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# The Significance of the Corpus Juris Civilis: Matilda of Canossa and the Revival of Roman Law

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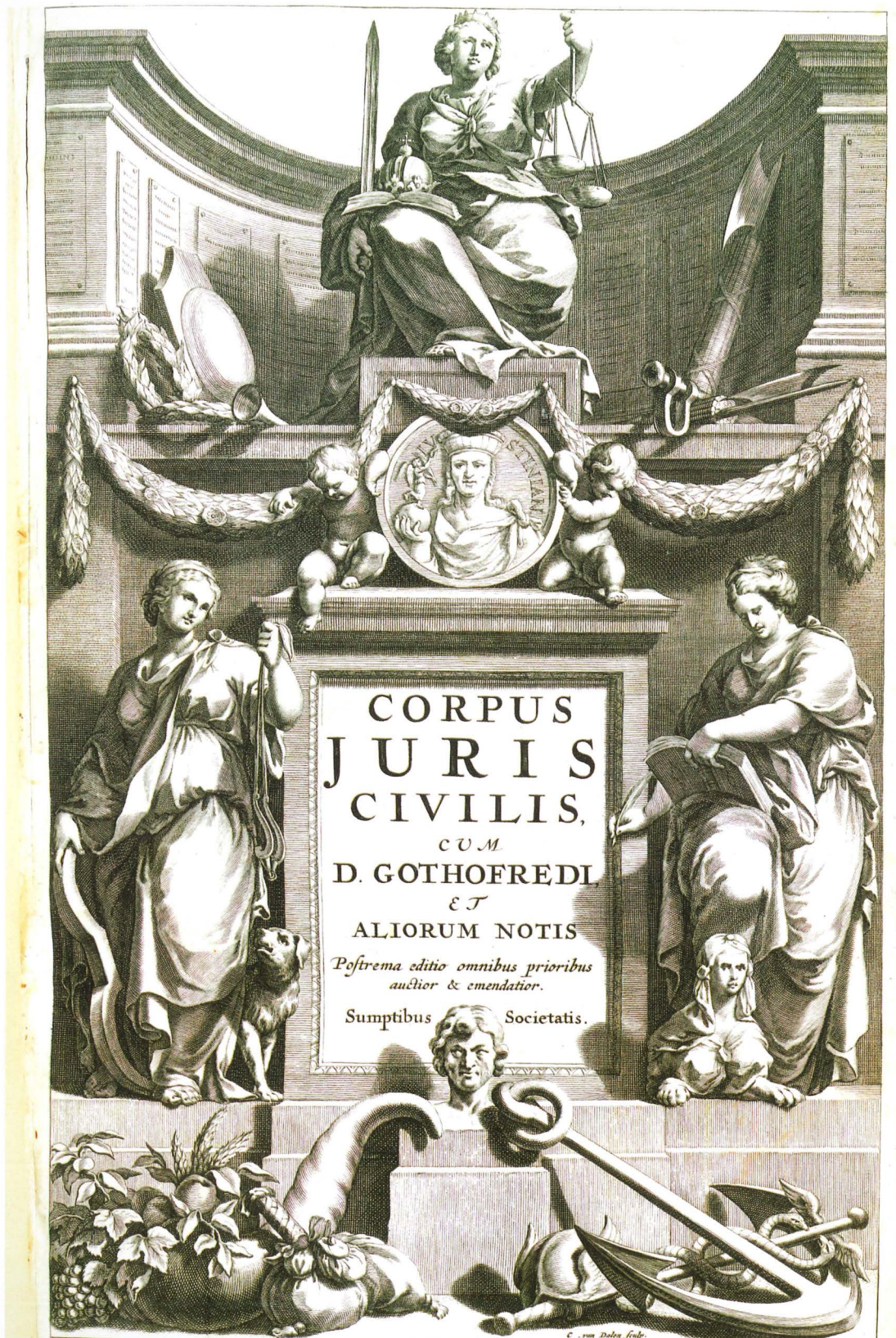
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Frontispiece, *Corpus Iuris Civilis*. Edited by Denis Godefroy, Amsterdam, 1663.  
Image courtesy of College of William & Mary, Wolf Law Library

# THE SIGNIFICANCE OF THE CORPUS JURIS CIVILIS: MATILDA OF CANOSSA AND THE REVIVAL OF ROMAN LAW

BY THOMAS J. MCSWEENEY AND MICHÈLE K. SPIKE

Roman law has had an undeniable influence on modern legal systems. About two-thirds of the world's population lives in countries that have civil-law systems, which proudly claim Roman law as their progenitor. The Anglo-American common law, which covers about another quarter of the world's population, tends to think of itself as very English and immune to outside influences. But even the common law cannot deny the debt it owes to Roman law. Many of the legal categories that we think of as fundamental and universal—public and private, civil and criminal, property and contract—are actually Roman in origin.

When we think of Roman law, we usually think of ancient figures like Cicero and ancient texts like the Twelve Tables, but the Roman law that has exerted such a powerful influence over the world's legal systems is actually a much later Roman law. It has come down to us through compilations made in the sixth century, after the Western Roman Empire had fallen. These texts only became significant in Western Europe because of a renewed interest in the laws of Rome in eleventh-century Italy which, as fate would have it, would launch Roman law onto the European scene. From the twelfth century onwards, Roman law was deeply embedded in European legal culture.

