

Review

Simon Corcoran*

Codex Theodosianus: Le code Théodosien V. Edited and translated by S. Crogiez-Pétrequin, P. Jaillette, and J.-M. Poinssotte. Turnhout: Brepols Publishers, 2009. 523 pp. ISBN 978-2-503-51722-3.

This handsome book is the long anticipated first volume from the project to produce a complete French translation of the Theodosian Code. The team is headed by Sylvie Crogiez-Pétrequin and Pierre Jaillette of Université Lille-3 as part of the THAT (*Texts pour l'Histoire de l'Antiquité*) initiative under the aegis of *Le Centre national de la recherche scientifique*. Indeed, French publication on the Theodosian Code has blossomed in recent years. Two different translations of the ecclesiastical Book XVI have appeared from the same press (*Les éditions du CERF*): the first by Elisabeth Magnou-Nortier,¹ who has also recently edited and translated the Sirmondian Constitutions;² the second by the late Jean Rougé, part of a posthumously edited two volume collection of religious legislation between Constantine and Theodosius II, also including the Sirmondians.³ The French project itself held four colloquia between 2003 and 2008, the first and third of which

* Senior Research Fellow, *Projet Volterra*, Department of History, University College London.

¹ E. Magnou-Nortier, *Le Code Théodosien, livre XVI: et sa réception au moyen âge* [*Sources canoniques*, 2] (Paris 2002).

² E. Magnou-Nortier, "Autour des Constitutions Sirmondians: introduction, texte latin, traduction française," in *Traditio Iuris: Permanence et/ou discontinuité du droit romain durant le haut Moyen Âge* (Lyon 2005), 105–97.

³ J. Rougé, trans., R. Delmaire and F. Richard, eds., *Les lois religieuses des empereurs romains de Constantin à Théodose II (312–438)*, 1 [*Code Théodosien, livre XVI* (Paris 2005) = *Sources chrétiennes* 497] and 2 [*Code Théodosien, livres I–XV, Code Justinien, Constitutions Sirmondians* (Paris 2009) = *Sources chrétiennes* 531].

have now been published,⁴ while papers from another conference in 2005 have appeared as well.⁵ Readers of English have for more than fifty years been able to consult the translation produced by the team headed by Clyde Pharr,⁶ whose shortcomings are outweighed by its convenience and usefulness. However, the large but single volume of Pharr, which included also the *Sirmondians* and *Novels*, will be dwarfed by the French enterprise, which plans one volume for each book of the Code, sixteen in all. Further, unlike the Budé series, whose pattern this would seem to mimic, the volumes will not be handy small paperbacks, but large, lavish and indeed pricey hardbacks as this first volume demonstrates. This is a prestige set made for library shelves, in essence a long delayed companion to the *Corpus Iuris Civilis* translation of the Napoleonic era.

Jaillette's lengthy, detailed and impressive introduction (pp. 11–252) opens with the dramatic burning of the Turin palimpsest in the disastrous fire of 1904, followed by a brief account of the key Theodosian editors and “reconstructors,” who worked both before and after the discovery of the Turin manuscript, from Gothofredus up to the rivalry of Mommsen and Krüger. He then turns to examine in detail the problems of Book V, “un livre en lambeaux,” and shows how its reconstruction remains by far the most uncertain of all the Theodosian books. The text translated in this volume is that of the orthodox edition by Mommsen, which means that his fundamental editorial choices govern the shape of any versions or translations based upon it. Yet of Mommsen's version of Book V, Jaillette comments: “Magistrale en apparence, elle est cependant, en réalité, loin d'être achevée” (p. 27). The main foil to Mommsen's reconstruction is that of Krüger, whose editorial choices were often markedly different (pp. 54–64). The key issue lies in the Turin palimpsest (T). The sources of the book are primarily the Breviary for the opening and closing titles (with some support from T), but the intervening material comes

⁴ S. Crogiez-Pétrequin, P. Jaillette, and O. Huck, eds., *Le code théodosien: diversité des approches et nouvelles perspectives* [Collection de l'École française de Rome, 412] (Rome 2009); J.-J. Aubert and Ph. Blanchard, eds., *Droit, religion et société dans le Code Théodosien: Troisième Journées d'Étude sur le Code Théodosien, Neuchâtel, 15–17 Février 2007* (Geneva 2009).

