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

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

BY THOMAS J. MCSWEENEY AND MICHELE K. SPIKE

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

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

JUSTINIAN AND THE REVISION OF THE LAW

Early in his reign, the Eastern Roman Emperor Justinian (r. 527-565) initiated a program to restore the law of the early Roman Empire. This legal restoration was part of a broader program of restoring the empire's glory, which included plans to reconquer the Western empire from the Germanic tribes that had seized most of it in the previous century. He began by creating a commission in 528 to look through the imperial legislation of the last few centuries, to revise it where necessary, and to compile it "in a single book (codex), under our blessed name." When this text, called the Code, was completed, Justinian commissioned a group of law professors to work through the "two thousand books and three million lines" of writing by the great jurists of the first through third centuries and to "present the diverse books of so many authors in a single volume." The professors were to take the best of the opinions, change them where they were faulty, and arrange them all in a work of fifty books, which would be promulgated by the emperor and have the same authority as a legislative act. This work, completed in 533, was known as the Digest or Pandects. At the same time, Justinian promulgated a legal textbook, called the Institutes, meant for beginning law students. The Digest, the Institutes, and an updated version of the Code, promulgated in 554, would collectively come to be known as the Corpus Juris Civilis, or the body of civil law.
Justinian's plans to reconquer the Western empire enjoyed very limited success and, within a short time, the empire had lost much of what it had regained. The Justinianic corpus therefore never really took hold in the Western part of the Roman Empire and had little influence in Western Europe between the sixth and the eleventh centuries.1

In the eleventh century something sparked an interest in Justinian's corpus. Historians have described this event as the "big bang" both because of its enormous influence on European legal thought and because of the obscurity of the event itself.2 The reasons why people in Italy suddenly became interested in these texts, which had lain dormant for five hundred years, are many. Scholars have posited reasons for the Roman-law revival as diverse as the commercial revolution that occurred in Northern Italy in the high middle ages, the political strife between the papacy and the German emperors, the increasing sophistication of Lombard law, and the rediscovery of the Digest.3 Whatever the reason for the revival, the rise of Roman law is intrinsically bound with the rise of Europe's first university, the University of Bologna, which was recognized by the end of the twelfth century as Christian Europe's premier center for legal study. People would travel from all over Europe to study with its legal luminaries, who established rock-star-like reputations that spurred the continent. Thomas Becket, the famous archbishop of Canterbury and martyr-saint of the law twelfth century, was sent to Bologna to study law early in his career.4 By 1174 there were enough English students there to dedicate an altar to him in one of Bologna's churches.5 These foreign students took their learning back to their home countries, and Bologna's teaching would become the model for Roman-law teaching throughout Europe.

But as significant as the University of Bologna would become, we know very little of its founding. We have no contemporary accounts of the beginnings of the teaching of Roman law at Bologna. What we do have are later written accounts of the history of the university. In the middle of the thirteenth century, when a teacher at Bologna named Odofreduz lectured to his students on the history of the university, he identified a man named Irnerius (who appears to have called himself Wernerius or Guarnerius) as the "light of the law" who established Roman law studies in the city in the first decades of the twelfth century and another man named Pepo as Irnerius' teacher.6 Scholars have traditionally taken Odofreduz and other chroniclers of the university at their word and have credited Pepo and Irnerius with everything from rearranging the Digest, to writing extensive glosses on Justinian's texts, to developing the scholastic method for teaching law.

There has been some skepticism recently about their role in establishing Roman-law studies at Bologna and the truth is we have no direct, contemporary evidence that either of these men taught law at Bologna.7 It is likely that these two men did something to make them worthy of memory, however.

