

Justice Fred Blume and the Translation of Justinian's Code (2nd ed. 2008)*

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Professor Kearley tells the awe-inspiring story of how a German immigrant, Justice Fred Blume of the Wyoming Supreme Court, singlehandedly created what is still today the only known English translation of Justinian's Code made from the standard Latin edition. He also describes his ongoing project to create a digital version of the translation, so that the huge manuscript, with its extensive notes on Roman law, will become widely available.

¶1 In the United States today, Roman law is of little consequence for the legal profession. Relatively few law schools teach a course in it, and courts do not seek guidance from it. Yet Roman law is alive and well in other venues. It provides the foundation for modern civil law systems and is still commonly taught in many countries. Moreover, Roman law, especially the Corpus Juris Civilis (CJC),¹ is still very much of interest to classicists and historians around the world who find in Justinian's compilations a wealth of information about Roman culture and society. Writing very recently, Caroline Humfress noted that:

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** Director of the Law Library and Professor of Law, University of Wyoming College of Law, Laramie, Wyoming. I would like to thank Linda J. Hall, professor of history at St. Mary's College of Maryland, for her generosity in sharing information with me and for her helpful comments on a draft of this article. At the time of this writing, Professor Hall was writing an article tentatively titled "Clyde Pharr and Theresa Sherrer Davidson: The Translation of the Theodosian Code at Vanderbilt University," the relevance of which for my article will be apparent as the reader proceeds.

1. See *infra* ¶¶ 5–9 for a discussion of the CJC.

For the legal historian, the Age of Justinian is nothing short of pivotal. Medievalists and early modernists interested in the so-called reception of Roman law in later times and places must look back to Justinian and his law books, as classicists and historians interested in the Roman republican or early imperial law must frequently look forward to them.²

¶2 Roman law was quite significant to many American legal scholars and jurists earlier in the country's history. Leading figures such as Kent and Story had a strong interest in Roman law and referred to it often.³ Interest in Roman law and history was strong among the Founders and it continued to be studied by many American jurists in the nineteenth century. Only in the early decades of the twentieth century was it reduced to a subject of lesser academic interest.⁴ Ironically, it was in this same period, as interest in Roman law was fading, that Fred Blume of Wyoming was laboring as a “lone wolf” on his translation of Justinian's Code and Novels⁵—yet to be published to this day—and it was in 1932 that Samuel Parson Scott's English translation of the entire CJC was published.⁶

¶3 Roman law will never again be of any great practical significance to American lawyers. However, a rudimentary knowledge of its widespread influence on civil law systems and of the heroic efforts that have gone into its transmission across the centuries is an inspiring story for the

2. Caroline Humfress, *Law and Legal Practice in the Age of Justinian*, in *THE CAMBRIDGE COMPANION TO THE AGE OF JUSTINIAN* 161, 162 (Michael Maas ed., 2005).

3. See MICHAEL H. HOEFELICH, *ROMAN AND CIVIL LAW AND THE DEVELOPMENT OF ANGLO-AMERICAN JURISPRUDENCE IN THE NINETEENTH CENTURY* 28–29 (1997). Compare Alan Watson, *Chancellor Kent's Use of Foreign Law*, in *THE RECEPTION OF CONTINENTAL IDEAS IN THE COMMON LAW WORLD 1820–1920*, at 45 (Mathias Reimann ed., 1993).

4. The ebb and flow of Roman law's significance in the United States is subject to debate. I follow Hoeflich in this synopsis. See HOEFELICH, *supra* note 3, at 1–8. Others, such as Stein, contend that Roman law's influence in the United States was stronger than Hoeflich views it to have been early in the nineteenth century, but accept that it had “ceased to be a real force in the development of American law” by 1850. Peter Stein, *The Attraction of the Civil Law in Post-Revolutionary America*, 52 VA. L. REV. 403, 432 (1966).

5. See *infra* ¶¶ 12–26.

profession. So, the fact that Blume, a German immigrant who served on the Wyoming Supreme Court for forty-two years, singlehandedly and in his spare time created what is still the only known English translation of Justinian's Code made from the standard Latin edition⁷ should be widely known. More important, that massive manuscript, with its extensive notes on Roman law should be available to all. While it may be used extensively only by relatively few specialists, simply viewing the magnitude of the accomplishment inspires the kind of awe one associates with an experience such as seeing Mount Rushmore for the first time. This is why I decided to engage in the lengthy process of editing and retyping Justice Blume's 4521-page manuscript into digital form.

¶4 I was granted a sabbatical leave from the University of Wyoming in spring 2005 to start working with the huge manuscript that had been sitting in cabinets in the law library's Blume Room since Justice Blume bequeathed it to the university, along with his extensive library on Roman law and Western civilization, upon his death in 1971. As will be explained later, Blume continued to revise his manuscript for decades, making penciled corrections and pasting large patches of text corrections on to original pages, rendering it useless for scanning.⁸ During my sabbatical, I learned to decipher his handwriting and managed to edit and re-type five of the

6. THE CIVIL LAW (S.P. Scott ed. & trans., photo. reprint 1973) (1932).

7. Scott made his translation from an edition by the Kriegel brothers rather than the later edition by Krueger, Mommsen, Schoell, and Kroll, which is accepted as the authoritative Latin version. See Stephen Sass, *Research in Roman Law: A Guide to the Sources and Their English Translations*, 56 LAW LIBR. J. 210, 229 (1963); A. ARTHUR SCHILLER, ROMAN LAW: MECHANISMS OF DEVELOPMENT § 12, at 30–31 (1978). Blume also translated the Novels. See *infra* ¶ 8 for a description of the Novels. They have been scanned and are available at George William Hopper Law Library, Univ. of Wyo., Justice Fred H. Blume, <http://uwacadweb.uwyo.edu/blume&justinian/default/novels.asp> (last visited Dec. 19, 2008).

8. See *infra* ¶¶ 51–55 for a discussion of Blume's manuscript.

Code's twelve books into Word format. In fall 2005, when I returned to work, I was awarded an AALL/Aspen Publishers research grant to hire a typist to do rough inputting of the manuscript, which I would then edit. This process is now complete, and Justice Blume's ANNOTATED JUSTINIAN CODE is available in full at <http://uwacadweb.uwyo.edu/blume&justinian/default.asp>, bringing Justice Blume's decades of work to fruition and filling a long perceived need for a reliable English translation of Justinian's Code.⁹

The Corpus Juris Civilis

¶5 In his introduction to *The Digest of Justinian*, Alan Watson justly writes that “the Corpus Juris Civilis has been without doubt the most important and influential collection of secular legal materials that the world has ever known. The compilation preserved Roman Law for succeeding generations and nations.”¹⁰ The CJC consists of four elements: the Code, the Digest or Pandects, the Institutes, and the Novels.¹¹

¶6 Justinian, who ruled the Roman Empire from Constantinople in the years 527 to 565,

9. Reviewing a relatively recent translation of the Digest, a specialist commented that “[i]t would be wonderful if the process could continue; the cause of Roman legal history would be advanced even further by comparable translations of Justinian's Code and Novels.” William Turpin, *The Digest of Justinian*, 8 J. LEGAL HIST. 381, 382 (1987) (reviewing THE DIGEST OF JUSTINIAN (Theodor Mommsen, Paul Krueger & Alan Watson eds., 1985)).

10. THE DIGEST OF JUSTINIAN, at xi (Theodor Mommsen, Paul Krueger & Alan Watson eds., 1985).

11. Denys Godefroy, in the late sixteenth century, was the first Western scholar both to use the term Corpus Juris Civilis (body of the civil law) for these works and to divide them in this manner. The phrase “body of the *civil* law” was employed to distinguish these works from the “body of the *canon* law,” or Corpus Juris Canonici. See SCHILLER, *supra* note 7, § 12, at 29. Before Godefroy, the glossators in the West had divided them into five books: three for the Digest; one for the first nine books of the Code; and one that contained both the last three books of the Code, the Institutes, and the Novels. See Sass, *supra* note 7, at 221, 225; SCHILLER, *supra* note 7, § 12, at 30. The term Code will be used here to refer only to Justinian's Code; the Theodosian Code will be referred to by that full designation.

had as one of his early concerns the number of contradictory laws that had arisen through the centuries of Roman legislation and had added to confusion and delay in the courts. He ordered that a commission organize into one collection the existing compilations of imperial legislation (covering the years from 117 to 438), add to it all subsequent imperial enactments, and harmonize the resulting material to eliminate the contradictions.¹² This first compilation, known as the Codex Justinianus or Code of Justinian, was issued in 529.

¶7 Justinian next ordered a commission to harmonize the views of the most authoritative classical jurists, because the conflicts among their opinions also created problems in litigation.¹³ The resulting publication, the Digest, came into force as law in 533, but it also was used as an advanced law school text. Many of the conflicts among the classical juristic writings were resolved by the commission itself simply choosing what it deemed to be the best opinion, but some were thought serious enough to require legislation from the emperor. Justinian issued a sufficiently large number of statutes during the years the Digest was being composed that he decided it was necessary to publish a second edition of the Code, integrating the new statutes into the compilation.¹⁴ This second version was published in 534 and is the only one that has come down to us.¹⁵ Justinian also wanted to create an introductory law school text to accompany the advanced Digest. For this purpose he decided to update and modify a collection of the lectures of

12. As to Justinian's intent in codification, see Charles Pazdernik, *Justinianic Ideology and the Power of the Past*, in *THE CAMBRIDGE COMPANION TO THE AGE OF JUSTINIAN* 185, 198–202 (Michael Maas ed., 2005). For a description of the pre-Justinian compilations and their dates of coverage, see Sass, *supra* note 7, at 219; SCHILLER, *supra* note 7, § 24, at 55 & § 35, at 56.

13. Tony Honoré, *Justinian's Codification: Some Reflections*, 25 *BRACTON L.J.* 29, 30 (1993).

14. See Pazdernik, *supra* note 12, at 199.

15. See Sass, *supra* note 7, at 222–24; SCHILLER, *supra* note 7, § 15, at 37.

Gaius called the Institutes. This new version of the Institutes was published the same year as the Digest.¹⁶

¶8 Because Justinian did not stop legislating after he published the second edition of the Code, many uncodified statutes accumulated. Justinian had indeed intended to make an official compilation of the new statutes he issued after the second edition of the Code, but the project never materialized. However, private jurists created collections of these new statutes (*Novellae Constitutiones* or Novels). A version known as the *Authenticum* eventually became the standard source for what has come down to us as the Novels.¹⁷

¶9 The Corpus Juris Civilis did not survive, tidily intact, with full copies of the original manuscripts handed down across the centuries. Many generations of scholars labored to piece together the versions of the CJC we have today. Much of the story of this transmission, discussing the work of the glossators, commentators, and modern textual critics, is told succinctly, but well, by Schiller in *Roman Law: Mechanisms of Development*.¹⁸ The hub of Roman law research shifted from time to time, and, fortunately for Fred Blume, it had moved to Germany by the nineteenth century. Because German was his native tongue, Blume could read the vast body of work being produced there by the Pandecticists and other scholars of Roman law. This

16. Sass, *supra* note 7, at 223; Honoré, *supra* note 11, at 30.

17. Sass, *supra* note 7, at 224; SCHILLER *supra* note 7, § 11, at 39.

18. SCHILLER, *supra* note 7, §§ 12–16, at 29–40. See also Sass, *supra* note 7, at 224–26. For a fascinating, detailed examination of how the CJC was transmitted from Justinian's time until around 1100, see CHARLES M. RADDING & ANTONIO CIARALLI, *THE CORPUS IURIS CIVILIS IN THE MIDDLE AGES: MANUSCRIPTS AND TRANSMISSION FROM THE SIXTH CENTURY TO THE JURISTIC REVIVAL* (2007). The authors challenge the received wisdom regarding the early dating for many CJC manuscripts. As to reconstructing an accurate version of the Code, they note that putting all of the constitutions into proper order was "...a daunting problem that made reconstituting the Code unlike any other classical text." *Id.* at 146.

scholarship, as well as the German translation of the CJC published in the early 1830s,¹⁹ was essential for the English translation of the Code and Novels he would eventually produce through decades of effort.

