CIRCUMSTANCES OF THE CREATION OF CODEX IURIS CANONICI (1917)

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The organizational structure, the operational principles as well as the, dicasterial character of the Holy See have always been the starting point for European rulers: a representation of the Roman imperial knowledge on state structure and view of law. Taking into consideration the expansion of Christianity within the borders of the Roman Empire, the dogma system and the institutions of the Roman law had a tremendous – however, not exclusive – impact on its legal development. The connection between canon law and Roman law proved to be mutually productive. During this time the codification of Iustinianus, the Roman law was considered to be Christian law.[1] The first book of the *Codex repetitiae praelectionis* issued in 534 was concerned with the legal environment of the Church.[2]

Following the disbandment of the unified Roman Empire, the Church attempted to preserve the achievements of the imperial tradition. The church endeavored to do this by "rescuing" the elements of the imperial tradition which were scattered all over the world in various legal systems. The aim was be ready for the era of a new major empire, when centralization and stability may be an opportunity for spreading an unified legal approach.[3]

Despite these preparations, Roman achievements were respected and incorporated by conquerors.

1. The edict containing 154 chapters promulgated by the Ostrogoth king, I. (Great) Theodoric in 500 in Rome obliged both Romans and Goths; its personal effects were still in power on the gothic population at the time of Emperor Iustinianus.[4]
2. The legal code issued by the Burgundian king Gundobad obliged the Romans living in Burgundy (however, only for a short period of time, as the codex which was introduced in 517 was soon ousted from usage by the Visigoth codex after the Frank conquest in 534).
3. The *Lex Romana Visigothorum* introduced by the Visigoth king II. Alarik in 506 already includes verbatim the original Roman measures that served as its source. Thus, among the sources one may find the Codex Theodosianus, C. Gregorianus, C. Hermogenianus as well as the sentences of Paulus and Gaius.

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[1] Hamza Gábor: *Gondolatok az állam és az egyház(ak) kapcsolatának alakulásáról – történeti áttekintés*. In: Magyar Tudomány (ed. Elek, László) 2012/6, 653–659.

[2] W. W. Buckland: *A text-book of Roman Law from Augustus to Justinian*. Cambridge, 1921, 47.

[3] J. S. Taylor Cameron: *Roman Law in the Middle Ages*. In: Judical Review (vol. X.), 1898, 446.

[4] James Muirhead: *Historical Introduction to the private law of Rome*. Edinburgh, 1886, 399–401.

The need for recognition and collection of the incurred legal material was also prevalent in the East. Excellent examples include the Basilika consisting of 60 books from the time of Emperor VI. Leo as well as the Hexabiblos, a book of 6 volumes compiled by 1345 by Harmenopulos, the judge of the city of Thessaloniki.[5]

The Collectio Dionysiana (between 500–523), the monumental work of Dionysius Exiguus (a monk probably of Scythian origin) was born at the time of the Migration Period inside the workshop of the Anicius family which aimed at conserving and stimulating scientific life. The opus evoked such high respect that it was named *codex canonum, corpus canonum*. During the Carolingian Renaissance, Pope I. Hadrian contributed substantially – however, not exclusively – to the efforts of the Frank king and later emperor Charlemagne to create a uniform legal system by preparing and presenting the Collectio Dionysio-Hadriana (774). This era ushered in a need for a uniform and exclusive legal material. This is particularly emphasised by the fact that even its deficiencies were sought to be substituted by the assembly of the Collectio Hadriano-Hispana (Collectio Dionysio-Hadriana + Collectio Hispana) and the Collectio Dacheriana (Collectio Dionysio-Hadriana + Collectio Hispana systematica).[6]

Concurrently with the consolidation of the Holy Roman Empire, the need for scholasticism initiated the installation of university professorships and consequently, the systematization of legal science. The civil and ecclesiastical law showed parallel, competing development; this noble competition facilitated the exacting cultivation of both the civil and canon law.[7]

