

Frakes, Robert M.: *Compiling the Collatio Legum Mosaicarum et Romanarum in Late Antiquity*. Oxford: Oxford University Press 2011. ISBN: 978-0-19-958940-1; XIV, 368 S.

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„Compiling the *Collatio Legum Mosaicarum et Romanarum* in Latin Antiquity“ by Robert M. Frakes is the second volume of the series Oxford Studies in Roman Law and Society. The publication of this book is indicative of two trends in English-language scholarship: The first is the growth of interest in Roman law and legal sources both per se and as valuable sources for the study of the social and cultural history of the Roman Empire; the second is the unapologetic study of Late Antiquity. The convergence of these two trends has produced several new studies of Late Antique legal sources.¹ „Compiling the *Collatio*“ is not merely a monograph. The work is divided into two parts, the first of which consists of five chapters dedicated to the history of the *Collatio* and its author. The second part of the book consists of a Latin text, English translation, and commentary. The book is completed by source tables, a bibliography, subject index, index of modern authors, and an index locorum.

Chapter 1 is a brief introduction to the legal and religious history of the Later Roman Empire, from the reign of Diocletian to the traditional fall of the West in AD 476. The beginning of Chapter 2 is certainly memorable: the first explicit reference to the *Collatio* happens to derive from Hincmar of Reims' defence of Queen Theutberga from allegations of incestuous anal sex with her brother. With this salacious datum Frakes begins an account of the textual history of the *Collatio* – its journey from the Collator to Hincmar, who appears to have used ms B (p. 43). Internal evidence puts the *Collatio* later than 390, the date of a constitution of Theodosius I (Coll. 5,3 = Cod. Theod. 9,7,6) and earlier than AD 438 the *Codex Theodosianus* itself. Frakes narrows this to 392–395 (p. 59). The crucial constitution of Theodosius I, however, is isolated in a work that otherwise appears to

be early fourth-century in date (pp. 53–58): Coll. 5,3 strongly resembles a later interpolation. Frakes is willing to allow that the Collator had very limited access to imperial law of the fourth century (p. 58, 270), but the Collator would have been a very limited lawyer indeed if that were the case. In Chapter 3, Frakes reviews the juristic sources and the text of the Bible used by the Collator. It appears that the Collator used a version of *Vetus Latina*, perhaps only the Pentateuch, and relied heavily on Pseudo-Paul's „*Sententiae*“ and Ulpian's „*de officio proconsulis*“. Chapter 4 is dedicated to the Collator's methods. The titles of the *Collatio* are loosely (some very loosely) based on the second half of the Ten Commandments (pp. 99–111).

Who was the Collator? One might well wonder with Frakes (p. 143) why a Christian author would compare Mosaic and Roman law in a treatise apparently intended for pagan jurists. In Chapter 5 Frakes argues that the Collator was probably a Christian lawyer writing in the hopes of converting „sensitive pagan colleagues“. Though unconvinced, Frakes gives alternative interpretations a fair hearing, too (pp. 129–140). Particularly attractive, in my opinion, is the argument of Volterra's that the Collator was in fact a Jew writing in the early fourth century (rejecting Coll. 5,3 as interpolated). It seems to Frakes highly unlikely that a Jewish Collator would use the Christian Latin Bible (p. 134–135), but I see nothing inherently Christian about a copy of the Pentateuch in Latin. There were Roman Jews whose very epitaphs were in Latin, a trend which increased in Late Antiquity.² Obviously, the identity of the Collator is far from certain.

The second half of the book contains the text and commentary. Frakes' Latin text is based on Mommsen's, integrating numerous

¹ E.g. Simon Corcoran, *The Empire of the Tetrarchs. Imperial Pronouncements and Government, AD 284–324*, Oxford 1996; Jill Harries, *Law and Empire in Late Antiquity*, Cambridge 1999; John F. Matthews, *Laying Down the Law*, New Haven 2000; Caroline Humfress, *Orthodoxy and the Courts in Late Antiquity*, Oxford 2007; Serena Connolly, *Lives Behind the Laws. The World of the Codex Hermogenianus*, Bloomington 2010.

