

## Introduction: The Novels of the Emperor Justinian

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The ‘Novels’ consist of a series of laws issued in the sixth century by the Emperor Justinian in the wake of his codification of the Roman law, along with a number of laws issued by his immediate successors on the throne of Constantinople, Justin II and Tiberius II, supplemented with a handful of associated texts. This introduction places the novels in their historical and legal context, and traces their transmission from late antiquity.<sup>1</sup>

### i) Justinian, the Empire and the Law

On 16 November 534 AD, in the imperial capital of Constantinople, the East Roman (or ‘Byzantine’) Emperor Justinian (527–565) formally promulgated the second recension of the ‘Justinianic Code’ (*Codex Iustinianus*), a work which sought to harmonise, unite and give renewed focus to all laws of general effect or significance issued by Roman emperors since the reign of Hadrian (117–138 AD). This second version of the *Codex* replaced an earlier one that had been issued in April 529, and represented the final stage in a wider programme of legal reform that had also seen Justinian’s law commissioners produce a condensed and reworked compendium of the writings of the classical legal scholars or ‘jurisconsults’ (the *Digest*, or *Pandects*, published and promulgated in fifty volumes on 16 December 533), together with a clear and accessible textbook for those beginning the study of law with a view to entering government service (the *Institutes*, issued in November 533, which likewise reworked and reformed

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the inherited instructional literature).<sup>2</sup> The committee responsible for the first version of the *Codex* had been chaired by the empire's chief civil servant, the Praetorian Prefect of the East, John the Cappadocian.<sup>3</sup> The committees responsible for the second version of the *Codex*, as well as the *Digest* and *Institutes*, had been presided over by the empire's former (and future) chief legal officer, or *Quaestor*, the jurist Tribonian, who at that point held the office of *Magister Officiorum*.<sup>4</sup>

This concerted programme of legal codification and reform represented an effort on the part of the emperor and his commissioners to resolve a problem that had bedevilled Roman legislators and legal practitioners for centuries: namely, that it was often very difficult to establish in the course of legal proceedings what the current state of law on a given subject actually was. Traditionally, laws of general effect issued by emperors, *ad hoc* judgments issued by the imperial authorities and communicated in the form of official letters to provincial administrators, litigants and petitioners, and the writings of legal scholars had all had legal standing and could be cited in court. This inevitably led to confusion as to which text or authority was to be given preference. Under the Emperor Diocletian (284–305) two attempts had been made by legal scholars to collect and codify the laws issued by emperors (known as 'constitutions', after the Latin verb *constituere* 'to decide' or 'to establish'), leading to the publication of the *Codex Gregorianus* and *Codex Hermogenianus*. Similarly, in the early fifth century, the imperial authorities in Constantinople under the Emperor Theodosius II (408–450) had attempted to remedy the situation by compiling and promulgating the *Codex Theodosianus* – notionally an official codification of all laws issued by Christian emperors since Constantine which were deemed to be of general application or which established important legal points applicable in similar or related contexts. At the same time, a 'law of citations' had been established, officially defining which juriconsults had canonical standing and which did not. Even those juriconsults who made it through the Theodosian pruning,

<sup>2</sup> For a clear and concise introduction to this legal programme, see Birks and McLeod (1987), pp. 8–12. A.M. Honoré, *Tribonian* (Honoré (1978)) provides a masterly account of both the reform programme and one of its driving figures. After the first version of the *Codex*, Justinian had issued a work entitled the 'Fifty Decisions' (*Quinquaginta Decisiones*) to resolve outstanding differences in the writings of the classical jurists. Perhaps inspired by Tribonian, this modest work was set aside for the far more ambitious project of the *Digest*. See also Corcoran (2016) 1, pp. xcvi–clxiv.

<sup>3</sup> *PLREIIIA*, pp. 627–35 (Fl. Ioannes 11).

<sup>4</sup> Honoré (1978). On the composition of the *Digest*, see also idem. (2010). See *PLREIIIB*, pp. 1335–9 (Tribonianus 1).

however, had still bequeathed to posterity some 1,500 books of opinions, and the number of imperial constitutions and responses to petitions (or ‘rescripts’) had continued to proliferate.<sup>5</sup>

