

Review

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Compiling the *Collatio Legum Mosaicarum et Romanarum* in Late Antiquity. By Robert M. Frakes. Oxford Studies in Roman Society and Law. Oxford: Oxford University Press, 2011. 384 pp. ISBN 978-0-19-958940-1.

The *Collatio Legum Mosaicarum et Romanarum* (the *Collatio*) has represented both a mystery and a challenge since the first manuscripts of the work were discovered in the sixteenth century. No one knows the identity of the Collator, the reasons why he might have compiled a work comparing biblical precepts with those of Roman law, or where or when this work, which could be classified as one of the first exercises in comparative law, was completed. Frakes, currently Professor and Chair of the Department of History at Clarion University (USA), decided to take up this challenge in 2000, as the author himself explains when recounting a conversation he had with Dieter Nörr while they were strolling round the Englischer Garten in Munich. Frakes worked on the project during successive stays at the Leopold Wenger Institute, supported by an Alexander von Humboldt grant, and since then has published a number of preliminary articles in major publications in several different fields. In line with the collection in which his work is published, the author wants it to be useful to medievalists, scholars of religion, and legal historians alike.

The work is divided into two clearly differentiated sections, the first devoted to the Collator and the second to the text of the *Collatio*. While they are separate, each of these sections supports the other in such a way that they cannot be understood individually. They form a coherent whole, justified by continual cross references. Therefore, one cannot say that this is an edition of the *Collatio* preceded by a study of its author any more than one can

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claim that it is a work on the Collator followed by an edition of the text. Rather, it is a complete study of the *Collatio Legum Mosaicarum et Romanarum*. The book begins with a brief introduction in which the author explains the *status quaestionis* of the relevant research, from Pithou's first edition (Paris 1573) to Mommsen (Berlin 1890), with reference to the principal published studies, particularly the key works by Volterra and Schulz. It is worth providing a detailed description of the contents of each section, since this work will be useful to anyone wishing to gain a closer understanding of the *Collatio* as well as anyone wishing to work with the text.

Part I, "The Collator," is divided into five chapters which tackle the main questions surrounding this mysterious author. 1. "Approaching the Collator's World," which also aims to help the non-specialist reader, provides the historical background that might justify the creation of a work comparing Jewish and Roman law. Developments in the modern study of late antiquity now enable us to gain a greater understanding of the organization of the state from Diocletian onwards, along with the legal and religious problems associated with the development of Christianity in the fourth century. The next four chapters bravely tackle the problems that have been associated with the Collator and his work since his text's discovery. I list them here to give a general overview of the book and I will offer my observations on their contents below: 2. Dating the Work. 3. The Collator's Sources. 4. The Collator's Method. 5. The Collator's Identity and Purpose.

Part II, "The Work (*Collatio Legum Mosaicarum et Romanarum*)," consists of three main sections and a series of tables and indices. First, Frakes offers his own edition of the complete text of the *Collatio*, taking as his starting point the Mommsen edition and the *stemma* from the manuscripts provided by Schulz. (There are three known manuscripts: Berlin, ninth century; Vercelli, tenth/eleventh century; and Vienna, ninth century.) He then compares the Mommsen edition with these three manuscripts, as well as with Joseph Scaliger's *Apograph* and earlier editions of the *Collatio*. The result is around a hundred tiny modifications to the until-now standard edition of Mommsen. The critical notes list Mommsen's own readings and the textual justification for Frakes's suggestions. There follows an English translation of the edition – the only one that existed previously was the translation by Rabbi Moses Hyamson of 1913 which was prepared from the Mommsen text – and a third section that Frakes titles "Commentary," which is worthy of more detailed analysis here. Longer than the text itself, Frakes's com-

mentary provides a point-by-point analysis of the paragraphs into which the sixteen chapters of the *Collatio* are divided, offering information that is intended to be of interest to both Romanist scholars and non-specialist readers. The commentary on each fragment may include a brief reference to the subject that the Collator wished to highlight in the passage in question. This is followed by information on the biblical texts cited, the extent to which they do or do not correspond to the different versions of the Bible, and the interpretation of each one, where applicable. Frakes comments on the Roman laws that appear in the text, who introduced them and when, how the text was transmitted, and provides a current bibliography relating to the text. He also offers information on the jurists whose texts are included in the *Collatio*, the current editions of these works and how some specific points are interpreted. A note at the beginning of each chapter also offers some standard bibliographical detail on relevant topics in the academic literature on Roman law. In short, for each chapter and fragment, Frakes collates and condenses the information that he offers in the first section when discussing the sources used by the Collator and describes the method that he suggests the Collator may have used to compile them.

