

ΔΙΑΙΡΕΣΙΣ

ICb 2 and the Incorporation of Justinian's Novels into the Text of the Basilica

1. Introduction

ICb 2 is a partial index titulorum of the Basilica. It covers the first nine books of this compilation of laws and is transmitted in cod. Coisl. gr. 151, a manuscript dating from the first half of the fourteenth century. The core of the index itself goes back to the later ninth century and predates the period between 886 and 899. ICb 2 saw its editio princeps only very recently.¹

In its original and purest form, ICb 2 divided the text of B. 1 - B. 9 into titles and enumerated their respective sources: the index simply indicated which provisions from Justinian's legislation made up the text of any given title of the first nine books of the Basilica. Within each of those titles, ICb 2 also listed Basilica chapters, always marked by the phrase κεφάλαιον 'chapter':² each reference to a κεφάλαιον indicated the beginning of a new series of fragments derived from one particular Digest title, of a new set of constitutions stemming from one particular title from the Code, or of a new series of text units originating from one particular Novel.³ When one particular Digest fragment is referred to, ICb 2 uses the designation δίγεςτον, or rather its abbreviation διγ.⁴ Individual constitutions from the Code are referred to by the phrase διάταξις, again in an abbreviated form, viz. διατ.⁵ In references to Justinian's Novels in ICb 2, we come across the term διαίρεσις, followed by one or more numbers in Greek.⁶ The most current meanings of this

¹ On cod. Coisl. gr. 151 - which also hands down the text of B. 1 - B. 9 and the Index Coislinianus, an index covering all sixty books of the Basilica -, and on its dating, cf. L. Burgmann / M.Th. Fögen / A. Schminck / D. Simon, *Repertorium der Handschriften des byzantinischen Rechts*. Teil I: Die Handschriften des weltlichen Rechts (Nr. 1 - 327), [Forschungen zur byzantinischen Rechtsgeschichte, Band 20], Frankfurt / M. 1995, No. 202. On ICb 2, cf. Th.E. van Bochove, 'Index titulorum. Merely Table of Contents or Ἀρχὴ σὺν Θεῶ τῶν Βασιλικῶν?', *SG VI* (1999), 1-58; on the date of the index, cf. § 9 of the latter article. The edition of the text of ICb 2 is to be found in § 10. In what follows, ICb 2 will be quoted after line.

² On the phrase κεφάλαιον in ICb 2, cf. Van Bochove, 'Index titulorum', § 6 with n. 45, § 8 and § 10.

³ On the general features of ICb 2, cf. Van Bochove, 'Index titulorum', § 8; Th.E. van Bochove, 'Ἐπιγραφὴ. Zur Entstehung der Titelrubriken der Basiliken', *SG VI* (1999), 59-75, in particular § 1. Cf. ICb 2, 88-89: Βιβ. α' τῶν Διγ. τιτ. γ' διγ. λα' 'Book 1 of the Digest, title 3, digeston 31'.

⁴ Cf. e.g. ICb 2, 28-29: Βιβ. α' τοῦ Κωδ. τιτ. ζ' διατ. γ' 'Book 1 of the Code, title 6, constitution 3'. Cf. also ICb 2, 30-31, 33-34, 113-114, etc.

⁶ We encounter the term διαίρεσις in ICb 2, 36-37 (Nov. 37, with the numbers 2, 3, 4 and 5); ICb 2, 38-39 (Nov. 131, with the numbers 20, 21, 22, 23 and 24); ICb 2, 42 (Nov. 42, with the number 2); ICb 2, 103 (Nov. 66, with the number 1); ICb 2, 116 (Nov. 123 j^o. Nov. 137, with the numbers 9-65); ICb 2, 119 (Nov. 3, with the numbers 1, 2 and 3); ICb 2, 129 (Nov. 57, with the numbers 1 and 2); ICb 2, 132-133 (Nov. 5, with the number 1); ICb 2, 135 (Nov. 123, with the number 66); ICb 2, 148 (Nov. 119, with the number 9); ICb 2, 198 (Nov. 128, with the number 27); ICb 2, 199 (Nov. 161, with the number

term are ‘divisibility’, ‘division’, ‘distinction’, ‘distribution’, etc.⁷ In the English translation of the text of ICb 2, however, *διαίρεσις* has always been rendered by the phrase ‘section’. Of course, one could wonder about the reason of this rendering. Or to put this question into the right perspective: what is the exact meaning of the term *διαίρεσις* in the context of the references to Justinian’s Novels in ICb 2?

2. *Διαίρεσις versus ἡ ὅλη νεαρά*

Many references to the Novels are specified by the addition of the phrase *ἡ ὅλη νεαρά* ‘the entire Novel’.⁸ The latter phrase indicates, that the entire text of the Novel concerned was part of the relevant Basilica title, or rather, that the entire text of the Novel concerned should be adopted into the relevant Basilica title.⁹ The contrast between the phrase *ἡ ὅλη νεαρά* on the one hand and the term *διαίρεσις* with the addition of one or more numbers on the other hand seems to indicate, that *διαίρεσις* refers to a formal subdivision of the text of Justinian’s Novels. The source references to the Digest and the Code in ICb 2 suggest the same: phrases like Βιβ. α’ τῶν Διγ. τιτ. γ’ διγ. λα’ and Βιβ. α’ τοῦ Κωδ. τιτ. ς’ διατ. γ’ seem to have the same value as for instance Νε. ρκη’ *διαίρεσις* κζ’ ‘Novel 128, section 27’.¹⁰ If the phrase *διαίρεσις* indeed refers to a formal subdivision of the text of Justinian’s Novels, the question arises as to which text of the Novels, or rather, which collection of Novels we are dealing with. Before we can pursue this point any further, however, we must establish whether or not the term *διαίρεσις* itself may indeed allude to an individual text unit of restricted size, viz. a section or paragraph, a meaning not attested in the lexica.¹¹

2); ICb 2, 203 (Nov. 95, with the number 2); ICb 2, 435 (Nov. 119, with the numbers 4 and 5); and, finally, ICb 2, 439 (Nov. 134, with the number 15).

⁷ Cf. e.g. H.G. Liddell / R. Scott / H. Stuart Jones, *A Greek English Lexicon*, Oxford 1940⁹ (repr. Oxford 1977) (with a Supplement, Oxford 1996²), s.v.; G.W.H. Lampe, *A Patristic Greek Lexicon*, Oxford 1961 (twelfth impression, Oxford 1995), s.v..

⁸ The phrase *ἡ ὅλη νεαρά* - or merely (*ἡ*) *ὅλη* - occurs in ICb 2, 44-45 (Nov. 109); ICb 2, 48 (Nov. 144); ICb 2, 51 (Nov. 146); ICb 2, 109-110 (Nov. 113); ICb 2, 111 (Nov. 114); ICb 2, 122-123 (Nov. 16); ICb 2, 137-138 (Nov. 133); ICb 2, 147 and 149 (Nov. 120); ICb 2, 205-206 (Nov. 17); ICb 2, 207-208 (Nov. 149); ICb 2, 431 (Nov. 93); and, finally, ICb 2, 436-437 (Nov. 126).

⁹ This last remark is inspired by the nature of the ultimate original of ICb 2: the index (and other indices as well, for that matter) serving as an editorial list for the compilation of the text of the Basilica; on this issue, cf. Van Bochove, ‘Index titulorum’, § 1 and § 9.

¹⁰ Cf. the notes 4 and 5 above, and ICb 2, 198.

