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# The Corpus Juris Civilis: A Guide to Its History and Use

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## **The *Corpus Juris Civilis*: A Guide to Its History and Use\***

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**Abstract:** The *Corpus Juris Civilis* is indispensable for Roman law research. It is a vital pillar of modern law in many European nations, and influential in other countries. Scholars and lawyers still refer to it today. This valuable publication, however, may seem impenetrable at first, and references to it can be hard to decipher or detect. This guide provides a history of the *Corpus Juris Civilis* and the forms it has taken, states why it is still an important resource today, and offers some tips and tools for research using it.

### **Introduction**

*We have determined, with the help of God, now to make a present, for the common good, of what appeared to many past emperors to require improvement, but which none of them, in the meantime, ventured to put into effect.*<sup>1</sup>

Created in the sixth century CE, the *Corpus Juris Civilis*<sup>2</sup> may no longer be binding law, but its influence lives on. This article will discuss the history of the *CJC* and the different publications that compose it; why the *CJC* is still relevant to civil<sup>3</sup> and common law scholars

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<sup>1</sup> *De Novo Codice Componendo* (Justinian 528). Translated as Fred Blume, trans., *Concerning the Composition of a New Code*, Annotated Justinian Code (last visited June 24, 2016), <http://www.uwyo.edu/lawlib/blume-justinian/ajc-edition-2/books/book1/book%201-concerningcode.pdf>.

<sup>2</sup> Sometimes, the *Corpus Juris Civilis* is written *Corpus Iuris Civilis*. The letter *j* was not added to the Roman alphabet until the middle ages, when it replaced the “consonantal *i*.” Frederic M. Wheelock & Richard A. LaFleur, *Wheelock's Latin* xlii (6th rev. ed. 2005). This article will use the spelling *Corpus Juris Civilis* unless referring to a specific title that uses the other spelling. It will also sometimes use the title *Corpus Juris Civilis* to refer to the complete body of Justinian's laws, even though that name was not used until the 16th century. See *infra* text accompanying notes 124-126.

<sup>3</sup> In this article, *civil law* refers to Roman law and the systems that descended from it. See Peter Birks & Grant McLeod, *Introduction*, in *Justinian's Institutes* 7, 8 (Peter Birks and Grant McLeod trans., Cornell Univ. Press 1987).

today; and tips on researching the *CJC*.

### **The History and the Elements of the *Corpus Juris Civilis***

Justinian was not the first figure in Roman history to attempt to compile the empire's law in one collection. From the *Twelve Tables* of 450 BCE<sup>4</sup> to the *Codices Gregorianus*<sup>5</sup> and *Hermogenianus*<sup>6</sup> under Emperor Diocletian (r. 284-305 CE) and Eastern Emperor Theodosius II's (r. 408-450 CE) *Codex Theodosianus*,<sup>7</sup> several past regimes assembled large portions of Roman law into one set, but not to the extent of what Justinian envisioned. Previous collections focused on binding laws issued by emperors called *constitutiones*.<sup>8</sup> Another important source of Roman law existed, however: non-binding but highly-authoritative literature by Roman jurists interpreting the law.<sup>9</sup>

#### ***Enter Justinian and his "grand design"***

Flavius Petrus Sabbatius was born into Tauresium, a Latin-speaking town in the Byzantine Empire<sup>10</sup> around 482 CE,<sup>11</sup> and took the name Justinian to honor his adoptive uncle,

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<sup>4</sup> Paul du Plessis, *Borkowski's Textbook on Roman Law* § 2.2.1.1 (5th ed. 2015).

<sup>5</sup> Wolfgang Kaiser, *Justinian and the Corpus Iuris Civilis*, in *The Cambridge Companion to Roman Law* 119, 120 (David Johnston ed., 2015).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 121.

<sup>8</sup> *Constitutiones* were broken down into specific types, but this article will use the general term to describe them all. For more information on the different types of *constitutiones*, see Timothy J. Kearley, *The Creation and Transmission of Justinian's Novels*, 102 *Law Lib. J.* 377, 378 (2010) and du Plessis, *supra* note 4, at § 2.3.2.

<sup>9</sup> For more information on the jurists and their writings, see du Plessis, *supra* note 4, at § 2.3.4.

<sup>10</sup> Even though modern historians often call it the Byzantine Empire, its citizens still considered themselves Romans, the continuation of the Eastern Roman Empire from before Rome officially fell. Peter Heather, *The Fall of the Roman Empire: A New History of Rome and the Barbarians* 25 (2006); Olga E. Tellegen-Couperus, *A Short History of Roman Law* 118 (1993).

<sup>11</sup> John W. Barker, *Justinian and the Later Roman Empire* 65 (1966); Michael Maas, *Roman Questions, Byzantine Answers*, in *The Cambridge Companion to the Age of Justinian* 4, 5 (Michael Mass ed., 2005). There seems to be

Emperor Justin I (r. 518-527).<sup>12</sup> When Justin died, Justinian became Emperor Justinian I.<sup>13</sup> He inherited an empire that was a shadow of its former self; the former Western Empire was under the control of Germanic tribes.<sup>14</sup> Justinian believed that God would reward a ruler who properly and diligently carried out his duties<sup>15</sup> -- all part of what some historians describe as his "grand design" for the empire.<sup>16</sup> One of the pillars of Justinian's grand design was Roman law. To that end, he had to put the body of law itself into good order.<sup>17</sup>

### ***The First Law Commission***

On February 13, 528, Justinian authorized a commission to synthesize the binding imperial laws into one collection.<sup>18</sup> This commission had the power to gather the *constitutiones*, 2664 altogether, leave out any obsolete or redundant laws, and remove contradictions.<sup>19</sup>

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some dispute as to where Tauresium was located. Maas, for example, says it was in present-day Caričin Grad in southern Serbia. The Encyclopaedia Britannica's website, however, says it was probably near modern-day Skopje, Macedonia. See Joan Mervyn Hussey, *Justinian I*, Encyclopaedia Britannica Online (last visited Mar. 9, 2016), <http://www.britannica.com/biography/Justinian-I> [<https://perma.cc/FDX9-FDHR>].

<sup>12</sup> Maas, *supra* note 11, at 5; Birks & McLeod, *supra* note 3, at 8; John Julius Norwich, *Byzantium: The Early Centuries* 190, 389 (1989). Justin's rise to Emperor is quite a story in itself. Justin was a peasant who rose through the Imperial military ranks to become Commander of the Excubitors, the palace guard. Norwich at 188; Lars Brownworth, *Lost to the West* 67 (2009). A combination of being in the right place at the right time, some clever (if slightly underhanded) maneuvering, the support of the Excubitors, and possibly no small amount of help from Justinian paved Justin's path to the throne. Norwich at 187-89.

<sup>13</sup> Maas, *supra* note 11, at 5-6.

<sup>14</sup> Kaiser, *supra* note 5, at 121.

<sup>15</sup> Tony Honoré, *Tribonian* 17 (1978).

<sup>16</sup> Andrew Louth, *Justinian and His Legacy*, in *The Cambridge History of the Byzantine Empire c. 500-1492* 99, 107 (Jonathan Shepard ed., 2008).

<sup>17</sup> Maas, *supra* note 11, at 6.

<sup>18</sup> *De novo Codice Componendo*, *supra* note 1.

<sup>19</sup> Alan Watson, *Justinian's Corpus Iuris Civilis: Oddities of Legal Development, and Human Civilisation*, 1 J. Comp. L. 461 (2006).

Justinian had a knack for discovering talent, and placed some of his protégés on the commission.<sup>20</sup> One of those protégés was a lawyer named Tribonian, quite possibly the brightest legal mind in the empire, and a very charming man to boot.<sup>21</sup> He was only the sixth-ranked member,<sup>22</sup> but quickly became one of the most important figures in the *Corpus Juris Civilis's* story. One year later, the commission finished the *Codex Iustianus* -- a remarkable feat by the reckoning of that age's historians.<sup>23</sup> The *Codex* was a practical handbook for judges, officials, and litigators that contained the empire's most important laws in one place.<sup>24</sup> This first edition, called the *Codex Vetus*,<sup>25</sup> is now lost to time.<sup>26</sup>

### ***Tribonian's Rise and the Second Law Commission***

One of Justinian's goals was to unite the empire under Christianity (specifically, the proper form Christianity as Justinian saw it). To meet this goal, the emperor ordered a purge of heretics and pagans from official ranks, which worked to Tribonian's benefit.<sup>27</sup> Sometime between 527 and 529, imperial officials removed Thomas from the position of *quaestor sacri*

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<sup>20</sup> Honoré, *supra* note 15, at 12-13.

<sup>21</sup> *Id.*; Norwich, *supra* note 12, at 196 (1989); Honoré, *supra* note 15, at 49.

<sup>22</sup> Honoré, *supra* note 15, at 44.

<sup>23</sup> *Id.* at 46.

<sup>24</sup> *Id.* at 48.

<sup>25</sup> Stephen L. Sass, *Research in Roman Law: A Guide to the Sources and Their English Translation*, 56 *Law Lib. J.* 210, 222 (1963).

<sup>26</sup> Caroline Humfress, *Law and Legal Practice in the Age of Justinian*, in *The Cambridge Companion to the Age of Justinian* 161, 164 (Michael Maas ed., 2005).

<sup>27</sup> Christian Wildberg, *Philosophy in the Age of Justinian*, in *The Cambridge Companion to the Age of Justinian* 316, 332 (Michael Maas ed., 2005); Honoré, *supra* note 15, at 14-15.

*palatii*.<sup>28</sup> The *quaestor* drafted imperial laws, headed up legal reform, and spoke for the emperor.<sup>29</sup> This was a very powerful position in the emperor's inner circle, and after Thomas's departure, Tribonian took his place.<sup>30</sup>

Tribonian's star rose further in 530 when Justinian appointed him chair of the Second Law Commission.<sup>31</sup> This commission had two major assignments: create a textbook for first-year law students, and compile several centuries' worth of juristic writings into one collection.<sup>32</sup> This commission would not have much time, however, before their work was interrupted by the Nika Riots.<sup>33</sup>

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<sup>28</sup> Honoré, *supra* note 15, at 46-47.

<sup>29</sup> *Id.* at 8-9.

<sup>30</sup> Kearley, *supra* note 8, at 382 n.32; Honoré, *supra* note 15, at 47. Interestingly, some historians contend that Tribonian was also a pagan. See, e.g., Barker, *supra* note 11, at 72; Norwich, *supra* note 12, at 196. If true, one wonders how Tribonian managed to avoid the putsch. Barker theorizes that Tribonian's gift for flattery kept him in Justinian's good graces. Barker, *supra* note 11, at 72. Honoré, however, says we should not be quick to apply the pagan label. Honoré sees Christian sentiment in the propaganda Tribonian wrote for Justinian, and thinks that Tribonian's pride and wit might have angered contemporary bishops and theologians, causing them to label Tribonian a pagan to besmirch his name. Ultimately, Honoré concludes that we cannot know for sure whether Tribonian was pagan or not from the evidence available. Honoré, *supra* note 15, at 65-69.

