Peter Landau

Le radici: l'incontro del diritto canonico col diritto romano e col diritto germanico
The meeting of canon law with roman law and germanic law

I. Beginning of the penetration of Canon Law by Roman law

The meeting of medieval canon law with the tradition of Roman law during the Middle Ages is certainly one of the most important mutual penetrations in the history of European Law from the 12th to the 15th century. Canon Law developed to be an academic discipline in Bologna with the Decretum Gratiani as its fundamental textbook around 1140, during those years when studying the sources of classical Roman law had already been established in the same city by the school of the Glossators. According to our present knowledge the first glossator Irnerius probably taught in Bologna at least between 1120 and 1130 and established a school with four major disciples, Bulgarus, Martinus, Jacobus and Hugo. The monk Gratian wrote his Concordia discordantium canonum, later called Decretum or Decreta, between 1120 and 1140, including already in the first version of this book some texts of Roman law, especially in his own commentary called the Dicta Gratiani. Among these texts we find already a unique fragment of the Authenticum, a Latin translation of Roman law after Justinian, which had only be discovered a few years before Gratian. So we can be sure that Gratian felt no aversion towards Roman law, but we have no sources indicating places and teachers responsible for his knowledge. In the Decretum Gratiani Roman law is already a model and a source for canon law. Gratian' s first distinctions on the sources of law are taken from the Etymology by Isidore of Sevilla and indirectly from Roman law. After 1140 schools of canon law and of roman law existed side by side in Bologna, but as different disciplines. The experts of Roman law were called ‚legistae', those in canon law had the name ‚canonistae'. But some legists started to quote Gratian's Decretum already around the middle of the 12th century – the first seems to have been Martinus, one of the four famous disciples of

Irnerius. The canonist Bazianus, who died in 1197, taught first Roman law as layman and later canon law as cleric – he seems to have been the first ‚doctor utriusque iuris' (Schulte). So we have already different specialists for Roman and for Canon law in Bologna during the second half of the 12th century. In this time we also find some schools of Roman law in other Italian cities, e.g. in Pisa and in Mantova.
But modern research in legal history also discovered early schools of law outside Italy in France and England, then also in Germany. I can only give a short summary of recent discoveries in that field, covering the first period of learned law in Europe. Pierre Legendre edited in 1973 the Summa Institutionum ‚Justiniani est in hoc opere', written in Southern France, probably in Valence, ca. 1127. The text of this Summa to Justinian' s Jnstitutions is influenced by the doctrines of the glossator Martinus. Around 1150 we have the first canonistic work from the same region, an abbreviation of Gratian's Decretum with the Incipit ‚Quoniam egestas'. So we can conclude that the Provence was the first region outside Italy with experts in the learned laws already during the first half if the 12th century. The ‚incontro' between canon law and roman law led already to impressive amalgamations in the field of civil procedure during the 12th century.

II. Literature of Procedure

Civil procedure had not been a special object of juristic literature in antiquity. But the 12th century was the period of time when procedural treatises, called ‚Ordines iudiciorum' or ‚Ordines iudiciarii' were written all over Europe, mainly outside Italy. I gave a comprehensive survey in an essay on the beginnings of procedural science in a volume of a conference in the Villa Vigoni in 2009. There I counted 19 treatises from the 12th century. Eight treatises originated in the anglo-norman school of canon law, beginning with ‚Ulpianus de edendo', written in Durham already between 1153 and 1157, and ‚Tractaturi de iudiciis', written ca. 1165 in Paris by the canonist Walter of Coutances, born in Cornwall and later archbishop of Rouen from 1185 to 1207, a leading politician in the anglo-norman realm. Three treatises are products of the Provence, among them the ‚Tractatus criminum' on crininal procedure, edited recently by Giovanni Minnucci. Some treatises originated

probably in the canonistic law school of Reims around 1170. Four treatises were written in Germany during the time of Emperor Frederick Barbarossa, among them the so-called ‚Rhetorica ecclesiastica' in Hildesheim ca. 1160. One of the systematic achievements of this literature is the division between civil and criminal procedure.
The authors of this procedural literature outside Italy were primarily canonists with only limited knowledge of roman law. Some English authors might have learnt Roman law in the school of the legist Vacarius, who most likely taught Roman law in Lincoln, where some treatises on procedure where written in the 12th century and papal decretals were collected in the last decades of the 12th century.