¹¹ See e.g. LSJ and Lampe. The use of *διαίρεσις* as a technical term is widespread. In palaeography, e.g., *διαίρεσις* (or its transcription diaeresis) refers to a mark of division in the form of a double dot placed over ι and υ; cf. e.g. R. Barbour, *Greek Literary Hands, A.D. 400 - 1600*, [Oxford Palaeographical Handbooks], Oxford 1981 (repr. 1982), xxix; E.M. Thompson, *An Introduction to Greek and Latin Palaeography*, Oxford 1912, 63. In the Byzantine legal literature of the sixth century, the *διαίρεσις* - as equivalent of the Latin *distinctio*, i.e. ‘distinction’, ‘differentiation’ - served as a mode of interpretation, for instance in Thalelaios’s commentary on the Justinian Code; cf. D. Simon, ‘Aus dem Kodexunterricht des Thalelaios. A. Methode’, *SZ* 86 (1969), 334-383 (347-354). More specific

3. *Διαίρεσις* in Byzantine legal literature

Modern literature on Byzantine books and 'Buchwesen' offers small assistance in the above matter: no explicit reference seems to be made to the term *διαίρεσις* denoting a text unit of limited size.¹² What we do find, however, is the verb *διαίρῶ*: in antiquity this verb was sometimes apparently used in connection with activities in an editorial context.¹³ Moreover, Byzantine legal literature presents clear examples of the term *διαίρεσις* denoting a text unit. Three examples chosen at random may suffice.

3.1 *Garidas*

The first example occurs in a reference to the work of Garidas. This lawyer, who lived and worked during the reign of emperor Constantine X Doukas (1059 - 1067),¹⁴ wrote a *βιβλίον περὶ ἀγωγῶν κατὰ στοιχεῖον*, viz. a commentary on legal actions, characterized by an alphabetical arrangement.¹⁵ A number of fragments from and allusions to this commentary has been preserved via the *Basilica scholia*.¹⁶ One of these scholia contains a quotation from - in the words of the scholiast - the fourth *διαίρεσις* of the entry *πάντα* under the letter Π of Garidas's commentary. The relevant passage of the scholion reads: Ἀνάγνωθι τὸν Γαριδᾶ ἐν τῇ δ' τῶν συμφώνων διαίρεσει τοῦ Π στοιχείου, ἔνθα φησὶν ἐπὶ τῶν στρίκτων ἢ ἐπερώτησις τίττει τὸν τόκον, ἐπὶ δὲ τῶν καλῆ πῖσει τὸ ὀφρῖμιον τοῦ δικαστοῦ, καὶ τὰ λοιπά.¹⁷ 'Read Garidas in the fourth *διαίρεσις* of the (entry) 'contracts'

meanings - with reference to the relevant places in classical and patristic Greek literature - may be found in the lexia mentioned in n. 7 above, under the entry *διαίρεσις*.

¹² Cf. (the indices of) e.g. B. Atsalos, *La terminologie du livre-manuscrit à l'époque byzantine*. I^{re} partie: Termes désignant le livre-manuscrit et l'écriture, [Ἑλληνικά. Περιοδικὸν Σύγγραμμα Ἑταιρείας Μακεδονικῶν Σπουδῶν. Παράρτημα, 21], Θεσσαλονίκη 1971; *Byzantine Books and Bookmen. A Dumbarton Oaks Colloquium, 1971*, Washington D.C. 1975; R. Devreesse, *Introduction à l'étude des manuscrits grecs*, Paris 1954; V. Gardthausen, *Griechische Palaeographie*. I: Das Buchwesen im Altertum und im byzantinischen Mittelalter, II: Die Schrift, Unterschriften und Chronologie im Altertum und im byzantinischen Mittelalter, Leipzig 1911-1913² (indices compiled by B. Noack, Amsterdam 1983); D. Harlfinger, [ed.], *Griechische Kodikologie und Textüberlieferung*, Darmstadt 1980; H. Hunger, *Schreiben und Lesen in Byzanz. Die byzantinische Buchkultur*, [Beck's Archäologische Bibliothek], München 1989; Thompson, *Introduction*.

¹³ Cf. Th. Birt, *Das antike Buchwesen in seinem Verhältniß zur Literatur mit Beiträgen zur Textgeschichte des Theokrit, Catull, Properz und anderer Autoren*, Berlin 1882 (repr. Aalen 1959), 459-461 with further references.

¹⁴ On Garidas, cf. e.g. P.E. Pieler, 'Byzantinische Rechtsliteratur', in: H. Hunger, *Die hochsprachliche profane Literatur der Byzantiner*, II, [Handbuch der Altertumswissenschaft, XII,5,2], München 1978, 467; A. Schminck, *Studien zu mittelbyzantinischen Rechtsbüchern*, [Forschungen zur byzantinischen Rechtsgeschichte, Band 13], Frankfurt / M. 1986, 42 with the notes 145 and 146, and 43; M.Th. Fögen, 'Byzantinische Kommentare zu römischen Aktionen', *FM VIII* (1990), 215-248 (244-246).

¹⁵ On this commentary, and on its title, cf. BS 1623/34 - 1624/1; Pieler, 'Rechtsliteratur', 467; Fögen, 'Kommentare', 244.

¹⁶ Cf. Fögen, 'Kommentare', 244 n. 38.

¹⁷ BS 1622/3-6 (sch. Pa 6 ad B. 23,3,1). The phrase τῶν συμφώνων (or rather σύμφωνα) featuring as entry under the letter Π appears somewhat peculiar, but can easily be explained. In all probability, the

under the letter Π, where he says: In actions of strict law a stipulation brings about interest, in actions of good faith, however, the duty of the judge, and so forth'. Despite its small size, the fragment from Garidas's βιβλίον περὶ ἀγωγῶν clearly demonstrates, that a διαίρεσις can perfectly consist of concrete text, or to put it otherwise: that the term is indeed capable of designating a text unit of restricted size, viz. a paragraph.¹⁸ Moreover, the above passage may also serve to illustrate a logical step in the - probable - evolution of the meaning of the term διαίρεσις, viz. from 'thematical distinction' (purely concerning content) to 'location where the distinction is dealt with'.

3.2 Athanasios of Emesa

The second example occurs in a short passage in the work of Athanasios Scholastikos of Emesa, who lived in the second half of the sixth century.¹⁹ Athanasios aimed at facilitating the consultation of the Novels of Justinian, which in those days made up the bulk of the imperial legislation used in legal practise. By means of supplying basic information and of bringing down the Novels to their bare essentials, he wished to provide lawyers with a systematic introduction into the subject matter of those Novels, without having the intention to substitute them. In order to achieve his aim, Athanasios divided the Novels known to him - viz. the Novels of Justinian and Justin - into 22 thematically arranged titles. In their turn, the titles were subdivided into διατάξεις or constitutions, each one of which consisted of an entire Novel. The constitutions were again subdivided into smaller units: κεφάλαια or chapters. Athanasios partly created these chapters himself, and partly adopted them from his exemplar: the Collection of Novels used by him for the compilation of his book. This was how Athanasios's Syntagma of the Novels of Justinian originated.²⁰

entry originally read *πάκτα* - Latin for contracts -, but was later replaced by its Greek equivalent *σύμφωνα*. Apparently, the main entries of Garidas's commentary were Latin words, written either in Latin or in Greek transliteration. BS 1622/17-18 (sch. Pa 9 ad B. 23,3,1) refers to the same fragment from Garidas's βιβλίον περὶ ἀγωγῶν. Pa = cod. Paris. gr. 1348 (beginning of the thirteenth century); RHBR, I, No. 161.

¹⁸ Garidas himself used the phrase διαίρεσις apparently in a more technical sense. For the benefit of emperor Constantine X Doukas (already referred to in the main text), he wrote an expert opinion on the differentiation between unintentional and premeditated murder under the heading διαίρεσις περὶ φόνων; cf. BS 3747/1 - 3748/10 (sch. Pe 4 ad B. 60,39,3); Pieler, 'Rechtswissenschaft', 467 with n. 227; Fögen, 'Kommentare', 244 with n. 37; Simon, 'Kodexunterricht', 353. Pe = cod. Paris. gr. 1350 (twelfth century); RHBR, I, No. 163.

¹⁹ On Athanasios of Emesa in general, cf. D. Simon / Sp. Troianos, [edd.], *Das Novellensyntagma des Athanasios von Emesa*, [Forschungen zur byzantinischen Rechtsgeschichte, Band 16], Frankfurt / M. 1989, VII - XXIV (further references in n. 1 on p. VII).