Pepo's contemporaries associated him with Roman law. In a record of a March 1076 case, dated at Bologna, the notary listed him as a leges doctor (teacher of law).8 The case turned on a citation to the Digest with a sophisticated legal analysis of real property law. This evidence also points to connections between Pepo and Irnerius and Matilda of Canossa. Matilda was remembered as Irnerius' patroness in later centuries; the German priest Burkhard von Unberwurt wrote in the early thirteenth century that "the Lord Wernerius renewed the books of law which had been compiled by the Emperor Justinian from a wealth of records and which formerly had been neglected and which up to then no one had studied, at the petition of Countess Matilda."9
Contemporary evidence confirms that Matilda and her mother Beatrice patronized the two jurists. In the 1076 case where he is listed as a leges doctor, Pepo appears to have been in Beatrice’s employ. He is listed along with a bank of judges headed by Nordilla, who is specifically said to be the “legate of the Lady Beatrice, duchess and marchioness.” In March 1076, Beatrice was with Matilda, who was tending her mother in her last illness in nearby Pisa. In addition to this proceeding, Pepo is recorded on several occasions in Matilda’s presence, acting as advocatus, or lawyer, for monasteries associated with the House of Canossa. On June 7, 1072 and February 19, 1078, Pepo represented the Monastery of San Salvatore at Monte Amiata. In a document of November 25, 1080, “Peponem” appears at Ferrara with Matilda as the lawyer of the Document issued at Borgo Martiri, March 1076, Archivio di Stato, Monastery of Pomposa. Ferrara, located north of the Apennines, is about 50 km (or 31 miles) from Bologna. Both the monasteries at Monte Amiata and at Pomposa received rich donations from Matilda and her parents. Immerius was also associated with Matilda’s court towards the very end of her life; he appears as a lawyer in Matilda’s courts starting in 1112. In May 1113 “Warnerius de Bononia” appears as “candesce,” or lawyer, in a document in which the Countess takes the Monastery of Sant’Andrea in Rovinata under her protection. Three years later, immediately after the death of Matilda, between May and October 1116, “Warnerius infestus” or “Wernetius bononensis index” (Warnerius of Bologna judge) signed nine Imperial edicts issued by the Emperor Henry V.29 These documents effected agreements Matilda made with Henry V four years before her death. In 1111, Matilda agreed that, at her death, the entirety of the territory which Matilda’s father, Bonifacio, had held in feud and which under Germanic customs she, as a woman, would not be allowed to inherit, would be returned to Henry V, who was her closest male heir as well as the king and emperor (“rex et imperator”).30 She specifically excluded properties previously donated by herself and her ancestors to named monasteries.31 In the 1116 documents Henry V appears to be putting the terms of this agreement into effect.32 The emperor’s edicts benefit the monasteries at Pomposa and at San Benedetto Po to which the House of Canossa had donated substantial properties. Henry also confirmed the restitution of property to the Church of Parma which Matilda’s allies in the reform papacy had been demanding for years.33 When the Emperor returned to north
Italy, in 1118, he granted his protection to the monastery at Bombiana, located along the pass through the Apennines that connects Bologna with Florence, which Matilda had established on August 9, 1098. In the 1116 and 1118 documents, “Warnerius iudex” signed directly below Henry V’s cross, see exhibit 4. As all these documents effect the prior agreements of the Countess, it is possible that Warnerius was acting on Matilda’s behalf before the Emperor. The other witnesses listed on the documents include: judices and causidici, laymen, Bishops and Abbots, and laity from the area—people, institutions, and groups who were part of Matilda’s court. Thus, although there is no direct, contemporary evidence that Irnerius was actually in Matilda’s employ, contemporary documents indicate that he was in the presence of the Emperor Henry V together with other members of Matilda’s court, effecting acts which she desired. We cannot draw a direct line between Matilda and Irnerius and Bologna, but it is certainly possible that she knew him and asked him to return the study of the Emperor Justinian’s law books.

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

We cannot be certain of the role, if any, Matilda played in establishing the teaching of Roman law at Bologna. We only have the contemporary evidence of connections between her and Pepo and Irnerius combined with the memory of Roman jurisprudence and the emperor over her inheritance from her father. The emperor had followed prevailing German custom in investing Matilda’s husband, Godfrey, with her ancestral lands. When Godfrey died in 1076, he willed Matilda’s lands to his own nephew, cutting Matilda out entirely. Matilda was placed in the position of having to defend her patrimony against the emperor and against her husband’s appointed heir, neither of whom wanted her in control of Tuscany. Roman law allowed a daughter to inherit and control her father’s land, and would have given Matilda another weapon to use in her propaganda war against the emperor. Matilda’s turn to Romans may also have been related to her involvement in the Gregorian reform movement. Roman law was used by some of the imperial and papal polemicists to support their sides. The year 1076 was also part of an active period of hostility between Pope Gregory and Henry IV, a period in which Matilda was one of the major political players. Gregory issued the Dictatus Papae in 1075 and Henry IV’s humiliation at Matilda’s castle of Canossa would occur in 1077.

