

Odd Topics, Old Methods and the Cradle of the *Ius Commune*

Byzantine Law and the Italian City-States

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1. Introduction to the subject and method

The roots of European common private law lie in the medieval *ius commune*. It is generally accepted that the medieval *ius commune* began to be formed in Bologna in the late eleventh century, when Roman law was ‘rediscovered’ and acquired a second life. From this period many documents have been preserved concerning the Eastern Roman empire – also known as Byzantium¹ – and the Italian maritime states of Venice, Pisa and Genoa. In particular, in the tenth, eleventh and twelfth centuries, the Byzantine Emperors promulgated acts in favour of these three maritime cities granting them commercial and financial privileges. These acts were promulgated in the form of a privilege act, known as a *chrysobull* (golden bull), but were in reality treaties between Byzantium on the one hand and the Italian cities on the other.² For my dissertation thesis I studied these Byzantine documents from a legal perspective, analysed their legal issues and compared them with Byzantine and Western sources. A few words must be said on why and how this research was set up, what the research questions were and which methods were used.

Nowadays, a key element in the European structure is without doubt the common legal mechanism that is being formed; the European legislator has to face a challenge in formatting laws which will apply to so many countries and so many different legal systems. But was there a common legal route behind today’s Europe? What is the information we obtain from acts of that time regarding the legal relations between the Western and Eastern parts of Europe? Moreover, how were these acts formed and in which language? What was the procedure followed? My dissertation attempted to investigate these questions regarding the Mediterranean part of Europe in the Middle Ages.

The research was divided into two main parts which reflect the twofold method that was followed. In the first part all Byzantine documents referring to Venice, Pisa and Genoa were studied and analysed in chronological order from a legal point of view. These documents consisted not only of the privilege acts of the Byzantine Emperors in favour of the Italian cities, but also, for example, of imperial letters in which information was given about the negotiations which took place beforehand. These Byzantine documents formed excellent material for answering the research questions for the following reasons: they referred to practical legal issues

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1 Byzantium (or the Byzantine Empire) is a conventional name, used for the first time in the sixteenth century to describe a medieval Empire that covered most of the south-eastern part of Europe. For an introduction to the history of Byzantium, see for example, J. Herrin, *Byzantium, The Surprising Life of a Medieval Empire* (2007), A. Cameron, *The Byzantines* (2006) and C. Mango (ed.), *The Oxford History of Byzantium* (2002).

2 The word *chrysobull* (χρυσόβουλλον) derives from the Greek words ‘χρυσός’ (gold) and ‘βούλλα’ (seal) and it was used for documents bearing the Emperor’s gold bulla. On the use of the chrysobull as an act of foreign policy, see F. Dölger & J. Karayannopoulos, *Byzantinische Urkundenlehre. Erster Abschnitt: Die Kaiserurkunden* (1968), p. 25 and pp. 94 et seq. For the Byzantine documents concerning the Italian cities in particular, see also W. Heinemeyer, ‘Die Verträge zwischen dem Oströmischen Reiche und den italienischen Städten Genua, Pisa und Venedig vom 10. bis 12. Jahrhundert’, (1957) 3 *Archiv für Diplomatik, Schriftgeschichte Siegel- und Wappenkunde*, pp. 79-161.

and gave information not only on the actual regulation of the legal issues but also on the ‘making of’ the legal solutions chosen. Moreover, they were promulgated within a period that was crucial for the ‘rediscovery’ of Roman law in the West and, finally, they offered a link between the Eastern and the Western parts of Europe.

