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THE RELATIVITY OF MORAL CODES :
ROME AND PERSIA IN LATE ANTIQUITY

The arch-persecutor of the ancient Church, the emperor Diocletian, was treated by his victims with a generosity that has not been much noticed. Not only did they preserve at Spalato his palace and transform its noble mausoleum into a Cathedral used to this day, but they also allowed his portrait to remain on its ceiling¹. It is also almost entirely through Christian sources that a large quantity of his edicts have been transmitted²: the great majority (many hundreds) through Justinian's Codex of the sixth century³, a few through an earlier more curious work, probably but not certainly Christian, the anonymous comparison between the Mosaic and Roman legal systems which modern scholars (not the mediaeval manuscripts) have agreed to call *Mosaicarum et Romanarum Legum Collatio*⁴. Two exceptionally important edicts,

1. For a clear summary of the remnants of Diocletian's palace see J.J. WILKES, *Dalmatia* (London, 1969) 387-391. J. ZEILLER and E. HEBRARD, *Le Palais de Dioclétien à Spalato* (Paris, 1912), remains valuable.

2. The price edict is otherwise transmitted: see S. LAUFFER, *Diokletians Preisedik* (Berlin, 1971); K.T. ERIM and Joyce REYNOLDS, "The Aphrodisias copy of Diocletian's edict on maximum prices", *Journal of Roman Studies* 63 (1973) 99-110.

3. The sheer size of the material from Diocletian and the tetrarchy included by Tribonian can be seen at a glance from P. Krüger's index to his edition in the second volume of the *Corpus Iuris Civilis*.

4. The *Collatio* is critically edited by T. MOMMSEN, *Collectio librorum iuris anteiustini- niani* (Berlin, 1890) 2. 108-198, and by M. HYAMSON (Oxford 1913). A convenient text without critical apparatus by J. BAVIERA is in *Fontes iuris romani anteiustini- niani* (FIRA) 2 (ed. S. Riccobono and others; 2nd ed.; Florence, 1968). For bibliography see F. SCHUTZ, *History of Roman Legal Science* (Oxford, 1946) 311-314, 344; M. KASER, *Das römische Privatrecht* (2nd ed.; Munich, 1975), 2.

against the Manichees and against incest, owe their preservation to this strange work⁵.

The *Collatio* raises too many complex questions to be treated here without a gross extension of this offering to a scholar who has always been a master of terse statement. Suffice it to say that the author of the *Collatio* transcribed both edicts from the *Codex Gregorianus*, that is, from a juristic compilation made during the last decade of Diocletian's reign by an Eastern lawyer, possibly a prominent member of the chancery, named Gregorius. Mommsen thought Gregorius likely to have been a professor in the law school at Berytus (Beirut), but it is no more than a guess⁶. From his reference to Diocletian and Maximian as '*d(omini) n(o)stri*' when citing an edict of 290⁷, it is clear that Gregorius published his work under Diocletian. The latest dated edict attested for inclusion in the *Codex Gregorianus* is Diocletian's edict against incest of 1 May 296⁸, so that the presumptive date of publication of Gregorius' collection is not long after that time.

Gregorius' collection was not the only collection of Diocletianic material used by Tribonian and his assistants in the making of the *Codex Iustinianus*. A second standard collection of imperial edicts was also made, apparently on different organisational principles, by Hermogenianus. It is certain that Hermogenianus included in his collection many Diocletianic edicts of 293 onwards, and a few of earlier years as well. The fifth century *Consultatio veteris cuiusdam iurisconsulti* expressly cites several edicts of the years 293-295 from Hermogenianus. The same juristic *Consultatio* gives two edicts of the year 294 '*ex corpore Gregoriano*'⁹. It would be tidy if one could simply adopt the view advocated by Rotondi in 1914¹⁰, that the work of Gregorius was completed and published in 291, that the large mass of constitutions of 293-4 and later years preserved in the *Codex Iustinianus* were all drawn from Hermogenianus, and that the edicts preserved by the *Collatio* and

5. Diocletian's edict against the Manichees is also cited by Ambrosiaster, in his commentary on 2 Timothy 3:6; an allusion also in his *Quaestiones* 127. 18. Ambrosiaster and the *Collatio* have other points in common also.

6. Th. MOMMSEN, *Gesammelte Schriften* (Berlin, 1905) 2. 366-370.

7. *Collatio* 1. 10.

8. *Collatio* 6. 4.

9. *Consultatio* 9. 18-19 (*FIRA*, 613).

10. G. ROTONDI, *Scritti giuridici* (Milan, 1922) 1. 111 ff., reprinted from *Bullettino dell'Istituto di diritto romano* 26 (1914) 175 ff.