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

Timothy G. Kearley\*\*

*Drawing primarily upon the most authoritative foreign-language sources, this article provides an English-language survey of how compilations of Justinian's Novels were created and passed along over nearly two thousand years.*

### Introduction

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

¶2 Nineteenth- and twentieth-century Continental writers provided extremely detailed accounts in German, French, Italian, and sometimes Latin of the different versions of the Novels and other parts of the *CJC*—how they were created, used, and passed along during the Middle Ages and the Renaissance, and how scholars gradually reconstructed the texts to create the edition now accepted as the standard. This is not surprising, as the Continent was necessarily the locus of research on the subject. Most of the ancient manuscripts were there, and their national legal systems were based on, and still looked to, Roman law. Writers in English cite Biener, Krüger, Noailles, and Wenger, especially, for their lengthy descriptions of the manuscripts and these processes.<sup>2</sup>

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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 Professor Harold Evjen for reading a draft of this article and making valuable suggestions for its improvement. Any remaining errors or deficiencies are my own responsibility.

1. For information in English, see, e.g., TONY HONORÉ, *TRIBONIAN 124–222* (1978); WOLFGANG KUNKEL, *AN INTRODUCTION TO ROMAN LEGAL AND CONSTITUTIONAL HISTORY* 163–76 (J.M. Kelly trans., 2d ed. 1973); A. ARTHUR SCHILLER, *ROMAN LAW: MECHANISMS OF DEVELOPMENT* §§ 12–16, at 29–40 (1978); Caroline Humfress, *Law and Legal Practice in the Age of Justinian*, in *THE CAMBRIDGE COMPANION TO THE AGE OF JUSTINIAN* 161, 162–66 (Michael Maas ed., 2005); and Detlef Liebs, *Roman Law*, in *14 THE CAMBRIDGE ANCIENT HISTORY: LATE ANTIQUITY: EMPIRE AND SUCCESSORS, A.D. 425–600*, at 238, 244–52 (Averil Cameron et al. eds., 2000).

2. FRIEDRICH AUGUST BIENER, *GESCHICHTE DER NOVELLEN JUSTINIAN'S* (Berlin, Dümmler 1824); PAUL KRÜGER, *GESCHICHTE DER QUELLEN UND LITTERATUR DES RÖMISCHEN RECHTS* (Leipzig, Duncker & Humblot 1888); PIERRE NOAILLES, *LES COLLECTIONS DE NOVELLES DE L'EMPEREUR JUSTINIEN* (1912–1914); LEOPOLD VON WENGER, *DIE QUELLEN DES RÖMISCHEN RECHTS* (1953). Also useful is MAX CONRAT COHN, *GESCHICHTE DER QUELLEN UND LITERATUR DES RÖMISCHEN RECHTS IM FRÜHEREN MITTELALTER*

¶3 However, scholars writing in English appear to have wished to avoid repeating the findings of their Continental counterparts, and seem to have assumed that persons interested in the details would be able to read these foreign languages for themselves; therefore, they offer only summary descriptions. Schiller, in his excellent *Roman Law*, provides a good example of this. He covers the history of the Novels in only two pages and then writes: “The promulgation and the nature of the Novels, the manuscripts and editions are discussed at length by Biener [and] Wenger.”<sup>3</sup> Unfortunately, I think many interested parties may not, in fact, be able to read these early studies that appeared in languages other than English.

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

### Background of the Novels

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

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(Leipzig, J. C. Hinrichs 1891). Kroll also refers frequently to Biener and Krüger in his Latin introduction to the classic modern edition of the Novels. See Guilelmus [Wilhelm] Kroll, *Praefatio* to 3 RUDOLF SCHOELL & WILHELM KROLL, *CORPUS IURIS CIVILIS: NOVELLAE*, at iii (1912). The names of persons in this article will be standardized in their most commonly used forms. For instance, many writers on Roman law used Latinized versions of their names in their scholarly work, e.g., Guilelmus Kroll and Rudolfus Schoell, but they are usually referred to by their given names for bibliographic purposes.

3. SCHILLER, *supra* note 1, § 16, at 39 n.1 (citations omitted). See also H.F. JOLOWICZ & BARRY NICHOLAS, *HISTORICAL INTRODUCTION TO THE STUDY OF ROMAN LAW* 496–98 (3d ed. 1972) (devoting about the same space as Schiller to the Novels and also referring to Krüger and other foreign-language writers); Stephen L. Sass, *Research in Roman Law: A Guide to the Sources and Their English Translations*, 56 *LAW LIBR. J.* 210, 210 n.2 (1963) (citing Krüger and Wenger). *A Dictionary of Greek and Roman Biography and Mythology* offers more detailed coverage of this subject, but it was published in 1880 and thus does not benefit from over a century and a third of subsequent scholarship. However, the relevant entries are still worth reading. See John Thomas Graves, *Justinianus: The Legislation of Justinian*, in 2 *A DICTIONARY OF GREEK AND ROMAN BIOGRAPHY AND MYTHOLOGY* 666 (William Smith ed., London, John Murray 1880) [hereinafter Graves, *Justinianus*] and John Thomas Graves, *Julianus: The Graeco-Roman Jurist*, in 2 *A DICTIONARY OF GREEK AND ROMAN BIOGRAPHY AND MYTHOLOGY*, *supra*, at 650.

4. Concerning the Establishment of a New Code [*Constitutio haec quae Necessario*] (Feb. 13, 528), translated in 6 [12] *CORPUS IURIS CIVILIS: THE CIVIL LAW* 3 (S.P. Scott trans., photo. reprint 1973) (1932) [hereinafter *CIVIL LAW*]. (In references to the print edition of Scott, the first volume number is the reprint volume, the number in brackets is the original volume number, and the page number is the original page number. The reprint publisher printed more than one original volume in each reprint volume but retained the original page numbers. The original volume numbers also appear on each page, so the reader can find the appropriate page by using all three numbers.) This constitution

this compilation—the *Codex*, or Code—in 529.<sup>5</sup> Thereafter, only the Code, and not the prior imperial legislation, could be cited as law. In 530 and 531, he issued the “fifty decisions” (*quinquaginta decisiones*) that resolved differences among the writings of classical jurists, and thereafter he continued to issue other new laws.<sup>6</sup> These additions meant his Code could no longer be the sole unified source of imperial legislation. Thus, in 534, Justinian promulgated the second edition of the Code (*Codex repetitae praelectionis*), with his *Constitutio cordi nobis*,<sup>7</sup> integrating the new legislation into the Code and superseding the first edition.

¶6 However, new legislation obviously would continue to be required after the second Code as well. In his pragmatic sanction of 554 (*Sanctio pragmatica pro petitione Vigilii*),<sup>8</sup> Justinian foresaw that, in order to ensure that interested parties could know the current state of the law, he would need to maintain a collection of all new laws modifying the Code (*novellae constitutiones, quae post nostri codicis confectio-nem late sunt*). Justinian never did issue an official compilation of these new

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was attached as the first preface to Justinian’s original Code and also is found with the second edition, as are the second and third prefaces noted below. Constitutions are known by their opening words. See KUNKEL, *supra* note 1, at 164.

Unfortunately, Scott did not use the best available sources for his English translation of the *Corpus Juris Civilis*. See *infra* ¶ 47. However, Justice Fred Blume did use the most authoritative Latin texts for his translation of the Code and Novels. See *id.* For his translation, see Fred H. Blume, Univ. of Wyo. College of Law, Annotated Justinian Code (Timothy Kearley ed., 2d ed. 2010), <http://uwacadweb.uwyo.edu/blume&justinian/default.asp> [hereinafter Annotated Justinian Code]. His translation of the constitution in question is on the University of Wyoming web site: Concerning the Composition of a New Code (Feb. 13, 528), *translated in* Annotated Justinian Code, *supra*, <http://uwacadweb.uwyo.edu/blume&justinian/Book%201PDF/Book%201-Introduction.pdf>. For the background of Justice Blume’s translation, see Timothy G. Kearley, *Justice Fred Blume and the Translation of Justinian’s Code*, 99 LAW LIBR. J. 525, 2007 LAW LIBR. J. 31.

