

D. PENNA

# The Byzantine Imperial Acts to Venice, Pisa and Genoa, 10th–12th Centuries

A Comparative Legal Study



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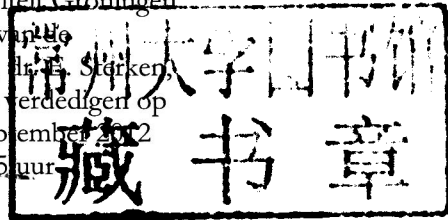
RIJKSUNIVERSITEIT GRONINGEN

The Byzantine Imperial Acts to  
Venice, Pisa and Genoa, 10th - 12th Centuries

A Comparative Legal Study

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On the book cover appears a map from the Genadius Library, American School of Classical Studies and a chrysobull of Alexios III Angelos, Patmos, inv. no 76 (Monastic Archive Documents from Mount Athos and Patmos, National Hellenic Research Foundation)

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The Byzantine Imperial Acts to  
Venice, Pisa and Genoa, 10th - 12th Centuries

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To my parents

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Groningen has become my Ithaca.

Σὰ βρεῖς στὸν πηγαῖμὸ γιὰ τὴν Ἰθάκη,  
νὰ εὐχέσαι νᾶναι μακρὺς ὁ δρόμος,  
γεμάτος περιπέτειες, γεμάτος γνώσεις.  
Τοὺς Λαιστρυγόνες καὶ τοὺς Κύκλωπας,  
τὸν θυμωμένο Ποσειδῶνα μὴ φοβάσαι,  
τέτοια στὸν δρόμο σου ποτὲ σου δὲν θὰ βρεῖς,  
ἂν μὲν ἡ σκέψις σου ὕψηλὴ, ἂν ἐκλεκτὴ  
συγκίνησις τὸ πνεῦμα καὶ τὸ σῶμα σου ἀγγίζει.  
[...]  
Ἡ Ἰθάκη σ’ ἔδωσε τ’ ὥραῖο ταξίδι.  
Χωρὶς αὐτὴν δὲν θ᾿ ἄβγαίνεις στὸν δρόμο.

As you set out on your journey to Ithaca,  
hope that the road is a long one,  
full of adventures, full of knowledge.  
The Laestrygonians and the Cyclops,  
the angry Poseidon do not fear  
such, on your way, you will never find  
if your thoughts remain lofty, if a fine  
emotion touches your spirit and your body.  
[...]  
Ithaca gave you the beautiful journey.  
Without her you’d not have set upon the  
road.

From the poem *Ithaca* by Constantine P. Cavafy (1911)

“...τοιούτον γὰρ τὸ Λατίνων ἅπαν γένος ἐρασιχρημάτων  
τε καὶ ὀβολοῦ ἑνὸς πιπράσκειν εἰωθὸς καὶ αὐτὰ δὴ τὰ  
φίλτατα...”

“...because this whole nation of the Latins is very fond  
of money and quite accustomed to selling even what is  
dearest to them for one penny...”

Anna Komnene (1083-1153/54), *Alexias*, 6,6,4



## ABBREVIATIONS<sup>1</sup>

AJC	Bluhme and Kearly, Annotated Justinian Code
B.	Scheltema / Holwerda / van der Wal
	Basilicorum libri LX
BS	B., Series B: Scholia
BT	B., Series A: Textus
Byz.For.	Byzantinische Forschungen
BZ	Byzantinische Zeitschrift
Cod. Dipl. Genova	Codice Diplomatico Genova
C.	Codex Justinianus
D.	Digest
CSHB	Corpus scriptorum historiae byzantinae
DOP	Dumbarton Oaks Papers
EHB	The Economic History of Byzantium
Eis.	Eisagoge
FM	Fontes Minores
JGR	Ius Graecoromanum
MM	Miklosich and Müller, Acta Diplomata
Nov.	Novel
ODB	The Oxford Dictionary of Byzantium
Reg.	Regesten number, Dölger
SG	Subseciva Groningana
TTh	Tafel and Thomas, Urkunden

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<sup>1</sup> For complete citations, see Bibliography.