The results of the 12th century are well-known . The text of the Digesta (found around 1080) catalyzed the development of the *ius civile*. In parallel with this (and also due to its scientific impulse), the Decretum Gratiani was born, placing the university education of canon law on new ground. Peter of Benevento compilation sought the exquisite and precise recognition of the law (compilatio tertia, 1210). The first authentic compilation of canon law revealed itself in legal history. In the issue of the Liber Sextus in 1298, such an opus was born. We can consider this event as being a prototype regarding the construction of civil law books of the modern era (or at least, can definitely be considered as their spiritual antecedent).[8]

Thus, the terminologies of *Corpus Iuris Civilis* and *Corpus Iuris Canonici* side by side constituted the backbone of the common European legal material, which is well exemplified by the university title of *doctor iuris utriusque*.

With the fading of the Middle Ages' world view, the secular powers and the Church were both faced with multiple challenges posed by the Modern Era. Concurrently with the spreading of absolutism, the state power gained an abstract character. Such a centralization, therefore, required the birth of uniform legal materials. In each case, the Roman Law

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[5] Charles Sumner Lobingier: *Continuity of Roman Law in the East*. In: Tulane Law Review (vol. IV.) 1930, 367–369.

[6] Alfonso M. Stickler: *La norma Canonica nel primo millennio della Chiesa*. In: Ius Canonicum (vol. 16.), 1976, 26.

[7] Che Carmichael – W. P. Eversley: *Roman Law and School of Bologna*. In: The Law Magazine and Law Review, 1889, 88–95.

[8] Danuta M. Gorecki – Arnold Wajenberg: *Canon Law: History and a proposed classification scheme*. In: Law Library Journal (vol. 75.), 1982, 381–402.

embodied ideas that could be referred to before the court. The vulgar and local customary laws, however, produced the differentiated versions of all these, even inside a single state. Thus, by the 18th–19th centuries a growing need for codification emerged. In this case, one could positively define it as codification activity, as it was directed towards the unification and development of the vulgar law originating from the divergent modifications of the Roman Law.[9]

A refreshing example is Greece after the liberation from the Turkish power, overruling the Roman legal material derived from the Byzantium only by the civil code of 1946.[10]

The concept of ius civile changed markedly over the centuries. In many places it is excusively understood in the narrow sense as the civil law. In any case, codifications of the civil law (let this phrase be used in any sense and let the content of the law material be anything, accordingly) created the codices of the nation-states with uniform approaches by the 19th century.[11]

If we approach the question from the perspective of legal sociology, a law may entirely prevail only if it is cognoscible by the addressees; otherwise the good standing can hardly be expected. In the same way, the need also exists on the subjects' side to recognize their rights and obligations: the legal certainty (and from their perspective, the psychic sense of security) can prevail only if the borders set by the law – that do not simply restrain but also appoint the security zone and make the good standing comfortable – are clear to them.[12]

The canon law of the 19th century could not in the least correspond to this. One had to be a prepared legal historian to safely know the operative law. From the 16th century, the organizational structure of the Roman Curia became increasingly complex and the volume of the legal publications also multiplied. It is true that the bullariums, the *Acta Sanctae Sedis* (from 1865)[13] and the compilations from certain congregations, offices and curial courts gave some base, but the accurate overview of these materials needed serious preparedness and plenty of time. Increasingly complaints came from the bishops' side that the overview of the operative law became encumbered – in certain cases it was almost unfeasible. The 1st Vatican Council had to close its session speedily and unexpectedly due to the stormy and tragic historic necessities, therefore the question of the need for codification could not be placed on the agenda.

Considering the civil codification activities in Europe as well as estimating the prevailing circumstances, Pope St. Pius X. (1903–1914) issued his motu proprio *Arduum sane munus* in 19 March 1904, initiating the codification activities on the ecclesiastical law.[14] The task was indeed enormous as not only a law suitable for the usage in a smaller political unit of a continent must have been created, but such regulations must have been established for the universal Church, suitable for the evocation of the desired legal effect in each and

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[9] Guy Carleton Lee: *Historical Jurisprudence. An introduction of the Systematic Study of the Development of Law*. New York – London, 1900, 399–440.

