One of the main purposes for which Graeco-Roman or 'Byzantine' law is employed is to fill the gaps in our knowledge of the Justinian codification. Among the most conspicuous and frustrating gaps is the absence in our Codex manuscripts of those pieces that have been issued in the Greek language. It is there that the Basilica text and other sources are consulted. It is, of course, commonly known that the great majority of these sources have their provenance in various sorts of texts written by bilingual law professors or antecessores in Justinian's own time, who were particularly well qualified to inform us about the Corpus Iuris Civilis because they had personally participated in making it. We know their names and we actually believe to a certain extent to know who did what. These names and contributions are duly mentioned in the critical apparatus of our editions. Nevertheless, the less-informed user of, especially, Krüger’s Codex edition is at places put on the wrong track. This paper will increase rather than clarify the confusion. It will concentrate on the constitutions C. 3.10.2, C. 3.43.1 and 2 and C. 6.4.4, paying little attention to C. 3.2.2 and 4. What these six laws have in common is the fact that we possess (traces of) Latin epitomized versions of them, two of which (C. 3.10.2 and 6.4.4) are explicitly attributed to a Peter of Cardona. Kantorowicz regards Peter as the author of all six translations, on the argument that they ‘are all closely connected.’ This statement is debatable. It is reasonable to suppose a connection between the Latin epitome of C. 3.2.4, which is merely known by its opening words, and that of C. 3.2.2. Further, a relationship between them and the Latin versions of C. 3.43.1-2 is suggested by the fact that that of C. 3.2.2 has been discovered in a Codex manuscript following 3.43.2. However, the close connection between these four anonymous Latin versions and the two attributed to Peter of Cardona is not immediately clear.

The background of the problem is illustrated by the testimonia of C. 3.43.1 and 2.


2 By Biener in the cod. Vatic.Pal.lat. 758, and even earlier by Contius; see also Kantorowicz, p. 54 [194].
We owe our information about these Greek constitutions to several sources. Consulting the Codex edition one is primarily referred to the text of Basilica 60.8.5 (BT 2807/9-20) and to Nomocanon 13.29 (I 327-328 Rh-P), the former being attributed by Krüger to Thalelaeus, the latter to Anatolius. The Latin text is found in several Codex manuscripts of an otherwise low quality. Krüger says it is a translation not of the original constitution but of a Greek epitome, which the anonymous translator would have found in the Basilica scholia or some other compilation, or in a Codex commentary such as Isidorus'. The problem is, of course, that we do know that Thalelaeus, Anatolius and Isidorus, just as Theodorus and anonymous legal scholars, worked on the Codex and that Byzantine legal texts are generally based on their writings, but that we are not always in a position to connect the authors and their works with certainty. Thus Thalelaeus is in most cases held responsible for the Basilica version of Codex texts, but in this particular case the most recent Basilica editors doubt the connection. Anatolius is no longer regarded as the author of the Codex fragments underlying the Nomocanon, so in theory he is no less likely a candidate than Isidorus as the source of the Latin translation. Seen in this light, it is interesting that we actually have, or believe to have, Anatolius’ summary of another Greek constitution, C. 3.10.2, of which we also possess a Latin version. It will be seen that the two are indeed remarkably similar. However, speculating about the causes of this similarity is complicated by the fact that, again, we do not possess the original Greek text, the so-called ῥητώv, of C. 3.10.2. In compensation, we have no less than seven Greek and Latin versions of it: in addition to those that are attributed to Anatolius and Peter of Cardona they are Bas. 7.6.22, Inst. 4.6.24 and 4.6.33e, and the same two fragments in Theophilus’ Paraphrase of the Institutes. We will have to base our idea of what the ῥητώv looked like on a comparison of these versions. It is only then that it may be possible to guess in what ways it was adapted by its respective epitomizers and/or translators. The inevitable circularity of such an argument, however, must clearly limit our expectations.

The most helpful information is offered by Justinian himself in his Institutes and by his antecessor Theophilus. Justinian’s constitution C. 3.10.2 was very closely linked to

