

The Justinian Code



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Abstract

The Justinian Code was the updating and collecting of laws under one clear system. The code was based on existing Roman laws in which Justinian commissioned a ten man counsel to codify the laws. Sometime later, Tribonian, a legal minister under Justinian, was chaired to lead a group of Byzantine scholars to sort the existing code into a more useful form, therein the Digest and the Institutes were created. New laws or Novels were introduced and expanded the Code which then comprised 4 components;

- The Code - Codification of Roman Laws
- The Digest – A casebook covering trials and decisions, essentially a guide for judges. The views of some 39 jurists living in the years between Augustus and Justinian. Some were rewritten to accord with modern law and contradictions and opinions that no longer applied were eliminated. The end result supposedly represented the law as it existed under Justinian.
(Summary of common law)
- The Institutes of Justinian – essentially a textbook for law students and practitioners
- The Novels – new proposed laws

Thesis/Hypothesis

What advancements did the Justinian Code, *Corpus Juris Civilis*, make to the laws and statutes of modern society with regards to legal aspects of women in society?

The sources found are the code itself which is the primary source for information regarding the code. The limitation of the code are its size, it is approximately three times the size of the Bible and would be an undertaking to read in itself. Other sources include a variety of articles and books listed in the bibliography. Primary source is the codex of

Justinian Law. Secondary sources are articles and selected chapters from books relating to the Code and its affect on woman in Justinian law. Allan's book provides a good summary of Justinian's impact on Byzantium law. He makes a decent reference to woman's aspects and touches on Theodora's influence in Justinian's empire.

Sources

The Justinian Code, *Corpus Juris Civilis*, to include; The Code, The Digest, The Institutes, The Novels.

The is the Code produced during Justinian's time and is the only primary source for the research, we were not able to access a code in physical form but in chunks available on the web.

The Civil law, including the Twelve tables [electronic resource] : the Institutes of Gaius, the Rules of Ulpian, the Opinions of Paulus, the Enactments of Justinian, and the Constitutions of Leo, Published by the Central Trust Co

Available through the La Forest Law Library online at

<http://www.heinonline.org/HOL/Index?index=beal/civillaw&collection=beal>

This is an excellent source published in 1932 which contains an abundance of Justinian information as well as other Roman Law info.

www.canadianlawsite.ca

Accessed on February 22nd 2010, provides information on Canadian law content and was helpful in clarifying some points about the impact of the Justinian Code to today's law culture. The authors throughout the site are varied from practicing lawyers to professors to religious authorities.

Evans, James. (2005). The Emperor Justinian & The Byzantine Empire. Connecticut: Greenwood Press

This book was an excellent secondary source for providing to the point information on the impact and issues of the Justinian Code in the Byzantine Empire.

Joseph, Ferdinand & Feldbrugge, Maria (1985). Encyclopedia of Soviet Law. Hingham, MA: Kluwer Academic Publishers

Argument/Discussion/Evidence

The perspective of the Code was that it was equitable to the subjects of the empire. The roles and rights of men, women and children were disproportionate and although may have been equitable for the era, they have been reformed for modern law. The status of women was also a concern of Justinian. “Women in Roman



society never enjoyed equality with men in all aspects of life, but since the fourth century, the law had been evolving in a direction favourable to women.” (Evans, pg. 27)

The status of women was a concern to Justinian, his marriage to former actress Empress Theodora may have impacted his attitudes. Regardless, some very modern ideas were enacted or amended under The Code. Theodora, Justinian’s empress, encouraged her husband to make new laws that were fairer to women. These included laws allowing parents to leave property to daughters, laws improving women’s rights, and laws which stated that women were innocent until proven guilty.

Numerous amendments were made to the issue of divorce and in turn modernized the Roman view of the issue. Infidelity was recognized as a legitimate reason for divorce under the code and not simply a shameful act. A woman caught in adultery was no longer put to death but now sent to a convent, and her husband was also afforded the right to

pardon her should he see fit. Not entirely egalitarian, but most certainly more civil than the previous decree. Justinian also protected the wife's right to her dowry under a divorce. The prenuptial donation was essentially a gift from the groom or his family to the bride, but it was handled by the husband as capital of the new household. Its intent was to provide funds for a wife to support not only herself but also her children in the event of her husband's death, the use of it before Justinian's reforms were largely of the husbands will. Justinian allowed a man to legitimize children born to a concubine by marrying her under the new code; this was a very modern idea and afforded the children certain rights to the father's estate after death. Justinian declared that no woman was to go to jail; women who required incarceration were simply sent to a nunnery to serve their detention for fear of violation by male prison guards.