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## CHAPTER I

### 1. Introduction

Many acts from the 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> centuries have been preserved that document the relations between the Eastern Roman Empire, also known as Byzantium, and the Italian city-states of Venice, Pisa and Genoa. These Italian maritime republics managed to gain commercial and financial privileges from the Byzantine emperors and thus played an important role in the Mediterranean world, one that would expand in the later Middle Ages. While the Byzantine imperial acts granted to these three Italian cities have been studied in the past in relation to their commercial context, they have not, until now, been studied systematically in relation to their legal content. This book attempts to examine the Byzantine imperial acts directed at the city-republics of Venice, Pisa and Genoa in the 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> centuries and investigate the legal issues arising from them. This research begins with the year 992, when the first preserved privilege act was issued in favour of Venice,<sup>2</sup> and ends with the year 1204, a boundary mark in the history of Byzantium since the Byzantine Empire then fell to the Latins who sacked Constantinople.<sup>3</sup>

It is well known that by these acts the Byzantine emperors granted commercial privileges to these Italian cities, but the question arises as to whether the emperors also granted legal privileges by these acts; and if so, whether some Italian cities were more privileged than others in respect of legal matters. There is no doubt that commercial relations were strong between Byzantium and the Italian city-states and there is also evidence of cultural interaction between both parties, but little is known about the legal background of these relations. In other words, what is the legal information that these acts provide and which is the applicable law? Did both their territories have law in common and if so, of what does it consist? Is Roman law assumed to be binding in these acts as part of that law that was common, and if so, in which cases and what are the examples given? Investigating this final question, namely whether there was already a common legal understanding in Europe before the 11<sup>th</sup> century and how it was actually formed, may contribute to an explanation of why Justinian's law became prominent in the West in the 11<sup>th</sup> century and how it was applied in different parts of Europe.

It is necessary here to briefly sketch out the development of Roman law up to the 11<sup>th</sup> century in the Eastern and Western parts of Europe. In the 3<sup>rd</sup> century, the emperor Diocletian divided the Roman Empire into an Eastern and a Western part. The Eastern Roman Empire, what is known today as

---

<sup>2</sup> Reg. 781, see chapter II,1.

<sup>3</sup> From 1204 to 1261 most of the Byzantine Empire was divided among rulers from Western Europe, the so-called Latin rulers, and we speak of a Latin Empire as existing in that time. However, during the period 1204-1261 Greek successor states did exist. See *ODB*, vol. 1, pp. 356-58.

Byzantium, lasted for approximately 1000 years and covered most of today's South-Eastern part of Europe. A boundary mark in the history of Byzantium was the legislation of emperor Justinian in the 6<sup>th</sup> century: under his reign the codification of Roman law was achieved, which was to remain the legislative bedrock of the Byzantine Empire and lasted even after its fall. The continuity of Roman law was therefore firmly established for the Eastern part of Europe. This legislation had yet to become the basis for many European legal texts when it was 'rediscovered' in the 11<sup>th</sup> century in Italy and subsequently spread through Western Europe as an authoritative source of rules.<sup>4</sup> Therefore, examining the legal information of the Byzantine acts from the 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup> centuries that are related to Italy will enable us to determine to what extent the ground had already been prepared for this legislation by the increasing role of the Byzantine-Italian relations and the part played by Roman law in them.

This book is divided into five chapters, as follows. The first chapter includes general information about the legal traditions of Venice, Pisa and Genoa up to 1204 and some general remarks about the examined acts. In the second, third and fourth chapters, the acts directed at Venice, Pisa and Genoa have been examined in detail and in chronological order with regard to the legal issues that arise in them. In the fifth chapter however, a comparative analysis of common legal issues in these acts has been made. Such issues deal with grants of immovable property, justice, maritime law, shipwreck and salvage provisions and finally, oaths. These legal issues are compared with other Byzantine or Western sources. If, for example, a grant of immovable property appears in an act of Venice, it is not only described in full in chapter II, but is compared with other grants of immovable property that I have come across in the Byzantine acts for Pisa and Genoa in chapter V. With regard to granting immovable property especially, the legal terminology is problematic; therefore I will use the expressions "grants of immovable property" and "granting immovable property". In chapter V,2 I will explain what is actually being granted to the Italians in respect of the immovable properties in Constantinople. Should a legal issue arise in only one act, it is thoroughly examined in that place.<sup>5</sup> In the appendix, the legal part of the chrysobull of Alexios III Angelos in 1198<sup>6</sup> has been translated because this is the only chrysobull which includes such detailed legal provisions. Finally, in the appendix a table with an overview of all the Byzantine imperial acts that have been examined has been made, including the year in which the act was issued, the name of the emperor and the registration number assigned by F. Dölger.<sup>7</sup>