Fred Blume

¶10 Friedrich Heinrich Blume was born in Winzlar, Germany, on January 9, 1875.²⁰ His prospects there were meager, so, like many others in that era, he emigrated to the United States, joining his elder brother Wilhelm in Elgin, Illinois in 1887. Five years later, at age seventeen, Fred struck off on his own, intending to earn his living as a farm hand in Kansas.²¹ However, fate intervened; en route, in Audubon, Iowa, Fred met Theodore Myers, a German-speaking lawyer who was also a member of the local school board. Myers offered Blume a part-time job in his law office and a living space there.²² Blume finished high school in Audubon in two years,²³ then, a year later in 1895, he enrolled at the State University of Iowa (now the University of Iowa).²⁴ He graduated

19. CARL EDWARD OTTO, BRUNO SCHILLING & CARL FRIEDRICH STINTENIS, *DAS CORPUS JURIS CIVILIS* (Leipzig, Focke 1831–39).

20. Michael Golden, *Journey for the Pole: The Life and Times of Fred H. Blume, Justice of the Wyoming Supreme Court* (pts. 1–2), 28 LAND & WATER L. REV. 195, 202, 511 (1993). The facts concerning Justice Blume’s early life which follow are all taken from Wyoming Supreme Court Justice Michael Golden’s detailed, two-part biography of Blume and discussion of his jurisprudence. I have provided page citations for the more important dates and facts to aid the reader who is interested in finding the details of a particular aspect of Blume’s life in that extensive piece. The present article, for the most part, will avoid plowing the same ground already tilled so ably by Golden and will instead focus on the details surrounding Justice Blume’s translation.

21. *Id.* at 205.

22. *Id.* at 205–06.

23. *Id.* at 206.

24. *Id.* at 208.

from the university three years later as a member of Phi Beta Kappa,²⁵ read law, and was admitted to the Iowa bar in 1899, seven months after he had received his degree.²⁶

¶11 Blume practiced law in Iowa until 1905 when he and his wife moved to Sheridan, Wyoming where he had been offered a partnership with J. L. Stotts.²⁷ His substantial energy soon revealed itself, as he was elected city attorney²⁸ and then to the Wyoming House in 1907,²⁹ followed by terms in the Wyoming Senate in 1909 and 1911.³⁰ One of the more momentous decisions of Blume's life was his choice as a Republican to back Teddy Roosevelt's Bull Moose bid for the presidency in 1912 instead of sticking with the Republican machine-supported William Howard Taft.³¹ For when the Bull Moose party went down to defeat, Blume knew his political prospects in Wyoming under Taft-supporter F. E. Warren would be slim. This led Blume, then age thirty-seven, to ponder his future.

The Translation

Origins and Preparation

¶12 Writing of the 1912 election years later, Blume said, "I decided on that day that I would quit

25. *Id.* at 210.

26. *Id.* at 210–11.

27. *Id.* at 213–14.

28. *Id.* at 216.

29. *Id.*

30. *Id.* at 218.

31. *Id.* at 220–22.

politics and spend the time which I had devoted to something else.”³² The same day, with no clients harrying him, Blume started reading about the Middle Ages, eventually going on to read “dozens upon dozens of books on the Medieval, Roman, Greek, Oriental and Egyptian worlds . . .” until he “was reasonably well satisfied in [his] mind” on the wide variety of subjects his books had covered.³³

¶13 Because Sheridan, Wyoming in 1912 was not exactly at the heart of the book publishing industry and interlibrary loan was not operating, Blume had to develop his own collection of research materials through correspondence. His papers reveal an extensive correspondence beginning in the second decade of the twentieth century, following the Bull Moose defeat, with publishers and book dealers from Cedar Rapids, Iowa (works on Greek drama and the Vedanta from the Torch Press Book Shop); Chicago (the Book Supply Company—D’Aubigne’s *History of the Reformation*); Boston (*A History of the Eastern Roman Empire* by J.B. Bury and Beirer’s *Evolution of Religions* from DeWolfe & Fiske); Philadelphia (Vattel’s *Law of Nations* from Leary, Stuart & Co.); and New York, where he did a great deal of business with Shulte’s Bookstore and a branch of G. E. Stechert & Co., both of which shipped him numerous

32. Fred Blume, [History of the Translation and its Background] 5 (n.d.) (untitled manuscript annexed to Letter from Fred Blume to Clyde Pharr, Professor, Vanderbilt University (Dec. 28, 1943)) [hereinafter History of the Translation and its Background] (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) [hereinafter Blume Collection, H69-10]. My “title” for this annexed material was used by Blume himself for part of this explanation of how he came to undertake the translation and of his approach to translation. Blume did not give a title to his explanation as a whole, but the one I have used accurately describes its main theme. It should be noted that the institutional references to Blume’s correspondence in this article will differ from those in Golden’s piece, due to a reorganization of the responsible agency.

33. *Id.*; also excerpted in Golden, *supra* note 20, at 226.

works on Roman history and law.³⁴

¶14 Blume's library of more than 2300 volumes, which he left to the University of Wyoming College of Law, attests to the breadth of his reading and the time he invested in its creation. His collection runs from tomes on Altaic hieroglyphics and Hittite inscriptions, and volumes on ancient empires of the East, to works on ecclesiastical history and many others on Roman law and history (some 880). It was very much a working collection, and Blume did not hesitate to make marginal notes in the volumes that were most important to his study. (Blume also permitted himself some leisure reading, which consisted mainly of paperback westerns and mysteries. Erle Stanley Gardner appears to have been one of his favorite authors.) Two particular books by Samuel Dill on Roman society initiated the chain of events leading to his singlehanded translation of Justinian's Code and Novels.

¶15 Blume recalled that:

34. This information was gleaned from an unlabeled accordion file containing scores of receipts, pieces of correspondence, cards notifying Blume of the availability of various works, etc., that Blume bequeathed to the University of Wyoming College of Law, along with his book collection (on file with the author).

During probably the first year after November 1912, I read two books by Dill on Roman society after Nero. He gives many citations from the Theodosian and Justinian Codes. I wanted to read the original sources, so I wrote to Stechert and Company in New York, the largest second-hand book firm in the United States, to procure for me an English translation of these Codes. Much to my chagrin and surprise I found that there was none in existence. So ruminating on the subject, I wondered if I might not be able to add my little mite to the culture of the world by translating at least one of these Codes. Here was the germ of the thought of the translation of the Justinian Code, although I did not realize at that time the difficulties that lay ahead.³⁵

Not surprisingly, in writing the above lines some thirty-one years later, at age sixty-eight, Blume appears to have considerably condensed in his memory the beginning of his readings with the initiation of his impulse to translate one of the codes. His records indicate he actually purchased Dill's works³⁶ in 1915 for \$1.50 each, not 1912 or 1913. Moreover, his correspondence shows it was not until July 1919 that Blume wrote a letter to Stechert & Co. in which he asked whether the Theodosian Code or the Justinian Code had ever been translated into English, and, if they had not, indicated he would like to have a German version.³⁷ In this same letter, he stated that he had volume one of the *Corpus Juris Civilis, editio stereotypa*³⁸ (which contains only the Institutes and Digests), and wanted volume two of the work (which contains the Justinian Code as edited by Paul Krueger) as well as the Theodosian Code. In August of the same year, a Stechert representative replied to Blume with a card informing him "We cannot find that there are English translations. . . ."³⁹ At this point, Blume's correspondence shows that he began to narrow the focus of his collecting and reading to Roman law and history and a handful of other subjects, such as religious history, that bore directly on his desire to translate either

35. History of the Translation and its Background, *supra* note 32, at 6; Golden, *supra* note 20, at 226.

36. SAMUEL DILL, ROMAN SOCIETY FROM NERO TO MARCUS AURELIUS (1905); SAMUEL DILL, ROMAN SOCIETY IN THE LAST CENTURY OF WESTERN EMPIRE (1906).

37. Letter from Fred Blume to G. F. Stechert & Co. (July 28, 1919) (on file with the author).

38. CORPUS IURIS CIVILIS (Paul Krueger & Theodor Mommsen eds., Berlin, Weidmann 1872). Blume later acquired several different editions of various CJC volumes. See *infra* note 48. An *editio stereotypa* has dual column printing, much like a typical West reporter volume. For a description of the manuscripts Krueger used to create his edition, see RADDING & CIARALLI, *supra* note 18 at 36.

39. Card from G. E. Stechert & Co. to Fred Blume (Aug. 21, 1919) (on file with the author).

of the Codes.

Start and First Draft

¶16 Unfortunately, neither Blume nor his records identify an exact date on which he either received his first copy of Krueger's authoritative edition of Justinian's Code or began the monumental translation. There are no invoices from Stechert for volume two of the *editio stereotypa* CJC that he had requested in July 1919. However, it seems that he probably got a copy of this Krueger edition of the Code sometime in late 1919 or early 1920. In a letter written in December 1922 to Dean Wigmore of the Northwestern University Law School, Blume indicated that he started to translate the Justinian Code "some two or more years ago."⁴⁰ This is verified by a February 1924 letter to Yale Law School Dean Thomas Swan in which Blume noted that he had finished a rough draft of his Code translation that he had been working on in his "leisure time" for some four years.⁴¹ More specifically, he noted in the 1943 history of his translation that he had tried without success to get a copy of Krueger's edition of the Code while continuing his background reading; he went on to say that it was not until "after the first World War" that he got his modern edition of Krueger.⁴² In addition, Blume wrote to Stechert again in May 1920 to tell them he had found, contrary to previous information the bookseller had given him, that there was in

40. Letter from Fred Blume to John H. Wigmore, Dean, Northwestern University Law School (Dec. 11, 1922) (available in Blume Collection, H69-10, *supra* note 32). Wigmore responded with great enthusiasm, writing: "What you say about the translation of Justinian's Code is the most fascinating piece of news that I have received for a long time. The Anglo-American world has been waiting for an English translation of the Code and of the Digest." Letter from John H. Wigmore, Dean, Northwestern University Law School (Dec. 12, 1922) (available in Blume Collection, H69-10, *supra* note 32).

41. Letter from Fred Blume to Thomas Swann, Dean, Yale Law School (Feb. 18, 1924) (available in Blume Collection, H69-10, *supra* note 32).

