

EdinLR Vol 14 pp 172-173
DOI: 10.3366/E1364980909001176

Lorena Atzeri, GESTA SENATUS ROMANI DE THEODOSIANO PUBLICANDO: IL CODICE TEODOSIANO E LA SUA DIFFUSIONE UFFICIALE IN OCCIDENTE

Berlin: Duncker und Humblot (www.duncker-humblot.de), Freiburger rechtsgeschichtliche Abhandlungen, neue Folge, Band 58, 2008. 359 pp. ISBN 9783428120697. €79.80.

The genesis of Dr Atzeri's important study lies in her doctoral thesis, a product of La Sapienza in Rome that also benefited particularly from a year's research at the Institut für Rechtsgeschichte at Freiburg, in whose series it has appeared. It is the third major monograph on the Theodosian Code to appear this decade, though, in place of the more global treatments of John Matthews' *Laying Down the Law* (2000) and Boudewijn Sirks' *The Theodosian Code: A Study* (2007), Atzeri focuses in depth on one feature: the proceedings of the senate (*gesta senatus*), in which the presentation of the Code to the senate at Rome is famously greeted by a long series of acclamations, and an associated imperial constitution (the so-called *C. de constitutionariis*) that is found uniquely in a manuscript of the Ambrosian Library in Milan. These texts, along with Theodosius II's *Novel 1*, which is transmitted elsewhere but is also present in this manuscript, together provide complementary information on the process of publication and dissemination of the Code in the eastern and western halves of the Empire. Ever since their discovery in 1820 the *gesta* have been included by editors of the Code as prefatory material and as such provide an engaging introduction to the circumstances of the Code's publication. As Atzeri emphasises, however, the resemblance of these editions in this respect to the original official version of the Code is not to be taken for granted. For the Ambrosian version is a curious hybrid, the scribe (or his exemplar) having grafted the *gesta senatus* and a copy of *NTh 1* on to a copy not of the full Theodosian Code but of its Visigothic Breviary, albeit one augmented with material reintroduced from a full Code.

Atzeri's study comprises two distinct parts. The first chapter examines the testimony of the Ambrosian manuscript (C 29 P[ars] Inf[erior]). This represents a major contribution in itself, since Atzeri provides by far the most detailed codicological and palaeographical description of the artefact so far published, correcting and improving on her predecessors in numerous respects. The codex is a composite, the Theodosian material being found in the latter part, along with a copy of Justinian's *Institutes*. This legal miscellany was joined at some point to a copy of various Ciceronian speeches, written in Italy in the ninth or tenth century. In contrast the legal section is somewhat later in date, written in a Caroline minuscule of the second half of the twelfth century for which Atzeri favours an origin in southern France. Having established these facts, she moves on to analyse the content and significance of the *gesta* in the remainder of the book.

As observed by previous commentators, the *gesta* are an edited version of the proceedings of the meeting that took place at the urban mansion of Anicius Acilius Glabrio Faustus, on perhaps 25 May rather than 25 December 438, if we adopt Atzeri's attractive emendation of *VIII k. Ian.* to *VIII k. Iun.* (Atzeri incidentally does herself a disservice by printing as an appendix Mommsen's text unchanged, without even his apparatus, let alone her various proposed emendations.) Atzeri's re-dating puts the presentation ceremony in Rome only six, rather than twelve, months after the launch ceremony in Constantinople, where Faustus, newly appointed as praetorian prefect of Italy, had received his copy, and allows a more comfortable six months before the kalends of January from which the Code was to become exclusively authoritative in the east according to *NTh 1* (assuming, as most commentators do, that this

looks forward to 1 January 439). Despite the obviously ritual aspects of the acclamations, Atzeri rejects the view that the ceremony in Rome was empty display. She argues that its purpose was to mark the formal achievement of the mission entrusted to Faustus, that of *directio* (delivery) of the Code to the west, and the beginning of the second phase, that of its *editio* (diffusion). Given the safeguards put in place to ensure the integrity of the text – the grant to the *constitutionarii* of exclusive licence to produce official copies, for any faults in which they are to be held responsible, and the specific directives on copying enshrined amongst the senators' acclamations – Atzeri is sceptical of Sirks' proposal that the Code did not acquire exclusive force in the west until 448, when Valentinian III promulgated Theodosius II's *Novel* collection (including *NTh* 1). While Valentinian, in the *C. de constitutionariis*, credits Theodosius with the general regulations for copying the Code, Atzeri attributes the establishment of the office of the *constitutionarii* to the inspiration of Faustus. This is all the more plausible given the fact that the *gesta* of 438 themselves clearly served as documentary support submitted with a later request on behalf of the *constitutionarii* by Faustus, once again serving as praetorian prefect, to which the transmitted imperial constitution of 443 responds.

The dependency of the transmission of the *gesta* in their current form upon their being linked to the constitution of 443, and the centrality of Faustus to both, are perhaps insufficiently emphasised. As for the enigmatic *constitutionarii*, Atzeri proposes that they were attached to the praetorian prefecture (Mommesen favoured the urban prefecture) and rightly stresses that Valentinian's constitution reaffirmed their exclusive franchise to sell copies of the Code. In addition it might be observed that their title strongly suggests a pre-existing operation selling authenticated copies of imperial rescripts, and their attachment normally to the imperial court, which was at Ravenna in 438. The transfer of the court to Rome, after 440, may be the background to the *C. de constitutionariis*, since it hints at the sale of rival (illegal) copies by the officials of an office most plausibly identified as the urban prefecture. The return to office of their patron, Faustus, afforded the opportunity of obtaining redress. It is natural that *gesta* and constitution might then be copied subsequently into official copies as a certificate of authenticity. Although Atzeri convincingly demonstrates that the frontal placement of *NTh* 1 in the Ambrosianus is not an original feature of either the Code or Breviary, she only cautiously hints at the possibility that the *gesta* might also have been so displaced. However, it seems quite plausible that where they appeared, they did so originally as an appendix rather than as a preface. Thanks to the recognition of their potential to serve as a historical preface by the designer of the Ambrosianus, or its archetype, the *gesta* have come to occupy pride of place in modern editions; now thanks to Atzeri's attentive and perceptive study their full complexity can be readily appreciated.

Benet Salway
University College, London

EdinLR Vol 14 pp 173-174

DOI: 10.3366/E1364980909001188

Caroline Humfress, ORTHODOXY AND THE COURTS IN LATE ANTIQUITY

Oxford: Oxford University Press (www.oup.com), 2007. xiv + 344 pp. ISBN 9780198208419. £71.

Caroline Humfress' excellent new book is concerned with forensic argumentation in late Antiquity. It is divided into three sections, each containing a number of chapters organised around a central theme. The first section explores the subject of forensic practitioners and the development of late Roman law and contains a number of searching conclusions regarding