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3 Cf. also the Praefatio to his edition, pp. XXII.
4 Critical apparatus at BT 2807/9. They are indeed disappointing in view of Thalelaeus’ usual competence (cf. my note 43). Yet it must be borne in mind that as a Greek adaptation of a Greek text it served a different function than Thalelaeus’ indices of Latin constitutions; cf. also note 15.
5 Van der Wal - Lokin, Delineatio, pp. 44 and 66; N. van der Wal and B.H. Stolte, Collectio tripartita, Groningen 1994, pp. XXIII-XXV, cf. XVII.
6 Theodorus does not qualify, for his summary has been preserved as a Basilica scholion (BS 3287/13-18).
7 See below, p. 91.
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C. 3.10.1, which was issued by the emperor Zeno. They both deal with plus petitio. The close relation between them is well illustrated by the fact that Justinian speaks of them in one breath as lex Zenonia et nostra, legislation which altered the earlier practice of plus petitio (Inst. 4.6.33e; cf. Theoph. ibid. διάταξις Ζήνωνος τοῦ τῆς θείας λέξεως, οὐδὲν δὲ ἦττον καὶ νομοθεσία τοῦ ἡμετέρου βασιλέως). The Justinian constitution did not change the Zenonian one, but supplemented it. Zeno, who had also legislated in Greek, so that we do not possess the original text of his constitution either, had regulated on claiming a debt too early (si quidem tempore plus petitum), Justinian on claiming too much in terms of quantity or in any other respect (sin autem quantitate vel alio quo modo). Scholia on Theophilus' paraphrase of this text, and also on that of Inst. 4.6.24, where solely Justinian's own constitution is discussed, duly refer the reader to our C. 3.10.1 and 2, respectively. C. 3.10.2 is twice referred to within the same title of the Institutes, but for different reasons. Inst. 4.6.33e mentions it in the context of the general discussion about the possibility that someone claims either more or less than what he is entitled to, or the wrong object (4.6.33-35). This is, of course, precisely the place where one expects it. Yet the Justinian constitution is only summarily dealt with in that context, because it has been discussed already: sin autem quantitate vel alio modo plus petitum, omne, si quid damnum ex hac causa acciderit ei contra quem plus petitum fuerit, commissa tripli condemnatione, sicut supra diximus, puniatur. 8

Indeed Inst. 4.6.24 had paid much attention to C. 3.10.2, citing it as an example of a condemnatio in triplum. Theophilus further illustrates the principle by adding an example:

Triplo vero, cum quidam maiorem verae aessmentonis quantitatem in libello conventionis inseruit, ut ex hac causa viatores, id est executores litium, ampliorum summan sportularum nomine exegerint, tunc enim quod propter eorum causam damnum passus fuerit reus, id triplum ab actore consequetur, ut in hoc triplo et simplum in quo damnum passus erit connumeretur. quod nostra constituio induxit, quae in nostra codice fulget.

Eis τὸ τριπλὸν γίνεται ἡ κατάδικη ἐπὶ ἐκείνου τοῦ δόματος. διάταξις ἐστὶν τοῦ ἡμετέρου βασιλέως ἤτοις τοῖς τῶν ὑποθέσεων ἐκδημοσίᾳ λέγω χρήσις ἐκκυβαίνων τι δίδωσον παρεκελεύσατο πρὸς τὴν ποσότητα τῆς τῷ βιβλίῳ τῆς αἰτίας ἐμφρομημένην. οἷν λόγου χάριν μέχρι ρ᾽ νομισμάτων ώρίσε δίδωσον τὸ ἡμαν τοῦ νομίσματος, ἐς δὲ μεῖξιν ἔτις ποσοτῆς, πλεονεκρῶν εἶναι καὶ τὰς ψωπυγόκοιν ὑποθέτουν ψωπυγόκοιν πλεον πλοοῦκν ψωπυγόκοιν δοσιματώτες, ἐστοφειλόμενοι παρ᾽ αὐτῷ ρ᾽ νομίσμαται.

8 Scholia of this type were edited by C. Ferrini, in: Memorie del Reale Istituto Lombardo, 3ª serie, IX, (1886), pp. 13-68, repr. in: Opere di Contardo Ferrini I, Milan 1929, pp. 139-224. They are found in codd. Par. gr. 1364 and/or 1366.

9 Cf. Theoph.: εἰ δὲ καὶ περὶ ποσότητα ἡ καθ᾽ ἅτερον τρόπον γένεται PLUS PETITION καὶ τῆς ἐπετεύχθη ζήμα συμβῇ τῷ ἑπαγομένῳ, οἷν χρήσις τὰς ψωπυγόκοιν δοσιματώτες (ὡς καὶ προσωρικάς) εἰς τὸ τριπλὸν ἄν υπὲρ τὸ δέον ὡς ΚΕΩΤΙΖΗΜΙΑΘΗΝ ὁ ΑΚΤΟΡ καταδικασθήσεται.
One reason why this Theophilus text deserves some attention is that it is a Greek text about a Greek constitution, which the author without doubt was acquainted with and which he may have consulted when he prepared his lectures about the Institutes. In theory, some of his phrasing and vocabulary may come straight from the constitution itself. However, being one of the authors of the Institutes themselves, he had applied his expertise to the Latin wording as well, so the contribution of his Paraphrase should not be exaggerated. If it has anything essential to add to our knowledge of C. 3.10.2, it may be in what he added to the Institutes.