42. "I found an edition of 1571, but the print of that is too fine and I did not undertake to translate from that. I did not get the modern edition of Krueger until after the first World War." History of the Translation and its Background, *supra* note 32, at 7; *see also* Golden, *supra* note 20, at 227. The 1571 edition he refers to probably is ANTONIUS CONTIUS, CODICIS DN. IUSTINIANI . . . REPETITAE PRAELECTIONIS LIB. XII . . . (London, 1571). This volume was not in Blume's collection when it was turned over to the University of Wyoming.

fact a German translation of the Code published in the 1830s.⁴³ He requested a secondhand copy of this work from them, and one is in his collection, but there is no proof he received it in 1920 as a result of this request.⁴⁴

¶17 Another sign that Blume had begun the translation around 1920 is that correspondence from that era between Blume and publishers or book dealers tends to focus on writings about Roman history, culture, and law, such as Sohm's *Institutes*⁴⁵ and Muirhead's *Historical Introduction to the Private Roman Law*.⁴⁶ He also sought good Latin-English dictionaries at that time. He wrote to Barnes and Noble in May 1920 asking for a recent and "absolutely first class complete Latin dictionary, and not Harper's."⁴⁷ In reply, Barnes and Noble "begged to state" that Harpers was evidently the largest and best available,⁴⁸ and that dictionary does appear in Blume's collection. In fact, Blume's library grew to include some thirty-five Greek and Latin dictionaries, grammars, guides to composition, synonym finders, etc.

¶18 In addition, a disassembled, partial copy of the 1914 Krueger edition of the Code in Blume's library has 1920 dates penciled in at various spots in the text, apparently in Blume's hand and seeming to reflect when he reached that spot in his translation. The earliest date is at the end

43. Letter from Fred Blume to G. E. Stechert & Co. (May 8, 1920) (on file with the author).

44. The work in question is the seven-volume OTTO, SCHILLING & STINTENIS, *supra* note 19. It is clear that Blume had this translation by 1924, because in that year he wrote: "I am also fortunate in having a German translation of the work, which Monro says is the best translation of the Justinian works extant, and which, with its notes, has been a great help in securing accuracy." Letter from Fred Blume to Thomas Swann, Dean, Yale Law School (May 26, 1924) (available in Blume Collection, H69-10, *supra* note 32).

45. RUDOLPH SOHM, THE INSTITUTES (James Crawford Ledlie trans., 1901).

46. JAMES MUIRHEAD, HISTORICAL INTRODUCTION TO THE PRIVATE ROMAN LAW (Henry Goudy ed., 2d ed., London, Adam and Charles Black 1899).

47. Letter from Fred Blume to Barnes and Noble, Inc. (May 27, 1920) (on file with the author) (referring to E.A. ANDREWS ET AL., HARPER'S LATIN DICTIONARY (rev., enl. 1888)).

48. Letter from Barnes and Noble, Inc. to Fred Blume (June 2, 1920) (on file with the author).

of C.1.1.8.6, where Blume drew a line to the top of the page and wrote “4/3/20.”⁴⁹

¶19 Blume also wrote that he did not remember exactly when he started the translation but knew he “did not have much of it done on April 23, 1921, when [he] was appointed to the [Wyoming] Supreme Court.”⁵⁰ His memory may have been weak on this point, however, because in the December 1922 letter to Wigmore, Blume reported that he had translated “substantially one-half of the book” even though “during the last year or more I have been unable to do any work on this.”⁵¹ It seems more likely that this latter, contemporaneous statement is true—that he had done a good deal of translating before he was appointed to the Wyoming Supreme Court but had not done much more immediately thereafter as he was learning how to be a justice. In any event, Blume seems to have started his solo translation of Justinian’s Code toward the end of 1919 or the beginning of 1920 and to have completed his first draft in late 1923 or early 1924, some twelve years after he’d embarked on his background preparation following the election defeat of 1912.

¶20 Justice Blume’s production of a first draft translation of the Code was done at

49. And at C.1.3.44, he wrote “4/26/20.” However, it also should be noted that at C.1.3.10 there is a note stating “here 12/21/23” and that there are other, much later dates, at other places in the text. These likely reflect the dates at which he came to these passages again in his nearly-endless revisions. Citation forms for Roman law are covered in THE BLUEBOOK, A UNIFORM SYSTEM OF CITATION 303 tbl. T2 (Columbia Law Review Ass’n et al. eds., 18th ed. 2005). For additional detail on citing Roman law sources, see Sass, *supra* note 7, at 232–33; Lucia Diamond, *Roman and Canon Law Research*, LEGAL REFERENCE SERVICES Q., 2001, no. 1–2, at 99, 105–08. The Krueger edition in question is PAUL KRUEGER, CODEX IUSTINIANUS (1914). There also is an 1877 version of Krueger’s CODEX IUSTINIANUS (Berlin, Weidmann 1877) and an *editio stereotypa* which was volume two of a set of which Mommsen and Krueger’s *Institutes and Digests* were volume one (CORPUS IURIS CIVILIS (Berlin, Wiedmann 1872)). So, by the “modern edition of Krueger,” Blume probably means the 1914 edition. For a discussion of Mommsen’s & Krueger’s editions, see Sass, *supra* note 7, at 225–26.

50. History of the Translation and its Background, *supra* note 32, at 7.

51. Letter from Fred Blume to John H. Wigmore, Northwestern University Law School, *supra* note 40.

considerable cost to his health and private life as well. In his later recollection of the translation effort, he writes of how busy he was with his regular court work and goes on to explain:

So the work on the Justinian Code and Novels was necessarily done in spare moments. I devoted to it substantially every evening until eleven o'clock at night or later, and every Saturday afternoon and Sunday with few exceptions. I limited my social life to the minimum. I wrote everything in long hand, until, after a year or two after I began, my right hand and arm would work no longer, so I had to resort to a typewriter, which is not so good for a translator. It took me a year or so before I could write long hand again.⁵²

Despite these hardships, Blume persevered and certainly had completed the first draft by the time he wrote to Dean Swan of Yale in February 1924. Swan's positive reply clearly heartened him and renewed his enthusiasm for the long process of revision that lay ahead. Blume responded by thanking him for his letter, confiding that "[i]t gives a little zest to a work which is necessarily tedious and which I am doing at the expense, often, of moments which, perhaps should be devoted to recreation from my court work, which itself, with a crowded docket, keeps us busy."⁵³

Revisions and Notes

¶21 Blume was not content with the first draft of the Code translation and appears to have begun revising it almost immediately. In the February 1924 letter to Swan, Blume wrote that he was "now working on a revision of my translation, and am proceeding with that comparatively rapidly, and if I continue to work on that without taking up some other matters, I shall probably have the major portion of it revised by the end of this year."⁵⁴ This prediction proved to be overly optimistic, as Blume was not sufficiently satisfied with his revisions to have the whole manuscript

52. History of the Translation and its Background, *supra* note 32, at 8.

53. Letter from Fred Blume to Thomas W. Swan, Dean, Yale Law School (May 26, 1924) (available in Blume Collection, H69-10, *supra* note 32).

54. Letter from Fred Blume to Thomas W. Swan, *supra* note 41.

translation typed until an additional five years had passed. The process of revising the translation turned into a process of additional extensive book collecting, self-education, and annotation writing, rather like a do-it-yourself project that begins as an effort to add a bedroom and ends with a palatial annex and a garage full of tools. He later described the process:

After I had made the first rough draft, I went over the text a second time. As I did so I noted down several hundred passages in the text which [sic] seemed to me to be obscure. I went over these again later and made whatever correction[s] I thought necessary. In the meantime, I read on the subjects dealt with a great deal, but my recollection is that I made the main notes [Blume's extensive explanation of various Code provisions] after making the revision, in the meantime making corrections from time to time in the translation. The notes necessitated, of course, extensive reading, and I had by that time acquired books on nearly every phase of the subject[s] dealt with in the latter. . . . I had the manuscript typed by others, I think, in the spring of 1929.⁵⁵

¶22 Blume was able to put an approximate date to the first typing of his manuscript because he remembered having some of the translated books with him when he lectured on Roman law at the Northwestern University Law School in summer 1929,⁵⁶ at age fifty-four, seven years after Dean Wigmore had first invited him to teach there.⁵⁷ Unfortunately, there is a gap of some nine years, from about 1920 to 1929, in the records of Blume's transactions with publishers and dealers, and he did not note the acquisition dates in the books he collected, so it is difficult to determine what titles informed his work during this period. He does comment in his grateful letter of May 1924 to Dean Swan that he had just recently obtained a copy of Gothofredus on the Theodosian Code that he was using in his translation of the Justinian Code "whenever it has any pertinent comments."⁵⁸ However, it is clear that neither his collection building efforts nor his

55. History of the Translation and its Background, *supra* note 32, at 8–9.

56. *Id.* at 9.

57. Wigmore first extended such an invitation in 1922. Letter from John H. Wigmore, Dean, Northwestern University Law School, to Fred Blume (Dec. 18, 1922) (available in Blume Collection, H69-10, *supra* note 32).

58. Letter from Fred Blume to Thomas W. Swan, Yale Law School, *supra* note 53. The

revision work ceased once he had the translation first typed.

¶23 It was about at the point that Blume had his typed manuscript in hand that he appears to have begun to read extensively the Continental literature on Roman law, especially the Pandecticists and other Roman law scholars working in Germany. Blume's records from the years 1929 to 1931 reveal an abundance of correspondence with European publishers and book dealers. In 1929, he purchased from the Albert Raustein Schweitzerisches Antiquariat in Zurich a used three-volume set of the *Corpus Iuris Civilis* by Mommsen, Krueger, and Schoell,⁵⁹ along with Savigny's *System des Heutigen Römischen Rechts*,⁶⁰ Esmark's *Römische Rechtsgeschichte*,⁶¹ Windscheid's *Pandektenrechts*,⁶² and many other well-known works in the field that he later refers to often in the copious notes accompanying his translation.

¶24 In the next two years Blume bought numerous other works from Raustein (and its successor Hellmut Schumann), Alfred Loren of Leipzig, Praeger in Berlin, the Richard Cohn Buchhandlung und Antiquariat of Frankfurt am Main, and Martinus Nijhof in the Hague, to mention but a few. In 1931, he received in response to letters he apparently had written to the U.S. legations in Vienna and Prague, lists of secondhand bookstores in those cities specializing in Roman law and history. He followed up with correspondence to at least one of the businesses

Gothofredus work in question is JOCOBUS GOTHOFREDUS, CODEX THEODOSIANUS CUM PERPETUIS COMMENTARIIS (London, Ioannis-Antonii Heuguetan & Marci-Antonii Rauaud 1665).

59. THEODOR MOMMSEN, PAUL KRUEGER & RUDOLF SCHOELL, CORPUS IURIS CIVILIS (Berlin, Weidmann 1872, 1895, 1915). These were not the most recent editions of the CJC available at the time.

60. FRIEDRICH CARL VON SAVIGNY, SYSTEM DES HEUTIGEN RÖMISCHEN RECHTS (Berlin, Veit 1840–49).

61. KARL ESMARK, RÖMISCHE RECHTSGESCHICHTE (Kassel, Wigand 1888).

62. BERNHARD WINDSCHEID, LEHRBUCH DES PANDENKTENRECHTS (Frankfurt, Rütten & Löning 1887).

mentioned, but after 1931 Blume's collection development activities appear to have diminished considerably.

¶25 His records show only a few book purchases after that time. This may have been due to the increasing cost of his collection. In 1933, Blume wrote that a number of books he wanted were available in a catalog of secondhand books, but that "the matter of exchange is getting so grotesquely expensive that I have hesitated to send for these books under present economic circumstances."⁶³ In 1934, he and Clyde Pharr exchanged lamentations about the high cost of foreign legal materials.⁶⁴ It seems he then focused on studying the numerous works he had already obtained and on applying what he learned to his continuing revision of the translation and the writing of his extensive explanatory notes.^{64a} For example, his manuscript translation contains an "original" Book II that has on its title page a note in Blume's hand stating "revised 1/24/31," as well as a "revised" Book II. Despite the apparent slowdown in Blume's acquisitions, by April 1937 his Roman law collection, according to his own count, consisted of 862 volumes.⁶⁵

63. Letter from Fred Blume to Clyde Pharr, Professor, Vanderbilt University (Sept. 25, 1933) (available in Blume Collection, H69-10, *supra* note 32).

