

THE COLLECTIO TRIPARTITA AND THE EPITOME ATHANASII

Problems for an Editor

I

If we had to find an alter ego in Byzantium for the scholar whom we honour with the present collection of studies on *novellae constitutiones*, surely that man would have been Athanasius of Emesa. Just as Athanasius provided his contemporaries with a book that enabled them to find their way in the diffuse mass of legislation which followed the Justinianic codification, Nico van der Wal gave us his *Manuale Novellarum* for the same purpose. Most recently Athanasius' *Epitome* or *Syntagma Novellarum* has found its definitive edition by the hands of Dieter Simon and Spyros Troianos.¹ The direct link between the *Epitome Athanasii* and the *Collectio Tripartita*, a compilation on the editing of which I have had the pleasure to collaborate for some years with our friend and colleague, presents the occasion of the present paper.

The first century after the Justinianic codification witnessed several efforts to collect and combine the canon and civil legislation on religious and ecclesiastical affairs, culminating in the second decade of the seventh century in the first edition of the *Nomocanon XIV Titulorum*. One of the attempts at collecting the relevant civil legislation is the so-called *Collectio Tripartita* of the end of the sixth century. For its third part the anonymous author simply took over the first three titles of the second edition of the *Epitome Athanasii*;² there is no evidence whatsoever that he edited the text for his purpose. Thus, although the history of the transmission of the third part of the *Collectio Tripartita* was different from that of Athanasius, the editors of the *Epitome Athanasii* were able to use it as a direct witness for their text. The editors of the *Collectio Tripartita*, however, are in a different position. On the one hand they may and will not ignore the evidence supplied by the *Epitome Athanasii* as the source on which the author of the *Collectio Tripartita* drew, but on the other hand they face a serious problem. If they wish to edit the *Collectio Tripartita*, they cannot take the text of the *Epitome Athanasii* for granted; they actually have to reconstruct the manuscript of the *Epitome Athanasii* the author used. Each time they find evidence of a divergence of their text from that of the *Epitome Athanasii*, they will have to decide whether this divergence has been caused by the transmission of the text of the *Collectio Tripartita*, which at this point

1 *Das Novellensyntagma des Athanasios von Emesa* [Forschungen zur byzantinischen Rechtsgeschichte, 16], Frankfurt am Main 1989.

2 For all this, see Van der Wal-Lokin, *Delineatio*, 51-54, 60-62, 66-70.

originally read as the *Epitome Athanasii*, or that it was already present in the author's copy. In the first case they will reject the divergent reading and may print the reading of the *Epitome Athanasii*; in the second case they will treat the divergent reading as the genuine reading of the *Collectio Tripartita* as opposed to the *Epitome Athanasii*. It is the purpose of this paper to ascertain to what extent we may treat these divergent readings of the *Collectio Tripartita* as genuine and to make some observations on the transmission of its text.

II

The manuscript tradition of the *Epitome Athanasii* may be summarized as follows.³ There are two manuscripts with the full text, the *Athonensis Laura* Θ 65 (A; 10th/11th century) and the *Parisinus graecus* 1381 (B; 11th century); B is not dependent upon A. Of the first three titles there are two other witnesses. The first is a manuscript now in Munich, the *Monacensis graecus* 380 (H; 14th century). It contains inter alia the *Collectio Tripartita*, but the text of its third part has been taken directly from an *Athanasius* manuscript, as is also indicated in front of the pinax of that part: ὑποτίτλωσις Ἀθανασίου σχολαστικοῦ. Thus it really belongs to the tradition of the *Epitome Athanasii* as far as the part of the *Novels* is concerned. The second is an indirect witness, the so-called *Collectio Ambrosiana*,⁴ the sole manuscript of which, the *Ambrosianus* L 49 sup. (K) is preceded by one leaf with the end of the second part of the *Collectio Tripartita* in an interpolated version.⁵ The *Collectio Ambrosiana* quotes a considerable part of the first three titles of the *Epitome Athanasii*.

