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**UNDERSTANDING ECCLESIASTICAL LAWS:
CANON 17 IN LIGHT OF CONTEMPORARY HERMENEUTICS**

by
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A dissertation submitted to the Faculty of Canon Law,
Saint Paul University, Ottawa, Canada, in partial
fulfillment of the requirements for the degree of
Doctor of Canon Law

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ABSTRACT

TITLE: Understanding Ecclesiastical Laws: Canon 17 in Light of Contemporary Hermeneutics

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Ecclesiastical law as an objectivation of the Church's understanding of its own spiritual and social life, puts itself into the great tradition of interpreting the expressions of human life which is hermeneutics. As the canonical tradition of interpretation of ecclesiastical laws brings to light the conflict between common sense and theory, hermeneutics stresses the dialogical nature of understanding, its dynamic character, its historical dimension as operating within and mediating with the different traditions, and its actuality expressed in application to the present.

Some particular results of this research point to the traditional notion of the proper meaning of the words (*propria verborum significatio*) as demanding the consideration of a larger context which entails various disciplines of the Church's science. Similarly, the reflection on recourse to the mind of the legislator tends to disprove the voluntarist conception of the interpretation of the meaning of laws which equates the search for the will of the legislator with the ultimate goal of the interpretative activity in the canonical realm.

The findings on the ground of the particular branches of hermeneutics entitle the A. to formulate an outline of a theory of understanding which incorporates some pertinent results of hermeneutical reflection, valid for the endeavor of interpretation of canon law. The analysis of the process of understanding permits one to maintain that the mutual interdependence and interactiveness of cognitional operations create a kind of hermeneutical circle. This allows the interpreter to discover the meaning of the whole by applying each particular insight to enrich, qualify, and correct the already achieved understanding of a legal text. Moreover, the analysis of the notion of a legal norm together with some ontological presuppositions lead to the concept of an evolutive interpretation. This evolutive character constitutes a particular feature of the endeavor to interpret the laws and guarantees keeping in touch with the requirements of answering the problems of understanding the significance of the law for the People of God in every time and place.

To sum up, hermeneutics creates the awareness that the meaning of a legal text is not simply offered to a passive subject-interpreter in any routine procedure, but presents itself as a dynamic and creative reality requiring constant interaction between various subjective and objective, textual and extra-textual factors.

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And finally, to my friends, I say thank you so much for your constant encouragement and generous support.

ABBREVIATIONS

- AAS** *Acta Apostolicæ Sedis: commentarium officiale*, Romæ, 1909-
- ABBOTT** W.A. ABBOTT (ed.), *The Documents of Vatican II*, New York, America Press, Association Press, 1966, 794 p.
- c.** canon
- cc.** canons
- CCC** *Catechism of the Catholic Church*, Ottawa, Publication Service, Canadian Conference of Catholic Bishops, 1994, 698 p.
- CDD** SACROSANCTUM ŒCUMENICUM CONCILIUM VATICANUM II, *Constitutiones, decreta, declarationes cura et studio Secretariæ Generalis Concilii Œcumenici Vaticani II*, [Romæ, Typis polyglottis Vaticanis], 1966, xxiv, 1292 p.
- CCEO/90** *Codex canonum Ecclesiarum orientalium auctoritate Ioannis Pauli PP. II promulgatus*, Typis polyglottis Vaticanis, 1990, xxxiv, 381 p.
- CIC/17** *Codex iuris canonici, Pii X Pontificis Maximi iussu digestus, Benedicti Papæ XV auctoritate promulgatus, præfatione fontium annotatione et indice analytico-alphabetico ab Em.mo Petro Card. Gasparri auctus*, [Romæ], Typis polyglottis Vaticanis, 1933, xlvii, 786 p.
- CIC/83** *Codex iuris canonici auctoritate Ioannis Pauli PP. II promulgatus*, Libreria editrice Vaticana, 1983, xxx, 317 p.
- CLD** BOUSCAREN, T.L., and J.I. O'CONNOR (eds.), *Canon Law Digest*, Milwaukee, WI, The Bruce Publishing Company, 1934-1969, 6 vols., Mundelein, IL, *Canon Law Digest*, 1975-1991, 5 vols.

INTRODUCTION

The phenomenon of virtually unlimited communication among peoples, including the newest possibilities opened up by the Internet, marks the contemporary existence of human societies. It raises hope for a new model of coexistence and cooperation among the peoples in various parts of the world despite geographical distances, linguistic, cultural, and social differences. The Church's communities experience the same expectation. Already Vatican Council II recognized the necessity of an appropriate renewal of various ecclesiastical institutions and organisms in order to build up more just and brotherly communities of the faithful. One particular expression of this pursuit is the new legislation. The CIC/83 is meant to reflect the spirit and letter of the conciliar and postconciliar documents in this particular aspect which concerns the common good of ecclesial communities.

Admittedly, the call for participation in the life of the Church's communities includes participation in the largely understood process of making and implementing decisions. It tends to a new understanding of laws. The laws become not so much something "descending-from-above" as rather "ascending-from-below" as an expression of understanding the universal conditions of human and Christian

existence. Thus the laws become one of the means of communicating specific Christian values not so much *to* as *within* and *through* the community of believers. Another characteristic of the contemporary attitude towards the life of the Christian communities is often a rejection of law. It may have some roots of an ecclesiological nature which flow from positions unacceptable dogmatically, but, in most cases, the aversion and rejection of law is a consequence of an inexact understanding of the nature and the function of law in the Church.¹ All this points to the necessity of a deepened reflection about ecclesiastical law and its function within the Christian community.

The Code of Canon Law as the Church's fundamental legislative document can be regarded as the essential effort to translate the conciliar ecclesiology into canonical terms, although it is impossible to transpose perfectly the conciliar doctrine into canonical language. But, at the same time, the canonical legislation will be an effective instrument of carrying out the Church's salvific mission only if the ecclesiastical laws will be largely accepted and fully implemented. That presumes that they will be adequately understood.

¹ "There are those who perceive no more than a distorted, false and even very shallow concept of the law. This is perhaps the result of an arid, purely exegetical and verbalistic teaching method, and of an exclusively legalistic observance. They confuse law with a caricature of it, with juridicism and formalism which are the sclerosis of the law; they presume to apply the law for the law's own sake, thus losing sight of the common good and the transcendent finality of canon law. Others have a very reductive conception of canon law. They see nothing more in it than rules for exterior behavior, a kind of highway code, whose importance logically is very secondary and whose observance becomes almost optional and arbitrary" (R.J. CASTILLO LARA, "Some Reflections on the Proper Way to Approach the Code of Canon Law," in *Proceedings of the Canon Law Society of America*, 46 (1984), pp. 27-28).

Canon 17 states that "ecclesiastical laws are to be understood according to the proper meaning of the words considered in their text and context."² Some problems immediately appear, among others: What does "the proper meaning" mean? How to approach the text? What is the appropriate context? Do all these questions call for any kind of a reflective theory of the process of understanding written texts?

Indeed, the Holy Father points out that the knowledge of the Code presupposes scientific and thorough study, not reduced to establishing any purely literal or philological meaning, but succeeding in searching for the *mens legislatoris* and the *ratio legis*, and penetrating the spirit of law.³ On the other hand, Cardinal R. Castillo Lara reminds us that an interpretation based exclusively on the spirit of the law, on the inspiring principles, on theoretical constructions, but being in open conflict with the proper signification of the text (which remains the first criterion of interpretation), is not admissible.⁴

² The English translation of the canons of the 1983 *Codex iuris canonici*, unless otherwise noted, is taken from the British Commonwealth version of English-language translation: *The Code of Canon Law in English Translation*, prepared by the Canon Law Society of Great Britain and Ireland, in association with the Canon Law Society of Australia and New Zealand and the Canadian Canon Law Society, London, Collins; Ottawa, Canadian Conference of Catholic Bishops, 1983, xv, 319 p. All references to canons of the 1917 *Codex iuris canonici* (= *CIC/17*), 1983 *Codex iuris canonici* (= *CIC/83*), and 1990 *Codex canonum Ecclesiarum orientalium* (= *CCEO/90*) will be styled c. for canon and cc. for canons, followed by the canon number(s).

³ See JOHN PAUL II, Allocution to the Roman Rota, 26 January 1984, in *Communicationes*, 16 (1984), p. 16. English translation from W.H. WOESTMAN, (ed.), *Papal Allocutions to the Roman Rota 1939-1994*, Ottawa, Faculty of Canon Law, Saint Paul University, 1994, p. 183.

⁴ See CASTILLO LARA, "Some Reflections on the Proper Way to Approach the Code of Canon Law," p. 39.

Nowadays, the word *hermeneutics* is commonly heard in theological, philosophical, and literary circles. Generally, hermeneutics is the theory or philosophy of the interpretation of meaning.⁵ In any event, it is hermeneutics that marks the contemporary existence and development of various kinds of human knowledge. The Church's sciences experience the same phenomenon. In fact, the so-called *new hermeneutics* emerged in European Protestant theology as the "focal point" of today's theological problems.⁶ At the same time, one may ask for the relevance of hermeneutics in the field of the legal science and, consequently, in understanding legal texts. To put it differently, is there any need for a canonist to bother about twentieth-century developments in the philosophy of language, phenomenology, epistemology, or any Heideggerian ontology?⁷ Father Örsy gives an answer concluding that hermeneutics " [...] is mature enough to encounter our venerable canonical texts and throw new light on them."⁸ Besides that, an urgent need for any kind of dialogue between hermeneutics and canon law appears clearly if one does not want the theories of understanding embodied in canon law to seem out of date. Again Father Örsy reminds us that "[...] questions raised by the science

⁵ See J. BLEICHER, *Contemporary Hermeneutics: Hermeneutics as Method, Philosophy and Critique*, London, Routledge and Kegan Paul, 1983, p. 1.

⁶ See R.E. PALMER, *Hermeneutics: Interpretation Theory in Schleiermacher, Dilthey, Heidegger, and Gadamer*, Evanston, Northwestern University Press, 1969, p. 3.

⁷ See PALMER, *Hermeneutics*, p. 63.

⁸ L. ÖRSY, *Theology and Canon Law: New Horizons for Legislation and Interpretation*, Colleagueville, MN, Liturgical Press, c1992, p. 70.

of hermeneutics have hardly penetrated the field of canon law as yet.⁹ There is a firm expectation, then, that canon law may profit from new insights and discoveries which contemporary hermeneutics offers. Some other sciences which have encountered similar problems with interpretation can also provide some help.¹⁰

Much has been written on hermeneutics in the twentieth-century so one can talk about an explosion of literature with regard to the theory of the interpretation of meaning. Most of these works concern some specific fields of human intellectual activity, as for instance: theology, philosophy, biblical studies, literature, and civil law studies. However, the hermeneutical reflection can offer a deeper comprehension of the nature of the phenomenon of understanding for all those disciplines concerned with the task of interpreting the works of man, including canon law.¹¹ Among some major results of the hermeneutical study one can count the awareness that the hermeneutical experience (i.e. the encounter with the text) is, among others, intrinsically historical, linguistic, dialectical, and ontological in its character. Moreover, the hermeneutical experience leads to a disclosure of truth. These characteristics are not alien to the canonists in their struggling for understanding laws. To sum up, there is a reasonable hope that the theory (theories), no doubt successful in various fields of the social sciences and the

⁹ ÓRSY, *Theology and Canon Law*, p. 52.

¹⁰ See ÓRSY, *Theology and Canon Law*, p. 52.

¹¹ Cf. ÓRSY, *Theology and Canon Law*, p. 52.

humanities, can bring to greater clarity the distinctive character of understanding canon law and its interpretation.

Although research still continues in various fields, little has been written on the subject of hermeneutics in the domain of canon law. At the present, no major canonical study has been undertaken on the effect that the contemporary hermeneutics has (or can possibly have) on the interpretation of canon law.¹² Among the authors who touch upon this question are: L. Örsy (*Theology and Canon Law: New Horizons for Legislation and Interpretation*), H. Pree (*Die evolutive Interpretation der Rechtsnorm im Kanonischen Recht*), P. Santoso (*The Rules of Interpretation according to Canon 17: Searching the Will of the Legislator inside the Words of Law*), M.M. Shekleton (*Doctrinal Interpretation of Law: A Historical Synopsis and a Commentary*), C. D'Souza, (*Approach to the Interpretation of the 1983 Code according to Canon 17 and the Literary Critical Theory*). Although Father Örsy's *Theology and Canon Law: New Horizons for Legislation and Interpretation* deals extensively with the problematics of understanding ecclesiastical laws, especially in their broader theological context, nevertheless it leaves a certain room for a further development and clarifications (the Author himself admits that he touches on some limited aspects of hermeneutics).¹³ Pree's dissertation gives an overview of the understanding of interpretation throughout the history of the canonical science. It also offers a systematic elaboration of the notion of the

¹² Cf. ÖRSY, *Theology and Canon Law*, p. 52.

¹³ See ÖRSY, *Theology and Canon Law*, p. 69.

canonical norm and its structure. That part includes some references to the problem of understanding ecclesiastical laws. Santoso's work - according to its subtitle: *Searching the Will of the Legislator* - offers a specific perspective of the study of the problem. It analyzes the problem of understanding according to the traditional style of canonical handbooks. However, he brings to attention the importance of various literary forms present in the Code. Shekleton's *Doctrinal Interpretation of Law* looks at the problem of understanding laws also from the traditional point of view. He discusses the problematics of c. 18 in CIC/17 (c. 17 in CIC/83) and the concepts of the interpretation of ecclesiastical laws without any references to the contemporary theories of the interpretation of meaning. D'Souza himself concentrates on the particular theory of interpretation (literary critical theory as known in the biblical science) and applies it to the task of the interpretation of ecclesiastical laws.

The purpose of this dissertation is to delineate the matrix of considerations within which canonists can meaningfully re-open the question of understanding and interpretation. The topic of the research: understanding ecclesiastical laws, is considered in the aspect of expressing the phenomenon of understanding in the terms of contemporary hermeneutics (understanding is meant here in its dynamic aspect rather than as the result of the process). The dissertation intends to show the contemporary situation as regards the various means and possibilities of implementing some specific hermeneutical approaches, attitudes, and tools in the field of the canonical science, saving the specific character of the task of the understanding and interpretation of ecclesiastical laws. To put it in other words, the

aim of the dissertation is regarded as an effort to transpose the traditional canonical concept(s) of understanding laws into the language of the contemporary hermeneutics. Some general hermeneutical concepts seem to be indisputedly useful in this regard, particularly: the theory of horizon of consciousness, the concepts of the hermeneutic circle, hermeneutic consciousness, hermeneutic experience.

From these remarks the following questions can be asked:

1. Does the traditional attitude concerning the understanding of ecclesiastical laws embody any particular hermeneutical theory of understanding written texts?
2. To what extent can such a theory be identified, described, and evaluated?
3. How can the achievements of the contemporary hermeneutics enlighten the future task of the interpreters of canon law?
4. Can any specific hermeneutical theory, compatible with the task of understanding ecclesiastical laws, be actually proposed?

In view of answering these questions some particular aspects of the problem must be studied; especially: the attitude towards understanding ecclesiastical laws proceeding from the commonly accepted philosophical, theological, and canonical tradition, the actual impact of some contemporary theories of interpretation of meaning on the canonical science, and some possible reopening of the question of

understanding and the interpretation of ecclesiastical laws in the light of the modern hermeneutical reflection.

Needless to say, contemporary philosophical hermeneutics represents a vast area of scientific endeavor. As a result, to keep the subject of this dissertation in clear focus, consideration is given primarily to some chosen representatives in the field. The choice was inspired by the importance of their contribution to the science of hermeneutics. However, the document of the Biblical Commission listing F. Schleiermacher, W. Dilthey, and, among contemporary thinkers, M. Heidegger, R. Bultmann, H.-G. Gadamer, and P. Ricoeur, was serving as a kind of external criterion in assessing the suitability of the particular hermeneutical traditions for solving the problems of understanding in canon law.¹⁴ It is a matter of fact that various conceptions of hermeneutics constantly battle with each other. However, beyond the differences between the several forms of the proposals within hermeneutics, there are many similarities, too. The diverse directions in hermeneutical theories illustrate clearly a hermeneutical principle that the interpretation is shaped by the questions with which the interpreter approaches his subject. Besides, the hermeneutical problem as such is too complex to become the domain of a single school of thought. Hermeneutics, thus, though experiencing conflicts nowadays, should remain open to possible contributions from many different, and sometimes conflicting, traditions.¹⁵

¹⁴ See PONTIFICAL BIBLICAL COMMISSION, *The Interpretation of the Bible in the Church*, Sherbrooke, Éditions Paulines, 1994, p. 73.

¹⁵ See PALMER, *Hermeneutics*, pp. 66-67.

The actual organization of the dissertation follows Lonergan's approach to understanding texts. It has four main aspects: understanding the words, understanding the object to which the text refers, understanding the author, arriving at understanding through a process of learning or conversion.¹⁶

The first chapter examines then the nature of the process of understanding in its larger, philosophical aspect, possibly universally valid for any endeavor at interpreting the works of man. Moreover, some important contemporary theories of interpretation of meaning are shown and analyzed in the aspect of the interpretation of the written texts.

In the second chapter the text of ecclesiastical laws becomes the primary object of the process of understanding. In this regard, the concept of the proper meaning of the words and the strategy of seeking for this proper meaning is considered.

The third chapter is devoted to the essential task of exegetical activity which lies in understanding the object to which the text refers. Understanding ecclesiastical laws includes the presentation of some general, philosophical, theological, and canonical components of the present attitude towards understanding the Church's life and its various expressions in a large intellectual horizon.

The fourth chapter brings up the consideration in regard to the relationship between the author (the lawgiver) and the reader (the recipient of the law) in the

¹⁶ B.J.F. LONERGAN, *Method in Theology*, Toronto, University of Toronto Press for Lonergan Research Institute of Regis College, 1994, p. 155.

process of understanding laws, and the concept of the mind of the legislator in particular, as essential for canon law purposes.

An attempt to formulate an outline-theory of understanding ecclesiastical laws, acceptable from the philosophical, theological, and canonical points of view, and respecting the development of contemporary hermeneutics follows finally in the fifth chapter.

1. PHILOSOPHICAL ANALYSIS OF THE PHENOMENON OF UNDERSTANDING

An analysis of human intersubjectivity assures us that meaning is embodied or carried in symbols, in language, in art, and in the lives and deeds of persons.¹ Thus, human existence is not conceivable without broadly understood communications of meaning resulting in mutual comprehension of one man by another. As a result, interpretation probably represents the most basic act of human thinking and existing itself, and thus it is more encompassing than even the linguistic world: for apart from the linguistic level of interpretation, there are many nonlinguistic ones as well. Nevertheless, amid the various symbolic media of expression used by man, language occupies a privileged position; no other medium exceeds it in communicative flexibility, power, and general importance. Indeed, the linguistic level assumes an exceptional importance: human existence in fact always involves language.²

¹ See LONERGAN, *Method in Theology*, p. 57.

² See PALMER, *Hermeneutics*, p. 9.

1.1. Human being interpreting the world

1.1.1. A call for interpretation - the problem of hermeneutics

For many authors the discussion of the Greek notion of interpretation serves the purpose of introducing the reader into the contemporary world of the problems concerning the interpretation of written texts. The rich reservoir of meaning resident in the Greek roots is of exceptional help to clarify the present situation on the field of the science and art of interpretation.³ Searching for an acceptable theory of interpretation leads historically to Greek philosophy. The verb *hermēneuein* ("to interpret") and the noun *hermēneia* ("interpretation") occur in their various forms in the ancient texts, including Aristotle's major treatise in the *Organon* - *Peri hermēneias* ("On interpretation"). The basic usages of these words suggest the process of bringing a thing or a situation from being hidden to being seen, from unintelligibility to understanding.⁴ There are three directions of meaning of

³ Cf. PALMER, *Hermeneutics*, pp. 31-32. Hermeneutics in the German-French philosophical climate equates the theory of interpretation with a theory of understanding. According to the Anglo-Saxon philosophy, rather the theory of meaning is a theory of understanding. Understanding appears then as an intermediate concept, reduced either to interpretation or to meaning. See H. PARRET, *Contexts of Understanding*, Amsterdam, John Benjamins B.V., 1980, p. 4. "Contemporary hermeneutics cannot resist the temptation to purely and simply identify understanding and interpretation [...]" (PARRET, *Contexts of Understanding*, p. 6).

⁴ See PALMER, *Hermeneutics*, pp. 12-13. *Hermēneuein* and *hermēneia* "[...] point back to the wing-footed messenger-god Hermes, from whose name the words are apparently derived (or vice versa?). Significantly, Hermes is associated with the function of transmuting what is beyond human understanding into a form that human intelligence can grasp. [...] The Greeks credited Hermes with the discovery of language and writing - the tools which human understanding employs to grasp meaning and to convey it to others. [...] This mediating and message-bringing process of "coming to understand" associated with Hermes is implicit in all of the three basic directions of meaning of *hermēneuein* and *hermēneia* in ancient usage" (PALMER, *Hermeneutics*, p. 13).

hermēneuein in its ancient usage: to express aloud in words ("to say"), to explain, and to translate.⁵ Nevertheless,

[...] in all three cases, something foreign, strange, separated in time, space, or experience is made familiar, present, comprehensible; something requiring representation, explanation, or translation is somehow "brought to understanding" - is "interpreted."⁶

Translation represents a special instance of the basic interpretative process of "bringing to understanding." The act of translation reveals the fact that language itself contains an interpretation of the world and that the translator mediates between one world and another.⁷ Translation shows the clash between the reader's world of understanding and that in which the work is operating. These two separate worlds (linguistic, social, cultural) are present in any interpretation of a written work.⁸

⁵ See PALMER, *Hermeneutics*, p. 13.

⁶ PALMER, *Hermeneutics*, p. 14. Minor editorial modifications, for instance: capitalization, spelling, inclusive language, have been made in some of the quotations to conform to the adopted style for this work. Whenever the source of the English translation is not given, the translation was made by the author of this dissertation.

⁷ See PALMER, *Hermeneutics*, p. 27.

⁸ See PALMER, *Hermeneutics*, p. 30. Lonergan remarks that different languages develop in different manners. Consequently, even the best translations express not the exact meaning of the original but the approximation possible in another tongue. See LONERGAN, *Method in Theology*, p. 71.

B.J.F. Lonergan's⁹ study of human understanding provides a useful philosophical framework for explaining the existence of those two non-concurring worlds. He defines a linguistic expression¹⁰ as:

[...] a verbal flow governed by a practical insight (F) that depends upon a principal insight (A) to be communicated, upon a grasp (B) of the anticipated audience's habitual intellectual development (C), and upon a grasp (D) of the deficiencies in insight (E) that have to be overcome if the insight (A) is to be communicated.¹¹

The analysis of the phenomenon of expression discloses a multiplicity of interactions involved in the process of communication. It appears that some insight (A)¹² to be communicated is mediated by a practical set of insights (F). That

⁹ Lonergan is one of the twentieth-century philosophers who have been accused of a failure to deal adequately with the hermeneutical dimension of human experience. It can be true concerning his hermeneutical concerns in *Insight*, which have been dominated by the problem of objectivity. Lonergan's theory of methodological hermeneutics in *Insight* is founded on an analysis of the procedures proper to mathematics and the natural sciences in order to outline the possibility of a general heuristic structure for interpretation. Nevertheless, in his later *Method in Theology* Lonergan presents a different motivation for the formulation of a general hermeneutics which integrates not only the empirical sciences, but the humanities as well. That new concept of transcendental hermeneutics is founded on Lonergan's notion of "functional specialties". See R. McKINNEY, "The Hermeneutical Theory of Bernard Lonergan," in *International Philosophy Quarterly*, 23 (1983), pp. 277, 283.

¹⁰ Lonergan classifies acts of meaning as potential, formal, full, constitutive, or instrumental. He sees expressions as instrumental acts of meaning through which the other acts of meaning are externalized and exhibited for interpretation by others. See LONERGAN, *Method in Theology*, p. 71. For more about the elements of meaning, see LONERGAN, *Method in Theology*, pp. 73-76 and an evaluation of Lonergan's understanding of meaning in R.M. DORAN, *Theology and the Dialectics of History*, Toronto, University of Toronto Press, 1990, pp. 568-589.

¹¹ B.J.F. LONERGAN, *Insight: A Study of Human Understanding*, London, Longmans, Green and Co, 1957, p. 562. The definition adopted here enables Lonergan to resolve the problem of the objectivity of interpretation. Although his conclusions on the possibility of "objective" hermeneutics are not without difficulties, some of his concepts and analyses appear still to be useful at least to present the complexity of the problem of interpretation.

¹² Let us, at this point, understand insight in its vocabulary meaning as "the imaginative power to see into and understand immediately" and/or "an item of knowledge gained through this power" (*The New Lexicon Webster's Encyclopedic Dictionary of the English Language*, Canadian rev. and updated ed., New York, Lexicon Publications, Inc., [c1988], p. 500).

practical insight (F), although determined by the insight (A) as its principal objective, is also influenced by the insight (B) which takes into consideration what the communicant need not explain and the resources of language allowing him for effective communication (the grasping the recipient's habitual accumulation of insights (C)). Moreover, the insight (D) that is the grasping of the recipient's relevant deficiencies in insight (E) cannot be neglected. It means that the practical insight (F) governing the verbal flow differs notably from the insight (A) to be communicated.¹³

Regarding the goal of reaching the primary insight (A) through the communication of verbal expressions, it is clear that that process must take into account all the insights on the side of the communicant ((A), (B), (D)) and all the relevant conditions on the side of the recipient ((C), (E)), determining in effect the practical insight (F). The ancient Greek idea of the existence of two different worlds - that of the communicant and that of the recipient - obtains thus clear justification.

The above mentioned, pretty rudimentary analysis of the structure of human expressions reveals their meaningful component, which is not something immediately given, but it has to be perceived and recognized as meaningful by a subject (a recipient) and transposed into his own system of values and meanings.¹⁴ Here is the core of the problem of hermeneutics: how to render this process

¹³ See LONERGAN, *Insight*, p. 556.

¹⁴ See BLEICHER, *Contemporary Hermeneutics*, p. 1.

possible, effective, and reliable, while facing the fact that the subjectively intended meaning is mediated by the interpreter's own subjectivity.¹⁵

1.1.2. Problem of hermeneutics in the social sciences

God's plan concerning mankind includes a communitarian nature of man's vocation: "God, who has fatherly concern for everyone, has willed that all men should constitute one family and treat one another in a spirit of brotherhood."¹⁶ The call for community - fellowship or communion - appears as a fundamental reality and a profoundly human longing in the contemporary world. The only *milieu* in which a man can find a fulfilled humanity occurs in the *polis*, i.e. in community with other people. The human person can realize himself only in ties of affection, in mutual sharing, in concern for personal values.¹⁷ Again, the Second Vatican Council teaches that:

¹⁵ Lonergan insists that not every expression stands in need of interpretation. Commonsense statements have within a given community a perfectly obvious meaning. Nevertheless, for another community the meaning of the same expression may not be such. See LONERGAN, *Method in Theology*, pp. 153-154. "Commonly it does happen that conversation occurs between people that share the same common sense, that writing is directed to readers that already understand in considerable detail the subject under discussion. But there also is communication between people with different habitual accumulations of insights [...]" (LONERGAN, *Insight*, p. 556).

¹⁶ SECOND VATICAN COUNCIL, Pastoral Constitution on the Church in the Modern World, *Gaudium et spes*, 7 December 1965, no. 24, in SACROSANCTUM ŒCUMENICUM CONCILIUM VATICANUM II, *Constitutiones, decreta, declarationes cura et studio Secretariæ Generalis Concilii Œcumenici Vaticani II (=CDD)*, [Romæ, Typis polyglottis Vaticanis], 1966, p. 714. English translation from W.A. ABBOTT (ed.), *The Documents of Vatican II (=ABBOTT)*, New York, America Press, Association Press, 1966, p. 223.

¹⁷ See W. KASPER, *Theology and Church*, New York, Crossroad, 1989, pp. 148-149.

Christian revelation contributes greatly to the promotion of this communion between persons, and at the same time leads us to a deeper understanding of the laws of social life which the Creator has written into man's spiritual and moral nature.¹⁸

Man's social nature makes it evident that the progress of the human person and the advance of society itself hinge on each other. [...] This social life is not something added on to man. Hence, through his dealings with others, through reciprocal duties, and through fraternal dialogue he develops all his gifts and is able to rise to his destiny.¹⁹

Therefore, a society is essential to the fulfilment of man's vocation. Within and through the society:

[...] men can share their knowledge of the truth, can claim their rights and fulfil their duties, receive encouragement in their aspirations for the goods of the spirit, share their enjoyment of all the wholesome pleasures of the world [...] It is these spiritual values which exert a guiding influence on culture, economics, social institutions, political movements and forms, laws, and all the other components which go to make up the external community of men and its continual development.²⁰

The subject and the goal of all social institutions is, then, the human person and the good of that person as an individual. Nevertheless, the social nature of man causes that the good of each individual is necessarily related to the common good, which in turn can be defined only by reference to the human person²¹ as "[...] the sum of those conditions of social life which allow social groups and their individual

¹⁸ *Gaudium et spes*, no. 23, in *CDD*, p. 713; *ABBOTT*, p. 223.

¹⁹ *Gaudium et spes*, no. 25, in *CDD*, p. 715; *ABBOTT*, p. 224.

²⁰ JOHN XXIII, Encyclical Letter, *Pacem in terris*, 11 April 1963, I, in *Acta Apostolicæ Sedis* (=AAS), 55 (1963), p. 266. English translation from *The Pope Speaks*, 6 (1963), p. 20.

²¹ See *Gaudium et spes*, no. 25, in *CDD*, p. 715; *ABBOTT*, p. 224; *Catechism of the Catholic Church* (=CCC), no. 1905, Ottawa, Publication Service, Canadian Conference of Catholic Bishops, 1994, p. 398.

members relatively thorough and ready access to their own fulfilment."²² Nevertheless, well-ordered society needs an authority to govern it. The role of that authority is to ensure the common good of the society.²³ That includes making laws, giving orders to men, and expecting obedience from them.²⁴

These remarks refer primarily to the civil entities. However, the Church, which is a divine mystery, is also a human institution. Although its power comes from God, it is still necessarily mediated by human beings, human systems, human structures. Ecclesial institutions remain profoundly human so that it would be ultimately inconceivable that the values which the Church espouses for the secular communities will be for long excluded from the ecclesial ones. The Church obviously is not a civil society, but it is a political entity and remains subject to the same laws.²⁵

The Council emphasizes that in the Church, unity in Christ creates a mutual communion of life of all those members who share the same values and live these out:²⁶

God, in fact, "willed to make men holy and save them, not as individuals without any bond or link between them, but rather to make them into a people" (*Lumen gentium*, 9). The very life-giving presence

²² *Gaudium et spes*, no. 26, in *CDD*, p. 716; *ABBOTT*, p. 225.

²³ See *CCC*, no. 1898, p. 397.

²⁴ See *CCC*, no. 1897, p. 397.

²⁵ See J.L. LINNAN, "Subsidiarity, Collegiality, Catholic Diversity, and Their Relevance to Apostolic Visitations," in *The Jurist*, 49 (1989), pp. 415-416.

²⁶ See J.H. PROVOST, "Structuring the Church as a *Communio*," in J.H. PROVOST (ed.), *The Church as Communion*, Washington, DC, Canon Law Society of America, 1984, p. 192.

of the Holy Spirit (cf. *Lumen gentium*, 7) builds up organic cohesion in Christ: indeed, He unifies the Church" in communion and in the works of ministry [...]."²⁷

The common vocation of all the members of the Church requires as a criterion for participating in ecclesial communion, the primacy of life in the Spirit.²⁸ The Holy Spirit is also the source of the multiplicity of the gifts, that is, the offices and the various duties, which differentiate the members among themselves and constitute substantially some mutual complements.²⁹ All these diverse and complementary charisms work together for the common good.³⁰ Obviously enough, it involves the existence and activity of some authority which relates to establishing and implementing laws in service to the community.

In a detailed inquiry concerning the relationship between values and laws, L. Örsy describes laws as "norms of action for the community, set by legitimate authority, for the appropriation of values by the community."³¹ Those values are

²⁷ SACRED CONGREGATION FOR RELIGIOUS AND FOR SECULAR INSTITUTES, SACRED CONGREGATION FOR BISHOPS, Directives for the Mutual Relations Between Bishops and Religious in the Church, *Mutuæ relationes*, 14 May 1978, no. 2, in AAS, 70 (1978), p. 475. English translation from *Canon Law Digest (=CLD)*, vol. 9, p. 300.

²⁸ See *Mutuæ relationes*, no. 4, in AAS, 70 (1978), p. 476; *CLD*, vol. 9, p. 301. Unfortunately, that primacy is not recognized in the Code of Canon Law which speaks about communion in terms of Christ's visible body, bonds of profession of faith, the sacraments and ecclesiastical governance which are the institutional criteria. See KASPER, *Theology and Church*, p. 153.

²⁹ See *Mutuæ relationes*, no. 2, in AAS, 70 (1978), p. 475; *CLD*, vol. 9, p. 300.

³⁰ See CCC, no. 801, p. 177.

³¹ ÖRSY, *Theology and Canon Law*, p. 92.

meant to serve the common good of the Christian community.³² Theology provides an overall vision and definition of those specific values.³³ It fully accords with the Pope's statement in *Sacræ disciplinæ leges* that the Code can be regarded as "[...] a great effort to translate the conciliar ecclesiological teaching into canonical terms."³⁴ That process of translation is itself the interpretation, if one understands translation - in the line of the Greek tradition - as the mediation between two different worlds: in this particular case, between the world (and language) of theology and the world (and language) of canon law.³⁵

The specific character of legal sciences requires, no doubt, the hermeneutics oriented to find the precise patterns of actions.³⁶ That brings forth the problem of the objectivity of interpretation and the notion of the correct understanding of laws. In

³² *Bonum commune* Órsy sees as expressing itself in values which contribute to the development of persons. See ÓRSY, *Theology and Canon Law*, pp. 89-101.

³³ See ÓRSY, *Theology and Canon Law*, p. 103.

³⁴ "[...] magnus n̄sus transferendi in sermonem canonisticum hanc ipsam doctrinam, ecclesiologiam scilicet conciliarem" (JOHN PAUL II, Apostolic Constitution, *Sacræ disciplinæ leges*, 25 January 1983, in AAS, 75, Pars II, (1983), p. xi. English translation from *The Code of Canon Law in English Translation*, pp. xiii-xiv). Cf. also R.J. BARRET, "Canon Law or Canonical Theology? What Does a Theology of Law Mean for the Specificity of Canon Law?," in *The Irish Theological Quarterly*, 60 (1994), p. 31.

³⁵ Cf. PALMER, *Hermeneutics*, pp. 26-31. The Council admits, moreover, the constant effort of the Church to interpret the world in the light of the Gospel: "[...] the Church has always had the duty of scrutinizing the signs of the times and of interpreting them in the light of the Gospel. Thus in language intelligible to each generation, she can respond to the perennial questions which men ask about this present life and the life to come, and about the relationship of the one to the other. We must therefore recognize and understand the world in which we live, its expectations, its longings, and its often dramatic characteristics" (*Gaudium et spes*, no. 4, in CDD, p. 684; ABBOTT, pp. 201-202).

³⁶ Cf. ÓRSY, *Theology and Canon Law*, p. 167. Órsy contrasts two kinds of hermeneutics: one, oriented to search for all the possible meanings (suitable for theology), and second, characterized by a limited scope of searching for the allowable actions (proper for canon law). See ÓRSY, *Theology and Canon Law*, p. 167.

this regard, *Sacræ disciplinæ leges* points at some difficulties in the process of transposing the ecclesial reality into the world of legal concepts and norms directing the actions.³⁷ On the other hand, however, the canonical legislation will be an effective instrument of carrying out the Church's salvific mission only if the ecclesiastical laws will be largely accepted and fully implemented, which presumes that they will be adequately understood in all their implications.³⁸

Interpretation of canon law shares many common characteristics with the interpretation of all legal texts. In fact, legal hermeneutics has a long tradition. Beginning from W. Dilthey (1833-1911), hermeneutics becomes the foundation for the *Geisteswissenschaften*.³⁹ The term *Geisteswissenschaften* encompasses all the disciplines (humanities and social sciences) which interpret expressions of man's

³⁷ "Quod si fieri nequit, ut imago Ecclesiae per doctrinam Concilii descripta perfectae in linguam *canonicam* convertatur, nihilominus ad hanc ipsam imaginem semper Codex est referendus tamquam ad primum exemplum, cuius lineamenta in se, quantum fieri potest, suapte natura exprimere debet. Inde nonnullae profluunt fundamentales normae, quibus totus regitur novus Codex, intra fines quidem materiae illi propriae, necnon ipsius linguae, quae cum ea materia cohaeret. Quinimmo affirmari licet inde etiam proficisci notam illam, qua Codex habetur veluti complementum magisterii a Concilio Vaticano II propositi, peculiari modo quod attinet ad duas Constitutiones, dogmaticam nempe atque pastorem [It is impossible perfectly to transpose the image of the Church described by conciliar doctrine into canonical language, nevertheless the Code must always be related to that image as to its primary pattern, whose outlines, given its nature, the Code must express as far as is possible. Hence flow certain fundamental principles by which the whole of the new Code is governed, within the limits of its proper subject and of its expression, which must reflect that subject. Indeed it is possible to assert that from this derives that characteristic whereby the Code is regarded as a complement to the authentic teaching proposed by the Second Vatican Council and particularly to its Dogmatic and Pastoral Constitutions]" (*Sacræ disciplinæ leges*, in AAS, 75, Pars II, (1983), pp. xi-xii; *The Code of Canon Law in English Translation*, p. xiv). Naturally, any ecclesiological and canonical principles governing the process of composition of the Code become, then, the principles of its faithful reading.

³⁸ Canon 17 implies the notion of correct understanding ("Leges ecclesiasticae intellegendae sunt [...]"). The canon itself is a norm, giving the direction (one may say: some hermeneutical rule) for ecclesially accepted understanding laws.

³⁹ At its early stage, hermeneutics has been employed to assist discussion in philology, in biblical exegesis, and in jurisdiction. See BLEICHER, *Contemporary Hermeneutics*, p. 11.

inner life, among others: human actions and the law governing them.⁴⁰ Dilthey asserted that the interpretation of great expressions of human life, whether it be a law, literary work, or sacred scripture requires an act of historical understanding which is fundamentally distinct from the "scientific" understanding implied for grasping the natural world.⁴¹ It allows the *Geisteswissenschaften* to get away from the reductionist and mechanistic perspective of the natural sciences and to assume an approach adequate to the complexity of phenomena.⁴² Legal hermeneutics tells us that there are some peculiar differences in the approach to the legal text. The specific problems arising from the interpretative task are intimately connected with the application of its results.⁴³ That practical and dynamic dimension in the interpretation of law (especially the *ius vigens* which governs the current actions of society) adds a specific feature of actuality relative to juridical hermeneutics.⁴⁴ Moreover, the unique character of the Church's legal system, founded not so much on any philosophical or social analyses as on the Church's self-understanding

⁴⁰ See PALMER, *Hermeneutics*, p. 98.

⁴¹ See PALMER, *Hermeneutics*, p. 41.

⁴² See PALMER, *Hermeneutics*, p. 100.

⁴³ See BLEICHER, *Contemporary Hermeneutics*, p. 13. Gadamer insist on actuality of every kind of interpretation: in every interpretation a certain kind of application takes place: "[...] wir meinen [...], daß Anwendung ein ebenso integrierender Bestandteil des hermeneutischen Vorgangs ist wie Verstehen und Auslegen [...] we consider application to be just as integral a part of the hermeneutical process as are understanding and interpretation]" (H.-G. GADAMER, *Wahrheit und Methode: Grundzüge einer philosophischen Hermeneutik*, 2. Aufl. durch einem Nachtrag erweitert, Tübingen, J.C. Mohr, 1965, p. 291. English translation from H.-G. GADAMER, *Truth and Method*, 2d rev. ed., translation rev. by J. WEINSHEIMER and D.G. MARSHALL, New York, Crossroad, 1989, p. 308). Cf. also BLEICHER, *Contemporary Hermeneutics*, pp. 126-127.

⁴⁴ For the difference between interpreting the literary texts and the texts of legal norms, see ÖRSY, *Theology and Canon Law*, pp. 146-147.

articulated as a broader ecclesial perspective mostly by the science of ecclesiology,⁴⁵ requires a special approach to the task of understanding and interpretation of canon law.⁴⁶

In his *Theology and Canon Law*, Órsy admits that hermeneutics already plays a great role in the Church's sciences: it opened a new era in biblical studies and helped to find new meanings in ancient conciliar texts as well.⁴⁷ Moreover, as John Paul II reminds us, Catholic exegesis does not limit itself to any exclusive method of interpretation, but it makes use of most of all the current methods, freed, however, from such philosophical presuppositions which are contrary to the truth of the faith.⁴⁸ For very often, the use of those methods for specified purposes is

⁴⁵ The mutual relationship between theology and canon law is a matter of constant and vigorous study. Among numerous elaborations, see: L. ÓRSY, *Theology and Canon Law: New Horizons for Legislation and Interpretation*, Collegeville, MN, Liturgical Press, c1992, 211 p.; L. ÓRSY, "Corecco's Theology of Canon Law," in *The Jurist*, 53 (1993), pp. 186-198; M. WIJLENS, *Theology and Canon Law: The Theories of Klaus Mörsdorf and Eugenio Corecco*, Lanham, MD, University Press of America, [1992], xvii, 229 p.

⁴⁶ It is clear that sociological and political concepts or formulas cannot be applied to the reality of the Church without some reservations: "[...] its [Church's] reality cannot be explained by recourse to any mere sociological formula; for real *newness* transcending the human order is inherent in it. Only in this transcendent perspective can we rightly interpret the relationships among various members of the Church" (*Mutuæ relationes*, no. 1, in AAS, 70 (1978), p. 475; *CLD*, vol. 9, p. 299). "The present social evolutions and cultural changes, which we ourselves are witnessing, even though they evoke in the Church the need to renew not a few perhaps of her human aspects, are nevertheless unable to deface in the least her specific structure as *universal sacrament of salvation*. On the contrary, these very changes, which are to be promoted, will serve at the same time to place her nature in ever greater evidence" (*Mutuæ relationes*, no. 3, in AAS, 70 (1978), p. 476; *CLD*, vol. 9, p. 301).

⁴⁷ See ÓRSY, *Theology and Canon Law*, p. 69. "In its recent course exegesis has been challenged to some rethinking in the light of contemporary philosophical hermeneutics, which has stressed the involvement of the knowing subject in human understanding, especially as regards historical knowledge" (PONTIFICAL BIBLICAL COMMISSION, *The Interpretation of the Bible in the Church*, p. 73).

⁴⁸ See JOHN PAUL II, *Address on the Interpretation of the Bible in the Church*, 23 April 1993, in *L'Osservatore Romano* (English ed.), no. 17 (1288), 28 April 1993, p. 4.

accompanied by *a priori* principles, that is not something pertaining to the methods themselves, but to “[...] certain hermeneutical choices which govern the interpretation and can be tendentious”.⁴⁹

From the preface of Cardinal J. Ratzinger to the document of the Pontifical Biblical Commission *The Interpretation of the Bible in the Church* (1993) evolves the methodological rule that every particular method of scientific investigation which leads to the better knowledge about reality is not only permissible, but welcomed in the field of the Church’s sciences. Nevertheless, the fundamental criterion for the admissibility of those methods is the non-existence of any contradiction of the philosophical principles behind a given method with the basic principles of philosophy, essential and indispensable as implied in the deposit of the faith.⁵⁰ Consequently, at least by way of analogy, the implementation of hermeneutics in the

⁴⁹ PONTIFICAL BIBLICAL COMMISSION, *The Interpretation of the Bible in the Church*, p. 39. “[...] because of the progress made in the human sciences, questions of interpretation have become more complex in modern times. Scientific methods have been adopted for the study of the texts of the ancient world. To what extent can these methods be considered appropriate for the interpretation of holy Scripture? For a long period the Church in her pastoral prudence showed herself very reticent in responding to this question, for often the methods, despite their positive elements, have shown themselves to be wedded to positions hostile to the Christian faith” (PONTIFICAL BIBLICAL COMMISSION, *The Interpretation of the Bible in the Church*, pp. 29-30).