<sup>31</sup> Honoré, *supra* note 15, at 49, 52; *Const. Deo auctore* (Justinian 530), translated as *The Composition of the Digest in 1* Theodor Mommsen & Paul Krueger, *The Digest of Justinian* xlvii (Alan Watson trans., Univ. of Pa. Press 1985); *Const. Omnem* (Justinian 533), translated as *The Whole Body of Law in 1* Mommsen & Krueger at l. While most books and articles use the terms "committee", "commission", or "commissioners" when discussing the bodies that created the *Corpus Juris Civilis*, Roman Law scholar David Pugsley argues that it would be more proper to think of the Second Law Commission as "Tribonian and the others" rather than a collective team, noting that the *Digest's* preface says nothing about a commission or commissioners. David Pugsley, *On Compiling Justinian's Digest II: Plans and Interruptions*, 13 *J. of Legal Hist.* 209, 213 (1992).

<sup>32</sup> Honoré, *supra* note 15, at 48.

<sup>33</sup> Norwich, *supra* note 12, at 198; James Allan Evans, *The Empress Theodora: Partner of Justinian* 40-42 (2002); *The Chronicle of John Malalas 275-76* (Elizabeth Jeffreys et al. trans., Australian Assoc. for Byzantine Studies 1986). The riots were named after the word *Nikā* (victory) that the rioters used as their rallying cry and shibboleth. *Id.*

The Nika Riots began with chariot racing<sup>34</sup> and ended with over 30,000 deaths, including the decapitation of two of the nephews of previous emperor Anastasius I.<sup>35</sup> The riots allowed Justinian's wife, Empress Theodora, to show her strength and determination during its apex.<sup>36</sup> On the other hand, the riots dealt Tribonian a setback when Justinian agreed to remove him as *quaestor* in a unsuccessful attempt to placate rioters.<sup>37</sup> The riots themselves must have disrupted work on the *Corpus Juris Civilis*, but their overall impact could have been worse. Tribonian still head of the Commission, and he was *quaestor* again by 534.<sup>38</sup> In addition, some scholars theorize that the emperor, looking for a public-relations boost in the riots' wake, may have accelerated the schedule for the next installment of the *CJC*, the *Digest*.<sup>39</sup>

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<sup>34</sup> Perhaps it should not be too surprising that even back then rabid sports fans were causing city-wrecking riots.

<sup>35</sup> Barker, *supra* note 11, at 88-89; Malalas, *supra* note 33, at 280-81; Norwich, *supra* note 12, at 200. The Nika Riots were an important and bloody turning point in Justinian's reign. Mike Dash, *Blue versus Green: Rocking the Byzantine Empire*, Smithsonian (Mar. 2, 2012), <http://www.smithsonianmag.com/history/blue-versus-green-rocking-the-byzantine-empire-113325928/> [<http://perma.cc/R52S-MN7Z>], succinctly describes events leading up to and during the riots as well as their aftermath. Norwich, *supra* note 12, at 197-200; Barker, *supra* note 11, at 82-91; and John Moorhead, *Justinian* 40-49 (Longman 1994) provide more detailed descriptions of the riots, their origins, and their aftermath. Each author focuses on different aspects of the events and interprets historical sources differently, so these narratives complement each other well. Geoffrey Greatrex, *The Nika Riot: A Reappraisal*, 117 *The Journal of Hellenic Studies* 60 (1997) is also worth reading for alternate explanations of some events during the riots.

<sup>36</sup> Evans, *supra* note 33, at 40-47.

<sup>37</sup> Malalas, *supra* note 33, at 276-77. John and Tribonian played a part in the riots' origin. John's techniques for filling imperial coffers angered members of the upper class. Norwich, *supra* note 12, at 194-95; Barker, *supra* note 11, at 57, 73; Moorhead, *supra* note 35, at 45. Word around the empire had it that *quaestor* Tribonian would repeal or enact any law for the right price, and the judicial system was corrupt under his watch. Barker, *supra* note 11, at 72.

<sup>38</sup> Honoré, *supra* note 15, at 109.

<sup>39</sup> See, e.g., du Plessis, *supra* note 4, at § 2.5.3.4.

***The Digest (or Pandects)***

The *Digest* (also known as the *Pandects*<sup>40</sup>) was the most complicated of the Commission's tasks. Other Roman emperors had overseen codifications like the *Codex*. Even the Visigoths took the *Codex Theodosianus* and combined it with Germanic traditions to create the *Lex Romana Visigothorum*.<sup>41</sup> But assembling hundreds of years' worth of jurists' writings was a project on an entirely different level. Emperor Theodosius II tried to compile jurists' writings on the scale Justinian envisioned, but it proved too much and was never completed.<sup>42</sup> For Justinian, though, it was a vital part of his project. The jurists' writings were more detailed, and filled in areas not covered by the broadly-worded *Codex*. Besides, what better way to prove Justinian's greatness than by doing something his predecessors could not?<sup>43</sup>

The Second Law Commission finished the project in three years. Justinian saw the *Digest's* quick completion as the work of Divine Providence, but a lot of credit should go to Tribonian's exceptional administrative skills and the increased scholarly firepower at the *quaestor's* disposal compared to Theodosius's time.<sup>44</sup> The commissioners distilled 1528 books by 39 jurists (many little-known titles from Tribonian's well-stocked library)<sup>45</sup> into a collection one-

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<sup>40</sup> From the Greek word *pandectae* (πάν δέχεσθαι), meaning “to take in everything”. Wolfgang Kunkel, *An Introduction to Roman Legal and Constitutional History* 155 (J.M. Kelly trans., 1st ed., Clarendon Press 1966).

<sup>41</sup> Honoré, *supra* note 15, at 50.

<sup>42</sup> *Id.* at 139-40.

<sup>43</sup> *Id.* at 48-49.

<sup>44</sup> *Id.* at 141.

<sup>45</sup> H.F. Jolowicz and Barry Nicholas, *Historical Introduction to the Study of Roman Law* 482-83 (3d ed. 1972).



twentieth as large,<sup>46</sup> omitting and amending writings to conform with Justinian law.<sup>47</sup> Tribonian and his commission organized the edited writings into fifty books (*liberi*):

- Book I: Public Law
- Books II-XLVII: Private Law
- Book XLVIII: Criminal Law
- Book XLIX: Appellate Procedure and Treasury
- Book L: Municipal Law, Specialized Law, and Definitions

Books were divided into a total of 432 titles (*tituli*), titles into laws, laws into sections or paragraphs. Each law had a header called an *inscription* stating which jurist wrote it, the title of the work that the law came from, and which volume in the jurist's work the law came from (e.g., Paulus's second book on the *fideicommissum*).<sup>48</sup> The *Digest* text was not copied from the original verbatim, and does not indicate when a commissioner made an *interpolation*, an edit to the jurist's work to avoid redundancy or contradiction with Justinian law.<sup>49</sup>

With the academic Tribonian as Commission chair, the *Digest* had a different tone than practitioner-oriented *Codex Vetus*.<sup>50</sup> The Commission designed the *Digest* to be a comprehensive handbook, more detailed than the *Codex*, for judges and practitioners, with all the jurists' writings that counsel could cite in court. At the same time, Tribonian and his imperial patron also pictured the *Digest* as a legal textbook and storehouse of ancient learning -- all the works of the

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<sup>46</sup> Barker, *supra* note 11, at 170; Honoré, *supra* note 15, at 48; Pugsley, *supra* note 31, at 213. Tribonian said it was 2000 books, but he may have exaggerated for effect. Honoré, *supra* note 15, at 147.

<sup>47</sup> *Const. Deo auctore*, *supra* note 31, at §§ 7-10.

<sup>48</sup> *Dig.* 35.2.29 (Paulus, *Fideicommissum* 2).

<sup>49</sup> Jolowicz & Nicholas, *supra* note 45, at 486.

<sup>50</sup> Honoré, *supra* note 15, at 46.

great Roman jurists in one handy collection.<sup>51</sup>

This book, important as it was, was not perfect. Foremost among the *Digest's* flaws was its organization, an "appalling arrangement".<sup>52</sup> Part of the problem came from the source material. Tribonian's commission organized the books and the titles partially based on the legal education curriculum at the time<sup>53</sup> (a system that Justinian and Tribonian themselves described as haphazard and perverse)<sup>54</sup>, but mostly on the awkward Praetor's Edict.<sup>55</sup>

The problems, unfortunately, do not end there. Books and titles are organized by topic. Within each title, however, the system changes. In order to understand this system, we must first learn more about the process the Second Law Commission used to three million lines of writing into 432 titles of the *Digest*.

Tribonian divided the Second Law Commission into three committees. Each committee read, edited, and organized an assigned group of writings. The writings were grouped in four *Masses*. Three of the *Masses* were named after the first writing in the group: The Sabinianic, Edictal, and Papinianic *Masses*. The fourth, smaller, *Mass*, was called the Appendix.<sup>56</sup> After the subcommittees read and edited the writings, the full commission organized them into 50 books

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<sup>51</sup> *Id.* at 48-49.

<sup>52</sup> Alan Watson, *The Importance of Nutshells*, 42 Am. J. Comp. L. 1, 4 (1994). Watson created the best-regarded English translation of the *Digest* to date.

<sup>53</sup> Charles Donahue, Jr., *On Translating the Digest*, 39 Stan. L. Rev. 1057, 1059 (1987).

<sup>54</sup> *Const. Omnem*, *supra* note 31.

<sup>55</sup> Watson, *supra* note 52, at 2; Donahue, *supra* note 53, at 1059; Fritz Schulz, *History of Roman Legal Science* 150-52 (1st ed. with new addenda 1967); Watson, *supra* note 52, at 2-4. The Edict was a statement of how Roman praetors planned to carry out their duties, such as court administration, along with jurists' commentaries on that statement. Jurists worked for glory, and glory came from creating new writings, not organizing the writings that already existed. *Id.*

<sup>56</sup> Pugsley, *On Compiling Justinian's Digest: The Victory Riots and the Appendix Mass*, 11 Oxford J. of Legal Studies 325, 326 (1991); Tony Honoré, *Justinian's Digest: Character and Compilation* 1-2 (2010).

and 432 titles. Within each title, the writings were arranged by the Masses they were in. The overall effect was a work not nearly as logically arranged as modern legal treatises.<sup>57</sup>

Despite its poor organization, modern scholars consider the *Digest* the most important part of the *Corpus Juris Civilis*.<sup>58</sup> Justinian certainly thought the *Digest* a crowning achievement and a complete restatement of the law as written by Roman jurists over the empire's many years. The emperor decreed that no commentary was allowed on the *Digest* (nor, presumably by extension, on the *Codex* or the *Institutes*).<sup>59</sup> Only translations into Greek (the Byzantine Empire's first language by now), indexes, or summaries were allowed.<sup>60</sup>

The Second Law Commission had completed a major project and made their emperor quite happy. Tribonian's work was not done, however.

