

The Reception of Justinian's Prohibition of Commentaries

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In March 2012, I heard one of our colleagues give a paper at a conference about Justinian's prohibition of commentaries. An interesting point about the paper was that it established a link between Justinian's prohibition and much more recent attempts to put the formation of law entirely in the hands of the legislative power. More precisely: it drew a parallel between Justinian's prohibition and the prohibitions of commentaries and of judge-made law that we can see in the time of the great codifications of the late 18th and 19th centuries, and it presented Justinian as a kind of legal positivist *avant la lettre*¹.

This parallel is interesting and we will come back to it. But what surprised me about the paper was that it simply repeated the traditional interpretation of the prohibition of commentaries. By that I mean the interpretation of Justinian's prohibition as a simple, straightforward prohibition to write any commentary whatsoever on his codification. Having learned Roman law initially in Groningen among the colleagues and successors of Scheltema, the editor of the modern edition of the *Basilica*, I knew the latter's rather different interpretation of the prohibition². This interpretation was not mentioned at all in the paper, probably because the author of the paper – though not exactly a novice – was unaware of Scheltema's theory. I also wondered

¹ Now published as: A.TORRENT RUIZ, *La fractura justiniana en la producción del derecho. La prohibición de comentar el Digesto y su ideología positivista*, in: Pedro Resina Sola (ed.), *Fundamenta Iuris. Terminología, principios e interpretatio*, Almería 2012, 15-34.

² H.J.SCHELTEMA, *Das Kommentarverbot Justinians*, TR 44 (1976) 307-331.

at the readiness of the author of the paper to completely equate Justinian's prohibition and its purpose with *modern* prohibitions of commentaries and *their* purpose. This is in fact an important methodological point. When we are comparing ourselves with people from more than a thousand years ago we cannot take it for granted that all *cetera* were *paria*. What seems to be the same need not be the same, and we must first think hard about what exactly Justinian was trying to achieve with his prohibition before we decide it is the same as the modern ones, or vice versa. In other words: we must compare ancient and modern prohibitions of commentaries in their context, not as isolated phenomena³.

The general theme of this SIHDA conference gave me the chance to carry out an old plan that I have had since writing my PhD thesis⁴ on the introductory constitutions *Tanta* and *Δέδωκεν*: to investigate the reception of the introductory constitutions. This is a fairly ambitious plan, so it seemed convenient to limit it to the reception of the prohibition of commentaries for the time being. Even that requires more work than I actually had time for. I have started to trace the reception of Justinian's prohibition, but I haven't managed to spend all the time on it that I would have liked to, so to that extent I present a paper on work in progress. Still, the outline of the research is fairly clear, and at the end of the paper I will suggest a provisional conclusion, or at least a hypothesis – or perhaps rather an educated guess.

The question is: is there a continuous line from the Glossators to the present day in terms of the interpretation of the prohibition? To what extent was it studied over the centuries? Or did jurists prefer to tacitly ignore it, fearing it might be applied to their own work? On the one hand I am looking at glosses and other commentaries on the *Corpus Iuris* to see what they say about the prohibition of commentaries; on the other hand I must work my way through the literature related to the great codifications of the last few centuries. And finally I also want to work my way back, starting with relatively recent articles on the prohibition of commentaries and try to find out whether they are simply a continuation of earlier reflection on the prohibition, or that

³ Cf. H.J.HOETINK, *Über anachronistische Begriffsbildung in der Rechtsgeschichte*, ZSS 72 (1955), 39-53; IDEM, *Les notions anachroniques dans l'Historiographie du droit*, TR 23 (1955), 1-20.

⁴ T.WALLINGA, *Tanta/Δέδωκεν. Two introductory constitutions to Justinian's Digest*. Groningen 1989.

they represent a new line of thought that starts at a specific point in time.

But let us begin at the beginning. Justinian's prohibition is contained in three passages from the constitutions *Deo auctore* (530) and *Tanta/Δέδωκεν* (533):

Deo auctore § 12

Nostram autem consummationem, quae a vobis deo adnuente componetur, digestorum vel pandectarum nomen habere sancimus, nullis iuris peritis in posterum audentibus commentarios illi applicare et verbositate sua supra dicti codicis compendium confundere: quemadmodum et in antiquioribus temporibus factum est, cum per contrarias interpretantium sententias totum ius paene conturbatum est: sed sufficiat per indices tantummodo et titulorum suptilitatem quae paratitla nuncupantur⁵ quaedam admonitoria eius facere, nullo ex interpretatione eorum vitio oriundo.