5. See Concerning the Confirmation of the Code of Justinian [*Constitutio Summa Rei Publicae*] (Apr. 7, 529), *translated in* 6 [12] CIVIL LAW, *supra* note 4, at 4 (second preface to the Code); Concerning the Confirmation of the Justinian Code (Apr. 7, 529), *translated in* Annotated Justinian Code, *supra* note 4, <http://uwacadweb.uwyo.edu/blume&justinian/Book%201PDF/Book%201-Introduction.pdf>.

6. See HONORÉ, *supra* note 1, at 142–46. See also Liebs, *supra* note 1, at 250; Charles Pazdernik, *Justinianic Ideology and the Power of the Past*, in THE CAMBRIDGE COMPANION TO THE AGE OF JUSTINIAN, *supra* note 1, at 185, 198–202.

7. Concerning the Amendments of the Code of our Lord Justinian, and the Second Edition of the Same (Nov. 16, 534), *translated in* 6 [12] CIVIL LAW, *supra* note 4, at 6 (third preface to the Code). See also Concerning the Correction of the Justinian Code and the Second Edition Thereof (Nov. 16, 534), *translated in* Annotated Justinian Code, *supra* note 4, <http://uwacadweb.uwyo.edu/blume&justinian/Book%201PDF/Book%201-Introduction.pdf>.

8. That the Laws of the Emperor Shall Be Extended into His Provinces (Aug. 13, 554). This law is appended to the standard edition of the Novels as number 7 (Nov. App. 7). The English title given here is that provided by Blume in his translation and describes the thrust of the law. The actual first words refer to the fact that this pragmatic sanction was given in response to a petition sent to the emperor by Pope Vigilius. WENGER, *supra* note 2, § 84, at 658–59. A pragmatic sanction was “[a]n imperial decree or order or constitution addressed to a community, guild, municipality or other body of men concerning their public affairs.” Concerning the Composition of a New Code, *supra* note 4, at 1 n.2 (Blume’s note). See also W.W. BUCKLAND, A TEXT-BOOK OF ROMAN LAW FROM AUGUSTUS TO JUSTINIAN 20 n.7 (Peter Stein ed., 3d rev. ed. 1963); WENGER, *supra* note 2, § 74, at 434–38.

constitutions,<sup>9</sup> but private persons filled the void and created unofficial compilations in several forms.<sup>10</sup>

### The Nature of the Novels

¶7 Before discussing the compilations per se, it is helpful to describe the laws, or constitutions, themselves. The term *constitutiones* (or *constitutiones principis*) refers to a wide range of “measures decreed by the princeps” that were deemed to create law.<sup>11</sup> *Constitutiones* thus includes such common measures as *edicta* (edicts), *decreta* (decrees), *mandata* (mandates), and *rescripta* (rescripts). Edicts were proclamations of the emperor directed to the public at large; decrees consisted of judicial decisions made either in the first instance or as an appellate judge; mandates ordered a provincial governor to take certain actions; and rescripts referred to the emperor’s correspondence with public officials and private citizens.<sup>12</sup> Also coming under the broad category of constitutions were *epistulae*—letters from the emperor to public officials that established binding law—and *subscriptions*—his responses to private parties written in the margin at the bottom of their petitions.<sup>13</sup> Several other, less important, types of law also have been identified, but need not be described here.<sup>14</sup>

¶8 The compiled constitutions have a standard form. First, there is an *inscription* indicating to whom the law is addressed, complete with that person’s title, and declaring that it is from the emperor (most of whose lengthy title is usually omitted).<sup>15</sup> Next is the *praefatio* or *prooimion* (preface), which provides the rationale for the law—the problem it addresses.<sup>16</sup> The body of the law (the *sanktion* in German) follows.<sup>17</sup> In modern editions, the law typically is divided into chapters, although the originals were not.<sup>18</sup> The substance of the law is followed by an *epilogus* or *epilogo* (epilogue), to the addressees, instructing them on how, and to whom,

9. The term *novella*, or novels, was used as early as the fourth century A.D. for newer laws; e.g., the Novels of Theodosius. When used without additional qualification, however, the term “novels” is now assumed to refer to the Justinian novels. WENGER, *supra* note 2, § 84, at 652. For an analysis of the debate over whether the *Authenticum* (see *infra* ¶¶ 19–25) was an official compilation, see BIENER, *supra* note 2, at 38–51; JOLOWICZ & NICHOLAS, *supra* note 3, at 498; and *infra* ¶¶ 19, 22.

10. BIENER, *supra* note 2, at 51–57; KRÜGER, *supra* note 2, § 48, at 353.

11. KUNDEL, *supra* note 1, at 127.

12. See generally *id.* at 127–30. As to *edicta*, *decreta*, *mandata*, and *rescripta*, see SCHILLER, *supra* note 1, § 164, at 481–84; § 165, at 484–88; § 169, at 501–06; § 166, at 488–93, respectively, where he provides examples of each from ancient documents.

13. See KUNDEL, *supra* note 1, at 128–29. The term *scriptio* was used in other senses as well—such as simply referring to the emperor’s signature *scripsi*, or *rescripsi*: “I have signed.” For a detailed explanation of the different forms of subscription, see SCHILLER, *supra* note 1, § 168, at 497–501.

14. Wenger, for example, discusses *adnotationes*, *leges generales*, and *sanctio pragmaticae*. WENGER, *supra* note 2, § 74, at 432–38.

15. For a discussion of inscriptions, see BIENER, *supra* note 2, at 21, 24–25; 1 NOAILLES, *supra* note 2, at 81; and WENGER, *supra* note 2, § 84, at 654–57, 679.

16. See HONORÉ, *supra* note 1, at 125–27; KRÜGER, *supra* note 2, § 48, at 354; SCHILLER, *supra* note 1, § 16, at 40.

17. BIENER, *supra* note 2, at 22; KRÜGER, *supra* note 2, § 48, at 354.

18. 2 NOAILLES, *supra* note 2, at 52.

the contents of the law should be made known, and when it should take effect.<sup>19</sup> At the end of each constitution is a subscription (different from the legal “subscriptions” noted above) showing the date the law was issued.<sup>20</sup> These subscriptions were frequently removed from manuscripts, and their modern reconstruction required a good deal of research.

¶9 Most novels were written in Greek, the language of the Eastern empire.<sup>21</sup> However, a few novels were written in Latin because Latin was still the language of the higher bureaucracy, the law schools, and some parts of the empire, while a few others were composed in both languages.<sup>22</sup> Although the Novels is now the least discussed piece of Justinian’s codification, it was the best-known part of Justinian’s law for centuries in Europe,<sup>23</sup> and for many more centuries it was valid law in the Byzantine Empire.<sup>24</sup>

¶10 As noted above, these *novellae constitutiones* were sent to the addressees shown in the inscriptions, who, in turn, were sometimes directed in the epilogue to make the contents known to others.<sup>25</sup> The bulk of the novels, those of general application, were directed to the Praetorian Prefect of the Orient, the Emperor’s chief judicial officer, who was sometimes commanded in the law to make it widely known.<sup>26</sup> This general publication often was done by writing the law on a tablet, or in stone, and displaying it in churches.<sup>27</sup>

## Sources

### Archive: The Liber Legum

¶11 Although Justinian never issued an official compilation of the legislation he promulgated following the publication of the second edition of the Code, his administration did maintain many of those new laws in a collection called the *Liber legum* or *Libri legum*. Pierre Noailles describes this archive at great length, referring to it as a depository, and other writers comment on it as well, although they do not agree as to its exact nature.<sup>28</sup> Letters between Pliny and emperor Trajan from the

19. 1 *id.* at 75. See also BIENER, *supra* note 2, at 22; KRÜGER, *supra* note 2, § 48, at 354.

20. 1 NOAILLES, *supra* note 2, at 62; WENGER, *supra* note 2, § 84, at 679.

21. See HONORÉ, *supra* note 1, at 124; KUNKEL, *supra* note 1, at 175.

22. KUNKEL, *supra* note 1, at 175. Honoré indicates that from 535 to 541, 115 *novellae constitutiones* were promulgated in Greek and 21 in Latin; 4 were counted twice, with novels 111 and 112 being bilingual, and number 7 being the composite of a Greek law and a Latin law. HONORÉ, *supra* note 1, at 124 n.3.

23. 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* 40 (2007).