### ***Justinian's Institutes***

The *Codex* and the *Digest* served an important purpose as modern statements of imperial law. The *Digest* was also an academic textbook, but Justinian recognized that its large and unwieldy nature might be too intimidating for the beginning law student. Future lawyers and officials needed a friendlier, better-arranged introduction to Justinian law. As work on the *Digest* drew to a close, Justinian directed the Second Law Commission to begin work on a "cradle of the

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<sup>57</sup> Jolowicz & Nicholas, *supra* note 45, at 484.

<sup>58</sup> du Plessis, *supra* note 4, at 56.

<sup>59</sup> *Const. Tanta* (Justinian 533) § 21, translated at *The Confirmation of the Digest* in 1 Theodor Mommsen and Paul Krueger, *The Digest of Justinian* lv (Alan Watson trans., Univ. of Pa. Press 1985).

<sup>60</sup> *Id.*; Jolowicz & Nicholas, *supra* note 45, at 481. Not that anyone paid any attention to this rule. *Id.* at 482.

law" (*legum cunabula*)<sup>61</sup> to be called the *Iustiniani Institutiones* (Justinian's *Institutes*).<sup>62</sup>

Tribonian formed a subcommittee with professors Theophilus and Dorotheus to take charge of creating the book, which would be based on the standard legal text of the time, Gaius's *Institutes*.<sup>63</sup> The subcommittee kept much of Gaius's organizational scheme of four books covering three broad subjects (persons, things, and actions) then divided the books into titles.<sup>64</sup> By December 30, 533, Justinian had his first-year textbook for law students that was also binding law.<sup>65</sup> Tribonian's Commission was not quite done, though. There was one more bit of updating left.

### ***The Codex Repetitae Praelectionis***

The *Codex Vetus* quickly became outdated.<sup>66</sup> Rather than have lawyers and officials deal with an old *Codex* with a long list of amendments, Justinian asked the Second Law Commission to revise the publication. On November 15, 534, the *Codex Repetitae Praelectionis* replaced the *Codex Vetus*.<sup>67</sup> When legal scholars refer to the *Codex* today, they mean the *Codex Repetitae*

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<sup>61</sup> *Const. Imperatoriam maiestatem* (Justinian 533) §§ 3, translated as *To Young Enthusiasts for Law, in Justinian's Institutes* 33 (Peter Birks and Grant McLeod trans., Cornell Univ. Press 1987).

<sup>62</sup> Jolowicz & Nicholas, *supra* note 45, at 492; Honoré, *supra* note 15, at 187; *Const. Deo auctore*, *supra* note 31, at § 11; *Const. Imperatoriam maiestatem*, *supra* note 61, at §§ 3-4.

<sup>63</sup> David Ibbetson, *Sources of Law from the Republic to the Dominate, in The Cambridge Companion to Roman Law* 25, 29 (David Johnston ed., 2015); Jolowicz & Nicholas, *supra* note 45, at 492; du Plessis, *supra* note 4, at § 2.3.4.4(e); *Const. Imperatoriam maiestatem*, *supra* note 61, at § 6.

<sup>64</sup> Jolowicz & Nicholas, *supra* note 45, at 493.

<sup>65</sup> *Id.* at 492.

<sup>66</sup> *Id.* at 479-80.

<sup>67</sup> *Const. Cordi nobis* §§ 4-5 (Justinian 534), translated as Fred Blume, trans., *Concerning the correction of the Justinian Code and the second edition thereof*, Annotated Justinian Code (last visited Aug. 10, 2016), <http://www.uwyo.edu/lawlib/blume-justinian/ajc-edition-2/books/book1/book%201-concerningcode.pdf>.

*Praelectionis*.<sup>68</sup>

The *Codex*<sup>69</sup> contained *constitutiones* dating back to Emperor Hadrian (r. 117-138 CE) and organized them using a topic outline based on the Praetor's Edict.<sup>70</sup> The *Codex* was divided into books:<sup>71</sup>

- Book I: Ecclesiastical law, legal system, administration
- Books II-VIII: Private Law
- Book IX: Criminal Law
- Books X-XII: Public Law

Books were divided into titles, titles into laws. Each law had an *inscription* stating which emperor issued the law and usually (for example, in the case of *rescripta*) the name of the person who asked the question prompting the *constitution*.

The Second Law Commission's work was done. The emperor, however, was not finished molding Roman law.

### ***The Novellae***

Justinian handed down *constitutiones* during his reign, even after Tribonian's commission completed the revised *Codex*. These *constitutiones* composed the last part of the *Corpus Juris Civilis*, the *novellae constitutiones (novels)*.<sup>72</sup> The *Digest* and the *Institutes* were mainly in Latin,

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<sup>68</sup> Jolowicz & Nicholas, *supra* note 45, at 494; Honoré, *supra* note 15, at 212. No known copies of the *Codex Vetus* exist today. *Id.*

<sup>69</sup> *Codex* is often translated to *code* in English, but *Codex* likely referred to the fact that this publication would be in the form of a bound book with spine and pages, called a *codex* in Latin, as opposed to a *liber*, which would normally be a papyrus scroll. Birks & McLeod, *supra* note 3, at 9.

<sup>70</sup> Humfress, *supra* note 26, at 163.

<sup>71</sup> Kaiser, *supra* note 5, at 134.

<sup>72</sup> Kaiser, *supra* note 5, at 138.

Tribonian's preferred legal language.<sup>73</sup> Most of the *novellae*, however, were in Greek, the Byzantine Empire's majority language by then.<sup>74</sup> Justinian planned to collect the *novellae* he passed from 534-554 in a set to give to the western parts of his empire, but that never happened.<sup>75</sup> It would fall to private scholars to compile Justinian's *novellae* after the emperor's death. Modern collections of the *novellae* resemble session law books: each *novel* gets a chapter number, although Justinian did not number his laws originally. Also like session law series, modern *novellae* collections are not organized by subject.<sup>76</sup>

Each *novel* usually begins with an *inscription* saying to whom the *constitution* is addressed (including that person's title), along with a declaration that the emperor is issuing the document. A *praefatio/prooimion* (preface) states the reason Justinian issued the law. Then comes the main text of the law, followed by an *epilogus/epilogo* (epilogue) telling the people who receive the law how and to whom the law must be publicized and when the law is effective. A *subscription* at the end states when the law was issued.<sup>77</sup>

Together with the *Codex*, *Digest*, and *Institutes*, these edicts formed the final piece of Justinian's efforts to make the body of Roman law his. From their publication date onward, Justinian stated that imperial law was "as if it had been uttered from our own inspired mouth."<sup>78</sup>

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<sup>73</sup> Honoré, *supra* note 15, at 41-42, 71.

<sup>74</sup> Kearley, *supra* note 8, at 381. Honoré, *supra* note 15, at 42, 58-59, 124, 134-35. One theory argues that this change in language signified rival Justinian protégé John of Cappadocia's triumph over Tribonian in a power struggle. *Id.* at 134. While Tribonian viewed Latin as the proper language of law, John strongly promoted Greek. *Id.* at 59, 255.

<sup>75</sup> Humfress, *supra* note 26, at 164.

<sup>76</sup> Kearley, *supra* note 8, at 380.

<sup>77</sup> *Id.* at 380-81. Kearley notes that many *novellae* compilations left out the *subscriptions*, which made it hard for modern scholars to reconstruct many of them. *Id.* at 381.

<sup>78</sup> *Const. Deo auctore*, *supra* note 31, at § 6.

The *Codex*, *Digest*, *Institutiones*, and *Novellae* were the only forms of law that lawyers and officials could cite in court. From Justinian's view, there was not even a need to keep the old sources for historical research. Justinian ordered Tribonian's commission to destroy some of the sources they used,<sup>79</sup> and many other copies of the ancient resources disappeared from neglect.<sup>80</sup> Now, Justinian's project to revise Roman law was complete. It was time to reform legal education.

### ***Justinian Education Reform***

Byzantine legal education was not necessarily bad, and had in fact revived in recent decades. The school in Beirut (then known as Berytus) enjoyed the best reputation; it was the "mother of the law", and its faculty "the teachers of the *eucumene* (empire)".<sup>81</sup> Constantinople's school was also well-regarded. Justinian, however, did not think highly of institutes in Alexandria, Athens, and Caesarea.<sup>82</sup> The former western empire only had a mediocre school in Rome. The emperor and his *quaestor* wanted to create a new, more uniform course of instruction

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<sup>79</sup> If a good portion of those sources truly came from Tribonian's personal library, that order must have caused the *quaestor* no small amount of pain.

<sup>80</sup> John Henry Merryman & Rogelio Pérez-Perdomo, *The Civil Law Tradition* 7 (3d ed. 2007). Some of those older versions of the law survive. Paper's high value in olden days may have helped. Since paper was precious back then, writers would re-use paper as much as possible. One of their methods was creating a *palimpsest*, which involved removing the ink on a page with solvent. Monks from the fourth through tenth centuries would often create palimpsests out of ancient works to use as paper for religious tomes. Fortunately, beginning in the 17th century, scholars could test paper to find out if it had been used as a palimpsest, and could even recover some of the removed writing. Using these techniques, Barthold Georg Niebuhr discovered that an eighth-century copy of the *Epistles* of St. Jerome was a palimpsest of Gaius's *Institutes*. This re-use of an ancient work is the only reason modern scholars have access to the original text of that important forbear to the Justinian *Institutes*. T. Lambert Mears, *Introduction, in The Institutes of Gaius and Justinian* i, i-iv (T. Lambert Mears trans., Steven and Sons 1882).

<sup>81</sup> Yaron Dan, *The Legal Profession in Palestine during the Byzantine Period*, 17 *Isr. L. Rev.* 274, 282-83 (1982).

<sup>82</sup> *Const. Omnem*, *supra* note 31, at § 7.

to better prepare students for legal practice and for careers as imperial officials.<sup>83</sup>

The language of instruction was also important. Justinian was a native Latin-speaker,<sup>84</sup> and Tribonian preferred Latin to Greek.<sup>85</sup> They were in the minority, however. Few people in the capital outside of the legal and bureaucratic spheres spoke Latin, and lectures at Beirut and Constantinople had been in Greek since at least the early fifth century.<sup>86</sup> Creating a quality legal curriculum with lectures in Greek but using the Latin-language *Digest*, *Codex*, and *Institutes* could be one way to encourage bright Greek-speaking students to learn Justinian's and Tribonian's favored language.<sup>87</sup>

Justinian's law of December 16, 533, limited the list of authorized law schools to three: Beirut, Constantinople, and Rome.<sup>88</sup> In the first year of the Justinian curriculum, students attended lectures on the *Institutes* and the first part of the *Digest*. Second and third years were devoted to lectures on other parts of the *Digest*. Fourth year was for private study of the rest of the *Digest*, and the fifth year was spent on private study of the *Codex*. Justinian may have added a sixth year for private study of his novels.<sup>89</sup> To help their studies (and increase his new works' visibility, no doubt), Justinian made provisions for law students to receive cheap copies of the

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<sup>83</sup> Jolowicz & Nicholas, *supra* note 45, at 453-54; Honoré, *supra* note 15, at 49.

<sup>84</sup> Moorhead, *supra* note 35, at 7.

<sup>85</sup> Honoré, *supra* note 15, at 41.

