

MAREK NOVÁK

**GLOSSATORS
AND COMMENTATORS
AT THE STRAHOV LIBRARY**



KAROLINUM

Glossators and Commentators at the Strahov Library

Marek Novák

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TABLE OF CONTENTS

Introduction	7
Getting to know the foundations	7
State of knowledge and resources	10
Method of research	12
1. The beginnings of the reception of Roman law	16
2. Glossators	30
2.1 Legal school	30
2.2 Literary forms	35
2.2.1 Glossae	35
2.2.2 Summae	41
2.2.3 Tractatus	47
2.2.4 Quaestiones	50
2.2.5 Lecturae	55
2.2.6 Other forms	58
2.3 Authors and writings at the Strahov library	60
2.3.1 Accursius	60
2.3.2 Azo	67
2.3.3 Odofredus	74
2.3.4 Placentinus	78
2.3.5 Roffredus	81
3. Commentators	86
3.1 Legal school	86
3.2 Literary forms	91
3.2.1 Commentaria	91
3.2.2 Tractatus	95
3.2.3 Consilia	99
3.2.4 Quaestiones disputatae	105
3.2.5 Repetitiones	110
3.2.6 Other forms	113
3.3 Authors and writings at the Strahov library	116
3.3.1 Accoltis Aretinus, Franciscus de	116

3.3.2	Bologninus, Ludovicus	120
3.3.3	Castro, Paulus de	124
3.3.4	Cumanus, Raphael Raymundus	134
3.3.5	Decius, Philippus	137
3.3.6	Fulgosius, Raphael	144
3.3.7	Gambilionibus, Angelus Aretinus de	151
3.3.8	Laudensis, Martinus Garratus	156
3.3.9	Mayno, Jason de	161
3.3.10	Mugellanus, Dinus de Rossonis	166
3.3.11	Penna, Lucas de	171
3.3.12	Pistorio, Cinus de Sigibuldis de	174
3.3.13	Pontanus, Ludovicus	177
3.3.14	Rosate, Albericus de	181
3.3.15	Salyceto, Bartholomaeus de	188
3.3.16	Sancto Petro, Florianus de	193
3.3.17	Saxoferrato, Bartolus de	196
3.3.18	Socinus, Bartholomaeus	210
3.3.19	Tartagnus, Alexander	219
3.3.20	Ubaldis, Angelus de	231
3.3.21	Ubaldis, Baldus de	236
Conclusion		249
List of sources		254
List of shelf marks		259
Catalogue of bibliographical units included		268

INTRODUCTION

GETTING TO KNOW THE FOUNDATIONS

On January 1, 2014, the new Civil Code came into effect in the Czech Republic. It replaced the older one originating in 1964, when the former Czechoslovakia had supposedly achieved the quality of socialism under the leadership of the authoritarian regime of the Communist Party. The Code of 2014 has already managed to establish itself as applicable in practice and has shown its bright and shady sides. In any case, it has one unquestionable merit. It has reminded Czech lawyers that the theory of civil law is not subject to hot-headed interventions of the socialist legislator but rather has firm roots in Roman law. It was in ancient Rome that the foundations of today's private law were formed, which reached its peak in the form of a comprehensive codification elaborated on by the initiative of the East Roman emperor Justinian I between 528 and 534 AD and was later called the *Corpus iuris civilis*. In it, Justinian's jurists summarised the content of the imperial decrees issued up to that time and a large selection of statements made by classical Roman jurists, thus capturing in one place the results of the development of law over a period of several centuries. The subsequent detailed study of Justinianic codification during the Middle Ages and the modern period led to the conviction that it was useful to codify civil law. It gave rise to a whole set of civil codes from around the mid-18th century onwards and developed the belief, at least in a system of continental law, that it is useful today to have some sort of civil code based on Roman law theory.

It is not surprising, therefore, that many lawyers and legal historians have recently focused on a closer examination of the Roman law roots of the effective Civil Code. Many useful comparisons of the current law with the norms captured by the Justinianic codification have emerged, and the context of Roman law can certainly inspire contemporary legal practice in filling gaps in the law and resolving difficulties in the interpretation of legal norms. However, while most attention is focused on comparing the law in effect in 534 and 2014, it is easy to overlook the period of 1480 years that separates these two moments. Yet, it was during this period that the process of reception of Roman law took place, during which the *Corpus iuris civilis* was analysed in detail. The beginnings of such adoption of older law date back to