III. Papal decretal law

So we come to the influence of papal decretal law in classical canon law after Gratian. Papal decretals were for a long time a permanent main factor for development and change in canon law. They followed the model of the Rescripta issued by Roman and Byzantine emperors and collected in the Codex Iustinianus. The first papal decretal preserved in canonistic collections up to Gratian was a famous letter of Pope Siricius from 385 after Christ to the archbishop of Tarragona. In the 12th century after Gratian the number of decretals increased very rapidly to form a ius novum, collected in special decretal collections after 1170. During the eighties of the 12th century we have already special commentaries to decretal collections, the origin of a decretalist literature to be separated from the decretist works. The success of the decretals can be attributed to two major factors: 1.) the generally accepted legal authority of the papal curia, leading to many consultations directed to the pope and to special consultation decretals, e.g. ‚Pastoralis' of Innocent III in 1204.
The second most remarkable innovation of classical canon law compared to Roman law was the extension of the right of appeal to recognize already an ‚appellatio ante sententiam' from an inferior judge immediately to the pope. The principle of a comprehensive liberty of appeal (De libertate appellationis') had its origin in the psendo-isidorian decretals, the famous forgery of the 9th century, which found reception in the collections of canon

law mainly in the period of the so-called Gregorian revolution at the end of the 11th century. The famous ‚Dictatus Pape', formulated by Pope Gregory VII in 1075 had already in c. 18 the sentence: "Quod nullus audeat condemnare apostolicam sedem appellantem" – no judge should be allowed to condemn somebody who had appealed to the pope, presupposing an appeal ante sententiam, during the law suit. Ten year later bishop Anselm of Lucca, author of a Collectio canonum, which later became one of the main sources for the Decretum Gratiani, devoted the second book of his collection with the title ‚De libertate appellationis' to the comprehensive right of appeal in canon law; which became something like a fundamental law in the church. This principle was also accepted by Gratian who said in one of his Dicta (C. 2, q. 6, Dict. p.c. 14): „Tempus vero appellationis est ante datam sententiam vel post datam. Quoniam enim se pregravari senserit, libere potest appellare." Anne Lefebvre-Teillard wrote in a major essay with the title ‚L'appel a gravamine': „L'appellatio a gravamine est une procédure caractéristique du droit canonique classique."

In decretist literature after Gratian the difference between canon law and roman law in the domain of appeal is seen as one of the main spheres of differences between the two laws. I only want to refer to the Rhenish Summa Coloniensis, written by the later bishop Bertram of Metz in 1169. There we can read: ‚Secundum leges, gravatis in causis … post sententiam appellatio … Secundum canones contra est, quia gravatis eque ante sententiam et post appellare licet. Cuius differentie causa ea est, quia secundum leges a sententia tantum, secundum canones vero sicut a sententia sic a gravamine appellatur.' This extension of appeal in canon law led to long discussions about the definition of ‚gravamen'. The fourth Lateran Council in 1215 formulated a remarkable definition for the limits of appellatio ante sententiam in canon law in its c. 35: it should only be permitted, if the appellant could refer to a causa vationabilis, defined as causa probabilis. This conciliar canon found immediately extensive commentaries by the contemporary canonists. In his Glossa ordinaria to the Decretum Gratiani, finished already a short time after the council, the German canonist Johannes Teutonicus defined the causa probabilis mentioned in the conciliar canon as ‚evidens causa gravaminis'. But he also

accentuated that the difference in the law of appeal between roman law and canon law had not been abolished by the conciliar legislation of 1215.

IV. Theology and Canon Law

The meeting of canon law with roman law was always overshadowed by the influence of theology on canon law.

The influence of theological sources in the text of the Decretum Gratiani had been very important. Looking at C. 23 in the Decretum, where Gratian deals with the problem of a just war (bellum iustum), we find many texts taken from writings of the Church fathers, especially from St. Augustine. In his book on ‚The Just War in the Middle Ages', published in 1975, Frederick Russell wrote: "The locus classicus of texts concerning warfare was the lengthy Causa 23. The influence of St. Augustine suffused the entire Causa; it would be difficult to fault Gratian for the comprehensiveness of his selection of Augustinian texts" (p. 56). Altogether Gratian included more than 1000 texts – 1022 according to Munier (Munier p. 126) in the Decretum, among them 469 from Augustine. On the other side Gratian clearly postpones the authority of the fathers to the legal potestas of the popes in his introduction to D. 20 (D. 20 pr.).