²⁰ For all this, and especially for the arrangement of Athanasios's Syntagma into titles, constitutions and chapters, cf. Simon / Troianos, *Novellensyntagma*, VIII - XI; D. Simon, 'Einführung in die justinianischen Novellen', *RJ* 4 (1985), 122-132 (123-126); D. Simon, 'Zitate im Syntagma des Athanasios', *FM* VI (1984), 1-18 (1-8); D. Simon, 'Das Novellenexemplar des Athanasios', *FM* VII (1986), 117-140 (140, referring to Athan. 10,2,25 and 10,2,44).

What has come down to us is the second, revised edition of this work, written between May 572 and August 577. The second edition contains important supplements and improvements. As it is, many Justinian Novels suffer from a lack of systematic cohesion: in many cases, they are not concerned with one specific item, but deal with a multitude of very heterogeneous and highly divergent subjects. In view of the thematic structure of the Syntagma, this would have led to the fragmentation of individual Novels, and the subsequent dispersion of minor text portions from those Novels over the various titles of the Syntagma. Athanasios, however, had no wish to meddle with the Novels in that way; on the contrary, he rather wanted to avoid the division of the Novels over the individual titles of his Syntagma. In order to achieve this, he provided most titles with annotations, or in his own words: τὰ παράτιτλα τοῦ τίτλου 'the parallel titles of the title'. These parallel titles can be defined as notes on any given title of the Syntagma. As regards contents, the parallel titles refer to other titles of the Syntagma and the Novels included there: those Novels contain rulings concerning the same subject matter as the one dealt with in the main title to which the relevant paratitlon belongs. As regards form, there are two types of paratitla: they either merely refer to a certain aspect of the Novel alluded to, or they provide the text of the ruling to be found in the Novel concerned.²¹ In the second edition of his Syntagma, Athanasios also came up with an additional, twenty-third title, provided with its own rubric: Περὶ διαφόρων ἀναγνωσμάτων 'On various places' (viz. in the text of the Syntagma). Athanasios's remarks in this last title are of the same nature as the regular paratitla to most of the 22 titles of the first edition, and can be looked upon as paratitla to the Syntagma in its entirety.²²

In Athan. 3,2,3, then, we read: (...) τῶν εἰρημένων ἐν τῇ προτέρῃ διαίρεσει περὶ τῶν μετανοούντων Σαμαρειτῶν καὶ ἐνταῦθα κρατούντων.²³ '(...) what has been said in the previous section concerning the repentent Samaritans, shall be valid here as well'. The phrase τῶν μετανοούντων Σαμαρειτῶν in this passage clearly refers to the clause ὁ Σαμαρείτης μετὰ ταῦτα Χριστιανὸς γενόμενος from the preceding chapter. The relevant passage from this chapter - Athan. 3,2,2 - reads as follows: "Ἴσθι δὲ ὅτι ὁ ἀποκλειόμενος Σαμαρείτης μετὰ ταῦτα Χριστιανὸς γενόμενος τὸ οἰκεῖον ἀπολαμβάνει μέρος παρὰ τοῦ

²¹ For all this, cf. Simon, 'Einführung', 124-125; Simon / Troianos, *Novellensyntagma*, IX; D. Simon, 'Paratitla Athanasii', *FM* VII (1986), 141-159 (141-145, and 156-157). It should be noted, that the addition of the paratitla to the second edition of the Syntagma, though likely enough, is not completely certain; cf. the above literature.

²² Cf. Simon, 'Paratitla', 157-159; Simon / Troianos, *Novellensyntagma*, IX; cf. also Sp. Troianos, 'Zum Aufbau des Titels Περὶ διαφόρων ἀναγνωσμάτων im Syntagma des Athanasios', in: L. Burgmann / M.Th. Fögen / A. Schminck, [edd.], *Cupido legum*, Frankfurt / M. 1985, 235-244.

²³ Athan. 3,2,3 (Simon / Troianos, 126/14-15). As the passage quoted originates from the third title of the Syntagma, it occurs in the *Collectio Tripartita* as well: the first three titles of Athanasios's Syntagma constitute the third part of the *CollTrip*. The passage under discussion appears in *CollTrip*. III,3,2,3 (ed. N. van der Wal / B.H. Stolte, *Collectio Tripartita. Justinian on Religious and Ecclesiastical Affairs*, Groningen 1994, 159/10-11). On the third part of the *CollTrip*., cf. Van der Wal / Stolte, *Collectio Tripartita*, XXXIV - XXXV.

Χριστιανοῦ συγγληρονόμου, τοὺς ἐν μέσῳ ζημιούμενος καρπούς.²⁴ ‘You should know, however, that the Samaritan, though initially being barred (viz. from intestate succession), but having become Christian afterwards, will receive his own share from his Christian co-heir, but will lose the fruits drawn in the meantime’. In using the phrase ἐν τῇ προτέρᾳ διαιρέσει, Athanasios evidently alluded to the preceding chapter, though it cannot be established with certainty whether or not it concerns a chapter from his Syntagma. It is equally possible, that - via his paraphrase - Athanasios wished to refer to the ruling to be found in the original chapter of the Novel which underlies the chapter from the Syntagma: as we have seen, Athanasios occasionally adopted chapters from his exemplar. This means, that the clause ἐν τῇ προτέρᾳ διαιρέσει either refers to the final text portion of Athan. 3,2,2 (in the edition of Simon and Troianos), or to the ruling concerning repentent Samaritans contained in Nov. 129, c. (2 and) 3 (in the edition of Schöll and Kroll).²⁵ In cross-references within his Syntagma, Athanasios apparently used the term κεφάλαιον in order to denote the smallest text unit.²⁶ In view of this, the phrase διαίρεσις in the passage quoted above is most probably nothing more than an equivalent of the term κεφάλαιον. But again it is clear, that the term διαίρεσις designates a concrete text unit of limited size.

3.3 *The younger Anonymos / Enantiophanes*

Our third and final piece of evidence occurs once more in the Basilica scholia. This time, it concerns a passage derived from the work of the younger Anonymos / Enantiophanes. The true name of the lawyer thus designated remains shrouded in the veil of obscurity: the indication Anonymos / Enantiophanes can obviously not be regarded as a real name.²⁷ The Enantiophanes produced paragraphai on the Digest (or, rather, the Summa of the Digest composed by the elder Anonymos and underlying the text of the Basilica), which survive in the Basilica scholia. Apart from these paragraphai, he also compiled the Nomocanon XIV Titulorum. He may also be held responsible for the Collectio Tripartita: on the basis of a comparison of the elder Anonymos’s Digest Summa in the CollTrip., in the Nomocanon and in the Basilica text, B.H. Stolte has suggested, that the CollTrip. was

²⁴ Athan. 3,2,2 (Simon / Troianos, 126/5-8). Athan. 3,2,2 underlies CollTrip. III,3,2,2 (Van der Wal / Stolte, 158/22-159/3).

²⁵ Cf. Simon / Troianos, 126/8; R. Schöll / G. Kroll, [edd.], *Novellae*, [Corpus Iuris Civilis. Editio stereotypa secunda, vol. III], Berlin 1899 (many reprints), 648/40 - 649/7. (Schöll / Kroll = SK).

²⁶ Cf. again Simon, ‘Zitate’, 1-2.

²⁷ On the identity of the younger Anonymos / Enantiophanes, cf. now N. van der Wal, ‘Wer war der “Enantiophanes”?', *TRG* 48 (1980), 125-136 (125-127 with further references).