<sup>86</sup> Jolowicz & Nicholas, *supra* note 45, at 453; Barker, *supra* note 11, at 171-72; Kearley, *supra* note 8, at 381.

<sup>87</sup> Honoré, *supra* note 15, at 49.

<sup>88</sup> Kaiser, *supra* note 5, at 126, *citing* *Const. Omnem*, *supra* note 31. A massive earthquake destroyed Beirut, including its law school, in 551. Many lawyers associated with the school died in the disaster. The school moved to Sidon, but never again would it be the empire's "mother of the law". Dan, *supra* note 81, at 284; Honoré, *supra* note 15, at 255-56.

<sup>89</sup> Kaiser, *supra* note 5, at 126; Jolowicz & Nicholas, *supra* note 45, at 499.



*Digest, Institutes, and Codex.*<sup>90</sup> With a new legal education system in place and his collection of laws, Justinian made his mark on Roman jurisprudence. It would take centuries, though, before the legal world would feel the true impact of the emperor's efforts.

### ***End of the Justinianian Era***

Justinian died on November 14, 565.<sup>91</sup> The years diluted the impact of Justinian's works in the empire as the Greek language strengthened its hold. Later emperors and scholars abridged and amended the books, translated them into Greek, and added extensive commentary. Emperor Leo VI's (Leo the Wise, r. 886-912) *Basilica* was probably the most important of these post-Justinian revisions, collecting fragments of the *Corpus Juris Civilis* and integrating them with other laws.<sup>92</sup>

By the end of his reign, his empire had retaken most of Italy and southern Spain,<sup>93</sup> but those costly gains did not survive long after his death. His financially-strapped successors quickly lost most of the conquered territory.<sup>94</sup> Soon, the *Codex, Institutes, and Novellae* languished in obscurity, and western Europe was ruled by varying mixes of Germanic traditions

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<sup>90</sup> Humfress, *supra* note 26, at 166, citing *Const. Omnem*, *supra* note 31, at § 7. Justinian's reforms even changed terminology; first-year students were no longer *dupondii* ("two-pounders"), but *Iustiniani novi* ("Justinian's new people"), and in shades of 21<sup>st</sup>-century concerns, hazing of *Iustiniani novi* was forbidden. Jolowicz & Nicholas, *supra* note 45, at 499-500; Charles P. Sherman, *The Study of Law in Roman Law Schools*, 17 Yale L.J. 499, 506 (1908). Lest any students think Justinian was no fun at all, however, he did allow third-year *Papinianistae* to continue celebrating the day they began that year of study. Jolowicz & Nicholas, *supra* note 45, at 500.

<sup>91</sup> Norwich, *supra* note 12, at 262.

<sup>92</sup> Jolowicz & Nicholas, *supra* note 45, at 500-03. In an extra twist of the knife to the Latinate Justinian and Tribonian, the *Basilica* used Greek translations of the *Digest, Codex, and Institutes* for its excerpts. *Id.*

<sup>93</sup> Norwich, *supra* note 12, at 250-54.

<sup>94</sup> Barker, *supra* note 11, at 215-17; Charles M. Radding & Antonio Ciaralli, *The Corpus Iuris Civilis in the Middle Ages* 39-40 (2007).

and Roman law borrowed from the *Codex Theodosianus*.<sup>95</sup> After several centuries, however, Justinian returned to western Europe.

### ***The Medieval Revival***

By the mid-eleventh century, conditions in western Europe were ready for a Justinianian revival. Centers of learning moved their focus from dredging ancient writings for knowledge towards systematic, logical study of fields. This study required an authoritative text more complete than the bare-bones *Codex*, introductory *Institutes*, and scattershot *Novellae*.<sup>96</sup> Meanwhile, the Holy Roman Emperors and the Roman Catholic Church fought over their relative power, and laws available at the time offered little help in resolving the dispute.<sup>97</sup> The different nations within the Holy Roman Empire moved towards Latin dialects, and looked to Roman institutions to provide answers for problems that Germanic traditions did not address.<sup>98</sup>

The final piece of the puzzle fell into place with the discovery of the *Codex Secundus*, a copy of the *Digest*, which had been long lost to western Europe. The *Secundus* formed the basis of the *Digest* versions created in medieval times, but copies of it no longer exist.<sup>99</sup> With the *Digest* available again, students had a well-written and thorough text for the engaging study of

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<sup>95</sup> Barry Nicholas, *An Introduction to Roman Law* 46 (1962); Radding & Ciaralli, *supra* note 94, at 39-41; Norwich, *supra* note 12, at 364.

<sup>96</sup> Paul Vinogradoff, *Roman Law in Medieval Europe* 56-61 (Wm. W. Gaunt & Sons. 1994) (originally published with new introduction 1968); du Plessis, *supra* note 4, at § 11.2.2.1; Thomas Glyn Watkin, *An Historical Introduction to Modern Civil Law* 81-83 (1999); Peter Stein, *Roman Law in European History* 44 (1999).

<sup>97</sup> Stein, *supra* note 96, at 42; Du Plessis, *supra* note 4, at 372-73.

<sup>98</sup> Laurent Mayali, *The Legacy of Roman Law*, in *The Cambridge Companion to Roman Law* 374, 376 (David Johnston ed., 2015).

<sup>99</sup> Stein, *supra* note 96, at 43.

Roman law.<sup>100</sup>

The Pisans introduced another *Digest* text to western European scholars in 1135 when they looted it from the city-state of Amalfi, a Byzantine ally until the late 11th century. Florence, in turn, liberated the *Littera Pisana* from the Pisans in 1406, so it is known today as the *Littera Florentina*. This version of the *Digest*, dating back to 533-557, is the oldest text of the *Digest* known to exist today, and modern scholars still consider it the best copy.<sup>101</sup>

One of the most important figures in the *Corpus Juris Civilis's* medieval revival was Countess Matilda of Canossa, a noblewoman trying to protect her inheritance, Matilda invited the scholar Irnerius to come to Bologna and begin teaching law there. Irnerius became one of the most important figures in western European legal education, "the torch of law" who restored the science of legal analysis to the land. His classes were the beginning of the University of Bologna, which would become the premiere medieval law school – the “mother of scholars” – in Europe. Irnerius's students and successors created a legal network that replaced the local lords' ad-hoc justice. Roman law, and with it Justinian's books, had returned to continental prominence.<sup>102</sup>

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<sup>100</sup> *Id.* at 44.

<sup>101</sup> Harry Dondorp & Eltjo J.H. Schrage, *The Sources of Medieval Learned Law*, in *The Creation of the Ius Commune* 7, 13 (John W. Cairns & Paul J. du Plessis eds., 2010).

<sup>102</sup> Michèle K. Spike, *Tuscan Countess: The Life and Extraordinary Times of Matilda of Canossa 255-57* (2004); 1 John E. Ecklund, *The Origins of Western Law: From Athens to the Code Napoleon* 318 (Constance Cryer Ecklund ed., 2013). Countess Matilda is a fascinating person and an important figure in the Holy Roman Empire's history; Spike's book is worth reading for the whole story. Historians generally accept Irnerius as the first person to teach Roman law in medieval western Europe, but one theory argues that credit should go to a man named Pepo, who cited the *Digest* in courts and taught law before Irnerius. Stein, *supra* note 96, at 45; 1 Ecklund at 304. None of Pepo's writings still exist, however, and there seems to be little solid evidence for this claim. At any rate, Pepo was a legal advisor to Countess Matilda, so her connection to Justinian would remain. James A. Brundage, *The Medieval Origins of the Legal Profession* 80-81 (2008). Another theory states that Lanfranc of Pavia, an Archbishop of Canterbury, reintroduced the *Digest* to western Europe. Laurent Waelkens, *Amne Adverso: Roman Legal Heritage in European Culture* 100-01 (2015). However, there does not seem to be much evidence that Lanfranc had access to the *Digest* when he taught at Bec, and some scholars doubt whether he taught law at all. *See* Brundage at 92; 1 Ecklund at 238-39. To be fair, scholars have even begun to wonder if Irnerius was really as influential as the

*Justinian's Books in the Glossators' Age*

Irnerius gave birth to an important scholarly group: the *Glossators*.<sup>103</sup> The Glossators believed that the *Corpus Juris Civilis* was truly a complete body of law, and their efforts to divine law from the *CJC* resulted in *glossae* – short commentaries in the margins of a text that they added to Justinian's books.<sup>104</sup> Irnerius created the first *glossae*, and laid the foundations for the Glossators' classification schemes, called *distinction(e)s*.<sup>105</sup> The next major Glossators were the "Four Doctors": Bulgarus, Martinus, Hugo, and Jacobus.<sup>106</sup> Bulgarus, "the golden mouth", created some of the earliest comprehensive, systematic analyses of Justinian law. *Summulae* were brief summaries of all or part of a title in the *Corpus Juris Civilis*, and were collected into books called *summae*. More thorough collections of *summae* were called *apparatus*.<sup>107</sup>

Bulgarus is responsible for many of the important late Glossators. He taught Johannes Bassanianus,<sup>108</sup> whose student Azo created a *summa* on the *Codex* that became the litigator's

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currently-accepted history says he was. Brundage at 82-84. This article will accept the traditional narrative about Irnerius.

<sup>103</sup> Stein, *supra* note 96, at 46.

<sup>104</sup> Dondorp & Schrage, *supra* note 101, at 21-22.

<sup>105</sup> *Id.* at 311-12; Stein, *supra* note 96, at 47.

<sup>106</sup> 1 Ecklund, *supra* note 102, at 319-20. The traditional story says Irnerius taught the Four Doctors. *Id.* at 319. Evidence for this statement, though, is not airtight. The first claim for this teacher-student relationship arose several decades after Irnerius died. Brundage, *supra* note 102, at 85. As with many stories from this far back, historians make the best conclusion they can from the evidence available.

<sup>107</sup> *Id.* Dig. 50.17 was one of the Glossators' favorite titles to discuss. Litigators often referred to *summae* and *apparatus* of that title to find maxims supporting their side, just as modern-day American legal minds arm themselves with Karl Llewellyn's dueling canons of construction. Karl L. Llewellyn, *Remarks on the Theory of Appellate Decision and the Rules or Canons About How Statutes Are to Be Construed*, 3 Vand. L. Rev. 395 (1950).

<sup>108</sup> 1 Ecklund, *supra* note 102, at 321.

standby of his time.<sup>109</sup> Azo's student, Accursius, was the last and arguably most famous of the Glossators. His crowning accomplishment was the *Glossa Ordinaria*, which compiled all his predecessors' *summae* and 96,000 of their *glossae* into one book that became the mandatory reference for Roman law for the rest of the medieval era.<sup>110</sup> Their work practically defined European law in the middle ages, but would complicate later scholars' efforts.<sup>111</sup>

### **The Digest**

Evidence shows that the Glossators knew about the *Florentina*, but did not use it when creating their commentaries on the *Corpus Juris Civilis*, using the *Codex Secundus* instead.<sup>112</sup> The versions of the *Digest* the Glossators created are called the *Littera Bononiensis* or the *Vulgata*, and they pose several difficulties for modern scholars trying to use them. The Glossators abridged the *Digest* – replacing, for example, Greek quotations with Latin translations or omitting the quotations altogether. Sometimes errors were introduced during copying, resulting in some variations between editions.<sup>113</sup> The Glossators divided the *Digest* into three different publications. The *Digestum Vetus* contained *Dig.* 1.1-24.2. *Dig.* 24.3-38.17 became the

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<sup>109</sup> *Id.*; Stein, *supra* note 96, at 48; Randall Lesaffer, *European Legal History: A Cultural and Political Perspective* 257 (2009).