But after Gratian the decretists attributed to the popes not only a supreme power of legislation, but also the supreme power of interpretation for the texts including the ‚auctoritates patrum' (the patristic fragments in the Decretum). E.g. Johannes Teutonicus said in his Glossa ordinaria: „Regulariter in causis diffiniendis preiudicat auctoritas summi Pontificis Augustinum et Ieronimum" (Munier p. 192).

Biblical texts were quoted by Gratian only in his Dicta – altogether ca. 950 (Le Bras, Mélanges Tisserant p. 246). When Bernhard of Pavia composed his Breviarium Extravagantium, later called Compilatio I, he included also 19 chapters of his collection from the Old Testament, especially in his titles on loan and compensation. He commented those texts in his own Summa to his Breviarium with the following words: „Quod autem … de lege Mosaica introduxi non ad hoc feci, ut servari debeant ad litteram, ubi de legibus vel canonibus contradicunt, sed ut sicut, quid de talibus in ipsa lege statutum" (Bernhard, Summa p. 79). He obviously took over those texts for

comparison, not for applying them as valid law, and he was followed in his attitude towards the biblical law texts by the canonists of the 13th century. The result was that the Lex Aquilia in Roman Law became also the fundament of the law of compensation in canon law.

Canon Law also restricted the influence of ius divinum in the positive law of the church. The impediment forbidding marriage between relatives had been fixed by councils in canon law during the 11th century up to the seventh degree of relationship, different from roman law, which had an impediment up to the fourth generation. But the impediment in canon law was modified by the fourth Lateran Council under Innocent III in 1215 (c. 50), where the prohibition was restricted to be valid only up to fourth degree of relationship. The canon of this council has the following reasoning: „Non debet reprehensibile iudicari, si secundum varietatem temporum statuta quandoque varientur lumana, praesertim cum urgens necessitas vel evidens utilitas id exposcit, quoniam ipse Deus ex his quae in veteri testamento statuerat, nonnulla mutavit in novo."

This statement of the Lateran Council recognized in a certain way a possibility to interpret natural law or divine law in positive canon law accepting a mutability of its rules and opened new ways for Roman law to influence Canon Law.

V. Accursius and Bartolus

The thirteenth and fourteenth century, probably the culminating point in the classical period of medieval law, had as its main authors Accursius and Bartolus in Roman Law and pope Innocent IV and Cardinal Hostiensis in Canon Law. Let us have a closer look to the importance of Canon law in the works of those two legists and of Roman law in the commentaries of these two canonists.

Let us start with Accursius and his Glossa ordinaria to the Corpus Iuris Civilis. He died in 1263, but had already completed his Glossa with more than 90000 glosses to all parts of the Corpus around 1230. For his relations to canon law we have a classical essay ‚Accurse et le droit canon', originally a paper for the commemorative Congress in Bologna in 1963, written by Gabriel Le Bras 700 years after Accursius' death. Le Bras accentuates

‚consonance et dissonance' of canon law with roman law in the glosses of Accursius and uses the formula of ‚une bonne entente' between the two learned laws. The penetration of roman law into canon law had already been generally accepted in the epoch of Accursius – it had taken place mainly by the approbation of leges by the popes. I can quote for this theory the doctrine of the so-called Apparatus ‚Animal est substantia', the last major commentary of the Parisian school of Canon law, written around 1210 and much influenced by roman law. In this commentary we read: „ Si papa leges approbaverit sicut hodie factum est, dominus papa approbando facit illas suas et valere per suam approbationem" (Legendre p. 64). This authority of the pope is obviously accepted by Accursius, who stresses also the authority of all ecumenical councils (Le Bras p. 221) and generally accepts a superior authority of canon law in cases of conflict with roman law. An example is the requirement of a continua bona fides for the acquisition of property during the period of possession and the general interdiction of usury in canon law (Le Bras p. 223), prevailing over exceptions in roman law. In Accursius' glosses we find an ‚utrumque ius', a unity of roman and canon law; he consequently was often quoted by canonists up to the end of the Middle Ages. In cases of contradiction he does not always accept the solution of canon law.