⁵⁰ “The application of a “profane” method to the Bible necessarily led to discussion. Everything that helps us better to understand the truth and to appropriate its representation is helpful and worthwhile for theology. It is in this sense that we must seek how to use this method [the historical-critical method] in theological research. Everything that shrinks our horizon and hinders us from seeing and hearing beyond that which is merely human must be opened up. Thus the emergence of the historical-critical method set in motion at the same time a struggle over its scope and over its proper configuration which is by no means finished as yet” (J. RATZINGER, *The Preface to The Biblical Commission Document*, in PONTIFICAL BIBLICAL COMMISSION, *The Interpretation of the Bible in the Church*, p. 25). What would be that accepted set of the philosophical principles in the Church? This problem needs a deeper research, indeed. It is obvious, however, that certain philosophical doctrines (as for instance any monistic ontology) are excluded. It seems realistic that the question of any suspected discrepancy between the presuppositions of the method at stake and these accepted principles should be resolved on a case-by-case basis.

area of the interpretation of canon law seems to be justified not only on a theoretical basis, but also on the ground of the current practical approach of the Church's authorities concerning the use of some new scientific methods in various fields of theology.

Nevertheless, as Örsy points out, the present use of the attainments of hermeneutics in the field of the canonical study is not yet satisfactory:

Questions raised by the science of hermeneutics have hardly penetrated the field of canon law as yet [...] if canon lawyers want to learn about epistemological issues and hermeneutics, they must look for help in the fields of other sciences which have encountered similar problems connected with interpretation and are at least in the process of learning how to solve them, such as biblical studies, theology, or civil law. Their questions are important for us. The answers they give illustrate, in other subject matter, how scientific progress can be made. We must raise similar questions but find our own answers."⁵¹

To sum up, there is a certain hope that the implementation of hermeneutics into canon law study will be promising. As Örsy concludes: "Hermeneutics may be a new science, but it is mature enough to encounter our venerable canonical texts and throw new light on them."⁵²

⁵¹ ÖRSY, *Theology and Canon Law*, p. 52.

⁵² ÖRSY, *Theology and Canon Law*, p. 70.

1.2. Human being interpreting his works

1.2.1. Hermeneutics as the theory of the interpretation of meaning

Contemporary hermeneutics is understood as a theory or philosophy of the interpretation of meaning.⁵³ Hermeneutics, if defined as the study of the understanding of the works of man, becomes fundamental to all those disciplines concerned with interpretation and goes beyond any mere linguistic and textual interpretation.⁵⁴ It brings to hermeneutics a potentially broad significance for all those disciplines occupied with the interpretation of the works of man: all the humanistic disciplines. The focus of hermeneutics becomes deciphering the human imprint on a work, understanding its "meaning." As natural objects require the methods of natural sciences to be understood, so the works of man require a special "science" of understanding which is appropriate to them as "works." The works which "speak" demand a different, more subtle and comprehensive mode of understanding than "silent", natural objects.⁵⁵ It brings forth the question whether a work of man is an object to be understood by conceptualizing or analyzing it, or it is a complex, historical encounter which calls for personal experience of existence

⁵³ See BLEICHER, *Contemporary Hermeneutics*, p. 1. Palmer provides six different definitions of hermeneutics: 1) the theory of biblical exegesis; 2) philological methodology; 3) the science of linguistic understanding; 4) the methodological foundation for the *Geisteswissenschaften*; 5) the phenomenology of *Dasein* and of existential understanding; 6) the systems of interpretation used to find the meaning behind myths and symbols. See PALMER, *Hermeneutics*, pp. 33-45.

⁵⁴ See PALMER, *Hermeneutics*, p. 10.

⁵⁵ See PALMER, *Hermeneutics*, pp. 7-8.

in the world.⁵⁶ Consequently, from a certain point of view hermeneutics may be seen as an opposition to an indiscriminate implementation of the method proper to the sciences into the task of interpretation of the works of man. In other words, hermeneutics calls for the rejection of a mono-methodological empiricism.⁵⁷

As the contemporary hermeneutics suggests, understanding is both an ontological and an epistemological phenomenon. Hermeneutics tries to answer the question of what understanding itself is, and the problem of what is involved in the event of understanding a text.⁵⁸ According to some conflicting views concerning the solution of the problem of hermeneutics three separable strands may be found:⁵⁹ hermeneutics understood as either a hermeneutical theory (that is, the methodology and epistemology of interpretative understanding practiced as a science),⁶⁰ or a hermeneutic philosophy (that is the philosophical inquiry into the ontological

⁵⁶ See PALMER, *Hermeneutics*, pp. 9-10. From phenomenology came a radical critique of realistic conceptions of perceiving in literary interpretation. The textual analysis has been accused of falling into the scientist's ways of thinking and becoming increasingly technological: an exercise in the conceptual "dissection" of the literary object. In fact, the literary work is not a manipulatable object, but it is a human voice out of the past. In order to understand any literary work dialog, not dissection, is suitable. A literary work as a humanly created text cannot be understood with disinterested objectivity of some scientific method. What is needed here is a humanistic understanding of the whole event of the literary interpretation. See PALMER, *Hermeneutics*, pp. 5-7. Hermeneutics claims that these remarks, valid in the field of the literary interpretation, find their importance in all endeavors of interpreting texts, including the legal ones.

⁵⁷ See R.J. HOWARD, *Three Faces of Hermeneutics: An Introduction to Current Theories of Understanding*, Berkeley, University of California Press, [1982], pp. 32-34. The characteristic thesis of methodological monism is that the methodologies appropriate to the cultural and natural worlds are essentially one. See HOWARD, *Three Faces of Hermeneutics*, p. 31.

⁵⁸ See PALMER, *Hermeneutics*, p. 10.

⁵⁹ See BLEICHER, *Contemporary Hermeneutics*, p. 1. The division of the field of hermeneutics, proposed here, does not claim to be universally accepted, nevertheless, it provides a clear and useful framework for the presentation of current ideas in contemporary hermeneutics.

⁶⁰ See BLEICHER, *Contemporary Hermeneutics*, p. 267.

preconditions of understanding),⁶¹ or a critical hermeneutics (essentially, a critique of systematically distorted communication).⁶² Among the contemporary hermeneutical issues, there is a debate between those who see hermeneutics as a methodology for validation and those who regard hermeneutics as an ontology of understanding in general.⁶³

Hermeneutical theories attempt to create a general theory of interpretation that would serve as the methodology for the *Geisteswissenschaften*. In this regard, F.E. Schleiermacher provides the first attempt to analyze the process of understanding and inquire into the possibilities and limits of valid interpretation. He sees understanding as a creative reformulation and reconstruction,⁶⁴ and, consequently, he postulates a general hermeneutics as the art of understanding which consists in the re-experiencing of the mental processes of the author. Understanding constitutes a reverse of the process of composition, because it begins with the fixed expression and attempts to go back to the mental life of the author. The speaker or author constructed an utterance, the hearer (for Schleiermacher understanding is a matter of dialogical relationship and

⁶¹ See BLEICHER, *Contemporary Hermeneutics*, p. 268.

⁶² See BLEICHER, *Contemporary Hermeneutics*, p. 266. As regards the usage of the terms "hermeneutical" and "hermeneutic," see BLEICHER, *Contemporary Hermeneutics*, p. 3. Howard locates the core of contemporary hermeneutical problematic in the three major streams of modern philosophy - analytic, Marxist, and phenomenological. See HOWARD, *Three Faces of Hermeneutics*, pp. xvi, 32-34.

⁶³ See MCKINNEY, "The Hermeneutical Theory of Bernard Lonergan," p. 277.

⁶⁴ Already Schleiermacher's forerunners regarded the process of understanding as a repetition of the process of creation (F. Ast, 1778-1841) in which the thoughts of an author have to be understood as he had understood them himself (F.A. Wolf, 1759-1824). See BLEICHER, *Contemporary Hermeneutics*, pp. 13-14.

hermeneutics is the art of hearing) searches the structures of the utterance and the thought. His systematic hermeneutics contains, thus, two parts: grammatical and psychological interpretation (everything encompassed by the author's psychic life).⁶⁵

In Dilthey's theory understanding means an operation in which the mind grasps the "mind" of the other person. Understanding is considered here as a transposition and re-experiencing of the world as another person meets it in lived experience. Understanding, thus, becomes a mental process by which one comprehends living human experience.⁶⁶

The primary concern of E. Betti's theory is the problem of transposing a meaning-complex created by the author into the recipient's own understanding of himself and the world. For Betti, the way to achieve that purpose is the analysis of the reality of understanding as the intuitive capacity of human mind (*verstehen*). *Verstehen* is the means to the re-experiencing or re-thinking of the author's original feelings or thoughts.⁶⁷ Betti considers the process of interpretation as destined to solve the epistemological problem of understanding. This process has a triadic character: the interpreter as an active, thinking mind on the one end, and, at the

⁶⁵ See F.E. SCHLEIERMACHER, *Hermeneutik, nach den Handschriften neu hrsg. und eingeleitet von Heinz KIMMERLE*, Heidelberg, C. Winter, 1959, pp. 80-83. For the summary of Schleiermacher's project of a general hermeneutics, see PALMER, *Hermeneutics*, pp. 84-97.

⁶⁶ See DILTHEY, *Gesammelte Schriften*, vol 7: *Der Aufbau der geschichtliche Welt in den Geisteswissenschaften*, 3. unveränderte Auflage, Stuttgart, B.G. Teubner, 1961, pp. 205-220. For the summary of Dilthey's concept of hermeneutics as the foundation of the *Geisteswissenschaften*, see PALMER, *Hermeneutics*, pp. 98-123.

⁶⁷ For Betti, the object of interpretation is an objectification of man's spirit expressed in sensible form. As a result, interpretation is seen as a recognition and reconstruction of the meaning embodied in the given form by its author. The observer must get access to a foreign subjectivity and, through an inversion of the creative process, get back to the "idea" or "interpretation" which is embodied in the object. See PALMER, *Hermeneutics*, p. 57.

opposite end, the mind of the author, objectivated in meaning-full forms (*sinnhaltige Formen*) which mediate between these two beings.⁶⁸ It effects an inversion of the creative process: the interpreter moves into the opposite direction by re-thinking it in his inner self.⁶⁹ That methodology aims at the acquisition of "relatively objective" knowledge through approaching meaning-full forms with a set of rules.⁷⁰ These rules (canons of interpretation) provide Betti with the correct interpretation of objectivations of human activity or consciousness (human expressions).⁷¹

Hermeneutic philosophy however rejects the scientific investigation of meaning, resulting through the use of methodical procedures in objective knowledge, as its aim.⁷² M. Heidegger offers a broader conception of understanding. He throws out the idea that understanding is one among other faculties that man possesses. Understanding becomes a fundamental mode of existing in the world and the medium of ontological disclosure, the medium in which and through which man exists.⁷³ Understanding, as in hermeneutic philosophy, does not merely reproduce a pre-given object but involves the participation in an on-going

⁶⁸ See E. BETTI, *Die Hermeneutik als allgemeine Methodik der Geisteswissenschaften*, 2. durchsehene Aufl., Tübingen, J.C.B. Mohr (Paul Siebeck), 1972, pp. 11-12. For understanding the term "meaning-full terms," see pp. 8-9.

⁶⁹ See BETTI, *Die Hermeneutik als allgemeine Methodik der Geisteswissenschaften*, p. 13.

⁷⁰ Betti underlines the autonomy of the object of interpretation and the possibility of "historical" objectivity in making valid interpretations. See PALMER, *Hermeneutics*, p. 46.

⁷¹ See BLEICHER, *Contemporary Hermeneutics*, pp. 1-2.

⁷² See BLEICHER, *Contemporary Hermeneutics*, p. 2.

⁷³ See PALMER, *Hermeneutics*, pp. 227-228.

communication between the past and present.⁷⁴ For H.-G. Gadamer this communication takes the form of a dialogue resulting in the "fusion of horizons".⁷⁵ Understanding is an historical act, always connected to the present; naivety is, thus, to understand from some standpoint outside of history, and, consequently, to speak about "objectively valid interpretations."⁷⁶

J. Habermas, as a representative of critical hermeneutics, calls into question some idealist assumptions present in both hermeneutical theories and hermeneutic philosophy. For instance: he acknowledges the neglect to take into account extra-linguistic factors which also influence the constitution of the context of thought and action, that is work and domination. Critical hermeneutics combines a methodical and objective approach with the striving for practically relevant knowledge.⁷⁷ P. Ricoeur's phenomenological hermeneutics refers to that conflict of interpretation. It mediates between hermeneutical theories and hermeneutic philosophies by considering the notion of an objective sense on the one hand, and the existential appropriation of meaning on the other.⁷⁸ Ricoeur also discusses the theories of the main critics of modern society: Freud, Marx, and Nietzsche and their impact on

⁷⁴ See BLEICHER, *Contemporary Hermeneutics*, p. 2. Among some particular features of Heideggerian hermeneutics which influenced the development of hermeneutics one can also mention the concept of the fore-structure of understanding. For a concise description of this idea, see M. HEIDEGGER, *Sein und Zeit*, 10. unveränderte Aufl., Tübingen, M. Niemeyer, 1963, p. 150.

⁷⁵ See GADAMER, *Wahrheit und Methode*, pp. 286-290.

⁷⁶ See PALMER, *Hermeneutics*, p. 46. Gadamer's conception is placed in the tradition of Heidegger. R. Bultmann, G. Ebeling, E. Fuchs, W. Pannenberg may be quoted as Gadamer's allies in various fields of hermeneutics. See PALMER, *Hermeneutics*, pp. 46-47.

⁷⁷ See BLEICHER, *Contemporary Hermeneutics*, pp. 3-4.

⁷⁸ See BLEICHER, *Contemporary Hermeneutics*, pp. 217-218.

critical hermeneutics. In short, Ricoeur tries to integrate three strands of hermeneutics into a larger framework.⁷⁹ Ricoeur's theory addresses also the crisis in hermeneutics since the development of structuralism as a method of reading texts and as an ideology. That change in hermeneutical perspective may be termed the "decentralization of man" in respect of an erroneous kind of subjectivity. It expresses itself in the almost exclusive importance given to the textual object and little attention paid to the aspect of the subjective appropriation of the text.⁸⁰

1.2.2. Some characteristics of hermeneutical experience

This overview of the various concepts of contemporary hermeneutics reveals different conceptions of the scope and purpose of hermeneutics on the one hand, but many underlying similarities on the other. The analysis of the main current of ideas found in hermeneutics allows us actually to draw out some conclusions which are of importance for every kind of textual encounter.⁸¹

Firstly, among the particular characteristics of the hermeneutical experience, that is the encounter with a text, there is the thesis that the hermeneutical

⁷⁹ See BLEICHER, *Contemporary Hermeneutics*, p. 4.

⁸⁰ See C. GEFFRÉ, *The Risk of Interpretation: On Being Faithful to the Christian Tradition in a Non-Christian Age*, translated by D. SMITH, New York, Paulist Press, 1987, p. 34.

⁸¹ Palmer's summary (PALMER, *Hermeneutics*, pp. 242-253) serves as a useful guide for that enterprise. Although Palmer refers those characteristics specifically to literary texts, nevertheless hermeneutics encompasses all the encounters with the texts, not limiting itself to the literary field, i.e. keeping in mind the *Geisteswissenschaften*.

experience brings into light the ontological function of understanding and language; they both disclose the being of things. Therefore, the hermeneutical experience is intrinsically ontological and linguistic.⁸² It involves understanding language not merely as a tool of communication, but as a medium in which a man lives, moves, and has his being.⁸³

Secondly, the encounter with a text is dialectical. The hermeneutical experience means the understanding encountering a negativity which broadens and illuminates self-understanding.⁸⁴ In that process the questioner himself is being questioned by the text.⁸⁵ Consequently, the genuine hermeneutical experience is led by the text. Understanding, instead of being a self-sufficient grasping consciousness, becomes something seized by being; the interpreter and the text become the partners in the hermeneutical dialogue. Moreover, the text itself assumes its own autonomy and objective status.⁸⁶

Thirdly, the hermeneutical experience is dynamic. As a "language event", it is not limited to the static categories of conceptual knowing, outside of all time and space, it transcends the subject-object schema that places the text at a distance from the interpreter as an object of conceptual analysis. Thus, the experience is objective in a special sense of a "historical" objectivity which refers to the fact that

⁸² See PALMER, *Hermeneutics*, p. 242.

⁸³ See PALMER, *Hermeneutics*, p. 9.

⁸⁴ See PALMER, *Hermeneutics*, p. 242.

⁸⁵ See BLEICHER, *Contemporary Hermeneutics*, pp. 113-114.

⁸⁶ See PALMER, *Hermeneutics*, pp. 244, 246.

the interpreter moves within and conforms himself to the forms (the texts) that have been handed down to him within the tradition of perceiving and understanding the world.⁸⁷

Fourthly, the hermeneutical experience is intrinsically historical.⁸⁸ Historical consciousness, that is, the awareness of the relativity of all historical reality and phenomena allows the interpreter to be critical of his situatedness and striving for objective knowledge. As an epistemological category, it refers to the situational (historical, social, cultural) determinateness of thought which bars the immediate access to human expressions and effects the relativization of knowledge.⁸⁹ Particularly for the social sciences, hermeneutics provides the concept of meaning as the intentional, teleological character of action and the concept of situational determination of interpretation of meaning. The hermeneutical sciences help to see "data" in a historical context that refers to the self-understanding of social groups which itself is determined by tradition.⁹⁰

Finally, as an ontological category, historicity (*Geschichtlichkeit*) means the reference to human existence as a life in responsibility for the future and

⁸⁷ See PALMER, *Hermeneutics*, pp. 243, 246. Hermeneutic philosophy points out the danger of objectivism underneath the methodical, objectifying approach to the interpretation of expressions of human inner life. The "fore-structure" of understanding calls into question any naive assumption of the possibility of completely objective or neutral knowledge. See BLEICHER, *Contemporary Hermeneutics*, p. 257.

⁸⁸ See PALMER, *Hermeneutics*, p. 242.

⁸⁹ Parret raises as an objection the fact that hermeneutics was preoccupied primarily not with the communicative understanding of the texts by contemporaries, but rather with the historical understanding by people separated from the author in time. See PARRET, *Contexts of Understanding*, p. 5.

⁹⁰ See BLEICHER, *Contemporary Hermeneutics*, p. 257.

understanding as the knowledge about self and existence gained on the basis of "prejudice" and within a changing "horizon."⁹¹ Hence, the hermeneutical experience understands in the light of the present; every true interpretation involves an application to the present. The interpreter's task is, thus, to render explicit a work's meaning today, to bridge the distance between his own and the text's horizons.⁹² In these ways, the hermeneutical experience alerts the interpreter to its own openness as opposed to the "closedness" and dogmatism of the purely analytical method.⁹³

It does not necessarily mean that each and every one of the above mentioned characteristics can be accepted without any modifications within the ontological and epistemological perspective professed by a given interpreter. Nevertheless, this summary of insights provided by hermeneutics will serve the purpose of preparing the field for further consideration of some pertinent hermeneutical issues which may be of particular interest for understanding ecclesiastical laws.

⁹¹ See BLEICHER, *Contemporary Hermeneutics*, p. 268.

⁹² See PALMER, *Hermeneutics*, pp. 244-245.

⁹³ See PALMER, *Hermeneutics*, p. 247.

1.3. A canonist interpreting laws

The traditional canonical doctrine expresses itself in the conviction that already from the nature of written laws arises the necessity of their interpretation.⁹⁴ The practical wisdom and experience of the generations of the interpreters of the law testify to the unavoidable occurrences of some ambiguities and doubts in assessing the meaning of the laws.⁹⁵

Traditionally accepted descriptions (or definitions) of interpretation say that, etymologically, interpretation is a suitable explication of a word or a sentence through something (words or sentences) which is (are) more clear.⁹⁶ Consequently, the description of the interpretation of law is as follow:

[It is] [...] whether the comprehensive exposition of the genuine sense of the law, bringing forward and explaining all what is brought about and covered by the law, or the manifestation of the sense of law in

⁹⁴ "Leges scriptæ [...] directe enim et formaliter legislatoris voluntatem manifestant, et hanc quidem in formula concreta apte densatam, cognitionique communitatis regendæ accurate accommodatam. Sed ex hac ipsissima legum natura, ex speciali quo leges feruntur modo, a priori elucet leges interpretandi necessitas, ut verba a legislatore ad voluntatem suam manifestandam adhibita, vero sensu ab ipso intento intelligantur et casibus practicis vitæ iuridicæ applicentur" (G. MICHIELS, *Normæ generales iuris canonici: commentarius libri I Codicis iuris canonici*, editio altera penitus retractata et notabiliter aucta, vol. I, Parisiis, Desclée et Socie, 1949, pp. 469-470).

⁹⁵ "Hæc est humana conditio, ut vix possit homo tam perspicuis verbis sensum suum explicare, quin ambiguitates et dubia nascentur; præsertim quia lex humana loquitur breviter et in generali, et in applicatione eius ad varios casus in particulari frequenter oriuntur dubia, propter quæ iudicium prudens et declaratio doctrinalis necessaria est" (F. SUÁREZ, *Opera omnia*, Tomus sextus: *Tractatus de legibus ac Deo legislatore*, Parisiis, Apud L. Vivès, 1856, lib. VI, c.1, n. 5).

⁹⁶ "[...] congrua verbi vel sententiæ per aliud clarius explicatio" (MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 471).

order to grasp it clearly and on that account to apply it properly in various concrete cases which the law is created to govern.⁹⁷

However, under the influence of the prevalent voluntarist perspective in the canonical tradition,⁹⁸ this general notion of interpretation found its completion in a precise indication of the ultimate goal of the interpretation of ecclesiastical laws: searching for the will of the legislator expressed in the words of the law.⁹⁹

It appears that interpretation encompasses two directions: an endeavor of searching for the meaning of law and the result of that process which is the presentation of that meaning. This latter notion corresponds to Lonergan's understanding interpretation as a second expression addressed to a different audience than that of the original expression to be interpreted. Lonergan introduces several concepts of interpretation. He understands interpretation as a second

⁹⁷ "[...] genuini eius sensus seu comprehensionis manifestatio, omnium quæ in lege contrahuntur et involvuntur ex-tractio et ex-plicatio, seu, ut clare percipiuntur ideoque variis casibus concretis, ad quos ordinandos lex conditur, rite applicari possint, aperitio" (MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 471). For some authors, interpretation presupposes doubtful or obscure meaning that differs from simple declaration of the meaning of any, clear in itself, verbal formula. See A. VERMEERSCH and I. CREUSEN, *Epitome iuris canonici: cum commentariis, ad scholas et ad usum privatum*, Tomus I: *Libri I et II Codicis iuris canonici*, 7 ed., Mechliniæ, H. Dessain, 1949, p. 118.

⁹⁸ "[...] certum est, ad legem ecclesiasticam quod attinet, ipsam esse essentialiter expressionem voluntatis rationabilis obligandi Superioris legitimi, in determinata formula verbali ab ipso fixam et circumscriptam" (MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 472).

⁹⁹ "Cum lex sit essentialiter actus Superioris [...] hæc sola Superioris voluntas, revera in lege contenta, proprie dictæ interpretationis obiectum constituere potest. Quare verum interpretationis munus ad hoc reducitur, ut, abstractione facta a quacumque consideratione subjectiva vel pio interpretantis desiderio, in tota sua puritate et primæva comprehensione reconstituatur et revelatur determinatum voluntatis legislatoris obiectum, illud scilicet quod, momento quo legem condidit, de facto rationabiliter imponere voluit" (MICHIELS, *Normæ generales iuris canonici*, vol. I, pp. 472-473). "Cum lex sit essentialiter actus voluntatis determinatus ab ipso Superiore determinato modo manifestatus, ab ipso scilicet in formula verbali fixus et circumscriptus, cumque proinde sola legis formula voluntatem legislatoris determinatam authentice contineat et apodictice manifestet [...], apprime sequitur, interpretari legem revera nil aliud esse, quam inquirere et determinare totam solamque voluntatem legislatoris, quatenus ab ipso in formula verbali exprimitur, seu indagare et manifestare sensum verborum, quæ a legislatore ad voluntatem suam manifestandam fuerunt adhibita [...]" (MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 473).

expression addressed to a different audience than that of the original expression.

As the second expression, the interpretation is:

[...] guided by a practical insight (F') that depends upon a principal insight (A') to be communicated, upon a grasp (B') of the anticipated audience's habitual intellectual development (C'), and upon a grasp (D') of the deficiencies in insight (E') that have to be overcome if the principal insight (A') is to be communicated.¹⁰⁰

To put it differently, in the interpretation:¹⁰¹

[...] the principal insight (A') to be communicated purports to coincide with the principal insight (A) of the original expression. Hence, differences between the practical insight (F) and (F') depend directly upon differences between the habitual insights (B) and (B'), (D) and (D'), and remotely upon differences between the habitual developments (C) and (C'), and the deficiencies (E) and (E').¹⁰²

The fact that both the original expression and its interpretation are relative to their respective audiences brings about the difference between them.¹⁰³

Moreover, the variety of audiences explains the fact of multiplicity of possible

¹⁰⁰ LONERGAN, *Insight*, p. 562.

¹⁰¹ Lonergan discerns between a simple and a reflective interpretation. A reflective interpretation is meant to incorporate the differences between the audiences into the interpretation through an active cooperation of a given audience: "A reflective interpretation, then, is guided by a practical insight (F'') that depends upon insights (A''), (B''), and (D''). But now the insight (B'') is a grasp of the audience's habitual grasp (C'') of its own intellectual development (C') and of the difference between that development and the habitual accumulation of the insight (C) in the initial audience. Similarly, the insight (D'') is a grasp the audience's deficiencies (E'') in grasping the differences between the habitual developments (C') and (C) and so in understanding the differences between the deficiencies (E') and (E) and between the practical insights (F') and (F). Finally, the principal insight (A'') to be communicated will be a grasp of the identity of the insight (A) communicated in the original expression and of the insight (A') communicated in the simple interpretation" (LONERGAN, *Insight*, p. 563).

¹⁰² LONERGAN, *Insight*, p. 562. On the one hand, in the case of ecclesiastical laws, the general law (the first expression) is made for all and the interpretation (the second expression) is directed virtually to the same audience. But on the other hand, owing to some cultural differences, the flow of time between the formulation of law and its implementation, the respective audiences differ. "[...] audiences are an ever shifting manifold" (LONERGAN, *Insight*, p. 563).

¹⁰³ See LONERGAN, *Insight*, p. 562.

interpretations, the meaning of the first expression being fixed, notwithstanding. In this sense, interpretation is a means of communicating insights taking into account given conditions and circumstances: the anticipated audience's habitual intellectual development, and the deficiencies in insight that have to be overcome in the successful process of communication. To put it differently, in the interpretation meant as a channel of communication the interpreters play the role of intermediaries between the first expression to be interpreted and the recipients of the second expression, i.e. the interpretation as a fixed product of the interpretation understood in the sense of a dynamic activity of human mind, dynamic specialty leading to understanding the text by the interpreter in question.

Altogether, for a canonist, if he understands hermeneutics as a theory of the interpretation of meaning, four canons (cc. 16-19) concerned with interpretation come forth. Canon 16 appears to be a canon about the interpretation as a product of interpretive activity of the legislator or those entrusted with the power to do so. Again, c. 18 seems to limit the scope of potential meanings present in the text of law. Both, thus, can be seen as an external factor in the process of interpreting the meaning of laws. Finally, c. 19 concerns the situation of application of law, and not the interpretation of law, because in this case, as canon itself says, there is no express provision in law. As a result of those remarks, c. 17 calls for special attention. It says:

Leges ecclesiasticæ intellegendæ sunt secundum propriam verborum significationem in textu et contextu consideratam; quæ si dubia et obscura manserit, ad locos parallelos, si qui sint, ad legis finem ac circumstantias et ad mentem legislatoris est recurrendum

[Ecclesiastical laws are to be understood according to the proper meaning of the words considered in their text and context. If the meaning remains doubtful or obscure, there must be recourse to parallel places, if there be any, to the purpose and circumstances of the law, and to the mind of the legislator].¹⁰⁴

Traditionally, all four canons (16-19) are usually reckoned among the canons on interpretation. Although it is true in a certain sense, nevertheless, properly speaking, it is c. 17 that concerns understanding of the meaning¹⁰⁵ of the laws in the precisely hermeneutical sense.¹⁰⁶

¹⁰⁴ Canon 1499 of the CCEO/90 reproduces c. 17 of the CIC/83 almost literally: "Leges intellegendæ sunt secundum propriam verborum significationem in textu et contextu consideratam; quæ si dubia et obscura mansit, secundum locos parallelos, si qui sint, legis finem ac circumstantias et mentem legislatoris [Laws are to be understood in accord with the proper meaning of the words considered in their text and context. If the meaning remains doubtful and obscure, recourse is to be taken to parallel passages, if such exist, to the purpose and the circumstances of the law, and to the mind of the legislator]." The English translation of the canons of the CCEO/90, unless otherwise noted, is taken from *Code of Canons of the Eastern Churches, Latin-English Edition*, translation prepared under the auspices of the Canon Law Society of America, Washington, DC, Canon Law Society of America, 1992, xlvii, 785 p.

¹⁰⁵ Many authors use the terms "to interpret" and "to understand" changeably and indiscriminately. See P. SANTOSO, *The Rules of Interpretation according to Canon 17: Searching the Will of the Legislator inside the Words of Law*, Roma, Pontificia Studiorum Universitas a S. Thoma Aq. in Urbe, 1986, p. x-xi. In canon law, the term *hermeneutica iuris canonici* was used for describing the rules of the science of interpretation (explanation). See F. WERNZ, *Ius canonicum: ad Codicis normam exactum opera P. Petri Vidal*, Tomus I: *Normæ generales*, Romæ, Apud Aedes Universitatis Gregorianæ, 1938, p. 230. The relationship between interpretation and understanding will be clarified in the course of this work.

¹⁰⁶To complete the perspective, another instance of a hermeneutical canon is c. 36 § 1 which speaks about understanding singular administrative acts: "Actus administrativus intellegendus est secundum propriam verborum significationem et communem loquendi usum; in dubio qui ad lites referuntur aut ad pœnas comminandas infligendasve attinent aut personæ iura coarctant aut iura aliis quæsita lædunt aut adversantur legi in commodum privatorum, strictæ subsunt interpretationi; ceteri omnes, latæ [An administrative act is to be understood according to the proper meaning of the words and the common manner of speaking. In doubt, a strict interpretation is to be given to those administrative acts which concern litigation or threaten or inflict penalties, or restrict the rights of persons, or harm the acquired rights of others, or run counter to a law in favor of private persons; all other administrative acts are to be widely interpreted]." The counterpart of that canon in CCEO/90, c. 1512, reads as follow: "1. Actus administrativus intellegendus est secundum propriam verborum significationem et communem loquendi usum nec debet ad alios casus præter expressos extendi. 2. In dubio actus administrativus, qui ad lites refertur, ad pœnas comminandas vel irrogandas attinet, iura personæ coarctat, iura aliis quæsita lædit aut adversatur legi in commodum privatorum, strictam recipit interpretationem; secus vero latam" [1. An administrative act is to be

1. 4. Conclusion

Hermeneutics situates the tradition of the canonical interpretation in a larger scale of the endeavor of comprehending the meaning of the expressions of the human mind. At the same time, the hermeneutical reflection brings to the historically accepted field of canonical considerations some new theoretical concepts which can be used in the task of considering the meaning of the legal texts in some contemporary categories of scientific thought. In this regard, various branches of linguistics offer an exceptional help in re-considering the notion of *propria verborum significatio*. Hermeneutics proposes also a matured look at the problematics concerning the practice of interpretation, especially the question of the so-called “canons of interpretation.”

understood in accord with the proper meaning of the words and the common usage of speech, and must not be extended to cases other than those actually expressed in it. 2. In doubt, a strict interpretation is to be given to those administrative acts which concern litigation or threaten or inflict penalties, or restrict the rights of persons, or harm the acquired rights of others, or run counter to a law in favor of private persons; all other administrative acts are to be widely interpreted].”

2. THE WORLD OF THE TEXT

The inner life of man finds its privileged objectivation in various linguistic forms. Indeed, the linguistic level of human expressions involves a text.¹ Generally speaking, law constitutes an objectivation of human understanding of our social life based on justice. But, far from any reductionist approach, it is true that law is mediated to us through the text of certain legal precepts.² Therefore, the text as such becomes the primary object³ of the endeavor of understanding ecclesiastical laws.⁴

¹ See PALMER, *Hermeneutics*, p. 9.

² Some derive the etymological meaning of the word "law" from the Latin *legendo*, for the reason that the Greeks and Romans had their laws written on public tablets and columns. See A.G. CICOGNANI, *Canon Law: I. Introduction to the Study of Canon Law, II. History of the Sources of Canon Law, III. A Commentary on Book I of the Code*, 2d. rev. ed., translated by J.M. O'HARA and F.J. BRENNAN, Westminster, MD, The Newman Bookshop, [c1934], p. 521.

³ Viewing the works of man, and consequently the texts, as "objects" is passionately opposed by various strands of hermeneutics. Hermeneutics as the study of understanding the texts requires a different approach than the methods of understanding natural objects by conceptualizing or analyzing them. See PALMER, *Hermeneutics*, pp. 7-10.

⁴ "Ipse textus legis seu complexus verborum est elementum *præcipuum* omnis interpretationis" (A. VAN HOVE, *De legibus ecclesiasticis*, Mechliniæ, H. Dessain, 1930, p. 2).

2.1. The text in its objectivity

Once again, Lonergan's teaching on the act of understanding present a convenient point of departure for further considerations. Lonergan locates hermeneutics within interpretation understood as a functional specialty. By hermeneutics he means some principles of interpretation, and by exegesis he considers the application of those principles to a given task.⁵ Following Lonergan's approach, we find three basic exegetical operations: understanding the text, judging how correct one's understanding of the text is, and stating what one judges to be the correct understanding of the text. Again, understanding the text has four aspects: understanding the object to which the text refers, understanding the words employed in the text, understanding the author, and arriving at such understanding through a process of learning or a conversion.⁶

Canonical literature presents some definitions of the text of law: "The totality of the words of the legislator, considered singly according to their written structure, ordered to announce a determined precept."⁷ In other words, the text of law is understood as "[...] the original words of an author - the body of the matter on a

⁵ See LONERGAN, *Method in Theology*, p. 153.

⁶ See LONERGAN, *Method in Theology*, p. 155.

⁷ "Complexus verborum a legislatore ad determinatum præscriptum enuntiandum adhibitorum, singillatim et secundum graphicam texturam consideratorum" (MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 519). A significant shift, from words into sentences, can be noticed in the contemporary general understanding of text; it is "[...] a particular sequence of sentences which in their configuration form a totality that is irreducible to the individual sentences" (J.W. VAN DEN HENGEL, *The Home of Meaning: The Hermeneutics of the Subject of Paul Ricoeur*, [Washington, DC], University Press of America, [1982], p. 41).

printed page. Text is the same as texture (from the Latin *texo*) - the structural order of the words, the wording of the law in the present case.⁸ To put it differently, this notion of the text refers to the actual placement of the words in a phrase, a clause, a sentence, considered singly according to the wording and in a paragraph, as modified by capitalization and punctuation.⁹ When any doubt arises as regards the text of the law, namely its genuity or completeness, the rules of textual criticism apply.¹⁰

However, contemporary hermeneutics affords a more sophisticated understanding of the text. In order to elucidate the current situation in the field of hermeneutics focused on the true locus of the hermeneutical problem and concerned with understanding polysemous (multivalent) meaning in written texts,¹¹ the present crisis in hermeneutics has to be addressed. The challenge comes from

⁸ CICOGNANI, *Canon Law*, p. 609.

⁹ See J.A. CORIDEN, "Rules for Interpreters," in *The Art of Interpretation: Selected Studies in the Interpretation of Canon Law*, Washington, DC, Canon Law Society of America, [1982], p. 20. The fundamental objective of promulgation is to establish authentically both the fact of the existence of the law and its precise formulation. As c. 8 regulates it, promulgation happens through the insertion of the text of laws in AAS in the case of universal ecclesiastical laws (unless in particular cases another manner of promulgation has been prescribed) or in the manner prescribed by the legislator in the case of particular laws. See the commentary to c. 8 in E. CAPARROS, M. THÉRIAULT, and J. THORN (eds.), *Code of Canon Law Annotated*, Latin-English edition of the *Code of Canon Law* and English-language translation of the 5th Spanish-language edition of the commentary prepared under the responsibility of the Instituto Martín de Azpilcueta, Montréal, Wilson & Lafleur Limitée, 1993, p. 85.

¹⁰ See M.M. SHEKLETON, *Doctrinal Interpretation of Law: A Historical Synopsis and a Commentary*, Washington, DC, The Catholic University of America Press, 1961, p. 65. "When doubt arises concerning the text, whether it be genuine or not, complete or incomplete, it is to be restored according to the rules and methods of the art of criticism" (CICOGNANI, *Canon Law*, p. 609). Analogically, in biblical sciences textual criticism seeks to establish a text as close as possible to the original. See PONTIFICAL BIBLICAL COMMISSION, *The Interpretation of the Bible*, pp. 37-38.

¹¹ See D.E. KLEMM, *The Hermeneutical Theory of Paul Ricoeur: A Constructive Analysis*, Lewisburg, Bucknell University Press, [1983], p. 74.

the linguistic sciences, and particularly from the structuralist analysis of texts, which has been successful in applying principles of modern linguistics to myth and literature.¹²

[...] the advances of linguistic science which, by constituting language as an autonomous object of investigation by a neutralized subject, has successfully isolated the synchronic and closed system of signs (or lexemes) in abstraction from all conditions of language in use. In this way it excludes all reference to time and history as well as to the function of saying something *about* something, in order to concentrate solely on the linguistic codes that govern the combinations of lexemes and thus make the inventory of signs into a *structure*.¹³

Structural linguistics distinguishes between language as *langue* which is a code or a lexical system, and language as *parole*, i.e. the activity of speaking subjects. The first aspect of language deals with the semi-algebraic theory of the combinations and oppositions of the component elements of the system; the second one concerns the intentionality of language: saying something to someone about something. Nonetheless, a linguistic *of langue* became the primary focus of structuralism. Within that system, the function of a linguistic sign is not to unite a thing and a name, but it is a phenomenon which relates and opposes a signifier (which can be a sound, a written pattern, a gesture), called *signifiant* in French and a signified (*signifié*). Furthermore, the signified is not a thing or an object outside of language, but merely the differential values in the lexical system. As a result, the signified remains within the internal structure of language. Although the correlation

¹² See KLEMM, *The Hermeneutical Theory of Paul Ricoeur*, p. 75.

¹³ KLEMM, *The Hermeneutical Theory of Paul Ricoeur*, p. 75.

of the signifier and the signified in the sign effects its meaning, the sign has meaning only by its place in the lexical system.¹⁴ A substantialist conception of language which sees language as a receptacle containing signs through which the reader decodes a meaning is, thus, suppressed by understanding language as a totalization of differences producing meaning by oppositions.¹⁵

Structuralism claims that the hypothesis of the theory of the sign applies also to the larger units of language. It imposes upon the text the closure similar to the closure of signs in semiotics. The text remains, thus, without any external meaning.¹⁶ The problem of sense (what is said) and reference (that of which it is said) finds here its place. In the structuralist linguistics the question of reference does not make any sense. The text apparently has its immanent sense, but no external relationship with an out-of-the-text-reality is possible.¹⁷ In this context the idea of the truth of the text is replaced by the conception of "permission", i.e. what

¹⁴ See VAN DEN HENGEL, *The Home of Meaning*, pp. 20-21.

¹⁵ See C. GEFFRÉ, *The Risk of Interpretation*, p. 26. The discovery of the original meaning hidden beneath the letter of the text is the main task of every hermeneutical approach to the text. Hermeneutics postulates a continuity of meaning and the primacy of the subject who decodes the intelligibility of a unique essence beyond the materiality of textual, historical, or cultural contexts. See GEFFRÉ, *The Risk of Interpretation*, pp. 24-25.

¹⁶ See VAN DEN HENGEL, *The Home of Meaning*, p. 45. The structuralist idea of the closed nature of the text brings some further consequences. It is impossible to retranslate the same meaning into different languages. Words only have meaning in relation to other words according to their lateral relationship. The change in textual or historical context causes the change in this differential game of signifiers. Meaning neither exists prior to the system of signifiers, nor transcends that system. See GEFFRÉ, *The Risk of Interpretation*, pp. 28-29.

¹⁷ See VAN DEN HENGEL, *The Home of Meaning*, pp. 32-33.

the text does or does not permit.¹⁸ Accordingly, there is no meaning existing prior to the text or underneath the text. Reading a text is not decoding a meaning already present in the text, but producing meaning by letting a reader be regulated by a chain of signifiers.¹⁹

The priority of the synchronic point of view in linguistics challenges the presupposition of all hermeneutical understanding which assumes that tradition provides the necessary sphere for every act of understanding.²⁰ Ricoeur's theory represents an effort to reconcile these two, seemingly incompatible, approaches (that of structuralism and that of hermeneutics),²¹ and, at the same time, to restore the ontological function of language: disclosing the being of things. In his defense of hermeneutics it is crucial to consider language from the semantic rather than from the purely linguistic perspective. A distinction has to be made between the

¹⁸ See GEFFRÉ, *The Risk of Interpretation*, p. 27. The world of man who is the subject of language disappears in favor of a silent world of structures and signs. Language itself becomes a system of signs and not a sign or the expression of man's thought. Language as a word, a manifestation of meaning and the event of an encounter is dominated by language as a system. As the consequence of that revolution in linguistics since the time of de Saussure, the ideas of the literal meaning and the truth of the text are called into question. See GEFFRÉ, *The Risk of Interpretation*, pp. 25-26.

¹⁹ See GEFFRÉ, *The Risk of Interpretation*, p. 26. The new theories of reading as opposed to interpreting texts and the structural analysis of texts limit themselves exclusively to the internal structures of the text. The question of continuity of meaning beyond the textual or historical distance becomes here irrelevant. The meaning is seen as arising from the articulation of signs in signifying system. The problem of the production of meaning and its functioning within a closed text that is organized as a significant system assumes its importance. The concept of "production" of meaning replaces the concept of "understanding" of meaning. See GEFFRÉ, *The Risk of Interpretation*, p. 24.

²⁰ See GEFFRÉ, *The Risk of Interpretation*, p. 28.

²¹ Looking from another perspective, Ricoeur attempts to reconcile an epistemological theory of interpretation and hermeneutics in the ontological sense. See GEFFRÉ, *The Risk of Interpretation*, p. 35.

linguistics of "language", where the basic units are the signs, and the linguistics of "discourse" where the sentences become the signifying units.²² *Semantics*, as the methodical inquiry into the principles of discourse, is opposed by *semiotics*, which takes the sign rather than the sentence as the basic unit and attempts to analyze how linguistic signs fit into systems on the basis of codes.²³ So, the event of the word exists only at the level of discourse which is itself always a message about something. Ricoeur tries to restore priority to the semantic dimension of discourse and to prevent its total eclipse by the semiotics.²⁴

Ricoeur places his emphasis on the importance of the text, its objective structure, its internal organization, and the conditions under which it was produced.²⁵ On the one hand, Ricoeur agrees to follow the exegetical method ordered to establish the objectivity of the text, but on the other hand, he rejects deconstruction in the sense of structuralism. As a result, he does not reject hermeneutical understanding which is a search for truth, although he regards the text as mediating

²² See GEFFRÉ, *The Risk of Interpretation*, p. 33. Ricoeur's theory of discourse has two sources: French sanskritist E. Benveniste for the theory of discourse based on the linguistics of the sentence, and Frege, Husserl, and English-language philosophy for the logic of meaning and of reference. Benveniste replaces the Saussurean term *parole* with *discours* (discourse) to express that *parole* also has a structure which is irreducible to the structure of *langue*. See VAN DEN HENGEL, *The Home of Meaning*, pp. 24-25.

²³ See KLEMM, *The Hermeneutical Theory of Paul Ricoeur*, p. 75. "Semiotics in the broad sense refers not only to linguistic theory with its units of phonemes, lexemes, semantemes, but also to the theory of structuralist analysis of texts[...]" (KLEMM, *The Hermeneutical Theory of Paul Ricoeur*, p. 75).

²⁴ See KLEMM, *The Hermeneutical Theory of Paul Ricoeur*, p. 75.