These four witnesses, then, constitute the evidence with which one has to compare the tradition of the *Collectio Tripartita*.⁶ Generally speaking, the *Epitome Athanasii* has fared better in the course of the transmission of its text, as is apparent above all from the *Latina* and the subscriptions. As to quantity, however, the tradition of the *Collectio Tripartita* is the richer of the two, and its oldest manuscripts probably predate the two chief witnesses of the *Epitome Athanasii* by a few decades. Neither of the two texts, however, has been preserved in a manuscript dating from before the transliteration, and their authors are some four centuries older than our extant manuscripts.

3 See the prolegomena to the new edition, pp. XIII-XXI and also the works referred to on p. VII, n. 1.

4 Sp. Troianos, 'Die *Collectio Ambrosiana*', *FM* II (1977), 30-44.

5 It is to my knowledge impossible to ascertain whether the manuscript originally contained a complete *Collectio Tripartita*, or at least - which is in this respect more important - the third part.

6 I restrict myself to these main witnesses, although there are some other indirect ones: see Simon-Troianos, pp. XVIII-XXI.

It has proved impossible to construct a stemma of the manuscripts of the *Collectio Tripartita*. Some groups may be distinguished,⁷ but for the present investigation the important aspect of the transmission of its text is that one may speak of a *paradosis*⁸ (to be indicated as c) containing divergences from the *Epitome Athanasii*. An occasional variant reading does not detract from the fact that it is fairly easy to establish the *paradosis*; the problem for an editor is to ascertain whether the *paradosis* represents the original text of the author of the *Collectio Tripartita* or the sum total of accidental corruption.

It would hardly have come as a surprise if there had been a certain amount of contamination between the two traditions. In a way the case of Ms Monacensis graecus 380 is of course precisely that, but it does not affect the independence of the two traditions, as there is no danger of mistaking a reading of the *Collectio Tripartita* for that of the *Epitome Athanasii*. Contamination in the customary sense of the word, the silent borrowing of readings from a source other than the manuscript the scribe has copied, probably has occurred within each of the two traditions, but is rare, if not absent, between them. A possible exception is Ms Barocci 173, to which I shall return below, but that manuscript occupies a fairly isolated place within the tradition of the *Collectio Tripartita*.

III

If, then, we compare the *paradosis* of the *Collectio Tripartita* with the manuscripts of the *Epitome Athanasii*, there are divergences where the *Collectio Tripartita* goes against all manuscripts of the *Epitome Athanasii*. At first sight it seems attractive to consider these differences between the traditions of the two texts as the differences between what Athanasius and what the author of the *Collectio Tripartita* wrote. In that view the author of the *Collectio Tripartita* faithfully transcribed an Athanasius manuscript that already showed these variant readings. They therefore would be genuine readings of the *Collectio Tripartita* and, insofar as they are acceptable, the editors should include them in their text. One might also argue, however, that precisely because there is no evidence in the Athanasius tradition, it is pure speculation to trace the origin of such readings back to an Athanasius manuscript. One could also explain these differences as changes with respect to a 'normal'

7 Cf. J. Konidaris, 'Die Novellen des Kaisers Herakleios', *FM V* (1982), 33-106, esp. 41-49; his findings also hold good for the *Collectio Tripartita* insofar as both collections occur in the same manuscripts.

8 I use the term here to denote the 'effective consensus of the manuscripts'; see M. West, *Textual Criticism and Editorial Technique applicable to Greek and Latin texts*, Stuttgart 1973, 53. I reserve the use of the word 'tradition' for the process of transmission of a text, the word '*paradosis*' for its result, a perhaps not very logical but convenient distinction.

Athanasius manuscript, introduced by the author of the *Collectio Tripartita*, accidentally or on purpose, in which case they still would be genuine readings of that collection. But for that possibility evidence is lacking as well; the divergences may have resulted simply from copying the author's copy and do not tell us much at all about what the author of the *Collectio Tripartita* wrote or wanted to write. As long as we do not possess other evidence, it is impossible to tell what happened before the tenth century.

