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The 'mysterious' beauty of Laws

Estratto
dagli ANNALI DEL SEMINARIO GIURIDICO
DELL'UNIVERSITÀ DEGLI STUDI DI PALERMO

(AUPA)

Volume LVII
(2014)



G. GIAPPICHELLI EDITORE - TORINO

ANNALI DEL SEMINARIO GIURIDICO
UNIVERSITÀ DEGLI STUDI DI PALERMO
(AUPA)

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The 'mysterious' beauty of Laws

THE 'MYSTERIOUS' BEAUTY OF LAWS*

1. In some key-passages of the introductory constitutions of the Digest we are faced with a representation in terms of beauty with respect to the laws collected in the Code and in the Digest: the ancient material is depicted as having attained a '*nova pulchritudo*' ('*in novam pulchritudinem pervenire*': c. *Tanta* pr.); it is affirmed that the "superior divine force" has intervened to bring to the Roman νομοθεσία a 'κάλλους ἰδέα' (Δέδωκεν pr.); the same Digest is indicated as '*forma legum pulcherrima*' (c. *Tanta* 11).

Tribonian and Justinian have accustomed us to emphatic images and metaphors intended to support the propaganda of the compilation, and in particular to the images and metaphors that involve the perspective of vision: from the *leges* "bright and resplendent" to the laws "which, shrouded in the night of the darkness, are made shine with light". But the relationship established between the laws and the beauty stimulates a specific reflexion.

It is not an aesthetic evaluation concerning the form of the texts. This is already suggested by the others uses in the Justinian's legislative texts, in which the semantic of '*pulcher*', '*pulchritudo*', 'καλός', 'κάλλος' concerns the substance of the law: it refers to the effectiveness or to the topicality of a legal institution¹ or, again, to the appropriate compilers' work of distribution of the classical material in books and titles.² On the other hand, we find the same perspective of the substance and of the contents in the works of the *antecessores*, as in the frequent construction 'καλῶς εἰπεῖν', through which they approved a position of the commented text, as well in the current use of 'καλόν' for rendering the concept of *aequum*.

* Il testo riproduce il discorso pronunciato nell'Academy Building dell'Università di Groningen il 24 giugno 2014 come Inaugural Lecture, in relazione al conferimento del ruolo di Honorary Professor in Byzantine Law at the H.J. Scheltema Chair of the University of Groningen. Ho ommesso le parole introduttive e ho aggiunto alcune note essenziali.

¹ In c. *Tanta* 17 Justinian states that the compilers have excerpted from the classical texts "*quidquid pulcherrimum erat*", in opposition to what was by now unusable; similarly, in c. *Omnem* 3 he affirms that "*omnia nova pulchritudine sunt decorata*, since absolutely nothing unprofitable or obsolete can be found in them"; and again, the emperor considers the institutions regulated in the fourth part of the Digest as '*utilissima et pulcherrima iura*', "τὰ κάλλιστα καὶ χρησιμώτατα τῶν νόμων" (c. *Tanta*-Δέδωκεν 5); in a case the reference is to the only effectiveness: in C. 5.13.1.2a (A.D. 530) the new remedy concerning the *res uxoria* is described as "decorated by the *pulchritudo* both of the ancient *actio rei uxoriae* and of the new *actio ex stipulatu*". To a more appropriate solution or regulation of a case alludes the use of 'τὸ κάλλιον' in Nov. 18.1; 22 pr.; 74.4 pr.; 97.6.2; 117.4; 127.4. For c. *Deo auctore* 7 ('*opus moderatum et quam pulcherrimum*') see *infra*, nt. 10.

² c. *Deo auctore* 5: '*opus pulcherrimum*'.

More particularly, if we look at the specific contexts in which the ‘beauty’ concerning the laws is mentioned, we can recognize that such a representation gives voice – or I should say: gives light – to the most important propaganda motif concerning the making of the *Corpus iuris* and especially of the Digest. Let’s consider rapidly these contexts.

In c. *Tanta* pr. the ‘*nova pulchritudo*’ is the result of the overall imperial intervention on the entire Roman Law, which, as Justinian says, was “wavering because of internal strifes” (*vacillante intestinis proeliis*) and has been reduced to a “single harmonious whole” (*‘in unam consonantiam reducere’*), so that nothing should be found in it which was contradictory or identical or repetitious, and that two different laws (*‘leges geminae’*) on a particular matter should nowhere appear.³

In c. Δέδωκεν (pr.) the words *‘μίαν παρασχέιν κάλλους ιδέαν’*, “provide a beautiful aspect” (and not “provide an idea of beauty” in a platonic sense, as it has been recently said by an authoritative scholar)⁴ express the achievement of both a *‘συμφωνία’*, obtained by eliminating the contradictory dispositions, and of the suppression of laws which were identical or similar (*τὸ ταυτόν τε καὶ ὁμοίον*); the consequence is that for each matter there is a single regulation (*‘ὅστε ἓνα τὸν κείμενον ἔφ’ ἐκάστω καθεστάναι πράγματι νόμον’*).