In the second part of the research a comparative analysis of the common legal issues was made with other Byzantine and Western sources of that period. With regard to Byzantine sources, I had a preference for sources that reflected legal practice because such sources could give more information on the actual applicable law. For example, comparisons were made with Byzantine imperial acts directed at monasteries of that time in order to investigate similarities and differences in the procedures followed and the terminology used. Regarding the Western sources, comparisons were mainly made with Crusader charters for the following reason. The eleventh and twelfth centuries were also the time of the Crusades and the newly established Crusader states had good contacts with Venice, Pisa and Genoa. The three Italian cities were granted important privileges by the Crusader leaders. In that respect, the privilege charters of the Crusader leaders shared similarities with the privilege acts of the Byzantine Emperors. Legal issues that were regulated in the privilege charters of the Crusader leaders were also regulated in the Byzantine imperial privileges granted to the Italian cities.³

There are two methodological issues which I would like to discuss here and which are related to this research. The first is the preference for an ‘odd’ topic, namely Byzantine law. It is true that Byzantine law is somehow an ‘odd’ and ‘remote’ subject. In general, Byzantium remains obscure as a topic for study despite the fact that Byzantium was a medieval Empire that covered a large part of south-eastern Europe for a very long time – the Byzantine Empire lasted rather more than a thousand years.⁴ How prejudiced people are about Byzantium is expressed in the common use of the word ‘Byzantine’ which is usually connected to something bureaucratic or difficult to understand or corrupt.⁵ Byzantium had also developed political, cultural and legal ties with its neighbours in the West. Byzantine influence and heritage did not limit itself to south-eastern Europe but extended to more areas and to many fields even after the fall of Constantinople to the Ottomans in 1453. When it comes to Byzantine law we seem to forget that the Emperor Justinian, who was responsible for the codification of Roman law in the sixth century and has been characterised as ‘the legislator of Europe’ was, in fact a Byzantine Emperor.

A few explanatory remarks should be made at this point on the rise of Byzantine law and its link with the Western legal tradition. As mentioned above, in the sixth century the Byzantine Emperor Justinian promulgated his legislation.⁶ Most of his legislation was promulgated in Latin and that was problematic for the inhabitants of his Empire because Greek was the dominant language in Byzantium. That is why, shortly after the promulgation of his legislation, Greek summaries and commentaries appeared of his legislation.⁷ The transition from Latin into Greek in this period gave birth to Byzantine law because the translation of a text inevitably leads to the interpreting of it.⁸ Justinian’s codification of Roman law remained the bedrock of the legislation of the Byzantine Empire until the end of that Empire and even afterwards. But Justinian’s legislation proved to be influential for the Western part of Europe as well. Around the end of the eleventh century jurists in Bologna began to read and study Justinian’s legislation. Because his legislation was in Latin, people were able to read it and understand it in medieval Western Europe. Through the renewed study of Justinian’s legislation which came to be known as the *Corpus Iuris Civilis* (the body of civil law) Roman law was gradually spread throughout the Western part of Europe and later became the basis for many European legislative texts. Every book on European legal history includes Justinian and refers to his

3 See J. Praver, *Crusader Institutions* (1980), p. 244 and A.E. Laiou, ‘Byzantine trade’, in A.E. Laiou & R.P. Mottahedeh, *The Crusades from the perspective of Byzantium and the Muslim world* (2001), pp. 157-192 (especially pp. 180-87 with particular reference to pp. 186-87).

4 The majority of scholars place the beginning of the Byzantine Empire in 324 (or 330) when Constantine I founded the city of Constantinople. In 1453 the Byzantine capital fell to the Ottomans and this marks the end of the Byzantine Empire.

5 A. Cameron, *The Byzantines* (2006), pp. 3-5. See also A. Cameron, *Byzantine Matters* (2014), especially the first chapter entitled ‘Absence’.

6 On parts of Justinian’s legislation, see, for example, G. Mousourakis, *Roman Law and the Origins of the Civil Law tradition* (2015), pp. 193-211.

7 The *antecessors*, i.e. the law professors at the time of Justinian, tackled the language problem by developing a particular method for explaining the legal material. See H.J. Scheltema, *L’enseignement de droit des antécédents* (1970) (repr. in N. van der Wal et al. (eds.), *H.J. Scheltema Opera Minora ad iuris historiam pertinentia* (2004), A, 3, pp. 58-110).

