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“Corpus Juris Civilis” and “Corpus Juris Canonici”. Legal and Canonical Considerations

Mititelu Cătălina

Mititelu Cătălina

Ovidius University of Constanta
Email: ovidiustomis@yahoo.co.uk

Abstract

The heritage of the medieval European legal culture is represented by both the legal and canonical sources. The legal one is composed of four works by Emperor Justinian (527-565), that circulated in a single legal format as “Corpus Juris Civilis” from the twelfth century to the present day. As regards the canonical sources, they are represented by the canonical phrase of the Eastern Orthodox Church and by Corpus Juris Canonici. In this juridical-canonical study, I made express reference only to Corpus Juris Civilis and to Corpus Juris Canonici.

Keywords

the Civil Law, Codex Justinianus, the Roman law, the Byzantine law

The legal and canonical European culture is represented by two large collections known as “Corpus Juris Civilis” and “Corpus Juris Canonici”, whose content is not only a first-hand documentary source for lawyers and canonists, but also a reference for the researcher of European institutions.

Nowadays, their research provide lawyers and canonists, historians, sociologists and political scientists the possibility to analyze both the genesis and the evolutionary process of these legal and canonical institutions

and their impact on European legislation, along the centuries. In the lines below, we are going to present the two “Codes” in an effort to give the reader the opportunity to become acquainted with both the history of their emergence and the content of their laws, because many of their principle provisions were affirmed not only in the state and ecclesiastical medieval law in many European countries – including our country – but also in the text of several statutes today.

1. Corpus Juris Civilis

This “collection of civil law” was made up of four works by the Emperor Justinian, namely, “Codex” (the Code), “Digestae” (Digest), “Institutiones” (Institutions) and “Novellae” (Novels). These four works by Justinian, which formed a single legal work, increasingly circulated at the beginning of the twelfth century, until nowadays, under the name of “Corpus Juris Civilis”¹.

Emperor Justinian’s legal work (527-565) was thus composed of several collections with a different material, i.e., “Codex” and “Novellae” – which have a purely legal content – and two works with a doctrinal and legal content, *id est* Digest (Digestae) and Institutions (Institutiones).

“Codex Justinianus” – the most comprehensive and important legal collection of legislation and Roman law – was included – along with the other three works published during the reign of Emperor Justinian I (527-565), the last Roman emperor and the first Byzantine basileus – in the “Corpus Juris Civilis” (Civil Law Collection).

a) Codex Justinianus² had a first edition in 529, and a second one in 533

Codex Teodosianus that was improved and completed so as the Commission of jurists found it reasonable (Commission established at the order of emperor Justinian), was used “in extenso” for Codex Justinianus, which

¹ See, Vl. Hanga, Preface to *Justiniani Institutiones (Justinian’s Institutions)*, Lumina Lex Publishing, Bucharest, 2002, p. 6.

² See, *Codex Justinianus*, ed. Th. Mommsen, Dublin/Zürich, 1971; *Codex Justinianus*, ed. P. Krüger, republished in 1989.

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incorporated in its text all the laws issued by the Roman emperors since 117 (Emperor Adrian, 117-138) to 529/533 inclusively.

The content of this Code is divided into 12 books, where there are numerous statutes related to the Church, and some introductory utterances of some laws, which express the position of the state or of the emperors towards the Church and towards some elements of the Christian faith³.

b) Novels (Novellae Constitutiones)

Emperor Justinian – the greatest legislator of antiquity – did not want to draw a Byzantine law, “...but to restore the old Roman Law”. Therefore, Justinian tried and managed to “revive” the old system of Roman law, and to adapt it to the realities of his times. But, by “the simple changes” made to this Law, i.e. to “Jus antiquum romanum (ancient Roman law)”, Justinian actually transformed his work into a representation of the Roman law terminus and into “a source for the subsequent development of the Law itself”⁴.

The only work from “Corpus Juris Civilis” whose text has not changed was the Novels because they were, in fact, a creation of Emperor Justinian and of his collaborators famous legal consultants and teachers of his time, i.e. Tribonian and Theophilus, professors at the School of Law in Constantinople, Dorotheu from the School of Law in Beirut etc.