The nature of the intellectual achievement that underlay Justinian’s programme of legal codification can be misconstrued. The scale of the project, for example, was evidently perfectly manageable if properly organised and carefully delegated.<sup>6</sup> Thus it has been estimated that those legal scholars commissioned to produce the *Digest* probably had to read no more than forty pages of Latin text per day and decide which twentieth part of the text read merited inclusion in the new compilation; and as a formidable teacher of Roman law, the late Tony Weir, opined, ‘even a law student can read forty pages in a day and highlight the 5% he thinks important’.<sup>7</sup> Rather, the achievement of the *Digest* lay in the fact that beneath a classicising veneer (to which we shall return), Justinian’s legal officers managed both to edit and to fundamentally re-cast the inherited Roman law tradition in order to express a single opinion and will, represented as being that of the Emperor Justinian. The codification and reform of the ‘civil law’ (as Roman law was known) thus served an important ideological as well as legal function: not only were the laws reworked to serve contemporary needs but also the emperor was established, for the first time in Roman legal tradition, as the one and only legitimate source of law. The person of the Emperor was, Justinian declared, ‘the law animate’ (in Greek, *nomos empsychos*).<sup>8</sup> The reformed law issued in the emperor’s name was not to be altered, amended or corrupted in copying and circulation.<sup>9</sup> It is striking that law students in their second year of study were to be called *Iustiniani* (‘the Justinians’): they were to be the crack troops at the forefront of the emperor’s struggle to restore imperial order. As Justinian declared to the ‘young enthusiasts for law’ to whom the promulgation of the *Institutes* was dedicated:

Imperial Majesty should not only be graced with arms but also armed with laws, so that good government may prevail in time of war and peace alike. The head of the Roman state can then stand victorious not only over enemies in war, but also over trouble-makers at home . . . Study our law. Do your best and apply yourself keenly to it. Show that you have

<sup>5</sup> See Corcoran (1996), Honoré (1998), Matthews (2000) and Sirks (2007).

<sup>6</sup> For the nature of the delegation involved in the composition of the *Digest*, see Honoré (2010).

<sup>7</sup> Weir (2006), p. 40.

<sup>8</sup> *J. Nov.* 105.2.4.

<sup>9</sup> *C. Tanta* 21: discussed by Scheltema (1977).

mastered it. You can then cherish a noble ambition; for when your course of law is finished you will be able to perform whatever duty is entrusted to you in the governance of our state.<sup>10</sup>

Justinian's emphasis on the need to combat enemies both at home and abroad is telling, for the emperor's programme of legal reform also sought to respond to contemporary political realities and, in particular, a number of specific challenges to the authority of the imperial office and the writ of imperial law that were becoming increasingly pressing in the early sixth century.<sup>11</sup> The first such challenge related to enemies abroad. In the fourth century, the Roman Empire had come to be divided into two parts, each (for the most part) with a separate ruler: the Eastern Empire (comprising Greece, Asia Minor and Anatolia, Syria, Palestine and Egypt) and the Western Empire (consisting of Italy, Gaul, Britain, the Iberian peninsula and Africa), with the dividing line between the two parts running through Illyricum in the Balkans (see Map 1). In the early fifth century, however, the Empire as a whole came under sustained military pressure from the Huns and various Germanic peoples from beyond the Rhine and Danube. This pressure was especially pronounced with respect to the Empire's western provinces, which bore the brunt of barbarian invasion and were progressively lost to central imperial control, such that by the early 470s the Western Empire barely extended beyond Italy. In 476, the last western Roman Emperor, Romulus Augustulus ('the little Augustus'), was deposed by the Gothic general Odoacer, who wrote to Constantinople informing the imperial authorities that there was no longer any need for an emperor in the West.<sup>12</sup>

In place of a unifying trans-Mediterranean Roman hegemony, therefore, by the end of the fifth century, autonomous kingdoms had emerged in Italy, Spain, Gaul and Africa under Gothic, Frankish, Burgundian and Vandal overlordship. Even Rome was lost to Roman control. Whilst the leaders of some of these regimes (such as the Burgundians in Savoy) continued to pay lip service to the concept of some sort of over-arching imperial suzerainty emanating from the seat of the remaining Roman Emperor in Constantinople others, such as the Vandals, openly defied the imperial court, and pointedly contested the emperor's claims to universal authority at the same time as adopting an increasingly imperial style

<sup>10</sup> *C. Imperatoriam Maiestatem*.

<sup>11</sup> For more detailed discussion of the context to Justinian's reign, see Maas (2005) and Sarris (2006) and *idem.* (2011a).

