

Mathias Schmoeckel

Kanonisches Recht: Geschichte und Inhalt des Corpus iuris canonici. Ein Studienbuch.

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Four years after its publication I think it is important to review a book which in my opinion fills an important gap not only in German but also in international Legal Historiography. Last year in 2023, Prof. Schmoeckel's book was reviewed this time by Prof. Heinrich de Wall in the *Zeitschrift für evangelisches Kirchenrecht*. In fact, the History of Canon Law written by Prof. Schmoeckel makes available to the scientific community an updated working tool which greatly facilitates teaching and research in this field.¹

The work of Prof. Mathias Schmoeckel, Professor of German and Rhenish Legal History and Civil Law at the University of Bonn (Germany), deals with the History of Canon Law from its beginnings to the time of Reformation and Counter-Reformation at the beginning of the Modern Period, including the classic period of Canon Law Science (*Kanonistik*) in the 12th and 13th centuries with the Gratian's *Decretum* and the Decretals of Gregory IX. The fact that the Author chose to allude to the *Corpus iuris canonici* in the title of his book is also worthy of mention. Indeed, the *Corpus iuris canonici* constituted, to this day, the source of Canon Law which has been applied for the longest time in the history of the Latin Church. The codification movement which we can observe in other branches of Law during the 19th century only reached Canon Law in the 20th century: with the publication of the Apostolic Constitution *Providentissima Mater Ecclesiae* in 1917 Pope Benedict XV promulgated the first Code of Canon Law in the History of the Catholic Church thus concluding the codification work on this branch of Law which had begun during the Pontificate of Pope St. Pius X. Currently, the Code of Canon Law in force is the second in the history of the Latin Church and was promulgated in 1983 by Pope St. John Paul II through the Apostolic Constitution *Sacrae Disciplinae Leges*. As Prof. Schmoeckel points out,² due to the non-innovative nature of the first Code of Canon Law (it came into force in 1918), the law of Decretals coming from the 13th century was for all intents and purposes in force until the new Code of Canon Law came into force in 1983. Prof. Schmoeckel's work, however, does not cover the history of the codification of the two aforementioned Codes of Canon Law. In fact, matters relating to the 19th and 20th centuries are not dealt with here. The History of Canon Law after the Reformation and Counter-Reformation is also not dealt with in this book. Only a short reference is made to these matters, namely, the Enlightenment and the period following the French Revolution (1789) in the third and final part dedicated to "Canon Law Science (*Kanonistik*) in the Modern Age", namely, the "Counter-Reformation" (*Q. Gegenreformation*), in the last chapter (chapter V: *Schluss*).³

After these observations, we can say that Prof. Schmoeckel's book explains comprehensively and thoroughly the canonical legal system, namely, in its classical form, a system which exerted an important influence on the History of Law in Europe. In fact, since the end of the 11th century, beginning of the 12th century until the great codifications of the 18th and 19th centuries, European legal culture, namely the legal culture generated and transmitted in the Universities, corresponded to Roman-canonical Common Law (*ius commune*) expressed, in the Canon Law part, in the *Corpus iuris canonici*. From this perspective, Prof. Schmoeckel's work becomes particularly useful when, in its first part,⁴ he exposes the origins of Canon Law in the early Church and its evolution until the 13th century. This introduction to Canon Law is made following the appropriate perspective, that is, in the context of an exposition of the historical evolution of the Church and the Papacy, with special emphasis given to the classical era or era of splendor of Canonical Jurisprudence in the 12th and 13th centuries which, within the framework of *utrumque ius*, exerted influence on Euro-