## JUSTINIAN AND THE REVISION OF THE LAW

Early in his reign, the Eastern Roman Emperor Justinian (r. 527-565) initiated a program to restore the law of the early Roman Empire. This legal restoration was part of a broader program of restoring the empire's glory, which included plans to reconquer the Western empire from the Germanic tribes that had seized most of it in the previous century. He began by creating a commission in 528 to look through the imperial legislation of the last few centuries, to revise it where necessary, and to compile it "in a single book (*codicem*), under our blessed name."<sup>1</sup> When this text, called the *Codex*, was completed, Justinian commissioned a group of law professors to work through the "two thousand books and three million lines" of writing by the great jurists of the first through third centuries and to "present the diverse books of so many authors in a single volume."<sup>2</sup> The professors were to take the best of the opinions, change them where they were faulty, and arrange them all in a work of fifty books, which would be promulgated by the emperor and have the same authority as a legislative act. This work, completed in 533, was known as the *Digest* or *Pandects*. At the same time, Justinian promulgated a legal textbook, called the *Institutes*, meant for beginning law students. The *Digest*, the *Institutes*, and an updated version of the *Codex*, promulgated in 534, would collectively come to be known as the *Corpus Iuris Civilis*, or the body of civil law.<sup>3</sup>

## TEACHING THE LAW: MATILDA, PEPO, AND IRNERIUS

Justinian's plans to reconquer the Western empire enjoyed very limited success and, within a short time, the empire had lost much of what it had regained. The Justinianic corpus therefore never really took hold in the Western part of the Roman Empire and had little influence in Western Europe between the sixth and the eleventh centuries.<sup>4</sup>

In the eleventh century something sparked an interest in Justinian's corpus. Historians have described this event as the "big bang" both because of its enormous influence on European legal thought and because of the obscurity of the event itself.<sup>5</sup> The reasons why people in Italy suddenly became interested in these texts, which had lain dormant for five hundred years, are murky. Scholars have posited reasons for the Roman-law revival as diverse as the commercial revolution that occurred in Northern Italy in the high middle ages, the political strife between the papacy and the German emperors, the increasing sophistication of Lombard law, and the rediscovery of the *Digest*.<sup>6</sup>

Whatever the reason for the revival, the rise of Roman law is inextricably bound with the rise of Europe's first university, the University of Bologna, which was recognized by the end of the twelfth century as Christian Europe's premiere center for legal study. People would travel from all over Europe to study with its legal luminaries, who established rock-star-like reputations that spanned the continent. Thomas Becket, the famous archbishop of Canterbury and martyr-saint of the late twelfth century, was sent to Bologna to study law early in his career.<sup>7</sup> By 1174 there were enough English students there to dedicate an altar to him in one of Bologna's churches.<sup>8</sup> These foreign students took their learning back to their home countries, and Bologna's teaching would become the model for Roman-law teaching throughout Europe.

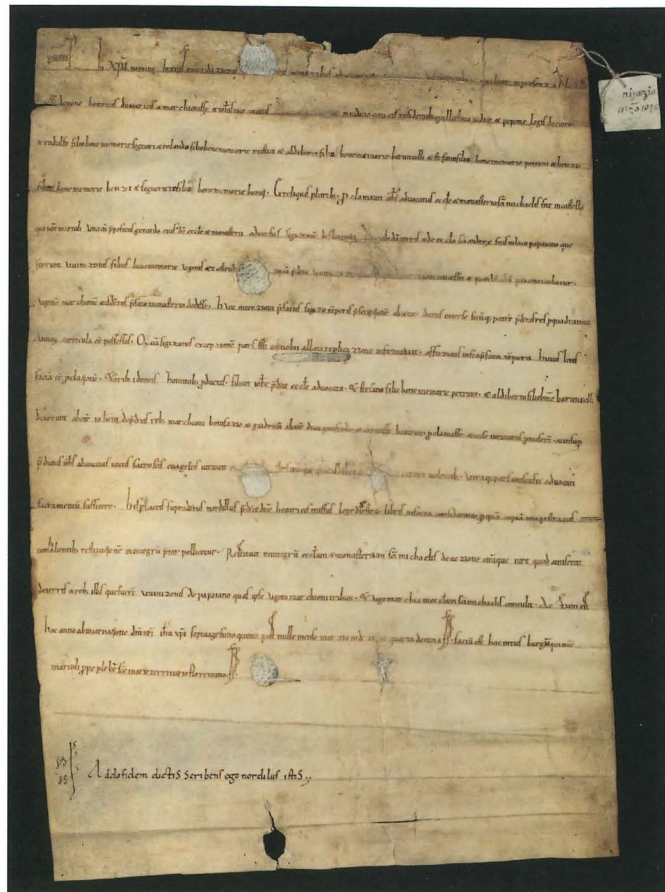
But as significant as the University of Bologna would become, we know very little of its founding. We have no contemporary accounts of the beginnings of the teaching of Roman law at Bologna. What we do have are later written accounts of the history of the university. In the middle of the thirteenth century, when a teacher at Bologna named Odofredus lectured to his students on the history of the university, he identified a man named Irnerius (who appears to have called himself Wernerius or Guarnerius) as the "light of the law" who established Roman law studies in the city in the first decades of the twelfth century and another man named Pepo as Irnerius' teacher.<sup>9</sup> Scholars have traditionally taken Odofredus and other chroniclers of the university at their word and have credited Pepo and Irnerius with everything from rearranging the *Digest*, to writing extensive glosses on Justinian's texts, to developing the scholastic method for teaching law.