Such an addition is found in the first half of his paraphrase of Inst. 4.6.24, where Justinian’s constitution is summarized (diastaxies esti tov hmetevo baxalwos hteis ... tâ sportula). This summary unexpectedly suggests that C. 3.10.2 did not so much legislate on the case where overclaiming on the part of the actor results in the reus being overcharged sportulae, as on the proportion between the amounts of the claim and the sportulae in general (tovs tov upoteosewos ... tâ sportula). It is not until the last sentence that we discover that the same constitution (cf. ek tis eirnhenhs diastaxeos) was responsible for the condemnatio in triplum in cases of plus petitio. Perhaps C. 3.10.2 contained both rules. Alternatively, the original Justinian constitution contained them before 534 AD, when the Codex compilers divided it over two different titles. In any case, the proportion between the heights of the claim and of the sportulae is tacitly presupposed by the text of the Institutes. Theophilus’ additional information about it enabled his students to understand the ‘case’ of condemnatio in triplum that he had announced in the first sentence (cf. en’ ekainon tov thematos). In other words, it served as a kind of unintroduced prothesis. Otherwise Theophilus’ paraphrase does not seem to add anything essential to our knowledge of the ρητον of the Codex.

10 Krüger has placed the opening sentence of Theoph. 4.6.24 in the title on sportulae as C. 3.2.5. However, apart from the Theophilus text under discussion there are no indications of the existence of
Just like Theophilus', the testimony of Anatolius, who taught sixth-century law students from the Codex, may, in principle, be trusted. The summary of C. 3.10.2 attributed to him is found in the compilation of texts that was first edited by Ferrini under the name of *Anecdotae Laurentiana et Vaticana* and which its new editors propose to call *Excerpta Vaticana et Laurentiana*. The Latin version with which it seems interesting to compare it has been discovered in the bottom margin of one Codex manuscript, the Harleianus 5117, where the translation ‘de greco in latinum’ is attributed to ‘dominus Petrus de Cordona’. This Peter has been identified as the twelfth-century Catalan jurist Petrus of Cardona, who is also known as a canon of Vich and a cardinal priest of Pope Alexander III. Peter’s and Anatolius’ versions of C. 3.10.2 run as follows:

The most conspicuous difference, of course, is that Peter’s equivalent to Anatolius’ summary of C. 3.10.2 is preceded by a lengthy introduction (not fully cited above), which explains that Justinian is following the example of the late emperor Zeno and which recapitulates that constitution, C.3.10.1. Otherwise, however, the similarity between the two versions is striking, especially if we compare them with one more version of the constitution. This last text is found in the Basilica and was therefore, presumably, based on the *index* by Thalelæus. It runs (BT 354/25-29):

this constitution. The Theophilus scholia refer to C. 3.10.2, as has been said. The Basilica compilers have combined the Codex titles 3.1-2 and 3.10 to Bas. 7.6, passing directly from 3.2.4 to 3.10.1.

11 Jan H.A. Lokin and Roos Meijering, *Anatolius and the Excerpta Vaticana et Laurentiana*, Groningen, forthcoming. The summary of C. 3.10.2 is counted as VL 120. On the authorship and the identity of Anatolius, see there, pp. 8-12 and 24-30, respectively.


13 The information has helpfully been collected by the editor of Kantorowicz’s posthumous paper, W.W. Buckland, on p. 195 n. 25.

14 Both manuscripts have *σπόρτουλος*, as if it was a neuter identifying *δῶρον*: ‘the amount of *sportulae,*’ However, the Greek equivalent of *sportulae* is the plural (*τὰ*) *sportula*. Anatolius probably wrote *sportulon*, intending this as a genitive specifying the object of *ἐπιστρατεία*. See Meijering, *The Text Constitution of VL and the Tradition of the Summa Anatolii*, in: Lokin and Meijering, p. 180.

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There is nothing seriously wrong with this Basilica version. In comparison with the other two it may be slightly more explicit than would have been necessary. The ‘someone’, for instance, who might insert into the *libellus* a greater debt than he is entitled to, could not be anyone else than a claimant (τίς τῶν ἐνεγόντων), and the fact that this *libellus* is ‘sent by him’ (διασμεμομένως παρ’ αὐτῶ) does not come as a surprise either. Nevertheless, these bits of information would not seem out of place in an imperial law text. Indeed they were probably there in the original, for Thalelaeus had little reason to add them, whereas their omission by Anatolius is no more than could be expected. So far, the difference is that between an *index* in the technical sense and a *summa*.

On the other hand, I am inclined to consider the definition of the ‘real quantity which he is entitled to claim’ (II. 28-29) a *παρογραφή* by Thalelaeus. It presupposes a ρήτων where πλείονα ποσότητα (πλ) was specified as ‘more than the ἄλφηθς ποσότης’. Echoes of the same phrase are found in the versions of Anatolius and Peter of Cardona (maiorem quam sibi deberetur quantitatem). The nearest parallel, however, is found in Inst. 4.6.24 maiorem verae aestimationis quantitatem. Another interesting difference between the Basilica text on the one hand and Anatolius’ and Peter’s on the other, is the absence of the key word *sportulae* for the defendant, caused by the claimant inserting too great a claim in the book. At first sight, Σημίας might seem an unfortunate exhellenism for *sportulae*, for it is quite clear from the context that Thalelaeus did think of overexaction of *sportulae*. Judging from Inst. 4.6.33e, damage might well have been the real key word

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15 See Meijering, *Anatolius and the Codex*, in: Lokin and Meijering, § 3.3. Where the source text is Greek, an antecessorial Greek *index* naturally loses its main function of translating the text. Instead, it can be expected to make it more accessible by simplifying its style and abridging its content and, if necessary, providing background information. In such cases, then, it would come quite close to a *summa* of the same text.

