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Justinian and the *Corpus Iuris*. An Overview

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The most important legal undertaking of Antiquity was the compilation of what was later called *Corpus Iuris Civilis* promulgated by Emperor Justinian. It is rightly said that this body of laws and jurisprudence, along with Aristotelian writings and the Bible, constitutes one of the three pillars of Western culture. The *Corpus Iuris*, a true temple of justice, is both an endpoint and a starting point in world history. Histories of Rome usually end with Justinian's *Corpus Iuris*; Byzantine histories and Western legal histories, on the other hand, begin with the *Corpus Iuris*. Justinian's codification is the bridge that links Antiquity, the Byzantine Empire, and Europe. It is also the link between civil law and common law, and between canon law and civil law. To know about the *Corpus Iuris* is to know about something that was instrumental for the development of justice and law in the past, continues to operate in the present, and will probably have its impact in the future. The *Corpus Iuris*, especially the Digest, has not only a historic value but an intrinsic one because it embodied the creative spirit and permanent character of all of Roman jurisprudence.

Emperor Justinian. One of the most prominent legislators in human history, Justinian the Great was Eastern Roman emperor from 1 August 527 to his death on 14 November 565 in Constantinople. Flavius Iustinianus was born around 482 CE at Tauresium (in the current Republic of Macedonia). His father, Sabbatius, was the brother-in-law of the childless Emperor

Justin I. Emperor Justin adopted his nephew Justinian and provided him with an excellent education in Constantinople, in both Latin (Justinian's original language) and Greek. Appointed to *magister militum* (high military command) in 520 and consul in 521, Justinian married the former actress Theodora, who died childless in 548.

In 527, Justinian became co-regent, and later that year, after Justin's death, he succeeded his uncle as sole emperor. A vigorous, hard-working, and energetic man, talented but unattractive in character, Justinian planned to restore and unify the old glory of the Roman Empire under one emperor, one religion, and one law. According to his ambitious project, he continued the wars with the Persians, and, in the West, he regained North Africa, Italy, and a part of southern Spain from the control of the barbarian invaders. Warfare occupied much of Justinian's efforts and attention. His military success was, however, ephemeral. His successors lost most of the West, and the empire was reduced to the East, both in territory and in culture. During the lengthy reign of Heraclius (610–41), the official language of the empire became Greek.

Justinian's ecclesiastical policy was based on the Eastern idea that church and state were inseparably linked as inherent elements of a single Christian empire. Justinian felt he had the duty of improving the governance of the church, of defending orthodox religious doctrine, and of fighting to end dogmatic divisions. He passed many religious laws against pagans and heretics, and he passionately loved religion and theology.

The most complex doctrinal religious issue during his reign was the struggle between the orthodox Christological doctrine accepted at the Council of Chalcedon (451 CE) and the Monophysite doctrine. According to the Council of Chalcedon, both divine and human natures coexist in the person of Christ. On the contrary, the Monophysite doctrine affirmed that Christ

has only a divine nature. Monophysitism was strongly supported in Syria and Egypt. Moreover, Theodora, Justinian's wife, was also a strong supporter of Monophysitism. With little success, Justinian tried to resolve dogmatic divisions by subordinating the church to the emperor (caesaropapism). He was not able to develop a categorical distinction between church and state as it was later cultivated in Western Christianity. Justinian was a solid Chalcedonian, but at the end of his life, he came closer to the doctrine of Aphthartodocetism, deeply related to Monophysitism, which affirmed that the body of Christ was naturally incorruptible. His new approach led to the expulsion of some leading Chalcedonian bishops.

Justinian's compilation. The purpose of Justinian's compilation was to restate the whole of Roman law in a single legal source of law with binding force over the entire empire. Justinian's major legal work, often called a codification, was not a codification in the modern sense but rather an up-to-date and systematized compilation or collection of legislation and legal literature. Emperor Justinian himself gave no collective title to his compilation. He used only once the expression *corpus iuris* in the generic sense of body of law (CJ 5.13.1pr: *omne corpus iuris*). In the Middle Ages, the whole compilation was called *Corpus iuris* by the medieval glossators. From the end of the sixteenth century up to our own time, to distinguish Justinian's compilation from the compilation of canon law (*Corpus Iuris Canonici*), jurists have usually referred to Justinian's compilation as *Corpus Iuris Civilis*. That collective name was first used in the edition by Dionysius Gothofredus (Denis Godefroy) in 1583.

