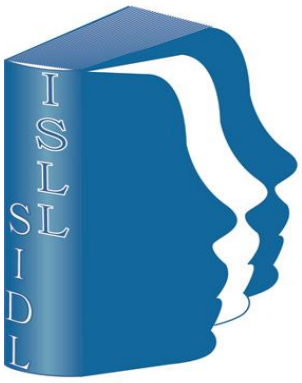

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Essays

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The invisible canon
Points of contact between legal and literary texts

Lilla Lőrinczi[*] [**]

Abstract:

This paper aims to explore the links, similarities, and differences between legal and literary texts, with particular reference to the concepts of canon and canonisation. Whilst the terms *'canon'* and *'canonisation'* are most often associated with sacred texts, literary texts, or music, this paper encourages the reader to move away from these traditional meanings and explore how the term's scope can be extended to include legal texts and the mechanisms related to them. The present study considers whether legal texts undergo a comparable process of canonisation to that of literary texts, and how this approach might contribute to a more profound understanding of legal texts. This analysis aims to explore whether legal texts possess a particular characteristic that might explain why the concept of canon has not become a prominent subject of inquiry within legal scholarship.

Key words: law and literature, literary texts and legal texts, canon, canonisation, and canon formation.

1. Introduction

When considering the concept of canon and the process of canonisation, it is common to envision sacred texts, literary works or a musical technique. In this paper, which draws primarily on Hungarian literary scholarship and Hungarian legal scholarship, the latter situated within the continental legal tradition, I invite the reader to set aside, even if only momentarily, familiar interpretations and allow me to demonstrate how the scope of the term can be extended to legal texts and the mechanisms related to them. The reason for this invitation is that, in the domain of continental law, the notion of canon has not emerged in relation to legal texts to the same extent as in literature, and I believe it is worth examining why this area has

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remained largely untouched, appearing only in passing references.
The application of this popular literary concept to legal texts may raise questions similar to those posed by the so-called canon wars in the United States. The question of literary curricula has been the subject of debate since the 1960s, when the issue first arose. Since then, the debate has continued with varying degrees of intensity. The fundamental question that forms the basis of this debate is who has the authority and the power to determine the status of these literary works and, consequently, the cultural values they embody. In addition to the established directions of law and literature research, which are law in literature and law as literature, American legal scholar Judith Resnik identifies this direction, the canon, as the third research direction in the field. By examining which values are considered to be of paramount importance in a legal canon or canons of law that receive little attention, it is possible to shed new light on the elements of power present in the legal system and how they operate.[1]
The initial step in this process is a comparative analysis of legal and literary texts. The juxtaposition of these two types of texts may reveal a feature of legal texts that elucidates the reasons why the canon, which has become such a popular object of research (and often a source of problems) in literature, has appeared to a much lesser extent, and why it has remained less explored in the field of law.

2. Differences and similarities between legal and literary texts

In contemporary discourse, the term 'canon' has evolved to signify two distinct senses. From one perspective, the concept of the canon is to be interpreted broadly, referring to the cultural context as a whole, including all the works that are used to create cultural narratives. In another perspective, the concept of canon also has a "narrower, professional or interpretive community" meaning.[2] If the subject of the present text is approached from a broader sense, the canon may be defined as a tool used to maintain the past in the present. For the past to be regarded as the present, its elements must be reused, re-read, re-interpreted and re-evaluated. Maintaining these elements — artworks in the narrow sense of the term — on the surface of cultural memory demands significant effort; not all works of art can be expected to meet this fate: "Only a small percentage acquire this status through a complex procedure which we call canonisation."[3] According to this general definition, canonisation is most often associated with works of art. Therefore, it is worth asking whether all information relating to the concept of 'law' is canonised through legal texts and, if so, whether this process is similar to literary canonisation.
Firstly, it is important to note that this paper considers legal texts to be distinct from other types of text. The same position is taken regarding literary texts, which are also considered distinct from other types of text, in contrast to poststructuralist

[1] Judith Resnik: „Constructing the Canon" Yale Journal of Law and Humanities 1990. 221–230.
[2] László Boka: A divattól a kultuszig; Kanonizációs stratégiák Sütő András műveinek magyarországi recepciójában [From fashion to cult; Strategies of canonisation in the reception of András Sütő's works in Hungary] Doctoral dissertation. (Budapest: 2006).
[3] Aleida Assmann: Canon and archive. in Astrid Erll – Ansgar Nünning (ed.): Cultural Memory Studies. An International and Interdisciplinary Handbook (Berlin, New York: Walter de Gruyter 2008) 97–107., https://doi.org/10.1515/9783110207262.2.97

literary studies.[4] As Márton Falusi, a Hungarian literary scholar and poet, writes: "If we deconstruct the literary and the legal text, blurring their boundaries, we render both essentially incapable of combat; we smoke out referentiality from the former, normativity from the latter."[5] Therefore, to compare the two types of text, they must be considered as distinct entities.

In the following pages, I will make some general observations about the differences between the two types of text. This will help those new to the subject of law and literature understand it a little better. Approaching the concept of the canon with this information in mind may reveal whether a segment of legal texts exists that is unsuitable for literary canonisation.