[10] Christina Deliyanni-Dimitrakon: *The Greek Civil Code*. In: Revue Hellénique de Droit International (vol. 65.), 2012. 418.

[11] H. Krabbe: *The modern idea of the State*. London – New York, 1922, 3–11.

[12] Lon Fuller: *Az erkölcs, ami lehetővé teszi a jogot*. In: Takács Péter (ed.): Joguralom és jogállam. Budapest, 1995, 111–115.

[13] Walter Kasper (ed.): *Lexikon für Theologie und Kirche I*. Freiburg, 1993, 116.

[14] Constant van de Wiel: *History of Canon Law*. Louvain, 1991, 168.

every corner of the World. Again, the special character of the task is demonstrated by the fact that not a single branch of the law, but rather each universal ecclesiastical canon had to be incorporated into one codex in a complex manner. Also, this had to be done with the consideration of almost two thousand years of ecclesiastical traditions and by featuring the legal materials and the good practice that was operative at the time of the codification.

Two persons took over the codification activities in a providentially manner: Cardinal Pietro Gasparri (from 1907) and Justinian Serédi, a Benedictine monk and later prince primate of Hungary.

Pietro Gasparri was born in 1852. He was educated in the Apollinare university of Rome and became the doctor of both laws and theology. He was ordained a priest in 1877. He became the prefect of the Apostolic Signatura and worked later as a teacher of the law of the Propaganda Fide collegium. In 1880, Pope XIII. Leo sent him to Paris to the newly founded canon law department of the Institut Catholique. He worked as a teacher in Paris for 18 years; meanwhile he became the leader of the committee that was responsible for the investigation of the validity of the Anglican bishop-ordinations. The Pope appointed him as a titular archbishop in 1898, and he worked as an apostolic delegate in Peru, Bolivia and Ecuador. He moved to Rome in 1901 as the secretary of the Congregation of Extraordinary Matters. From 1904, he led the codification activities of the CIC. He became a cardinal in 1907 and worked as the Secretary of State from 1914. He was the one who signed the Lateran Contract from the Vatican's side in 1929. From 1930 to his death in 1934 he led a sequestered life.[15]

Justinian György Serédi OSB was born in 1884, as the 10th child of a poor Hungarian family. Following his older brother, he requested his admittance to the Benedictine order in 1901. From 1904 he studied in Rome, in the St. Anselm University, where he obtained a doctorate in 1908 in theology. In the same year, he was ordained a priest and took his solemn vow. With a short interruption he operated as a member of the codification committee of the CIC from 1908, as well as a teacher of canon law from 1910 at the St. Anselm University.[16]

His previous professor in canon law, Pierre Bastien, a Belgian law professional worked besides Gasparri as a consultor. He recommended the young talent for the works with the CIC.[17] Serédi did a heroic work: he researched the original sources for each and every canons. Thus, he finally attached 26.000 references (based on 10.500 sources) to the finished codex. From 1915, Serédi lived in the Vatican, therefore he could meet with Pope Benedict XV. (1914–1922) and Cardinal-Secretary of State Gasparri on a daily basis.[18]

The complete work consisted of 2414 canons; among them, only 854 was new. The aforementioned 10.500 sources formed the basis of 1560 canons; among them, 3304 sources were from Corpus Iuris Canonici, 293 from decrees of ecumenical councils, 704 from papal decretals, 5751 from the decrees of the Roman Curia (congregations, offices, courts) and 454 sources were from liturgical books.[19]

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[15] Francesco Maria Taliani: *Vita del Cardinale Pietro Gasparri, Segretario di Stato e povero prete*. Milan, 1938.

[16] Hegyi Márton: *Megemlékezés Serédi Jusztinián bíboros hercegprímásról*. In: Katolikus Szemle 1. 1950, 44–45.

[17] Erdő Péter: *Magyar kánonjogászok az egyetemes egyház történetében*. In: Magyar Egyháztörténeti Vázlatok 2006/1–2, 9.

[18] Bánk József: *De Justiniano Card. Serédi*. In: Monitor Ecclesiasticus (vol. 81.) 1956, 463–481.

