Pastoral Functions in the Diocese. (Consultation)

See above, canon 757.

983

Ephemerides Theologicae Lovanienses 81 (2005), 200-213: Anne Bamberg: Culture sourde, droit canonique et déontologie professionnelle. Réflexion à partir des interprètes pour Sourds. (Article)

See below, canon 1471.

990

Ephemerides Theologicae Lovanienses 81 (2005), 200-213: Anne Bamberg: Culture sourde, droit canonique et déontologie professionnelle. Réflexion à partir des interprètes pour Sourds. (Article)

See below, canon 1471.

995

N XLI 1-2/05, 66-68: Paenitentiaria Apostolica: Decreto circa le Indulgenze concesse durante l'Anno dell'Eucaristia. (Decree)

For the duration of the Year of the Eucharist a plenary indulgence is granted under the usual conditions to those who attend functions or devotions in honour of the Blessed Sacrament, whether exposed or in the tabernacle. Clergy and others bound to the Liturgy of the Hours, or who recite them out of devotion, can obtain a plenary indulgence by saying Vespers and Compline in the presence of the Blessed Sacrament. Provision is also made for those unable to attend church for reasons of health or another just cause.

BOOK IV, PART I, TITLE VI: ORDERS

1024

IC XLIV 88/04, 707-733: E. Molano: La mujer y el sujeto del orden sacerdotal. Un comentario a la Carta Apostólica «Ordinatio sacerdotalis». (Article)

M. reviews the letter of Paul VI to the Archbishop of Canterbury (30 November 1970) and the declaration *Inter Insigniores* of the Sacred Congregation for the Doctrine of the Faith (15 October 1976) before summarising the apostolic letter *Ordinatio Sacerdotalis* of John Paul II (22 May 1994). Of primary concern for M. is the level of authority the apostolic letter holds: he concludes that it is infallible teaching, because it deals with the divine constitution of the Church, it is a formal declaration of the Pontifical Magisterium authoritatively interpreting tradition and the prior Magisterium, and is a definitive teaching on the deposit of faith (the object of the infallible teaching of the Church), requiring the firm and irrevocable assent of faith. Special emphasis is placed on the response of the Congregation for the Doctrine of the Faith regarding the *motu proprio Ad Tuendam Fidem* (18 May 1998) and to a *dubium* regarding *Ordinatio Sacerdotalis* (28 October 1995, but not published until 29 June 1998).

1036-1037

QDE 18 (2005), 141-152: G. Brugnotto: Il concetto di celibato sacerdotale. (Article)

See above, canon 277.

1041

SC 38 2/04, 481-508: B. Dunn: Does a Vasectomy Constitute an Irregularity to the Sacrament of Orders? (Article)

D. examines the issue of vasectomy in relation to irregularities for the sacrament of orders. Various opinions provide contradictory approaches as to whether or not a vasectomy constitutes the irregularity associated with mutilation as found in canon 1041 5°. The first section investigates the meaning of “mutilation” by considering the teaching of various Papal documents and the positions of a number of moralists. This investigation leads to the conclusion that a vasectomy is certainly included in the meaning of the word “mutilation.” The next two sections consider the legislation of the 1917 Code of Canon Law and the 1983 Code of Canon Law and their respective commentaries, showing

how these Codes have dealt with vasectomy and mutilation. After weighing the canonical evidence, D. concludes that a man with a vasectomy has the possibility of incurring the irregularity of canons 1041 5°; 1044 §1 1°; and 1044 §1 3°, provided the requirements are present which are necessary for incurring an irregularity. The article considers the process of investigation which is necessary in these cases and includes several pertinent decisions. D. concludes with a reflection on canonical and pastoral issues.

1044

AkK 172 2/03, 465-474: H. Schmitz: Krankheit als Hindernis fur die Ausübung der Weihe, Kanonische Anmerkungen zu c. 1044 #2 n.2 CIC. (Article)

S. deals with illness as an impediment for the exercise of orders on the basis of canon 1044 §2, 2º, dealing with insanity or other psychological infirmity.

1044

SC 38 2/04, 481-508: B. Dunn: Does a Vasectomy Constitute an Irregularity to the Sacrament of Orders? (Article)

See above, canon 1041.

BOOK IV, PART I, TITLE VII: MARRIAGE

1055

AA XI (2004), 57-84: J. Bonet Alcón: Valor jurídico del amor conyugal. (Colloquium presentation)

B. uses as his starting point John Paul II's discourse to the Roman Rota on 21 January 1999 which referred to the concept of true conjugal love between two people of equal dignity but distinct and complementary in their sexuality. After distinguishing the nature of conjugal love from other kinds of love, he speaks of the different stages of love. Although Vatican II in *Gaudium et Spes* made several references to conjugal love the term does not appear at all in the 1983 Code, mainly because the concept of love may be considered a subjective one and not suitable to the objectivity required in the juridical sphere. The Code does speak of the good of the spouses which some commentators see as approximating in some way to conjugal love. The question remains whether love can be an objective reality to be demanded in law as an obligation and a right. B. argues that sentimental or romantic love which is fickle and changeable cannot be so considered but that love develops and matures with time, and in the moment of marital consent takes on a different nature as mutual self-giving and receiving in the common life of marriage. It is no longer a free love which can be withdrawn but a love which is owed in justice as part of the marriage relationship. It is now true conjugal love which does not depend on the passing whims of sentiment or passion. He concludes with some juridical and pastoral suggestions.

1055

CLSN 140/04, 33-69: A. Mendonça: Recent Developments in Rotal Jurisprudence on Exclusion of *Bonum Coniugum*. (Article)

M. focuses on two recent decisions, one by Pinto (9 June 2000), the other by Civili (8 November 2000). He believes that both sentences offer fresh possibilities for developments with regard to the *bonum coniugum*. Among these are that both sentences admit that the *bonum coniugum* is an essential element of marriage; and that even if a party does not testify, certain conclusions can be drawn from his or her lifestyle. There is also a recognition of the influence of cultural background as to a person's understanding of marriage; and there are two elements which constitute the *bonum coniugum*: the unique personhood, and the inviolable personal dignity, of each spouse. M. believes both sentences "could offer us valuable insights into the ground of exclusion of the good of the spouses".

1055

For XIII/02-XIV/03, 36-44: Congregation for the Doctrine of the Faith: Considerations regarding proposals to give legal recognition to unions between homosexual persons. (Note)

This document does not set out new doctrinal elements but applies existing teaching to the need for direction on the part of Catholic politicians. However, since the considerations are based on natural law they are addressed to all concerned with the good of society. After setting out the nature of marriage and problems relating to homosexual unions, the Congregation outlines several arguments against their legal recognition. It would contradict right reason by undermining the common good through obscuring basic moral values and devaluing marriage. Such unions lack the biological and anthropological elements of marriage. Society owes its survival to the family founded on marriage. Homosexual unions do not contribute to the common good, and do not need legal protection. For these reasons Catholic politicians must oppose such recognition, both from the outset and in terms of seeking the at least partial repeal of such laws, to whatever extent is possible.

1055

INT 11 1/05, 4-15: W. Desmond: Consecrated Love: A Philosophical Reflection. (Article)

D. looks at what the great philosophers had to say about marriage: not a great deal. Many were single and misogynist. He distinguishes marriage from other forms of consecrated love and then analyses its nature. He notes that today's ethos rejects the notion of any external consecrating source.

1055

INT 11 1/05, 18-25: X. Lacroix: Conjugalité et parentalité: Un lien entre deux liens. (Article)

Modern science has allowed the sexual act to be divorced from the *finis* of children. Marriage increasingly is seen as separate from procreation, and is no longer generally accepted as the cornerstone of society. L. spells out the deleterious effects of this for the human community, including the lack of a secure base for child-bearing, identity problems in children, and a weakened and confused understanding of being a parent. What is needed, he argues, is a recognition that human society depends on relationship, not independence, and he looks at this in terms of Christian theology.

1055

INT 11 1/05, 67-77: R. Dell'Oro: Reproductive Cloning, Marriage, and Family: Ideological Premises and Forgotten Issues. (Paper)

The purpose of reproductive human cloning is the asexual generation of a human being who, genetically, is identical to an already existing person. This article is an examination of some of the ethical aspects of human cloning. It also looks at the destructive consequences of cloning for the individual, who can never be a properly free human being, and for marriage and family relationships, which cloning subverts.

1055

SC 38 1/04, 215-232: Diocese of A., Ireland, *coram* Boccafola, 14 October 1999. (Sentence)

See below, canon 1095 2°-3°.

1055-1056

For XIII/02-XIV/03, 9-15: Pope John Paul II: Good of Indissolubility, Good of Marriage. (Address)

The text of the Pope's address to the Roman Rota on 28 January 2002. Judicial activity is a form of pastoral service. Indissolubility is the natural good that corresponds to the Creator's plan for husband and wife, not an ideal, but a natural law requisite of universal applicability. It is not an imposition but the reverse side of the good and potential inherent in marriage. It is a pastoral service to uphold this, and to convalidate marriage that would otherwise be null. For this reason one cannot set a supposed *favor personae* against the *favor matrimonii*. It is essential that civil law should also uphold this value, and that legal professionals avoid cooperation in divorce.

1055-1056

For XIII/02-XIV/03, 20-25: Pope John Paul II: Natural Marriage already has sacred dimension. (Address)

Following on from previous years, the 2003 address to the Rota develops the theme of a natural bond elevated into the dignity of a sacrament. The natural and supernatural dimensions are not simply juxtaposed, but intimately connected. From the beginning of creation, marriage was sacred. Jesus inserts it into the very mystery of his covenant with the Church. Fidelity is an expression

not only of human love, but God's love. This principle must guide judges. It must also be understood correctly in the context of those who are well disposed and wish to marry according to its natural reality but are insufficiently prepared from the supernatural point of view. A lack of supernatural understanding does not render marriage null unless it undermines validity at a natural level, as can be seen from the understanding that a marriage can become sacramental when the unbaptised party receives baptism.

1055-1056

SC 38 1/04, 155-172: J. A. Coriden: The Marriage Bond and Ecclesial Reconciliation of the Divorced and Remarried. (Article)

C. offers a proposal for a different pastoral strategy regarding the reconciliation of divorced and remarried Catholics. It advocates a shift from a "preferential option for a canonical solution" to a process of discernment and supportive counsel that sometimes would lead to a moral rather than juridical solution. C.'s argument proceeds in three steps: 1) an examination of the meaning of the "bond of marriage" in the canonical tradition, concluding that it is an expression of the married state from a juridical point of view; 2) a reflection on the status of the divorced and remarried from various points of view: personal, ecclesial, canonical, moral, and sacramental; 3) a proposal for a pastoral approach to the reconciliation of divorced and remarried persons that is set within a larger ministry to marriage and family. The approach values and includes canonical options, i.e. declarations of nullity, but embraces a range of other options as well, including the toleration of some irregular unions within full communion.