<sup>110</sup> 1 Ecklund, *supra* note 102, at 322-23; Stein, *supra* note 96, at 48-49. By this time, Justinian's books were always published alongside their *glossae*, but Accursius's books were often published minus the original Justinianic texts. While Justinian would likely approve of the idea of one book containing all the laws of the land, this author imagines he would not be pleased that it was done through commentaries on the *CJC*. A healthy sense of irony did not seem to be one of Justinian's foremost qualities.

<sup>111</sup> Stein, *supra* note 96, at 46.

<sup>112</sup> Dondorp & Schrage, *supra* note 101, at 13-14; Radding & Ciaralli, *supra* note 94, at 2, 172-75. Earlier theories favored the idea that the *Secundus* was culled together from different fragments of *Digest* copies over the years, but more recent thought says it was a copy of the *Florentina* that had some errors introduced during the copying process. *Id.*

<sup>113</sup> Dondorp & Schrage, *supra* note 101, at 14-15.

*Infortiatum*. The last part of the *Digest*, *Dig.* 39.1-50.17, became the *Digestum Novum*, which the Glossators published after the other two parts of the *Vulgata*.<sup>114</sup>

### **The Codex**

In the earlier middle ages, scholars only copied *constitutiones* relevant to their era, reducing Justinian's *Codex* to a smaller collection of imperial enactments now known as the *Epitome Codicis*. Some *constitutiones* were later restored to the *Codex*, minus the *inscription* and *subscription* stating which emperor issued them and when.<sup>115</sup>

As with the *Digest*, the Glossators divided the *Codex* into separate books. The book they called the *Codex* was only the first nine *liberi* of Justinian's compilation; the last three were published separately as *Tres Liber Codicis*. The Glossators added *authenticae*, abridgments of Justinian's *novellae*, to the *Codex*. The *authenticae* began as marginal notes, but the Glossators eventually directly inserted them into the main body of the *Codex*'s text. Some laws from the Holy Roman Emperors even made their way into the *Codex*.<sup>116</sup>

### **The Novellae**

The Glossators also collected only the *novellae* they decided were relevant to their times, using private collections as their source. In the early middle ages, the most prominent of these private collections was the *Epitome Juliani*, which sixth-century Constantinople law professor Julian created for his students.<sup>117</sup> By the twelfth century, the *Authenticum*, containing 134

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<sup>114</sup> *Id.* at 15.

<sup>115</sup> Radding & Ciaralli, *supra* note 94, at 135. Scholars probably used Greek-language sources to restore the *constitutiones*. *Id.*; Sass, *supra* note 25, at 225.

<sup>116</sup> Dondorp & Schrage, *supra* note 101, at 15-16.

<sup>117</sup> Kearley, *supra* note 8, at 383-85.

*novellae*, was the most important collection.<sup>118</sup> Glossators ignored 37 of the *Authenticum's novellae*, and added the *Libri Feudorum*, a collection of Lombard feudal laws.<sup>119</sup> The other highly important collection, the *Greek Collection of 168*, was discovered in western Europe around 1200, but would not be used much until centuries later.<sup>120</sup>

### **The *Institutes***

The Glossators mostly left Justinian's *Institutes* alone, including it in the *Volumen parvum*, along with the *Authenticum* and the *Tres Libri Codicis*.<sup>121</sup> No intact copies of the *Institutes* from Justinian's days have survived, but sections from as far back as the late sixth century still exist. In addition, well-preserved notes from lectures on the *Institutes* taught by Second Law Commission member Theophilus remain, which have greatly helped with interpreting Justinian's first-year law textbook.<sup>122</sup>

### ***Back to the beginning: returning to the original Justinianic text***

The Glossators were followed by the Post-glossators, also known as the Commentators, who mostly interpreted the *glossae*. The sixteenth century brought the Humanists, who were disappointed with how the Post-glossators' neglected the history of Roman law and its original texts<sup>123</sup> and wanted to return to the original text of Justinian's books. This meant uncovering and removing the Glossators' changes. Jacques Godefroy (a.k.a. Jacobus Gothofredus) established a

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<sup>118</sup> *Id.* at 385; Dondorp & Schrage, *supra* note 101, at 16-18; Kaiser, *supra* note 5, at 139. Only 14 of the *Authenticum's novellae* were in Latin. *Id.*

<sup>119</sup> Dondorp & Schrage, *supra* note 101, at 16-18; Kaiser, *supra* note 5, at 139.

<sup>120</sup> Kearley, *supra* note 8, at 387.

<sup>121</sup> *Id.* at 391-92; Kaiser, *supra* note 5, at 139.

<sup>122</sup> Dondorp & Schrage, *supra* note 101, at 17-18; Kaiser, *supra* note 5, at 133.

<sup>123</sup> Stein, *supra* note 96, at 74-79.

major milestone in Justinian scholarship in 1583 with his *Corpus iuris civilis in IIII partes distinctum*,<sup>124</sup> the first collection of Justinian's works that actually went by the name *Corpus Juris Civilis* and divided Justinian's books into the hierarchy we know today: *Codex*, *Digest*, *Institutes*, and *Novellae*.<sup>125</sup> Gothofredus's edition was the definitive original-language version of the *CJC* for several centuries, and remains highly regarded today.<sup>126</sup>

### ***Germany's Historical School, Romanists, and today's standard CJC***

Germany became one of history's most influential centers of Roman law scholarship in the 19th century, providing the foundation for modern study in the field. The German nation-states knew the influence of Roman law dating back to the early days of the Holy Roman Empire.<sup>127</sup> By the middle of the 18th century, the Enlightenment sparked a desire in western Europe to reorganize the law into a simple, logical system comprehensible to many, leading to the codification movement.<sup>128</sup>

Bavaria<sup>129</sup> and Prussia<sup>130</sup> developed civil codes in the 18<sup>th</sup> century, and by the 19<sup>th</sup> century many of the German states that had endured French rule wanted a body of law to replace the *Code Napoleon*.<sup>131</sup> In the 1810s, the German states pushed to create a general code, written

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<sup>124</sup> *Id.* at 50.

<sup>125</sup> Sass, *supra* note 25, at 225.

<sup>126</sup> Lesaffer, *supra* note 109, at 352 (2009); Nicholas, *supra* note 95, at 50; O.F. Robinson, *The Sources of Roman Law: Problems and Methods for Ancient Historians* 54 (1997).

<sup>127</sup> O.F. Robinson, T.D. Fergus, and W.M. Gordon, *European Legal History* §§ 11.2-11.4 (3d ed. 2000).

<sup>128</sup> du Plessis, *supra* note 4, at 385.

<sup>129</sup> *Codex Maximilianeus Bavaricus civilis*, a.k.a. *Bayrische Landrecht* (1756).

<sup>130</sup> *Allgemeines Landrecht für die preussischen Staaten* (1794).

<sup>131</sup> Robinson, *supra* note 127, at § 16.2.5.



in German, that could simplify their law's chaotic state. The process drew out for decades as officials and academics debated all its aspects. One side said that Roman law could not meet present-day Germans' needs. Friedrich Carl von Savigny, founder of Germany's Historical School, stepped up to defend the Justinianian inheritance.<sup>132</sup>

Savigny agreed that German law needed to be improved, but he thought codification would lead to a rigid, lifeless body of law unable to adapt to new situations. Savigny and his fellow Historians argued that a country's code could only be properly crafted after properly studying its history, and that Germany had not done that. Savigny was also a Romanist and opined that Germans needed to study their Roman legal inheritance from its apex during the Roman Empire before reforming contemporary German law.<sup>133</sup> Savigny's call led to a surge of innovative scholarship into ancient Roman laws, resulting in some of the field's most important developments.<sup>134</sup> The Historians' and the Romanists' research efforts also resulted in the most accurate reconstructions of the original *Corpus Juris Civilis* to date: the *stereotype edition*<sup>135</sup> of the *CJC*, consisting of Theodor Mommsen's *Digesta Iustiani Augusti* from 1870, Paul Krueger's *Codex Iustinianus* from 1877 and *Iustiniani Institutiones* from 1867, and Rudolf Schöll & Wilhelm Kroll's *Novellae*.<sup>136</sup>

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<sup>132</sup> *Id.* at §§ 16.2.3-16.2.6.

<sup>133</sup> *Id.* at §§ 16.2.6-16.2.8.

<sup>134</sup> *Id.* at § 16.2.9. Niebuhr's discovery of a palimpsest made from Gaius's *Institutes* and Friedrich Bluhme's theory on how Tribonian compiled and organized the *Digest* occurred during this time. *Id.*

<sup>135</sup> *Stereotype edition* refers to the printing method used. In a *stereotype*, a mold is made of a page full of individual blocks of type. This process had the advantage of freeing up the type blocks for other uses and making it easy to create a new plate for the page if the old one wore out. John Carter and Nicolas Barker, *ABC for Book Collectors* 210-11 (8<sup>th</sup> ed., Oak Knoll Press and The British Library 2004).

<sup>136</sup> Robinson, *supra* note 127, at § 16.2.10; Kearley, *supra* note 8, at 393; Sass, *supra* note 25, at 225-26.

### ***English Translations***

Justinian's books have been available to people who read Latin and Greek for centuries.

But what English translations are available?

#### **The *Institutes*: First in time and influence.**

In 1756, English lawyer George Harris finished *Iustiniani Institutionum libri quattuor*, the first translation of any part of the *Corpus Juris Civilis* into English. Harris's translation went through several editions, many copies making their way to the American colonies.<sup>137</sup> Harris's translation extended its influence in the United States when lawyer and President of South Carolina College Thomas Cooper republished it and added extensive annotations on applying the *Institutes* to American law, making it a standard addition to any American lawyer's collection. Until the 20<sup>th</sup> century, the *Institutes* remained the only part of the *CJC* with an English translation and the sum total of many Americans' knowledge of Roman law.<sup>138</sup> The *Institutes* proved equally popular among 20<sup>th</sup>-century translators. Peter Birks and Grant McLeod's *Justinian's Institutes* (1987) is still in print. J.A.C. Thomas's *The Institutes of Justinian* (1975) is fairly recent, but out of print now.<sup>139</sup>

#### **Monro's *Digest* Translation**

Charles Henry Monro, linguist and law lecturer at Cambridge University, released the first English translation of a substantial portion of the *Digest*, or any part of the *CJC* besides the *Institutes*, in 1904. His two-volume *The Digest of Justinian* was described as an "excellent

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<sup>137</sup> M.H. Hoeflich, *Legal History and the History of the Book: Variations on a Theme*, 46 U. Kan. L. Rev. 415, 424 (1998).