There has been some skepticism recently about their role in establishing Roman-law studies at Bologna and the truth is we have no direct, contemporary evidence that either of these men taught law at Bologna.<sup>10</sup> It is likely that these two men did something to make them worthy of memory, however.

Pepo's contemporaries associated him with Roman law. In a record of a March 1076 case, dated at BorgoMarturi in south Tuscany, the notary listed him as a *legis doctor* (teacher of law).<sup>11</sup> The case turned on a citation to the *Digest* with a sophisticated legal analysis of real property law.

The evidence also points to connections between Pepo and Irnerius and Matilda of Canossa. Matilda was remembered as Irnerius' patroness in later centuries: the German priest Burchard von Ursberg wrote in the early thirteenth century that "the Lord Wernerius renewed the books of law which had been compiled by the Emperor Justinian from a wealth of records and which formerly had been neglected and which up to then no one had studied, at the petition of Countess Matilda..."<sup>12</sup>

Contemporary evidence confirms that Matilda and her mother Beatrice patronized the two jurists. In the 1076 case where he is listed as a legis doctor, Pepo appears to have been in Beatrice's employ. He is listed along with a bank of judges headed by Nordillo, who is specifically said to be the "legate of the Lady Beatrice, duchess and marchioness."<sup>13</sup> In March 1076, Beatrice was with Matilda, who was tending her mother in her last illness in nearby Pisa.<sup>14</sup> In addition to this proceeding, Pepo is recorded on several occasions in Matilda's presence, acting as advocatus, or lawyer, for monasteries associated with the House of Canossa. On June 7, 1072<sup>15</sup> and February 19, 1078,<sup>16</sup> Pepo represented the Monastery of San Salvatore at Monte Amiata. In a document of November 23, 1080, "Peponem" appears at Ferrara with Matilda as the lawyer of the Monastery of Pomposa.<sup>17</sup> Ferrara,



Document issued at Borgo Marturi, March 1076, Archivio di Stato, Firenze, Carte della Badia di Borgo Marturi

located north of the Apennines, is about 50 km (or 31 miles) from Bologna. Both the monasteries at Monte Amiata and at Pomposa received rich donations from Matilda and her parents.<sup>18</sup>

Irnerius was also associated with Matilda's court towards the very end of her life; he appears as a lawyer in Matilda's courts starting in 1112.<sup>19</sup> In May 1113 "Warnerius de Bononia" appears as "causidicus," or lawyer, in a document in which the Countess takes the Monastery of Sant'Andrea in Ravenna under her protection. Three years later, immediately after the death of Matilda, between May and October 1116, "Warnerius iudex" or "Wernerius bononiensis iudex" (Warnerius of Bologna judge) signed nine Imperial edicts issued by the Emperor Henry V.<sup>20</sup> These documents effected agreements Matilda made with Henry V four years before her death. In 1111, Matilda agreed that, at her death, the entirety of the territory which Matilda's father, Bonifacio, had held in feud and which under Germanic custom she, as a woman, would not be allowed to inherit,<sup>21</sup> would be returned to Henry V, who was her closest male heir as well as the king and emperor ("rex et imperator").<sup>22</sup> She specifically excluded properties previously donated by herself and her ancestors to named monasteries.<sup>23</sup> In the 1116 documents Henry V appears to be putting the terms of this agreement into effect.<sup>24</sup> The emperor's edicts benefit the monasteries at Pomposa and at San Benedetto Po to which the House of Canossa had donated substantial properties.<sup>25</sup> Henry also confirmed the restitution of property to the Church of Parma which Matilda's allies in the reform papacy had been demanding for years.<sup>26</sup> When the Emperor returned to north

Italy, in 1118, he granted his protection to the monastery at Bombiana, located along the pass through the Apennines that connects Bologna with Florence, which Matilda had established on August 9, 1098.<sup>27</sup> In the 1116 and 1118 documents, “Warnerius iudex” signed directly below Henry V’s cross, see exhibit 4. As all these documents effect the prior agreements of the Countess, it is possible that Warnerius was acting on Matilda’s behalf before the Emperor.<sup>28</sup> The other witnesses listed on the documents include *judices* and *causidici*, lay vassals, Bishops and Abbots, and laymen from the area – people, institutions, and groups who were part of Matilda’s court.<sup>29</sup> Thus, although there is no direct, contemporary evidence that Irnerius was actually in Matilda’s employ, contemporary documents indicate that he was in the presence of the Emperor Henry V together with other members of Matilda’s court, effecting acts which she desired. We cannot draw a direct line between Matilda and Irnerius and Bologna, but it is certainly possible that she knew him and asked him to renew the study of the Emperor Justinian’s law books.