the second half of the 11th century, when jurists, later referred to as glossators, identified the hidden benefits of the Justinianic codification and started studying them. The next generation of jurists, known as commentators, abstracted more rigorously from the casuistic and often imperfect ancient texts to abstract general rules and began to notice their internal systems. Legal humanists subjected the sources to textual criticism, and their followers in various parts of Europe continued to analyse the sources and formulate rules that could be deduced from them. Individual authors built on each other, disputed the results presented, and subjected them to criticism. Since legal scholars typically combined the study of ancient sources with teaching in law schools, they also provided education for future lawyers. Only when the theory was thus developed and prepared did it become useful for the creation of modern codifications. Without centuries of careful work, the codification of civil law would be impossible. In fact, civil law theory and contemporary civil codes are not so much based on the raw text of the *Corpus iuris civilis* as on the results of a long process of reception of Roman law.

Unfortunately, researching how medieval and modern scholars processed Roman law over the centuries is not easy. Their ideas are hidden to modern jurists not only behind a language barrier, but also in the recesses of extensive archives and in dusty old prints that were produced hundreds of years ago using museum-like technologies. The writings of Roman law scholars are challenging to read and hard to find.

The purpose of this book is to change this situation, or at least to contribute to its improvement. Its aim is to map the works of authors belonging to the first two periods of the reception of Roman law, i.e., glossators and commentators, in the library of the Royal Canonry of Premonstratensians at Strahov in Prague, which contains one of the most extensive collections of manuscripts, incunabula, and old prints in the Czech Republic. This library was chosen because of its importance; the extent of its collection, including legal writings; and its good accessibility for researchers. The records of the Strahov Library collection are available in the form of an electronic catalogue, but the research in this book faced two kinds of difficulties. Firstly, the catalogue,¹ although according to its own statistics it contains 4,828 manuscripts, 1,782 incunabula, and 103,517 old prints, does not sort its contents thematically in any useful way. Individual authors may be listed under more than one name, and there is no indication of the affiliation of individual volumes or bibliographical units to Roman law, let alone to particular stages of reception of Roman law. Indeed, such a task cannot even be asked of librarians, as their mission is to cover the entire library collection, comprising a multitude of

1 Online library catalogue, Royal Canonry of the Premonstratensians at Strahov, accessed 20 August 2024, <https://strahovskyclaster.tritius.cz>.

different disciplines, at a reasonable level of detail. Law, naturally, did not play a key role in the monastic library. Furthermore, to the displeasure of scholars and librarians, the catalogue contains errors that obscure the actual content of the volumes processed. In part, this may be the result of inattention; in other cases, it may be the result of the incorrect differentiation between titles and their authors. Often, even a glance at the title page of an old print is not sufficient to reliably reveal its true content, which is again a natural consequence of working with old literary works. As a result, there is no idea of to what extent Roman law as a whole or its related topics, including the reception of Roman law, are represented at the Strahov Library. It must be represented in some way, but no one knows exactly how.

This book should, therefore, serve as a guide for scholars interested in studying the works of glossators and commentators, especially at the Strahov Library. It traces the results of the work of glossators and commentators in the library collection, examines them, and revises the records in the current catalogue. Individual volumes and titles present in the library are identified and described. On this occasion, information on the life and work of individual glossators and commentators is added in order to provide a comprehensive overview. The very existence of the two schools of reception of Roman law aforementioned is also explained, since the affiliation to them links the individual authors to each other. A catalogue of the bibliographical units by the glossators and commentators is attached, which makes it easier to find the titles present.

The objectives pursued are reflected in the structure of the book, which is divided into three parts. The first part, the introductory chapter, places the beginnings of the reception of Roman law into historical context and explains the conditions that could have supported this process. The next two chapters, focusing first on the glossators and then on the commentators, provide first an account of the legal school in question and then an alphabetically arranged overview of individual jurists, containing their biographical information, details of their professional output, and an identification and a description of examples of their works preserved at Strahov. In addition, annexes provide an overview of all the described bibliographical units and authors.

The first impulse and inspiration for the exploration of part of the Roman law collection of the Strahov Library was the publication *Historická knihovna hospitalu Kuks a její romanisticko-kanonistický fond* [Historical Library of the Kuks Hospital and its Roman Law and Canon Law Collection], published in 2014 by Jindřich Kolda and † Ignac Antonín Hrdina.² In it, the authors went through the collection of the local nobleman library and selected volumes relating to

2 Jindřich Kolda and Ignac Antonín Hrdina, *Historická knihovna hospitalu Kuks a její romanisticko-kanonistický fond* (Pavel Mervart, 2014).

the areas of Roman, church, and religion law. The authors presented the contents of the hospital library and contributed to the popularisation not only of Roman law but also of one of the most beautiful Czech historical sites. This book seeks to similarly uncover hidden volumes and to convey information about them to the reader.

