

Review

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Société, économie, administration dans le *Code Théodosien*. Edited by Sylvie Crogiez-Pétrequin and Pierre Jaillette. Contributions by Simon Corcoran, Sylvie Crogiez-Pétrequin, Paola Cuneo, Giovanni De Bonfils, Roland Delmaire, Lucietta Di Paola, Julien Dubouloz, Wanda Formigoni Candini, Christel Freu, Laurent Guichard, Olivier Huck, Christophe Hugoniot, Pierre Jaillette, Juan-Antonio Jiménez-Sánchez, Aude Laquerrière-Lacroix, Patrick Laurence, Andrea Lovato, Arnaldo Marcone, Aglaia McClintock, Bruno Pottier, Francesca Reduzzi Merola, Francesco Salerno, Benet Salway, Boudewijn Sirks, Emmanuel Soler, and Witold Wolodkiewicz. Villeneuve-d'Ascq: Presses Universitaires du Septentrion, 2012. 558 pp. ISBN 978-2-7574-0392-1 (paper).

This is a collection of papers on the Theodosian Code given at Lille in 2005 at a colloquium which was one of a series. The papers were given in 2005 but publication was delayed by the necessity of changing editors; this has allowed the authors to make some revisions. This collection has been divided into three sections: on the compilation and publication of the Code; on the administration of its law; on economic and social aspects.

Theodosian studies have been in progress for just about 500 years; the Introduction gives a very rapid survey. There was relative quiet for a century after Mommsen's edition in 1904–1905, apart from revision by Krueger, and then interest revived, marked by the Colloquium at St. Andrews in 1990.¹ One of the strategic aims of the colloquium here reviewed is to emphasize that there was no Golden Age under Augustus or the Antonines, but that in the fourth and fifth centuries, too, rulers aimed at peace, prosperity, *utilitas publica*, and the rule of law.

Benet Salway begins with a study of N.Th. 1 and the *Gesta Senatus*. It has been generally assumed that Theodosius handed

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¹ See [Chronik], ZSS (RA), 108 (1991), 691.

a *codex* each to the senior Praetorian Prefects, Faustus and the Prefect of Oriens, and that these were then published, to acclamation, in West and East, which would be relevant to the MS traditions. Salway does not refute this but suggests an alternative model. The Emperor delivered the copies to his Praetorian Prefects, probably all four of them, and this was their formal enactment. The proceedings before the Senate of Rome were not promulgation of the Code but political flattery. The *Gesta* are only regularly prefixed to the Code after the role of the *constitutionarii* in preserving the purity of all copies was confirmed in 443.

Lovato holds that the Code was published separately in East and West, but this is not his central point. His interest lies in Theodosius' extraordinary change of attitude between 429, when he was considering some sort of "Digest," and 438, when he blasted the juriconsults of his era for prolixity and complexity. The Emperor was striving for simplicity and conciseness, and wished to reduce the lawbooks; the Law of Citations was to be sufficient. Lovato too stresses the concern for the authenticity of the sources.

Huck is concerned with the post-Constantinian imperial legislation that does not find a place in the Theodosian Code; C.Th. 1.1.6 orders the collection of all *edictales generalesque constitutiones*. (My own favorite is the law declaring that horses must be washed downstream from the camp — C.Th. 7.1.13.) He pursues the question of whether this was due to the editing criteria, i.e. deliberate omission, or carelessness, mainly through a comparison of the Code with the Sirmondian Constitutions. Huck's paper produced "une discussion passionante et passionée," which it was thought should be on record as a *Réaction* from Sirks and a *Réponse* from Huck. Sirks denied the preservation of any obsolete law; what might appear obsolete was valid for different circumstances or regions; the principle was *lex posterior derogat legi priori* and legislation was validated at the moment of its enactment. He points out that Pharr's footnotes, saying "not extant," list the missing constitutions. Huck responded that the compilers were less systematic and less scrupulous than Sirks held.

Dubouloz studies C.Th. 15.1, *de operibus publicis*. Rules were generalized to prevent individual officials, particularly provincial governors, claiming exceptions, and a clear hierarchy of competences was laid down. The cities were not obliged to make extraordinary contributions — unless specifically required by the Emperor — but must be responsible under penalty for the protection of their own *loca publica* as now defined. In Rome the

Senate became responsible for the preservation of the public patrimony of the City.

Sirks convincingly argues that the Theodosian compilers regularly took their texts from the central archives and only exceptionally from provincial repositories. Following the tradition of the Republic and early Empire, it was the imperial signature that gave validity to a law, not its publication; thus the text of any letters dispatched from the imperial chancery was sufficient for the compilers. Local ignorance was relatively unimportant, just as today “many laws are unknown to people, but they go, if they are sensible, in case of need to a professional who knows the law and keeps up with it.”²

Delmaire discusses how Justinian’s compilers edited the C.Th. texts for their use in the Justinianic Code. He considers the different techniques of suppression, explanatory glosses, and the use of generalization, as well as the introduction of new institutions. Perhaps he could have made more of the cutting back of rhetoric, which is particularly marked in the field of criminal law.