After Accursius' time Roman law got even more authority among the legists in the period of the Post-Glossators or Commentators of the 14th century. Here I will concentrate on Bartolus, the most famous author during the later Middle Ages. Again I can refer to a special essay by Gabriel Le Bras for a Congress at the six-hundred anniversary of Bartolus' death in 1357. Bartolus was a disciple of the jurist Cinus, who had an extensive knowledge of decretal law (Le Bras p. 298). He accepted a wide authority of canon law, e.g. for all iura spiritualia (Le Bras p. 301) and ratione materiae for marriage law and the rules of usury (Le Bras p. 302). So he could follow canon law in its elaborate doctrines concerning the impediments of marriage. Generally he denied contradictions between the two laws and often quoted famous canonists like Innocent IV, Hostiensis or Duranti (Le Bras p. 303). He never shows a polemical attitude towards canonistic authors and does also not hesitate to advocate the application of roman law in canonical procedure (Le Bras p. 305). The works of Bartolus must be seen as a culminating point of

synthesis between the two learned laws at the end of the Middle Ages. His appreciation of canon law is also found in his doctrine for the sources of law, where he accepts the formula from pope Innocent III that canon law had to be applied in all cases ‚ratione peccati' (Le Bras p. 300). On the other hand Bartolus does not support the exaggerated doctrine of papal power in the constitution ‚Unam sanctam' by Boniface VIII, but remains a follower of pope Gelasius I and his doctrine of two powers in a Christian society. We cannot be surprised that Bartolus' doctrines had great authority in ecclesiastical tribunals during 14th and 15th century – Panormitanus, the greatest canonist at the end of the Middle Ages, called Bartolus ‚juris civilis illuminator' (Le Bras p. 307).

VI. Innocent IV and Hostiensis

After this look on the Postglossators of Roman law we might still sketch the appreciation of Roman law among the most famous canonists of the 13th century, pope Innocent IV and Cardinal Hostiensis.

For Innocent IV I can once more refer to a paper by Le Bras published in the four volumes of the Collectanea for Stephan Kuttner in Studia Gratiana XI (1967): with the title "Innocent IV romaniste".

For Le Bras pope Innocent IV, who was the canonist Sinibaldo dei Fieschi, has a decisive role among the witnesses for the influence of Roman law in classical canon law (Le Bras p. 307). In his Apparatus to the Liber Extra, completed around 1250, we find only a few quotations from the fathers of the church, but very many from roman law; Le Bras says, that Innocent is nearer to Ulpian than to Jerome (Le Bras p. 311). Roman law is applied by this pope very often in his doctrine of the sources in Canon law, for the theory of laws, rescripta and custom. Le Bras counted 700 quotations of roman law in the sections on the sources. So we find roman law mainly in Books 1 and 2 of his Apparatus to the Liber Extra, but very seldom in Book 4, dealing with marriage law. As canonist Pope Innocent IV must be evaluated primarily as a jurist, not as a theologian. Explaining the concepts of iurisdictio and imperium, Innocent is inspired by roman law, so that he can attribute to the pope the same power as to the emperor, namely the merum imperium. The influence or roman law is also strong in his commentary in

the field of procedure, especially for the office of judges delegate (Le Bras p. 315). He has 65 quotations from roman law in his sections on the office of a judge in canon law (Le Bras p. 316). We cannot be surprised to find a strong influence of roman law in the classification of contracts (Le Bras p. 319), and in the restitutio in integrum, central fields of private law. But the pope does not exclude any connection to theology in canon law, but has instead a tendency to minimize differences between the two laws (Le Bras p. 321).
On the other hand this author does not separate all connections of canon law to theology; he still acknowledges the task of canon law to be a safeguard for spiritual values (Le Bras p. 325). Resuming the relation between roman law and canon law in the Apparatus of the pope Le Bras uses the formula of an ‚alliance between the two learned laws' (Le Bras p. 323 and p. 326), and we can accept this description.
In a certain way we enter another world studying the contemporary work of Henricus de Segusio, the Cardinal Hostiensis. Born around 1200, he studied canon and roman law in Bologna, taught probably for some time in Paris, became then archbishop of Embrun in 1250 and Cardinal archbishop of Ostia, therefore called Hostiensis in 1262. He often was active as a diplomat for the papal curia and died in 1271. His two major works were his Summa super titulis decretalium, begun in 1239 and finished in 1253, and then his voluminous ‚Lectura in quinque libros decretalium' with a first version in the Sixties and finally published after his death. The enormous work of Hostiensis is the final synthesis of classical canon law. It combines roman law with the teachings of the fathers of the church, the councils and the popes. For Hostiensis it is a matter of course that canon law has to be understood as an independent third science beside roman law and theology. The knowledge of the two other disciplines is seen as a presupposition of canon law which is called by him ‚scientiarum scientia'. Being concerned with spiritual and temporal questions, canon law can be seen, probably for a fun, as a mule compared to theology as a horse and to roman law as a donkey. In another comparison Hostiensis calls theology the head of the church, civil law its feet and canon law its hand (Gallagher p. 77). Those three disciplines must work together according to his judgment.
The work of the Bolognese glossator Azo is very important for Hostiensis' interpretation of roman law. He does not hesitate to follow roman law in