STATE OF KNOWLEDGE AND RESOURCES

The Roman law collection of the Strahov Library has not been systematically researched or processed so far, so its mapping cannot be based on anything other than primary sources – such as the catalogues and the volumes represented in the library. Information on the presence of bibliographical units is primarily provided by the electronic catalogue, which was created by digitising data from the paper index.³ This process has only recently been finished, and unfortunately, although the catalogue is complete, it suffers from an inevitable human error rate. Nevertheless, the catalogue is valuable, and virtually the only source of information on old prints, as it contains references to prints with an issue date of January 1, 1501 and later.⁴ Older printed publications are referred to as incunabula. Their defining feature is that they were produced between the beginning of the massive use of printing for book production, probably from 1447, to December 31, 1500. Their design is very specific. For instance, at the time of their creation, the form of the title page, indicating the title, the author, and the publisher details, was not yet established. The Strahov incunabula were revised and newly catalogued by Petr Voit in a 2015 publication.⁵ It provides reliable information and describes the incunabula in great detail from a professional librarian point of view, accompanied by extensive indexes taking into account, among other things, historical shelf marks, provenance, printers, publishers, and bookbinders. However, at first glance, it is evident that glossators and commentators are rarely represented among the incunabula at Strahov.

Finally, the works of glossators and commentators are represented at Strahov in the form of manuscripts. Although it is typical of these authors that their work was first distributed in the form of manuscripts, and only

3 Old prints inventories are summarised in the following article: Věra Břeňová, “Katalogy Strahovské knihovny,” in *Strahovská knihovna, sborník Památníku národního písemnictví* 12–13 (1977–78), 105–119.

4 Petr Voit, *Nauka o starých tiscích* (Ústav informačních studií a knihovnictví, Filosofická fakulta Univerzity Karlovy v Praze, 2007), accessed 20 August 2024, https://sites.ff.cuni.cz/uisk/wp-content/uploads/sites/62/2016/01/Nauka-o-star%C3%BDch-tisc%C3%ADch_Voit.pdf.

5 Petr Voit, *Katalog prvotisků Strahovské knihovny v Praze* (Královská kanonie premonstrátů na Strahově, 2015).

many years after their death did the manuscripts begin to be processed by printers and thus published more widely, they are not present at the Strahov Library. This is understandable, given that manuscripts from these periods are generally rare, and their distribution network was not primarily in the Czech lands. They are rather preserved in large numbers in Italian libraries and archives, from where they originated. For the purposes of this book, only a few manuscript sheets bound in one volume with old prints, which readers used as aids to more efficiently work with these prints, are of interest. Their content, therefore, comes from the readers of these prints, not from glossators and commentators. Since the manuscripts are not reliably processed in the electronic catalogue, information about them must be obtained from other partial sources. These include, in particular, the registers compiled in the 1970s by Bohumil Ryba,⁶ the catalogue of illuminated manuscripts compiled by Pavel Brodský and Jan Pařez,⁷ and the papers published by Marie Tošnerová.⁸ The Strahov Library is not included in charts made by Friedrich Schulte, Miroslav Boháček, Gero Dolezalek, and Hermann Fitting.⁹

The catalogue of the collection of the Strahov Library is similar to the work presented by Douglas J. Osler, who extensively researches old prints on legal topics in Europe.¹⁰ He usually defines his subject of interest in terms