16 It may even be a *παρογραφή* on C. 3.10.1 § 3 (cf. BT 354/22-24).

17 I would be happier reading *propter eorum* (viz. sportularum) *causam*. As it stands now, the text probably refers to the whole story of an *actor* claiming too much and the *reus* consequently paying too many *sportulae*.
of C. 3.10.2, rather than sportulae, which are not even mentioned there. Theophilus (ibid.) merely mentions the overexaction of sportulae as an obvious example of such damage. Similarly, a scholion on Theoph. 4.6.33e presents it in the form of a θεματισμός. 18

If it is true that Thalelaeus remained fairly close to the ρητόν in rendering C. 3.10.2, it is clear that Peter of Cardona did not simply translate the original Greek text. In fact, he definitely did not do that; the quickest way to ascertain this is to compare his version of C. 6.4.4 with the corresponding Basilica text, as will be seen below. Nor did he translate Anatolius’ summa, as is shown by the introduction about Zeno’s law. The result of his efforts differs from the ρητόν in two aspects: it is in Latin rather than in Greek, and it is more concise. This appears also true of the four anonymous Latin texts. Since the two processes of translating and summarizing may have taken place either simultaneously or in successive stages, there are several theoretical possibilities. As for the anonymous Latin epitomae, those of C. 3.43.1 and 2 among them, each individual one may be:

- a sixth-century Latin summary of the Greek ρητόν, of the kind we are acquainted with from Julianus’ Epitome latina Novellarum: this possibility was raised and immediately rejected by Conrat; 19 or
- a sixth-century Latin translation of a contemporary Greek summary of the ρητόν, another possibility that Conrat rejected; or
- a medieval summary of a complete Latin translation, possibly a κατὰ τόδοςς; or
- a medieval Latin translation of a sixth-century Greek summa of the ρητόν, such as were made by Anatolius and Theodorus, or of an index, made by, for instance, Thalelaeus and Isidorus. 20 This is the view of Krüger, hesitantly accepted by Conrat; or
- a medieval Latin summary of the ρητόν itself: this is the hypothesis of Kantorowicz and Troje.

If we believe the explicit statement that Peter of Cardona translated from the Greek, we can obviously rule out the first three alternatives for C. 3.10.2 and 6.4.4, which are attributed to him. He must have unearthed either a Codex manuscript that contained Greek constitutions, or a sixth-century version that originated in the Eastern-Roman tradition. In Krüger’s view, a source of the latter kind might have taken the form of an antecessorial index or summa, or else have been integrated in some sort of Byzantine

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18 θεματισμόν γάρ ὃτι δὲ ἐνάψων ἐν τῇ πομπῇ τοῦ βι. πλέον τῶν κεχρεωστημένων κατὰ ἐταξία καὶ ἐγένετο κατὰ τὸν πρωτούλων πλείον ἐκατάπην, κατὰ τὸν ἐνάψων ἐκαταδικασθήσεται εἰς τὸ τριπλῶν.

19 M. Conrat [= Cohn], Geschichte der Quellen und Literatur des römischen Rechts im früheren Mittelalter I, Leipzig 1891 [repr. Aalen, 1971], p. 121 n. 2.

20 Krüger does not distinguish the two; he defines indices as ‘argumenta constitutionum modo longiora modo breve contracta’ (Praef. X, n. 5). Cf. my note 15.
compilation. The possibility that Peter should have had a Codex manuscript with a few Greek fragments is decidedly the less improbable one. We know, for instance, that Bulgarus had one. Incidentally, it is Bulgarus’ pupil Bassianus who informs us that he has inserted Peter’s translation of C. 6.4.4 at the right place in his Codex copy. The presence in twelfth-century Western Europe of separate antecessorial Codex commentaries is highly unlikely. But, even if we conclude that Peter found Greek texts in a Codex copy, these need not have represented the original ἰητοῦ of the constitutions. In fact, I find it hard to believe that he should have taken hold of the complete text of a missing constitution, without doubt realizing his luck and the importance of making his non-Greek reading colleagues benefit, yet did not take the opportunity of making a full translation. More probably, such Greek texts, wherever Peter found them, had been epitomized and adapted already.

