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**The *facultas* in canon law in the light of the forms of
meaning used in the *Decretum Gratiani***

Thesis booklet

Budapest 2024

I. For a correct understanding and application of the provisions of the current canon law of the Catholic Church, and even more so for the enactment of these provisions, it is indispensable to analyze and study the terminology of the canon law sources and to take into account the conclusions drawn from them. As a classical philologist, I was inspired in choosing my doctoral thesis by the possibility of using the method of philology to contribute to the study of canon law and thus to a better understanding of the Latin terminology still used in current law. My exploration of the meaning of the term *facultas* was primarily analyzed in terms of its relation to *potestas* and *ius*. I have narrowed the analysis to the term *facultas*. Nevertheless, my research on the two other terms mentioned above has nevertheless added important aspects to the exploration of the meaning of the word *facultas* in canon law. As part of the same research process, it has also become clear that the primary focus for an adequate understanding of the use of the word *facultas* in twentieth-century ecclesiastical sources must be on the analysis of the text of the *Decretum Gratiani*.

II. In the current canon law system, we can observe significant differences in the use and meaning of the term *facultas* compared to the old law. The term also occurs in large numbers in codified law. In the CIC, it is mainly used by the legislator in connection with the celebration of the sacrament. Within this context, the confessional, ordination and anointing authority is the most commonly used. However, it is also found in a number of other meanings, such as preaching authority, legal capacity, voting power, legal capacity, but also occurs in the sense of property, and even in the 1983 Code of Canon Law we can identify certain evasive behavior in relation to the term *facultas* in some places, if we read the text of a canon carefully. The notion of *facultas* is not defined in the existing codes (i.e. CIC, CCEO), nor in the CIC (1917). Textbooks or manuals on canon law provide some definitions; most of the older lexicons attempt to summarize the specific meaning of canon law in relatively short glossaries. However, when these are compared even with the usage found in the current Code of Canon Law, serious gaps can be observed. The most recent major canon law dictionary, the *Diccionario General de Derecho Canónico* (DGDC) the article on *facultas* (2012), written by Juan González Ayesta, discusses it in much greater length and depth than before, but defines only three meanings: opportunity (*posibilidad*), occasion (*oportunidad u ocasion*) and power, authority or competence (*potestad, poder o competencia*). However, Rudolf Köstler, in his dictionary for the CIC (1917), already gave the word five different meanings: 1) opportunity (*Möglichkeit, Gelegenheit*); 2) ability (*Fähigkeit, Befähigung*); 3) permission (*Erlaubnis, Gestattung*); 4) right, authorization, power (*Recht, Berechtigung, -fugnis, Vollmacht*,

Ermächtigung); 5) money, property (*Geldmittel, Vermögen*). He gave several examples of these, from which the predominance of the 4th meaning in the CIC (1917) is clear. Cardinal Peter Erdő also lists five meanings according to the Roman law, divided into two groups: 1) ability, opportunity, wealth, and 2) authorization, entitlement. Returning to the DGDC's description, he discusses *facultas* in a broad and narrow sense, narrowly as a legal faculty received by special permission from a superior, an interpretation that was also fundamental in earlier authors, e.g., Franz Xaver Wernz, or in the *Dictionnaire de Droit Canonique*, in Raoul Naz's article. Nevertheless, when he summarizes the divisions from different points of view, he indicates the problem that the term *facultas* cannot be classified under a single definition, even if the powers of confession, baptism and confirmation, which have their own regulations, are excluded. Alternatively, it is proposed that the term *f. generalis* be used instead of *facultas habitualis* (permanent or permanent authorization), since it is not subject to the rule *on f. habitualis* in canon 132. This also suggests that there is some difficulty in applying *the facultas habitualis*.

III. The current canon law textbooks and manuals also raise questions, for example, in his volume *Church Law*, which has been revised several times, Péter Erdő indicates that the nature of *facultas habitualis* raises the question of whether it involves the exercise of governmental power. He argues that it is clear from the context that it does not. Those who argue in favor of it, on the other hand, start from the old typical example of *facultates quinquennales*. Moreover, what is to be considered a permanent power? If baptismal and confessional authority, when they are permanent, then the way in which they are transmitted differs. He also raises the possibility that the CIC (1917) included *facultas* among the privileges, but the CIC does not comment on this, but some experts stress that they are exercised for the benefit of others by those who receive them. Klaus Mörsdorf, in his book on the legal language of the CIC (1917), notes that in canon 1341 (on the authorization to preach) the words *facultas* and *licentia* are used interchangeably.