8 On the genesis of Byzantine law, see B.H. Stolte, ‘Is Byzantine Law Roman Law?’, (2003-2004) 2 *Acta Byzantina Fennica*, pp. 111-126 and more recently B.H. Stolte, ‘The Law of New Rome: Byzantine Law (Chapter 17)’, in D. Johnston (ed.), *The Cambridge Companion to Roman Law* (2015), Chapter DOI: <<https://doi.org/10.1017/CCO9781139034401.023>>, pp. 355-373.

impressive legislation and the influence it had on the development of European private law. Yet, hardly any book on European legal history mentions or explains what Byzantine law was despite the fact that Byzantine law was 'born' at the time of Justinian or literally *because* of Justinian. When it comes to the study and editions of legal sources, the comparison between the editions and the progress of the study of Western legal sources with the Byzantine ones is again poor for the Byzantine field. It suffices to mention that we still do not have updated critical editions and translations of basic Byzantine legal sources. In short, Byzantine law seems a strange topic to study. From a methodological point of view there seems to be a risk in choosing an 'odd' or – at first sight – 'remote' topic in legal research, but I will return to this issue further in the third part of this paper, where I will evaluate the chosen method.

The second methodological issue refers to the material used. For my research I studied Byzantine imperial documents directed to the Italian cities which were to be found in critical editions, analysed them and compared them with other Byzantine sources and Western ones. Regarding the method, I preferred to use not only legal documents or documents that regulated the actual legal issues between both sides, but also material that could give information on the actual process of regulating these legal issues.⁹ This variety of sources created a better chance to understand how and why both sides reached a particular legal solution. It also helped in the studying of the development of the encountered legal institutions and issues. In short, the material of my research consisted of the study, analysis and comparison of medieval documents. This method could be described as 'old-fashioned', 'traditional' or even 'dull' by some. In the last part of this paper, which deals with the evaluation of this method, I will return to this issue and refer to my own experience of using an 'old-fashioned' method.

As a preliminary remark let me point out that the importance of reading the sources as a whole on your own is self-evident and cannot be overestimated. Most of the documents of my research project had been studied in the past in regard to the commercial privileges they included and the financial and political consequences they had for the Byzantine Empire and the Italian cities. However, these documents had not been studied from a legal historian's point of view. Studying these documents afresh from a legal point of view led to concrete conclusions on questions related to the legal status of the Italians within the Byzantine empire, the applicable law in these acts, the legal interaction between Byzantium and the Italians and in general to questions related to legal history. Because most of these acts were promulgated in the period in which Roman law was 'rediscovered' in the West and the *ius commune* began to be formed, the legal questions become even more interesting especially as this 'rediscovery' of Roman law began in Italy.

2. Applying the method: examples of legal interaction between the Byzantine and Western sides

All Byzantine documents, including the privilege acts and imperial letters, directed to the Italian cities were issued in Greek and were translated into Latin by Byzantine officials so that the Italians could understand what was in the document. A copy of the original Greek act and its Latin translation was kept in Byzantine archives and another copy of the original Greek and its Latin translation was given to the Italians to take home. Obviously, both documents served also as proof of what the Italians had agreed with the Byzantine Emperor and what the privileges were which they had received. This information explains why these documents have survived in Italian archives in Greek and Latin.¹⁰ Unfortunately no Byzantine archive has been preserved in Istanbul. There are critical editions of these Byzantine documents but there are no translations. In the following subsections I will briefly highlight some of the legal issues that I encountered in my material.

9 See the observations of R. Sacco, 'A Dynamic Approach to Comparative Law', (1991) 39 *American Journal of Comparative Law*, no. 1, pp. 1-34 (Part I) and no. 2, pp. 343-401 (Part II). See also J. Gordley, 'Comparative Law and Legal History', in M. Reimann & R. Zimmermann (eds.), *The Oxford Handbook of Comparative Law* (2006), online publication date Sep. 2012, <DOI:10.1093/oxfordhb/9780199296064.013.0017>, pp. 753-73, particularly pp. 761-63.

10 Unfortunately not all Byzantine imperial documents addressed to Italian cities have survived in both Greek and Latin. For example, all Byzantine imperial acts of this period (tenth-twelfth centuries) addressed to Venice have been preserved only in Latin versions, all of which are copies of the original Latin translation. Some documents have not been preserved at all and we only have indirect references to them in other sources.