The first point of comparison is the purpose of the two types of text.[6] A legal text is "always normative, or at least requires normativity,"[7] meaning it seeks to directly or indirectly influence human actions in the direction it deems desirable. This need for normativity primarily applies to legislation and judgements, as well as the texts of secondary discourse — academic and non-academic writings on law — insofar as they seek to influence the existing legal order.[8] This picture is further nuanced by explanatory texts, which function as meta-texts; their main goal is to explain and analyse legal sources, contracts and rulings. While the primary audience of these texts is legal practitioners, they may also be law students or individuals with no legal training.[9] These texts indirectly influence human actions, but the question is whether they meet the level of normativity expected of legal texts — in other words, can they be considered normative texts?

However, when analysing the function of the literary text, or more precisely, the function of literary fiction, it is in fact discussing the function of literature itself. This is because literature, with the possible exception of comics, can be considered synonymous with the text, with being in the text.[10] Literature, as such, is characterised by its persistent attempt to define its object, with its primary focus being the ontological question of the mode of existence of works of art and the identity of those works. These questions are occasionally accompanied by the question of whether literature can have a social impact at all, and if so, in what way and to what extent.[11] Given this, the purpose of this paper is to raise some of the

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[4] Márton Falusi: Eszmetörténet és/vagy kultúratudomány – avagy van-e a „jog és irodalom" kutatásoknak módszertana. [The history of ideas and/or cultural studies - or is there a methodology for research on "law and literature".] in Attila Farkas – Dávid Kovács (ed.): Eszmetörténeti lehetőségek (Budapest: Magyar Művészeti Akadémia Művészetelméleti és Módszertani Kutatóintézet 2022) 31– 49., 33., https://jog.tk.hu/uploads/files/FalusiMarton.pdf

[5] Márton Falusi: Jog és irodalom, haza és haladás a magyar eszmetörténetben. [Law and literature, home and progress in the Hungarian history of ideas.] Doctoral dissertation (Pécs: 2017), 37. https://ajk.pte.hu/sites/ajk.pte.hu/files/file/doktori-iskola/falusi-marton/falusi-marton-vedes-ertekezes.pdf.

[6] The categories used as a basis for comparison were based on the grouping described by Balázs Fekete in his booklet on educational methodology entitled Írásmódszertan joghallgatóknak. Balázs Fekete: Írásmódszertan Joghallgatóknak [Writing Methodology for Law Students.] (2017), https://www.eltereader.hu/media/2017/08/MF5_Fekete_READER1.pdf

[7] ibid.

[8] ibid.

[9] Zsolt Ződi: Jogi szövegtípusok. [The types of legal texts] Magyar Jogi Nyelv 2017/2. 20–29. https://joginyelv.hu/jogi-szovegtipusok/#_ftn2.

[10] René Wellek – Austin Warren: Az irodalom elmélete [The Theory of Literature, Hungarian edition] (Budapest: Osiris 2006) 29–38.

[11] Eric Achermann – Klaus Stierstorfer: „Squaring Law and Literature: Materiality – Comparativity –

possible purposes of literature.

The function of literature in the history of aesthetics has been a subject of debate, with scholars oscillating between two extremes. These two extremes are the dulce et utile, the pleasant and the useful, a concept familiar to readers of Horatian poetry. To consider only one of these would lead to a severe misunderstanding of the function of literature. Therefore, it is appropriate to opt for the solution where the function of literature is the combination of these two adjectives; that is, literature can give enjoyment and can also convey knowledge. A widely contested perspective is that literature serves as a medium for discovering and gaining insight into truth, offering a cognitive approach that is often overlooked by philosophy and science. However, according to Wellek and Warren, the discourse surrounding literature's allegedly distinct cognitive mode is fundamentally a semantic problem. The semantic content of words such as 'knowledge' and 'cognition', among others, determines how a particular theorist in literary studies ascribes this specific cognitive potential to literary texts.[12] However, it should also be noted that there is a school of thought in the history of aesthetics which considers art, and literature in particular, to be a unique form of influence. This influence can be defined as the conscious or unconscious persuasion of the reader to accept as true the artist's or writer's perception of life.[13] The science of rhetoric represents another area in which law and literature intersect. The American legal scholar Kenji Yoshino has identified it as one of the two strands of research in the field of law as literature: "Law-as-literature (on the other hand), subdivides into two concerns: the study of rhetoric in legal writing and the application of literary theory to the law."[14] It is also important to mention the theories that focus on the Aristotelian phenomenon of catharsis as the function of literature. The most widely accepted meaning of the still controversial concept of catharsis is that literature (poetry) is meant to relieve the emotional tension in both writers and readers.[15]

Taking the above into account, it can be concluded that literary texts do not possess a singular, definitive function. "As the context of understanding shifts, the function takes on new and novel forms, and a new sense of use is created. [...] Ultimately, it is not so much that we utilise the text, but that the text utilises (or even 'exploits') us to give form to the possibilities of its meanings."[16]

Constitutivity" Law & Literature 2022/4. 457–489., https://doi.org/10.1080/1535685x.2022.2052598.

[12] Wellek–Warren (11. footnote) 32–35.; For further insight into the relationship between scientific knowledge and literature in the wake of modernity, see: Bernadette Malinowski: „Literary Epistemology" in Aura Heydenreich – Klaus Mecke (ed.): Physics and Literature: Concepts – Transfer – Aestheticization (Berlin, Boston: De Gruyter 2022) 279–302. https://doi.org/10.1515/9783110481112-012.