Since the late Roman Empire, these Novels, which are actually the imperial constitutions of emperor Justinian, have become “... the most important source of positive law”, i.e. of written law, and, therefore, they were called “leges (laws) unlike the works of jurists – also a source of law – known as the “law” or “old law” (Jus antiquum)”⁵.

These laws were called “Novellae”, i.e. enactments that began with a new legislation, a “jus novum”, not only because they were established after the second edition of Codex Justinianens of 533, which was the old legislation of the Roman law, namely “Jus antiquum”, but also because it was really a “Jus Novum” (New law), established “in nomine Jesu Christi” (in the name of Jesus Christ), which – for Justinian and for the other

³ I. N. Floca, *Orthodox canon law. Church legislation and administration*, vol. I, EIBM-BOR, Bucharest, 1990, pp. 100-101.

⁴ Vl. Hanga, *op. cit.*, p. 6.

⁵ *Ibid.*, p. 4.

Byzantine emperors who followed him – was the Supreme Legislator of the World. Taking into account that these “New laws” were enacted by Emperor Justinian “in nomine Domini nostri Jesu Christi”⁶, meaning “in the name of our Lord Jesus Christ”, we are entitled to say that, since the era of Justinian (527-565), the Romanian legislation actually underwent a process of Christianization in its content, becoming a Christian legislation, thus giving expression to a new conception of the world and life, understood and based on the teachings of Jesus Christ.

These new laws, i.e. Justinian’s Novels, inaugurated

“both a new type and a new form of enactment or regulations and a new era or a new stage in the development of the Roman law. The new form is represented by the fact that the Novels or the new laws are drafted in the form of organic laws which refer to one sector or to one important branch of legal relations, whose regulation is done according to a plan as solid, as logical and as systematical as possible. And the new stage of the Roman law, inaugurated by the Novels, consists in the fact that it makes the transition from the old Roman Law to the Byzantine law itself, most of them being written in Greek or only in Greek and few in Latin”⁷.

This collection of 153 Novels – the most complete and the most significant state regulation in church matters – was made towards the end of Justinian’s life; however, it was published after his death, thus implying some changes and additions made by the same committee of jurists of the Imperial Court of Constantinople.

c) “Institutiones” (Institutes)

This work, which appeared in 529, was actually written as an Introduction Manual for the study of law. Moreover, Justinian’s Institutions represent the oldest Law Manual which has been preserved, due to which we become acquainted not only with the doctrine and jurisprudence of the Roman law – through those famous statements or pronouncements about the law, its nature and purpose, left by the famous Roman legal consultants (Gaius, Ulpianus, Tribonian etc.) – but also by the curriculum of the famous Law school in Constantinople, at that time.

⁶ *Ibid.*, p. 7.

⁷ I. N. Floca, *op. cit.*, p. 101.

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The matter of this manual is divided into four parts, which sought to clarify the fundamental legal concepts (the origin and nature of law, the distinction between sacred law and secular law, etc.).

This manual does not cover actual laws and there is no express legal material concerning the Church, but the items presented by “Institutiones”, “... are indispensable in understanding many elements of the Church law itself, from the very wording of the canons and especially from the content of the state statutes regarding the Church”⁸.

d) “Digestae” (Digest) or “Pandectae” (Pandects) in 50 books⁹

About this work – published in 533, which served to the composition of the previous one (Institutiones) – it was told that it is

“the synthesis of the Roman legal thinking, systematically exposed as statements of the Roman jurists, who ruled both the law principles, the general concepts, and the practical matters or the detail ones, setting, by their statements, some classical ways of presenting the issues or problems that are called case law, i.e. wise statements of lawyers. This is the original meaning of the word case law, which has been subsequently used to this day also in the sense of judicial rule, established by the decisions of a court, usually by higher court decisions”¹⁰.

In Digest (from “digerō, digere, digessi, digestum” = to divide, to disperse, to exhibit, to treat, where the noun *digesta*, –orum = work divided into books, chapters, paragraphs), we learn how the theoretical and practical law issues were processed, debated and settled by the Roman jurists.

“In other words, Digest is the result of the way in which the Roman thinking developed concise and precise general legal principles and rules, definitions and utterances; some of them have become axioms and imposed themselves by the power of their internal value not only as unwritten laws or rules adopted by custom, but also as real written laws, some of them even prevailing over positive laws”¹¹.

