

# The Creation and Transmission of Justinian's Novels\*

Timothy G. Kearley\*\*

*By drawing upon the most authoritative foreign-language sources on the subject, this article provides an English-language survey of how editions of Justinian's Novels were created and passed along over nearly two thousand years. It further describes how some important nineteenth century scholarship on the Novels not widely available in print is now freely accessible online.*

## Introduction

The basic history of Justinian's 6th century codification of Roman law is no secret. Literature about the *Corpus Juris Civilis* (*CJC*), as that body of law came to be known, abounds in many languages.<sup>1</sup> However, one part of that compilation, the Novels, has been less widely discussed than the others. Moreover it appears that, in particular, detailed descriptions of how the Novels were transmitted from Justinian's time to our era have not been published in English.

---

\* © Timothy G. Kearley, 2009. To be published in LAW LIBRARY JOURNAL, Summer 2010.

\*\* Director of the Law Library and Professor of Law, University of Wyoming College of Law, Laramie, Wyoming.

<sup>1</sup> For information in English, see for example, TONY HONORÉ, *TRIBONIAN* 124-222 (1978); Caroline Humfress, *Law and Legal Practice in the Age of Justinian*, in *THE CAMBRIDGE COMPANION TO THE AGE OF JUSTINIAN* 161, 162-166 (Michael Mass ed., 2005); WOLFGANG KUNKEL, *AN INTRODUCTION TO ROMAN LEGAL AND CONSTITUTIONAL HISTORY* 163-176 (J.M. Kelly trans. 2nd ed. 1973); Detlef Liebs, *Roman Law*, in *LATE ANTIQUITY: EMPIRE AND SUCCESSORS, A.D. 425-600*, 238, 244-252 (Averil Cameron ed. 2000) [CAMBRIDGE ANCIENT HISTORY, 2nd ed. vol. 14] [hereinafter Liebs, *Roman Law*]; and A. ARTHUR SCHILLER, *ROMAN LAW: MECHANISMS OF DEVELOPMENT* §§ 12-16 AT 29-40 (1978).

Nineteenth and twentieth century Continental writers provided extremely detailed accounts in German, French, and Italian of the different versions of the Novels, how they were created, used, and passed along during the Middle Ages and the Renaissance, and how scholars gradually reconstructed the texts to create the edition now accepted as the standard. This is not surprising, as the Continent was necessarily the locus of research on the subject. Writers in English cite Biener, Krüger, Noailles, and Wenger, especially, for their lengthy description of the manuscripts and these processes.<sup>2</sup>

However, scholars writing in English appear to have wished to avoid repeating the findings of their Continental counterparts, and seem to have assumed that persons interested in the details would be able to read these foreign languages for themselves; therefore, they offer only summary descriptions. Schiller, in his excellent *ROMAN LAW*, provides a good example of this. He covers the history of the Novels in only two pages and then notes: "The promulgation and the nature of the Novels, the manuscripts and editions are discussed at length by Biener... see also Wenger...."<sup>3</sup>

---

<sup>2</sup> FRIEDRICH AUGUST BIENER, *GESCHICHTE DER NOVELLEN JUSTINIANS* (Berlin, Dümmler 1824) available at <http://books.google.com>; PAUL KRÜGER, *GESCHICHTE DER QUELLEN UND LITTERATUR DES RÖMISCHEN RECHTS* (Leipzig, Duncker and Humblot 1888) available at <http://books.google.com>; PIERRE NOAILLES, *LES COLLECTIONS DE NOVELLES DE L'EMPEREUR JUSTINIAN* (1912-1914); L. WENGER, *DIE QUELLEN DES RÖMISCHEN RECHTS* (1953). Also useful is MAX CONRAT COHN, *GESCHICHTE DER QUELLEN UND LITERATUR DES RÖMISCHEN RECHTS IM FRÜHEREN MITTELALTER* (Leipzig, J.C. Hinrichs 1891) available at <http://books.google.com>.

<sup>3</sup> SCHILLER, *supra* note 1 § 16 at 39 n.1. See also, Stephen L. Sass, *Research in Roman Law; a Guide to the Sources and Their English Translations*, 56 *LAW LIBR. J.* 210 n.2 (1963), who refers to Krüger and Wenger. A *DICTIONARY OF GREEK AND ROMAN*

Unfortunately, I think many interested parties may not, in fact, be able to read these early studies that appeared in languages other than English.

Therefore, I will offer in this article an English-language synthesis of the detailed information concerning the Novels—the manuscripts, their transmission, and their transformation into the modern editions we know—that has appeared mostly in other languages. I will draw primarily on the writers noted in the preceding paragraphs and will refer to both French and German writings whenever possible. However, I also will refer to other, more recent research, including English-language work, that modifies the earlier accounts to some extent. (All translations provided here will be my own.)

## **I. Background of the Novels**

The basic facts concerning Justinian's codification can be summarized readily. In 528, the emperor Justinian appointed a commission to compile and harmonize the imperial enactments (*constitutiones*, or constitutions) of previous emperors.<sup>4</sup> The

---

BIOGRAPHY AND MYTHOLOGY offers rather detailed coverage of this subject but was published in 1876 and thus does not benefit from over a century and a third of subsequent scholarship. However, the relevant entries are still worth reading. See John Thomas Graves, *Justinianus, The Legislation of Justinian*, in A DICTIONARY OF GREEK AND ROMAN BIOGRAPHY AND MYTHOLOGY 665—674 (William Smith ed., London, John Murray 1876) [hereinafter Graves, Justinianus] *available at* <http://books.google.com>, and the same author's entry *Julianus, the Greco-Roman Jurist* at *id.* 650-652.

<sup>4</sup> *Constitutio haec quae necessario*, or "Concerning the Establishment of a New Code" (Feb. 13, 528), 6 [12] S.P. SCOTT, THE CIVIL LAW 3 (photo. reprint 1970) (1932), *available at* <http://www.constitution.org.sps/sps12.htm>. (In references to the print edition of SCOTT the first volume number is the reprint volume, the number in brackets is the original volume number, and the page number is the original page

commission worked quickly, and Justinian was able to promulgate this compilation--the *Codex*, or Code--in 529.<sup>5</sup> Thereafter, only the Code, and not the prior imperial legislation, could be cited as law. In 530 and 531, he issued the Fifty Decisions (*quingenta decisiones*) which resolved differences among the writings of classical jurists, and thereafter he continued to issue other new laws.<sup>6</sup> These additions meant his Code no longer could be the sole, unified, source of imperial legislation. Thus, in 534, Justinian promulgated the 2nd edition of the Code (*Codex repetitae praelectionis*), with his *Constitutio cordi nobis*,<sup>7</sup> integrating the new legislation into the Code and superseding the first edition.

---

number. The reprint publisher printed more than one original volume in each reprint volume but left the original page numbers. However, the original volume numbers also appear on each page, so the reader can find the appropriate page by using all three numbers.) This constitution was attached as the first preface to Justinian's original Code and also is found with the second edition, as are the second and third prefaces noted below. Constitutions are known by their opening words. See KUNKEL, *supra* note 1 at 164.

Unfortunately, Scott did not use the best available sources for his English translation of the *Corpus Juris Civilis*. See *infra* text accompanying notes 147-148. Justice Fred Blume, however, did use the most authoritative Latin texts for his translation of the Code and Novels. See *infra* text accompanying note 149. For his translation, see the ANNOTATED JUSTINIAN CODE web site [hereinafter AJC] available at <http://uwacadweb.uwyo.edu/blume&justinian/default.asp>. His translation of the constitution in question is at

<http://www.uwacadweb.uwyo.edu/blume&justinian/Book I2.asp>. For the background of Justice Blume's translation, see Timothy Kearley, *Justice Fred Blume and the Translation of Justinian's Code*, 99 LAW LIBR. J. 525 (2007).

<sup>5</sup> See *Constitutio summa rei publicae*, or "Concerning the Confirmation of the Code of Justinian" (April 7, 529), the second preface to the Code, 6 [12] SCOTT, *supra* note 4 at 4. See also AJC *supra* note 4 at

<http://www.uwacadweb.uwyo.edu/blume&justinian/Book I2.asp>.

<sup>6</sup> See HONORÉ, *supra* note 1 at 142-146. See also Charles Pazdernik, *Justinianic Ideology and the Power of the Past*, in THE CAMBRIDGE COMPANION TO THE AGE OF JUSTINIAN 185, 198-2002 (Michael Maas ed., 2005).

<sup>7</sup> "Concerning the Amendments of the Code of our Lord Justinian, and the Second Edition of the Same," (November 16, 534) the third preface to the Code, 6 [12] SCOTT,

However, new legislation obviously would continue to be required after the second Code as well. In his pragmatic sanction of 554 (*Sanctio pragmatica pro petitione Vigili*),<sup>8</sup> Justinian foresaw that in order to ensure interested parties could know the current state of the law, he would need to maintain a collection of all new laws modifying the Code (*novellae constitutiones, quae post nostri codicis confectionem late sunt*). Justinian never did issue an official compilation of these *novellae constitutiones*, or novels,<sup>9</sup> but private persons filled the void and created unofficial compilations in several forms.<sup>10</sup> This article will describe how these manuscript compilations of novels were created and came down to us across the centuries.