There are also a few studies and a monograph in the canon law literature that deal with some aspect of the meaning and use of this word, or briefly discuss it in the context of other topics. They mainly deal with the problem of *facultas habitualis*. A number of questions can be raised, such as the one formulated by Julio García Martín CFM: whether the privileges and powers of cardinals could be more properly called rights. This problem has prompted me to examine this question in greater depth, the results of which I published in a separate article in 2022. However, a review of the source texts has not provided a sufficiently clear and unambiguous picture of the terminological question raised. García Martín also suggested that if the penitentiary canon used to have ordinary power, now he only has ordinary authority. Thus

the question is whether this has changed the nature of his office. One might say that only those powers which are not acquired by virtue of office, but are separable from office, would be real authorizations. In the context of *f. specialis*, he mentions that these delegations to the coadjutor or auxiliary bishop do not pass to the successor but cease to exist, in which he considers that they differ from *f. habitualis*. In the context of *f. specialis*, he mentions that these delegations given to the coadjutor or auxiliary bishop do not pass to the successor, but cease, and in this he considers them different from *f. habitualis*. In his opinion, there can also be no doubt that an auxiliary bishop is not succeeded in office by another auxiliary bishop in the legal sense of the word. He concludes that, because of the difficulties that have arisen, a clear definition has not been given in the Code, but only the rules on the power of deputy apply to this too.

John M. Huels also distinguishes three meanings in his study published in 2003, power or authorization, possibility or opportunity, and ability or capacity. He deals only with the issue of *f. habitualis*, and according to him *facultas* is the authority or power of a person to act legally on behalf of the Church. However, the problem outlined by Ayesta in the DGDC also appears with him, i.e. that he cannot classify specific powers into a single category. He does, however, refer to the vocabulary of the Eastern Code and notes that in total only two canons mention *facultas habitualis* explicitly in the sense of governmental power, and that in four canons it is predominantly used only in the sense of authorization, and in four canons it is used to mean power.

IV. Examining the interpretations of *facultas* described above, it is necessary to note that the historical aspect is not present in the literature at all, at most the legal institution of *facultates quinquennales* is referred to older sources, up to the 13th century. It is not, of course, the task of encyclopedias and manuals to provide a historical overview of the use of the term *facultas*, but such an overview can provide essential knowledge and shed light on its use in codified law, and help to clarify the differences between the old and the new Code in the use of the term *facultas*, which are very significant, and the uncertainties and inconsistencies that can be observed in the new Code. It may help canon lawyers of today to be able to apply the term *facultas* in a thoughtful and consistent way, in the light of their knowledge of the sources, and to understand correctly the legislation in which the legislator has used or will use the term *facultas*. The primary aim of my research and questioning, therefore, is to review the use of the term *facultas* in the *Decretum Gratiani*, which, as the first work specifically compiled for teaching canon law at university level, was widely used and thus had one of the most significant impacts on the study of canon law, and continues to play a crucial role in the correct interpretation of the law to this day.

V. Scholarly studies of Gratian's *Decretum* in the international literature have so far not paid attention to the occurrence of the word *facultas* and its precise meaning in the various passages. It is therefore to this open question that I have devoted my final conclusions, namely, what similarities and differences can be found between the *Decretum Gratiani* and codified law with regard to the use and meaning of *facultas*, and thus what meanings can be identified for the term *facultas* in the canon law in force. My research focuses on the law of the Latin Church, but I will also look at the use of the words in the Eastern Codex, as they help to interpret the Latin Codex, shed light on the intention of the legislator and show the direction of change. In my scholarly work, I have used the methods of classical philology as an auxiliary discipline of canon law to examine terminology, and I have analyzed the content of canon law using my own methods of jurisprudence and canon law. In all cases I have taken the original Latin text as a basis, because the word *facultas* can only be correctly translated into Hungarian or other languages by several different expressions, always taking into account the context and the contextual context.