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THE IUS COMMUNE

Bologna very quickly became an international center for the study of law. Works by Bolognese scholars, such as the jurist Azo's treatises on the Institutes and Codex, would circulate throughout Europe. By the end of the twelfth century, the two laws were being taught together as if they formed a coherent whole; a medieval proverb stated that "A Romanist without canon law isn't worth much and a canonist without Roman law is worth nothing at all." In the twelfth century, jurists began to refer to them as utrumque ius (both laws) or the ius commune (the common law). Roman law acquired a quasi-divine status; medieval jurists saw it as the universal law of Western Christendom, something close to a Platonic form of law that the laws of individual kingdoms should, ideally, emulate. We see this kind of subtle influence in legal texts from Spain, Sicily, Southern Italy, France, Germany, and Scandinavia.

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

Justinian's Digest, Codex, and Institutes were some of the first books printed in the second half of the fifteenth century. Although the Littera Bononiensis was considered authoritative for purposes of legal practice, the demand for a text that more accurately reflected Justinian's original led the Italian humanist Lelia Torelli to seek permission from Cosima de Medici to edit the Littera Florentina, the text of which, after extensive comparison, was determined to be more complete than the copy in Bologna. He published the first edition of that manuscript in 1553, see exhibit 9. In 1583, Denis Godefroy, a French scholar of Roman law residing in Geneva, published a single, combined edition of the Institutes, Digest, and Codex and gave it the name it has borne ever since: the Corpus Juris Civilis. While medieval students of Roman law focused on the Digest and all its subtleties, the Institutes rose in prominence in the early modern period as a text that could teach beginning law students the fundamentals of a legal system. The Dutch jurist Anthonius Vrinus published an influential Latin edition of the Institutes in 1642. The edition contained an extensive Latin commentary, which incorporated the opinions and glosses of medieval and early modern jurists. Vrinus' edition and commentary were read throughout Europe and in the American colonies.

John Adams read it as he prepared for the bar, and the celebrated Supreme Court Justice Joseph Story cited Vrinus in his works. George Wythe, William & Mary's first law professor, owned a copy, which he left to Thomas Jefferson in his will, see exhibit 11.
The Institutes were first translated into English by George Harris, a lawyer who practiced in the English ecclesiastical courts, in 1753. Harris' translation made its way into many British and American libraries, including that of George Wythe, see exhibit 12. Thomas Cooper re-edited Harris' text for an American audience, commending the Institutes to American lawyers on the ground that "a competent knowledge of the general principles of the Civil law is expected as a matter of course among the Bar, as well as upon the Bench." Cooper was perhaps overstating his case, but the Institutes and other parts of Justinian's corpus were cited with some frequency by American courts. Justice Tompkins' opinion in the old chestnut of property law, the 1805 New York Supreme Court case Pierson v. Post, relies partially on the Institutes for its reasoning. Cooper's edition, published in Philadelphia in 1812, tried to relate the Institutes to American legal practice. It included additional notes on American laws and cases relating to the topics covered in the Institutes, see exhibit 13. The Institutes also exerted an indirect influence on the Anglo-American common law and the way lawyers learned it for over a century. The institutional framework was adopted by many of the common law's most influential authors. William Blackstone's Commentaries on the Laws of England, the standard text for teaching law in England and America in the eighteenth and nineteenth centuries, was modelled on the Institutes, as was Chancellor Kent's Commentaries on American Law. The Corpus Iuris Civilis declined in importance as a legal text when many countries began to codify their national law in the eighteenth and nineteenth centuries. The civil codes adopted by countries like France and Germany, and copied by many others, were meant to be comprehensive, so common was no longer relevant to legal practice. But the influence of Justinian's texts continued even in these codes, which took much of their organization, many of their doctrines, and the very idea that there should be an authoritative and comprehensive legal text from the Digest, Institutes, and Code. This idea was influential even in the early American Republic. In a letter dated at Monticello on June 17, 1812 to Judge John Tyler, Thomas Jefferson calls Justinian's Code of Roman Civil Law "a system of perfect justice." A committee was established in 1776 that included Jefferson, Tom Lee, George Mason, Edmund Pendleton, and George Wythe to discuss what law the American colonies should adopt. The committee considered codification on the civil law model: "whether we should undertake to reduce the common law, our own & so much of the English, statutes as we have adopted, to a text, is a question of transcendent difficulty. It was discussed at the first meeting of the committee of the Revised code in 1776 & decided in the negative by the opinions of Wythe, Mason & myself, against Pendleton & Tom Lee." A statutory or civil law system was rejected because of the inevitable period of litigation that would ensue to clarify such a new code. In particular Jefferson cited the extensive commentaries that the Institutes of Justinian had engendered as well as "the baffle of the times which did not admit leisure for such an undertaking." Although the Corpus Iuris Civilis is not at the forefront of our legal consciousness today, it is hard to underestimate its importance to the development of the world's legal systems. Virtually every lawyer in the world has encountered some element of Roman law in her career, whether she knows it or not. The "big bang" that brought Roman law onto the stage happened during Matilda's lifetime, in Matilda's part of the world, and was associated with people who worked in Matilda's courts. The details, unfortunately, been obscured by time. But whatever the underlying reasons for the revival of Justinian's corpus, and whatever role Matilda of Canossa played in it, the events of the eleventh century sparked a revolution in legal thought. We owe many of our fundamental legal ideas and concepts to the medieval revival of Justinian's Corpus Iuris Civilis.
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Concil, The Corpus Iuris Canonum in the Middle Ages: Monks and

