

JUSTINIANUS, *Institutiones*; ACCURSIUS, *Glossa ordinaria* (unfinished)

In Latin, illuminated manuscript on parchment

Southern France, perhaps Toulouse , c. 1290-1300.

51 ff., with last folio a former flyleaf, apparently complete (collation: i⁶, ii-iv⁸, v¹⁰, vi⁸, vii³), on parchment, with two distinct hands and decorators (ff. 1-30v; ff. 31-50v), written in a fine French version of littera bononiensis (at least two hands), in brown ink, text in 2 columns (justification 232 x 130 mm.) with surrounding gloss (justification: 320 x 230/235 mm), first two quires (ff. 1-14v) with marginal gloss, after f. 15 annotations are more scarce and gloss has not been copied, decorated catchwords in brown ink (some with anthropomorphic features, i.e. mermaid in lower margin of f. 22v, prickings still visible in the outer margin of leaves, some early stitching to repair parchment with blue thread, rubrics in red, some guide words for the rubricator, spaces left vacant for rubrics or decorated initials (unfinished), lemmata in gloss underlined in brown ink, paragraph marks in alternating red or blue, marginal and interlinear gloss (some interlinear gloss might be textual corrections), manicule and doodles in the margins (some with faces), 66 decorated highly finished initials up to 4-line high in blue or pink on opposite color grounds with colored foliate or floral infill with burnished gold, some with rinceaux and foliate motifs extending into the margin, a few inhabited with grotesque figures (first campaign of decoration, ff. 1-30v), change of decorated initials in second campaign of illumination (beginning f. 31 till the end) with more modest initials only 2-line high of highly burnished gold on blue grounds with pink infill highlighted in white, 1 HISTORIATED INITIAL (f. 1) placed below the miniature, 4 COLUMN-WIDE MINIATURES (ff. 1, 9v [one face defaced, 24, 37], opening leaf with long decorative colored baguettes with swirling acanthus leaves that descend and separate the columns, creating something of a frame, with two figures at top [figure with a sword; figure with a horn and bagpipe] (with the exception of the miniature, the decoration of the frontispiece leaf is clearly conceived in imitation of Italian Bolognese illuminated codices), heraldic shields found on f. 1 (repeated twice, larger arms in the bas-de-page between two birds (added later)), f. 24. Modern full vellum binding (acidity of ink has damaged the parchment in a few instances, some leaves cut shorter with the removal of lower (blank) portions of the margins, e. g. ff. 31-34; some early parchment reparations, some holes in animal hide reflected in parchment, some internal staining). Dimensions 410 x 260 mm.

Fine illustrated copy of Justinian's Institutes, a text that served as a manual for students of law and became an authoritative source of Roman Law. There are four miniatures, one introducing each of the four books. A place of origin in Toulouse, one of several places of production for legal manuscripts, seems likely. The annotations and supplementary glosses and corrections that pepper this codex merit further study. This codex constitutes an excellent example of the different stages in a given decorative program.

PROVENANCE

1. Manuscript decorated in two different or separate campaigns: the first portion of this codex (ff. 1-30v) sports very polished decorated initials in bright blue and pink, with foliate red and blue foliate infill, apparently meant to be part of the first campaign of illumination. The second portion of the codex (ff. 31-50v) was copied perhaps only very slightly later, in imitation of Italian ornament. There remains nonetheless a coherent style amongst the four miniatures which are distributed in all quires, with both decorative campaigns. This leaves us with the possibility that the decorative phases (initials, rubrication) and even textual phases (note the interruption, rather abrupt, in the gloss

that fills only the first 14 leaves, might have been interrupted or abandoned. The miniatures would thus have been part of the very first phase in the decorative program, which would account for their coherence in style (although there are presumably two different hands involved).

The codex appears to have been copied in France, with a possible place of origin in southern France, probably south-western France. Tentatively we suggest Toulouse as a possible place of production for this codex. Indeed, the present codex affords comparisons with other codices tied to Toulouse such as a Dominican Missal (Toulouse, BM, MS 103), discussed by Stones, in [Exhibition]. *Le parement d'autel des Cordeliers de Toulouse* (2012), pp. 51-52; see also the Decretum of Gratian (Avignon, BM, MS. 659), c. 1320, see Stones, 2012, p. 51. There was a vibrant legal community and university in Toulouse, a city in need of legal manuscripts for practice and study. The composition of most of the quires in gatherings of eight (8) corroborates the French origin of this manuscript, as well as the practice of underlining the lemmata in brown ink.