²⁵ See GEFFRÉ, *The Risk of Interpretation*, p. 4.

the truth that is to be understood.²⁶ Since the correct interpretation always takes place in the projection of the matter of the text, it is also subjected to explanatory procedures based on the literary or structural analysis. Under the influence of structuralism, explanation has thus become the true path of understanding.²⁷ Nevertheless, the concept of explanation refers no more to the model of intelligibility borrowed from the natural sciences but from properly linguistic models. At the same time, the concept of interpretation has undergone profound transformations distancing it from the psychological notion in Dilthey's sense.²⁸ Explanation and interpretation appear to be strictly complementary and reciprocal to each other.²⁹

Ricoeur presents a short definition of a text: it is any discourse fixed by writing.³⁰ He distinguishes between speech and writing: "What is fixed by writing is thus a discourse which could be said, of course, but which is written precisely because it is not said."³¹ Although Ricoeur admits the psychological and sociological

²⁶ See GEFFRÉ, *The Risk of Interpretation*, p. 35.

²⁷ See GEFFRÉ, *The Risk of Interpretation*, p. 4.

²⁸ See P. RICOEUR, "Qu'est-ce qu'un texte? Expliquer et comprendre," in P. RICOEUR, *Du texte à l'action: Essais d'herméneutique*, Paris, Éditions du Seuil, 1986, p. 137.

²⁹ See RICOEUR, "Qu'est-ce qu'un texte?," pp. 142-145. That corresponds to another meaning of *hermēneuein*, i.e. "to explain". See PALMER, *Hermeneutics*, pp. 20-26.

³⁰ See RICOEUR, "Qu'est-ce qu'un texte?," p. 137.

³¹ RICOEUR, "Qu'est-ce qu'un texte?," p. 138. English translation: "What is a Text? Explanation and Understanding," in P. RICOEUR, *Hermeneutics and the Human Sciences: Essays on Language, Action and Interpretation*, edited, translated and introduced by J.B. THOMPSON, Cambridge, [England], Cambridge University Press, [1981], p. 146. The Greek idea of interpretation provides here some valuable insight into the contemporary analysis. The first direction of meaning of *hermēneuein* is "to say", "to assert" or "to express". Moreover, saying as interpretation shows up the powers of spoken language and the weaknesses of written one: "[...] the writing down of language fixes and preserves it, gives it durability, and is the foundation of history (and literature), but at the same time it weakens it [...]. All written language calls for retransformation into its spoken

priority of speech over writing, nevertheless he assigns to the text a special value: "[...] a text is really a text only when it is not restricted to transcribing an anterior speech, when instead it inscribes directly in written letters what the discourse means."³² The writing-reading relation is neither the speaking-answering relation, nor a relation of interlocution, nor an instance of dialogue. Dialogue consists of an exchange of questions and answers, but there is no such situation between the writer and the reader: the first does not actually respond to the second. What comes to writing, Ricoeur says, is discourse as "intention-to-say"; the writing becomes a direct inscription of this intention. That writing preserves discourse and makes it available for both individual and collective memory.³³ The emancipation of the text from the oral situation entails a veritable upheaval in the referential relation of language to the world, as well as in the relation between language and the various subjectivities concerned (that of the author and that of the reader).³⁴ The referential relation (or referential function) is supported by the sentence as the first and the

form; it calls for its lost power" (PALMER, *Hermeneutics*, p. 15). The power of the oral word is significant in Christianity. Saint Paul says that salvation comes through the ears. The Scripture is a message to be proclaimed and not just information. As such the Scripture requires the interpretational processes appropriate to its character. Those processes presuppose retransformation writing into speech in order to regain some of lost expressive power of the Word and therefore its meaning. See PALMER, *Hermeneutics*, pp. 18-20. How much the power of law is lost by resignation from its oral performance? By the way of analogy, is there any significance for interpretation of law that spoken language as itself is an interpretative phenomenon? And how much law was written primarily to be read silently? Cf. PALMER, *Hermeneutics*, pp. 16-17.

³² "[...] le texte n'est pas véritablement texte lorsqu'il ne se borne pas à transcrire une parole antérieure, mais lorsqu'il inscrit directement dans la lettre ce que veut dire le discours" (RICOEUR, "Qu'est-ce qu'un texte?," p. 138; RICOEUR, "What is a Text?," p. 146).

³³ See RICOEUR, "Qu'est-ce qu'un texte?," pp. 138-139.

³⁴ See RICOEUR, "Qu'est-ce qu'un texte?," p. 140.

simplest unit of discourse. For it is the sentence which intends to say something about something. Thereby, discourse is reconnected to the world, while language separates signs from things. The text is, thus, not without reference, and it is the task of reading, *qua* interpretation, to fulfil that reference.³⁵ In the meantime, the ostensive reference of the dialogical situation of an oral discourse is suspended, although not abolished. Instead of giving entry to a common situation (Gadamer's *Umwelt*) of the author, the semantic autonomy of the text enlarges that particular author's *Umwelt* into the world of the text which opens up the ensemble of references.³⁶ As a result, when the text takes the place of speech, the situation, the surroundings, and the circumstantial milieu of discourse which in speech are present to the interlocutors and to which the discourse is fully meaningful, are replaced by the quasi-world of texts or literature, created by the interrelationship of the texts among themselves.³⁷

Discourse in the form of writing acquires a life of its own, at once permanent and independent of any author's intentions. It can be read in different contexts

³⁵ See RICOEUR, "Qu'est-ce qu'un texte?," pp. 140-141. Lonergan's stand shows much similarity to that of Ricoeur. For Lonergan meaning finds its greatest liberation as embodied in language, i.e. in a set of conventional signs. Those conventional signs can be multiplied and differentiated almost indefinitely, and, moreover, they can be used reflexively in the analysis and control of linguistic meaning itself. But, at the same time, the meaning is transcending the system of linguistic signs: for Lonergan the words represent vocal tools of communication expressing a speaker's or writer's thought or judgment or decision to listeners or readers. See LONERGAN, *Insight*, p. 544. Moreover, Lonergan underlines the relation of the words to the world: "Were words related only to other words, their meaning would never be more than verbal. But the mere fact that a word can occur in a sentence that is affirmed endows it with a basic reference to the objective of intelligent and rational consciousness, to being. Moreover, this basic reference, which is the core of all meaning, admits differentiation and specialization" (LONERGAN, *Insight*, p. 555).

³⁶ See VAN DEN HENGEL, *The Home of Meaning*, p. 40.

³⁷ See RICOEUR, "Qu'est-ce qu'un texte?," p. 141.

leading to a multiplicity of readings. The phenomenon of writing calls, then, for objectivization: standing at a distance as a condition of all understanding. Ricoeur dissociates himself both from the position of hermeneutical theories which postulate any discovery of objective meaning intended by the author, and from the position of the structuralists limiting meaning to the sphere of structures and mechanics of the text.³⁸ The world of the text proposes a world, that is, that kind of world which the reader can inhabit to project into it one of his most distinctive possibilities.³⁹ The reader's appropriation of the text is finally the appropriation of a proposed world, not behind the text, but in front, as what is developed, discovered, and revealed by the work. Understanding here becomes understanding oneself before the text.⁴⁰

2.2. Text in the process of understanding - the notion of *propria verborum significatio*

In the Roman juristic literature of the second and early first century B.C. some kind of grammatical interpretation appears. It resulted in a search for the meaning of the words of law, particularly with regard to the sense in which they were

³⁸ See GEFFRÉ, *The Risk of Interpretation*, p. 36.

³⁹ See P. RICOEUR, "Hermeneutical Function of Distanciation," in RICOEUR, *Hermeneutics and the Human Sciences*, p. 142.

⁴⁰ See RICOEUR, "Hermeneutical Function of Distanciation," p. 143.

used by the legislator.⁴¹ Many of the legal principles, elaborated by the Roman jurists became the foundation of the so-called doctrinal interpretation in canon law,⁴² which subsists in "[...] a clearer determination of the mind or words of the legislator, which is not authoritative and therefore of itself not binding, but directive and based upon science, made according to a certain set of critical rules by those who are skilled in the art of jurisprudence."⁴³

One of those rules embodies the notion of *propria verborum significatio* - the proper or true meaning of the words: the words of the law were to be understood according to their proper signification unless another meaning was indicated by the subject matter or the nature of the act or contract.⁴⁴ G. Michiels proposes a definition of that notion: "Generally speaking, *propria verbi significatio* is one that corresponds adequately to a concept for which a standard word has been given and

⁴¹ See SHEKLETON, *Doctrinal Interpretation of Law*, p. 7. "Alongside this grammatical interpretation there is to be found what is now termed logical interpretation. This system sought to interpret the meaning of the law from the intention of the lawgiver rather than from its wording. The co-existence of the two views is reflected in the conflict between the word (*verbum, scriptum*) and the intention (*voluntas, sententia*)" (SHEKLETON, *Doctrinal Interpretation of Law*, p. 7).

⁴² See SHEKLETON, *Doctrinal Interpretation of Law*, p. 9.

⁴³ SHEKLETON, *Doctrinal Interpretation of Law*, p. 16. Cf. MICHIELS, *Normæ generales iuris canonici*, vol. I, pp. 482-483; VAN HOVE, *De legibus ecclesiasticis*, p. 250. For the history of the doctrinal interpretation in canon law, see SHEKLETON, *Doctrinal Interpretation of Law*, pp. 14-43.

⁴⁴ See SHEKLETON, *Doctrinal Interpretation of Law*, p. 18. The polysemous meaning of words was admitted expressly already in Roman law; see for instance: Fr. 204, D., L. 16. In *Corpus Iuris Canonici*, the juridical meaning of words and their locations in law which explained the meaning of the words in question were treated under the special title "*De verborum significatione*" in *Decr. Greg.* IX, l. V, tit. 40; in *VP*, l. V, tit. 12; in *Clement.*, l. V, tit. 11; in *Extrav. Jo.* XXII, l. V, tit. 14. See MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 518.

which meaning is linked to that word regularly whenever it is used."⁴⁵ He admits that the process of establishing a word and the determination of its regular meaning is essentially based on convention and the common use in the actual language; nevertheless it is done saving the rules of logic and in connection with other, etymologically similar, words. Thus, in law there can be found several various meanings of the same word, in fact *propriae*, although of a different level.⁴⁶

The traditional approach⁴⁷ offers a threefold distinction as regards the proper meaning of the words. The proper meaning *sensu vero* encompasses a natural or etymological (*naturalis seu etymologica*) meaning of words.⁴⁸ The classical authors supply some examples for that: the Latin word *filius* means a natural son and less an adopted one; *mors* means a true separation of soul from the body and not civil death; *actio* means any human action; *familia* means a natural and not religious family.⁴⁹ The proper meaning *sensu strictiore* resembles a usual, current (*usualis*

⁴⁵ "*Significatio verbi propria* generatim loquendo ea est, quæ adæquate respondet conceptui ad quem exprimendum verbum illud fuit institutum, quæquæ regulariter verbo illi, quando usitatur, subponitur." MICHIELS, *Normæ generales iuris canonici*, vol. I, pp. 517-518.

⁴⁶ See MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 518.

⁴⁷ As regards this subject matter, see: MICHIELS, *Normæ generales iuris canonici*, vol. I, pp. 513-524; VAN HOVE, *De legibus ecclesiasticis*, pp. 256-264; M.R. TORFS, "*Propria verborum significatio: de l'epistémologie à l'herméneutique*," in *Studia canonica*, 29 (1995), pp. 179-183; CICOGNANI, *Canon Law*, pp. 608-615.

⁴⁸ "*Sensu vero propria est significatio verbi naturalis seu etymologica, primæve eius institutioni et derivationis morphologicæ regulis conformis*" (MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 518). "*Naturalis orta est ex primæva impositione nominis diversis rebus, qua res significari solent prout occurrunt in rerum natura et naturaliter sunt*" (VAN HOVE, *De legibus ecclesiasticis*, p. 260).

⁴⁹ See MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 518; VAN HOVE, *De legibus ecclesiasticis*, p. 260.

seu vulgaris) usage of words. Usually that meaning leans upon and corresponds to the previous one, but sometimes, differs to a certain degree.⁵⁰ For instance, the Latin word *medicina* primarily meant a remedy which serves to make an ill person healthy, but afterwards it means also the art of medical profession. Another example furnished by Michiels: words used in a plural form include also a meaning of a singular object - reading the prohibited books (in plural) applies also to one book. The proper meaning *sensu strictissimo* means a juridical (*iuridica vel civilis*) meaning of the words of law as defined or understood in law or in jurisprudence.⁵¹ For example, *actio* assumes the precise meaning of the right to execute in the judicial forum whatever belongs to somebody.⁵²

The proper meaning of the words is set against the improper one. In the latter case one substitutes a meaning which does not fit either the natural, nor the usual, nor the juridical meaning of the words in question.⁵³ Instead of those meanings any

⁵⁰ "Sensu strictiore propria est significatio verbi *usualis seu vulgaris*, communi populi loquendi usu corroborata; qui usus sane generatim significationi naturali innititur eique conformatur, non raro tamen ab ea aliquatenus deflectit [...]" (MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 518). "*Usualis* est significatio naturalis confirmata vel mutata usu hominum. Sensus enim verborum apprimè determinatur communi hominum usu, ideoque significatio *usualis* seu communis est maxime propria" (VAN HOVE, *De legibus ecclesiasticis*, p. 260).

⁵¹ "Sensu strictissimo in iure propria dicitur significatio verbi *iuridica* (vel *civilis*), ea scilicet qua in lege vel iurisprudentia definitur aut intelligitur" (MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 518). "*Usualis* significatio vocatur *iuridica*, si hæc usu iuris peritorum vel definitione iuris ipsius est determinata" (VAN HOVE, *De legibus ecclesiasticis*, p. 260). As an example of defining the meaning of words in legal texts by the legislator himself, see PIUS XII, *Motu proprio, Postquam apostolicis litteris*, 22 February 1952, Pars III, *De verborum significatione*, cc. 302-325, in AAS, 44 (1952), pp. 144-150.

⁵² See MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 518.

⁵³ "*Significatio verbi impropria* per oppositionem ea dicitur, quæ neque iuridice neque usualiter neque naturaliter verbo convenit, sed a loquente, pro speciali suo lubitu vel saltem ob rationes sibi visas, verbo substituitur" (MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 519). For instance, F.J. Urrutia sets the proper meaning of words against their metaphorical use. See F.J. URRUTIA,

arbitrary meaning is supplied.⁵⁴ Michiels illustrates that situation by the example of the Latin word *rogo* that might be used in the sense of a command, but whose proper meaning conveys the idea of a request.⁵⁵

In the concrete application of the concept of the *propria verborum significatio*, the words are first considered individually so that their proper meaning as they are employed in the legal formula can be seized in order to understand finally the whole content of the norm.⁵⁶ The general presumption is that the legislator uses clear words in their common usages, regulated by the rules of the language, and he does so by excluding any arbitrary or figurative words. There is an established hierarchy among the various kinds of the proper meaning of the words of law: firstly juridical, if there is any, then usual, finally natural.⁵⁷ Therefore, the interpreter may expect that a word that obtained a technical juridical meaning defined in the Code, is used in

De normis generalibus. Adnotationes in Codicem: Liber I, Romae, Pontificia Universitas Gregoriana, 1983, p. 19.

⁵⁴ "*Impropria significatio pendet ab arbitrio utentis*" (VAN HOVE, *De legibus ecclesiasticis*, p. 261). In this regard, the technique of understanding the law through recourse to the parallel texts offers a particular example of *impropria*. In the case when these texts, understood according to the proper meaning of the words, bring the contradiction, a "more improper meaning" is proposed in order to solve the contradiction (*sensum verborum proprium derelinquere debemus pro sensu magis improprio*). However, some logical criteria are imposed on that "improper meaning": it cannot be unreasonable, or in opposition to the statements or principles adhered to by the legislator. See MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 528.

⁵⁵ See MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 519; cf. SHEKLETON, *Doctrinal Interpretation of Law*, p. 64.

⁵⁶ See MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 520.

⁵⁷ "Secundum propriam eorum significationem, præprimis iuridicam, quæ si deficiat, usualem, vel denique naturalem [...]" (MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 520).

that specific sense.⁵⁸ The "proper meaning of the words" refers, thus, to the defined or accepted canonical sense of the terms, if such there be. Many terms acquired an accepted meaning in the Code and other canonical literature.⁵⁹ However, certain dictionary meanings of words, including their technical meaning, may be made inapplicable by a given text and context.⁶⁰ If the words of the law lack such a determined juridical meaning, the source of the law in question might provide the proper sense of the words.⁶¹ In the case when neither of these instances provides the meaning of a particular word, it is to be understood in its usual or commonly used meaning, contemporary at the time of the writing the law, i.e. in the synchronic manner.⁶² In this regard, c. 36 § 1 constitutes a special instance. It expressly states that singular administrative acts are to be understood according to the proper meaning of words and the common manner of speaking (*communis loquendi usus*). It seems that the legislator wants to assure that in a concrete case, which those acts concern by their nature, the addressee of an act in question will understand it

⁵⁸ See T.L. BOUSCAREN, A.C. ELLIS, and F.N. KORTH, *Canon Law: A Text and Commentary*, 4th rev. ed., Milwaukee, The Bruce Publishing Company, [1966], p. 34. Cicognani points out the necessity to interpret correctly the Latin language according to the proper and usual meaning of words. In the case, when the lawgiver determines the technical, juridic meaning of certain words, that meaning should be followed against the ordinary one. See CICOGNANI, *Canon Law*, p. 609. "Significatio *etymologica* seu *philologica* in iure non attenditur, nisi quatenus est medium detegendi sensum proprium verborum" (VAN HOVE, *De legibus ecclesiasticis*, p. 261).

⁵⁹ See CORIDEN, "Rules for Interpreters," p. 20. "Sensus iuridicus verborum determinari potest etiam *ex collatis variis textibus* in quibus usu veniunt" (VAN HOVE, *De legibus ecclesiasticis*, p. 260).

⁶⁰ See BOUSCAREN, ELLIS, and KORTH, *Canon Law: A Text and Commentary*, p. 34.

⁶¹ See CORIDEN, "Rules for Interpreters," p. 20. Cicognani quotes Hilary (c. 6, X, V. 40): "The interpretation of words should be made according to their source, because the object does not depend on the word, but rather the word on the object" (CICOGNANI, *Canon Law*, p. 610).

⁶² See CORIDEN, "Rules for Interpreters," p. 20.

clearly.⁶³ That clarity assumes a particular importance when the administrative act is addressed to a community incapable of receiving the law. Such a community, instead of employing the technical, canonical language⁶⁴ requires a kind of communication conformed rather to its habitual manner of speaking.⁶⁵

All that implies that both the text and the context help to establish the vocabulary of a given text. Michiels is fully aware of the fact that in order to discover the true sense of a word used in any legal formula, the word should be considered not in abstraction, just as it stands in itself, and in the separation from the formula in which it is employed, but in the particular concrete usage, in conjunction and relationship to the other words. Since most often the meaning of the word considered in itself is general or at least to a certain degree undetermined, while the words used conjointly in the text and context acquire their concrete determination.⁶⁶

⁶³ See *Code de droit canonique annoté*, traduction et adaptation française des Commentaires de l'Université pontificale de Salamanque publiés sous la direction du professeur L. DE ECHEVERRIA, traduction française révisée du Code par la Société internationale de droit canonique et de législations religieuses comparées avec le concours de la Faculté de droit canonique de l'Université Saint-Paul d'Ottawa et de la Faculté de droit canonique de l'Institut catholique de Paris, Paris, Éditions du Cerf, 1989, p. 26.

⁶⁴ With the development of language a distinction emerges between ordinary, technical, and literary language. As regards the ordinary one, it is "[...] the vehicle in which the human community conducts its collaboration in the day-to-day pursuit of the human good." Such language is transient, elliptical, and based on common sense. But the divisions of human activity bring the specialization of language. "Eventually there arises a distinction between words in common use that refer to what is generally known about particular tasks and, on the other hand, the technical words [...]" (LONERGAN, *Method in Theology*, pp. 71-72).

⁶⁵ See *Code de droit canonique annoté*, p. 46. An interesting question is whether canon 36 § 1 introduces a new notion of *common manner of speaking* as different from the proper meaning of words *sensu strictiore* or simply underlines the latter as especially significant in a case of interpreting administrative acts?

⁶⁶ "Aliis verbis, ut deprehendatur verus sensus alicuius verbi in formula legali usitati, verbum illud non abstracte et separatim est dimetiendum, quasi per se stans et a formula, in qua reapse adhibetur, divulgum, sed *in concreto* est examinandum, coniunctim cum et dependenter ab aliis

Ultimately, from the traditional perspective, the text in the sense of c. 17 is meant primarily as the totality of the words of a legislator, considered singly as written on the page. The arrangement of the words in sentences or phrases - the connected structure of a writing is considered the context. The words of the law, thus, treated also conjointly, just as they were arranged in the proposition or the sentence under consideration are meant as considered in their context.⁶⁷

The traditional doctrine of the interpretation of law was certainly aware of the indispensability of the reference to a context understood broadly enough. Already in Roman law the maxim was known: "It is improper, without examining the whole of a law, to give judgment or advice, upon a view of any clause of it."⁶⁸ But obviously, in the field of canon law the context was considered also as a larger setting for the words, i.e. the article, section or book of the Code, the canonical institute, or subject area of the legislation.⁶⁹ Then, the context encompasses

verbis in eadem formula enuntiatis, interpunctione adhibita, etc.; sæpissime enim significatio propria alicuius verbi in se et per se solum spectati generalis est vel aliquatenus indeterminata, dum ceteris verbis in textu et contextu simul usitatis concretam acquirit determinationem" (MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 522).

⁶⁷ See CICOGNANI, *Canon Law*, pp. 609-610. Cf. A. TOSO, *Ad Codicem iuris canonici commentaria minora. Liber I. Normæ generales*, ed. 2, Romæ, P. Marietti, 1921, p. 57: "Quare, sicut verba, singillatim et secundum graphicam texturam considerata, textus dicuntur, ita eadem verba, si considerentur coniunctim eaque significatione, quam obtinent ex eorum iuxtapositione, ad normam regularum grammaticalium, dicuntur in contextu considerari" (Quoted after MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 519). However, a certain terminological problem appears: what is exactly the difference between the text and context in the traditional doctrine? Is it only the manner in which a given complex of words (the particular legal norm) is treated, i.e. either singly (as in the text) or conjointly (as in the context)? Or does the difference lie also in the extension of the context well beyond the written structure of the norm in question?

⁶⁸ "Incivile est, nisi tota lege perspecta, una aliqua particula eius proposita, iudicare vel respondere" (L. 24, D. I, 3; as quoted by VAN HOVE, *De legibus ecclesiasticis*, p. 263. English translation from CICOGNANI, *Canon Law*, p. 610).

⁶⁹ See CORIDEN, "Rules for Interpreters," p. 20.

ultimately the whole of the legislation: Van Hove's examples of the interpretation based on the context imply the whole Code as the possible field of the reference for a particular norm.⁷⁰ Similarly nowadays, the notion of the context includes such a broad perspective. In this regard, Cardinal Castillo Lara stresses the internal reference and harmony among all the canons in the CIC/83 flowing from the fact that the Code is a single law.⁷¹

To complete this overview of the notion of *propria verborum significatio* there is a need to point to another theoretical development. In the canonical literature concerned with the theory of the interpretation, a concept of the proper meaning of sentences can be found as a counterpart to the notion of the proper meaning of words. For law, as any other text, does not consist in the merely material concepts of the words or in their juxtaposition, but in the sentences (or the propositions) in which the meaning of the norm is expressed. Therefore the task of the interpreter is not to care so much about the words and their individual sense, but to bring together the meaning of the legal precept expressed in all the words of the text and context, conjointly and reciprocally compared.⁷² So Pope Gregory the Great says: "[...] I ask that the meaning of the words and not the words themselves be

⁷⁰ For the examples of the interpretation of the law in its context, see VAN HOVE, *De legibus ecclesiasticis*, pp. 263-264. "In legis interpretatione non unicum verbum attendendum est, vel una alterave particula, sed *tota lex est perspicienda* [...]" (VAN HOVE, *De legibus ecclesiasticis*, p. 263). Cf. also MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 519.

⁷¹ Therefore, each and every canon should be considered in the totality of the whole Code. See CASTILLO LARA, "Some Reflections on the Proper Way to Approach the Code of Canon Law," p. 33.

⁷² See MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 523.

translated, because usually when words are interpreted literally, their true meaning is lost."⁷³ Likewise, the *Digest* maintains that the knowledge of law consists in searching for their sense, rather than for the content of its words.⁷⁴

It seems, thus, that next to the proper meaning of words, the concept of the proper meaning of the sentence has been introduced. Just as the words, singularly examined, should be taken according to their sole and whole concept, expressed in themselves, similarly the norms of law are to be understood according to their total comprehension and extent in the sentence, taken in its proper sense. That sense is called either particular - when the norm is understood in a form of the practical rule, introduced on account of a sole case, limited to the determined circumstances; or general - when the norm is proposed as an abstract rule, for the general audience and applicable for all concrete cases, or, finally, as a juridic concept or definition, with all their practical and theoretical consequences.⁷⁵ In any event, this particular conception of the proper meaning of sentences brings the whole notion of the interpretation of ecclesiastical laws closer to some contemporary positions which maintain that sentences, and not words, are the proper carriers of meaning.

⁷³ "[...] rogo non verbum ex verbo, sed sensum ex sensu transferri, quia plerumque, dum proprietates verborum (singillatim, seorsim) attenditur, sensus veritatis amittitur [...]" (C. 8, X, V, 40; quoted after MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 523. English translation from CICOGNANI, *Canon Law*, p. 610).

⁷⁴ "Scire leges non hoc est verba earum tenere, sed vim ac potestatem" (L. 17, D., 1, 3; quoted after MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 523).

⁷⁵ See MICHIELS, *Normæ generales iuris canonici*, vol. I, pp. 523-524.

2.3. *Propria verborum significatio* in the light of contemporary linguistics

From the analysis of the traditional canonical doctrine about the interpretation of ecclesiastical laws, it appears that the concept of *propria verborum significatio* exploits somehow the philosophical position known in philosophical semantics as the thesis of denomination. It postulates that a certain name is attached *properly* to a thing, so that a word is said to have a proper meaning which is opposed to an improper meaning or figurative one that may be attached to the word as well. Meaning consists then in the proper naming of a thing which reflects the philosophical stand of nominalism.⁷⁶ However, if one accepts the ontological meaning of words (and according to R. Torfs the adjective "proper" in the notion of *propria verborum significatio* may suggest it), the discussion enters the domain of a philosophical theory. But *propria significatio* seems to take its real shape within the hermeneutical process which takes into account the context: Michiels' and Van Hove's commentaries allow for the discovery of the intense interaction between the proper meaning and the context. The proper meaning of the concrete word becomes, then, more relative. Actually, this situation renders the whole concept more relative, too. For *propria* finds itself face to face with *impropria* which is defined in a negative manner as an arbitrary decision about the meaning of a word. Consequently, because *propria* corresponds to every meaning which excludes any unfounded or arbitrary decision, therefore that term does not situate itself

⁷⁶ See VAN DEN HENGEL, *The Home of Meaning*, p. 28.

necessarily within an ontological level.⁷⁷ Consequently, Torfs maintains that the notion of *propria verborum significatio* leads to the conclusion that a certain tension exists between what that expression claims to be and how it is interpreted in concrete cases. Apparently enough, the expression itself has an equivocal meaning. The necessity to take into consideration the three categories of the proper meaning of words and the variety of traditionally proposed techniques of the interpretation of law witness to that. In order to find the concrete implications of that formula, there is a need for a reference to the context in almost every case, with an implicit presumption that a consensus between meaning and the content of its context does exist. Ultimately, Torfs believes, it is the context that allows us to discover with certainty the proper meaning of the words.⁷⁸

However, in the domain of linguistic sciences, a new perspective for understanding the meaning of words emerges. On the one hand, the thesis of denomination is contradicted by structuralism which postulates quite a specific perspective: the words have a meaning relative to the other words in the sentence, but not in any relation to an external reality. The text functions in producing certain effects of meaning - the game of the signifiers does not presuppose any ultimate signified.⁷⁹ None of the elements of language as a constitutive unit can be distinguished from others on the basis of what it represents or designates.

⁷⁷ See TORFS, "*Propria verborum significatio*," p. 182.

⁷⁸ See TORFS, "*Propria verborum significatio*," p. 181.

⁷⁹ See GEFFRÉ, *The Risk of Interpretation*, p. 25.

Consequently, meaning is not constituted by the extrinsic relationship of the sign with the reality, but it is produced by the intrinsic constitutive relationship of the word in question found in the other words in the vocabulary.⁸⁰ On the other hand, the contextual theory of meaning formulated on the ground of the English-language philosophy brings the discussion about the meaning of words one step further: into a discourse-situation. This theory emphasizes that words have meaning only to the extent that they are used in a sentence, so that their meaning is derived from the sentence or from a discourse-situation. Consequently, a word has no literal or proper meaning; if it has any meaning, it is because of its use in discourse, either the sentence or sentence-surrogates. The meaning of words becomes subordinated to the over-all meaning of the sentence.⁸¹

Both above mentioned positions within the sphere of linguistics seem to be difficult to maintain without some necessary adjustments. Ricoeur tries to reconcile those different directions: that of the semantics of the word and that of the semantics of the sentence. He admits the contextual functioning of the word: an interplay of meaning between the sentence and the word by which the word receives the "imprint" of predication. Nevertheless, this does not mean that it results in the dissemination of any meaning of the word, which possesses as such a

⁸⁰ "Meaning results from the correlation of the signifier and the signified in the sign. No entity of the system has a meaning of its own. The sign-units relate to other signs purely by their oppositions and differences. Just as a sound can be defined only in relation to other sounds so a meaning is only a difference in a lexical system. In a system of signs we must not look for the proper existence of a word. The sign has no other existence than in the lexicon where it is defined by the opposition to other words" (VAN DEN HENGEL, *The Home of Meaning*, pp. 20-21).

⁸¹ See VAN DEN HENGEL, *The Home of Meaning*, p. 28.

semantic autonomy. The various acceptances of a word form "contextual classes" (the usages of the particular words in the different contexts). As regards the final determination of the meaning of a word, Ricoeur gives to its use in a sentence priority against any denominative function. As a result, the isolated word has only a potential meaning. The actual meaning of the word realizes itself only in a sentence. To put it differently, the word represents a series of possible meanings in a variety of possible contexts. In discourse the word brings to the sentence a "semantic capital," i.e. the variety of contexts in which it has functioned. It is the sentence which manages and sorts out this semantic capital in order to actualize meaning in a certain manner. To sum up, a word possesses a proper identity, which allows us to use it as the same word, although in a different context. Nevertheless, the proper framework of the word is provided by the sentence.⁸²

2.4. The correct understanding of words

The traditional notion of the correct understanding of the text of law presupposes, as an indispensable factor, the correct understanding of the words of laws according to their proper meaning. Moreover, the rules of interpretation serve

⁸² See VAN DEN HENGEL, *The Home of Meaning*, p. 29. Lonergan points out that the meaning of words is assigned to each of them by basic lexicography in the way similar to the technique of implicit definition: by quoting from accepted authors the usages of a particular word in sentences or the other expressions. Various levels of meaning of words, examined from successively higher viewpoints, require, however, more comprehensive strategies, taking into account whole areas of scientific study in order to assess the meaning of some, highly "technical" terms. See LONERGAN, *Insight*, pp. 554-555.

not only for finding the meaning of the law and making that meaning clear, but also for confirming that the wording of the law has been correctly understood.⁸³ Cardinal Castillo Lara reminds canonists that the proper significance of the words still remains the first criterion of the canonical interpretation. It is, then, not admissible to ignore, prescind from, or distort the proper meaning of the words. Similarly, any interpretation, presumed "[...] to be based exclusively on the spirit of the law, on the inspiring principles, on theoretical constructions,"⁸⁴ but in open conflict with the very text of the law cannot be accepted.

The theoretical maturity of every scientific discipline evokes the formulation of some reliable methods which will produce valid results. Consequently, as some trends in hermeneutics firmly maintain, the theory of interpretation should lead to a methodology of interpretation. Indeed, canons of interpretation had been in existence already in the *hermeneutica sacra* of biblical scholars, and, more fully, in legal interpretation.

The canonical tradition adopted a set of particular rules concerning the understanding of words. Among these rules there are some very fundamental ones concerning the need for and the scope of the interpretation of the meaning of words. It is admitted that in certain instances interpretation is superfluous: if the words of the law in the text (and context) are clear, they are (the words) the sole norm of

⁸³ See CORIDEN, "Rules for Interpreters," p. 21.

⁸⁴ CASTILLO LARA, "Some Reflections on the Proper Way to Approach the Code of Canon Law," p. 39.

interpretation and no interpretation nor conjecture of the will should be admitted.⁸⁵ Among other rules concerning the overall "strategy" of the interpretation of law, mentioned by the traditional authors, we find: "Where the law does not distinguish, neither ought we to distinguish."⁸⁶ Or: "An indefinite expression is equivalent to one that is universal."⁸⁷ And also: "General words are to be generally understood."⁸⁸ It is worthy to note however, that these rules seem to be negative, limiting rather the number of the possible variants of understanding of a given word, than leading to any positive insight, broadening and enriching the meaning.

On the ground of civil legal science, we can cite some canons of legal interpretation, too. Some traditional canons of interpretation of statutory and constitutional law resemble *propria verborum significatio*: "We ought not to deviate from the common use of the language, unless we have very strong reasons for it," or: "Where a word has a fixed technical meaning, it is to be taken in that sense, unless the context or other evidence of meaning indicates a contrary legislative

⁸⁵ "Verba clara non admittunt interpretationem nec legis coniecturam." And similarly: "Cum in verbis nulla ambiguitas est, non debet admitti voluntatis questio" (Fr. 25, D., 32; quoted after MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 517).

⁸⁶ "Ubi lex non distinguit neque nos distinguere debemus" (Quoted without indicating the source in VAN HOVE, *De legibus ecclesiasticis*, p. 262).

⁸⁷ "Indefinita locutio æquipollet universali" (Glossa ordinaria ad constitutionem Gregorii IX *Rex Pacificus*, V° in iudiciis; quoted after VAN HOVE, *De legibus ecclesiasticis*, p. 262).

⁸⁸ "Verba generalia generaliter intelligenda" (C. 22, X, V, 33; quoted after VAN HOVE, *De legibus ecclesiasticis*, p. 262).

intent."⁸⁹ Nevertheless, these canons of interpretation share a similar lack of either generality or practicality.

Hermeneutical theories gave rise to the methodologically developed use of "canons" which have been formulated in order to facilitate the correct understanding of human expressions.⁹⁰ Already Schleiermacher formulated general canons which would be applicable to all texts. One of the most general of them is: "Everything in a given text which requires fuller explanation must be explained and determined exclusively from the linguistic domain common to the author and his original public."⁹¹ In the case of law that general remark leads to the more precise legal rule that the common linguistic domain, and, consequently, the proper meaning of words is determined by the time-moment of the promulgation of the law.⁹² The traditional doctrine was aware of this diachronic dimension of language.⁹³ *Propria verborum significatio* concerns the meaning of the words at the time of the making of the law,

⁸⁹ As quoted in E.D. HIRSCH, *Validity in Interpretation*, New Haven, Yale University Press, [1967], p. 202. For more about the principles of statutory interpretation, see C.K. ALLEN, *Law in the Making*, 7th ed., London, Oxford University Press, 1964, pp. 482-530; R. DWORKIN, *Law's Empire*, Cambridge, MA, Harvard University Press, 1986, *passim*.

⁹⁰ Hermeneutics is understood here as a kind of "technology" for correct understanding, especially in the juridical interpretation. See BLEICHER, *Contemporary Hermeneutics*, p. 11. Hence, hermeneutics becomes a set of philological principles which is at hand, ready for simple use. See PALMER, *Hermeneutics*, p. 63.

⁹¹ "Alles was noch einer näheren Bestimmung bedarf in einer gegebenen Rede, darf nur aus dem Verfasser und seinem ursprünglichen Publikum gemeinsamen Sprachgebiet bestimmt werden" (SCHLEIERMACHER, *Hermeneutik*, p. 90. English translation from HIRSCH, *Validity in Interpretation*, p. 200).

⁹² Cf. VAN HOVE, *De legibus ecclesiasticis*, p. 261: "Significatio propria illa est, quam verba habent *momento promulgationis legis*."

⁹³ "Sed notandum est usum verborum in Codice non esse perpetuum [...] significatio propria illa est, quam verba habent *momento promulgationis legis*, nisi postea consuetudine iuridica aut stylo Curiae sensus fuerit mutatus" (VAN HOVE, *De legibus ecclesiasticis*, pp. 260-261).

and not at the time of its application. Although law is accommodated to the historically founded social necessities, nevertheless that accommodation is related to the legislator himself, not to the interpreters.⁹⁴ However, in the case of legal texts, a certain difficulty appears: laws deliberately strive to extend their application into the future. First of all, the determinants of a legal text have to be found within that common linguistic domain, "[...] but they must not be limited to that domain, since they are also meant to apply to objects and situations which did not exist when the law was formulated and which thus could not be comprehended or comprehensible within that original linguistic domain."⁹⁵ Therefore, the traditional doctrine of interpretation of canon law maintains that the proper meaning of words of law can be modified through their actual use in legal practice.⁹⁶ Hirsch considers Schleiermacher's canon (and its derivatives) as obvious, "[...] since the *verbal* meaning of an author can only be a meaning which his audience could possibly share. That shareability is implied by the phrase *common linguistic domain* and the purpose of the canon to exclude private meanings and anachronisms."⁹⁷

⁹⁴ "Secundum propriam significationem quam habebant verba tempore quo lex fuit condita, non vero tempore quo actualiter applicatur [...]. Nec dicatur hanc restrictionem esse contrariam vitæ legislationis, quæ, ut efficax sit, necessitatibus socialibus decursu temporum oriundis est accommodanda; hæc enim accommodatio non ab interpretibus, sed ab ipso legislatore est exsequenda [...]" (MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 521).

⁹⁵ HIRSCH, *Validity in Interpretation*, p. 201.

⁹⁶ Therefore the rule: "Significatio propria illa est, quam verba habent *momento promulgationis legis*" finds its completion: "[...] nisi postea consuetudine iuridica aut stylo Curiae sensus fuerit mutatus" (VAN HOVE, *De legibus ecclesiasticis*, p. 261).

⁹⁷ HIRSCH, *Validity in Interpretation*, p. 200.

Another one of Schleiermacher's canons reads as follow: "The meaning of any word in a given passage must be determined according to its coexistence with the words that surround it."⁹⁸ Hirsch doubts whether that canon presents any valuable help for the task of interpretation. For that rule is:

[...] of course a description of what every interpreter has always done, whether he knew the rule or not, since in order to construe a word at all he has to construe its function, and that cannot be done in isolation from the larger sense which the word conveys in alliance with the surrounding words. Undoubtedly, therefore, this canon has real generality, but it is perfectly useless as a practical rule. It tells everyone to do what everyone has always done and will continue to do without the rule, but, more important, it has no capacity to enforce practical decisions. Every word is always construed in connection with its neighbors, and when there are alternative constructions, the senses of the surrounding words will vary accordingly. The context is not a fixed given, but something that can be just as variable as the word at issue. Thus, one could just as well set down as a corollary canon that "the sense of a word must determine the senses of the surrounding words." Both elements are variable and codependent [...].⁹⁹

Schleiermacher's system of interpretative rules resulted in a development within hermeneutical practice. There is the variety of interpretative rules which proliferate in the most diverse directions. The interpretation of the texts in particular disciplines exacts different rules;¹⁰⁰ for instance legal studies are not interested in

⁹⁸ "Der Sinn eines jeden Wortes an einer gegebenen Stelle muß bestimmt werden nach seinem Zusammensein mit denen die es umgeben" (SCHLEIERMACHER, *Hermeneutik*, p. 95. English translation from HIRSCH, *Validity in Interpretation*, 201).

⁹⁹ HIRSCH, *Validity in Interpretation*, p. 201.

¹⁰⁰ However, the unity of procedure was frequently causing a disregard to the specificity of the content of the text under consideration. The variegated use of the methods elaborated in the field of hermeneutics was considered as a sufficient allowance made for specific content of the works representing a vast set of fields and disciplines. See BLEICHER, *Contemporary Hermeneutics*, p. 15.

canons which determine the allegorical or anagogic character of a poem. Even within the same domains, different sorts of texts require different canons: "No one has ever brought forward a concrete and practical canon of interpretation which applies to all texts, and it is my firm belief that practical canons are not consistently applicable even to the small range of texts for which they were formulated."¹⁰¹ In any event, Hirsch comes to the conviction, that, ultimately, the range of application of the practical rules of interpretation is always limited.¹⁰² He concludes that as a general rule of interpretation there are no interpretative rules which would be at once general and practical. All those rules are, at best, provisional guides or rules of thumb. In the absence of compelling indications to the contrary, they are to be followed as preliminary probability-judgments based on past experience. As such they bring some consequences as regards their application: a strictly limited range of their application (to a given class of texts) and the possibility to overturn particular canons by subsuming a given text to a narrower class of texts.¹⁰³ It seems fair to say, then, still following Hirsch, that no possible set of rules can generate or compel an insight into the meaning of the text. For the act of understanding appears to be at first a genial assumption (or a mistaken guess), and there are no methods for

¹⁰¹ HIRSCH, *Validity in Interpretation*, p. 200. For some authors the thesis that the various disciplines concerned with textual interpretation require autonomous and distinct methods is misleading. It is rather that they require their own distinct content of relevant knowledge. What is far more important than any elaborated set of rules of interpretation is determining the general principles which is the concern of general hermeneutics. See HIRSCH, *Validity in Interpretation*, pp. vii-viii.

¹⁰² See HIRSCH, *Validity in Interpretation*, pp. 198-200.

¹⁰³ See HIRSCH, *Validity in Interpretation*, pp. 202-203.

making guesses and generating insights. Ultimately, the methodical process of interpretation begins when one tests and criticizes his guesses.¹⁰⁴

Loneragan summarizes the concept of rules of interpretation by pointing to their ancillary and instrumental character:

Rules of hermeneutics or exegesis list the points worth considering in one's efforts to arrive at an understanding of the text. Such are an analysis of the composition of the text, the determination of the author's purpose, knowledge of the people for whom he wrote, of the occasion on which he wrote, of the nature of the linguistic, grammatical, stylistic means he employed. However, the main point about all such rules is that one does not understand the text because one has observed the rules, but, on the contrary, one observes the rules in order to arrive at an understanding of the text. Observing the rules can be no more than mere pedantry that leads to an understanding of nothing of any moment or to missing the point entirely. The essential observance is to note one's every failure to understand clearly and exactly and to sustain one's reading and rereading until one's inventiveness or good luck have eliminated one's failures in comprehension.¹⁰⁵

Anyway, the analysis of the notion of *propria verborum significatio* points to the necessarily contextual determination of the meaning of the words. Regarding canonical studies however, such a contextual determination of the meaning brings forth the problem of the content of the context. To arrive at a uniform interpretation of words in their context, there is a need for all of the persons concerned to reach the consensus as regards the implicit meaning of the theoretical (in the case of canon law - predominantly theological) foundations which form the basis of the

¹⁰⁴ See HIRSCH, *Validity in Interpretation*, p. 203.

¹⁰⁵ LONERAGAN, *Method in Theology*, pp. 159-160.

discussion.¹⁰⁶ As we saw earlier, *propria verborum significatio* comes to light in the dialogue with the context. The fact that the meaning has to be accepted by all means that there should be an agreement, at least tacit, upon the context. Everyone who evaluates such a context should do that in the same manner in order that the proper meaning of words, seen in its text and its context, can be the same thing for all. On the contrary, Torfs has an impression that as the consensus concerning the context becomes weaker the threat of the juridical positivism appears greater. He does not understand the context of a canonical norm as solely a passage where a given legal norm happens to be, but as the whole complex of the underlying ideas which are the foundations of the norm concerned. There are at least two reasons for the weakening of those foundations which have to do with the new ecclesial context: first, a new position which canon law assumed within the structure of Church's sciences since Vatican II, and second, the increasing plurality of theological reflection in the Church. Because any uniform understanding of the ecclesial context seems not to be the case, and any absence of such a consensus as regards the context has as its consequence that the proper meaning has to be considered in itself, a positivist juridical interpretation appears practically unavoidable.¹⁰⁷

¹⁰⁶ See TORFS, "*Propria verborum significatio*," p. 187.