After these six papers the theme switches to the application of the Code rather than its construction. Wolodkiewicz considers time limits and the importance of time in the Code; four titles are concerned solely with the consequences of the passage of time. In 424 Theodosius introduced a thirty-year prescription for all types of action, whether *in rem* or *in personam*; this law survives in both the Theodosian and (edited) in the Justinianic Codes.

Pottier is concerned with violence. Constantine criminalized incursions on private property even when there were no weapons used. He and his successors tried to control aggrandizement by the strong, whether private persons or officials, by extending the right of self-defense. However, as Augustine and Basil of Caesarea in the fifth century both indicate, this right came to be seen as very liable to abuse, and it was again restricted.

Bonfils argues that the two parts of the Empire were separate in practice. There was a rhetoric of unanimity, but legislation was diverse.

Formigoni Candini writes on the *curiosi* as they appeared in C.Th. 6.29. Constantius II depended heavily on them, but his successors were much more cautious in their reliance on these secret policemen.

Corcoran explains that the *Caesariani*, officials of the *res privata*, appear not only in the Code but also in several long inscriptions, in Latin, in the Eastern part of the Empire; this may

² Page 162.

well have been due to Galerius. Corcoran points out how the period 294–313 is effectively blank in the legal sources, for largely political reasons, and as a consequence the deeds of the last pagan emperors were likely to be ascribed to Constantine.

Di Paola considers the judicial profile of provincial governors. She interprets this very benevolently.

Laquerrière-Lacroix writes on the margins of private and public law. In the East *emphyteusis* was a specific right distinguished from *dominium*, and indeed in essentials may go back before the time of Zeno. This was not the case in the West where *ius perpetuum* survived, with subjection to the Emperor marked only by an annual payment.

Reduzzi Merola writes on the theft of water from Republican times on; in C.Th. 15.2 the focus was on the illegal tapping of the public aqueducts, an abuse mentioned by Cassiodorus as well as in Justinian's Code.

Hugoniot and Soler have produced a survey of the state's role in the organization and financing of the *spectacula*. There was a state monopoly on the breeding of racehorses for the circus, but there was no general discouragement of the place of private enterprise in putting on the public shows. Nevertheless imperial subventions were used to provide some equality of provision between the greater and the lesser cities. This lightened the pressure on the *curiales*, and greatly enhanced the appearance of mutual devotion between Emperor and subjects.

Cuneo writes on the development of intestate inheritance rights of *corpora naviculariorum* etc., *curiales*, and other corporate bodies, rather oddly not citing Sirks.

Guichard discusses C.Th. 13.1.5. Constantius had exempted the clergy from certain fiscal burdens, but this law, passed after Julian's denial of privileges to Christians, gave them only partial immunity as the state's needs had become more pressing.

Jaillette provides an entertaining paper on the physical provision of pork to the citizens of Rome, and the bringing of the pigs, hundreds daily in the season, to the City. I did wonder if there was any evidence of drovers' trysts, as in Scotland.

Freu argues convincingly that the *metallarii* in C.Th. 10.19 were not normally simple miners, let alone condemned criminals, but rather small-scale leaseholders with employees of their own. However, political conditions led to provincial variations.

McClintock writes on *servi poenae*.

Salerno considers how Constantine abolished the sentence of condemnation *in ludum*, to fight as a gladiator, and replaced it,

more usefully, with condemnation to the mines. But his desire to avoid spectacles involving bloodshed in an age of public peace and domestic tranquility was vain. Gladiatorial games were immensely popular and continued to be given until the misadventure of an amphitheatre's collapse provided the health and safety grounds for their abolition; they were unknown in Justinian's day.

Jiménez-Sánchez makes another contribution to our knowledge of the circus games. The charioteers were celebrities, but the horses had their individuality too, and their differing breeds, such as the Phrygian or the Cappadocian, had a relationship to their success. He also points out that the wide scatter of texts on racehorses proves how unsystematic was the compilation of the Theodosian Code.

Laurence writes on the legal status of women with particular reference to their sexual partners. Social and moral as well as legal factors played a part, and so he touches on women and *munera*.

Marcone also is concerned with women, in this case in the context of marriage between Roman and barbarian, something which Valentinian I's law made subject to the death penalty. The political context was the German frontier, and more particularly the threat of the Alemanni. Marcone notes Ambrose's concern with the Arian Goths at the imperial court, at a time when the barbarians were more often heretics than pagans.

Like nearly all collections of papers, and there are twenty-four of them here, even when there is genuinely a common base, the result is a mixed bag. It is not a book for reading straight through, but scholars may find helpful contributions in their own specialities.