In my work I sought to answer the following open questions about the use of the term *facultas*:

- 1) In which meanings does *facultas* occur in the entire corpus of the *Decretum Gratiani*?
- 2) Does the word *facultas* appear in the *Dicta Gratiani*, and if so, does it differ from the terminology of the *auctoritas* texts?
- 3) Does Master Gratian's use of the word *facultas* reflect the influence of Roman law and, if so, how did it influence his use of the word *facultas*?
- 4) Can a change in meaning be detected in the use of the word in the codified law and in the language of Second Vatican Council in comparison with the *Decretum Gratiani*?
- 5) Is there any trend in the use of the term *facultas* in codified canon law and, if so, how can it be assessed?
- 6) Is the current Hungarian translation in line with the results of the research, or are there areas where it could or should be modified?

VI. In order to answer all these questions, I have examined each of the 126 occurrences of the *facultas* within the *Decretum Gratiani*, providing translations and delimiting as precisely as possible the meaning of each use of the term. This has allowed me to define the term *facultas* in each of the contexts in which it occurs in the canon law texts under study, taking into account the canon law historical background. From the statistically most frequent to the least frequent meaning, I have compared it with the meanings found in existing codified law and in the

documents of the Second Vatican Council, in the light of which I can give a balanced answer to the questions listed above.

VII. In the entire corpus of the *Decretum Gratiani*, there are 126 instances of the term *facultas*, 36 of which are *dictum Gratiani*. The different meanings of this technical term are listed in order of frequency of occurrence in the analytical section. On the basis of the *Thesaurus Linguae Latinae* dictionary and the criteria of the research, I have classified the occurrences of the term *facultas* in the Decree of Gratian into 8 different groups of meanings:

1) *Opes, possessiones, divitiae* (III/A, III/B): money, wealth, richness

The most frequent meaning of the word *facultas* in Gratian's Decretum, 56 in all, is wealth, goods, material opportunities. In many cases it refers to the property of the Church, and usually occurs in plural forms (48 cases). Some of the singular forms (8) also refer to the property of the Church, but in others to the property of individuals, and are rendered by the term 'material opportunity'. The meaning of wealth here is also in contact with the meaning of ability or opportunity, and there are times when these cannot be completely separated. Everywhere except in Roman legal texts (councils, popes, church fathers, *dicta Gratiani*), wealth is the most frequent meaning of the word *facultas*.

2) *Possibilitas* (I/A/1): natural possibility

The second most frequently used meaning of *facultas* in Gratian's Decretum is natural possibility, with a total of 24 occurrences, of which 8 are *dicta Gratiani*. This is the most common colloquial meaning of the word in Latin. It is usually accompanied by the gerund of a verb in genitive, sometimes by a gerundive structure in genitive, or by the genitive of a noun. In Gratian's Decretum, the word *facultas* is only found in singular in the possible meaning. In several different places it is used of the possibility of harming or hurting, and of sinning, the other natural possibilities all occur only once, e.g., the possibility of teaching, confessing sins, entering the church and praying, escaping, selling or buying back slaves, making a free choice, giving a speech, etc.

3) *Ius* (I/B/2): right

Among the meanings of the term *facultas*, I have classified 13 places in this category, from 12 different texts. Everywhere, without exception, it is accompanied by a *gerund* or *gerundivum genitive*. In this category of meanings, the influence of Roman law is predominant, four texts are quotations from different Roman legal texts, and St. Ambrose speaks of an ancient legal institution, *refugium*, which existed in Roman law, but the other seven also bear the influence of Roman law, both in their language and in their thinking. The text of the Council of Carthage III clearly uses the language of Roman process law, applying the rules of Roman procedure to a church trial. Very important are the two dictums of Gratian, in both of which he quotes