¹⁰⁷ See TORFS, "*Propria verborum significatio*," pp. 182-183.

To put it differently, for some *propria verborum significatio* risks becoming a notion without any foundation.¹⁰⁸ It is no longer supported by the context shared by all, by any common theological basis and a singular ecclesiology, or by any undisputed philosophical points of departure. Once the breaking up between the proper meaning of words and the basic philosophical and theological ideas takes place, the way is open to legal positivism. We come to the paradox: the affirmation of ontology results in a threat of positivism. The legislator still keeps the idea of *propria verborum significatio*, but without any common theological frame (a frame which until recently was implicitly present) the positivism seems to be inevitable. Torfs asks, dramatically, whether there is any need, henceforth, to accept the decline of the notion of the proper meaning of words, and, even worse, to succumb to the idea that positivism necessarily enters into the system of canon law and just at the moment when canon law renewed its theological aspirations?¹⁰⁹ As one of the means to cope with this difficulty, Torfs proposes elaborating a technique of rendering the text more constrained. This presupposes a more precise formulation of law and diminishing the number of open juridical norms. When the implicit consensus seems to be less firm than previously, it seems that a more exact definition of the juridic notions can help to keep the interpretation sufficiently univocal. The inconvenience of that technique is however obvious: it demands a

¹⁰⁸ It is needless to say that the notion of *propria verborum significatio* is condemned to death in some hermeneutical approaches for which the crisis of the proper meaning of words seems to be total. From the philosophical point of view many consider it as an epistemological curiosity which is not credible. See TORFS, "*Propria verborum significatio*," pp. 185-187.

¹⁰⁹ See TORFS, "*Propria verborum significatio*," p. 188.

modification of law which is impossible to accomplish within the short time in the sphere of universal law. Nevertheless, increasing detailness in the formulation of law and the limitation of the open juridic norms can be applied successfully in the particular law.¹¹⁰

2.5. Conclusion

In the meantime it appears that Ricoeur's theory of meaning of words proposes a way of a deeper understanding the problem of the meaning of written texts within the contemporary linguistic paradigm. Although Ricoeur affirms the meaning which the words possess by themselves, he situates the concretization of that meaning on the side of the context. That particular stand may serve as a bridge between the classical theories of the proper meaning of words, asserted still in the field of canon law, and the new perspectives and indisputable achievements in the linguistic sciences.

To sum up, the concept of the proper meaning of words, although not without certain difficulties, still retains a certain value. The strategy of seeking for the proper meaning of words allows us, at least, to formulate some first guesses concerning the meaning of the words in question. The kind of an "operational field" which is created in that manner may serve as a point of departure for further attempts to

¹¹⁰ See TORFS, "*Propria verborum significatio*," p. 190.

determine the meaning of the words concerned. That meaning, in any event, will be sought by referring to the largely understood context. Besides, the process of finding the correct meaning of words in the text is far more complex than any quasi-mechanical technique implying any determinate rule to a given text. For coming to understand is not a logical deduction, but "[...] a self-correcting process of learning that spirals into the meaning of the whole by using each new part to fill out and qualify and correct the understanding reached in reading the earlier parts."¹¹¹

¹¹¹ LONERGAN, *Method in Theology*, p. 159.

3. THE WORLD OF THE CONTEXT

Accepting a reference of the text to the external reality (external to the text itself) leads to the conclusion that the essential task of exegetical activity lies in understanding the object to which the text refers. In a certain sense, then, this step means progressing from the interpreter's habitual general knowledge to an actual, more particular one, concerning the objects to which the text refers.¹ In turn, it brings forth the problem of pre-knowledge proper to the interpreter and his pre-understanding of the text.

3.1. Contextuality of understanding

The Greek notion of hermeneutics can offer a suitable rationale for introducing the problem of pre-understanding in the process of interpreting meaning. The first direction of the meaning of *hermēneuein* is "to say," "to assert," or "to express." Nevertheless, the phrase "to express" suggests "a saying" which is itself already an interpretation. The analysis of oral interpretation makes especially

¹ See LONERGAN, *Method in Theology*, pp. 156-158.

apparent that the latter is a creative performance in which the reproducer is involved in the complex dialectical process.² For, on the one hand, it is indispensable to understand something in order to express it, but, on the other hand, understanding itself comes from interpretive reading-expression.³

The second direction of the meaning of *hermāneuein*, "to explain," furnishes some further ideas. It emphasizes the discursive aspect of understanding: explaining something, giving reasons for it, making it clear.⁴ But any object has its significance only in its relationship to something else, and that relationship determines its significance. That kind of explanatory interpretation points out that explanation is contextual, "horizontal," and, subsequently, it must take place within a horizon of the subject's own meanings, intentions, hopes.⁵

Schleiermacher's concept of the hermeneutical circle,⁶ in which the idea of a certain minimal pre-knowledge appears, can serve the purpose of introducing the

² "What begins to emerge here is the complex dialectical process involved in all understanding as it grasps the meaning of a sentence, and somehow in a reverse direction supplies the attitude and emphasis which alone can make the written word meaningful" (PALMER, *Hermeneutics*, p. 16).

³ See PALMER, *Hermeneutics*, pp. 14-16.

⁴ See PALMER, *Hermeneutics*, p. 20.

⁵ Cf. PARRET, *Contexts of Understanding*, p. 11: "[...] one understands once one 'knows' about the anthropological conditions governing the production of sentences, arguments, proofs [...] and these conditions [...] are rooted in the internal structure of the participants of semiotic processes; these participants are men, creators of significance, with their idiosyncratic but also general and basic needs, intentions and purposes."

⁶ "Jedes Verstehen des Einzelnen ist bedingt durch ein Verstehen des Ganzen" (SCHLEIERMACHER, *Hermeneutik*, p. 46). "Auch innerhalb einer einzelnen Schrift kann das Einzelne nur aus dem Ganzen verstanden werden, und es muß deßhalb eine cursorische Lesung um einen Überblick des Ganzen zu erhalten der genaueren Auslegung vorangehen. Dies scheint wieder ein Cirkel; allein zu diesem vorläufigen Verstehen reicht diejenige Kenntniß des Einzelnen hin, welche aus der allgemeinen Kenntniß der Sprache hervorgeht" (SCHLEIERMACHER, *Hermeneutik*, pp. 89-90).

problem associated with the contextuality of the process which every understanding involves. Palmer summarizes this awareness as follows:

[...] we understand something by comparing it to something we already know. What we understand forms itself into systematic unities, or circles made up of parts. The circle as a whole defines the individual part, and the parts together form the circle. A whole sentence, for instance, is a unity. We understand the meaning of an individual word by seeing it in reference to the whole of the sentence; and reciprocally, the sentence's meaning as a whole is dependent on the meaning of individual words. By extension, an individual concept derives its meaning from a context or horizon within which it stands; yet the horizon is made up of the very elements to which it gives meaning. By dialectical interaction between the whole and the part, each gives the other meaning; understanding is circular, then. Because within this "circle" the meaning comes to stand, we call this the "hermeneutical circle."⁷

The sentence provides a clear example of the interaction between the whole and its parts and the complementary character of this process. Any understanding of the meaning of the whole sentence is generated out of the meaning of individual parts. Respectively, the meaning of the whole changes the indeterminateness of the words into a fixed and meaningful pattern.⁸ For Dilthey that situation does not exclusively exist on the level of the sentence. The same relationship is valid on a greater scale which entails the parts and the whole of one's life.⁹ Meaning becomes

⁷ PALMER, *Hermeneutics*, p. 87.

⁸ See PALMER, *Hermeneutics*, p. 118.

⁹ "Der einfachste Fall, in welchem Bedeutung auftritt, ist das Verstehen eines Satzes. Die einzelnen Worte haben jedes eine Bedeutung und aus der Verbindung derselben wird der Sinn des Satzes abgeleitet. Das Verfahren ist also, daß aus der Bedeutung der einzelnen Worte das Verständnis des Satzes sich ergibt. Und zwar besteht eine Wechselwirkung zwischen dem Ganzen und zwischen den Teilen, kraft derer die Unbestimmtheit des Sinnes, nämlich die Möglichkeiten eines solchen und die einzelnen Worte, bestimmt wird. Dasselbe Verhältnis besteht zwischen den Teilen und dem Ganzen eines Lebensverlaufes, und auch hier wird das Verständnis des Ganzen, der Sinn des Lebens aus der Bedeutung... Dieses Verhältnis von Bedeutung und Sinn ist also in bezug auf den Lebensverlauf. Die einzelnen Ereignisse, welche ihn bilden, wie sie in der Sinnenwelt

thus temporal, defined in terms of one's life context.¹⁰ So the same with understanding: it becomes temporal too, as grounded in the horizon of the interpreter's temporality and his position in history.¹¹

Gadamer's analysis of the process of understanding brings some further insights. He asserts that before any attempt to understand the linguistic meaning of the individual parts of the sentence one must first, in a certain sense, construe that sentence. Nevertheless, this process is already governed by an expectation of meaning that follows from the context of what has been understood before. That expectation, in turn, may be adjusted, if the text calls for it. The text, then, unifies its meaning around the subsequent expectations, so that the direction of understanding is changeably from the whole to the part and back to the whole. The unity of the understood meaning expands, then, centrifugally, and the criterion of correct understanding consists in the harmony of all the parts with the whole.¹²

The precise battle ground, as presented in methodologically oriented hermeneutics, concerns the problem of subjectivity found in pre-understanding. In Dilthey's theory the impossibility of "presuppositionless" understanding is founded

aufzutreten, haben wie die Worte eines Satzes ein Verhältnis zu etwas, das sie bedeuten. Durch dieses ist jedes einzelne Erlebnis von einem Ganzen aus bedeutungsvoll zusammengenommen. Und wie die Worte im Satz zu dessen Verständnis verbunden sind, so ergibt der Zusammenhang dieser Erlebnisse die Bedeutung des Lebenslaufes. Ebenso verhält es sich mit der Geschichte" (DILTHEY, *Der Aufbau der geschichtliche Welt in den Geisteswissenschaften*, p. 235).

¹⁰ See Dilthey's discussion of experience as an object of reflection in his *Der Aufbau der geschichtliche Welt in den Geisteswissenschaften*, pp. 139-140.

¹¹ See PALMER, *Hermeneutics*, p. 122.

¹² See GADAMER, *Wahrheit und Methode*, p. 275.

on the circularity of understanding. Every act of understanding happens only in a given context or horizon. In the sciences the explanation is given in terms of a frame of reference; in the humanities the context of understanding is "lived experience," historical and temporal in its essence. A man understands always from within his own horizon by constant reference to his experience. The task of the interpreter is to find viable modes of interaction between his own and the text's horizon.¹³

Unlike Dilthey, who finds the conditions for understanding (*verstehen*) on the level of the logical foundations of knowledge, Heidegger transfers that problem into the realm of ontology. The phenomenological analysis of *Dasein*¹⁴ as the Being-of-mankind provides a critique of the body of underlying assumptions in the Western philosophical tradition.¹⁵ First of all, Heidegger notices that the interpretation of something as something is founded on the fore-structure of understanding: any perception of things is pre-formed by our understanding of the world. He introduces the concepts of fore-having (*Vorhabe* - something we have in advance, i.e. the context and the anticipation of meaning), foresight (*Vorsicht* - something we see in advance, i.e. understanding as guided by a certain point of view), and fore-

¹³ See PALMER, *Hermeneutics*, p. 121.

¹⁴ In Heidegger's hermeneutic phenomenology *Dasein* is characterized by its understanding of Being. Understanding becomes the fundamental *existentiale* (*existentiales*, together with categories form two basic possibilities for characters of Being; *existentiales* are proper to *Dasein* because *Dasein's* characters of Being are defined in term of existentiality) that constitutes the disclosedness of Being-in-the-world and contains in itself the possibility of interpretation. The meaning of Being is revealed through interpretation of that which is the "hermeneutic" of *Dasein*; therefore "hermeneutic" becomes here a fundamental concept of ontology. The analysis of *Dasein* shows that the meaning of Being can only be interpreted from within a pre-current understanding. The "hermeneutic of *Dasein*" explicates and clarifies an already existing pre-understanding that forms the structure of our "Being-in-the-world." See BLEICHER, *Contemporary Hermeneutics*, pp. 98-101.

¹⁵ See BLEICHER, *Contemporary Hermeneutics*, p. 98.

conception (*Vorgriff* - something we grasp in advance, i.e. the framework of interpretability and the intuition of interpretation). *Vorhabe*, *Vorsicht*, and *Vorgriff* form the conditions for the possibility of interpretative understanding and provide the presuppositions for the constitution of an "object."¹⁶ Therefore, even the mere recognition of a fact is theory-based and dependent on a number of anticipations.¹⁷ In understanding texts the interpreter approaches them "[...] not with an empty consciousness temporarily filled with the present situation but rather because we hold in our understanding, and bring into play a preliminary intention with regard to the situation, an already established way of seeing, and certain ideational "preconceptions."¹⁸

¹⁶ "Diese [alltägliche, umsichtige Auslegung] gründet jeweils in einer *Vorhabe*. Sie bewegt sich als Verständniszueignung im verstehenden Sein zu einer schon verstandenen Bewandnisganzheit. Die Zueignung des Verstandenen, aber noch Eingehüllten vollzieht die Enthüllung immer unter der Führung einer Hinsicht, die das fixiert, im Hinblick worauf das Verstandene ausgelegt werden soll. Die Auslegung gründet jeweils in einer *Vorsicht*, die das in *Vorhabe* Genommene auf eine bestimmte Auslegbarkeit hin "anschneidet." Das in der *Vorhabe* gehaltene und "vorsichtig" anvisierte Verstandene wird durch die Auslegung begrifflich. Die Auslegung kann die dem auszulegendem Seienden zugehörige Begrifflichkeit aus diesem selbst schöpfen oder aber in Begriffe zwingen, denen sich das Seiende gemäß seiner Seinsart widersetzt. Wie immer - die Auslegung hat sich je schon endgültig oder vorbehaltlich für eine bestimmte Begrifflichkeit entschieden; sie gründet in einem *Vorgriff*. Die Auslegung from Etwas als Etwas wird wesentlich durch *Vorhabe*, *Vorsicht* und *Vorgriff* fundiert" (HEIDEGGER, *Sein und Zeit*, p. 150).

¹⁷ See BLEICHER, *Contemporary Hermeneutics*, pp. 101-102. For Heidegger interpretation is never a presuppositionless grasping of something given in advance. In fact, the concept of pre-structure of understanding goes beyond the model of the interpretative situation considered in terms of subject-object relation. In the process of understanding, what appears from the object is what the interpreter allows to appear on the basis of certain already given and granted presuppositions. See PALMER, *Hermeneutics*, pp. 135-136.

¹⁸ PALMER, *Hermeneutics*, p. 176. It corresponds with Lonergan's rejection of the Principle of the Empty Head: "According to this principle, if one is not to 'read into' the text what is not there, if one is not to settle in a *priori* fashion what the text must mean no matter what it says, if one is not to drag in one's own notions and opinions, then one must just drop all preconceptions of every kind, attend simply to the text, see all that is there and nothing that is not there, let the author speak for himself, let the author interpret himself. In brief, the less one knows, the better an exegete one will be" (LONERGAN, *Method in Theology*, p. 157).

For some, the concept of pre-understanding postulates the necessity of an expertise of the interpreter in the area concerned, or, in other words, a living relationship with the subject-matter. For Bultmann the process of interpretation is possible only on the ground of a preceding involvement with a subject-matter which is expressed in a text directly or indirectly.¹⁹ The text itself constitutes the “upon-which” (*Woraufhin*) of the inquiry: the interest of the interpreter in the subject-matter gives rise to the kind of questions asked.²⁰ In the case when the “upon-which” of the inquiry harmonizes with the intention of the text, the subject-matter is provided directly by the text. It may happen, however, that the subject-matter is provided by the text only indirectly: the interpreter’s approach to the task of the interpretation can be led by his psychological interest which results in the examination of the text in relation to the psychology of the individual, group, or society, and then inquires into the psychological aspects of language, art, law, etc. In like manner, the “upon-which” can be provided by an aesthetic interest or a tentative understanding of human existence supplying some particular categories for such an inquiry. Accordingly, the strategy of overcoming all these limitations of pre-understanding

¹⁹ “[...] Voraussetzung des Verstehens das Lebensverhältnis des Interpreten zu der Sache ist, die im Text - direkt oder indirekt - zu Worte kommt” (R. BULTMANN, “Das Problem der Hermeneutik,” in *Zeitschrift für Theologie und Kirche*, 47 (1950), p. 52). In other words, pre-understanding is founded upon the life-relationship (*Lebensverhältnis*) of the interpreter to the reality of which the text speaks. Bultmann proposes Heideggerian existential analysis as a frame in which the text of Scripture is understandable for people of today. See PONTIFICAL BIBLICAL COMMISSION, *The Interpretation of the Bible*, pp. 73-74.

²⁰ “Ein Verstehen, eine Interpretation, ist - das ergibt sich - stets an einer bestimmten Fragestellung, an einem bestimmten Woraufhin, orientiert. Das schließt aber ein, daß sie nie voraussetzungslos ist; genauer gesagt, daß sie immer von einem Vorverständnis der Sache geleitet ist, nach der sie den Text befragt. Auf Grund eines solchen Vorverständnisses ist eine Fragestellung und eine Interpretation überhaupt erst möglich” (BULTMANN, “Das Problem der Hermeneutik,” p. 51).

is based on a critical examination which reconciles this *Vorverständnis* together with a conscious submission of the interpreter to the questions posed by the text itself.²¹

In his analysis of the phenomenon of understanding Gadamer concretizes Heidegger's idea of the fore-structure²² and widens Bultmann's concept of pre-understanding into his conception of "prejudices" which form a given "horizon of understanding."²³ Gadamer stresses the fact that the process of interpretation is historically conditioned so that prejudices become true conditions for understanding. Understanding, especially understanding historical events, is regarded as an entering into the process of tradition in which past and present form an arena of reciprocal action and constantly mediate each other.²⁴ The interpreter is always located in the context of tradition which is regarded here as the sharing of fundamental and supportive prejudices.²⁵ By its nature, human *Dasein* is not

²¹ See BULTMANN, "Das Problem der Hermeneutik," pp. 62-63. On page 63, he summarizes his idea: "[...] kurz, es gilt: in der Befragung des Textes sich selbst durch den Text befragen zu lassen, seinen Anspruch zu hören."

²² For an analysis of Heidegger's idea of the fore-structure of understanding and the conception of prejudices, see GADAMER, *Wahrheit und Methode*, pp. 250-261.

²³ See BLEICHER, *Contemporary Hermeneutics*, p. 108. For the concept of the horizon of understanding, see GADAMER, *Wahrheit und Methode*, pp. 286-290.

²⁴ See BLEICHER, *Contemporary Hermeneutics*, p. 76. "Das Verstehen ist selber nicht so sehr als eine Handlung der Subjektivität zu denken, sondern als Einrücken in ein Überlieferungsgeschehen, in dem sich Vergangenheit und Gegenwart beständig vermitteln" (GADAMER, *Wahrheit und Methode*, pp. 274-275).

²⁵ See BLEICHER, *Contemporary Hermeneutics*, p. 110. Palmer stresses the encompassing character of Gadamer's conviction: "A biblical, literary, or scientific text is not interpreted without preconceptions. Understanding, since it is an historically accumulated and historically operative basic structure, underlies even scientific interpretation; the meaning of the described experiment does not come from the interplay of the elements in the experiment but from the tradition of interpretation in which it stands and the future possibilities it opens up. The past-present-future temporality applies to both scientific and nonscientific understanding; it is universal" (PALMER, *Hermeneutics*, p. 182).

determined by any definitive situation, so it does not possess any closed horizon. Whenever understanding takes place, the "fusion of horizons" occurs: the interpreter's horizon is widening so that it can integrate the horizon of those parts of tradition in which he is interested. In other words, the interpreter's horizon is formed by the process which tests the interpreter's prejudices in the encounter with the past and the struggle to understand parts of his tradition. During the process of understanding a new horizon, one that transcends the initial questions and prejudices emerges.²⁶

The concept of horizon finds its further development in Örsy's distinction between the subjective and the objective component of the horizon of the interpreter. From the epistemological point of view, when the operations of the interpreter's mind reach greater refinement, a vertical move from the level of common sense to the level of abstraction occurs. In other words, it consists in developing the subjective component of the horizon. The objective component of the horizon of the interpreter develops by expanding his vision to include some new fields with other objects, horizontally.²⁷ The subjective pole of a horizon includes the manner (mode, level) of operations of the subject; the objective pole represents the

²⁶ See BLEICHER, *Contemporary Hermeneutics*, p. 112. "Der Entwurf des historischen Horizontes ist also nur ein Phasenmoment im Vollzug des Verstehens und verfestigt sich nicht zu der Selbstentfremdung eines vergangenen Bewußtseins, sondern wird von dem eigenen Verstehenshorizont der Gegenwart eingeholt. Im Vollzug des Verstehens geschieht eine wirkliche Horizontverschmelzung, die mit dem Entwurf des historischen Horizontes zugleich dessen Aufhebung vollbringt" (GADAMER, *Wahrheit und Methode*, p. 290).

²⁷ See ÖRSY, *Theology and Canon Law*, pp. 18-19.

content of the field of vision (the objects included in the subject's field of vision).²⁸ The traditional conviction that knowledge increases through the acquisition of new ideas and their organization according to some principles of reasoning is thus enriched by the conception of a mental horizon which furnishes the space for all ideas and principles.²⁹ This understanding of horizon postulates that: "[...] the mental operations and their results in human persons are essentially dependent on and limited by their field of vision. In other terms, the meaning of everything that happens subjectively and is expressed objectively in the mind of a person can be fully grasped only if the extent of the field of vision of that person is taken into account."³⁰

The reality of understanding serves Gadamer to formulate the rule of the hermeneutic circle. It postulates that the whole of tradition provides an anticipation of meaning which, however, should be understood in relation to the parts which, in turn, themselves determine that whole. The prejudices are an indispensable part of the process of understanding so the hermeneutic task means separating those of an individualistic nature from those which allow for true understanding.³¹ In any event, the circularity of understanding reminds us that there is no true starting point for understanding, because every step presupposes the others. As a result, there

²⁸ See ÖRSY, *Theology and Canon Law*, pp. 26-27.

²⁹ See ÖRSY, *Theology and Canon Law*, p. 65.

³⁰ ÖRSY, *Theology and Canon Law*, p. 20.

³¹ For this summary of Gadamer's idea of the hermeneutic circle and the subsequent critical analysis of Gadamer's thought, see BETTI, *Die Hermeneutik als allgemeine Methodik der Geisteswissenschaften*, pp. 40-43.

can be no “presuppositionless” understanding: every act of understanding is situated in a given context or horizon and operates within a certain frame of reference. The interpreter’s horizon, then, constitutes a part of the hermeneutical circle; hence there can be no non-positional understanding of anything, especially a text.³²

To sum up, a common platform in hermeneutics (whether on the ground of methodologically oriented hermeneutical theories or on the ground of hermeneutic philosophy) becomes the awareness that the meaning of the text is not simply offered to a passive interpreter in any mechanical procedure. In order to arrive at understanding the interpreter has to employ his intuition, the creativity of his own insight, and the categories of thought located in his practical knowledge. Inevitably, thus, a subjective component comes into play in the process of understanding texts. For already the first encounter with the text brings to light the whole complex of pre-conditions which bear upon the process of understanding and its actual validity. Finally, hermeneutics enables us to present understanding the text in its context not as any one-dimensional, routine procedure, consisting of a simple comparison with the surrounding texts, but as a dynamic reality requiring constant interaction between various, subjective and objective, textual and extra-textual factors.

³² See PALMER, *Hermeneutics*, pp. 120-121. Cf. Heidegger’s remark: “Auslegung ist nie ein voraussetzungsloses Erfassen eines Vorgegeben” (HEIDEGGER, *Sein und Zeit*, p. 150).

3.2. Horizon of understanding ecclesiastical laws

3.2.1. The notion of the context of understanding ecclesiastical laws

As Betti reminds us, even plain common sense would accept the need for an interrelation between the whole and its parts that expresses the concept of the hermeneutical circle, or, using Betti's terminology, the canon of the coherence of meaning.³³ Betti finds this canon as especially useful, and actually used largely, in the legal science, in the interpretation of legal norms and laws. Interpretations which conflict with the consistency of a system that has been established with the aids of legal dogmatics, are to be excluded. For each norm or maxim for decision-making should become an integral, coherent part, related logically to the whole body of laws. Reciprocally, the whole provides the effective-structure (Dilthey's *Wirkungszusammenhang*), generating an organic interrelationship, interdependency, coherence, and conclusiveness for particular norms, group of norms, or different areas of the law.³⁴

The implementation of the idea of the hermeneutical circle in the field of legal science, and in canon law in particular, calls for an attempt to identify the totality, the whole, to which the laws should be referred. As it was stated earlier, the hermeneutical circle concerns first the level of the sentence, and then, gradually,

³³ See BETTI, *Die Hermeneutik als allgemeine Methodik der Geisteswissenschaften*, p. 15.

³⁴ See BETTI, *Die Hermeneutik als allgemeine Methodik der Geisteswissenschaften*, pp. 16-17.

some major entities of the text as well. It calls for recognizing the need for a broad context, which seems to be obvious in canon law.

As it was mentioned previously, from the classical canonical point of view the context of a law was considered as the words of the law, treated conjointly (in contradiction to the text where the words of a legislator were considered singly), just as they were arranged in the proposition or the sentence under consideration.³⁵ However, the concept of a broader context included a larger setting for the words, i.e. the article, section or book of the Code, the canonical institute, or subject area of the legislation.³⁶ Then, the context is sufficiently broadened to encompass ultimately the whole of the legislation.³⁷ And so, the commentary prepared by the Pontifical University in Salamanca describes the context as not only the proximate surroundings of a word in the sentence, but also extends the notion of the context to the surroundings of the sentence in a paragraph, the paragraph in a canon, and, gradually, the surroundings of the canon in its article, chapter, section, part, book, in the whole system of the Code, and in the whole canonical realm. The movement of the whole process of constructing the context proceeds thus by rising and

³⁵ See CICOGNANI, *Canon Law*, pp. 609-610.

³⁶ See CORIDEN, "Rules for Interpreters," p. 20.

³⁷ For the examples of the interpretation of the law in its context, see VAN HOVE, *De legibus ecclesiasticis*, pp. 263-264. "In legis interpretatione non unicum verbum attendendum est, vel una alterave particula, sed tota lex est perspicienda [...]" (VAN HOVE, *De legibus ecclesiasticis*, p. 263). Cf. also MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 519.

enlarging, step by step, the actually considered surroundings.³⁸ Context understood in such a manner reveals its primarily synchronic character, making it independent from the time-factor. The strategy of building up such a context is structured horizontally within a given system. Actually, the whole Code offers the primary fundamental textual context for the particular canons:

The Code is a single law and there must be internal reference and harmony among all the canons, so that a canon can never be considered in isolation, but must be viewed in the totality of the new legislation. This new frame of reference has more than a slight influence on the importance of a canon, old in its wording but new because of the context in which it is inserted.³⁹

In addition, c. 17 offers another instance of enlarging the context. For in the case of any doubtful meaning in the words of the law the legislator prescribes recourse to parallel places, if there be any. Recourse to parallel places, then, presupposes comparison with the other laws which approach the same matter, however from a different perspective, or use the same expression, however on a

³⁸ "Par *contexte*, il faut comprendre non seulement l'environnement immédiat des mots dans la phrase, mais aussi l'environnement de la phrase dans le paragraphe et du paragraphe dans le canon, et encore l'environnement du canon dans son article, chapitre, section, partie et livre, comme aussi dans le système du Code tout entier et du Code dans tout l'appareil canonique, procédant ainsi de proche en proche en montant et en élargissant le contexte" (*Code de droit canonique annoté*, p. 26).

³⁹ CASTILLO LARA, "Some Reflections on the Proper Way to Approach the Code of Canon Law," p. 33.

different occasion or circumstances.⁴⁰ Admittedly, such a procedure includes laws external to the Code as well.⁴¹

The context, however, includes not always only legal texts. As c. 17 prescribes, it goes, at times, even beyond the texts of the law to include the purpose and circumstances of the law, and the mind of the legislator, provided that it still remains within the canonical realm.⁴² Furthermore, regarding the new legislation, Pope John Paul II points to the larger context of understanding CIC/83 which is the Second Vatican Council itself: "[...] the fundamental basis of the

⁴⁰ See *Code de droit canonique annoté*, pp. 26-27. Cf. the discussion of the *Coetus studiorum "De normis generalibus"* regarding "locos parallelos." See for that "Ex Actis Pont. Comm. CIC Recognoscendo," in *Communicationes*, 16 (1984), pp. 150; 157. Michiels defines parallel places as: "[...] loci [...], in quibus aliquid statitur circa eandem disciplinam, etsi forsan materialiter seu ad specialem disciplinæ respectum quod attinet, et formaliter seu ad verba usitata quod spectat, aliter et aliter [...]" (MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 524). The praxis of recourse to parallel places presents an interesting example of highly sophisticated canonical technics of interpretation; see for instance: MICHIELS, *Normæ generales iuris canonici*, vol. I, pp. 525-530; VAN HOVE, *De legibus ecclesiasticis*, pp. 265-268. However, as such they are not the matter of interest of this thesis.

⁴¹ For C. Regan recourse to parallel places which are not limited, as in the CIC/17, to the Code itself, allows us to broaden the horizon of understanding to include "[...] historical consciousness, principles of Vatican II, the guiding principles of the Code Commission and Synod of Bishops, etc." C. REGAN, "The Church Lawyer - Interpreter of Law," in *The Jurist*, 44 (1984), p. 422. For E. Kneal it means recourse to "[...] parallel places in the worshipping life of the community, to the *Weltanschauung* out of which we view the law," or, in other words, it opens "a window to a much larger view of interpretation, namely, the cultural one" (E. KNEAL, "Interpreting the Revised Code," in *The Art of Interpretation*, p. 29). In particular, as J. Abbass argues, the CCEO/90 can serve as an important source of parallel passages for the CIC/83. See J. ABBASS, "Canonical Interpretation by Recourse to *Parallel Passages*: A Comparative Study of the Latin and Eastern Codes," in *The Jurist*, 51 (1991), p. 295. In his address to the 28th General Congregation of the Synod of Bishops, Pope urges for comparative studies of both Codes ("*studium comparativum amborum Codicum*"). See JOHN PAUL II, Address to the 28th General Congregation of the Synod of Bishops, 25 October 1990, in *AAS*, 83 (1991), p. 490.

⁴² Such strategy seems to presuppose a certain stability within the intention of the lawgiver, whether he is the same physical person or the ecclesiastical authority who represents over the course of time a given, stable legislative tradition. Michiels locates the possibility of an effective use of recourse to parallel places in rationality of law, which is assured by the same general principles and concepts, shared by ecclesiastical legislators, especially as regards the ultimate purpose of law which is the common good of an ecclesial community. See MICHIELS, *Normæ generales iuris canonici*, vol. I, pp. 524-525.

'newness' which, while never straying from the Church's legislative tradition, is found in the Second Vatican Council and especially in its ecclesiological teaching, generates also the mark of 'newness' in the new Code."⁴³

Admittedly, the largest notion of the context of understanding ecclesiastical laws postulates taking into account all various elements (juridical, theological, social, cultural, etc.) which promise to help in achieving a most comprehensive understanding of laws.⁴⁴ It expresses the consensus that surely exists today on the necessity of considering the task of understanding law as a very complex endeavor.

As Pope John Paul II maintains, the knowledge of the Code

[...] presumes assiduous, scientific, deep study, which is not limited to pointing out the possible variations with respect to the previous law, or to establishing its purely literal or philological meaning, but which takes into consideration the mind of the legislator (*mens legislatoris*) and the reason of the law (*ratio legis*). This will give you a global view which enables you to penetrate the spirit of the new law. For the issue in substance is: The Code is a new law and it is to be evaluated primarily in the perspective of the Second Vatican Council, to which it is intended to conform fully.⁴⁵

⁴³ "[...] fundamentalis illa ratio 'novitatis,' quæ, a traditione legifera Ecclesiæ numquam discedens, reperitur in Concilio Vaticano II, præsertim quod spectat ad eius ecclesiologicalam doctrinam, efficiat etiam rationem 'novitatis' in novo Codice" (*Sacræ disciplinæ leges*, in AAS, 75, Pars II, (1983), p. xii; *The Code of Canon Law in English Translation*, p. xiv). For the analysis of the relationship between the CIC/17 and the Vatican I, and between the CIC/83 and Vatican II, see J.A. ALESANDRO, "The Revision of the *Code of Canon Law*: A Background Study," in *Studia canonica*, 24 (1990), pp. 92-101.

⁴⁴ Such a broad attitude appears in the traditional doctrine of recourse to the purpose and circumstances of the law. Michiels recognizes the importance of possible factors which influence the internal and external sphere of the legislator's life and inevitably bear upon the intended meaning and purpose of the law. See MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 530.

⁴⁵ JOHN PAUL II, Allocution to the Roman Rota, in *Communicationes*, 16 (1984), p. 16; WOESTMAN, *Papal Allocutions*, p. 183.

From this enunciation it appears that understanding ecclesiastical laws postulates inter-disciplinary study, not limited only to the strictly legal (canonical) level, but encompassing the whole reality of all the elements which can bear upon the genesis of the law and its history in the life of the Church. It broadens significantly the concept of the context of understanding law. The horizon of understanding ecclesiastical law transcends thus the field of canon law to seek insights in other branches of ecclesiastical science, and virtually, in every field of knowledge concerned with human beings.

3.2.2. Historicality of understanding ecclesiastical laws - diachronic and synchronic perspectives

The interpretation of law must be a historical event for two reasons: it considers the law first at the specific point of its evolution, and then at a specific point in the development of the interpreter. While this principle does not relativize all knowledge, it brings to attention an element of relativity proper to all knowledge. So, the law itself and the interpreter himself develop and progress constantly,⁴⁶ and the history of norms must be known in order to construe their meaning accurately.⁴⁷

⁴⁶ See ÖRSY, *Theology and Canon Law*, pp. 50-51.

⁴⁷ See ÖRSY, *Theology and Canon Law*, p. 78.

The historical method seems to be, thus, an integral part of a larger process of understanding law in its diachronic dimension.

From the merely canonical point of view, the necessity to take into account the canonical tradition concerning the interpretation of canons which have their history flows from c. 6 § 2 which reads:

Canones huius Codicis, quatenus ius vetus referunt, æstimandi sunt ratione etiam canonicæ traditionis habita (To the extent that the canons of this Code reproduce the former law, they are to be assessed in the light also of canonical tradition).⁴⁸

Moreover, the canonical justification of the thesis that the historical method seems to be an integral part of a largely considered process of understanding laws arises from another source. Namely, c. 17 furnishes some principles applicable in the interpretation made either by those entrusted with the application of the law, or by the subjects to the law itself, or by those concerned with the doctrinal interpretation of law. These principles should not be considered rigidly as either enumerative or prescriptive, but as conformed to the "natural" reading of law. In practice, then, they should be utilized simultaneously.⁴⁹ Accordingly, c. 17 invokes the necessity of

⁴⁸Moreover, c. 6 § 2 seems to have a certain value as applied to c. 17 itself. For that reason, in assessing c. 17, a recourse to the traditional rules of interpretation, regarded as the traditional reading of that canon, seems to be indispensable. Cf. *Code de droit canonique annoté*, p. 26. However, as H. Pree notices, c. 17 and following concern ecclesiastical laws in general, not only those inserted into the CIC/83, while c. 6 § 2 applies to the CIC/83. See H. PREE, "Traditio canonica. La norma de interpretación del c. 6 § 2 del CIC," in *Ius canonicum*, vol. 35, no. 70 (julio-diciembre 1995), p. 431.

⁴⁹ See *Code de droit canonique annoté*, p. 26. However, numerous canonists maintain the position that recourse to those principles is justified only if the proper meaning of the words in question remains doubtful or obscure. See, for example, URRUTIA, *De normis generalibus*, p. 19: "Et solum si obscura manserit significatio verborum propria, ad criteria subsidiaria recurrendum."

referring to the parallel places, to the object and the circumstances of law, and to the mind of the legislator. The parallel places however may include the previous legislation still in effect which is to be considered in the light of the canonical tradition (c. 6 § 2). In an effort to appropriate the understanding of the purpose and the circumstances of law, the necessity to recall the historical conditions of the time and place seems to be unavoidable. The classical authors pointed to the psychological and social determinants inseparably included in the process of creating laws. These circumstances encompass some factors which either precede the origin of the law in question, or accompany, or follow it.⁵⁰ As Michiels notices, a particular legal norm usually has its roots in the tradition, in custom, or in previous legal enactments. It takes its shape gradually in an evolutive process, often under the influence of some social necessities. The process of the discussion and the actual redaction and the law casts a significant light on its understanding; similarly the subsequent stadium of the communal understanding, reception and application, or the evolution of the law in the course of time.⁵¹ By way of completion, a similar

⁵⁰ Accepting the voluntarist's stand that the law is identified solely with the actual will of the legislator, and, consequently, the whole task of the interpreter is limited to apprehension and manifestation of it, the circumstances are considered inasmuch as they influence the will of the legislator. See MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 531. According to this concept, only those circumstances might be considered which are proved to direct the legislator: either from the phase of preparation of the law or from authentic (authoritative) documents. See MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 532.

⁵¹ See MICHIELS, *Normæ generales iuris canonici*, vol. I, pp. 530-533. Cf. VAN HOVE, *De legibus ecclesiasticis*, pp. 272-273. Cicognani adds: "[...] to have known the historical circumstances under which a law was made is practically the same as knowing its cause" (CICOGNANI, *Canon Law*, p. 612).

strategy appears necessary in order to have recourse to the purpose of the law and to the mind of the legislator.⁵²

By way of an analogy with biblical studies, the historical method applied in canon law can be seen as including a kind of the redaction-criticism which situates the legal texts in the stream of the juridic tradition in the Church and attempts to describe the development of this tradition over the course of time. It studies the modifications that these texts have undergone before being fixed in their final state; it also analyzes this final stage, trying as far as possible to identify the tendencies particularly characteristic of this concluding process.⁵³ The laws themselves are historically conditioned, as reflecting some particular understanding of the institutions of the Church. Moreover, the literary forms in which the laws are expressed (not to mention the language and the vocabulary) are historically conditioned as well.⁵⁴

The historical-critical method, so successfully applied to the texts of Scripture, is particularly attentive to the historical development of texts or traditions throughout the passage of time. For many biblical scholars that diachronic concern to reconstruct the past has given way to a tendency to ask questions of texts by viewing them within a number of contemporary perspectives: philosophical,

⁵² That kind of a broader historical perspective in understanding laws corresponds, then, somehow to Gadamer's thought regarding the historicity of all understanding.

⁵³ Cf. PONTIFICAL BIBLICAL COMMISSION, *The Interpretation of the Bible*, p. 38.

⁵⁴ When the texts studied belong to a historical literary genre or are related to events of history, historical criticism helps to determine the empirical significance of the text, in the modern sense of this expression. Cf. PONTIFICAL BIBLICAL COMMISSION, *The Interpretation of the Bible*, p. 38.

psychoanalytical, sociological, political, etc.⁵⁵ As numerous studies indicate, the legal texts undergo a similar way of development regarding the perspectives and traditions of their understanding. It is particularly evident in the case of the canons reproducing the former law in a new set of legislative texts.⁵⁶

Although c. 6 § 2 seeks to mandate recourse to canonical tradition as a means of proper understanding of the norms which come from the old law, nevertheless the diachronic perspective of studying ecclesiastical laws is not understood as an exclusive technique. The word "etiam" suggests that the interpretation of a norm found in the CIC/17 and reproduced identically as regards its formulation in the CIC/83 should moreover be made in the light of contemporary circumstances.⁵⁷ While the preceding steps of the historical-critical method have sought to explain the text by tracing its origin and development within a diachronic perspective, the last step is synchronic in its character. At this point the text is explained as it stands, on the basis of the mutual relationships between its diverse elements and with special attention paid to its character as a message communicated by the author to his contemporaries.⁵⁸ As for all kinds of understanding, so in the case of canon law: the historical character of

⁵⁵ See PONTIFICAL BIBLICAL COMMISSION, *The Interpretation of the Bible*, p. 31.

⁵⁶ For Cardinal Castillo Lara the new frame of reference of the particular canons, created by inserting them in the new legislation, creates a great influence on the canons, set in their wording but put in a new context. See CASTILLO LARA, "Some Reflections on the Proper Way to Approach the Code of Canon Law," p. 33.

⁵⁷ See *Code of Canon Law Annotated*, p. 83

⁵⁸ Cf. PONTIFICAL BIBLICAL COMMISSION, *The Interpretation of the Bible*, p. 38.

understanding cannot be limited only to the process of the diachronic analysis of the legal context, but the synchronic analysis, itself historically conditioned, discloses its own determinate character.⁵⁹

To sum up, the goal of the historical-critical method is to determine, particularly in a diachronic, but in a synchronic manner as well, the meaning of a particular norm as expressed by the legislator and as understood throughout its history. The historical-critical method in this way becomes a search for the meaning of the legal text not only within its historical circumstances, but it is concerned with other possibilities of meaning which have been revealed at later stages of the history of the particular norm and its role in the Church's life.⁶⁰

3.2.3. Theological component of understanding law

As Lonergan emphasizes, understanding the text includes understanding the object to which the text refers. It leads to the discussion of what the object of a legal text is. The traditional definition of the ecclesiastical law⁶¹ suggests a specific action

⁵⁹ Cf. JOHN PAUL II, *Address on the Interpretation of the Bible in the Church*, p. 4: "Another characteristic feature of this synthesis offered in the document of the Pontifical Biblical Commission is its balance and moderation. In its interpretation of the Bible, it knows how to harmonize the diachronic and the synchronic by recognizing that the two are mutually complementary and indispensable for bringing out all the truth of the text and for satisfying the legitimate demands of the modern reader."

⁶⁰ Cf. PONTIFICAL BIBLICAL COMMISSION, *The Interpretation of the Bible*, pp. 40-41.

⁶¹ In c. 17 the objects of understanding are ecclesiastical laws. That means that the manner of understanding other kinds of legislation may be different than that established by the norm in question. See CICOGNANI, *Canon Law*, p. 608.

to create order aimed at promoting the common good of a society as the object of law.⁶² However, parallel to that primary object of law is a certain ecclesial value to uphold for which the particular norm is instituted. If the latter is the (secondary) object of law, it follows from that assertion that this value, as different from the norm as such, is to be discovered in a hermeneutical process.⁶³ As regard the context in the first case, there is a necessity to consider the particular norm in relationship to the other norms of the legal system. In the second case, a necessity to go beyond the system of law appears. In a detailed inquiry concerning the relationship between values and laws, Örsy describes laws as: "norms of action for the community, set by legitimate authority, for the appropriation of values by the community."⁶⁴ Those values are meant to serve the common good.⁶⁵ Theology provides an overall vision and definition of those specific values.⁶⁶ For canon lawyers, then, a higher synthesis comes from the viewpoint of values which effects in understanding the meaning of law as a function of the value that a norm in question intends to serve. Örsy sees

⁶² "[...] legem ecclesiasticam [...] recte circumscribi posse censemus: Ordinatio obligatoria voluntatis rationabilis, ab eo qui communitatis ecclesiasticæ aliquatenus perfectæ curam habet, ad bonum commune stabiliter promovendum, communitati qua tali generaliter imposita, eique ex auctoritate publica promulgata" (MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 154).

⁶³ In his theory of understanding Parret maintains that to understand is to have a relation with a value. To understand means, in fact, to understand human values through any semiotic expression. In the hermeneutical tradition, and in the analytical one as well, understanding transcends mere grasping of the propositional content of a work of man and encompasses the anthropological conditions governing production of works of man, rooted in the internal structure of the participants of semiotic processes. See PARRET, *Contexts of Understanding*, p. 11.

⁶⁴ ÖRSY, *Theology and Canon Law*, p. 92.

⁶⁵ *Bonum commune* Örsy sees as expressing itself in values which contribute to the development of persons. Cf. ÖRSY, *Theology and Canon Law*, pp. 89-101.