⁸ *Ibid.*

⁹ See, *Les Cinquante Livres du Digeste ou des Pandectes de l'Empereur Justinien*, translated in French by M. Hulot, Metz/Paris, 1805sq.

¹⁰ I. N. Floca, *op. cit.*, pp. 101-102.

¹¹ *Ibid.*, p. 102.

In the Preface to the Digest, the Emperor Justinian declared – among other things – that “God” was the one who put “in his hands the bridles of the Empire” and that he had such “a great confidence in the Almighty God (ad Dei omnipotentens)”, that he did “not trust in force of weapons (necque armis confidamus) nor in the courage of his soldiers and in the skills of his generals, but he put all his hope in the Holy Trinity, who created the world and all its things”¹².

The same emperor declared “... that nothing is more worthy of people’s attention and study but the laws governing all the divine and human things”, thus, taking note that the Roman laws were producing

“such great confusion (ita esse confusum) and that their study had become impossible for the understanding of the human mind..., he engaged into the analysis of the laws given by our predecessors, in order to bring the necessary corrections (eorum constitutione emendare) and, then, he gathered all of them in a single Code (in unum codex congregatae), after getting rid of all their similarities and contradictions ...”¹³.

Of course, he was talking about Codex Justinianus, which – according to its author, Emperor Justinian, – brought together all the “Constitutions” (Constitutiones)¹⁴, i.e. the laws of his predecessors on the throne of the “Old Rome” and the “New” ones.

Regarding Digest, Justinian declared that the success of the Code determined him to bring the necessary corrections and improvements to the “entire Civil Law”, and, as such, to proceed to the assembly and incorporation into a code (uno Codice) of the entire Roman jurisprudence (omnem romanam sanctionem); thus, he put in a single volume the jurisconsults’ books scattered everywhere¹⁵.

According to his own confessions, in order to materialize his initiative, he was helped by highly appreciated law professors, legal consultants and lawyers from the Bar of Constantinople, whom he proposed “... to read and correct the books on the Roman law (jus Romanum) written by the old legal consultants (Antiquorum prudentium), so that no two similar laws exist, nor two contrary laws”¹⁶.

Justinian demanded his body of jurisconsults – whom he entrusted the drafting of the Roman Jurisprudence “in fifty books and in a certain

¹² *Les Cinquante Livres du Digeste ...*, tom I^{er}, p. 1.

¹³ *Ibid.*, p. 1-2.

¹⁴ *Ibid.*, p. 2.

¹⁵ *Ibid.*

¹⁶ *Ibid.*, p. 2-3.

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number of titles” – that these books contain all “the old law (Jus antiquum) observed for more than fourteen centuries”, without any confusion¹⁷.

Justinian finally asked his jurisconsults not to eliminate the law “Comments” done by the old jurisconsults Papian, Ulpianus, Paul and Marcian, even if there were differences of opinion among them¹⁸.

Both “Digest” and “Institutiones” are indispensable accessories for understanding the Byzantine and Roman law, and, ipso facto, the European law and the canon and nomocanon law. Moreover, the statements of famous Roman legal consultants (Cels, Gaius, Ulpianus etc.) on law, on its nature and purpose are found even in the Code of Laws of the Country, i.e. those Byzantine nomocanoans translated, adapted and published in Romanian, as was the case with the Great Code of Laws, printed in Targoviste in 1652.

After Justinian’s legislation – which made history and has established itself as a model for later Byzantine law – there appeared other Collections of law, with a mixed content (state and ecclesiastical); however, they did not enjoy the same reception in the East and Western Europe, except some of them, such as the one in Basilicata, which served as a documentary source and basis in the countries of south-eastern Europe, until the modern era.

Finally, it should be noted that Justinian’s Collection of laws – which, from the twelfth century circulated under the name of “Corpus Juris Civilis” – was, “for the European culture, the most widespread book after the Bible”¹⁹, hence its considerable contribution to the teaching of the European legal culture.

2. Corpus Juris Canonici

In the twelfth century, the canonical Collections of the West²⁰ – which included the canonical law of the Latin Church in the first millennium – were

¹⁷ *Ibid.*, p. 3.

¹⁸ *Ibid.*, p. 4.

¹⁹ Apud I. N. Floca, *op. cit.*, p. 102.

