RELATION BETWEEN THE LIBER EXTRA AND THE CODEX IURIS CANONICI (1917) IN THE LIGHT OF CANONICAL SOURCE AND SCIENCE HISTORY*

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1. Introduction

Canon law, as a system of the Church's disciplinary rules that directs Christ's faithful (*christifideles*) "to divine worship, peace, and preserving Christian justice, at last to reach the eternal happiness" (i.e. Francis Xavier Schmalzgrueber S. J.[1]), may for this reason actually be considered as "sacred law" (*ius sacrum*), since its norms promote, directly or indirectly, the sanctification of the individual persons. If we contrast this with the norms regulating the common life of the human society (*ius civile*), then we may call it in a broad sense divine law (*ius divinum*), or law bound to the divine law, because a canonical law has a special bond to the divine law (i.e. Ioannes Paolus Lancelotti[2]). On the one hand, numerous positive ecclesiastical laws merely formulate the divine law, the force of which no hierarchical level is able to dispense with. Alternatively, even in relation to merely ecclesiastical laws, it must be noted that these have a singular bond with divine law as the means of the observance and application of its contents.[3] These meanings were crystallized during the Church's life, first in the customary law of administering the sacraments and proclaiming the Gospel, and then in written form. The entire canonical system is one,

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1 G. Michiels: *Normae generales iuris canonici*. I. Lublin 1929. 11.

2 Leges omnes, ac iura omnia in dirigendis humanis actionibus ad bene, beateque vivendum, non aliter se habent, quam habenae, frena, et calcaria ad incitandos, et moderandos gressus, et cursus equorum: unde cum lex iubet alieno abstinere, ab iniuria temperare, neminem denique hominem laedere, contrafacientibusque poenas addir, nobis ac cupiditatibus nostris quasi frena quaedam iniicir, et habens praemit, flagellisque coercet. Cum vero honesta iubet, atque ad ea praemiis nos allicit, naturae humanae ad bonitatem stimulos addit, et calcaria subditur demum cum quaedam benigne indulgere, permittit, vel tolerat, habenas laxat. Sed tamen tam cohibendo, quam incitando, quam etiam indulgendo ad unicum tantum, ac certum finem genus humanum dirigit, nempe ad bene, beateque vivendum (...). J. P. Lancelotti: *Institutiones Iuris Canonici, quibus ius pontificium singulari methodo*. Coloniae 1609. 1050.

3 Cf. Erdő P.: *Metodo e storia del diritto nel quadro delle scienze sacre*. In: E. De León – N. Álvarez de las Asturias (a cura di): La cultura giuridico-canonica Medioevale premesse per un dialogo ecumenico (Pontificia Università della Santa Croce, Monografie giuridiche 22), Milano 2003. 3–22, especially 15–16. J. C. M. Errázuriz: *Lo studio della storia nella metodologia canonistica: la rilevanza della nozione di diritto*. In: E. De León – N. Álvarez de las Asturias: (a cura di), *La cultura giuridico-canonica Medioevale*. 109–121, especially 114.

united logical structure – if you like: a pyramid –, gradually built on the doctrine of the Church, in order to protect that, in close connection to natural law (*ius naturale*) which statement is enlightened well by Zenon Grocholewski.[4] Over the centuries several methods have arisen in order to interpret, to instruct and to apply those canonical norms which were gradually composed. It was already true before the appearance of the university teaching system, for example at the cathedral schools of Europe. In the golden age of universities, from the mid-12th century it was based on the *Decretum Gratiani* (1140).[5] While the use of the knowledge of canon law science was diffused widely in daily ecclesiastical practice, canon law instruction was strengthened at the level of cathedral and university teaching.[6] At the same time the use of some canonical handbooks also became essential for day-to-day parish work.[7] This is the turning point in the canon law science when the synthesis of the formal sources and collections stimulated a clear methodical system which became the basis not only for teaching, but it caused a new – well organized – technique for composing the new canon law – decretal – collections i.e. *Liber Extra* (1234). This new decretal collection has theoretically changed the traditional structure of the instruction and administration of canon law, because of its promulgation by Pope Gregory IX (1227–1241). From this particular time only the various glossal interpretations could take place around the text, but the contextual enlargement could not be a possibility any more. Nevertheless, the composition and promulgation of *Liber Extra* cannot be interpreted as 'codification'.[8]