In c. *Tanta* 11 ‘*pulcherrima forma legum*’⁵ indicates the whole arrangement of the Digest as the final result of the operations described immediately before (§ 10),⁶ among which

³ *‘Tanta circa nos divinae humanitatis est providentia, ut semper aeternis liberalitatibus nos sustentare dignetur. ... enim leges antiquas iam senio praegravatas per nostram vigilantiam praebuit in nova m pulchritudine et moderatum pervenire compendium: quod nemo ante nostrum imperium umquam speravit neque humano ingenio possibile esse penitus existimavit. Erat enim mirabile Romanam sanctionem ab urbe condita usque ad nostri imperii tempora, quae paene in mille et quadringentos annos concurrunt, in testinis proeliis vacillantem hocque et in imperiales constitutiones extendentem in unam reducere consonantiam, ut nihil neque contrarium neque idem neque simile in ea inveniatur et ne geminae leges pro rebus singulis positae usquam appareant’.*

⁴ I allude to M. BREONE, *Soliloquio sul diritto antico* (I: “Una metafora giustiniana”), Lecce-Brescia 2013, 17 and 25. But the use of the verb *παρασχέιν*, ‘provide, attribute’, prevents such a reading; rather, the statement corresponds to the concept of ‘*forma legum pulcherrima*’ of c. *Tanta* 11. The presence of the (neo)platonism in the culture of the VI century is well known and irrefutable; however, this fact does not mean that each literal reference to *ιδέα* (as well as to the semantic of *συμφωνία*, *consonantia*, *pulchritudo*) reflects a platonic point of view rather than a current and not-engaged use of the term. See E. DES PLACES, *Lexique*, in PLATON, *Oeuvres complètes*, ed. «Les Belles Lettres», XIV.1, Paris 1964, 260 s., with the different occurrences of ‘*ιδέα*’ in philosophical pregnant sense (as in *Ph.* 65a, recalled by the same Breone) and in the current meaning of ‘form, aspect’ (for my part, I add that, with this last sense, we find in the literary language even a connection with the beauty already in Pindarus, *Ol.* 10.122: *ιδέα καλή*).

⁵ *‘Sed cum prospeximus, quod ad portandam tantae sapientiae molem non sunt idonei homines rudes et qui in primis legum vestibulis stantes intrare ad arcana eorum properant, et aliam mediocre eruditionem praeparandam esse censuimus, ut sub ea colorati et quasi primitiis omnium imbuti possint ad penetralia eorum intrare et formam legum pulcherrimam non coniventibus oculis accipere...’.*

⁶ c. *Tanta* 10: *‘Tanta autem nobis antiquitati habita est reverentia, ut nomina prudentium taciturnitati tradere nullo patiamur modo: sed unusquisque eorum, qui auctor legis fuit, nostris digestis inscriptus est: hoc tantummodo a nobis effecto, ut, si quid in legibus eorum vel supervacuum vel imperfectum aut minus idoneum visum est, vel adiectionem vel deminutionem necessariam accipiat et rectissimis tradatur regulis. Et ex multis similibus vel contrariis quod rectius habere apparebat, hoc pro aliis omnibus positum est unaque omnibus auc-*

there was the deletion, from the material to be collected, of the classical controversies and of statements similar or conflicting.⁷ Significantly, in the successive section (§ 12), the main merit of the compilation of the Digest, which Justinian presents with pride and emphasis to all *homines*, is indicated through the hendiadys '*moderatio et legitima veritas*'.⁸ These words allude to the clearing of the excessive amount of legal material accumulated due to superfluous similar texts and to the presence of conflicting texts and stances. In particular, the *legitima veritas* corresponds to the *sinceritas*, which is mentioned in the *c. Deo auctore* 1 as the opposite of "all unnecessary repetition and of most iniquitous disagreement among the texts" ("*omnis supervacua similitudo et iniquissima discordia*").⁹ The *veritas-sinceritas* is the capability of regulating through unambiguous and straight dispositions, without repetitions and contradictions.¹⁰

toritate indulta, ut quidquid ibi scriptum est, hoc nostrum appareat et ex nostra voluntate compositum: nemine audente comparare ea quae antiquitas habebat his quae nostra auctoritas introduxit, quia multa et maxima sunt, quae propter utilitatem rerum transformata sunt. Adeo ut et si principalis constitutio fuerat in veteribus libris relata, neque ei pepercimus, sed et hanc corrigendam esse putavimus et in melius restaurandam. Nominibus etenim veteribus relictis, quidquid legum veritati decorum et necessarium fuerat, hoc nostris emendationibus servavimus. Et propter hanc causam et si quid inter eos dubitabatur, hoc iam in tutissimam pervenit quietem, nullo titubante relicto'.

⁷ The evidence offered by the § 10 can not be invalidated by the use of '*forma*' (*legum pulcherrima*). In fact, although one could think, at first glance, of a reference to a linguistic profile concerning the form of the texts, the term alludes to the overall structure of the compilation, in the same perspective of '*formosus*', 'well structured', in *c. Cordi* 4. This adjective recalls, in pregnant and synthetic way, the operations mentioned just before, which involve not the form but the content: namely, the clarification of obscure provisions and the elimination of similar or contrasting or abrogated constitutions ('*Supra dicitis itaque magnificis et prudentissimis viris permisimus haec omnia facere et, si qua emendatione opus fieret, hanc facere non titubante animo, sed nostra auctoritate fretos, constitutiones vero superfluas vel ex posterioribus sanctionibus nostris iam vacuatas, vel si quae similes vel contrariae invenirentur, circumducere et a prioris codicis congregatione separare et tam imperfectas replere quam nocte obscuritatis obductas nova eliminationis luce reterege, ut undique non solum institutionum et digestorum via dilucida et aperta pateret, sed etiam constitutionum nostri codicis plenum iubar omnibus claret, nulla penitus nec simili nec diversa nec inusitata relicta, cum nemini venit in dubium, quod repetita praelectio probavit, hoc satis validum satque esse formosum*').

⁸ *c. Tanta* 12: '*...Omnibus itaque hominibus eandem sanctionem manifestam facere necessarium esse perspeximus, ut sit eis cognitum, quanta confusione et infinitate absoluti in quantam moderationem et legitimam veritatem pervenerunt: legesque in posterum habeant tam directas quam compendiosas...*'.