## II. The Nature of the Novels

However, before discussing the compilations per se, it is helpful to describe the laws, or constitutions, themselves. The term *constitutiones* (or *constitutiones*

---

*supra* note 4 at 6. See also AJC, *supra* note 4 at [http://www.uwacadweb.uwyo.edu/blume&justinian/Book I2.asp](http://www.uwacadweb.uwyo.edu/blume&justinian/Book%20I2.asp).

<sup>8</sup> "That the Laws of the Emperor Shall be Extended into his Provinces" (August 13 554). This law is appended to the standard edition of the Novels as number 7 (Nov. App. 7). The English title given here is that provided by Blume in his translation and describes the thrust of the law. The actual first words refer to the fact that this pragmatic sanction was given in response to a petition sent to the emperor by Pope Vigilius. WENGER, *supra* note 2, § 84 at 658-659. Regarding pragmatic sanctions as a type of law, see W.W. BUCKLAND, A TEXT-BOOK OF ROMAN LAW 21 note 6 (1921) and WENGER, *supra* note 2, § 74 at 434-438.

<sup>9</sup> The term *novella*, or novels, was used as early as the fourth century B.C. for newer laws; e.g., the Novels of Theodosius. When used without additional qualification, however, "Novels" is now assumed to refer to the Justinian novels. WENGER, *supra* note 2, § 84 at 652. For an analysis of the debate over whether the *Authenticum* was an official compilation, see BIENER, *supra* note 2 at 38-51, and *infra* text accompanying notes 65, 72, and 73.

<sup>10</sup> BIENER, *supra* note 2 at 51-57, and KRÜGER, *supra* note 2 § 48 at 353.

*principis*) refers to a wide range of "measures decreed by the princeps" that were deemed to create law.<sup>11</sup> *Constitutiones* thus include such common measures as *edicta* (edicts), *decreta* (decrees), *mandata* (mandates), and *rescripta* (rescripts). Edicts were proclamations of the emperor directed to the public at large; decrees consisted of judicial decisions made either in the first instance or as an appellate judge; mandates ordered a provincial governor to take certain action; and the term rescripts referred to the emperor's correspondence to public officials and private citizens.<sup>12</sup> Also coming under the broad category of constitutions were *epistulae*--letters from the emperor to public officials that established binding law, and his responses to private parties written in the margin at the end of the petition--known as *subcriptiones*.<sup>13</sup> Several other, less important, types of law also have been identified but need not be described here.<sup>14</sup>

The compiled constitutions have a standard form. First, there is an *inscription* that indicates to whom the law is addressed, complete with that person's title, and declaring that it is from the emperor (most of whose lengthy title is usually

---

<sup>11</sup> KUNKEL, *supra* note 1 at 127.

<sup>12</sup> See generally, *id.* at 127-130. As to *edicta*, *decreta*, *mandata*, and *rescripta*, see SCHILLER, *supra* note 1 § 164 at 481-484, § 165 at 484-488, § 169 at 501-506, and § 166 at 488-501, respectively, where he provides examples of each from ancient documents.

<sup>13</sup> See KUNKEL, *supra* note 1 at 128-129. The term *subscriptio* was used in other senses as well--such as simply referring to the emperor's signature *scripsi*, or *rescripsi*, "I have signed." For a detailed explanation of the different forms of subscription, see SCHILLER, *supra* note 1 § 168 at 499-501.

<sup>14</sup> Wenger, for example, discusses *adnoationes*, *leges generales* and *sanctio pragmaticae*. WENGER, *supra* note 2, § 74 at 432-438.

omitted).<sup>15</sup> Next is the *praefatio* or *prooimion* (preface), which provides the rationale for the law--what problem it addresses.<sup>16</sup> The body of the law (the *sanktion* in German) follows.<sup>17</sup> In modern editions the law typically is divided into chapters, although the originals were not.<sup>18</sup> The substance of the law is followed by an *epilogus*, or *epilogo*, (epilogue) to the addressees, instructing them on how, and to whom, the contents of the law should be made known, and when it should take effect.<sup>19</sup> At the end of each constitution is a subscription (not in the legal sense noted in the paragraph above) showing the date the law was issued.<sup>20</sup> These subscriptions were frequently removed from manuscripts, and their modern reconstruction required a good deal of research.

Most novels were written in Greek, the language of the Eastern empire.<sup>21</sup> A few were written in Latin, since Latin was still the language of the higher bureaucracy and of some parts of the empire, and a few were composed in both languages.<sup>22</sup> Although the Novels are now the least discussed piece of Justinian's codification,

---

<sup>15</sup> For a discussion of inscriptions, see BIENER, *supra* note 2 at 21, 24-25; 1 NOAILLES, *supra* note 2 at 81; and WENGER, *supra* note 2, § 84 at 654-657, 679.

<sup>16</sup> See HONORÉ, *supra* note 1 at 125-127; KRÜGER, *supra* note 2, § 48 at 354; and SCHILLER, *supra* note 1, § 16 at 40.

<sup>17</sup> BIENER, *supra* note 2 at 22, and KRÜGER, *supra* note 2 § 48 at 354.

<sup>18</sup> 2 NOAILLES, *supra* note 2 at 52.

<sup>19</sup> 1 NOAILLES, *supra* note 2 at 75. See also BIENER, *supra* note 2 at 22, and KRÜGER, *supra* note 2, § 48 at 354.

<sup>20</sup> 1 NOAILLES, *supra* note 2 at 62, and WENGER, *supra* note 2, § 84 at 679.

<sup>21</sup> See HONORÉ, *supra* note 1 at 124, and KUNKEL, *supra* note 1 at 175.

<sup>22</sup> KUNKEL, *supra* note 1 at 175.

they were the best-known part of Justinian's law for centuries in Europe,<sup>23</sup> and for many more centuries they were valid law in the Byzantine Empire.<sup>24</sup>

### III. Sources

#### A. Archive: The *Liber Legum*

Although Justinian never issued an official compilation of the legislation he promulgated following the publication of the second edition of the Code, his administration did maintain many of those new laws in a collection called the *Liber legum* or *Libri legum*. Pierre Noailles describes this archive at great length, referring to it as a depository, and other writers comment on it as well, although they do not agree as to its exact nature.<sup>25</sup> Letters between Pliny and emperor Trajan from the early first century A.D. presuppose that the imperial bureaucracy stored an archive of constitutions for many years;<sup>26</sup> the text of some novels indicate they are to be deposited<sup>27</sup> (e.g., novels 17, and 24-26); and Wenger points to a sketch in the

---

<sup>23</sup> See CHARLES M. RADDING & ANTONIO CIARALLI, *THE CORPUS IURIS CIVILIS IN THE MIDDLE AGES: MANUSCRIPTS AND TRANSMISSIONS FROM THE SIXTH CENTURY TO THE JURISTIC REVIVAL* 40 (2007) and *infra* text accompanying notes 57-62.

<sup>24</sup> See Charles P. Sherman, *The Basilica*, 66 U. PA. L. REV. 363, 364-365 (1918). The *novellae* also were “received” into German law in the sixteenth century. See RUDOLF SOHM, *THE INSTITUTES* § 6 at 18. (James Crawford Ledlie trans. 2<sup>nd</sup> ed. 1901) *available at* <http://books.google.com>.

<sup>25</sup> See generally 1 NOAILLES, *supra* note 2 at 31-58. See also, BIENER, *supra* note 2 at 39-40; KRÜGER, *supra* note 2, § 48 at 353 n.3; BERNHARD KÜBLER, *GESCHICHTE DES RÖMISCHEN RECHTS* § 42 at 417 (1925); and WENGER, *supra* note 2, § 74 at 441-442 and § 84 at 652-654.

<sup>26</sup> 1 NOAILLES, *supra* note 2 at 32.

<sup>27</sup> BIENER, *supra* note 2 at 39.



"Notitia" of a thick bundle of documents under the Quaestor's insignia, which he suggests might represent the *Liber legum*.<sup>28</sup>

In brief, the office of the *Quaestor sacri palatis* maintained a collection of original copies of important laws.<sup>29</sup> Most of the legislation stored in it consisted of general laws, but some rescripts and pragmatic sanctions were deposited as well.<sup>30</sup>

According to Noailles, the laws were kept in "groups of six months" but were not necessarily in chronological order within those semi-annual batches.<sup>31</sup> He believed this *Liber legum* was the common source of the novel texts used by private parties to create the Novel compilations that have come down to us. ("One is led to believe that it [the *Liber legum*] was the principle source from which jurisconsults knew the imperial constitutions and also without doubt was where the editors of the various collections we have obtained their material.")<sup>32</sup>

Noailles even suggests this depository collection may be the collection promised by Justinian when he wrote in his *Constitutio cordi nobis* that if any additional new laws needed, they would "be embodied in another collection to be designated by the name of New Constitutions."<sup>33</sup> Other commentators disagree with him on this issue (and some other specifics about the *Liber legum*), most believing Justinian intended to publish a separate compilation of *novellae constitutiones*, not just to collect them

---

<sup>28</sup> See WENGER, *supra* note 2, § 84 at 653.