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- 6 Bohumil Ryba, *Soupis rukopisů Strahovské knihovny*, vol. III, DF-DG (no. 1236–1821) (Památník národního písemnictví, 1979); Bohumil Ryba, *Soupis rukopisů Strahovské knihovny*, vol. IV, DH-DK (no. 1822–2425) (Památník národního písemnictví, 1970); Bohumil Ryba, *Soupis rukopisů Strahovské knihovny*, vol. V, DL-DU (no. 2426–3286) (Památník národního písemnictví, 1971); Bohumil Ryba, *Soupis rukopisů Strahovské knihovny*, vol. VI/2, Index to vol. III, IV, V (Památník národního písemnictví, 1979).
 - 7 Pavel Brodský and Jan Pařez, *Katalog iluminovaných rukopisů Strahovské knihovny* (Masarykův ústav a Archiv Akademie věd České republiky, Královská kanonie premonstrátů na Strahově, 2008).
 - 8 Marie Tošnerová, *Průvodce po rukopisných fondech v České republice*, vol. IV, Rukopisné fondy centrálních a církevních knihoven v České republice (Archiv Akademie věd ČR, 2004); Marie Tošnerová, "Rukopisy předbělohorského období (1526–1620), signatury DA–DE v knihovně Královské kanonie premonstrátů na Strahově," *Studie o rukopisech*, 2005, no. 35 (2002–2004), 115–156.
 - 9 Johann Friedrich von Schulte, *Die canonistischen Handschriften der Bibliotheken 1. der k. k. Universität, - 2. des Böhmischen Museums, - 3. des Fürsten Georg Lobkowitz, - 4. des Metropolitan-Kapitels von St. Veit in Prag* (Böhmische Ges. der Wiss., 1868); Miroslav Boháček, "On the spread of legist manuscripts in the Czech lands," *Studies on Manuscripts*, 1971, no. 10, 1–63; Gero Dolezalek, *Verzeichnis der Handschriften zum römischen Recht bis 1600*. Bände I–IV (Max-Planck-Institut für Europ. Rechtsgeschichte, 1972); Hermann Fitting, *Juristische Schriften des früheren Mittelalters. Aus Handschriften meist zum Ersten mal Herausgegeben und Erörtert von Hermann Fitting* (Waisenhauses, 1876).
 - 10 Douglas J. Osler, *Catalogue of books printed in Spain, Portugal and the Southern and Northern Netherlands from the beginning of printing to 1800 in the library of the Max-Planck-Institut für Europäische Rechtsgeschichte* (Vittorio Klostermann, 2000); Douglas J. Osler, *Catalogue of books printed on the continent of Europe from the beginning of printing to 1600 in the library of the Max-Planck-Institut für Europäische Rechtsgeschichte* (Vittorio Klostermann, 2000); Douglas J. Osler, *Jurisprudence of the Baroque. A Census of Seventeenth Century Italian Legal Imprints*, 1. A–G (Vittorio Klostermann, 2009); Douglas J. Osler, *Jurisprudence of the Baroque. A Census of Seventeenth Century Italian Legal Imprints*,

of time and territory, and has thus systematically processed prints from Spain, Portugal, and the Netherlands up to the year 1800 in the library of the Max Planck Institute for European Legal History in Frankfurt, Germany; all units represented in the same library published before 1600; and also Italian legal prints from the 17th century. Osler compiles the information into bibliographic reference works and provides detailed descriptions of each copy, including its title, author, date of publication, publisher, and physical characteristics. He has not yet focused on the holdings of the Strahov Library, but his own database of prints is larger than the already published scope. Osler's approach is characterised by the identification of selected works in the collection of a selected library and the attempt to describe bibliographical units reliably. This book, however, focuses more on the area of legal history and adds a set of general information about individual lawyers and their works in addition to the mere cataloguing of data. On the other hand, it does not focus in such detail on the technical description of the library and the archival data on the volumes under study.

The need to add the context of the individual titles, and to present the life and work of the glossators and commentators represented at Strahov in order to make the imaginary handbook complete for future researchers, requires working with a second type of sources: legal-historical publications focused on the history of law in Europe and the reception of Roman law. Many foreign sources focus on this area, most of them by authors from Italy and Germany, but publications on this topic are still rare in the Czech legal environment. The process of the reception of Roman law is briefly described in textbooks by Valentin Urfus and David Falada, while Miroslav Černý has written articles on partial topics or authors. Thus, the aim of this book is also to publish information on glossators and commentators in sufficient detail and in a comprehensive manner.

METHOD OF RESEARCH

The process of researching the Strahov Library collection concerning the schools of glossators and commentators can be divided into several phases. Because this research has no parallel in the past, it had to be continuously modified and dead ends had to be avoided. First, it was necessary to compile a list of jurists who were active in the relevant periods and could potentially have dealt with the reception of Roman law. The names of 600 possible authors were searched in the library catalogue and checked to see if they

2. H-S (Vittorio Klostermann, 2009); Douglas J. Osler, *Jurisprudence of the Baroque. A Census of Seventeenth Century Italian Legal Imprints*, 3. T-Z and sources (Vittorio Klostermann, 2009).

were represented in the library at all, with their works identified. In this context, it is worth noting that this book does not include the contents of the library of the archbishop's seminary, which was acquired by the Strahov Library in the 1990s but has not been fully catalogued, nor the Manderscheid and Brus libraries, which were only taken over in 2020, during the conduct of this research. In the next step, a major selection of identified titles was made. Only Italian glossators and commentators, who are represented at the Strahov Library by at least one bibliographical unit that performed an exegesis of some part of the Justinianic codification, remained research subjects. In the case of these authors, then, writings that do not concern sources of Roman law, especially canon law writings and commentaries on specialised collections of feudal law, were set aside. This leads to the definition of the subject of this book. The editions of the sources of law also fall outside this research focus, since they are not the result of the creative activity of glossators or commentators.