⁹ *c. Deo auctore* 1: '*Cum itaque nihil tam studiosum in omnibus rebus invenitur quam legum auctoritas, quae et divinas et humanas res bene disponit et omnem iniquitatem expellit, repperimus autem omnem legum tramitem, qui ab urbe condita et romuleis descendit temporibus, ita esse confusum, ut in infinitum extendatur et nullius humanae naturae capacitate concludatur: primum nobis fuit studium a sacratissimis retro principibus initium sumere et eorum constitutiones emendare et viae dilucidae tradere, quatenus in unum codicem congregatae et omni supervacua similitudine et iniquissima discordia absolutae universis hominibus promptum suae sinceritatis praebeant praesidium*'.

¹⁰ For the whole sequence of *c. Tanta* 10-12 and for the meaning of '*moderatio et legitima veritas*' (and of '*sinceritas*' in *c. Deo auctore* 1) see G. FALCONE, *La 'veritas' delle 'leges': C. 7.62.39.2a; cost. 'Tanta' §§ 10 e 12*, in C. CASCIONE - C. MASI DORIA (ed.), *Quid est veritas?*, Napoli 2013, 453 ss.

Once examined the previous references, we can also quote the passage of *c. Deo auctore* 7, in which Justinian instructs the compilers of the Digest to achieve an '*opus moderatum et quam pulcherrimum*' ('*Sed*

2. Therefore, the contexts show that the beauty with respect to the laws alludes to the sharpness and straightness, to the *consonantia*, *συμφωνία*, *concordia*. In the propaganda of the compilation, this is the most important result achieved by Justinian: it is not a case that by formulating the famous ban on the commentaries upon the Digest, Justinian states emphatically that a possible presence of a ‘*discordia*’ among the commentaries would cause to the same Digest a ‘*dedecus*’, i.e. a dishonour and an affront.¹¹ Moreover, it was really the answer to the need most urgently felt in Late Antiquity: it is sufficient to recall that, already at the end of the fourth century, the anonymous author of the treatise *De rebus bellicis* addressed a passionate plea to the Emperor, with which he asked to the imperial majesty to remove the presence of conflicting positions within the legal texts, which prevented the proper administration of justice.¹²

Is it a mere coincidence and doesn't it have any particular meaning that in all cases in which the beauty refers to the laws it always alludes to the sharpness-straightness, to the ‘*consonantia*’, ‘*συμφωνία*’, ‘*concordia*’? I don't think so.

It is known that in the Byzantine political thought the legislative power of the Emperor is supported by the following two ideological pillars, which project this power in a religious

*et hoc studiosum vobis esse volumus, ut, si quid in veteribus non bene positum libris inveniatis vel aliquod superfluum vel minus perfectum, supervacua similitudine semota et quod imperfectum est repleatis et omne opus moderatum et quam pulcherrimum ostendatis. Hoc etiam nihilo minus observando, ut, si aliquid in veteribus legibus vel constitutionibus, quas antiqui in suis libris posuerunt, non recte scriptum inveniatis, et hoc reformetis et ordini moderato tradatis: ut hoc videatur esse verum et optimum et quasi ab initio scriptum, quod a vobis electum et ibi positum fuerit, et nemo ex comparatione veteris voluminis quasi vitiosam scripturam arguere audeat...’). This conceptual couple corresponds to the couple of c. *Tanta* pr. ‘*leges antiquas in novam pulchritudinem et moderatum pervenire compendium*’ (above, nt. 3); but see also the hendiadys ‘*moderatio et legitima veritas*’ of c. *Tanta* 12 (above, nt. 8): both the elements linked, in these two last passages, to *moderatum* / *moderatio* (that is, the qualify ‘*pulcherrimum*’ and the *veritas*) allude, as we have seen, to the result of the selection among similar and contrasting data, to the overcoming of interpretative divergences and to the attitude to regulate a situation with a unique and unambiguous provision. Moreover, the ‘*reformare*’ (‘*et hoc reformetis et moderato ordine tradatis*’) brings to mind the ‘*forma legum*’ of c. *Tanta* 11 and the adjective ‘*formosum*’ of c. *Cordi* 4 (above, nt. 7).*

¹¹ C. *Tanta* 21: see G. FALCONE, *The prohibition of commentaries to the Digest and the antecessorial literature*, in *Subseciva Groningana IX (Between Groningen and Palermo)*, 2014, 21 s. An interesting confirmation of the ideological relevance of this result is offered by the Novel 75 (AD 537). We know that, starting from the early Novels, every emphasis disappeared from the references to the Digest, because of a rapid disillusion about the sufficiency of the collection (in front of the continuous occurrence of new cases, arising from the *varia rerum natura*: G. LANATA, *Legislazione e natura nelle Novelle giustinianee*, Napoli 1984, 41 ss.; 165 ss.); nevertheless, Tribonian – this is the relevant point – is still commended highly as the collaborator thanks to whose commitment “*omnis legum ambiguitas, omnis latitudo in praesentem concordiam et pulchram breviter pervenit*”: a solemn statement which clearly reminds the hendiadys ‘*opus moderatum et pulcherrimum*’ and ‘*moderatio-veritas*’ (on which, see above, nt. 1).

¹² *De reb. bell.* 21.1-2: ‘*Divina providentia, sacratissime imperator, domi forisque rei publicae praesidis comparatis, restat unum de tua serenitate remedium ad civilium curarum medicinam, ut confusas legum contrariasque sententias, improbitatis reiecto litigio, iudicio augustae dignationis illumines. Quid enim sic ab honestate consistit alienum quam ibidem studia exerceri certandi ubi, iustitia proficiente, discernuntur merita singulorum?*’. On this text see, recently, V. MAROTTA, *La recitatio degli scritti giurisprudenziali: premesse repubblicane e altoimperiali di una prassi tardoantica*, in *Ius controversum e processo fra tarda repubblica ed età dei Severi* (Atti Congresso, Firenze 2010), Roma 2012, 360 s.

perspective: 1) the legislative power is deriving from God;¹³ 2) the legislation is a very relevant part of an imperial *potestas* considered as "imitation of God" (*μίμησις θεοῦ*).¹⁴

Both the elements, having a long and complex philosophical-theological genealogy, are very present in the Justinian's texts.