[13] Wellek–Warren (11. fn.) 36.; Eliot sees Dante or Lucretius, for example, as responsible propagandists, who still have the ability to influence humanity through their poetry, thus passing on the system of thought they have mastered. – T. S. Eliot: „Poetry and Propaganda" The Bookman February 1930. 595–602.; cf. Mihály Szegedy-Maszák: „Szerepjátszás és költészet: összhang vagy ellentmondás?" [Role-playing and poetry: harmony or contradiction?] Irodalomtörténet 1992/4. 715 728. https://epa.oszk.hu/02500/02518/00265/pdf/EPA02518_irodalomtortenet_1992_04_715-851.pdf.

[14] Kenji Yoshino: „What's Past Is Prologue: Precedent in Literature and Law" The Yale Law Journal 1994/2. 471–510., 473., https://doi.org/10.2307/797009.

[15] Wellek–Warren (11. fn.) 37.

[16] Antal Bókay: Bevezetés az irodalomtudományba [Introduction to Literary Studies] (Budapest: Osiris 2006) 13.

The following point of comparison between the two types of text is that of interpretation. The reason why it is worth taking a moment at this point of comparison is that, as Hungarian literary scholar Mihály Szegedy-Maszák says, "[the] canon is a product of the imagination, but interpretation cannot exist without it."[17] Although Szegedy-Maszák's statement refers to works of art, it is undeniable that interpretation is central to the field of law. The necessity of interpretation is an inescapable part of legal work and practice, aided by the methodology of the so-called interpretative canon. In this instance, the concept of the legal canon — in the case of the interpretative canon — is already apparent. However, for the purpose of achieving a more comprehensive understanding of this text's implications within the broader context of the literary canon, it is necessary to temporarily set aside this particular focus. According to this broader concept of the notion, "every canon constitutes a system of values."[18] Consequently, the canon can not only serve as a background for interpretation, but also as a normative and formative force in the social practices of the interpretative community to which it belongs[19] — thus affecting legal practices as well.

A notable distinction in the manner of interpretation between legal and literary texts is the presence of a definitive, institutional, authoritative entity — the Curia in contemporary Hungary[20] — that possesses the capacity and obligation to adjudicate disputes concerning interpretation. Under its authority and position, this entity is empowered to formally resolve these disputes. However, this closure is intended to be provisional, as it is also possible for legal texts to be reinterpreted once a particular meaning has been established. In such cases, the court will continue to be the body with the authority to determine the (provisional) meaning.[21]

Interpretation is a perpetual, open-ended process, where, in the reception of literary texts, even highly personal interpretations can emerge. However, if we reflect on the characteristic features of the canons mentioned in passing, we can be aware that the field of interpretation of literary texts is not infinite, and that there may be authoritative forums that determine the possible interpretations. A fundamental distinction between these two types of texts, however, is that these forums cannot democratically present themselves and the meanings they adopt as exclusive.

Moreover, the purpose of interpretation differs between the two types of text. As demonstrated above, the fundamental requirement for legal texts is unity of interpretation. This means that the result of any interpretation should be the one

[17] Mihály Szegedy-Maszák: A bizony(talan)ság ábrándja: kánonképződés a posztmodern korban. [The mirage of (un)certainty: canon formation in the postmodern age.] In Mihály Szegedy-Maszák: Minta a szőnyegen [Pattern on the carpet] (Budapest: Balassi 1995) 76.

[18] Szegedy-Maszák (18. fn.) 77.

[19] Assmann (4. fn.) 100.

[20] The Fundamental Law of Hungary, Article 25 (3): "In addition to the provisions of paragraph (2), the Curia shall ensure the uniformity of the application of law by courts, and shall make uniformity decisions which are binding on courts."

[21] Fekete (7. fn.) The interpretation of law, which necessarily precedes the application of law, is a "special activity of exploration of meaning [...] carried out by judges"; regardless of whether it is the initial interpretation or the reinterpretation of a term, the possibility of completing the interpretation process will rest in the hands of the court. – Zoltán Tóth J.: „A dogmatikai, a logikai és a jogirodalmi értelmezés a magyar felsobírósági gyakorlatban" [Dogmatic, logical, and scholarly legal interpretation in the jurisprudence of the Hungarian Supreme Court] MTA Law Working Papers 2015/17. 11., 15., https://jog.tk.hu/mtalwp/a-dogmatikai-a-logikai-es-a-jogirodalmi-ertelmezes-a-magyar-felsobirosagi-gyakorlatban.

that each interpreting community considers to be correct,[22] since the norm has a binding force.[23] In the case of literary texts, the aim of interpretation is to discover what the text offers to the reader. By contrast, in the context of law, the aim is to establish the most appropriate meaning that governs the specific life or social situation to which the law is intended to be applied.[24]

The third point of comparison is the *readership*. If we want to examine the canons in more depth, we cannot ignore this aspect, given that the community involved in the process of canonisation is shaped and formed by the canon. The canon determines the community's perception of itself, as the reading public inevitably becomes part of the tradition;[25] however, the community also impacts the canon itself and the process of canonisation.[26] That is why it is worth paying attention to what values the underlying legal canons uphold and reinforce, and what kind of community they create as a result. After all, communities are constantly being shaped, and this phenomenon occurs in two scenarios: firstly, when an individual becomes a member of the community of interpreters of legal canons; and secondly, when they are influenced by the values that are currently upheld by practitioners of the profession and institutions specialising in the preservation of values.