Tanta § 21

Hoc autem, quod et ab initio nobis visum est, cum hoc opus fieri deo adnuente mandabamus, tempestivum nobis videtur et in praesenti sancire, ut nemo neque eorum, qui in praesenti iuris peritiam habent, nec qui postea fuerint audeat commentarios isdem legibus adnectere: nisi tantum si velit eas in Graecam vocem transformare sub eodem ordine eaque consequentia, sub qua et voces Romanae positae sunt (hoc quod Graeci κατὰ πόδα dicunt), et si qui forsitan per titulorum suptilitatem adnotare maluerint et ea quae παράτιτλα nuncupantur componere. alias autem legum interpretationes, immo magis perversiones eos iactare non concedimus, ne verbositas eorum aliquid legibus nostris adferat ex confusione dedecus. quod et in antiquis edicti perpetui commentatoribus factum est, qui opus moderate confectum huc atque illuc in diversas sententias producentes in infinitum detraxerunt, ut paene omnem Romanam sanctionem esse confusam. quos si passi non sumus, quemadmodum posteritatis admittatur vana discordia? si quid autem tale facere ausi fuerint, ipsi quidem falsitatis rei constituentur, volumina autem eorum omnimodo corrumpentur. si quid vero, ut supra dictum est, ambiguum fuerit visum, hoc ad imperiale culmen per iudices referatur et ex auctoritate Augusta manifestetur, cui soli concessum est leges et condere et interpretari.

Δέδωκεν § 21

Ἐκεῖνὸ γε μὴν εὐθύς τε τὴν νομοθεσίαν ἀθροισθῆναι ταύτην ἐνκελευόμενοι νῦν τε αὐθις αὐτὴν βεβαιούμεντες ἅπασιν ὁμοίως

⁵ *quae paratitla nuncupantur add. F²*; I have no doubt that this reading – like all others by F² – belongs in the text; *contra* Mommsen.

ἀπαγορεύομεν τὸ μηδένα θαρρήσαι μήτε τῶν νῦν ὄντων μήτε τῶν ὕστερον ἔσομένων τούτων δὴ τῶν νόμων ὑπομνήματα γράφειν, πλὴν εἰ μὴ βουληθεῖεν εἰς μὲν τὴν Ἑλλήνων γλώτταν αὐτὰ μεταβαλεῖν, μόνη δε τῇ κατὰ πόδα καλουμένη χρήσασθαι τῶν νόμων ἔρμηνεῖα, καὶ εἴ τι κατὰ τὴν τῶν ὀνομαζομένων παρατίτλων ὡς εἰκὸς προσγράψαι βουληθεῖεν χρεῖαν· ἕτερον δὲ παντάπασι μὴδ' ὅτιοῦν περὶ αὐτὰ πράττειν μηδὲ αὐθις δοῦναι στάσεως τε καὶ ἀμφισβητήσεως καὶ πλήθους τοῖς νόμοις ἀφορμὴν· τοῦτο ὅπερ καὶ πρόσθεν ἐπὶ τῆς τοῦ ἡδίκτου γέγονεν νομοθεσίας, ὥστε καίτοι γε οὕτω βραχύτατον αὐτὸ καθεστὸς, ἐκ τῆς τῶν ποικίλων ὑπομνημάτων διαφορᾶς εἰς ἀναρίθμητον ἑκταθῆναι πλήθος. εἰ γάρ τι φανεῖ τυχὸν ἀμφισβητούμενον ἢ τοῖς τῶν δικῶν ἀγωνισταῖς ἢ τοῖς τοῦ κρίνειν προκαθημένοις, τοῦτο βασιλεὺς ἔρμηνεύσει καλῶς, ὅπερ αὐτῷ μόνῳ παρὰ τῶν νόμων ἐφέειται. ὡς ὃ γε θαρρῶν παρὰ ταύτην ἡμῶν τὴν νομοθεσίαν ὑπόμνημά τι καταθέσθαι κατὰ σχῆμα τῆς ἡμετέρας κελεύσεως ἀλλοιότερον, οὗτος ἴστω τοῖς τῆς παραποιήσεως ἐνεξόμενος νόμοις, τοῦ παρ' αὐτοῦ συντεθέντος ἀφραπαζομένου καὶ πάσιν διαφθειρομένου τρόποις.