1055-1059

For XV 1-2/04, 3-541: J. Mizzi: Catholic and Muslim Marriages. (Doctoral Thesis)

This is the full text of a doctoral thesis submitted to the Lateran University, Rome. The first chapter (pp. 17-84) sets out the foundation and core beliefs of Islam (the Five Pillars of Islam), and the development of an Islamic legal system. M. explains the fonts of law for Islam and the different legal schools, and goes on to examine the relationship between Moslems and non-Moslems, particularly in the context of the modern world and Europe. The second chapter (pp. 89-232) examines marriage in Islamic Law, including the age for marriage, and impediments both permanent and temporary, as well as legal formalities relating to the marriage. M. then looks at Islamic family life and the termination of marriage. A final section examines civil law on marriage in some Islamic countries (Morocco, Algeria, Tunisia, Libya & Egypt). The third chapter (pp.

233-336) considers the juridical, anthropological and pastoral implications of marriages between Catholics and Moslems. An important issue is the raising of children as Moslem, and this is the reason why a Moslem man may marry a non-Moslem woman, but a Moslem woman may never validly marry a non-Moslem man. The fourth chapter (pp. 337-470) investigates the relationship between the Catholic Church and Islam over the centuries, and more generally the attitude to marriage between Catholics and non-Catholics or the unbaptised. The final part of this chapter focuses on issues to be addressed in the pastoral preparation for marriage of a Catholic-Moslem couple. M. also looks briefly at the application of Pauline Privilege, non-consummation and Favour of the Faith procedures to such marriages, but not questions of nullity that might have arisen from Islamic impediments, or attitudes to marriage. He also provides a glossary of Islamic terms, and a very extensive bibliography of both primary and secondary sources.

1055-1062

IC XLIV 88/04, 439-513: P.-J. Viladrich: El amor conyugal entre la vida y la muerte. La cuestión de las tres grandes estancias de la unión (II). (Article)

This article contains the second part of V.'s lengthy inaugural lecture of 19 September 2003 at the University of Navarra (see *Canon Law Abstracts*, no. 94, p. 83). Intended as a "linear discourse", V. presents his thoughts on the nature and significance of conjugal love, basing them on a theological anthropology with interdisciplinary dimensions. The language is heavily phenomenological, as V. presents each of the three stages of conjugal love in turn. The first stage is the affective coincidence of man and woman in the sensible dynamics which draw out their corporeal nature. The second stage is the transformation of the initial unitive principle from the unitive dynamics (according to the flesh) to the bond between persons (according to the spirit). The third stage is the union of all other unions. In this later stage, V. distinguishes between the concepts of validity, convenience, and fullness.

1060

IE XVI 1/04, 321-344: Giovanni Paolo II: Discorso alla Rota Romana, 29 gennaio 2004 (con *nota* di A. S. Sánchez Gil, *Il* favor matrimonii *e la presunzione di validità del matrimonio: appunti per la loro chiarificazione concettuale*). (Document and commentary)

In his annual address to the Rota the Holy Father spoke of *favor matrimonii* and *favor iuris* as principles that inform all the substantial and procedural norms on

marriage. He clarified the errors involved in the proposed *favor personae*, or *favor veritatis subjecti*, or *favor libertatis.* Commenting on the address, S. looks first at the fundamental value that the *favor matrimonii* and the presumption of validity enjoy in every juridical order, and then at the advisability of a clarification of these concepts. He explains the confusion involved in seeing those concepts in opposition to the so-called *favor personae* or the *favor veritatis subjecti* or the *favor libertatis*. He warns about the tendency to identify the *favor iuris* and the presumption of validity with one another, and says it is necessary to overcome an excessively institutionalised vision of the *favor matrimonii* and to make a clear conceptual distinction between *favor matrimonii* and the presumption of validity, as the two have different foundations.

1061

N XLI 3-4/05, 135-203: Congregatio de Cultu Divino et Disciplina Sacramentorum: L'Adunanza "Plenaria" della Congregazione per il Culto Divino e la Disciplina dei Sacramenti. (Report)

See below, canon 1142.

1063-1064

AA XI (2004), 451-464: H. A. von Ustinov: Imperativos pastorales y procesos canónicos de nulidad matrimonial. (Article)

In the face of the breakdown of many Catholic marriages in recent times and the prevailing divorce mentality of a completely secular and even anti-Christian society, U. emphasises the need for a true and proper understanding to be imparted to young couples of the authentic nature of marriage, its essential properties and elements, and the need for effort and perseverance in the face of difficulties. He quotes extensively from, and comments on, the discourses of John Paul II to the Roman Rota from 2001 to 2004. Pastoral care should be directed especially to providing support and care for marriages in difficulty and only when all attempts to save a marriage have failed should recourse be had to the tribunals of the Church for a possible declaration of nullity. It is only then that the juridical process becomes a morally acceptable option.

1077

SC 38 1/04, 37-64: L. Robitaille: The *Vetitum* and *Monitum*: Consequences of Marriage Nullity or Pastoral Preparation for a New Marriage? (Article)

The tribunal judge in marriage nullity cases often not only renders a decision on the marriage, but also assesses whether the party or parties are sufficiently prepared to enter into a new marriage. This declaration about sufficient preparation for a new marriage is delivered by either a judicial *vetitum* or an administrative *vetitum* or *monitum*. R. investigates these modes in the light of two questions: Is the *vetitum* a consequence of invalidity and thus imposed in order to avoid another invalid marriage? Or are the *vetitum* and *monitum* tools for pastoral praxis to prepare for a new marriage? R. examines these distinctions and presents several recommendations.

1079-1082

BEF LXXX 845, 93-106: J. González: Faculties to Exercise Some Pastoral Functions in the Diocese. (Consultation)

See above, canon 757.

1084

For XIII/02-XIV/03, 126-145: U. Navarrete: AIDS e consenso matrimoniale. (Paper)

See below, canons 1095-1102.

1095

For XIII/02-XIV/03, 184-228: E. Xuareb: The incidence of drug-taking on the validity of marriage consent. An analysis of Rotal Jurisprudence. (Article)

One cannot simply transfer the categorisation of decisions taken under the 1917 Code on the basis of *amentia* to that of canon 1095 1°, since *amentia* is a psychological concept, whereas “lack of sufficient reason” is a canonical one. However, some of the decisions would fall under this heading. X. examines seven decisions that would come under this criterion, three of which relate to one case finally decided in the fifth instance *coram* Caberletti. The second tranche of cases relates to canon 1095 2°. Here X. looks at nine decisions beginning with one of cocaine addiction, judged by Wynen in 1941. Here it was not lack of the use of reason, but an inability to evaluate ethically, that led to an

affirmative decision. Some more recent decisions focus on the lack of internal freedom. Other decisions focus on the mechanism by which judgement is affected. Fourteen decisions are reviewed. The final section looks at ten cases which use the framework of canon 1095 3°. In each section X. considers briefly the role of the expert.

1095

REDC 62 157/04, 731-778: F. R. Aznar Gil / R. Román Sánchez: Boletín bibliográfico y de jurisprudencia rotal sobre anomalías psíquicas y consentimiento matrimonial (1984-2004). (Bibliography)

The compliers have provided an extensive bibliography of some forty-seven pages of books, articles and Rotal decisions dealing with psychological anomalies and marriage consent, covering the years 1984 to 2004. The bibliography is divided as follows: lack of use of reason (canon 1095 1º); defect of discretion of judgement (canon 1095 2º); lack of internal freedom; inability to assume (canon 1095 3º); specific anomalies; procedural aspects. Works in all major European languages are included but with predominance of Spanish and Italian. The Rotal sentences are listed under the three headings of canon 1095 (use of reason; discretion of judgement; inability to assume).

1095 2°

REDC 62 157/04, 821-835: Tribunal de la Diócesis de Oporto, 3 de abril de 2000, nulidad de matrimonio (miedo grave, error en cualidad, defecto de discreción de juicio e incapacidad de asumir las obligaciones), *coram* José Joaquín Almeida Lopes. (Sentence)

The case (text in Portuguese) concerns a marriage entered into on account of a premarital pregnancy (the bride was aged sixteen at the time of the wedding) and the resultant pressure from the girl's family. Moreover, on the wedding day the bride suffered a severe epileptic attack, a condition which continued and worsened during the following years and which affected her mental health and stability, leading to extreme and bizarre behaviour. The alleged grounds of nullity were reverential fear in both parties, error of quality on the part of the male petitioner and grave lack of discretion of judgement and inability to assume on the part of the respondent. A.L.'s *in iure* section deals mainly with the internal freedom necessary for valid marriage consent. He rehearses the arguments for considering this a separate ground of nullity (based on canon 219) but opts for its consideration under the heading of grave lack of discretion of judgement, quoting Rotal jurisprudence in support. The positive decision was based on this last ground alone.

1095 2°

REDC 62 157/04, 953-963: Tribunal de la Diócesis de Orihuela-Alicante, 29 de setiembre de 1997, nulidad de matrimonio (falta de libertad interna, exclusión de la fidelidad y de la indisolubilidad), *coram* Joaquín Martínez Valls. (Sentence)

The marriage under consideration was arranged only after the eighteen year old petitioner was discovered to be pregnant. No thought or plan for marriage had ever arisen in the two years the couple had known each other (mostly as members of a wider social group of friends – they had not even visited each other's homes). However the devout Catholic upbringing and atmosphere of her home and the fear of local gossip and scandal led the petitioner to agree to marry, even though she foresaw that the marriage could not be a success due to the great differences between them of background, upbringing and character. Within a year they had separated. The alleged grounds of nullity were lack of internal freedom in the petitioner and exclusion of fidelity and indissolubility on the part of the respondent. M.'s *in iure* section deals especially with the freedom necessary for valid marriage consent and the difference between fear and the lack of internal freedom. The contractant must have not only the freedom to consent or not, but also the internal freedom to choose between one option or another from various possible choices, without the felt or self-perceived need to follow a predetermined or preset course of action. It was on this last ground alone that nullity was declared, under the heading of grave lack of discretion of judgement.

1095 2°

SC 38 1/04, 233-246: Diocese of A., Ireland, *coram* Pinto, 24 March 2000. (Sentence)

After a difficult courtship, this couple's decision to marry was caused by an unexpected pregnancy and hastened by the death of the respondent's mother and the difficulty the petitioner was having in continuing to live with her father. The difficulties continued during the common life, not the least being the respondent's neglect of his wife in favour of his work. The marriage lasted barely one year and a half. The case was studied on the grounds of a defect of discretion of judgement on the part of both parties, of exclusion of the good of the sacrament (indissolubility) and of the good of children on the part of petitioner, and force and fear inflicted on her by her parents. A negative decision was pronounced only on the ground of defect of discretion on the part of both parties, without any reference to the other grounds. The negative decision was overturned by the appeal tribunal on the grounds of lack of discretion of judgement on the part of both parties. The Roman Rota's law

section deals with the maturity of a party necessary for marriage, i.e. an actual "capacity to control the sub-structures of the ego" and "subordinating them to higher structures of intelligence." It also has a section on mental illnesses related to pregnancy. After reproving the method of procedure of the first instance tribunal, the judges accepted the expert's opinion that although the petitioner might have "some instability in her personality", the acts did not prove that she had an insufficient capacity of discretion of judgement, and concluded that she was capable of exercising the critical faculty in marrying. As for the respondent, despite contradictory conclusions of the first instance and third instance experts, the judges did find that he had married even though he was aware of all the difficulties in the relationship, that he entered marriage only as a cure for his serious problems, and that he was not at all aware of the responsibilities of marriage. They rendered an affirmative decision regarding the ground of grave lack of discretionary judgement on the part of the respondent.