<sup>138</sup> *Id.* at 422-25; M.H. Hoeflich, *Comparative Law in America*, 4 Wash. U. Global Stud. L. Rev. 535, 540-41 (2005).

<sup>139</sup> Sass, *supra* note 25, at 231 has a thorough list of older English translations of Justinian's "cradle of the law".

monolingual translation”, but he died before he could complete the project, so it only covers the first 15 *liberi*.<sup>140</sup>

### **S.P. Scott's *The Civil Law***

Samuel Parsons Scott was a successful businessman turned reclusive translator of Latin works and writer. His best-known work is *The Civil Law* -- to date, the only complete English translation of the entire *Corpus Juris Civilis*.<sup>141</sup> The mere fact that Scott was able to translate all of Justinian's books is a remarkable accomplishment, but Scott based his translation on an older Latin edition of the *Corpus Juris Civilis* and did not give much thought to the special meanings of legal Latin.<sup>142</sup> The end result was a readable translation that failed to convey the true meaning of the original text. Nevertheless, readers can use Scott's translation to determine which part of the *Corpus Juris Civilis* they need to look at, and professors find it makes a useful introduction to Roman law.<sup>143</sup>

### **Justice Blume's *Codex and Novellae* Translations**

In one of those strange coincidences history likes to create, a justice in Wyoming was working on a partial *Corpus Juris Civilis* translation around the same time as Scott.<sup>144</sup> Blume, unlike Scott, was a native German speaker and kept up with that country's latest research in

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<sup>140</sup> *Id.* at 229.

<sup>141</sup> Timothy G. Kearley, *The Enigma of Samuel Parsons Scott*, 10 *Roman Legal Tradition* 1, 2 (2014), <http://romanlegaltradition.org/contents/2014/RLT10-KEARLEY.PDF> [<https://perma.cc/6XP6-DFSZ>].

<sup>142</sup> *Id.* at 30-32; Donahue, *supra* note 53, at 1062-63.

<sup>143</sup> Kearley, *supra* note 141, at 32-24.

<sup>144</sup> Timothy G. Kearley, *Justice Fred Blume and the Translation of Justinian's Code*, 99 *Law Lib. J.* 525, 529-531, 533, 537-39 (2007). Blume originally planned to stop his work when he heard about Scott's translation – until Blume read some of it. *Id.*

Roman legal history, and he based his translation on the stereotype edition of the Latin *CJC*.<sup>145</sup> Many who read Blume's translations of the *Codex* and *Novellae* found that them better than Scott's translations; Blume's work achieved readability without sacrificing accuracy.<sup>146</sup> Blume's attempts to publish his translation during his lifetime never came to fruition, but it is now available for free on the University of Wyoming law library's website.<sup>147</sup> Cambridge University Press also plans to publish a print edition of Blume's translation of the *Codex* in 2016.<sup>148</sup>

### **Alan Watson's *Digest***

In 1985, professor Alan Watson created a new translation of the *Digest* based on the stereotype edition. Reviewers considered this edition a substantial improvement over Scott's, with a much more faithful translation. Watson's translation is now considered the standard English edition of the *Digest*.<sup>149</sup>

### **Relevance of the *Corpus Juris Civilis* to Modern Researchers**

Justinian's books form an important cornerstone of the law as we know it today. Even if the *CJC* is no longer binding, it still provides important insight into the history of European

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<sup>145</sup> *Id.* at 526.

<sup>146</sup> *Id.* at 550-54.

<sup>147</sup> *Annotated Justinian Code*, University of Wyoming College of Law George William Hopper Law Library (last visited Aug. 10, 2016), <http://www.uwyo.edu/lawlib/blume-justinian/>. Note that even though the title refers to the *Codex*, this website also contains Blume's translation of the *Novellae*. See Kearley, *supra* note 144, for the story of how Kearley led the project to digitize Blume's translations.

<sup>148</sup> *The Codex of Justinian : a new annotated translation, with parallel Latin and Greek text based on a translation by Justice Fred H. Blume* (Fred H. Blume trans., Bruce W. Frier ed., 2016). Cambridge Univ. Press also plans to release a new English translation of the *Novellae* in the next few years based on the original Greek versions. Timothy G. Kearley, *From Rome to the Restatement: S.P. Scott, Fred Blume, Clyde Pharr, and Roman Law in Early Twentieth-Century America*, 108 *Law Lib. J.* 55, 55 n.1 (2016).

<sup>149</sup> See, e.g., Donahue, *supra* note 53, at 1065-66; William Turpin, *The Digest of Justinian*, 8 *J. of Legal Hist.* 381, 381-82 (1987) (book review).

jurisprudence.

### ***Historical Research***

One of the *CJC*'s clearest purposes is to research the law of the Byzantine Empire, the older law of the Roman Empire, and the law of the Roman Republic. Justinian's efforts to make sure Byzantine lawyers, jurists, and officials would only cite to his books guaranteed that future historians would primarily rely on the *CJC* when researching ancient Roman law.<sup>150</sup> The Glossators' *summae* are important for anyone researching medieval law. For a time, Accursius's *Glossa Ordinaria* practically *was* the law in western Europe.<sup>151</sup> Justinian's books also interest historians of other fields. Students of church history also and of canon law<sup>152</sup> refer to the *CJC*,<sup>153</sup> as do women's studies<sup>154</sup> and economic<sup>155</sup> historians.

### ***Influence in Civil-law Jurisdictions***

The *CJC*, the Glossators' *summae*, and the Commentators' treatises formed the basis of the *ius commune*, a set of general legal principles that held sway in many western European

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<sup>150</sup> Merryman & Pérez-Perdomo, *supra* note 80, at 7.

<sup>151</sup> 1 Ecklund, *supra* note 102, at 324.

<sup>152</sup> John P. Beal et al., *New Commentary on the Code of Canon Law* 230, 1297 (2000). The *CJC* had a very strong influence on the history of Eastern Christian Churches' canon law. *See, generally*, Spyros Troianos, *Byzantine Canon Law to 1100*, in *The History of Byzantine and Eastern Canon Law to 1500* 115 (Wilfried Hartmann & Kenneth Pennington eds., 2012).

<sup>153</sup> *See, e.g.*, John Meyerdorff, *Justinian, the Empire, and the Church*, 22 *Dumbarton Oaks Papers* 43 (1968); Fergus Miller, *Rome, Constantinople and the Near Eastern Church under Justinian: Two Synods of C.E. 536*, 98 *J. of Roman Studies* 62 (2008).

<sup>154</sup> *See, e.g.*, Adam Gearey, "Mad and Delirious Words": *Feminist Theory and Critical Legal Studies in the Work of Peter Goodrich* (book review), 6 *Feminist Legal Studies* 121, 122, 125 (1998); Jo Ann McNamara and Suzanne Wemple, *The Power of Women through the Family in Medieval Europe: 500-1100*, 1 *Feminist Studies* 126, 126 n.1, 127 n.6 (1973).

<sup>155</sup> *See, e.g.*, Bernard W. Dempsey, *Just Price in a Functional Economy*, 25 *Am. Econ. Rev.* 471, 473 n.10 (1935); Marcello de Cecco, *Monetary Theory and Roman History*, 45 *J. of Econ. Hist.* 809, 813 n.10, 819 n.24 (1985).

nations from the end of the eleventh century through the sixteenth century.<sup>156</sup>

The *Corpus Juris Civilis* also influenced individual nations. Castile's *Las Siete Partidas*, which still influences Spain and its colonies today, used the *Digest's* framework and large portions of the *CJC's* text.<sup>157</sup> France's *Code Napoleon* (a.k.a. *Code Civil*), which influenced numerous nations' codes, was itself influenced by the structure and choice of subjects in Justinian's *Institutes*.<sup>158</sup> Germany's *Bürgerlichen Gesetzbuch* (*BGB*, the *German Civil Code*) combined Roman law with traditional German law to form a comprehensive body of law in the Justinian mold that influenced Japan's and Brazil's codes.<sup>159</sup>

### ***Influence in Common-law Jurisdictions***

Justinian's books are also relevant to the modern common-law researcher. One of the most influential treatises in common-law history had a strong Justinianian pedigree. Henry de Bracton, whose *On the Laws and Customs of England* was the standard statement and commentary on English law for centuries,<sup>160</sup> borrowed extensively from Azo's *summa*, cited frequently to the *Corpus Juris Civilis*, and used Justinian's *Institutes* as a template for his book's

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<sup>156</sup> du Plessis, *supra* note 4, at 371; Lesaffer, *supra* note 109, at 266; Robinson, *supra* note 127, at §§ 7.1-7.2; Mayali, *supra* note 98, at 378-79; Reinhard Zimmerman, *Roman Law in the Modern World*, in *The Cambridge Companion to Roman Law* 452, 464-65 (David Johnston ed., 2015).

<sup>157</sup> 1 Charles Phineas Sherman, *Roman Law in the Modern World* § 290 (2d ed. 1922); Vincenç Feliu et al., *A Closer Look: A Symposium Among Legal Historians and Law Librarians to Uncover the Spanish Roots of Louisiana Civil Law*, 38 Int'l. J. Legal Info. 295, 307 (2010).

<sup>158</sup> 1 Sherman, *supra* note 157, at § 258; Robinson, *supra* note 127, at § 15.7.7; du Plessis, *supra* note 4, at 382.

<sup>159</sup> du Plessis, *supra* note 4, at 385-86; 1 Sherman, *supra* note 157, at § 344. Roman law's influence on the *BGB* even extended to naming conventions. For a while at least, amendments and additions to the *BGB* were called *novellae*. 1 Sherman at § 344 n.182.

<sup>160</sup> Edward R. Re, *The Roman Contribution to the Common Law*, 29 Fordham L. Rev. 447, 471 (1961); Theodore F.T. Plucknett, *A Concise History of the Common Law* 263-64 (Liberty Fund 2010) (originally 5th ed. published 1956); 1 Sherman, *supra* note 157, at §§ 374, 389.

outline.<sup>161</sup> Sir Francis Bacon advocated codifying English law, citing Justinian's precedent of distilling an unwieldy body of law into a concise collection.<sup>162</sup> Roman law influenced English equity,<sup>163</sup> ecclesiastical, and admiralty law.<sup>164</sup>

Justinian's influence crossed the Atlantic into the American colonies. Founding Fathers George Wythe,<sup>165</sup> John Adams,<sup>166</sup> and Thomas Jefferson<sup>167</sup> cited Justinian in their work, as did authors of major American treatises such as John B. Minor,<sup>168</sup> James Kent,<sup>169</sup> and United States Supreme Court Justice Joseph Story.<sup>170</sup> Louisiana's debt to Justinian comes as little surprise due to its Spanish and French heritage,<sup>171</sup> but Justinian's influence can be seen in other parts of the United States. For example, Virginia's Statute of Descents and Distributions of 1785,<sup>172</sup> which

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<sup>161</sup> 1 Sherman, *supra* note 157, at § 374.

<sup>162</sup> *Id.* at § 390.

