

JUSTINIAN: LIEUTENANT OF CHRIST, LEGISLATOR FOR CHRISTENDOM

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Born a peasant of the Balkans and elevated to the highest station on earth, the Roman Emperor Justinian produced perhaps the second most important writing in the history of the world. His faithfulness to God in the work God had put before him produced fruit that nourishes man and glorifies God to this day, one and one half millennia later. Justinian's greatest work, second in influence only to the word of God, is the *Corpus Juris Civilis*, the definitive compilation of Roman law.

The year 483 saw the birth of Petrus Sabbatius in the town of Tauresium, in what is now Yugoslavia. There he likely would have stayed had not his uncle Justin risen through the ranks to become chief of the imperial palace guard in Constantinople, New Rome, capital of the Roman Empire. The childless Justin had drawn his nephew to the capital, where the illiterate soldier hoped Petrus would acquire the command experience his uncle possessed and the learning his uncle lacked. These attainments, and political connections, would make the youth a suitable heir.¹

Petrus Sabbatius, taking the added surname Justinianus in honor of his avuncular patron, apparently took well to his military duties, to his studies—especially in theology and law—and to Theodora, a lowborn actress of loose morals and engaging personality. The death of the emperor in 518 led to the elevation of Justin himself to the Purple. By then, the 36-year-old Justinian had become well prepared to guide his uncle, if not in fact to reign through him.² (Actually, it seems Justinian was offered the throne himself before Justin, but declined in favor of the old soldier. Some say this was to give himself a trial run at ruling the empire.) Justin made his nephew Caesar, and then Augustus—his official co-ruler. When Justin's wife, Euphemia, died, Justinian was able to

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¹ See 1 EDWARD GIBBON, *THE DECLINE AND FALL OF THE ROMAN EMPIRE* 647 (Encyclopaedia Britannica, Inc. 1952) (1776-1788).

² See H.F. JOLOWICZ AND BARRY NICHOLAS, *HISTORICAL INTRODUCTION TO THE STUDY OF ROMAN LAW* 478 (3d ed. 1972). See also JOHN JULIUS NORWICH, *BYZANTIUM: THE EARLY CENTURIES 189-91* (1989).

marry Theodora, having lived with her as mistress until the disapproving matron left the scene.³

While Justin yet reigned, Justinian was able to anticipate the work he himself would undertake later in his own name. Some projects he was able to begin with Justin's cooperation and under his authority. Others he was content merely to plan. In this last category fell the grand project for which he is most famous.

In 527, Justinian began his own long reign as emperor.⁴ He was joined on the throne by his wife, having had Theodora crowned co-ruler—a rarity. Theodora was to exert a powerful force upon Justinian and also to influence policies and administration in state and Church in her own right. Although, for reasons discussed later, it seems Justinian owed his very reign to her, his dearly loved empress opposed him in what was likely the most important work in Justinian's own estimation. For the Empress Theodora was a monophysite.⁵

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Since the early fourth century, the Church had understood and proclaimed the biblical truth that Jesus Christ is fully God and fully man, opposing the Arian heresy that He is indeed fully man but something less than fully God. By Justinian's time, Arianism was the faith only of the semi-barbarians who occupied the western half of the Empire under the nominal authority of the emperor in Constantinople. The prelates of the Church, even in the west, and the faithful within the territory under Justinian's direct control had rejected Arianism. But the non-Arians remained divided over the nature of Christ. In reaction to Arianism, some went beyond the orthodox view of fully God and fully man. This excess in opposition to Arianism came in several forms, but during Justinian's reign chiefly in the form of Monophysitism—"One-nature-ism."⁶ This heresy held that Christ had not both a human and a divine nature, but only a divine nature that had received certain human attributes in the

³ See 1 GIBBON, *supra* note 1, at 648-50.

⁴ See JOLOWICZ & NICHOLAS, *supra* note 2, at 478. See also NORWICH, *supra* note 2, at 194.

⁵ See NORWICH, *supra* note 2, at 193.

⁶ See ROUSAS J. RUSHDOONY, *THE FOUNDATION OF SOCIAL ORDER: STUDIES IN THE CREEDS AND COUNCILS OF THE EARLY CHURCH* 56 (1968); NORWICH, *supra* note 2, at 155.

Incarnation.⁷ In other words, Christ was fully God, but not fully man, for he lacked the *nature* of man.