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composed by the younger Anonymos / Enantiophanes.²⁸ All the Enantiophanes's works originated in the period between 577 - 620.²⁹

The term *διαίρεσις* occurs in one of the Enantiophanes's *paragraphai* - i.e. notes - on the Digest. In the prolegomena to his edition of the *Basilica*, Heimbach observed that the Enantiophanes distinguished *διαίρέσεις* - here apparently again to be taken as equivalent of *κεφάλαια* - within individual titles of the Institutes of Justinian³⁰ - or, rather, Theophilos's Paraphrase of the Institutes. Heimbach based himself on three testimonies, viz. sch. Τοῦ Ἐναντιοφ. II 25, sch. Anon. Κἄν ζῶντος IV 94 and sch. Anon. Περί IV 290.³¹ Of these scholia, the latter two have to be disregarded. Even in Heimbach's own edition, the scholion Κἄν ζῶντος bears no heading, so its attribution to the Anonymos / Enantiophanes is not beyond all doubt.³² To make things worse, the Groningen *Basilica* edition demonstrates, that what Heimbach considered to be one scholion are in truth (parts from) no less than four different scholia. The first sentence of Heimbach's text, starting with Κἄν ζῶντος, is in fact the final portion of a scholion containing a fragment from the work of the lawyer Cyril: that scholion bears the heading Κυρίλλου.³³ Sch. Anon. Περί IV 290 is less problematic: the Groningen edition confirms, that we are here indeed dealing with one single scholion. However, in both Heimbach's and the Groningen edition the scholion

²⁸ Cf. Van der Wal, 'Enantiophanes', 125-129; B.H. Stolte, 'The Digest Summa of the Anonymus and the Collectio Tripartita, or the Case of the Elusive Anonymi', *SG* II (1985), 47-58; Van der Wal / Stolte, *Collectio Tripartita*, XV n. 10, XXI and XXXII. On the CollTrip. in general, cf. Van der Wal / Stolte, *Collectio Tripartita*, XIII-LVIII; cf. also n. 23 above.

²⁹ Cf. e.g. H.J. Scheltema, 'Das Kommentarverbot Justinians', *TRG* 45 (1977), 307-331 (313-314); Pieler, 'Rechtsliteratur', 435-436; Van der Wal, 'Enantiophanes', 127-129 and 135; N. van der Wal / J.H.A. Lokin, *Historiae iuris graeco-romani delineatio. Les sources du droit byzantin de 300 à 1453*, Groningen 1985, 48, 63-65, 66-67 and 130-131; Stolte, 'Digest Summa', 47-48; Van der Wal / Stolte, *Collectio Tripartita*, XVIII-XXI and XXXII.

³⁰ Cf. C.W.E. Heimbach, *Basilicorum libri LX*. Vol. VI,1: Prolegomena, Leipzig 1870 (repr. Amsterdam 1962), 21: 'Anonymus et Enantiophanes in titulis Institutionum distinguunt διαίρέσεις vel κεφάλαια'. It is quite remarkable that Heimbach - rather confusingly - continued to distinguish between the Anonymos and the Enantiophanes, despite the fact that he accepted Zachariä's view regarding the identity of the Anonymos / Enantiophanes; cf. Heimbach, Prolegomena, 15: 'Egregie Zachariae de L. probavit, Anonymum et Enantiophanem unum esse Iureconsultum'.

³¹ Cf. Heimbach, Prolegomena, 21 n. 2. The indications II 25, IV 94 and IV 290 refer to the volume- and pagenumber of Heimbach's *Basilica* edition.

³² Cf. C.W.E. Heimbach, *Basilicorum libri LX*. Vol. IV, Leipzig 1846, 94. Heimbach attributes the scholion to the Anonymos in his manuale; cf. C.W.E. Heimbach, *Basilicorum libri LX*. Vol. VI,2: Manuale, Leipzig 1870, 304.

³³ The new edition of Heimbach's text, accompanied by corrections, may be found in the following scholia: BS 2407/23-24 (sch. Pb 1 ad B. 41,1,5); BS 2408/10-11 (sch. Pb 6 § ad B. 41,1,5); BS 2407/28-29 (sch. Pb 3 ad B. 41,1,5) and BS 2408/8-9 (sch. Pb 5 § ad B. 41,1,5). The sequence of the scholia mirrors the sequence of the text portions in Heimbach's scholion. Pb = cod. Paris. gr. 1345 (twelfth / beginning of the thirteenth centuries); RHBR, I, No. 158.

lacks an inscription, so in this case, too, the attribution to the Anonymos / Enantiophanes is not completely certain.³⁴

What remains, then, is Heimbach's third testimony, viz. sch. Τοῦ Ἐναντιοφ. II 25. Both Basilica editions present this scholion as a single, independent text unit and provide it with the same heading. The text of the scholion - of course quoted after the Groningen edition - reads in its entirety: Τοῦ Ἐναντιοφανοῦς. Ἐν τῷ ς' τιτ. τῆς δ' ἰνστιτουτ. ἐν τῇ δ' διαιρέσει ἐξ ἀρνήσεως αὐτοῦ, ὡσπερ τὸν Ἀκουίλιον, λέγει διπλασιάζεσθαι, οὐ μὴν καὶ χωρὶς ἀρνήσεως· καὶ ἔστιν ξένον καὶ ἀλλαχοῦ μὴ εἰρημένον.³⁵ 'Of the Enantiophanes. In the sixth title of the fourth book of the Institutes, in the fourth section the author says, that on denial the action,³⁶ as the *lex Aquilia*, is doubled, though certainly not so without denial: and this is new and not stated anywhere else'. In this quotation, the phrase 'the action' is a brachylogy, of course: it stands for 'the fine ultimately resulting from the sentence in the *actio depositi*'. The phrase '*lex Aquilia*' is short for 'the fine ultimately resulting from the sentence in the action based on the *lex Aquilia*'.

More important for the subject matter of the present article is the mention of the fourth διαιρέσις. Heimbach observed, that the διαιρέσεις or κεφάλαια mentioned in the Basilica scholia alluded to do not correspond with our paragraphs - apparently the paragraphs in the edition(s) of (Theophilos's Paraphrase of) the Institutes. He then identified the phrase ἐν τῷ ς' τιτ. τῆς δ' ἰνστιτουτ. ἐν τῇ δ' διαιρέσει as a reference to Inst. 4,6,23: it is this paragraph that mentions the *actio depositi in duplum* and the *actio ex lege*

³⁴ Heimbach's sch. Anon. Περί IV 290 = BS 2634/18-20 (sch. Pb 4 ad B. 42,4,1). Attribution to the Anonymos: Heimbach, *Manuale*, 249.

³⁵ BS 637/21-23 (sch. Ca 3 ad B. 13,2,1). The present scholion is quoted almost verbatim, and commented on in a scholion occurring in another Basilica manuscript, viz. P (= cod. Paris. gr. 1352; cf. n. 94 below). The relevant part of this scholion reads (BS 672/25-28 (sch. P 2 ad B. 13,2,1)): Ὁ μὲν Ἐναντιοφανῆς φησιν, ὡς ἐν τῷ ς' τιτ. τῆς δ' τῶν Ἰνστιτούτων ἐν τῇ δ' διαιρέσει ἐξ ἀρνήσεως τὴν δεποσίτου διπλασιάζεσθαι περιέχεται, οὐ μὴν καὶ χωρὶς ἀρνήσεως. Ἐἶτα ἐπάγει, ὅτι καὶ ἔστι ξένον καὶ ἀλλαχοῦ μὴ εἰρημένον. 'The Enantiophanes says, that in the sixth title of the fourth book of the Institutes, in the fourth section, it is written, that on denial the *actio depositi* is doubled, though certainly not so without denial. He then puts forward, that it is new and not stated anywhere else'. There is no way of either identifying the author of the P scholion or determining its date. We can only be certain, that it was written after the compilation of the text of the Basilica, as the scholion repeatedly refers to this text; cf. e.g. BS 672/28, 673/1-3.

³⁶ The Basilica manuscript Ca (= cod. Coisl. gr. 152 (second half of the twelfth century); RHBR, I, No. 203), f. 115^v reads αὐτοῦ. This reading ought to be preferred in terms of the *lectio difficilior* maxim. However, I have translated an accusative αὐτήν (sc. τὴν ἀγωγὴν; cf. BT 720/6-10) for the following reasons: (1) διπλασιάζεσθαι requires a noun or pronoun as subject-accusative in the *accusativus cum infinitivo* clause which depends on λέγει; (2) ὡσπερ τὸν Ἀκουίλιον, evidently featuring as parallel, requires a counterpart - in the accusative - of which it is the parallel; (3) the P scholion reads in BS 672/26 ἐξ ἀρνήσεως τὴν δεποσίτου διπλασιάζεσθαι. If, however, one prefers to stick to the reading αὐτοῦ, one would have to supplement a subject pertaining to διπλασιάζεσθαι, for instance 'the fine'; αὐτοῦ might then refer to the defendant in the *actio depositi*. This would result in the translation 'on denial of the defendant, as in the *lex Aquilia*, (the fine) is doubled'.