In my opinion, this is the point where the two types of text overlap the most. Even though legal texts are created for a closed audience — potentially those who wish to assert their interests through the law[27]— the range of areas that the law leaves untouched is quite narrow. And since we encounter the law at every turn, it is understandable that there is a need for it to be accessible and comprehensible to everyone. That is to say, legal texts must satisfy the needs of a universal readership: "The law is only capable of effectively conveying expectations if the content it presents is identifiable to the target groups. These target groups are largely composed of ordinary people, as most legislation is aimed at *ordinary people*, seeking to guide and influence their behaviour in the expectation that they will comply with the law."[28] Consequently, if the principle of legal certainty is considered to be of importance, there is no justification for the restriction of the readership of legal texts to those individuals who already possess the special skills and knowledge necessary to interpret legal texts.[29] In the context of literary texts, it is unsurprising

[22] Zoltán Tóth J.: „A jogi hermeneutika gyakorlata Magyarországon: az írott jogi normaszövegek értelmezésének módszerei a magyar felsőbírósági jogesetek tükrében" [„The practice of legal hermeneutics in Hungary: methods of interpretation of written legal norms in the light of Hungarian Supreme Court cases"] in Balázs Fekete – István H. Szilágyi – Anna Kiss – Zsolt Ződi (ed.): Iustitia körülnéz. Tanulmányok a jog és irodalom köréből [Iustitia looks around. Studies in law and literature] (Budapest: Szent István Társulat – az Apostoli Szentszék Könyvkiadója 2016) 179–201.

[23] Péter Szilágyi: Jogi alaptan [Principles of law] (Budapest: Osiris 2006) 314.

[24] Zoltán Tóth J. (23. fn.).

[25] Szegedy-Maszák (18. fn.) 78.

[26] Steven Tötösy de Zepetnek: „Toward a Theory of Cumulative Canon Formation: Readership in English Canada" Mosaic: An Interdisciplinary Critical Journal 1994/3. 107–119. 109.

[27] Fekete (7. fn.).

[28] László Blutman: „Bírói jogalkalmazás és szöveghű értelmezés" [Judicial application of the law and literal interpretation] JeMa – Jogesetek Magyarázata 2010/4. 94–104., https://jema.hu/article.php?c=77. (Highlighted by me.)

[29] This realization and the resulting demand for clarity have already appeared in Hungarian judicial system: "We can expect positive changes in the comprehensibility of court judgments in the near future, as in 2017 the Curia organized mandatory court training at all courts in the country as part of a program entitled "Comprehensibility and Professionalism in the Application of Law by the Courts," with the aim of familiarizing judges with the recommendations of the so-called style guides compiled

to hypothesise the existence of a universal readership. Writers and poets can dedicate their works to any individual, and these works can be accessed by anyone.[30] However, this point of comparison is questionable from the perspective that the reading audience can be understood in several ways: it can refer to those for whom the text was intended, but also to those who actually read it. It can be hypothesised that the result of employing either definition will not differ significantly between the two types of text.

In contrast, there are significant differences in the style and vocabulary of the texts, which brings us to the final aspect of our comparison.

While it is acknowledged that "different types of legal texts have different linguistic characteristics,"[31] it is important to note that, in general, the style and vocabulary of legal texts are largely determined by their technical nature. As a consequence, in contrast to natural language, which is unlimited, legal language is limited and restricted, as the use of technical terms is essential for effective communication within the field. This necessarily narrows the possibilities for capturing certain phenomena in a linguistically unique way.[32] Legal language therefore, strives for monosemy, i.e. it "limits multiple or ambiguous meanings, and does not contain metaphors, words with related meanings or evocative words, nuances of meaning, etc."[33] The character of legal language and, by extension, legal texts is defined by their foundation in written language and the stylistic features of that form of expression. These stylistic features, which include "old, traditional expressions, almost ritualistic turns of phrase, and long and complex sentence structures,"[34] also determine oral expressions. In "spoken language situations [...] word usage, expressions, idioms, and even sentence structure are closely linked to and echo the wording of written legislation."[35] Zsolt Ződi, a Hungarian legal scholar, attributes an additional characteristic to legal texts, namely the so-called complex purpose. In his view, the purpose of legal language can be "to settle legal disputes, but it can also be to steer existing social practices in a certain direction, or even to prohibit them, to collect state revenues, or simply to coordinate."[36]

In order to discuss the vocabulary and style of literary texts, we must refer back to the statements made about the purpose of literature. This is because the specific nature of the literary use of language stems from the fact that, in contrast to other

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by the two previous legal practice analysis groups." Edina Vinnai: „Harc a szavakért – Közérthetőség a jogban" [Fighting for words – Comprehensibility in law] Alkalmazott Nyelvészeti Közlemények 2017/1. 42–53. https://matarka.hu/koz/ISSN_1788-9979/vol_12_no_1_2017/ISSN_1788-9979_vol_12_no_1_2017_042-053.pdf.

[30] Fekete (7. fn.).

[31] Vinnai (30. fn.).

[32] See: Miklós Szabó: „Nyelvi átfordítások a jogban" [Linguistic translations in law] in Miklós Szabó (ed.): Nyelvében a jog : Nyelvhasználat a jogi eljárásban (Miskolc: Bíbor 2010) 9–28.; Vinnai (30. fn.)