24. See Charles P. Sherman, *The Basilica: A Ninth Century Roman Law Code Which Became the First Civil Code of Modern Greece a Thousand Years Later*, 66 U. PA. L. REV. 363, 364–65 (1918). The Novels also were “received” into German law in the sixteenth century. See RUDOLF SOHM, *THE INSTITUTES* § 6, at 18 (James Crawford Ledlie trans., Augustus M. Kelley 3d ed. 1970) (1907).

25. See BIENER, *supra* note 2, at 24–25.

26. See *id.* at 25–35; 1 NOAILLES, *supra* note 2, at 80–81; WENGER, *supra* note 2, § 84, at 654–57.

27. BIENER, *supra* note 2, at 28–29.

28. See generally 1 NOAILLES, *supra* note 2, at 31–58. See also BIENER, *supra* note 2, at 39–40; KRÜGER, *supra* note 2, § 48, at 353 n.3; BERNHARD VON KÜBLER, *GESCHICHTE DES RÖMISCHEN RECHTS* § 42, at 417 (1925); WENGER, *supra* note 2, § 74, at 441–42; § 84, at 652–54.

early first century A.D. presuppose that the imperial bureaucracy stored an archive of constitutions for many years;<sup>29</sup> the text of some novels indicates they are to be deposited<sup>30</sup> (e.g., novels 17 and 24–26); and Wenger points to a sketch in the *Notitia dignitatum* of a thick bundle of documents under the insignia of the *Quaestor sacri palatii*, which he suggests might represent the *Liber legum*.<sup>31</sup>

¶12 In brief, the office of the *Quaestor sacri palatii* maintained a collection of original copies of important laws.<sup>32</sup> Most of the legislation stored in it consisted of general laws, but some rescripts and pragmatic sanctions were deposited as well.<sup>33</sup> According to Noailles, the laws were kept in “groups of six months” but were not necessarily in chronological order within those semiannual batches.<sup>34</sup> He believed this *Liber legum* was the common source of the novel texts used by private parties to create the novel compilations that have come down to us. “One is led to believe that it [the *Liber legum*] was the principle source from which jurisconsults knew the imperial constitutions and also without doubt was where the editors of the various collections we have obtained their material.”<sup>35</sup>

¶13 Noailles even suggests this depository collection may be the collection promised by Justinian when he wrote in his *Constitutio cordi nobis* that if any additional new laws were needed, they would “be embodied in another collection to be designated by the name of New Constitutions.”<sup>36</sup> Other commentators disagree with Noailles on this issue (and on some other specifics about the *Liber legum*), most believing Justinian intended to publish a separate compilation of *novellae constitutiones*, not just collect them in an archive.<sup>37</sup> However, all agree the *Quaestor* did keep an archive of important laws. Wenger proposes that “the *Liber legum* can, literally understood, mean simply a book [perhaps a binder] in which the laws were contained . . . .”<sup>38</sup> In any event, we can be sure the imperial administration kept copies of the *novellae constitutiones* that private persons used for the texts on which they based their compilations. The three most important editions of the Novels are the *Epitome Juliani*, the *Authenticum*, and the Greek Collection of 168.

29. 1 NOAILLES, *supra* note 2, at 31–32.

30. BIENER, *supra* note 2, at 39.

31. See WENGER, *supra* note 2, § 84, at 653. The *Notitia dignitatum* was “a sort of official handbook, in which the civil offices and the military commands . . . together with information about official insignia and badges are collected . . . .” KUNKEL, *supra* note 1, at 217.

32. 1 NOAILLES, *supra* note 2, at 39; WENGER, *supra* note 2, § 84, at 653. The *Quaestor sacri palatii* has been called “a sort of Minister of Justice.” KUNKEL, *supra* note 1, at 141. Tribonian held this office under Justinian. According to Blume, this official had no dedicated legal staff of his own but could draw on lawyers in three other imperial offices. Concerning the Office of *Quaestor* [*De Officio Quaestoris*] tit. 30, ch. 1.30 (Apr. 424), translated in Annotated Justinian Code, *supra* note 4, <http://uwacadweb.uwyo.edu/blume&justinian/Book%201PDF/Book%201-30.pdf> (translator’s headnote).

33. 1 NOAILLES, *supra* note 2, at 41–42.

34. *Id.* at 54–55 (author’s translation from French to English), 92–93.

35. *Id.* at 59 (author’s translation from French to English).

36. *Id.* at 34–35 (author’s translation from French to English).

37. See, e.g., SCHILLER, *supra* note 1, § 16, at 39; WENGER, *supra* note 2, § 84, at 668.

38. WENGER, *supra* note 2, § 84, at 653 (author’s translation from German to English).

## Compilations

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

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

¶15 Julian most likely chose to make his compilation in 555 because Justinian had only a year before issued the pragmatic sanction *pro petitio Vigili*, making the codifications effective in Italy and thereby increasing the demand for Roman legal studies.<sup>44</sup> Justinian had authorized law teaching at Rome some twenty years earlier, in the *Constitutio omnem*,<sup>45</sup> but students from Italy still traveled to Constantinople to study at its long-established university.<sup>46</sup> The curriculum of legal studies became a five-year program, but Scheltema suggests a sixth year may have been added for a short period in order to encompass the Novels, and he proposes that the *Epitome Juliani* constituted the complete lecture notes for this course.<sup>47</sup>

39. For information on this collection generally, see BIENER, *supra* note 2, at 70–84; COHN, *supra* note 2, at 38–41, 121–32; KRÜGER, *supra* note 2, § 48, at 355; 1 NOAILLES, *supra* note 2, at 149–60; WENGER, *supra* note 2, § 84, at 669, 677–78; and Kroll, *supra* note 2, at vii–viii. For information on an earlier, lost collection, see Liebs, *supra* note 1, at 251–52.

40. See DETLEF VON LIEBS, DIE JURISPRUDENZ IM SPÄTANTIKEN ITALIEN 220–23, 264–65 (1987); H.J. SCHELTEMA, L'ENSEIGNEMENT DE DROIT DES ANTÉCESSEURS 13, 47–48 (1970). For brief English-language surveys of Roman legal education in late antiquity, see Liebs, *supra* note 1, at 253–55 and H.J. Scheltema, *Byzantine Law*, in 4 THE CAMBRIDGE MEDIEVAL HISTORY: THE BYZANTINE EMPIRE: GOVERNMENT, CHURCH AND CIVILISATION 55, 55–58 (J.M. Hussey ed., 1967).

41. See 1 NOAILLES, *supra* note 2, at 158; WENGER, *supra* note 2, § 84, at 669 n.183.

42. This summary or paraphrase is sometimes referred to as an “index.” See SCHELTEMA, *supra* note 40, at 49–52; Scheltema, *supra* note 40, at 57.

43. For example, Rudorff gives the number of novels in the *Epitome* as 125. See 1 ADOLF FRIEDRICH VON RUDORFF, RÖMISCHE RECHTSGESCHICHTE § 114, at 319 (Leipzig, Tauchnitz 1857). For a description of this fragmentary comment and a theory about it, see K.E. Zachariae von Lingenthal, *Zur Geschichte des Authenticum und des Epitome Novellarum des Antecessor Julianus*, in 2 SITZUNGSBERICHTE DER KÖNIGLICH PREUSSISCHEN AKADEMIE DER WISSENSCHAFTEN ZU BERLIN 993, 1000–03 (Berlin, Akademie der Wissenschaften 1882) (positing that the manuscript containing the comment originally held both the *Epitome* and the *Authenticum*, and was later divided so that the comment ending the *Epitome* became attached to the beginning of the *Authenticum*). See also 1 NOAILLES, *supra* note 2, at 150–52 (discussing Zachariae's theory).

44. 1 NOAILLES, *supra* note 2, at 156; WENGER, *supra* note 2, § 84, at 669.

45. LIEBS, *supra* note 40, at 124. For an English translation of this constitution, see The Whole Body of Law (Dec. 16, 533), translated in 1 THE DIGEST OF JUSTINIAN, at 1 (Alan Watson ed. & trans., 1985). The law outlines the official course of legal study to be followed in the authorized schools. See also BUCKLAND, *supra* note 8, at 49; JOLOWICZ & NICHOLAS, *supra* note 3, at 498–500.

