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HYLKJE DE JONG, Ἐντολή (mandatum) in den Basiliken (Legal History Library 31). Leiden – Boston: Brill 2020. XII, 239 pp. – ISBN: 978-90-04-41395-5 (€ 94,-)

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In this monograph HYLKJE DE JONG attempts a novel experiment: the analysis of a Roman legal institution (ἐντολή / *mandatum*) almost exclusively on the basis of scholia to the *Basilika*, the crowning achievement of Middle Byzantine legal scholarship. In essence, DE JONG proposes to reconstruct the interpretations of late antique and medieval jurists based on the interlineal or marginal notes and commentaries these scholars made to the *Basilika*. What emerges is an impressive, albeit at times highly recondite study that offers a model for future studies of Byzantine law.

In order to understand the significance of DE JONG's study, some contextualization is necessary on the history of Byzantine law. For purposes of brevity, this might be presented with regard to the emergence of the *Basilika*. The *Basilika*, the "Imperial [Lawbooks]", are a Hellenized (paraphrased/translated into Greek) rendering of that famed Late Roman legal corpus, known since the early modern period as the *Corpus Iuris Civilis*, the "Body of Civil Law". Already in Justinian's day Roman law as represented by the *Corpus Iuris Civilis*, written as it was almost entirely in Latin (with Justinian's *Novels*, issued mainly in Greek or in both Greek and Latin, constituting the major exception), was becoming increasingly difficult for the empire's Greek-speaking jurists to fully utilize. As part of an effort to make the *Corpus Iuris Civilis* understandable to Greek-speaking students, a large number of translations, paraphrases and commentaries of this corpus were authored in the sixth and into the seventh century. To the extent that these didactic texts have survived, it is almost exclusively as scholia (Theophilos' *Paraphrase* being the major exception). When the *Corpus Iuris Civilis* was reissued as the *Basilika* during the reign of Leo VI, these scholia from the sixth and seventh centuries were appended to the text of the *Basilika*. In addition to these "old" scholia, "new" scholia representing the opinions of Byzantine jurists of the eleventh and twelfth centuries were likewise added to copies of the *Basilika*.

The haphazard transmission of the *Basilika* itself, along with its scholia, means that while certain Roman legal institutes cannot be studied on the basis of the *Basilika* and its scholia alone, other topics are extensively discussed in the *Basilika* and, more importantly, in the scholia. As the author of a previous monograph and several articles on the sixth-century Roman jurist Stephanos, whose writings have been transmitted as scholia to the *Basilika*, Prof. DE JONG is well-equipped to undertake the main object of her study, *mandatum*. What is termed *mandatum* in Latin or ἐντολή in Greek was act of commission, whereby a person (the mandatory) was tasked with performing a service for the *mandator* or a third party. Such a service was rendered free of charge by the mandatory, who could, however, claim reimbursement for the expenses he had incurred. This monograph examines all relevant aspects of the *mandatum*: how a *mandatum* was contracted (Ch. 3), the contents of the agreement (Ch. 4), the ensuring legal responsibilities (Ch. 5), possible legal actions if the agreement was not fulfilled (Ch. 6), valid compensation (Ch. 7) and special problems associated with the *mandatum* (Ch. 8).

Rather than discussing in detail all the characteristics of *mandatum* which emerge from this study, I shall focus in what follows on some aspects that might be of broader interest for Byzantinists and legal historians. One noteworthy aspect of DE JONG's study are the two manuscripts which transmit both the relevant section of the *Basilika* (14.1) and accompanying scholia that deal with *mandatum*, *Codex Graecus Coislinianus* 152 (Ca) and *Codex Parisinus Graecus* 1352 (P).[1] Ca stems from the second half of the twelfth century and is richly supplied with scholia (636 in total, including 451 anonymous, with 153 of these being new scholia, 46 old, and the rest of uncertain date). Of the named scholia, 175 of 185 are old scholia and are found on the inner margin, while only 10 are new. The scholia are written in a somewhat chaotic manner in the inner or the outer margin. In addition, the manuscript contains numerous *Sekundärscholien* from the end of the twelfth and the beginning of the thirteenth century. P, stemming from the beginning of the thirteenth century, is completely different, with only around a quarter of the number of Ca's scholia, and many of these unnamed: of 176 scholia, 159 are anonymous, and almost all the scholia make reference to the *Basilika* rather than the *Digest*. P's scholia are also much more orderly than Ca's.

1. Description of the two manuscripts HYLKJE DE JONG, Ἐντολή, pp. 20–23.

Though separated by less than a century, one has here, as it were an interesting demonstration of the development of Byzantine law on the basis of these two manuscripts. The earlier manuscript, Ca, is marked by a continuing engagement with the Late Roman legal tradition. Legal problems are discussed mainly on the basis of where they are found in the sixth-century *Digest*, not in the corresponding passages in the *Basilika*. The opinions of the great jurists of the sixth and seventh centuries, most of whom are named, are collected in the outer margin of the manuscript, while the numerous, often anonymous, scholia of more recent vintage are haphazardly written in the inner margin. In sum, the manuscript encapsulates the complex yet vibrant revival of secular legal studies into the eleventh and twelfth centuries.