¹ See WALL, H. de, Review of Schmoeckel, Mathias: *Kanonisches Recht. Geschichte und Inhalt des Corpus iuris canonici*. Juristische Kurz-Lehrbücher, München: C. H. Beck 2020, IX und 337 S. In: *Zeitschrift für evangelisches Kirchenrecht*, vol. 68, Nr. 2, 2023, p. 217-219 and the other reviews of the book: LARSON, A. A., Review of Mathias Schmoeckel, *Kanonisches Recht: Geschichte und Inhalt des Corpus iuris canonici. Ein Studienbuch* (= Kurzlehrbücher für das juristische Studium). C.H. Beck, München 2020. XXIV, 337 S., ISBN 978-3-406-74910-0. In: *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, kanonistische Abteilung*, vol. 107, 2021, p. 373-376; ESCHLBÖCK L., Review of Schmoeckel, Mathias: *Kanonisches Recht, Geschichte und Inhalt des Corpus iuris canonici. Ein Studienbuch*. – München: C. H. Beck 2020. 337 S., geb. € 79, 00 ISBN 978-3-406-74910-0. In: *Theologische Revue*, vol. 117, Okt., 2021, col. 407-408; HOEREN, Th., Review of Schmoeckel, Mathias: *Kanonisches Recht. Geschichte und Inhalt des Corpus iuris canonici*. München: C. H. Beck 2020. XXIV, 337 S. = Juristische Kurz-Lehrbücher. Geb. EUR 79,00. ISBN 9783406749100. In: *Theologische Literaturzeitung. Monatsschrift für das gesamte Gebiet der Theologie und Religionswissenschaft*, vol. 146, Nr. 6, 2021, col. 611; MUCKEL, S., Review of Mathias Schmoeckel, *Kanonisches Recht. Geschichte und Inhalt des Corpus iuris canonici. Ein Studienbuch*. Juristische Kurz-Lehrbücher. C.H. Beck, München, 2020, 337 S., ISBN 978-3-406-794100 (79,00 €). In: *Kirche & Recht. Zeitschrift für die kirchliche und staatliche Praxis*, vol. 26, Nr. 2, 2020, p. 328-330.

² See SCHMOECKEL, M., *Kanonisches Recht: Geschichte und Inhalt des Corpus iuris canonici. Ein Studienbuch*, Juristische Kurz-Lehrbücher. München, 2020, p. 186.

³ See SCHMOECKEL, M., *Kanonisches Recht: Geschichte und Inhalt des Corpus iuris canonici. Ein Studienbuch*, Juristische Kurz-Lehrbücher. München, 2020, p. 328-330.

⁴ See SCHMOECKEL, M., *Kanonisches Recht: Geschichte und Inhalt des Corpus iuris canonici. Ein Studienbuch*, Juristische Kurz-Lehrbücher. München, 2020, p. 12-186.

pean legal culture and which corresponds to the second part of the book.⁵ The subject – “Contents of Classical Canon Law” – is exposed following the system of the Canon Law of the time, namely, the system of the *Decretales Gregorii IX* (1234): *iudex*, that is, Constitutional and Administrative Law of the Church, *iudicium*, that is, Procedural Law, *clerus*, that is, Law that regulates the life and property of clerics, *connubium*, that is, Marriage and Family Law, and *crimen* (that is, Canon Criminal Law).

In addition to this part, decisive, as we have seen, for the understanding of the History of Law in Europe, Prof. Schmoeckel also discusses, in the third and final part of his book,⁶ the period of the History of Canon Law at the time of the Protestant Reformation, at the beginning of Modern Age, particularly important in a work of this nature published in Germany, the cradle of Reformation, helping the reader to understand the changes which Canon Law and the Canon Law Science (*Kanonistik*) underwent after the advent of Protestantism in Europe.

Now we are going to highlight some topics covered by Prof. Schmoeckel which, in my opinion, deserve the attention of the users of his book.

In the first part of his work in which, as mentioned above, Prof. Schmoeckel presents an introduction to Canon Law trying, in particular, to explain the formation of this legal order, we find, for example, the themes of the trial of Jesus,⁷ the expansion of Christianity in the Roman Empire⁸ or the persecution against the Christians.⁹

In this context, Prof. Schmoeckel correctly states that the Edict, mistakenly known as the “Edict of Tolerance of Milan” (313 AD) issued by Emperor Constantine, ultimately constituted an Agreement celebrated between Emperors Constantine and Licinius which we can call the “Agreement of Milan”.¹⁰

Regarding the Edict *Cunctos populos* jointly issued by the Emperors Theodosius I, Gratian and Valentinian II in 380 AD, Prof. Schmoeckel states that it is an edict defining the way in which the Christian religion should be practiced, and that Theodosius I introduced with it an official religion into the Roman Empire, Christianity, in the Roman form transmitted by the Apostle Peter, the faith of Pope Damasus and Peter, Bishop of Alexandria, that is, we may add, Roman Catholicism.¹¹ This statement, however, is controversial. In an article published a few years ago, J. H. A. Lokin defends the idea according to which the goal of the Constitution *Cunctos populos* (380 AD) was not, originally, to grant Christianity the status of official religion of the Empire.¹² This idea, however, cannot be accepted. We regret that Prof. Schmoeckel did not treat this topic further in his book. There is also a lack of reference to the above mentioned article authored by J. H. A. Lokin and to the bibliography regarding the Edict *Cunctos populos*.

