

JUSTINIANIUS, *Institutiones*; FREDERICK II, *Constitutiones Frederici imperatoris*
In Latin, decorated manuscript on parchment
Northern France (?), c. 1225-1250

ii (paper) + 49 + ii (paper) folios on parchment except ff. 17-21, later leaves on laid paper without a discernible watermark, early modern foliation in ink, 1-44 omitting added leaves, modern foliation in pencil top outer corner recto 1-49, missing five leaves, supplied later, else complete (collation i-ii^s iii^s [1-5, ff. 17-21, later paper leaves] iv-vi^s vii^t [singleton, no loss of text], no catchwords or signatures (justification 158-155 x 100 mm.), ruled in lead with the top two, middle two, and bottom two horizontal rules full across, and with an extra set of double rules in the lower margin, full-length vertical bounding lines, double inside and outside and triple between the columns, written under the top ruled line in an upright early gothic bookhand in two columns of 39 lines, red rubrics and paragraph marks, two-line red or blue initials set outside the text column with contrasting pen decoration, opening words of books 1-3, ff. 1, 7 and 24v, in elongated alternately 4- to 5-line red and blue capitals with pen decoration, book one begins with a 17-line parted red and blue initial, added leaves (justification 170 x 128 mm.), ruled in lead with single full-length bounding lines, written on the top line in an elegant cursive script in two columns of 42 lines, cockled, stains and holes in the upper margins especially on ff. 1-9 and ff. 34-end, opening and closing leaves darkened and somewhat stained, lower inside corner f. 8 torn, outer margins ff. 30-31 with a slit, text is intact throughout. Bound in eighteenth-century vellum over pasteboard, spine with five raised binds and title in ink, "Jusinia/ni/ Institu/tiones/ Mss. XIII Saec." (written in capitals, possibly in the hand that added the frontispiece, with traces of an earlier title also visible on the spine), front and back covers renewed in vellum, a few stains, covers bowed. Dimensions 313 x 220 mm.

Justinian's Institutes was an essential text for the study of Roman Law from the Middle Ages to modern times. There was no faculty of Roman Law at the University of Paris after 1219, and this manuscript, likely copied in Paris, is of special interest. The generous margins (intended for a commentary) in this large-format copy remain mostly blank. Copies of the Institutes are now rare on the market (two sales in this century in the Schoenberg Database).

PROVENANCE

1. Evidence of the script and decoration suggest that this was copied in Northern France, most likely in Paris, in the second quarter of the thirteenth century, probably closer to c. 1225 than to c. 1250. It was copied by numerous scribes, none of them from Italy or Southern France (although the decoration in the manuscript shows the influence of exemplars from Southern Europe, which is common in legal manuscripts); the scribe who copied Frederick's *Constitutions* and perhaps supplied the rubrics was German, although presumably not working in Germany.

This is large-format copy which was intended to include marginal commentary, which was never completed (interlinear glosses were added throughout, and f. 31rv includes an extensive marginal commentary in a thirteenth-century hand). There was no independent faculty of Roman law at the university of Paris; indeed, the study of Roman law was apparently banned by the pope in 1219. Nonetheless, canon lawyers in Paris must have studied this text, although perhaps not formally in the classroom, which might explain the absence of a commentary in this copy (Coppens, 2013).

2. Rebound in the eighteenth century, when a title page and five leaves on paper supplying missing text were added; the title page, front flyleaf, f. ii, is carefully written in ink within a decorative border in several different styles of capitals imitating typeface: "IMP. Justiniani institutionum libri IV Necnon Imperatoris Frederici Constitutiones. Codex Manuscriptus Saeculi Decimi Tertii ineuntis," with a monogram below.
3. Lower margin, front flyleaf, f. ii, "Souvenir offert à M. Leroy avocat. Épinal le 29 Xbre 1843, Mansion"; Leroy, a lawyer, and Mansion, an inspector of primary schools, were members of the *Société d'émulation du département Des Vosges* of Epinal, one of the oldest societies savants in France (they published a journal, *Annales De La Société d'émulation du département Des Vosges*).
4. No later notes from dealers or owners.

TEXT

ff. 1-9, [Preface], *In nomine domini nostri ihesu christi imperator cesar flavius iustinianus alemanicus gotticus slavicus germanicus atticus wandalicus affricanus pius felix inclitus <victor> ac triumphator magnificus victor semper augustus. Cupide legum iuventuti salutem et obsequium. Incipit primus liber institucionum prologus, incipit,* "[in red and blue capitals: Imperatoriam]. Imperatoriam [sic] maiestatem non solum armis decoratam..."; [f. 1], incipit, *De iusticia et iure, "Iustitia est constans et perpetua ... removendus non est quasi suspectus," Explicit liber primus;*

ff. 9-24v, *Incipit ii de rerum divisione, incipit, "Superiori ueriori [sic] libro de iure ... ordinationis desiderant," Explicit liber ii;*

ff. 24v-37v, *Incipit tertius de hereditatibus que ab intestato derferuuntur, incipit, "Intestatus ntestatus [sic] decedit qui aut omnino testamentum ... ex consensu descendunt sicut iam dictum est," Explicit iii;*

There is an extensive marginal gloss to title XIII, Of Obligations on f. 31rv, added in a thirteenth-century hand.

ff. 37v-48, *Incipit iiii de obligationibus que ex delictis nascuntur scilicet de furto, incipit, "Cum expositum sit superiori libro de obligationibus ... Sed de publicis iudiciis hec exposuimus...ex latioribus digestorum seu pandectarum libris deo propitio adventura est."*

Justinian, *Institutiones*. ed. Krueger and Mommsen, *Corpus Iuris Civilis*, Hildesheim, 2000, pp. 43-56.