2. The *Liber Extra* and its structure

Before St. Raymund of Peñafort composed his decretal collection, ordered by Pope Gregory IX, for 1234 – known *Liber Extra* or *Decretales Gregorii IX* – already compiled his (incomplete) canonical work as professor of Bologna, under the title: *Summa Iuris Canonici*. Within this earlier work he had already crystallized his own system and structural characteristics. The known form of this *Summa* can be dated from 1221.[9] Raymund – as a trained professor who explained canon law, commenting on the *Decretum Gratiani* and also the *Compilationes antiquae* at the University of Bologna – used a comprehensive and well-

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[4] Z. Grocholewski: *La legge naturale nella dottrina della Chiesa*. Roma 2008. 41–49.

[5] With detailed bibliography, cf. J. M. Viejo-Ximénez: *Dectreto de Graciano*. In J. Otaduy – A. Viana – J. Sedano (dir.): Diccionario General de Derecho Canónico, II. Pamplona 2012. 954–972.

[6] C. H. Haskins: *The Renaissance of the Twelfth Century*. Cambridge Mass.-London 1993. 212–222.

[7] Szuromi Sz. A.: *Medieval Canon Law, Sources and Theory* (Bibliotheca Instituti Postgradualis Iuris Canonici Universitatis Catholicae de Petro Pázmány nominatae III/12). Budapest 2009. 100.

[8] A. M. Stickler: *Historia iuris canonici latini* (Institutiones academicae. Historia fontium I). Roma 1950. 367; cf. M. Bertram: *Die Dekretalen Gregors IX. Kompilation oder Kodification?* In: Longo, C. (a cura di), Magister Raimundus: atti del convegno per il IV centenario della canonizzazione di San Raimondo de Penyafort: 1601-2001. Roma 2003. 61–86.

[9] First modern edition: J. Rius Serra (ed.): *Sancti Raymundi de Penyafort Opera omnia, I: San Raymundo de Penyafort, Summa iuris*. Barcelona 1945; cf. S. Kuttner: *The Barcelona edition of St. Raymond's first treatise of canon law.* In Seminar 1 (1950) 52–67, especially 54, 56–67. A new modern edition by X. Ochoa – A. Díez (ed.): *Summa de iure canonico* (Universa Bibliotheca Iuris I-A). Roma 1975; cf. S. Kuttner: *On the method of editing medieval authors*. In: The Jurist 37 (1977) 385–386. A. García y García: *La canonística ibérica (1150-1250) en la investigación reciente*. In: Bulletin of Medieval Canon Law 11 (1981) 44.

structured system to summarize the canonical material, distributed into the following seven parts: I) *Varie species et differentie iuris*; II) *De ministris canonum, differentiis et officiis eorundem*; III) *De ordine iudiciario*; IV) *De contractibus et rebus tam ecclesiarum quam clericorum*; V) *De criminibus et penis*; VI) *De sacramentis*; VII) *De processione spiritus sancti*. Even in the light of these themes it is quite clear that the contemporary university instruction placed specific stress on explaining the judgment of charges against clerics, as well as the minute presentation of sacramental discipline, or on exposition of the basic norms of the ecclesiastical trial (i.e. the material object, the active subject, the form, the passive subject, and the formal object). Regarding this *Summa* and also on the composition of *Liber Extra*, José Miguel Viejo Ximénez recently published a precise analysis in 2017.[10]

If we turn our attention to the structure and contents of the *Liber Extra*[11], we can find St. Raymund's clear categories and concept within the new decretal collection as in the above mentioned *Summa*. We do not know too much about the process of its composition, but it was promulgated by Gregory IX's Bull *Rex Pacificus* on September 5th 1234.[12] The collection is distributed into five books, containing titles (*titulus*) and chapters (*capitulum*). Book I (*Liber Primus*) incorporates forty-three titles (from *De summa trinitate et fide catholica* to *De arbitris*)[13]; Book II (*Liber Secundus*) thirty titles (from *De iudiciis* to *De confirmation utili vel inutili*)[14]; Book III (*Liber Tertius*) fifty titles (from *De vita et honestate clericorum* to *Ne clerici vel monachi saecularibus negotiis se immisceant*)[15]; Book IV (*Liber Quartus*) twenty-one titles (from *De sponsalibus et matrimoniis* to *De secundis nuptiis*)[16]; and Book V (*Liber Quintus*) forty-one titles (from *De accusationibus, inquisitionibus et denunciationibus* to *De regulis iuris*)[17]. The entire material covers 1965 chapters.[18] This structure had a substantial iimpact upon the further decretal collections (i.e. a *Liber Sextus* – promulgated by Pope Boniface VIII [1294–1303] in 1298[19] –, *Clementinae* – promulgated by Pope John XXII [1316–1334] in 1317[20] –, *Extravagantes Ioannis XXII* [1325/1500][21], and the *Extravagantes Communes* [1500/1503][22]) which together with the *Decretum Gratiani*