By the time that the second manuscript, P, had been copied, a major shift in the way Roman law was studied and utilized in Byzantium had taken place. Instead of approaching the legal tradition via the tracts of late antique jurists like Stephanos, Thalelaios or Theophilos, reference was now made to the *Basilika*. The scholia are fewer, less than of quarter of those in P, and they are almost entirely anonymous. While in the eleventh century a judge could lend credence to a legal argument by citing Stephanos as a legal mind superior to anything found in the *Basilika*, in the era in which P was written such name-dropping would have meant little. The prominence of the jurist and legal scholar, and his validity as an interpreter and, in his own way, even a source of law, a staple of the Roman legal tradition, had abated, even disappeared.

The way in which the scholiasts to the *Basilika* approached legal problems has enjoyed increased scholarly attention in recent years, and DE JONG's study should be contextualized within the wider scholarship on Byzantine jurisprudence. Within this field of study the verdict of the legal historian DIETER SIMON has been particularly influential, who, on the basis of the so-called *Peira* (compiled around the year 1050), a didactic collection of the verdicts and legal opinions of the judge Eustathios Rhomaios, posited a casuistic, inconsistent and rhetorical mode of Byzantine jurisprudence.[2]

2. DIETER SIMON, Rechtsfindung am byzantinischen Reichsgericht. Vortrag gehalten 1972 auf dem 19. deutschen Rechtshistorikertag (Wissenschaft und Gegenwart. Juristische Reihe 4). Frankfurt am Main 1973.

Recently, and especially with reference to the scholia of the *Basilika*, this opinion has been nuanced: though considerable variation in method and views is discernable amongst the scholiasts, their reasoning was circumscribed and guided by a shared set of basic principles.[3]

DE JONG's conclusions regarding how *mandatum* was interpreted by *Basilika* scholiasts broadly supports this more recent scholarship on Byzantine jurisprudence. One cannot speak of a unitary theory of *mandatum* amongst the *Basilika* scholiasts, who each had their own particular views on the subject.[4] That said, their differences of opinion were normally one of degree rather than of kind. A key illustration of this point, to which much of Ch. 4 is devoted, is DE JONG's refutation of the existence of the so-called *mandatum incertum*. A key component of the *mandatum* was that the action that the *mandator* wanted undertaken by another person had to be described in detail. Yet certain scholia of Stephanos would seem to suggest that he approved of a *mandatum incertum*, e.g. a *mandatum* along the lines of "go and buy some field for me". The vagueness of such a *mandatum* would not have withstood the scrutiny of a Byzantine judge, and therefore allowing such an agreement would have made Stephanos a major outlier among Byzantine jurists. DE JONG demonstrates, however, that these passages of Stephanos have been misunderstood and that what Stephanus would have in fact construed as a valid *mandatum* would have to involve the concept of the "good man" (*vir bonus*), such as "go and buy for me a field that a good man would choose". The takeaway: even if there existed differences of opinion and emphasis among Byzantine jurists regarding the *mandatum*, with Stephanos being unusual in his legal concept of the *vir bonus*, their opinions as a whole do reflect a certain internal logic and shared legal principles.

The book is exhaustively researched, and DE JONG deserves much credit for this impressive study. It certainly suggests that scholars of Roman law could win new insights by studying the opinions of the *Basilika* scholiasts –

3. In this regard see especially LYDIA PAPARRIGA-ARTEMIADI, Combler graduellement les lacunes du droit. Les approches interprétatives des scoliastes byzantins. REByz 76 (2018) pp. 267–298; EADEM, Les scoliastes byzantins face aux ambiguïtés des lois. REByz 77 (2019) pp. 225–256. SIMON has likewise now highlighted the salience of particular principles in the oeuvre of Eustathios Rhomaios: DIETER SIMON, Eustathios Rhomaios, kaiserlicher Richter im Konstantinopel des XI. Jahrhunderts und das Gesetz. T&MByz 22/1 (2018) (= Constantinople réelle et imaginaire. Autour de l'œuvre de Gilbert Dagron) pp. 481–498.

4. DE JONG, Ἐντολή, p. 251.

something already opined, as she notes, by the eminent historian of Byzantine law, Karl Eduard Zachariä von Lingenthal (1812–1894), who wrote of the "treasure that Byzantine legal sources might open" to Romanists.[5] If there is something to criticize about the book, it is that focus on *mandatum* exclusively within the bounds of the *Basilika* and its scholia leaves the reader with no real idea how this legal institution functioned in practice in Byzantine society. The rich legal literature of the jurists living at the time of the Macedonian dynasty, for instance, is ignored, even though there are discussions of contemporaneous cases of *mandatum*, for instance in the *Peira*.[6] Nor is any attempt made to utilize the archival material from the same period, especially legal documents stemming from the Athonite archives. DE JONG's study is *Rechtsgeschichte* at its finest, but the historian might well exclaim, along with the anonymous eleventh-century author of the *Meditatio de nudis pactis*, that he would "rather fondly dwell in the breadth of the ancient [laws] instead of casting about in the *Basilika*."[7]

Keywords
Basilika; history of law

5. Cited in DE JONG, Ἐντολή, p. 1. For a further elaboration of this point see her recent articles: HYLKJE DE JONG, The Benefit to Romanists of Using the Basilica. The Example of B. 14,1,26,8 (D. 17,1,26,8). RHD 84 (2016) pp. 423–436; EADEM, Using the Basilica. ZRG 144 (2016) pp. 286–321.

6. E.g. *Peira* 30.77, an interesting case where someone was commissioned via *mandatum* to buy garments and bring them to a hermitage.

7. *Meditatio de nudis pactis* 7.3.