⁶⁶ See ÖRSY, *Theology and Canon Law*, p. 103.

the need for such value-oriented evaluation of the norms of canon law in order to secure a well-balanced development of the law and its interpretation.⁶⁷ In other words, understanding presupposes entering into the world of an extrinsic (i.e. extra - legal) context, in this particular instance the theological one, which postulates some values upheld by the norms of law.

The ecclesiastical law has a specific mission within the Church. The purpose of the laws:

[...] is not in any way to replace faith, grace, charisms and above all charity in the life of the church or of Christ's faithful. On the contrary, the Code rather looks towards the achievement of order in the ecclesial society, such that while attributing a primacy to love, grace and the charisms, it facilitates at the same time an orderly development in the life both of the ecclesial society and of the individual persons who belong to it.

As the Church's fundamental legislative document, and because it is based on the juridical and legislative heritage of revelation and tradition, the Code must be regarded as the essential instrument for the preservation of right order, both in individual and social life and in the Church's zeal.⁶⁸

Canon law should be, then, considered “[...] in its natural context of faith as an expression of the *munus regendi* entrusted by Christ to his Church and therefore

⁶⁷ See ÖRSY, *Theology and Canon Law*, p. 28.

⁶⁸ “[finem Codicis] minime illum esse, ut in vitæ Ecclesiæ vel christifidelium fides, gratia, charismata ac præsertim caritas substituantur. Ex contrario, Codex eo potius spectat, ut talem gignat ordinem in ecclesiali societate, qui, præcipuas tribuens partes amoris, gratiæ atque charismatibus, eodem tempore faciliorem reddat ordinatam eorum progressionem in vita sive ecclesialis societatis, sive etiam singulorum hominum, qui ad illam pertinent. Codex, utpote cum sit primarium documentum legiferum Ecclesiæ, innixum in hereditate iuridica et legifera Revelationis atque Traditionis, pernecessarium instrumentum censendum est, quo debitus servetur ordo tum in vita individuali atque sociali, tum in ipsa Ecclesiæ navitate” (*Sacræ disciplinæ leges*, in AAS, 75, Pars II, (1983), p. xi ; *The Code of Canon Law in English Translation*, p. xiii).

an instrument for the supreme goal of the salvation of souls.⁶⁹ The conciliar Decree on Priestly Formation, *Optatam totius*, in no. 16 states that: "[...] in the explanation of canon law and Church history, the mystery of the Church should be kept in mind, as it was set forth in the Dogmatic Constitution on the Church [...]."⁷⁰ So, canon law is placed in relationship to the mystery of the Church thereby emphasizing the more its theological nature. Although canon law still remains true law, it does not tolerate any exaggerated theologizing.⁷¹ According to *Sacrae disciplinae leges*, the Code can

⁶⁹ CASTILLO LARA, "Some Reflections on the Proper Way to Approach the Code of Canon Law," p. 27. The dominant canonical orientation in the CIC/83 understands ecclesial law as an order of the means of sanctification. This orientation descends from a fundamental contemporary reflection on the ecclesial law. The point of departure for that reflection was the encyclical letter of Pius XII *Mystici corporis* which regretted an opposition between the Church of law and the Church of charity. This regret gave raise to some theological considerations on the social aspect of the Church. As compared with the theory of ecclesial law which expressed ecclesial law only in the connection to some concepts of social philosophy, the remark of the Pope gave an impulse to the development which, in the confrontation between ecclesiology and social philosophy, effected in some conclusions regarding the fundamental problematics of ecclesial law. The key question became here the reciprocal relation between the interior and exterior life of the Church. Since the interior life should not deny some exterior structural forms, the Church is also considered as a juridic society. Ecclesial law does not directly embody the supernatural life but it concerns external acts, causes or effects, and, eventually, obstacles to that life. Ecclesial law creates the appropriate conditions for supernatural life which permit people to preserve and develop the life of grace. Towards this objective, it subordinates different functions of the members of the Church, just as the utilization of the means of sanctification. It assists to avoid scandals or to repair them, it orders the external means serving the realization of the Kingdom of God on earth. This orientation is, then, an attempt to reattach ecclesial legislation to its ecclesiological fundaments. In any case, however, the law has a consecutive character with regard to the Church. It remains as it were an outpost of the salvific events. It still assumes more the juridical mentality of the present world instead of that one to come. See R. SOBAŃSKI, "L'ecclésiologie du nouveau Code de droit canonique," in M. THÉRIAULT and J. THORN (eds.), *The New Code of Canon Law. Proceedings of the 5th International Congress of Canon Law, University of Ottawa, August 19-25, 1984*, Ottawa, Faculty of Canon Law, Saint Paul University, 1986, p. 268.

⁷⁰ "[...] in iure canonico exponendo et in historia ecclesiastica tradenda respiciatur ad Mysterium Ecclesiae, secundum Constitutionem dogmaticam 'De Ecclesia' [...]" (SECOND VATICAN COUNCIL, Decree on Priestly Formation, *Optatam totius*, 28 October, 1965, no. 16, in *CDD*, p. 378; *ABBOTT*, p. 452).

⁷¹ CASTILLO LARA, "Some Reflections on the Proper Way to Approach the Code of Canon Law," p. 33. The new systematics of the CIC/83 constitutes in the law of the Church not only an instrument of setting things in a logical order, but it has also an ecclesiological valor, inasmuch as it belongs to the instruments of theological expression. See also SOBAŃSKI, "L'ecclésiologie du

be regarded as "a great effort to translate the conciliar ecclesiological teaching into canonical terms."⁷² That constitutes a specific process of interpretation.⁷³

The instrument, such as the Code is, fully accords with the nature of the Church, particularly as presented in the authentic teaching of the Second Vatican Council seen as a whole, and especially in its ecclesiological doctrine. In fact, in a certain sense, this new Code can be viewed as a great effort to translate the conciliar ecclesiological teaching into canonical terms. If it is impossible perfectly to transpose the image of the Church described by conciliar doctrine into canonical language, nevertheless the Code must always be related to that image as to its primary pattern, whose outlines, given its nature, the Code must express as far as is possible.

Hence flow certain fundamental principles by which the whole of the new Code is governed, within the limits of its proper subject and of its expression, which must reflect that subject. Indeed it is possible to assert that from this derives that characteristic whereby the Code is regarded as a complement to the authentic teaching proposed by the Second Vatican Council and particularly to its Dogmatic and Pastoral Constitutions.⁷⁴

nouveau Code de droit canonique," p. 247.

⁷² *Sacræ disciplinæ leges*, in AAS, 75, Pars II, (1983), p. xi; *The Code of Canon Law in English Translation*, pp. xiii-xiv.

⁷³ Cf. PALMER, *Hermeneutics*, pp. 26-31. The Council admits, moreover, the constant effort of the Church to interpret the world in the light of the Gospel: "[...] per omne tempus Ecclesiæ officium incumbit signa temporum perscrutandi et sub Evangelii luce interpretandi; ita ut, modo unicuique generationi accommodato, ad perennes hominum interrogationes de sensu vitæ præsentis et futuræ deque earum mutua relatione respondere possit. Oportet itaque ut mundus in quo vivimus necnon eius exspectationes, appetitiones et indoles sæpe dramatica cognoscantur et intelligantur [...] the Church has always had the duty of scrutinizing the signs of the times and of interpreting them in the light of the gospel. Thus in language intelligible to each generation, she can respond to the perennial questions which men ask about this present life and the life to come, and about the relationship of the one to the other. We must therefore recognize and understand the world in which we live, its expectations, its longings, and its often dramatic characteristic]" (*Gaudium et spes*, no. 4, in CDD, p. 684; ABBOTT, pp. 201-202).

⁷⁴ "Instrumentum, quod Codex est, plane congruit cum natura Ecclesiæ, qualis præsertim proponitur per magisterium Concilii Vaticani II in universum spectatum, peculiarique ratione per eius ecclesiologicalam doctrinam. Immo, certo quodam modo, novus hic Codex concipi potest veluti magnus nisus transferendi in sermonem *canonisticum* hanc ipsam doctrinam, ecclesiologicalam scilicet conciliarem. Quod si fieri nequit, ut imago Ecclesiæ per doctrinam Concilii descripta perfectæ in linguam *canonisticam* convertatur, nihilominus ad hanc ipsam imaginem semper Codex est referendus tamquam ad primarium exemplum, cuius lineamenta is in se, quantum fieri potest, suapte natura exprimere debet. Inde nonnullæ profluunt fundamentales normæ, quibus totus regitur

Accepting the hermeneutical rule of reading a text in the same spirit in which it has been written, it follows that the general principle of the interpretation of the Code might be summarized as "The Council governs the Code." Consequently, ecclesiastical laws are to be understood in the spirit, direction, and attitude of the Council. In this regard, the ecclesiology of the Council becomes the proper context for appreciating and applying the law. Moreover, because many canons are directly derived, inspired, or influenced by the various documents of the Council, these documents and their conciliar elaborations form the primary background and context for those canons.⁷⁵

On the one hand, the Code is fully incorporated into canonical tradition, but, on the other hand, it also includes new elements coming from the Council, and, as the Council itself, it is marked by "fidelity in newness and newness in fidelity."⁷⁶

novus Codex, intra fines quidem materiae illi propriae, necnon ipsius linguae, quae cum ea materia cohaeret. Quinimmo affirmari licet inde etiam proficisci notam illam, qua Codex habetur veluti complementum magisterii a Concilio Vaticano II propositi, peculiari modo quod attinet ad duas Constitutiones, dogmaticam nempe atque pastoraalem" (*Sacrae disciplinae leges*, in AAS, 75, Pars II, (1983), pp. xi-xii; *The Code of Canon Law in English Translation*, pp. xiii-xiv).

⁷⁵ See J.A. CORIDEN, "Highlights of the Revised Code," in *The Jurist*, 44 (1984), pp. 31-32. Reading the Code makes us realize that its redactors derive abundantly enough their materials from the documents of the Council. A great number of definitions in the Code may be explained by the desire to transplant the doctrine of the Council. In particular, the chapters on new postconciliar institutions or on older ones, but reviewed and brought up to date, usually begin with a canon declaring what that institution is like. That canon justifies the juridic disposition that follows, and it permits the passage of the conciliar teaching into the ecclesial practice, now sanctioned by the Code. At the same time, however, there are some canons in which the conciliar orientations are treated in an imperfect manner or even mutilated (for example c. 511: lack of any inter- or supra-diocesan councils). See SOBANSKI, "L'ecclésiologie du nouveau *Code de droit canonique*," p. 266.

⁷⁶ "[...] fidelitatis in novitate et novitatis in fidelitate [...]" (*Sacrae disciplinae leges*, in AAS, 75, Pars II, (1983), p. xii; *The Code of Canon Law in English Translation*, p. xiv).

From this awareness follows the necessity of approaching the Code with a new mentality ("*novus habitus mentis*"): ⁷⁷

Whoever approaches it with an old mentality, considering it merely a retouching of the previous, tends perhaps unconsciously to ignore the new elements, to minimize them or to force them into a context of interpretation which does not correspond to the true nature of the new Code. At the opposite extreme, whoever presumes to free it completely from canonical tradition would lose one of the fundamental keys to reading it. The binominal fidelity and newness must therefore always be kept in mind when reading and interpreting the Code. In reading canons which repeat *ad litteram* canons from the previous Code, one cannot be satisfied solely with seeing and understanding them as if they were still part of the previous context. ⁷⁸

The "*novus habitus mentis*" requires, instead of a purely literal reflex, rather a deep and thorough knowledge of the Code seeking for the inspiring ideas, or, in other words, the spirit of the Code. ⁷⁹ So the "*novus habitus mentis*" can be described, as Örsy does, as:

[...] a permanent disposition of the human spirit, the spirit that by its very nature is both contemplative and active, [...] an internal capacity to operate in new ways; that is, in an improved method of searching for the truth and in an increased determination to reach out for values not noticed before. ⁸⁰

⁷⁷ Paul VI referred to the "*novus habitus mentis*" during his speech to the Commission for the Revision of the Code. See PAUL VI, Allocution to the Commission for the Revision of the Code, 20 November 1965, in *Communicationes*, 1 (1969), p. 41. Paul VI was strongly convinced that without that new attitude of mind the laws of the Church cannot be correctly understood. See ÖRSY, *Theology and Canon Law*, p. 10.

⁷⁸ CASTILLO LARA, "Some Reflections on the Proper Way to Approach the Code of Canon Law," pp. 32-33.

⁷⁹ See CASTILLO LARA, "Some Reflections on the Proper Way to Approach the Code of Canon Law," p. 35.

⁸⁰ ÖRSY, *Theology and Canon Law*, p. 11. For more about the "*novus habitus mentis*," cf. D.E. HEINTSCHEL, "...A New Way of Thinking," in *The Jurist*, 44 (1984), pp. 41-47.

Through that capacity, a mind is able to move into a higher viewpoint, to perceive the objects in a different light, to raise new questions, and to find inventive answers.⁸¹ Such was the method of the conciliar Fathers, and, consequently the method of understanding and interpretation of the Code should be related to it as well. A higher viewpoint for the interpreters may be provided by different branches of studies: theology, philosophy, history. It effects a broadening of the context in which legal norms are seen.⁸² For Örsy, the new disposition of mind consists in the developing of an inquiry which does not rest in the possession of some acquired knowledge but progresses towards the fullness of truth. It continues in assuming that there cannot be any scientific understanding of canon law which does not include the search for the ultimate reasons of every single norm.⁸³

Canonists who are merely lawyers cannot grasp the full meaning of ecclesiastical laws. Since the world of canon law is immersed in the world of Christian doctrine and its systematic understanding, which in turn includes the necessity to take into consideration the humanities, the interpretation has to operate within such an extended horizon. Moreover, the reality of any horizon of understanding laws has not only its intellectual dimension, but includes a capacity

⁸¹ It includes awareness of some philosophical transitions, among others a shift from a classicist world view into historical mindedness which bears upon theological understanding. Cf. J.A. ALESANDRO, "The Revision of Church Law: Conflict and Reconciliation," in *The Jurist*, 40 (1980), pp. 2-9.

⁸² See ÖRSY, *Theology and Canon Law*, pp. 15-17.

⁸³ See ÖRSY, *Theology and Canon Law*, p. 18.

to assimilate existentially the world in which law exists.⁸⁴ The legislator is embedded in Christian history and operates within the theological horizon; so for understanding the meaning of ecclesiastical laws, the interpreter must operate within the same environment.⁸⁵ The meaning has an evolutionary character; it belongs to an evolving universe. Since meanings exist in minds, the latter evolve. It should be true especially for the Church's community which is animated by the living Spirit. The new readings of theology, and ecclesiology particularly, inevitably bear on some new readings of the legal norms as well.⁸⁶ Consequently, there can be no legitimate interpretation of canon law outside the theological horizon.⁸⁷ The allocution of John Paul II to the members of the Pontifical Commission for the Revision of the Code of Canon Law emphasizes this strategy of approaching the law:

[...] when the Second Vatican Ecumenical Council directed its attention to the mystery of the Church (in the Constitution *Lumen gentium*) and to its role or mission in the world of the present time (in the Constitution *Gaudium et spes*) it proffered a much fuller view of ecclesiology and opened up much vaster horizons in evaluating the relationship of the Church with the world itself.

As a result, there is the necessity that the laws of the Church be so structured that they square with that same prospectus and that they harmonize with those horizons. Moreover, this relationship had already been clearly declared by the Council itself when it observed

⁸⁴ See ÓRSY, *Theology and Canon Law*, p. 51.

⁸⁵ See ÓRSY, *Theology and Canon Law*, p. 109.

⁸⁶ See ÓRSY, *Theology and Canon Law*, p. 81.

⁸⁷ See ÓRSY, *Theology and Canon Law*, p. 109.

that the mystery of the Church must be kept in view in the elaboration of canon law.⁸⁸

Eventually, these remarks allow us to speak about a general tendency, an overall perspective, or, in other words, the spirit of the Code. The correct approach to the Code includes a comprehension of its spirit which is conditioned by the fact that the Code is a partial and historical expression of canon law. So, searching for some inspiring principles which permeate all the legislation and provide a key to reading the Code seems to be indispensable for its right understanding.⁸⁹ Referring to the spirit of the Code resembles F. Ast's idea of a specific concept of the hermeneutical circle, based on the premises of the spiritual unity of the humanities (*Einheit des Geistes*). It assumes the outer and inner content of a work as a unity that points to the higher unity of "spirit": the source of the inner unity of individual works. The imprint of the spirit of the whole (*Geist des Ganzen*) is found in the parts which are understood from the whole and the whole is understood from the inner harmony of its parts. Understanding, then, contains its "geistige" component, i.e. understanding

⁸⁸ "At [...] Concilium Œcumenicum Vaticanum Secundum, cum mentis suæ oculos intenderet in mysterium Ecclesiæ (in Constitutione *Lumen gentium*) atque in ipsius munus vel missionem apud huius temporis mundum (in Constitutione *Gaudium et spes*), præbuit multo plenior prospectum Ecclesiologiæ aperuitque fines multo vastiores in æstimanda necessitudine Ecclesiæ cum mundo ipso. Hinc profecta est necessitas ut Ecclesiæ leges ita exstructæ sint quæ cum eodem illo prospectu congruant quæque finibus illis convenient; ceterum hæc necessitas iam explicite est declarata a Concilio ipso, ubi monuit ut in iure Canonico exponendo haberetur ratio mysterii Ecclesiæ" (JOHN PAUL II, Allocution to the Members of the Pontifical Commission for the Revision of the Code of Canon Law, 29 October 1981, in AAS, 73 (1981), p. 721; CLD, vol. 9, p. 37).

⁸⁹ Michiels points out to the cognitive value of the body of the juridical principles reflecting a certain philosophy of law and moral order which underlie the whole system of the legislation. An analysis of that complex can help understanding the particular law, its intention, reason, and to give some insight as regards the mind of the legislator. See MICHIELS, *Normæ generales iuris canonici*, vol. I, pp. 529-530. One of the examples of the overall philosophies underlying the legislation might be the concept of the "*societas perfecta*."

the work in relation to the total view of the author and the total view (*Geist*) of the age.⁹⁰

The analysis of the spirit of the Code empowers us finally to maintain that the hermeneutical and epistemological principle of philosophical and legal reason has been changed in the CIC/83 to the theological principle of faith.⁹¹ It shows the direction, pointed out by the legislator, of bearing in mind the co-essentiality of the theological aspect of canon law.⁹² The Code, then, contains an entire series of theological data, a multitude of elements, falling under the notions of ecclesiology, dogmatic definitions, ecumenical and pastoral concerns, which come together in a global epistemological and hermeneutical approach arising out of faith.⁹³ The present systematization of the Code is marked by “[...] a concern for the institutional and disciplinary development of the canonical norms in total respect for the organizational logic of the content of faith itself, more than by the demands of a juridical rationality. Such a mode adheres more closely [...] to the concrete ecclesial experience of the faithful.”⁹⁴ Among the motivating principles Cardinal Castillo Lara

⁹⁰ The “geistige” level of understanding is paralleled by the so-called hermeneutics of the spirit (*Hermeneutik des Geistes*) which seeks out the controlling idea (*Grundidee*, foundational idea), the view of life (*Anschauung*, viewpoint), and the basic conception (*Begriff*). Hermeneutics becomes the theory of extracting the spiritual (*geistige*) meaning of the text. The common participation in *Geist* is the foundation of the possibility to apprehend the meaning of expressions transmitted from the past. See PALMER, *Hermeneutics*, pp. 76-79.

⁹¹ See E. CORECCO, “Theological Justifications of the Codification of the Latin Canon Law,” in THÉRIAULT and THORN (eds.), *The New Code of Canon Law. Proceedings of the 5th International Congress of Canon Law*, p. 73.

⁹² See CORECCO, “Theological Justifications,” p. 78.

⁹³ See CORECCO, “Theological Justifications,” p. 74.

⁹⁴ CORECCO, “Theological Justifications,” p. 95.

counts the pastoral concern of the Code, which he describes as legislative moderation understood as greater recognition of the rightful autonomy of the particular churches corresponding to the principle of subsidiarity and individual responsibility.⁹⁵ Finally, he considers two principles of ecclesiology important for any adequate understanding the Code: communion, which is visible in all of the structural and relational substance of the Code, and participation, which belongs to the nature of being *Christifideles*.⁹⁶

3.2.4. Cultural component of understanding law

Apparently enough, theology must play an overriding hermeneutical role in the interpretation of canon law to assure integrity in the life of the Church.⁹⁷ For only theology identifies the specifically Christian values which canon law is meant to serve; therefore there is no accurate interpretation of canon law without theological reflection. However, not all of the values upheld by canon law are strictly theological ones. Some values are accepted from "outside" by way of "canonizing" civil law or assuming some results of some social or psychological doctrines.⁹⁸ Because law

⁹⁵ See CASTILLO LARA, "Some Reflections on the Proper Way to Approach the Code of Canon Law," pp. 35-39.

⁹⁶ See CASTILLO LARA, "Some Reflections on the Proper Way to Approach the Code of Canon Law," p. 34.

⁹⁷ See ÓRSY, *Theology and Canon Law*, p. 104.

⁹⁸ See ÓRSY, *Theology and Canon Law*, p. 109.

takes its roots in the life of human communities, then the human sciences can contribute significantly to a better understanding of certain aspects of legal texts.⁹⁹

Legal texts are bound in a reciprocal relationship to the society in and for which they originate. Therefore, a knowledge of social conditions characteristic of the various milieux in which laws take shape is important. This socio-historical information needs to be completed by a sociological explanation of the implications of the prevailing social conditions.¹⁰⁰ In this regard, some major factors of interest are: the constitutional model of the Church at a given time, the social structure and organization of religious entities in the course of the Church's history, their relationship to other external social entities and systems, like the state, social classes, politics, civil law, etc., social behavior in a particular cultural milieu, an economic factor, etc. Such a sociological approach broadens understanding the world of the Church's communities in their functioning in particular circumstances of time and place.¹⁰¹

⁹⁹ Among the classical authors, Michiels points out to the importance of some psychological and social factors which influence the internal and external sphere of the legislator's life and bear upon the intended meaning and purpose of the law. See MICHIELS, *Normæ generales iuris canonici*, vol. I, pp. 530-532.

¹⁰⁰ In the biblical exegesis form-criticism devotes a special attention to the social circumstances in which texts were written (*Sitz im Leben*). See PONTIFICAL BIBLICAL COMMISSION, *The Interpretation of the Bible in the Church*, p. 57-58.

¹⁰¹ The Biblical Commission considers knowledge of sociological data indispensable for historical criticism. The better understanding of the early Church's witness to faith requires the scientific research which studies the relationship between the texts of the New Testament and life of the early Church. At the same time, the Commission points out some possible risk involved in applying the sociological approach, for example some of these methods do not pay enough attention to the personal and religious dimension of human life. See THE PONTIFICAL BIBLICAL COMMISSION, *The Interpretation of the Bible*, pp. 58-59.

The approach through cultural anthropology, although in close relationship with the sociological approach, differs from the latter in the level of perception as regards the method itself and the precise aspect of reality under consideration. The anthropological approach is interested not only in language, art, religion, but also in all that concerns ethnography. The goal is to define the characteristics of different kinds of human beings in their social context by way of studying the rural or urban context with attention paid to the values recognized by the society in question, the manner of exercising social control, the institutionalized dualities (patron - client, owner - tenant, benefactor - beneficiary), the ideas of family, house, kin, sacred and profane, rites of passage from one state to another, etc.¹⁰² Law, as understood in anthropology, and especially in a separate subfield of it, which is the anthropology of law, is a proper subject for scientific research, because law, as a part of culture, is a particular expression of what is considered to be valuable in a society.¹⁰³ Anthropology of law seeks to relate legal phenomena in a given cultural milieu within the larger social context in order to find answers to such problems as: the response of law to changes in society, the influence of customs and beliefs on behavior, the modes of enforcing law, etc.¹⁰⁴ On that basis some typologies and models are proposed as common to a number of cultures. This approach allows one to distinguish more clearly those elements of systems of law that are permanent, as

¹⁰² Cf. PONTIFICAL BIBLICAL COMMISSION, *The Interpretation of the Bible*, p. 60.

¹⁰³ See J. HUELS, "Interpreting Canon Law in Diverse Cultures," in *The Jurist*, 47 (1987), pp. 276-277.

¹⁰⁴ See HUELS, "Interpreting Canon Law in Diverse Cultures," p. 279.

having their foundation in human nature, and those which are more contingent, characteristic for certain cultures.¹⁰⁵

Already the definitions of culture: "an ordered system of meaning in terms of which social interaction takes place," or "the fabric of meaning in terms of which human beings interpret their experience and guide their action" point out the necessity of anthropology understood as a hermeneutical study of meaning embodied in the language, customs, institutions, and other elements of culture.¹⁰⁶ Anthropology then insists that understanding the language is an indispensable condition of understanding another culture. It poses a particular problem for understanding the universal law which comes in Latin. For translation always involves interpretation since it is impossible to convey exactly all connotations from one language to another.¹⁰⁷ Distinct vehicles of meaning within the language include some specific literary forms, particular for a given epoch or culture. For our purposes, an analogy can be found once again in the field of biblical sciences where so-called genre-criticism leads to the identification of the literary genres, the social milieu that gave rise to them, their particular features, and the history of their development.¹⁰⁸ The necessity for using such a method of form-criticism appears in canon law: Church laws actually contain several different kinds of literature which

¹⁰⁵ Cf. PONTIFICAL BIBLICAL COMMISSION, *The Interpretation of the Bible*, pp. 60-61.

¹⁰⁶ See HUELS, "Interpreting Canon Law in Diverse Cultures," p. 251.

¹⁰⁷ See HUELS, "Interpreting Canon Law in Diverse Cultures," pp. 252-253.

¹⁰⁸ See PONTIFICAL BIBLICAL COMMISSION, *The Interpretation of the Bible*, p. 38.

require different interpretative approaches.¹⁰⁹ The specificity of canon law demands that it must be conformed more to the mystery of the Church and to the reality of intra-ecclesial relations than to the abstract forms of law. The Code, then, contains not only juridical norms in the strict sense of the word.¹¹⁰ From a literary perspective, the Code can be perceived as a collection of small literary pieces, different as regards their nature. Because the literary form of a given text is part of the meaning of the text, the analysis of the literary forms in the Code cannot be neglected.¹¹¹ In just the section on marriage, Örsy finds such literary forms, as: dogmatic statements, theological opinions, statements on morality, exhortations, philosophical theories, empirical psychology concepts, strict legal rights and duties formulations. Some canons combine several forms in their content. Neglecting the presence of various forms may cut off a norm from its roots, and, consequently, it may cause legalism and misunderstanding; for example, dogmatic statements with legal precepts.¹¹² In this regard, a specific category of "leading" canons should be stressed here; those canons, which introduce a new chapter or a new topic in the Code, are the "key" canons for interpreting the canons which follow in the same group.¹¹³ Consequently, the task of the interpreter, which is to transform something

¹⁰⁹ See CORIDEN , "Rules for Interpreters," p. 20-21.

¹¹⁰ See CASTILLO LARA, "Some Reflections on the Proper Way to Approach the Code of Canon Law," p. 34.

¹¹¹ See ÖRSY, *Theology and Canon Law*, p. 53.

¹¹² See ÖRSY, *Theology and Canon Law*, pp. 56-58.

¹¹³ See ÖRSY, *Theology and Canon Law*, p. 56. Örsy admits that the idea of that particular genre of "leading canons" he owes to F.G. Morrissey.

unfamiliar, distant, and obscure in meaning into something known, close, and intelligible,¹¹⁴ also includes determining the literary forms of legal texts.

Anthropology reveals, thus, that understanding people (and the legal texts characteristic for a given society) in other cultures presupposes a complex and difficult process. Any comprehensive attempt to do it includes the variety of elements which are often difficult to trace and enumerate. The challenge remains for canon law to develop consciousness and sensitivity to understand more fully and correctly the specific cultural component of the Church's legislation. This challenge is even more present nowadays when some fundamental objection to the operation of the universal law in the communion of particular churches is raised up. For some, canon law represents possibly the most serious instance of cultural bias in the Church's communion. Canon law is considered culturally Western. It reflects its roots in the culture of the ancient Rome and West European civil law tradition,¹¹⁵ and as such, it is intrinsically incapable of expressing the concerns of non-Western cultures. Moreover, the accusation follows that canon law constitutes a juridical expression of uniformity and cultural superiority. As a particular example of lack of harmony between the Code and non-Western cultures the law governing marriage is often quoted. This and other similar situations prompt to re-thinking the role and the extent of the particular law, enacted for culturally specific regions of the world,

¹¹⁴ Cf. PALMER, *Hermeneutics*, p. 14.

¹¹⁵ The Second Vatican Council points out that law is culturally conditioned: "Various conditions of community living, as well as various patterns for organizing the goods of life, arise from diverse ways of using things, of laboring, of expressing oneself, of practicing religion, of forming customs, of establishing laws [...]" (*Gaudium et spes*, no. 53, in *CDD*, p. 767-768; *ABBOTT*, p. 259).

and reflecting the local theology.¹¹⁶ For canon law emanates from Western theology, which is also culturally conditioned. Theology can never be wholly extricated from the cultural circumstances in which it was elaborated. The process of understanding the influence of theology on canon law includes then taking into account diverse cultural settings of different strands in theology and other ecclesiastical sciences.¹¹⁷

3.3. Correctness of understanding laws in their context

The interaction of the interpreter's horizon with the horizon of the text poses a question for Gadamer: how to achieve such a degree of an openness to the text which does not impose in advance any subjective category upon it?¹¹⁸ The

¹¹⁶ A. SHORTER, *Toward a Theology of Inculturation*, Maryknoll, NY, Orbis Books, 1988, pp. 69-70. For various implications of the task of interpreting canon law in different cultural milieux, see for instance: M.A. AKWUE, *Some Canonical Implications of Cultural Pluralism in the Church with Particular Application to Nigeria*, Romæ, Pontificia Universitas Urbaniana, 1988; M. DE MUELENAERE, "Cultural Adaptation and the Code of Canon Law," in *Studia canonica*, 19 (1985), pp. 31-59.

¹¹⁷ See HUELS, "Interpreting Canon Law in Diverse Cultures," pp. 285-288. The questions which emerged during the international symposium "Christ and Context: The Confrontation between Gospel and Culture" (Dunedin, New Zealand) can serve as the examples of a vital reflection on the problem of contexts in theology, among the others: how far and in what ways theological interpretations of Christ are and have been conditioned by various and diverse contexts; how far theological and chrystological interpretations ought to be conditioned by our contexts; how to control that process, how to asses the theological value of a particular context, how to avoid the danger of imposing some particular pre-understanding on theological problems? See A.J. TORRANCE, *Introduction*, in H.D. REGAN and A.J. TORRANCE with A. WOOD (ed.), *Christ and Context: The Confrontation between Gospel and Culture*, Edinburgh, T. & T. Clark, 1993, pp. 4-5.

¹¹⁸ See PALMER, *Hermeneutics*, p. 121. The Scriptural study faces a similar problem. Contextual approaches depend on the mindset and concerns of its readers who give special attention to certain aspects and, often unaware, neglect others. However, some approaches bring perspectives which are responsive to contemporary currents of thought and they do that with critical discernment. Cf. PONTIFICAL BIBLICAL COMMISSION, *The Interpretation of the Bible*, p. 63.

application of this requirement seems all the more problematic since moving into a new horizon is not the result of any kind of logical operation, but an effect of courage and determination to face the uncertainty which the new environment brings.¹¹⁹ So, the psychological factor plays an important role in exercising the task of an interpreter.¹²⁰

The hermeneutical rule of situating the Code in the perspective (context) of the conciliar doctrine has understandably received a great deal of attention. However, the application of this rule seems to be not without difficulties, some of them linguistic in nature. In this regard, Sobański poses the critical, methodological question whether and how the theological teaching on the Church can be expressed through the methods and the language of law. In the legal language some expressions achieve a determined meaning, intended by the legislator. This meaning is more strict and precise than the same expressions have in the current language. Moreover, the expressions used in the legal texts obtain even a greater precision through the interpretation, either doctrinal or jurisprudential. According to Sobański, it leads to the distinction between a legal language and a juridical one (respectively: the language of legal texts and the language of legal theories). From the point of view of the purpose of the legislation, legal texts and their interpretations should be known not only to some limited number of specialists, but especially to the whole community concerned. Needless to say, that from the practical point of

¹¹⁹ See ŌRSY, *Theology and Canon Law*, p. 23.

¹²⁰ For more about the psychological conditions for understanding, see ŌRSY, *Theology and Canon Law*, p. 34.

view, there is a significant difference between the legal or juridical language and the current, commonly used one. These differences are conditioned, among others, by the cultural milieu, the specific attitude (of reception or critique) concerning the law, the social involvement of a given community.¹²¹ No doubt, the language proper to canon law belongs to the group of juridical languages. It descends not directly from a current language, but from the language of religion and theology. The latter belongs also to a group of specialized languages. From the point of view of the objectives which they serve, these languages should be maximally comprehensive and closely related to the current language. One has to notice, however, that their specialization has been accomplished owing to the results of a research on the means of adequate expression of the reality of faith. In fact, the act of faith does not constitute any new language. The language which explains that act should overcome the abyss of transcendence. It is indispensable in so far as it is an instrument of faith. Owing to the imperfection of language as an instrument of expressing the truth of faith, the nature of the Church is presented to us in *Lumen gentium* by the way of various images.¹²² Meanwhile, the specialized theological language is equally burdened with human imperfection so there are recourses to the complementary images of the Church in *Lumen gentium*. The imperfections of all kinds of languages assure us that it is impossible to transpose perfectly the image

¹²¹ See SOBAŃSKI, "L'ecclésiologie du nouveau *Code de droit canonique*," pp. 245-246.

¹²² See SECOND VATICAN COUNCIL, Dogmatic Constitution on the Church, *Lumen gentium*, 21 November 1964, no. 6, in *CDD*, pp. 98-100; *ABBOTT*, pp. 18-20.

of the Church into the terms of canonical language.¹²³ Moreover, the imperfection of the canonical language does not flow from its relationship to the language of law, but just from the imperfection of the theological language. In fact, if a distinctive characteristic of the language of law lies in its tendency to achieve precision, such precision should in no case reduce its usefulness as a means of transmission.¹²⁴

The theological language and the canonical one, as they are taking shape in the life of the Church, serve to express and to secure its mission. These two become an object of the continuous process of the verification which determines better the adequacy of the language in the expressed content, that of its actual capacity to communicate. As a matter of study, it includes the use of different philosophical systems and their terminology to express the religious contents, anything like the use of juridical sciences to formulate and organize the life of the Church. It is essential that the canonical language, and the theological one as well, are comprehensive and serve in reality for the transmission of faith in the life of the Church.¹²⁵

As the problem of the mutual relationship between canon law and theology becomes increasingly vocal, the discussion brings new perspectives to respond to the exigencies of the moment. In an effort to appropriate the recent reflection on this matter, E. Corecco stresses the difficulty of expressing the Vatican II-transformed

¹²³ "[...] fieri nequit, ut imago Ecclesiae per doctrinam Concilii descripta perfectae in linguam *canonicam* convertatur [...]" (*Sacræ disciplinæ leges*, in AAS, 75, Pars II, (1983), p. xi; *The Code of Canon Law in English Translation*, p. xiv).

¹²⁴ See SOBAŃSKI, "L'ecclésiologie du nouveau *Code de droit canonique*," p. 246.

¹²⁵ See SOBAŃSKI, "L'ecclésiologie du nouveau *Code de droit canonique*," pp. 246-247.

model of the Church in homogeneous, legislative norms. The civil codes of the nineteenth century were founded on the cultural presupposition asserting the existence of a homogeneous model of society possessing a precise identity and respecting some values of universal validity. Likewise, the ecclesiological presupposition of the CIC/17 entailed the notion of the Church as a perfect society, composed of unequal persons within a hierarchical structure, where each element was a determined part of the precisely ordered unity. However, a much more fluid model of the Church emerged from Vatican II. Many fundamental questions remained open which do not allow the legislator to present the vision of the Church according to any entirely coherent institutional identity.¹²⁶ It is true that the revised Code can be seen as a complement to the conciliar teaching, especially to the Dogmatic Constitution on the Church *Lumen gentium*. Nevertheless, because the conciliar ecclesiology does not appear as homogeneous, it is possible to speak about two conciliar ecclesiologies.¹²⁷ Two tendencies are visible: one derived from the concept of the Church as a society, the other determined by the vision of the Church as a communion.¹²⁸

¹²⁶ Corecco provides for some examples of such open issues: the place of pneumatology in ecclesiology, the constitutional value of charisms, the relationship between the universal Church and particular Churches, the definition of a lay person and his/her specific rights and duties. See CORECCO, "Theological Justifications," p. 70. It is noted that the new Code concentrates itself, more than its predecessor, on the fundamental constitution of the Church. See SOBĄŃSKI, "L'ecclésiologie du nouveau *Code de droit canonique*," p. 267.

¹²⁷ See SOBĄŃSKI, "L'ecclésiologie du nouveau *Code de droit canonique*," p. 244.

¹²⁸ See SOBĄŃSKI, "L'ecclésiologie du nouveau *Code de droit canonique*," p. 265.

The general norms witness to the impression that the redactors of the Code were not able to detach themselves from the notion of the Church understood as *societas perfecta*, governed like all other societies. This illustrates the fact that the juridical ecclesial thought not always integrated ecclesiology. Nevertheless, since the time of the Council, which made a way for two parallel ecclesiologies, theologians and canonists made an important step towards reuniting ecclesiological and canonical thought. It is enough to indicate here the concept to derive the law from the mystery of the Church without dividing the ecclesial reality in an interior and spiritual part and in an exterior and juridical one, and to present ecclesial law as an expression of the mystery, and not of a society. In this respect, the notion of the Church as a communion plays the main role. This notion embodies the whole ecclesial reality without reducing it to any singular aspect.¹²⁹ It is not a question of any simple replacement of one notion with the other or to destroy any notion useful for explanation of the ecclesial reality, but rather of re-affirming the ecclesial law to such notions which embody, possibly to the best extent, the whole ecclesial reality in its complexity and unity, and which will provide nowadays a vehicle for the juridical thought.¹³⁰

¹²⁹ See SOBAŃSKI, "L'ecclésiologie du nouveau *Code de droit canonique*," pp. 264-265.

¹³⁰ See footnote 56 in SOBAŃSKI, "L'ecclésiologie du nouveau *Code de droit canonique*," p. 265. Sobański puts a few remarks about the importance of a positive and creative presence of ecclesial law in the juridic world. He opposes the thesis that the employment of the original ecclesial notions and liberation from the civil law theories mean losing contact with the juridic world. To the contrary, it will permit canon law to exercise an active and inspiring role, not only a passive and imitating one. It is especially important that the Church, founded certainly on the positive divine law and proclaiming it, should have something to say about the juridical culture. From the point of view of justice we should sometimes recognize certain laws as a deformation of law. In addition, a mere recourse of the ecclesial law to any theory elaborated in civil juridical science does not secure any

The ecclesiology of communion is represented in the Code to the degree sufficient to stimulate realization of the Church as *communio*. As regards the Code itself, which rests on a double ecclesiology, it constitutes perhaps the image of the actual condition of catholic religious consciousness.¹³¹ Oriented in any case towards the practice, it embodies too easily a necessary realism.¹³² However, the Code does not perpetuate this state of affairs as the only possible one. Although the new legislation does not introduce new visions, it reinforces those ones which have been proved. The Code is, as the whole legislation, a compromise, but, for that reason, it leaves open the other possibilities.¹³³ Life will bring to existence some of them. It depends on the faithful, all of them, which ecclesiological options will prevail: whether the law will become the law of a society, as it were a society of this world, or the law of communion, for which charity remains the fundamental law and the realization of faith its task.¹³⁴

true and fruitful contact with other juridical cultures. That contact comes to life through an active presence, and not through an adaptation. See footnote 56 in SOBAŃSKI, "L'ecclésiologie du nouveau Code de droit canonique," p. 265.

¹³¹ Sobański notices that we did not yet overcome the dichotomy between the "theological" and "juridical" thinking and clearly different currents of the ecclesiological thought take their shape in the Code; among others, a voluntarist tendency treating law as *iussum principis*. See SOBAŃSKI, "L'ecclésiologie du nouveau Code de droit canonique," p. 267.

¹³² See SOBAŃSKI, "L'ecclésiologie du nouveau Code de droit canonique," pp. 266-267.

¹³³ Similarly, as regards the systematics employed in the distribution of a body of laws in the CIC/83, it must be noted that the legislator did not wish to impose any scheme of juridical thought regarding the systematization of the Code; the latter must be considered as open to any possible scientific systematization. See J.M. GONZÁLES DEL VALLE CIENFUEGOS, "The Method of the *Codex iuris canonici*," in THÉRIAULT and THORN (eds.), *The New Code of Canon Law. Proceedings of the 5th International Congress of Canon Law*, pp. 153-154.

¹³⁴ See SOBAŃSKI, "L'ecclésiologie du nouveau Code de droit canonique," p. 269.

Admittedly, understanding any legal text in its cultural context involves a complexity of processes. The text itself makes a representation of something which has to be brought to understanding, and, at the same time, separated from us in its subject by space, time, language, and some other culturally conditioned barriers. A psychological process of so-called "restructuring" calls for a special attention: it consists of filtering received information, interpreting it out of one's personal and cultural background, and then responding to it in terms of its restructured meaning. Communication between different cultures includes not only different personal experiences and values, but in addition, different group ethos, orientations, values, and a total set of experiences shared only by the members of a given milieu. Understanding the legal text presupposes, then, a conscious effort of identifying the personal and cultural biases and presuppositions of the interpreter.¹³⁵ In this regard, especially two particular tendencies need to be eliminated: the uncritical acceptance of the demands of one's culture as defining *a priori* theological and canonical conclusions and the belief that culture defines the necessary form of theological and canonical questioning. In theology it may amount to the overwhelming endorsement of the prevailing culture and the destructive concept of culturally neutral Christianity

¹³⁵ See HUELS, "Interpreting Canon Law in Diverse Cultures," pp. 253-254. However, the cultural impact on understanding the law is to be considered in its full aspect. As a result, on the one hand, the interpreter should be aware of his own cultural background and bias and should take into account all possible ramifications linked to his own cultural milieu. On the other hand, he ought to consider the similar factors on the side of the legislator, and the material, socio-cultural, and psychologico-spiritual condition of the community for which the law has been created. Cf. DE MUELENAERE, "Cultural Adaptation and the Code of Canon Law," p. 54.

which overlooks necessary cultural and contextual "interwovenness" of the Church.¹³⁶

3.4. Conclusion

To sum up, hermeneutics presents understanding of the text in its context as a dynamic reality of constant interaction between various, subjective and objective, textual and extra-textual factors which are often difficult to trace and enumerate. It bears on the complexity of the task of the interpreters: "[...] the canonist must remain authentic and maintain integrity in the interpretation of the law. Our first obligation is to understand what the law says and not obscure this. We must not shape it to fit our personal biases nor be anything less than truly professional in our exegesis. Otherwise, we are not providing the service that the Church asks us to provide. This implies that we will study the revised law seriously if the Church is to realize its potential more fully."¹³⁷ The challenge still remains for canon law to develop consciousness and sensitivity to comprehend more fully and correctly various components of the broadly understood context of understanding the Church's legislation.

¹³⁶ See TORRANCE, *Introduction*, p. 2.

¹³⁷ R. HILL, "Reflections on Interpretation of the Revised Code," in *The Art of Interpretation*, pp. 35-36.

4. THE WORLD OF THE LEGISLATOR

The endeavor to understand the author is one of the essential elements inherent in the process of understanding the text.¹ Indeed, a vast area of the polemic in hermeneutics concerns the problem of the author of a text and the meaning intended by him for the text in question. Despite the vigorous disputes in the course of the history of hermeneutics, certain difficulties and challenges still look very much like open question today.

4.1. Hermeneutics about understanding the author

4.1.1. Understanding others through the text

As the historical development of hermeneutics displays a certain thematization, it is symptomatic of the romanticist hermeneutics that it concentrated on emphasizing the importance of understanding the author as a part of the process of coming to understand his work. At that point in the development of hermeneutics, the process of understanding was meant, generally speaking, as an activity of the interpreter as opposed to the process of the creation of a work by the author.

¹ See LONERGAN, *Method in Theology*, p. 155.