The identified units had to be subsequently examined in order to verify the validity of the data recorded at the Strahov Library catalogue and to fill in any missing data. Electronic databases of books that offer the possibility of viewing incunabula and old prints in electronic form, especially Google Books, were helpful in this phase. In about half of the cases, it was possible to find the same edition of the title in electronic form. Thus, if two identical copies of the same edition were found, and if the catalogue did not raise any particular doubts that they were identical, the Strahov copy was described on the basis of its digital equivalent. For half of the identified units, however, it was not possible to use this procedure, either because of their unavailability in electronic form or because of questionable data provided by the catalogue. These units were, therefore, examined in physical form at the Strahov Library study room. When examining them, it was necessary to find out, first of all, information about the title, the authors, and the publisher, which was stated on the title pages and in the introductory or concluding passages of the text, referred to as incipit and explicit. The declared information was then compared to the actual contents of the volume, which in some cases revealed discrepancies between the contents, the title page, and the catalogue. This book provides a transcription of significant passages of title pages, or incipit or explicit, because they can be used to identify specific editions and because they provide a useful and detailed description of the contents.

A specific difficulty in researching the Strahov Library collection was the widespread practice of combining more bibliographical units into one convolute. This refers to the binding of at least two originally separately published units into a single final volume. Such a volume comprises multiple units, which have their own title pages, series of page numbers, and series of printer folder markings, which served as an aid to the printer in assembling

the volumes, and which were typically placed in the lower right-hand corners of selected pages. Multiple titles may have been bound into a single convolute by the owner, either the Strahov Library or its predecessor, for example, in an effort to bring together various thematically related writings of shorter length. Identifying the convolute is challenging because it may have originated not only from the owners of the copies but also from the printers. This is probably why the library catalogue formerly concealed the existence of many convolutes and neglected to identify them. This is evident in the fact that a single shelf mark was assigned to the convolute, making it unable to distinguish the individual bound parts, such as a separate commentary on the Digest and a subsequent commentary on the Codex of Justinian. Sometimes, the absence of proper identification of a convolute led the catalogue to mistakenly list only the main unit as contents of the entire volume. This occurred because, when the volume was opened, the first title page typically identified only the main bound unit. The catalogue, then, failed to indicate that other units were also available in the convolute – and indeed at the Strahov Library. This study attempts to correct these errors, firstly by identifying them and describing exactly where they lie. However, the output of the research is, among other things, a set of proposals for corrections to the catalogue and shelf marks. These corrections were implemented by the library before publication of this book. The present study, therefore, offers an updated status of shelf marks that reflect the newly identified convolutes.

The titles described are placed into the necessary context. Biographical information on the relevant authors and general information on their writings was gathered in order to provide the reader with a comprehensive picture of the library's legal collection. In the general sections focused on the schools of glossators and commentators, special attention was paid to the modes of their work, i.e., the forms of their professional output. These literary forms are then described, with an emphasis on their distinctive features and with the aid of previews of pages from the examined Strahov units. The patterns of work within the process of reception of Roman law are thus demonstrated through real cases in pictures. On the other hand, the original expectation to explore the origins of the physical volumes described has proved unrealistic. To derive this information from the ownership marks in the volumes would require advanced knowledge of palaeography, which was beyond the scope of this research. Beyond that, one can only compare entries in older catalogues in order to trace the moment when the entry first appeared in the records. However, such a procedure would be hindered by the fact that there are no catalogues dating to before the 17th century or archival records, and that the library was partly looted in 1648 during the last battles of the Thirty Years War. It is, therefore, not possible to trace the provenance of all the volumes being processed in such detail.

To sum up, this book empirically examines the Strahov Library collection, and expands the current state of knowledge and provides an overview of the writings produced by lawyers belonging to the Italian medieval schools of legal glossators and commentators in the process of reception of Roman law. It, then, analyses the contents of the collection. It presents a guide for researchers interested in studying this segment of legal history and introduces modifications to the library catalogue to bring the recorded data into line with the actual status of the collection. The list of all the bibliographical units included is presented in the annex. This book is interdisciplinary in its content, as it links legal history and substantive law – through its examples of the application of law in the works of glossators or commentators – with bibliography and library science.