The Justinian compilation, composed in Latin, consists of three independent legal projects, all related by his single overriding intention for the whole: a body of imperial constitutions (the Code), a body of brief extracts of jurisprudence (the Digest or, in Greek, Pandects), and a textbook for the students of the whole empire (the Institutes). After the

publication of the Code, Justinian also continued with his legislative efforts for more than thirty years by promulgating about 150 new constitutions (the Novels: *novae leges*). Some of these novels were to be applied throughout the empire, some of them in just part of it. They were written in Latin or Greek, based on their intended scope of application. The authoritative edition of Justinian's *Corpus Iuris Civilis* was produced at the end of the nineteenth century by Theodor Mommsen in collaboration with Paul Krüger (the Digest), and by Paul Krüger himself (the Institutes and the Code). Rudolf Schöll and Wilhelm Kroll produced the authoritative edition of the Novels in 1895. The standard edition of the *Corpus Iuris* contains the Institutes and the Digest in the first volume, the Code in the second volume, and the Novels in the third volume (Berlin: Weidmann, 1895).

Some of Justinian's constitutions usually referred to by their first words (e.g., *Imperatoriam, Tanta*) provide information about the plan for the codification. The main architect and inspiration for the codification was Tribonian. Born in Side, in Pamphylia, around 500 CE, Tribonian was a practicing lawyer and an erudite writer in both Latin and Greek. A man of great talent and capacities, in 529 he was appointed *quaestor sacri palatii* (senior legal official). He was a member of the commission in charge of the codification of imperial law (529) and of the commission in charge of the preparation of the body of classical legal literature. In 532 he was removed from his office of quaestor because of popular hostility to him emerging from the Nika riot, but he continued working on the legal codification as a *magister officiorum*. In 533, he headed the commission that prepared the Institutes and, one year later, the commission of the second edition of Justinian's Code. He died around 542.

Justinian's Code. In February 528, just a few months after his accession, Justinian established a commission to prepare a comprehensive compilation of imperial enactments that

were to bear his name: Justinian's Code (*Codex Iustinianus*). It would be a consolidation and update of existing codes (the Gregorian, the Hermogenian, and the Theodosian Codes) and the imperial constitutions enacted afterward. Members of the commission, headed by the politician John of Cappadocia, included Tribonian, Theophilus (a law professor in Constantinople), and two advocates of the court of Constantinople. The commissioners were explicitly authorized to edit texts: omitting what was obsolete, superficial, or contradictory; restating in clear language what was ambiguous; and changing or adding what was necessary. The commission worked hard and with notable speed to prepare the Code in fourteen months. The Code was enacted by the imperial constitution *Summa* on 7 April 529 and sent to all provinces. It came into force in the whole empire on 16 April 529.

After the promulgation of the Code, Justinian went on to issue so many imperial constitutions (many of them related to particular legal controversies) that the Code became outdated within five years. A revision was necessary. After the whole codification project was completed (533), the Code was revised again under the guidance of Tribonian. In November 534 the new edition of the Code (*Codex repetitae praelectionis*) came into force through the constitution *Cordi*. The first edition of the Code (529 CE) did not survive, but the second one (534) did. The only parts of the first edition preserved today are the two constitutions *Haec* and *Summa*, which also were published at the beginning of the second edition.

Justinian's Code consists of twelve books, divided into titles. Within the titles, the imperial constitutions (including the name[s] of the emperor[s], the addressee, and the date) are arranged in chronological order. The latest constitution published therein is of 4 November 534, and the earliest is by Emperor Hadrian (CJ 6.23.1). The first book deals with ecclesiastical law, the sources of law, and the administration of the empire. Specifically, the Code begins with the

imperial constitution of the emperors Gratian, Valentinian II, and Theodosius I of 380 that declared Christianity to be the state religion of the empire. Books 2 to 8 address topics of private law; book 9 deals with criminal law; and books 10 to 12 deal with administrative law and tax law. The Justinian Code followed the same pattern of composition as the Theodosian Code. They differ in the material contained, in their arrangement and structure, and in the degree of alterations made to earlier imperial constitutions.