fields like the law of adoption and dowry, but always stresses the superiority of theology in spiritual matters. His great influence in canon law during the later Middle Ages led to a strengthening of the theological element in canon law and to a gain of prestige for canon law in its competition with roman law. So Hostiensis taught that canon law was more humane than roman law, e.g. concerning the treatment of children born out of wedlock. Charles Lefebvre called Hostiensis' Summa Aurea ‚l'élément de base du ius canmune en voie de formation' (Lefebvre p. 313). The apprectiation of canon law as the scientia scientiarum in its classical period is more or less still the consequence of its meeting with roman law.

VII. Dinus Mugellanus and the Regulae Juris of the Liber Sextus

We have still to take a look on the fact of the Regulae iuris and their inclusion in the last titles of the collection of canon law called the Liber Sextus, promulgated by Pope Boniface VIII in 1298. The Liber Sextus was a addition to the Liber Extra of Pope Gregory IX. The new collection of papal law contained at its end a special title ‚De regulis iuris' with 88 Regulae mostly adopted from Roman law or formulated on the basis of special sentences in the Corpus Iuris Civilis. Some of these Regulae or Maxims had their origin also in texts of canon law itself. So I could prove recently that the famous maxim ‚Quod omnes tangit, debet ab omnibus approbari' (Regula 29), which had been first formulated in roman law for a special problem in the relations between several tutors (Cod. Iust. 5.59.5) had been first interpreted as a general rule in canon law in the anglo-norman school at the end of the 12th century, according to my research in the Summa decreti Lipsiensis, a commentary written by the English canonist Rodoicus Modicipassus (Landau in BMCL 32, 2015, p. 27 and already ZRG Kan. Abt. 92, 2006, p. 340-354). Recently Pope Franciscus quoted ‚Quod omnes tangit' in his memorable speech on the topic ‚Synodality for the third millenium' during the Episcopal synod in Rome on October 17th 2015.

The Regulae Iuris in the Sext are also very important for law even in the world of Canon law, where the reception or Roman law had not taken place, according to a classical formulation by Frederic William Maitland, who wrote in 1898: "When in any century from the thirteenth to the nineteenth an

English lawyer indulges in a Latin maxim, he is generally, though of this he may be profoundly ignorant, quoting from the Sext." But who was responsible for redacting this concluding part of Boniface' VIII legislative work? According to an old medieval tradition, going back to the fourteenth century, it was the work of the Bolognese professor Dinus Mugellanus, a well-known legist, who spent a few months in 1298 at the papal curia and may have worked during this time for the redaction of the Regulae. But this medieval tradition was put into doubt by several modern scholars, among them also Stephan Kuttner, because Johannes Andreae, who taught in Bologna shortly after Dinus, had written that his colleague in Roman law had no knowledge of canon law and so would have been unable to formulate the maxims in the Regulae iuris, which contain also many subjects of canon law. We also have two commentaries of Dinus for the Regulae iuris of the Sext, a short one printed since the fifteenth century, and another ine preserved in several manuscripts, tedious according to Schulte. I could use manuscripts in Munich for this extensive commentary and discovered in one of these manuscripts a shorter commentary with the title ‚Dicta Dini' preceding his well-known commentary. Studying those Dicta, I found that they contained a shorter text than the commentary, but that they included many quotations of canon law lacking in the printed commentary. In the Dicta we find quotations of canon law to each of the 88 Regulae. The commentary was probably published posthumously, eliminating the canonistic parts of the Dicta, because they had been taken over in the meantime in glosses from Johannes Andreae and Guido de Baisio for the Regulae Iuris. Dinus' knowledge or roman law can be proved by his so-called ‚Dicta', written probably in 1301 as his last work. He was not ignorant in roman law, but rather a witness of the first rank for the synthesis of the two laws by his formulation of the Regulae iuris.