At first glance, Justinian appears to prohibit writing *commentarii*, apart from a few exceptions: *paratitla*, *kata poda*, *indices*. Scheltema starts the article in which he sets out his interpretation by expressing his surprise that the emperor who had just done so much for the preservation of legal science would decide to put a stop to its further development at the same time. And, more importantly, he points out that in fact many commentaries are known which date from Justinian's days and must have been written shortly after his codification had been finished. This of course is a fact well known to Byzantinists, maybe less so to Romanists. The existence of these commentaries makes it difficult to see how the prohibition of commentaries could have been a full-scale prohibition. In theory, the sanctions were those for *falsum*, a serious crime⁶, and if this included writing the kinds of commentaries that have come down to us one wonders why contemporary scholars would have risked heavy punishment by writing them.

There are several ways to explain the existence of these commentaries. Maybe the prohibition was lifted soon after coming into force.

⁶ The punishment was originally (in the time of Sulla's *lex Cornelia de falsis*) *aqua et igni interdictio*. Later for *honestiores* it varied between *deportatio in insulam* plus confiscation of their property, and *infamia* for lighter cases; the lower classes risked hard labour in the *metalla*, and sometimes even the death penalty, which was the rule for slaves: cf. WALLINGA, *Tanta/Δέδωκεν* (above, note 4), 101-102.

This is unlikely; it should have left some traces in the sources, and why would the prohibition have come down to us at all in that case? Another explanation is that all existing commentaries would have come under the permitted exceptions. This is also unlikely: all Justinian permitted were short marginal notes and a literal translation into Greek written between the lines, and there are commentaries of a far more extensive nature. There are articles by Berger and Pringsheim which may be given as examples of this explanation,⁷ and they are unconvincing in that they do not really explain the difference between commentaries that *would* have been allowed and commentaries that *would not* have been allowed, as Scheltema carefully points out.

The third explanation is Scheltema's own: in his view, we are not dealing with a prohibition to write commentaries as such; what was prohibited was writing down the commentaries in the same manuscripts as the text of the codification. This makes far more sense than the traditional interpretation. A closer look at the text of the introductory constitutions shows support for Scheltema's theory: several words used (*adscribere*, *προσγράψαι* etc.) imply writing as an addition to something already in existence rather than writing as such. Another argument in favour of Scheltema's theory may well be the purpose of the prohibition as stated by Justinian in Tanta § 21: "*...ne verboritas eorum aliquid legibus nostris adferat ex confusione dedecus.*" The *confusio* mentioned here could refer to mixing new text with old – although this is not a conclusive argument; *confusam* a little further down must be read in the more general sense of "disorderly".

What was allowed, in Scheltema's view, was adding a literal Greek translation of Latin words in between the lines of the manuscripts of the Digest and Institutes (the *kata poda*-translation), and short summaries of the contents of titles in the margins, written in smaller letters so that they would not be confused with the main text. These were the *indices* or *paratitla*.

⁷ F.PRINGSHEIM, *Justinian's prohibition of commentaries to the Digest*, RIDA 1e sér. 5 (1950), 383-415; A.BERGER, *The emperor Justinian's ban upon commentaries to the Digest*, BIDR 14-15 (1951) 124-169; A.BERGER, *Zu Justinians Verbot der Digestenkommentierung*, *Labeo* 4 (1958) 66-74. Cf. also L.WENGER, *Die Quellen des römischen Rechts*, Vienna 1953, 681ff. (with further references).

In my PhD thesis I managed to find a few new arguments in favour of Scheltema's theory⁸. In *Tanta/Δέδωκεν* § 15, Justinian deals with the possibility of apparently contradictory texts in his codification:

Contrarium autem aliquid in hoc codice positum nullum sibi locum vindicabit nec invenitur, si quis suptili animo diversitatis rationes excutiet ...

He invites the users of his book to look for a subtle interpretation of the texts that will eliminate the apparent contradiction. This is practically equal to an invitation to write a commentary on this kind of apparent contradictions, and in fact, we know of one: the *μυνοβίβλιον περὶ ἐναντιοφανειῶν* by a writer who, for want of a better name, is called simply the Enantiofanos.⁹ This commentary was written fairly soon after the publication of Justinian's codification.