verbatim from Roman law, testifying that Master Gratian used and argued from the then rediscovered Justinian Codex, calling it *auctoritas* himself. The other two quotations are most probably later insertions from Roman law into the *Decretum Gratiani*, one quoting it verbatim, the other quoting it in substance, and thus an important witness to the vocabulary and state of language of Gratian's day, in which *facultas* means law, approached from the point of view of legal possibility. The 'right to make chrisms' mentioned in the letter of Pope Gelasius I is significant because it relates to the sanctifying function of the Church, in relation to which the use of the term *facultas* is foregrounded in the current Code of Canon Law. The *facultas / potestas / ius baptizandi* in Gratian's *dictum* is also one of the most important places for our study, both because it sheds light on the use of the term by Gratian himself and because we find the same terms in codified law in connection with the administration of sacraments and holy orders. This is the only place where all three words used as synonyms, *ius*, *potestas* and *facultas*, are used in the same text and in the same line of thought, so this is the best evidence that Master Gratian did not perceive any distinction between them. Three occurrences are found in conciliar texts, two in papal decretals and one in the writings of a patristic author, i.e. St. Ambrose. With regard to the two occurrences of *facultas accusandi* quoted from Roman law, it is important to bear in mind that not only *facultas accusandi* but also *potestas accusandi* occurred in the *Codex Iustiniani*, and that they were synonymous with each other. This may have influenced Gratian's use of the words *facultas*, *potestas* and *ius* as synonymous words when he was explaining the text of St. Augustine.

4) *Potestas* (IA/1): power, empowerment

The fourth most common meaning of *facultas* (11 occurrences, in 7 different texts) is power. Almost everywhere it is accompanied by the genitive of the gerund and, except in one place, is in the singular. Of the 11 textual places, 6 are from the fictitious text of the Council of Rome and the 2 corresponding *dictum Gratiani*, and only the other 5 are 'authentic' *auctoritas* places. Of the 11 occurrences, the phrase *facultas disponendi* is used six times. From a canon law point of view, power is the most important meaning of *facultas* to examine, since it is this meaning that has come to the fore in its present usage when used in the sense of authority. Mostly in connection with the material goods of the Church and with ecclesiastical dignities and offices, but always in connection with the life of the Church, *facultas* is used in the sense of power. It was not used exclusively in connection with the property and offices of the church, and it was by no means a technical term, as is clearly shown both by the places of *auctoritas* and by Gratian's repetition of other words. In the period 414 – 1100 we find places of *auctoritas* where it occurs in this sense, but there is a long pause in its use between 693-1059, from the Council of Toledo XVI to the Council of Lateran. Apart from the four *dicta Gratiani*, it occurs four

times in the texts of councils, twice in papal decretal letters, and once in the writings of the church father, i.e. St. Augustine.

5) *Possibilitas* (IA/1): canonical possibility

I have listed here 11 occurrences of the term *facultas*, from 8 canons. Eight *auctoritas* places and three *dictum Gratiani* belong to this group of meanings. It occurs only in texts of the 4th to 6th centuries, and afterwards only in dictums of Gratian, which are Gratian's own commentaries. Two of them are particularly long, in which he expresses his own ideas. The various occurrences are basically all legal texts. No authentic conciliar text contains the term *facultas* in this sense. From a substantive point of view, we see that it appears in connection with the life of the Church, promotion of clergy, accusation of magistrates, contradiction of them, possibility of deliberation, and we also find it in general litigation and marriage law in 1-1 places. Sometimes it is not easy to decide whether it is a natural or a canonical possibility, e.g., in the case of Augustine, whether it is a right or only a canonical possibility (f. *dimittendi et ducendi*).

6) *Vis, potestas, indoles* (II/A, II/C): force, ability, character

The word *facultas* also means ability, and the *Thesaurus* distinguishes between physical, mental or spiritual, and oratorical ability. Of these, four times in Gratian's *Decretum* the word *facultas* is used in the sense of spiritual or mental ability, and once in the sense of physical ability, three of these in Gratian's dictum, and these certainly attest that Master Gratian himself used the term *facultas* in the sense of ability/strength, both for physical and spiritual or mental ability. However, in the course of my research I also found one place that deserves special attention, in one case it meant canonical ability, so I will highlight this one: *facultas reddendi iuris*, which I have translated as ability to administer justice. It is a literal quotation from the *Codex Iustiniani*, and a *palea*. This meaning is worthy of attention not only because it is not included in the *Thesaurus*, but also because, although in one instance, this specific canonical meaning of *facultas* is present in the *Decretum Gratiani*.

7) *Venia, licentia, libertas* (II/C/1, II/C/2): permission, liberty

I could identify the word *facultas* in this sense in 3 places in *Decretum Gratiani*, all three in *auctoritas*, in *dicta Gratiani* this sense of *facultas* does not occur at all, it is the only one, all the other senses listed by the *Thesaurus* are found in Gratian. However, it is worth noting that here too there is a common sense of the meaning and a legal sense, so it occurs in the text of the Council of Carthage V, when it is equivalent to the word *licentia* and means a permission in the canonical sense.