[33] Szabó (33. fn.); and Ződi (10. fn.): "A characteristic feature of legal texts [...] is that in certain areas, the vocabulary does not differ radically from everyday vocabulary, and where it does differ, it is not because of the law, but because of the regulated area. What differs radically from the everyday register in law is the *formation and use of meaning*.Similar to the text bases of other technical languages, law seeks to *monopolize meaning*: sometimes narrowing, sometimes expanding its scope. Similar to the text base of other technical languages, law seeks to appropriate meaning: sometimes narrowing, sometimes expanding its scope compared to everyday meaning, but in any case giving it a specific legal meaning." (Highlighted in the original.)

[34] Szabó (33. fn.).

[35] Vinnai (30. fn.), Szabó (33. fn.).

[36] Ződi (10. fn.).

branches of art, literature does not have its own medium of communication. Therefore, the material of literary works is language itself.
As a result, any individual aspiring to describe literary language may encounter a multitude of challenges.[37] However, it can be said that literary language, in terms of its signifying function, does not specifically strive to make the relationship between the sign and the signified completely unambiguous. Another significant feature is expressiveness, defined as the desire to familiarise the reader with the mood of the narrator/lyrical self and, beyond familiarisation, to influence the reader's behaviour, a process aided by sound symbolism in addition to the content of what is communicated.[38]

In the context of canonisation, this final aspect assumes particular significance when one discovers or believes one has discovered various textual connections in literary texts, particularly in the context of the so-called internal history of literature. The dialogue between authors and texts, as well as the connections within and outside texts, i.e., intertextual references, logically builds on the idea that a text or text fragment should appear in its entirety and unchanged. However, while the consistent and accurate use of technical terminology is undoubtedly important in legal texts, and indeed legal texts can refer to each other verbatim, the immanent nature of canonisation may be much more subtle than in literary texts.

3. What exactly is a canon?

"The problem, of course, is that this canon is hidden, fragmentary,, implicit, and extremely difficult to trace."[39]

But why has the issue of literary canon and canonisation been raised so rarely in connection with the examination of legal texts? To answer this question, let us now take a look at the canon.
The ancient Greek term kanon (κανών) began its career as an architectural term meaning "measuring instrument."[40] According to German cultural anthropologist and Egyptologist Jan Assmann, the word underwent a shift from its concrete meaning — a type of reed with divisions that could be used as an architectural tool — and eventually settled on four figurative meanings: (1) measure, criterion; (2) model, example; (3) rule, norm; (4) table, list.[41] The purpose of the canon as an instrument was to aid orientation: "it enabled precision and provided reliable reference points and guidelines"[42] — in both art and in human actions. In this

[37] Cf. "We must also recognize that the difference between art and non-art, between literary and non-literary language, is very relative." Wellek–Warren (11. fn.) 25.
[38] Wellek–Warren (11. fn.) 22-25.
[39] György Kálmán C.: „A kis népek kánonjainak vizsgálata" [An examination of the canons of small nations] Helikon 1998/3. 255., https://mandadb. hu/dokumentum/232934/helikon_1998_3.pdf.
[40] Magdaléna Csóti: A farkasember anatómiája. Kanonizációelméleti fejtegetések a farkasember-irodalom kapcsán. [The anatomy of the werewolf. Discussions of canonisation theory in relation to werewolf literature.] Doctoral dissertation (Budapest: 2014) 51., https://doi.org/10.15476/ elte.2014.015.
[41] Jan Assmann: A kulturális emlékezet. Írás, emlékezés és politikai identitás a korai magaskultúrákban [Cultural Memory and Early Civilization: Writing, Remembrance, and Political Imagination, Hungarian edition] (Budapest: Atlantisz 1999) 106.
[42] Assmann (42. fn.) 112.

respect, it imposed the indispensable condition that followers of canonical works should follow the examples presented as accurately and faithfully as possible.[43] The meaning of the ancient *canon* underwent a significant change from the second century AD onwards. This change culminated in the fourth century AD, when the word no longer referred to a specific standard or model as a result of its use by the Christian Church. Instead, it came to refer to the "recognised body of sacred literature."[44] The expansion of meaning resulted in a key shift: the canon, which had previously been based on human authority, became divine in origin.[45] As a result, the initially abstract standard of measurement ultimately took on the meaning of the norm of norms.[46] Adherents of the Jewish and Christian faiths came to perceive the canon no longer as a mere set of rules or forms created by humans, but rather as a collection of narratives contained within the holy book. These narratives were regarded by their readers as inexhaustible, encyclopedic accounts containing truths revealed by God. They encompassed everything from common assumptions to professed beliefs to rules of conduct.[47] The ancient concept of the canon essentially sought to define what should be adhered to. It was "the guiding principle in the retrospective evaluation of humanity and human creations",[48] but the canon underwent a change in meaning and gave way to future connections based on the selected texts. In other words, "the canon also demanded to shape the future."[49]

From the modern era onwards, the term 'canon' no longer referred exclusively to works seeking to regulate or considered sacred texts, acquiring a new meaning in the process. This new meaning is almost identical to the everyday meaning of canon used today: a collection of authors and works of outstanding value. Initially, in the modern era, the term was used for works written in classical languages. However, as a result of translations and imitations, by the 18th century, works written in folk and national languages had caught up with those written in classical languages and, over time, began to replace Greek and Latin works.[50] The emergence of the concept of national literature, the spread of book printing and reading, the changing role of the individual and the strengthening of the middle class all contributed to the term 'canon' becoming associated with literature. However, the evolving meaning of the term was also influenced by the growing commercialisation of literature and the increasing complexity of copyright regulations.[51]