Aquilia in duplum.³⁷ Heimbach's identification requires some comment. Inst. 4,6,23 does indeed mention both actions,³⁸ but it would appear that this paragraph cannot be the one alluded to by the Enantiophanes, as the paragraph lacks one essential item, viz. the reference to denial on the part of the defendant. However, the Greek counterpart of Inst. 4,6,23 does contain this very reference, albeit only in connection with the *actio ex lege Aquilia*.³⁹ The difference between Inst. 4,6,23 and Theoph. 4,6,23 is less fundamental than it might seem, and can easily be explained. It should not be forgotten that Theophilus's Paraphrase - originating from the period between November 20th 533 and November 15th 534 - is not a verbal translation of Justinian's Institutes. Rather, it is the written form of Theophilus's lecture notes produced during the latter's Greek course in Justinian's Institutes. The Paraphrase may even have been edited by one of the antecessor's students.⁴⁰ It is quite possible, that Theophilus (or his student) inadvertently anticipated a more elaborate treatment of the *actiones in duplum*, including the *actio ex lege Aquilia*. Justinian dealt with these actions somewhat further down in the same title, viz. in paragraph 26. This paragraph contains the reference to denial in connection with both the *actio depositi* and the *actio ex lege Aquilia*.⁴¹ In using the phrase ἐν τῷ ζ' τιτ. τῆς δ' ἰνστιτουτ. ἐν τῆ δ'

³⁷ Cf. Heimbach, Prolegomena, 21 n. 2 i.f.: 'Hae διαιρέσεις vel κεφάλαια paragraphis nostris non respondent. Nam (...) de actione depositi in duplum nonnumquam concepta, uti de legis Aquiliae actione, de qua Enantiophanes loquitur, § 23 Inst. IV,6'.

³⁸ Cf. Inst. 4,6,23: *In duplum agimus veluti furti nec manifesti, damni iniuriae ex lege Aquilia, depositi ex quibusdam casibus*: (...) 'Our action is for twofold, for instance, in the action for non-manifest theft, for wrongful damage under the *lex Aquilia* and in certain cases of deposit; (...) ' (transl. by J.A.C. Thomas, *The Institutes of Justinian. Text, Translation and Commentary*, Amsterdam / Oxford 1975, 287).

³⁹ Cf. Theoph. 4,6,23: Εἰς διπλοῦν δὲ, οἷον ἢ furti nec manifesti καὶ ἢ τοῦ Aquiliu ἐξ ἀρνήσεως καὶ ἢ depositi ἐστὶν ὅτε... (ed. E.C. Ferrini, *Institutionum graeca paraphrasis Theophilo Antecessori vulgo tributa*, II, Berlin 1897 (repr. Aalen 1967), 429/8-10). 'But (the action) is for twofold, for instance, in the action for non-manifest theft, in the action *ex lege Aquilia* on the ground of denial, and sometimes in case of deposit (...)'. A new critical edition of Theophilus's Paraphrase is being worked on at the Department of Legal History of Groningen University. Until the completion of that edition, Ferrini's edition remains the one to be consulted, despite its flaws and shortcomings.

⁴⁰ For all this, cf. e.g. H.J. Scheltema, *L'enseignement de droit des antecessors*, [Byzantina Neerlandica. Series B: Studia. Fasciculus I], Leiden 1970, 17-21; J.H.A. Lokin, 'Theophilus Antecessor. I. The Codex Messanensis, hodie Kilianus. II. Was Theophilus the author of the Paraphrase?', *TRG* 44 (1976), 337-344; Pieler, 'Rechtsliteratur', 419-421. On the genesis of the text of the Paraphrase, cf. most recently G. Falcone, 'La formazione del testo della Parafraasi di Teofilo', *TRG* 68 (2000), 417-432. Falcone connects the genesis of the Paraphrase with Theophilus alone.

⁴¹ Cf. Inst. 4,6,26: (...) *: at illae, id est damni iniuriae ex lege Aquilia et interdum depositi, infitiatione duplicantur, (...)*. '(...) but the others, i.e. that on the *lex Aquilia* for wrongful damage and sometimes that on a deposit, become twofold against a defendant who denies the claim (...) ' (transl. Thomas, 287). Theoph. 4,6,26 (ed. Ferrini, II, 431/12-14): (...) ὁ δὲ aquiliu καὶ ἢ depositi ἐπὶ τῶν εἰρημένων θεμάτων κατὰ μὲν τῶν ἀρνούμενων διπλασιάζονται, (...). 'But the action *ex lege Aquilia* and the *actio depositi* in the above mentioned cases are doubled against defendants denying the claim, (...) '.

διαϊρέσει, the Anonymos / Enantiophanes must have referred to what is now paragraph 26 of Theoph. 4.6.⁴²

Again it is clear, that the term διαϊρσεις denotes a concrete text unit, in this case a text portion from Theophilos's Paraphrase. It is of course impossible to be more specific as to the identity of the διαϊρέσεις, even though they do not concur with the (modern) numbered paragraphs: as a subdivision of the individual titles into numbered paragraphs is missing in the manuscripts of both the Institutes⁴³ and the Paraphrase,⁴⁴ it is non-Justinianic in origin. The Enantiophanes may have consulted a copy of Theophilos's Paraphrase written in uncial script.⁴⁵ This uncial copy may have contained a subdivision of the text into smaller text units (διαϊρέσεις) strongly deviating from the present day paragraphs. This might explain the difference between 'our paragraphs' - Heimbach's terminology - on the one

⁴² *Contra* Van der Wal, 'Enantiophanes', 134, who argued that quotations from or allusions to the Institutes by the Anonymos / Enantiophanes are so infrequent, that he definitely cannot have used Theophilos's Paraphrase. It may be true, that quotations are infrequent - Heimbach, Prolegomena, 21 with n. 2 and 32 refers to only three testimonies, two of which disqualify -, but I cannot disregard the evidence of BS 637/21-23 (supported by BS 672/25-28; cf. n. 35 above), even if this scholion might prove to be the only one containing a quotation on the Enantiophanes's part.

⁴³ Cf. L. Wenger, *Die Quellen des römischen Rechts*, [Österreichische Akademie der Wissenschaften. Denkschriften der Gesamtakademie, Band 2], Wien 1953, 610 with n. 136 (§ 82, I, 6 c), 599 n. 208 (§ 81, VIII, 3) and 118 n. 104 (§ 40, II, 11). On being asked, B.H. Stolte kindly consulted microfilms of the codd. Bamberg. D II 3 (ninth or tenth century) and D II 4 (eleventh or twelfth century); neither manuscript contains numbered paragraphs, though one of them shows the beginning of a - possibly - thematic arrangement into smaller text portions. On the manuscripts of the Institutes in general, cf. Wenger, *Quellen*, 609 (§ 82, I, 6 a); cf. also H.L.W. Nelson, *Überlieferung, Aufbau und Stil von Gai Institutiones*, [Studia Gaiana, Volumen VI], Leiden 1981, 185-186 n. 6.

⁴⁴ What we do find are small text units, whose beginnings are marked by slightly protruding capital letters or initial word(s): this division may be thematic in origin. There is no fixed system: some manuscripts of the Paraphrase contain hardly any markings as described above, others provide text units of the above type more abundantly. By courtesy of my close colleague Roos Meijering, I have consulted specimens of the codd. Athon. Μεγίστη Λαύρα E 178 (fifteenth century; RHBR, I, No. 30), Mes-sanensis, hodie Kilianus K.B. 157 (second half of the eleventh / beginning of the twelfth centuries; RHBR, I, No. 89), Paris. gr. 1364 (eleventh century; RHBR, I, No. 179), and Paris. gr. 1366 (end of the tenth / beginning of the eleventh centuries; RHBR, I, No. 181). The manuscripts are completely void of numbered paragraphs. On the manuscripts of Theophilos's Paraphrase in general, cf. RHBR, I, p. 463.