2.1 Justice

It is clear from the examined Byzantine documents that a form of legal co-operation gradually developed between the Byzantines and the Italians. We encounter information about jurisdiction issues and competent courts. Italians were judged in some cases in Byzantine courts which proves that Italians came in contact with the Byzantine judicial system. The most interesting clause was undoubtedly the one referring to the jurisdiction which was granted to the Venetian judge in Constantinople. In a *chrysobull* promulgated by Emperor Alexios III Angelos in 1198 it was ordered that the Venetian representative in the Byzantine capital was allowed to judge not only cases that solely concerned Venetians but also some mixed cases, namely cases that arose between Byzantines and Venetians. The document offers detailed information on the jurisdiction of this Venetian judge. His jurisdiction covered some civil cases and one case of criminal law. This information shows that the Byzantines recognized the jurisdiction of a foreign judge within their own capital and that they came in contact with the Western administration of justice. Comparison with the Crusader charters shows that the Crusader leaders had allowed jurisdiction within the Crusader states to judges of all three Italian city-republics.

2.2 Grants of immovable property

One of the legal issues regulated in the examined documents was the granting of immovable property in Constantinople by the Byzantine Emperor to the Italians. All three Italian cities received such grants. The practice of granting immovable properties to foreigners in the Byzantine capital was born out of the need for foreign merchants to have lodging places and landing areas, where they could safeguard their merchandise and transact their businesses.¹¹ These grants were described in the examined Byzantine acts as ‘donations’ and it was repeatedly mentioned that the Italians had the *possessio*, i.e. possession (‘νομή’ or/and ‘κατοχή’) of this property.¹² The legal question arose as to whether or not the Italians actually acquired the right of full ownership of this property. In trying to answer this question a comparison was made with other Byzantine documents of this period, mainly monastic documents and a focus was given to the terminology used regarding grants of immovable property. In the Byzantine imperial acts concerning the Italians, no word was included that was related to the idea of ‘full ownership’ in either Greek or Latin, whereas in the Byzantine legal practice of that time we came across such a word (‘δουλοτέλεια’ or ‘κυριότης’) when transfer of ownership took place. Taking other factors into account my conclusion was that what the Italians received seemed to resemble most closely the right of *emphyteusis*, which was a *ius in re aliena*, meaning a right *in rem* over another man’s property.¹³

Further, comparison of these grants was made with grants of immovable property by the Crusader leaders to the Italians. In the Crusader charters there was usually a long description of what the Italians were allowed to do with the granted immovable property, something that must also have been related to feudal law practices of that time. The same long description was included in acts by which the Italians conceded to some other person or institution immovable property that had been granted to them either by the Byzantine Emperors or by the Crusader leaders. Another difference between the Byzantine documents and the charters of the Crusader leaders was that in the latter case there was no reference made to an act of delivery, whereas in Byzantine practice such an act (*praktikon paradoseos*) was always mentioned. Interestingly, in their own documents the Venetians used the Byzantine term *praktikon* rather than a Latin term when describing the grant of the Byzantine Emperor.

When compared with the Crusader charters, the examined Byzantine imperial acts seemed to reflect a more sophisticated legal level. This does not mean that the Byzantine imperial acts were highly sophisticated as far as the legal terminology was concerned but, in comparing them with the Crusader charters, the following observation can be made. Roman terms were used in Byzantine imperial documents: the Italians received the ‘νομή’ in Greek or *possessio* in Latin of areas in Constantinople and the delivery described in the Byzantine imperial documents to the Italians seemed to correspond to the Byzantine tradition of the

11 See O. Remie Constable, *Housing the stranger in the Mediterranean World* (2003).

12 I prefer to use the Latin term ‘possessio’ because in English the term ‘possession’ can mean both possession and detention.

13 For the right of *emphyteusis*, see for example B. Nicholas, *An Introduction to Roman law* (1975), pp. 148-149.

traditio per cartam ('delivery by a document').¹⁴ In the privilege charters of the Crusader leaders, on the contrary, a long description was made in order to show what was allowed in the areas acquired by the Italians and no reference was made to an act of delivery or its formal requirements. In the Crusader states we are clearly dealing with the influence of feudal law. It is possible that the experience of the Italians with Byzantine diplomacy affected the later drafting of charters in the Crusader states and the Italian 'legal tradition' in the following decades.