There are heraldic elements found in this codex, that merit further study as we have not yet secured identification. The first leaf contains repeated twice the following arms: *de gueules au croissant montant d'or*. The arms are found in the lower margin, between two birds (added later). They are also repeated beneath the historiated initial representing a scribe at work. Could they be the arms of the cleric?

Oddly, other arms are found on f. 24, again repeated twice, but with reversed colors: *d'or au croissant montant de gueules*. One of the shields adds a "lambel" and are described as follows: *d'or au croissant montant de gueules au lambel d'azur*.

Further research might allow for proper identification of these arms. There are many candidates. For instance there is Guillaume de Mordelles, seigneur de Chateau-Goello, c. 1300: *de gueules au croissant montant d'or* (La Chesnaye-Desbois, X, Paris, 1775, p. 464; Pol Potier de Courcy, *Nobiliaire et armorial de Bretagne*, Rennes, 1890, entry "Mordelles ou Morzelles (de)," t. II, p. 300). This could fit, but there are a number of other families that bear these arms.

2. Numerous inscriptions, contemporary or near-contemporary (14th c. hands) are found on the back flyleaf (ff. 51-51v) luckily preserved. Most of the notes relate to points of law. However one reads "In ista institutiones sunt 51 folia" (f. 51); "In hoc volumen sunt per totum...in 60 [sexto] clemen[...] instituta 89 folia" (f. 51). In the lower righthand corner of f. 51, one reads an ownership inscription (early 14th c. hand): "Iste liber est [dilecte] (?) capina (?) can[onici] avin[ionensis]" (f. 51). The reading of "Avinionensis" (for Avignon) is suggested here but can be read with great difficulty. Ultraviolet light might allow for a better reading.

TEXT

ff. 1-9v, Justinianus, *Institutiones*, Book I, Preface, rubric, *In nomine domini nostri ihesu christi cesar flavius justinianus alamanicus goticus germanicus ala,icus vindalicus affricanus pius felix inclitus victor ac triumphator semper augustus romani legum expositor institucionum seu helementorum liber primus incipit*; incipit, "Imperatoriam maiestatem non solum armis decoratam..."; incipit Book I, rubric, *De iusticia et iure*;

incipit, "Iustitia est constans et perpetua..."; explicit, "[...] removendus non est [quasi sus]p[er]ctus" (ed. Krueger and Mommsen, *Corpus Iuris Civilis*, Hildesheim, 2000, pp. 1-10);

ff. 9v-24, Justinianus, *Institutiones*, Book II, rubric, *Incipit liber .ii. domini iustiniani de rerum divisione*; incipit, "Superiore libro de iure personarum..."; explicit, "[...] ordinationis sollempnitatem desiderant" (ed. Krueger and Mommsen, *Corpus Iuris Civilis*, Hildesheim, 2000, pp. 10-28);

ff. 24-37, Justinianus, *Institutiones*, Book III, no rubric (but guide words in the inner margin, traced in ink), incipit, "Intestatus decessit qui autem omnino testamentum..."; explicit, "[...] ex consensu descendunt sicut iam dictum est" (ed. Krueger and Mommsen, *Corpus Iuris Civilis*, Hildesheim, 2000, pp. 28-43);

ff. 37-50v, Justinianus, *Institutiones*, Book IV, no rubric (but guide words in the inner margin, traced in ink), incipit, "Cum expositum sit superiori libro de obligationibus..."; explicit, "[...] Sed de publicis iudiciis haec exposuimus...ex latioribus digestorum sive pandectarum libris deo propitioventura est" [ends complete] (ed. Krueger and Mommsen, *Corpus Iuris Civilis*, Hildesheim, 2000, pp. 43-56);

ff. 51-51v, flyleaf, with contemporary annotations.

This manuscript contains an illuminated copy of the Institutes of the Roman Emperor Justinian (c. 482-565), partially glossed.

After centuries of indifference, the Justinianic codification became the focus of intense study in the eleventh century. There is a steadily increasing flow of manuscripts and citations after c. 1025 (see Radding, 2007, pp. 67-68). The earliest manuscript of the Institutes from the period of rediscovery of Justinian in the eleventh century is Bamberg, MS Jur. 1 (see Radding, 2007, who gives an overview of the important eleventh-century codices of the Institutes, ch. 4, pp. 111-131).