Theodora had embraced the Monophysitism of the Patriarch of Alexandria, who alone ministered effectively to her as sometime actress-prostitute. He disciplined her as her spiritual advisor, and the empress became a tireless advocate—and agent—on behalf of the monophysites generally.⁸

As committed as his empress was to Monophysitism, so too was the emperor committed to the contrary cause of Orthodoxy. (The opposition of one ruler to the other, and the great power of the empress to further her partisans, were so pronounced that the contemporary historian Procopius thought this imperial matrimonial dualism a calculated posture designed by Justinian and Theodora to assure them flexibility in their united political machinations. But then again, Procopius also thought Justinian was a demoniac monster set on destroying the Church and Empire.) Justinian's efforts to heal the rift in the Church (on orthodox terms) were to occupy perhaps most of his energy, especially in his last years after Theodora's death, when he proposed what he thought to be a version of the orthodox position more palatable to monophysites. This proposal neither side accepted, notwithstanding Justinian's command that all bishops subscribe to it. The bishops chose correctly, however, for it seems that the octogenarian emperor had fallen into the heresy of Aphthartodocetism, the christology that understands Christ as having both divine and human natures, but a human nature that could not sin.⁹

Justinian's christological concerns and his often high-handed treatment of bishops in this and other matters were not the officious intermeddling of a powerful amateur theologian. Rather, as we shall see, they lay at the core of Justinian's conception of imperial authority and at the core of his understanding of the Lordship of Christ.

If christology and church matters were so important to the Emperor, there remains the question of Theodora's powerful patronage of the monophysites, often freely allowed by her husband. The answer seems to be that the two deeply loved each other and enjoyed a marriage of strong, lasting commitment. This faithfulness to one another—notwithstanding her notorious early exploits and their own illicit relationship—is a model of the Christian marriage.¹⁰ The Emperor had crowned his wife Empress, and was willing to let her advance policies in accor-

⁷ See generally HUGO RAHNER, *CHURCH & STATE IN EARLY CHRISTIANITY* 185-224 (Leo Donald Davis trans., 1992).

⁸ See generally *id.*

⁹ See generally *id.*

¹⁰ See *Matthew* 19:4-6; *Mark* 10:6-9.

dance with her own conscience despite his own conscientious dedication to the opposing policy.

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But there was more to this relationship than genuine deep affection and commitment. In some measure, Justinian owed his very reign to Theodora. A half dozen years after Justin's death and Justinian's accession to rule with Theodora, popular disaffection towards his reign, and especially towards Justinian's extortionate lieutenants, erupted into a riot in 532. For hundreds of years, residents of Rome, both Old and New, had been allowed to form what today might be called "pep teams" to support charioteers in the circus. Eventually, these teams assumed the aspect of social-political-theological clubs in a society that otherwise tolerated no factions. By Justinian's time, the "Greens" and the "Blues" stood on opposing ground in many matters—including, of course, the orthodox and monophysite christologies. One day at the circus races, Justinian and his retinue were met by the angry screams of "NIKA! NIKA!" ("DEFEAT THEM! DEFEAT THEM!") aimed against him and his ministers instead of the usual "DEFEAT THEM, GREEN" and "DEFEAT THEM, BLUE" aimed against rival teams.¹¹

The riot ripened into full-blown revolution, culminating days later when the circus mob acclaimed a relative of Justinian emperor in his place. Holed-up in the palace, Justinian was about to abandon the capital city for a safe refuge with his ministers and whatever treasure they could hoard aboard ship.¹² At the last moment, Theodora halted the retreat with words to this effect:

While it is not proper for a woman to be bold or to behave brashly among men who themselves are hesitant, I think the present crisis hardly permits us to debate this point academically from one perspective or another. For, when people's interests have reached the greatest peril, they consider nothing more vital than to settle matters in the best possible fashion. For my part, then, I consider flight, even though it may bring safety, to be quite useless, at any time and especially now. Once a man has come into the light of day it is impossible for him not to face death; and so also is it unbearable for someone who has been a ruler to be a fugitive. For, let me never be without this purple garment, and let me never be alive upon that day when all those who encounter me do not greet me with the salutation of "Your Majesty." So now, if it is still your wish to save yourself, O Emperor, there is no

¹¹ See NORWICH, *supra* note 2, at 198. See also 1 GIBBON, *supra* note 1, at 652-54.