1095 2°-3°

AA XI (2004), 541-553: Tribunal de la Rota Romana. Coram Joseph Huber. Nullitatis matrimonii. Sententia definitiva, 13 novembris 2002. (Sentence).

The petitioner and husband of the marriage was an adopted child who grew up insecure and unstable. The couple first married civilly to obtain housing. They had serious relational problems in their cohabitation. Nevertheless when the respondent announced she was pregnant, canonical marriage was soon celebrated. Relations continued to deteriorate and within a month the couple had already separated; within four months they had obtained a legal separation. A negative decision was returned at first instance on the ground of the petitioner's grave lack of discretion and inability to assume the obligations of marriage. His appeal at second instance reversed that decision, and the case found its way to the Rota for definitive sentence. In his *in iure* section, Huber stresses the important contribution psychology and psychiatry can make in showing how the subconscious plays a part in decision-making. This was particularly important in this case given the petitioner's emotional turmoil and insecurity ever since discovering at the age of seven that he was an adopted child. The Rotal decision was in favour of nullity.

1095 2°-3°

AA XI (2004), 555-560: V. E. Pinto: Comentario a la sentencia de J. Huber. (Commentary)

P. provides a commentary on the sentence referred to in the preceding entry.

1095 2°-3°

For XIII/02-XIV/03, 257-284: Metropolitan Tribunal of Malta: Coram Said Pullicino, November 29, 2002; Lack of discretion of judgement; Inability to assume. (Sentence)

The girl did not feel ready for marriage, and when she became pregnant the couple, who were living with her parents, accepted advice to wait until after the child was born. It soon became clear that the respondent was grossly irresponsible with gambling and infidelity. Both grounds were alleged in both parties, but the decision was affirmative only on those in the respondent. The law section focuses on the ability to establish a communion of life which is not unbearable, and distinguishes this from the difficulties that arise from the tensions in a relationship that is complementary rather than symmetrical. P. also develops the notion of emotional immaturity.

1095 2°-3°

For XIII/02-XIV/03, 285-312: Metropolitan Tribunal of Malta: *Coram* Grech, July 30, 2003; Lack of discretion of judgement; Inability to assume; Exclusion of *bonum prolis*. (Sentence)

The decision was affirmative but only on partial simulation. The petitioner insisted on using condoms, and when he discovered the respondent was piercing them, ceased sexual relationships altogether. The law section focuses on conjugal self-giving of which openness to children is one element.

1095 2°-3°

For XIII/02-XIV/03, 313-330: Regional Tribunal of Second Instance: Decretum Confirmationis Sententiae: *Coram* Bajada, April 30, 2004; Lack of discretion of judgement; inability to assume. (Decree)

In this decree of ratification B. elaborates on the nature of emotional immaturity and inadequate personality on which the affirmative decision had been based. The importance of intrapersonal integration has been emphasised time and again in Rotal jurisprudence.

1095 2°-3°

REDC 62 157/04, 837-951: Tribunal de la Diócesis de Plasencia, 23 de julio de 2001, nulidad de matrimonio (defecto de discreción de juicio e incapacidad de asumir las obligaciones), *coram* Juan Agustín Sendín Blázquez. (Sentence)

This case concerns an abnormally introverted and unsociable man who relied on alcohol and drugs to ease his natural inhibitions and allow him to engage in a semblance of normal social relationships which otherwise would have been impossible for him. Yet in the marriage he showed himself to be an extremely domineering and "macho" type of husband. The grounds of nullity proposed were grave lack of discretion of judgement and inability to assume in both parties. The sentence is extremely long – 114 pages. S. analyses in detail both grounds, with copious references to Rotal jurisprudence as well as to the jurisprudence of Spanish tribunals and canonical authors. In his treatment of the effects of alcohol consumption and drug taking on consent he presents and analyses various Rotal sentences on the matter. The decision declared nullity on both grounds in the respondent alone and recommended a *vetitum*.

1095 2°-3°

SC 38 1/04, 215-232: Diocese of A., Ireland, *coram* Boccafola, 14 October 1999. (Sentence)

Both parties in this case came from dysfunctional families. After dating for only one month, they decided to marry, but the petitioner began having doubts shortly after the proposal because of her future husband's "black moods" and penchant for wearing women's undergarments under his clothes. They married anyway because the petitioner's father had pressured them to end their engagement, but the respondent's transvestism disorder soon caused the failure of the marriage. The petitioner submitted a request for a declaration of nullity and the grounds retained were canon 1095 2° and 3° on the part of the petitioner. The case received a negative decision in first instance but an affirmative decision on both grounds in second instance. The Roman Rota appointed an expert *ex officio*. After first distinguishing between a lack of due discretion (canon 1095 2°) and an incapacity to fulfill the essential obligations of marriage (canon 1095 3°), the law section of this sentence goes on to explain the *bonum coniugum* as one the essential elements of marriage, the pathological abnormalities which may prevent a spouse from fulfilling this obligation, and the proofs required to verify the invalid consent. Although the judges point with surprise to the petitioner's decision to ignore her future husband's transvestic fetishism and marry him anyway, they concentrate their reasoning on the inconsistency of the proofs provided by the petitioner and see in this a

demonstration and illustration of her mental illness, her long psychotic cyclothymic disorder, antecedent to the marriage. Her psychopathology prevented the free and conscious expression of her intellectual and volitional capacities; it also prevented her from adequately evaluating how her husband's transvestism would adversely affect the marriage. The third instance decision was affirmative.

1095 3º

CLSN 140/04, 33-69: A. Mendonça: Recent Developments in Rotal Jurisprudence on Exclusion of *Bonum Coniugum*. (Article)

See above, canon 1055.

1095 3º

IE XVI 3/04, 641-680: Tribunale Apostolico della Rota Romana. *Matriten*. Nullità del matrimonio. Timore reverenziale. Esclusione dell'indissolubilità. Incapacità di assumere gli obblighi essenziali per cause di natura psichica. Incapacità «relativa». Sentenza definitiva. 25 ottobre 2001. Stankiewicz, Ponente (con *nota* di H. Franceschi F.). (Sentence and commentary)

The Rota gave a negative verdict under the headings of reverential fear and exclusion of the *bonum sacramenti* in the male petitioner and incapacity to assume the essential duties in the respondent; and an affirmative verdict under the heading of incapacity in the petitioner. The main point of interest in this sentence is that it clarifies at length the error of judging on the basis of "relative" incapacity. At the root of the false analogy between "relative impotence" and "relative incapacity" there is a confusion between the concepts of "psychic" and "moral" impossibility. In his commentary, F. praises the clear and thorough approach of the Rotal tribunal and summarises the content of the *de iure* section. He refers to the preparation work of the 1983 Code which purposely avoided the expression "moral impotence" in order not to confuse two substantially different concepts. The direct object of the impediment of impotency is a defect in *potentia copulandi*, while the object of an inability to assume is a defect in a person's capacity for self-determination, which is in itself of a spiritual nature, and of course this cannot depend "relatively" on the other partner.

1095-1102

For XIII/02-XIV/03, 126-145: U. Navarrete: AIDS e consenso matrimoniale. (Paper)

Whilst AIDS is a recent medical phenomenon, in the Middle Ages the Church had to contend with leprosy, and N. compares and contrasts these conditions, and the Church's response to them. In the case of leprosy Alexander III upheld the right to marriage, provided it had not led to impotence, but his reply supposes that the other party is aware of the condition. If the illness is contracted after the marriage, there is an obligation to accept sexual relationships, and to continue cohabitation, and in particular to offer assistance to the sick person. However, with the passage of time, moral theologians mitigated these obligations where the person felt them a danger to health. N. then examines the clinical effects of AIDS. There are significant differences in terms of the emotional and psychological effects on the sufferer as well as of life expectancy. In fact the relatively short life expectancy implies that only a few cases will be brought before tribunals, and the problem lies more in terms of admission to marriage. He concludes that the effects of AIDS are so devastating that someone affected is incapable of establishing a communion of life and love. This does not mean that AIDS constitutes a separate heading for nullity, but depending on circumstances cases could be envisaged based on impotence, grave lack of discretionary judgement, inability to assume the essential obligations, deceit, error and simulation.

1097

IE XVI 1/04, 182-223: Tribunale della Rota Romana. *Pragen*. Nullità del matrimonio. *Error qualitatis.* Sentenza definitiva. 25 ottobre 2002. Caberletti, Ponente (con *nota* di M. A. Ortiz: Errore su una qualità intesa *directe et principaliter* (can. 1097 §2) ed *error redundans* (can. 1083 §2 CIC 17)). (Sentence and commentary)

The couple met at primary school and become very good friends when in their twenties. He had received an excellent Christian education and practised his faith with sincere piety; she came from a family negligent in matters of religion, and did not practise at all. There were minor difficulties during engagement, but when she became pregnant and he finished his military service, they married. Early in 1979, the child was born, and a second child followed soon afterwards. Subsequent frictions led them to seek marriage counselling, and the husband, suspecting unfaithfulness in his wife, obtained a civil divorce in 1994. In 1996 he asked the ecclesiastical tribunal for a declaration of nullity on the ground that his wife "had excluded conjugal fidelity from the beginning and had not been capable of establishing a harmonious union". The grounds at first instance were

exclusion of unity and indissolubility, on the part of the wife, and error on the part of the petitioner concerning a substantial quality (namely the religiosity) of the respondent, in accordance with canon 1083 §2 of the 1917 Code (corresponding to canon 1097 §2 of the 1983 Code). However, the first instance tribunal did not in fact deal with the first ground but gave an affirmative sentence only on the ground of error. The appeal tribunal overturned that decision, and the case was referred to the Rota. The Rotal sentence shows the inexistence of error, since neither the petitioner's prevalent intention, nor the connection of his matrimonial will with the existence of the quality in question, had been proved. In his commentary, O. looks into the relationship between canon 1083 of the 1917 Code and canon 1097 of the present Code. He studies the distinction in the light of Gratian's Decree, St Thomas, Sánchez, and St Alphonsus, as well as the views of Viladrich, and the address of Pope John Paul II to the Rota in 1993, in which the Pope specified that, in cases of *error in persona*, one may not attribute to the terms used by the legislator a meaning alien to canonical tradition. O. studies the Rotal jurisprudence in this connection, looking in some detail at half a dozen sentences of 1998. He ends with some conclusions on subjective intentionality in relation to the invalidating power of error.