The trouble with this hypothesis is, that the two versions explicitly attributed to Peter of Cardona both start with splendid, authentic sounding introductions that are rather unlikely in Byzantine Codex adaptations. That of C. 3.10.2, cited above, says: Zenonis divae memoriae vestigiis inhaerentes praesenti lege decernimus, ut ... etc. The introduction to C. 6.4.4 is even more elaborate, saying: Veteris iuris alterationes, quas super successionibus libertorum antiquitas introduxit, nec non et inextricables circuitus legis Papiae et numerosam summam centum milium sestertiorum, quam praedicta lex in bonis libertorum requirebat, a nostra republica penitus amputantes hac edictali lege sanctimus, ut, si ... etc. A Byzantine Codex commentator would hardly have left such rhetorical prose untouched. We already saw that this was indeed the main difference between Peter’s and Anatolius’ versions of C. 3.10.2, and we did not find any traces of the introduction in the Basilica text either.

One of the purposes of these introductions is to recapitulate previous legislation which the respective constitutions elaborate, hence also to emphasize the splendid effort made by Justinian in perfecting it. There is nothing out of the ordinary with the fact that Justinian, apparently, paraphrased the earlier law within the preface to his own supplement. The phenomenon has many parallels, C. 6.4.4 among them. Even the expression

22 Krüger presents this as § 9, but I regard it as the counterpart of the long passage pr.-§ 9 as a whole. Judging from its analysis in the corresponding Basilica text, this passage set out on which grounds patrons were, and had always been, disqualified from the inheritance of their freedmen (BT 2274/30-2276/8). Thalelaeus speaks about this part as a ‘narrative’ (2274/31), as opposed to the ‘legislation’ (2276/9), which starts in § 9.
23 Cf. also Meijering, ‘Anatolius and the Codex’, pp. 146 ff. and § 2.1.4.
24 Unless it was Peter who combined C. 3.10.1 and 2, borrowing, moreover, the addressee Verinus from C. 3.12.1 (486 AD).
25 E.g. C. 1.3.55, which recapitulates C. 1.3.45 § 9; Nov. 7, with recapitulations of C. 1.2.14, 1.2.17 and 1.2.24 § 5: see especially cap. 1 (30 ff. S-K): ἐκέλημ (viz. a law issued by Leo) γέρα ... κρατεῖν

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vestigiis inhaerentes in Peter’s version has a parallel in just such a context: in C. 6.58.15 Justinian also refers to an earlier constitution, which itself ‘followed in the footsteps’ of the Twelve Tables (pr.): Meminimus antea divinam promulgasse constitutionem, per quam ad vestigia legis duodecim tabularum ... sanximus ... etc. Although some points of this constitution are modified by 6.58.15, it remains valid (§ 1 quam constitutionem in suo robore permanere censemus), hence was included in the Codex (6.58.14); yet it is also paraphrased by Justinian in the introduction to his new law (pr.-§ 1). The one source which specializes in such matters of legal history and propaganda, and which Peter of Cardona must have been acquainted with, is the Institutes of Justinian himself. Indeed we already found the reference to and recapitulation of Zeno’s law on plus petitio in Inst. 4.6.24. It may be worth the trouble, therefore, to investigate to what extent Peter may have used the Institutes as his source. In this context it is noteworthy that the epitome of C. 6.4.4 was first discovered in a manuscript of the Institutes: it was found in the margin of Inst. 3.7.3, where the constitution is paraphrased.

As far as the new, supplementary legislation of Justinian himself is concerned, Peter’s version of C. 3.10.2 does not say anything that is not also found in the Institutes. This is not true, however, of his recapitulation of C. 3.10.1, which is considerably more informative than that in Inst. 4.6.24, or even that in Theophilus’ Paraphrase. Two other places where the Institutes refer to C. 3.10.1, viz. Inst. 4.6.34 and 4.13.10, do not contain the missing information either; we owe our own knowledge of it mainly to the Basilica text (BT 354/7-24). So, despite the similarity of the Institutes to Peter’s epitome, they cannot have been his only source, even if we discarded the statement that he ‘translated from the Greek’. He did not simply compose a Latin text in what he hoped was an imperial style, on the basis of what he knew from Latin sources. Moreover, although the first clause of his epitome is promising enough, the strange, not to say unintelligible wording of what follows also makes it more probable that he indeed translated an only partially understood Greek text. He may have found this quite extensive Greek version in the margin of a manuscript with the Institutes. As for the nature of this text, all we can say is that the index of Thalelaeus is ruled out, since we saw that Peter’s epitome of C. 3.2.2 proper (i.e. without the introduction about 3.2.1) was not based on it.

καὶ κυρίων εἶναι θεσπίζομεν, διόταρ κυήν καὶ προφήθκαμεν κτλ.

26 It was discovered there by Savigny in a manuscript in Göttingen. Bassianus does not say where he found it, but it was, apparently, not at its proper place in the Codex, where Bassianus put it (‘de novo posui’); see D’Ablaing, SZ 9, 1888, pp. 40-41.