¹² See 1 GIBBON, *supra* note 1, at 655.

problem. For we have plenty of money, the sea is there, and here are the ships. Nevertheless, consider whether, once you have managed to save yourself, you might not then gladly exchange your safety for death. But as for me, I take pleasure in an old expression that royal rank is the best burial garment.¹³

The steeled emperor recovered his resolve to put down the revolt. A few days later, his trusted military genius Belisarius massacred the circus mob. Its leaders and apologetic ersatz emperor were executed and dumped into the Marmara.¹⁴ Justinian found a new dedication to his calling as emperor—perhaps from seeing God's providence and favor in the narrow rescue from disaster. And the prime agent of that providence and favor, his empress Theodora, was evermore secure in her position as trusted advisor and powerful coadjutor.

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The Justinian that survived the Nika Revolt was a Justinian inspired and committed to accomplish his program. The "emperor who never slept," and who ate little, lived only to fulfill the God-given duty of his God-given calling.¹⁵ The role he played in the christological disputes within the church reflected his overall program. Justinian was God's vicegerent of the Roman Empire, His anointed ruler, commissioned to make that Empire as much as possible the earthly Kingdom of God.¹⁶

At Justinian's accession, the western regions of the Empire lay under the immediate rule of Goths and Moors—Arians and monophysites who submitted little to their formal legal station as lieutenants of the Emperor in Constantinople. To the Byzantines, the deposing in 476 of the co-emperor in Rome was no fall of the Western Roman Empire, but rather a recentralization of Roman power in the New Rome, Constantinople. The west remained within the Empire, but under the remaining emperor in Constantinople and committed by him to the care of Gothic and other semi-barbarian overlords. Of course, those immediate rulers paid little more than lip service to their imperial suzerian. Worse, they

¹³ I PROCOPIUS, WARS, XXIV, §§ 33-37, as translated in JOHN W. BARKER, JUSTINIAN AND THE LATER ROMAN EMPIRE 87-88 (1966). For a different translation, see 1 GIBBON, *supra* note 1, at 655.

¹⁴ See 1 GIBBON, *supra* note 1, at 655.

¹⁵ See PETER BROWN, THE WORLD OF LATE ANTIQUITY: AD 150-750, at 155 (1971).

¹⁶ See DENO JOHN GEANAKOPLOS, BYZANTIUM: CHURCH, SOCIETY, & CIVILIZATION SEEN THROUGH CONTEMPORARY EYES 19-21 (1984).

often took to persecuting orthodox Christians. Both of these offenses Justinian found intolerable. God had committed to him the rule of the entire Roman Empire, east and west. He was to preserve the Empire as a polity, intact and under the Constantinopolitan imperium. Perhaps more important, he was to ensure that the orthodox faith prevail within this intact empire, in all places and at all times. Oppression of the true Church by upstart rebels had no place in the Kingdom of God. Justinian mounted protective measures against external threats from the east and a total reconquest of the west for Byzantine rule. His chief general, the brilliant and noble Belisarius, one of the greatest soldiers of all time, served him well.¹⁷ Africa, Italy, and Spain in part, were brought under the actual control of Constantinople. The reconquest was to be short-lived. Even before Justinian's death in 565, the costly victory was being reversed, a gain too expensive to maintain. Nevertheless, the emperor's military ventures show forth his conception of the office he held. God's royal representative on earth was obliged to preserve the Empire as a united community of orthodox Christians, secure from rebellion and heresy. The entire Empire itself was to manifest God's kingdom in its order, peace, and justice.

The Empire was also to manifest God's kingdom in the beauty of its worship. To this end, Justinian embarked upon his second-most expensive project, the building of great churches and monasteries. Religious communities at Mount Sinai, Mount Athos, and elsewhere, received beautiful homes in which to continue their worship and prayer. More spectacular were the churches at Ravenna, Italy, then the western capital, and Constantinople itself. The queen of this building project, of course, was the Church of Holy Wisdom, Hagia Sophia.¹⁸ The emperor took special interest in his architecture, visiting Hagia Sophia daily while building it. It is even recorded that he received divine illumination to resolve technical problems that had baffled the professional architects. (One trusts the emperor's advice had nothing to do with the collapse of the first dome of the church a few years after its dedication!) Again, this great building program, one of Justinian's three overarching projects, expressed his understanding of the call God had placed upon his life. The Roman Emperor was to see that the Roman Empire gave the True God the service due Him. Just as He exceeded the gods of pagan myth and legend, so must the grandeur of His holy buildings. To this day, the mo-

¹⁷ See NORWICH, *supra* note 2, at 205-61.