Also interesting is the presentation dedicated by Prof. Schmoeckel, in the second part of his book, as we have seen, to the exposition of the “Contents of Classical Canon Law” according to the system of the *Decretales Gregorii IX* (1234) on some questions which are important to evaluate the influence of the Canon Law Science (*Kanonistik*) on Legal History, namely, on what we can generally call “Economic Law”. Under the title *clerus*, it deals, in particular, with the theory of fair price, alluding to the institute of *laesio enormis*,¹³ and to the question of the prohibition of interest by Canon Law.¹⁴

Interesting for civilists is the reference to the end of contractual typicality coming from Roman Law and the affirmation of the principle of contractual freedom.¹⁵

Reference is also made in the second part of Prof. Schmoeckel’s book to the important question of the contribution of Canon Law Science (*Kanonistik*) to the science of International Law. Firstly, the Law of War, namely the doctrine of Saint Thomas Aquinas, as well as, in general, the question of knowing when it is allowed to resort to war (*ius ad bellum*) and what rules are to be observed during hostilities (*ius in bello*). The doctrines developed by Spanish theologians and jurists regarding the conquest of America and

⁵ See SCHMOECKEL, M., *Kanonisches Recht: Geschichte und Inhalt des Corpus iuris canonici. Ein Studienbuch*, Juristische Kurz-Lehrbücher. München, 2020, p. 187-283.

⁶ See SCHMOECKEL, M., *Kanonisches Recht: Geschichte und Inhalt des Corpus iuris canonici. Ein Studienbuch*, Juristische Kurz-Lehrbücher. München, 2020, p. 284-330.

⁷ See SCHMOECKEL, M., *Kanonisches Recht: Geschichte und Inhalt des Corpus iuris canonici. Ein Studienbuch*, Juristische Kurz-Lehrbücher. München, 2020, p. 14-15.

⁸ See SCHMOECKEL, M., *Kanonisches Recht: Geschichte und Inhalt des Corpus iuris canonici. Ein Studienbuch*, Juristische Kurz-Lehrbücher. München, 2020, p. 16-17.

⁹ See SCHMOECKEL, M., *Kanonisches Recht: Geschichte und Inhalt des Corpus iuris canonici. Ein Studienbuch*, Juristische Kurz-Lehrbücher. München, 2020, p. 22-25.

¹⁰ See SCHMOECKEL, M., *Kanonisches Recht: Geschichte und Inhalt des Corpus iuris canonici. Ein Studienbuch*, Juristische Kurz-Lehrbücher. München, 2020, p. 27. In the same sense, see also SARDINHA, C., *Cronologia de Direito Romano*. Lisboa, 2022, p. 26-27.

¹¹ See SCHMOECKEL, M., *Kanonisches Recht: Geschichte und Inhalt des Corpus iuris canonici. Ein Studienbuch*, Juristische Kurz-Lehrbücher. München, 2020, p. 30-31.

¹² See LOKIN, J. H. A., The first constitution of the *Codex Justinianus*: Some remarks about the imperial legal sources in the *Codices Justiniani*. In: *Subseciva Groningana. Studies in Roman and Byzantine Law*, vol. IX, 2014, p. 343-382 [see: *The first constitution of the Codex Justinianus. Some remarks about the imperial legal sources in the Codices Justiniani* | *Subseciva Groningana* (rug.nl), retrieved on July 03, 2024]

¹³ See SCHMOECKEL, M., *Kanonisches Recht: Geschichte und Inhalt des Corpus iuris canonici. Ein Studienbuch*, Juristische Kurz-Lehrbücher. München, 2020, p. 233-234.

¹⁴ See SCHMOECKEL, M., *Kanonisches Recht: Geschichte und Inhalt des Corpus iuris canonici. Ein Studienbuch*, Juristische Kurz-Lehrbücher. München, 2020, p. 236ff.

¹⁵ See SCHMOECKEL, M., *Kanonisches Recht: Geschichte und Inhalt des Corpus iuris canonici. Ein Studienbuch*, Juristische Kurz-Lehrbücher. München, 2020, p. 234-236.

the subjection of the Indians are also mentioned by Prof. Schmoeckel. However, further development of these matters would be desirable.¹⁶

Another important aspect of Prof. Schmoeckel's work is the importance he gives to the fact that the Christian idea of law arose and developed itself within the framework of theology, and is therefore a tributary of Biblical Studies, namely the commentary on the Bible through glosses, the so-called "Ordinary Gloss" (*Glossa Ordinaria*) of the Bible.¹⁷ This touches on an important aspect of Canon Law Science (*Kanonistik*) as a science which, even in classical times, could not be conceived separately from the study of the Bible. From a legal-historical perspective, Canon Law and Theology cannot be separated, that is, this symbiosis between both sciences can already be observed in the History of Medieval Canon Law.