<sup>163</sup> *Id.* at § 379.

<sup>164</sup> *Id.* at § 380.

<sup>165</sup> W. Hamilton Bryson, *The Use of Law in the Virginia Courts*, 28 Am. J. Legal Hist. 135, 141-43 (1984), has a good discussion of Wythe's use of the *CJC*.

<sup>166</sup> Daniel R. Coquillette, *Justinian in Braintree: John Adams, Civilian Learning, and Legal Elitism, 1758-1775*, in 1 *The History of Legal Education in the United States* 75, 82-87 (Steve Sheppard ed., 1999).

<sup>167</sup> Peter Stein, *The Attraction of the Civil Law in Post-Revolutionary America*, 52 Va. L. Rev. 403, 410 (1966).

<sup>168</sup> Bryson, *supra* note 165, at 145.

<sup>169</sup> Harold J. Krent, *Foreword: The Legacy of Chancellor Kent*, 74 Chi.-Kent L. Rev. 3, 3 (1998).

<sup>170</sup> Roscoe Pound, *The Place of Judge Story in the Making of American Law*, 48 Am. L. Rev. 676, 679 (1914).

<sup>171</sup> A.N. Yiannopoulos, *The Civil Codes of Louisiana*, 1 Civil Law Commentaries 1, 4 (2008), [http://www.law.tulane.edu/uploadedFiles/Institutes\\_and\\_Centers/Eason\\_Weinmann/v01i01-Yiannopoulos%281%29.pdf](http://www.law.tulane.edu/uploadedFiles/Institutes_and_Centers/Eason_Weinmann/v01i01-Yiannopoulos%281%29.pdf) [<http://perma.cc/757X-U638>]. Civil law historians have argued over whether Louisiana's law owes more of a debt to Spanish or French law. See Feliu et al., *supra* note 157, for a summary of the debate. Either way, Justinian's influence on Louisiana's law is strong.

<sup>172</sup> 12 W.W. Hening, *Statutes at Large: Being a Collection of All the Laws of Virginia* 138 (Printed for the editor by George Cochran 1823).

remains more or less intact today,<sup>173</sup> was heavily influenced by NOV. 118.<sup>174</sup> Roman law's influence on the post-Revolution United States, its continuing influence on one state, and its influence in many other nations make the *CJC* a resource that is still relevant for modern researchers – not just scholars of civil and common law, but historians of many disciplines.

### **How to Research the *Corpus Juris Civilis***

The *Corpus Juris Civilis* is still an important resource, but it was not designed to be an easily-searchable code. What is a researcher to do?

#### ***Modern secondary sources***

When researching an unfamiliar area of the law, one of the best places to start is with a secondary source.

#### **Roman Law**

*Borkowski's Textbook on Roman Law*<sup>175</sup> is a good starting point that explains Roman law logically and includes ample citations to relevant parts of the *Corpus Juris Civilis*. Barry Nicholas's *An Introduction to Roman Law*<sup>176</sup> is good for getting a grounding in Roman law, but has very few citations to primary sources. *Borkowski* may be the better textbook to begin with. *The Cambridge Companion to Roman Law*<sup>177</sup> is a collection of essays discussing different aspects of Roman law and its history that also offers useful citations to the *CJC*. It is less universal in coverage than *Borkowski*, but it covers some topics, such as Roman legal history, in

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<sup>173</sup> Va. Code Ann. § 64.2-200 (2012).

<sup>174</sup> Bryson, *supra* note 165, at 139, *citing Davis v. Rowe*, 27 Va. (6 Rand.) 355 (1828).

<sup>175</sup> du Plessis, *supra* note 4.

<sup>176</sup> Nicholas, *supra* note 95.

<sup>177</sup> *The Cambridge Companion to Roman Law* (David Johnston ed, 2015).



more detail.

H.F. Jolowicz and Barry Nicholas's *Historical Introduction to the Study of Roman Law*<sup>178</sup> lives up to its name. Jolowicz and Nicholas thoroughly discuss the history of Roman law and where it was written down up to Justinian. People interested in the *Corpus Juris Civilis*'s history specifically are advised to look at Tony Honoré's *Tribonian*,<sup>179</sup> which does a wonderful job of describing how the *CJC* was created as well as the events leading up to its birth. *The Cambridge Companion to the Age of Justinian*<sup>180</sup> includes some excellent, well-sourced essays on how the law worked under Justinian and on how the *CJC* came to be. The end of Jolowicz and Nicholas's book also has a nice discussion of Justinian's rule and the *CJC*'s creation.

### **Roman law's influence in Western Europe**

*Borkowski* has some sections that discuss Roman law's impact on European nations for readers seeking a brief summary. For a bit more detail, Peter Stein's *Roman Law in European History*<sup>181</sup> is a helpful introduction on the effect Roman law has had on its European successors. The scholar looking for a more detailed overview should consult O.F. Ferguson, T.D. Fergus, and W.M. Gordon's *European Legal History*.<sup>182</sup> Charles Phineas Sherman's *Roman Law in the Modern World*<sup>183</sup> shows its age, especially in some of the terms it uses, but its first volume still has an excellent rundown of the history of Roman law and its influence on other nations from the

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<sup>178</sup> Jolowicz & Nicholas, *supra* note 45.

<sup>179</sup> Honoré, *supra* note 15.

<sup>180</sup> *The Cambridge Companion to the Age of Justinian* (Michael Maas ed., 2005).

<sup>181</sup> Stein, *supra* note 96.

<sup>182</sup> Robinson, *supra* note 127.

<sup>183</sup> Sherman, *supra* note 157.

Roman Empire's birth through the early 20<sup>th</sup> century.

Paul Vinogradoff's *Roman Law in Medieval Europe*<sup>184</sup> is over a century old but still highly regarded for people interested in the *CJC*'s journey through that time period. John E. Ecklund's *The Origins of Western Law*<sup>185</sup> has a good discussion about the Glossators, but tends to stray from Roman law after that. *The Creation of the Ius Commune*<sup>186</sup> has a useful first chapter that discusses the Glossators and their part in the *CJC*'s story.

### **History of Justinian, the Byzantine Empire, and the Roman Empire**

Justinian's reign was one of the better-documented ones of ancient history. Besides the *Cambridge Companion to the Age of Justinian* mentioned above, John W. Barker's *Justinian and the Later Roman Empire*<sup>187</sup> and John Moorhead's *Justinian*<sup>188</sup> are excellent resources on this important emperor. Barker generally offers more detail than Moorhead, but both books make good companions, as each author sometimes draws different conclusions from the *Rashomon*-esque collection of historical sources available.

Lars Brownsworth's *Lost to the West*<sup>189</sup> is an enjoyable popular history of the Byzantine Empire that sparked this author's interest in the subject. John Julius Norwich is an entertaining writer with a sense for juicy details, and his books on the Byzantine Empire are a great place to go for a more thorough history of the Eastern Roman Empire. He originally wrote three

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<sup>184</sup> Vinogradoff, *supra* note 96.

<sup>185</sup> Ecklund, *supra* note 102.

<sup>186</sup> *The Creation of the Ius Commune* (John W. Cairns & Paul J. du Plessis eds., 2010).

<sup>187</sup> Barker, *supra* note 11.

<sup>188</sup> Moorhead, *supra* note 35.

<sup>189</sup> Brownsworth, *supra* note 12.

volumes,<sup>190</sup> now out of print but still available at many libraries, replaced by a one-volume abridgment called *A Short History of Byzantium*.<sup>191</sup>

Those seeking a history of the older Roman Empire may want to begin with Mary Beard's recent *SPQR*,<sup>192</sup> a highly-readable popular history of Rome from its beginnings to the third century CE. Mary T. Boatwright's *The Romans: From Village to Empire*<sup>193</sup> is considered one of the best textbooks on Roman history today. Theodor Mommsen, who played an important part in Roman law scholarship, also wrote a highly-regarded history of the empire called *The History of Rome*.<sup>194</sup>

### ***Justinian's Institutes***

Present-day researchers can also use the same book Justinian's first-year students used. The *Institutes* contain citations to other Roman law sources, including other parts of the *CJC*. Birks and McLeod's version of the *Institutes*<sup>195</sup> runs the English translation parallel with the

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<sup>190</sup> Norwich, *supra* note 12; John Julius Norwich, *Byzantium: The Apogee* (1992); John Julius Norwich, *Byzantium: The Decline and Fall* (1995).

<sup>191</sup> John Julius Norwich, *A Short History of Byzantium* (Reprint ed., 1998).

<sup>192</sup> Mary Beard, *SPQR: A History of Ancient Rome* (2015).

<sup>193</sup> Mary T. Boatwright et al., *The Romans: From Village to Empire: A History of Rome from Earliest Times to the end of the Western Empire* (2d ed. 2011).

<sup>194</sup> Theodor Mommsen, *The History of Rome* (Richard Bentley ed., William Purdie Dickson trans., Routledge/Thoemmes Press 1996). Mommsen's book is also available on the Internet Archive for free (Vol 1 at <https://archive.org/details/historyofrome01mommiala> ; Vol. 2 at <https://archive.org/details/historyrome02mommiala> ; Vol. 3 at <https://archive.org/details/historyofrome03mommiala> ; Vol. 4 at <https://archive.org/details/historyofrome04mommiala> ; and Vol. 5 at <https://archive.org/details/historyofrome05mommiala>).

<sup>195</sup> *Justinian's Institutes* (Peter Birks & Grant McLeod trans., Cornell Univ. Press 1987).

Latin text, as do J.A.C. Thomas's translation<sup>196</sup> and Thomas Collett Sandars's.<sup>197</sup> All three keep the footnotes in the Latin version, which refer to other parts of the *CJC*, but the English translations do not include those footnotes. Sections in the *Institutes* tend to be short, though, so it is not too much trouble to determine which footnote goes with which part of the text. Thomas's and Sandars's editions also include helpful translator's commentary.

### ***Citing to the Corpus Juris Civilis***

Depending on how old the reference is, deciphering a cite to the *Corpus Juris Civilis* can be simple or a bit of a research exercise in itself.

#### **Present-day cite format**

Fortunately, modern cites to the *Corpus Juris Civilis* are straightforward. For that, we can thank Edward Gibbon, author of *The History of the Decline and Fall of the Roman Empire*.<sup>198</sup>

##### **a) Gibbon**

Using Gibbon's system, *D.* or *Dig.* refers to Justinian's *Digest*; *C.* or *Cod.* is the *Codex*; *I.* or *Inst.* is Justinian's *Institutes*; and *N.* or *Nov.* is the *Novellae*. Next, the cite specifies which part of the book to look in, from largest (*liber*) to smallest (law, section, etc.) So *D. 47.2.15.3* refers to book 47, title 2, law 15, section 3.<sup>199</sup>

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<sup>196</sup> *The Institutes of Justinian: Text, Translation, and Commentary* (J.A.C. Thomas trans., Juta 1975).

<sup>197</sup> *The Institutes of Justinian: With English Introduction, Translation, and Notes* (Thomas Collett Sandars trans., 15th Impression 1922).

<sup>198</sup> Sass, *supra* note 25, at 232.