2.3 Maritime law, shipwreck and salvage provisions

In the examined material I encountered provisions referring to the rescuing of goods if Pisan and Genoese ships were wrecked within the Empire, as well as provisions referring to the resolution of maritime conflicts with Pisa and Genoa. In a *chrysobull* promulgated in 1111 by Emperor Alexios I Komnenos to Pisa, the reward was regulated for the Byzantines who helped to rescue goods from a Pisan ship that was wrecked within the Empire. From the study of this document it is clear that regional customs played an important role in estimating the amount of the reward. Customs did in fact prevail in this case over a general law made by order of the Emperor himself. Interestingly, in the whole of the Mediterranean area in this period local practice and customs were significant in maritime law. Hence this preference of the Byzantine Emperor for a local custom was in line with the general practice applied in the Mediterranean in that period in respect of maritime law and the use of customs and proved that both the Byzantine Empire and the rest of the Mediterranean world had something in common here.

In the examined material detailed information is also given about the escalation of a maritime conflict between the Byzantines and the Genoese and its resolution. We are informed about the following piracy incident that occurred in 1182: Genoese and Pisan pirates under the command of a Genoese corsair pillaged Venetian ships that were carrying valuable gifts from the Sultan of Egypt for the Byzantine Emperor as well as merchandise. The pirates stole the gifts and the merchandise and killed many people on board. After first warning the city of Genoa to deal with this incident, the Emperor took measures against the Genoese living in the Byzantine capital because nothing was being done about the payment of compensation to the people who had suffered damage. In particular, the Emperor ordered the Genoese living in Constantinople to pay an amount as deposit (this is how it is described in the documents) under the following condition: if the city of Genoa did nothing to resolve this conflict, then the merchants who had suffered damage would receive compensation from this deposit. In other words, the Genoese who lived in the Byzantine capital were held liable for the wrongful acts of their fellow-countrymen.

This measure of the Emperor strongly resembled the so-called *ius represaliarum*, a practice applied in medieval Europe which implied the following: if someone had a claim against a foreign debtor and the debtor could not pay, then the person who had the claim could request payment from a compatriot of the debtor. The compatriot who paid the debt could then ask for the money back from the primary debtor. This practice, as so described, forms the first stage of the development of the notion of reprisals and corresponds to 'the period of unlimited private self-help in the Middle Ages' since 'states did not intervene in the exercise of such action'.¹⁵ It was the travelling merchants who applied this practice frequently and often in an uncontrolled way.¹⁶ The practice of the *ius represaliarum* was further developed in the notion of reprisals in the following centuries and influenced international law in medieval and early modern Europe. In 1354 Bartolus de Saxoferato, one of the most significant medieval jurists, who has been considered 'the father of international private law', wrote the first treatise on reprisals, the *Tractatus Represaliarum* and he justified the use of reprisal at that time in Italy.¹⁷ The Emperor's measure in this case, because of its

14 See F. Brandileone, 'La traditio per chartam nel diritto bizantino', in G. Ermini (ed.), *Scritti di Storia del diritto privato Italiano, II* (1931), pp. 15-36. In this book there are other articles connected with the issue of *traditio per cartam*.

15 From the entry 'Reprisals' by M. Ruffert in the *Max Planck Encyclopedia of Public International Law, Oxford Public International Law* (2015), <<http://opil.ouplaw.com>>, under A. *Historical Evolution of the Concept of Reprisals*. The author gives a basic historical outline and the current situation of the concept of reprisals and provides further bibliographical references.