As for the first element, it is enough recalling that in some passages of his Novels, Justinian underlines that the legislative *potestas* is given to the emperor *παρὰ θεοῦ*, by God, with the aim of preserving the *imperium* and the peace and quiet of the State granted to him by the same God (Nov. 113.1pr.; 137praef.; 72praef.), and that the emperor is 'animated Law' sent by God to the *homines* (Nov. 105.2.4).

As for the second element (that is, legislation as '*imitatio Dei*'), I point out two textual evidences. On the one hand, in a constitution of 530 (C. 5.16.27.1) Justinian expressly indicates as '*imitatio Dei*' the *humanitas* of the imperial *maiestas* which manifests itself in the issue of the laws. On the other hand, I quote the preamble of the constitution *Deo auctore*: "...Nothing in any sphere is found so worthy of care as the authority of law, which sets in good order ('*bene disponit*') affairs both divine and human". It is the immediate sequel of the reference to the Supreme Trinity, "from whom the elements of the whole world proceeded and their disposition throughout the universe was derived".¹⁵ The use of the expression "*bene disposit*" with respect to the imperial laws is an evident reproduction of this mention of the divine '*dispositio*' of the universe. It is right the 'εὐτέθημι' used, for example, by the contemporary author of the philosophical '*Dialogue on the political science*' with reference both to the actions of God, which set the whole universe in harmonic order, and to the imitating actions through which the emperor contributes to

¹³ On this point, see, recently, J.H.A. LOKIN, *The Significance of Law and Legislation in the Law Book of the Ninth to Eleventh Centuries*, in A. LAIOU - D. SIMON (ed.), *Law and Society in Byzantium, Ninth-Twelfth Centuries*, Washington 1994, 74 ss. Despite the recent attempt to re-evaluation of the role of the *populus* and of the figure of the *lex regia* as sources of the imperial (legislative) power achieved by L. HECKETSWEILER, *La fonction du peuple dans l'Empire romain. Réponses du droit de Justinien*, Paris 2009, *passim*, I believe founded the traditional interpretation, according to which the reference to those elements (c. *Deo auctore* 7; D. 1.4.1; I. 1.2.6) is only «un ossequio - estemporaneo e di facciata - alla volontà popolare» (R. BONINI, *Introduzione allo studio dell'età giustiniana*,⁴ Bologna 1985, 83), which recalls «un fatto del passato, avvenuto una volta per tutte e irreversibile» (R. ORESTANO, *Il problema delle persone giuridiche in diritto romano*, Torino 1968, 274).

¹⁴ See, e.g., C. CAPIZZI, *Potere e ideologia imperiale da Zenone a Giustiniano*, in G.G. ARCHI (ed.), *L'imperatore Giustiniano. Storia e mito*, Milano 1978, esp. 9 ss.; 25 ss.; A. PERTUSI, *Il pensiero politico bizantino*, Bologna 1990, spec. 19 ss.; M.TH. FÖGEN, *Das politische Denken der Byzantiner*, in I. FETSCHER - H. MÜNKLER (hrsg.), *Pipers Handbuch der politischen Ideen*, II, München-Zürich 1993, 43 ss.; D. KARAMBOULA, *Der byzantinische Kaiser als Politiker, Philosoph und Gesetzgeber*, in *Jahrbuch Österreichischen Byzantinistik*, 50, 2000, esp. 14 ss.; L. DE GIOVANNI, *Istituzioni, scienza giuridica, codici nel mondo tardoantico. Alle radici di una nuova storia*, Roma 2007, 413 ss.

¹⁵ c. *Deo auctore* 1: '*Cum itaque nihil tam studiosum in omnibus rebus invenitur quam legum auctoritas, quae et divinas et humanas res bene disponit et omnem iniquitatem expellit, reperimus autem omnem legum tramitem, qui ab urbe condita et romuleis descendit temporibus, ita esse confusum, ut in infinitum extendatur et nullius humanae naturae capacitate concludatur: primum nobis fuit studium a sacratissimis retro principibus initium sumere et eorum constitutiones emendare et viae dilucidae tradere, quatenus in unum codicem congregatae et omni supervacua similitudine et iniquissima discordia absolutae universis hominibus promptum suae sinceritatis praebeant praesidium*'.

a ‘παναρμονίος συμφωνία’ of the State:¹⁶ and - mind you - the author of this *Dialogue* had to be in very close terms with Tribonian and Justinian, since he was, with all probability, Thomas, one of the compilers of both the first Code and the Digest.¹⁷ Well, the passage of the *c. Deo auctore* just now quoted is revealing for our purposes: because the relationship, established therein, between the “*bene disponere via leges*” and the ‘divine *dispositio* of the universe’, is the premise both for the statement according to which Justinian has already eliminated from the constitutions of former emperors all unnecessary repetition and disagreement (§ 1) and for the intention to remove, through the projected Digest, any repetition and divergence also from the ancient *ius* (§ 4).¹⁸

In essence: the laws are adorned with ‘beauty’ in so far they are harmonious, straight and unambiguous, lacking of repetitions and of contradictions; and in this sense they are an imitation of the divine beauty, which disposes the whole universe with order, harmony and splendour (τάξις, ἁρμονία, ἀγλαΐα, according to a widespread representation, from Eusebius of Caesarea to the contemporary pseudo-Dionysius the Aeropagyte).

3. In such a perspective I think we can better understand two data, which are linked together: the use of Latin as the outward form of this beauty and the ‘mysteriousness’ of this beauty.