The Digest. The Digest (also officially called Pandects) constitutes the main part of Justinian's compilation. On 15 December 530, Justinian addressed the constitution *Deo Auctore* to Tribonian. Tribonian had to select members for a commission to excerpt and compile the writings of the ancient jurists into a single work, which would be called Digest or Pandects (in Greek) (*Deo Auctore* §12). Justinian reasoned that the writings of the ancient jurists were so voluminous and confusing that they had become unmanageable and beyond the reasonable comprehension of any human being.

The commission consisted of four law professors (Theophilus, Cratinus from Constantinople, and Dorotheus and Anatolius from Berytus) and some high officials and advocates of the court in Constantinople. The commissioners were able to complete their work in just three years because of their familiarity with legal writings. On 16 December 533, Justinian published the Digest (and the Institutes) through a constitution both in a Latin version (*Tanta*) and in a Greek version (*Dedoken*). The two versions were not entirely identical in content. Two weeks later, the Digest and the Institutes came into effect over the whole empire. In both versions of the constitution (*Tanta/Dedoken* §19), Justinian prohibited citing in court the original legal writings of ancient jurists. As a result, the Digest replaced altogether the study of original juristic writings in law schools.

The Digest is made up of fifty books and is divided into titles with title headings. It basically follows the arrangement of Justinian's Code and the praetorian edict (constitution *Deo auctore* 5). Every excerpt is identified by the name of its author, the title of the original work, and the number of the book in which it can be found. This does not mean, however, that each fragment is completely faithful to the original; the compilers had the capacity to make changes and alterations to adapt the texts to Justinian law. The earliest jurist included was Quintus Mucius Scaevola, the pontifex (died 82 BCE); the latest jurists were Arcadius Charisius and Hermogenian, of the age of Diocletian (r. 284-305 CE). The majority of the excerpts came from jurists of the later classical period. Ulpian furnished about two fifths of the whole, making him the leading author, followed by Paulus (one fifth of the whole). Papinian was the leading author on questions of adultery; Macer, on public trials; Menander, on military law; and Gaius, on mortgage.

In 1820, Friedrich Bluhme discovered that the compilers had divided the legal writings into three large bodies or groupings of authors and works, in order to distribute the commission's work among three committees. These three groupings were: the edictal (542 books), the Sabinian (556 books), and the Papinian (294 books). There were 110 books not included in any of the three portions.

The first book provides a general introduction on law and justice, legal history, legal sources, and the jurisdiction of the magistrates, among other topics. From book 2 to book 5, the Digest addresses topics related to legal procedures; books 6 to 46 cover topics of private law (property, inheritance, and civil obligations); book 47 addresses private offenses; book 48 deals with public criminal law; book 49 refers to appeals, referrals, and the imperial treasure. Finally,

book 50 refers to various topics on municipalities. At the end of book 50 is an explanation of legal terminology (D. 50.16) and a large compilation of legal rules (D. 50.17).

An almost complete manuscript of the Digest (*codex Florentinus*), probably produced at the end of the sixth century in the East, perhaps in Constantinople, has survived. It is therefore close in time to the reign of Justinian. The manuscript is also called *littera Pisana* because we know that in the twelfth century it was in Pisa. The large manuscript, comprising 907 sheets, is kept in the Laurentian Library in Florence. Many other manuscripts of the work are incomplete and contain only one of the three parts into which the Digest was divided in the Middle Ages by the glossators: *Old Digest* (*Digestum vetus*: books 1–24.2); *Infortiatum* (reinforced) (books 24.3–38), and *New Digest* (*Digestum novum*: books 39–50).