<sup>29</sup> 1 NOAILLES, *supra* note 2 at 39, and WENGER, *supra* note 2, § 84 at 653.

<sup>30</sup> 1 NOAILLES, *supra* note 2 at 41-42.

<sup>31</sup> *Id.* at 54-55, 92-93.

<sup>32</sup> *Id.* at 59.

<sup>33</sup> *Id.* at 34-35.

in an archive;<sup>34</sup> but all agree the Quaestor did keep an archive of important laws. Wenger proposes that "the *Liber legum* can, literally understood, mean simply a book, in which the laws were contained...."<sup>35</sup> In any event, we can be sure the imperial administration kept copies of the Novels that private persons used for the texts on which they based their compilations.

As noted above, these laws were sent to the addressees shown in the inscriptions, who, in turn, were sometimes directed in the epilogue to make the contents known to others.<sup>36</sup> The bulk of the novels, those of general application, were directed to the Praetorian Prefect of the Orient, the Emperor's chief judicial officer, who was sometimes commanded in the law to make it widely known.<sup>37</sup> This general publication sometimes was done by writing the law on a tablet, or in stone, and displaying it in churches.<sup>38</sup>

## **B. Compilations**

### **1. The *Epitome Juliani*<sup>39</sup>**

---

<sup>34</sup> See, for example, SCHILLER, *supra* note 1, § 16 at 39, and WENGER, *supra* note 2, § 84 at 668.

<sup>35</sup> WENGER, *supra* note 2, § 84 at 653.

<sup>36</sup> See BIENER, *supra* note 2 at 24-25.

<sup>37</sup> See *id.* at 25-35; 1 NOAILLES, *supra* note 2 at 80-81; and WENGER, *supra* note 2, § 84 at 654--657.

<sup>38</sup> BIENER, *supra* note 2 at 28-29.

<sup>39</sup> On this collection, see generally *id.* at 70-84; Cohn, *supra* note 2 at 121-132; Krüger, *supra* note 2 at 355; 1 NOAILLES, *supra* note 2 at 149-160; and WENGER, *supra* note 2 § 84 at 669, 677-678. As to an earlier, lost, collection, see Liebs, Roman Law, *supra* note 1 at 251-252.

Julian (Iulianus), a law professor in Constantinople, created the earliest still-surviving Novels compilation as an introduction to these predominately-Greek laws for the use of his Latin-speaking students--probably in the 556-557 academic year.<sup>40</sup> An inscription at the top of a few of the manuscripts gives Julian's name and describes him as a very renowned professor of Constantinople who translated the Greek novels to Latin.<sup>41</sup> This work, known as the *Epitome Juliani*, provides a Latin summary--not the full text--of 124 novels (actually 122 because two are repeated).<sup>42</sup> The number of novels covered is sometimes given as 125, because of a cryptic, fragmentary comment at the end of two *Epitome* manuscripts referring to Constitution CXXV.<sup>43</sup>

---

<sup>40</sup> See DETLEF LIEBS, DIE JURISPRUDENZ IM SPÄTANTIKEN ITALIEN 220-223, 264-265 (1987)[hereinafter LIEBS, JURISPRUDENZ] and H.J. SCHELTEMA, L'ENSEIGNEMENT DE DROIT DES ANTÉCESSEURS 13, 47-48 (1970) [hereinafter SCHELTEMA, ENSEIGNEMENT]. For brief English-language surveys of Roman legal education in late antiquity see Liebs, Roman Law, *supra* note 1 at 253-255 and H.J. Scheltema, *Byzantine Law*, in THE BYZANTINE EMPIRE: GOVERNMENT, CHURCH AND CIVILISATION 55, 55-58 (J.M. Hessey ed. 1967) [THE CAMBRIDGE ANCIENT HISTORY vol. 4, part 2][hereinafter Scheltema, Byzantine].

<sup>41</sup> See 1 NOAILLES, *supra* note 2 at 158, and WENGER, *supra* note 5, § 84 at 669, n. 183.

<sup>42</sup> This summary or paraphrase sometimes is referred to as an "index." See Scheltema, Byzantine, *supra* note 40 at 57 and SCHELTEMA, ENSEIGNEMENT, *supra* note 40 at 49-52.

<sup>43</sup> For example, Rudorff gives the number of novels in the *Epitome* as 125. See ADOLF FRIEDRICH RUDORFF, RÖMISCHE RECHTSGESCHICHTE § 114 at 319 (Leipzig, Tauchnitz 1857) available at <http://www.books.google.com>. For a description of this fragmentary comment and a theory about it (that the manuscript containing the comment originally held both the *Epitome* and the *Authenticum*, and was later divided so that the comment ending the *Epitome* became attached to the beginning of the *Authenticum*), see K.E. Zachariae von Lingenthal, *Zur Geschichte des Authenticum und des Epitome Novellarum des Antecessor Julianus* XLV SITZUNGSBERICHTE DER KÖNIGLICH PREUSSISCHEN AKADEMIE DER WISSENSCHAFTEN ZU BERLIN 993, 1000-1003 (1882) available at <http://books.google.com>. See also 1 NOAILLES, *supra* note 2 at 150-152, where he discusses Zachariae's theory.

Julian most likely chose to make his compilation in 555 because Justinian had only a year before issued the pragmatic sanction *pro petitio Vigili*, making the codifications effective in Italy and thereby increasing the demand for Roman legal studies.<sup>44</sup>

Justinian had authorized law teaching at Rome some twenty years earlier, in the *Constitutio omnem*,<sup>45</sup> but students from Italy still traveled to Constantinople to learn at its long-established university.<sup>46</sup> The curriculum of legal studies eventually was lengthened to a sixth year in order to encompass the Novels, and it appears as if the *Epitome Juliani* constituted the complete lecture notes for this course.<sup>47</sup>

This *Epitome* includes only 122 distinct novels (as noted above, two are doublets<sup>48</sup>) arranged in rough chronological order.<sup>49</sup> It encompasses the shortest time span of all the collections, from 535-555, and is not as complete as the other compilations to be discussed below--especially the 168-novel Greek Collection that forms the basis

---

<sup>44</sup> 1 NOAILLES, *supra* note 2 at 156, and WENGER, *supra* note 2, § 84 at 669.

<sup>45</sup> LIEBS, JURISPRUDENZ *supra* note 40 at 124. For an English translation of this constitution--"The Whole Body of the Law"--see THE DIGEST OF JUSTINIAN xlvii (Alan Watson trans. & ed. 1985). The law outlines the official course of legal study to be followed in the authorized schools.

<sup>46</sup> See LIEBS, JURISPRUDENZ *supra* note 40 at 220-221, and 1 NOAILLES, *supra* note 2 at 160.

<sup>47</sup> See LIEBS, JURISPRUDENZ *supra* note 40 at 220-222; Scheltema, Byzantine, *supra* note 40 at 56-57; and SCHELTEMA, ENSEIGNEMENT *supra* note 40 at 48-49.

<sup>48</sup> Number 25 is the same as 120, and 68 duplicates 97.

<sup>49</sup> Noailles provides a table showing the year in which each novel (designated by its number in the Greek Collection of 168) was issued (Table I, 1 NOAILLES, *supra* note 2 at 256). Another of his tables translates the Greek Collection number into the number given that same novel in the *Authenticum* and the *Epitome Juliani*. See Table II, *id.* at 258-259. See also Appendix IV, part 5 in BIENER, *supra* note 2 at 538-540 for a list in which he provides, adjacent to each of the novels as numbered by Julian, that novel's place in the Greek collection (as established by Contius's 1571 edition) and its year of promulgation.

of modern editions.<sup>50</sup> However, the *Epitome Juliani* does include one novel missing from that larger collection,<sup>51</sup> and the subscriptions retained in this epitome's manuscripts were used to fill in the missing subscriptions of the Greek Collection.<sup>52</sup> Moreover, its *paratitla*<sup>53</sup> proved useful for centuries of Roman law students. It is likely Julian's students brought copies of this Novels summary back to Italy to assist them in their practice.<sup>54</sup> Over the years, an extensive array of Latin annotations and commentary developed around it.<sup>55</sup> There is debate over the extent to which Julian himself was responsible for the compilation and commentary<sup>56</sup> but, in any case, it is agreed that the compilation was the primary vehicle by which Roman law was known in Europe for hundreds of years. Radding and Ciaralli note that "...only the Novels in the form of the *Epitome Juliani* enjoy any appreciable readership in the early Middle Ages, while other works [of the *Corpus*]

---

<sup>50</sup> For a list of the novels contained in the Greek Collection but missing from the *Epitome Juliana*, see 1 NOAILLES, *supra* note 2 at 155.