[10] J. M. Viejo-Ximénez: *Raymund of Penyafort Decretalist*. In: Folia Theologica et Canonica VI (28/20) [2017] 119–147, especially 121–123, 126–129.

[11] Cf. M. Bertram: *Decretales de Gregorio IX*. In: J. Otaduy – A. Viana – J. Sedano (dir.): Diccionario General de Derecho Canónico, II. 916–923.

[12] Gregorius IX, Bulla, *Rex Pacificus*: L. Auvray (ed.): *Les registres de Grégoire IX*. Paris 1896. I, num 208; cf. Friedberg, Ae. (ed.): *Corpus iuris canonici, II*. Lipsiae 1888 (repr. Graz 1955) [hereafter: Friedberg II] 1–4.

[13] Friedberg II. 5–238.

[14] Friedberg II. 239–418.

[15] Friedberg II. 419–660.

[16] Friedberg II. 661–732.

[17] Friedberg II. 733–928.

[18] Book I: capp. 439; Book II: capp. 418; Book III: capp. 499; Book IV: capp. 165; Book V: capp. 444.

[19] Friedberg II. 937–1124.

[20] Friedberg II. 1133–1200.

[21] Friedberg II. 1205–1236.

[22] Friedberg II. 1239–1312.

and the *Liber Extra* constitute a canon law 'corpus', published in printed form at the first time in Rome in 1582. It has been called *Corpus iuris canonici* since 1671.[23]

After the Council of Trient (1545–1563) the above mentioned material was supplemented with the decisions of the general council. This 'corpus' together with further papal and curial legislation, caused serious and difficult situation for those canonists who liked to apply the Church's norms to specific canonical cases.[24] There were already several ways for interpretation – beside the 'Glossa Ordinaria', attached to every single decretal collection of the *Corpus* – which was developed in several different scientific centers (I.e universities) of canon law between 1545 and 1773.[25] This period has crystallized the most significant principles and methods of canon law science.[26] Among the initiatives we can find the institutional method (*institutiones iuris canonici*)[27] and its most important theoretician: Ioannes Paolus Lancelotti (†1590).[28] He systematically treated the material of the *Corpus Iuris Canonici*, and arranged it into four books within his own work[29]: persons (*De personis*), things (*De rebus*), processes (*De iudiciis*), and penal cases (*De delictis*).[30] The authority of the canonical sources and their critical systematization, applying the institutional method in theory, then implement it – through different forms – into the praxis, gradually reached that appropriate contents, structure, method, and interpretational technique which improved the canon law science. This clear method defined the structure of the auxiliary books to the *Corpus* (e.g., the work of Zegerus Bernardus Van Espen [†1728][31], or much later Franz Xavier Wernz [†1914][32]) which not only support the application of a concrete canonical source, but had a substantial impact upon the first codification as well.[33]

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[23] J. Sedano: *Dal Corpus Iuris Canonici al primo Codex Iuris Canonici: Continuità e discontinuità nella tradizione giuridica della Chiesa latina*. In: Folia Theologica et Canonica IV (26/18) [2015] 215–238.

[24] C. Fantappiè: *Chiesa romana e modernità giuridica, I: L'edificazione del sistema canonistico (1563-1903)*. Milano 2008. 41–44.

[25] In detailed cf. Szuromi Sz. A.: *A kánonjogtudomány legjelentősebb szerzői és munkái 1545 és 1773 között*. In: I. Boros (ed.): Keresztény megújulási mozgalmak (1500–1800), Budapest 2019. 9–18.