1. THE BEGINNINGS OF THE RECEPTION OF ROMAN LAW

Like the Roman Empire, the norms of Roman law did not exist in a single static form throughout antiquity but rather evolved gradually. The sources of law, through the interpretation of which we recognise the content of legal norms and which give the norms their external form, therefore also changed. Looking at the sources that played the most important role in the period of the Dominate (284–476 AD) and the fall of the Western Roman Empire, which ended in 476 AD, two noticeable trends in their development can be traced. The first is the process of concentration of power in the hands of the emperor, who achieved the status of absolute monarch, and the acquisition of a monopoly of legislative power during the reigns of Diocletian and Constantine the Great.¹¹ This is the result of a development that took place over many years, beginning with the conferral of the legislative initiative and the right to issue official decrees (*ius edicendi*) on republican magistrates elected by assemblies of Roman citizens, and then shaped by Octavianus Augustus at the end of the first century BC when he accumulated both official functions and powers derived from the authority of magistrates. The second tendency can be seen as a strengthening of the importance of legal science. While in the archaic period of the Roman kingdom, the power to construe the law was reserved to the priests, during the Roman republic the interpretation of the law was opened to the laity. To this day, we know the names of a number of lawyers who have become famous for their expertise. The respect and acknowledgment they received from society naturally gave their legal opinions an accepted authority. However, these opinions remained the private results of their legal interpretations; they were not binding sources of law. The transformation of this state of affairs goes back to Octavianus Augustus, as he and his successors began to grant various privileges to selected jurists in order to win their favour. The privilege of giving legal advice in the name of the emperor (*respondere ex auctoritate principis*) initially had no formal weight, and lawyers endowed with this title enjoyed only increased popularity. However, judges, who did not have the courage to resist the legal opinions of these lawyers, began to attribute greater authority to them. The next logi-

11 Leopold Heyrovský, *Dějiny a systém soukromého práva římského* (Otto, 1910), 51.

cal step was the emergence of a general belief that the opinion of privileged lawyers was binding and had the force of law.¹² The special laws of citation in the Dominate period then prescribed precisely under what conditions the opinions of the classical and post-classical jurists were to be followed, and consequently, their statements became recognised as true sources of law.

It is not surprising, therefore, that when the Eastern Roman emperor Justinian the Great decided to codify Roman law as part of a general effort to restore the glory of the ancient empire, it was the imperial decrees and pronouncements of the Roman jurists that caught his attention. Shortly after he took office, Justinian ordered the compilation of a collection of imperial decrees in the constitution *De novo codice componendo* of February 13, 528. In doing so, he aimed to facilitate such an essential source of law, as subsequently stated:

Hence We have hastened to bring these matters to your notice, in order that you may be informed to what an extent Our daily care is occupied with matters having reference to the common welfare, by collecting such laws as are certain and clear, and incorporating them into a single code, so that, by means of this code, designated by Our auspicious name, the citation of the various constitutions may cause decisions to be more readily rendered in all litigation.¹³

The *Novus Iustinianus Codex* was promulgated by the constitution *Summa rei publicae* of April 7, 529 and came into force on April 16, 529.¹⁴ A year later, by the constitution *Deo auctore* of December 15, 530, work began on a collection of the opinions of Roman jurists, which bears the title *Digesta seu Pandectae*. Justinian's intention was to reconstruct the content of classical civil law through the opinions of jurists, their commentaries, and their arguments, and to collect them from scattered sources and publish them in one place:

We therefore command you to read and work upon the books dealing with Roman law, written by those learned men of old to whom the most revered emperors gave authority to compose and interpret the laws, so that the whole substance may be extracted from them, all repetition and discrepancy being as far as possible removed, and out of them

¹² Jaromír Kincl, Valentin Urfus and Michal Skřejpek, *Římské právo* (C. H. Beck, 1995), 29.

¹³ § 3 *De novo codice componendo*. Source: Paulus Krueger and Theodor Mommsen, eds., *Corpus iuris civilis*, Editio stereotypa quinta, volumen secundum (apud Weidmannos, 1892). "Haec igitur ad vestram notitiam ferre properavimus, ut sciatis, quanta nos diurna super rerum communium utilitate cura sollicitat, studentes certas et indubitatas et in unum codicem collectas esse de cetero constitutiones, ut ex eo tantummodo nostro felici nomine nuncu pando codice recitatio constitutionum in omnibus ad citiores litium decisiones fiat iudiciis." Source of translation: Samuel P. Scott, ed., *The Civil Law*, vol. XII (The Central Trust Company, 1932).