The authoritative critical edition of the Digest (*editio maior*) was produced by Theodor Mommsen (1817–1903), the great historian and winner of the Nobel Prize in Literature. It was published in two volumes in Berlin, in 1868 and 1870. Some years later, a simplified edition was published (*editio minor*). After Mommsen died, Paul Krüger, beginning in 1908, revised and edited the *editio minor*, incorporating valuable improvements. Italian professors Pietro Bonfante, Carlo Fadda, Contardo Ferrini, Salvatore Riccobono, and Vittorio Scialoja produced a useful pocket edition of the Digest, based mainly on the edition of Mommsen (1908; reprint 1949). The authoritative English translation of the Digest was produced by Alan Watson.

Interpolations. The constitution promulgating the Digest (*Tanta* §10) stated that “Many things, and matters of the highest importance, have been changed for reasons of utility” (*Tanta* §10). These alterations are traditionally called interpolations. This statement provides a good starting point for understanding both Justinian’s intentions and how the compilers worked in accordance with the spirit and mandate of this emperor. Justinian’s intention was to convert

classical jurisprudence (*ius*) into a statute (*lex*), the best way to modernize and improve the law. This explains why, to preserve the uniformity of the new legal system, Justinian forbade critical commentaries on these modifications. He allowed only explanatory writings and additional notes to the titles of the Digest. To guarantee consistency was, therefore, a secondary goal of his project.

Compilers acted accordingly. They made abundant adjustments and alterations (suppressions, additions, substitutions). That happened specifically in areas of the law that were subject to significant changes between the period of the classical jurists and Justinian. Many times, the compilers made systematic alterations to eliminate old institutions. For instance, they inserted *traditio* for *mancipatio* (old institution), or *actio dotis* (action for recovery of a dowry) for the classical *actio rei uxoria* (action for recovery all that belongs to a wife)). Where classical jurists had *sponsio* (old solemn promise), the compilers put *fideiussio* (new type of suretyship).

Frequently, compilers did not change the wording but did change the context. A famous example is the statement, “the emperor is not bound by statutes” (*princeps legibus solutus est*, D. 1.3.31). Ulpian had written the statement in the commentary to the *lex Iulia et Pappia*, to exempt the emperor from application of the limitations of these two statutes dealing with the rights of unmarried and childless people to inherit property. The statement was generalized by compilers, however, and thus was included in the first book of the Digest under the general title of statutes, senatorial resolutions, and costumes.

We have certainty about alterations and omissions only where the same text has been transmitted in the Digest and in a different legal source, for instance in private collections of the fourth century (*Fragmenta Vaticana, Collatio Legum Mosaicarum et Romanarum*). Sometimes the lack of consistency within an argument, and structural or grammatical irregularities and gaps,

can be explained as simple pre-Justinianic or post-Justinianic abridgements or even as result of a defect of the manuscript.

Since the sixteenth century, researchers have made efforts to find these interpolations in order to recover the value of Roman juristic writings in their pristine, unaltered condition. In the countries in which Justinian law was directly applied, the search for interpolations was not extensive. At the beginning of the twentieth century, coinciding with the promulgation of the German Civil Code (BGB) and the Digest's loss of practical relevance, researchers began to overestimate the number and importance of interpolations. There was a collective fascination with discovering new interpolations. This attitude was ironically called "interpolation hunting" (*Interpolationenjagd*). When a text was complex and not well understood, the natural inclination was to consider it nonclassical and interpolated, instead of trying to find more sophisticated solutions. After the Second World War, there was a well-justified reaction against the hunters of Justinian's interpolations. Recently, however, there has been a tendency to underestimate their relevance and extent. A good balance is required. On the one hand, the excesses of the past must be avoided; on the other hand, textual critical considerations have to be taken seriously in research. Interpolations are there and must be detected to preserve the value of classical writings in their original form.

The Institutes. After the final draft of the Digest was completed, a commission was appointed to prepare a brief introduction to the Digest, which could be used as a textbook for first-year law students instead of Gaius's *Institutes*. This introduction would be like a lecture by the emperor to law students, imbued with the same legal force as the imperial constitutions. The commission that created this introduction, or Institutes, consisted of law professors Theophilus and Dorotheus, working under the supervision of Tribonian.