²⁰ See, N. V. Dură, *Colecții canonice, apusene, din primul mileniu (Canonical Western Collections from the first millennium)*, in Ovidius University Annals. Series: Law and Administrative Sciences, no. 1, 2003, pp. 19-33; Idem, *Un daco-roman, Dionisie Exiguul, părintele dreptului bisericesc apusean (A Daco-Roman, Dionysius Exiguus, the father of the Western religious law)*, in Studii Teologice, XLIII (1991), no. 5-6, pp. 84-90; Idem, *Denis Exiguus (Le Petit) (465-545). Précisions et correctifs concernant sa vie et son oeuvre*, in “Journal Española de Derecho Canonico (Universidad Pontificia de Salamanca)”, L (1993), pp. 279-290; C. Mititelu, *Internal (Material) Sources of Orthodox Canonical Law*, in “Philosophical-Theological Review”, Tbilisi State University (Georgia), no. 1, 2011, pp. 111-120.

replaced by the collection of the Italian monk Johannes Gratianus²¹ – jurist and canonist by training – who, around 1140-1150, published a canonical Collection which he called “Concordia discordantium canonum”.

Gratian’s canonical Collection – later called “Decretum Gratiani”²² – has been discussed for centuries by many glossists. Their glosses – known as the “Gloss apparatus” or “Lectura in Decretum” – circulated in Collections entitled “Summae” which, over time, have achieved fame and authority equal to the ones of the Decree.

Some reviewers of this Decree – consecrated in the literature – are Paucapalea and Magister Rolandus, but the most important commentators were considered Rufinus of Bologna, Huguccius and Simon of Bisignano.

By “Concordia discordantium canonum” (The concordance of discordant canons), – which has been called by some specialists “Nova Collectio” (the New Collection) – Gratian sought to harmonize the different interpretations and comments to the text of the canon law of the Western Church over the centuries.

The text of Gratian’s Collection underwent some changes and additions, especially after the second Lateran Council (1139). The collection was later incorporated into Corpus Juris Canonici, which was published in 1582.

Decretum Gratiani was published in two versions. Regarding the first one, is believed to have appeared after 1139, and the second one – around 1150.

The researchers specialized in Gratian’s Decree found that there are major differences between the two versions. For example, the first version

²¹ Gratian studied and was a professor at the University of Bologna, where he taught Roman law and Latin canon law. But his fame was due to his canonical collection later known as the “Decretum Gratiani”. It is certain that the fame of Gratian was retained even by Dante, who mentions him in his work *Paradise*, among the Fathers of the Western Church. About Gratian and the correctives to his biography, see J. T. Noonan, *Gratian slept here: the changing identity of the father of the systematic study of canon law*, in “Traditio”, 35 (1979), pp. 145-172.

²² See, A. Winroth, *The Making of Gratian’s Decretum*, New York, Cambridge University Press, 2004; Idem, *Recent Work on the making of Gratian’s Decretum*, in “Bulletin of Medieval Canon Law”, New Series Vol. 26, (2004-2006), pp. 1-29; A. A. Larson, *The Evolution of Gratian’s Tractatus de Poenitentia*, in “Bulletin of Medieval Canon Law”, New Series Vol. 26, (2004-2006), pp. 59-123; Idem, *Early Stages of Gratian’s Decretum and the second Lateran Council*, in “Bulletin of Medieval Canon Law”, New Series Vol. 27, (2007), pp. 21-56.

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includes only the canonical text and makes no reference to the Roman law and to its jurisprudence. In contrast, the second version included the rules of Roman law, extracted directly from *Corpus Juris Civilis*. In addition, in this version, the text of the canonical law was invoked in order to justify the claims of papal primacy. Or, by this version, *Decretum Gratiani* helped develop a new canonical doctrine, of papal nature. But, as noted also by Anders Winroth – a researcher specialized in the genesis and content of the text of this decree – the differences between the two versions lead to the conclusion that Gratian was the author only of the canonical collection entitled “*Concordia discordantium canonum*”, he was not the author of the Decree, the latter was the work of a jurist specialized in Roman law²³.

However, the author of this decree – whether Gratian or another Italian jurist – appealed both to the Roman law and to the texts of the Holy Scriptures and of the Fathers of the Western Church, and, of course, to the text of the synodic canon law, which, assessed through the lens of papal Decrees, represents a novelty both in connection to this decree and to the old Roman canon Law in the first millennium.