The *Corpus Iuris Civilis* ("Body of Civil Law") is the appellation given to the collection of works in jurisprudence, issued from 529 to 534 by order of Justinian I, Roman Emperor. It is also sometimes referred to as the Code of Justinian. The work as planned had three parts: the Code (Codex) is a compilation, by selection and extraction, of imperial enactments to date; the Digest or Pandects is an encyclopedia composed of mostly brief extracts from the writings of Roman jurists; and the Institutes (*Institutiones*) is a student textbook, mainly introducing the Code although it has important conceptual elements that are less developed in the Code or the Digest. The preface begins: "The Emperor Caesar Flavius Justinian, conqueror of the Alamanni, the Goths, the Franks, the Germans, the Antes, the Alani, the Vandals, the Africans, pious, prosperous, renowned, victorious, and triumphant, ever august, To the youth desirous of studying the law...."

All three parts of the *Corpus Iuris Civilis*, even the textbook, were given force of law. They were intended to be, together, the sole source of law; reference to any other source, including the original texts from which the Code and the Digest had been taken, was forbidden. Nonetheless, Justinian found himself having to enact further laws and today these are counted as a fourth part of the Corpus, the *Novellae Constitutiones* (literally New Laws). During the Middle Ages,

interest in the Justinian corpus revived. It was "received" or imitated as private law and its public-law content was quarried for arguments by both secular and ecclesiastical authorities. This revived Roman law, in turn, became the foundation of law in all civil law jurisdictions.

As the Digest neared completion, Tribonian and two professors, Theophilus and Dorotheus, made a student textbook, called the Institutions or Elements. The *Institutiones* are largely based on the Institutions of Gaius, with two thirds of the *Institutiones* of Justinian consisting of literal quotes from Gaius. As there were four elements, the manual consists of four books: Book I, Establishment of the Rule of Law in the reconquered Empire; Book II, Of the different kinds of things; Book III, On successions and inheritance; Book IV, Obligations arising from wrong-doing.

The gloss found in the present manuscript covers ff. 1-14 and then ends abruptly at the end of quire 2, suggesting a partially unfinished state for this codex. It is the classical gloss attributed to Accursius (in Italian Accorso di Bagnolo, c. 1182-1263). Accursius was an Italian jurist, notable for his organization of the glosses, the medieval comments on Justinian's codification (of which there were many), and was referred to as "the idol of the jurisconsults." There is one main hand with additions and corrections because glosses could be added in multiple strata (overview of Institutes glosses and literature pertaining to these glosses is quoted in Radding, 2007, p. 112-118).

ILLUSTRATION

f. 1, Enthroned Justinian, crowned Emperor, flanked on the right by a group of armed warriors and on the left by lawyers and jurists [The Emperor establishes the Rule of Law in the Reconquered Empire] (dimensions 28 x 53 mm.).

For the iconography of the Prologue, the text provided all elements: "Imperial Majesty should not only be graced with arms but also armed with laws." This miniature shows Justinian giving equal weight to arms and the law (see L'Engle and Gibbs, 2001, pp. 86-87).

f. 1, Historiated initial I: Scribe writing, placed above heraldic arms (monk or tonsured cleric);

f. 9v, Two figures are given permission to enter a building (?) [Of usufruct], (dimensions 46 x 56 mm.).

f. 24, A dying woman on her deathbed dictates her will to a scribe (dimensions 52 x 58 mm.).

f. 37, Judge (?) ordering punishment to be hanged for wrong-doing; The Hangman leaving with his ladder in the margin (dimensions 26 x 57 mm.).

LITERATURE

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

[Exhibition]. *Le parnement d'autel de cordeliers de Toulouse*, Paris, Somogy, 2012, in particular, A. Stones, "Les dominicains et la production manuscrite à Toulouse aux environs de 1300," pp. 51-57.

Krueger, P. and T. Mommsen, eds. *Corpus Iuris Civilis. Volumen Primum. Novellae Institutiones...*,

Hildesheim, 2000.

L'Engle, S. and R. Gibbs. *Illuminating the Law. Legal Manuscripts in Cambridge Collections*, London, Harvey Miller, 2001.

Radding, C. M. And A. Ciarelli. *The Corpus Iuris Civilis in the Middle Ages. Manuscripts and Transmission from the Sixth Century to the Justice Revival*, Leiden and Boston, Brill, 2007.

Thomas, J.A.C. *The Institutes of Justinian. Text, Translation and Commentary*, Amsterdam and Oxford, 1975.

ONLINE RESOURCES

Project Gutenberg, Justinian, Institutes (in English):

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

On the Institutes :

http://www.shsu.edu/~his_ncp/InstJust.html

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

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