46. See LIEBS, *supra* note 40, at 220–21; 1 NOAILLES, *supra* note 2, at 160.

47. SCHELTEMA, *supra* note 40, at 48–49. Cf. Liebs, *supra* note 1, at 254 (stating that “[t]he course of study lasted five years”).

¶16 This epitome includes only 122 distinct novels,<sup>48</sup> arranged in rough chronological order.<sup>49</sup> It encompasses the shortest time span of all the collections, from 535 to 555, and is not as complete as the other compilations discussed below—especially the 168-novel Greek Collection that forms the basis of modern editions.<sup>50</sup> However, the *Epitome Juliani* does include one novel missing from that larger collection,<sup>51</sup> and the subscriptions retained in this epitome's manuscripts were used to fill in the missing subscriptions of the Greek Collection.<sup>52</sup> Moreover, its *paratitla*<sup>53</sup> proved useful for centuries of Roman law students.

¶17 It is likely Julian's students brought copies of this Novels summary back to Italy to assist them in their practice.<sup>54</sup> Over the years, an extensive array of Latin annotations and commentary developed around it.<sup>55</sup> There is debate over the extent to which Julian himself was responsible for the compilation and commentary<sup>56</sup> but, in any case, it is agreed that the compilation was the primary vehicle by which Roman law was known in Europe for hundreds of years. Radding and Ciaralli note that "only the Novels in the form of the *Epitome Juliani* enjoyed any appreciable readership in the early Middle Ages, while the other works [of the *Corpus*] make at best brief appearances and produced no intellectual tradition of lasting significance."<sup>57</sup>

¶18 Ecclesiastical officials maintained an interest in the *Epitome Juliani* due to the support many of its novels gave to the rights of the Church,<sup>58</sup> but the specifics of how the *Epitome* and other parts of the *CJC* survived and were transmitted during the early Middle Ages remain something of a mystery.<sup>59</sup> The earliest of the *Epitome Juliani*'s known manuscripts date from the seventh or eighth century,<sup>60</sup> and

48. As noted earlier, two are doublets. Number 25 is the same as 120, and 68 duplicates 97.

49. Noailles provides a table showing the year in which each novel (designated by its number in the Greek Collection of 168) was issued. 1 NOAILLES, *supra* note 2, at 256 tbl.I. Another of his tables translates the Greek Collection number into the number given that same novel in the *Authenticum* and the *Epitome Juliani*. See *id.* at 258 tbl.II. See also BIENER, *supra* note 2, at 538 app.IV, pt.5, for a list in which he provides, adjacent to each of the novels as numbered by Julian, that novel's place in the Greek Collection (as established by Contius's 1571 edition) and its year of promulgation. For information regarding the Greek Collection generally, see *infra* ¶¶ 26–32.

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

51. *Id.* (Number 29); Kröll, *supra* note 2, at vii.

52. WENGER, *supra* note 2, § 84, at 669.

53. The epitome's *paratitla* are "glosses cross-referencing the Novels with the Code and Digest . . ." RADDING & CIARALLI, *supra* note 23, at 38. See also KRÜGER, *supra* note 2, § 49, at 359.

54. LIEBS, *supra* note 40, at 244; 1 NOAILLES, *supra* note 2, at 160.

55. LIEBS, *supra* note 40, at 220–21. See also COHN, *supra* note 2, at 192–204, 360–63.

56. See generally LIEBS, *supra* note 40, at 221–23; 1 NOAILLES, *supra* note 2, at 152–54; SCHELTEMA, *supra* note 40, at 52–53. Scheltema refers to the *Epitome Juliani* as "lecture notes, sometimes written up in considerable detail." Scheltema, *supra* note 40, at 57. He goes on to describe how "[f]irst the professor would dictate a continuous paraphrase or translation, called the Index, and during the second lecture he would make general observations on the same passage . . ." *Id.*

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

58. See RADDING & CIARALLI, *supra* note 23, at 49; see also COHN, *supra* note 2, at 40.

59. See generally RADDING & CIARALLI, *supra* note 23, at 35–65.

60. See *id.* at 37 (providing tables of *CJC* manuscript dates).

several were made during the Carolingian Renaissance.<sup>61</sup> In any case, the *Epitome Juliani* was so thoroughly accepted, and so well regarded, that the historian-monk Paulus Diaconus believed it to be an official work of Justinian.<sup>62</sup>

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

¶19 In the twelfth century, the *Epitome Juliani* lost its status as the leading edition of the Novels to the more extensive Latin version known as the *Authenticum*, which surfaced in Bologna around 1100.<sup>64</sup> This Latin collection of 134 novels was so named because glossators, including the renowned Irnerius, believed it to be an official, or authentic, translation ordered by Justinian.<sup>65</sup> After it ceased to be deemed authentic, this version was sometimes referred to as the *Versio vulgata*.<sup>66</sup>

¶20 The *Authenticum* includes 133 novels from 535–556—the original Latin version of the few issued solely in Latin, the Latin versions of novels promulgated in both Latin and Greek, and Latin translations of novels issued only in Greek. (The additional law—number 132—is from 563 and probably was added after the initial compilation).<sup>67</sup> Thus, although, with a minor exception (it encompasses only one year not covered by the *Epitome Juliani*), it is more comprehensive than that epitome for those years. On the other hand, the glossators often created manuscripts from this collection in which only ninety-seven novels were used, detaching from them the others (which became known as *extravagantes*) that were deemed irrelevant for practice.<sup>68</sup>

¶21 The novels in the *Authenticum* are presented in rough chronological order, though the degree of this order is open to interpretation.<sup>69</sup> The novels following 124 appear to have been a kind of appendix added later in no special order.<sup>70</sup> Noailles believes the same group of documents found in the *Liber legum* served as the basis for the *Authenticum* and the Greek Collection of 168, in part because the first 115

61. *Id.* at 47. See also COHN, *supra* note 2, at 39–40 (describing manuscripts of the *Epitome Juliani*); WENGER, *supra* note 2, § 84, at 677–78 (same).

62. WENGER, *supra* note 2, § 84, at 669.

63. For more information on the *Authenticum*, see generally COHN, *supra* note 2, at 132–37; KRÜGER, *supra* note 2, § 48, at 355–57; 1 NOAILLES, *supra* note 2, at 160–78; WENGER, *supra* note 2, § 84, at 669–71; and Kroll, *supra* note 2, at vi–vii.

64. RADDING & CIARALLI, *supra* note 23, at 35–36; WENGER, *supra* note 2, § 84, at 670.

65. SCHILLER, *supra* note 1, § 16, at 39; WENGER, *supra* note 2, § 84, at 669–70. According to Vinogradoff, “Irnerius . . . took a prominent part in the collection of Justinian’s texts by replacing the fragments of the Novellae, hitherto quoted from Julian’s *Epitome*, by the so-called *Authenticum* . . .” PAUL VINOGRADOFF, *ROMAN LAW IN MEDIEVAL EUROPE* 47 (1909).

66. See 1 RUDORFF, *supra* note 43, § 114, at 320; FREDERICK TOMKINS, *THE INSTITUTES OF THE ROMAN LAW* 174 (London, Butterworths 1867).

67. See 1 NOAILLES, *supra* note 2, at 161; WENGER, *supra* note 2, § 84, at 669.

68. See KRÜGER, *supra* note 2, § 52, at 384 (noting they also were referred to as *inutiles*); WENGER, *supra* note 2, § 84, at 671. See also BIENER, *supra* note 2, at 547 app.IV, pt.7 (surveying these ninety-seven selected novels).

69. Kübler sees this chronological order extending to number 124, while Krüger sees continuity through 127. See KÜBLER, *supra* note 28, § 42, at 418; KRÜGER, *supra* note 2, § 48, at 356. Readers can judge for themselves by consulting Table II in 1 NOAILLES, *supra* note 2, at 258–59. See also BIENER, *supra* note 2, at 540 app.IV, pt.6 (showing in one column the novels of the *Authenticum* and in adjacent columns their Greek Collection numbers and years of promulgation); *supra* ¶ 16.