1097

ME CXXVIII 1/05, 427-440: Jurisprudentia Tribunalis Rotae Romanae: Reg. Triveneti seu Tridentina Nullitatis Matrimonii (Bacher-Biasi). Sententia Definitiva diei 19 Iulii 2002 coram R.P.D. J. Sciacca, Ponente. (Sentence)

The negative second instance decision before the Rota of 15 March 1996 is upheld. The case revolved around a town girl who fell in love with a country boy, but quickly became disillusioned with life on the farm, and left after a couple of months. She claimed to be in error as to his social status and plans, and that he had deceived her with regard to his qualifications. These arguments were given short shrift. She had ample time to get to know his family background, and had spent time with the family. The niceties of the level of partnership between himself and his father, and as to the level of his qualifications, did not amount to any substantial error of quality objectively speaking, and, subjectively, there was no evidence that she had primarily intended such qualities. Such substantial error, whether objective, or of subjective importance to the party, must be established for consent to be rendered invalid.

1097

ME CXXVIII 1/05, 441-453: Judgement of the Roman Rotae [sic] Tribunal: Ponens R.P.D. J. Sciacca. (Sentence)

English translation of the preceding decision.

1097

SC 38 1/04, 65-84: E. Rinere: Error Which Causes the Contract. (Article)

In the 1917 Code of Canon Law, error of quality (c. 1083 §2) and error of law (c. 1084), even if they were the cause of the contract, did not invalidate consent. In both canons the phrase *etsi det causam contractui* indicated the antecedent motivating error of quality which did not invalidate. The first, error of quality which caused the contract, did not invalidate consent because the accepted jurisprudence indicated that error of quality pertained to an accident of the contract and not to its substance. The second, error of law which caused the contract, did not invalidate because of the presumption that such error was simple. That is, it remained in the intellect and never invaded the will. In the 1983 Code, the phrase *etsi det causam contractui* is retained for error of quality but not for error of law. According to canon 1097 §2, in order to invalidate, error of quality must rise to the level of a condition principally and directly intended. Although the intent of the canon appears to be the establishment of a higher standard of proof and the avoidance of multiple nullities, there is an indication in some canonical writings that the presence of error of quality which causes the contract results in a strong presumption that the quality was also principally and directly intended. If this presumption is correct, an argument can be made that all antecedent motivating error of quality results in nullity of consent. The revision of the canon on error of law leads to a different conclusion. In canon 1099 of the 1983 Code, the phrase *etsi det causam contractui* was replaced with *dummodo non determinet voluntatem*. The two phrases appear to have significantly different meanings; the earlier phrase encompassing all antecedent motivating errors of law, and the later phrase excluding some levels of antecedent motivating error. Error which determines the will seems to be of greater intensity than error which causes the contract. Thus, not all antecedent motivating errors of law result in nullity of consent.

1098

REDC 62 157/04, 781-819: Tribunal de la Rota de la Nunciatura Apostólica de Madrid, 18 de mayo de 2000, nulidad de matrimonio (defecto de discreción de juicio, incapacidad de asumir las obligaciones y error doloso), *coram* Santiago Panizo Orallo. (Sentence)

The male petitioner married unaware that his wife had hidden from him the fact that she had been suffering from epilepsy since her teenage years. When he discovered this deceit he reluctantly agreed to stay with her within the marriage for the sake of their children, and the marriage lasted eighteen years. First instance found in favour of nullity only on the ground of the petitioner's *error dolosus* caused by the respondent, but not on the grounds of grave lack of discretion or inability to assume in either party. The respondent (who had refused to cooperate at first instance) appealed against the decision. In this second instance sentence a clear exposition is made of the canonical and psychiatric teaching on error and deceit with regard to marriage. Of special interest is P.'s study of epilepsy and its relationship to marriage nullity. Although epilepsy is a brain disorder it is nevertheless inseparable from the personality of the sufferer. In the epileptic there are present characteristic personality traits such as slowness or inertia in the processing of ideas, irritability, impulsiveness and the constant need for affection. He concludes his *in iure* section with an analysis of some Rotal jurisprudence on epilepsy. The decision of first instance was upheld and a *vetitum* on the respondent recommended.

1099

SC 38 1/04, 65-84: E. Rinere: Error Which Causes the Contract. (Article)

See above, canon 1097.

1101

CLSN 140/04, 33-69: A. Mendonça: Recent Developments in Rotal Jurisprudence on Exclusion of *Bonum Coniugum*. (Article)

See above, canon 1055.

1101

For XIII/02-XIV/03, 9-15: Pope John Paul II: Good of Indissolubility, Good of Marriage. (Address)

See above, canons 1055-1056.

1101

For XIII/02-XIV/03, 20-25: Pope John Paul II: Natural Marriage already has sacred dimension. (Address)

See above, canons 1055-1056.

1101

For XIII/02-XIV/03, 229-256: Apostolic Tribunal of the Roman Rota: *coram* Caberletti, June 15, 2000; Exclusion of *Bonum Fidei.* (Sentence)

This case involved a girl who resumed a relationship with another boy shortly after the wedding; the question was whether she had genuinely made a break, and then felt neglected, or whether she had excluded fidelity. The decision was negative. C. reflects on the meaning of self-giving and fidelity, where the teaching of Vatican II and John Paul II has given a new impetus to its understanding. Refusal to be obliged by fidelity amounts to exclusion, but not a simple will to be unfaithful. The Rota continues to distinguish between the right and its exercise. C. lists seven ways in which the right can be excluded: direct exclusion of the right itself; a condition contrary to fidelity; granting a right to conjugal acts to a third party; intention to exclude the obligation while revealing one's intention to associate with others, even persons of the same sex; deep-seated conviction that fidelity is impossible due to human weakness; restricting the right to a determinate or indeterminate period; an intention to commit adultery which prevails over that to give and receive the obligation to fidelity.

1101

For XIII/02-XIV/03, 285-312: Metropolitan Tribunal of Malta: *Coram* Grech, July 30, 2003; Lack of discretion of judgement; Inability to assume; Exclusion of *bonum prolis*. (Sentence)

See above, canon 1095 2°-3°.

1101

IE XVI 1/04, 135-181: Tribunale della Rota Romana. *Reg. Venetiarum*. Nullità del matrimonio. Simulazione totale del consenso. Esclusione dell'indissolubilità. Sentenza definitiva. 25 luglio 2002. Defilippi, Ponente (con *nota* di M. Gas di Aixendri: *L'assenza di volontà matrimoniale tra simulazione totale ed incapacità*.) (Sentence and commentary)

While affected by the interruption of his cohabitation with another girl, P. began a relationship with a girl who had previously contracted civil marriage and given birth to a daughter. Pregnancy followed and, although the parties disagreed about their attitude to the Church (and in addition, a miscarriage occurred), canonical marriage was celebrated in May 1983. Six months later, when the woman obtained a civil divorce from her previous marriage, they immediately contracted civil marriage as well. The marriage was happy for eleven years, but then difficulties arose, among other reasons because of unfaithfulness and drug abuse. The wife approached the civil tribunal in 1994 for a decree of legal separation, and a few months later the husband sought a declaration of nullity from the ecclesiastical tribunal under the heading of his own exclusion of marriage, or at least of the sacramental dignity of marriage. The first instance sentence was negative, and there followed an appeal to the Rota, where the grounds considered were the original head of total simulation, plus that of exclusion of indissolubility on the part of the husband. The sentence presents a thorough juridical treatment of the various aspects of canon 1101. It summarises in six points the circumstances opposing a declaration of nullity under the head of total simulation; it then sets out why the exclusion of indissolubility by a positive act of the will on the part of the husband was in no way proved. In her commentary on the case, G. says that, as is evident, if the act of consent is totally missing, the conjugal bond is not established and the celebration is null; yet to specify the cause of such nullity is not a simple matter. She uses this case, in which no positive act of the will excluding indissolubility was proved to have existed, to show how a number of authors, and more importantly certain Rotal auditors, see the possibility of dealing with such cases as a total simulation of consent, on the basis that the act of simulation may not necessarily be a *voluntas simulandi*, but may fall within the subspecies of *simulatio voluntatis*, involving a total absence of the *intentio contrahendi*.

1101

ME CXXVIII 1/05, 474-483: Jurisprudentia Rotae Romanae: R.P.D. J. B. Defilippi, Ponens. Vaticana. Nullitatis Matrimonii (Samperi-Uman). Decretum Turni. (Decree)

This decree ratifies the affirmative first instance decision of the ecclesiastical tribunal of the Vatican City State. A Turkish diplomat (Moslem) was posted to Libya, where he was unhappy and lonely, and wanted to send for his Italian girlfriend. Turkish law does not allow diplomats to marry foreign wives, so a compromise was arrived at: a church wedding in the Vatican that would not be registered with the Turkish authorities. Before she could join him, he found solace in someone else's arms, and no longer wished her to come, and petitioned for nullity, on the grounds of his own simulation, total or partial. The respondent contested this, and eventually the man abandoned the case. This has now been taken up the woman. The law section looks closely at the relationship between the *finis operis* and the *finis operantis.* Normally the personal purpose is to be obtained in and through marriage and so counters a claim of total simulation. However, this is not the case when the end is extrinsic to marriage, and the ceremony simply a means to that end. In this case there was the problem that the later statements of the woman and her witnesses contradicted those made earlier, but the circumstances served to explain this. It was clear that for the man, the church wedding was simply a way to get the woman to Libya, and his insistence that the marriage not be registered with the Turkish authorities confirmed his statement that he regarded only a marriage in accordance with Turkish law as binding, and he had no intention of sacrificing his career by seeking such recognition.

1103

REDC 62 157/04, 821-835: Tribunal de la Diócesis de Oporto, 3 de abril de 2000, nulidad de matrimonio (miedo grave, error en cualidad, defecto de discreción de juicio e incapacidad de asumir las obligaciones), *coram* José Joaquín Almeida Lopes. (Sentence)

See above, canon 1095 2º.

1106

Ephemerides Theologicae Lovanienses 81 (2005), 200-213: Anne Bamberg: Culture sourde, droit canonique et déontologie professionnelle. Réflexion à partir des interprètes pour Sourds. (Article)

See below, canon 1471.

1108

ACR LXXXII 2/05, 163-177: B. Daly: Form for Marriage: Technicality or Protecting a Sacrament? (Article)

After reviewing the history of the canonical form of marriage, and the underpinning theology, D. concludes that there are excellent reasons for upholding the requirement of the form although the original motive (clandestine marriages) no longer holds. After considering the possibilities of dispensation from the form and permission for marriage outside a sacred place, he sees the need for a greater appreciation of the sacramental nature of marriage, and for the sacredness of marriage to be emphasised by liturgical celebration.