64. Letter from Fred Blume to Clyde Pharr, Professor, Vanderbilt University (Jan. 26, 1934) (available in Blume Collection, H69-10, *supra* note 32); Letter from Clyde Pharr, Professor, Vanderbilt University, to Fred Blume (Apr. 9, 1934) (available in Blume Collection, H69-10, *supra* note 32). In the latter, Pharr notes that foreign book prices are "unreasonably high, due partly to the devaluation of our dollar" and goes on to say that he has been on a "buyers strike" for eight to ten months. *Id.*

64a Many other volumes contain revision date notes adjacent to titles; e.g., "Rev. 11/20/31." Most of the manuscript volumes also contain Blume's handwritten notes to himself on the inside back cover or on otherwise blank pages, listing laws about which he was unsure and usually noting problems encountered. Blume appears to have addressed these troublesome translations later, as all these notes have check marks beside them.

65. Among the items donated to the University of Wyoming is a notebook labeled "Catalog of Roman Law Books," dated April 3, 1937, which provides a volume count in Blume's hand.

Involvement with Clyde Pharr and the Corpus Juris Romani

¶26 On May 27, 1933, Clyde Pharr, professor of Greek and Latin at Vanderbilt University,⁶⁶ wrote a letter to Blume that would be the start of three decades of intermittent correspondence between the two and that would both help and hinder Blume's work on the Code.⁶⁷ Without being specific about his sources, Pharr said: "I have recently been informed that you are at work on an annotated translation of the Code of Justinian. So I am taking the liberty of writing you to see whether it may be practicable to work out something on a cooperative basis."⁶⁸

¶27 Pharr included a seven-page proposal titled "A Project for a Variorum Translation into English of the Entire Body of Roman Law,"⁶⁹ which he apparently was sending to potential collaborators and possibly to funding sources. A *variorum* translation, as the proposal indicates, includes "variant translations of all passages on which there may be a difference of opinion among competent scholars as to the proper interpretation."⁷⁰ As Pharr envisioned the project in this initial proposal (which, in hindsight, we easily can see as wildly optimistic), it would consist of "at least"

66. For a brief biography of Pharr, see Golden, *supra* note 20, at 525–26. By the time he wrote to Blume, Pharr had established himself prominently in his field with two textbooks: CLYDE PHARR, *HOMERIC GREEK: A BOOK FOR BEGINNERS* (1920) and CLYDE PHARR, *VERGIL'S AENEID* (1930), both of which have gone through several printings. See Rowena Rutherford Farrar, *Clyde Pharr, Practical Scholar*, *HOLLAND'S*, July 1934, n.p.

67. Letter from Clyde Pharr, Professor, Vanderbilt University, to Fred Blume (May 27, 1933) (available in Blume Collection, H69-10, *supra* note 32).

68. *Id.*

69. Clyde Pharr, *A Project for a Variorum Translation into English of the Entire Body of Roman Law* (n.d.) (note annexed to letter from Clyde Pharr, Professor, Vanderbilt University, to Fred Blume (May 27, 1933)) [hereinafter *A Project for a Variorum Translation*] (available in Blume Collection, H69-10, *supra* note 32).

70. *Id.* at 2.

eight units, including the Theodosian Code and the entire CJC.⁷¹ He attached no timeline for this ambitious endeavor, which he acknowledged would result in printed matter three or four times larger than the King James Bible.⁷²

¶28 Years later, when Pharr had moved to the University of Texas, this enormous project was whittled down into the series he called The Corpus of Roman Law, or Corpus Juris Romani. According to a twenty-page prospectus dated 1952, the revised series was to have included: (1) the Theodosian Code and Novels; (2) “other pre-Justinian legislation and jurisprudence”; (3) Justinian’s Corpus Juris Civilis; and (4) “legal inscriptions and papyri and the more important legal material culled from the ancient Greek and Latin authors, and other sources, such as Polybius, Cicero, Livy, Tacitus, Pliny, Aulus Gellius, Cassius Dio, Ammianus Marcellinus, and the Syro-Roman Law Book.”⁷³ Of these, only the first and part of the fourth were ever published.⁷⁴

¶29 In his initial response to Pharr, Blume expressed interest in joining the project but also asked whether Pharr was familiar with Scott’s recent translation of the entire CJC.⁷⁵ (Had Blume

71. *Id.* at 5. The parts Pharr mentions are: “(1) Brunes, FONTES IURIS ROMANI; 2) other inscriptional material; 3) the pre-Justinian collections of Roman jurisprudence; 4) the Theodosian Code and Novels; 5) other pre-Justinian legislation; 6) the Corpus Juris Civilis; 7) the more important legal materials culled from classical authors, such as Cicero, Pliny and Aulus Gellius; 8) papyri material.” *Id.*

72. *Id.* at 6.

73. Clyde Pharr, A Project for the Collection, Translation, and Annotation of All the Source Material of Roman Law 1–2 (May 15, 1952) (available in Blume Collection, H69-10, *supra* note 32). Another prospectus, written some eight years earlier, when Pharr was still at Vanderbilt, had retained the same ambitious scope as his original A Project for a Variorum Translation, *supra* note 69. See Clyde Pharr, A Project for the Collection, Translation, and Annotation of All the Source Material of Roman Law (1944) (copy on file with the author).

74. CLYDE PHARR, THE THEODOSIAN CODE AND NOVELS, AND THE SIRMUNDIAN CONSTITUTIONS (Corpus of Roman Law, vol. 1, 1952); ANCIENT ROMAN STATUTES: A TRANSLATION (Allan Chester Johnson ed. & trans., Corpus of Roman Law, vol. 2, 1961).

75. Letter from Fred Blume to Clyde Pharr, Professor, Vanderbilt University (June 1, 1933) (available in Blume Collection, H69-10, *supra* note 32). Blume was referring to THE CIVIL LAW,

read Pharr's project outline carefully, he would have seen that in it Pharr had written that "a recent attempt to translate the Corpus Juris Civilis and some other material has been so poorly done that it is thoroughly untrustworthy and as a consequence quite valueless."⁷⁶) Referring to that publication, Blume told Pharr: "It almost halted my personal work on the Annotated Justinian Code."⁷⁷ However, after explaining that he had not gone through much of the work yet, he went on to say: "I have gone through one book of the Code and found what I thought so many glaring mistakes that I concluded to go on with my work. . . ."⁷⁸ Pharr waited some three weeks before replying to Blume, in part so that he could take a longer look at Scott's translation, which, if adequate, would have pre-empted the core of Pharr's project. Pharr's considered judgment of the Scott translation was damning: "A more careful examination has unfortunately confirmed my earlier impression and I am convinced that his work is valueless."⁷⁹ Pharr went on to refer to a letter Dean Roscoe Pound had recently sent him in which Pound labels Scott's work as "most unfortunate," and which Pharr claims is "the prevailing opinion of competent scholarship."⁸⁰

¶30 It is highly ironic that Scott and Blume both had been laboring away in obscurity

supra note 6, edited and translated by S.P. Scott.

76. A Project for a Variorum Translation, *supra* note 69, at 6–7.

77. Letter from Fred Blume to Clyde Pharr, *supra* note 75.

78. *Id.* Later, Blume wrote that he could not understand how Scott had made so many errors, and he suggested that he "half suspect[ed] that he did not personally translate the Code, but left that to subordinates, and that the mistakes are not due to himself." History of the Translation and its Background, *supra* note 32, at 32 (in a subsection headed "Anent S. P. Scott").

79. Letter from Clyde Pharr, Professor, Vanderbilt University, to Fred Blume (June 24, 1933) (available in Blume Collection, H69-10, *supra* note 32).

80. *Id.* Pharr goes on to criticize the translation extensively, referring to Buckland's rather critical review in the *Tulane Law Review* as "entirely too kind hearted" and then proceeding to attack the translation for numerous faults. *Id.*

around the same time on translating the CJC. Although Scott's translation of the entire CJC was published in 1932, he apparently had completed it some ten years before, when Blume was still working on his first draft of the Code translation. Scott's "Editor's Preface" is dated February 11, 1922,⁸¹ and it is interesting to speculate as to whether Blume would have continued with his efforts had he been confronted with Scott's massive, completed work in that year, even if he deemed it flawed. That the work is seriously flawed does indeed seem to be the "prevailing opinion of competent scholarship," as Pharr asserted. Schiller refers to Scott's translation as "distinctly poor" and indicates it must be used "with great caution, for mistranslations are frequent . . . in part due to the fact that an antiquated text was used for translation."⁸² Another scholar has noted that "[i]f Scott had immersed himself in the Roman law scholarship available in his day, he probably could have produced an adequate translation—one good enough that it might not be worth doing again."⁸³ This critic pointed out that Scott's work failed to reflect the many valuable advances in Roman law scholarship that had been made after the mid-1800s.⁸⁴ Blume's work does

81. Scott, *supra* note 6, at 49.

82. SCHILLER, *supra* note 7, § 12, at 31.

83. Charles Donahue, *On Translating the Digest*, 39 STAN. L. REV. 1057, 1062 (1987) (reviewing THE DIGEST OF JUSTINIAN (Theodor Mommsen, Paul Krueger & Alan Watson eds., 1985)).

84. *Id.* The comments of eminent Roman law scholar Salvatore Riccobono on Scott's translation also are worth noting. He referred to it in his preface to the 1935-36 reports on the Riccobono Seminar. He admitted that he was "not acquainted with this work of Scott, which has enjoyed little dissemination in Europe..." Salvatore Riccobono, *Roman Law in the United States of America* (Preface of Salvatore Riccobono to the Reports [of the Riccobono Society] of 1935-1936) at 4. [Translated by Anscar Parsons, 9-page mimeographed document in Riccobono Seminar file, Catholic University Reference Files, ACUA Reading Room; copy on file with the author. Original Italian version in: Salvatore Riccobono, *Il Diritto Romano in America*, 15 BULLETTINO DELL' ISTITUTO DI DIRITTO ROMANO 314 (1936). However, Riccobono went on to critique Scott's translation anyway: "I can admit that in difficult points, whether these be corruptions or interpolations, the translation may seem faulty when compared with the results of modern criticism. I can admit further, that the translator here and there encountered insurmountable difficulties in rendering the meaning of the text." *Id.* Presumably, these sentiments were ones Riccobono acquired from colleagues who had read Scott's translation.

not fail in this, due to his expansive book collection and research activities already noted.

¶31 In any event, Blume replied quickly to Pharr, saying “I shall be glad to join you in the work and cooperate with you in every way I can, considering the limited time at my disposal.”⁸⁵ While these letters show the mutual interest of Blume and Pharr in Justinian’s Code, the correspondence also hints at problems to come: Blume’s “limited time” later would be channeled into the Theodosian Code piece of Pharr’s project, as opposed to the Justinian Code, and Pharr’s and Blume’s concepts of how Justinian’s Code should be presented were at variance.