[19] Winfried Aymans: *Die Quellen des kanonischen Rechtes in der Kodifikation von 1917*. In: Ius Canonicum (vol. XV.) no. 29., 1975, 79–95.

The introduction of the CIC and the references praise the activity of Justinian Serédi. The results of this enormous work were the source publications in nine books between 1923 and 1939 called briefly "Fontes", publishing all texts, except the *Corpus Iuris Canonici* and the decrees of the Council of Trent.[20]

The operations of the CIC were conducted in three committees.

1.) The body of consultors: their duty was the elaboration of the canon schemes.
2.) Collaboratores (collaborators): In this phase, the Curia waited for the opinion of the diocesan bishops, metropolites and universities.
3.) Codificators: this was a committee of sixteen cardinals. Under papal supervision, they followed with attention the activities of the previous two committees and reviewed their results.

In his work, Pietro Gasparri was the president of the consultory body and the relator of the codificational committee.[21]

The operations starting in 1904 were essentially finished by 1914. Between 1914 and 1916, the opinions of the bishops of the Church, the committee of cardinals and those who had right the to discuss during a council were expected.[22]

The Codex was finally promulgated by the apostolic constitution *Providentissima Mater Ecclesia* from Pope Benedict XV. at Pentecost of 1918 (19. May), which is a very short time with reference to the *vacatio legis*. However, this also shows well the thoroughness of the completed work, the respect for the tradition and the personal presence of the wide commenting circle.[23]

The Codex is divided into five books:

1. General rules
2. Persons
3. Things
4. Litigation
5. Penal law[24]

By this, it follows the traditional institutional system by Gaius: *de personis, de rebus, de actionibus*.[25]

As it was formulated by Ioannes Paulus Lancelottus in his poem at 1563:[26]

– *Personas non prima docet, resque secunda,*
– *Tertia dat iudices, crimina quarta premit*.[27]

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[20] Wiel 1991, 169.

[21] Agustin Motilla: *La idea de la codificacion en el proceso de formacion del Codex de 1917*. In: Ius Canonicum (vol. XXVIII.) no. 55., 1988, 681–720.

[22] Szántó Antal: *Az új egyházi törvénykönyv keletkezése*. In: Religio 2., 1928, 150.

[23] *Codex Iuris Canonici*. Kenedy & Sons, 1918. XXXIX – XLII.

[24] Szuromi Szabolcs Anzelm: *Kánonjogtudomány és kodifikáció*. In: Iustum, Aequum, Salutare IV. 2008/2, 83–92.

[25] Bánk József: *Kánoni jog I*. Budapest, 1960, 82.

[26] Kovács Ferencz: E*gyetemes és részszerű egyházjog alaptanai*. Debrecen – Nyíregyháza, 1870, 24.

[27] Wiel 1991, 170.

With respect to its construction, all five books followed similar inner division. Progressing from the major to the minor units, each book was divided into parts, the parts to sections, the sections to titles, the titles to chapters, the chapters to articles, the articles to canons and the canons to paragraphs.[28]

The Codex Iuris Canonici is OFFICIAL as it originates from the ecclesiastical legislative power.

It is also AUTHENTIC, as there is no room for textual criticism against the text of the law.

It is UNIFORM, as there exists only one single law book (*fons unicus*).

It is UNIVERSAL, as it binds the whole Church, with only a few exceptions, such as the liturgical law and the discipline of the oriental churches.

It is EXCLUSIVE, as only those parts remained in force from the old law that the Codex mentions explicitly or in its content. Exceptions to this are the: oriental law, liturgical law, concordats, certain privileges and acquired rights, certain consuetudinary norms.[29]

Between the frames of the present introductory short paper one may feel that the borders of a serious work became outlined. These works – as milestones of the scientific thoroughness and exactness – bear lessons and evoke high respect both in the legal profession as well as in the general public.[30]

[28] liber>pars>sectio>titulus>caput>articulus>canon>paragraphus

[29] Bánk 1960, 230.

[30] Szántó 1928, 155.