27 It requires someone better versed in the language of the glossators to appreciate what Peter’s Latin may indicate about the language of his source. Personally I sometimes need to consult the Basilica in order to follow him at all, especially for the phrase (pr.) tanto tempore ultra constitutum tempus manifesta plus petitione ... expectet: cf. BT 354/9-11 ἐλλαν τοσοῦτον περιμενέτωσαν χρόνον ... ἕσον στοι αὐτοὶ προφθάσας τὴν προθυμίαν ἐπεχείρησαν.
In the case of C. 6.4.4 we only have the testimony of the Institutes (3.7.3 and the other constitutions of that title), Peter of Cardona and the Basilica text (BT 2274/30-2281/12). The constitution is far too long to be dealt with in some detail here, but even so, it is clear that:

- the equivalent of BT 2274/30-2276/8 (pr.-§ 8) is lacking both in the Institutes and in the Latin epitome; among other omissions which these two versions have in common are those of §§ 10a-11a (BT 2276/22-2277/11), 16b (2278/25-28), 17-17a (2279/3-10) and 19 (2279/18-20);

- more positively, the two resemble each other, sometimes to a greater extent than the Basilica, in §§ 9a29 and 10, where Peter of Cardona might almost have summarized the Institutes,30 in 16c31 and 19b;32 he cannot, however, have used the Institutes as his source for restituting §§ 12, 14 and 18, nor for everything following § 19b.

In short, the evidence of C. 6.4.4 corroborates our impression of the interrelation between the various adaptations of C. 3.10.2.

As I said in the beginning of this paper, I am not convinced that we also owe to Peter of Cardona the four anonymous Latin adaptations of Greek constitutions, as Kantorowicz believes. It is true that two of them, C. 3.2.2 and 4, deal with sportulae, the theme we are familiar with from C. 3.10.2, but I consider this a coincidence rather than an argument in favour of Peter’s authorship. In any case we do not know much about them; the only other testimony is the Basilica text. A more promising object for comparison are the versions of C. 3.43.1, one of the two constitutions in the title De aleae lusu et aleatoribus, on dice and other games of chance. Both C. 3.43.1 and 2 were originally issued in Greek, by Justinian. Again we are confronted with two laws dealing with the same subject, the second one being a mere supplement to the earlier one. This supplementary nature of C. 3.43.2 may explain its relative shortness, which is reflected in

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28 There also is a Latin gloss about C. 6.4.4, edited as nr. 94 by L. Chiapelli, ‘La Glossa pistoiese al Codice giustianeo’, in: Memorie della Reale Accademia delle Scienze di Torino, 37 (1885), pp. 36-37 (cf. 15-16). This is another translation from the Greek, ‘de greco sumtum’. More precisely, it is a pre-eleventh-century translation of a Greek scholion on a Greek constitution, as is shown by nota quia (cf. σημειωσαν δρε). See also Conrad/Cohn, p. 120.

29 Inst. 3.7.3 ut, si quidem ... integrum reservavit; Peter ut, si ... in solidum vocetur; cf. BT 2276/11-15.

30 Inst. cum vero ... semotis; Peter si vero ... repellendo; cf. BT 2276/16-22.

31 Inst. sed ad coheredes hoc onus redundaret; Peter quod onus ad heredes redundabit; cf. BT 2278/30 διδότωςαν οἱ ἐκληρονομοὶ

32 Inst. and Peter in capite, non in stirpes; BT 2279/23 οίχί κατὰ σειμᾶν, ἄλλακ προσωπικῶς.
ANATOLIUS AND PETER OF CARDONA

the testimonia. It is also less interesting for my purpose in this paper, and I shall pay little attention to it.

We owe our knowledge about the content of the two constitutions to an interesting variety of Greek and Latin testimonia. This time the Latin text is decidedly the most extensive and informative among them; Krüger honoured it by printing it as the main text of C. 3.43 accordingly. Nevertheless, he denied it the predicate of direct translation from the ἡγητῶν, because it disagreed at certain points with the corresponding Basilica text (BT 2807/9-15 and 16-20, respectively), the Nomocanon (13,29: I 327-328 Rh-P), and C. 1.4.25, ‘locus germinus’ of C. 3.43.1 § 3 in the title about the jurisdiction and responsibility of bishops. Furthermore, we have a summa by Theodorus (BS 3287/13-18) and Balsamon’s commentary at the Nomocanon (I 328-329 Rh-P). I propose to reconsider Krüger’s opinion about the Latin epitome by investigating what elements may be lacking in which of the testimonia and for what possible reasons. Since the Basilica text and scholia hardly add anything, the comparison will focus on the Nomocanon and the Latin version.

Just as in the cases of C. 3.10.2 and 6.4.4, the Latin text is unique in having a beautiful preface worthy of a late-Roman emperor. Justinian explains that he is seriously worried by the social problems that arise from the game of dice. The trouble is that people tend to play it with an insufficient comprehension of the concept of playing (ludentes nec ludum scientes, sed nominationem tantum), hence do not stop in time to prevent enormous financial losses. This leads to blasphemy and falsification33 (pr.). Therefore the emperor forbids gambling (§ 1). This prohibition is obviously the essence of the constitution and it is found in all its testimonia, but with varying details. The Nomocanon and Latin text agree about the invalidity of contracts made in the context of gambling,34 but only the Nomocanon singles out security as a possible case.35 Already paid sums are reclaimable by the gambler himself or his heirs or even, if they should not take action, by local magistrates. In the latter case, the sum must be transferred to a fund for public works.36 This fund is not mentioned by the Latin version here, but it is in the counterpart of C. 3.43.2 § 1.37 Whether we consider this an omission on the part of the Latin author or a reduplication by his Greek colleague, it does not prove much about the source of the translation.