1108-1115

BEF LXXX 845, 93-106: J. González: Faculties to Exercise Some Pastoral Functions in the Diocese. (Consultation)

See above, canon 757.

1108-1123

AC 46 (2004), 67-76: E. Raad / J.-P. Durand: Régimes matrimoniaux canoniques et civils: comparaisons entre le Liban et la France. (Article)

See above, Code of Canons of the Eastern Churches.

1111

ME CXXVIII 1/05, 464-473: Giurisprudenza del tribunale regionale di Vancouver, sentenza di prima istanza, ponente R.P.D. Pedro López Gallo. (Sentence)

A page and a half summary in Italian introduces a sentence given in English. Common error is intended to protect the community, when, for example, a priest attached to the parish does not in fact enjoy the faculties everyone thinks he does. It is not intended to cover the mistakes of individuals, including the priest, who may be under a misapprehension in this regard. This was a case where the couple were married in a college chapel by the petitioner's uncle, after preparation by the parish priest of the respondent, who lived in another diocese. Neither party's parish priest was in a position to give delegation, since the chapel was located in a third parish. No one thought to ask the relevant parish priest for delegation. Neither the president of the college, nor the

Ordinary, who could also have delegated, was asked. The decision was affirmative.

1112

BEF LXXXI 846/05, 285-294: J. González: Invalid Delegation of a Religious Sister to Assist at Marriages? (Consultation)

In reference to a particular case, G. considers that the delegation by a bishop of a religious sister to assist at marriages without the prior approval of the episcopal conference and the permission of the Apostolic See would be unlawful but not invalid, and that marriages at which she assisted likewise would be valid.

1112

N XLI 3-4/05, 135-203: Congregatio de Cultu Divino et Disciplina Sacramentorum: L'Adunanza "Plenaria" della Congregazione per il Culto Divino e la Disciplina dei Sacramenti. (Report)

See below, canon 1142.

1124-1127

CLSN 140/04, 7-32: J. McAreavey: Mixed Marriages: Conversations in Theology, Ecumenism, Canon Law and Pastoral Practice. (Paper)

This is the text of the Lyndwood Lecture given on 15 November 2004, sponsored jointly by the Canon Law Society of Great Britain and Ireland, and the Ecclesiastical Law Society. McA. looks at the question of mixed marriages from various perspectives, especially in the light of recent ecumenical dialogue. Special attention is paid to the promises required. Although the problems of mixed marriages may not disappear, it is hoped that, in the words of Pope John Paul II, with "increase of fellowship" they may be eased.

1124-1129

SC 38 2/04, 411-438: W. Kowal: The Power of the Church to Dissolve the Matrimonial Bond in Favour of the Faith. (Article)

See below, canons 1141-1142.

1134-1135

SC 38 1/04, 155-172: J. A. Coriden: The Marriage Bond and Ecclesial Reconciliation of the Divorced and Remarried. (Article)

See above, canons 1055-1056.

1141-1142

SC 38 2/04, 411-438: W. Kowal: The Power of the Church to Dissolve the Matrimonial Bond in Favour of the Faith. (Article)

The article addresses the question of the essential principles underlying the process for the dissolution of marriages in favour of the faith. K. affirms that the exercise of the Papal power regarding dissolution of a marriage presupposes the existence of a just cause, ultimately defined as the *salus animarum*. In favour of the faith cases, it is precisely this benefit to the faith that constitutes a necessary just cause for the valid dissolution of a marriage. Furthermore, the article treats the particular question of possible insincerity of the promises required from the parties in the case of a marriage with a person who is unbaptised or baptised outside the Catholic Church. The analysis of the problem leads K. to the conclusion that the *cautiones* are directly related to the benefit of the faith of the Catholic party in whose respect the favour is actually granted. Consequently, in particular cases, insincerity in making the promises could severely compromise the existence of a just cause for the dissolution, calling into question the very validity of the favour.

1141-1150

N XL 11-12/04, 618-626: D. Sorrentino: Procedure canoniche e prospettive teologico-spirituali. (Address)

The Secretary of the Congregation for Divine Worship and the Discipline of the Sacraments gave this address to participants in a course on canonical-administrative practice. After outlining the origin of the present competency of the Congregation under *Pastor Bonus*, he looks at different dimensions of the Congregation's involvement primarily in non-consummation cases (with a glance at dissolution in favour of the faith), and in cases of dispensation from the obligations arising from holy orders.

1142

N XLI 3-4/05, 135-203: Congregatio de Cultu Divino et Disciplina Sacramentorum: L'Adunanza "Plenaria" della Congregazione per il Culto Divino e la Disciplina dei Sacramenti. (Report)

The report includes a message from Pope John Paul II in several languages, an introduction by the Prefect, and a description of the work of the Undersecretary in connection with the Plenary Meeting, but the bulk of the report (pp. 157-195) is an account of the work of the Congregation for Divine Worship and the Discipline of the Sacraments since the previous meeting in 2001. After setting out the way the Congregation is organised, and its role, it lists projects completed or under way in the form of liturgical books and documents. There is an account of relations with episcopal conferences, and also of the day-to-day activities of the different sections of the Congregation. Statistics are provided concerning dispensations from diaconal and priestly obligations for each year between 1997 and 2004. The Congregation has also been examining in detail the question of *humano modo* in non-consummation cases, particularly in the context of grave fear, but a conclusion has not yet been reached. Requests have been received from a number of European countries to allow lay people to be qualified witnesses for marriage, a faculty already granted in Brazil and some other parts of Latin America. Up to now the Congregation has not granted such requests, considering them inopportune.

1150

SC 38 2/04, 411-438: W. Kowal: The Power of the Church to Dissolve the Matrimonial Bond in Favour of the Faith. (Article)

See above, canons 1141-1142.

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

1166-1172

SC 38 2/04, 345-368: J. Huels: A Juridical Notion of Sacramentals. (Article)

The Code of Canon Law in canons 1166-1172, and hundreds of liturgical laws, regulate the use of sacramentals in the Church. H. states that a proper application of this canonical discipline requires an understanding of what sacramentals actually are. The purpose of this study is to develop a juridically precise and contemporary definition of sacramentals. H. begins with an historical trajectory indicating the diverse understandings of sacramentals from the Middle Ages until the present time. Then there follows an examination of sacramentals as presented in the more significant texts of the universal law and the Magisterium. The third part presents five elements which are operative in a juridical definition of sacramentals.

1186-1189

AC 46 (2004), 195-222: S. Boiron: Trente et les images. (Article)

In the context of the Reformation, the destruction of images, relics, sacred art and books took place in Wittenberg (1521-1522) and in Rome (1527). When the Council of Trent opened in 1545 however this issue was secondary; it was not discussed until 1562, the second year of the third Session. The conciliar decree, inspired by the work of theologians from the Sorbonne, opposed indecent (nude) images and those that reflected false doctrine.

BOOK IV, PART III: SACRED PLACES AND TIMES

1214

QDE 18 (2005), 194-201: C. Azzimonti: L'ingresso in chiesa, libero e gratuito, nel tempo delle sacre celebrazioni (can. 1221). (Article)

See below, canon 1221.

1215

AC 46 (2004), 103-124: J.-P. Schouppe: Les procedures administratives face aux dysfonctionnements dans les communautés ecclésiales. (Article)

See below, canons 1713-1717.

1221

QDE 18 (2005), 194-201: C. Azzimonti: L'ingresso in chiesa, libero e gratuito, nel tempo delle sacre celebrazioni (can. 1221). (Article)

Canon 1221 states that entry to a church at the hours of sacred functions is to be open and free of charge. A. looks into the background to this provision and some of its practical implications.

BOOK V: THE TEMPORAL GOODS OF THE CHURCH

1254-1298

IE XVI 3/04, 817-825: Pontificio Consiglio per i Testi Legislativi: Nota «La funzione dell'autorità ecclesiastica sui beni ecclesiastici», 12 febbraio 2004. (Document)

This is the text in Italian of a note issued on 12 February 2004 by the Pontifical Council for Legislative Texts. It is divided into the following sections: the notion of "ecclesiastical goods"; the diocesan bishop and the administration of the goods of public and private juridical persons subject to him; the Roman Pontiff as the supreme administrator of ecclesiastical goods; the power of the Roman Pontiff; and acts of jurisdiction of the Holy See over ecclesiastical goods. The document ends by saying that the Roman Pontiff is not to be held responsible for the consequences of acts of economic administration made by the immediate administrators of the goods of the various juridical persons, since the Pope is an administrator, not in the sense of private law, but rather *vi primatus regiminis*, by virtue of his public position in the Church.

1262

IE XVI 1/04, 345-350: Giurisprudenza Civile: Svizzera. Tribunale Federale. Seconda sezione di Diritto pubblico. Sul ricorso di A. – contro la decisione della Chiesa cantonale di Lucerna di obbligarlo a dimettersi dalla Chiesa cattolica affinché sia valida la sua dimissione dalla Chiesa cantonale. Sentenza, Losanna, 18 dicembre 2002 (con *nota* di A. Cattaneo). (Document and commentary)

The text given is a summary (in German) of the most relevant parts of the sentence of 18 February 2002 of the Swiss Federal Tribunal. It highlights one of the problems caused by the State ecclesiastical law applicable to almost all the Swiss cantons. The State establishes public corporations that involve economic aspects such as the payment of taxes. A member of the faithful residing in the canton of Lucerne communicated his desire to resign from the Cantonal church, but not from the Catholic Church. A year later the Cantonal church denied such a possibility, saying that if he wanted to leave the Cantonal church – thus ending his obligation to pay them ecclesiastical taxes – he had to declare his resignation from the Catholic Church. He appealed to the Federal Tribunal on the grounds of freedom of religion. The Tribunal rejected his appeal and confirmed the legitimacy of the requirement of the civil authority. The Catholic Church considers the Federal Tribunal decision unacceptable. In his commentary C. sets out the main characteristics of the ecclesiastical law at

present in force in the majority of the Swiss cantons, as well as the criticisms that bishops and canonists make of this legal system.

1263

AA XI (2004), 431-449: L. Okulik: La potestad tributaria del obispo diocesano y la interpretación del canon 1263 del CIC. (Article)

O.'s study arises from the practice in some Argentinian dioceses of the imposition of a tax or levy on the independent schools run by various institutes of consecrated life, a practice claiming juridical justification in canon 1263. He analyses the canonical principles for the imposition of ecclesiastical taxes and gives an overview of the development of this canon through the various preliminary *schemata* until its final form in the present Code. A *dubium* presented in 1989 to the Pontifical Council for the Interpretation of Legislative Texts as to whether the words of the canon *personis iuridicis publicis suo regimini subiectis* included schools of religious institutes *iuris pontificis* was answered in the negative. Institutes of religious life are public juridical persons and, within the limits of the law, enjoy autonomy with regard to the diocesan bishop. Therefore, while members of such institutes working in diocesan schools are subject to the local bishop, schools owned and run by the institute are not. O. concludes by encouraging a greater communion and effective collaboration between bishops and institutes of religious life in the common task of preaching the Gospel to the world.