² See Leonard V. Rutgers, *The Jews in Late Ancient Rome*, Leiden 1995, p. 176–209.

improvements. Frakes discusses each reading in lucid footnotes rather than an austere apparatus criticus. He is somewhat more conservative than Mommsen, allowing the readings of the mss to stand where they are clear enough, although in a few cases correction seems preferable. For example, at 1,6,3 we read „*ex quo ferro percussit Epafroditus?*“ Mommsen emended „*ex quo*“ to „*ecquo*“: the sense must be „With what kind of iron implement did Epafroditus strike?“ (so Frakes), but the preposition „*ex*“ does not give it. Again, in 14,3,1, certain procurators of Caesar exercise jurisdiction „*quam Roma etiam in provinciis.*“ Mommsen read „*tam in provinciis quam Romae.*“ Clearly, at the very least „*Roma*“ should be in the locative case: „*Romae.*“ The reading of B „*quam rome tam in puintiis*“ gives „*quam Romae tam in provinciis,*“ which seems good enough.

The translation is clear and direct and always gives a fair approximation of the style of the original.³ A few passages could be improved: In 1,1,3, Frakes translates „*aut in miserit super eum aliquod vas*“ as „or throws an implement at him“ (again at 1,5,1). The Latin should mean „drops a pot/vessel on him from above“, as in the case of the man killed by a chamber-pot on Cnidos, adjudicated by Augustus.⁴ The adjective „*atrox*“ in the legal sense „grievous“ or „aggravated“ is the source of some funny translations: it is „frightful“ in 2,2,1; at 11,2,1 „*atroces pecorum abactores*“ become „cattle rustlers of hardened hearts“, evoking a kind of Late Antique Wild West. In 4,1,1, the Latin „*dotabit eam sibi in uxorem*“ should mean „he must give her a dowry to take her as his own wife“, which differs from „he must marry her himself without dowry“. In 10,4,1, the governor will force a party to restore property „*sive teneant sive dolo fecerint quominus possint restituere.*“ In a strange conflation, Frakes has the governor „compel them to give satisfaction to you [...] as to whether they might retain it or whether they, by fraud, have made it that they are unable to make restitution.“ The context requires the governor to force them to make satisfaction „whether they have (the items) in their possession or have fraudulently made it impossible to restore them.“⁵

The commentary elucidates textual and le-

gal questions and gives extensive literature relevant to the texts. A few things are lost in translation. In 2,5, the distinction between statute law and „honorary“ or praetorian law is lost in the baffling translation, „An action of injuries is either prescribed by law or by honour“. In 6,4,6–7, Diocletian and Maximian talk about the „preservation of *pudor*“ and about pardons „granted counter to *disciplina*“, but neither of these Latin terms is explained in the commentary (despite good intentions: p. 6). I had hoped for somewhat more commentary on the social and cultural significance of the passages, but, on the other hand, the coverage of the legal material is truly impressive. Clearly, Frakes faced difficult choices between widely divergent material and conflicting interests: all criticism aside, this is an excellent and extremely useful commentary.

It was no easy task to produce a stimulating monograph and edition of such a complicated text, which indeed serves several exacting masters. Compiling the *Collatio* is a valuable study of an understudied author that takes the difficult route of attempting to reach a wide scholarly and lay audience. The book is written with exceptional candor and love of learning. It is full of fascinating information: On one page, Frakes notes a German tragedy inspired by the life of Papinian (p. 76); on another, he considers whether the Collator might have used work tables to organize his various sources: writing tables are not in evidence until the ninth century (p. 122)! The *Collatio*, ultimately, is a surprisingly rich subject, and with „Compiling the *Collatio*“ Frakes has written a rich work.

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³Somewhat awkward: 1,10, „and there is not able to be any doubt“ (for e.g. „and it is beyond doubt“); 13,3,2, similarly „it is impossible to doubt.“ 1,8,1 reads „Your comrade acts more properly if he gives himself up to the governor of the province“ („*Frater vester rectius fecerit, si se praesidi provinciae obtulerit*“). This should be either „would have acted [...] had given“ or „will have acted [...] gives“; depending on how one interprets *fecerit* and *obtulerit*.

⁴IG XII 3.174 = SIG³ 780.

⁵Two more quibbles: Frakes translates *telo* in 1,6,3 as „a spear“ but the generic meaning of „weapon“ is needed. In 1,11,2, *acceptus* is translated as „treated“; „caught“ seems right (the passage concerns a man being tossed in a cloak).

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