Also, in *Tanta/Δέδωκεν* § 19 Justinian prohibits using any other than his own lawbooks in court; it is *falsum* to use other books than his:

(...) Hasce itaque leges et adorate et observate omnibus antiquioribus quiescentibus: nemoque vestrum audeat vel comparare eas prioribus vel, si quid dissonans in utroque est, requirere, quia omne quod hic positum est hoc unicum et solum observari censemus. nec in iudicio nec in alio certamini, ubi leges necessariae sint, ex aliis libris, nisi ab iisdem institutionibus nostrisque digestis et constitutionibus a nobis compositis vel promulgatis aliquid vel recitare vel ostendere conetur, nisi temerator velit falsitatis crimini subiectus una cum iudice, qui eorum audientiam patiatur, poenis gravissimis laborare.

This is the first form that *falsum* can take: the use of a false (or the wrong) document. This passage in principle already solves the problem of commentaries: what is the problem with the existence of separate commentaries if they cannot be used in court anyway? Therefore, *Tanta/ Δέδωκεν* § 21 must be dealing with something else, with another form of *falsum*, namely: adulterating existing documents or generally, the *production* of a false document. And that is precisely the point: *Tanta/Δέδωκεν* § 21 is about books in which the commentaries are added to the text of the law that already existed. This is sure

⁸ WALLINGA, *Tanta/Δέδωκεν* (above, note 4), 114-116.

⁹ SCHELTEMA (above, note 2), 314. Cf. N.VAN DER WAL/J.H.A.LOKIN, *Historia iuris graeco-romani delineatio. Les sources du droit byzantin de 300 à 1453*. Groningen 1985, 63-64.

to lead to confusion of authentic and unauthentic texts, and therefore must be avoided. This is the true significance of Justinian's prohibition of commentaries¹⁰.

It is important to realise that Justinian produced his codification in a time when there was no printing-press. All the copies of his books had to be written by hand, and quite a few were needed at short notice: at least 70-90 to provide the more important cities in his empire with one copy each¹¹. Now this is a problem that Justinian tackled in a different way than Theodosius II had for his *Codex Theodosianus*. Theodosius appointed two government officials, the *constitutionarii*, and put them in charge of the copying process; copies could only be produced by them. Even if they used a large staff, this procedure must have slowed the copying process down. Justinian, on the other hand, left the copying of his law-books to the free market – which forced him to lay down some rules with specifications for the copies produced. This is what he does in §§ 20-22 of *Tanta/Δέδωκεν*. § 20 justifies the existence of the *Index auctorum Florentinus* and of the names of authors and works in the *inscriptiones* of the Digest – one can well imagine that lazy copyists or stingy prospective buyers of a copy would be inclined to leave those out in order to save time and money. § 21 contains the prohibition of commentaries, and in § 22 we find the prohibition to use abbreviations. The prohibition of commentaries therefore stands in the context of measures aimed at protecting the text of the codification. There is no reason to suppose that Justinian prohibited commentaries that were written in separate books.

In all fairness, it should be stated that Scheltema's theory is not the definitive one about the prohibition of commentaries. It fails – like all others – to provide a satisfactory explanation for the fact that this prohibition, unlike the prohibition of abbreviations, does not appear in the *constitutio Cordi* that introduced the second edition of Justinian's Code. This is a bit of a mystery: surely there was exactly the same potential for corruption of the text if commentaries were written in the margin of the manuscripts of the Code, and hence the same need for a prohibition. There remains a certain amount of *non liquet*¹².

¹⁰ VAN DER WAL/LOKIN (previous note), 35-38.

¹¹ WALLINGA, *Tanta/Δέδωκεν* (above, note 4), 90-92.

¹² SCHELTEMA (above, note 2), 325-327; critical about his explanation: WALLINGA, *Tanta/Δέδωκεν* (above, note 4), 111-113.

Reception

Now, coming to the reception of the relevant passages in the introductory constitutions, what about the reception of the so-called prohibition of commentaries? How did the medieval jurists see the prohibition? Have they dedicated any glosses or commentaries to it? What about Legal Humanism or the *Usus modernus*? Getting a good picture of the reception requires consulting many manuscripts and editions with glosses and other works about the text of the introductory constitutions, and this is something I have started on, but it is by no means finished and I might still come across some surprises. And I haven't even mentioned the codification movement yet, which certainly should have something to say about prohibiting commentaries.