70. KRÜGER, *supra* note 2, § 48, at 356.

novels of the *Authenticum* are among those of the first 120 of the Greek Collection, with some of those being in precisely the same order, even though they are not strictly chronological.<sup>71</sup>

¶22 The origins and purpose of the *Authenticum* are more debated than those of the other compilations. As mentioned above, the glossators thought it to be an official translation ordered by Justinian for Italy after the *pro petitio Vigili*. This theory gradually lost favor, and, although Zachariae von Lingenthal took up its cause in the late 1800s, it never regained popularity.<sup>72</sup> Among the factors arguing against the *Authenticum*'s official status are the poor quality of its Latin translations from the Greek, the absence of the *pro petitio Vigili* (which one would expect to find in it, were it an official work designed to facilitate the implementation of that pragmatic sanction), and its inclusion of many laws that had nothing to do with Italy. In addition, if an official translation had existed, other translations would have been unnecessary, yet there is evidence that such translations did exist.<sup>73</sup>

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

¶24 A more recent, intriguing hypothesis advanced by Scheltema suggests that the *Authenticum* is a kind of *kata poda*<sup>76</sup> created for Latin-speaking students who had a hard time understanding the particularly difficult Greek of the Novels.<sup>77</sup> The *Authenticum*'s possible origin as a word-for-word translation of the Greek novels,

71. 1 NOAILLES, *supra* note 2, at 164–66.

72. See KÜBLER, *supra* note 28, § 42, at 418; 1 NOAILLES, *supra* note 2, at 166–70. Kroll also discounted this theory. See Kroll, *supra* note 2, at vi. Zachariae presented it in Zachariae von Lingenthal, *supra* note 43.

73. See 1 NOAILLES, *supra* note 2, at 170; WENGER, *supra* note 2, § 84, at 670. See also COHN, *supra* note 2, at 133; JOLOWICZ & NICHOLAS, *supra* note 3, at 497–98.

74. See 1 NOAILLES, *supra* note 2, at 163; WENGER, *supra* note 2, § 84, at 671; Kroll, *supra* note 2, at vii.

75. Compare WENGER, *supra* note 2, § 84, at 670, with SCHELTEMA, *supra* note 40, at 15, 57 and 1 NOAILLES, *supra* note 2, at 170–71. Cohn offers Illyricum as its place of origin, while Jolowicz and Nicholas propose that the translations were made at various times under the authority of the Prefect of Italy at Ravenna. See COHN, *supra* note 2, at 136–37; JOLOWICZ & NICHOLAS, *supra* note 3, at 498. See also Kroll, *supra* note 2, at vii (viewing either of the latter two conjectures as plausible).

76. *Kata poda* means "following in the footsteps," so a *kata poda* is a literal translation. Justinian allowed only *kata podas* of his Latin codification into Greek, as opposed to commentaries, which he forbade altogether. KUNKEL, *supra* note 1, at 179. Thus, the literal translation of the Greek novels into Latin would be a *kata poda* in reverse. SCHELTEMA, *supra* note 40, at 57; see also WENGER, *supra* note 2, § 84, at 669 n.192.

77. See SCHELTEMA, *supra* note 40, at 52–57; Scheltema, *supra* note 40, at 57–58. Supporting Scheltema are N. VAN DER WAL, *MANUALE NOVELLARUM JUSTINIANI*, at xii–xiii (2d ed. 1998); LIEBS, *supra* note 40, at 266–69; and Liebs, *supra* note 1, at 252. Zachariae had earlier suggested the Latin translation of the Greek novels was a *kata poda* but had not advanced this as its purpose. See Zachariae von Lingenthal, *supra* note 43, at 995.

with each Latin word sitting above the corresponding Greek one, in the Greek word order, would seem to explain its existence better than the perplexing survival of an extremely awkward attempt at a literary translation.

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

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

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

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

78. WENGER, *supra* note 2, § 84, at 678.

79. For more information on the Greek Collection, see generally KRÜGER, *supra* note 2, § 48, at 357–58; KUNKEL, *supra* note 1, at 176; 1 NOAILLES, *supra* note 2, at 178–81; SCHILLER, *supra* note 1, § 16, at 40; WENGER, *supra* note 2, § 84, at 671–72; Kroll, *supra* note 2, at iii–vi; and Liebs, *supra* note 1, at 252.

80. KÜBLER, *supra* note 28, § 42, at 419. Thirteen of the laws in the “Greek Collection” are actually in Latin. See KRÜGER, *supra* note 2, § 48, at 358.

81. See BIENER, *supra* note 2, § 84, at 90; KRÜGER, *supra* note 2, § 48, at 358; KÜBLER, *supra* note 28, § 42, at 419.

82. See KRÜGER, *supra* note 2, § 48, at 357–58. See also BIENER, *supra* note 2, at 98; JOLOWICZ & NICHOLAS, *supra* note 3, at 497; 1 NOAILLES, *supra* note 2, at 179.

83. 1 NOAILLES, *supra* note 2, at 179; Kroll, *supra* note 2, at iii.

84. 1 NOAILLES, *supra* note 2, at 180, 258 tbl.II. See also KRÜGER, *supra* note 2, § 48, at 358.

85. 1 NOAILLES, *supra* note 2, at 180–81.

¶28 The group of thirteen Justinian edicts that completes the Greek Collection today was found appended to the *Venetian* manuscript version.<sup>86</sup> These edicts range over the entire period of the Novels, but most are from 535–48, and three are repeated in the basic collection of 168.<sup>87</sup> There is considerable speculation as to when and where the edicts were gathered, but it seems likely the group was added as a unit to the Greek Collection long after its initial compilation. Some scholars believe the thirteen edicts derive from a manuscript composed in Alexandria.<sup>88</sup> The *Basilica*<sup>89</sup> does not mention them, nor does Byzantine jurisprudence in general. Wenger believed the edicts are better thought of as a separate entity that one owner of the Greek Collection attached to the Novels compilation,<sup>90</sup> and Noailles suggested they could have been added at any time between the ninth and thirteenth centuries.<sup>91</sup>

¶29 The modern version of the Greek Collection of 168 has been transmitted mainly through two manuscripts—the *Venetian*, or *Marcianus* (so called because it was housed in St. Mark's Cathedral in Venice when it was examined), and the *Florentine*, also called the *Laurentianus* (because it was held by the Laurentian library there).<sup>92</sup> The *Venetian*, probably created around the end of the twelfth century,<sup>93</sup> is considered the better of the two, as it appears to have suffered less from the editing and errors of copyists.<sup>94</sup> The *Florentine* likely was made considerably later—in the fourteenth century—and was much muddled by well-meaning copyists.<sup>95</sup>

¶30 The *Venetian* manuscript is heavily glossed with *paratitla*, *scholia*, and critical notes.<sup>96</sup> In it, the novels are not yet divided into chapters in the manuscript, but,

86. For a detailed first-hand description and analysis of this key manuscript version of the Novels, see 2 NOAILLES, *supra* note 2, at 5–83.

87. Edict 1=Novel 8, Edict 6=Novel 166, and Edict 5 is a Latin version of Novel 111 in Greek. KRÜGER, *supra* note 2, § 48, at 358 & nn.36–37. See also BIENER, *supra* note 2, at 509 app.IV, pt.2.

88. See, e.g., 2 NOAILLES, *supra* note 2, at 40–42 (describing Zachariae's theory as set out in Zachariae von Lingenthal, *Aus und zu den Quellen des Römischen Rechts*, in 15 ZEITSCHRIFT DER SAVIGNY-STIFTUNG FÜR RECHTSGESCHICHTE: ROMANISTISCHE ABTHEILUNG 365 (1894)). See also Kroll, *supra* note 2, at ix n.2. It is widely agreed that the bulk of the Greek Collection was compiled in Constantinople. See 1 NOAILLES, *supra* note 2, at 179–80.

89. The *Basilica* (imperial law) is the Byzantine adaptation of Justinian's codification made from Greek summaries during the reign of Leo the Wise, probably around 892. It combines all four units of the *CJC* into a whole and is heavily annotated. The *Basilica* is important in the history of the Novels because it proved useful to Western scholars in reconstructing and understanding some novels. For information on the *Basilica*, see KUNKEL, *supra* note 1, at 179–81; Kroll, *supra* note 2, at iv–vi; Sheltema, *supra* note 40, at 66–67; and Sherman, *supra* note 24, at 364–65. A modern edition of the *Basilica* is *BASILICORUM LIBRI LX* (Gustavo Ernesto Heimbachio ed. & trans., Leipzig, Barth 1870).

90. WENGER, *supra* note 2, § 84, at 673.

91. 2 NOAILLES, *supra* note 2, at 44.