Transmutation from the Eighth Century to the Tenth (Oxford, Blackwell, 2001), 41-43.


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See. 30; Goez 1998, no. 2, pp. 35-39, dated June 7, 1072; ibid., no. 3, dated May 6, 1078.

Translation by author.

before the 1140s. Ibid., 157.

Transmission from Rome to Bologna was

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24) Epistulae placentae ad Regum Popul. on April 8, 1116, tànza Mariae et Christi and a curious record of Meirdh, in favor of the Church in Paris, Zanardi 1997, p. 12. Meirdh had fought the Roman claims over the Church of Paris for much of his life. The new Pope Calixtus II and Gernot II came from Rome (Dominici 11, p. 61-74, v. 69-80, Dominici 12, 61-89, v. 70-76) and Meirdh remained allied to Gernot III and refused to reconcile with Meirdh even after the death of Henry IV in Carcassonne in 1122. Meirdh opposed Pope Urban II through his entire papacy. Pope Paschal II attempts to see a Guglielmo bishop in Paris in August of 1116 was violently rejected by the people of Paris. (Dominici, 11, p. 61-74, v. 69-80). Meirdh refused to accept the Guglielmo actions of the Roman church until 1116, after the Council of Leipsic held by Paschal II at Constance in October of that year. In November 1116, Meirdh accompanied Paschal into the Lombard stronghold which had more than once competed for her desires. Att Paris, Pope Paschal II consecrated the Cathedral of Santa Maria Assunta and crowned Berengarii II d'urbis, Meirdh also achieved and appointed as Poem bishop. Great 1198, n. 129, p. 284/304 dated November 8, 1116, in: See Cox 1198 Dep no. 103, p. 449.


26) For arguments for and against Bottoni in the role of controller of the Government see Zanardi 2013, pp. 52-53 in particular, W.D. Todd, "Canterbury: Growth of Culture in the Middle Ages", in: See Cox 1198 Dep. no. 103, p. 449.

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57 To Judge John Taylor, “For however I admit the superiority of the Civil, over the Common Law code, as a system of perfect justice, yet an incorporation of the two would be like Nebuchadnezzar’s image of metals, a thing without cohesion of parts.” The papers of Thomas Jefferson Retirement Series, Volume 5, 1812-1813, Princeton and Oxford Princeton University Press 2005, pp. 135-137.

58 “In the case the meaning of every word of Blackstone would have become a source of litigation until it had been settled by repeated legal decisions, and to come at that meaning we should have had produced an all-embracing that very pile of authorities from which it would be said he drew his conclusion which of course would explain it, and the more so which it is couched. Then we should have required the same chain of law decisions which we wished to be superseded, added to the evils of uncertainty which a new text, & new phrases would have generated. An example of this may be found in the old statutes and commentaries on them in Coke’s 2d institute, but more remarkably in the Institute of Justinian, & the vast masses, explanatory, or supplementary of what which fills the Historian of the Legislators. We were deterred from the attempt by these considerations, added to which, the body of the system did not admit issues for such an undertaking.” Ibid.