That Latin was tough for the Greek speaking *homines*, to those Justinian proclaimed the ‘beauty’ and ‘*veritas*’ of the collected laws, was well known to the same emperor. Not only, as we shall see, did he authorize the Greek translation of the Digest, but also in the Novel 7 of the 535 he affirms that the use of Greek (“*κοινή φωνή*”), instead of Latin (“*πάτριος φωνή*”), makes the constitution knowable to all subjects because of its easy intelligibility; and in the Novel 66 of the 538, in order to justify the adoption of a disposition formulated in Greek and Latin, he explicitly states that the Greek version was enacted with the aim of meeting the linguistic usage of the most of recipients.

Why, then, Latin for the Compilation? The answer is in the immediate sequel of the same Novel 66: if Greek is the current language, Latin is “*φωνή ... κυριωτάτη διὰ τὸ τῆς πολιτείας σχῆμα*”, “an idiom of greatest moment in relation to the figure of the State”. Latin and State: the ideology of the legislation as highest expression of the imperial power and as

¹⁶ *Menae patricii cum Thoma referendario De scientia politica dialogus* (ed. C. Mazzucchi, Milano 1982), V.134-136 (p. 47 M.).

¹⁷ C.M. MAZZUCCHI, *Damascio, autore del Corpus Dyonisiacum, e il Dialogo ΠΕΡΙ ΠΟΛΙΤΙΚΗΣ ΕΠΙΣΤΗΜΗΣ* (*Saggio Integrativo* in P. SCAZZOSO - E. BELLINI (ed.), *Dionigi Aeropagita, Tutte le opere*, Milano 2009), 760 s. (already in «*Aevum*» 80, 2006: *non vidi*); ID., *Per una rilettura del palinsesto vaticano contenente il Dialogo ‘Sulla scienza politica’ del tempo di Giustiniano*, in *L'imperatore Giustiniano. Storia e mito*, cit., 237 ss.; esp. 246 s.; for the dating between the years 532-533 see ID., *Menae patricii cum Thoma referendario* cit., p. XIII-XV. On this work see also D. O'MEARA, *The Justinianic Dialogue on Political Science and its Neoplatonic Sources*, in K. IERODIAKONOU (ed.), *Byzantine Philosophy and its Ancient Sources*, 2002 49 ss. (which prefers the different dating – end of the reign of Justinian - proposed by A. Cameron).

¹⁸ *c. Deo auctore* 4: ‘*Iubemus igitur vobis antiquorum prudentium, quibus auctoritatem conscribendarum interpretandarumque legum sacratissimi principes praebuerunt, libros ad ius Romanum pertinentes et legere et eliminare, ut ex his omnis materia colligatur, nulla secundum quod possibile est neque similitudine neque discordia derelicta, sed ex his hoc colligi, quod unum pro omnibus sufficiat...*’.

key-element of the *'imitatio Dei'* required a solemn and 'potestative' language for the laws. The best description of this character had been made, about 300 years before and in the identical perspective of polarity between Greek and Latin, by the Greek-speaking Gregory Thaumaturgus: the Latin is "an idiom impressive and haughty and worthy of the imperial power".¹⁹ Moreover, the link 'imperial power - Latin language' reaffirmed and underlined the Roman roots of the imperial power (another political-ideological motif): in a passage of the *De Magistratibus* (II.12), Johannes Lydus - a prominent figure in Justinian's court - mentions an oracle given to Romulus, stating that Fortune would desert the Romans whenever they forgot their native tongue. This oracle was fulfilled, continues Lydus, when Cyrus the Egyptian (an official in the government of Theodosius II) began to issue decrees in Greek. Of course, Cyrus was put aside for internal rivalries in the court; however the reading of Lydus, together with the "discovery" of the oracle, of which no other source speaks, reflects the view of Tribonian-Justinian about Latin as expression of Roman imperial *maiestas*.²⁰

Thus, the beauty of the laws, considered by Justinian as the greatest result and the greatest merit of the Digest's accomplishment, was not accessible in its concrete contents to most people because of Latin. The Digest is esoteric, is intelligible only by 'initiates': in this sense, the emphasized beauty is arcane, mysterious.

This interpretation is consistent with the perspective of sacralisation of the text-Digest, that we can recognize on the basis of some explicit data of the *c. Tanta*: first of all, to the purpose of proclaiming the overlapping of the imperial *auctoritas* on the collected classical *leges*, Justinian enunciates that these *leges* are to be considered as if uttered by the 'divine imperial mouth' (§ 6: *'divino ore profusa'*); further, he refers to the collection through the words "Worship these laws!", *'has leges adorete'* (§ 19);²¹ finally, the Digest is represented as a 'most holy temple of Justice' (*sanctissimum templum Iustitiae*: § 20)²² - an image, which

¹⁹ Gregorius Thaumaturgus, *Remerciement à Origène suivi de La Lettre d'Origène à Grégoire. Texte grec, introduction, traduction et notes par H. Crouzel* (Sources Chrétiennes, 148, 1969), I.7. See C.M. MAZZUCCHI, *Il contesto culturale e linguistico. Introduzione al lessico giuridico greco*, in J.H.A. LOKIN - B. STOLTE (ed.), *Introduzione al diritto bizantino. Da Giustiniano ai Basilici*, Pavia 2011, 72. An interesting example of the "potestative" fascination of the Latin during the same years of Justinian is offered by a passage of the already mentioned *"Dialogue on the political science"* (above, nt. 17). He has quoted several times Cicero and other Roman authors, but only in one case (of course, within the surviving parts of the work) he felt the need and, so to say, the pleasure of using, besides the Greek, also the Latin expression contained in the source and it is a clear word of power, 'princeps': "Cicero appropriately called Socrates 'ἀρχηγόν', and, for speaking I too in Latin, 'πρίγκιπα' of the whole philosophy" (§ V.209, p. 63 M.).