1263

IE XVI 3/04, 619-637: J. Miñambres: Il tributo diocesano ordinario come strumento di governo. (Conference presentation)

While the principle underlying the discipline on offerings of the faithful is the will of the donor, the reason for the imposition of diocesan taxes seems to be an *ex auctoritate* redistribution of goods among the public juridical persons of the diocese. M. studies the nature, juridical regime and purpose of ordinary ecclesiastical taxes within the bishop's role of governance. After looking at a definition of the tax, M. dedicates specific sections to those involved in imposing the tax – the bishop, the diocesan finance committee and the council of priests – and to the public juridical persons to whom it applies. He studies in detail parishes and other diocesan subjects, as well as institutes of consecrated life. Regarding private associations of the faithful, he explains their exemption in this matter. In the last section, M. considers the final provision of canon 1263 with regard to the arrangements which the hierarchy and civil authorities have agreed upon in some countries concerning taxation.

1281-1288

AA XI (2004), 397-430: J. González Greñón: El párroco y la administración de los bienes eclesiásticos. (Article)

In the first part of his study G. looks at the notion and classification of ecclesiastical goods and their administration. A parish, as a juridical person, enjoys the right to acquire and possess its own patrimony through all legitimate means of natural and positive law, such as the offerings of the faithful, the rent or lease of parish property, and the acceptance of pious foundations and wills. As well as ordinary expenses for the proper maintenance of the parish fabric and pastoral services, parish goods may be alienated for a just cause and in accordance with the law. It is the parish priest who is the administrator and legal representative of the parish. This is a personal responsibility which he cannot hand over to another; even his bishop cannot intervene except in cases of obvious negligence. G. glosses the canons dealing with the duties of the parish priest in administering the goods of the parish. Maladministration may result in illicit or invalid acts leading to juridical responsibility on the part of both the parish and the parish priest. He concludes his study commenting that administration of the parish should not be neglected by the priest for more seemingly pastoral activities, since the proper administration and care of ecclesiastical goods and property has ultimately only one aim, the furthering of the evangelising and pastoral work of the Church.

1290-1298

BEF LXXXI 848/05, 426-435: J. González: Alienation of Church Goods: Why and How? (Consultation)

G. reviews the reasons for the Church acquiring, administering, and alienating temporal goods; the requirements for valid alienation; the competent authority to give permission when the value of the goods to be alienated exceeds an agreed maximum; and the method for requesting permission from the Apostolic See when that is required.

BOOK VI: SANCTIONS IN THE CHURCH

1311

SC 38 2/04, 369-410: P. Lagges: The Penal Process: The Preliminary Investigation in Light of the *Essential Norms* of the United States. (Article)

See below, canons 1717-1722.

1311-1399

Patricia M. Dugan (ed.): The Penal Process and the Protection of Rights in Canon Law. (Book)

This publication contains an English translation of the papers presented at a conference held at the Pontifical University of the Holy Cross, Rome, on 25-26 March, 2004. After an introduction to the conference by E. Baura, the papers were: "Responsibility and Punishment. Anthropological Premises for a Discussion of Penal Sanctions in Church Law" (G. Lo Castro); "Innocent Until Proven Guilty: The Origins of a Legal Maxim" (K. Pennington); "The Balance of the Interests of Victims and the Rights of the Accused: The Right to Due Process" (J. Llobell); "Reasons for Legal Protection in a Penal Environment" (C. Gullo); "Penal Sanctions, Penal Remedies and Penances in Canon Law" (V. De Paolis); "Prescription in Penal Matters" (D. Cito); "Criminal Law Protection of Human Rights in Civil and Religious Societies" (E. Caparros); "The Procedure and Praxis of the Congregation for the Doctrine of the Faith regarding *Graviora Delicta*" (C. Scicluna); "The Administrative Imposition of Penalties and the Judicial Review of their Legitimacy" (F. Daneels); "The Special Penal Norms of the United States and their Application" (K. Boccafola); and "Considerations on Imposing Penalties in Specific Cases" (A. Urru). (For bibliographical details see below, Books Received.)

1314-1319

QDE 18 (2005), 181-193: M. Mosconi: L'azione del vescovo a tutela del celibato dei chierici: il ricorso al precetto penale. (Article)

See above, canon 277.

1320

SC 38 2/04, 461-480: Rose McDermott: Ecclesiastical Authority and Religious Autonomy: Canon 679 under Glass. (Article)

See above, canons 678-680.

1321

IE XVI 3/04, 825-830: Pontificio Consiglio per i Testi Legislativi: Nota «Elementi per configurare l'ambito di responsabilità canonica del Vescovo diocesano nei riguardi dei presbiteri incardinati nella propria diocesi e che esercitano nella medesima il loro ministero», 12 febbraio 2004. (Document)

This is the text in Italian of a note issued on 12 February 2004 by the Pontifical Council for Legislative Texts. It is divided into the following sections: ecclesiological premises; the nature of the relationship of subordination of the priest to the diocesan bishop; the scope of that relationship; the scope of the priest's autonomy and the possible responsibility of the diocesan bishop. Two paragraphs conclude the document. The first says that the Pontifical Council "sustains that, both in general and in the specific case of an offence of paedophilia committed by a priest incardinated in his diocese, the diocesan bishop has no juridical responsibility arising from the relationship of canonical subordination existing between them." The second adds: "The offence committed by the priest and its penal consequences – including any payment for damages – are imputed to the priest who committed the offence, not to the bishop or to the diocese of which the bishop is the legal representative."

1321-1329

SC 38 2/04, 369-410: P. Lagges: The Penal Process: The Preliminary Investigation in Light of the *Essential Norms* of the United States. (Article)

See below, canons 1717-1722.

1336-1337

SC 38 2/04, 461-480: Rose McDermott: Ecclesiastical Authority and Religious Autonomy: Canon 679 under Glass. (Article)

See above, canons 678-680.

1339-1342

QDE 18 (2005), 181-193: M. Mosconi: L'azione del vescovo a tutela del celibato dei chierici: il ricorso al precetto penale. (Article)

See above, canon 277.

1362

IE XVI 1/04, 313-321: Giovanni Paolo II: 1. "Normae substantiales et processuales" promulgate col m.p. "*Sacramentorum Sanctitatis Tutela*" (30 aprile 2001); 2. *Decisioni di Giovanni Paolo II susseguenti la promulgazione del m.p.* "Sacramentorum Sanctitatis Tutela" (7 novembre 2002 – 14 febbraio 2003). (Documentation)

In 1988 *Pastor Bonus* further specified 1362 §1 by including as part of the responsibility of the Congregation for the Doctrine of Faith all that refers to crimes against the faith and the sanctity of the Eucharist and of the Sacraments. The texts given here include the Substantial and Procedural Norms for such matters (30 April 2001), in addition to subsequent modifications introduced by John Paul II on 7 November 2002, 7 February 2003, and 14 February 2003. See also above, canons 908, 927; and below, canons 1367, 1378-1379, 1387-1388.

1362

REDC 62 157/04, 433-472: F. Aznar Gil: Delitos más graves reservados a la Congregación para la Doctrina de la Fe. Texto del m. pr. *Sacramentorum Sanctitatis Tutela*, y comentario. (Document and commentary)

The complete Latin text is provided of the *motu proprio Sacramentorum Sanctitatis Tutela* of 18 May 2001 on the more serious crimes reserved to the Congregation for the Doctrine of the Faith and the procedural norms for dealing with them, followed by A.'s commentary.

1367

IE XVI 1/04, 313-321: Giovanni Paolo II: 1. "Normae substantiales et processuales" promulgate col m.p. *"Sacramentorum Sanctitatis Tutela"* (30 aprile 2001); 2. *Decisioni di Giovanni Paolo II susseguenti la promulgazione del m.p.* "Sacramentorum Sanctitatis Tutela" (7 novembre 2002 – 14 febbraio 2003). (Documentation)

See above, canon 1362. Offences against the consecrated species in canon 1367 are included among those reserved to the Congregation for the Doctrine of the Faith.

1378-1379

IE XVI 1/04, 313-321: Giovanni Paolo II: 1. "Normae substantiales et processuales" promulgate col m.p. *"Sacramentorum Sanctitatis Tutela"* (30 aprile 2001); 2. *Decisioni di Giovanni Paolo II susseguenti la promulgazione del m.p.* "Sacramentorum Sanctitatis Tutela" (7 novembre 2002 – 14 febbraio 2003). (Documentation)

See above, canon 1362. Offences against the prescriptions of canons 1378 and 1379 incur punishments and are reserved to the Congregation for the Doctrine of the Faith.

1387-1388

IE XVI 1/04, 313-321: Giovanni Paolo II: 1. "Normae substantiales et processuales" promulgate col m.p. *"Sacramentorum Sanctitatis Tutela"* (30 aprile 2001); 2. *Decisioni di Giovanni Paolo II susseguenti la promulgazione del m.p.* "Sacramentorum Sanctitatis Tutela" (7 novembre 2002 – 14 febbraio 2003). (Documentation)

See above, canon 1362. Offences committed by priests against canons 1387 or 1388 incur punishments according to their gravity and are reserved to the Congregation for the Doctrine of the Faith.

1395

AA XI (2004), 11-56: D. G. Astigueta: La persona y sus derechos en las normas sobre los abusos sexuales. (Colloquium presentation)

A.'s intention is to consider how the norms proposed by different episcopal conferences concerning the penal process in cases of alleged sexual abuse respect the rights of those involved. Sexual abuse is wider than simply physical

sexual acts. Any sexualisation of the pastoral relationship is to be condemned and is always an abuse of power and trust and an exploitation of what should be the Church's structures of pastoral and spiritual help and healing. He deals with his subject by examining the following areas: the material act of sexual abuse considered in general and as paedophilia; the identification of the agent of sexual abuse; duties and rights of the accused; the situation of the guilty party; psychotherapy; reparation; return to ministry; the situation of those found innocent; doubtful cases; relationship of the Church to, and care for, the victims; prevention of sexual abuse and the safeguarding of possible future victims through psychological screening of seminary candidates, the formation of seminarians and the ongoing formation of priests. Other areas touched on are the wider moral context of chastity to which clerics and religious are especially committed, the status of norms issued by episcopal conferences, especially those (the vast majority) which have not received a *recognitio* from the Holy See, the presumption of innocence, prescription, the tension between the bishop's duty of care for his priests and his obligation to comply with the norms of justice, and different aspects of causing scandal and making reparation for scandal. The norms of the following episcopal conferences are widely cited: USA, England and Wales, Ireland, Australia, New Zealand, Canada, Philippines, Belgium, Germany, Switzerland and France.