8) *Occasio, opportunitas* (I/A/1): occasion

In one text the word *facultas* appears in an occasional sense – a special meaning of natural possibility – in a text from St. Augustine, *auctoritas*, and in the preceding *dictum Gratiani*. In

St. Augustine, it is worth noting, this is the only such place in the *Decretum Gratiani* where *potestas* is used as a synonym for *facultas* in the text, and it also means occasion, a meaning also rarely encountered, so here we see that *facultas* and *potestas* are not only words related in the sense of power and empowerment, but can also be words related in the sense of occasion.

VIII. Is there a change in the meaning of the codified canon law and the vocabulary of the Second Vatican Council as compared to the *Decretum Gratiani*, with regard to *facultas*?

While in Gratian's *Decretum* the most frequent occurrences were the colloquial meanings (natural possibility, opportunity, permission, liberty, ability, money, wealth, richness: 89 out of 126 places; 70%), in the current codified Latin canon law there are only 3 such places, and none in the Eastern canon law. In the documents of the Second Vatican Council, however, there are many examples of these, the majority of all occurrences (48/34) having one of these meanings, so that the proportion is similar to that of the *Decretum Gratiani*, although the proportions of the different meanings and the cases to which the word refers have changed completely.

In the current Code of Canon Law, the special canonical meanings occur in a total of 67 cases. The report of legal possibility (*possibilitas*) is found in 11 cases in the *Decretum Gratiani*, in 8 canons of the old Codex (i.e. CIC [1917]) this report is present in *facultas*, and in the current Latin Codex it occurs only 5 times. In the texts of the Second Vatican Council this meaning appears only once (in Gratian no authentic conciliar text has this meaning), and in the Code of the Eastern Churches no canon has this meaning.

In the current CIC and CCEO, the meaning of power (*potestas*) occurs most often in the Latin Code in the term *facultas*, in a total of 57 places, because the Hungarian word empowerment falls within this range of meanings. In the Latin Code in force, the occurrences of the sense of empowerment can be classified basically into two groups according to the opinion of canon lawyers, one where it is used in connection with the sanctifying function of the Church, and the other where it is used in connection with the ecclesiastical administration or jurisdiction (*iurisdictio*). In addition, in my opinion, there are general rules on permanent or permanent powers in canon 132 which apply to both groups. In the current Code of Canon Law, 46 occurrences belong to the first group, so we can see that this meaning is predominant in the current codified law, with all the others being present in the text of the laws only to a much lesser extent. The Code of the Eastern Churches is even more dominated by the occurrences relating to the sanctifying mission of the Church, and these indicate a conscious effort on the part of the legislator. However, its use is not exclusive, with the exception of the confessional mandate, and other expressions occur in parallel. A very good example of this is the power to consecrate a church, which has probably avoided consistent terminological standardization

because of its peripheral nature, and in relation to which I have taken 13 different terms from the age of codified law which express and describe the specific canonical competence to consecrate or bless a church, only one of which is the term *facultas*, which is not even mentioned in the Latin Code in this context. In the documents of the Second Vatican Council there are only 4 places where the word *facultas* is used in this sense. In the CIC, 10 out of 57 other occurrences appear in connection with ecclesiastical administration (of which only two parallel occurrences of the term *facultas* appear in the CCEO), but perhaps it would be more accurate to say that they are not directly connected with the sanctifying function, since even administration or jurisdiction may not be applied to all of them. These are clear indications of the direction already described above, the word *facultas* being used as far as possible only in connection with the sanctifying function in the two current Codes. In the documents of the Second Vatican Council, there are five instances of authorizations which are not directly related to the sanctifying function.

In addition to the above, in the CIC, the word *facultas* is used in a canon in the sense of a power of attorney, not a power of attorney in the canonical sense, but a power of attorney as it is known from Roman law and secular law. This is a meaning of the word that was not found in the *Thesaurus* or in Gratian, but the canon nevertheless bears traces of the general categories and terminology of Roman law.