Another, more interesting discrepancy is the following. Although Justinian seems especially concerned with gambling for real money, the Nomocanon informs us that he

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33 Cf. also C.3.43.2 § 2.
34 nulla sequatur condemnation: Nomoc. ὁ ἠγητής εἰς κόστος οὐκ ἀπαυστάται; BT πάντα τὰ ἐν αὐτοῖς συνάλλαγματα ἀνευρέτειν.
35 Nomoc. καὶ ἡ γνωμηνία ἐπὶ κόστῳ ἀσφάλεια ἀκιρός ἐστι, καὶ ἀποδίδοται.
36 'Such as bridges or the paving of roads' (BS 3287/22).
37 et in opus publicum convertat; cf. Nomoc. καὶ δοκιμῇ εἰς ἑργα τῆς πόλεως and, further down, καὶ προσκυρισθήσατα τῶς ἑργας τῶν πόλεως.
does not allow them to be played for ‘chips’ or any other matter ($\eta$ δερμος ληπη) either. Such chips, apparently, took the form of θερμων: lupin seeds. The Latin text does not mention them; instead, it forbids playing neque in specie neque in genere. This evidently does not exclude that the Greek source text did speak of θερμων. Even if the translator was acquainted with the Greek and Latin botanical names, he may not have understood the appearance of lupin in a law about gambling.

In this context we may also compare, if only in order to account for the ‘sports’ in the title of this paper, a cryptical and possibly corrupt phrase which is only preserved in the Latin preface. It says that playing dice is permitted extra operas pugnantibus. Krüger refers to D. 11.5.2 § 1, where ‘playing’ (ludere) for money is contrasted with ‘fighting’ (certare) in racing, throwing the javelin etc., competitions which are primarily held virtutis causa, although prizes may be won. It is certainly tempting to hypothesize that this contrast between playing games and competing in sports recurs in lusus ... pugnantibus concessa. Yet I have to confess that I still do not understand the phrase, not even with Krügers emendation of circa for extra.

According to § 3 of C. 3.42.1, the local bishops are authorized to investigate these matters, in co-operation with several civil servants. We are lucky enough to possess the Greek text of C. 1.4.25 in the Collectio 25 capitulorum. Not all discrepancies, however, between this text and the Latin version of C. 3.43.1 § 3 can be blamed on the latter; Tribonian’s committee probably adapted the original text of the constitution to the different contexts of C. 1.4.25 and C. 3.43.2. Thus, C. 1.4.25 emphasizes the responsibility of the bishop.

In § 4 an exception is made for five specific games. At this point the Latin adaptor evidently, and understandably, was not capable to translate his source. Instead he resorted to a mere transliteration of the strange, Greek names, which we also find in the Nomocanon version; if Balsamon is right, they refer to the sports of D. 11.5.2. For our purpose it is more interesting to notice the change of style. After the elaborate, highly rhetorical preface and the emphatically imperial clause hac generali lege decernimus, the translator now drily says: Deinde vero ordinat (conj. Krüger: ordinent mss.) quinque ludos. In the next sentence he returns to the first person plural and the

38 Cf. Lewis and Short, A Latin Dictionary, s.v. lupinum (2).
39 Cf. D. 11.5.3
40 The only interpretations that occur to me, one with and the other without the emendation and both equally far-fetched, are that dice would be permitted (1) in a competition (pugnantibus) where the prize is the performance of a certain ‘job’ on behalf of the winner, or (2) where the outcome of the game is not put into effect.
42 Γινώσκε ότι το μονοθόλον λέγεται το δρόμος, κοινομονοθόλον το πήδημα κτλ. (I 329 Rh-P). Balsamon was less sure of his interpretation of the ‘wooden horses’ in C. 3.43.2.
43 Cf. BS 3287/13-14 Απαριθμεῖται η προκειμένη διάταξις ε’ παινία & ου κωλύεται τις παίζειν; BT
corresponding grand style, while he sets a limit on the prizes even of these exceptions: 
\textit{sed nemini permittimus} etc. This passage leads in a natural and logical way to the 
epilogue: the emperor wishes to protect the loser from heavy suffering, because the per-
sonal well-being of his subjects is no less important to him than the military and religious 
affairs of the empire \textit{(non solum enim bella bene ordinamus et res sacras, sed et ista)}