There are also variant readings in which the *paradosis* of the *Collectio Tripartita* goes with one or more manuscripts of the *Epitome Athanasii* against a reading of the other manuscripts. Here we stand a greater chance of having a genuine reading of the *Collectio Tripartita* that has arisen from an Athanasius manuscript already containing that reading. If we are dealing with an obviously faulty reading, we cannot exclude the possibility that the same mistakes have been made independently, especially such mistakes as caused by, e.g., *homoioteleuton*. But not all variant readings are obvious mistakes, and if there are variant readings shared by the *paradosis* of the *Collectio Tripartita* and a branch of the tradition of the *Epitome Athanasii*, I am prepared to argue that in such cases we are dealing with genuine readings of the *Collectio Tripartita* originating from the Athanasius manuscript the author of the *Collectio Tripartita* used.

IV

By way of illustration of the points I have been making, I present a number of the divergences between the *paradosis* of the *Collectio Tripartita* and the manuscript tradition of the *Epitome Athanasii*, without attempting to give an exhaustive list.⁹

1 Chapter 1.2.12 (26,23-26) is lacking in all manuscripts of the *Collectio Tripartita*; none of the witnesses of the *Epitome Athanasii* shows a similar omission. The chapter may have been omitted at any point in the transmission of the text between the sixth and the tenth century. It is impossible to say whether it was ever part of the *Collectio Tripartita*.

2 Three similar cases occur in 1.4, 1.5 and 1.6. At the end of each of these chapters the subscription is wanting, and in 1.4 also the note (ἴσθι δὲ κτλ.) which precedes it. The omission is shared by the *Collectio Ambrosiana* (K), which fact however does not count for much, as K mostly omits notes and subscriptions.

3 In 1.17.3 the *Collectio Tripartita* lacks εἰ δὲ ... χειροτονίαν (72,7-9), an omission probably caused by *homoioteleuton*., as the preceding sentence also ends

9 I refer to the Simon-Troianos edition according to their division into chapters and add between brackets the numbers of page and line.

with χειροτονίαν. K lacks the same passage; the omission does not prevent one from understanding the chapter.

4 Similar faults occur in (a) 2.1.5 (80,9: καταβληθησόμενος ... τῶν om. c), (b) 2.3.12 (102,5-7: λαβεῖν ... καταλειφθέντα om. c), and (c) 2.3.13 (102,16-17: διατυπωθέντα ... εὐσεβῶς om. c). They are all caused by homoioteleuton, and make it difficult to understand the text. The three cases differ in the relation with the tradition of the Epitome Athanasii. In 4a the omission is peculiar to the Collectio Tripartita. In 4b there is evidence of a textual problem in the Munich manuscript (H) of the Epitome Athanasii. H does not lack anything, but has too much. Precisely between καταλειφθέντα and μεθοδεύω in line 7, i.e. at the point where the omission in the Collectio Tripartita occurs, H contains a rubric Περὶ τοῦ κτλ., which has slipped from the margin into the text. In my view this has happened because originally the margin of the exemplar of H contained the lacking words and the rubric, and the two were inserted in the the text of H together at the place where the wanting words belonged.¹⁰ In 4c there is even stronger evidence of textual problems in the tradition of the Epitome Athanasii, where the Athos manuscript (A) reads exactly as c. The sentence concerned ends in both cases with ἀχθῆναι instead of ἀχθῆ, the reading of the Paris manuscript (B) where the verb is dependent on ἴνα in the words lacking in A and c. H has the full sentence, but has preserved no less than three traces of an imperfectly executed correction: it reads δόξαντα instead of διατυπωθέντα in line 16, inserts a rubric Περὶ κληρονόμων after this δόξαντα and has retained ἀχθῆναι at the end. Thus 4b and 4c are very similar.

5 In 2.1.6 (80,15) the Collectio Tripartita reads κινήτων instead of the Epitome Athanasii's ἀκινήτων; ἀκινήτων corresponds with the text of Nov. 7.3.3. As the text deals with ἐμφύτευσις, there is no question which of the two is the true reading: a silent correction by a scribe who was aware of what he was copying would have been perfectly natural.