Above, we drew attention to the fact that this work does not deal with matters relating to the 19th and 20th centuries. For example, we do not find in Prof. Schmoeckel's book any reference to Pope Leo XIII's Encyclical *Immortale Dei* (1885) and to the doctrine of the Church as *societas perfecta*.¹⁸ What is at stake in this doctrine is the idea according to which the Church constitutes a self-subsistent community, independent of the State, endowed with its own power and with its own purpose, namely, the salvation of souls or the pursuit of the common spiritual good, distinct, therefore, from the purpose or *raison d'être* of the State as political society, the pursuit of the so-called temporal common good. The Church therefore constitutes a society which, like the temporal society, postulates the legal phenomenon (*ubi societas ibi ius*). A power of its own corresponds, therefore, to a Law of its own, Canon Law, distinct from the Law that governs temporal society and its affairs. The question is important in a History of Canon Law, firstly because according to Protestant doctrine only the State constitutes a perfect society and only the State has the plenitude of power and the Church must, therefore, submit itself to temporal jurisdiction. On the other hand, the doctrine of the Church as *societas perfecta* contradicts the excesses of the absolutist and secular State.¹⁹ In fact, the doctrine of the perfect society, in addition to affirming the independence and freedom of spiritual power in relation to temporal power, also states that the purpose or *raison d'être* of the Church, the salvation of souls, being superior to the purpose or *raison d'être* of the State, simple temporal well-being, must, therefore, be considered superior to the purpose or *raison d'être* of the temporal power.²⁰

Unfortunately, we cannot but lament the lack of an index of sources.

Prof. Schmoeckel's work therefore deserves the applause not only of those cultivating Canon Law and the History of Canon Law, but also of those cultivating the History of Law and European History of Law.

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¹⁶ See SCHMOECKEL, M., *Kanonisches Recht: Geschichte und Inhalt des Corpus iuris canonici. Ein Studienbuch*, Juristische Kurz-Lehrbücher. München, 2020, p. 277ff.

¹⁷ See SCHMOECKEL, M., *Kanonisches Recht: Geschichte und Inhalt des Corpus iuris canonici. Ein Studienbuch*, Juristische Kurz-Lehrbücher. München, 2020, p. 113.

¹⁸ See RHODE, U., *Kirchenrecht*, Studienbücher Theologie, vol. 24. Stuttgart, 2015, p. 29-30.

¹⁹ See ERDŐ, P., *Theologie des kanonischen Rechts. Ein systematisch-historischer Versuch*, herausgegeben und mit einer Einleitung versehen von GEROSA, L., *Kirchenrechtliche Bibliothek*, vol. 1. Münster, 1999, p. 13ff. namely p. 14.

²⁰ See Pope Leo XIII, *Immortale Dei* (November 01, 1885), 10 and 13 [see *Immortale Dei (November 1, 1885) | LEO XIII (vatican.va)*, retrieved on July 03, 2024). On this subject see LISTL, J., *Kirche und Staat in der neueren katholischen Kirchenrechtswissenschaft*, Staatskirchenrechtliche Abhandlungen, vol. 7. Berlin, 1978, p. 173ff., namely p. 178-179.

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Robert von Lucius

Hellmuth Freiherr Lucius von Stoedten. Diplomat zwischen Kaiserreich und Weimar

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1. Einordnung

Die erfolgreiche Reihe „Zeitgeschichtliche Forschungen“ aus dem Verlag Duncker & Humblot in Berlin verfügt mit dem vorliegenden Band über eine weitere wertvolle Biographie. Es handelt sich um einen Mann, der für die Geschichte des 20. Jahrhunderts bislang viel zu wenig Beachtung fand: Hellmuth Freiherr Lucius von Stoedten verband gewissermaßen als Diplomat das deutsche Kaiserreich und die allzu instabile Weimarer Republik, womit der Biograph Robert von Lucius ein Hauptcharakteristikum hervorhebt.

„Er ist wirklich eine Spezialität - aber keine uninteressante. Wenigstens langweilig sind die Leute aus ‚unsrer‘ Familie nicht, das muss man sagen.“ Dies sind die Worte des Heidelberger Soziologen Alfred Weber, der seinen Vetter in Stockholm im Jahre 1918 besuchte; Hellmuth Freiherr Lucius von Stoedten war Gesandter in Schweden und prägte dort die deutsche Russlandpolitik. Als erster Diplomat warnte er hellhörig die deutsche Politik vor einer drohenden Revolution in Russland, denn er sah, dass das Zarenreich einer baldigen Katastrophe entgegen gehen sollte und behielt Recht, wie wir heute wissen.