There are many reasons why Matilda might have wanted jurists trained in Roman law in her entourage. Roman law was gaining in prestige in the eleventh century, partly because Matilda’s great rivals, the Emperors Henry III, Henry IV, and Henry V, claimed to be the successors to the ancient Roman emperors and made appeals to Roman law to legitimate themselves; Henry III actually cited the Codex in one of his own constitutions in 1047.<sup>30</sup> But once the emperors began to use Roman law to legitimate themselves, others could hold them to Roman law’s standards. Matilda would have had reason to do so. In the year 1076, the year in which we first see Pepo in Countess Beatrice’s employ, Matilda was embroiled in a major conflict with the emperor over her inheritance from her father. The emperor had followed prevailing German custom in investing Matilda’s husband, Godfrey, with her ancestral lands.<sup>31</sup> When Godfrey died in 1076, he willed Matilda’s lands to his own nephew, cutting Matilda out entirely.<sup>32</sup> Matilda was placed in the position of having to defend her patrimony against the emperor and against her husband’s appointed heir, neither of whom wanted her in control of Tuscany. Roman law allowed a daughter to inherit and control her father’s land, and would have given Matilda another weapon to use in her propaganda war against the emperor.<sup>33</sup> Matilda’s turn to Romanists may also have been related to her involvement in the Gregorian reform movement. Roman law was used by some of the imperial and papal polemicists to support their sides.<sup>34</sup> The year 1076 was also part of an active period of hostility between Pope Gregory and Henry IV, a period in which Matilda was one of the major political players. Gregory issued the *Dictatus Papae* in 1075 and Henry IV’s humiliation at Matilda’s castle of Canossa would occur in 1077.<sup>35</sup>

We cannot be certain of the role, if any, Matilda played in establishing the teaching of Roman law at Bologna. We only have the contemporary evidence of connections between her and Pepo and Irnerius combined with the memory of Roman jurists a century after the events happened. The best we can say is that two men who were associated early on with Roman law and its revival actively participated in the courts of the two great countesses, Matilda and Beatrice. We can also say that the first mention of the *Digest* in over three centuries occurred in 1076 under the authority of Beatrice, Matilda’s mother.<sup>36</sup>

Justinian’s *Digest* prevailed over other codes of law, including Salic and Lombard, in the century after Matilda’s death. Pepo, Irnerius and their students were intellectually committed to Roman law as the template for all law. They staffed the bureaucracies of the ruling elites, whether Kings, the Church, nobility, like Beatrice and Matilda, or the communes liberated in the course of Matilda’s rebellion from the German empire. During the 12th and 13th centuries, the bureaucracies became more sophisticated as each group sought to expand their political power.

## THE *IUS COMMUNE*

Bologna very quickly became an international center for the study of law. Works by Bolognese scholars, such as the jurist Azo's treatises on the *Institutes* and *Codex*, would circulate throughout Europe.<sup>37</sup> Canon law studies blossomed there, as well. A scholar named Gratian wrote his *Concordance of Discordant Canons*, a work that would become the primary textbook of canon law throughout Western Christendom, at Bologna around 1140.<sup>38</sup> By the end of the twelfth century, the two laws were being taught together as if they formed a coherent whole; a medieval proverb stated that "A Romanist without canon law isn't worth much and a canonist without Roman law is worth nothing at all."<sup>39</sup> In the twelfth century, jurists began to refer to them as *utrumque ius* (both laws) or the *ius commune* (the common law). Roman law acquired a quasi-divine status; medieval jurists saw it as the universal law of Western Christendom, something close to a Platonic form of law that the laws of individual kingdoms should, ideally, emulate. We see this kind of subtle influence in legal texts from Spain, Sicily, Southern Italy, France, Germany, and Scandinavia.<sup>40</sup> Even the English common law, which has long been seen as an outlier among European legal systems, was heavily influenced by Roman law in its early centuries.<sup>41</sup>

The texts of Justinian's corpus remained central to the study of Roman law. Some of the earliest works of Roman-law scholarship that survive are glosses on these texts.<sup>42</sup> Often collectively called "the jurist's Bible," Justinian's texts held a quasi-sacral status throughout the middle ages. A sixth-century copy of the *Digest*, known today as the *Littera Florentina*, became one of the great treasures of Italy. It now resides in Florence, which took it from Pisa as a prize of war in 1406, see exhibit 6.<sup>43</sup> The *Littera Bononiensis*, the version of the *Digest* used at the University of Bologna, became the gold standard for editions of the *Digest* in the middle ages and was used in all of Europe's universities; since there was no printing press and copies had to be made by hand, the university placed careful controls on the copying of the *Digest* to ensure that copies were as uniform as possible.<sup>44</sup>