¶32 As to the latter, Blume’s vision was to create, as he called it, an *Annotated Justinian Code* “for mainly the ordinary lawyer in the United States, who does not know any great amount of Latin or Greek.”⁸⁶ Therefore, he translated all the Latin and Greek terms into English (unlike, Buckland, who, Blume notes, left so many Latin terms untranslated that his *Textbook on Roman Law* is “nearly worthless for an average American lawyer”),⁸⁷ and he made headnotes to the various titles of the Code in order to explain difficult passages. Blume made clear on numerous subsequent occasions that he thought his notes were extremely important and that he valued them highly. In his letter of June 1 to Pharr, Blume sums up his concept of a Code translation by indicating that the letter’s preceding explanation was intended to show what he thought it

They seem to coincide with those of Pound and Pharr, as described above. It also should be noted, however, that Riccobono went on to opine that the deficiencies he remarked upon “do not weaken the practical value of the translation...[for] the immediate and wider diffusion of this treasure of jurisprudence among the ranks, and especially for practical purposes.” *Id.*

85. Letter from Fred Blume to Clyde Pharr, Professor, Vanderbilt University (June 30, 1933) (available in Blume Collection, H69-10, *supra* note 32).

86. Letter from Fred Blume to Clyde Pharr, *supra* note 75.

87. Letter from Fred Blume to Clyde Pharr, *supra* note 85 (referring to W. W. BUCKLAND, A TEXT-BOOK OF ROMAN LAW FROM AUGUSTUS TO JUSTINIAN (1921)).

advisable to do “in order to make the work salable and sufficiently interesting to be read by the American lawyer and by the student of Roman law and customs in general.”⁸⁸

¶33 Pharr’s intent, on the other hand, was to create the definitive scholarly English translation of the documents, primarily for specialists. Pharr’s letter in response to Blume’s acceptance and somewhat different vision indicated his agreement with what he called Blume’s “general scheme,” but he went on to reiterate his preference for “the use of a limited amount of notes” and “brief notes.”⁸⁹ In short, Pharr, the classicist, wanted more of a “pure” translation of the original documents, for their own sake, while Blume, the lawyer, wanted to explain their significance and substance to American lawyers and hoped “that it might become a work which could with confidence be utilized by the courts of this country, either on account of analogy or contrast.”⁹⁰ Blume’s extensive notes may have bothered Pharr the purist, but they later proved extremely valuable in the eventual translation of the Theodosian Code, and Pharr later repeatedly expressed his view that they should be published.⁹¹

¶34 The drain of Pharr’s project on Blume’s translation was not immediate. Pharr had difficulty organizing and funding The Corpus of the Roman Law, so Blume continued to read Roman law and revise his manuscript according to his own plan for several years after their initial discussion of entering into a cooperative venture. When he wrote to Pharr in 1933, Blume told

88. Letter from Fred Blume to Clyde Pharr, *supra* note 75.

89. Letter from Clyde Pharr to Fred Blume, *supra* note 79.

90. Letter from Fred Blume to Clyde Pharr, *supra* note 85.

91. See, e.g., Letter from Clyde Pharr, Professor, Vanderbilt University, to Fred Blume (July 12, 1945) (available in Blume Collection, H69-10, *supra* note 32); Letter from Clyde Pharr, Professor, Vanderbilt University, to Fred Blume (Jan. 25, 1958) (available in Blume Collection, H69-10, *supra* note 32).

him he had “gone over it three or four times, and . . . [was] still going over it, as . . . [he studied] the various subjects separately and the laws of the Code in connection therewith.”⁹² Blume continued to work on his revision and notes all through the 1930s. However, at the outbreak of the war in 1939, he ceased correcting his notes and read Roman law only a little, because at that point he “thought that all efforts in connection with the translation of any of the Roman Law would be useless.”⁹³

¶35 Blume and Pharr also seem to have ceased corresponding by then. The Blume archives show a flurry of sixteen letters (eight from each) in the year between Pharr’s first letter to Blume in May 1933 and his last in April 1934. Thereafter, only one appears—in 1937—until the two reconnected in 1943.

“Completion” of the Translation and Collaboration on the Theodosian Code

¶36 In May 1943, after a six-year hiatus, Pharr wrote to Blume with great enthusiasm, indicating he would like to renew their “lively correspondence.”⁹⁴ Now secretary-treasurer of the American Classical League, Pharr told Blume that his institution—Vanderbilt University—was providing funds to start the translation. He greatly desired Blume’s collaboration. “I found your work on the Code of Justinian so far superior to anything else that has been done that I hope we may be able to arrange some sort collaboration. You have done a fine job and have spent an enormous amount

92. Letter from Fred Blume to Clyde Pharr, *supra* note 85.

93. Letter from Fred Blume to Clyde Pharr, Professor, Vanderbilt University (May 28, 1943) (available in Blume Collection, H69-10, *supra* note 32).

94. Letter from Clyde Pharr, Professor, Vanderbilt University, to Fred Blume (May 25, 1943) (available in Blume Collection, H69-10, *supra* note 32).

of work on it.”⁹⁵ Pharr went on to ask Blume if he would be willing to send him his manuscript so that he could have it copied.⁹⁶ His intention was to start with the Theodosian Code, due to its linguistic, historical, economic, and sociological interest, but he desired to apply Blume’s knowledge and experience with the Justinian Code to this earlier work.⁹⁷ (A good many of the laws of the Theodosian Code were retained in the Justinian Code; hence Blume’s translation of the latter was extremely useful for translating the former.⁹⁸)

¶37 When Pharr wrote to Blume again in June with more details about his plan for the project, he indicated that Blume would be credited as translator and annotator of the Code and the Novels, as well as an assistant editor on the whole project, given the amount of work he had done already.⁹⁹ Blume was happy to cooperate but wanted time to review the manuscript again before he sent it, since he had not worked on it for some four years at this point.¹⁰⁰ In June 1943, Blume wrote to Pharr again, saying he was working hard on his notes to the Code, making many revisions, but that he had been having trouble finding stenographers for the manuscript because

95. *Id.*

96. *Id.*

97. *Id.* It is interesting and amusing to note that in Blume’s response to Pharr he recalled an encounter he had with Dean Roscoe Pound years earlier in which Blume had asked him if he thought it would be “of any use” to translate the Theodosian Code, to which Pound brusquely replied “it would be of no use, no use at all.” Letter from Fred Blume to Professor Clyde Pharr, *supra* note 93. The august Pound’s opinion obviously had no effect, no effect at all, on Pharr and Blume.

98. At one point Pharr wrote to Blume: “You will find how much we are plundering from your work when you receive our issue of the second book of the Theodosian Code.” Letter from Clyde Pharr, Professor, Vanderbilt University, to Fred Blume (Apr. 28, 1945) (available in Blume Collection, H69-10, *supra* note 32).

99. Letter from Clyde Pharr, Professor, Vanderbilt University, to Fred Blume (June 9, 1943) (available in Blume Collection, H69-10, *supra* note 32).

100. Letter from Fred Blume to Clyde Pharr, *supra* note 93.

Cheyenne was “one of the war centers of the country.”¹⁰¹

¶38 Previously, in September 1933, Blume had sent Pharr a copy of his translation and notes for Book II of the Code; he had promised to do so in his last letter of June in order that Pharr might get a feel for his work.¹⁰² (In the accompanying letter, Blume described his philosophy and methods of translation in some detail.¹⁰³) Pharr had written back praising it as “a fine work of scholarship and the result of much careful thought” and offered to critique it, with the help of some graduate students.¹⁰⁴ In December 1933, Pharr forwarded that critique, some of which seems a bit condescending¹⁰⁵ but which Blume took well.¹⁰⁶

¶39 Some seven months passed before Blume was prepared to part with his complete manuscript translation of the Code and the Novels. On December 28, 1943, nearly sixty-nine years of age, he finally wrote to Pharr: “I am sending you, as I promised I would, by express, copy [sic] of my translation of the Justinian Code and the Justinian Novels, including the edicts

101. Letter from Fred Blume to Clyde Pharr, Professor, Vanderbilt University (June 14, 1943) (available in Blume Collection, H69-10, *supra* note 32).

102. *Id.*

103. Letter from Fred Blume to Clyde Pharr, Professor, Vanderbilt University (Sept. 12, 1933) (available in Blume Collection, H69-10, *supra* note 32). See *infra* ¶¶ 56–64 for additional discussion of this topic.

104. Letter from Clyde Pharr, Professor, Vanderbilt University, to Fred Blume (Sept. 22, 1933) (available in Blume Collection, H69-10, *supra* note 32).

105. For example, Pharr wrote: “The fine art of translation can be developed only through long continued practice and requires a great deal of criticism for its best development. . . . This translation shows marked ability and insight but the sentence structure adheres too closely to the Latin.” Clyde Pharr, Notes to Justice Blume’s Translation (n.d.) (unpublished note annexed to letter from Clyde Pharr, Professor, Vanderbilt University, to Fred Blume (Dec. 1, 1933)) (available in Blume Collection, H69-10, *supra* note 32).

106. Blume told Pharr he was accustomed to receiving constructive criticism concerning his judicial opinions from other members of the court, the bar, and law reviews. However, he indicated he thought some of Pharr’s criticisms “probably ought not to be accepted.” Letter from Fred Blume to Clyde Pharr, Professor, Vanderbilt University (Jan. 26, 1934) (available in Blume Collection, H69-10, *supra* note 32).

and appendices appearing in the edition of the Novels of Schoell and Kroll.”¹⁰⁷ (Blume’s focus had been the Code, but he ended up translating the Novels as well to show how the latter had affected some of the Code sections.) He went to explain that since Pharr had written to him in May, he had re-read the entire translation and most of the text (his notes); therefore, he warned Pharr, “numerous interlineations, or corrections in pencil appear.”¹⁰⁸ Blume referred to the shipment of his translation of the Code and Novels as the equivalent of bidding farewell to a child and a brother, respectively. It was such a momentous occasion to him that he appended to this letter a separate, thirty-two page annex in which he discussed the history of his translation, his approach to translating, and why he translated certain terms as he did (in part, as a response to Pharr’s criticisms of 1933); responded to certain other criticisms of Book II in Pharr’s 1933 critique; and made a last comment on Scott and his unfortunate translation.¹⁰⁹

¶40 Professor Pharr wrote to Blume on January 8, 1944 to assure him the manuscript had arrived safely that day. This time, as opposed to his reaction in 1933 to Blume’s translation of Book II, Pharr’s praise was unstinting.

107. Letter from Fred Blume to Clyde Pharr, Professor, Vanderbilt University, *supra* note 32.

108. *Id.*

109. History of the Translation and its Background, *supra* note 32, at 32.

Frankly, I am quite overwhelmed by the indication of extremely sound research and scholarship [shown] by your work. . . . I remember criticising part of your manuscript some eleven years ago. At that time, I was a beginner in Roman Law, although I have been engaged in classical scholarship. Because of my rather superficial knowledge of Roman law at that time, I criticised certain features of your manuscript which, in the light of further knowledge, I now gladly revise.¹¹⁰

Given Blume's decades of Roman law study and the enormous amount of time he lavished on his "Annotated Justinian's Code," it is not surprising that Pharr was impressed by the result. In addition to praising the translation, Pharr characterized what he called Blume's "magnificent task" in words that are still appropriate today: "You place us all, both those of the present and those of the future greatly in your debt. Though I am sure you are too modest to say so yourself, I shall feel confident that you were justified in writing with Horace, *Exegi monumentum aere perennius*" [I have erected a monument more lasting than bronze].¹¹¹

¶41 At this point, Blume turned to his duties as a consulting editor on the Theodosian Code translation but, as we shall see, he had in truth not seen the last of his own Code of Justinian translation.