<sup>51</sup> Number 29. *Id.*

<sup>52</sup> WENGER, *supra* note 2, § 84 at 669.

<sup>53</sup> The epitome's *paratitla* are "glosses cross-referencing the Novels with the Code and Digest." RADDING & CIARELLI, *supra* note 23 at 38. See also KRÜGER, *supra* note 2 at 359.

<sup>54</sup> LIEBS, JURISPRUDENZ *supra* note 40 at 244, and 1 NOAILLES, *supra* note 2 at 160.

<sup>55</sup> LIEBS, JURISPRUDENZ *supra* note 40 at 220-221. See also, COHN, *supra* note 2 at 192-204, 360-363.

<sup>56</sup> See generally, *id.* at 221-223; 1 NOAILLES, *supra* note 2 at 152-154; and SCHELTEMA, ENSEIGNEMENT *supra* note 40 at 52-53. Scheltema refers to the *Epitome Juliani* as "lecture notes sometimes written up in considerable detail." Scheltema, Byzantine, *supra* note 40 at 57. He goes on to describe how "First the professor would dictate a continuous paraphrase or translation, called the Index, and during the second lecture he would make general observations on the same passage..." *Id.*

make at best brief appearances and produced no intellectual tradition of lasting significance."<sup>57</sup>

Ecclesiastical officials maintained an interest in the *Epitome Juliani* due to the support many of its novels gave to the rights of the Church,<sup>58</sup> but the specifics of how the *Epitome* and other parts of the CJC survived and were transmitted during the early Middle Ages remain something of a mystery.<sup>59</sup> The earliest of the *Epitome Juliani*'s known manuscripts date from the seventh or eighth century,<sup>60</sup> and several were made during the Carolingian Renaissance.<sup>61</sup> In any case, the *Epitome Juliani* was so thoroughly accepted, and so well regarded, that the historian-monk Paulus Diaconus believed it to be an official work of Justinian.<sup>62</sup>

## **2. The Authenticum<sup>63</sup>**

In the twelfth century, the *Epitome Juliani* lost its status as the leading source for the Novels to the more extensive Latin version known as the *Authenticum*, which surfaced in Bologna around 1100.<sup>64</sup> This rudimentary Latin translation of 134 novels was so-named because glossators, including the renowned Irnerius, believed

---

<sup>57</sup> RADDING & CIARALLI, *supra* note 23 at 40. Cohn also notes that the *Epitome Juliani* was the only part of the Justinian law used in France in the early Middle Ages. See COHN, *supra* note 2 at 30.

<sup>58</sup> See RADDING & CIARALLI, *supra* note 23 at 49. See also, COHN, *supra* note 2 at 40.

<sup>59</sup> See generally, RADDING & CIARALLI, *supra* note 23 at 35-65.

<sup>60</sup> See the tables of CJC manuscript dates in *id.* at 37.

<sup>61</sup> *Id.* at 47. As to manuscripts of the *Epitome Juliani*, see also COHN, *supra* note 2 at 39-40, and WENGER, *supra* note 2 at 677-678.

<sup>62</sup> WENGER, *supra* note 2, § 84 at 669.

<sup>63</sup> See generally, COHN, *supra* note 2 at 132-137; 1 NOAILLES, *supra* note 2 at 160-178; KRÜGER, *supra* note 2 § 48 at 355-357; and WENGER, *supra* note 2, § 84 at 669-671.

<sup>64</sup> RADDING & CIARELLI, *supra* note 23 at 35-36, and WENGER, *supra* note 2, § 84 at 670.

it to be an official, or authentic, translation ordered by Justinian.<sup>65</sup> After it ceased to be deemed authentic, this version was sometimes referred to as the *versio vulgata*.<sup>66</sup>

The *Authenticum* includes novels from 535-556 originally issued in Latin, the Latin versions of novels promulgated in both Latin and Greek, and Latin translations of novels issued only in Greek (with the addition of one law--number 132--from 563, probably added after the initial compilation).<sup>67</sup> Thus, although with a minor exception, it encompasses only one year not covered by the *Epitome Juliani*, it is more comprehensive than that epitome for those years. On the other hand, the glossators often created manuscripts from this collection in which only 97 novels were used, detaching from them the 37 others (which became known as *extravagantes*) that were deemed irrelevant for practice.<sup>68</sup>

---

<sup>65</sup> SCHILLER, *supra* note 1 § 16 at 39, and WENGER, *supra* note 2, § 84 at 670. According to Vinogradoff, "Irnerius...took a prominent part in the collection of Justinian's texts by replacing the fragments of the Novellae hitherto quoted from Julian's Epitome by the so-called Authenticum..." PAUL VINOGRADOFF, ROMAN LAW IN MEDIEVAL EUROPE 47 (1909) available at <http://www.google.books.com>.

<sup>66</sup> See RUDORFF, *supra* note 43 § 114 at 320, and FREDERICK JAMES TOMKINS, THE INSTITUTES OF THE ROMAN LAW § 31 at 174 (London, Butterworths 1867) available at <http://books.google.com>.

<sup>67</sup> See 1 NOALLES, *supra* note 2 at 162, and WENGER, *supra* note 2, § 84 at 669.

<sup>68</sup> See KRÜGER, *supra* note 2 § 52 at 384, where they are referred to as *inutiles*, and WENGER, *supra* note 2, § 84 at 671. See also BIENER, *supra* note 2 at 547-550, Appendix IV, part 7, where the author surveys these 97 selected novels.

The novels in the *Authenticum* are presented in rough chronological order up to number 124.<sup>69</sup> The novels following 124 appear to have been a kind of appendix added later in no special order.<sup>70</sup> Noailles believes the same group of documents found in the *Liber legum* served as the basis for the *Authenticum* and the Greek Collection of 168 discussed below, in part because the first 115 novels of the *Authenticum* are among those of the first 120 of the Greek Collection, with some of those being in precisely the same order even though they are not strictly chronological.<sup>71</sup>

The origins and purpose of the *Authenticum* are more debated than those of the other compilations. As mentioned above, the glossators thought it to be an official translation ordered by Justinian for Italy after the *pro petitio Vigili*. This theory gradually lost favor, and although Zachariae von Lingenthal took up its cause in the late 1800's, it never regained popularity.<sup>72</sup> Among the factors arguing against the *Authenticum*'s official status are: the poor quality of its Latin, the absence of the *pro petitio Vigili* (which one would expect to find in it, were it an official work designed to facilitate the implementation of that pragmatic sanction), and its inclusion of many laws that had nothing to do with Italy. In addition, if an official translation had

---

<sup>69</sup> KÜBLER, *supra* note 25 § 42 at 418 and WENGER, *supra* note 2, § 84 at 670. See also Table II in 1 NOAILLES, *supra* note 2 at 258-259, as described in note 49 *supra* and BIENER, *supra* note 2 at 540-547, Appendix IV, part 6, for a list showing in one column the novels of the *Authenticum* and in adjacent columns their Greek Collection numbers and years of promulgation.

<sup>70</sup> KRÜGER, *supra* note 2 § 48 at 356.

<sup>71</sup> 1 NOAILLES, *supra* note 2 at 164-166.

<sup>72</sup> See KÜBLER, *supra* note 25 § 42 at 418, and 1 NOAILLES, *supra* note 2 at 166-170. Zachariae described his theory in Zachariae von Lingenthal, *supra* note 43.



existed, other translations would have been unnecessary, yet there is evidence that such translations did exist.<sup>73</sup>

The consensus is that the *Authenticum* was created in the mid-sixth century. Kroll places it in Justinian's reign, and Noailles advances a date of 556, even though Mommsen thought it must have been created in the eleventh century, due to its "barbaric" Latin.<sup>74</sup> Its place of origin also is in dispute; some argue it was done in Italy by a writer with a poor grasp of both Greek and the law, while others claim it was created in Constantinople mainly for use by Latin-speaking students.<sup>75</sup>

A more recent, intriguing, hypothesis advanced by Scheltema suggests that the *Authenticum* is in fact a kind of *kata poda*,<sup>76</sup> created for Latin-speaking students who had a hard time understanding the particularly difficult Greek of the Novels.<sup>77</sup> The *Authenticum's* possible origin as a word-for-word translation, with each Latin word sitting above the corresponding Greek one, in the Greek word order, would seem to

---

<sup>73</sup> See 1 NOAILLES, *supra* note 2 at 170, and WENGER, *supra* note 2, § 84 at 670. See also, COHN, *supra* note 2 at 133.

<sup>74</sup> See 1 NOAILLES, *supra* note 2 at 163, and WENGER, *supra* note 2, § 84 at 671.