Justinian's *Digest*, *Codex*, and *Institutes* were some of the first books printed in the second half of the fifteenth century. Although the *Littera Bononiensis* was considered authoritative for purposes of legal practice, the demand for a text that more accurately reflected Justinian's original led the Italian humanist Lelio Torelli to seek permission from Cosimo de Medici to edit the *Littera Florentina*, the text of which, after extensive comparison, was determined to be more complete than the copy in Bologna. He published the first edition of that manuscript in 1553, see exhibit 9.<sup>45</sup> In 1583, Denis Godefroy, a French scholar of Roman law residing in Geneva, published a single, combined edition of the *Institutes*, *Digest*, and *Codex* and gave it the name it has borne ever since: the *Corpus Iuris Civilis*, see exhibit 10.<sup>46</sup>

While medieval students of Roman law focused on the *Digest* and all its subtleties, the *Institutes* rose in prominence in the early modern period as a text that could teach beginning law students the fundamentals of a legal system.<sup>47</sup> The Dutch jurist Arnoldus Vinnius published an influential Latin edition of the *Institutes* in 1642.<sup>48</sup> The edition contained an extensive Latin commentary, which incorporated the opinions and glosses of medieval and early modern jurists.<sup>49</sup> Vinnius' edition and commentary were read throughout Europe and in the American colonies. John Adams read it as he prepared for the bar, and the celebrated Supreme Court Justice Joseph Story cited Vinnius in his works.<sup>50</sup> George Wythe, William & Mary's first law professor, owned a copy, which he left to Thomas Jefferson in his will, see exhibit 11.

The *Institutes* were first translated into English by George Harris, a lawyer who practiced in the English ecclesiastical courts, in 1753.<sup>51</sup> Harris' translation made its way into many British and American libraries, including that of George Wythe, see exhibit 12.<sup>52</sup> Thomas Cooper re-edited Harris' text for an American audience, commending the *Institutes* to American lawyers on the ground that "a competent knowledge of the general principles of the Civil law, is expected as a matter of course among the Bar, as well as upon the Bench."<sup>53</sup> Cooper was perhaps overstating his case, but the *Institutes* and other parts of Justinian's corpus were cited with some frequency by American courts.<sup>54</sup> Justice Tompkins' opinion in that old chestnut of property law, the 1805 New York Supreme Court case *Pierson v. Post*, relies partially on the *Institutes* for its reasoning.<sup>55</sup> Cooper's edition, published in Philadelphia in 1812, tried to relate the *Institutes* to American legal practice. It included additional notes on American laws and cases relating to the topics covered in the *Institutes*, see exhibit 13. The *Institutes* also exerted an indirect influence on the Anglo-American common law and the way lawyers learned it for over a century. The institutional framework was adopted by many of the common law's most influential authors. William Blackstone's *Commentaries on the Laws of England*, the standard text for teaching law in England and America in the eighteenth and nineteenth centuries, was modelled on the *Institutes*, as was Chancellor Kent's *Commentaries on American Law*.<sup>56</sup>

The *Corpus Iuris Civilis* declined in importance as a legal text when many countries began to codify their national law in the eighteenth and nineteenth centuries. The civil codes adopted by countries like France and Germany, and copied by many others, were meant to be comprehensive; *ius commune* was no longer relevant to legal practice. But the influence of Justinian's texts continued even in these codes, which took much of their organization, many of their doctrines, and the very idea that there should be an authoritative and comprehensive legal text from the *Digest*, *Institutes*, and *Codex*. This idea was influential even in the early American Republic. In a letter dated at Monticello on June 17, 1812 to Judge John Tyler, Thomas Jefferson calls Justinian's Code of Roman Civil Laws "a system of perfect justice."<sup>57</sup> A committee was established in 1776 that included Jefferson, Tom Lee, George Mason, Edmund Pendleton, and George Wythe to discuss what law the American colonies should adopt. The committee considered codification on the civil-law model:

"Whether we should undertake to reduce the common law, our own & so much of the English, statutes as we have adopted, to a text, is a question of transcendent difficulty. It was discussed at the first meeting of the committee of the Revised code in 1776 & decided in the negative by the opinions of Wythe, Mason & myself, against Pendleton & Tom Lee."

A statutory or civil law system was rejected because of the inevitable period of litigation that would ensue to clarify such a new code. In particular Jefferson cited the extensive commentaries that the *Institutes* of Justinian had engendered as well as "the bustle of the times which] did not admit leisure for such an undertaking."<sup>58</sup>

Although the *Corpus Iuris Civilis* is not at the forefront of our legal consciousness today, it is hard to understate its importance to the development of the world's legal systems. Virtually every lawyer in the world has encountered some element of Roman law in her career, whether she knows it or not. The "big bang" that brought Roman law onto the world stage happened during Matilda's lifetime, in Matilda's part of the world, and was associated with people who worked in Matilda's courts. The details, have, unfortunately, been obscured by time. But whatever the underlying reasons for the revival of Justinian's corpus, and whatever role Matilda of Canossa played in it, the events of the eleventh century sparked a revolution in legal thought. We owe many of our fundamental legal ideas and concepts to the medieval revival of Justinian's *Corpus Iuris Civilis*.