⁴⁵ I have adopted the term 'uncial script' from Barbour's study *Greek Literary Hands*, though Barbour herself remarked (Introduction, p. xvi), that the word 'uncial' is not very aptly used. However, she continued to use the term 'uncial', because it lacks both a precise definition and a satisfactory alternative. In the more recent German literature on Greek palaeography, one comes across the term 'majuscule script', used as an alternative, or rather, the substitute of 'uncial script'; cf. e.g. H. Hunger, 'Handschriftliche Überlieferung in Mittelalter und früher Neuzeit; Paläographie', in: H.-G. Nesselrath, [ed.], *Einleitung in die griechische Philologie*, [Einleitung in die Altertumswissenschaft], Stuttgart / Leipzig 1997, 26-27. I use the term 'uncial' on the understanding that it denotes the same basic idea as 'majuscule', viz. the type of script as opposed and used prior to the 'minuscule script'.

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hand and the Enantiophanes's διαίρεσεις on the other,⁴⁶ but even then problems remain. First, there is no way of proving that the Enantiophanes actually did use an uncial copy. Second, if he did, it is impossible to determine in what way the subdivision into διαίρεσεις referred to came into being, and what it exactly looked like: the Enantiophanes may have found an already existing subdivision in his exemplar, or he may have 'invented' it himself, for his own convenience's sake. Likewise, it is impossible to establish whether or not the subdivision consisted of numbered διαίρεσεις: it may also concern a thematic arrangement of the text of the Paraphrase into smaller portions, whose beginnings were marked by e.g. protruding capital letters or initial words. The evidence is too scanty and too weak to draw any firm conclusion. All that matters, however, is the fact that the term διαίρεσις refers to a text portion of restricted size.

4. Διαίρεσις and the Novels of Justinian

In the §§ 1 - 2 of the present article, it has been pointed out, that in ICb 2 many references to the Novels of Justinian are specified by the addition of the phrase ἡ ὅλη νεαρά, whereas others are accompanied by the phrase διαίρεσις. In its turn, the term διαίρεσις is followed by one or more numbers in Greek. It has been argued, that references to individual, i.e. numbered διαίρεσεις seem to have the same value as the source references to individual Digest fragments and Codex constitutions, and that the contrast between the phrase ἡ ὅλη νεαρά on the one hand and numbered διαίρεσεις on the other hand might indicate a formal subdivision of the text of Justinian's Novels. A more elaborate treatment of this issue has been postponed until now, because we first had to establish whether or not the phrase διαίρεσις itself might allude to an individual section or paragraph. The latter question has been answered affirmatively, so in this respect there is no objection to starting from the premise that in ICb 2 we are indeed dealing with a subdivision of the text of the Novels of Justinian. The remaining question is: which collection of Justinian's Novels are we dealing with in ICb 2? What it comes down to, is, that the extant subdivisions of every known collection of Novels, be it complete or fragmentary, have to be checked, in order to find correspondence - if any - with the numbered διαίρεσεις of the Novels in ICb 2. In what follows, one important remark should be borne in mind. The original text of Justinian's Novels did not contain chapter numbers that were added by the imperial legislator. Any numbering of chapters that has reached the present day ultimately goes back to the compilers of the collections of Novels of which we have direct or indirect knowledge.⁴⁷

⁴⁶ Cf. Heimbach, *Prolegomena*, 21 n. 2 i.f.: 'Quaenam alia titulorum subdivisio a paragraphis nostris diversa ab Anonymo et Enantiophane intelligatur, dici nequit, cum ignoremus, quam Institutionum graecam versionem uterque ante oculos habuerit'.

⁴⁷ On this, cf. N. van der Wal, 'Die Textfassung der spätrömischen Kaisergesetze in den Codices', *BIDR* 83 (= terza serie 22) (1980), 1-27 (18-20). On the collections of Novels in general, cf. now the summary by N. van der Wal, *Manuale Novellarum Justiniani. Aperçu systématique du contenu des Nouvelles de Justinien*, Groningen 1998², XI-XVI. In modern literature up to 1989, reference was made to two highly fragmentary and elusive adaptations of Justinian's Novels, compiled by a certain

4.1 *The Schöll-Kroll edition*

The first and most well known subdivision of the text of the Novels is, of course, the one into numbered chapters occurring in the standard edition of the *Collectio CLXVIII Novellarum* prepared by Schöll and Kroll. Sadly enough, it must immediately be disregarded. For, this subdivision into numbered chapters is not based on manuscript evidence: Schöll and Kroll adopted it from earlier editions of the Novels. It first occurred in the edition of Contius which was published in Lyon in the year 1571. In dividing the text of the Novels into chapters, Contius may have used Julian's Latin Epitome of Justinian's Novels.⁴⁸ What we need are subdivisions into numbered text units which have been preserved via manuscripts, be it partially or completely.

4.2 *The codd. Marc. gr. 179 and Laurent. plut. 80.4*

Traces of such a subdivision have actually been preserved. The text of the *Collectio* has mainly come down to us via two manuscripts, viz. cod. Marc. gr. 179 (dating from the end of the twelfth / beginning of the thirteenth centuries) and cod. Laurent. plut. 80.4 (dating from the second half of the thirteenth century).⁴⁹ Furthermore, in establishing the text of a number of Novels, Schöll and Kroll could also rely on the testimony of cod. Ambros. L 49 sup. (dating from the twelfth century).⁵⁰ Both the Marcianus and the Laurentianus show traces of a subdivision of the Novels into numbered chapters.⁵¹ This subdivision is very rudimentary indeed: the number of Novels provided with chapter numbers is very restricted, the Marcianus and the Laurentianus do not always cover the same Novels, and, if they do, they do not always come up with the same chapter numbers. Despite these

Symbatios and a certain Philoxenos. Symbatios's adaptation has proved to be a phantom, Philoxenos's may have existed - date of compilation unknown -, but essentially seems to have been nothing more than 'a contaminative "plagiarism" of the works of Athanasios of Emesa and Theodore of Hermoupolis'; cf. L. Burgmann, 'Die Novellenbearbeitungen von Symbatios und Philoxenos - Phantome oder Plagiate?', *RJ* 8 (1989), 343-351 (346 and 351); Van der Wal, *Manuale*, XIII n. 12.

⁴⁸ Cf. F.A. Biener, *Geschichte der Novellen Justinians*, Berlin 1824 (repr. Aalen 1970), 373-376 and 397-402; P. Noailles, *Les collections de nouvelles de l'empereur Justinien*. II: La collection grecque des 168 nouvelles, Paris 1914, 52; Van der Wal, 'Textfassung', 20 with n. 36. On Contius (Le Conte, 1517-1586), cf. e.g. H.E. Troje, *Graeca leguntur. Die Aneignung des byzantinischen Rechts und die Entstehung eines humanistischen Corpus iuris civilis in der Jurisprudenz des 16. Jahrhunderts*, [Forschungen zur neueren Privatrechtsgeschichte, Band 18], Köln / Wien 1971, 353 (index).

⁴⁹ On the Marcianus, cf. RHBR, I, No. 296; SK, p. VIII-X. On the Laurentianus, cf. RHBR, I, No. 67; SK, p. X. For a complete listing of all manuscripts handing down (parts of) the Novels, cf. RHBR, I, p. 408-409.

⁵⁰ On the Ambrosianus, cf. SK, p. X-XI; Sp. Troianos, 'Die Collectio Ambrosiana', *FM* II (1977), 30-45; Simon / Troianos, *Novellensyntagma*, XVIII. A description of the Ambrosianus is lacking in RHBR, I.