The same researchers specialized in the Decree tell us that its author or authors did not obtain the documentary material directly from the source, but through several Collections²⁴ (canonical or legal) published subsequently and whose text also underwent some changes, and even some modifications made in the spirit of the papal doctrine, approved by the Tridentine Synod, and finally, by the first Vatican Council.

Gratian’s collection – which, following the additions and changes brought to its original text was called *Decretum Gratiani* – was

“the first part of that great collection of ecclesiastical laws which, after the example of Emperor Justinian’s *Corpus Juris Civilis*, was named *Corpus Juris Canonici* and includes the laws issued for almost two centuries, by the supreme authority of the Roman Pontiffs, with the help of the experts in canon law, called glossists”²⁵.

²³ Cf. A. Winroth, *Recent Work on the making of Gratian’s Decretum*, ..., p. 1-29.

²⁴ See, Ch. Munier, *Les sources patristiques du droit de l’Église du VIIIe au XIIIe siècle*, Mulhouse, 1957; P. Landau, *Neue Forschungen zu vorgratianischen Kanonensammlungen und den Quellen des gratianischen Dekrets*, in “*Ius Commune*”, 11 (1984), pp. 1-29.

²⁵ *Code of Canon Law*, Preface, Ed. Sapientia, Iași, 2004, p. 25.

In addition to the text of this decree, Corpus Juris Canonici includes “Liber Extra of Gregory IX, Liber VI of Boniface VIII, Clementinae or the Collection of Clement V, promulgated by John XXIII, to which there are added the Extravagantes of John XXIII and Extravagantes communes, i.e. the Decretals of various Roman Pontiffs, which have never been brought together in an authentic collection”²⁶.

According to the Roman Catholic canonists, the ecclesiastical law which is contained in this Corpus represents “the classic law” of the Catholic Church and bears, in general, that name²⁷.

The same canonists state “that Syntagma Canonum or Corpus canonum orientale of the Greek Church”²⁸, i.e. of the Eastern Orthodox Church, which has incorporated in its text the canonical legislation of the IV – IX centuries²⁹, is a correspondent for this Corpus of the Latin Church.

In the Western Church, however, a huge legislation promulgated by various congregations of the Roman Curia circulated thus, in time, outside the “Corpus Juris Canonici” an immense accumulation of laws stacked on each other was formed, which made the first Council of Vatican to order the drafting of a “new and unique collection of laws”³⁰. But this collection was to be promulgated by Pope Benedict XV on 17th May 1917 and entered into force on 19th May 1918 as the Code of Canon Law. Was it really intended that the notion of “Codex” (Code) to remind us of Justinian’s Code? It is certain that Codex Justiniani served Emperor Napoleon as a model and reference for his Civil Code (Juris Civilis), which, in turn, served as a paradigm to the authors of the Code of the Roman Catholic Church in 1917.

The brief presentation of the two Corpuses of law, one of state and the other of church, reveals that they are – along with the canonical Syntagma

²⁶ *Ibid.*, p. 26.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ About the genesis and content of the canonical text of this legislation, see N. V. Dură, *Le Régime de la synodalité selon la législation canonique, conciliaire, oecuménique, du I^{er} millénaire (The Synodality regime according to the canonical, conciliar, ecumenical law of the first millennium)*, Ed. Ametist 92, Bucharest, 1999, pp. 287-382; C. Mititelu, *Internal (Material) Sources...*, pp. 111-120.

³⁰ *The Code of Canon Law ...*, p. 26.

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(Collection) of the Eastern Church in the first millennium³¹ – the legal and canonical heritage of the medieval European culture; this triggers both the need for their knowledge and the necessity to invoke their text as the basis and authority for the establishment and functioning of the European legal and canonical institutions from the medieval era to our modern times.

This legislation helps us to better understand both the evolution process of the European legal and canonical institutions – including church-state relations, the two basic institutions of our society – and the history of the European law, whose constitutive and integral part is also represented by the history of the Law of each European State³².

³¹ N. V. Dură, *Le Régime de la synodalité ...*, pp. 287-382.

³² See, C. Mititelu, *Începuturile Dreptului scris la români*, in “Dionysiana”, no. 1, 2009, pp. 417-426.