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"Constans et perpetua voluntas Pocta Petrovi Blahovi k 75. narodeninám", Peter Mach, Matej Pekarík, Vojtech Vladár, Trnava 2014 : [recenzja]

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Constans et perpetua voluntas
Pocta Petrovi Blahovi k 75. narodeninám

Eds. Peter Mach, Matej Pekarík and Vojtech Vladár. Trnavská univerzita v Trnave, Právnická fakulta. Trnava 2014, 763 pp.

The collection is dedicated to Professor Peter Blaho, a distinguished Slovak scholar of Roman law, on the occasion of his 75th birthday. As stated by editors, the collection is meant as a tribute to “the one of the most significant representatives of Slovak and European legal science, brilliant teacher and precious human being in every sense” (p. XVIII). The publication consists of a considerable number of 53 articles by the professor’s colleagues and friends, which manifest his wide-ranging contacts. Among the contributors are not only the authors from Slovakia and the Czech Republic, but also from Hungary, Poland, Austria and Germany; the articles are written in Czech, Slovak, German, Polish and Italian. Considering the fact that Professor Blaho is mainly an expert in the field of Roman law, it is not surprising that the majority of articles is devoted to certain problems of this legal area and this period of legal history. However, some authors, because of the wide range of Roman-law culture, go beyond the above-mentioned thematic line. That is also the reason of finding points of contact between the branches of theory of law, positive civil law, Church law, not forgetting general legal history. Immediate impulses for this thematic overlap is, for example to certain Czech contributors, the fact of new Czech Code of Civil Law coming into effect on 1 January 2014.

Readers interested in the topic of Church law may found a lot of valuable material. Since the students of canon law usually deal with the sources of Church law itself, it is revealing for them to meet also the Ceasar’s Church legislation from the times when the Christianity was

authorized and later official religion. The Byzantine “symphony” of relationships between the state and the Church is well illustrated in the article by Pal Sárosi (representing the Miskolci Egyetem, Állam- és jogtudományi kar) about the changes of the prison system in the Christian Roman Empire (“Die Änderungen des Gefängniswesens im christlichen römischen Reich”). For example, according to the Novels of Justinian, the cloisters became the jails for deposed bishops, clerics devoted to the gambling or false testifying at the courts, deaconesses living as concubines, illegally divorced persons, adulterous women and persons selling real properties to heretics (pp. 528—529). The same topic is undertaken by Róbert Brtko (Univerzita Komenského v Bratislave, Právnická fakulta) in the paper “*Catholics lex* and the decrees of emperors concerning the Church matters.” This article pays attention, among others, to the very early enactment by the Emperor Constantine who in 318 AD introduced particular type of process, so-called *episcopalis audientia*, by which he granted the Christians the alternative not to turn on the civil court with certain causes, but to the Church forum, thus the bishop applied the “Christian” law, *lex Christiana* (pp. 41—42). Constantine also granted to bishops the right to *manumissio*, the manumitting of slaves: “The will to manumit the slave had to be stated before the Christian community in the temple and to be accepted by the Church authority that *ad probationem* made the written document about it” (pp. 42—43).

Ignác Antonín Hrdina (Univerzita Karlova v Praze, Katolická teologická fakulta) paid attention to the reception of Roman law in Canon law in the article entitled “*Ecclesia vivit lege Romana*.” The author introduces in the very beginning of the paper an inspiring comparison: “Theologians are used to say nowadays, and the participants of the Second Vatican Council did the same, that the Christian Church is the younger sister of Jewish synagogue in the area of religion. It may be said by analogy that canon law in the area of law is the younger brother of Roman law” (p. 223). The Roman-law heritage proves itself in the canon-law concept of Church matrimony whose foundation, literally the root — *radix* — is the consent of parties, *consensus matrimonialis* (p. 224). The summary of canon enactments on the ordaining of clerics is called “law of ordination” until nowadays, having its origin in the old-Roman law anyway: “The same way Church ranks its holders by the rite of ordination, deacons, as well as priests or bishops, to particular state — *ordo (diaconorum, presbyterorum, episcoporum)*, namely by the rite that by its name already (*ordinatio*) refers to the categorization of distinguished states of Roman society — for example the state of senators (*ordo senatorius*), state of cavalry (*ordo equester*), etc.” (pp. 224—225). Other Church life and institutions maintain the terminology of the old-Roman times, “[...] for exam-