Accordingly, Ast perceives understanding as a repetition of the author's creative process, especially in the artistic domain.² In a similar manner, F.A. Wolf maintains that the interpretation means a dialogue with the author and, as such, it requires a special talent of empathizing with the thoughts of others.³ For Schleiermacher understanding means reversing the process of composition. Since interpretation consists of two elements, the "grammatical" and the "psychological," the latter goes back to the mental life of the text's author. It consists largely of re-experiencing his mental processes.⁴ The "psychological" approach requires both comparative and "divinatory" methods; the latter one allows the interpreter to transform himself into another person in order to grasp the author's individuality.⁵ In other words, according to their practitioners romanticist hermeneutics postulated an ideal harmony between the contemporary reader and the author in the past.⁶

Although he represents a different era in the development of hermeneutics (the historical school), Dilthey belongs essentially to the same tradition and describes understanding as a mental process in which the "mind" (*Geist*) grasps the

² See PALMER, *Hermeneutics*, pp. 79-80.

³ See PALMER, *Hermeneutics*, p. 81.

⁴ See SCHLEIERMACHER, *Hermeneutik*, pp. 80-83.

⁵ Palmer warns against regarding this strategy as a kind of "psychoanalysis" of the author. The objective here is not to assign motives or causes for the author's feelings i.e. to understand him from a psychological standpoint, but to reconstruct the thought of another person through interpretation of his/her utterance in order to achieve fullest access to the meaning of the text. See PALMER, *Hermeneutics*, pp. 89-90.

⁶ See GEFFRÉ, *The Risk of Interpretation*, p. 39.

“mind” of the other person. This approach amounts finally to comprehending living human experience by transposing and re-experiencing the world of another person.⁷

Among the recent undertakings in hermeneutics, Betti’s hermeneutical theory exploits further the relationship between the author and the interpreter. The importance of this problematic appears in Betti’s rules of interpretation. His first and most basic canon of interpretation concerns the hermeneutical autonomy of the object. It postulates that meaning-full forms, as objectivations of the author’s mind and manifestation of some thought-content, should be understood with reference to that mind. It follows that among all possible variations of the meaning which the form itself might acquire, only those are reckoned as valid which conform to the representational function with reference to the mind in question.⁸ Betti’s third canon of interpretation, the canon of the actuality of understanding, assumes the task of the interpreter as retracing the creative process. He reconstructs it within himself in order to retranslate the thought of the author into the actuality of his own life and experience, making it part of his own intellectual horizon and mental universe.⁹ Consequently, Betti regards the main task of the interpreter to find out “[...] the intended meaning of a manifestation of someone’s thought and to understand the style of thinking and imagining apparent in it.”¹⁰ The maxim that the interpreter and

⁷ See DILTHEY, *Der Aufbau der geschichtliche Welt in den Geisteswissenschaften*, pp. 205-220.

⁸ See BETTI, *Die Hermeneutik als allgemeine Methodik der Geisteswissenschaften*, p. 14.

⁹ See BETTI, *Die Hermeneutik als allgemeine Methodik der Geisteswissenschaften*, p. 19.

¹⁰ “[...] den gemeinten Sinn einer fremden (bzw. schon vergangenen) Bekundung eines Gedachten aufzusuchen, die darin auftretende Art des Denkens and Vorstellens zu verstehen” (BETTI, *Die Hermeneutik als allgemeine Methodik der Geisteswissenschaften*, p. 20. English

the author should share a similar intellectual and moral status follows logically.¹¹ This “congeniality” between author and interpreter transcends the question of personality and includes the background of the author’s time and cultural climate as well.¹²

Heidegger goes one step further as he tries to emulate the goal of the Greek hermeneutics: unveiling the hidden meaning, bringing what is unknown to the light, i.e. revelation and disclosure. The finished text is not the only object of interpretation. The interpreter is not merely saying what the author positively intended, but he is also asking what the text does not say, why the author did not and could not say, thereby revealing the innermost dynamic and struggle during the creation of the text.¹³

On the other hand, however, some recent trends in hermeneutics put themselves at a distance from the romanticist and psychologically oriented types of hermeneutics which assigned priority to the concept of affinity and connaturality

translation from BLEICHER, *Hermeneutics*, p. 62).

¹¹ See BLEICHER, *Contemporary Hermeneutics*, p. 33.

¹² See BLEICHER, *Contemporary Hermeneutics*, p. 43. Betti refers to this broader context on the occasion of explaining his canon of the hermeneutical correspondence of meaning and its consequences. See BETTI, *Die Hermeneutik als allgemeine Methodik der Geisteswissenschaften*, p. 53-57. In order to complete Betti’s rules of interpretation the two other canons are: the canon of coherence of meaning (principle of totality) which resembles the idea of the hermeneutical circle, and the canon of the hermeneutical correspondence of meaning (meaning-adequacy in understanding) which brings the interpreter’s lively activity into harmony with the stimulating object. See BETTI, *Die Hermeneutik als allgemeine Methodik der Geisteswissenschaften*, pp. 15-18; 53-55.

¹³ See M. HEIDEGGER, *Kant und das Problem der Metaphysik*, 3. Aufl., Frankfurt am Main, Vittorio Klostermann, 1965, pp. 182-183.

between the reader and the author.¹⁴ Particularly both the juridical and the theological hermeneutics consider as illusory the idea that the text is understood on the basis of congeniality with its author.¹⁵ The argument goes in the direction that no connaturality is necessary to recognize significant and fundamentally meaningful elements of tradition.¹⁶ The text is understood because its subject-matter is shared on the basis of language.¹⁷ Similarly, the hermeneutical circle requires an area of shared understanding since communication involves a dialogical relation: the speaker and the reader must share the language and the subject of their discourse.¹⁸ Moreover, the interpreter of both the legal and theological texts must distinguish the applicable and meaningful from the secondary and inapplicable; so he has to go behind the text to search for the reasons which brought it into life. To accomplish this means asking what the text did not or could not say.¹⁹

Furthermore, Hirsch's *Validity in Interpretation* presents a challenge to many assumptions shared recently in the theory of literary interpretation. He witnesses the tendency in literary criticism to maintain the theory of the so-called "authorial irrelevance." This attitude manifests itself in various particular approaches. The theory of semantic autonomy maintains that textual meaning is independent of the

¹⁴ See GEFFRÉ, *The Risk of Interpretation*, p. 34.

¹⁵ See PALMER, *Hermeneutics*, p. 188.

¹⁶ See GADAMER, *Wahrheit und Methode*, p. 294.

¹⁷ See PALMER, *Hermeneutics*, p. 236.

¹⁸ See PALMER, *Hermeneutics*, pp. 87-88.

¹⁹ See PALMER, *Hermeneutics*, p. 237.

author's control.²⁰ In this regard, Ricoeur says that, contrary to any spoken discourse, with the written one the author's intention and the meaning of the text no longer coincide. The text transcends the finite author's horizon. What the text says now outweighs what the author meant to say.²¹ This means the autonomy of the text vis-à-vis the author's intention, the socio-cultural context in which the text originated and its original addressees.²² The theory of semantic mutability maintains that the meaning of a text changes (for the radical historicist view: from era to era, for the psychologistic view: from reading to reading). However, in this case, Hirsch points out that the meaning of the text does not change but its significance to the reader at a given moment of time does. Meaning is represented by the text and linked to a particular sign sequence; significance represents the relationship between that meaning and a person.²³ Another stand in this dispute claims that the author's meaning is inaccessible. It leads to the category of "private meanings." Hirsch, however, distinguishes between meaning-experiences of the author, which are private, and textual meaning. He agrees that the author's intended meaning cannot be known with total certainty.²⁴ However, a claim that the meaning of the author is

²⁰ For that theory, see HIRSCH, *Validity in Interpretation*, pp. 1-6.

²¹ See P. RICOEUR, "The Model of the Text: Meaningful Action Considered as a Text," in RICOEUR, *Hermeneutics and the Human Sciences*, pp. 200-201.

²² See BLEICHER, *Contemporary Hermeneutics*, p. 234. The theory of semantic autonomy may find its consequences in the concept of "public consensus" or "public meaning." It is the meaning which the public happens to construe from the text. See HIRSCH, *Validity in Interpretation*, p. 13.

²³ See HIRSCH, *Validity in Interpretation*, pp. 6-10.

²⁴ See HIRSCH, *Validity in Interpretation*, pp. 14-19.

impossible to reproduce because the interpreter is simply a psychologically different person includes an assumption of identifying meaning with the mental processes instead of with the result of those processes.²⁵

Hirsch's position as regards the problematic of understanding the author deserves attention. He links meaning to consciousness and to persons of both the author and the reader. He also denies that the linguistic signs can speak meaning on their own.²⁶ On purely practical grounds, Hirsch considers it preferable to agree to equating the meaning of the text with the author's meaning in the sense of the verbal meaning.²⁷ As a definition of the verbal meaning he offers: "[...] whatever someone has willed to convey by a particular sequence of linguistic signs and which can be conveyed (shared) by means of those linguistic signs."²⁸ This meaning is changeless, reproducible, and determinate.²⁹ As such, this particular notion of meaning seems to provide a useful norm for understanding legal texts in the tradition of the voluntarist concept of law.

Finally, structuralism maintains an extreme position which does not allow for any reconciliation between the text and the mind of its author. From the structuralist's perspective, unlike that of the interpretative approach to

²⁵ See HIRSCH, *Validity in Interpretation*, p. 32.

²⁶ See HIRSCH, *Validity in Interpretation*, p. 23.

²⁷ See HIRSCH, *Validity in Interpretation*, p. 25.

²⁸ HIRSCH, *Validity in Interpretation*, p. 31.

²⁹ See HIRSCH, *Validity in Interpretation*, p. 46. However, as Palmer points out, in effect it produces an understanding of hermeneutics not as the theory of understanding, but as the logic of validation. See PALMER, *Hermeneutics*, p. 64.

hermeneutics, it is useless to go back to the author's intention and any ultimate signified. All the ideas of the author as the proprietor of the meaning, message, and recipient who has to appropriate the meaning lose their foundations in favor of the immanence of the text as a differential game of signifiers.³⁰

4.1.2. Understanding better than the author

The interpretation of the works of man usually postulates a temporal distance between the author and the actual reader of the text. On the one hand, this situation creates a particular challenge for the reader, but, on the other hand, it seems to allow the reader for a certain advantage of understanding the work and its author from a temporal perspective, and, consequently, for understanding the author better than he could understand himself. Among the protagonists of such a belief, we find again Dilthey who maintains that the interpreter who thoroughly follows the thought of an author will have to bring many elements to consciousness which could remain unconscious in the latter. As a result, the reader will thereby understand the author better than he had understood himself.³¹

³⁰ See GEFFRÉ, *The Risk of Interpretation*, p. 27.

³¹ See W. DILTHEY, *Gesammelte Schriften*, vol. 14/2: *Leben Schleiermachers. Zweiter Band: Schleiermachers System als Philosophie und Theologie*, Göttingen, Vandenhoeck und Ruprecht, 1966, pp. 707-708. Lonergan points out the distinction between the author's consciousness of his activities and his knowledge of them. Authors are certainly conscious of their intentional operations but only introspective attention, inquiry, understanding, reflection and judgement allows for achieving knowledge of them. Such self-scrutinizing authors are rather exceptional. See LONERGAN, *Method in Theology*, pp. 166-167.

Whether the interpreter really understands better than the author understood himself, many contemporary hermeneutists answer negatively. Hirsch points out that behind this claim of understanding the author better than he understood himself stands the fact of falsely identifying the author's meaning with the subject matter which the author attempted to analyze. It is true, it may happen that the interpreter sees more diverse and general implications than those enunciated by the author.³² Lonergan finds it true that "[...] the interpreter may understand very fully and accurately something that the author knew about only in a very vague and general fashion. [...] But it does not follow that the interpreter will understand the text better than the author did for, while the interpreter can have a firm grasp of all that was going forward, it is rare indeed that he will have access to sources and circumstances that have to be known if the many accidentals in the text are to be accounted for."³³ Lonergan agrees that the interpreter reconstructs but does not reproduce the past in thought. He builds up the evidence for an element of knowledge of his concern, he grasps the main strands and understands many details, but he never comes (and he never has to do it) to the understanding of every detail.³⁴

Heidegger maintains that one does not understand the author better, but differently, because the whole set of author's considerations in the course of the

³² See HIRSCH, *Validity in Interpretation*, pp. 19-20.

³³ LONERGAN, *Method in Theology*, pp. 165-166.

³⁴ See LONERGAN, *Method in Theology*, p. 166.

composition was different than those of the reader.³⁵ Gadamer stresses the uselessness, in view of the historicity of a human being, of any attempt to reconstruct the conditions and original circumstances of the work. Similarly, a hermeneutics meant as the reconstruction of the original should be regarded as a recovery of a dead meaning.³⁶

To sum up, from this short overview it appears that the discussion in hermeneutics about the author has many characteristics. Some of them can enlighten the specific problem of understanding the author of the law, the legislator. However, the specific character of the legal text flowing from the unique position of its author involves particular consequences regarding the choice of possible approaches to the problem. To tell the truth, while the subjectivity of the author is held in many theories of literary interpretation as a fallacy (the intentional fallacy), it is considered quite valid in the interpretation of law, especially within the tradition of the voluntarist approach.

³⁵ See his famous conversation with a Japanese in M. HEIDEGGER, *Gesamtausgabe*, Bd. 12: *Unterwegs zur Sprache*, Frankfurt am Main, Vittorio Klostermann, 1985, p. 134.

³⁶ See GADAMER, *Wahrheit und Methode*, pp. 159-160.

4.2. Legislator's intended meaning

4.2.1. Mind of the legislator

The theological hermeneutics and the legal one both represent good examples which illustrate the claim that the text make upon us. So much so that we have to subordinate ourselves to these textual demands. To interpret the law's intent becomes a service of what is considered valid.³⁷ The interpreter is rather adjusting his own thinking to the text than applying a method to the text considered as an object. He does not attempt to dominate the subject of the text but to serve it.³⁸ This particular feature of the legal hermeneutics distinguishes it from other kinds of hermeneutics, for instance the literary one. While the latter stresses more creativity in the process of interpretation, the former finds itself more preoccupied with the correctness of understanding. Accordingly, in its service to the text, the intellectualist and the voluntarist concepts of law place their emphasis, respectively, either on the correlation between the reason and the common good, or on the sovereign will of the legislator. That ambiguity seems to result in two different approaches to the interpretation of ecclesiastical laws: the one as the explanation of the sense of the law according to the words of the law, the other as the explanation of the sense of the law according to the mind of the legislator.³⁹

³⁷ See GADAMER, *Wahrheit und Methode*, pp. 294-295.

³⁸ See PALMER, *Hermeneutics*, p. 236.

³⁹ See SHEKLETON, *Doctrinal Interpretation of Law*, p. 48. As the representatives of the first stance he quotes among others: F.X. Wernz, A. Van Hove, G. Michiels, F. Capello. As the representatives of the second, he puts P. Maroto and M. Conte a Coronata. See SHEKLETON,

As the traditional reflection on the search for the mind of the legislator observes, recourse to the mind of the legislator takes no account of a merely internal will of the legislator.⁴⁰ The traditional doctrine found in Suárez' thought maintains that the mind of the other human being is basically not accessible in any other way than through a verbal expression. Consequently, the meaning of the law cannot be obtained as something proceeding directly from the mind of the legislator, but only through the mediation effected by his words.⁴¹ It sends us back to the text of the law. This does not mean, however, that the protagonists of the voluntarist conception of law give up their position. They argue that there can be a difference between the actual meaning of the text and the mind of its author (legislator), based

Doctrinal Interpretation of Law, pp. 48-49.

⁴⁰ See MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 554.

⁴¹ "[...] homines non possunt mentem alterius hominis percipere, nisi ex verbis eius [...]; quomodo ergo potest sensus legis, quæ in verbis consistit, ex mente sumi, cum ipsa mens per verba tantum nobis potest innotescere?" (SUÁREZ, *Tractatus de legibus ac Deo legislatore*, lib. VI, c. 1, n. 13). By way of comparison, the scriptural sciences represent a general conviction that the text reveals the intention of the human author. In this respect Pope Pius XII in his Encyclical Letter *Divino afflante Spiritu* writes: "Quo in opere exsequendo ante oculos habeant interpretes sibi illud omnium maximum curandum esse, ut clare dispiciant ac definiant, quis sit verborum biblicorum sensus, quem *litteralem* vocant. Hanc *litteralem* verborum significationem omni cum diligentia per linguarum cognitionem iidem eruant, ope adhibita contextus, comparationisque cum assimilibus locis; quæ quidem omnia in profanorum quoque scriptorum interpretatione in auxilium vocari solent, ut auctoris mens luculenter patescat [In the performance of this task let the interpreters bear in mind that their foremost and greatest endeavor should be to discern and define clearly that sense of the biblical words which is called literal. Aided by the context and by comparison with similar passages, let them therefore by means of their knowledge of languages search out with all diligence the literal meaning of the words; all these helps indeed are wont to be pressed into service in the explanation also of profane writers, so that the mind of the author may be made abundantly clear]" (PIUS XII, Encyclical Letter, *Divino afflante Spiritu*, 30 September 1943, in AAS, 35 (1943), p. 310). A working definition of the literal sense in Scripture is: "the sense which the human author directly intended and which the written words conveyed." The adverb "directly" points out to some ramification imposed on these words later through the larger scriptural context, or the conditions of the place and time. See R.E. BROWN, and S.M. SCHNEIDERS, *Hermeneutics*, in R.E. BROWN, J.A. FITZMYER, and R.E. MURPHY (eds.), *The New Jerome Biblical Commentary*, 2 ed., London, Geoffrey Chapman, 1989, p. 1148.

on an ambiguity of the meaning of the words and the inadequacy of the language as a means of externalizing the inner world of a person.⁴² The awareness of that situation found its historical expression in some legal rules: "Words are to be understood not according to what they sound, but according to the mind of the speaker,"⁴³ or: "Someone should not [so much] consider the words, but the will [of the legislator], for the intention should not to be subservient to the words, but the words to the intention."⁴⁴ *Regula iuris 88* says: "It is certain that anyone who, although fulfilling the letter of the law, turns against its intention violates that law."⁴⁵ Pope Eugene IV in his Letter *Fide digna*, July 8, 1440 declares: "We say explicitly that it was not the intention of the lawgiver to expose the souls of the faithful to the danger of mortal sin in communicating. [...] For the intention rather than the sound of words is to be carefully considered."⁴⁶ The prevailing legal tradition seems to be clear; it makes the intention of the legislator normative.

This firm conviction about a possible discrepancy between the meaning intended by the lawgiver and the actual products of his legislative activity has led to a studious elaboration of the problematic of understanding laws according to the

⁴² See SHEKLETON, *Doctrinal Interpretation of Law*, pp. 49-50.

⁴³ "Verba intelligenda sunt non secundum quod sonant, sed secundum mentem proferentis" (C. 11, C. XXII. q. 5; quoted after MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 555).

⁴⁴ "Non debet aliquis considerare verba, sed voluntatem, cum non intentio verbis, sed verba intentioni debeant deservire" (C. 6, in VI^o, V, 40; quoted after MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 555).

⁴⁵ "Certum est, quod is committit in legem, qui, legis verba complectens, contra legis nititur voluntatem" (*R. J. 88*, in VI^o, V, 12).

⁴⁶ Quoted after CICOGNANI, *Canon Law*, p. 608.

mind of the legislator. Consequently, it found its expression in the notion of the so-called "true meaning of the words" (*verus verborum sensus*) as complementary to the concept of proper meaning of the words. As Michiels maintains, it is the verbal formula employed by the legislator which constitutes a law. Because and insofar as the legislator's will (*voluntas legislativa*) shapes the law, it contains and expresses what he truly intended. From that it appears that the interpretation of the law consists of the investigation and manifestation of the true meaning of the words, i.e. revealing all and only that which is comprehended in the words (*sub vi verborum comprehensa*), not subtracting anything included in them by the legislator and not adding anything alien to his true intention.⁴⁷ From that it follows that the meaning of the phrase *verus verborum sensus* does not always and necessarily mean *proprius verborum sensus* found *ex post*, according to the accepted doctrine and to the meaning established by the juridical or common use. Of course, the legislator usually uses the words in their proper meaning; therefore that meaning is at the same time the *verus sensus*, intended in fact by the legislator. However, this does not always happen, and therefore the object and the scope of the interpretation are not reduced simply to determining the proper meaning of the words.

This awareness brings some consequences regarding c. 18 (c. 17 in the CIC/83). A controversy existed (and apparently it still does exist) concerning the

⁴⁷ "Cum formula verbalis a legislatore adhibita ideo et eatenus constituat legem, quia et quatenus revera informatur eius voluntate legislativa, quia et quatenus continet et exprimit hoc quod a legislatore reapse fuit intentum, interpretari legem est indagare et manifestare verum verborum sensum, illum scilicet quo a legislatore reapse fuerunt adhibita, pandendo ea omnia et sola de quibus constat quod ab ipso sub vi verborum reapse fuerunt comprehensa, quin dematur aliquid ab eo sub iisdem revera contentum vel quin addatur aliquid quod sensui ab eo reapse intento sit revera extraneum" (MICHIELS, *Normæ generales iuris canonici*, vol. I, pp. 473-474).

means of interpretation mentioned in the second part of the canon. Is recourse to them necessary only in the case of doubt or obscurity of meaning? Or is it legitimate, and indeed helpful, to use those means of interpretation (recourse to parallel places, to the reason and circumstances of the law, and to the mind of the legislator) in any circumstances during the process of coming to understand the law, or, to be precise, to a better understanding it. On this question, Michiels rejects the opinion of his contemporaries. They claim that c. 18 should be understood in a manner that only if the proper meaning of the words is doubtful or obscure, recourse to the other means of interpretation is permitted. Michiels argues however that certain situations happen when the legislator uses words apparently in some equivocal or improper sense. Accordingly, in order to understand the law it does not suffice to inquire after the proper meaning of the words. In addition, another source must confirm the *verus sensus* which the legislator intended.⁴⁸ Consequently, Michiels maintains that in c. 18 the clause: "*quæ si dubia et obscura manserit*" does not mean "if the proper meaning of the words following from the text and context appears doubtful and obscure," but "if it would be doubtful and obscure that the proper meaning of the words deduced from the text and context conforms to the *verus sensus* in fact intended by the legislator." For recourse to the parallel places, the circumstances, the purpose of the law, and to the mind of the legislator serves nothing or only a little to determine the proper meaning of the words. Hence

⁴⁸ See MICHIELS, *Normæ generales iuris canonici*, vol. I, pp. 474-475.

Michiels restricts these means almost exclusively to determine the *verus sensus*, truly intended by the legislator.⁴⁹

Altogether, from the analysis of the notion of the *mens legislatoris* it appears that knowledge about the internal dispositions of the legislator bears upon the task of understanding law. The traditional canonical doctrine distinguishes however between two manifestations of the internal disposition of the legislator. One of them it identifies with the will of the legislator, in the proper sense a legislative one (or intrinsically constitutive for a given law, which can be found from the words and other circumstances, influencing directly the process of formation and constitution of the law). The other one it identifies with the mind of the legislator in a sense of a directive power, the disposition of the soul, or a kind of habitual faculty, manifesting itself in the promulgation of the law in question and the other laws.⁵⁰ Having recourse to the mind of the legislator in the sense of c. 18, the interpreter

⁴⁹ "Formula canonis [c. 18] *si hæc (idest, significatio propria) dubia et obscura manserit, non significat si significatio propria verborum ex textu et contextu non eruatur certa sed manserit dubia et obscura, sed si dubium et obscurum sit significationem propriam ex textu et contextu deductam esse significationem veram a legislatore reapse intentam, recurrendum est ad locos parallelos, ad circumstantias et finem legis, ad mentem legislatoris; recursus ad media ista enim ex ipsissima sua natura parum aut nihil inservit ad determinandum proprium verborum sensum, sed solummodo ad determinandum sensum verum a legislatore reapse intentum*" (MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 475).

⁵⁰ It is worthy to notice that the classical authors are not unanimous as to the systematization of the factors bearing on the internal dispositions of the legislator. For instance, F. Wernz identifies the will of the legislator with his intention. It may be known on the basis of the subject matter of the law, the reason of the law (*ex ratione legis*), the comparison with the other laws and their connections within the system. See WERNZ, *Normæ generales*, pp. 233-234. Some authors identify the mind of the legislator with the soul of the law, the legislator's intention or his will. See A. VERMEERSCH and I. CREUSEN, *Libri I et II Codicis iuris canonici*, p. 123. Among the contemporary authors, Urrutia points out that *mens legislatoris* differs from the intended legislator's meaning. It is rather his internal disposition: "Mens legislatoris non est significatio ab eo intenta, tunc enim non est criterium, sed ipsum obiectum interpretationis; sed habitudo in regimine: alia et alia v.g. fuit ea Pii XII ab illa Joannis XXIII" (URRUTIA, *De normis generalibus*, p. 19).

should direct his attention to that second disposition. Consequently, this notion of the mind of the legislator, as inspiring and dominating the legal activity of the legislator should be extended also to the task of interpreting the law.⁵¹ For some authors however, searching for the mind of the legislator is a fundamental and encompassing goal. Although it is clear that in c. 18 (c. 17 in the CIC/83) the legislator intended recourse to the mind of the legislator as a precise tool of arriving at the meaning of the law, specifically mentioned among the others: recourse to the specificity of the matter of the law, the parallel places, to the purpose of the law, its circumstances,⁵² nevertheless Van Hove maintains that these latter are to be considered as subsidiaries. Finally, they are to serve to discover the mind of the legislator. For searching for the mind of the legislator indicates rather the supreme norm of every interpretation than its new subsidiary tool.⁵³

⁵¹ See MICHIELS, *Normæ generales iuris canonici*, vol. I, pp. 555-556. The classical authors proceed in searching for the principles directing the mind of the legislator and required in the process of the interpretation and application of law. Among others, these are: conformity to the universal law and to the style and practice of the Roman Curia, preserving reasonability, justice, canonical equity. For that, see VAN HOVE, *De legibus ecclesiasticis*, pp. 274-304; MICHIELS, *Normæ generales iuris canonici*, pp. 556-569.

⁵² See MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 555.

⁵³ See VAN HOVE, *De legibus ecclesiasticis*, p. 273.

4.2.2. Searching for the will of the legislator

According to canonical tradition, the interpretation of ecclesiastical laws includes also searching for the purpose (or reason) of the law,⁵⁴ its circumstances, and parallel places. Michiels distinguishes between the proximate and determinate purpose of the law (*finis operis*), i.e. the specifically determined value through which the law in question serves to promote the common good; and the purpose of the legislator (*finis operantis*), external to the act prescribed by the law, i.e. the specific good intended by the legislator, or the motive (*causa motiva*) which as a matter of fact led the legislator to order the law to direct the juridic relations in a specific case, at a specific time, for specific persons.⁵⁵

Whether the purpose is mentioned in law or deduced from it, only a probable conjecture may be made. For the reason of the law may be inadequately expressed in the law itself, or apart from the expressed reason some other reasons may exist or, regarding the reason motivating the legislator, the same reason can move the

⁵⁴ To know the "why" of the law was considered by Gratian essential for understanding it. See ÖRSY, *Theology and Canon Law*, p. 97.

⁵⁵ "Intelligitur autem finis eius [legis] proximus et determinatus, seu bonum concretum specificè determinatum, cuius assecutione lex determinata bonum commune partialiter promovet; et finis operantis quidem, qui est actui per legem præscripto extrinsecus, i.e. bonum a legislatore positive intentum, causa motiva (non mere impulsiva) propter quam legislator de facto tulit legem determinatam seu relate ad certam speciem casuum tali et non alio modo ordinavit relationes iuridicas, puta ad vitandum periculum fidei, ad tuenda iura temporalia alicuius personarum cœtus" (MICHIELS, *Normæ generales iuris canonici*, vol. I, pp. 533-534). The juridical purpose of the legislator can be known from either the law itself, or it can be clearly manifested in the preparatory phase of the creation of the law, especially in the comparison with a previous law from which the law in question proceeds or in a subsequent statement from the legislator. See MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 534.

legislator in different ways respectively to the different objects.⁵⁶ As a result, some other means of searching for the will of the legislator should be applied which can render clearer the meaning of the law in question.⁵⁷ However, if the reason of the law is included in the law itself, this situation amounts to an important indication regarding the will of the legislator.⁵⁸

Michiels poses a question - for which he does not expect any easy solution - whether and to what extent recourse to the purpose of the law is allowed, or even imposed, in order to determine the correct meaning of the law, the matter which the words of the legal formula cover, and, therefore, to determine the obligation or the *vis propria* of the law as proceeding from the mind of the legislator. Michiels illustrates this dilemma by the procedure of filling out a *lacuna legis*. In this case the law to which one has recourse is not interpreted in any determined manner, and the obligation, which as a matter of fact is not expressly imposed, is not deduced directly from that law. One argues rather indirectly what would be the intent of the law in similar circumstances, looking for the spirit of the law. The obligatory power of the solution is then derived not from the compared law, but from the general,

⁵⁶ “[...] licet aliquid conferat ad assequendam legislatoris mentem, non est tamen certum indicium, sed probabilis tantum coniectura, tum quia sæpe ratio non est certa, sed in opinione doctorum posita est, tum etiam quia multo minus certum est, illam fuisse rationem, quæ movit ipsum legislatorem, cum possint esse aliæ a quibus moveri potuerit, et consequenter est incertum ad quam rationem magis accommodandus sit sensus legis” (SUÁREZ, *Tractatus de legibus ac Deo legislatore*, lib. VI, c.1, n. 20).

⁵⁷ See SUÁREZ, *Tractatus de legibus ac Deo legislatore*, lib. VI, c. 1, n. 20.

⁵⁸ “At vero quando ratio legis in ipsa lege continetur, magnum indicium esse potest mentis legislatoris, et post verba ipsa videtur secundum certitudinis locum obtinere, quia tunc ratio legis est aliquo modo pars eius” (SUÁREZ, *Tractatus de legibus ac Deo legislatore*, lib. VI, c. 1, n. 20).

expressed will of the legislator, which is imposed by the canon about the *lacuna legis* and natural equity.⁵⁹ Then, the purpose of the law can be invoked in order to confirm (to corroborate) the presumed meaning as indicated by the proper meaning of the words, or even perhaps to abandon, extend, or restrict that meaning through considering the purpose - all in order to arrive at the true meaning, really intended by the legislator.⁶⁰ For, at the same time, as Michiels maintains, the circumscriptive and indicative element of the will of the legislator is demonstrated *per se* and directly in the verbal formula alone. Any interpretation neglecting then the verbal formula or considering it just as something secondary and investigating the will of the legislator from the sole purpose of the law according to the exigencies of that purpose goes beyond the very meaning of the words and cannot be admitted.⁶¹ On the side of the legislator, the purpose of his intention constitutes the determinate and circumscriptive cause of the use of the determined words; indeed he employs such words which precisely serve to express his will and which suit maximally to achieve the purpose of his decision. On the side of the interpreter, however, investigating the meaning of the employed words as the cause *per se* and directly determining and manifesting the meaning of the words is admitted not on the basis

⁵⁹ Canon 20 in the CIC/17 and c. 19 in the CIC/83.

⁶⁰ See MICHIELS, *Normæ generales iuris canonici*, vol. I, pp. 534-535. Two questions, however, stand: whether the purpose of the law, known in a particular case of the law, might be extended to all laws, even though the proper sense of the words does not include it; and, whether the purpose of the law known from another source should be restrained by the proper meaning of the words. See MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 535. For the historical overview of the attitude towards these problems, see MICHIELS, *Normæ generales iuris canonici*, vol. I, pp. 535-539.

⁶¹ See MICHIELS, *Normæ generales iuris canonici*, vol. I, pp. 539-540.

of the examination of the purpose, but on the ground of examining their proper meaning. Already the classical authors knew the problem of a possible discrepancy between the understanding the law according to the proper meaning of the words employed and the understanding based on the analysis of the reason of the law. Exceptionally it may even happen that the law understood according to the proper meaning of the words does not achieve the effect to which it is ordered by the legislator, or that it loses its quality of rationality, or that it is considered unjust in particular circumstances. In such a case the reason of the law becomes its cause determining the meaning of the words in the process of interpretation - utility and justice take over.⁶²

The circumstances of the process of the creation of the law serve as a complementary source of information about the motives, intentions, goals of the legislator introducing a given law. The circumstances preceding the origin of the law in question point out the roots of the law in the tradition, in previous legal enactments, in customs. The circumstances of the preparation of the law, the evolutive process of the discussion,⁶³ the actual redaction of the law, and the

⁶² See MICHIELS, *Normæ generales iuris canonici*, vol. I, pp. 540-541. Traditionally, with the mind of the legislator the canonical equity is connected, treated extensively by the classical authors. For that, see MICHIELS, *Normæ generales iuris canonici*, vol. I, pp. 557-569. "Epikeia is an interpretation exempting one from the law contrary to the clear words of the law and in accordance with the mind of the legislator." It is justified only in a particular case when the strict interpretation of the law would work a great hardship, or in view of the usual interpretation it may be prudently conjectured that, in this particular case, the legislator would not wish the law to be strictly applied. See BOUSCAREN, ELLIS, and KORTH, *Canon Law: A Text and Commentary*, p. 34. Cf. also the discussion of the *Coetus studiorum "De normis generalibus"* regarding "legislator." See, for that, "Ex Actis Pont. Comm. CIC Recognoscendo," in *Communicationes*, 16 (1984), p. 157.

⁶³ Michiels points out to the cognitive value of the legislator's consultations with the canonists in the process of preparation of the law, and their private interpretation. The presumption is that in such a case, if the legislator uses certain expressions proposed by the scholars, he does it in the

following phases of the communal understanding, reception, application, and evolution of the law in the course of time add some new insights regarding the legislative activity of the lawgiver.⁶⁴

However for those who accept that the law is identified solely with the actual will of the legislator, which means that the whole task of the interpreter is limited to its apprehension and manifestation, the circumstances are considered not so much in themselves, as rather how they were viewed from the position of the legislator, just as directive, determinate, consciously assumed and attentively utilized standards of his will.⁶⁵ Although it is presumed that the law responds to the practical occasion and social circumstances, which allow one to investigate deeper the meaning of the law, nevertheless only those circumstances might be considered in the course of interpretation of law which are proved actually to direct the legislator. This proof comes either from the phase of the preparation of the law or from authentic (authoritative) documents.⁶⁶ On the other hand, the customary understanding of the law, introduced by the community, or the meaning established in the process of scientific interpretation does not uncover, directly and *per se*, the will of the legislator because these instances of understanding are subsequent in

same sense. Hence the analysis of the preparatory phases of the process of creation of the law always maintains its importance. See MICHIELS, *Normæ generales iuris canonici*, vol. I, pp. 532-533.

⁶⁴ See MICHIELS, *Normæ generales iuris canonici*, vol. I, pp. 530-533.

⁶⁵ See MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 531.

⁶⁶ See MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 532.

time. Nevertheless they may indicate, with a moral certitude, the meaning intended by the legislator.⁶⁷

As it was stated above, while recourse to parallel places grounds its effectiveness in the rationality of law and postulated stability of the will of the legislator, at the same time this particular means of achieving a more complete understanding of law offers a certain reciprocity. For it allows us to broaden our knowledge regarding the intentions of the lawgiver, his principles and concepts, his attitude to the legislative activity, his understanding of the common good.

From the above presented perspective, the mind of the legislator forms the ultimate instance of understanding the law. However, this does not so much concern the search for its material content, but rather its correct understanding. The correctness of understanding is meant here as a conformity to the intentions of the legislator. It resembles however the attitude of the present Supreme Legislator who maintains that the knowledge of the Code “[...] succeeds in seeing also the *mens legislatoris* and the *ratio legis*.”⁶⁸

⁶⁷ See MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 533. The old maxime “Minime sunt mutanda, quæ interpretationem certam semper habuerunt” retains its value. See MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 533.

⁶⁸ JOHN PAUL II, Allocution to the Roman Rota, in *Communicationes*, 16 (1984), p. 16; WOESTMAN, *Papal Allocutions*, p. 183.

4.3. The correct understanding of the legislator

As far as the notion of the author's intentions is considered as an indispensable factor in assessing the correctness of understanding, the search for the internal dispositions of the legislator has its place in the theory and practice of interpretation. Inevitably, the question of understanding the concept of correctness in the perspective of author's intentions comes forth. Clearly, the answer depends largely on the assumed attitude concerning the whole conception of ecclesiastical law: whether it be a voluntarist or intellectualist approach to the problem.

Departing from the view-point adopted from the romanticist hermeneutics, the assessment of the process of creation of the law in its dynamic and static dimensions comes to mind. The specificity of the character of the legal texts as texts bears upon the uniqueness of the creative activity of the legislator. Örsy sees as a focal point in the making of a law the convergence of three judgements. First, the assessment of the nature of the community and its particular needs plays its part. Next, the determination of the values which should be achieved to satisfy needs follows. Finally, the capacity of the community to pursue the values in the concrete order completes the process. Later, as the final stage of the process of creation, the concept of a law that exists in the mind of the legislator takes its shape in a text.⁶⁹

⁶⁹ See ÖRSY, *Theology and Canon Law*, pp. 40-41.

At the same time, however, this explanation brings forth the problem of a possible discrepancy between the aim of the legislator, as willed by himself and the actual content of the text, as read by the interpreters. For as Örsy maintains, the legislator can simply fail to express his original intention in the actual text of the law.⁷⁰ Or the interpreter's understanding of the legislator's intentions can be far from the correct ones. Moreover, the problem's complexity is intensified by the discussion on the existence of the so-called "objective meaning of the text itself," or "verbal," "plain," "pure" meaning of the text, taken in "itself." It can hardly be believed, that such a notion might nowadays be maintained without any ramifications in the field of textual interpretation of texts.⁷¹ The contextuality of all understanding has its component in the specific world of the author. The question, however, whether the notion of the correctness of understanding necessarily includes fidelity to the author's mind might vary from one kind of hermeneutical study to another.

Needless to say, the science and art of interpretation in canon law always regarded the notion of the will of the legislator as its most important, if not its decisive component. Örsy denounces, however, a certain shift in the attitude towards ecclesiastical laws. Since the sixteenth century they became more the expression of the sovereign will of the legislator than the means for appropriating values identified by faith. It resulted in a specific approach to the law seeking the

⁷⁰ See ÖRSY, *Theology and Canon Law*, p. 47.

⁷¹ However, Hirsch argues strongly for usefulness of the notion of the verbal meaning of a text as [the meaning] changeless, determinate and reproducible. See HIRSCH, *Validity in Interpretation*, p. 46.

mind (the intention) of the legislator instead considering the relationship of the law to the values for which they were instituted.⁷² Domination of the voluntarist approach bears on all theoretical constructions in the theory of the canonical interpretation. Having accepted that verbal expressions might have, and in reality do often have, ambiguous meaning, the intentions of the legislator form an external criterion for accepting the concrete understanding of the law as willed by the legislator, and consequently, legally binding. In terms of the traditional doctrine, it results in producing a category of the true meaning of the words (*verus verborum sensus*) as superior and ultimate against the proper meaning of the words (*propria verborum significatio*).

Michiels poses the question whether the search for the true meaning of the law is restricted *per se* only to the application of the first rule in c. 18 (*propria verborum significatio*), and only in an accidental and deficient manner extended to the other rules following their ordering in the canon. He expresses his doubt that the meaning truly intended by the legislator might be known unless the circumstances, the purpose, the subject matter and the mind of the legislator, manifested in any other way, are examined. Practically, all the rules should be applied simultaneously: the first one as indicating the presumed true meaning, the others as approving or disproving (either confirming, or weakening) this meaning. Finally, Michiels comes to the conviction that the meaning truly intended by the legislator can never be known with certainty from the sole analysis of the verbal formula of the law. To

⁷² See ŌRSY, *Theology and Canon Law*, p. 104.

achieve any satisfactory certainty, recourse to the supplementary rules is then necessary. To sum up, what proceeds from the proper meaning of the words stays unless from the sources external to the verbal formula something different appears.⁷³

Throughout history, the considerations about the circumstances, the purpose, the mind of the legislator resulted in various rules of interpretation which are treated at great length in the classical works. However, many of those rules concern not so much the correct meaning of the law, as the precise paths of recognized and approved strategies of applying laws to concrete situations; for instance to the problem of extension and restriction of the law on the basis of its reason.⁷⁴ As such, however, they suit rather the canons about interpretation.⁷⁵

As far as contemporary hermeneutics is concerned, Betti's canon of the hermeneutical autonomy of the object brings an elaborate reflection on understanding authorial intention. The canon evinces a determinate attitude towards the notion of the correctness of understanding the texts. It postulates the immanence of the standards of hermeneutics. Betti maintains that: "[...] meaning-full forms have to be regarded as autonomous, and have to be understood in accordance with their own logic of development, their intended connections, and in their necessity, coherence and conclusiveness; they should be judged in relation to

⁷³ See MICHIELS, *Normæ generales iuris canonici*, vol. I, pp. 516-517. Certainly, this understanding is controversial; for the discussion, see SHEKLETON, *Doctrinal Interpretation of Law*, p. 100.

⁷⁴ See MICHIELS, *Normæ generales iuris canonici*, vol. I, pp. 541-554.

⁷⁵ Canons 17, 19, 20 in the CIC/17 and, respectively, cc. 16, 18, 19 in the CIC/83.

the standards immanent in the original intention: the intention, that is, which the created forms should correspond to from the point of view of the author and his formative impulse in the course of the creative process; it follows that they must not be judged in terms of their suitability for any other external purpose that may seem relevant to the interpreter.⁷⁶ The objectivated meaning-content of the text remains an objectification of the creative force of the author; however, the task of interpretation, owing to the actuality of understanding, can never be regarded as finished and completed; no interpretation can claim to be actually the definitive one.⁷⁷

As the interpretation of the law requires from its nature, the evaluation of the correctness of understanding the law is to be addressed. The positions represented in this regard by Betti, Gadamer, and Hirsch seems to be relevant and symptomatic. Betti sees the weakness of Gadamer's theory in the fact that it enables a substantive agreement between the author and the reader, i.e. between the accessible meaning of the text and the subjectivity of the reader, without any guarantee of the correctness of understanding. Gadamer's approach, Betti claims, is concerned exclusively with the internal coherence and conclusiveness of the

⁷⁶ "[...] die sinnhaltigen Formen in ihrer Eigengesetzlichkeit verstanden werden müssen, gemäß der eigenen Bildungsdesetzlichkeit nach ihrem intendierten Zusammenhang, in ihrer Notwendigkeit, Kohärenz und Bündigkeit: sie sollen daher mit dem ihrer ursprünglichen Bestimmung immanenten Maßstab gemessen werden, der Bestimmung nämlich, der die geschaffene Form vom Standpunkt des Autors (man möchte sagen: des Demiurgen) und seines Gestaltungswollens beim Schaffensprozeß entsprechen sollte; also nicht nach Maßgabe ihrer Eignung für diesen oder jenen äußeren Zweck, der dem Interpreten als der nächstliegende erscheinen mag" (BETTI, *Die Hermeneutik als allgemeine Methodik der Geisteswissenschaften*, pp. 14-15; BLEICHER, *Hermeneutics*, p. 58).

⁷⁷ See BETTI, *Die Hermeneutik als allgemeine Methodik der Geisteswissenschaften*, pp. 28-29.

desired understanding, and the presuppositions determine not only the process of questioning the text, but also the actual content of what is claimed to be understood.⁷⁸ For Betti then, the meaning intended by the author serves as a specific criterion of admissibility of only those theoretically possible (on the basis of language) meanings of the meaning-full forms which agree with the standards immanent in the original author's intention, to the exclusion of other meanings suited rather for any external purpose, deemed relevant to the interpreter.

In the meantime, Hirsch rediscovers the notion of the author's intention as the norm of assessing the validity of interpretation - explication of the verbal meaning of a given passage. The intention forms a determinate entity supported or disproved by the objective evidence. On the basis of that evidence, the further determination of the meaning, universally recognized as valid, is possible.⁷⁹

As Gadamer notices, Betti's theory emphasizes also the principle of the actuality of understanding which stresses that the interpreter is tied to a particular perspective of his time and culture.⁸⁰ Betti's canon of the actuality of understanding postulates the task of the interpreter as retracing the creative process,

⁷⁸ See BETTI, *Die Hermeneutik als allgemeine Methodik der Geisteswissenschaften*, pp. 43-44, pp. 79-80. Gadamer's reply is that his critic (Betti) is relating him to a question that he does not intend: "Im Grunde schlage ich *keine Methode* vor, sondern ich beschreibe, was ist. [...] In diesem Sinne versuche ich, über den Methodenbegriff der modernen Wissenschaft (der sein begrenztes Recht behält) hinauszudenken und in prinzipieller Allgemeinheit zu denken, was *immer* geschieht [Fundamentally I am *not proposing a method*; I am describing *what is the case*. [...] Hence I am trying to go beyond the concept of method held by modern science (which retains its limited justification) and to envisage in a fundamentally universal way what *always happens*]" (GADAMER, *Wahrheit und Methode*, pp. 483-484; GADAMER, *Truth and Method*, p. 512).