⁵¹ On this subdivision, cf. Van der Wal, 'Textfassung', 20 with n. 33. In their edition, Schöll and Kroll have taken the existence of chapter numbers in the manuscripts into account. It should be noted, however, that they have supplemented a good deal of numbers: when (Greek) chapter numbers are placed between angle brackets < >, this means, that the numbers in question do not occur in the manuscripts.

inconsistencies, the chapter numbers in the Laurentianus and the Marcianus share a common origin.⁵² Besides the two most important manuscripts, the Ambrosianus would seem to contain traces of a subdivision into numbered chapters as well.⁵³

There is only one case in which numbers of διαιρέσεις in ICb 2 can be compared directly with chapter numbers in the manuscripts handing down the *Collectio*, viz. Nov. 3.⁵⁴ On this Novel, ICb 2 remarks: Νε. γ' περι τοῦ ὠρισμένον εἶναι τὸν ἀριθμὸν τῶν κληρικῶν τῆς μεγάλης ἐκκλησίας Κωνσταντινουπόλεως διαίρεσις α', β', γ'.⁵⁵ 'Novel 3: the number of clerics of the Great Church of Constantinople is limited; sections 1, 2, 3'. In cod. Laurent. plut. 80.4, Nov. 3 is accompanied by two chapter numbers, viz. β' and γ'.⁵⁶ According to ICb 2, Nov. 3 belongs to B. 3, but the index fails to specify the relevant title.⁵⁷ What ICb 2 considers to be the ensemble of the διαιρέσεις α', β' and γ' of Nov. 3, takes up the entire second title of the text of the third book the *Basilica*, viz. BT 104/5 - 107/18. This *Basilica* text portion is exactly identical with the total sum of the chapters α', β' and γ' of Nov. 3 in the manuscripts transmitting the *Collectio* CLXVIII *Novellarum*, i.e. the text unit to be found in SK 20/9 - 23/39. Thus, the subdivision of Nov. 3 into διαιρέσεις which occurs in ICb 2 corresponds exactly with the subdivision of the Novel into numbered chapters occurring in the Marcianus and the Laurentianus. Moreover, the

⁵² Novels with chapter numbers (in Greek) preserved in the Marcianus: Nov. 1 (chapter numbers 2, 3, 4, 5, 7); Nov. 2 (chapter numbers 1, 3); Nov. 5 (chapter number 7); Nov. 6 (chapter numbers 4, 5, 6, 7, 11, 13, 14, 16, 17, 18, 19); Nov. 7 (chapter numbers 2, 5, 6, 9, 10, 11); Nov. 8 (chapter numbers 1, 2, 3, 5, 6, 8, 9, 10, 12, 14); Nov. 13 (chapter number 1); Nov. 17 (chapter number 13); list provided by Noailles, *Les collections*, II, 49. Novels with chapter numbers (again in Greek) preserved in the Laurentianus: Nov. 1 (chapter numbers 2, 3, 6, 7, 8, 9); Nov. 3 (chapter numbers 2, 3); Nov. 4 (chapter number 1); Nov. 8 (chapter numbers 1, 2, 3, 8, 11, 15); Nov. 17 (chapter numbers 2, 13); Nov. 19 (chapter number 1); Nov. 22 (chapter number 19); Nov. 41 (chapter number 1); Nov. 115 (chapter numbers 1, 11, 12); list presented by Noailles, *Les collections*, II, 132. Common origin: Noailles, *Les collections*, II, 133.

⁵³ In SK, Nov. 12 has preserved the following (Greek) chapter numbers: 2, 3, 4, 5, 6, 8, 9, 10. These numbers occur in the Ambrosianus; cf. SK 95 app. ad l. 13 β'. Noailles, however, observed that the Ambrosianus does not contain the text of the original Collection of 168 Novels, and that the chapters occurring in that manuscript derive from the author of the collection preserved in the Ambrosianus; cf. Noailles, *Les collections*, II, 49 n. 1 and 52. To be more precise: in cod. Ambros. L 49 sup., Nov. 12 constitutes title 8 of the *Collectio* Ambrosiana; the chapter numbers do not pertain to the original text of the Novel, but to title 8 of the *Collectio* Ambrosiana; cf. Troianos, 'Collectio Ambrosiana', 37 with n. 27. Thus, the testimony of the Ambrosianus must be disregarded.

⁵⁴ I have based my findings on a comparison of Noailles's lists quoted in n. 52 above with the numbered διαιρέσεις of the Novels occurring in ICb 2, as listed in n. 6 above.

⁵⁵ ICb 2, 117-119.

⁵⁶ Cf. SK 21/21 and 23/23; Noailles, *Les collections*, II, 132. According to Noailles, Nov. 3 would lack chapter number α' altogether. However, SK 20/9 does present chapter number α' without angle brackets, so this number ought to be present in at least one of the manuscripts. It does not occur in the Ambrosianus: Nov. 3 belongs to title 2 of the *Collectio* Ambrosiana, and this title omits a counting of chapters; cf. Troianos, 'Collectio Ambrosiana', 36 with n. 19. Chapter number α' occurs in the Marcianus on f. 84^v.

⁵⁷ Cf. ICb 2, 112 and 117-119.

διαρρέσεις α', β' and γ' of Nov. 3 in ICb 2 are also in complete accordance with the modern chapters 1, 2 and 3 of the Novel in the edition of Schöll and Kroll.

One instance of agreement is insufficient to draw any conclusion concerning the origin and the identity of both the subdivision of the Novels into διαρρέσεις in ICb 2 and the subdivision of the Novels into numbered chapters which occurs in the manuscripts. Moreover, this particular case of correspondence can easily be explained. Van der Wal has observed, that the chapter division of the Novv. 3, 4 and 5 in the edition of Schöll and Kroll is identical with the chapter division in the manuscripts, to which he added, that the latter division results almost compulsively from the contents of the Novels concerned.⁵⁸ In other words, it is the contents of the Novv. 3, 4 and 5 that dictate the division into chapters: thus, the contents of the Novels concerned can be held responsible for the correspondence between the chapter division in the edition of Schöll and Kroll and the chapter division which occurs in the manuscripts. The correspondence between the subdivision of Nov. 3 into διαρρέσεις in ICb 2 and the subdivision of the Novel into numbered chapters in the Marcianus and the Laurentianus can be explained along the same lines: it simply results from the contents of Nov. 3. This strongly reduces the evidential value of the only instance in which direct comparison is possible.

The division of the Novels into numbered chapters which occurs in the manuscripts transmitting the *Collectio CLXVIII Novellarum* must be abandoned altogether. Attention has already been drawn to the fact that this division is very rudimentary. Noailles described the traces of this chapter division preserved in the Marcianus and the Laurentianus as traces of an abortive attempt, restricted to some of the first Novels in the entire *Collectio*.⁵⁹ It is exactly this restriction that prohibits any further comparison with the subdivision of the Novels into διαρρέσεις in ICb 2, for the latter division covers Novels throughout the entire *Collectio*.⁶⁰

4.3 *The Authenticum*

Our next candidate is the Authenticum, or rather, the Greek collection of Novels underlying the Authenticum. The Authenticum itself is a Latin *κατὰ πόδα* translation, used as an auxiliary for Latin students in the Latin course on Justinian's Greek Novels, this course being part of Justinian's system of legal education as taught by the antecessores. The Authenticum stems from a bilingual collection of Novels: the Latin text was written between the lines of the Greek original, in such a way that every Latin word corresponded exactly with the Greek word right below it. At a moment which can no longer be specified, the Authenticum was detached from its original: scribes started to copy only the Latin text.

⁵⁸ Cf. Van der Wal, 'Textfassung', 20 n. 35.

⁵⁹ Cf. Noailles, *Les collections*, II, 52.

⁶⁰ E.g., ICb 2, 38-39 mention the διαρρέσεις κ', κα', κβ', κγ' and κδ' of Nov. 131. This Novel lacks chapter numbers in both the Marcianus and the Laurentianus, and so on.