Four tables follow in which Frakes provides an organized and classified list of the texts used by the Collator in his work. Table 1 lists the Collator's alleged sources (a series of works by Paulus, Ulpian, Papinian, Modestinus, and Gaius, along with texts originating from the *Codex Gregorianus*, the *Codex Hermogenianus* and contemporary laws). Table 2 lists the biblical quotations in the *Collatio* (fragments from Numbers, Exodus, Leviticus, and Deuteronomy). Table 3 contains a simultaneous list of citations of sources, in which the author provides cross-referenced columns showing the biblical and Roman texts cited by the Collator in each chapter. To facilitate a comparison with *Textstufen*, in Table 4, the author also offers variant surviving texts from the Collator's sources in *Corpus Iuris Civilis*.

Frakes then includes a highly detailed bibliography that provides the reader with comprehensive information on editions and translations of the *Collatio*, editions and translations of other primary sources cited in footnotes, secondary sources cited in footnotes, and commentary. This extremely useful information is very welcome. He ends the book with a selective index of names and topics, in which he attempts to avoid any repetition with the earlier bibliography and in which he offers a brief list of names of ancient and medieval authors and historical figures, along with titles of laws and works and a further short, selective index of

modern scholars. At the end there is an index of places which contains a list of the legal, literary, and biblical sources cited throughout the work.

In essence, Frakes argues that the *Collatio* is a complete and unified work, written in the western region of the Roman Empire during the last decade of the fourth century by a single author, probably a lawyer with a Christian upbringing who had been well educated in accordance with post-classical standards and who was working to a pre-defined plan.¹

Frakes treats the Collator and his work with respect, rebutting certain critics who suggest that the *Collatio* is a minor work and the creation of someone with little training who did not know what he was talking about. On the contrary, Frakes believes that the Collator had a very clear plan when he took on this work, that he knew what he wanted and had access to all the usual texts of the period, including the Bible and legal texts. This is precisely one of advantages of the *Collatio*: it offers the world vision of a non-elite writer. Frakes justifies maintaining the name *Collatio Legum Mosaicarum et Romanarum* on the basis that this is how it has been known and cited by researchers since the sixteenth century. This is despite the fact that surviving manuscripts refer to it as *Lex Dei quam Dominus praecepit ad Moysen*.

The *Collatio*'s sixteen chapters cover homicide, severe injury, cruelty towards slaves, adultery, *stuprum* (a term used by the Collator for male homosexuality), incest, theft, perjury, not admitting the testimony of family members, deposit, cattle rustling, arson, moving boundary markers, kidnapping, a combined chapter dealing with astrology, sorcery and Manichaeism, and, lastly, inheritance. The last two chapters have given rise to the most controversy, since they are difficult to reconcile with the others. Each chapter is laid out in the same way: it begins with a biblical text that is then compared with the Roman texts.

¹ Timothy Barnes has recently published another work on this subject which is highly critical of some of Frakes's conclusions: T. D. Barnes, "Leviticus, the Emperor Theodosius, and the Law of God: Three Prohibitions of Male Homosexuality," *RLT*, 8 (2012), 43–62. On page 61 he offers a summary of his thesis, of which I shall here only mention the basic areas in which he strongly disagrees with Frakes. For Barnes, this is not a unified work but a revision made in Rome, in or shortly after 390, of a text originally composed in the very early fourth century, and its author was not a Christian but a Jew. He is highly critical of the current name, *Collatio*, since maintaining the work's original name, *Lex Dei quam Dominus praecepit ad Moysen*, would facilitate its identification as a Jewish text.