The impression I have of the Glossators is that they were not particularly interested in the introductory constitutions. Generally, one might doubt whether they would have been keen to highlight some passages in the text that appeared to forbid their own activity specifically. In any case, I have found very little serious comment so far in the glosses about the prohibition of commentaries. By the way, writing glosses the way the Glossators did would probably be a forbidden activity in any interpretation of the prohibition of commentaries.

As far as the text of Justinian's introductory constitutions is concerned, most medieval manuscripts of the Digest come without them; the constitutions *Deo auctore* and *Tanta* are preserved in the Code, C.1.17.1-2. In most manuscripts and later editions, this title has very few glosses indeed. Wilhelmus de Cabriano's *Casus Codicis*, written in the middle of the twelfth century, completely ignore C.1.17 which contains the constitutions *Deo auctore* and *Tanta*. I have not yet had the opportunity to check any microfilms in the Max Planck Institute to find out more about the period of the early Glossators. However, I would be surprised to find anything in their works. The printed edition of Azo's *Summa super Codicem* does not contain any comment on the prohibition of commentaries, neither in *Deo auctore* nor in *Tanta*. Precisely the same holds good for his *Lectura super Codicem*, which dedicates only a few lines to either constitution.¹³

¹³ *Azonis Summa super Codicem*. [Corpus Glossatorum Iuris Civilis, II], Turin 1966; *Azonis Lectura super Codicem*. [Corpus Glossatorum Iuris Civilis, III], Turin 1966, 44-45. What is interesting though is that he has a reference to the prohibition of abbreviations: *Hodie contra est, quia non consequentia litterarum scribuntur*. Appar-

Things are different in Accursius' *Glossa in Codicem*, which does contain a short gloss on the prohibition of commentaries, only in the constitution *Deo auctore*. Here it is, with my translation – which is open to debate; the text is not completely unequivocal:

Accursius, *Glossa in Codicem* (printed Venetiis 1488, reprint Turin 1968)

Ad const. Deo auctore ... (C.1.17.1)

Commentarios. Scilicet faciendos et addendo novas leges; non autem prohibet exponi istas, licet verius est quod reprobet, ut statim ponit.

Translation:

Commentaries. That is, to make them by also adding new laws; but he does not prohibit explaining them, although it is true that he disapproves of it, as he states immediately afterwards.

I think that one thing we may infer from this gloss is that Accursius did not see a prohibition to interpret the laws. Apparently what he thought was forbidden was the making of new laws by someone else than the legislator, i.e. the emperor. So making commentaries to explain the existing laws would have been permitted, in his view.

This particular gloss maintained itself throughout the centuries; I have found it also in the edition by Johannes Fehus¹⁴ from 1627, in slightly different wording – the difference is hardly significant:

Commentarios, scilicet faciendo, & addendo novas leges. Nam non prohibet exponi istas, sed verius est, quod reprobet: vt statim patet.

The most interesting variant reading is *faciendo* where Accursius had *faciendos*; the singular ablative *faciendo* suits my interpretation better than *faciendos*. This gloss seems to confirm that centuries later, the general view was still that the passage in *Deo auctore* meant that it was no problem to write commentaries to explain the texts, as long as they did not amount to a new law in themselves.

Even in the 17th century, the glosses for the introductory constitutions are still few and far between. Whether this is a continuum or not still remains to be checked; most likely the Legal Humanists will have

ently, the medieval jurists did not consider themselves to be bound to Justinian's prohibition of abbreviations.

¹⁴ *Corpus juris civilis cum commentariis Accursii ... studio Ioan. Fehi*, IV, Lugduni 1627 (reprint Osnabrück 1966).

had something to say about the prohibition of commentaries. One example found thus far is in Alciatus' *Dispunctiones*¹⁵:

In lege secunda, C. de vet. iur. enucleando, quaedam verba emendari declararique debere.

In posteriori constitutione, de veteri iure enucleando, edicit imperator, ne alicui liceat interpretationes in ius civile condere, ne ex his aliquid dubietatis insurgat, unde iterum omne ius turbetur: quod edictum non modo palam contemnitur, longa iam interpretandi consuetudine ab Hirnerio coepta, ab Accursio perfecta, a Bartolo, Baldo, caeterisque συμμοσαίς usque ad nauseam aucta: verum etiam, si diis placet, nemo tibi laureola Doctoratus insignitur, nisi cum hac praefatione: damus tibi auctoritatem glossandi. ut sicut prima initia adversus Iustiniani legem ausplicantur, ita discant in futurum in eadem corruptela perseverare, & in dies aliquid adversus legum latores conari.