¹⁸ See World Monuments Watch, *Picture of the Hagia Sophia* (last visited Feb. 8, 1999) <<http://www.worldmonuments.org/hagiaso.html>>.

saics of San Vitale, Ravenna, and the expanse of the Hagia Sophia bespeak the service Justinian offered His Lord.¹⁹

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However significant his military and architectural achievements, it is the third grand effort of Justinian that concerns us most in this essay. It too was an expression of his faith and duty, of his understanding of the office to which God had called him. Justinian's most significant achievement, one to affect the history of the world to this day, was the production of the summary of Roman Law, the *Corpus Juris Civilis*, the body of civil law, as it has been called since the Middle Ages. This monumental writing remains the foundation of law for most of Christendom and beyond, and of impact even upon the non-civil system of the common law of English-speaking countries. Like the reconquest of the west and the ecclesiastical building program, the writing of the *Corpus Juris Civilis* expressed Justinian's obedience to his divine call to rule Christendom after God's design. The emperor, under God, was the font of justice. And, while the emperor's will was law, he was yet under the law, for the law granted him his authority.²⁰ His rule must reflect God's perfect justice.

The state of law at Justinian's accession (and for some time before) was a sorry affair. The edicts of the emperors—statutes with the force of law—had not been collected and organized for generations. The chief body of Roman law—the centuries of opinions of the lay legal scholar “jurisconsults”—survived in jumbled assortments. The diversity of views of these jurisconsults had led to rules of citation in which emperors commanded judges to follow the preponderant opinion, or ranked jurisconsults in order of authority and commanded judges to follow the view of the highest authority on the question. Unfortunately, the very richness of the Roman legal tradition made for expensive and unreliable litigation, a situation intolerable to the chief minister of God's justice on earth.²¹

Justinian had harbored plans for comprehensive legal reform during his uncle's reign, and hit the ground running upon his own accession.

¹⁹ See Barbara Kellum, *The Age of Justinian, Mosaics of Justinian and Theodora* (last visited Feb. 8, 1999) <<http://sophia.smith.edu/art/Outline/oct19/oct19.html>>; for other examples of Justinian's mosaics. See also, Ecumenical Patriarchate of Constantinople, *The Byzantine Monuments* (last visited Feb. 8, 1998) <http://www.patriarchate.org/ecumenical_patriarchate/chapter_4/html/hagia_sophia.html>.

²⁰ See A. P. D'ENTRÈVES, *NATURAL LAW* 67-68 (2d ed. 1970).

²¹ See GEANAKOPOLOS, *supra* note 16, at 73-75.

Committing the work to his chief legal expert—the brilliant, but pagan and corrupt, Tribonian, owner of the finest law library in the world—Justinian first directed the collection of imperial edicts into a Code in 528.²² In effect, this work was an update of the previous Code assembled by the Emperor Theodosius a century before. Now lawyers needed only to look to the Code to find the statutes of the Roman Empire. A superseding version of the Code, the only one that survives, replaced the original several years later.²³

The success of this enterprise emboldened Justinian for the major work of his legal reform, the promulgation of the Digest, or Pandects, the authoritative collection and harmonization of the main body of Roman law, the opinions of the juriconsults. For this, Tribonian gathered panels of law professors, lawyers, and judges, who poured through hundreds of texts, thousands of opinions, to find and harmonize the best views of a millennium of Roman legal thought.²⁴ Justinian's edict described the task:

[S]ince there is nothing to be found in all things so worthy of attention as the authority of the law, which properly regulates all affairs both divine and human and expels all injustice: We have found the entire arrangement of the law which has come down to us from the foundation of the City of Rome and the times of Romulus, to be so confused that it is extended to an infinite length and is not within the grasp of human capacity; and hence We were first induced to begin by examining what had been enacted by former most venerated princes, to correct their constitutions, and make them more easily understood; to the end that being included in a single Code, and having had removed all that is superfluous in resemblance and all iniquitous discord, they may afford to all men the ready assistance of their true meaning.