Although our whiggish view of the era provides us with an opinion on the equality of the laws with regards to how fairly women were treated, Justinian's view seems clearly illustrated in scripture dating back to 535 "In the service of God, there is no male or female". (Evans, pg. 28)

Modern Relation to the Code

The relation and significance to today's society is abundant. The Justinian code modernized aspects of divorce and law pertaining to women in many ways, providing greater access to divorce



through a variety of courses not previously available to women who certainly have been very contemporary for the 6th century. Providing rights for the bride to the dowry and prenuptial donation in the event of divorce is a form of today's spousal support and in the event of children could be viewed as the underpinning of child support. The Justinian code modernized civil law and systemized case law and decisions with the Digest. He made advancements in the area of a standardized judicial system but still fell short in certain areas;

Citizens did not correspond directly to the state such as we do in Canada to a crown attorney for example; they often challenged each other directly which created a disproportionate fairness in any given courtroom based on an individual's background and education. The variety of material presented during any such a case would be so varied and outside a standard system of justice that it would be difficult for a judge to facilitate a case with no formally educated law practitioner in the room and even more difficult for a central database of judicial record to be maintain based on the decisions made as a result of courtroom presentation. (Evans, pg. 31) Access to a courtroom was also a difficulty; the judges were often local governors who facilitated the process through their own private courtrooms for a fee. If the dowry was not available to a woman until the death of her husband or divorce how would a woman be expected to produce funds to access a judicial review?

Haldon later continues in saying that there “are some modern writers, for the most part, not professional historians who have, consciously or not, transferred these prejudices to the world of contemporary scholarship” (2009, pp210), reiterating the possibility of invalid or unfounded content.

Rarely, will a claimed concept, attitude or idea go without contradiction. To contradict a statement, you question its context, validity and those who put it forth, comparable to what many know as the scientific method. Even today there are countries that do not allow for women to divorce their husbands no matter the circumstances. The Philippines for example, declares that marriage is an inviolable social institution, a special contract of permanent union between a man and a woman. There are only two countries left that do not allow for divorce, looking back just over a thousand years to the Byzantine era, one could only try to imagine the opposition to the indoctrination of a law legalizing divorce. It could possibly be compared to the question of the legalization of abortion in the United States, an issue with several alternative positions.



Historically, other empires used the Justinian code and its treatment of women as a basis for their own laws and judicial practices. Many of these empires and rulerships were satisfied with the notion that women were placed under “guardianship” by their husbands and or fathers, but others were weary of the implications it may have for the role of

women in their society. For instance in comparing ancient Russian or Soviet Law to that of the Byzantine Empire, Russian law paid special attention to the property law of women. In fact the Encyclopedia of Soviet Law states that “it is significant that the legal position of women was more favorable in Ancient Russian law than in Byzantine legislation, which placed women under guardianship” (Ferdinand & Feldbrugge, pg. 469).

In Peter Seixas’ 2006 article entitled *Benchmarks of Historical Thinking: A Framework for Assessment in Canada*, he states that “The past is everything that ever happened to anyone anywhere, we cannot remember or learn it all, we put effort into learning about and remembering that which is historically significant” (pp.3). Seixas goes on to ask how we determine whether or not something from our past is worth knowing, and for our purposes, teaching. We may not always share a common interest to something that we are expected to know or expected to want to know, and we most certainly can not hold it against those of us who may not be interested. Covering a topic so seemingly distant to us, such as the Byzantine Empire, it is important that we bring forth and identify a current connectedness; one that invokes as opposed to expects a want to know. The topic briefly outlined above shares this connection to our modern social contexts in the form of social awareness, a context that encompasses both themes of social equity and the creation and adaptability of a legal system which dates back to the Roman Empire. As a learner, knowing where we have come from, not only helps us to understand where it is we may be going, but provides us with tools and resources, acquired by living through our pasts, to aid us in reaching our potential future.

Conclusion

The Justinian Code consolidated and clarified many of the legal aspects from the Roman Empire which modernized the Byzantine system. It created a basis for today's system which included;

1. **The Institutes** served as a textbook in law for students and lawyers.
2. **The Digest** was a casebook covering many trials and decisions.
3. **The Codex** was a collection of statutes and principles, and
4. **The Novels** contained new proposed laws.

It updated many facets of the system from which most modern day western systems draws its roots.