- 1 Code Just.Haec Quae Necessario. Translation by author.
- 2 Alan Watson, ed. *The Digest of Justinian*, 4 vols.(Philadelphia: University of Pennsylvania Press, 1985), Constitutio de Auctore.2, Constitutio Omnem.1.
- 3 Peter Stein, *Roman Law in European History* (Cambridge: Cambridge University Press, 1999), 32-35.
- 4 The *Digest*, in particular, appears to have been almost completely unknown. Charles M. Radding and Antonio Ciaralli, *The Corpus Iuris Civilis in the Middle Ages: Manuscripts and Transmission from the Sixth Century to the Juristic Revival* (Leiden: Brill, 2007), 40, 65.
- 5 Kenneth Pennington, "The "Big Bang": Roman Law in the Early Twelfth Century," *Rivista internazionale di diritto comune* 18 (2007).
- 6 See Lester K. Little, *Religious Poverty and the Profit Economy in Medieval Europe* (Ithaca, NY: Cornell University Press, 1978), 30; Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, MA: Harvard University Press, 1983); Charles M. Radding, *The Origins of Medieval Jurisprudence: Pavia and Bologna 850-1150*(New Haven: Yale University Press, 1988).
- 7 Frank Barlow, *Thomas Becket* (London: Phoenix Press, 1986), 37.
- 8 James A. Brundage, *The Medieval Origins of the Legal Profession: Canonists, Civilians, and Courts* (Chicago: University of Chicago Press, 2008), 224.
- 9 Anders Winroth, *The Making of Gratian's Decretum* (Cambridge: Cambridge University Press, 2000), 158.
- 10 Anders Winroth, in particular, has argued that there is little evidence of sophisticated Roman law teaching at Bologna before the 1140s.Ibid., 157-70; For a recent argument that the teaching of law at Bologna was already well established by the 1120s and 1130s, see Pennington, ""Big Bang"," 43-70.
- 11 Radding and Ciaralli, *Corpus Iuris Civilis in the Middle Ages*, 183. The document is published in its entirety by Luciana CambiSchmitter, *Carta della Badia di Marturinell'Archivio di Stato di Firenze* (971-1199), Polistampa 2009, no. 9, pp. 77-78.
- 12 Burchard von Ursberg, *Die Chronik Des Propstes Burchard Von Ursberg*, 2nd ed., Monumenta Germaniae Historica (Hannover and Leipzig: Hahnsche Buchhandlung, 1916), 15. Translation by author.
- 13 The text says that the case was heard "in the presence of Nordillo, the legate of the Lady Beatrice, duchess and marchioness." Schmitter, *Carta della Badia di Marturi*, 77. Translation by author.
- 14 Donizone I, fol 46r, vv 1355-1356
- 15 Goetz 1998, no. 2, pp. 35-39, at Caleraki on June 7, 1072; .
- 16 Goetz 1998, no. 25, pp. 95-97, at Puntiglio, February 19, 1078.
- 17 Goetz 1998, no. 32, pp. 114-116, at Ferrara, November 23, 1080.
- 18 See Goetz 1998, no. 2, pp. 35-39, dated June 7, 1072 and no. 25, pp. 95-97, dated February 19, 1078, Donizone I, chapters XV and XVI, vv 1070 – 1137, for relationship of Matilda's father with the Monastery at Pomposa.
- 19 Brundage, *Medieval Origins*, 84. The first document in which Irnerius "causidicus" or lawyer, appears is in a placito in Cornacervina of June 28, 1112, involving the monastery at Pomposa, Nerio Zanardi, *Capitoli Bolognesi della Storia d'Italia: Da Irnerio a Carducci*, Bologna 1997, p. 10; "causidici quoque Wernerius de Bononia" appears before Matilda in May 1113, at Baviana, see Goetz 1998, no. 128, pp. 331-32, dated May 1113 at 'Baviana'.
- 20 For a list of documents in which Irnerius appears see: Nerio Zanardi, *Capitoli Bolognesi della Storia d'Italia: da Irnerio a Carducci*, Bologna 1997, p.12, who writes at (p. 22) that Irnerius retired to Bologna and died c. 1135. Of the documents listed by Zanardi, most are signed Wernerius iudex,. On April 8, 1116 at Reggio Emilia at a placito of Henry V, among those listed as present is "Vuarnerus de Bononia", and on May 13, 1116 at Governolo "Wernerius bononiensis Ubaldu de Carpenetha iudices" are listed as present; G. Mazzanti, Irnerio: contributo a una biografia in Rivista internazionale di diritto comune, 11, 2000, pp. 120-25; Enrico Spagnesi, *Libros legum renovavit: Irnerio lucerna e propagatore del diritto*, ed. il Campano, Pisa 2013, pp. 49-52, who writes that "most refer to him as "Wernerius bononiensis iudex" at p. 49 .
- 21 See eg Susan Reynolds, *Fiefs and Vassals: The Medieval Evidence Reinterpreted* (Oxford: Clarendon Press, 2001) Inheritance under Salic law is governed by Title 59.5 which provides that no land may be inherited by a woman but all of it must go to the male sons. « De terra vero nulla (salica) in muliere hereditas non pertinebit, sed ad virilem sexum qui fratres fuerint tota terra pertineat. »
- 22 See Paolo Colliva, *Irnerio da Bologna, Comune di Bologna, Quartiere Irnerio*, 1982, p. 20. See also, M.K. Spike, *Tuscan Countess: The Life and Extraordinary Times of Matilda of Canossa*, New York 2004, pp. 29, 73, 277-8, n 10.
- 23 Spike 2004, pp. 252-3. See also: Buzzacchi-Migliorini 1968, p. 17, citing Bacchini 1696, p. 89; Cantarella in Golinelli 1998, p. 76; Cowdrey 1978, p. 197: «Henry V] promised his protection to the possessions held by the Monasteries of Cluny, within the borders of the Empire, and in particular that of Polirone».
- 24 "Immediately after the death of the Countess, the Emperor Henry V arrived in Italy to take up his inheritance, but in the nine documents in which Irnerius appears with him, the emperor confirms his protection of the monasteries at Pomposa and at San Benedetto Po , the restituted to the Church of Parma, the pardon and privilege to the comune of Bologna – in all of which the Emperor is surrounded by *iudices* and *causidici*, lay vassals, Bishops and Abbots, and laymen from the area – people, institutions, and groups, which were in the Canossan court. Paolo Colliva, *Irnerio da Bologna, Comune di Bologna, Quartiere Irnerio*, 1982, p. 20.
- 25 Imperial privilege dated May 6, 1116, at Governolo, in favor of the Monastery at Pomposa, Zanardi 1997, p. 12; Donizone I, chapters XV and XVI, vv 1070 – 1137, for relationship of Matilda's father with the Monastery at Pomposa. Imperial donation May 12, 1116, at Governolo, in favor of the Monastery of San Benedetto Po, Zanardi 1997, p. 12; San Benedetto Po was the beneficiary of significant donations by the Countess throughout her life, and it is the place of her