92. For Noailles's description of the *Marcianus*, see *id.* at 5–45; for his description of the *Laurentianus*, see *id.* at 107–16. See also BIENER, *supra* note 2, at 551 app.V (offering descriptions of the *Marcianus* and *Laurentianus*, respectively). For Kroll's detailed descriptions of these manuscripts, see Kroll, *supra* note 2, at ix–xi, xvi.

93. 2 NOAILLES, *supra* note 2, at 17.

94. *Id.* at 42. See also Kroll, *supra* note 2, at xi.

95. 2 NOAILLES, *supra* note 2, at 137.

96. For a description of these, see *id.* at 25–29.

according to Noailles, they show signs that such a division was planned.<sup>97</sup> Contius (Le Conte) was responsible for the first chapter divisions in his 1559 edition of the *Authenticum*; for his 1571 edition he reworked them into the arrangement we see in modern versions: preface, chapters, and epilogue.<sup>98</sup> A particularly important aspect of the *Venetian* is that it is the only copy of the Greek Collection retaining all the novel subscriptions.<sup>99</sup> On the other hand, the eighteen Latin novels are replaced in it by Greek epitomes, and it lacks three other Justinian novels, four of Justin II, three of Tiberius II, and the three edicts of the praetorian prefects.<sup>100</sup> However, the *Venetian* manuscript of the Greek Collection was the primary source used by Schoell and Kroll for their edition of the Novels that became the standard version as part of Mommsen, Krüger, Schoell, and Kroll's *Corpus Juris Civilis*.<sup>101</sup>

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

¶32 Each of these two main manuscripts has a copy that also figures in the transmission of the Novels. The *Palatino-Vaticanus* (housed in the Vatican library) was copied from the *Venetian* manuscript at the beginning of the sixteenth century and provided the text for Scrimger's 1558 edition of the Greek Collection.<sup>105</sup> The *Bonomiensis* (made for Lodovico Bolognini) was copied around the same time from the *Florentine* text.<sup>106</sup> The *Bonomiensis* is important for two reasons: (1) it was copied from the *Florentine* manuscript before the last segment of the latter was mutilated, thus making this copy the only source for novels 164–167 of the Greek

97. *Id.* at 49–52.

98. *Id.* at 52.

99. *Id.* at 56–57.

100. *Id.* at 45.

101. Schoell always gave that manuscript first place, though he had some reservations about it, looked over many other sources, and was willing to correct it; nevertheless, Kroll thought perhaps Schoell placed too much confidence in it. Kroll, *supra* note 2, at x n.2. See also 2 NOAILLES, *supra* note 2, at 74. For additional information on this edition, see *infra* ¶¶ 44–45.

102. 2 NOAILLES, *supra* note 2, at 97.

103. *Id.* at 112–16. *Scholia* are marginal notes commenting on the text. In this case, they often refer to the writings of classical Roman jurists. See PETER STEIN, ROMAN LAW IN EUROPEAN HISTORY 35 (1999).

104. See 2 NOAILLES, *supra* note 2, at 120–21.

105. Scrimger's edition is IMPP. IUSTINIANI, IMP. LEONIS NOVELLAE CONSTITUTIONES (Geneva, Henry Stephanus 1558). Biener describes this volume at length. BEINER, *supra* note 2, at 367–72. See also Kroll, *supra* note 2, at xiii.

106. 2 NOAILLES, *supra* note 2, at 2. See also *id.* at 147–56 (describing this manuscript). For Biener's description of it, see BEINER, *supra* note 2, at 562–63.

Collection;<sup>107</sup> and (2) it provided the text for Haloander's 1531 edition—the first printed version of the Greek Collection.<sup>108</sup>

### Other Collections

¶33 Other versions of Justinian's Novels exist, and still others are known to have existed from fragments that remain, but none of these has had the influence on Western law exerted by the collections described above. However, because they are sometimes cited, they are worth mentioning here.

¶34 **The *Epitome Athanasii***:<sup>109</sup> Around 572, a Byzantine jurist and rhetorician known as Athanasius of Emesa created an epitome of 153 novels, all but one of which are also in the Greek Collection.<sup>110</sup> Like the *Epitome Juliani*, it appears to have been created for teaching purposes,<sup>111</sup> but its summaries are more detailed than those of Julian or Theodorus.<sup>112</sup> However, it omits the novels of Tiberius and the *Eparchica* and thus appears to have been formed before the final version of the Greek Collection took shape.<sup>113</sup> The *Epitome Athenasii* is unique among Novel compilations in that its summaries are organized into twenty-two topics, or rubrics, instead of being in rough chronological order. Athanasius's special contributions were to provide practice aids in the form of *paratitla* that indicate additional rubrics in the compilation that the novel in question addresses;<sup>114</sup> to refer to relevant portions of the Code and Digest;<sup>115</sup> and to make theoretical observations about the laws, especially because of the extent to which they may have been affected by subsequent laws.<sup>116</sup>

¶35 **The *Epitome Theodori***:<sup>117</sup> Another Byzantine jurist—Theodorus Scholasticus of Hermopoliss—wrote a Greek summary of all the novels in the Greek Collection of 168 (in the same order and including even the doublets) sometime between 572 and 602, perhaps in 575, since that is the date of the last law includ-

107. 2 NOAILLES, *supra* note 2, at 147.

108. *Id.* GREGORIUS HALOANDER, NOVELLARUM CONSTITUTIONUM DN IUSTINIANI PRINCIPIS QUAE EXSTANT ET UT EXSTANT VOLUMEN (Nünberg, Io., Petreius 1531). For a detailed description of this volume, see BEINER, *supra* note 2, at 341–48. For a description of how Haloander used the *Bonomiensis*, see 2 NOAILLES, *supra* note 2, at 162–67; Kroll, *supra* note 2, at xiii.

109. A modern critical edition of this collection is DAS NOVELLENSYNTAGMA DES ATHANASIOS VON EMESA (Dieter Simon & Spyros N. Trōianos eds., 1989) [hereinafter ATHANASIOS VON EMESA]. The editors deemed a new version necessary due to flaws in Heimbach's original edition, ANEKDOTA: ATHANASII SCHOLASTICI EMISENI DE NOVELLIS CONSTITUTIONIBUS IMPERATOR JUSTINIANI JUSTINI COMMENTARIUM (G.E. Heimbach ed. & trans., Leipzig, Barth 1838), which they call "miserable." ATHANASIOS VON EMESA, *supra*, at vi.

110. 1 NOAILLES, *supra* note 2, at 185; WENGER, *supra* note 2, § 84, at 672.

111. ATHANASIOS VON EMESA, *supra* note 109, at viii.

112. For more on Theodorus's epitome, see *infra* ¶ 35.

113. WENGER, *supra* note 2, § 84, at 672. Simon and Trōianos believe Athanasius used a collection grounded in the same "transmission chain" (*Überlieferungskette*). ATHANASIOS VON EMESA, *supra* note 109, at x.

114. See ATHANASIOS VON EMESA, *supra* note 109, at ix; 1 NOAILLES, *supra* note 2, at 186.

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

116. *Id.*

117. Zachariae edited a version of this published as ANEKDOTA: THEODORI SCHOLASTICI BREVIARIUM NOVELLARUM (Karl Eduard Zachariae von Lingenthal ed., Leipzig, Barth 1843).

ed.<sup>118</sup> This *Epitome Theodori* was created for use in practice and contains for each novel: its number in the Greek Collection, its title, the beginning words, a summary, and the subscription (but no inscription).<sup>119</sup> Parallel provisions in the Code and in other novels are noted as well. Its rubrics are shorter than those in the *Epitome Juliani* but longer than those of the *Epitome Athanasii*. Many *scholia* in the *Basilica* were taken from this compilation, but it was not known in the West until the nineteenth century, when it was discovered in a convent on Mt. Athos.