1395

AkK 172 2/03, 380-391: H. Schmitz: Sexueller Missbrauch durch Kleriker nach kanonischem Strafrecht. (Article)

S. deals with sexual abuse by clerics and its punishment in the light of canon law in this three-part article. In the first part he deals with the *motu proprio Sacramentorum Sanctitatis Tutela* promulgated on 30 April 2001, the new law concerning the matter. In the second part he examines the punishable offences according to canon 1395 §§1-2. In the third part he explains the procedure for the punishment.

1395

AkK 172 2/03, 392-426: W. Rees: Sexueller Missbrauch von Minderjährigen durch Kleriker, Anmerkungen aus kirchenrechtlicher Sicht. (Article)

This article is an evaluation of the sexual abuse of minors by clerics. R. considers the present situation, Church laws, and strictness in this matter. Finally he explains the aim of the Church's punishments: should such offences be punished, and how they are to be punished? Can sexual abuse be controlled

by punishment? What is the pastoral stance to be adopted towards the petitioner and the respondent, and what are the rights of the accused? He also gives some examples of the policies adopted by individual bishops' conferences.

1395

For XIII/02-XIV/03, 116-125: C. Scicluna: The Procedure and Praxis of the Congregation for the Doctrine of the Faith regarding *Graviora Delicta.* (Article)

See below, canons 1717-1731.

1395

QDE 18 (2005), 181-193: M. Mosconi: L'azione del vescovo a tutela del celibato dei chierici: il ricorso al precetto penale. (Article)

See above, canon 277.

1395

SC 38 2/04, 369-410: P. Lagges: The Penal Process: The Preliminary Investigation in Light of the *Essential Norms* of the United States. (Article)

See below, canons 1717-1722.

1396

IE XVII 1/05, 199-220: Anne Bamberg: Vacances et obligation de résidence de l'évêque diocésain. Réflexion autour de l'interprétation de canons. (Article)

See above, canon 395.

BOOK VII: PROCESSES

1400

AC 46 (2004), 103-124: J.-P. Schouppe: Les procedures administratives face aux dysfonctionnements dans les communautés ecclésiales. (Article)

See below, canons 1713-1717.

1400

ME CXXVIII 1/05, 484-502: E. Colagiovanni: Deontologia Judiciaria. (Lecture)

The text falls into four sections, which appear to constitute separate lectures: judicial deontology in today's world; conscience and the object of the moral act; a personalistic deontology of judgement; and the role of judges at individual phases of a trial. The first section looks at the philosophical and social background for the exercise of judging today. The second examines conscience and first principles, and the obligation of conscience, before considering erroneous conscience and the act of evaluation. The third looks at the encounter between processual equity and fidelity to the Gospel, something that becomes a personalised dialogue. The final section considers how best to prepare for the role of judge.

1400

SC 38 2/04, 439-460: R. Jacques: Les droits et devoirs des fidèles: aperçus historiques. (Article)

See above, Historical Subjects.

1419-1441

IE XVI 1/04, 111-132: P. Gefaell: Tribunali delle Chiese *sui iuris* non patriarcali. (Lecture)

See above, Code of Canons of the Eastern Churches.

1421

SC 38 1/04, 85-109: A. Asselin: Vingt ans après la promulgation du Code de droit canonique: qu'en est-il du service des laïcs dans l'Église? (Article)

See above, canon 129.

1442-1444

CLSN 140/04, 78-79: Apostolic Signatura: Request for a Pontifical Commission. (Document)

The document outlines what is required for consideration of a request that a case at third instance be committed to a local tribunal rather than to the Roman Rota. In making the request, generic reasons are not sufficient: "there must be a just, reasonable and proportionate cause … taking into account … the circumstances of the case and the gravity of the law from which a dispensation is to be granted". The Signatura also gave a reminder that the domicile of the parties should be included in the sentence.

1471

Ephemerides Theologicae Lovanienses 81 (2005), 200-213: Anne Bamberg: Culture sourde, droit canonique et déontologie professionnelle. Réflexion à partir des interprètes pour Sourds. (Article)

The Code of Canon Law mentions the intervention of an interpreter in the context of canonical trials as well as for the celebration of the sacraments of penance (canon 990) and marriage (canon 1106). The deaf person is specifically mentioned in canon 1471 where the legislator recommends that a sworn interpreter be employed for the interrogation of persons who use a language which is not understood by the judges. B. examines the canonical and ethical questions concerning interpreters for the deaf: the difficult choice of a sworn sign-language interpreter, confidentiality and canonical secrecy, and the proper and faithful fulfilment of the function. B. gives preference to interpreters who have good professional standards and follow a code of ethics. Since deaf culture is still quite unknown the interpreter should also be able to assure cultural mediation.

1501-1655

Lawrence G. Price / Daniel A. Smilanic / Victoria Vondenberger (eds): The Tribunal Handbook: Procedures for Formal Matrimonial Cases. (Book)

See below, canons 1671-1691

1530-1586

SC 38 2/04, 369-410: P. Lagges: The Penal Process: The Preliminary Investigation in Light of the *Essential Norms* of the United States. (Article)

See below, canons 1717-1722.

1574-1581

AA XI (2004), 185-210: C. Baccioli: Puntos fundamentales de la pericia psicólogo-psiquiatra en el proceso de nulidad matrimonial. (Article)

B. considers the requirement of the expert services of a psychiatrist or psychologist in cases dealing with inability to assume the essential obligations of marriage due to causes of a psychological nature. The judge will have to ensure that the expert he calls holds to a genuinely Christian anthropology and not to an atheistic, materialistic or determinist understanding of human nature. He will also be aware that psychology is not an exact science and embraces different schools and tendencies with a lack of overall uniformity of criteria or models. The expert will have to be sufficiently acquainted with the canonical requirements concerning consensual capacity for a valid marriage as distinct from the ideal happy marriage. The last part of B.'s article is a suggested questionnaire to guide the judge in his deliberations. A first set of questions about the subject's present state of mind and personality is directed to the psychologist; a second set, this time directed to the subject him/herself, investigates their state of mind and personality at the time of consent. The final questions, to the psychologist, seek to establish his clinical conclusions and the reason for his diagnosis. B. concludes with a commentary and explanation of his questionnaire.

1612

CLSN 140/04, 78-79: Apostolic Signatura: Request for a Pontifical Commission. (Document)

See above, canons 1442-1444.

1641

AA XI (2004), 267-378: N. Schöch: Criterios para la declaración de la conformidad equivalente de dos sentencias según la reciente jurisprudencia rotal. (Article)

S.'s theme is equivalent conformity of sentence (*conformitas aequivalens seu substantialis*). Although the Code speaks only of formal conformity (judgements between the same parties about the same matter and on the same grounds) Rotal jurisprudence has developed a wider interpretation beyond the strict application of the law, mainly for procedural efficiency and simplicity, but still regarded as the exception rather than a general rule. The facts must be the same in both judgements and the decision refer to the same parties. S. presents and comments on various combinations of grounds of marriage nullity which could give rise to equivalent conformity of sentence: simulation and fear; total and partial simulation; simulation and inability due to causes of a psychological nature; fear and inability; condition, error and deceit; simulation and condition; simulation and error; grave lack of discretion and inability to assume. In any event equivalent conformity of sentence is only applicable in cases of defect of consent and not to marriage impediments or lack of canonical form. S. offers in an appendix two Rotal sentences (*coram* Serrano, 15 June 2001, and *coram* Turnaturi, 22 November 2002) confirming equivalent conformity of sentence.

1641

SC 38 2/04, 329-344: A. Mendonça: Equivalent Conformity of Sentences in a Marriage Nullity Process: A Case Study. (Article)

When people go to an ecclesiastical tribunal to request an annulment, the celebration of a new marriage in the Church is only possible if there are two affirmative decisions on the same case and on the same grounds. Although there is no mention of uniformity of grounds in canon 1684 §1 (CCEO canon 1370 §1), doctrine and jurisprudence mutually agree on maintaining that two affirmative decisions in a marriage nullity case must be "formally" or "substantially" identical. There is formal uniformity when two affirmative decisions are based on the same ground stated in law, for example, two affirmative decisions concerning "a grave lack of due discretion", or two affirmative decisions concerning "the exclusion of marriage itself" (total simulation). But the principle of "substantial" or "equivalent" conformity of sentences is now accepted in canonical doctrine and in jurisprudence. According to this principle, two affirmative decisions may be given on two different grounds for nullity but which are based on the same "juridical facts". For example, the first affirmative decision is on a "grave lack of due discretion", but the second affirmative decision is on "total simulation". The

two decisions, however, are based on the same "juridical fact", that is the "psychological immaturity" of one or both parties. This short study illustrates the application of the principle of "substantial" or "equivalent" conformity of sentences. Although the Rotal decision *coram* Huber of 25 June 2003 is negative, its decree clearly affirms the legitimate use of the principle of "substantial" or "equivalent" conformity of sentences within the parameters established by doctrine and jurisprudence.

1671-1691

Lawrence G. Price / Daniel A. Smilanic / Victoria Vondenberger (eds): The Tribunal Handbook: Procedures for Formal Matrimonial Cases. (Book)

This Handbook is concerned with the adjudication of formal marriage trials. It was prepared with the goal of providing a convenient tool for tribunal practitioners in the United States and in other English-speaking situations. It consists of thirteen chapters, each written by a different member of the Canon Law Society of America, and dealing with the following topics: "Initial inquiries" (Gary D.Yanus); "Case options" (John K. Cody); "Officers of the trial" (Thomas C. Anslow); "Starting a formal case" (Richard R. Soseman); "Grounds for nullity" (Charlene Cram); "Parties and witnesses" (Kevin M. Quirk); "Other proofs" (C. Michael Padazinski); "Publications and conclusion" (William J. King); "Resolution without a sentence" (Paul D. Counce); "First instance trial and sentence" (Paul B. R. Hartmann); "Actions following the sentence" (Eileen C. Jaramillo); "Tribunal staff" (Kenneth K. Schwanger); and "The tribunal and the parochial community" (Rita Ferko Joyce). The Handbook takes into account the instruction *Dignitas Connubii*, which (as the successor to *Provida Mater*) guides the local tribunal in the application of universal law. There is also a Preface by Bishop Thomas Doran, a glossary of terms and an index. (For bibliographical details, see below, Books Received.)

1680

AA XI (2004), 185-210: C. Baccioli: Puntos fundamentales de la pericia psicólogo-psiquiatra en el proceso de nulidad matrimonial. (Article)

See above, canons 1574-1581.

1683

IE XVI 3/04, 681-708: Tribunale Apostolico della Rota Romana. *Inter. Bonaëren. seu Moronen.* (Argentina). Nullitas matrimonii. Incid. nullitatis sententiae. Decreto. 4 marzo 2004. Turnaturi, Ponente (con *nota* di F.