<sup>199</sup> *Id.*

## b) Bluebook

Anyone who has dealt with the *Bluebook*<sup>200</sup> will not be surprised to learn that it insists on doing things a little differently. Table T2.34<sup>201</sup> sets out the rules for citing to Roman Law. The *Bluebook*'s format is similar to Gibbon's, but it prefers a bit more information. Happily, this information is easily found in the versions of the *CJC* most modern researchers will use.

### Medieval cite format

Understanding citations by medieval scholars, who were expected to know Justinian's books by heart,<sup>202</sup> gets more complicated. Medieval editions of Justinian's books did not even begin to number the books, titles, or section until 1510.<sup>203</sup>

Medieval references to the *Corpus Juris Civilis* began the same way modern citations do, with an abbreviation to indicate which part of the *CJC* the author is talking about. Medieval scholars often represented the *Digest* with a *D.* with a line through its center, or with the abbreviation *ff.*<sup>204</sup> *C.* for *Codex* and *Inst.* for the *Institutes* remained.<sup>205</sup>

Since they had no title, book, or law numbers to refer to, scholars in the middle ages used the first couple of words in the title and the law they wanted to cite to. So, D. 47.2.15.1 (Paul,

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<sup>200</sup> *The Bluebook: A Uniform System of Citation* (Columbia Law Review Ass'n et al. eds., 20th ed. 2015).

<sup>201</sup> *Id.* at 444 tbl. T2.34.

<sup>202</sup> Sass, *supra* note 25, at 232.

<sup>203</sup> Dondorp & Schrage, *supra* note 101, at 18.

<sup>204</sup> *Id.* at 19. Historians are not entirely sure where *ff.* came from, but their best guess is that it was a corrupted form of an oddly-designed *D.* *Corpus Juris Civilis Citation Form*, Ames Foundation (last updated Oct. 14, 2013), <http://amesfoundation.law.harvard.edu/digital/CJCiv/CitationForm.shtml> [<https://perma.cc/WE58-5C3E>].

<sup>205</sup> Dondorp & Schrage, *supra* note 101, at 19. Since medieval scholars did not use the *Novellae* the same way modern scholars do, they had no equivalent to the *N./Nov.* abbreviation. *Id.* For more information on how medieval scholars referred to Justinian's *novellae*, see Kenneth Pennington, *Roman and Secular Law, in Medieval Latin: An Introduction and Bibliographical Guide* 254, 256 (F.A.C. Mantello & A.G. Rigg eds., 1996).

Sabinus 5) would be "ff. de furt. (l.) Creditorus, Qui fundum."<sup>206</sup> *ff.* stands for the *Digest*, *furt.* is short for *De Furtis*, the name of the *titulus*. (l.) is short for *lex* (law). *Creditorus* is the first word in law 15 of title 2 of book 47. *Qui fundum* means the first section after the *principum*, the law's preface.<sup>207</sup> A modern researcher can look at the table of contents or index of the *CJC* stereotype edition to get a quick look at names of the *tituli*. Finding aids have also been created for the Glossators' and Commentators' scholarship.<sup>208</sup> When referring to the Glossators' version of Justinian's books, modern scholars still normally use the Gibbon format, while also specifying the edition used.<sup>209</sup>

### ***Online resources***

The modern scholar has a major advantage their predecessors did not: the Internet. The *Corpus Juris Civilis*'s original text is available online, as are some English translations.

### **Useful portals**

Fordham University's Internet Medieval Sourcebook<sup>210</sup> has a section on Roman law with links to Latin and English versions of parts of the *Corpus Juris Civilis*. The Université Pierre-Mendès-France's Roman Law Library<sup>211</sup> contains the Latin stereotype edition of the *Corpus Juris Civilis* in text format, as well as links to other editions of the *CJC* (including Accursius's

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<sup>206</sup> Dondorp & Schrage, *supra* note 101, at 19.

<sup>207</sup> *Id.*

<sup>208</sup> *Id.*; Ames Foundation, *supra* note 204, and Pennington, *supra* note 205, are good places to get more details on researching medieval Roman law.

<sup>209</sup> Ames Foundation, *supra* note 204.

<sup>210</sup> *Medieval Legal History*, Fordham University (last updated March 27, 2007), <http://legacy.fordham.edu/Halsall/sbook-law.asp>.

<sup>211</sup> *The Roman Law Library*, Y. Lassard & A. Koptev (last visited Aug. 10, 2016), <http://droitromain.upmf-grenoble.fr/>.

*Glossa Ordinaria*) on other websites. The website for Harvard University's Ames Foundation<sup>212</sup> has scanned images from two *Vulgata* editions of the *CJC*.

### **Finding specific parts of the Corpus Juris Civilis**

If a researcher already knows which part of the *CJC* they are interested in, and what language they want it in, they have other online options.

#### **c) The Complete Corpus Juris Civilis in English**

The quality of the translation in S.P. Scott's *The Civil Law*<sup>213</sup> may not be highly regarded, but it is still the only English translation of the entire *CJC*. It also has an index covering the entire set, no small help for those who are not sure which of Justinian's books covers their topic. Hein Online includes Scott's book in its Legal Classics collection.<sup>214</sup>

#### **d) The Codex and the Novellae in English**

The University of Wyoming's George William Hopper Law Library makes Justice Fred Blume's translation of the *Codex* and the *Novellae* on its website for free.<sup>215</sup> Their website also includes some background information on Justice Blume, the *Codex* and the *Novellae*, and Blume's translation. Those interested in Blume's process can also see scans of Blume's original manuscript for the translations with marginal notes. The site offers a Google-powered search of

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<sup>212</sup> *The Ames Foundation*, The Ames Foundation (last visited Aug. 10, 2016), <http://amesfoundation.law.harvard.edu/>.

<sup>213</sup> S.P. Scott, *The Civil Law* (1932).

<sup>214</sup> Scott's book is also available for free in text format on the Constitution Society's website at <http://www.constitution.org/sps/sps.htm>. There is very little information on the Constitution Society, so their website seems fine for getting the gist, but probably should not be considered a reliable copy (somewhat appropriate, considering the opinion some Roman law scholars have of Scott's translation).

<sup>215</sup> *Annotated Justinian Code*, Univ. of Wyoming George W. Hopper Law Library (last visited Aug. 10, 2016), <http://www.uwyo.edu/lawlib/blume-justinian/>.

the *Codex* and *Novellae*, as well as tables showing which *Novellae* affected which *Codex* sections.

**e) The *Digest* in English**

The full text of Watson's translation of the *Digest* is not online, but University of Pennsylvania Press offers a Google Books preview.<sup>216</sup> This is handy for finding relevant sections of the *Digest*, especially as Watson's translation does not have an index. Monro's partial *Digest* translation is available in Hein Online's Legal Classics Library, as well as through the Internet Archive.<sup>217</sup> The Internet Archive's book search is basic, essentially a PDF-style find-within-the-document search. The website is free, and books can be downloaded in a variety of formats including PDF, EPUB, and Kindle.

**f) The *Institutes* in English**

The *Institutes* have been translated by multiple people over the centuries. Likewise, multiple versions of that book are available online.

Thomas Collett Sandars's translation of the *Institutes* did not work from the stereotype edition's Latin original, but it used a Latin version from around the same time, and was still being published into the 20<sup>th</sup> century. Several editions of it are available on the Internet Archive<sup>218</sup> and on Hein Online's Legal Classics and World Constitutions Illustrated: Contemporary & Historical Documents and Resources collections. Refer to the sixth edition from 1878 or later, which used a

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[https://books.google.com/books/pennpress?q=bibliogroup:%22The+Digest+of+Justinian%22&hl=EN&source=gs\\_metadata\\_r&cad=2](https://books.google.com/books/pennpress?q=bibliogroup:%22The+Digest+of+Justinian%22&hl=EN&source=gs_metadata_r&cad=2).

<sup>217</sup> <https://archive.org/details/digestjustinian00monrgoog> (Vol. I);  
<https://archive.org/details/digestofjustinia02monruoft> (Vol. II).

<sup>218</sup> <https://archive.org/details/institutesofjus00sandoft>.



newer version of the original Latin text.

Scholars consider J.B. Moyle's translation of the *Institutes* to be a good one, and it is based on Krueger's Latin version from the stereotype edition. Unlike many other recent translations, it does not include the original Latin text, and does not include the original text's footnotes. The Internet Archive has a 1906 edition of Moyle's edition,<sup>219</sup> and Hein's Legal Classics library has a 1913 Moyle edition as well as an 1852 edition of Cooper's translation.

Those who prefer to read the original Latin and Greek text need not worry. The Internet Archive has a copy of the "stereotype edition": Kreueger's *Institutes* and Mommsen's *Digest*,<sup>220</sup> Krueger's *Codex*,<sup>221</sup> and Kroll's *Novellae*.<sup>222</sup> The Université Pierre-Mendès-France's Roman Law Library<sup>223</sup> has the stereotype edition in text, and includes links to other editions of the Latin/Greek-language *CJC*.

### Using the print

There is still something to be said for more traditional finding tools. Scott's *The Civil Law* has a table of contents for each volume and an index in the last volume covering the entire set, both in English. The Latin stereotype edition has tables of contents and indexes for the *Codex*, *Institutes*, and *Digest*. Note that the indexes in the stereotype edition are in the front of the volumes, not the back.

Print readers of the *Digest* face a bit of a challenge. Both Watson's and Monro's

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<sup>219</sup> <https://archive.org/details/institutesjusti00moylgoog>.

<sup>220</sup> <https://archive.org/details/corpusjuriscivil01krueuoft>.

<sup>221</sup> <https://archive.org/details/corpusiuriscivil02krueuoft>.

<sup>222</sup> <https://archive.org/details/corpusjuriscivil00krueuoft>.

<sup>223</sup> *Roman Law Library*, *supra* note 211.

translations have a Table of Contents in both Latin and English. Watson places the contents for the entire *Digest* in parallel Latin and English pages at the beginning of Volume One, along with separate English tables of contents for each volume. Monro has a separate table of contents for each volume in English with parenthetical Latin translations. Neither Watson nor Monro, however, includes an index in their translation. Someone researching the *Digest* may need to consult a secondary source, online source, or the index in Scott's edition.

As usual, *Institutes* readers have multiple options. The latest translations from Thomas and from Birks & McLeod have parallel Latin and English tables of contents, as well as English-language indexes. Moyle's translation of the *Institutes* has a table of contents and index in English, and Sandars's *Institutes* translation has an English index.

## **Conclusion**

Justinian's project to consolidate the law and effectively rewrite it in his name was a success, possibly even beyond his wildest dreams. The *Corpus Juris Civilis* is no longer the binding law of a great empire, but its influence stretched through the middle ages to the modern era. It had a tremendous impact across Europe and much of the earth. Researchers, even those investigating the common law, still need to be familiar with Justinian and Tribonian's great endeavor. Even though the *Corpus Juris Civilis* suffers from an unfortunate system of organization, we have several tools we can use to make the task of researching the late emperor's works easier. Justinian's legacy looks set to continue for centuries to come.