[26] Erdő P.: *Storia della scienza del diritto canonico. Una introduzione*. Roma 1999. 142–143, 146, 149–150, 154.

[27] C. Fantappiè: *Institutiones iuris canonici*. In: J. Otaduy – A. Viana – J. Sedano (dir.): Diccionario General de Derecho Canónico, IV. 635–636.

[28] J. Miñambres: *Lancelotti, Giovanni Paolo*. In: J. Otaduy – A. Viana – J. Sedano (dir.): Diccionario General de Derecho Canónico, IV. 970–971.

[29] J. P. Lancelotti: *Institutiones Iuris Canonici, quibus ius pontificium singulari methodo*. Coloniae 1609.

[30] Cf. L. Sinisi: *Nascita e affermazione di un nuovo genere letterario. La fortuna delle Institutiones iuris canonici di Giovanni Paolo Lancelotti*. In Rivista di storia del diritto italiano 77 (2004) 53–95.

[31] Z. B. Van Espen: *Iuris ecclesiastici universi, I-III*. Venetiis 1759. About his work cf. Erdő P.: *Storia della scienza del diritto canonico*, 149.

[32] F. X. Wernz: *Ius Decretalium ad usum praelectionum in scholis textus canonici sive iuris decretalium, I–VI*. Romae 1905–1913.

[33] Szuromi Sz. A.: *A kánonjogtudomány legjelentősebb szerzői és munkái 1545 és 1773 között*. 18.

3. Codification and its relation to the *Corpus Iuris Canonici*

As Pietro Card. Gasparri had explained in his introduction, to the Pius-Benedict Code, the reason for the canonical codification was similar to the civil codifications from 1804.[34] Due to the numerous canonical norms from different times and circumstances, it was difficult todefine the right source with the correct interpretation based upon the many parallel regulations. This was due in part to the several alterations within the texts on the similar cases. This had made it increasingly difficult to establish the appropriate canonically conclusion of the process. There were still many loopholes and misinterpretations within the canonical system too. The mentioned problems were listed accurately by Alfonse M. Stickler: "*multitudo legum*", "*inordinatio legum*", "*forma legum*", *incertitudo legum*", *inutilitas legum*, and "*lacunae legum*".[35] Based on the above mentioned reasons Pope Pius X (1903–1914) convoked the Cardinals who had office in Rome in 1904 to find out their opinion on his new Motu Proprio which was under preparation at that time. This document had been promulgated on March 19th 1904 with the introductory words: *Arduum sane munus*.[36] The Motu Proprio expressed the order of the Holy Father to collect the entire material of the universal canonical corpus, and to structuralize it into a clear organized system.[37] Promoting this extensive work, the Holy Father had established a Pontifical Commission of cardinals, attaching to that a ministerial team of consultors as experts (*Collegium Collaboratorum*).[38] The pope appointed Pietro Gasparri as the beginning secretary of the Commission, then – from 1907 – he continued his office as the head of the Commission.[39] Considering the professional opinions of consultors, the Commission had concluded on the real contents of the codified law, which – based on their decision – should be as precise as possible for the entire universal canonical legal system. In order to reach this goal it was necessary to elaborate upon all of the canonical texts which were in force from the material of the *Corpus Iuris Canonici*, from the disciplinary regulations of the *Council of Trient* (1545–1563), from the official papal legislative acts; moreover those disciplinary statements, decrees, instructions, notes, etc. which had been issued through the activity of the Sacred Congregations and the Curial Tribunals of the Apostolic Holy See; but in the same time omitting those canonical regulations which had been already re-regulated, derogated or overruled. This collected and cleansed canonical material was intended to be a basis for a hierarchical and thematically unified text of the Code of Canon Law, distributed into canons, and within them paragraphs, or even numbers.[40] Pope Pius X made clear that the codification is not a creation of a new

[34] A. M. Stickler: *Historia iuris canonici latini* (Institutiones academicae. Historia fontium I). Roma 1950. 380–383.

[35] A. M. Stickler: *Historia iuris canonici latini*. 371–376.

[36] ASS 26 (1904) 549–550.

[37] In detailed cf. E. Baura – N. Álvarez de las Asturias – Th. Sol (a cura di): *La codificazione e il diritto nella Chiesa*. (Pontificia Università della Santa Croce, Monografie Giuridiche 46). Milano 2017. 35–70.