110. Letter from Clyde Pharr, Professor, Vanderbilt University, to Fred Blume (Jan. 8, 1944) (available in Blume Collection, H69-10, *supra* note 32). Pharr went on to write: "I am delighted that you stand by your guns and many of the statements and many of the colorful phrases which you have coined to express the close relationship between Roman Law ideas and other legal ideas, including those found in our own period." *Id.*

111. *Id.*

The Theodosian Code

¶42 Having “bid farewell to his child and his brother,” Blume shifted his attention to the duties of a consulting editor for the *Corpus Juris Romani*, the first product of which was to be the Theodosian Code. Pharr had managed to recruit a stellar group of consultants, including, among others, Roscoe Pound, Ernst Rabel, Max Radin, A. Arthur Schiller, and Hessel Yntema.¹¹² Pharr’s plan was to have initial drafts done by himself and others at Vanderbilt, a book at a time, and then to send mimeographed copies to the consulting editors for their critiques.¹¹³

¶43 Justice Blume applied himself to the Theodosian Code translation as fully as he had done to Justinian’s Code and the Novels. In a series of letters in Blume sent to Pharr from 1944 to 1947, he refers to his difficulties in acquiring the Krueger Latin edition of the Theodosian Code,¹¹⁴ makes suggestions for references showing where portions of that code appear in Justinian’s Code,¹¹⁵ and indicates that he had read the entire Theodosian Code in pursuance of his obligations as a consulting editor.¹¹⁶ By this time, however, Blume was wearing down a bit. In

112. A list of all the consulting editors faces the title page of PHARR, *supra* note 74.

113. Letter from Clyde Pharr to Fred Blume *supra* note 99. In the first mimeographed volume sent to these editors, Pharr and Associate Editor T. S. Davidson wrote a preface (“General Directions for the Editorial Staff”) in which they refer to Justice Blume’s work on Justinian’s Code as “of much higher quality than anything else that has been done in this field” and state that they “are finding both his translation and his notes invaluable in the interpretation of many difficult and obscure passages of the Theodosian Code.” Theodosian Code, Book I, at iv-v (Clyde Pharr ed., 1944) (copy on file with the author; WorldCat also shows these preliminary, mimeographed editions as being held in the Vanderbilt library).

114. Letter from Fred Blume to Clyde Pharr, Professor, Vanderbilt University (May 25, 1944) (available in Blume Collection, H69-10, *supra* note 32). He makes the same complaint two years later. Letter from Fred Blume to Clyde Pharr, Professor, Vanderbilt University (July 1, 1946) (available in Blume Collection, H69-10, *supra* note 32).

115. Letter from Fred Blume to Clyde Pharr, Professor, Vanderbilt University (June 20, 1944) (available in Blume Collection, H69-10, *supra* note 32).

116. Letter from Fred Blume to Clyde Pharr, Professor, Vanderbilt University (July 18, 1944) (available in Blume Collection, H69-10, *supra* note 32).

1945, at age seventy, he confessed to Pharr that “[a] hard day’s work in the office is not conducive to make a man of my age want to read Latin in the evening, which might be recreation to you but labor to me.”¹¹⁷ Thus, Blume had almost entirely ceased to concern himself with his own Justinian Code translation, though he did look back at it from time to time.¹¹⁸

¶44 In 1947, Blume, at Pharr’s request, wrote a letter to the American Society of Learned Societies, urging a publication subvention for the Theodosian Code;¹¹⁹ Pharr subsequently noted the importance of Blume’s recommendation.¹²⁰ This subvention made it possible for the Princeton University Press to take on its publication. In his initial announcement to the consulting editors, Pharr indicated the work would likely appear around June 1, 1948.¹²¹ However, it was not until January 1949 that he shipped the forty-eight pound manuscript to the press,¹²² and not until January 1952 did Pharr write to Blume to say that the volume had just appeared and that he would forward a copy to him.¹²³ In the same letter, after lauding Blume’s contribution to this first

117. Letter from Fred Blume to Clyde Pharr, Professor, Vanderbilt University (Apr. 2, 1945) (available in Blume Collection, H69-10, *supra* note 32).

118. Early in 1947, Blume confessed to Pharr: “I have been reading a little in the Justinian Code from time to time, and I have been astonished from my present standpoint how many mistakes I made or how many corrections or improvements might be made.” Letter from Fred Blume to Clyde Pharr, Professor, Vanderbilt University (Jan. 29, 1947) (available in Blume Collection, H69-10, *supra* note 32).

119. Letter from Fred Blume to Clyde Pharr, Professor, Vanderbilt University (Apr. 24, 1947) (available in Blume Collection, H69-10, *supra* note 32).

120. Letter from Clyde Pharr, Professor, Vanderbilt University, to Fred Blume (June 24, 1947) (available in Blume Collection, H69-10, *supra* note 32).

121. Letter from Clyde Pharr, Professor, Vanderbilt University, to the Consulting editors of the *Corpus Juris Romani* (n.d.) (available in Blume Collection, H69-10, *supra* note 32).

122. Letter from Clyde Pharr, Vanderbilt University, to Fred Blume (Jan. 15, 1949) (available in Blume Collection, H69-10, *supra* note 32). Justice Blume’s manuscript weighs in at “only” thirty-six pounds, but it is typed on onionskin paper.

123. Letter from Clyde Pharr, Professor, University of Texas, to Fred Blume (Jan. 4, 1952)

volume on The Corpus of the Roman Law, Pharr assured him that work was already underway on Justinian's Code and Novels and that it should be ready in two to three years.¹²⁴

False Hope for Justinian's Code and Novels

¶45 Pharr's optimistic assessment of the status of Justinian's Code and Novels motivated Blume, now seventy-seven years old, to return to the translation he had sent off some nine years earlier. In his letter of January 1952 acknowledging receipt of *The Theodosian Code*, Blume told Pharr, "I shall, if I find time, go over the Code and Novels again and make note of the passages which [sic] I consider doubtful as I did when I went over the work the first time, and particularly the second time."¹²⁵ Although there is no correspondence between Blume and Pharr on the matter, it does appear as if Blume began to review his translation yet again, because his old, disassembled copy of Krueger bears marginal dates of February, March, and June 1952 at various points.¹²⁶

¶46 However, it seems that Blume stopped this review, and his correspondence with Pharr likewise ceases from February 1952 until October 1956. Even though Pharr resigned his position at the University of Texas in 1952 to devote all his time to what he called "our Roman law project,"¹²⁷ it appears as if Blume by then may have given up hope of seeing his translation of

(available in Blume Collection, H69-10, *supra* note 32).

124. *Id.* Pharr wrote: "There is no way to estimate the value of your assistance to us in completing this work, and we feel that by all rights you are definitely a collaborator—really one of the authors—in this enterprise. Although you have not been willing to accept full credit for your part in our work, you are certainly entitled to one of the author's copies that the publisher sent us." *Id.*

125. Letter from Fred Blume to Clyde Pharr, Professor, University of Texas (Jan. 17, 1952) (available in Blume Collection, H69-10, *supra* note 32).

126. The first is 2/24/52 and the last is 6/1/52.

127. Letter from Clyde Pharr, Professor, University of Texas, to Fred Blume (Feb. 9, 1952) (available in Blume Collection, H69-10, *supra* note 32).

Justinian's Code and the Novels published, perhaps because he had not heard from Pharr in that period. In a précis of his career that he sent as an enclosure to Dean R.R. Hamilton of the University of Wyoming Law School in anticipation of receiving an honorary doctor of laws degree, Blume notes that he assisted Pharr in translating the Theodosian Code and quotes Pharr's praise of him in the preface of that book, but he says nothing about the likely publication of his life's work, the Justinian's Code and Novels.¹²⁸ Moreover, less than a year later, in March 1957, Blume wrote to Dr. George Humphrey, president of the University of Wyoming: "I doubt, because of lack of money, that my translation will be published in my lifetime."¹²⁹ In this same letter (again in connection with Blume's being granted the honorary degree), Blume described his fifteen-volume, 4521-page manuscript translation and indicated he would leave it, together with his private library, to the university.¹³⁰ The next year, Blume's hopes may have risen somewhat in response to Pharr's optimism, and he urged Pharr to retain his annotations,¹³¹ but that marked the last time he mentioned the subject to Pharr.

¶47 Pharr seems to have kept working on Justinian's Code during this time even though he did not write to Blume about it. In response to Blume's October 1956 letter in which Blume tangentially refers to the translation, Pharr implied it was still a going concern with him. "You did the harder part of this task, and it is enormously easier for me to revise your translation, which is

128. Fred Blume, Unpublished précis (n.d.) (annex to letter from Fred Blume to R. R. Hamilton, Dean, University of Wyoming Law School (Oct. 29, 1956)) (available in Blume Collection, H69-10, *supra* note 32).

129. Letter from Fred Blume to George D. Humphrey, President, University of Wyoming (Mar. 22, 1957) (available in Blume Collection, H69-10, *supra* note 32).

130. *Id.*

131. Letter from Fred Blume to Clyde Pharr, Professor, University of Texas (Feb. 3, 1958) (available in Blume Collection, H69-10, *supra* note 32).

at least 95 percent correct, than it would be for me to draft my own translation without the help that you gave.”¹³² He also indicated he was writing again to Professor Max Rheinstein of the University of Chicago to inquire about funding.¹³³

¶48 Less than a year later, Pharr asked Blume to again write to the American Council of Learned Societies, this time to recommend Pharr be given a grant to prepare Justinian’s Code for publication, just as Blume had done before in regard to the Theodosian Code.¹³⁴ This request was successful, and Pharr wrote to Blume in January 1958 to thank him and to let him know that he and his wife were “now giving full time to the completion of the translation and annotation of the Code.”¹³⁵ Ever optimistic, Pharr went on to say: “The work is proceeding very satisfactorily and we hope that in a few months we shall have something substantial to show for our labors. . . . We are hoping to be able to send to you the translation and notes of the first book of the Code within a few weeks. . . .”¹³⁶ Blume replied that he was still willing to review the manuscript despite not being able to work on it for the length of time he could have in the past (he was then eighty-three), but there is no indication Pharr ever sent his revisions for Blume to review.

¶49 Instead, Pharr had temporarily shifted his attention to what was to become the second,

132. Letter from Clyde Pharr, Professor, University of Texas, to Fred Blume (Dec. 6, 1956) (available in Blume Collection, H69-10, *supra* note 32).

133. *Id.*

134. Letter from Clyde Pharr, Professor, University of Texas, to Fred Blume (Sept. 15, 1957) (available in Blume Collection, H69-10, *supra* note 32).

135. Letter from Clyde Pharr to Fred Blume, *supra* note 91.

136. *Id.* The same letter suggested that the title page should read “*The Code of Justinian, A Translation with Commentary, Glossary, and Bibliography* by Fred H. Blume and Clyde Pharr.” *Id.*

and last, volume in the Corpus Juris Romani series—*Ancient Roman Statutes: A Translation*.¹³⁷

In the same letter in which he told Blume about this detour, Pharr assured him they were back on track with the Code and still planned to publish it, probably with the University of Texas Press, though the Princeton Press had an option on all volumes in the series.¹³⁸ In fact, *Ancient Roman Statutes* was not published until late 1961, further disrupting Pharr’s work on the Code.¹³⁹ After 1961 Pharr may have continued his efforts on the translation, but the five letters between Blume and Pharr in 1962, 1963, and 1965 make no mention of it. By 1961, Pharr would have been seventy-six himself and may simply have lacked the energy to continue. In the last letter discussing the Code translation, Pharr told Blume, “I continually marvel that you were able to produce a work of this extent and quality in the midst of your exacting judicial activities.”¹⁴⁰

¶50 Thus, when Justice Blume died in 1971, at age ninety-six,¹⁴¹ he no doubt believed that, as he had written to President Humphrey: “It [might] be that some day [there might be] some student at the University [of Wyoming] who will be interested in the subject and if so my translation and the notes should be of immense value to him. So I think my manuscripts ought to be preserved.”¹⁴² Fortunately, the relatively small monetary expense involved in electronic

137. ANCIENT ROMAN STATUTES, *supra* note 74. See Letter from Clyde Pharr, Professor, University of Texas, to Fred Blume (Mar. 11, 1959) (available in Blume Collection, H69-10, *supra* note 32).