6 In 2.3.8 (100,3) the Collectio Tripartita has βουλόμενος, whereas the Epitome Athanasii reads ἀρξάμενος. According to the Collectio Tripartita the mere wish to build a place of worship gives rise to an obligation to complete the work, but in the Epitome Athanasii one has to have actually started the work to incur a similar obligation. Of course the latter is correct, as is also stated in Nov. 131.7. A closer look at the text of Nov. 131.7, however, reveals that the word βουλόμενος is not without support, either. Ch. 7 pr. begins with εἴ τις δὲ βουλευθεῖ κτλ. and tells us what has to be done before work commences, and par. 1 with ὁ δὲ ἅπαξ ἀρξάμενος, stating the consequences. Athanasius' summary of this chapter contains all the information of the full text, but has the principium and par. 1 in inverse order. As there is no palaeographical explanation for ἀρξάμενος being changed into

10 This may of course have happened at an earlier stage of the transmission of the text.

βουλόμενος, and Nov. 131.7 actually begins with ... βουλευθείη, one wonders whether the Collectio Tripartita has not preserved an unemended reading of the Epitome Athanasii.

7 In 2.P.7.1 (122,10-11) in c there is an anacoluthon, ending with INUENTARION aut sim., BH have INUENTARION ἐκδικήσει καὶ εἰς ἀνάρρυσιν αἰχμαλώτων δαπανήσει, a supplement of which A only has the first word ἐκδικήσει. In one manuscript of the Collectio Tripartita, Barocci 173, the same word is added by the first hand as a correction. It seems highly probable that at least one branch of the Epitome Athanasii reads as the paradosis of the Collectio Tripartita, and that the Barocci 173 was corrected after an Athanasius manuscript of that branch. The scribe probably did not collate his manuscript systematically, but then not everywhere something is so obviously wrong as here - that is to say, if one knows that INUENTARION is not a verb.

8 The testimony of A goes with c against other witnesses of the Epitome Athanasii in several cases, e.g. 1.3.3 (50,4: μέλλων Ac, λέγων BH); 1.3.7 (50,19-20: πλεονεξία B, om. Ac, post ἐκβίβαστων [l. 19] transp. H); 1.17.2 (70,26: ἢ ἐτέρῳ ... γενομένης BHK, τῆς Ac); 1.P.2 (74,19: κατὰ BHK,¹¹ καὶ Ac; 74,21: ἡ <ι' > διάταξις] ι' om. Ac, ιδ' BH); 2.2.26 (96,15: (τῆς ὑποθήκης) καὶ (τοῦ χρέους) BHK, καὶ om. Ac); 2.3.3 (98,11: δακίαις μεδιτερρανέας aut sim. BH, om. Ac); 2.3.13 (case 4c, above); 2.P.1.1 (118,12-13: χρή τὰ ... προσκυροῦσθαι BH, χρήματα ... προσκυρούσθω Ac); 2.P.2.7 (120,12: ἢ διαφθειράντων ἢ ὑπονοθευσάντων BH, om. Ac).

9 Much less numerous are readings of c shared with A and H against B, e.g. 1.2.18 (30,10: quotation from the text of Nov. 123.9 [ἔχει δὲ τὸ περὶ τούτου ῥητὸν οὕτως κτλ.] AcH[K], om. B); 1.17 (70,23-24: κατὰ ... γραφῶν BK, om. AcH); 2.P. rubr. (118,10: τὰ παράτιτλα τοῦ τίτλου B, καὶ ὅσα παράτιτλα AcH).

10 Extremely rarely c goes with B against A and H: 1.7.3 (56,23: ἀκινήτων AHK, om. Bc).

These examples seem to me to point to the conclusion that c is related closest to a branch of the tradition of the Epitome Athanasii represented by A, and removed farthest from that of B, H occupying a position in between. Where K is available, it often goes with c, and, finally, in some cases c stands alone.

More evidence of the relation between the paradosis of the Collectio Tripartita and the tradition of the Epitome Athanasii is provided by the numerous notes and remarks which, according to Simon,¹² do not all stem from Athanasius himself, but which have been transmitted with the text either in corpore or in margine. They

11 K is not available everywhere; moreover it is an indirect, though valuable witness.

12 D. Simon, 'Zitate im Syntagma des Athanasios', *FM* VI (1984), 1-18; the same, 'Das Novellensexemplar des Athanasios', *FM* VII (1986), 117-140.

were initially written in the margin of the manuscripts and sometimes slipped into the text. In the paradosis of the *Collectio Tripartita* we find several of these annotations, some of which certainly are not by Athanasius. In that case they may stem from the author of the *Collectio Tripartita*, who after all must have read and may have annotated an Athanasius manuscript, but who may also have used a manuscript already containing the annotations. And of course they may have been made in a manuscript of the *Collectio Tripartita* and from there have reached the paradosis. If they are the same notes as we find in the manuscripts of the *Epitome Athanasii*, it is difficult to believe in a coincidence. Rather than engaging in speculations about what may have happened, I would prefer to accept them as they occur in c and consider the relation with the Athanasius manuscripts.