Pappadia: *Circa la competenza del tribunale d'appello nelle cause di nullità del matrimonio ex cann. 1683, 1524 §1 e 1637 §3*). (Sentence and commentary)

A Rotal sentence *coram* Alwan of 25 February 2003 declared the irremediable nullity of a sentence given on 21 August 1997 by the National Appeal Tribunal of Argentina, on the ground of that tribunal's lack of competence (the tribunal had considered four new grounds in its decision, without considering the one initial ground examined at first instance. For more detail, see *Canon Law Abstracts*, no. 93, pp. 103-104). Soon after the Rota's decision, the promoter of justice lodged an appeal against the decree, which was overturned by a decree *coram* Turnaturi dated 4 March 2004. The difference of criteria hinges on the interpretation of canon 1683. The decision *coram* Alwan states that, if the heading judged by the first instance tribunal is not included in the joinder of the issue at appeal level, there would appear to be no connection to justify the competence of the appeal tribunal to judge a new heading *tamquam in prima instantia*. The decision *coram* Turnaturi takes into account canon 1524, which makes clear that the parties have the right to renounce a trial "in whole or in part", which could therefore include the renunciation of the head of nullity judged at first instance; and also the fact that the presence of old and new headings together is not prescribed in any part of the Code. In his commentary P. also points out the substantial difference that exists between the circumstances of the present case, and a deceitful concealment of the heading judged at first instance.

1684

SC 38 2/04, 329-344: A. Mendonça: Equivalent Conformity of Sentences in a Marriage Nullity Process: A Case Study. (Article)

See above, canon 1641.

1684-1685

SC 38 1/04, 37-64: L. Robitaille: The *Vetitum* and *Monitum*: Consequences of Marriage Nullity or Pastoral Preparation for a New Marriage? (Article)

See above, canon 1077.

1713-1717

AC 46 (2004), 103-124: J.-P. Schouppe: Les procedures administratives face aux dysfonctionnements dans les communautés ecclésiales. (Article)

The faithful are entitled to good ecclesial administration, that is, one that is not arbitrary. One of the key principles, participation, is found in canon 1215 §2. The section on administrative procedures, removed from the text of the proposed new Code, is reflected in canons 1517-1520 (CCEO). Arbitration and mediation (canons 1713-1716) are examples of administrative means of resolving disputes. S. points to the preliminary enquiry (Can. 1717) as the interface between pastoral intervention, administrative procedure and a penal process. He holds that, in regard to administrative penal procedures, respect for the person requires higher procedural standards than those that operated in the past. In any case, the civil law is there to hold Church authorities to a high standard, for example, in regard to rights of defence and recourse. S. rebuts the arguments against the setting up of administrative tribunals at diocesan or regional level. Finally he argues for the publication of administrative jurisprudence.

1717-1718

QDE 18 (2005), 181-193: M. Mosconi: L'azione del vescovo a tutela del celibato dei chierici: il ricorso al precetto penale. (Article)

See above, canon 277.

1717-1722

SC 38 2/04, 369-410: P. Lagges: The Penal Process: The Preliminary Investigation in Light of the *Essential Norms* of the United States. (Article)

In the 1983 Code, the penal process begins with canons 1717-1719 dealing with the preliminary investigation (*de praevia investigatione*). This article, in the light of the document *Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests and Deacons*, issued by the United States Conference of Catholic Bishops, looks at the canonical norms concerning the preliminary investigation in cases of sexual abuse of minors. L. identifies various Holy See documents, including the *motu proprio Sacramentorum Sanctitatis Tutela*, and the context in which they should be understood and applied. He then goes into a detailed analysis of the very important preliminary investigation procedure that permits the diocesan bishop to decide whether the file should be sent to the Congregation for the Doctrine of the Faith or, in the case of insufficient proof, whether it should be closed.

Particular attention is given to the rights of the accused and the heavy responsibilities of the diocesan bishop.

1717-1731

For XIII/02-XIV/03, 116-125: C. Scicluna: The Procedure and Praxis of the Congregation for the Doctrine of the Faith regarding *Graviora Delicta.* (Article)

S. sets out preliminary considerations regarding substantive law as contained in *Sacramentorum Sanctitatis Tutela,* including the question of prescription. He then provides some notes on procedure, describing the options open to the Congregation and how it reaches a decision on the procedure to be followed. He also indicates the particular route followed when accusations are made against religious clerics.

1717-1731

Patricia M. Dugan (ed.): The Penal Process and the Protection of Rights in Canon Law. (Book)

See above, canons 1311-1399.

1740-1752

AA XI (2004), 109-128: A. D. Busso: El tiempo de nombramiento de los párrocos. (Colloquium presentation)

After discussing the interpretation of parish priests' stability in office in canon 552, B. examines the historical background for the existence of "immovable" parish priests in the 1917 Code. This was based on the administrative needs of office holders in the benefice system then still in use, and not on the good of souls. This latter concept now finds its place in the 1983 Code as one of the grounds for a bishop's transferring of a parish priest (canon 1748). However, parish priests do have stability in office and are appointed for an indefinite period unless the episcopal conference allows appointments for a specified time. Many episcopal conferences have done so, mostly indicating a period of six or seven years. However, stability allows the priest freedom, independence and efficacy in his ministry, but above all it is an expression of true ecclesiology since the parish priest, while under the authority of his bishop, is not his substitute or vicar, but enjoys a certain autonomy in his ministry. Appointments for a specified time run the risk of inducing a level of apathy, indifference, or lack of enthusiasm or initiative in the exercise of the parish priest's pastoral

activity. B. questions the general use of such time-limited appointments, indicating that the law provides procedures for removal or transfer in those cases which require it. The parish priest is not simply the manager of the parish but its father-figure, and that status is better safeguarded by an appointment for an indefinite period. The implication of canon 552 is that time-limited appointments are to be the exception, not the rule.

1752

RfR 64 1/05, 94-98: E. McDonough: Salus Animarum. (Article)

A reminder that the ultimate goal of salvation is the Church's highest law.

EXCHANGE PERIODICALS

- African Ecclesial Review
- Angelicum
- Année Canonique
- Anuario Argentino de Derecho Canónico
- Apollinaris
- Archiv für katholisches Kirchenrecht,
- Boletin Eclesiastico de Filipinas
- Claretianum
- Commentarium pro Religiosis et Missionariis
- Communicationes
- De Processibus Matrimonialibus
- Ephrem's Theological Journal
- Estudio Agustiniano
- Estudios Eclesiásticos
- Folia Canonica
- Folia Theologica
- Forum
- Idee
- Il Diritto Ecclesiastico
- Immaculate Conception School of Theology Journal
- Indian Theological Studies
- Intams
- Irish Theological Quarterly
- Ius Canonicum
- Ius Ecclesiae
- Jnanatirtha
- The Jurist
- Laurentianum
- Law and Justice
- Louvain Studies
- Memorias (Curso de Actualización Canónica)
- Periodica
- Philippiniana Sacra
- Praxis Juridique et Religion
- Proceedings of the Canon Law Society of America
- Quaderni di Diritto Ecclesiale
- Quaerens
- Review for Religious
- Revista Española de Derecho Canónico
- Revista Mexicana de Derecho Canónico
- Revue Théologique de Louvain
- Revue de Droit Canonique
- Salesianum
- Studia Canonica
- Studium Ovetense
- Teología y Vida
- Theologische-praktische Quartalschrift
- Theologica Xaveriana
- Vida Religiosa
- Vidyajyoti

LIST OF ABBREVIATIONS, PERIODICALS AND ABSTRACTORS FOR THIS ISSUE

AA	Anuario Argentino de Derecho Canónico, Buenos Aires. V. Rev. J. A. McGee (Ayr).
AC	Année Canonique, Paris. Bishop J. McAreavey (Dromore).
ACR	Australasian Catholic Record. V. Rev. I. B. Waters (Melbourne).
AkK	Archiv für katholisches Kirchenrecht, Mainz. Rev. M. Vattappalam (Palai).
Ang	Angelicum, Rome. (Abstracts supplied by publisher.)
BEF	Boletin Eclesiastico de Filipinas, Manila. Rev. J. Hadley (Leicester).
CLSN	Canon Law Society Newsletter, London. Rev. J. Conneely (London).
CpR	Commentarium pro Religiosis, Rome. Rev. W. Becket Soule OP (Washington).
ETJ	Ephrem's Theological Journal, Satna, India. Rev. G. Bell (Kirkcudbright).
For	Forum, Valletta. Rev. G. Read (Colchester).
IC	Ius Canonicum, Pamplona. Rev. W. Becket Soule OP (Washington).
IE	Ius Ecclesiae, Milan. Rev. J. D. Gabiola (London).
INT	Intams, Belgium. Mrs M. Foster (Lancaster).
ITS	Indian Theological Studies, Bangalore. Rev. R. Sanders (Oxford).
J	The Jurist. Rev. P. Corcoran SM (Dublin).
ME	Monitor Ecclesiasticus, Rome. Rev. G. Read (Colchester).
N	Notitiae, Rome. Rev. G. Read (Colchester).
QDE	Quaderni di Diritto Ecclesiale, Milan. Rev. P. Hayward (London).
RDC	Revue de Droit Canonique, Strasbourg. (Abstracts supplied by publisher.)
REDC	Revista Española de Derecho Canónico, Salamanca. V. Rev. J. A. McGee (Ayr).
RfR	Review for Religious, Baltimore. Sr I. MacPherson SND (Fort William).
SC	Studia Canonica, Ottawa. A. Asselin (Ottawa).

Additional abstracts were supplied by Anne Bamberg (Strasbourg).

BOOKS RECEIVED

- Patricia M. DUGAN (ed.): *The Penal Process and the Protection of Rights in Canon Law*, Wilson & Lafleur Ltée, Montréal, 2005, 303pp., ISBN 2-89127-664-7 [see above, canons 1311-1399]

- Mary LYONS: *Governance Structures of the Congregation of the Sisters of Mercy: Becoming One*, Edwin Mellen Press, Lewiston, New York, 2005, 274pp., ISBN 0-7734-6186-8 [see above, canon 582]

- David MOTIUK: *Eastern Christians in the New World: An Historical and Canonical Study of the Ukrainian Catholic Church in Canada*, Metropolitan Andrey Sheptytsky Institute of Eastern Christian Studies and Faculty of Canon Law, St Paul University, Ottawa, 2005, 424pp., ISBN 1-895937-14-0 [see above, Code of Canons of the Eastern Churches]

- LAWRENCE G. PRICE / DANIEL A. SMILANIC / VICTORIA VONDENBERGER (eds): *The Tribunal Handbook: Procedures for Formal Matrimonial Cases*, Canon Law Society of America, 2005, xii + 177pp, ISBN 1-932208-07-0 [see above, canons 1671-1691]

- Therese Guerin SULLIVAN / Gary D. YANUS: *In Time of Need: Parishes and Canon 517, §2*, Canon Law Society of America, 2005, 71pp., ISBN 1-932208-06-2 [see above, canon 517]