After having concluded this work and collected it all in a single volume under Our illustrious name, raising Ourselves above small and comparatively insignificant matters, We have hastened to attempt the most complete and thorough amendment of the entire law, to collect and revise the whole body of Roman jurisprudence, and to assemble in one book the scattered treatises of so many authors; which no one else has heretofore ventured to hope for or to expect. . . .

Therefore We order you [Tribonian] to read and revise the books relating to the Roman law drawn up by the jurists of antiquity, upon whom the most venerated princes conferred authority to write and interpret the same; so that from these all the substance may be col-

²² See *THE INSTITUTES OF JUSTINIAN*, at xxxi (Thomas Collett Sandars trans., Greenwood Press 1970) (1922) [hereinafter *INSTITUTES*]; see also JOLOWICZ & NICHOLAS, *supra* note 2, at 479.

²³ See *INSTITUTES*, *supra* note 22, at xxxiv.

²⁴ See *id.*

lected, and, as far as may be possible, there shall remain no laws either similar to or inconsistent with one another, but that there may be compiled from them a summary which will take the place of all . . .²⁵

Instead of the ten years allowed by the emperor to produce the work, Tribonian's staff, under the watchful eye of the amateur lawyer Justinian, took only three. It was a miracle. It is this Digest, promulgated by the emperor as positive law, that makes Justinian's *Corpus Juris Civilis* a landmark of western civilization. The rediscovery of the Digest in the west in 1080 worked a revolution in legal science the fruit of which remains to this day.

Promulgated along with the Digest was the Institutes, a textbook for law students. This third part of the *Corpus Juris Civilis*, a new work constructed on the model of the then three-hundred-year-old *Institutes of Gaius*, distilled the massive Digest and set forth basic principles of Roman law for the beginner not yet ready to tackle that intimidating collation. The Institutes begins:

PROOEMIUM

IN THE NAME OF OUR LORD JESUS CHRIST

THE EMPEROR CAESAR FLAVIUS
JUSTINIAN, CONQUEROR OF THE
ALAMANNI, THE GOTHs, THE FRANKS,
THE GERMANS, THE ANTES, THE
ALANI, THE VANDALS AND THE
AFRICANS, DUTEIOUS FORTUNATE
AND RENOWNED, VICTORIOUS AND
TRIUMPHANT, EVER AUGUSTUS, TO
THE YOUNG DESIROUS OF LEGAL
KNOWLEDGE:

Imperial majesty should be not only embellished with arms but also fortified by laws so that the times of both war and peace can be rightly regulated and the Roman Emperor not only emerge victorious in war with the enemy but also, extirpating the iniquities of wrong-doers through the machinery of justice, prove as solicitous of the law as he is triumphant over defeated foes.

1. Each of these objectives we have, by the will of God, achieved through the utmost vigilance and foresight. The barbarian races brought under our subjection know our military prowess; and Africa and countless other provinces have after so long a

²⁵ 2 THE CIVIL LAW 179-82 (S. P. Scott trans. 1932), reprinted in GEANAKOPOLOS, *supra* note 16, at 73-74.

time been restored to Roman obedience through the victories which we, with divine guidance, have achieved and proclaim our empire. But all these peoples are also now governed by the law which we have made or settled. 2. After bringing into lucid harmony [in the Code] the august constitutions which were previously in disarray, we turned our attention to the vast bulk of ancient jurisprudence and, like one crossing the very heart of the ocean, brought to fruition—with the favour of Heaven—a seemingly hopeless project. 3. When this [the Digest] had been achieved with the support of God, we summoned and gave a special charge to Tribonian, the distinguished master and exquaestor of our sacred palace, and to Theophilus and Dorotheus, eminent professors; three men of whose acumen, legal learning and fidelity to our commands we had abundant proof. They were, by our authority and with our encouragement, to compose Institutes so that you might acquire your first rudiments of law not from ancient stories but through the splendor of the Emperor and that both your ears and your minds might receive the truth in these matters without that which is unnecessary or erroneous. And whereas previously at least four years would elapse before you came to read imperial constitutions, begin now at the outset with this work, meriting such honor and rejoicing in the fact that now both the commencement and the completion of your legal education proceed from the mouth of the Emperor.