To begin with the notes that have established themselves in the paradosis of the *Collectio Tripartita* in corpore, it is worth noting that they are concentrated in the paratitla of the first title, with the exception of ch. 1.7.2 and 3. They are references to a collection of Novels (ῥητόν) with numbers that differ from those of the Collection of 168 Novels. The numbers correspond with those mentioned in A and H; A also has them in corpore, whereas in H they stand in the margin.¹³ Other annotations as found in the Athanasius manuscripts hardly occur at all in the text itself in manuscripts of the *Collectio Tripartita*. The margins of the Simon-Troianos edition enable the reader to see at a glance what sort of annotations there are, and whether they occur in corpore or in margine. The closest relation is then seen to exist between c and B, as their texts are remarkably free from glosses of this kind. The margins of the manuscripts of the *Collectio Tripartita*, however, contain a great number of these notes. To edit these, with their variant readings from all the manuscripts, would be a daunting task. The fact that so few of them have actually been inserted in the text seems to justify the postulation as the archetype of the textual tradition of the *Collectio Tripartita* a manuscript with the outward characteristics of B, but the readings of A, with all the variations outlined above.

As additional examples of these variations I present the following cases:

- 1 In 1.13 (64,9-16) the order of ch. 5 and 6 in some of the manuscripts of the *Collectio Tripartita* has been corrected from 6-5 to 5-6. Now ch. 5 is lacking in B, which suggests a relation between a branch in the transmission of the *Collectio Tripartita* and that manuscript. A and H have both chapters in the correct order.
- 2 An interesting case is 2.1.7 (80,17):

ὁ οὐσούφρουκτον ἱερατικὸν λαμβάνων πράγμα Hc
 ὁ οὐσούφρουκτον ἦτοι εἰς χρῆσον ἱερατικῶν λαμβάνων πράγμα A
 ὁ USUFRACTOS ἱερατικοῦ λαμβάνων πράγματος B

13 Cf. the table in Simon, *Novellenexemplar*, 122.

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Cf. λαβεῖν κατὰ λόγον χρήσεως ἦτοι τοῦ καλουμένου οὔσουφρούκτου πρῶγμα ἐκκλησιαστικὸν Nov. 57.4.

In A once more a gloss appears to have intruded into the text and the result is grammatically unacceptable; the reading of B has been adopted by Simon and Troianos with the slight emendation of USUFRACTOS into -ON, supported by AcH. But would this not be the *lectio facilior*, the true reading being hidden in the other manuscripts, as they are closer to the text of the Novels? It is doubtful whether a construction of λαμβάνω with double accusative is possible. Perhaps an emendation ὁ <εἰς> could save the text of the *Collectio Tripartita*.¹⁴

3 Finally, we may observe in the case of 2.3.10 (100,18) that A represents a stage in a process of corruption from \overline{FCSU} (B) to φίσκου (c). A reads φιδεικομήσου τοῦτ' ἔστιν τῶν δημοσίων καὶ φίσκου. FCSU and φίσκου (the latter being an evident corruption of the former) may both have elicited explanatory comment: φιδεικομήσου is, of course, the expanded form of \overline{FCSU} (H reads φιδεικομίσσου), whereas ὁ φίσκος is the equivalent of τὸ δημόσιον. The original reading of \overline{FCSU} may thus have given rise to glosses with φιδεικομήσου as well as φίσκου, which may have been noted as alternative readings by subsequent scribes and readers. In A we find two alternative readings in the text, while only τοῦ φίσκου has reached the tradition of the *Collectio Tripartita*.