Different scholars have dated the composition of the work to between the end of the third century and the sixth century. Schulz suggested the possibility that it was the creation of different compilers over the course of several decades during the fourth century. Frakes believes it to be the work of a single author and dates it precisely to the last decade of the fourth century, specifically between 392 and 395. An exhaustive and detailed analysis of many pieces of both external and internal evidence leads him convincingly to this conclusion, of which Barnes is nevertheless critical, arguing that the work is “a reworking in or shortly after 390 of a text originally composed in the very early fourth century.”² The date of the work, on which both authors agree though for different reasons, is an extremely important starting point if one is to assess the reason that might have driven the Collator to compose it at that time and the use to which it might have been put in a variety of arenas, particularly for religious purposes within the Western church, where it was very popular during the Middle Ages, as confirmed by the citation made by Archbishop Hincmar in a text dating from 860 (a citation that contains points that are important for the actual dating of the *Collatio*).

Frakes confirms this date by examining the sources used by the Collator: the texts from the five jurists that would shortly afterwards be included in the Law of Citations (C.Th. 1.4.3 of 426) in post-classical versions of their work (which the author analyses one by one): the *Codex Gregorianus* (7 citations), the *Codex Hermogenianus* (2 citations, one of them quite lengthy), and other contemporary laws. The biblical texts would have been taken from a version of the Old Latin Bible, a translation into Latin of the Hebrew Pentateuch, since Jerome’s translation was not yet complete.

Using these materials, the Collator worked methodically based on a pre-arranged plan. Frakes, following on from Mommesen, argues that this plan followed the second half of the Ten Commandments (Exodus 20:2–17; Deuteronomy 5:6–21), and in order to compare the text of the *Collatio* with the Decalogue, he lists them as follows: 6th: You shall not murder; 7th: You shall not commit adultery; 8th: You shall not steal; 9th: You shall not bear false witness against your neighbor; 10th: You shall not covet your neighbor’s house; you shall not covet your neighbor’s wife, or male or female slave, or ox, or donkey, or anything that belongs to your neighbor. This plan is consistent with chapters 1 to 14 of the *Collatio*, but it does not explain the contents of chap-

² Id., 61.

ters 15 (astrology, sorcery, and Manichaeism) and 16 (inheritance), for which a variety of explanations have been advanced. Frakes's hypothesis is based on his view that this is a unified work, and he attempts to justify these last two chapters on the basis of the nature of the texts used by the Collator and the Collator's own Christian upbringing which made him averse to heresy and superstition.

Frakes's imagining of the Collator working in the way that was usual at that time, without a desk, surrounded by open manuscripts from which he copied the texts that interested him is interesting, and he draws conclusions about the way that this organization of the Collator's working space might have influenced the texts he selected.

The final chapter of the first section is devoted to a study of something that has been a matter of great academic debate for centuries: the identity of the Collator and the purpose of his work is a mystery since there is no preface or introduction of any kind (at least, none has been preserved) that might explain matters. In essence, two possibilities are suggested here. Was he a Jewish author who wanted to show the Roman elite the similarities between Judaism and traditional Roman culture, at a time when it would seem that the authority of Jewish law was being questioned? Or was he a Christian jurist who wanted to convince pagan judges, lawyers, and civil servants that his religion had already advanced solutions that were similar to those of the Romans? But was he really a jurist? Many authors (such as Volterra (1930), Rutgers (2000) and, recently, Barnes (2012)) believe that the Collator was a Jew, and they support this with a variety of arguments. Others, such as Schulz (1936), have argued that he was a Christian, though this remains a minority position. Frakes also takes this position by arguing that the Collator was a Christian jurist and placing the work in the context of a dialogue between Christians and pagans at a time when relations between them were particularly delicate.

I will end this review with Frakes's own final remarks: "While it would be delightful to end this book by stating that finally the enigma of the Collator had now *really* been solved, when dealing with ancient and medieval texts we can only argue in shades of plausibility and probability."³ Nevertheless, this is a serious work which offers a lot of information and forces one to reconsider each argument. It is extremely useful for the systematic clarity of its division into chapters and the instrumental value of the

³ Page 151.

supporting commentaries and indices that accompany the quality edition of the text and its translation into English.