⁷⁹ See PALMER, *Hermeneutics*, p. 60.

⁸⁰ See GADAMER, *Wahrheit und Methode*, p. 482.

reconstructing it within himself in order to retranslate the thought of the author into the actuality of one's own life and experience, into one's intellectual horizon and mental universe.⁸¹ In this regard, when speaking about the concept of the mind of the legislator, Örsy points out the necessity of using mental categories from the legislator's culture. The legislator is preconditioned by his own civilization which has already prejudged the understanding of the meaning of the text.⁸² He is located within Christian history and operates within a specific theological horizon. These presuppositions bring certain consequences for the horizon of understanding.⁸³ Among the components of that horizon, the understanding of law surely plays an important role.⁸⁴

Similarly, existential factors influence the process of creating laws. These might be counted here: personal background, experience, feelings, preferences, personal convictions, social and cultural milieux, a particular situation with urgent

⁸¹ See BETTI, *Die Hermeneutik als allgemeine Methodik der Geisteswissenschaften*, p. 19. However, this approach and following notion of "congeniality" between author and interpreter is labeled by Gadamer as a "strict psychologism with its romantic flavor." See GADAMER, *Wahrheit und Methode*, p. 483.

⁸² See L. ÖRSY, "The Canons on Ecclesiastical Laws Revisited: *Glossæ* on Canons 8-24," in *The Jurist*, 37 (1977), p. 149. For Lonergan understanding the author includes understanding the common sense of his place, time, culture, cast of mind. Understanding another's common sense Lonergan means as understanding what another person would say or do in any of the situation that commonly arose in his/her place and time. LONERGAN, *Method in Theology*, pp. 160-161.

⁸³ See ÖRSY, *Theology and Canon Law*, p. 109.

⁸⁴ Michiels points out to the cognitive value of the body of the juridical principles reflecting a certain philosophy of law and moral order which underlie the whole system of the legislation. However, such an analysis may impute to the legislator some principles which were not directly or consciously applied by him, but rather they were construed *ex post* on the basis of his creative work. See MICHIELS, *Normæ generales iuris canonici*, vol. I, pp. 529-530. For the evaluation of the actual role of the guiding principles in the process of the drafting both Codes, the CIC/83 and CCEO, see F.G. MORRISEY, "The Spirit of the New Eastern Code of Canons," in *Logos: A Journal of Eastern Christian Studies*, 34, no. 1-2 (1993), pp. 200-219.

needs.⁸⁵ Örsy remarks that the discrepancy between the world of the legislator and the recipients of law is obvious - it bears upon the problem of communication between them.⁸⁶ The legislator and the laws are parts of an evolving universe so that the problem of a dynamic character of the mind of the legislator comes into play here. Örsy points to the unavoidable development in the legislator himself in the course of time. He goes so far as to identify, in a certain sense, the meaning of a law with the legislator. From that he concludes that the meaning changes as well.⁸⁷ Similarly, when the law is interpreted within the changing horizons of the Christian community,⁸⁸ it leads to the notion of an evolutive interpretation, and, consequently to the problematics of creativity within the interpreter. In this regard, Örsy tends to understand interpretation as re-creating the meaning of the law. However, it is not any recovering of a static meaning but a process of interaction between the legislator's intended meaning and the interpreter's creativity.⁸⁹ It brings forth the problem of the active response from the community to which the law is addressed. As Örsy remarks, through understanding, acceptance, and practice of the law, the people of God become interpreters, too.⁹⁰

⁸⁵ Cf. ÖRSY, *Theology and Canon Law*, pp. 69-70; 79.

⁸⁶ See ÖRSY, *Theology and Canon Law*, p. 82.

⁸⁷ See ÖRSY, *Theology and Canon Law*, p. 64.

⁸⁸ See ÖRSY, *Theology and Canon Law*, p. 66.

⁸⁹ See ÖRSY, *Theology and Canon Law*, pp. 108-109.

⁹⁰ See ÖRSY, *Theology and Canon Law*, p. 49. This conviction brings some consequences as regards customs. If the meaning of law is fixed at its promulgation, what would be left for the custom deemed as the best interpreter of law? How custom could then explain, modify, or clarify understanding of laws? See ÖRSY, *Theology and Canon Law*, p. 60. J.P. McIntyre points to three

4.4. Conclusion

Altogether, the analysis of the internal world of the legislator brings a substantial element in understanding the law. Following Suárez,⁹¹ the traditional theory of interpretation of canon law considers searching for the mind of the legislator as the essential object of interpretation.⁹² Although it seems to favor the voluntarist position in understanding law against the intellectualist view, nevertheless, any sharp antithesis between these two positions in the theory of interpretation appears to be far too simplistic. Neither the meaning intended by the legislator may be disregarded, nor the interpreter's activity may be rigidly limited to recovering it with no attention paid to the present circumstances. For, as contemporary hermeneutics assures us, the interpreter is conditioned in his task by various external and internal factors bearing on the actuality of understanding. It leads to the acceptance of the fact that the reality of understanding laws is far more complex than any "archaeologic" recovery of the meaning intended by the legislator.

Consequently, although c. 17 prescribes recourse to the purpose and circumstances of the law and to the mind of the legislator in the case of a doubtful

uses of custom: as interpretative, supplemental, and abrogative. See J.P. McINTYRE, *Customary Law in the Corpus Iuris Canonici*, San Francisco, Mellon Research University Press, 1990, pp. 87-112.

⁹¹ "Illa [...] est ergo vera interpretatio legis, per quam mentem et voluntatem legislatoris assequimur" (SUÁREZ, *Tractatus de legibus ac Deo legislatore*, lib. VI, c.1, n.12).

⁹² "Interpretatio legis enim, ut sit vera, necessario attendere debet mentem legislatoris prout per verba exprimitur seu verba legis prout mente legislatoris informantur" (MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 477).

meaning of the law, nevertheless, as long as recourse to the purpose and circumstances of the law and the mind of the legislator does not vitiate the meaning of the text of the law, they might be deemed legitimate, and indeed helpful, for understanding more correctly the whole complex reality of the process of creation of the law, and, indirectly, in appreciating the many-sided understanding of the law itself. However, the proper significance of the words still remains the first criterion of interpretation and recourse to the circumstances, to the purpose of the law, and to the mind of the legislator are not admitted as the expression of the will and intention of the legislator in so far as they oppose the mere words of the law and what is considered from them.⁹³

⁹³ See MICHIELS, *Normæ generales iuris canonici*, vol. I, p. 555.

5. THE WORLD OF THEORY

The study of the endeavor to interpret and to understand the written texts reveals certain areas of particular interest for canonical science which together form an enlarged horizon for comprehending the Church's law. These are mainly: the linguistic, theological, philosophical, juridical, social, cultural, and psychological factors of the process of coming to understanding. As any division of the dynamic structure of the operations of human mind, this division shares a certain superficiality. Although all these elements of understanding are mutually dependent and interwoven, nevertheless the clarity of presentation requires some order and distinction introduced between them. All of them, however, must be studied from the historical perspective because they evolve in the course of time. In any event, it is the historical consciousness that provides for a certain matrix of any further consideration concerning the many-sided understanding of ecclesiastical laws.

Altogether, on the basis of diverse and, sometimes, even contradictory concepts of understanding, proposed in the field of contemporary hermeneutics, it is unlikely that we can construct any synthetic position, or to choose any exclusive concept of understanding human expressions. Nevertheless, from the analysis of the achievements of the contemporary hermeneutics, at least some essential characteristics of the process of understanding in general, and of the process of understanding ecclesiastical laws in particular, emerge.

5.1. Some essential attributes of the theory of understanding ecclesiastical laws

5.1.1. Historicality of understanding

It appears clearly that any method of understanding laws is far from a mechanical pattern of determined operations leading almost automatically to indisputable results. First of all, the analysis of the dynamic structure of the cognitional process discloses its predominantly historical nature. As Gadamer reminds us, historical consciousness is necessary to allow the interpreter to strive for objective knowledge. Hermeneutics points out that meaning, and consequently understanding, are temporal, grounded in the horizon of the interpreter's temporality and his position in history.¹ In brief, understanding is regarded as entering into the process of tradition in which past and present form an arena of reciprocal action and constantly mediate each other.² Understanding, then, means a specific "fusion of horizons": the interpreter's horizon is expanding by the process of testing his prejudices. As a result, a new horizon, transcending the initial questions and prejudices, emerges.³ Every act of understanding is thus situated in a given context or horizon and operates within a certain frame of reference.⁴

In the case of the study of any legal texts, the historicality of understanding brings some specific consequences. For Gadamer understanding always involves

¹ See PALMER, *Hermeneutics*, p. 122.

² See BLEICHER, *Contemporary Hermeneutics*, p. 76.

³ See BLEICHER, *Contemporary Hermeneutics*, p. 112.

⁴ See PALMER, *Hermeneutics*, pp. 120-121.

some application of the text to the present situation of the interpreter.⁵ Particularly, the juridical and theological hermeneutics regard their aim not as any antiquarian effort to enter the past world but as bridging the distance between the text and the present situation.⁶ Gadamer discloses the essential tension between the legal text set down by the legislator and the sense arrived at in the course of its application to the concrete situation. For the law is not to be understood historically, but it is to be rendered concretely valid. Hence the law, if it is to be understood properly, according to the claim that it makes, must be understood at every moment, in every particular situation, in a new and different way. Moreover, there is no difference between the meaning of the law which emerges from its normative and its merely cognitive interpretation. In this regard Gadamer compares the attitude of the jurist and the legal historian to the same text. Clearly, the jurist is concerned primarily with understanding the law from the point of the present case and for the sake of the present case. On the contrary, the legal historian approaches the law mainly with the task of disclosing the whole range of possible applications, not limiting his goal to the original application as determining its original meaning. His aim includes both searching for the historical change which the law in question has undergone as well as the development of that law from its original to the present application. On the one hand, Gadamer opposes any easy identification of the task of the historian with

⁵ "[...] im Verstehen immer so etwas wie eine Adwendung des zu verstehenden Textes auf die gegenwärtige Situation des Interpreten stattfindet" (GADAMER, *Wahrheit und Methode*, p. 291). It resembles the early tradition of hermeneutics in which hermeneutics was regarded as composed of *subtilitas intelligendi* (understanding), *subtilitas explicandi* (interpretation), and *subtilitas applicandi* (application). See GADAMER, *Wahrheit und Methode*, pp. 290-291.

⁶ See PALMER, *Hermeneutics*, p. 188.

reconstructing the original meaning of the legal formula and, on the other hand, he protests vigorously against limiting the goal of the jurist to harmonizing that meaning with the demands of the present. In a detailed argumentation Gadamer includes in the task of the jurist (1) achieving the knowledge of the original meaning of the law and (2) taking into account the change in historical and social circumstances which defines afresh the normative element of the law. Likewise, the legal historian cannot know the original meaning of the law without being aware of the differences between his present time (and the meaning of the law which he “automatically” accepts for now) and the past time when the law originated (and the original meaning of the law). The hermeneutical situation of both, Gadamer concludes, is *de facto* identical because of the presence of an immediate expectation of meaning. Besides, historical knowledge is possible only by embracing the past in its continuity with the present.⁷ Betti, however, disagrees with Gadamer’s description of the tasks of the historian and the jurist; instead, he distinguishes sharply between the cognitive and normative functions in legal interpretation. He argues that, even if the interpreter is concerned with the practical relation of the legal text to the present time, nevertheless, the application of the law does not constitute any inherent and intrinsic moment of its understanding but is merely the consequence of the practical functionality of the law for the ordering of co-existence in a society.⁸

⁷ See GADAMER, *Wahrheit und Methode*, pp. 307-313.

⁸ See BETTI, *Die Hermeneutik als allgemeine Methodik der Geisteswissenschaften*, p. 44-50. For more about the normative interpretation in the field of legal interpretation, see E. BETTI, *Allgemeine Auslegungslehre als Methodik der Geisteswissenschaften*, Tübingen, J.C.B. Mohr (Paul Siebeck), 1967, pp. 600-664.

Despite this controversy regarding the status of applying the law, the whole discussion reveals, however, the profoundly historical dimension involved in understanding laws. The historical approach appears, then, to be an indispensable perspective in the process of understanding ecclesiastical laws as well. Indeed, even though c. 6 § 2 calls for recourse to the canonical tradition, still the necessity of the historical perspective in understanding law must not be considered merely as a consequence of this legal precept (and only when some canons reproduce the former law). On the contrary, the need of recourse to the canonical tradition seems to be rather the consequence of some more universal principle which is the historicity of all understanding. In the field of today's hermeneutics, the historicity of understanding ecclesiastical laws achieves then its justification.

5.1.2. Linguistic component of understanding

Pope John Paul II reminds us regarding biblical studies that: "None of the human aspects of language can be neglected. The recent progress in linguistic, literary and hermeneutical research have led biblical exegesis to add many other points of view (rhetorical, narrative, structuralist) to the study of literary genres; other human sciences, such as psychology and sociology, have likewise been employed."⁹ Similarly, the document of the Pontifical Biblical Commission, *The*

⁹ JOHN PAUL II, Address on the Interpretation of the Bible in the Church, p. 4.

Interpretation of the Bible in the Church, points out: "Taking advantage of the progress made in our day by linguistic and literary studies, biblical exegesis makes use more and more of new methods of literary analysis, in particular rhetorical analysis, narrative analysis and semiotic analysis."¹⁰ By way of analogy, a similar, open attitude towards the recent development in linguistic studies is desirable in understanding texts of law; this means, of course, taking into consideration their specific character distinguishing them from other, scriptural or theological, writings.¹¹

Some methods which insist upon a synchronic understanding of texts - that is, ones which have to do with their language, composition, narrative structure and capacity for persuasion at a particular moment in time, call for a special attention.¹² Among them we find the structural reading of the text which treats it as a worldless and authorless object and explains the text exclusively in terms of its internal relations, its structure. That possibility of an explanatory attitude in regard to the text comes from the constitution of the text as text and of a body of the texts as literature

¹⁰ PONTIFICAL BIBLICAL COMMISSION, *The Interpretation of the Bible in the Church*, p. 41.

¹¹ In the interpretation of law a certain analogy to the task of the exegete exists: "If the first task of exegesis is to arrive at the authentic sense of the sacred text or even at its different senses, it must then communicate this meaning to the recipient of Sacred Scripture, who is every human person, if possible.[...] A constant process of actualization adapts the interpretation to the contemporary mentality and language. [...] Therefore, biblical thought must always be translated anew into contemporary language so that it may be expressed in ways suited to its listeners. This translation, however, should be faithful to the original and cannot force the text in order to accommodate an interpretation or an approach fashionable at a given time" (JOHN PAUL II, *Address on the Interpretation of the Bible in the Church*, p. 4; 6). In the field of canon law, this actualization finds its expression in both application and reception.

¹² See PONTIFICAL BIBLICAL COMMISSION, *The Interpretation of the Bible in the Church*, p. 31.

that justifies the interception of the double transcendence of discourse, towards the world and towards the speaking subject.¹³

Ricoeur summarizes the concept of structural analysis as follows. The working hypothesis of any structural analysis of a text is that the larger units of language (*langage*), i.e. the units of a higher order than the sentence, display organizations basically analogous to those of the smaller units of language, i.e. the units which are of a lower order than the sentence and which belong to the domain of linguistics.¹⁴ Therefore:

[...] the sense of the narrative consists in the very arrangement of the elements, in the power of the whole to integrate the sub-units; and conversely, the sense of an element is its capacity to enter in relation with other elements and with the whole of the work. These postulates together define the closure of the narrative. The task of structural analysis will be to carry out the segmentation of the work (horizontal aspect), then to establish the various levels of integration of the parts in the whole (hierarchical aspect) [...]. The logic of action [...] consists in an interconnected series of action kernels which together constitute the structural continuity of the narrative. [...] Corresponding to the nexus of actions are relations of a similar nature between the "actants" of the narrative. By that we understand [...] the roles correlated with formalized actions. Actants are defined entirely by the predicates of action, by the semantic axes of the sentence and the narrative: the actant is the one by whom, to whom, with whom, ... the action is done [...]. Structural analysis thus brings out a hierarchy of *actants* correlative to the hierarchy of *actions*.¹⁵

Legal texts contain a certain program which is to be realized in reality. This reality is also defined in these texts. Hence we find in the legal texts a certain model of the

¹³ See RICOEUR, "Qu'est-ce qu'un texte?," pp. 145-146.

¹⁴ See RICOEUR, "Qu'est-ce qu'un texte?," p. 147.

¹⁵ RICOEUR, "Qu'est-ce qu'un texte?," p. 149-150; RICOEUR, "What is a Text?," pp. 156-157.

reality, composed of some selected elements, structurally arranged for the purpose of the intended program. This program concerns the future. The legal texts, then, describe some events and lay down what is to happen if a given situation comes to existence. Thus, legal texts describe the subjects of actions, the actions themselves, and the means of their realization.¹⁶ In other words, a structural analysis will carry out the analysis of the legal texts in its horizontal and hierarchical aspects to bring forth the logic of action and relations between those involved "actants."¹⁷

Although the structuralist approach constitutes an indispensable element of the process of textual understanding,¹⁸ nevertheless, it does not encompass the

¹⁶ See SOBAŃSKI, "Z zagadnień normy kanonicznej," in *Prawo Kanoniczne*, 33, no. 1-2, (1990), pp. 4-5.

¹⁷ It is noted that structural analysis has the great merit of protecting a theologian from indulging in subjective, psychological, and apologetical interpretation of the texts. See GEFFRÉ, *The Risk of Interpretation*, p. 32. It seems reasonable that the canonist can count on similar assurances.

¹⁸ In exegesis, structural analysis may complete the historico-critical method because these two methods are not necessarily absolutely incompatible. The radical incompatibility and even a struggle to the death lies in the ideologies underlying these methods. See GEFFRÉ, *The Risk of Interpretation*, p. 29. "Semiotics can be usefully employed in the study of the Bible only in so far as the method is separated from certain assumptions developed in structuralist philosophy, namely the refusal to accept individual personal identity within the text and extra-textual reference beyond it" (PONTIFICAL BIBLICAL COMMISSION, *The Interpretation of the Bible in the Church*, p. 49).

whole reality of a text.¹⁹ Especially, the doctrine of horizons,²⁰ developed mainly in our century, reveals some fundamental deficiencies of the structural method. As Örsy remarks, the horizon of the interpreter can be confined to a specific field of knowledge, such as the critical analysis of the text in question. The interpreter may have come to important conclusions from the text itself. But if that text is a response to an intellectual movement, he will never be able to come to a full understanding of what is contained there unless his field of vision includes also the ideas which inspired that movement in the first place. For an adequate historical account the interpreter must move from the horizon of textual criticism, which is an indispensable starting point, into the horizon of current ideas - probably not even mentioned in the text. By expanding the field of vision, he sees more and better.²¹ In addition, the horizon of current ideas serves also as the means of limiting the number of the interpretations theoretically possible on the basis of the textual criticism. In particular, as Geffré insists: "[...] [there] can be many possible

¹⁹ "With respect to the inclusion, in the method, of a synchronic analysis of texts, we must recognize that we are dealing here with a legitimate operation, for it is the text in its final stage, rather than in its earlier editions, which is the expression of the Word of God. But diachronic study remains indispensable for making known the historical dynamism which animates Sacred Scripture and for shedding light upon its rich complexity: for example, the Covenant Code (Exodus 21-23) reflects a political, social and religious situation of Israelite society different from that reflected in the other law codes preserved in Deuteronomy (chapters 12-26) and in Leviticus (the Holiness Code, chapters 17-26). We must take care not to replace the historicizing tendency, for which the older historical-critical exegesis is open to criticism, with the opposite excess, that of neglecting history in favor of an exegesis which would be exclusively synchronic" (PONTIFICAL BIBLICAL COMMISSION, *The Interpretation of the Bible in the Church*, p. 40).

²⁰ For the presentation of the doctrine of the horizon, see: LONERGAN, *Method in Theology*, pp. 235-237; D. TRACY, *The Achievement of Bernard Lonergan*, New York, Herder and Herder, 1970, passim; GADAMER, *Wahrheit und Methode*, pp. 286-290.

²¹ See ÖRSY, *Theology and Canon Law*, p. 27.

interpretations in the light of different historical situations, but the living tradition, the subject of which is the interpreting community of believers, circumscribes a hermeneutical field which excludes the possibility of deviant or wrong interpretations. This means that we cannot abandon the diachronic for the synchronic point of view in order to reach an absolutely closed system in the text and a radical discontinuity."²²

In other words, the notion of the "world of the text" allows for a structural reading of the law, exposing all the relevant dynamics of the text within the text itself. But, at the same time, the text of the law takes the reader back to something other than itself, to the world of the underlying ideas and principles which form the context of understanding laws.²³ The evaluation of the contemporary hermeneutical thought, then, points to the variety of the different approaches as regards the endeavor of understanding texts. None of these techniques can claim any self-sufficiency in the field of canon law; the complexity of the phenomenon of understanding calls rather for their parallel employment in the task of comprehending "the world" of ecclesiastical laws.

²² GEFFRÉ, *The Risk of Interpretation*, pp. 33-34.

²³ See GEFFRÉ, *The Risk of Interpretation*, p. 40.

5.1.3. Contextual component in understanding

As was previously shown, the horizon of understanding ecclesiastical law transcends the field of canon law to seek insights in other branches of ecclesiastical science. Understanding ecclesiastical laws postulates thus a complex and interdisciplinary study, encompassing all the elements which contribute to comprehend the genesis of the law and its history in the life of the Church, including various juridical, theological, philosophical, social, cultural, psychological factors which influence the internal and external sphere of the legislator's life.

Analyzing of the spirit of the Code authorizes us to maintain that the hermeneutical and epistemological principles of philosophical and legal reason present in the CIC/17 have been transformed in the CIC/83 by the theological principle of faith.²⁴ Although the conciliar ecclesiology does not appear as homogeneous, nevertheless, since the time of the Council, more and more ecclesial law appears as an expression of the mystery of faith, and not only of a society. Which element of this ecclesiological alternative will actually succeed depends largely on the practice within the Church's life.

Besides theology, it is the field of largely understood anthropology which reveals some socio-cultural considerations as another component of the process of understanding the texts. Indeed, the challenge still remains for canon law to develop sufficient consciousness and sensitivity to understand more fully and

²⁴ See CORECCO, "Theological Justifications," p. 73.

correctly the specific cultural components of the Church's legislation, especially in circumstances when some fundamental objections to the operation of the universal law, as rooted in the culture of ancient Rome and West European civil law tradition, are raised up. Indeed, theology can never be wholly extricated from the cultural circumstances in which it was elaborated. Therefore, the process of understanding the influence of theology on canon law includes taking into account diverse cultural settings of different schools in theology and other ecclesiastical sciences.²⁵

On the basis of the consideration of the impact of the above presented factors, it is possible to speak about a particular kind of culture, i.e. juridical culture.²⁶ This culture would furnish some foundations for the contextual interpretation of the words in the same manner by all. The Code does not fully offer such a possibility, as the philosophical and theological presumptions do not either. Therefore, establishing the juridical culture would include discussions on the level of the canonical doctrine and jurisprudence. First of all, as Torfs reminds us, it is important for any discussion on the legal norms to be quite real and sincere.

²⁵ See HUELS, "Interpreting Canon Law in Diverse Cultures," pp. 285-288.

²⁶ J.M. González Del Valle Cienfuegos points out the differences in general understanding of law caused by a different juridical culture: "This method of approaching the understanding of law [the German pandectists' method] reflects a juridical culture that flourished in continental Europe, principally in Germany, in one specific period. But in the Anglo-Saxon world, as in classical Roman jurisprudence, the understanding of law took on an eminently casuistic character, independent of abstract conceptual generalizations and of systematic preoccupations" (GONZÁLES DEL VALLE CIENFUEGOS, "The Method of the *Codex iuris canonici*," p. 145). Canonists from the common-law tradition must discern the classical structure of the Church's law in order to understand the Code, that is mostly a classical document, in a proper manner. See ALESANDRO, "The Revision of Church Law," pp. 22-23. However, common-law tradition might offer some new insights, for instance in penal legislation, that could be used in applying canon law. See F.G. MORRISSEY, "Applying the 1983 Code of Canon Law: The Task of Canonists in the Years ahead," in THÉRIAULT and THORN (eds.), *The New Code of Canon Law. Proceedings of the 5th International Congress of Canon Law*, p. 1158.

Searching for foundations should be more important than any short-term tactics. Instead of any implicit theological or philosophical consensus, which is presently lost, Torfs postulates, pending arrival of a harmony reinforced on the level of the content, another consensus concerning the adequate juridical culture, based on a good communication.²⁷ This juridical culture, however, is far from uniform now. Nevertheless, creating a kind of a uniform juridical culture (*culture juridique*) offers another possibility of solving the problem of the proper meaning of the words. Through the juridical culture based on communication, the theological values play a leading part in the search for the new ways of revitalizing the notion of *propria verborum significatio*²⁸ and giving a new meaning to understanding ecclesiastical laws in their context.

Altogether, contemporary hermeneutics accentuates the necessity of employing a broad enough attitude regarding the context of understanding human expressions. It is extremely valuable for the successful result of the endeavor of understanding ecclesiastical laws to include within the horizon of the interpreters of the Church's law possibly all relevant elements which, in sum, make up the matrix of all contextual considerations, or, in other words, form a hermeneutical field for understanding the Church's law not as any isolated phenomenon in the Church's life, but as its vital component.

²⁷ See TORFS, "*Propria verborum significatio*," p. 191.

²⁸ See TORFS, "*Propria verborum significatio*," p. 191. Already in the commentaries on the CIC/17 there were appeals for some hermeneutical and dialogical techniques. See TORFS, "*Propria verborum significatio*," pp. 191-192.

5.2. Towards a theory of understanding ecclesiastical laws

5.2.1. Reconstruction of the voluntarist approach to understanding ecclesiastical laws

The analysis of the various aspects of understanding brings some conclusions valid for every description of an endeavor of understanding laws in terms of contemporary hermeneutics. Some features of a prospective method of understanding ecclesiastical laws seem thus to be indispensable. The specific task of any further consideration is now to find any particular conception within the hermeneutical reflection which would provide for the systematic apparatus furnishing necessary formal - ontological and epistemological - foundations for and encompassing all relevant material aspects of understanding ecclesiastical laws.

Searching for the meaning of a given legal text takes into account all particular circumstances: historical, linguistic, theological, philosophical, juridical, social, cultural, in which the text in question actually came into existence. These circumstances of the time, place, and the person of the author form a unique milieu in which the text achieves its primordial meaning. In any event, this particular locus creates an environment for understanding. That locus is fairly determinate; it bears upon the determinateness of the meaning of the text as well.²⁹

²⁹ This initial determinateness of the meaning of the legal text, proceeding from the particularity of the text's origin, requires however a further clarification regarding its relationship to the notion of evolving meaning.

Subordination to the textual demands in the interpretation of the law constitutes a particular feature of the legal hermeneutics, distinguishing it from other kinds of hermeneutics. The interpreter adjusts his own thinking to the text and finds himself preoccupied with the correctness of understanding. However, the intellectualist and the voluntarist concepts of law result in two different approaches to the interpretation of ecclesiastical laws: the one as the explanation of the sense of the law according to the words of the law, the other as the explanation of the sense of the law according to the mind of the legislator.

From the voluntarist perspective, the will of the legislator forms the ultimate instance of understanding the law. The correctness of understanding law according to the legislator's will includes a conformity to the legislator's overall attitude towards understanding the Church, the role of the legal order in her life, the hierarchy of values suitable for a Christian community, etc. While the notions concerned with the concept of the will of the legislator were always regarded as important for canonical interpretation, nevertheless, since the sixteenth century, ecclesiastical laws became the expression of the sovereign will of the legislator rather than the means for appropriating Christian values. For the theory and practice of the canonical interpretation, this emphasis resulted in a specific approach to the law seeking the will of the legislator instead considering the relationship of the law to the values for which they were instituted.³⁰ The voluntarist approach requires, in the case of any ambiguous meaning of the text, searching for the intention of the legislator. This

³⁰ See ŐRSY, *Theology and Canon Law*, p. 104.

intention constitutes an external criterion for accepting the concrete understanding of the law as willed by the legislator, and consequently, legally binding.

From the voluntarist perspective, which is oriented eventually towards establishing the will of the legislator, it seems necessary to maintain a certain autonomy of the meaning of the text in the specific contextual circumstances. This autonomy guarantees an objectivity of understanding. In this regard, Hirsch proposes an idea of the verbal meaning as the solution to the problem of the correct understanding. For him, the meaning of the text understood as “[...] whatever someone has willed to convey by a particular sequence of linguistic signs and which can be conveyed (shared) by means of those linguistic signs³¹ represents such a changeless, reproducible, and determinate entity.³² So, ultimately, the determinate verbal meaning corresponds to the determining will.

However, some further clarifications are helpful in construing the sketch of the process of interpretation of the text. As Hirsch reminds us, in ordinary speech the several moments of the hermeneutical endeavor: understanding, interpretation, judgment, and criticism are considered indiscriminately. Of course, they are co-dependent, but, on the other hand, they are distinct functions with distinct requirements and aims.³³ In practice, we relate our understanding to something else, because it is impossible artificially to isolate the act of construing verbal

³¹ HIRSCH, *Validity in Interpretation*, p. 31.

³² See HIRSCH, *Validity in Interpretation*, p. 46.

³³ See HIRSCH, *Validity in Interpretation*, pp. 132-133.

meaning from the other accompanying acts of the intellect. The difference, however, lies in the emphasis.³⁴ Hirsch argues that understanding is not an immediate given but requires an active making of meaning. Again, interpretation is an explanation of meaning (*subtilitas explicandi*), but it rarely exists in a pure form (perhaps in a paraphrase or in a translation). For the art of explaining almost always involves the task of discussing meaning in terms that are not native to the original text or having recourse to categories and conceptions not native to the original in question. The interpretations vary from age to age; they depend on various factors, but it does not mean that the meaning of the text varies under the influence of these factors.³⁵

As Hirsch notices, most commentaries that we call interpretation are concerned not only with the explanation of meaning but with significance as well, leading us to perceive values and relevancies. Significance names a relationship between the meaning and a person, conception, or situation. One constant and unchanging pole of that relationship is what the text means.³⁶ Nevertheless, each new interpreter or age finds new sorts of significance, new moments of relevance to some particular socio-cultural or intellectual milieu: "[...] each age must recriticize the works of the past in order to keep them alive and ourselves alive to them. As critics we should remind ourselves that we are not perceiving a new work or a new meaning, but a new significance of the work which often could not exist except in

³⁴ See HIRSCH, *Validity in Interpretation*, p. 140.

³⁵ See HIRSCH, *Validity in Interpretation*, pp. 134-137.

³⁶ See HIRSCH, *Validity in Interpretation*, p. 8. Failure to consider the distinction between meaning and significance Hirsch considers as the source of a great confusion in hermeneutics. See HIRSCH, *Validity in Interpretation*, p. 8.

our own cultural milieu. That phenomenon in itself proves the relational character of significance.³⁷ It follows that it is significance which evolves in the course of time and not the meaning of the text which retains its stability.³⁸ When we construe another's meaning we are subservient to the author's will. When we find the significance of the text for us, we exercise more freedom, although we are constantly bound to the author's perspective, constitutive for his meaning.³⁹ Finally, for the sake of the clarity of the theory, Hirsch reserves the term "criticism" for commentary that is primarily about significance and the term "interpretation" for the commentary that is primarily about meaning. He finds significance just as much an object of knowledge as meaning is. Moreover, he judges criticism to be more valuable than interpretation alone.⁴⁰

Finally, the question of the existence of the multiplicity of interpretations comes to mind. Hirsch's definition of verbal meaning places no rigid limit on the

³⁷ HIRSCH, *Validity in Interpretation*, p. 137.

³⁸ However, instead of the category of evolving meaning the notion of enriched meaning might be appropriate. The meaning of a given text may be understood partially in a given epoch or by a given interpreter. The followers may understand this meaning in a fuller manner, but it does not mean that the meaning in question has changed in itself. In this regard, Hirsch considers every interpretation as partial. No single interpretation can possibly exhaust the meaning of a text, but the various interpretation bring different aspects of textual meaning. See HIRSCH, *Validity in Interpretation*, p. 128.

³⁹ See HIRSCH, *Validity in Interpretation*, p. 142. From the discussion between Gadamer and Betti appears that searching for the meaning of the text involves first of all the cognitive aspects of the operations of human mind. In interpretation however, the normative element prevails. We interpret from our contemporary perspective and we seek from the text some answers valid for our time. Any strict demarcation line between the cognitive and normative element in understanding and interpretation does not apply; they are intertwined.

⁴⁰ See HIRSCH, *Validity in Interpretation*, pp. 143-144.

number of implications which verbal meaning of the text in question might have.⁴¹ The diversity of interpretations (as the explanation of meaning) is, then, welcomed in so far as they contribute to fuller understanding. But there are interpretations which are disparate or incompatible, so that the problem of discriminating between them appears.⁴² The interpretation has a determinate object of knowledge - the author's verbal meaning. Hirsch proposes a process of validation which shows that in a particular case such knowledge has been achieved in an objective sense.⁴³ Hirsch builds the process of validation on a principle of probability.⁴⁴ An interpretative hypothesis is ultimately a probability-judgment supported by all the relevant evidence.⁴⁵ Inevitably, such a procedure presupposes a broad discussion which necessarily results in creativity within the endeavor of interpretation. So that the active participation of the body of the interpreters in understanding the Church's law finds its way in the principles of the logic of a constant search for the meaning which successfully passes through the scrutiny of the "ruthlessly critical process of validation."⁴⁶

⁴¹ See HIRSCH, *Validity in Interpretation*, p. 139.

⁴² See HIRSCH, *Validity in Interpretation*, pp. 128-130.

⁴³ See HIRSCH, *Validity in Interpretation*, p. 163.

⁴⁴ See HIRSCH, *Validity in Interpretation*, pp. 173-180.

⁴⁵ See the detailed consideration on the interpretive evidence in HIRSCH, *Validity in Interpretation*, pp. 180-198, especially the summary on pp. 197-198.

⁴⁶ See HIRSCH, *Validity in Interpretation*, p. 206.

However, any theory of understanding and interpretation of ecclesiastical laws based on Hirsch's premises, faces multiple difficulties on the side of its ontological and epistemological foundations and on the side of the practical implications in the life of the Church as well. The theory seems to be coherent and logical, but provides only for a static description of understanding in isolation from its diachronic dimension. The dynamic character is allotted only to the significance of the text meant as an entity distinct from the meaning of the text in the strict sense. It leads to the accusations that Hirsch's theory reifies the notion of meaning (meaning existing *in and of itself*).⁴⁷ As G.B. Madison explains, this realistic conception of the hermeneutical object comes mostly from Hirsch's misunderstanding E. Husserl's conception of meaning⁴⁸ and, adopted from science, his concept of the ideal of "scientific knowledge."⁴⁹

The one-sided, voluntarist approach meets the critique coming from the canonists, too. Understandably enough, the notion of the mind of the legislator still receives a good deal of attention today. In his analysis, Torfs remarks in this regard that the crisis of the notion of *propria verborum significatio* results in conceding a greater importance to the will of the legislator. Canon 17 stipulates however, that the mind of the legislator cannot be invoked unless the proper meaning of the words remains doubtful or obscure. So it seems that *propria verborum significatio* creates

⁴⁷ See G.B. MADISON, *The Hermeneutics of Postmodernity: Figures and Themes*, Bloomington, Indiana University Press, 1988, p. 6.

⁴⁸ For this analysis, see MADISON, *The Hermeneutics of Postmodernity*, pp. 7-12.

⁴⁹ See MADISON, *The Hermeneutics of Postmodernity*, pp. 3-6.

the impression that there is a fair chance to achieve the required clarity. Torfs concludes that there is a fundamental difficulty here. One can imagine a situation when several interpreters, using a context which is obvious for this particular group and not for any other, arrives at a certain understanding of the proper meaning of the words of the law. At least theoretically, it may happen that the mind of the legislator was radically different. For already the classical authors agreed among themselves that the meaning truly intended by the legislator can never be known with certainty from the sole analysis of the verbal formula of the law. Actually, as a practical rule it is accepted that what proceeds from the proper meaning of the words is valid unless from the sources external to the verbal formula something different appears.⁵⁰ On the other hand, the evaluation of the text partly on the basis of its wording, partly on the basis of the mind of the legislator, brings forth the problem of the sufficient criterion for employing so heterogeneous a technique.⁵¹ For, as Suárez maintains, human law does not oblige, nor does it operate beyond the intention of the legislator, which the words of the law should make sufficiently clear.⁵² For all these reasons Torfs judges any revalorization of the notion of the mind of the legislator as not profitable from the juridical point of view.⁵³

⁵⁰ See MICHIELS, *Normæ generales iuris canonici*, vol. I, pp. 516-517.

⁵¹ See TORFS, "*Propria verborum significatio*," p. 189.

⁵² See SUÁREZ, *Tractatus de legibus ac Deo legislatore*, lib. VI, c.1, n.13.

⁵³ See TORFS, "*Propria verborum significatio*," pp. 189-190.

5.2.2. Towards the functional notion of the evolutive meaning of ecclesiastical laws

For many canonists, the necessity of an evolutive interpretation of the law is beyond any doubt. On the one hand, it appears to be a simple consequence of the constantly changing social world.⁵⁴ This functional assumption, however, finds its further proof on the ground of some ontological and epistemological foundations. On the basis of preceding evaluations a need for a more encompassing theory, providing for the notion of the evolving meaning, appears.

The idea of evolving understanding of laws is not new: the notion of the evolving interpretation has already been introduced into canon law.⁵⁵ This evolutive interpretation aims at overcoming the positivist limitation in understanding and interpretation of ecclesiastical law. Castillo Lara describes the evolutive interpretation as the concept which considers once promulgated law as an autonomous structure, endowed with a certain "life and will" of its own. This "will" is not immovable or static, but dynamic and active. The goal of the interpretation is then to find this "will" in its dynamic application for the requirements of the present

⁵⁴ For the interpretation in an evolutionary context, see ÖRSY, *Theology and Canon Law*, pp. 63-64. Cf. also H. SCHWENDENHEIM, "Der Geist der Gesetzgebung als dynamischer Interpretationsfaktor," in *Revue de droit canonique*, 22 (1972), pp. 315-332.

⁵⁵ For a historical and systematic overview of the problematic of the evolutive interpretation, see H. PREE, *Die evolutive Interpretation der Rechtsnorm im Kanonischen Recht*, Wien, Springer, 1980, xii, 270 p. Even some official enunciations seem to point to some kind of more open, dynamic, and evolutive interpretation of ecclesiastical law. See R. POTZ, "Ökumenische Interpretation: zur gegenwärtigen Situation der kanonistischen Auslegunglehre," in *Österreichische Archiv für Kirchenrecht*, 35 (1985), pp. 69-76.

time.⁵⁶ The will of the legislator has in this context a little importance, in contrast to “the will of the law itself”, which can be independent of the intention of the lawgiver. The “will of the law” can be found with the help of some other criteria: a particular interest of the recipients of the law, an actual trend in the society, from the purpose of the law, some social needs, etc.⁵⁷ Castillo Lara, though he admits the fact of the historical evolution of many canonical institutions, he does not, however, find any possibility for evolutive interpretation of the *ius vigens*. His understanding of the interpretation, apparently proceeding from his voluntarist perspective,⁵⁸ limits itself to searching for what the legislator actually wanted to determine and not what he could or would want to determine in a different historical and social circumstances. Besides, Castillo Lara considers the evolutive interpretation in such a form as a concept endangering the stability and certitude of the law, leading to arbitrariness and destruction of the unity of the legislation through some subjective interpretation.⁵⁹

⁵⁶ “Diese Interpretation, auch objektive Interpretation genannt, erwägt das Gesetz - einmal promulgiert - als autonomes Gebilde, mit eigenem Leben und Willen. Dieser Wille ist nicht unbeweglich und statisch, sondern dynamisch, in ständiger Aktivität; man würde fast sagen, lebendig. Der Zweck der Interpretation ist es, diesen Willen herauszufinden um ihm seine dynamische Anwendung für seine Anpassung an die Erfordernisse des Augenblicks zu gestatten” (R.J. CASTILLO LARA, “Die authentische Auslegung des kanonischen Rechtes im Rahmen der Tätigkeit der Päpstlichen Kommission für die authentische Interpretation des *ius canonicum*,” in *Osterreichisches Archiv für Kirchenrecht*, 37 (1987-1988), p. 223).

⁵⁷ See CASTILLO LARA, “Die authentische Auslegung des kanonischen Rechtes,” p. 223.

⁵⁸ Castillo Lara’s voluntarist approach appears clearly in his explanation of the obligation of the responses given by the Pontifical Council for the Authentic Interpretation of the Code of Canon Law: “[...] das Gesetz und folglich seine authentische Interpretation überwiegendermaßen ein *actus voluntatis* ist.” CASTILLO LARA, “Die authentische Auslegung des kanonischen Rechtes,” p. 226.

⁵⁹ See CASTILLO LARA, “Die authentische Auslegung des kanonischen Rechtes,” pp. 224-225, also p. 209.

To tell the truth, a certain ambiguity appears in the attitude towards the interpretation of ecclesiastical law. On the one hand, c. 17 represents a static model for any interpretation. On the other hand, in the light of the motives for the codification of Church's law, inserted also into the Apostolic Constitution *Sacræ disciplinæ leges*, it seems that only the dynamic interpretation leads to the correct understanding of ecclesiastical law. This necessity of the dynamic approach appears even more clearly when the problem of the application of law is taken into account.⁶⁰ Similarly, diachronic semantics calls for the theory of an evolving interpretation be taken into account.

The analysis of the notion of a legal norm brings another clarification to the problem of the interpretation of ecclesiastical laws.⁶¹ First of all, a legal order consists not of the legal provisions (in the sense of some sentences of a legal text), but rather of some rules of behavior. The canonical interpretation aims at exposing clearly what kind of behavior is expected in a particular situation and what are the consequences of the behavior different from the expected one. Fulfilling this aim means formulating a legal norm.⁶² Although a certain ambiguity exists as regards

⁶⁰ See R. SOBAŃSKI, "Uwagi o interpretacji prawa kościelnego," in *Prawo Kanoniczne*, 30, no. 1-2, (1987), p. 43. Cf. also PREE, *Die evolutive Interpretation*, p. 205. If one accepts Gadamer's position that every interpretation includes application, the evolutive interpretation assumes another justification.

⁶¹ Interpretation is understood here in a broader sense of the activity of the interpreters of the law. It encompasses, to a various extent, Hirsch's categories of interpretation as the explication of the meaning of the texts of law and criticism, as pointing to the significance of the law in the particular circumstances.

⁶² See SOBAŃSKI, "Z zagadnień normy kanonicznej," p. 8. Sobański remarks that c. 631 § 3 states: "Iuxta normas in iure proprio determinatas [...]." It means that norms exist within law and the goal of the interpretation is to find them. Besides, sometimes the expression *ad normam* concerns several canons - see, for instance, in c. 23: "[...] ad normam canonum qui sequuntur." In particular,

the use of the term *norma* in the Code (*norma* is synonymous with *canon*, *regula*, *præscriptum*, *constitutio*)⁶³, it is accepted that a canonical norm proposes the rule of behavior in a particular situation and that norm can be found in ecclesiastical legal texts⁶⁴ or in the customs of an ecclesial community.⁶⁵

A canonical norm postulates thus a certain way of acting. As a binding rule, it achieves its sense and goal only when it is observed by the community. The goal of the norm fulfills itself in proposing certain values to be realized by the community. It means that the particular norm emerges as a result of recognizing those values and assessing the reality in which they are to be implemented. Consequently, the concrete reality co-determines the norm and furnishes one of its criteria.⁶⁶ The content of the norm proceeds from an evaluating consideration which links the reality with the values. The result of this consideration is expressed in sentences.⁶⁷ Inevitably, as the texts which come into existence at the concrete moment of human

the Code never says anything about the interpretation of norms, but of laws. See SOBAŃSKI, "Z zagadnień normy kanonicznej," p. 12.