16 W. Grewe, *Epochen der Völkerrechtsgeschichte* (1984), p. 237.

17 See in detail C.N. Sidney Woolf, *Bartolus of Saxoferato: his position in the history of medieval political thought* (1913), pp. 203-207 and M.H. Keen, *The Laws of War in the Late Middle Ages* (1965), pp. 219-221.

resemblance to the *ius represaliarum*, shows a Western influence on Byzantine legal matters and touches upon the medieval roots of private international law.¹⁸

3. Evaluation of the chosen method: back to basics and the small, odd piece of the puzzle

This is not the place to analyse in detail the previously discussed legal issues or to extensively refer to the conclusions of this research. An evaluation, however, of the chosen method as applied in this research can be made. It is widely acknowledged that Roman law was rediscovered in the West in the eleventh century, but these documents provide a good example of how the ground was prepared for the reception of Roman law because, in Byzantium, the continuation of Roman law was never in doubt. There are enough legal examples in my material that prove the legal interaction between both the Byzantine and the Western world. It is clear that the Italians accepted practices that corresponded to Byzantine legal practice, for example, in issues dealing with the granting of immovable property. From the examples referring to justice we can also observe that the Italians came in contact with the Byzantine judicial system. The Byzantines in their turn accepted the jurisdiction of a foreign judge – even for mixed cases – within their capital and by doing so they must have become acquainted with the administration of justice by this foreign judge. In the legal provisions dealing with maritime law there are more points of legal interaction between both sides. For example, the resolution of the maritime conflict in this period between the Byzantines and the Genoese by a measure that is strongly reminiscent of the practice of the *ius represaliarum*, shows the Western influence on Byzantine legal practice.¹⁹ It illustrates how Byzantine practice appropriated a merchants' custom linked to Western Europe, a custom that later influenced the field of international law in medieval and early modern Europe, i.e. reprisals.

In short, there are enough examples of legal interaction between both Byzantines and Italians to suggest that there was a common legal understanding between Byzantium and the Italian cities, between East and West, in any case in the eleventh and twelfth centuries. The study of these Byzantine documents gives us a picture of how both jurisdictions, Western and Eastern, influenced each other. This enables us to give a more detailed and therefore a more complete picture of the early stages of the *ius commune*, which forms the beginning of European private law and subsequently an insight into how legal development can contribute to the common ties of modern Europe. In short, the study, analysis and comparison of documents of the medieval period at a European level help us to answer the question whether, long before the making of today's Europe, today's European countries were already bound by common legal forms.

In order to evaluate the chosen method in this research one has to consider the advantages and disadvantages of this method. The choice of an 'odd subject' can be risky not only because of its 'peculiarity' but it can also prove difficult because of the material. The study of these Byzantine documents means that you have to understand the Greek and Latin of this period and that you have to study the historical background of these acts and of other medieval documents which are to be used for the comparison. One therefore has to set limits on the material and one's goals. There is also the danger of paying more attention to the historical background or the linguistic problems of the documents than to the actual legal questions. Translating Greek and Latin documents takes time and this procedure can put the researcher off track in regard to the legal questions. On the other hand, because the subject is 'odd' and difficult and because of its material, it can be interesting and can give a new perspective to other disciplines. For example, in the case of my research the results on the legal interaction between Byzantium and the Italian cities were interesting for Byzantine historians who deal with the relationship between Byzantium and the West. Maritime historians have also shown an interest in the maritime issues and there are more examples to be found. It is fair to add that any subject on legal history is by definition an 'interdisciplinary' subject because of its material.

A point of attention for future research in this field is the use of online databases. For example, in recent years a lot of progress has been made with the online database of Greek sources called *Thesaurus Linguae*

18 For a detailed account of this Byzantine study case, see D. Penna, 'Piracy and reprisal in Byzantine waters: resolving a maritime conflict between Byzantines and Genoese at the end of the twelfth century', (2017) 5 *Comparative Legal History*, no. 1, <<http://dx.doi.org/10.1080/2049677X.2017.1311549>>, pp. 36-52.

19 See Section 2.3, supra.

Graecae (TLG). Important Byzantine legal sources have been added to this database and that is why TLG has become a very useful tool in, for example, comparing legal terminology in Byzantine sources. Online databases can help save time with their comparisons with other legal sources and translation issues and this can give you more time to focus on the study of the legal problems. In addition, co-operation with scholars of other disciplines (Greek, Latin, History and Medieval Studies) is also essential and this serves to underline the interdisciplinary character of such a research.