The brief history of the term outlined here was, of course, not quite so linear, but it may help explain why defining the canon is so difficult, given that earlier meanings still strongly influence our everyday usage today. As the above brief overview demonstrates, the term 'canon' has a relatively recent history in the field of

[43] Assmann (42. fn.) 105.
[44] Assmann (42. fn.) 113.
[45] Jan Gorak: „A modern kánon létrehozása. Egy irodalmi eszme teremtése és válsága" [The Making of the Modern Canon: Genesis and Crisis of a Literary Idea] in Rohonyi Zoltán (ed.): Irodalmi kánon és kanonizáció (Budapest: Osiris 2001) 27.
[46] Assmann (42. fn.) 114.
[47] Gorak (46. fn.).
[48] Csóti (41. fn.).
[49] Csóti (41. fn.) 52.
[50] Gorak (46. fn.) 47.; Csóti (41. fn.) 53.
[51] Csóti (41. fn.) 53.; Csilla Bagoly: Kánon 'MM' Kánon. A 20. század végi amerikai és magyar kánonviták okai és az irodalmi kánon definiálási kísérletei. [Canon 'MM' Canon. The causes of American and Hungarian canon debates at the end of the 20th century and attempts to define the literary canon] Doctoral dissertation (Miskolc: 2000) 9.

literature.

Despite the difficulty of defining the term, I would like to propose a few definitions that allow us to examine the canon and the formation of the canon with legal texts. In the preface to a Hungarian monograph on the literary canon titled *Literary Canon and Canonisation*,[52] Hungarian literary historian Zoltán Rohonyi writes that the canon is "not merely a *collection of texts, authors, styles of speech and genres,* but an *organic system of commentary* and *independent interpretation that determines their selection,* characterised by closing and opening, prescription and its continuous negation."[53] This definition shows that the canon encompasses much more than a collection of texts considered to be of outstanding value. It is evident that texts, authors, styles of speech and genres represent essential elements of the canon. However, according to Rohonyi, these elements are accompanied by a process of selection and a system of institutions necessary for interpretation.[54] A close examination of these elements — the text, the selection process, and the accompanying commentary, as well as the interpretation system — reveals a notable resemblance to the domain of legal texts. And if we take another look at the aforementioned definition, it reveals the absence of any reference to the purpose of the texts. While it is conceivable that the purpose could be aesthetic, it is equally possible that it is normative.

Jan Assmann goes so far as to place the origin of the canon formula directly in the sphere of law.[55] According to his definition, "the concept of canon refers to that form of tradition which has the greatest binding force regarding content and the greatest degree of fixity regarding form."[56] This tradition follows the call of the so-called canon formula, which states the following: "Nothing is to be added to it, nothing is to be taken away from it, nothing is to be changed in it."[57] The canon formula prescribes unchangeability as a requirement for many types of social acts: witnesses and messengers must adhere to it, and the same applies to compliance with laws and contracts.[58] The fact that a phenomenon originates in the domain of law does not guarantee its continued existence or demonstrable existence in that same domain in the present day. Having said that, if one of the purposes of the canon is to pass on a body of knowledge and a set of values to future generations without change,[59] then legal texts are also an integral part of this. Consider, for example, the *canonical* text of the law and literature movement: Robert M. Cover's *Nomos and Narrative.*

According to Hungarian literary historian György Kálmán C., a completely different

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[52] Zoltán Rohonyi: „Előszó. Kánon, kánonképződés, kanonizáció. Vázlat egy fogalmi tartomány működéséről és történeti funkcionalitásáról" ["Preface. Canon, canon formation, canonisation. An outline of the functioning and historical functionality of a conceptual domain."] in Zoltán Rohonyi (ed.): Irodalmi kánon és kanonizáció (Budapest: Osiris 2001) 7–15.

[53] Rohonyi (53. fn.) 8., (Highlighted in the original)

[54] As Mihály Szegedy-Maszák writes: "[The canon] can be described as a system of interpretative procedures that enable a community to maintain its own interests." Szegedy-Maszák (18. fn.) 78.

[55] Assmann (42. fn.) 105.

[56] Assmann (42. fn.) 103.

[57] Assmann (42. fn.).

[58] Assmann (42. fn.).

[59] "If we recognise that forgetting is a natural part of personal and cultural life, then remembering is the exception, which – especially in the cultural sphere – requires special and costly precautions. These precautions take the form of cultural institutions." In her study of the canon and the archive, Aleida Assmann describes the canon as an actively circulating memory, responsible for preserving the past in the present. Assmann (3. fn.) 98.

approach defines the canon as "not a collection of elements or an abstract system, but rather the product of conventionalised actions, while canonisation is the execution of an action with special power."[60] Although this definition interprets the process within the field of literature, it shifts the focus to the question of which actions ultimately produce the canon or canons and, perhaps more importantly, who carries out the canonisation process. Even in literary texts, it is clear that it is professional or vocational groups and people of culture who create, change and maintain the canon,[61] and further discussion is needed on how this can be understood as a system.[62] In the case of legal texts, however, due to the requirement of legal certainty, this relationship cannot be a matter of speculation. The circle of persons authorised to legislate and interpret the law must be clearly defined in legislation. This is particularly important if we assume that the canon or canons of legal texts can be aligned with the system defined by the hierarchy of legal sources.