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BOOK I
OF THE INSTITUTES OR ELEMENTS
OF OUR LORD JUSTINIAN EVER AUGUSTUS
COMPILED BY TRIBONIAN, THE EXALTED MASTER,
EXQUAESTOR OF THE SACRED PALACE AND MOST
LEARNED IN THE LAW; THEOPHILUS,
DISTINGUISHED JURISCONSULT AND PROFESSOR
IN THIS MOTHER CITY; AND DOROTHEUS,
DISTINGUISHED QUAESTORIAN, JURISCONSULT
AND PROFESSOR IN THE RENOWNED CITY OF
BERYTUS [*i.e.*, BEIRUT].

I

ON JUSTICE AND LAW

Justice is the constant and perpetual desire to give to each man his due right. 1. Jurisprudence is acquaintance with things

human and divine, the knowledge of what is just and what unjust.

* * *

3. These are the precepts of law: to live justly, not to injure another and to render to each his own.²⁶

An appendix to the *Corpus Juris Civilis* is the Novels. This work, unlike the Latin Code, Digest, and Institutes, Justinian promulgated in Greek, the lingua franca of the Empire. It comprises imperial edicts given after the second edition of the Code. In them, Justinian's own brand of lawmaking is most evident.²⁷

Though left largely to Tribonian and his staff, Justinian's legal reform bears the impress of the emperor's personal attention. Likely, he supervised the progress of his experts and personally reviewed the work. Moreover, the experts would be expected to understand the will of their master in legal matters, and select and draft the materials accordingly. And it was Justinian as emperor that personally promulgated the Codes, Digest, Institutes, and Novels, as positive law.

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The *Corpus Juris Civilis* is generally acknowledged to express the Christian faith of Justinian. It also expresses his conservatism, the tendency of the emperor to see his calling as one to preserve the Roman Empire and its civilization. The undertaking of the project itself manifests both of these motivations. As God's chief magistrate, Justinian was to see that his empire rendered civil justice impartially and effectively. The disarray in legal authorities made that difficult. The cure was not a wholesale adoption of the laws of the Bible, or a thorough rewrite of pagan law to reflect the Gospel. Rather, the Christian emperor, relying on the best and most learned legal mind of the pagan Tribonian, commissioned a rationalization of Roman law. This is not to say that Justinian promulgated law with no eye to biblical principles. At Justinian's direction the *Corpus Juris Civilis* did more than rationalize the law generally. It also adopted rules of "greater humanity" (a desideratum shared by the

²⁶ JUSTINIAN, THE INSTITUTES OF JUSTINIAN 1-3 (J.A.C. Thomas trans., 1975).

²⁷ See JOLOWICZ & NICHOLAS, *supra* note 2, at 496-98.

classic Stoic jurisconsults and Christians alike) and specific emendations of the law to reflect the Christian faith.²⁸

The *Corpus Juris Civilis* simplified and rationalized fourteen centuries of Roman law. Presumably much of this aspect of Justinian's law-making was only to make letter conform to practice. The law as stated was to describe the actual law of the Empire in accessible form. The form and structure of the work was to ease the actual practice of law, rendering it more efficient and inexpensive. At the same time, the content of the work also favored efficiency and economy. For example, rules of pleading were streamlined. Testamentary bequests were to be of one form. The intent of parties was in various ways to govern, over the form of words used to express that intent. Ownership and acquisition of property was also to be of one form rather than the multiplicity of forms set for persons of various civil ranks. Family law moved from the unique Roman institution of powerful paterfamilias and broad agnatic relation to the cognate family of the *jus gentium*, the law of nations. This move also favored another of Justinian's objectives—reform toward greater humanity—in that the life-and-death power of the paterfamilias saw great limitations. Noxal surrender, for example, the rule that allowed the paterfamilias to surrender a family member into slavery to satisfy a claim against that family member, Justinian abolished along with the power of the paterfamilias to sell his children. These changes and many others simplified Roman law and promoted justice.²⁹

Justinian's reforms in the interest of greater humanity were among the most profound. In addition to curbing the patria potestas of the paterfamilias, he favored the interests of debtors, slaves, and women. Perhaps led by biblical law, Justinian protected debtors against creditors, and safeguarded sureties. He made the manumission of slaves easier and removed limits on testimonial manumission. Freedmen also were to be indistinguishable in rights from the freeborn. Justinian's legislation favoring women was significant enough to be called "uxorious." For example, it protected the dowry, preserving it intact for wives against the possibility of divorce.³⁰

Significant among Justinian's modifications of Roman law was one that embraced the principle of greater humanity with an explicitly Christian expression. At classical Roman law, marriage depended upon the ongoing intent of the parties. Marriages lasted only so long as both parties intended to remain married, not unlike the contemporary Ameri-

²⁸ See FRITZ SCHULZ, *HISTORY OF ROMAN LEGAL SCIENCE* 297-99 (1946).