¹⁴ For an overview of constitutions, see David Falada, *Receptce římského práva* (Aleš Čeněk, 2016), 61–64.

one single work may be compiled, which will suffice in place of them all. (...) but that in these fifty books the entire ancient law in a state of confusion for almost fourteen hundred years, and rectified by us may be as if defended by a wall and leave nothing outside itself. All legal writers will have equal weight and no superior authority will be preserved for any author, since not all are regarded as either better or worse in all respects, but only some in particular respects.¹⁵

With the constitution *Tanta* of December 16, 533, Justinian thus published one of the most extensive codices of mankind, which, in a volume of 50 books, compiled excerpts from the works of classical and post-classical Roman jurists. The constitution came into effect on December 30, 533. However, selecting such content presents two types of risk. First, the opinions of jurists included are not usually written in the nature of theoretical postulates and explanatory interpretations. They do not offer abstract theses, but specific solutions to real disputes which the jurists either encountered directly or which, again based on practical experience, occurred to them as hypothetical examples. It is thus a set of case law. The explicit formulations of the Digest do not reveal the underlying theoretical legal order. Only from the study of a wide range of case law can such general principles be abstracted. Further, in compiling the Digest, the compilation committee headed by the jurist Tribonian selected legal opinions from the works of several different jurists who, moreover, did not live in the same period. It is also common for a single author to contradict himself in multiple works published during his lifetime. Disputes between multiple lawyers who differ in their views on the solution of a particular legal issue are common. It is understandable, then, that differences in the law are subject to change over time. All of this leads to the inevitable result, which is an inherent contradiction between the fragments of the Digest. The emperor Justinian was aware of this danger, and therefore in both aforementioned constitutions he explicitly empowered the commission to carry out interpolations, i.e., interventions in the texts of the Roman jurists by which they were edited, supplemented, but also amended. Although the commission tried to eliminate contradictions, it was not successful to the

15 § 4–5 *Deo auctore*. Source: Paulus Krueger and Theodorus Mommsen, eds., *Corpus iuris civilis*, Editio stereotypa duodecima, volumen primum (apud Weidmannos, 1911). “*Iubemus igitur vobis antiquorum prudentium, quibus auctoritatem conscribendarum interpretandarumque legum sacratissimi principes prae buerunt, libros ad ius Romanum pertinentes et legere et eliminare, ut ex his omnis materia colligatur, nulla (secundum quod possibile est) neque similitudine neque discordia derelicta, sed ex his hoc colligi quod unum pro omnibus sufficiat. (...) sed his quinquaginta libris totum ius antiquum, per millesimum et quadringentesimum paene annum confusum et a nobis purgatum, quasi quodam muro vallatum nihil extra se habeat: omnibus auctoribus iuris aequa dignitate pollentibus et nemini quadam praerogativa servanda, quia non omnes in omnia, sed certi per certa vel meliores vel deteriores inveniuntur.*” Source of translation: Alan Watson, ed., *The Digest of Justinian*, vol. 1 (University of Pennsylvania Press, 1998).

full extent. Thus, if the reader has the ambition to abstract general rules from the case law presented and to discover the theoretical system behind it, it soon turns out that such expectations were unrealistic, because the Digest offers no uncontroversial system. This says nothing about the actual state of the law in the classical period of Roman history, but the fact is that the Digest is not an ideal means of reconstructing it.

As the third part of the codification, Justinian published the *Institutiones seu Elementa*, which can be understood as a textbook or manual of Roman law, but at the same time still as a source of law, which the inhabitants of Byzantium were obliged to follow. The *Institutes* were promulgated by the constitution *Imperatoriam maiestatem* of December 21, 529, in which Justinian made it clear that his intention was to provide students with a modern textbook giving correct insights into civil law:

After the completion therefore of the fifty books of the Digest or Pandects, in which all the earlier law has been collected by the aid of the said distinguished Tribonian and other illustrious and most able men, we directed the division of these same Institutes into four books, comprising the first elements of the whole science of law. In these the law previously obtaining has been briefly stated, as well as that which after becoming disused has been again brought to light by our imperial aid.¹⁶