The *Institutes* (535 C. E.) was intended as a sort of legal textbook for law schools and included extracts from two major works, the Codex and the Digest. The prologue is addressed to "the youth desirous of studying the law," and continues, "The imperial majesty should be armed with laws as well as glorified with arms, that there may be good government in times both of war and of peace, and the ruler of Rome may not only be victorious over his enemies, but may show himself as scrupulously regardful of justice as triumphant over his conquered foes.... Receive then these laws with your best powers and with the eagerness of study and show yourselves so learned as to be encouraged to hope that when you have compassed the whole field of law you may have ability to govern such portion of the state as may be entrusted to you."

The *Institutes* has remained a resource for legal scholars over the centuries by presenting a more accessible, rationally ordered, and concise summary of the main concepts of Roman Law than the much larger and more comprehensive *Digest*; it was cited by the New York Supreme Court in a property law case as recently as 1805 (Online Resources, "The Medieval Law School").

Justinian I (Flavius Anicius Justinianus), the nephew of Justin I, was proclaimed sole emperor and crowned along with his wife Theodora in 527. His reign saw notable military successes, extending the territory of the Empire, and reuniting the East and West. But Justinian's greatest legacy was as a legislator and promoter of the codification of Roman law. The writings of the jurists were published as the *Digesta* of 529. The *Codex*, which compiled all of the extant imperial constitutions from the time of Hadrian, was published in 529. The *Code* was updated in a later work known as the *Novellae* in 556. The *Institutes*, *Digest*, *Code* and *Novella* together comprise what is known as the *Corpus Juris Civilis*, the Body of Civil Law.

Though largely forgotten for several centuries after the fall of the Western Empire, Roman law experienced a revival that began in Northern Italy in the eleventh century, blossomed at the university of Bologna in the twelfth, and spread throughout Europe. As a text studied at universities, copies of the *Institutiones* most often include extensive commentaries explaining the text copied in the margins. Our copy was surely meant to be glossed in this way. Only f. 31rv now includes an extensive marginal commentary added in the thirteenth century. There are, however, brief notes in the margins: book 1 on f. 4 (partially trimmed); book 2, ff. 9-15; book 3, ff. 31v-37v; book 4, on ff. 37v-39. Our text also includes interlinear glosses, noting variant readings (f. 1, "credendis" aliter credendam), expanding abbreviations, and adding brief explanations of words; a passage is marked "vacat" on f. 7.

ff. 48v-49v, *Constitutiones frederici imperatoris*, incipit, "Fredericus dei gratia romanorum imperator et semper augustus ducibus marchionibus comitibus cunctisque populis quos clementie nostre regit imperium. Salutem et gratiam ... Ad decus et decorem imperii et ad laudem romani principis nihil magis uidetur accedere ut expurgatis ... imperiali animaduersione nichilominus puniendus," *Expliciunt constitutiones imperiales*. [Ends mid col. a; remainder blank].

Constitution of Emperor Frederick II, November 22, 1220; ed. Weiland, 1896, pp. 107-109; and Huillard-Bréholles, 1852-61, vol. 2, part 1, pp. 3-7.

This constitution, promulgated by the Emperor Frederick II on the day of his coronation, protected the immunities and privileges of the church, and specified that it was to be inserted into copies of the *Corpus iuris civilis* by the doctors at the university of Bologna. It is found in at least ten manuscripts that of the *Institutes* listed in *Manuscripta mediaevalia* (Online resources), but it is certainly not included in all copies after 1220. With the title *De statutis et consuetudinibus contra libertatem ecclesiae editis et immunitatem locorum religiosorum ubique morantium et fori privilegio et Gazaris et Patarenis et aliis haereticis eorumque successoribus et navigiis peregrinis et advenis quocunque locorum hospitantibus eorumque successoribus et de agricolarum securitatibus* it was included in the early edition of the *Corpus iuris civilis* printed in Lyon c. 1498-1500 (GW 7772).

LITERATURE

Barker, J. W. *Justinian and the Later Roman Empire*, Madison, Wisconsin, 1966.

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[Corpus juris civilis. Novellae.]. *Consuetudines feudorum. Constitutio Friderici imperatoris de statutis et consuetudinibus contra libertatem ecclesiae editis. Consuetudines Henrici VII*, Lyon, circa 1498- 1500 (GW 7772).

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Huillard-Bréholles, Jean-Louis-Alphonse. *Historia diplomatica Friderici Secundi : sive constitutiones, privilegia, manata instrumenta quae supersunt istitus imperatoris et filiorum ejus ...*, Paris, 1852-1861.

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Weiland, Ludwig, ed. *Constitutiones et acta publica imperatorem et regum 1198-1272*, MGH Leg. IV., Hannover, 1896, vol. 2, pp. 107-109.

ONLINE RESOURCES

Project Gutenberg, Justinian, Institutes (in English)

<http://www.gutenberg.org/files/5983/5983-h/5983-h.htm>

Institutes in English (ending in Book 4, tit. 4)

<http://thelatinlibrary.com/law/institutes.html>

On the Institutes

<http://www.historyguide.org/ancient/justinian.html>

The Medieval Law School

<https://www.law.berkeley.edu/research/the-robbins-collection/robbins-collection-library/exhibitions/medieval-law-school/>

Roman Legal Tradition and the Compilation of Justinian

<https://www.law.berkeley.edu/library/robbins/RomanLegalTradition.html>

Manuscripta mediaevalia

<http://www.manuscripta-mediaevalia.de/#|15>

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