⁶³ See SOBAŃSKI, "Z zagadnień normy kanonicznej," p. 14.

⁶⁴ See SOBAŃSKI, "Z zagadnień normy kanonicznej," p. 15.

⁶⁵ Sobański concludes with the conviction that the canonical norm is a different entity than the canonical provision expressed in the words of the law: "The norm emerges as a result of interpretation of the provisions of laws with regard to the particular case and of the particular case with regard to the laws. So the interpretation is necessary not only to explain the provisions of law, but in addition and mainly to answer the question what a norm obliges in the concrete situation [Normę uzyskuje się w wyniku interpretacji - zarówno przepisów w odniesieniu do przypadku, jak i przypadku w świetle przepisów. Interpretacja jest konieczna nie tylko dla wyjaśnienia przepisów, lecz ponadto i zasadniczo dla uzyskania odpowiedzi, jaka w konkretnej sytuacji obowiązuje norma]" (SOBAŃSKI, "Z zagadnień normy kanonicznej," pp. 19-20).

⁶⁶ See SOBAŃSKI, "Z zagadnień normy kanonicznej," p. 16. Cf. PREE, *Die evolutive Interpretation*, p. 227.

⁶⁷ See SOBAŃSKI, "Z zagadnień normy kanonicznej," p. 17.

history, the laws bear the signs of their time. However, the historical circumstances (understood largely to include the linguistic, theological, juridical, social, cultural, and similar factors) change. Any interpretation aims at bridging the distance between the law and time through posing contemporary questions, not even foreseen by the legislator. Such an interpretation preserves the sense of the law and, at the same time, enters into the flow of time. It sees its goal not in establishing the will of the legislator as a historical fact, but in establishing the legal norm as implied by the actually binding laws.⁶⁸ Because every community lives in specific historical circumstances, the norm anchors that community in the particular moment of living out the Christian life.

Contemporary hermeneutics furnishes some other clarification of the problem of the evolutive understanding of laws. It points to the fact that neither the meaning intended by the legislator may be disregarded, nor the interpreter's activity may be rigidly limited to recovering it in any "archaeologic" manner, with no attention paid to the present circumstances. For the interpreter is conditioned in his task by various external and internal contingencies bearing on the actuality of understanding. Gadamer expresses his conviction that in the case of the legal hermeneutics the problem of understanding lies rather in a subsidiary legal principle than in any question of a general methodological kind. He finds the goal of the legal hermeneutics primarily not in understanding valid legal propositions but in "discovering law," i.e. in interpreting the law in a manner which allows the legal order

⁶⁸ See SOBAŃSKI, "Z zagadnień normy kanonicznej," pp. 10-11.

to penetrate fully the reality. Gadamer maintains that interpretation of the law is, in a juridical sense, an act of its creation, and different principles are to be applied here; for instance: the principle of analogy. He is not satisfied with using the subjective principle of the meaning and original intention of the law-giver as a canon of interpretation.⁶⁹

Consequently, Gadamer allots far greater activity to the interpreter than searching merely for the mind of the legislator. In this regard, he sees legal positivism as limiting legal reality entirely to the established law and its correct application. The application of the law to a concrete case is not a logical process of the subsumption of the individual under the universal. The distance between the universality of the law and the concrete legal situation in a particular case is essentially indissoluble, so the hermeneutical task of bridging the distance between the law and the particular case is still present, even if no change in social conditions or other historical factors occurs. It is no mere imperfection in the process of legal codification that leaves free play for its application to concrete instances: the law must be understood constantly in a new and different way. As a result, the meaning of the law emerging from its normative and its merely textual interpretation is essentially the same.⁷⁰ Gadamer insists thus on the actuality of every kind of interpretation: in every interpretation a certain kind of application takes place: "[...] we consider application to be just as integral a part of the hermeneutical process as

⁶⁹ See GADAMER, *Wahrheit und Methode*, (Supplement I), pp. 488-489.

⁷⁰ See GADAMER, *Wahrheit und Methode*, (Supplement I), pp. 489-490.

are understanding and interpretation."⁷¹ Gadamer's proposal does not mean a return to the threefold division of hermeneutics represented by Pietism (understanding, interpretation, application), nor the twofold unity of understanding and interpretation in the romantic hermeneutics. He suggests rather that hermeneutics is best understood as the union of understanding and interpretation applied as a single one integral whole.⁷² In general, understanding is always tied to a concrete historical situation; it is always applied understanding, although, in a particular case, the interpreter's conscious purpose might not include application.⁷³

Hermeneutics offers, then, some new and deepened considerations regarding the traditional notions concerned with the concept of the mind, will, and intentions of the law-giver. Although in canon law the position of the author, the law-giver, remains unique in its importance, nevertheless, hermeneutics can throw a new light on this aspect of understanding ecclesiastical laws and bring the desired balance between the voluntarist and intellectualist approach regarding the legal order in the Church. In any event, the above mentioned evaluation of the activity of the interpreter does not allow either for assigning to him only the task of the rediscovery of the author's (law-giver's) meaning or for excluding the author and his

⁷¹ "[...] wir meinen [...] daß Anwendung ein ebenso integrierender Bestandteil des hermeneutischen Vorgangs ist wie Verstehen und Auslegen" (GADAMER, *Wahrheit und Methode*, p. 291; GADAMER, *Truth and Method*, p. 308).

⁷² See J.C. WEINSHEIMER, *Gadamer's Hermeneutics: A Reading of Truth and Method*, New Haven, Yale University Press, 1985, p. 185.

⁷³ See WEINSHEIMER, *Gadamer's Hermeneutics*, p. 187.

intentions entirely from the process of interpretation.⁷⁴ Instead, the interpreter participates rather in the work of the creation of the meaning both on the basis of the legal text and his particular and actual circumstances in the world.

5.2.3. Ontological foundations of the evolutive meaning

Beginning with Dilthey, the hermeneutical tradition asserted that the interpretation of expressions of human life requires an act of historical understanding which is essentially distinct from the "scientific" understanding proper for grasping the natural world.⁷⁵ It allowed the *Geisteswissenschaften* to avoid the reductionist and mechanistic perspective of the natural sciences and to assume an approach adequate to the complexity of phenomena.⁷⁶ However, from time to time, some theories of interpretation advocate a thoroughgoing realism in matters of interpretation, inspired by the ideal of "scientific knowledge."

The voluntarist approach in interpretation of law seems to accept a strictly objective character of the author's (law-giver's) meaning, completely independent from the consciousness of the interpreter. Objective knowledge is understood here in terms of a correspondence to a fixed, independent entity. As Madison remarks,

⁷⁴ Cf. P. RICOEUR, *Interpretation Theory: Discourse and the Surplus of Meaning*, Fort Worth, Texas Christian University Press, [1976], p. 30.

⁷⁵ See PALMER, *Hermeneutics*, p. 41.

⁷⁶ See PALMER, *Hermeneutics*, p. 100.

such an author's meaning ("what an author meant") becomes an absolute object, a thing-in-itself, accessible through a scientific method. Textual meaning, then, possesses the characteristics of an invariant object. It results in a reification of meaning. Interpretation consists thus of the process of rediscovery or copying that meaning.⁷⁷

This understanding of the problem of the objectivity of meaning meets a critique based on different ontological presuppositions. Madison argues, on the ground of Husserlian transcendental idealism, that the objectivity of the object is entirely relative to the subjectivity of the subject. Intentionality of consciousness means that the object is always given with consciousness and has no meaning apart from it. It does not mean, however, that the object has no real existence, but that the meaning of reality is to be sought for in consciousness alone.⁷⁸ Actually, remaining in the perspective of transcendental idealism, reality is nothing other than the ideal object or an ideal pole of all possible conscious acts, or, in other words, the immanent, ideal unity of an indefinite number of experiences. In this sense, reality is immanent in and inseparable from consciousness.⁷⁹

Consequently, Madison proceeds with applying Husserl's understanding of the "object" and "reality" to the problematics of the hermeneutical object. He identifies different interpretations of a given text to intentional objects (Husserlian

⁷⁷ See MADISON, *The Hermeneutics of Postmodernity*, pp. 5-6.

⁷⁸ See MADISON, *The Hermeneutics of Postmodernity*, p. 9.

⁷⁹ See MADISON, *The Hermeneutics of Postmodernity*, p. 11.

noema - the content of consciousness) which are related to the hermeneutical object *simpliciter* (the real object outside consciousness), i.e. the meaning of the text.⁸⁰

What, then, is the meaning of the text? Obviously, it is not in this case something subsisting apart from the interpretive, reading consciousness, "out there" in some mysterious, transcendent realm of self-subsistent, reified meanings. It exists only in the interpretive consciousness as the meaning which is there for this consciousness. [...] The meaning of the text is no more identical with any given interpretation than the object *simpliciter* is reducible to any given *noema* or intentional object. But the meaning of the text, like the object, is not, of course, something totally other than its various determinations, either. It is precisely the *ideal* (nonreal) *telos* of interpretation, its immanent teleological goal. This is the only meaning that the meaning of the text can be said to have. The objectivity of the text cannot be divorced from the subjectivity of the interpreter; in fact, the only conceivable criterion for textual meaning is the interpreter (the whole interpretive tradition). Apart from interpretive consciousness, it is impossible to speak of the meaning of a text.⁸¹

As the traditional philosophical paradigms of reality conceived as something static, immutable, self-identical and timeless move towards the paradigms of reality understood in a historical and creative manner, so similarly the conceptions of interpretation change.⁸² In contradiction to Hirsch's position, this particular understanding of the textual meaning assumes that meaning does change:

There can be no other meaning of a text than its (actual or potential) meaning for us, and this does change. To say that our understanding of textual meaning undergoes change is equivalent to saying that the meaning which is there for us also changes. When, in the course of

⁸⁰ See MADISON, *The Hermeneutics of Postmodernity*, p. 11.

⁸¹ MADISON, *The Hermeneutics of Postmodernity*, pp. 11-12.

⁸² Among others it includes a shift from a classicist (normative and static) view of culture into its empirical (dynamic) conception which bears upon the theological and legal understanding. See, for that, LONERGAN, *Method in Theology*, pp. 301-302.

interpretation, we draw more and more meanings out of the text - and often one of these newly formulated meanings will appear to contradict a previous one - when we actively discern more and more meaning in a text, it is the text itself which becomes more meaningful, more laden with meaning. To be sure, there is something about a text considered in its own right that justifies and solicits its own interpretation - not any text will permit any interpretation - but these interpretations are not mere copies of fully developed meanings existing already in the text; they are realizations of an ever richer meaning. Instead of drawing false dichotomies between textual meaning in itself and its meaning for us, between "understanding" and "interpretation," and others of this sort, we should recognize the existence of a dialectic between text and interpretation, an irreducible dialectic which is the proper locus of emergent meaning. Interpretation, it could be said, is a motivated creation.⁸³

As a consequence, it appears that the text as not a self-contained, determinate meaning offers a certain "promise" of meaning: "The meaning of a text is what the text gives us to understand; it is an invitation and a call to interpretation, and interpretation is the effective realization of a text's promise. What a text really means is, therefore, inseparable from the history of the interpretations that it engenders."⁸⁴

Finally, there are some consequences of the Husserlian notion of meaning for the question of distinguishing among various interpretations. Instead of the procedure of validation, Madison proposes the criterion of the more fruitful, the more promising interpretation which would open more horizons of meaning. The harmonious unfolding and reciprocal confirmation of successive interpretations lead to the one that is the most promising and making the text intelligible and

⁸³ MADISON, *The Hermeneutics of Postmodernity*, p. 20.

⁸⁴ MADISON, *The Hermeneutics of Postmodernity*, pp. 21-22.

comprehensible for the reader.⁸⁵ This conception works on the pragmatic premisses. This kind of pragmatism seems to be acceptable in the interpretation of the texts which do not concern any material truth. Laws, as commands projecting some reality rather than describing it, fall into that category.⁸⁶

To sum up, the conception of an evolving meaning based on Husserlian transcendental idealism rescues the notion of the meaning of the texts from its reification and, at the same time, it safeguards the concept of the evolutive interpretation of the law from attaching to the law the personification of "life" and "will."⁸⁷ It provides also the ontological and epistemological fundamentals for the functional understanding of the necessity for an evolutive interpretation of the Church's law.

5.3. Transcendental method as an epistemological framework for interpretive endeavor

The methodical consideration of the phenomenon of understanding from the epistemological perspective (which is of particular importance for legal studies, concerned with the problem of correct understanding) requires some advanced,

⁸⁵ See MADISON, *The Hermeneutics of Postmodernity*, p. 15.

⁸⁶ See SOBAŃSKI, "Z zagadnień normy kanonicznej," pp. 4-5. In the case however, when the canons express the existential statements about the reality (for instance, when they repeat a dogma), the pragmatic criterion becomes unacceptable.

⁸⁷ See CASTILLO LARA, "Die authentische Auslegung des kanonischen Rechtes," p. 223.

reflective theory of the basic cognitive operations of the human mind (those operations of the human mind that result in some knowledge). One of the particular characteristics of the way in which the contemporary philosophical thought understands a human being lies in the rediscovery of the reality of human consciousness. Lonergan's philosophical achievement⁸⁸ provides a useful framework for presenting the world of human consciousness and for situating the question of understanding among the other activities of human mind. As J.P. McIntyre points out, the dynamic quality of Lonergan's concept of the cognitional process "[...] translates the rather static language of intellect and will into their appropriate gerunds."⁸⁹

The reflection on the procedures of the natural sciences results in a preliminary notion of a method that presents a normative pattern of recurrent and related operations yielding cumulative and progressive results.⁹⁰ The operations are transitive in character since by them one becomes aware of the object which these

⁸⁸ Bernard Lonergan's thought on the field of philosophical investigation into the world of operations of human mind seems to be adequate, sophisticated, universal, modern, but at the same time rooted in philosophical tradition. Moreover, it provides a specific self-assurance: any essential revision of the transcendental theory leads to the rejection of the revision itself. See LONERGAN, *Method in Theology*, pp. 18-19. Furthermore, Lonergan's hermeneutics presented in his *Method in Theology* shares many of the features prominent in the thought of Gadamer, Betti, Ricoeur, and Habermas, as R. McKinney points out in his article. See MCKINNEY, "The Hermeneutical Theory of Bernard Lonergan," p. 290.

⁸⁹ J.P. McINTYRE, "The Two Phases of Canon Law," in *Studia canonica*, 27 (1993), p. 336.

⁹⁰ See LONERGAN, *Method in Theology*, pp. 4-5. It is worthy to say that the method is not conceived as a set of rules and those operations are not limited to strictly logical ones. See LONERGAN, *Method in Theology*, p. 6. As Lonergan stresses, method is not any "[...] set of rules to be followed meticulously by a dolt. It is a framework for collaborative creativity. It would outline the various clusters of operations to be performed by theologians when they go about their various tasks. A contemporary method would conceive those tasks in the context of modern science, modern scholarship, modern philosophy, of historicity, collective practicality and coresponsibility" (LONERGAN, *Method in Theology*, xi).

operations intend. On the other hand, the operator becomes the subject as he performs the operations consciously. To sum up, the intentionality of the operations makes objects present to the subject; the consciousness of the operations makes the subject present to himself.⁹¹

It is characteristic for Lonergan's theory that it discerns qualitatively different levels of consciousness and intentionality:

There is the *empirical* level on which we sense, perceive, imagine, feel, speak, move. There is an *intellectual* level on which we inquire, come to understand, express what we have understood, work out the presuppositions and implications of our expression. There is the *rational* level on which we reflect, marshal the evidence, pass judgment on the truth or falsity, certainty or probability, of a statement. There is the *responsible* level on which we are concerned with ourselves, our own operations, our goals, and so deliberate about possible courses of action, evaluate them, decide, and carry out our decisions.⁹²

Therefore, the subject's consciousness expands gradually in a new dimension. It happens, when from mere experiencing he turns to the endeavor to understand what was experienced; afterwards when he passes judgment on the truth of the content of the act of understanding, and finally, when he comes to decision.⁹³

Likewise, intentionality differs from level to level. To describe it Lonergan uses the transcendentals as:

⁹¹ See LONERGAN, *Method in Theology*, pp. 7-8. That separation between subject and object, justified in natural sciences, is almost unanimously called into question by hermeneutics.

⁹² LONERGAN, *Method in Theology*, p. 9.

⁹³ See LONERGAN, *Method in Theology*, p. 9. The following observation regarding these operations expressed in the language of canon law comes to mind almost spontaneously: understanding laws locates itself on the intellectual level, judging the correctness of understanding laws on the level of judging the truth, application of laws on the level of the decision.

[...] comprehensive in connotation, unrestricted in denotation, invariant over cultural change. While categories are needed to put determinate questions and give determinate answers, the transcendentals are contained in questions prior to the answers. They are the radical intending that moves us from ignorance to knowledge. They are *a priori* because they go beyond what we know to seek what we do not know yet. They are unrestricted because answers are never complete and so only give rise to still further questions. They are comprehensive because they intend the unknown whole or totality of which our answers reveal only part.⁹⁴

Ultimately, the notion of the transcendentals adheres to the intentionality of the operations of human mind. Consequently, attentiveness takes a man beyond an unselected set of impressions to experiencing the object; intelligence leads beyond experiencing to ask the questions, reasonableness goes beyond the answers of intelligence to seek the truth, and responsibility proceeds beyond the factual knowledge to find what is truly good.⁹⁵ In other words, the basic pattern of conscious and intentional operations is dynamic: "[...] ever going beyond what happens to be given or known, ever striving for a fuller and richer apprehension of the yet unknown or incompletely known totality, whole, universe."⁹⁶ Finally, this normative pattern of recurrent and related operations yielding cumulative and progressive results is called the transcendental method because:

[...] the results envisaged are not confined categorially to some particular field or subject, but regard any result that could be intended by the completely open transcendental notions. [...] transcendental method is concerned with meeting the exigencies and exploiting the

⁹⁴ LONERGAN, *Method in Theology*, p. 11.

⁹⁵ See LONERGAN, *Method in Theology*, pp. 11-12.

⁹⁶ See LONERGAN, *Method in Theology*, p. 13.

opportunities presented by the human mind itself. It is a concern that is both foundational and universally significant and relevant.⁹⁷

Transcendental method is, in fact, nothing less than a constitutive part of every special method applied to the natural sciences, to theology, to philosophy, and to the humanities as well.⁹⁸ As a result, it is a constitutive part of the method (methods) proper to legal sciences, ultimately a constitutive part of the method (the methods) proper to canon law.⁹⁹

In order to situate the process of understanding legal norms within the framework of transcendental method, the notion of a functional specialty is useful. In his analysis of a single process of investigation from data to results, Lonergan distinguishes some successive stages, each of them being a distinct specialty.¹⁰⁰ Research is listed as the first functional specialty which makes available the data

⁹⁷ LONERGAN, *Method in Theology*, p. 14.

⁹⁸ The problem of a method of interpretation appears clearly in the polemics between Gadamer and Betti. Eventually, Gadamer claims that he has been misunderstood by his adversary: "Fundamentally I am *not proposing a method*; I am describing *what is the case*. That it is as I describe it cannot, I think, be seriously questioned... For example, when you read a classic essay by Mommsen you immediately know its era, the only era when it could have been written. Even a master of the historical method is not able to keep himself entirely free from the prejudices of his time, his social environment, and his national situation, etc. Is this a failing and even if it were, I regard it as a necessary philosophical task to consider why this failure always occurs wherever anything is achieved. In other words, I consider the only scientific thing is to *recognize what is*, instead of starting from what ought to be or could be. Hence I am trying to go beyond the concept of method held by modern science (which retains its limited justification) and to envisage in a fundamentally universal way what *always happens*" (GADAMER, *Wahrheit und Methode*, pp. 483-484; GADAMER, *Truth and Method*, p. 512).

⁹⁹ Cf. LONERGAN, *Method in Theology*, p. 23. Lonergan's hope is that transcendental method, although it does not introduce any new resource into theology, nevertheless it adds considerable light and precision to the performance of theological task. See LONERGAN, *Method in Theology*, p. 24. May we share similar expectation as regards canon law?

¹⁰⁰ See LONERGAN, *Method in Theology*, p. 126. Although that distinction is made primarily in view of theology it reflects - at least to some extent - the reality of investigation in the field of canon law.

relevant to investigation.¹⁰¹ Interpretation as the second specialty understands what was meant.¹⁰² Indeed, in his theory Lonergan insists on the clear separation of the problems of interpretation and problems in the other functional specialties¹⁰³ which - in the field of theology - include history, dialectic, foundations, doctrines, systematics, and communications.¹⁰⁴

As the analysis of Lonergan's transcendental method proves, the transcendental method is a constitutive part of every specialized method in every field of knowledge.¹⁰⁵ In canon law the cognitional structure characteristic of the transcendental method serves to clarify the field of interpretation and understanding laws. Namely, analogous to theology, some functional specialties proper to canon law exist. As Órsy puts it succinctly, in *oratione obliqua* these are identified with the tasks proper to: researchers preparing critical editions of legal texts, interpreters of texts, historians of canon law and ecclesiastical institutions, researchers of dialectical differences existing in Christian communities. In *oratione recta*, the Spirit-filled community constitutes the foundations, binding norms stay for doctrine, and

¹⁰¹ By analogy to the process of preparing data in the field of natural sciences which involves some interpretation, one can wonder if the first step in a largely understood process of investigation includes already a certain kind of interpretation (pre-interpretation).

¹⁰² See LONERGAN, *Method in Theology*, p. 127.

¹⁰³ The contemporary hermeneutics represents the opposite opinion. See LONERGAN, *Method in Theology*, p. 155.

¹⁰⁴ See LONERGAN, *Method in Theology*, p. 127.

¹⁰⁵ As Órsy says: "Such method is, ultimately, nothing else than fidelity to the internal laws of the working of our human spirit" (L. ÓRSY, "Lonergan's Cognitional Theory and Foundational Issues in Canon Law: Method, Philosophy and Law, Theology and Canon Law," in *Studia canonica*, 13 (1979), p. 185).

systematic inquiry and the communication process complete the whole structure.¹⁰⁶ While Lonergan insists on the clear separation of all the specialties, the notion of interpretation in some larger sense includes all of them under one term. Accordingly, the traditional grammatical interpretation suits the first specialty of preparing critical texts of law, the logical interpretation suits the level of interpretation (meant as a specialty), the historical one suits the phase of searching for the history of legal provisions, the analogical interpretation suits searching for dialectical differences. In *oratione recta*, the teleological interpretation stands for foundations, the genetic interpretation (in the sense of looking for the mind of the legislator) fulfils the role of doctrine, the systematic interpretation suits the specialty of systematic inquiry, and, finally, the interpretation aimed at an application of the law in view of the concrete case suits the specialty of communication.¹⁰⁷ This basic cognitional structure applied to the canonical realm allows us, however, to understand canon law in a broader perspective, providing another argument for a close relationship of canon law with theology. In this perspective, the specialty of dialectic becomes the completion of the process which generates a deeper appropriation of the faith, enabling responsible decision making (in the “way of achievement”), and the specialty of communications becomes an end which

¹⁰⁶ See ÖRSY, “Lonergan's Cognitional Theory,” p. 210.

¹⁰⁷ For the descriptions of all these different kinds of interpretation see G. MAY, and A. EGLER, *Einführung in die kirchenrechtliche Methode*, Regensburg, F. Pustet, 1986, pp. 195-220.

generates activity, enabling the individual to exercise his/her freedom in appropriate ways (in the "way of tradition").¹⁰⁸

5.4. Understanding and interpretation

At first glance, the act (process) of understanding is located within the second specialty, i.e. interpretation. The proper achievement of that level of conscious and intentional operations is insight into the previously apprehended (on the first level of experiencing) data, then followed by judgment which is the acceptance or rejection of the hypotheses and theories, and finally ending up with a decision which means the acknowledgment of values and the selection of the methods leading to their realization.¹⁰⁹ The relationship between interpretation and understanding is thus equated to the relationship between a means and an end. The purpose of interpretation is to understand the meaning of perceivable forms through which one's understanding is addressed. Interpretation is then an activity leading to understanding.¹¹⁰ Yet functional specialties are intrinsically related to one another. They are to be seen as functionally interdependent because they are successive parts of one and the same process in the manner that the later

¹⁰⁸ See McINTYRE, "The Two Phases of Canon Law," pp. 344-351. To put it in other words, the canons constitute the *terminus ad quem* and the *principium a quo* of the whole process.

¹⁰⁹ See LONERGAN, *Method in Theology*, p. 133.

¹¹⁰ BLEICHER, *Contemporary Hermeneutics*, p. 29. It allies Lonergan with Betti. See MCKINNEY, "The Hermeneutical Theory of Bernard Lonergan," p. 286.

presuppose the earlier and complement them.¹¹¹ As a result, in a scientific investigation the ends proper to a particular level become the objective of the successive operations. As an example, the activity of the textual critic who prepares the critical edition of the text is situated on the level of the first functional specialty - research. He operates on all four levels: "[..]he will select the method (level of decision) that he feels will lead to the discovery (level of understanding) of what one may reasonably affirm (level of judgment) was written in the original text (level of experience)."¹¹²

Nonetheless, the goal of the textual critic is proper to the first level of transcendental method, that is the ascertaining the data. The interpreter's goal is different:

He wishes to understand the text, and so he selects a different method. Moreover, he cannot confine his operations to the second level, understanding, and to the fourth, a selective decision. He must apprehend the text accurately before he can hope to understand it, and so he has to operate on the first level; and he has to judge whether or not his understanding is correct, for otherwise he will fail to distinguish between understanding and misunderstanding.¹¹³

Accordingly, an act (process) of understanding cannot be limited only and exclusively to that specific activity which interpretation, understood as the functional specialty, is. Indeed, an act (process) of understanding is found as an element of

¹¹¹ See LONERGAN, *Method in Theology*, p. 126. However, each functional specialty can be treated separately because each of them has its own proper end and its specific mode of operating. See LONERGAN, *Method in Theology*, p. 153.

¹¹² LONERGAN, *Method in Theology*, p. 134. Cf. also footnote 14 in ÖRSY, "Lonergan's Cognitional Theory," pp. 197-198.

¹¹³ LONERGAN, *Method in Theology*, p. 134.

each and every functional specialty, inasmuch as one operates on all four levels to achieve the end proper to a given level of operations.¹¹⁴

Understanding, as an indispensable element of all functional specialties constitutes also a fundament for interpretation. For something has to be, at least basically, understood in order to undergo the process of explanation and interpretation.¹¹⁵ Understanding, or more precisely speaking, pre-understanding allows for applying the procedures of interpretation: asking pertinent questions and searching for the answers. Pre-understanding anchors itself in the tradition in which the interpreter operates. On the basis of his pre-understanding and participation in the tradition, he asks a particular type of question. The character of the perspective of questioning expresses the temporal attitude of the interpreter and bears upon the process of the application of the law to the interpreter's situation.

On each and every level (i.e. specialty), the text of the law is understood in all its possible implications and understanding the meaning of the text of the law spirals, in a kind of the hermeneutical circle, into the meaning of the whole by applying each new insight to fill, qualify, and correct the understanding achieved on the other levels.¹¹⁶ All the functional specialties bring some new elements for enriching the meaning.

¹¹⁴ Cf. LONERGAN, *Method in Theology*, p. 134.

¹¹⁵ "It is obvious that understanding is prior to and different from interpretation. Anyone who has written a commentary on a text has been aware that he could adopt a number of quite different strategies to convey his understanding and, furthermore, that the strategy he does adopt depends upon his audience and his purposes quite as much as it depends upon his understanding of the text." HIRSCH, *Validity in Interpretation*, p. 129.

¹¹⁶ Cf. LONERGAN, *Method in Theology*, p. 159.

In a question concerning the relationship between understanding and interpretation, it appears, then, that they both are mutually dependent and interactive. This interaction forms a kind of a radio-feedback: the basic understanding of the legal text calls for eliciting the legal norm from it in the light of the contemporary (for the interpreter) situation. Reciprocally, this comprehension of the legal norm in its contemporary environment bears upon understanding better the text of the law itself, especially its limitations, or, in a Heideggerian sense: what the text of the law cannot say or does not say. The whole process moves in an ascending direction through asking newer and newer questions.¹¹⁷ This movement results in a kind of spiral understanding of the legal order which part is the norm in question. The text of the law, however, offers the point of departure for any other consideration. But, as it was shown, the whole process of understanding must not be considered as equated merely to the principle of the author's intended meaning.

5.5. Conclusion

Paradoxically enough, understanding itself is not easy to understand, and there is no adequate and satisfied theory of understanding yet.¹¹⁸ Similarly, the

¹¹⁷ "[...] coming to understand is [...] a self-correcting process of learning that spirals into the meaning of the whole by using each new part to fill out and qualify and correct the understanding reached in reading the earlier parts." LONERGAN, *Method in Theology*, p. 159.

¹¹⁸ See PARRET, *Contexts of Understanding*, pp. 1-2.

relationship between understanding and interpretation appears to be explained in a variety of ways. Nonetheless, as it appears from the analysis of the achievements of contemporary hermeneutics, various particular conceptions of the science of understanding human expressions may serve to enlighten the reality of the phenomenon of understanding. They point to some characteristics of understanding, among which the historical, linguistic, and contextual (in a larger sense) factors are the most important. Meanwhile, Lonergan's transcendental method provides a useful framework for presenting the world of human consciousness and for situating the question of understanding among the other activities of the human mind. Moreover, the transcendental method emphasizes the conscious activity of the human mind during the whole cognitional process. Admittedly, this process, basically open and unrestricted in its goal, leaves a considerable space for the interpreter's creativity.

The analysis of some philosophical presuppositions brings forth the thesis that the meaning of the text of the law evolves. This evolutive character constitutes a particular feature of the endeavor of the interpretation of the laws and guarantees keeping in touch with the requirements of answering the problems of understanding the significance of the law for the People of God of every time and place.

AFTERWORD

The Code of Canon Law promulgated in 1983 reflects some two thousand years of the Church's life and experience, guiding the People of God on its pilgrim way. While attributing a primacy to love, the Code serves, nonetheless, to introduce and to preserve an orderly development in the Church's life in our time. The eve of the Third Millennium, however, brings to that life a particular characteristic of a rapidly changing and evolving global society.

Indeed, some new challenges and some new expectations mark the contemporary existence of various human societies. They all raise a demand for a new model of peaceful coexistence and fruitful cooperation among all peoples despite geographical distances, linguistic, cultural, and social diversity. This attitude is not alien to the People of God. Saving all the pertinent differences based on the specific character of the Church, which is the sign and the means of eternal salvation, its communities experience a similar expectation. Answering the new reality of the Church's life in the new circumstances of the twentieth century, the Second Vatican Council recognized the necessity of an appropriate renewal of various ecclesiastical institutions and organisms in order to create more just and brotherly communities of the faithful. Accordingly, the renewal of the Church's law

is put into this larger perspective of the *aggiornamento*. Thus the new legislation is meant to reflect the spirit and letter of the conciliar and postconciliar documents in this particular aspect which concerns the common good of ecclesial communities. To put it in the words of Pope John Paul II, the Code of Canon Law constitutes the means of translating the conciliar ecclesiology into the norms of action for the Christian community.

However, as the constant development of the human societies assures us, no human law, and, consequently, ecclesiastical laws as such, provide the final and perfect word in matters that touch the human life in general, and the life of the Church as the community of salvation. As Father Morrisey tells us: “[...] were it the final word, we would have a dead Church; but because the Church is truly ‘alive and well,’ it is only natural that we expect it to continue to guide us along the path that leads to salvation. New situations will arise that will have to be addressed; new difficulties will have to be resolved; new developments will call for changes in structures.”¹

The development of the human societies requires a thorough reflection on the nature of their changes and various transformations. In this regard, ecclesiastical law as an objectivation of the Church's understanding of its own spiritual and social life, puts itself into the great tradition of interpreting the expressions of human life which is hermeneutics.

¹ MORRISEY, “Applying the 1983 *Code of Canon Law*,” p. 1143.

The analysis of the phenomenon of understanding and interpretation poses the existence of the core-problem of hermeneutics which is an effective communication of meaning. As hermeneutics presents us with the complex reality of the endeavor of understanding, particularly: understanding the written texts; it also assures us about the fundamental necessity for understanding ecclesiastical laws in a manner which brings together all the requirements of the theoretical achievements of some reflective theories of understanding human expressions. Hermeneutics, no doubt successful on many fields of the humanities and social sciences, allows us a sufficiently sophisticated approach to the problem of understanding laws. However, none of the present theories in hermeneutics seems to offer any immediate, or final, or ready-to-use solution of any of interpretative problems. In any event, the present vigorous discussion in the field of hermeneutics can throw a new light on the problems faced by interpreters of the written texts, and the interpreters of ecclesiastical laws in particular.

The canonical tradition of the interpretation of ecclesiastical laws however, brings to light the conflict between the common sense and theory (in Lonergan's understanding) that the canons concerned with interpretation (cc. 16-19) represent. Admittedly, this situation proves that the problematic regarding c. 17 is far from any banality. Reviewing this problematic in the light of contemporary hermeneutics points to the necessity of including multiple theoretical considerations, especially some epistemological and ontological reflection, in any future complex theory of understanding laws. On the existential side of the problem of understanding,

hermeneutics stresses the dialogical character of understanding, its dynamic character, its historical dimension as operating within and mediating with the different traditions, its actuality expressed in application to the present.

Some particular results of this research point to the traditional notion of the proper meaning of the words as requiring a new theoretical elaboration which will include in addition to the semantics of the word the semantics of the sentence. For a hermeneutical reflection underlines the contextual functioning of the word, saving however its proper semantic autonomy. The final determination of the meaning of a word - which if isolated has only a potential meaning - realizes itself in a sentence. Hermeneutics contributes then to a certain shift from some nominalistic attitude attaching the proper sense to a given word towards a more functional approach dependent on the context. It also points to some modern techniques of interpreting the texts, among which there is the semantic analysis, opening certain valuable perspectives in this regard.

Thus the ultimate concretization of the meaning of a word locates itself on the side of the context. As the traditional doctrine of the canonical interpretation always held, the meaning of the words is also sought by referring to the context. Hermeneutics stresses however such a concept of the context which will provide for a possibly holistic comprehension of the object of understanding. Inevitably, regarding ecclesiastical laws this largely understood context entails various disciplines of the Church's science and calls for a complex and thorough interdisciplinary study in which theology gains a place of preeminence.

The problem of the mutual relationship between canon law and theology brings a new perspective to the discussion of the context. The difficulty of expressing the conciliar model of the Church in homogeneous, legislative norms points to a certain indeterminateness of the conciliar ecclesiology. In addition, the imperfections of the theological, and, consequently, the canonical language bear on a certain equivocation concerning the theological context needed in the process of understanding ecclesiastical laws. All this result in the situation of a contextual field of operation which may present a certain material uniformity (in the sense of a determinate body of the conciliar documents forming the "literary" context of understanding the Church's legislation), but which in itself requires also a theological interpretation. Again, such indeterminateness of the context cannot guarantee sufficiently precise and determinate terms of understanding laws as the required norms of actions. The complexity of the problem increases when one includes the "prejudicial" character of every understanding: the multiplicity of the particular life-situatedness of the interpreters, operating always in a certain tradition, determined by the moment of the history, the uniqueness of the culture, the particularity of the language, the diversity of the possible application of the results of understanding according to the requirements of the actuality of every understanding, and the personal abilities and skills bearing on the extent and the quality of the actual personal horizon of understanding.

Facing the complexity of the conditions bearing on the correct understanding of the meaning of the law, the canonical doctrine appeals to the notion of the will of

the legislator as the ultimate instance and the decisive criterion. Recourse to the will and mind of the legislator in these circumstances proves however another difficulty of which the classical authors seemed to be fully aware. Namely, none of the available criteria guarantees the right deciphering of the internal dispositions of the legislator as the author of any legal texts. Consequently, the subjectivity of the author is held in many theories of literary interpretation as the intentional fallacy while it still remains the prevailing attitude and the guiding principle in the current understanding ecclesiastical laws.² Nevertheless, the hermeneutical reflection disproves the voluntarist conception of the interpretation of the meaning of laws as the search for the will of the legislator understood in the sense of an ultimate goal of the interpretative activity in the canonical realm. For some epistemological and ontological findings, especially those regarding the nature of the meaning of a text and the cognitional operations, combined with the experience of interpreting and applying law in the changing circumstances of today's world, point to some significant weaknesses of legal voluntarism. Meanwhile, one can raise an objection that the strategy of searching for the will of the legislator (expressed in a given law) on the ground of the notion of the mind of the legislator, which in turn is determined on the basis of the legislator's will expressed in the other laws, resembles rather the "*circulus vitiosus*" than the hermeneutical circle. It seems reasonable, as the hermeneutics of various strands proposes, that any sharp antithesis between the

² The position of Cardinal Castillo Lara (then the head of the Pontifical Commission for the Authentic Interpretation of the Code of Canon Law) concerning the task of interpretation of the Church's law is very symptomatic in this regard. See CASTILLO LARA, "Die authentische Auslegung des kanonischen Rechtes," p. 209.

two positions in the theory of interpretation - either disregarding the meaning intended by the legislator or mutilating the interpreter's activity to recovering it without any consideration for the present circumstances - should be deemed inadequate.

The findings on the ground of the particular branches of hermeneutics call for an attempt to formulate a larger theoretical perspective which will incorporate the pertinent results of hermeneutical reflection, valid for the endeavor of the interpretation of canon law, in a certain reflective theory. Certainly, this task encompasses a variety of the necessary considerations, discussions, and polemics. In this regard, the epistemological reflection based on Lonergan's theory finds the transcendental method of cognitive operations common for every cognitional activity of the human mind as a suitable matrix for considering the phenomena of understanding and interpretation in the sense of a creative endeavor. This particular theory (without, however, any false pretensions to uniqueness and indispensability) allows us to present understanding laws in all their possible implications owing to the basically open character of cognitional operations. The mutual interdependence and interactiveness of these operations being performed within the different functional specialties, create a kind of hermeneutical circle, allowing for the discovery of the meaning of the whole by applying each particular insight to enrich, qualify, and correct the understanding achieved on the other levels. Understanding and interpretation appear, then, as both mutually dependent and interactive,

contributing together to an evolving, “spiral” understanding of the legal norm in question.

The historicity of all understanding, as proclaimed by hermeneutics, empowers us to employ in the interpretation of the legal texts a method which will be suitable to determine in a diachronic manner the meaning of a particular norm as expressed by the legislator at the determined moment of time and as understood throughout its history. It allows us to search for the meaning of the legal text not only within its primordial historical circumstances, but for some other possibilities of meaning which have been revealed at later stages of the history of the particular norm and its role and further development in the Church’s life. In fact, when the law is interpreted within the changing horizon of the Christian community, it leads to the notion of an evolutive interpretation. This existential reflection, strengthened by the analysis of the legal norm in regard to the actuality of its application, finds its further clarification in the analysis of some ontological presuppositions which confirm the thesis that the meaning of the text of the law evolves. This evolutive character constitutes a particular feature of the endeavor of the interpretation of the laws and guarantees keeping in touch with the requirements of answering the problems of understanding the significance of the law for the People of God of every time and place.

One can argue, however, that the evolutive interpretation responds to the contemporary trend of considering the whole reality of the world from a perspective of the one possible approach, and, as such, it constitutes only a terminal phase in

the development of the human reflection, dependent to much on the actual beliefs and prejudices. Certainly, a kind of an “evolutionary” paradigm prevails in contemporary humanities and social sciences. Nevertheless, this paradigm finds its justification not only in the actual functioning of the societies, but also on the ground of some theoretical, ontological, and epistemological reflection. Besides, some reservations against the evolutive concept of meaning in canon law proceed from considering the evolution of the meaning of the law only in the sense of a possible contradiction of some successively discovered meanings, neglecting the whole area of a possible enrichment of the meaning of law unveiled throughout the gradual process of interpretation at the various stages of the Church’s history.

In addition, the particular importance of the thesis about the actuality of all understanding points to the reality of the process of applying the law and the specific role of the reception of the law by the community. It brings forth the problem of the active response from the community to which the law is addressed. Through understanding, acceptance, and practice of the law, the people of God become interpreters, too.³ Praxis then has its normative value. It can have a negative effect on a legal norm, rendering it unused or lacking *receptio*. However, praxis has an epistemological function, too, with respect to knowledge of the nature of the Church and of Christian experience.⁴

³ See ÖRSY, *Theology and Canon Law*, p. 49.

⁴ See CORECCO, “Theological Justifications,” p. 77.

Consequently, the role of the subject of the law increases immensely nowadays. As Father Örsy says:

Today it is no longer fitting to promulgate the law without any explanation and then to urge the people to obey. The legislator has the duty of clarifying the value that the law intends to uphold, or the good effect that the law is meant to achieve. By doing this, he recognizes that the Church is a gathering of intelligent and free persons.⁵

Cardinal Castillo Lara adds:

What canon law prescribes, with its gaze fixed on the common good and on the transcendent goal of *salus animarum*, is not an arbitrary decision but is the product of reason and of faith. In a higher vision which considers and harmonizes the rights of everyone and the common tendency to the supreme goal, it offers the greatest service to freedom because it defends it from its own deviations and saves it from the innate tendency to put what seems to be the individual good above or against the common good. The obedience which canon law demands is nothing more than the mature expression of one's own responsibility, which leads the individual to assume voluntarily what lawful authority proposes for the common good and also one's own.⁶

Admittedly then, the call for participation in the life of the Church's communities includes participation in the largely understood process of making and implementing decisions. It tends to a new understanding of laws towards one of the means of communicating specific Christian values within and through the community of believers.

To sum up, hermeneutics creates the awareness that the meaning of the text is not simply offered to a passive subject-interpreter in any routine procedure, but

⁵ ÖRSY, *Theology and Canon Law*, p. 50. Cf. ÖRSY, *Theology and Canon Law*, pp. 86, 100.

⁶ CASTILLO LARA, "Some Reflections on the Proper Way to Approach the Code of Canon Law," pp. 28-29.

as a dynamic and creative reality requiring constant interaction between various, subjective and objective, textual and extra-textual factors. But only such a comprehension of the task of understanding ecclesiastical laws seems to guarantee achieving the goal of the interpreters. The challenge still remains for the canonists to develop awareness and sensitivity to comprehend more fully and correctly the various components of the broadly understood endeavor of understanding the Church's legislation.

Of course, hermeneutics does not constitute the only and exclusive way of comprehending the meaning embedded in the world of the works of man. Substantial contribution to the problematics of understanding and interpretation may and does come from the other branches of contemporary philosophical reflection, for instance: analytical philosophy, as well. The hermeneutical analysis of the human expressions presents however a mature reflection which aspires to a totality of the perspective of understanding the world of human meaning. Such was the traditional perceiving of the art of interpretation as including the meaning that art of interpretation is to seek, achieving a deeper understanding in what we read and perceive in life, and in the law.⁷ There is a hope that enlarging the horizons of the canonical reflection to the perspective offered by contemporary hermeneutics will result in a better understanding of the Church's legislation, and, accordingly, a better service for the People of God.

⁷ See *The Art of Interpretation*, p. v.

Some further questions still remain. First, the practical one. The present attitude of the Pontifical Council for the Interpretation of Legislative Texts appears to favor the voluntarist position in understanding the role of the interpreters. Saving the Council's role of issuing authentic interpretations of universal laws of the Church, the whole interpretive activity of the Council belongs to the same level in the hierarchy of the interpretive operations, as the activity of the other interpreters. This expectation, however, does not find a visible application in the Council's approach to the practical exercise of its function. Presenting authentic interpretations without any explanations continues to resemble more the attitude of a legislator than that of an interpreter, however authentic.

Among the theoretical questions, it seems promising to exploit more fully and systematically Lonergan's ontology of meaning as a fundamental matrix not only for the metaphysical discussion, but for the reflection valid for the sciences concerned with the interpretation of the written texts. Another possible direction of any further research leads to the problematics of Lonergan's notion of conversion as employed in the task of understanding the subjective conditions on the side of the interpreter in the process of comprehending meaning.

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BIOGRAPHICAL NOTE

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