²⁰ On this text, B. ROCHETTE, *Justinien et la langue latine. A propos d'un prétendu oracle rendu à Romulus d'après Jean le Lydien*, in *Byzantinische Zeitschrift*, 90, 2007, 413 ss.

²¹ With regard to these words, M. CAMPOLUNGI, *Potere imperiale e giurisprudenza in Pomponio e in Giustiniano*, II.2, Perugia 2007, 224, recalls the idea of "enfasi devozionale" evoked, in other connection, by LANATA, *Legislazione e natura cit.*, 168.

²² See also *c. Deo auctore* 5. It has been remained unnoticed until now that, in the sources of the Late-Antiquity, this image is referred in a specific way to the law court: not only Ammianus Marcellinus (30.4.13) affirms that the law courts should be *'delubra aequitatis'* (temples of equity), but right in Justinian's years one of the epigrams describing the monuments of Byzantium (*Anth. Pal.* IX, 658) depicts the court of *praefectus urbi* as *'θέμενος Δίκης'* ('temple of Dike'), and one of the epideictic epigrams (*Anth. Pal.* IX, 779) refers to a specific *praefectus urbi* who "administers in imperishable way the *θρόνος Δίκης*" (the sacred throne of

would have allowed the emperor to portray himself, in the opening text of the Digest, as ‘*sacerdos iuris*’, a priest of the Law (D. 1.1.1.1).²³

4. Sacralisation of legal texts, inaccessibility of Latin, mysteriousness: that well learned men may have been induced to put these three elements together, is shown by an authoritative witness: Jacob of Edessa, a central figure of the Syriac intellectual life between VII and VIII century: canonist, theologian, translator, grammarian, philosopher.²⁴

Around the year 700 he carried out a revision of the preceding Syriac translation of the Greek cathedral homilies of Severus of Antioch, the excellent student of the Law-School in Berytos, who became, during the Justinian’s kingdom, Patriarch of Antioch.²⁵ Jacob adds here and there annotations, scholia, to the translated main-text. One of these scholia is intriguing; and I think that it is worth dwelling on it also because it has remained – as far as I know – unnoticed to the historians of law.²⁶

Within a broad discourse concerning the venerable name of God, Jacob recalls that the wise men called by King Ptolemy Philadelphus of Egypt to translate the Hebrew scriptures into Greek, every time they found the venerable name of God, kept it in Hebrew characters within the Greek lines, noting at the edge of the text the Greek ‘*Κύριος*’. To justify this proceeding Jacob establishes a comparison with the translations of the Roman laws (we

the Justice). Such architectonic representation of the ‘*pulcherrimum*’ Digest as sacred place of the law court perfectly matches, not only with the several references to the forensic destination of the compilation (c. *Deo auctore* 10; c. *Tanta* 17; 18; 19; 21; 22; 23; 24: see FALCONE, *The prohibition of commentaries* cit., 32 s.) and with the role of the same Emperor as ultimate judge in the procedural-system of the State, but also with the doctrine, according which the emperor imitates God both through legislation and justice: the link between these two elements, already firmly present in the philosophical-theological tradition concerning the *imitatio Dei*, is also expressed in c. *Deo auctore* 1 (above, nt. 7), where the authority of the laws is represented as setting in good order affairs both divine and human on the model of the Supreme Thrynity and as casting out all injustice (“... *legum auctoritas, quae et divinas et humanas res bene disponit et omnem iniquitatem expellit...*”).

²³ Justinian has reused, with regard to the emperor, an image devised by Ulpian with the aim of emphasizing the fundamental figure and role of the jurists (see G. FALCONE, *La ‘vera philosophia’ dei ‘sacerdotes iuris’: sulla raffigurazione ulpiana dei giuristi*, in AUPA 49, 2004, esp. 5 ss., 76 ss.; ID., *Un’ipotesi sulla nozione ulpiana di ius publicum*, in M.P. BACCARI - C. CASCIONE, *Tradizione romanistica e Costituzione*, II, Napoli-Roma 2006, 1167 ss.). The recent view of O. BEHREND, *Der Schlüssel zur Hermeneutik des Corpus Iuris Civilis. Justinian als Vermittler zwischen skeptischen Humanismus und pantheistischem Naturrecht*, in M. AVENARIUS (ed.), *Hermeneutik der Quellentexte des Römischen Rechts*, Baden-Baden 2008, 226 ss., according to which the whole D. 1.1.1.1 has a justinianic origin, is unacceptable already because of the use of the first person singular ‘*nisi fallor*’.

²⁴ See R.B. TER HAAR ROMENY (ed.), *Jacob of Edessa and the Syriac Culture of His Days*, Leiden 2008, *passim*.

²⁵ But also a guiding figure of the Monophysitism. For this reason Severus was struck by a Justinian’s anathema (Nov. 42, of the year 536): his writings should have been burned and not recopied anymore in the future (for an historical placing see C. CAPIZZI, *Giustiniano I tra politica e religione*, Catania 1994, esp. 61 ss., 65 ss.). Despite this disposition, the cathedrals homilies survived also thanks to the work of Jacob of Edessa.