However, the case of legal texts is not necessarily so clear-cut. Theories of canonisation typically distinguish between institutional and immanent canonisation.[63] In this framework, the conception of the actors and operations of institutional canonisation closely parallels Kálmán C.'s account — it is, by definition, embedded within a context of power.

Rohonyi, by contrast, draws on Harold Bloom's concept of 'anxiety of influence', focusing more on the intertextual-psychological aspect, as an example of the mechanism of immanent canonisation: "essentially, this is the internal process of literature — the Oedipal, intertextual dynamic between authors and authors, works and works."[64] Or, as the Hungarian literary historian and philosopher Zoltán Kulcsár-Szabó puts it: "Alongside its social functions, literature is itself canon-forming, that is, it canonises itself."[65] To this end, literature draws on intertextual procedures — imitation, interpretation, innovation — through which it is able and willing to connect with the texts of the past, and which, from antiquity onwards, have shaped the relationships between texts.[66]

I believe it would be worthwhile to examine this division in the context of legal texts as well — that is, to trace the evolution of both the immanent and the institutional textual corpora — since the above definitions contain nothing that would confine such modes of textual organisation strictly to literary works. In this

[60] Kálmán C. (40. fn.).

[61] Kálmán C. (40. fn.).

[62] The canon must therefore be viewed primarily in terms of its systematic nature. It needs cultural institutions and interpretive-authenticating communities to legitimise its concept of value and system of norms. The selection and interpretation of works endowed with distinguished authority are influenced by power interests. Canons and cultural institutions are mutually dependent: on the one hand, these cultural institutions are inconceivable without power structures, and on the other hand, the authority and permanence of canons depend precisely on these institutions." László Boka: „Kanonizáció és a »szerzői arc« az 1957 utáni erdélyi magyar irodalom magyarországi recepciójában" [„Canonisation and the »author's profile« in the reception of Transylvanian Hungarian literature in Hungary after 1957"] Irodalomtörténeti Közlemények 2001/1–2. 57–70., http://itk.iti.mta.hu/megjelent/2001-12/boka.pdf.

[63] Rohonyi (53. fn.)

[64] Rohonyi (53. fn.) 12.

[65] Zoltán Kulcsár-Szabó: „Irodalom/történet(i)/kánon(ok)" [Literature/History(/Histories)/Canon(s)] in István Fried – Flóra Kovács –István Zoltán Szabó (ed.): Szövegek között. Budapesti és szegedi tanulmányok az irodalomelmélet/ történet köréből (Szeged: JATE BTK 1996) 16–38., http://acta.bibl.u-szeged.hu/31941/1/szovegek_001_016-038.pdf.

[66] Kulcsár-Szabó (66. fn.).

light, one may ask whether, alongside the directed production and systematic arrangement of legal texts, there might not also be an involuntary, quasi self-regulating form of process at work. To observe this at a systemic level, it is first necessary to determine precisely what participates in the process of canonisation. The solution lies in a text typology which, in support of the openness of the canon, likewise conceives of the relations between texts as dynamic. For an adequate account of the canonical functioning of legal texts, I therefore take as my point of departure the text-type taxonomy outlined by Zsolt Ződi, who distinguishes between two fundamental categories. The first comprises texts internal to the legal system, including sources of law and operational texts ("any text that confers rights and obligations upon specific persons or records legally relevant facts.").[67] The second consists of text-types external to the legal system, so-called explanatory texts (commentaries, textbooks, monographs, scholarly articles).[68] The canonisation of the text types belonging to all three categories, as well as the texts that form the transition between them, is worth examining.

Canons formed from various texts may be built, for example, from what are regarded as the most important decisions of the Constitutional Court, from the most prestigious legal textbooks, or even from the typical problems and problem-solving approaches of the legal profession.[69] These are maintained through deliberate efforts through a mechanism that elevates only a small number of texts — those meeting very strict selection criteria — to a quasi-sacred status,[70] thereby preserving their apparent unassailability. Moreover, if we accept the possibility of legal canonisation and deem it worthy of examination, a broad field of further enquiry opens up. For instance, we could ask to what extent this process is culturally determined. Do other legal systems form different canons? Are legal canons formed differently? For example, does the development of legal canons differ between Anglo-Saxon and continental legal traditions?

Departing for a moment from the concept of legal canons and returning to literary ones, we can see that, in literature, we are undoubtedly dealing with a culturally defined and delimited concept that depends on interpretive communities.[71] As Szegedy-Maszák writes, "While it is possible to speak of an international canon in music and perhaps in the visual arts, there are no institutions in literature comparable to concert halls or art galleries."[72] In other words, due to its linguistic nature, literature cannot achieve universal status; no institution establishes a universal canon. Linguistic exposure also exists in legal texts, of course, but without

[67] Ződi (10. fn.).

[68] ibid.

[69] In connection with the last example, American legal scholars Balkin and Levinson, writing in the context of U.S. law, refer to another form in which the legal canon may appear: the so-called *deep canonicity*. This term denotes the characteristic modes of thinking, reasoning, and discourse specific to a given culture. The qualifier *deep* reflects the fact that such modes of thought, reasoning, and speech are often not the result of conscious choice or decision. Jack M. Balkin – Sanford Levinson: „Legal Canons: An Introduction" in Jack M. Balkin – Sanford Levinson (ed.): Legal Canons (New York, London: New York University Press 2000) 14–24., https://doi.org/10.18574/nyu/9780814709030.003.0004.

[70] Assmann (4. fn.)