⁵ J.-N. Guinot and F. Richard, eds., *Empire chrétien et Église aux IV^e et V^e siècles: intégration ou “concordat”? Le témoignage du Code théodosien* (Paris 2008).

⁶ C. Pharr, *The Theodosian Code and Novels and the Sirmondian Constitutions* (Princeton 1952).

from T alone. Herein lies the problem. Mommsen followed the folio order of Krüger's apograph of T (earlier views of T's ordering are listed on p. 31).⁷ Since the pages are often discontinuous and key title numerals are missing or incomplete, the sequence of the manuscript is uncertain, and by the time he embarked upon his own edition, Krüger had changed his mind, placing fol. 15 before fol. 13 (p. 57). Thus, whereas Mommsen's title 11 had no name, Krüger appropriately used for his own title 11 that of C.11.59 (*De omni agro deserto et quando steriles fertilibus imponuntur*), which Mommsen had used without reason for his title 15. Krüger then merged Mommsen's titles 15 (laws of the 360s) and 12 (laws from 409–434) into his own title 12, creating a logical chronological sequence (pp. 61–62).

Further, Mommsen's policy was to exclude Justinian Code material dating from the Theodosian Code time-period, which of necessity must have derived from it. Only where there was explicit independent evidence for the Theodosian Code material was Justinian material included, but in a separate box, usually only giving variants, but occasionally lengthy texts (e.g. *C.Th.* 3.30.3, 5.19.2). Krüger's approach was famously different, and he restored all relevant Justinian Code material into his edition, which forced him to address Theodosian structure more decisively. The fact that the two fascicles of his edition to appear covered all the incomplete books means that we have Krüger's reconstruction intact.⁸ For Book V, therefore, Jaillette's judgment is: "Au caractère conjectural des restitutions qu'avance Mommsen . . . s'oppose sans conteste la vigueur de l'édifice bâti par Krueger" (p. 60). It is a great boon that, although it is Mommsen's text which is translated, this edition includes reproductions of both the relevant folios of Krüger's Turin apograph (pp. 185–201) and his Book V edition (pp. 206–37). As Jaillette points out (p. 58), Krüger's edition is typographically very clear, distinguishing the three key constituent elements by printing the Theodosian text with greater line spacing than the *interpretationes*, and the restored Justinian texts in italics. The Mommsen edition marked out the *interpretationes* by means of a smaller font, although, perhaps oddly, the text printed here makes no such distinction.

⁷ P. Krüger, *Codicis Theodosiani Fragmenta Taurinensia* (Berlin 1880).

⁸ P. Krüger, *Codex Theodosianus*, fasc. 1 [*Liber I–VI* (Berlin 1923)] and fasc. 2 [*Liber VII–VIII* (Berlin 1926)]. The few suggestions for the later books are made in his article "Beiträge zum Codex Theodosianus," *ZSS (RA)*, 41 (1920), 1–14.

In addition to the fundamental question of the structure of Book V, Jaillette also covers issues of textual criticism, where Mommsen in particular was hesitant to emend the sometimes impenetrable Latin, often leaving his best suggestions in the *apparatus criticus* (pp. 65–70). Tim Barnes has recently favored a more bold approach to editorial emendation.⁹ Thus where Sirmondian 16 gives what should be the original reading “ne ingentis damni consideratio . . . negari faciat emptionem,” *C.Th.* 5.7.2, and indeed C.8.50.20, offer the impossible “quando enim” in place of the correct “ingentis.” If the compilers could not have written such Latin and this is the fault of textual corruption, an editor should correct (so Barnes). Mommsen, however, attributed difficulties to the varied sources and hurried compilation of the Code. Modern texts and translations of the two passages by the same authors, both here (pp. 78 and 322–23) and elsewhere,¹⁰ maintain the difference between the Code/Breviary and the Sirmondian readings. There is virtue, I think, in being cautious with such a difficult Latin text as that of the Code, which was not anyway that of the original constitutions.