[38] In detailed cf. Ph. Maroto: *Institutiones iuris canonici*. Madrid 1918. 117.

[39] V. Van Hove: *Prolegomena* (Commentarium Lovaniense in Codicem Iuris Canonici I/I). Romae 1928. 336–339.

[40] Cf. J. Llobell – E. De León – J. Navarrete: *Il libro "De processibus" nella codificazione del 1917. Studi e documenti. I. Cenni storici sulla codificazione "De iudiciis in genere" il processo contenzioso ordinario e sommario, il processo di nullità del matrimonio* (Pontificia Università della Santa Croce. Monografie Giuridiche 15). Milano 1999. It was well-proved that the most significant part of this enormous work had been done by Justinian Serédi OSB, cf. Szuromi Sz. A.: *Justinian Seredi OSB's Personal Contribution in the Codification of*

law, but preserves the old law by transformation to that general level which is applicable for any variation of cases of law.[41] The distributional technique of the classic canonical auxiliary handbooks had a strong influence on the preparatory method, particularly Franz Xavier Wernz's outstanding – above mentioned – contemporary work on canon law and its structure, thematic, method and dealing with original sources.[42] If we compare Wernz's work's structure and thematic with the later promulgated *Codex iuris canonici*'s structure, it unambiguously recognized the close similarity, in particular regarding the arrangement of parts, titles and subtitles.[43] It is evident therefore, that through the structure, thematic, etc. not only the contents of the *Corpus iuris canonici*, but indirectly its collections' classical structure had an essential influence on the *Codex iuris canonici* (1917), i.e. *De personis*, *De rebus*, *De iudiciis*, *De delictis*. We would like to emphasize here that this basic structure was rooted in the method of St. Raymund of Peñafort and in the *Liber Extra* which structure defined the further decretal collections.

The *Codex* therefore distributed into five books, which are the following: I) *Normae generales*; II) *De personis*; III) *De rebus*; IV) *De processibus*; V) *De delictis et poenis*. The 'General Norms' (*Normae generales*) categorizes under independent titles the meaning of Church laws (*De legibus ecclesiae*), customary law (*De consuetudine*), time (*De temporis supputatione*), rescripts (*De rescriptis*), privileges (*De privilegiis*) and the definition of dispensations (*De dispensationibus*). Book II deals in separated unit with clerics (*De clericis: in genere; in specie*), religious members (*De religiosis*) and with laymen (*De laicis*). The things which take place in Book III involve the sacraments (*De Sacramentis*), sacred places and times (*De locis et temporis sacris*), acts of Divine cult (*De cultu divino*), the Magisterium of the Church (*De magisterio ecclesiastico*), benefice and not collegial juridical persons of the Church (*De beneficiis aliisque institutis ecclesiasticis non collegialibus*), moreover the temporary goods of the Church (*De bonis Ecclesiae temporalibus*). Book IV – was dedicated to the canonical processes – contains the static and dynamic part of process law (*De iudiciis*), then the beatification and canonization process (*De causis beatificationis Servorum Dei et canonisationis Beatorum*), finally the process of nullity and the application of sanctions (*De modo procedendi in nonnullis expediendis negotiis vel sanctionibus poenalibus applicandis*). The last book of the Code lists those sins which realize delicts (*De delictis*), sins (*De poenis*) and the single delicts together with their sanctions (*De poenis in singula delicta*). The entire Code contains 2414 canons and their original sources are listed in the edition of 1918 of the *Codex Iuris Canonici* (1917).[44]

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the CIC (1917). In: J. Miñambres (a cura di): Diritto Canonico e Culture Giuridiche nel Centenario del Codex Iuris Canonici del 1917 (Atti del XVI Congresso Internazionale della Consociatio Internationalis Studio Iuris Canonici Promovendo, Roma 4-7 ottobre 2017). Roma 2019. 911–918.

[41] R. Epp – C. Lefebvre – R. Metz: *Le droit et les institutions de l'Église catholique latine de la fin du XVIII^e siècle à 1978. Sources et institutions* (Histoire du Droit et des Institutions de l'Église en Occident XVI). Paris 1981. 217–241.