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<sup>4</sup> On the rediscovery of Roman law in the Middle Ages and about the role of Roman law in general in Europe, see, for example, Koschaker, *Europa und das Römische Recht*, Berman, *Law and Revolution*; Stein, *Roman Law* and Caenegem, *Historical Introduction*.

<sup>5</sup> For example, the deposit in the chrysobull of Isaac II Angelos in 1193 (Reg. 1616), see chapter IV,6.

<sup>6</sup> Reg. 1647.

<sup>7</sup> Dölger, *Regesten*.



Some preliminary remarks regarding the legal systems in the Middle Ages in Europe and the differences between East and West also seem necessary here.<sup>8</sup> A first clear difference between East and West was the continuity of Roman law in Byzantium. Byzantium was never isolated from Roman law.<sup>9</sup> As is well known, most of the legislation of Justinian was issued in Latin, although his empire was mostly inhabited by a Greek-speaking population.<sup>10</sup> It was therefore difficult for his legislation to be understood and applied, and hence shortly after its promulgation, texts appeared in Greek that translated parts of that codification, commented upon or summarized it. This actually marks the beginning of Byzantine law.<sup>11</sup> Whereas the continuity of Roman law in the Eastern world was never in question, in the Western part, there are some doubts about this continuity between the 6<sup>th</sup> and 11<sup>th</sup> centuries. During that period, the so-called barbarian codes, in addition to local and customary law were mainly applied in the Western part of Europe.<sup>12</sup> These barbarian codes included the so-called ‘Roman vulgar law’ which did not reflect the Roman law of the classical period but that of the 5<sup>th</sup> century.<sup>13</sup> In this period, the personal principle prevailed, which meant that the Germanic tribes applied Germanic law, which was mainly customary law, only to their Germanic subjects, whereas ‘Roman vulgar law’ was applied to their Roman subjects.<sup>14</sup> Gradually however, as populations mixed, the territorial principle was applied, which meant that people living in a certain area were subject to the same law.<sup>15</sup> Moreover from the 8<sup>th</sup> century on, systems of feudal law began to develop in the West that were based on a personal bond between a lord and a vassal and were therefore important in the law of real property.<sup>16</sup>

The diverse development of Roman law in East and West was not the only difference between the Eastern and Western world. A second important difference was without doubt the language, which divided the worlds into East, where Greek was dominant, and West, where Latin was used. Given the differences between East and West with regard to their legal tradition and language, the main question is how the two parties in our documents could

<sup>8</sup> The standard book on Roman law in the Middle Ages remains Savigny's *Geschichte*, which has also been translated into English by Cathcart. On this topic, see also, for example, Cortese, *Il diritto*, who provides further bibliography, Calasso, *Medio Evo*, Paradisi, *Storia*. About Italian law, see, for example, Leicht, *Storia* and Besta's works (see bibliography provided by Cortese cit. above).

<sup>9</sup> See Stolte, *Byzantine Law*, pp. 111-126.

<sup>10</sup> The reason that Justinian issued his codification in Latin is related to his attempt to restore the *imperium Romanum*. See Troianos, *Piges*, p. 40-43, Lokin, *Prota*, p. 1-2 and Mousourakis, *Roman Law*, p. 423.

<sup>11</sup> Stolte, *Byzantine Law*, especially pp. 115-116.

<sup>12</sup> See Hazeltine, *Roman Law and Canon Law*, pp. 721ff.

<sup>13</sup> See Stein, *Roman Law*, p. 33.

<sup>14</sup> Stein, *Roman Law*, p. 39; Caenegem, *Historical Introduction*, pp. 17ff.

<sup>15</sup> Stein, *Roman Law*, p. 39.

<sup>16</sup> Caenegem, *Historical Introduction*, p. 20. On the term of feudalism, see Ganshof, *Feudalism*.