Jaillette next deals with the formal aspects of the constitutions, such as their headings and subscripts, the style of their language, and the manner in which they are divided, distributed and edited within the Code (using, indeed, *C.Th.* 5.7.2 and *Sirm.* 16 as an example, pp.77–86). Particular attention is drawn to the many different types of errors and inconsistencies imported into headings and subscripts by the hurried collecting and editing process. Thus the subscript for *C.Th.* 5.7.2 records an issue in December 409. Comparison with *Sirm.* 16 suggests that a longer subscript has been misleadingly telescoped, so that correctly the text was issued in December 408 and received or posted up (at an unknown location) in 409 (pp. 97 and 327). Most of the detailed work on dating and subscripts in the translation is attributable to Roland Delmaire, the current doyen of such studies, whose work was also key for the two Rougé volumes.

The last section of the introduction examines the thematic content of the Book (pp. 103–80). Here, as Jaillette discusses, the apparently miscellaneous nature of the topics covered can be explained, since the Praetor’s Edict is no longer the organizing

⁹ See T. D. Barnes, “Foregrounding the Theodosian Code,” *J. Roman Archaeology*, 14 (2001), 671–85; also his review of Rougé’s *C.Th.* XVI in *J. Theological Stud.*, 57 (2006), 725–28.

¹⁰ Pharr (note 6), 108, 486; Rougé, *Code Théodosien, livres I–XV* (note 3), 86–87, 536–37.

principle as it was for Books II–IV, and subjects outside and beyond it are here gathered together in a manner influenced by earlier jurists dealing with this type of material. Thus the first title (5.1: *De legitimis hereditatibus*) deals with inheritance under Civil law and statute, as opposed to inheritance under praetorian rules covered in Book IV. The other topics concern issues of personal status and land, and finally custom. For all these themes, Jaillette gives both historical background and contemporary context. Discussing the status of *coloni*, Jaillette is sensibly cautious, noting the illusory nature of modern reconstitutions of the colonate (p. 143). He suggests that the laws reflect less a coherent imperial policy for a supposed system, rather than responses to the imaginative manner in which land-owners would use any legal twist for their own advantage (p. 148). Jaillette ends this section with a discussion of the Breviary *interpretationes* (pp. 175–80).

Mommsen's Latin text with apparatus and the facing French translation and notes occupy the second half of the book (pp. 253–445). This is the collaborative part of the volume. The Latin text is presented with the Breviary *interpretationes* (the latter not typographically distinguished), but without the comparative Justinian material as included in boxes by Mommsen. In only one instance does this lead to an especially perplexing result, when *C.Th.* 5.19.2 is left blank, with neither the Justinian Code nor *Lex Romana Burgundionum* quoted or translated. The principles of the translation, as expressed by Jaillette, are "le refus de l'interprétation hâtive qui sacrifierait la difficulté du texte à la clarté supposée de sa compréhension, la rigueur de la traduction minutieuse, la règle de la scrupuleuse fidélité au texte."¹¹ The translation is clear and flowing, but without trying to gloss over the genuinely obscure, particularly where the text is in doubt, with alternative translations sometimes offered. Take, for instance, the difficult final clause of *C.Th.* 5.1.3: *cum satis superque sufficiat adversus omnes legitimo gradu ad successionem venientes in hereditatibus matrum incolumes ac superstites optabili sorte genitoris successio liberorum*. This is rendered, taking *incolumes ac superstites* (surely *incolumis ac superstes*) with *successio liberorum*, as:

¹¹ P. Jaillette, "Le code théodosien: de sa promulgation à son entree de traduction française. Quelques observations," in Crogiez-Pétréquin, et al., eds. (note 4), 36.

car, grâce au sort heureux de leur père, la transmission de l'héritage aux enfants saufs et survivants suffit amplement vis-à-vis de tous ceux qui viennent à la succession selon leur rang statutaire.

But an alternative translation is given in the notes, if the text is read slightly differently, reading *incolumis ac superstitis* to go with *genitoris*:

Le droit de succession des enfants suffit amplement, et fait obstacle à tous ceux qui, selon leur rang statutaire, prétendraient à la succession d'une mère dont le père aurait la chance d'être sauf et survivant.

Even this probably does not exhaust the possibilities. Pharr identifies *genitoris* as the mother's father, but still takes the "survivors" as being the children,¹² while *incolumes ac superstites* could even refer to the statutory heirs. This passage well illustrates how the rhetorical style of imperial texts and the vagaries of manuscript transmission foster uncertainty over clarity in detail, although the core legal point (the children succeed against the grandfather) is not affected. The French translators, therefore, cannot but be interpreters, although, alive to the difficulties of the text, they offer alternatives where most needed.