V

A disappointing aspect of the effort to discover genuine readings of the *Collectio Tripartita* divergent from the *Epitome Athanasii* is that in many cases they turn out to be simply mistakes. First of all we must not forget that there is no evidence that the author of the *Collectio Tripartita* wanted to change anything in the first three titles of the *Epitome Athanasii*. If it is possible to reconstruct the original form of that text, as I think Simon and Troianos have managed to do, there is small scope for the editors of the *Collectio Tripartita* to produce a text that is much different from theirs. The evidence against a reading of the *Epitome Athanasii* has to be very strong indeed to justify a diverging reading in the *Collectio Tripartita*. If moreover we remember that the tradition of the *Epitome Athanasii* is generally better than that of the *Collectio Tripartita*, the burden of proof against its readings becomes even greater. If the *paradosis* of the *Collectio Tripartita* nonetheless shows these divergences, many of which obviously are mistakes, there is not much the editors can do but to emend a number of them on the basis of the text of the *Epitome Athanasii*. As to the other divergences, the text is probably served best with a

14 Cf. 2.2.10 (92,1) where in the expression λαμβανέτω εἰς τελείαν δεσποτείαν c and K omit εἰς.

conservative edition, with an ample supply of references to the readings of the *Epitome Athanasii*. The editors as always hope that the reader will pay attention to the critical apparatus.

So far not a word has been said about the other two parts of the *Collectio Tripartita*, the first part with summaries from C. 1.1-13 and the second with fragments from the *Digest* and *Institutes*. As to these the editors are in a different position, as the sources from which the author drew are no longer available and a direct comparison therefore impossible. But it would be foolish not to allow for the possibility that the quality of the text of the first two parts has suffered as much; there is no reason to suppose that the process of transmission has been kinder to them than to the third part. I have tried to show elsewhere that the composition of the second part has not been such a mechanical process as was generally held.¹⁵ If the author of the *Collectio Tripartita* for his second part really interpolated some of the passages he had selected from his model, the value of this model - which we can only partially reconstruct in any case - for an edition is more limited than that of the *Epitome Athanasii* with respect to the third part. Of the source of the first part we know even less.

To crown all, two problems add to the difficulties for an editor of the *Collectio Tripartita*. First, there are strong indications in the manuscripts of the *Collectio Tripartita* that the scribes did not always copy the three parts from the same exemplar. That fact alone would suffice to frustrate any attempt at constructing a stemma for the *Collectio Tripartita* as a whole. Second, as far as testimonia are concerned, an editor is out of luck there as well. The bulk of the material is to be found in the *Nomocanon* of the XIV Titles, of which no modern critical edition is available.

After these slightly pessimistic reflections on the prospects of an editor of the *Collectio Tripartita*, I would like to pay some attention to one manuscript which has already been mentioned, the Oxford codex Barocci 173. The part with which we are concerned here dates from the tenth century¹⁶ and is therefore roughly contemporary with the Athos and Munich manuscripts of the *Epitome Athanasii*. In the third part (fol. 102r-124v) it contains readings, almost all of them corrections, which do not correspond with the *paradosis*. Several of these corrections are in accordance with the *Epitome Athanasii*. The most striking of these are the

15 'The *Digest Summa* of the *Anonymus* and the *Collectio Tripartita*, or the Case of the Elusive *Anonymi*', *SG II* (1985), 47-58.

16 In the past there has been some unanimity on a 12th-century dating, but the script is not unlike Ms. Paris, BN Suppl. gr. 469 A, of 986 (plate 73 in R. Barbour, *Greek Literary Hands AD 400-1600*, Oxford 1981).

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following:¹⁷ 1.4 inscr. (52,4); 1.P.5.2 (76,9; K goes with c); 2.1 inscr. + 1 (78,6-7; the archetype of c may have omitted a whole line of text); 2.1.3 (78,27; the scribe may have conjectured the correct reading); 2.1.17 (84,2; a Latin word; H goes with c); 2.1.21 (86,2; note that Barocci 173 has an even better reading than the Athanasius manuscripts); 2.2.10 (92,1: εἰς Athan., om. cK, κατὰ Barocci 173²); 2.3.15 (104,5); 2.3.16 (104,10); 2.P.7.1 (122,10-11: cf. above, case 7). In some of these cases the correction one finds in the Barocci 173 has to be incorporated in the text of the *Collectio Tripartita*, as it would not make sense otherwise. In so doing, however, the editors of the *Collectio Tripartita* are begging the question whether these readings ever were part of it. Thus the Barocci 173 is a perfect illustration of the dilemma the editors of the third part of the *Collectio Tripartita* find themselves in continuously.