138. *Id.*

139. Letter from Clyde Pharr, Professor, University of Texas, to Fred Blume (Dec. 19, 1961) (available in Blume Collection, H69-10, *supra* note 32).

140. *Id.*

141. Professor Pharr died only some two years later, on Dec. 31, 1972. Golden, *supra* note 20, at 564.

142. Letter from Fred Blume to George D. Humphrey, President, University of Wyoming, *supra* note 129.

publication now makes it possible for the entire world to benefit from Justice Blume’s decades of labor, not just that hypothetical student in Laramie.

The Manuscript

¶51 The manuscript Blume donated to the University of Wyoming appears to be his original. It consists of thirteen volumes of 8 1/2” x 13” typed pages, between boards used to bind Wyoming House and Senate bills.¹⁴³ Each book of the Code is in its own volume, except for Book II of which there is one “original” and one “revised” volume. All the rest have “original” inscribed in them. The pages have holes punched on their left sides and are bound together and to the boards by shoelaces. The pages shows signs of having been edited extensively by Blume—penciled corrections in his hand, partial pages pasted and even pinned on top of other pages, and dates apparently indicating when he had revised a particular title (e.g., “Rev. 4/3/32”). Inside the front cover of Book XII, Blume tallied the number of pages in each volume (the total is 4521) and wrote “compared finally 11/14/43.” None of this seems the least mysterious on the surface—this must be the original manuscript that Blume toiled over for decades.

¶52 However, there is some slight doubt about its status. In Pharr’s letter of May 25, 1943, in which he asked Blume to join the Corpus of the Roman Law project, he wrote: “If you are willing to send us your manuscript I shall have it copied for you, since the University is providing funds for clerical help on this project.”¹⁴⁴ Blume clearly did send a manuscript, bidding farewell to

143. In addition, Blume’s files contain an unbound copy of the early version of Book II in an accordion folder.

144. Letter from Clyde Pharr to Fred Blume, *supra* note 93.

the Code like a child, etc.¹⁴⁵ It is possible he sent the original, in as much as he told Pharr that “[n]umerous interliniations or corrections in pencil appear, but I hope that they are reasonably readable.”¹⁴⁶ There is no record of Pharr having returned either whatever Blume sent or a copy thereof and in 1959, when Professor Coleman-Norton wrote to Blume to see if he could borrow some of the translation, Blume referred him to Pharr.¹⁴⁷ In response, Pharr told Coleman-Norton: “I am not willing to trust Justice Blume’s original copy to the mails or to any express company, but I have had it copied, triple spaced, and I shall be glad to lend you any part or parts of it that you may wish. . . .”¹⁴⁸

¶53 On the other hand, it is much more likely that Blume sent Pharr a less-than-perfect copy, retaining the precious—and hard to read—original he had toiled over for decades. In the letter to Pharr in which he agreed to ship the manuscript, Blume said with respect to copying it that “the best that I can do is to do it myself with such help as I can get from my own secretary. . . . Many places however will still contain changes made in pencil but I am aiming to make these changes readable.”¹⁴⁹ These latter penciled corrections probably are the interliniations referred to above.

¶54 More significantly, as we have seen, in the letter in which Blume told Pharr he was sending the manuscript, he refers to sending “by express, *copy* [sic] of my translation of the

145. Letter from Fred Blume to Clyde Pharr, *supra* note 107.

146. *Id.*

147. Letter from Clyde Pharr, Professor, University of Texas, to Paul Coleman-Norton, Professor, Princeton University (Feb. 27, 1959) (available in Blume Collection, H69-10, *supra* note 32).

148. *Id.*

149. Letter from Fred Blume to Clyde Pharr, *supra* note 93.

Justinian Code and the Justinian Novels. . . .”¹⁵⁰ Moreover, we also have seen that after Blume received his copy of the *Theodosian Code* in 1952, he mentioned to Pharr that he would review the Code and the Novels yet again to note doubtful passages, and that his disassembled copy of the Krueger text shows he did this.¹⁵¹ It seems highly unlikely he would only have re-read the Latin without having his translation on hand, or that he could have worked on the Theodosian Code as he did without the aid of his Justinian Code translation. Also, in a 1957 letter to Blume, Pharr refers to the “translation and notes, of which you so kindly sent me *copies*.”¹⁵² Finally, Pharr’s letter to Coleman-Norton refers to an “original copy” as opposed simply to an “original.”¹⁵³

¶55 So, while the internal evidence is somewhat contradictory, it seems most likely that Justice Blume retained his original manuscript, and that what he sent Pharr in December of 1943 was a copy, with some handwritten edits. (It is interesting to note that at least two Roman law scholars in the United States mentioned this manuscript translation in their writings.)^{153.5} Thus the text we will publish on the Web will be Blume’s own, original work.

150. Letter from Fred Blume to Clyde Pharr, *supra* note 107 (emphasis added).

151. See *supra* text accompanying note 126.

152. Letter from Clyde Pharr, to Fred Blume, *supra* note 134 (emphasis added).

153. Letter from Clyde Pharr to Paul Coleman-Norton, *supra* note 147. In another letter to Blume concerning a similar request from G. O. W. Mueller, a professor at New York University, Pharr told Blume that he replied to him “that I have had your translation copied and that I shall always be glad to lend it or any part of it to scholars who may be interested.” Letter from Clyde Pharr, Professor, University of Texas, to Fred Blume (Mar. 11, 1959) (available in Blume Collection, H69-10, *supra* note 32). Although Blume’s letter to Pharr concerning Coleman-Norton’s request does not appear in the files, it sounds as if Blume, at this stage, simply did not want to fuss with making copies of his much-edited manuscript and had arranged with Pharr to refer requests to him.

Nature of the Translation

¶56 As has already been noted, Blume, unlike Scott, used as the basis for his translation of the Code and the Novels the Latin versions that modern scholarship has accepted as authoritative¹⁵⁴—Krueger’s edition of the Code and Schoell’s edition of the Novels.¹⁵⁵ He also “constantly” consulted the German translation of the Code, the Basilica, Cujas, Donellus, Perez, and the “innumerable special works on various subjects” that he had in his extensive library.¹⁵⁶ Blume used the French translation of the Code only a little, because he never could buy his own copy. He did not consider variant readings of the Code at all, telling Pharr that he “looked at the matter more from a lawyer’s standpoint than that of the linguist.”¹⁵⁷ He obviously had access to Scott’s 1932 translation, after he had completed his own first draft and several years of revisions, since he referred to it in his correspondence with Pharr in 1933. His *Catalogue of Roman Law Books* does not list a copy of Scott’s work, but he does seem to have consulted one from time to time, in as much as his manuscript and one of his Krueger editions refer to Scott in the margins.¹⁵⁸

¶57 Blume found that the Novels were relatively easy to translate, but that the Code

153.5 See Sass, *supra* note 7, at 231, note 11 and Schiller, *supra* note 7, at 40.

154. See *supra* text accompanying notes 7 and 40–42.

155. See *supra* notes 38, 49, 59 and accompanying text for citations to the various editions of these materials owned by Blume.

156. Letter from Fred Blume to Clyde Pharr, *supra* note 85. The Basilica was a tenth-century Byzantine legal compilation, in Greek, that contained a version of the CJC. Schiller refers to many writings that “conclusively show the value of the Basilica text and scholia for the correction and interpretation of Code passages.” SCHILLER, *supra* note 7, § 27, at 62 n.12. Blume consulted the Basilicorum, a Latin translation. Cujas, Donellus, and Perez commented on the Code.

157. Letter from Fred Blume to Clyde Pharr, *supra* note 85.

158. *E.g.*, at C.1.10.1., Blume wrote in the margin of his manuscript “German translation and Scott wrong.” And in his copy of the Novels at 43.1 he wrote “Scott 204?”

presented greater difficulties. He started on the Novels while working on the Code since the former had an effect on the latter. Writing of the Novels, Blume said: “When these were translated the number translated was so great that I thought it would be just as well to translate them all. And a partial incentive to that was the fact that the Latin of Schoell is, generally speaking, easy as compared with the Latin in the Code.”¹⁵⁹ Blume also felt the Code was much more problematic to translate than the Digest because “there are innumerable passages in [the Code] which represent abominable Latin, and the language is apt, at times, to mislead a man unless he is extremely careful.”¹⁶⁰ Originally, he placed his translations of the Novels into the Code following the provisions that each Novel modified; however, he separated them out and made them a self-standing work before he sent his whole opus to Pharr in 1943.¹⁶¹

¶58 Despite the admiration one must have for Justice Blume’s heroic effort, one must still ask whether the product that resulted is worthwhile. Is it a good translation? I am not qualified to say, but, as we have seen, Clyde Pharr, an eminent classicist certainly thought so.¹⁶² Blume’s expertise in Roman law seems well established. As previously noted, he taught a course on the subject at the Northwestern University Law School in the summer of 1929 at Dean Wigmore’s invitation;¹⁶³ in 1931 he published an article on Roman law in the *Tulane Law Review*;¹⁶⁴ he wrote

159. History of the Translation and its Background, *supra* note 32, at 9.

160. Letter from Fred Blume to Clyde Pharr, Professor, Vanderbilt University (Sept. 25, 1933) (available in Blume Collection, H69-10, *supra* note 32).

161. Letter from Fred Blume to Clyde Pharr, *supra* note 93.

162. See *supra* ¶ 40.

163. Blume, Unpublished précis, *supra* note 128. According to Blume, he was told “I had the largest Roman law class ever assembled in America, namely over 50. That doubtless was because the students figured that a lecturer from the wild west would be easy on grading.” *Id.*

and read part of a paper on “The Justinian Code and its Value” for the Riccobono Society in Washington, D. C. in 1938;¹⁶⁵ in that same year he reviewed Charles P. Sherman’s *Epitome of the Roman Law* for the *American Bar Journal*,¹⁶⁶ and he later reviewed another book on Roman law for a law review.¹⁶⁷ Moreover, he put his Roman legal knowledge to practical use in writing Wyoming Supreme Court opinions. According to one study, from 1922 to 1959, Justice Blume “cited Roman law 79 times in 19 cases and referred to Roman law or Roman history in 12 other cases.”¹⁶⁸ This expertise, of course, was developed through the decades of Roman law study he did to produce his Code translation. Finally, it is worthwhile to note that Dean Wigmore referred to Blume’s translation as “a great monument to his scholarship.”^{168.5}

¶59 On the other hand, Justice Blume never claimed to be an expert linguist. He told Pharr he knew law-Latin much better than ordinary Latin and that he had to work through unfamiliar

164. Fred H. Blume, *Legitimation Under the Roman Law*, 5 TUL. L. REV. 256 (1931).

165. Blume, Unpublished précis, *supra* note 128, at 5. Riccobono was an Italian scholar of Roman law, and the society was devoted to that topic. According to Blume, “There were present at the meeting the three greatest law writers of America, Professor Beale, Professor Williston, and Col. Wigmore, and a number of the Justices of the Supreme Court of the United States.” *Id.* A copy of Blume’s paper is among the materials he bequeathed to the University of Wyoming. A scanned version of *The Code of Justinian and its Value* is available at: <https://uwacadweb.uwyo.edu/blume&justinian/code-and-value.asp> (last visited Dec. 19, 2008). For a description and history of the Seminar, see Salvo Randazzo, *Roman Legal Tradition and American Law: The Riccobono Seminar of Roman Law in Washington*, 1 ROMAN LEGAL TRADITION 123 (2002).