[42] F. X. Wernz: *Ius Decretalium ad usum praelectionum in scholis textus canonici sive iuris decretalium, I–VI*. Romae 1905–1913.

[43] Cf. Szuromi Sz. A.: *Serédi Jusztinián (1884-1945)*. In: Hamza G. – Siklósi I. (ed.): Magyar Jogtudósok (Bibliotheca Iuridica. Publicationes Cathedrarurum LV), V. Budapest 2015. 132–141, especially 137.

[44] Cf. X. Ochoa – D. Andrés (ed.): *Leges Ecclesiae post Codicem iuris canonici editae, VII*. Romae 1994.

4. Conclusion: The effect of *Liber Extra* on the *Codex Iuris Canonici* (1917)

As mentioned above, the journey from the early canonical legislation to the *Decretum Gratiani*, then from the *Liber Extra* to the *Corpus Iuris Canonici* is a long and complicated development of the science of canon law. The mentioned auxiliary books which have kept the essential structure and method of the decretal collections while explained the canonical regulations influenced the process, method, technique and structure of the first codification, ordered by Pope Pius X. Nevertheless, not only this theoretical or technical correlation can be found between the first promulgated collection of the *Corpus iuris canonici* and the *Codex Iuris Canonici* (1917), but also an indispensable textual bond. If we take a glance at the footnotes of the *Codex*, which lists the original textual sources of the single canons we can have a clear overview of those fields and themes which basically were built upon the contents of the *Liber Extra*. These themes are the following: *De legibus ecclesiasticis*; *De consuetudine*; *De rescriptis*; *De privilegiis*; *De dispensationibus*; *De personis* (finishing with the question of consanguinity (Cann. 87–97); *De clericis in genere* (only Can. 108 § 1); *De iuribus et privilegiis clericorum* (particularly Cann. 120-123); *De officiis ecclesiasticis*; *De potestate ordinaria et delegata*; *De suprema potestate deque iis qui eiusdem sunt ecclesiastico iure participes* (especially on the Roman Pontiff, the general council, patriarchs, primates, and metropolitans); *De Episcopis*; *De Synodo diocesana* (only the first canon: Can. 356); *De Capitulis canonicorum*; *De vicariis foraneis*; *Parochus* (the introduction: Can. 460 § 1); *De religionum regimine*; *De locis et temporibus sacris*; *De bonis Ecclesiae temporalibus* (only the introductory text: Can. 1499 § 1); *De iudiciis in genere*; *De foro competenti*; *De natura delicti eiusque divisione*; *De poenis in genere*; *De excommunication*; *De interdicto*; *De suspension*; *De delictis contra fidem et unitatem Ecclesiae*. It is quite clear therefore, that those questions which received frequent new – more precise – definitions for various circumstances between the mid-12th century and the first part of the 13th century, among the sources to the *Codex* (1917) we can find at the first place the reference to the *Liber Extra*. However, if more precise definitions appeared in the other decretal collections of the *Corpus*, these were used by the later source. It is particularly true regarding those themes which were expansively described by the Council of Trient (e.g., sacraments, education for priesthood, etc.), or by some curial legislations, but even by detailed legislation of Pope Benedict XIV (1740–1758).[45] The structural, methodological and even textual bond between the *Liber Extra* and the *Codex Iuris Canonici* (1917) expresses convincingly the continuity of the canonical legislation from the beginning.[46] It clearly demonstrates the unbroken requirement that the Church's activity should be bound closely to Christ's Person and teaching, moreover to the Apostolic Tradition, which external representation is the Church's institutional unity in doctrine and discipline.

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[45] Cf. Szuromi Sz. A.: *The effect of Pope Benedict XIV's canonical works on the ecclesiastical process law*. In: Folia Theologica et Canonica IV (26/18) [2015] 191–200.

[46] S. Kuttner: *Harmony from Dissonance. An Interpretation of Medieval Canon Law*. In: S. Kuttner (ed.): The History of Ideas and Doctrines of Canon Law in the Middle Ages (Collected Studies Series CS 113), Hampshire 1992. I/1–16, especially I/5; cf. Szuromi Sz. A.: *Interpretation of the Church's discipline without the former sources?* In: Folia Theologica et Canonica IV (26/18) [2015] 253–266, especially 265–266.