<sup>12</sup> On this and what follows, see Sarris (2011a), pp. 41–125.

of rule at their own courts. In Spain and southern Gaul, for example, the Gothic regime (assisted by Roman courtiers) began to revise and update Roman law with respect to property and other sensitive issues, thereby infringing upon what was deemed to be an imperial prerogative. To add insult to injury, the Goths and Vandals also publicly rejected what had become the imperially sanctioned definition of the Christian faith, preferring to follow the teachings of the fourth-century heretic Arius, during whose period of ascendancy they had first been evangelised, and whose doctrinal stance allowed them to distance themselves further from Constantinople.<sup>13</sup>

The demise of Roman power in the west and the emergence there of the post-Roman successor kingdoms thus constituted a direct challenge to the authority of the remaining Roman Emperor in Constantinople, who claimed to be the sole heir to Augustus, with rightful jurisdiction over all territories that had once been Roman. This fact was not lost on political circles in Constantinople in the early sixth century, where the disparity between the emperor's theoretical claims to universal authority and his evident powerlessness over much former Roman territory helped to generate an outpouring of political speculation as to the nature of the imperial office.<sup>14</sup> Such debate demanded an imperial response. In particular, the legal initiative had to be wrested back from the hands of the barbarian heretics, and the currency of the imperial office restored.

At the same time, political tensions in Constantinople in the early sixth century are likely to have been heightened by a number of other threats and issues that loomed on the horizon.<sup>15</sup> Militarily, the early sixth century had seen the revival of warfare between the Eastern Roman Empire and its great super-power rival in the form of the Sasanian Empire of Persia. In 502, the Persians had launched what was perceived from Constantinople to be an entirely unprovoked assault on Roman Syria. Whilst the Persians had eventually been persuaded to withdraw their forces in return for the payment of tribute, warfare had been costly and can only have served to excite a deep sense of insecurity on the part of many of the inhabitants of the empire's eastern provinces and those who owned land there, including high-ranking members of the Senate in Constantinople. Through this senatorial connection, perceived military weakness on the fringes of Syria began to have an impact on political conditions in the imperial capital.

<sup>13</sup> *Ibid.*, p. 91.

<sup>14</sup> See Bell (2009).

<sup>15</sup> For what follows, see Sarris (2011a), pp. 125–68.



Map 1 The Roman Empire in the Late Fourth Century AD  
 Source: Cameron and Garnsey (1998): 18.



Map 1 (cont.)



The revival of warfare with Persia, which Justinian had inherited, also carried with it other, more far-reaching implications. For it meant that emperors had no choice but to upgrade the empire's military capacity and defensive infrastructure. Each of these required money, and money meant taxation (it has been estimated, for example, that the army received somewhere in the region of one-half to two-thirds of all tax revenues collected by the Roman state).<sup>16</sup> Yet effective taxation was something that, since the mid fourth century, Roman emperors had found it increasingly difficult to achieve. The fourth century had witnessed the emergence across the Roman world of a new imperial aristocracy of service, whose members had come to dominate both the highest offices of the state (such as the Senate of Constantinople and provincial governorships) and also, increasingly, local landed society.<sup>17</sup> From a fiscal perspective, this would prove to be a highly ominous development. Late Roman taxation was primarily levied on the land and those who worked it, and the ascendancy of this new aristocracy meant that a growing share of the land was passing into the ownership of individuals who, by virtue of the governmental positions and connections that they enjoyed, were especially well placed to evade the taxes to which their estates were liable (and which they were often charged with collecting). From the late fourth century, tax evasion on the part of such landowners can be seen to have become a growing cause for concern on the part of emperors, who also expressed mounting anxiety at the willingness and ability of such landowners to flout other aspects of imperial law by, for example, suborning imperial troops to serve as private armed retainers on their estates, or illicitly building prisons on their properties with which to intimidate and cajole their workforce.<sup>18</sup> The revival of warfare with Persia in the early sixth century served to increase the pressure on the imperial government to address this situation by seeking to strengthen the writ of the emperor and his law in the provinces.

When, therefore, in 533, Justinian alluded to an enemy within, it was probably such landowners, especially within the Senate of Constantinople, that he primarily had in mind. Indeed, in 532 (amid the so-called 'Nika Riots') the Emperor had narrowly survived an attempt to depose him orchestrated by members of the Senate who had already found his approach disconcertingly confrontational, and who dreamed of an emperor more blue-blooded than Justinian who, it was claimed, had been

<sup>16</sup> Wickham (2005), p. 73.

<sup>17</sup> Banaji (2007).

<sup>18</sup> For detailed discussion, see Sarris (2006), pp. 149–99.



born an Illyrian peasant, before migrating to the capital and advancing through the ranks of the palace guard along with his uncle, the Emperor Justin I (518–527).<sup>19</sup> The latter, it was claimed, had seized the throne by sleight of hand and arranged for his nephew's succession.<sup>20</sup> The presence at Justinian's side of his consort Theodora (alleged to have been an actress of especially ill repute) had only served to intensify aristocratic hostility.