There is a brief glossary of technical terms (pp. 447–50), but these are not left in Latin in the translation, so that we have, for instance, "Comte des largesses sacrées" (*C.Th.* 5.15.19), "Vicaire d'Asie" (*C.Th.* 5.19.1), "inquilins" and "colons" (*C.Th.* 5.18). French, however, is more fortunate than English, as its Romance vocabulary can more often approximate to Latin words, and French academic usage is comfortable with this style, whereas such Latinate choices in English may give an archaic flavor even more elevated and artificial than late antique rhetoric requires. Thus in the title of *C.Th.* 5.10, "sanguinolentos" becomes "sanguinolents," but the plainer "newborn" is preferable in English.¹³

One thing I missed was Mommsen's reporting for each text its manuscript authority. This is, of course, examined in detail in the introduction, with a useful summary table (pp. 52–53), but unlike the user of Pharr, who must have the Mommsen text before him, those who dip into this edition for a particular text or texts, need nothing else. Thus, additional information added to the text and translation, even if repeated from elsewhere in the volume, would

¹² Pharr (note 6), 104.

¹³ Pharr (note 6), 110.

be a help here to the user. However, it must be stressed that the simple fact of having text and translation together in the same volume and on facing pages is an immense advantage of the presentation in this edition.

In addition to the glossary, the volume is rounded off by a chronology, fitting the Book V constitutions into a wider historical framework (pp. 451–59), and lists of emperors and prefectures (pp. 460–62).¹⁴

My colleagues and I in the *Projet Volterra* team are very aware of the great challenges of dealing with such a difficult work as the Theodosian Code, grappling with its often baffling Latin text and trying to produce meaningful translations.¹⁵ In our case, this meant adapting Pharr, which, while easier perhaps than starting *ex novo*, still required many complex choices of interpretation.¹⁶ Therefore, we have great admiration for the achievement of the French team in producing this fine volume. It will do an extremely useful service for readers of French, by furnishing a translation of a text difficult in both its rhetoric and technicality, as well as providing an additional resource for those consulting Pharr, who wish for a second opinion. Jaillette's excellent introduction is an assured and detailed treatment of the vexed issue of the text's reconstruction, as of all other aspects of this Book. Indeed, it perhaps looks forward to the time when someone will feel able to try the daunting task of producing a new edition of the Code, and end the unresolved conflict of Mommsen and Krüger. This is, perhaps, unlikely, as in the last one hundred years there have been unfortunately few new manuscript sources discovered for the Code, and even those generally for the best attested books.¹⁷ Only one entirely new, if brief and fragmentary, Theo-

¹⁴ There are some slips and inconsistencies in reporting imperial reigns (e.g. Maxence 306–314). Serdica not Sirmium should be the capital of the Prefecture of Illyricum.

¹⁵ See the *Projet Volterra* website, hosted within that of the Department of History, University College London.

¹⁶ The Volterra translation only covers *C.Th.* texts from the period of the House of Constantine (337–363).

¹⁷ Thus *P. Oxy.* XV 1813 (Book VII), which appeared in time to be noted by Krüger in "Neue juristische Funde aus Ägypten," *ZSS (RA)*, 43 (1922), 560–63 and fasc. 2 of his *Codex Theodosianus* (note 8), 250–51. Also fragments of Books VI, X, and XI, long since known, were finally published in full by M. Caravale, "Frammenti del *Codex Theodosianus* conservati presso la Biblioteca dell'Accademia Nazionale dei Lincei e presso lo *Staatsarchiv* di Zurigo," in *Iuris Vincula: Studi in onore di Mario Talamanca*, 1 (Naples 2001), 433–87.

dosian Code text has been published (*P. Vindob.* L81),¹⁸ although firm assignment to Book V or any of the other incomplete books cannot be made. However that may be, this first volume is a superb start for the French project and the appearance of further volumes is to be eagerly anticipated.

¹⁸ F. Mitthof, "Neue Evidenz zur Verbreitung juristischer Fachliteratur im spätantiken Ägypten," in H.-A. Rupprecht, ed., *Symposium 2003: Vorträge zur griechischen und hellenistischen Rechtsgeschichte* (Vienna 2006), 415–22.