This would have made a good conclusion of the law, but the text rather lamely goes 
on to threaten with a fine and to repeat what it has already said in \S 3 about the bishops’ 
license to investigate in co-operation with the worldly magistrates \textit{(interminantem poenam 
transgressoribus, potestatem dando episcopis hoc inquirendi et auxilio praesidum 
shedendi)}. We might have been tempted to delete this last piece of the Latin text as a 
reduplication, possibly under the influence of a gloss in the Greek source text, if it did 
not have a parallel in the Nomocanon. The Nomocanon version of this passage differs on 
two points. First, the governors \textit{(δραχωντες, cf. praesides)} are indeed responsible for 
enforcing this law, but the Nomocanon does not mention the bishops here. Second, the 
fine is imposed not only on breakers of the law, but also on those who allow it to be 
broken by others \textit{(τοῖς παραβαίνονσιν ἡ συγχωροῦσα παραβαίνεισθαι)}. These last 
words show that there exists a direct connection between the fine and the question of 
who is to enforce the law. The Latin translator obviously misinterpreted the appearance 
of the verb \textit{συγχωρεῖν} (or a synonym) in his source under the influence of \S 3, where a 
similar expression must have been used.

We may conclude that the anonymous author of the Latin version of C. 3.43.1 very 
probably used the original, Greek Codex constitution - though not necessarily in a 
wholly correct form - which he may have found at its proper place in a Codex manu-
script. He conscientiously attempted to translate it into Latin. It is true that he was not 
entirely successful; his translation displays several gaps in comparison with its coun-
terpart in the Nomocanon, and not all of the discrepancies can be explained as additions in 
the Nomocanon version. However, the factor that determined the limitations of this Latin 
version was of a linguistic nature. The translator had few problems with the rhetorical 
passages, in particular the prologue and epilogue. The places where he transliterated his 
source, paraphrased it \textit{(ordinat)}, or skipped a difficult word \textit{(θερμίως)}, are precisely

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\textsuperscript{44} Cf. BT 2807/14-15 \textit{δέκα λιτρών ἑπτάμιον ὑδρίζουσα κατὰ τῶν συγχωροῦντων παραβαθήναι τὴν 
διάταξιν}.

\textsuperscript{45} See C. 1.4.25 \textit{ἀδόσιον δίδομεν καὶ τοῖς θεοφαλεστάτοις ἔπισκόποις καὶ ἄνθρωπῳ καὶ κτλ.; cf. 
Nomoc. τῶν ἑπισκόπων ἄδοσιν ἐγὼν τεῦτα ἱζτεῖν κτλ.; BT 2807/10-12 ἐπιτρέπουσα καὶ τῷ 
ἐπάρχῳ τῆς πόλεως καὶ τοῖς ἐρχομοι τῶν ἑπισκόπων καὶ τοῖς ἑπισκόποις ἱζτεῖν κτλ.}
those points where it is understandable that his knowledge of Greek should fail him. If the source he translated had been some Byzantine adaptation of the ἴητον, the gaps would have reflected the legal irrelevance of their contents.

If this conclusion is correct, and if it is also right to assume that the Greek sources translated by Peter of Cardona were not the original texts of C. 3.10.2 and 6.4.4, it would be an argument against Kantorowicz’s opinion that Peter of Cardona was the author of all six Latin translations that we know. The translated Greek text of C. 3.43.1 appears to have been closer to the original Codex constitution than that of C. 3.10.2. This difference between the translated sources may have been reflected by the dissimilar places where they were found: one, possibly, in the margin of a manuscript with the Institutes, the other in a Codex manuscript. It was a stroke of luck that one of those rare bilingual twelfth-century Western jurists should have chanced upon some rare Greek Codex fragments. We do not need to increase the degree of coincidence by assuming that these were in two different manuscripts. Instead, it appears that Peter of Cardona had a fellow translator about whom we know nothing at all, but some of whose work has been preserved in manuscripts dating from the thirteenth century at the earliest.

As for Peter, once Pope Alexander III had met this churchman and jurist, perhaps in Montpellier, and had made him a cardinal, he certainly made use of his services elsewhere too. It seems, then, that we are indebted to this pope, and especially to his negotiations with the Byzantine emperor Manuel I, for bringing Peter into contact with the Greek language, with Greek-speaking interpreters and Greek legal texts. Even if Peter was not quite of the stature of his contemporary Burgundio of Pisa, his career must have been more adventurous than is shown by his being praised as a ‘great jurist and decent man’ in the necrology of Vich in his native county.

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46 Perhaps he was not quite sure about the titles of the ἐπαρχος (τῆς θᾶλως), ἐφαρμός (τῶν ἐπαρχῶν), ἐκδικός and περίγραμα (cf. BT and Nomocanon) either, speaking only of praesides (§§ 3 and 4 i.f.; cf. also C. 3.43.2 § 1 procurator noster).

47 About Greek in Western Europe before the Renaissance, see e.g. Nigel G. Wilson, Scholars of Byzantium, London 1983, pp. 209-217; id., From Byzantium to Italy: Greek studies in the Italian Renaissance, Baltimore 1992, 1-2; on Burgundio’s translation of Greek fragments in the Digest, see Troje, pp. 14-16, with further references.