Alciatus has a different opinion than Accursius. He sees the prohibition as a true prohibition of commentaries, and dryly notes that this *edictum* of Justinian's is simply ignored in his day – moreover, anyone who obtains a doctorate receives it as it were with the words “We grant you the license to write glosses”. The contrast between the two opinions is interesting: Accursius appears to think that the prohibition is still in force, but does not apply to the writing of explanatory glosses, whereas Alciatus comes to the more radical conclusion that it was simply never observed by lawyers, but would have applied to the writing of glosses. However, we cannot say that either really gave a lot of thought to the precise nature of the prohibition or to Justinian's exact reasons to issue it.

My impression – or maybe I should rather call it a suspicion at this stage – is that the prohibition of commentaries did not really become an issue until the time of modern codifications, in the course of the 18th century. By that time, we find ourselves in a very different and new situation. The main influence is Montesquieu with his *Trias Politica* – which, incidentally, was of course a completely unknown quantity in Justinian's time. Montesquieu is in favour of keeping the law-making strictly in the hands of the legislator, and of reducing the role of the judge to *la bouche qui prononce les paroles de la loi*¹⁶. In this context, a prohibition of commentaries is a welcome instrument to

¹⁵ ALCIATUS, *Lib. dispunct.* cap. 23 (ed. Lugduni 1537, apud Jacob. Giunta, 339-340).

¹⁶ To quote Montesquieu correctly, for a change.

make sure that no-one but the legislator is in control of the law-making process. Since Montesquieu – it is important for us to realise this – we have a new problem: that of the dividing lines between the competences of the three different powers in the State. None of this was an issue for Justinian, who controlled all three powers and was blissfully unaware of Montesquieu's revolutionary ideas.

Coming back to the link that was established in the paper I heard in March 2012 between Justinian's prohibition and the era of modern codifications: there is certainly a link, but we cannot simply say that Justinian was a kind of forerunner of Montesquieu and that he and later codifiers of the law shared the same desire to keep the law-making in the hands of the legislator only. The context of Justinian's prohibition and the later ones is not at all the same. Justinian may also have wanted to control the law-making, but the background of this desire was not the correct division between the different powers of the Trias, and his prohibition of commentaries was not made for this purpose. His main problem from the past was the existence of lots and lots of legal works of uncertain authority, but all capable of being used for arguing a case in court. In other words: there was a lack of unity in the sources of the law. We all know how he solved this problem, in the six years between 528 and 534. His main problem for the future was the protection of his newly made texts during the copying process, and the prohibition of commentaries was intended to make sure that the text of his codification was not mixed with other texts – which, on the other hand, it was perfectly alright to write, as long as they stayed out of the courthouse. This is a problem that we tend to overlook, because we take it for granted that enough copies of a legislation can be made, easily and at short notice, by means of the printing press – let alone by putting texts on the internet. But in Justinian's day this was a major practical problem. The prohibition of commentaries belongs in this context of finding a way to quickly produce a lot of copies of the new legislation on the one hand, and on the other hand, to safeguard the integrity of the text at the same time.

Conclusion

To sum up: I agree that there is a link between Justinian and modern law-makers when it comes to the prohibition of commentaries, but it does not mean that we are talking about exactly the same phenomenon in both cases. The link between Justinian and modern law-makers

is more likely to be that the latter have found inspiration in Justinian's prohibition of commentaries, and have given it a different function in the context of XVIII-XIXth century codifications. As a result, we are conditioned by this modern purpose of a prohibition of commentaries, and we tend to think that Justinian's prohibition was just the same. Its reception in a somewhat altered form, at the time of the first codifications, has obscured its original character and has made it difficult to see it for what it really is. We have to look beyond the modern interpretation of the prohibition, place ourselves in Justinian's circumstances, and only then can we see what he meant to achieve with his prohibition and what its content really was. This is a small but useful lesson in historical methodology.

This sounds like a conclusion, but of course it is not; it is only supported by a dose of logic, but not by very much evidence from the sources. It will be a challenge to fill the many gaps there still are in the story of the reception of Justinian's prohibition of commentaries, by carefully examining all lawyers have said about this prohibition throughout the centuries. Only when that is done will it be the time for more definitive conclusions.