<sup>75</sup> Compare WENGER, *supra* note 2, § 84 at 670 with SCHELTEMA, ENSEIGNEMENT *supra* note 40 at 15, 57, and 1 NOAILLES, *supra* note 2 at 170-171. Cohn suggest Illyricum as its place of origin. See COHN, *supra* note 2 at 136-137.

<sup>76</sup> *Kata poda*, means "following in the footsteps," so a *kata poda* is a literal translation. Justinian allowed only *kata podas* of his Latin codification into Greek, as opposed to commentaries. See KUNKEL, *supra* note 1 at 179. Thus, the literal translation of the Greek novels into Latin would be a *kata poda* in reverse. SCHELTEMA, ENSEIGNEMENT, *supra* note 40 at 57. See also WENGER, *supra* note 2 at 669 n.192.

<sup>77</sup> See Scheltema, Byzantine, *supra* note 40 at 57-58, and SCHELTEMA, ENSEIGNEMENT *supra* note 40 at 52-57. Supporting Scheltema are Liebs, Roman Law, *supra* note 1 at 253; LIEBS, JURISPRUDENZ, *supra* note 40 at 266-269; and N. VAN DER WAL, MANUALE NOVELLARUM JUSTINIANI xii-xiii (2nd ed. 1998).

explain its existence better than the perplexing survival of an extremely awkward attempt at a literary translation.

Whatever the nature and source of the *Authenticum*, during the late Middle Ages and the Renaissance, it was held to be Justinian's official Novels collection and thus was highly valued and frequently copied. Some 129 manuscripts versions have been identified--more than those of the *Epitome Juliani*. The best of these is the 13th century Viennese Codex.<sup>78</sup>

### **3. The Greek Collection of 168<sup>79</sup>**

Ironically, the most extensive compilation of Justinian's Novels is the last one to have become known in the West--a collection of 168 items, nearly all in Greek, that came to light around 1200. Two of the constitutions are repeated (75=104 and 143=150), and another is included in both Latin and Greek (32=34)<sup>80</sup> making 165 unique laws in all. The main body of laws covers from 535, just after the second edition of the Code was issued, to 565, the end of Justinian's reign. They are arranged chronologically by year (except for numbers 24-29) until number 120, but they are not chronological within each year.<sup>81</sup>

---

<sup>78</sup> WENGER, *supra* note 2, § 84 at 678.

<sup>79</sup> For information on the Greek Collection, see generally KUNKEL, *supra* note 1 at 176; Liebs, Roman Law, *supra* note 1 at 252; SCHILLER, *supra* note 1 § 16 at 40; KRÜGER, *supra* note 2 § 48 at 357-358; 1 NOAILLES, *supra* note 2 at 178-181; and WENGER, *supra* note 2 § 84 at 671-672.

<sup>80</sup> Thirteen of the laws in the "Greek Collection" are actually in Latin. See KRÜGER, *supra* note 2 § 48 at 358

<sup>81</sup> See BIENER, *supra* note 2 at 90; KÜBLER *supra* note 24 § 42 at 419; and KRÜGER, *supra* note 2 § 48 at 358.

The Justinian novels are supplemented to the year 575 by four constitutions of Justin II (140, 144, 148, and 149), three of Tiberius II (161, 163, and 164), and three or four edicts of the praetorian prefect, the latter sometimes being referred to as *Eparchica*.<sup>82</sup> It is likely the group of Justinian novels reached its basic form in Constantinople during the reign of Tiberius II (around 575).<sup>83</sup> It appears as if the compiler, or compilers, had access to the *Authenticum* and the *Epitome Juliani*, or a collection common to both, because novels 1-43 of the Greek Collection (years 535-536) are in the same order as in the *Authenticum* and numbers 44-120 (537-544) are in the identical order of the *Epitome*, with minor exceptions.<sup>84</sup> The evidence seems to show that the novels from number 120 up to 150 were composed in two groups--one around 556 (numbers 120-135) and the second in 572 (numbers 135-149), while those from number 150 through 168 were added around 575 as an appendix by the compiler who put the Greek Collection into the form it maintained for centuries.<sup>85</sup>

The group of thirteen Justinian edicts that completes the Greek Collection today was found appended to the Venetian manuscript version.<sup>86</sup> These edicts range over the entire period of the Novels, but most are from 535-548, and three are repeated in

---

<sup>82</sup> See KRÜGER, *supra* note 2 § 48 at 357-358. See also BIENER, *supra* note 2 at 98, and 1 NOAILLES, *supra* note 2 at 179..

<sup>83</sup> 1 NOAILLES, *supra* note 2 at 179.

<sup>84</sup> *Id.* at 180 and Table II at 258-259. See also KRÜGER, *supra* note 2 § 48 at 358.

<sup>85</sup> 1 NOAILLES, *supra* note 2 at 180-181.

<sup>86</sup> See 2 NOAILLES, *supra* note 2 at 5-83 for a detailed first-hand description and analysis of this key manuscript of the Novels. See also text *supra* text accompanying note 83.

the basic collection of 168.<sup>87</sup> There is considerable speculation as to when and where the edicts were gathered, but it seems likely the group was added as a unit to the Greek Collection long after its initial compilation. Some scholars believe the thirteen edicts derive from a manuscript composed in Alexandria.<sup>88</sup> The *Basilica*<sup>89</sup> does not mention them, nor does Byzantine jurisprudence in general. Wenger regards the edicts as better thought of as a separate entity than one owner of the Greek Collection attached to the Novel compilation,<sup>90</sup> and Noailles suggests they could have been added anywhere from the ninth century to the 13th.<sup>91</sup>

The modern version of the Greek Collection of 168 has been transmitted through two manuscripts--the Venetian, or *Marcianus* (so called because it was housed in St. Mark's Cathedral in Venice when it was examined), and the Florentine, also called

---

<sup>87</sup> Edict 1=N.8, Edict 6=N.166, and Edict 5 is a Latin version of Novel 111 in Greek. KRÜGER, *supra* note 2 § 48 at 358. See also BIENER, *supra* note 2 at 529-530, Appendix IV, part 2.

<sup>88</sup> See, for example, 2 NOAILLES, *supra* note 2 at 40-42, describing Zachariae's theory as set out in E.K. Zachariae von Lingenthal, *Aus und zu der Quellen des römischen Rechts*, 14 ZEITSCHRIFT DER SAVIGNY STIFTUNG FÜR RECHTSGESCHICHTE (ROMANISTISCHE ABTEILUNG) 365, 371-373 (1894). It is widely agreed that the bulk of the Greek Collection was compiled in Constantinople. See 1 NOAILLES, *supra* note 2 at 179-180.

<sup>89</sup> The *Basilica* (imperial law) is the Byzantine adaptation of Justinian's codification made from Greek summaries during the reign of Leo the Wise, probably around 892. It combines all four units of the *CJC* into a whole and is heavily annotated. The *Basilica* is important in the history of the Novels because it proved useful to Western scholars in reconstructing and understanding some novels. On the *Basilica*, see KUNKEL *supra* note 1 at 179-181; Sherman, *supra* note 24 at 364-365 (1918); and Sheltema, *Byzantine*, *supra* note 40 at 66-67. A modern edition of the *Basilica* is GUSTAV HEIMBACH, *BASILICORUM LIBRI LX* (Leipzig, Barth 1883-1870) [volume 6 available at <http://www.books.google.com>].

<sup>90</sup> WENGER, *supra* note 2, § 84 at 673.

<sup>91</sup> 2 NOAILLES, *supra* note 2 at 44.

the *Laurentian* (because it was held by the *Laurentian* library there).<sup>92</sup> The Venetian, probably created around the end of the twelfth century,<sup>93</sup> is considered the better of the two, as it appears to have suffered less from the editing and errors of copyists.<sup>94</sup> The Florentine likely was made considerably later--in the fourteenth century--and was much muddled by well-meaning copyists.<sup>95</sup>

The Venetian manuscript is heavily glossed with *paratitla*, *scholia*, and critical notes.<sup>96</sup> The novels are not yet divided into chapters in the manuscript, but they show signs that such a division was planned, according to Noailles.<sup>97</sup> Contius (Le Conte) was responsible for the first chapter divisions in his 1559 edition of the *Authenticum*; he then reworked them for his 1571 edition into the arrangement we see in modern versions: preface, chapters and epilogue.<sup>98</sup> A particularly important aspect of the Venetian is that it is the only copy of the Greek Collection retaining all the novel subscriptions.<sup>99</sup> On the other hand, the 18 Latin novels are replaced in it by Greek epitomes, and it lacks three other Justinian novels, four of Justin II, three of Tiberius II, and the three edicts of the praetorian prefects.<sup>100</sup> However, the Venetian manuscript of the Greek Collection was the primary source used by Schoell and

---

<sup>92</sup> See *id.* at 5-45 for Noailles's description of the *Marcianus* and 107-116 for his description of the *Laurentian*. BIENER, *supra* note 2, Appendix V offers descriptions of the *Marcianus* and *Laurentian* at 551-557 and 557-562, respectively.