original tomb.

26 Imperial placito dated at Reggio Emilia, on April 8, 1116, before Abbot of Cluny and a various vassals of Matilda, in favor of the church of Parma, Zanardi 1997, p. 12; Matilda had fought for Roman control over the church of Parma for much of her life. The anti-Popes Cadulus II and Clement III came from Parma (Donizone II, fol 32r-33r, vv 843-885; Donizone II, fol 68r, vv 767-768) Parma remained allied to Clement III and refused to reconcile with Matilda even after she defeated Henry IV at Canossa in 1092. Parma opposed Pope Urban II through his entire papacy. Pope Paschal II's attempt to seat a Gregorian bishop in Parma in August of 1104 was violently rejected by the people of Parma. (Donizone, II, fol 74r-75r, vv 963-1006) Parma refused to accept the Gregorian reform of the Roman church until 1106, after the Council of bishops held by Paschal II at Guastalla in October of that year. In November 1106, Matilda accompanied Paschal into this Lombard stronghold which had more than once conspired for her demise. At Parma, Pope Paschal II re-consecrated the Cathedral of Santa Maria Assunta and invested Bernardo degli Uberti, Matilda's close advisor and ally, as Parma's bishop. Goetz 1998, no.96, pp 264-66 dated November 5, 1106. See also Goetz 1998 Dep no. 102, p. 458.

27 Imperial edict of protection dated June 12, 1118, at Bombiana, Zanardi 1997, p. 12, For Matilda's relationship with the hospice at the monastery of Bombiana see: Goetz 1998, doc no. 49, pp. 151-54, at Spedaletto in Val di Limentra, dated August 9, 1098; Goetz 1998, Dep no 97 p. 455. R. Zagnoni, "Abbazia di San Salvatore della Fontana Taona", in *Il Romanico Appenninico*, 2000; Renzo Zagnoni, *Gli Ospitali di Bombiana ed i ponti di Svignano: Un complesso viario dalla Dipendenza Monastica a quella dal comune di Bologna* (Secoli XI-XIV), in Atti e memorie della Deputazione di storia patria per Province di Romagna, 1996, pp. 205-251; republished in *Il Medioevo nella montagna toscano-bolognese, nomini strutture in una terra di confine*, 2004, pp. 57-82.

28 For arguments for and against Irnerius in the role of counselor of the Countess, see Spagnesi 2013, pp. 52-58 and in particular, Wolf Eckhart Voss, *Irnerius Rechtsberater der Mathilde, seine Rolle und seine Bedeutung im Investiturstreit*, in *ipoteridei Canossa*, p. 61, who argues that Irnerius was "consigliere giuridico" to the Countess.

