

The Temple of Justice. A Foundation of a Systematic Interpretation of the Digest

The Digest is one of the most important books of Western civilisation, for which reason it was called '*Biblia minor*' in the Middle Ages. It is a compilation of the writings of the classical Roman jurists (first three centuries A.D.) executed by a commission under Emperor Justinian I in the first half of the sixth century. The task assigned to the commission, an evaluation of all the Roman jurisprudence, and its result, a book of 800 densely printed folio pages comprising all the law, was so impressive that Justinian called it a "temple of justice". As this metaphor implies Justinian at least was convinced that the Digest had a very distinctive architecture and the mediaeval jurists who established themselves reading and interpreting the Digest around the year 1000 in Bologna would not have contradicted this judgement.

During the Renaissance, though, jurists, especially in France, became aware of the drawbacks of the Digest and considered it to be more Byzantine than Roman which was in their eyes a reason to judge this book with an ever-growing criticism. How scathing their criticism was they did not demolish the temple. The work of demolition was done in one forceful blow by a brilliant young scholar, a disciple of Savigny, precisely 200 years ago: Friedrich Blume. His monographic article on the composition of the titles of the Digest had such an impact that Theodor Mommsen incorporated its results in his critical edition. The Digest is divided into 50 books and the books into titles, the titles, in turn, are composed of quotations from the works of the classical Roman jurists, it can be called a gigantic *florilegium*. These quotations which, indicate the author and the place in the original, are called fragments or *leges*. It was the goal of Blume to show that the single fragments within a title must not be interpreted systematically; it belonged rather than to the title into which it had been included, it belonged to one of three „masses“ of quotations, which had been accumulated beforehand by the drafting committee. The fragments had been positioned according to historical contingency and not for logical reasons. As a consequence, the Digest became the stone quarry for the reconstruction of jurists writings, especially in Otto Lenel's "Paligenesia iuris civilis".

Even though this theory is the fundament of the Study of Roman law for the last 200 years, it will be shown to be erroneous, the committee's working method does not indicate a non-structured morphology of the Digest. A first and striking observation is that almost all the titles do have *exordia* (introductions), and these texts have their position on purpose. There are thousands moreover of 'interwoven' documents, that is to say, that one part of the sentence is from one author the other part from another like for example D. 1, 1, 1, 4 and following fragment. Many titles are thoroughly structured for instance the first eight titles of the first book but also D. 25, 1 *De in pensis in res dotalis factis*. These phenomena were neglected by Roman law scholars.

Considering them with the due attention, we have to ask ourselves if this structure is just an innovation of Byzantine authors of the 6th century or if they conserved some classical legal thinking. In our opinion the latter is true: In the overwhelming majority of cases the Digest is our only source for the quotations of the classical jurists, it is, therefore, to be taken into account if a lawyer from the 6th when belonged intellectually to Antiquity, had been trained by reading these texts and admiration for the classical jurists. This study will reap up the well-trodden ground of conventional Roman law scholarship. The order which Byzantines created in many cases happens to be at least as original and authentic as modern scholarship which, well-intentioned and informed as it may be, is always a reconstruction. Justinian's "temple of justice" must be studied as a comprehensive work of Antiquity rather than only the *Paligenesia Iuris Civilis*, that is a new Renaissance palace built out of ancient material.