Justinian's Institutes were mostly based on Gaius's *Institutes* and his *res cottidianae*. Many parts of Justinian's Institutes were taken almost verbatim from the works of Gaius. This is why the emperor referred to him fondly as "our Gaius" (*Gaius noster*; const. *Imp. Mai* §6 and *Omnem* §1). The compilers also used institutes of Florentinus, Marcianus, Ulpian, and probably of Paulus, as well as some new imperial constitutions incorporating Justinian reforms. Justinian's Institutes were published on 21 November 533 under the title *Imperatoris Iustiniani Institutiones*, and they came into force, along with the Digest, on 30 December 533.

The Institutes comprise four books, divided into titles, and the titles into paragraphs. Unlike the Digest, the Institutes do not mention the juristic writings from which the texts were taken. Like Gaius's *Institutes*, Justinian's Institutes deal first with people, second with things, and finally with actions. They also contain two titles on the duties of judges and on criminal law, which correspond to nothing within Gaius's *Institutes*. Based on their stylistic features, books 1 and 2 were probably written by a different author than books 3 and 4. It is possible, therefore, that the two law professors, members of the commission, distributed the work between them. We do not know, however, which part should be attributed to Theophilus and which to Dorotheus.

The Novels of Justinian. The *Novellae Constitutiones*, or "new constitutions," are the new legislation (*novae leges*) that Justinian enacted after the publication of the second edition of the Code (534 CE). Most of Justinian's Novels concerned administrative and ecclesiastical law, and they survive in Greek. Novels in Latin were concerned basically with North Africa and Italy, the Latin-speaking parts of the empire. Sometimes there were two versions of the same Novel, one in Greek and another in Latin (see Novel 66, of 538 CE). For Illyricum, a bilingual province of the empire, we know of novels in both Latin and Greek. No official collection of the Novels was ever produced. The most complete collection we know of is the so-called Greek Collection

of 168 Novels, which was used by the compilers of the *Basilika*. The Greek Collection was probably initiated in Constantinople in the time of Justinian and includes Novels until the reign of Emperor Tiberius II (578–82). Up to Novel 120, the order is chronological. The rest are not arranged according to any principle. The collection includes some constitutions dating from before the second edition of the Code but not included within it.

There are two private Latin collections of the Novels for teaching purposes: the *Authenticum* and the *Epitome Juliani*. The *Authenticum* is a collection of 134 Novels enacted by Justinian from 535 to 556. The *Epitome Juliani* is a summary of 122 Novels enacted by Justinian (two are duplicates) from 535 to 555 and produced by Julianus, a law professor in Constantinople. It also contains additional Latin Novels that are not attested to in any other legal collection. The *Epitome Juliani* was well known in the West. In the twelfth century, however, the *Authenticum* appeared in Bologna and generally took the place of the *Epitome Juliani*. Initially it was thought that the *Authenticum* was a falsification, but the law school of Bologna established its authenticity, hence the name *Authenticum*. The earliest edition of the Greek text of Justinian's Novels was produced in 1531 by Gregor Haloander.

The *Basilika*. Because the *Corpus Iuris* was written in Latin, it was incomprehensible to many Greek-speaking Byzantine lawyers. The compiler Theophilus produced a Greek version of the Institutes called the *Paraphrase* in order to disseminate the Institutes throughout the Greek-speaking world. In the eighth century, the *Paraphrase* was published as an official legal collection in Greek called *Ecloga*, which adapted Justinian's law to Byzantine practice. Around 890, Emperor Leo the Wise (r. 886–912) completed an extensive Greek restatement of all of Justinian's codification in sixty books. The labor of compilation, however, began under his predecessor Basil I (r. 867–86). The collection was called the *Basilika* (from *basilikos*, or

“imperial” [laws]) from the eleventh century, and it is considered the most important legal compilation of post-Justinian times. The laws were supplemented with explanatory notes (*scholia*) on the manuscript based on law professors’ teachings in Justinian’s time (old *scholia*) or from the eleventh and twelfth centuries (new *scholia*). The best edition of the *Basilika* and the *scholia* was produced by Herman Jan Scheltema (1906–81) and other researchers between 1951 and 1988. In 1345, a short version of the *Basilika* was published in six books (the *Hexabiblos*), which was in force in Greece until the promulgation of the Greek Civil Code in 1840.

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