29 Nerio Zanardi, *Irnerius: Rechtsberater*, Bologna 1997, p.12-20. In the documents, with "Warnerius bononiensis", also appears "Ubaldu de Carpenetha iudice" who frequently appeared with Matilda during her lifetime. G. Mazzanti, "Irnerio: Contributo a un'abiografia", in *Rivista internazionale di diritto comune*, 11, 2000, pp. 120-125. See e.g. Archivio Storico di Milano, *Diplomi e Dispacci Sovrani\_Germania: faldone 1*, 16 maggio 1116. For the existence of a court around Matilda see: G. Ropa *Testimonianze di vita culturale nei monasteri matildici nei secoli XI-XII*, in *Studi matildici. Atti e memorie del II convegno di studi matildici* (Modena-Reggio E, 1-2-3 maggio 1970) Modena 1971, p. 231; and G. Boni, *Sciluppi della canonistica al tempo di Matilde di Canossa* in pp. 45-115

30 Radding and Ciaralli, *Corpus Iuris Civilis* in the Middle Ages, 83.

31 Spike 2004, 73.

32 Ibid., 102, 10.

33 Chris Wickham, "Rural economy and society", in *Italy in the Early Middle Ages*, Cristina La Rocca, ed. Oxford University Press, 2002, p. 141 "Lombards regarded women as permanently subjected to men – in turn to their father, their brothers, at their father's death, their husband at marriage, and their sons at their husband's death – and as incapable of taking legal action or having any public role except through the mediation of their guardians...Both Rothari and Liutprand expatiate upon the inconceivability that women might bear arms and its immorality if they did."

34 Radding, *Origins of Medieval Jurisprudence*, 114.

35 Spike 2004, 18-19

36 Enrico Spagnesi, *Libros legum renovavit: Irnerio lucerna e propagatore del diritto*, ed. il Campano, Pisa 2013, p. 8.

37 See Azo, *Summa Azonis Sive Locuples Iuris Civilis Thesaurus* (Venice 1581).

38 Winroth, *Making of Gratian's Decretum*, 140-45.

39 Brundage, *Medieval Origins*, 234, n. 55.

40 See Manlio Bellomo, *The Common Legal Past of Europe* (Washington, D.C.: Catholic University of America Press, 1995).

41 Thomas McSweeney, "English Judges and Roman Jurists: The Civilian Learning Behind England's First Case Law," *Temple Law Review* 84(2012); Thomas J. McSweeney, "Property before Property: Romanizing the English Law of Land," *Buffalo Law Review* 60(2012).

42 Bellomo, *Common Legal Past*, 130-33.

43 Radding and Ciaralli, *Corpus Iuris Civilis* in the Middle Ages, 169.

44 Harry Dondorp and Eltjo J.H. Schrage, "The Sources of Medieval Learned Law," in *The Creation of the Ius Commune: From Casus to Regula*, ed. John W. Cairns and Paul J. du Plessis (Edinburgh: Edinburgh University Press, 2010), 14.

45 Laelius Taurellus and Franciscus Taurellius, *Digestorum Seu Pandectarum Libri Quinquaginta Ex Florentinis Pandectis Repraesentati* (Florence 1553).

46 Ernest Grégoire, "Godefroy, Denis 1er," in *Nouvelle Biographie Générale*, vol. 19-20 (Copenhagen: Rosenkilde et Bagger, 1966), 899-900.

47 Stein, *Roman Law in European History*, 80.

48 Michael H. Hoeflich, "Vinnius and the Anglo-American Legal World," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung* 114(1997): 348.

49 Ibid., 348-9.

50 Ibid., 356-9.

51 George Harris, trans., *D. Justiniani Institutionum Libri Quator, The Four Books of Justinian's Institutions* (London: 1753).

52 Wythe also appears to have owned a Latin edition of Vinnius' text. Bennie Brown, "The Library of George Wythe of Williamsburg and Richmond," (unpublished manuscript, May, 2012) Microsoft Word file. Earlier edition available at: <https://digitalarchive.wm.edu/handle/10288/13433>.

53 Thomas Cooper, trans., *The Institutes of Justinian* (Philadelphia: 1812), viii.

54 Richard H. Helmholz, "The Use of the Civil Law in Post-Revolutionary American Jurisprudence," *Tulane Law Review* 66(1992): 1654.

55 *Pierson v. Post*, 3 Cai. R. 175, 2 Am. Dec. 264.

56 Philip Girard, "'Of Institutes and Treatises': Blackstone's Commentaries, Kent's Commentaries and Murdoch's Epitome of the Laws of Nova-Scotia," in *Law Books in Action: Essays on the Anglo-American Legal Treatise*, ed. Angela Fernandez and Marcus D. Dubber (2012), pp. 43-62.

57 To Judge John Tyler, "For however I admit the superiority of the Civil, over the Common law code, as a system of perfect justice, yet an incorporation of the two would be like Nebuchadnezzar's image of metals & clay, a thing without cohesion of parts." The papers of *Thomas Jefferson Retirement Series*, Volume 5, 1812-1813, Princeton and Oxford Princeton

University Press 2005, pp. 135-137.

58 "In that case the meaning of every word of Blackstone would have become a source of litigation until it had been settled by repeated legal decisions, and to come at that meaning we should have had produced on all occasions that very pile of authorities from which it would be said he drew his conclusion & which of course would explain it, and the terms in which it is couched. Thus we should have retained the same chaos of law lore from which we wished to be emancipated, added to the evils of uncertainty which a new text, & new phrases would have generated. An example of this may be found in the old statutes and commentaries on them in Coke's 2d institute; but more remarkably in the Institute of Justinian, & the vast masses, explanatory, or supplementary of that which fills the libraries of the Civilians. We were deterred from the attempt by these considerations, added to which, the bustle of the times did not admit leisure for such an undertaking." *Ibid.*