### *Fragmented and Lost Works*

¶36 Several other compilations are known from references or fragments, but are now largely lost. The most important of these is the *Epitome of Anonymous*, which is cited frequently in ancient manuscripts.<sup>120</sup> This epitome seems to have been very popular but to have been similar to the other epitomes, especially the *Epitome Juliani*.<sup>121</sup>

### **Print Editions**

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

¶38 It was not until 1476, however, that the Novels was printed. This first print edition was based on the text of the *Authenticum* and was made in Rome, apparently as part of the whole *CJC*, not as an individual printing of the Novels.<sup>122</sup> The *CJC* was organized differently then than now: the Digest was issued in three volumes; the first nine books of the Code comprised a fourth volume; and the fifth volume consisted of the *Institutes*, the last three books (*Tres libri*) of the Code, and the entire Novels (usually based on the *Authenticum*).<sup>123</sup> This fifth volume, of which

118. 1 NOAILLES, *supra* note 2, at 181–83.

119. WENGER, *supra* note 2, § 84, at 672.

120. For information on these lost collections, see 1 NOAILLES, *supra* note 2, at 199–227; and WENGER, *supra* note 2, § 84, at 673–75. Noailles provides a comparison of the sequence of novels in the *Epitome Juliani*, the Greek Collection, and the *Epitome of Anonymous*. See 1 NOAILLES, *supra* note 2, at 260 tbl.III.

121. See 1 NOAILLES, *supra* note 2, at 200–01.

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

123. See SCHILLER, *supra* note 1, § 12, at 29–30. For an example of such a fifth volume, see 5 CORPUS JURIS CIVILIS IUSTINIANEI (Lugduni 1627), available at <http://gallica.bnf.fr/ark:/12148/bpt6k57376r>. This volume is also available in Europeana, <http://europeana.eu/portal> (last visited May 4, 2010).

the Novels were a part, was known as the *volumen parvum*, or lesser volume, because it was not considered to be as important as the others.

¶39 Early print editions reflected the flaws of the manuscripts from which they derived.<sup>124</sup> There would be no point in listing here the many editions of the Novels that have been printed over the centuries. Biener provides an extensive listing of them up to 1822 in an appendix to his monumental history of the Novels.<sup>125</sup> However, it is useful to note here editions of special historical importance and modern critical editions.

¶40 In the sixteenth century, several scholars created editions of the Novels that improved considerably on Renaissance manuscripts. Haloander's publication of 1531 already has been noted as being the first print version of the Greek Collection of 168 novels. His edition is important for setting the sequence of the novels and attaching the supplement containing the thirteen Justinian edicts.<sup>126</sup> It was relatively soon thereafter, in 1558, when Scrimger edited a print edition based on the *Palatino-Vaticanus* copy of the *Venetian* manuscript, also noted above. Thus, at this early date, two print versions of the most complete manuscript tradition for the Novels were available. In 1571, Contius, who in 1559 had published a separate print edition of the Novels based on the *Authenticum*, issued a version of the *CJC*, the Novels segment of which he based on both that *Authenticum* and the Greek Collection; he also arranged the Novels in a mostly chronological order.<sup>127</sup>

¶41 Scores of editions of the Novels were published in the seventeenth and eighteenth centuries, but no great advances were made in textual criticism during this period.<sup>128</sup> However, great advances made in Roman law scholarship and paleography in the nineteenth century led to vastly improved texts and several critical editions of the three Novels manuscript traditions.<sup>129</sup>

¶42 Unfortunately, the Kriegel brothers produced an edition *editio stereotypa* of the *CJC*, completed in 1843, that did not take the greatest advantage of these advances.<sup>130</sup> Osenbrüggen prepared the Novels for this edition based on several texts, including the *Venetian* and *Florentine* manuscripts of the Greek Collection of

124. KRÜGER, *supra* note 2, § 53, at 386.

125. BIENER, *supra* note 2, at 317–427 (editions from 1476–1822); *id.* at 427–31 (undated editions). For briefer overviews, see KRÜGER, *supra* note 2, § 53, at 386–89; and Kroll, *supra* note 2, at xiii–xvi.

126. See VAN DER WAL, *supra* note 77, at xv (referring to Haloander's version as the *editio princeps*).

127. AUTHENTICAЕ SEU NOVELLAE CONSTITUTIONES, D. JUSTINIANI SACRATISS (Ant. Contius ed., Lugduni, Gul. Rovillium 1571). Rudorff notes that Contius used the editions of Cujacius (1562) and A. Augustinus (1567) as the basis for his edition. 1 RUDORFF, *supra* note 43, § 122, at 345. For additional description of Contius's contributions to the literary history of the Novels, see Graves, *Justinianus*, *supra* note 3, at 673; Kroll, *supra* note 2, at xv. Contius's editions were the most frequently used until those of Schoell and Kroll.

128. KRÜGER, *supra* note 2, § 53, at 387. Krüger allows the Gebauer and Spangenberg *CJC* edition of 1776–1797 as an exception. *Id.* § 53, at 388.

129. For a description of some of this process, see RADDING & CIARALLI, *supra* note 23, at 1–33 (chapter 1, *Paleography and History*).

130. CORPUS JURIS CIVILIS (Albert Kriegel, Moritz Kriegel, Emil Herrmann & Eduard Osenbrüggen eds., Leipzig, Baumgarten 1833–1843).

168.<sup>131</sup> This edition did not satisfy Roman law scholars, but, for unknown reasons, S.P. Scott chose it as the basis for his English translation (more on which below). The *Authenticum* received its first modern, critical treatment around this same time (1846–1851), when Heimbach produced his edition of it, based on the Contius 1559 Paris edition.<sup>132</sup> A modern, critical edition of the *Epitome Juliani* did not appear until Hänel published his in 1873.<sup>133</sup>

¶43 In 1881, Zachariae von Lingenthal edited a version of the Greek Collection in which he integrated the edicts of the praetorian prefects and the edicts of emperors Justin II and Tiberius by date. However, because much remains uncertain about the dates of the edicts, his numbering caused a good deal of confusion and concern and was not accepted by his peers, despite the work's other scholarly merit.<sup>134</sup>

¶44 It was not until 1895 that a Novels collection based on the best of all manuscripts and modern scholarship was issued in a critical edition. This version was part of the monumental *editio stereotypa* of the *CJC* edited by Mommsen, Krüger, Schoell, and Kroll.<sup>135</sup> This edition of the Novels, begun by Schoell and finished by Kroll, provides the original Greek text in one column, the Latin version of the *Authenticum* (to the extent it overlaps with the Novels of the Greek Collection) in the facing column, and a modern Latin translation beneath. It also offers the *Epitome Juliani*, the edicts, and several other constitutions in an appendix, in addition to providing copious annotations and variant readings.

¶45 It is generally agreed that Schoell and Kroll's version of the Novels "surpasses all its predecessors and is equal to the editions of the Digest and Code by Mommsen and Krüger."<sup>136</sup> The stereotype edition of the *CJC* of which it is a part has become the standard edition, reprinted frequently. The consensus is that "compar[ed] with this stereotype edition . . . older general editions of the *Corpus iuris* can be used only as auxiliary material,"<sup>137</sup> and that it "benefits from all of the previous work and is its crowning."<sup>138</sup>

131. WENGER, *supra* note 2, § 84, at 678. For information regarding Osenbrüggen's edition, see also Kroll, *supra* note 2, at xvi.

132. AUTHENTICUM NOVELLARUM CONSTITUTIONUM IUSTINIANI VERSIO VULGATA (Gustav Ernest Heimbach ed., Leipzig, Barth 1851). WENGER, *supra* note 2, § 84, at 678. Schoell and Kroll used Heimbach's edition extensively. See Kroll, *supra* note 2, at xvi.

133. IULIANI EPITOME LATINA NOVELLARUM IUSTINIANI (Gustav Haenel ed., Leipzig, Hinrichs 1873). Hänel's work has been criticized by modern scholars. See LIEBS, *supra* note 40, at 246 (describing Hänel's edition as "especially unsatisfactory and unclear") (author's translation from German to English). A new version of Hänel's work was published recently. IULIANI EPITOME LATINA NOVELLARUM IUSTINIANI (Gustavo Hänel, Piero Fiorelli & Anna Marie Bartoletti Colombo eds., 2d ed. 1996).

134. NOVELLAE QUAE VOCANTUR (Karl Eduard Zachariae von Lingenthal ed., Leipzig, Tübner 1881). See 1 NOAILLES, *supra* note 2, at xii–xiv; VAN DER WAL, *supra* note 77, at xv. Kroll praises the value of Zachariae's scholarly work. See Kroll, *supra* note 2, at xiii–xiv.