VI

The reader has been warned by my title that this paper would be dealing with problems; indeed, I have no solutions to offer. I can only sum up what in my view is the most interesting part of the effort of editing the *Collectio Tripartita* insofar as its third part is concerned: it is not so much the satisfaction of producing a different text, but the lessons it teaches us about the transmission of Byzantine legal texts in general. A prospective editor of the *Collectio Tripartita* faces the task of reconstructing a sixth-century text on the basis of some 50 manuscripts, none of which is earlier than the tenth century. He is dealing with a very rich tradition of minuscule manuscripts, from which he reconstructs a paradosis containing a number of unsatisfactory readings. He then sets out to emend them, no doubt wondering anxiously whether he has discovered all the readings he actually has to emend, in other words asking himself whether his 50 manuscripts have not dealt him a bad hand. Conversely he may be vexed by the thought that he has emended too much. That would be the position he would find himself in if he did not have the evidence of the *Epitome Athanasii* for the third part of his text. Considering impartially whether it makes all that much difference that he now has this possibility to check his own findings, he will have to admit it does. The following inferences may be drawn from a comparison of the two positions:

1 There are several places in the paradosis of the *Collectio Tripartita* where he would not have suspected that something was wrong and would have printed the paradosis happily, whereas he now knows that his author may have written something quite different.

17 Again I simply refer to the Athanasius edition (above, n. 9); where I do not give further particulars, the corrections of Barocci 173 read as the Athanasius text.

2 There are also places where something is obviously wrong, such as a lacking subscription at the end of a constitution, but where there is no means of emending it ingenii ope with any degree of certainty.

3 The extent of corruption that is to be found in a text of the sixth century when one first sees it appear again in the tenth - and this not only in places where this is only to be expected, such as in Latin words in a Greek text, but also in perfectly normal Greek sentences - makes one aware of the problems one may meet in a text where there is not such a way of checking its quality as in the present case.

4 The age of the corruptions we find in the paradosis is difficult to determine. The possibilities are endless. Thanks to comparison we know at least that the author of the *Collectio Tripartita* probably had at his disposal a copy of Athanasius which was far better than the paradosis of the extant manuscripts of the third part. As it is not likely - but not impossible - that the paradosis of our manuscripts reflects the state of the author's copy, we must seek the origin of its corruptions at a later stage in the transmission. As so often, this is very likely to have happened in the period of the transliteration.¹⁸ The shape of the hourglass is the model of the transmission of so many texts: the transmission of the old uncial manuscripts converging in the first minuscule manuscript, from which the others all originate. From the state of the Athanasius manuscripts we would then have to suppose that the transliterated copy of the *Epitome Athanasii* was executed more carefully than that of the *Collectio Tripartita*. This would also mean that before the transliteration manuscripts of the *Collectio Tripartita* and the *Epitome Athanasii* may have been much more similar than they are now, and than is suggested by the critical apparatus of the editions. In other words, the legal historian should allow for the possibility that his critical editions only represent the time after the transliteration, or, to spell it out, it might be entirely wrong to assume that a Byzantine reader in the sixth, seventh or eighth century would find the same divergences in his two texts. Where the variant readings would represent variations in the substantive law - and how much more interesting would it be if that always were the case - the Byzantine idea of a point of the substantive law might have been different before and after the transliteration.

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18 See, e.g., A. Dain, 'La transmission des textes littéraires classiques de Photius à Constantin Porphyrogénète', *DOP* 8 (1954) 33-47, repr. in D. Harlfinger (ed.), *Griechische Kodikologie und Textüberlieferung*, Darmstadt 1980, 206-224, esp. 209-213; L.D. Reynolds-N.G. Wilson, *Scribes and Scholars*, Oxford ²1974, 53-54.