<sup>93</sup> 2 NOAILLES, *supra* note 2 at 17.

<sup>94</sup> *Id.* at 42.

<sup>95</sup> *Id.* at 137.

<sup>96</sup> For a description of these, see *id.* at 25-29.

<sup>97</sup> *Id.* at 49-52.

<sup>98</sup> *Id.* at 52.

<sup>99</sup> *Id.* at 56-57.

<sup>100</sup> *Id.* at 45.

Kroll for their edition of the Novels that became the standard version as part of Mommsen, Krüger, Schoell, and Kroll's *Corpus Juris Civilis*.<sup>101</sup>

The history of the Florentine manuscript is less well known than that of the Venetian even though it came to be owned by the de Medici family. Its first folio was torn out before modern scholars could examine it, thus eliminating any information contained there about its creation.<sup>102</sup> Like the Venetian, the Florentine contains *paratitla* and critical annotations, but fewer than the older manuscript. The Florentine also has *scholia* similar to those in the *Basilica*, as well as practice-oriented annotations.<sup>103</sup> The Florentine, again like the Venetian, lacks the Latin novels, but, in addition, it is missing 23 of the Greek novels. Tellingly, those lacking here are the same as those missing from the *Basilica*.<sup>104</sup> However, the Florentine manuscript does contain the novels of Justine and Tiberius and the *Eparchica*, whereas the Venetian does not.

Each of these two main manuscripts has a copy that also figures in the transmission of the Novels. The *Palatino-Vaticanus* (housed in the Vatican library) was copied from the Venetian manuscript at the beginning of the sixteenth century and

---

<sup>101</sup> According to Noailles, Kroll accorded the Venetian great confidence, but Schoell, while he always gave that manuscript first place, had some reservations about it, looked over many other sources, and was willing to correct it. *Id.* at 74. For additional information on this edition, see *infra* text accompanying notes 139-141.

<sup>102</sup> *Id.* at 97.

<sup>103</sup> *Id.* at 112-116. *Scholia* are notes commenting on the text. See PETER STEIN, ROMAN LAW IN EUROPEAN HISTORY 35 (1999).

<sup>104</sup> See 2 NOAILLES, *supra* note 2 at 120-121.

provided the text for Scrimger's 1558 edition of the Greek Collection.<sup>105</sup> The *Bononiensis* (made for Lodovico Bolognini) was copied around the same time from the Florentine text.<sup>106</sup> The *Bononiensis* is important for two reasons: 1) it was copied from the Florentine manuscript before the last segment of the latter was mutilated, thus making this copy the only source for novels 164-167 of the Greek Collection;<sup>107</sup> and 2) it provided the text for Haloander's 1531 edition--the first printed version of the Greek Collection.<sup>108</sup>

#### 4. Other Collections

Other collections of Justinian's Novels exist, and still others are known from fragments to have existed, but none of these has had the influence on Western law exerted by those described above. However, they should be discussed here since they are sometimes cited.

---

<sup>105</sup> Scrimger's edition is: IMPP. IUSTINIANI, IUSTINI, LEONIS NOVELLAE CONSTITUTIONES... (Geneva, Henry Stephanus 1558); Biener describes this volume at length. See BEINER, *supra* note 2 at 367-372.

<sup>106</sup> 2 NOAILLES, *supra* note 2 at 2. Noailles describes this manuscript at *id.* 147-156. For Biener's description of it, see BEINER, *supra* note 2 at 562-563.

<sup>107</sup> 2 NOAILLES, *supra* note 2 at 147.

<sup>108</sup> *Id.* NOVELLARUM CONSTITUTIONEM IUSTINIANI QUAE EXSTANT UT EXSTANT VOLUMEN (Nürnberg, Io. Petreius 1531). For a detailed description of this volume, see BEINER, *supra* note 2 at 341-348. For a description of how Haloander used the *Bononiensis*, see 2 NOAILLES, *supra* note 2 at 162-167.

### **a. The *Epitome Athanasii*<sup>109</sup>**

Around 572, a Byzantine jurist and rhetorician known as Athanasius of Emesa created an epitome of 153 novels, all but one of which are also in the Greek Collection.<sup>110</sup> Like the *Epitome of Julian*, it appears to have been created for teaching purposes,<sup>111</sup> but its summaries are more detailed than those of Julian or Theodosius.<sup>112</sup> However, it omits the novels of Tiberius and the *Eparchica* and thus appears to have been formed before the final version of the Greek Collection took shape.<sup>113</sup> The *Epitome Athanasii* is unique among Novel compilations in that its summaries are organized into twenty-two topics, or rubrics, instead of being in rough chronological order. Athanasius's special contributions were: to provide practice aids in the form of *paratitla* that indicate additional rubrics in the compilation that the novel in question addresses;<sup>114</sup> to refer to relevant portions of the Code and Digest;<sup>115</sup> and to make theoretical observations about the laws, especially considering the extent to which they may have been affected by subsequent laws.<sup>116</sup> There is a modern critical edition of Athanasius's work.<sup>117</sup>

---

<sup>109</sup> See generally, 1 NOAILLES, *supra* note 2 at 183-198; DAS NOVELLENSYNTAGMA DES ATHANASIOS VON EMESA VII-XI (Dieter Simon and Spyros Troianos eds. 1989) [hereinafter ATHANASIOS VON EMESA; and WENGER, *supra* note 2, § 84 at 673-674.

<sup>110</sup> 1 NOAILLES, *supra* note 2 at 185, and WENGER, *supra* note 2, § 84 at 672.

<sup>111</sup> ATHANASIOS VON EMESA, *supra* note 109 at viii.

<sup>112</sup> As to Theodosius's epitome, see *infra* text accompanying notes 118 and 119.

<sup>113</sup> WENGER, *supra* note 2, § 84 at 672. Simon and Troianos believe Athanasius used a collection founded in the same "transmission chain" (*Überlieferungskette*).

ATHANASIOS VON EMESA, *supra* note 109 at x.

<sup>114</sup> See 1 NOAILLES, *supra* note 2 at 186, and ATHANASIOS VON EMESA, *supra* note 109 at ix.

<sup>115</sup> ATHANASIOS VON EMESA, *supra* note 109 at x.

<sup>116</sup> *Id.*

<sup>117</sup> It is: ATHANASIOS VON EMESA, *supra* note 109. The editors deemed a new version necessary due to flaws in Heimbach's original edition, GUSTAV ERNST HEIMBACH,



### **b. The *Epitome Theodori*<sup>118</sup>**

Another Byzantine jurist--Theodorus Scholasticus of Hermopolis--wrote a Greek summary of all the novels in the Greek Collection of 168 (in the same order and including even the doublets) sometime between 572-602, perhaps in 575 because that is the date of the last law included.<sup>119</sup> This *Epitome Theodori* was created for use in practice and contains for each novel: its number in the Greek Collection, its title, the beginning words, a summary, and the subscription (but no inscription).<sup>120</sup> Parallel provisions in the Code and in other novels are noted as well. Its rubrics are shorter than those in the *Epitome Juliani* but longer than those of the *Epitome Athanasii*. Many *scholia* in the *Basilica* were taken from this compilation, but it was not known in the West until the modern era when discovered in a convent on Mt. Athos in the nineteenth century.

### **c. Fragmented and Lost Works**

Several other compilations are known from references or fragments but are now largely lost. The most important of these is the *Epitome of Anonymous*, which is cited frequently in ancient manuscripts.<sup>121</sup> This epitome seems to have been very

---

ANEKDOTA: ATHANASII SCHOLAST. EISENI DE NOVELLIS CONSTITUTIONIBUS IMP. JUSTINIANI JUSTINIQUE COMMENTARIUS (Leipzig, Barth 1838), which they call "miserable."  
ATHANASIOS VON EMESA, *supra* note 109 at vi.

<sup>118</sup> See generally, 1 NOAILLES, *supra* note 2 at 181-183, and WENGER, *supra* note 2, § 84 at 672. Zachariae von Lingenthal edited a version of this published as K. E. ZACHARIAE, ANEKDOTA: THEODORI SCHOLASTICI BREVIARIUM NOVELLARUM (Leipzig, Barth 1843) available at <http://www.books.google.com> (reprint 1969).

<sup>119</sup> 1 NOAILLES, *supra* note 2 at 181-183.

<sup>120</sup> WENGER, *supra* note 2, § 84 at 672.