²⁹ See RUDOLPH SOHM, *THE INSTITUTES: A TEXTBOOK OF THE HISTORY AND SYSTEM OF ROMAN PRIVATE LAW* (James Crawford Ledlie trans., 3rd ed., 1940).

³⁰ See JOLOWICZ & NICHOLAS, *supra* note 2, at 505-15.

can regime under "no-fault" divorce. Justinian replaced this concept with a Christian understanding of marriage, a covenantal understanding. Marriage remains dependent upon the intent of the parties, but that intent is encapsulated in a covenant, a solemn commitment of the parties that would perdure through any later change of heart.³¹ Civil law was made to recognize the true nature of marriage.³²

Other reforms likewise embraced specifically Christian positions. For example, gifts to Christian charities became easier, the law honoring to a greater extent than formerly the intent of the giver. Many of these reforms, however, breached what is now understood as a biblical principle of the *institutional* separation of church and state. The emperor, as Christ's vicar, used civil law to promulgate creeds of the church, regulate and support clergy, persecute unbelievers. Justinian's view of his calling and his commitment to his duty required that he use his power to preserve the Roman Empire as the holy kingdom of God on earth. If he erred in failing to respect God's own limits on civil authority as he went about this mission, he shares that error with many Christians even to this day.³³

Perhaps of all Justinian reforms, the greatest embraces the biblical rule of equality before the law.³⁴ Classically, Roman law distinguished fundamentally among diverse classes of humans. There were various distinctions of citizenship and rank, and these distinctions governed not only participation in politics, but also such fundamental rights as ownership of property. The nature of legal relations hinged upon whether one was a Roman citizen, or one holding Latin Rights, or the status of freedman, or some other level of civil rank. These distinctions, but for slavery, Justinian abolished. All free persons were fundamentally equal before the law.³⁵ Aspects of Roman law that were unique to some in elevated or depressed status were removed. Roman law became more the *jus gentium*, the law of nations, the reasonable law to which all could subscribe, suited to govern all within the Empire, whether dweller in Rome or in Alexandria, whether noble or freedman. The *Corpus Juris Civilis* was to be the epitome of human justice according to God's guidance, and that same justice was due all—or at least all free persons—within the Empire. It was a statement of universal principles of justice, rooted in

³¹ See 2 CHARLES PHINEAS SHERMAN, *ROMAN LAW IN THE MODERN WORLD* 74-80 (photo. reprint 1993) (1917).

³² See *Ephesians* 5:31-32.

³³ See Craig A. Stern, *Things Not Nice: An Essay on Civil Government*, 8 REGENT U. L. REV. 1 (1997).

³⁴ *Numbers* 15:15, 16; 35:15; *Deuteronomy* 1:17.

³⁵ See SOHM, *supra* note 29.

"natural laws which are followed by all nations alike, deriving from divine providence, remain[ing] always constant and immutable"³⁶

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This rooting of universal law in God's providence as an outworking of reason rather than raw imperial will endeared Justinian's work to later legal minds. With all men under God's law, and one grand summary of that law for all men and all time—the *Corpus Juris Civilis* became the most influential book besides the Bible. Justinian's faithfulness has produced lasting fruit, and has furthered greatly the ministry of justice. As Dante wrote in Canto VI of *The Paradiso*:

Caesar I was, Justinian I am.

By the will of the First Love, which I now feel,
I pruned the law of waste, excess, and sham.³⁷

³⁶ JUSTINIAN, *THE INSTITUTES OF JUSTINIAN* 3 (J.A.C. Thomas trans., 1975).

³⁷ DANTE ALIGHIERI, *THE PARADISO* 71 (John Ciardi trans., 1970) (Canto vi, lines 10-12).