The two following concluding remarks summarise the outcomes of my experience in this research and the chosen method as applied. Firstly, there is no need to be afraid of a rather 'odd' subject. On the contrary, a somehow 'odd' or 'remote' subject can give a more complete and more detailed picture on other issues; in my case, the birth and shaping of the *ius commune* and the medieval roots of private international law and subsequently the formation of our European legal identity. Variations in legal development help, after all, not only in completing a better picture of the situation at that time, but also because they provide a good insight into the way we nowadays *mutatis mutandis* deal with diversity in law. Secondly, it is necessary to go back and study the original sources; in other words in this case to study law at its root and not from secondary sources. I see no problem in choosing an 'old-fashioned' method. There is a tendency to promote research that uses innovative methods²⁰ but an 'old-fashioned' method can also be innovative. The innovation in this case is that you go back to the source itself and read it in its primary form as a whole and not from fragments or secondary literature. The fact that the material used in this research consisted not only of documents that regulated the legal issues or had strictly a legislative character, but that attention was also given to material that revealed the actual process of regulating the legal issues, can also be considered to be innovative. This approach helped me to try to understand how and why a particular legal issue was regulated and how a particular legal institution was structured and had developed. I wonder if nowadays in trying to be innovative with methodology issues we sometimes forget the basics and focus more on 'the package than the actual present'. In short, my proposal is 'back to basics'. By reading the actual primary sources including the sources that reveal information on the actual discourse of the legal matters, you can discover more than you might expect. It is a hard path but can bring out more solid conclusions. Because the sources are the object of the research, it is their information that can give us insight into how law functioned at that time and can enable us reach conclusions related to that period and to an extent *mutatis mutandis* to the law of today.

The research I undertook for my thesis attempted to complete a very small piece of the puzzle of how a common European legal heritage was formed. Such a study could be a base for making, to some extent, a parallel with modern legal developments because it shows that even in the historical period in question there were 'legal formations' or 'legal formants' that contributed to a common law.²¹ Finally, in some cases good research in legal history and especially comparative law on a historical base can prove beneficial even for the study of today's legal problems because of the comparisons it could offer. Roman law (Byzantine law is based on Roman law) can be an excellent base for comparing legal systems and structures.²² The core of property law and the law of obligations of most European countries is based, after all, on Roman law. In short, rigorous research in legal history can be an eye-opener for both understanding and tackling 'contemporary' legal issues. ■

20 Many research grants and funding proposals in the Netherlands and abroad require innovative methods. While innovative methods can indeed be advantageous for research, sometimes this mandatory requirement can be a burden for a research plan which is based on an 'old-fashioned' study of the analysis of documents.

21 On the term 'legal formants' see Sacco, *supra* note 9. For a discussion of this approach in relation to European matters, see U. Mattei, *The European Codification Process: Cut and Paste* (2003), pp. 9 et seq.

22 There are many studies that can prove this argument. See, for example, P. Koschaker, *Europa und das römische Recht* (1966); R. Zimmermann, *Legal History: Does it Still Deserve its Place in the Curriculum?* (1981), Inaugural Lecture, University of Cape Town; R. Zimmermann, *The Law of Obligations: Roman Foundations of the Civilian Tradition* (1996); R. Zimmermann, 'Roman Law and European Culture', (2007) *New Zealand Law Review*, pp. 341-72; R. Zimmermann, 'Roman Law in the Modern World (Chapter 21)', in D. Johnston (ed.), *The Cambridge Companion to Roman Law* (2015), Chapter DOI: <<https://doi.org/10.1017/CCO9781139034401.027>>, pp. 452-80; R. Zimmermann, 'Comparative Law and the Europeanization of Private Law', in M. Reimann & R. Zimmermann (eds.), *The Oxford Handbook of Comparative Law* (2006) online publication date Sep. 2012, <DOI:10.1093/oxfordhb/9780199296064.013.0017>, pp. 539-78. See also, for example, J. Gordley, *Foundations of Private Law, Property, Tort, Contract, Unjust Enrichment* (2006) and J. Gordley, 'Why Look Backward', (2002) 50 *The American Journal of Comparative Law*, no. 4, <<https://doi.org/10.1093/ajcl/50.4.657>>, pp. 657-670.