<sup>121</sup> On these lost collections, see 1 NOAILLES, *supra* note 2 at 199-227, and WENGER, *supra* note 2, § 84 at 673-675. Noailles provides a comparison of the sequence of

popular but to have been similar to the other epitomes, especially the *Epitome Juliani*.<sup>122</sup>

#### IV. Print Editions

Generations of law students and lawyers relied on copies of the manuscripts discussed above for their knowledge of the Novels. As has been noted, for most of the medieval period Justinian's codification was known in Europe chiefly through written copies of the *Epitome Juliani*.<sup>123</sup> Around 1100, manuscripts of the *Authenticum* appeared in Italy,<sup>124</sup> and by about 1200, early in the Renaissance, the Venetian manuscript of the Greek Collection was known to scholars.<sup>125</sup>

It was not until 1476, however, that the Novels were issued in print. This first print edition was based on the text of the *Authenticum* and was made in Rome, apparently as part of the whole *Corpus Juris Civilis*, not as an individual printing of the Novels.<sup>126</sup>

The *CJC* was organized differently then than now: the Digests were gathered into three volumes; the first nine books of the Code comprised a fourth volume; and the fifth volume consisted of the *Institutes*, the last three books (*Tres libri*) of the Code,

---

novels in the *Epitome Juliani*, the Greek Collection, and the *Epitome of Anonymous*. See 1 NOAILLES, *supra* note 2 at 260.

<sup>122</sup> See 1 NOAILLES, *supra* note 2 at 200-201.

<sup>123</sup> See *supra* text accompanying note 57.

<sup>124</sup> See *supra* text accompanying note 64.

<sup>125</sup> See *supra* text accompanying note 79.

<sup>126</sup> VOL. O. INST. EXTR. GLOSS. (Rome, Pulcher 1476). For full bibliographic information on this volume, see BIENER, *supra* note 2 at 322. The volumes of the Digest and Code that are thought to have been issued in this set have not been found. SCHILLER, *supra* note 1, § 12 at 30, n.3. Rudorff reports that the *Epitome Juliani* was first issued in print as a part of the *Leges Longobardorum* in 1512. RUDORFF, *supra* note 43 § 122 at 346.

and all the Novels (usually based on the *Authenticum*).<sup>127</sup> This fifth volume, of which the Novels was a part, was known as the *volumen parvum*, or lesser volume, because it was not considered to be as important as the others.

Early print editions reflected the flaws of the manuscripts from which they derived.<sup>128</sup> There would be no point in listing here the many editions of the Novels that have been printed over the centuries. Biener provides an extensive listing of them up to 1822 in an appendix in his monumental history of the Novels.<sup>129</sup> However, it is useful to note here editions of special historical importance and modern critical editions.

In the sixteenth century, several scholars created editions of the Novels that improved considerably on Renaissance manuscripts. Haloander's publication of 1531 already has been noted as being the first print version of the Greek Collection of 168 novels. His edition is important for setting the sequence of the novels and attaching the supplement containing the thirteen Justinian edicts.<sup>130</sup> It was relatively soon thereafter, in 1558, when Scrimger edited a print edition based on the *Palatino-Vaticanus* copy of the Venetian manuscript, also noted above. Thus, at this early date, two print versions of the most complete manuscript tradition for the Novels were available. In 1571, Contius, who in 1559 had published a separate print

---

<sup>127</sup> SCHILLER, *supra* note 1, § 12 at 29-30.

<sup>128</sup> KRÜGER, *supra* note 2 § 53 at 386.

<sup>129</sup> BIENER, *supra* note 2 at 317-427 (editions from 1476-1822) and 427-431 (undated editions). See also KRÜGER, § 53 at 386-389 for a briefer overview.

<sup>130</sup> See VAN DER WAL, *supra* note 77 at xv, where he refers to Haloander's version as the *editio princeps*.

edition of the Novels based on the *Authenticum*, issued a version of the *CJC* for which he used both that text and that of the Greek Collection and also arranged them in a mostly chronological order.<sup>131</sup>

Scores of editions of the Novels were published in the seventeenth and eighteenth centuries, but no great advances were made in textual criticism during this period.<sup>132</sup> However, great advances made in Roman law scholarship and paleography in the nineteenth century led to vastly improved texts and several critical editions of the three Novel manuscript traditions.<sup>133</sup>

Unfortunately, the Kriegel Brothers produced an edition *editio stereotypa* of the *CJC* in 1840-43 that did not take the greatest advantage of these advances.<sup>134</sup>

Osenbrüggen prepared the Novels for this edition based on several texts, including the Venetian and Florentine manuscripts of the Greek Collection of 168.<sup>135</sup> This edition did not satisfy Roman law scholars, but, for unknown reasons, S.P. Scott

---

<sup>131</sup> AUTHENTICAE SEU NOVELLAE CONSTITUTIONES D.N. JUSTINIANI... (Lyon, Gulielmum Bovillium 1571). Rudorff notes that Contius used the editions of Cujacius (1562) and A. Augustinius (1567) as the basis for his edition. RUDORFF, *supra* note 43 § 122 at 347. For additional description of Contius's contributions to the literary history of the Novels, see Graves, Justinianus, *supra* note 3 at 673. His editions were the most frequently used until those of Schoell and Kroll, concerning which see *infra* notes 139-141 and accompanying text.

<sup>132</sup> KRÜGER, *supra* note 2 § 53 at 387. Krüger allows the Gebauer and Spangenberg *CJC* edition of 1776-1797 as an exception. *Id.* At 388.

<sup>133</sup> For a description of some of this process, see chapter 1, *Paleography and History* in RADDING & CIARELLI, *supra* note 23 at 1-33.

<sup>134</sup> ALBERT KRIEGLER, MORITZ KRIEGLER, EMIL HERMANN, & EDUARD OSSENBRÜGEN, CORPUS JURIS CIVILIS (Leipzig, Baumgarten, 1840-1843); eighth impression of this ed. available at <http://books.google.com>.

<sup>135</sup> WENGER, *supra* note 2 § 84 at 678.

chose it as the basis for his English translation (more of which below). The *Authenticum* received its first modern, critical treatment around this same time (1846-1851) when Heimbach produced his edition of it, based on the Contius's 1559 Paris edition.<sup>136</sup> A modern, critical edition of the *Epitome Juliani* did not appear until Hänel published his in 1873.<sup>137</sup>

In 1881, Zachariae von Lingenthal edited a version of the Greek Collection in which he integrated the edicts of the praetorian prefects and the edicts of emperors Justin and Tiberius by date. However, because much remains uncertain about the dates of the edicts, his numbering caused a good deal of confusion and concern and was not accepted by his peers despite the work's other scholarly merit.<sup>138</sup>

It was not until 1895 that a Novels collection based on the best of all manuscripts and modern scholarship was issued in a critical edition. This version was part of the monumental *editio stereotypa* of the *CJC* edited by Mommsen, Krüger, Schoell, and

---

<sup>136</sup> GUSTAV ERNST HEIMBACH, *AUTHENTICUM NOVELLARUM CONSTITUTIONUM IUSTINIANI VERSIO VULGATA* (Leipzig, Barth 1846-1851). WENGER *supra* note 2, § 84 at 678.

<sup>137</sup> GUSRAV HANEL, *IULIANI EPITOME LATINA NOVELLARUM IUSTINIANI* (Leipzig, Hinrichs 1873) available at <http://www.europeana.eu/portal>. Hänel's work has been criticized by modern scholars. See LIEBS, *JURISPRUDENZ*, *supra* note 40 at 246, where he describes Hänel's edition as "especially unsatisfactory and unclear. See also VAN DER WAL, *supra* note 77 at 51-52. A new version of Hänel's work was published recently, with a glossary, concordance and the text on CD. (2nd ed. Gustav Hänel, Piero Fiorelli, & Anna Marie Bartoletti Colombo eds. 1996).

<sup>138</sup> K.E. ZACHARIAE VON LINGENTHAL, *NOVELLAE QUAE VOCUNTUR* (Leipzig, Teubner 1881) available at <http://www.books.google.com>. See 1 NOAILLES, *supra* note 2 at xii-xiv, and N. VAN DER WAL, *supra*, note 77 at xv.

Kroll.<sup>139</sup> This edition of the Novels, begun by Schoell and finished by Kroll, provides the original Greek text in one column, the Latin version of the *Authenticum* (to the extent it overlaps with the novels of the Greek Collection) in the facing column, and a modern Latin translation beneath. It also offers the *Epitome Juliani*, the edicts several other constitutions in an appendix, as well as providing copious annotations and variant readings.

It is generally agreed that Schoell's and Kroll's version of the Novels "...surpasses all its predecessors and is equal to the editions of the Digests and Code by Mommsen and Krüger."<sup>140</sup> The stereotype edition of the *CJC* of which it is a part has become the standard edition, reprinted frequently. The consensus is that "Compared with this stereotype edition...older general editions of the *corpus juris* can be used only as auxiliary material,"<sup>141</sup> and that it "...benefits from all of the previous work and is its consummation."<sup>142</sup>

#### IV. Translations

Scholars also began in the nineteenth century to translate the Novels (and the rest of the *CJC*) into modern European languages. The German version of the *CJC* edited by Otto, Schilling, and Sintenis is one of the most important translations.<sup>143</sup> Freiesleben

---

<sup>139</sup> THEODORE MOMMSEN, PAUL KRUEGER, RUDOLF SCHOELL, & WILLIAM KROLL, *CORPUS IURIS CIVILIS* (Berlin, Weidmann 1889-1895) *available at* <http://www.books.google.com>.