166. Fred H. Blume, *Epitome of the Roman Law*, 24 A.B.A. J. 660 (1938) (book review)

167. Fred H. Blume, *Roman Law, An Historical Introduction*, 5 OKLA. L. REV. 264 (1952) (reviewing HANS JULIUS WOLFF, *ROMAN LAW, AN HISTORICAL INTRODUCTION* (1951)).

168. Harold D. Evjen, *Rome on the Range: Roman Law and Justice Blume of Wyoming*, 79 ZEITSCHRIFT DER SAVIGNY-STIFTUNG FÜR RECHTSGESCHICHTE (ROMANISTISCHE ABTEILUNG) 213, 214 (1980).

168.5 *The Code of Justinian and its Value*, 17 BULLETTINO DELL' INSTITUTO DI DIRITTO ROMANO 416, 424 (1938) (remarks made by Dean Wigmore following Justice Blume’s partial reading of his paper at the Riccobono Seminar).

texts “in a laborious manner.”¹⁶⁹ He also made no pretense of knowing Greek.¹⁷⁰ (However, Blume read German well and could read French and Italian well enough to benefit from commentaries in those languages, of which his collection contains several.) His main interest was in providing American lawyers with a version of the Code that adequately expressed the legal content of the original. Acknowledging his limitations as a translator, Blume wrote: “I have no doubt that improvements can be made in many places in the phrasing and in the selection of words. . . . [;] each man who does much writing is bound to have a style of his own and is apt to fall into phraseology which may not be faultless.”¹⁷¹ He went on to note that lawyers and judges “do not always use the best English and are apt to have or acquire a style which is not the best.”¹⁷² Hence, Blume was happy to be working with the classicist Pharr and pleased to agree to have his translation be revised by the panel of experts envisioned in Pharr’s project proposal.¹⁷³

¶60 At least three basic approaches to translation can be identified. One focuses on making a fluent version of the target language and is willing to sacrifice technical accuracy where necessary for fluency. A second, at the opposite end of the spectrum from the first, strives for technical accuracy above all and is willing to accept an awkward version of the target language in

169. Letter from Fred Blume to Clyde Pharr, Professor, Vanderbilt University (July 5, 1945) (available in Blume Collection, H69-10, *supra* note 32).

170. *Id.* See also History of the Translation and its Background, *supra* note 32, at 10 (“I tried several times to learn enough Greek to understand the Greek texts, but could not find enough time to do any good, and so I finally gave it up. . . .”).

171. History of the Translation and its Background, *supra* note 32, at 11.

172. *Id.*

173. In the proposal, Pharr foresaw a General Editorial Board of “not less than two philologists and one jurist,” who would “assure uniformity of language and style,” as well as having the drafts initially critiqued by other specialists. A Project for a Variorum Translation, *supra* note 69, at 4.

pursuance of that accuracy. Scott tended toward the former. Buckland opined in his review of Scott's translation that Scott had "produced a version written in an English which can be read with pleasure,"¹⁷⁴ but he went on to note, as did others, the many technical inaccuracies of the work.¹⁷⁵ According to at least one critic, the relatively recent 1985 Watson translation of the Digest¹⁷⁶ is somewhat biased toward linguistic fluency as well. Donahue says of it:

The problem is that it makes the assumption that the reader knows no Latin and nothing at all about Roman law. The reader is given a flowing translation, one that captures well the juristic style, at the expense of flagging for the reader the ambiguities and difficulties of the texts. It is, in short, a translation for a reader who will not or cannot go further in pursuit of the meaning of the Latin or in pursuit of the various levels of law that are hidden in the text.¹⁷⁷

¶61 The opposite approach is taken by Charles Henry Monro, for example, whose partial English translation of the Digest¹⁷⁸ evidences a bent toward technical accuracy that results in stiffness. Monro left untranslated many Latin terms, as Buckland and others say should be done to avoid confusion, but his prose is much less readable than Scott's. Comparing Scott's and Monro's translations of the same portions of the Digest, one can see that Monro's lengthy English sentences follow the pattern of the original, run-on Latin, whereas Scott broke them up into smaller units with semicolons or separate sentences.¹⁷⁹

¶62 Blume did not appreciate Monro's approach. In a letter to Pharr, he referred to

174. W. W. Buckland, *The Civil Law*, 7 TUL. L. REV. 627, 629 (1932-33) (book review).

175. Buckland asserted that Scott mistranslated many Roman law terms and suggested he ought to have done as Monro and Thayer did and leave highly technical terms in the original Latin. *Id.* at 630.

176. THE DIGEST OF JUSTINIAN, *supra* note 10.

177. Donahue, *supra* note 83, at 1071.

178. CHARLES HENRY MONRO, THE DIGEST OF JUSTINIAN (1904-09).

179. Compare 1 SCOTT, *supra* note 6, at 79 (Scott's first preface to the *Digest*), with 1 MONRO, *supra* note 178, at xiii.

Monro's translation of the Digest as "exceedingly dry reading, which could be obviated to a large extent if some notes were added."¹⁸⁰ Therefore, Blume took what he called "a middle course, making the translation as fairly good English would warrant, without attempting by euphony to soften down what—for the want of a better term—I may call 'strong' statements in the text, but leaving, if possible, the feeling manifested in the text by the translation."¹⁸¹ Blume's aim, as we have seen, was to produce a translation for a reader such as described by Donahue—the one who knows little or no Latin or Roman law.¹⁸² However, while he translated all Latin terms into English, making some up when necessary,¹⁸³ he sometimes "insert[ed] the Latin term in brackets, and at times also [made] further explanation by a short note."¹⁸⁴ In the course of his extended study and revision, he went on to explain concepts in copious headnotes so as further to avoid suggesting false equivalencies between Roman and Anglo-American legal concepts.

¶63 However, Blume tried to be faithful to the substantive essence of the text at the expense of style when those conflicted. In later reflecting on his work in creating the translation, he apologized for not always having the right word at his fingertips but went on to write:

180. Letter from Fred Blume to Clyde Pharr, *supra* note 75.

181. History of the Translation and its Background, *supra* note 32, at 13.

182. In his very first letter to Pharr, Blume wrote that "the study of Latin is decreasing more and more, and I have in mind mainly the ordinary lawyer in the United States, who does not know any great amount of Latin or Greek." Letter from Fred Blume to Clyde Pharr, *supra* note 75

183. He noted that he had created terms such as "volunteer agent" and "volunteer agency." Letter from Fred Blume to Clyde Pharr (Sept. 12, 1933), *supra* note 103. He said he had discussed this with Professor Kocourek at Northwestern (presumably when he taught summer school there in 1929) and that these terms were "suggested by him, or at least emphatically approved." *Id.* Wigmore had mentioned to Blume in his letter asking Blume to teach a summer session at Northwestern that Professor Albert Kocourek who taught Roman law there wanted to talk with him about translation. Letter from John H. Wigmore, Dean, Northwestern University Law School (Dec. 28, 1922) (available in Blume Collection, H69-10, *supra* note 32).

184. Letter from Fred Blume to Clyde Pharr, *supra* note 75.

Then, too, the text is bound, to a more or less extent, to prevent a man from expressing the thought in the text in the most elegant manner if a man wants to, as I did, stick reasonably close to the text. To translate is not the same as writing on the subject in your own words.¹⁸⁵

Therefore, he retained Latin “circumlocutions and metaphorical expressions” as long as they did not result in misleading English.¹⁸⁶ Nevertheless, Blume indicated he did not feel bound by the tense of the original verbs, preferring to use the present tense, as long as it “would give just as good sense” as the original.¹⁸⁷ While sometimes loose with verbs, Blume paid great attention to punctuation, a topic about which he and Pharr sometimes disagreed. Pharr initially expressed a desire to limit punctuation, but Blume, calling upon his judicial experience, insisted that “punctuation in a statute may make all the difference in the world at times.”¹⁸⁸ Pharr eventually came around to Blume’s perspective, agreeing that using more punctuation can avoid ambiguity.¹⁸⁹

¶64 Fundamentally, Blume saw himself as much more a jurist than a linguist, so he limited the amount of time he spent striving for exactly the right word. Describing his process to Pharr not long after he sent the translation to him, Blume wrote:

I used to sit down, mentally make what I thought was a reasonable translation, then turn to the typewriter and write it out. In the process, particularly in laws of any length, one would be apt at times to miss or leave out the meaning of a word or two or even of a sentence, or misconstrue a meaning.¹⁹⁰

To compensate for his deficiencies as a linguist, Blume went over the work repeatedly, looking

185. History of the Translation and its Background, *supra* note 32, at 11.

186. Letter from Fred Blume to Clyde Pharr, *supra* note 103.

187. *Id.*

188. Letter from Fred Blume to Clyde Pharr, *supra* note 113.

189. Letter from Clyde Pharr, Professor, Vanderbilt University, to Fred Blume (May 30, 1945) (available in Blume Collection, H69-10, *supra* note 32).

190. Letter from Fred Blume to Clyde Pharr *supra* note 116.

for trouble spots and making corrections. To assist him in finding the proper English word or to explain a difficult Latin term or Roman law concept, Blume had the aid not only of his many dictionaries and extensive Roman law collection but also of some specialized reference works. His library contains *Heumann's Handlexikon zu den Quellen des Römischen Rechts*,¹⁹¹ Mayr's *Vocabularium Codicis Iustiniani*,¹⁹² and Wissowa's *Pauly's Real-Encyclopädie der Classischen Altertumswissenschaft*,¹⁹³ among others. Blume frequently refers to these works in his annotations.

¶65 Blume remained modest about his efforts at all times. He acknowledged that he had undoubtedly made mistakes, and he had no objection to others correcting them. It would be fitting if Justice Blume's great work would provide the basis for a definitive scholarly English translation of the Code by modern experts, standing on his shoulders, so to speak.¹⁹⁴ In any case, Blume's effort deserves recognition in its own right for, as he wrote,

[I]t would seem that it is only occasionally that a person can be found who has either the ability or the inclination to make the translation, and hence I have sometimes thought that inasmuch as I am, as I think, reasonably fitted to do the work, my knowledge ought not to be altogether wasted.¹⁹⁵

¶66 It is in an effort not to waste Justice Blume's encyclopedic knowledge of the Code that we are finally making it available on the Web, more than eighty years after he completed his first draft.

191. G. SECKEL, *HEUMANN'S HANDLEXIKON ZU DEN QUELLEN DES RÖMISCHEN RECHTS* (9th ed. 1926).

192. ROBERT MAYR, *VOCABULARIUM CODICIS IUSTINIANI* (1923).

193. *PAULY'S REAL-ENCYCLOPÄDIE DER CLASSISCHEN ALTERTUMSWISSENSCHAFT* (Georg Wissowa ed., Stuttgart, Metzlerscher 1894–1937).

194. Since this sentence was written, a panel of experts has in fact been organized by Professor Bruce Frier of the University of Michigan to do just this. The resulting collaborative translation is scheduled for publication by the Cambridge University Press in 2011.

195. Letter from Fred Blume to Thomas A. Swan (Feb. 18, 1924), *supra* note 41.