VIII. Germanic influences in Canon Law

At the end of this paper I want to make a few remarks on the subject of the meeting of canon law with traditions of germanic law, much discussed mainly in the 19th century, the climax of Germanistic studies especially in Germany. Nowadays we have become very skeptical in our attitude towards the supposition of common legal traditions among the people with germanic roots. The main representative of the theory of germanic influences in canon law was the Swiss German scholar Ulrich Stutz (1968-1938) at the end of the 19th century and during the first half of the twentieth century. He developed a germanic doctrine of the proprietary church. According to Stutz the proprietary church (Eigenkirche) had its roots in Iceland in the pagan epoch of this island; it was derived from the germanic concept of Gewere, a specific concept of possession in countries with Germanic culture. For Ulrich Stutz the Germanic people had transformed the Episcopal church of antiquity and had formed many institutions of canon law, among them the Beneficium, advowson and incorporation. It is impossible to develop in a conference paper the arguments in this controversy in a sufficient way. So I can only mention a few aspects.

The Icelandic origin of proprietary churches is a mere speculation. Private property of churches is already mentioned in an imperial constitution of 388 after Christ, distinguishing between ecclesiae privatae and ecclesiae publicae (Cod. Theod. XVI. 5.14). Private churches belonging to laymen existed in Gallia since the 5th and in Spain since the 6th century. The success of proprietary churches had to do with the economic system of the manor and had nothing to do with special national traditions. The proprietary church was a special estate called dominium, an institution characteristic for canon law from the 8th to the 12th century. It was replaced during the 12th century after Gratian by the ius patronatus, a much more limited right of laymen in the church. The concept of Beneficium, dominating in the canon law of church property since 1100, cannot be derived from the traditions of proprietary churches. Even if the system of proprietary churches cannot be deduced from Germanic law, it could be possible that the canon law of possession had its roots in the Germanic institution of Gewere. There can be no doubt that possessory actions are very important in canon law since

medieval times; we can refer to the actio and exceptio spolii or to the possessory action in marriage law for the relations between husband and wife.

Can we trace back these possessory actions to a Germanic influences by means of the concept Gewere?

Recent scholarships in Legal History, especially done by Paul Hyams, left many doubts about an origin of the concept of Seisine, equivalent to possession, found in English law after the Norman conquest of 1066, to any Germanic concept of Gewere in the Anglo-Saxon period (Hyams, Concepts of Seisine p. 45) and also to guess some elementary distinction between possessio and property in the sense of Roman law to have survived in Anglo-Saxon times in England. We have sources for the distinction of the procedure on seisine –meaning possession – and general rights of property first after the Norman conquest of England under the Kings Henry I and Stephen of Blois in the 12th century (Hyams p. 52). This distinction was brought to England by the Normans and had nothing to do with a supposed survival of vulgar Roman law in Britain since late antiquity and also with conjectures of connecting seisine with the hypothesis of a Germanic tradition of Gewere, a product of Germanistic legal historians during the 19th and early 20th centuries.

So we can conclude that a meeting of Canon Law with Germanic legal traditions during the Middle Ages is generally rather improbable. Canon Law had many influences from Roman law, but we cannot believe any more like Ulrich Stutz that the Christian church inherited a legal structure as a ‚Rechtskirche' from any Germanic people – it had a legal structure with the basis of Sacraments and Jurisdiction since the first century after Christ and was enriched in its legal culture by Roman law particularly during the Middle Ages.

If a meeting between canon law and Germanic or German private law can be recognized during the high Middle Ages, it might have been caused by an influence of canon law on German law it might have taken place inversely. Canon law knew possessory remedies in the action or exception spolii since the 9th century mainly by the Poendo-Isidorean forgeries. The concept of Gewere is, very dominant in the Mirror of the Saxon (Sachsenspiegel). In his recent article on ‚Gewere in the Handwörterbuch zur deutschen

Rechtsgeschichte', vol. II (2012), the author Werner Ogris, Professor of German legal history at the University of Vienna, is concluding with the sentence: "It should also be examined, if and to what extent there were influences of canon law for the concept of ‚Gewere' – (Auch wäre zu prüfen, ob und inwieweit Einflüsse des Kanonischen Rechts gegeben waren). This examination has not taken place until now – it is a task for future research in comparative legal history.