[71] The plurality of interpretive communities is both the condition, the guarantor, and the producer of the plurality of canons." György Kálmán C.: Te rongyos (elm)élet! [You ragged (con)templation!] (Budapest: Balassi 1998) 134.

[72] Mihály Szegedy-Maszák: Irodalmi kánonok [Literary Canons] (Debrecen: Csokonai 1998) 12.

the requirement of aesthetic primacy. Therefore, we can assume that legal canons are organised similarly to literary canons, in accordance with the communities that interpret them.

Returning to the comparison of common law and continental legal traditions, it is evident that the mechanisms of textual organisation differ between the two, whether it be institutional or immanent. This divergence can be traced back to a fundamental characteristic: the respective relationship of each legal system to written law, for the written form constitutes an essential precondition for the formation of textual corpora. Concerning writing in the two legal systems mentioned above, it is worth noting that although "common law […] is gradually shifting towards fixed texts, becoming textualised, thus moving closer to continental, written law […]",[73] judicial precedents still prevail over statutory law.[74]

In common law jurisdictions, the most productive application of the concept of canon and the process of canonisation may be to frame them in relation to the mechanisms that establish the hierarchy and authority of precedents. It is plausible that these collections are shaped by comparable internal and external factors, much like literary canons.

Bearing in mind the multitude of interpretive communities, but without delving into the reasons behind the formation of canons, J. M. Balkin and Sanford Levinson have identified three distinct areas of canon within American constitutional law: the pedagogical canon, the cultural literacy canon and the academic theory canon. In all three cases, a normative, prescriptive attitude emerges. This attitude considers which cases and texts should be included in the given canon. The aim is threefold: (i) to familiarise law students with important American societal values, encourage them to internalise these values, and prepare them well for their legal careers; (ii) to enable citizens who consider themselves educated to participate in social debates on American law; and (iii) to allow legal scholars to thrive and advance in academic life.[75] As this example illustrates, the distinction between these three categories is already apparent, being based on the field of law: Balkin and Levinson examine constitutional law. Balkin also defines the distinguishing feature of legal canons, which play an important role in American constitutional law education. These canons are known as 'anti-canons' or 'counter-canons'. The counter-canon consists of cases and legal texts that students — and, consequently, future legal professionals — are taught to recognise as erroneous or flawed. These cases demonstrate the ways in which the Constitution should not be interpreted and the types of judicial conduct that judges should avoid.[76]

When we think of 'canon wars', we may recall that counter-canons are, of course, also present in literature. However, while efforts there have aimed to reshape the established curriculum by removing certain elements and including others in the canon, the legal counter-canon plays a different role. Rather than shaking up the cases canonised by casebooks — a possibility to which Judith Resnik draws attention

[73] Zsolt Ződi: „A korábbi esetekre történo hivatkozások mintázatai a magyar bíróságok ítéleteiben" [Patterns of references to previous cases in Hungarian court judgements.] MTA Law Working Papers 2014/1. 15., http://real.mtak.hu/18350/1/mta_law_workig_ paper_2014_01_zodi_zsolt.pdf.

[74] ibid.

[75] Balkin – Levinson: (70 fn.) 5–10.

[76] Jack M. Balkin: „Wrong the Day It Was Decided, Lochner and Constitutional Historicism" Boston University Law Review 2005. 677–726., 681.

— it highlights and maintains, by consensus, legal material that can serve as a counterpoint to erroneous decisions.

In addition to the canon discussed above, the common law tradition recognises another meaning of 'canon', namely 'canon of construction'. These are general rules or assumptions that help judges interpret legislation. These rules can be divided into two main groups: the so-called semantic canons, also known as linguistic or descriptive canons, and the so-called substantive canons, i.e. normative or policy-based canons. The latter do not primarily take linguistic considerations into account, but rather established policies or legal outcomes and objectives.[77] This canon of construction also seeks to maintain a list of interpretation methods considered correct and applicable as a closed list, thereby fulfilling the substantive elements of the definition of canon.

Even when moving away from the context of common law and continental law, I believe that examining law and canonicity still raises further unresolved questions. Focusing on the conceptual elements of canon, we might ask whether all the elements of the conceptual set belonging to a legal canon can be found in law. For example, are there legal apocrypha? Additionally, bearing in mind an essential characteristic of canonicity — the command of immutability — we might ask what the relationship is between legal text and interpretation, or how legal instruments can be used to canonise our seemingly eternal values.

To return to the question I raised earlier — namely, why the notions of legal canon and canonisation have not yet been the subject of sustained discussion — I cannot, unfortunately, provide definitive answers. Perhaps literary theory has so forcefully appropriated the field that other disciplines have not yet had the opportunity to respond; perhaps scholarly attention has been directed primarily toward institutional modes of textual organisation; or perhaps the law-and-literature movement is still too young for this issue to have come into proper focus.

Wherever the truth may lie, the present study has sought to demonstrate that neither the meaning nor the definitions of the term *canon* imply that only literary texts, or collections thereof, may be elevated to canonical status. After all, the legal canon may be no more than a case of not seeing the forest for the trees: it may well exist alongside the literary canon — we simply have not yet recognised it.

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[77] Benjamin Eidelson – Matthew Caleb Stephenson: „The Incompatibility of Substantive Canons and Textualism" Harvard Public Law Working Paper No. 23-06, Harvard Law Review 2023/2. 515– 587. https://doi.org/10.2139/ssrn.4330403.

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