

CANON LAW AND CLOISTERED WOMEN: PERICULOSO AND ITS COMMENTATORS, 1298–1545 by ELIZABETH MAKOWSKI. The Catholic University of America Press, 1997. x + 149 pp (hardback \$46.95) ISBN 0-8132-0884-X.

A review by the Revd Fr W. Becket Soule, OP

The bull *Periculoso* of Boniface VIII was the first papal legislation to require strict enclosure for nuns of every order in the Latin Church. Issued in 1298, it was included in that pope's official compilation of papal legislation known as the *Liber Sextus* (3. 16, c. un.). The decree imposed strict active and passive cloister on all monasteries of nuns, that is, it prohibited not only exit from, but also entrance by unauthorised persons into, the monastic enclosure. The provisions of this legislation were re-enacted, and stern penalties for its violation were added, at the Council of Trent (1563).

Elizabeth Makowski's consideration of this bull forms the fifth volume in the Studies in Medieval and Early Modern Canon Law series, published by the The Catholic University of America Press. Her study begins with a discussion of the religious climate of the last decades of the thirteenth century, and of the circumstances in which Boniface VIII drafted the decree. After a short consideration of the promulgation and transmission of *Periculoso* to the local ordinaries and academics of Europe, the book reviews the canonical commentaries on this decree, grouped in three chronological periods (up to the *glossa ordinaria* of Joannes Andreae in 1305, the commentators concerned with the juridical implications of the legislation in the fourteenth and early fifteenth century, and the later writers who 'lingered over technicalities, whether of enforcement or circumvention', from the fifteenth century until the Council of Trent).

The work concludes with the text of two decrees of Boniface VIII (*Periculoso* itself, and the bull promulgating the *Liber Sextus*, known as *Sacrofanctae Romanae*), with English translations.

The clearly written survey of legal commentary on *Periculoso* is this book's greatest contribution. Even technical points of law are explained with sufficient clarity, so that the matters at issue can be understood even by one who is not a specialist in mediaeval canon law. Certain questions are used to tie together the consideration: for example, to what extent (and by what authority) were nuns who had been professed under a less stringent rule obligated by the more stringent provisions of this new legislation?

Of special interest is the author's consideration of the application of the provisions of *Periculoso* in England. Of particular concern is the question of the enforcement, or lack of enforcement, of the details of enclosure. Most of the references are to Cistercian and Franciscan monastic communities of women, perhaps because the sources are more accessible for these groups than for, say, Dominican women. The injunctions of English bishops regarding enclosure are also reviewed; the testimony of the English canonists John Acton and William Lyndwood suggests that both the nuns and those whose job it was to enclose them often had divided (if not overtly hostile) feelings about the provisions of the papal mandates.

A serious caution must be expressed about the book's first two chapters. While the author is lucid, and even skilful, in handling the text of the bull and its commentators, the introduction appears as a rather haphazard collation of three or four secondary sources. There is not a single reference to a primary source, and even in cases in which an explicit reference is made in the body of the text (such as to Caesarius of Arles' *Regula ad moniales*, or Jerome), the footnote cites instead a modern work on religious life for women.

This methodology causes some problems in investigating the author's contention

that the imposition of strict cloister for women was, in some sense, a 'radical change in the discipline of female religious houses'. The goal of the cloister, since ancient times, has been to provide the religious house with peace and quiet, in a place where the members may effectively be able to dedicate themselves to the pursuit of evangelical perfection. The enclosure is also not unconnected to the protection of chastity, to avoid what may threaten it: it thus follows that the enclosure prohibits entrance into the monastery of persons of the other sex, with exceptions made either by law or by the house's own rule or typicon. Some elements of the cloister were found at the very beginning of monasticism: Pachomius (early fourth century AD) established enclosure in his monasteries, and regulated the cloister of women's monasteries in a different and much stricter fashion than in men's monasteries (*Praecepta* nn. 51–5). The Church's universal law, also, regulated the enclosure of women's communities (even in cases in which it did not do so for men's communities) through such enactments as c. 4 of Chalcedon (451), c. 46 of Trullo (691), and c. 20 of Nicaea II (787), as well as the legislation of Justinian. Even in such 'non-monastic' rules as that of Augustine, the female version of the rule contained different, and stricter, provisions for enclosure than did the male version (although, rather surprisingly given its influence in the Middle Ages, Augustine's rule is not mentioned in Makowski's book at all). The introduction to this book does not address the development of the canonical institution of enclosure for women's communities (as distinct from the enclosure of men's communities), but rather contends that there was a 'fundamental equality' between monks and nuns (reiterated, for the most part, based on the secondary sources). On the basis of the primary sources, however, one cannot support such a contention, given the numerous distinctions made between enclosure in communities of men and women, from the very beginnings of monastic history.

The provisions of *Periculoso* would certainly be seen in a different light if it were shown that they applied (for the first time by papal authority) regulations which were, in fact, already contained both in the Church's common law (both East and West) and the various rules of women's communities. The 'innovation' in *Periculoso* was not, as the author contends, that nuns were for the first time treated in a different way than monks, but rather that this difference became a matter for legislation on a new and higher level than it had before.

RELIGIOUS INSTITUTIONS AND THE LAW IN CANADA by M. H. OGILVIE. 1996. Carswell. ISBN 0-459-25392-1 (hardback £42), ISBN 0-459-25398-0 (paperback).

A review by Professor Ian Leigh, University of Durham

For those interested in religious liberty, Canada is a fascinating test-bed. As in the United States and Australia, successive waves of immigration have left their mark so that the present population (especially in the major cities) is a remarkably diverse blend of ethnic and religious groups. This is partly the result of post-war immigration from South-East Asia, but long-standing Jewish and Orthodox communities exist also. Religious toleration has been written into the very fabric of the Constitution, dating back to the Confederation of 1867 when the predominantly Protestant Upper Canada joined with the predominantly Roman Catholic Lower Canada. Professor Ogilvie grounds her account of the law relating to religious institutions (predominantly churches and schools) and legal recognition of religion in this constitutional history.

After a valuable introductory chapter dealing with politico-theological theories of church-state relations, in chapters 2 to 4 the history and development of religious institutions in Canada and the impact of the Constitution upon religion are consid-