The *Institutes* came into effect on December 30, 529. After the completion of the Digest and the *Institutes*, the need arose to revise the Codex, which, as the oldest part of the codification, did not correspond to the contents of the later parts, nor did it reflect the further amendments made by the constitutions of the emperor Justinian. A newly formed commission, therefore, revised the form of the original Codex during 529, and at the end of that year the revised code – *Codex Iustinianus repetitae praelectionis* – was published by the constitution *Cordi* of November 16, 529. The Codex, effective from December 29, 529, replaced the original version of 529, completing the process of creating the Justinianic codification, which was subsequently referred to as the *Tria volumina*, in reference to the number of its parts, or *Corpus iuris civilis*, a name first used by the French legal humanist Dionysius Gothofredus (Denis Godefroy) in 1583 on the occasion of its publication. However, Justinian's work did not

16 § 4–5 *Imperatoriam maiestatem*. Source: Paulus Krueger and Theodor Mommsen, eds., *Corpus iuris civilis*, Editio stereotypa duodecima, volumen primum (apud Weidmannos, 1911). “Igitur post libros quinquaginta digestorum seu pandectarum, in quos omne ius antiquum collatum est (quos per eundem virum excelsum Tribonianum nec non ceteros viros illustres et facundissimos confecimus), in hos quattuor libros easdem institutiones partiri iussimus, ut sint totius legitimae scientiae prima elementa. Quibus breviter expositum est et quod antea optinebat et quod postea desuetudine inumbratum ab imperiali remedio illuminatum est.” Source of translation: John Baron Moyle, ed., *The Institutes of Justinian*, fifth edition (Clarendon Press, 1913).

end with the three volumes mentioned above. He and his successors naturally issued new imperial decrees known as *Novellae*. The *Novellae of Justinian* were later assembled into collections and, because they changed the content of Justinianic codification, they in effect formed a continuation of it.

Justinian had Roman law codified with the intention of creating an up-to-date, binding codification for the inhabitants of the entire Roman Empire, at least to the extent of the territory he controlled at this time. The selected imperial constitutions and the mass of classical law collected in the Digest were intended to replace private collections of constitutions in use up to that time from the period between the reigns of the emperors Hadrian and Diocletian, that is, the *Codex Gregorianus* and *Codex Hermogenianus*, as well as the *Codex Theodosianus*, the first public collection in force from 438 to 439. This intention was explicitly expressed by Justinian at the beginning of the works on the *Corpus iuris civilis* in the constitution *Summa rei publicae* of April 7, 529, which promulgated an earlier version of the Codex:

Therefore We have had in view the perpetual validity of this Code in your tribunal, in order that all litigants, as well as the most accomplished advocates, may know that it is lawful for them, under no circumstances, to cite constitutions from the three ancient codes, of which mention has just been made, or from those which at the present time are styled the New Constitutions, in any judicial inquiry or contest; but that they are required to use only the constitutions which are included in this Our Code...¹⁷

By the three codices mentioned in the quoted constitution he meant precisely *Codex Gregorianus*, *Codex Hermogenianus*, and *Codex Theodosianus*. After the defeat of the Ostrogoths and the conquest of Italy, Justinian enforced his idea through the *Pragmatica sanctio pro petitione Vigili* of August 13, 554, a regulation issued – as the name reveals – at the request of pope Vigilius, by which he stabilised the situation in Italy and annulled all the constitutions of the Gothic kings.¹⁸ In the eleventh of the twenty-three constitutions that make up the Pragmatic Sanction, he explicitly declared the Justinianic codification valid and binding in Italy:

¹⁷ § 3 *Summa rei publicae*. Source: Paulus Krueger and Theodorus Mommsen, eds., *Corpus iuris civilis*, Editio stereotypa quinta, volumen secundum (apud Weidmannos, 1892). “Hunc igitur in aeternum valiturum iudicio tui culminis intinere prospeximus, ut sciant omnes tam litigatores quam disertissimi advocati nullatenus eis licere de cetero constitutiones ex veteribus tribus codicibus, quorum iam mentio facta est, vel ex iis, quae novellae constitutiones ad praesens tempus vocabantur, in cognitionalibus recitare certaminibus, sed solis eidem nostro codici insertis constitutionibus necesse esse uti...” Source of translation: Samuel P. Scott, ed., *The Civil Law*, vol. XII (The Central Trust Company, 1932).

¹⁸ Miroslav Černý, “Počátky školy glosátorů a znovuoobjevení Digest,” in *Historia et interpretatio Digestorum seu Pandectarum*. Zborník z 18. konferencie právnych romanistov Slovenskej republiky a Českej republiky, uskutočnenej v dňoch 27.–28. mája 2016 na Právnickej fakulte Trnavskej univerzity v Trnave, ed. Peter Mach and Vojtech Vladár (Leges, 2016), 54.