Bibliography

- Adkins, Lesley & Ray A. *Handbook to Life in Ancient Rome*. New York: Facts on File, 1993.
- Barker, John W. *Justinian and the Later Roman Empire*. Madison: University of Wisconsin Press, 1966.
- Baus, Karl, Hans-Georg Beck, Evelyn Ewig & Herman J. Vogt. *The Imperial Church From Constantine to the Early Middle Ages*. Trans. A. Biggs. New York: Seabury Press, 1980.
- Berman, Harold J. *Law and Revolution: The Formation of the Western Legal Tradition*. Cambridge: Harvard University Press, 1983.
- Broadman, John Jasper Griffin, & O. Murray, eds. *The Oxford History of the Classical World*. New York: Oxford University Press, 1986.
- Brown, Peter. *The World of Late Antiquity: AD 150-750*. New York: Harcourt Brace Jovanovich, 1971.
- Burdick, William L. *The Principles of Roman Law and Their Relation to Modern Law*. Holmes Beach: Wm W. Gaunt, 1989; Rochester: Lawyers Co-operative Pub. Co., 1938.
- "Byzantine Empire," *National Geographic*. Dec. 1983: Vol. 164, No. 6.
- Cochrane, Charles N. *Christianity and Classical Culture: A Study of Thought and Action From Augustus to Augustine*. New York: Oxford University Press, 1957.
- d'Entrèves, A.P. *Natural Law: An Introduction to Legal Philosophy*. 2d. ed. London: Hutchinson & Co., 1970.
- Geanakoplos, Deno John. *Byzantium: Church, Society, and Civilization Seen Through Contemporary Eyes*. Chicago: University of Chicago Press, 1984.
- Gibbon, Edward. *The Decline and Fall of the Roman Empire*. Chicago: Encyclopaedia Britannica, Inc., 1952.

Güterbock, Carl. *Bracton and His Relation to the Roman Law: A Contribution to the History of the Roman Law in the Middle Ages*. Trans. B. Coxe. Littleton: Rothman, 1979.

Imperatoris Iustiniani Institutionum Libri Quattuor, with Introductions, Commentary, and Excursus. New York: H. Frowde, 1912.

The Institutes of Justinian. Trans. Thomas Collett Sandars. Westport: Greenwood Press, 1970; London: Longmans, Green & Co., 1922.

The Institutes of Justinian: Text, Translation & Commentary. Trans. J.A.C. Thomas. Cape Town: Juta, 1975.

Jolowicz, H.F., and Barry Nicholas. *Historical Introduction to the Study of Roman Law* 3d. ed. Cambridge: University Press, 1972.

Lawson, F. H., ed. *The Roman Law Reader*. Dobbs Ferry: Oceana Publications, Inc., 1969.

Nicholas, Barry. *An Introduction to Roman Law*. Oxford: Clarendon Press, 1962.

Norwich, John Julius. *Byzantium: The Early Centuries*. New York: Knopf, distributed by Random House, 1989.

Petry, R.C., ed. *A History of Christianity: Readings in the History of the Church*. Grand Rapids: Baker, 1981, 1962.

Principles of Roman Law. Oxford: Clarendon Press, 1956, 1936.

Rahner, Hugo. *Church and State in Early Christianity*. Trans. Leo D. Davis. San Francisco: Ignatius Press, 1992.

Rushdoony, Rousas J. *The Foundations of Social Order: Studies in the Creeds and Councils of the Early Church*. Fairfax: Thoburn Press, 1978, 1968.

Schulz, Fritz. *History of Roman Legal Science*. Oxford: Clarendon Press, 1967, 1946.

Sherman, Charles P. *Roman Law in the Modern World*. 3 vols. Littleton: F.B. Rothman, 1993; Boston: Boston Book Co., 1917.

- Sohm, Rudolph. *The Institutes: A Textbook of the History and System of Roman Private Law*. 3d. ed. Trans. James C. Ledlie. New York: A. M. Kelley, 1970, reprint of 1907 ed.
- Stein, Peter. *The Character and Influence of the Roman Civil Law: Historical Essays*. London: Hambledon Press, 1988.
- Stephenson, Andrew. *A History of Roman Law: With a Commentary on the Institutes of Gaius and Justinian*. Littleton: F.B. Rothman & Co., 1992; Boston: Little Brown, 1912.
- Vinogradoff, Paul. *Roman Law in Medieval Europe, with a new foreward by Peter Stein*. Cambridge: Speculum Historiale; New York: Barnes & Noble, 1968.
- Watson, Alan. *Roman Law and Comparative Law*. Athens: University of Georgia Press, 1991.