ple the papal curia copies truly enough the organization of emperor's hall; similarly — naturally as smaller units — the bishop's curias. The names of Church administrative districts are taken over from the Roman state administration (province, diocese) too, even in different meaning, etc. — the samples would not have any rhyme or reason” (p. 225). In the context of canon process law the author reminds then the insufficient interdisciplinary connection by the words of the leader of legal-historical science, a Prague professor Tureček that were written in 1935: “Due to the Church activities the miracle happened, the reception of Roman law, dead for a long time. The acceptance of the Roman-canon process in various territories was not a miracle at all, because canon law was and still is appreciated, vivid legal system. The reception of dead Roman law was a miracle [...] and the Church was the most scientific, most vital, strongest and most effective. As damage to the science may be classified, the Romanists often forget about this fact with admirable respect to the Roman culture” (p. 225). The desire for a modern codification of Canon law was aroused during the 19th century also in the Catholic Church, the will to create the modern Code of Canon Law, namely under the influence of inspiration of experiences of the Roman Empire and the reception of old-Roman law by the Church in the times of Middle Ages: “The codification of canon law, required then badly anyhow, did not happen during the 19th century, however the bishops invited to the First Vatican Council were calling out and requiring that the Canon law should be revised and better arranged according to the model of all modern states, as Gregory IX imitated Justinian” (p. 230). The medieval reception had also — from the contemporary point of view — its negative sides that were depicted in the article by Veronika Kalyniv (Trnavská univerzita v Trnave, Právnická fakulta), entitled “Death sentence in medieval inquisition trial.” The death sentence for “counterfeiting” of faith in the form of heresy was justifiable also for the most important medieval theologian of Western Christianity, St. Thomas Aquinas: “The crimes of high treason and counterfeiting of money was punished by death for a long time according to secular law, which afforded him the main argument for requiring the same punishment for heretics” (p. 274). Among others, the authoress presents the common formula to hand the condemned heretic over into the hands of secular power to execute them: “We are releasing you off our court, relinquishing you to secular power. However, we are asking the secular court to lighten your sentence to be avoided bloodshed and danger of death” (p. 275). An opposite process, that is weakening of Church's influence in the modern state, was described in the article “Secular state and religious freedom in sociology and legal theory” by Michaela Moravčíková (Trnavská univerzita v Trnave, Právnická fakulta). The authoress points out the contempo-

rary paradox that the French law of separation of 1905 establishing the regime of so-called lay state finds its justification in Catholic believers, although being directed against their church originally: “If the Catholics had been declining the acceptance of the law of separation for ages, nowadays it is the Catholic hierarchy, who is against any revision of this law. [...] In the present the Protestants came with an idea of its revision, trying to achieve the financing of sacral places by state” (p. 443).

Stanislav Příbyl (Jihočeská univerzita v Českých Budějovicích, Teologická fakulta) points out in the article “Personal status of clerics: matrimony, monkhood or celibacy?” the legislation of Augustus that pressured citizens of the Roman Empire to enter into marriage and give life to children (p. 499). Its indirect consequence was the slowing down of continuous process that resulted in the requirement of abstinence for clerics. The monk discipline was relevant also for the Cyrillo-Methodian mission, which is the main theme of Vojtech Vladár (Trnavská univerzita v Trnavě, Právnická fakulta) in the article “Church law in Great Moravia.” High cultural profile of the activities of Constantine and Methodius is apparent for example in the extraordinary translations of both apostles: “Especially the translation of sacral books is qualified by researchers as the best philological work of the 9th century that overcame also the chronologically older translation of Wulfila” (p. 625). Constantine and Methodius did not bring the Byzantine liturgy along, as it is frequently claimed: “However, in Great Moravia the Eastern liturgy of St. John Chrysostom was officiated, but Roman-Oriental liturgy of St. Peter that was created in the first half of the 9th century and represents the Greek translation of Roman mass of the Pope Gregory I the Great (Gregorius Magnus, 590—604) with certain Byzantine elements” (p. 626). Efforts of both apostles in the area of liturgy had its remarkable outcomes in the broader historical perspective: “Timelessness of the work of Constantine and Methodius can be seen especially in the fact that the Second Vatican Council [...], following the example of Constantine, officially authorized the using of national languages in the liturgy on the 4 December 1963. Their contribution reminds also the apostolic letter *Egregiae virtutis*, by which they were proclaimed by the Pope John Paul II in 1980 [...] the co-patrons of Europe” (p. 650).

The collection is supplemented with valuable register of sources created by Peter Mach, with prevailing domination of the compilations of Justinian’s codification, which were the object of Peter Blaho’s translations into Slovak language. His Prague colleague, professor Hrdina, translator of the documents of the Council of Trent (1545—1563), highly appreciates especially these activities: “I am confident it will be appreciated by scientific lawyers’ community and especially our younger colleagues at the

departments of legal history and elsewhere that represent, despite of not very favourable conditions, living hope of legal-historical science. Especially Professor Blaho is one of the most appreciated persons that have merit in guarantying this hope the real basis; the honest thanks for this activities go to him" (p. 232).

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