<sup>140</sup> KÜBLER, *supra* note 24 § 42 at 424.

<sup>141</sup> KUNKEL, *supra* note 1 at 223.

<sup>142</sup> 1 NOAILLES, *supra* note 2 at xiv.

<sup>143</sup> CARL EDUARD OTTO, BRUNO SCHILLING & CARL FRIEDRICH STINTENIS, *DAS CORPUS IURIS CIVILIS* (Leipzig, Focke 1831-1839) [volumes 3, 6, & 7] *available at*

and Schneider created the Novels portion of this translation, based mainly on a Latin translation of the Greek Collection, supplemented by the *Authenticum*, the *Epitome Juliani* and the *Basilica*.<sup>144</sup>

Surprisingly, it was not until the twentieth century that anyone created an English translation of the *CJC*, or of only the Novels.<sup>145</sup> In the early part of that century, two Americans launched into the task separately, and ignorant of each other's efforts.<sup>146</sup> S.P. Scott's translation of Justinian's codification appeared in 1932, though his preface is dated ten years earlier.<sup>147</sup> As noted previously, he chose to use the Kriegel Brothers *CJC* as the basis of his work instead of Mommsen and Krüger's, even though the latter was clearly regarded as the superior version. Scott's translation was not well received.<sup>148</sup>

Fortunately, Justice Fred Blume did use the Mommsen stereotype edition as the basis of his English translation of both the Code and the Novels, right from the start of his work around 1920.<sup>149</sup> As Justice Blume recalled it later: "Some of the novels were translated along with the translation of the Code having a bearing on the

---

<http://www.books.google.com>. Justice Fred Blume used this as an adjunct for his English translation of the Code and Novels.

<sup>144</sup> See *id.* volume 7 at iv.

<sup>145</sup> The Institutes and parts of the Digest had been translated into English, but neither the Code or Novels. The modern English version of the entire Digest is Watson's *THE DIGEST OF JUSTINIAN*, *supra* note 45.

<sup>146</sup> See Kearley, *supra* note 4 § 30 at 538.

<sup>147</sup> SCOTT, *supra* note 4.

<sup>148</sup> See Kearley, *supra* note 4 § 30 at 538-539.

<sup>149</sup> See *id.* ¶¶ 16-19 at 531-533. Rumors of Blume's manuscript translation of the Novels circulated for many years among Roman law specialists in America. See for example, SCHILLER, *supra* note 1 § 16 at 40, and Sass, *supra* note 4 at 231 n.11.

subjects dealt with in the latter.... When these were translated, the number translated was so great that I thought it would be just as well to translate them all.”<sup>150</sup> He also noted: “a partial incentive to that was the fact that the Latin of Schoell [in the Novels] is, generally speaking, easy as compared with the Latin in the Code.”<sup>151</sup>

Justice Blume’s reaction to Scott’s translation, as well as the negative reaction of others to that translation, made him determined to keep working on his solo translation of the Code and Novels over the course of more than two decades.<sup>152</sup> A newly scanned version of his annotated English translation of the Novels is available electronically on the University of Wyoming web site at <http://uwacadweb.uwyo.edu/blume&justinian/novels2.asp>.

## **V. Electronic Editions of the Texts and Relevant Treatises**

Unlike Justice Blume, who had to spend many hours, and much money, acquiring through book dealers the materials he needed to pursue his interest in Roman law,<sup>153</sup> modern scholars can gain access to much of it for free, online. Many of the works mentioned in this article, for instance, are available electronically in Google Books. The quality of the scanned versions varies, not all items are properly labeled,

---

<sup>150</sup> Fred Blume, [History of the Translation and its Background] 9 (n.d.) (untitled manuscript annexed to Letter from Fred Blume to Clyde Pharr, Profesor, Vanderbilt University (Dec. 28, 1943)) (available in Blume Collection, H69-10, Wyoming State Archives, Reference, Research and Historical Photo Unit, Wyoming Department of State Parks and Cultural Resources, Cheyenne, Wyoming).

<sup>151</sup> *Id.*

<sup>152</sup> See Kearley, *supra* note 4 ¶¶ 29-30 at 537-538.

<sup>153</sup> See *id.* ¶¶ 15-18 at 530-531.



and not all volumes of a set are always available. Biener's *GESCHICHTE DER NOVELLEN JUSTINIANS*,<sup>154</sup> for example, is frustratingly blurred in spots, volume one of Mommsen and Krueger's classic edition of the *CJC*<sup>155</sup> is labeled volume two in both the list view and cover view, and only volumes 3, 6, & 7 of the Otto, Schilling, and Stintenis German translation<sup>156</sup> are there. However, for the most part, the electronic copies were clear and easy to find, and it surely is better to have a few volumes of set available online than none.

In the following list I have identified all of the items referred to in this article for which I found a free full-text version online. I noted their availability in that electronic form in my footnotes as well, but I think the reader will find a consolidated, alphabetically arranged list more useful. I have not tried to create a complete bibliography of *CJC* editions or Roman law available online. Nor have I added the permanent links to these works, as they are monstrously long and all the books noted are readily discoverable by an advanced search. Unless otherwise indicated, the items are all on Google Books. Two works were also available on the Internet Archive (<http://www.archiv.org>), and one work I found only on the Beta version of Europeana, the "virtual European library," (<http://www.europeana.eu/portal>) which is to be launched officially in 2010. Given that two of the sources for the works digitized on Europeana will be the

---

<sup>154</sup> BIENER, *supra*, note 2.

<sup>155</sup> MOMMSEN ET AL., *supra* note 139.

<sup>156</sup> OTTO, SCHILLING & STINTENIS, *supra* note 143.

Bibliothèque National de France and the British Library, it is reasonable to believe that more items relevant to this topic will appear there in the coming years.

### **Cited, Out-of-Copyright Works Available Online**

BIENER, FRIEDRICH AUGUST, GESCHICHTE DER NOVELLEN JUSTINIANS (Berlin, Dümmler 1824).

CONRAT COHN, MAX, GESCHICHTE DER QUELLEN UND LITERATUR DES RÖMISCHEN RECHTS IM FRÜHEREN MITTELALTER (Leipzig, J.C. Hinrichs 1891).

[A] DICTIONARY OF GREEK AND ROMAN BIOGRAPHY AND MYTHOLOGY (William Smith ed., London, John Murray 1876).

\*HAENEL GUSTAV, IULIANI EPITOME LATINA NOVELLARUM IUSTINIANI (Leipzig, J.C. Hinrichs 1873).

HEIMBACH, GUSTAV ERNST, AUTHENTICUM NOVELLARUM CONSTITUTIONUM IUSTINIANI VERSIO VULGATA (1846-1851).

Id., BASILICORUM LIBRI LX (Leipzig, Barth 1883-1870)[volume 6].

KRIEGEL, ALBERT, ET AL., CORPUS JURIS CIVILIS (Leipzig, Baumgarten, 1858)[volume 1].

KRÜGER, Paul, GESCHICHTE DER QUELLEN UND LITTERATUR DES RÖMISCHEN RECHTS (Leipzig, Duncker and Humblot 1888).

MOMMSEN, THEODORE, ET AL., CORPUS IURIS CIVILIS (Berlin, Weidmann 1889-1895). [Also available in the Internet Archive, <http://www.archive.org>.]

OTTO, CARL EDWARD, ET AL., DAS CORPUS JURIS CIVILIS (Leipzig, Focke 1831-1839) [volumes 3, 6, & 7]. [Volumes 3 & 7 also available in the Internet Archive, id.]

RUDORFF, ADOLF FRIEDRICH, RÖMISCHE RECHTSGESCHICHTE (Leipzig, Tauchnitz 1857).

SOHM, RUDOLF, THE INSTITUTES (James Crawford Ledlie trans. 2<sup>nd</sup> ed. 1901).

TOMKINS, FREDERICK JAMES, THE INSTITUTES OF THE ROMAN LAW (London, Butterworths 1867).

VINOGRADOFF, PAUL, ROMAN LAW IN MEDIEVAL EUROPE (1909)

ZACHARIAE VON LINGENTHAL, KARL EDUARD, ANEKDOTA: THEODORI SCHOLASTICI BREVIARIUM  
NOVELLARUM (Leipzig, Barth 1843).

*Id.*, NOVELLAE QVAE VOCUNTUR (Leipzig, Teubner 1881).

*Id.*, *Zur Geschichte des Authenticum und des Epitome Novellarum des Antecessor*

*Julianus XLV* SITZUNGSBERICHTE DER KÖNIGLICH PREUSSISCHEN AKADEMIE DER  
WISSENSCHAFTEN ZU BERLIN 973 (1882).

\* Available on Europeana; all other works posted on Google Books.