135. CORPUS IURIS CIVILIS (Theodorus Mommsen et al. eds., Berlin, Weidmann 1889–1895) [hereinafter MOMMSEN CORPUS JURIS CIVILIS]. Kroll's preface describes in detail the history of the Novels, the manuscripts he and Schoell used, his evaluations of them, and more. Unfortunately, this wealth of information is relatively inaccessible to the modern reader, as it is in Latin and apparently has not been translated into a modern language (though it has been mined for information by some modern writers). See Kroll, *supra* note 2.

136. KÜBLER, *supra* note 28, § 42, at 424 (author's translation from German to English).

137. KUNKEL, *supra* note 1, at 223.

138. 1 NOAILLES, *supra* note 2, at xiv (author's translation from French to English).

## Translations

¶46 Scholars also began in the nineteenth century to translate the Novels (and the rest of the *CJC*) into modern European languages. The German version of the *CJC* edited by Otto, Schilling, and Sintenis is one of the most important translations.<sup>139</sup> Freiesleben and Schneider created the Novels portion of this translation, based mainly on a Latin translation of the Greek Collection, supplemented by the *Authenticum*, the *Epitome Juliani*, and the *Basilica*.<sup>140</sup>

¶47 Surprisingly, it was not until the twentieth century that anyone translated either the Code or the Novels into English.<sup>141</sup> In the early part of that century, two Americans launched into the task separately, ignorant of one another's efforts.<sup>142</sup> S.P. Scott's translation of Justinian's codification appeared in 1932, though his preface is dated ten years earlier.<sup>143</sup> As noted previously, he chose to use the Kriegel brothers' *CJC* as the basis of his work instead of Mommsen and Krüger's, even though the latter clearly was regarded as the superior version. Scott's translation was not well received.<sup>144</sup>

¶48 Fortunately, Justice Fred Blume did use the Mommsen stereotype edition as the basis of his English translation of both the Code and the Novels, right from the start of his work around 1920.<sup>145</sup> As Justice Blume recalled later: "Some of the novels were translated along with the translation of the Code having a bearing on the subjects dealt with in the latter. . . . When these were translated, the number translated was so great that I thought it would be just as well to translate them all."<sup>146</sup> He also noted: "[A] partial incentive to that was the fact that the Latin of Schoell [in the Novels] is, generally speaking, easy as compared with the Latin in the Code."<sup>147</sup>

¶49 Justice Blume's reaction to Scott's translation, as well as the negative reaction of others to that translation, made Blume determined to keep working on his solo translation of the Code and Novels over the course of more than two

139. DAS CORPUS JURIS CIVILIS (Carl Eduard Otto, Bruno Schilling & Carl Friedrich Ferdinand Sintenis eds. & trans., Leipzig, Focke 1830–1833) [hereinafter OTTO CORPUS JURIS CIVILIS]. Justice Fred Blume used this as an adjunct for his English translation of the Code and Novels.

140. See 7 *id.* at iv.

141. The Institutes and parts of the Digest had been translated into English, but not the Code or Novels. The modern English version of the entire Digest is THE DIGEST OF JUSTINIAN, *supra* note 45.

142. See Kearley, *supra* note 4, at 538, ¶ 30.

143. S.P. Scott, *Preface* to 1 CIVIL LAW, *supra* note 4, at 49.

144. See Kearley, *supra* note 4, at 538–39, ¶ 30.

145. See *id.* at 531–33, ¶¶ 16–19. Rumors of Blume's manuscript translation of the Novels circulated for many years among Roman law specialists in America. See, e.g., SCHILLER, *supra* note 1, § 16, at 40; Sass, *supra* note 3, at 231 n.11.

146. Fred Blume, [History of the Translation and Its Background] 9 (n.d.) (untitled manuscript annexed to Letter from Fred Blume to Clyde Pharr, Professor, Vanderbilt Univ. (Dec. 28, 1943)) (on file in Blume Collection, H69–10, Wyo. State Archives, Reference, Research & Hist. Photo Unit, Wyo. Dep't of State Parks & Cultural Resources, Cheyenne, Wyo.).

147. *Id.*

decades.<sup>148</sup> A newly scanned version of his annotated English translation of the Novels is available on the University of Wyoming web site.<sup>149</sup>

### Electronic Editions of the Texts and Relevant Treatises

¶50 Unlike Justice Blume, who had to spend many hours, and much money, acquiring through book dealers the materials he needed to pursue his interest in Roman law,<sup>150</sup> modern scholars can gain access to much of it for free online. Many of the works mentioned in this article, for instance, are available electronically in Google Books. The quality of the scanned versions varies, not all items are properly labeled, and not all volumes of a set are always available. Biener's *Geschichte der Novellen Justinian's*,<sup>151</sup> for example, is frustratingly blurred in spots, volume 1 of Mommsen and Krüger's classic edition of the *CJC*<sup>152</sup> is labeled volume 2 in both the list view and cover view, and only volumes 1, 6, and 7 of the Otto, Schilling, and Sintenis German translation<sup>153</sup> are there. However, for the most part the electronic copies are clear and easy to find, and it surely is better to have a few volumes of a set available online than none.

### Conclusion

¶51 Thanks to the efforts of librarians and copyists, Justinian's *novellae constitutiones* survived the fall of the Eastern Roman Empire and were reconstituted by the painstaking efforts of many scholars across the centuries. Let us hope that we, their successors in the digital age, are up to the task of preserving these fundamental documents and disseminating them to future generations.

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148. See Kearley, *supra* note 4, at 537–38, ¶¶ 29–30.

149. Univ. of Wyo. College of Law, Introduction to Justinian's Novels, 2d Edition, <http://uwacadweb.uwyo.edu/blume&justinian/novels2.asp> (last visited Apr. 27, 2010).

150. See Kearley, *supra* note 4, at 530–33, ¶¶ 14–18.

151. BIENER, *supra* note 2.

152. MOMMSEN CORPUS JURIS CIVILIS, *supra* note 135.

153. OTTO CORPUS JURIS CIVILIS, *supra* note 139.

## Appendix

### Cited Public Domain Works Available Online

In the following list I have identified all of the items referred to in this article for which I found a free full-text version online. I have not tried to create a complete bibliography of *CJC* editions or Roman law available online. Nor have I added the permanent links to these works, as they are monstrously long, and all the books noted are readily discoverable by an advanced search.

Unless otherwise indicated, the items are all on Google Books (<http://books.google.com>). Two others I found only on the new “virtual European library,” Europeana (<http://www.europeana.eu/portal>), which was launched officially in 2010. Given that two of the sources for the works digitized on Europeana will be the Bibliothèque National de France and the British Library, it is reasonable to believe that more items relevant to this topic will appear there in the coming years.

All works are posted on Google Books, except those marked with an \*, which are available on Europeana.

- *Anekdotae Theodori Scholastici Brevarium Novellarum*. Karl Eduard Zachariae von Lingenthal, ed. Leipzig: Barth, 1843.
- *Authenticum Novellarum Constitutionum Iustiniani Versio Vulgata*. Gustav Ernst Heimbach, ed. Leipzig: Barth, 1846–1851.
- *Basilicorum Libri LX*. Gustav Ernst Heimbach, ed. & trans. Leipzig: Barth, 1833–1870 [volumes 2 and 5].
- Biener, Friedrich August. *Geschichte der Novellen Justinians*. Berlin: Dümmler, 1824.
- Conrat Cohn, Max. *Geschichte der Quellen und Literatur des Römischen Rechts im Früheren Mittelalter*. Leipzig: J.C. Hinrichs, 1891.
- *Corpus Iuris Civilis*. Theodore Mommsen et al., eds. Berlin: Weidmann, 1889–1895.
- *Corpus Iuris Civilis*. Albert Kriegel et al., eds. Leipzig: Baumgarten, 1828–43 [volumes 1 and 3].
- *Das Corpus Iuris Civilis*. Carl Edward Otto et al., eds. Leipzig: Focke, 1831–1839 [volumes 6 and 7].
- \**Corpus Iuris Civilis Iustinianei*. 5, *Volumen Legum Paruum . . .* Lugduni [Lyon, France]: Iullieron, 1627.
- [A] *Dictionary of Greek and Roman Biography and Mythology*. William Smith, ed. London: John Murray, 1876.
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