Importantly, there were also other enemies towards whom the Emperor's suspicions were directed. Foremost amongst these were the various groups of religious dissidents within the Empire, whose activities and beliefs were understood to constitute both a cause of divine displeasure and also a direct and public rejection of imperial law. The world of Justinian was one in which the Christian Church was growing in power and cultural dominance. The Emperor himself was a devout Christian, who held the authority of his office to be derived from God (a claim which emperors had been making since the conversion to Christianity of the Emperor Constantine in the early fourth century). Indeed, Justinian had confirmed the promulgation of the *Digest* 'In the Name of Our Lord God Jesus Christ', thereby symbolically baptising the intellectual inheritance of the non-Christian classical jurists.<sup>21</sup> This growing influence and power of the Church could be a cause for division, however, not least on the part of the empire's many Jewish and (in Palestine) Samaritan subjects, who found themselves progressively alienated from an increasingly Christian state.<sup>22</sup> Likewise, amongst members of the governing classes, there continued to exist coterie of pagans and others of a traditional mindset, who were evidently ill at ease with the Christianisation of their inherited culture.<sup>23</sup>

At the same time, whilst the gravitational pull of Christianity within the empire was constantly strengthening, the Church itself was proving itself to be increasingly fissile theologically. In particular, in 451 at the Ecumenical Council of Chalcedon, the imperial Church had agreed a definition of the nature of the relationship between the human and divine in the person of Christ that the leaders of the Church in Egypt, Syria and elsewhere had publicly denounced and which they continued to resist.<sup>24</sup> The decrees of such councils (which were presided over by the emperor

<sup>19</sup> Greatrex (1997).

<sup>20</sup> Sarris (2006), pp. 204–5.

<sup>21</sup> C. *Tanta*; Humfress, in Maas (2005), pp. 161–84, 168.

<sup>22</sup> De Lange, in Maas (2005), pp. 401–26.

<sup>23</sup> Sarris (2011a), pp. 220–6.

<sup>24</sup> Price and Gaddis (2005).

or his representative) were deemed to carry the status of imperial law.<sup>25</sup> On going resistance to the theological formula established at Chalcedon was thus interpreted in Constantinople as an act of lawlessness and a further affront to imperial dignity. It, too, invited not only a theological but also a legal response.

Each of the challenges facing the imperial office in the early sixth century would elicit a concerted reaction from the Emperor Justinian in the first years of his reign. From the start, for example, he adopted a highly belligerent stance with respect to the Persians, investing heavily in the defensive infrastructure of the eastern provinces in order to render them less prone to Sasanian attack.<sup>26</sup> To the West, as early as 533, he took advantage of a succession dispute in the Vandal kingdom of Africa to launch a successful Roman re-conquest of the territory. He would go on to repeat the feat in 535 and the 550s, when he sent expeditionary forces to initiate the re-conquest of Italy and southern Spain respectively (see Map 2).<sup>27</sup> At the same time, Justinian embarked upon his legal project, which sought to restore the majesty of the imperial office and the writ of imperial law when both were perceived to be increasingly under attack.

## ii) The Codification and Justinian's 'Novels'

In his project of codification, Justinian claimed to be legislating for eternity: of the *Digest* and *Institutes* he declared 'these our laws . . . are to be valid for all time and have effect with our constitutions [i.e. the *Codex*], demonstrating their efficacy in all cases'.<sup>28</sup> Likewise, of the first recension of the *Codex*, he trumpeted, 'We have taken care that this Code, to last forever, should come to your knowledge, so that all litigants and lawyers may know that they will not be permitted in lawsuits to cite the constitutions of the three ancient Codes . . . but it is only necessary to cite the constitutions in this our New Code.'<sup>29</sup> In reality, of course, the first version of the *Codex* lasted for little more than five years before it was replaced by the updated edition produced by Tribonian. During that time, however, it was circulated to the provinces and seemingly put into effect.<sup>30</sup> Indeed, it

<sup>25</sup> See, with respect to Nicene Trinitarian doctrine, *Codex Theodosianus* 16.1.2. Justinian would make it clear that the same was true with respect to the Council of Chalcedon in *J. Nov.* 131.

<sup>26</sup> Sarris (2011a), pp. 134–53.

<sup>27</sup> *Ibid.*, pp. 89–96, 115–20, 189–92.

<sup>28</sup> *C. Tanta* 23.

<sup>29</sup> *C. Summa* 3.

<sup>30</sup> Corcoran (2008).