Compared with Gratian's *Decretum*, we see that while there the meaning of power accounted for a tenth of all occurrences, in the current Codex it is used in 57 of the 70 occurrences of the word 'power', i.e. 80% of the occurrences. In the Code of the Eastern Churches only in this sense is it used in all 52 occurrences (100%).

I have been able to identify the meaning of the term *facultas* as permission (*licentia, venia*) in only one place in the current CIC. Compared to the CIC (1917), there is a clear and significant decline in the use of this meaning in the current Code of Canon Law. In the documents of the Second Vatican Council this meaning does not occur at all. Compared with the *Decretum Gratiani*, it can be said that there, too, it occurs only once in the legal sense of permission, as in the current CIC. However, while there the leaving of bishops to another diocese was not permitted, this canon on general process has a Roman law origin.

Law (*ius*) is signified by *facultas* in three canons of the CIC, and in the texts of the Second Vatican Council it occurs three times in this sense. Compared with the Gratian's *Decretum*, we see that there the meaning of law was more frequent than that of power, and that for the most part places quoted from Roman law or of Roman legal origin were used. In the CIC in force, the sense of empowerment predominated absolutely, and the proportion of the meaning of right was halved. The concept of voting rights, which has its origin in Roman law, is found in only one canon.

The legal sense of capacity occurs in the only canon of the current Latin Code, and only since October 16th 2009, since it is the 3rd § of canon 1009 promulgated by *Omnium in mentem*. In Gratian's *Decretum*, legal capacity also appears in a single canon (quoted from Roman law).

In the canons that still contained the word *facultas* in the CIC (1917) and were included in the CIC but no longer contain *facultas*, the most frequent substitution is *facultas* for *potestas*, with four cases of *potest* and an infinitive, two cases of *licentia* and *licitum est*, and one case of *ius*, and one case of the term being dropped from the text. These alternations draw attention to the fact that, according to the actual meaning of the term *facultas*, *facultas* and *potestas*, *ius*, *licentia*, *licitum est*, *potest*+ inf. are interchangeable, synonymous with each other, and it is the intention of the legislator that decides which one to use.

IX. Is there a trend in codified canon law towards the term *facultas*, and if so, how can it be assessed?

While in the *Decretum Gratiani* the word *facultas* occurred mainly in connection with the material goods, dignities and offices of the Church, and was not considered a technical term, in the codified law we witness a conscious effort to use it as a technical term, especially during the second codification, which seems to be particularly violent in the Code of the Eastern Churches. However, this, in my opinion, impoverishes the *latinitas canonica*, because *facultas* loses its richness of meaning whenever it can be identified as being on the borderline of two meanings, e.g. when it carries the meaning of both law and legal possibility, *ius* or *possibilitas*, when used synonymously, loses the meaning of the other in the text. There have also been examples of the intersection of right and freedom, and I believe that the use of a synonym carrying only one of these meanings significantly alters the meaning of the text. The interpretation of it as a technical term raises a number of problems, probably also because it was not one before, and partly as a result of the spontaneous natural change in language it has come to be used for various canonical competences and legal phenomena which, as originally, are not common in nature today (at most there are similarities between them). It is therefore not possible to classify the current occurrences of *facultas* under a single definition. Indeed, canonical competences are determined by the official teaching of the Church, not by the nature of the *facultas*, e.g. whether the competence to consecrate a church building (*ius*, *potestas*, or *facultas*, etc.) belongs to whom and can be transmitted, and to whom. As for the relationship between *ius*, *potestas* and *facultas*, it may be said that it depends primarily on which of the properties or aspects of a particular canonical the legislator wishes to emphasize.

X. Does the current Hungarian translation of the CIC correspond to the results of the research, or are there areas where it could or should be modified?

The translation of some canons of the current Hungarian translation should be changed:

- 1) in canon 174, *facultas* means a mandate, not an authorization;
- 2) in canon 1009, § 3, it is a capacity, not an authorization;
- 3) in canon 1482, it is also not an authorization but a permission;
- 4) in canon 1659, neither an authorization, but a legal possibility.

In all four of these places, the translation is in favor of the word ‘authorization’, which highlights the recent rise of the sense of authorization over the other meanings of *facultas* and reminds us that it is always worthwhile to examine carefully the meaning of the word in a canon law text.