²⁶ A mention, from the point of view of the persistence of Latin in Syriac culture, is in V. POGGI, *Situazione linguistica dell’Oriente bizantino nel V secolo*, in G. FIACCADORI - M. PAVAN (ed.), *Autori classici in lingue del Vicino e Medio Oriente*, Roma 1990, 115.

must think: the *Corpus iuris*), in which abounded Latin technical terms which remained unchanged even in their original handwriting. I will quote from the French translation of Syriac made by a specialist, M. Brèier, in *Patrologia Orientalis*:²⁷

« ... en effet, nous voyons que ceux qui ont traduit les lois des Romains et les on fait passer dans la langue des Grecs, après y avoir laissé beaucoup de noms de ceux de la langue latine, qui renferment secrètement et profondément le sens des lois, et n'avoit pas voulu les traduire, afin que ce ne soit pas pour tout le monde que les lois et les noms soient connus et que ce ne soit pas [...] qui puisse changer quelque chose de sa propre volonté dans les livres [...] et les falsifier, n'ont pas écrit avec des signes grecs ces noms qu'ils ont laissés et n'ont pas traduits, mais les ont écrits avec les signes de l'écriture latine. Et également les contemporains, qui écrivent des documents d'achats et de dots en langue grecque d'après les livres des lois, écrivent pareillement ces noms latins à l'intérieur du langage grec et de l'écriture grecque avec les lettres latines, avec lesquelles ils étaient écrits aussi chez les Romains, en sorte que, si ceux-là ont ainsi honoré les lois des Romains dans leur état caché et avec leur signes, c'est très convenablement et très sagement qu'ont agi les traducteurs hébreux, qui ont honoré le nom honorable et secret de Dieu dans son état caché et avec leurs signes, et ne l'ont pas traduit ».

Plainly, Jacob can have proposed the parallel with the sacred Scriptures, the Law of God, only on the assumption of a sacralisation also of the imperial codified law. In relation to this parallel, the Roman *leges* are represented as having a hidden, mysterious sense; and the keeping of original words and characters in translating is represented as a way to honour the *leges* in their mysteriousness. The author alludes expressly to an esoteric perspective: “afin que ce ne soit pas pour tout le monde que les lois et les noms soient connus” (“in order that it is not for everyone that the laws and the words are known”). It is possible that the mentality of the canonist, used to dealing with rules which evoke the religious sphere, has somehow contributed to the sharpness of this discourse. However, what matters for our purposes is that, in relation to a sacralization of the legal text – and Justinian, as we have seen, projected the Digest in this horizon –, the use of Latin was suitable to be considered and justified as a mark of an intrinsically mysterious nature of the laws.

5. Moreover, the scholion of Jacob of Edessa offers an interesting suggestion also from another point of view, which call into question a famous passage of the Justinian's c. *Tantal Déδωκεν*, the § 21²⁸.

It is known that, with respect to the contents of the Digest, Justinian allows, besides the apposition of brief annotations via '*tituli*' or '*indices*' or *παράτιτλα*, a literal translation, called '*κατὰ πόδα*' in Greek. It is a word-for-word translation, having the role to clarify the

²⁷ *Patrologia Orientalis*, XXIX (*Les Homélie Cathédrales de Sévère d'Antioche. Traduction syriaque de Jacques d'Edesse*), Paris 1961, 199 ss., ed. M. BRIÈRE (the passage quoted in the text is at p. 200 ss.).

²⁸ On which see now FALCONE, *The prohibition of commentaries cit., passim*.

meaning of each word of the official text.²⁹ The translation must be absolutely respectful of the position that words have in their original context: “*in graecam vocem transformare sub eodem ordine eaque consequentia, sub qua voces Romanae positae sunt*”. Thus, it is more than a literal translation. It is what specialists call ‘strict literal translation’.

The traditional answer to the question “Why such a rigid provision?” is that this kind of translation prevents the translator from organising a discourse having a complete sense and in this way reduces the risks of alteration, voluntary or unaware, of the meaning of the original text. However, besides this explication, we can think of another perspective.

In this direction we are first of all oriented, precisely, from the text of Jacob of Edessa, in so far it offers two concomitant explications for the keeping of Latin legal terms in their original handwriting: the presence of a ‘mystic’ dimension of the legal writing, but also the ‘rational’ need to protect the text from risks of falsification: “*afin que ce ne soit pas ... qui puisse changer quelque chose de sa propre volonté dans les livres ... et les falsifier*”, “in order that ... there is no one ... who could change, of his own will, something in the books ... and falsify them”.

But we are also induced by a statement of Jerome, the Church Father active between the IV and V century. Protagonist of an intense activity of translation from Hebrew and Greek into Latin, Jerome also composed an epistle entitled “*De optimo genere interpretandi*”, that scholars consider “the first treaty of literature devoted to the translation”. In a passage of the epistle (§ 5.2) he affirms that in translating from Greek he usually renders, not ‘word for word’, but ‘sense for sense’ (“*non verbum e verbo, sed sensum de sensu*”), with the exception of the sacred Scriptures, in which “also the *ordo verborum* is a *mysterium*”: “*ubi et verborum ordo mysterium est*”.³⁰

‘*Mysterium*’ certainly indicates a ‘spiritual and sacred truth’. Referring to a written text, the term alludes to the existence of “a divine and immutable pre-linguistic meaning”.³¹

As for ‘*ordo verborum*’, it is clear, because of the otherness both respect to *sensus* and *verbum*, that it indicates the precise disposition of the words. And it is notable that, in another passage, Jerome opposes to the ‘*sensus*’ just the two words ‘*ordo et consequentia*’ that we find in the Justinian’s constitution.

Thus: in the sacred text *par excellence*, the *ordo et consequentia verborum* is expression of mysteriousness of divine meaning and for this reason should not be altered by translating. The suggestion deriving from it, is intuitive: in c. *Tanta-Δέδωκεν* 21 Justinian could have transferred to the field of law, and specifically to the text-Digest, the criterion of strict literal translation typical of the theological tradition, where it caught on in relation to the concern of protecting the sacred scriptures from ‘heretical’ translations and interpretations.³²

²⁹ On the *κατὰ πόδα* see, most recently, S. SCIORTINO, *La relazione tra il κατὰ πόδα e le traduzioni di Taleo dei rescritti latini del Codex*, in AUPA 56, 2013, 113 ss.; ID., *Conjectures regarding Thalelaios’ commentary on the Novus Codex*, in *Subseciva Groningana* IX cit., 157 ss.

³⁰ See, recently, E. BONA, *La libertà del traduttore. L’epistola de optimo genere interpretandi di Gerolamo*, Acireale - Roma 2008, 55 ss.

³¹ So C.-H. LAVIGNE, *Droit, traduction, langue et ideologie: Kata poda ou la traduction pas à pas selon Justinien 1er*, in *Traduction, Terminologie, Redaction* 18.1, 2005, 194.

³² For the connection, in general terms, between the (strict) literal translation and the spread of heresies see S. BROOK, *Aspects of Translation Technique in Antiquity*, in *Greek, Roman, and Byzantine Studies*, 20,

It would be superfluous to note that this reading matches with the already underlined sacred connotation of the text-Digest. Rather, it should be stressed that the works of Christian apologetics and polemics were familiar to the imperial cultural environment, also because of the difficult and pressing problem of the religious disputes, which led the same Justinian to intervene not only via constitutions, but also via theological writings, in which the emperor (or whoever for him)³³ draws continuously from the Christian controversial production. And it is interesting to note that in these writings Justinian, when he condemns the heretical interpretative technique of isolating the words of the sacred Scriptures from their context and the heretical interpretative technique of omitting this or that term, which would give the real meaning to the text, uses, in opposition to the normal 'ἔρμενεύειν', the pejorative 'παρερμενεύειν':³⁴ this recalls the juxtaposition 'interpretations-perversions' used right in c. *Tanta* 21 "*alias interpretationes, immo magis persiones iactare non concedimus!*"

If my reading of the strict literal translation imposed by Justinian is itself a plausible 'interpretation' and not a 'perversion', we are faced with a such sacralisation of the Latin Digest's writing, that even the outward disposition of its elements, the *ordo verborum*, is regarded as bearer of mysteriousness. The devotional imperative, earlier recalled, "*has leges adorate*" is referred to a Digest-icon, in which, like in a Byzantine liturgical scene, the location of each detail has a precise meaning.

6. I conclude with a rapid leap forward, of exactly 1000 years with respect to the constitution *Tanta*. The Dutch humanist Viglius Zuichem, who in 1534 published the *editio princeps* of the Paraphrase, in the *epistula dedicatoria* addressed to the Emperor Charles V³⁵ reproduces not few motifs from the compilation's propaganda of Justinian: the amazement for the excessive growing of the *ius civile*, due to the proliferation of conflicting laws and jurisprudential opinions; the request, to the Emperor, for remedying through an organic codification; the dualism *arma - leges*; the qualify of the emperor as person "which is at the head of the *templum iustitiae*". Even the 'beauty' appears. But this concept is now referred to the Institutes, no longer to the Digest. And the *Institutiones* are considered '*pulcherrimae*' for external aesthetic reasons: because they are brief statements (*versiculi*), ordered according to systematic criteria typical of the dialectical techniques, and because they are formally elegant. Besides: according to Viglius, thanks to such a kind of beauty, the Institutes allow to "open the secret mysteries of the Digest".

The reversal of perspective compared to the vision of Justinian could not be more clear. 'Beauty' is now separated from the 'mystery'; indeed, it is its opposite, is the key to solving

1979, 69 ss. More specifically, S. SARCEVIC, *New Approach to Legal Translation*, The Hague 1997, 24 s.

³³ See M. AMELOTI, *Introduzione storico-giuridica*, in M. AMELOTI - L. MIGLIARDI ZINGALE, *Scritti teologici ed ecclesiastici di Giustiniano* (Legum Iustiniani Imperatoris Vocabularium. Subsidia - III), Milano 1977, X-XI.

³⁴ *Schreiben gegen die Drei Capitel* (ed. E. SCHWARTZ, *Drei dogmatische Schriften Iustinians*,² in M. AMELOTI - R. ALBERTELLA - L. MIGLIARDI ZINGALE, *Legum Iustiniani Imperatoris Vocabularium. Subsidia - II*, Milano 1973), 84 l. 22; *Scritti contro Origene* (ed. M. AMELOTI - L. MIGLIARDI ZINGALE, in *Scritti teologici ed ecclesiastici di Giustiniano* cit.), 100 l. 34.

³⁵ The *epistula* is also included in W.O. REITZ, *Theophili Antecessoris paraphrasis graeca Institutionum caesarearum*, II, Hague Comitatus 1751, II, 1126 ss.

the mysteries. And the *secretiora mysteria et aenigmata* are, in this view, the more high and intricate problems and discussions collected, without a good systematic order, in the Digest. The advent of the Humanism elapses between the two representations, with its most characteristic elements in the legal field: on the one hand, the passion for elegance of letters and for systematic-dialectical organizing of the legal material, on the other hand, the discovery of the human reason against the authority and the hidden and immutable truths.³⁶

It is a particular, but significant example of how Byzantine propositions and ideas were revisited during the modern age: a general phenomenon which, in its turn, is part of the complex and fascinating history of the encounter between the ancient material coming from East and the Western legal culture. It is an important chapter of the making of the European legal tradition, which, however, for the most part is still waiting to be written.

³⁶ For an overview of these characteristics see G. FALCONE, “*Theophilus noster*”. *Zur Benutzung der Theophilus Paraphrasis seitens der humanistischen Jurisprudenz*, in *Iuris Antiqui Historia* 2, 2010, 16 ss. (with bibl. at nt. 2).

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Gli articoli, muniti di *abstract* e parole chiave, vanno inviati, entro il 31 maggio, al Comitato di Redazione via e-mail all'indirizzo: redazioneaupa@unipa.it.

Finito di stampare nel mese di dicembre 2014
presso le Officine Tipografiche Aiello & Provenzano s.r.l.
Bagheria (Palermo)