The Authenticum must have originated shortly after May 556: the most recent law incorporated into the Authenticum is Novel 134, dating from May 1st 556.⁶¹

With regard to the διατάξεις of the Novels in ICb 2, the Authenticum and its Greek original disqualify as candidates for comparison, for a number of reasons. First, the Authenticum contains translations of 'only' 134 Novels. ICb 2 quotes Novels which do not occur in the Authenticum: the index alludes to the Novv. 126, 135, 144, 149 and 161, the Authenticum omits all of these. Second, both numbers and rubrics of Novels which do occur in ICb 2 and in the Authenticum are at variance with one another. 44 Novels make their appearance in both ICb 2 and the Authenticum: of these 44, no less than 27 bear different numbers; the deviations occur from ICb 2, Nov. 37 onwards.⁶² As to the rubrics:⁶³ two examples may suffice. In ICb 2, Novel 42 is accompanied by the rubric Περί ἐπισκόπων ἀναθεματισθέντων 'Anathematized bishops'. In the Authenticum, this Novel bears the number 43. The rubric reads: *De depositione Anthimi, Severi, <Petri>, et Zoorae* 'On the deposition of Anthimus, Severus, <Peter> and Zooras'. In ICb 2, Novel 146 bears the heading: Περί Ἑβραίων πῶς δεῖ τὰς γραφὰς ἀναγινώσκειν 'Hebrews, how to read the Scriptures'. In the Authenticum, Novel 146 is numbered as Novel 124. Its rubric reads: *Ut liceat Hebraeis secundum traditionem legere sacras scripturas Latine vel Graece vel alia lingua, et ut de locis suis expellantur non credentes iudicium vel resurrectionem vel angelos esse creaturam* 'Hebrews are allowed to read the Holy Scriptures in accordance with their tradition, in Latin, Greek or another language. Those who do not believe in the Last Judgement, the Resurrection, or that Angels are creatures, shall be expelled from their homes'.⁶⁴ Third, it is unlikely, that the text of the Novels in the Authenticum and in its original was ever subdivided into numbered chapters: the oldest manuscripts of the Authenticum lack such a division.⁶⁵

⁶¹ For all this, cf. e.g. Van der Wal / Lokin, *Delineatio*, 45 and 126; Pieler, 'Rechtswissenschaft', 410 and 425-426; Scheltema, *L'enseignement*, 52-57; H.J. Scheltema, 'Subseciva. XI: Das Authenticum', *TRG* 31 (1963), 275-279; D. Holwerda, 'Fouten in het Authenticum', in: R. Feenstra / J.H.A. Lokin / N. van der Wal, [edd.], *Flores legum H.J. Scheltema antecessori Groningano oblata*, Groningen 1971, 115-119 (repr. and translated into German by S.L. Radt, in: J.H.A. Lokin / S.L. Radt / B.H. Stolte, [edd.], *Exempla Philologica. Vier Aufsätze von D. Holwerda*, Groningen 2000, 17-21).

⁶² Regarding the numbers of the Novels in the individual collections, I have based myself on a concordance appearing at the end of the present article. The concordance is used throughout the remainder of this article.

⁶³ With regard to rubrics, I have restricted myself to a comparison of the rubrics of a selection of 25 Novels, viz. those Novels which in ICb 2 are specified by either the term διατάξεις or the phrase ἡ ἄλλη νεογρά (cf. the notes 6 and 8 above), and their respective counterparts in the individual collections of Novels. It should be noted, that only major deviations have been taken into account: minor textual divergencies may always be explained as the work of individual scribes or the compilers of the collections. The preceding applies both here and in the remainder of this article.

⁶⁴ On Novel 42 / Auth. 43, cf. ICb 2, 41-42 and SK 263/9-11; on Novel 146 / Auth. 124, cf. ICb 2, 50-51 and SK 714/7-12. Obviously, the Latin rubrics have to be regarded as literal translations from their Greek original. The examples quoted in the main text can easily be multiplied; cf. e.g. Nov. 57 / Auth. 57 (ICb 2, 127-129; SK 312/15-24); Nov. 66 / Auth. 68 (ICb 2, 101-103; SK 340/2-8), and so forth.

⁶⁵ Cf. Noailles, *Les collections*, II, 51; Van der Wal, 'Textfassung', 20 with n. 38.

4.4 The antecessor Julian's *Epitome latina*

A fourth possible candidate for comparison appears via the work of the antecessor Julian. This antecessor gave a Latin course on Justinian's Greek Novels for an audience consisting of students whose mother tongue was Latin. The most important of Julian's writings is his completely preserved Latin index of the Greek Novels, known under the title *Juliani Epitome latina Novellarum Justiniani*. In the *Epitome*, the Novels are referred to as *constitutiones*. Apart from his *Epitome*, Julian also produced two sets of paragraphai or notes. The first of these is known under the name *Scholia anonyma in constitutiones aliquot*: it is incomplete. The second - complete - set consists of short comments which are known as *Paratitla*. The relation between the *Scholia* and the *Paratitla* remains unclear. In his teachings, Julian may also have used a Latin *κατὰ πόδας*, much like the *Authenticum*, though not the *Authenticum* itself: the *Epitome Juliani* predates the *Authenticum*, or rather, the Greek collection underlying the *Epitome* predates the Greek original of the *Authenticum*. Julian lectured in Constantinople in the year 555/556.⁶⁶

As to the *Epitome latina*,⁶⁷ it, too, must be disregarded. The reasons for this partly coincide with those mentioned in relation to the *Authenticum*. First, the *Epitome latina* covers 124 Novels. Again, ICb 2 alludes to Novels which do not occur in the *Epitome* (and in its Greek original): the *Basilica index* mentions the Novv. 37, 114, 132, 133, 134, 135, 144, 145, 146, 149 and 161, the *Epitome latina* omits all of them. Second, 38 Novels appear in both ICb 2 and the *Epitome latina*: all 38 Novels bear different numbers.⁶⁸ Rubrics do not qualify for comparison: the *Epitome latina* does contain rubrics, but these belong to the individual chapters of the *Epitome* and not to the Novels in their entirety.⁶⁹

⁶⁶ On Julian and his writings, cf. e.g. Van der Wal / Lokin, *Delineatio*, 44-45 and 126; Pieler, 'Rechtswissenschaft', 410-411 and 425-426; Scheltema, *L'enseignement*, 47-52; H.J. Scheltema, 'Subseciva. XIII: Die *Epitome Novellarum Iuliani*', *TRG* 31 (1963), 282-284. New edition of the *Paratitla*: N. van der Wal, 'Die *Paratitla* zur *Epitome Juliani*', *SG* II (1985), 93-137. On the relation between the *Epitome* and the *Authenticum*, cf. Van der Wal / Lokin, *Delineatio*, 45-46; Scheltema, *L'enseignement*, 57-60; H.J. Scheltema, 'Subseciva. XII: Die Notiz der Codd. Vindobon. lat. iur. civ. 19 und Claustro-Neoburg. 62', *TRG* 31 (1963), 279-282.

⁶⁷ Ultimately, it is Hänel's edition of the *Epitome* that remains to be consulted: G. Hänel, [ed.], *Juliani epitome latina Novellarum Iustiniani*, Leipzig 1873 (repr. Osnabrück 1965). Hänel's text has been reprinted in P. Fiorelli / A.M. Bartoletti Colombo, *Iuliani epitome latina Novellarum Iustiniani*. Secondo l'edizione di Gustavo Hänel e col glossario d'Antonio Agustín, [Legum Iustiniani imperatoris vocabularium], Firenze 1996. The latter work lacks the critical apparatus, the *Paratitla* and the *Scholia anonyma*, but it includes a very detailed and highly useful index.

⁶⁸ For all this, cf. the Concordance.

⁶⁹ Cf. Jul. Epit. lat. const. XXI (p. 43 Hänel): the first chapter - numbered as capit. 68 - is accompanied by the rubric *De officio rectoris provinciae* 'On the office of provincial governor'. The first sentence of capit. 68 reads: *Haec constitutio habet inscriptionem: mandata principis* 'This constitution bears the heading: imperial mandates'. Const. XXI epitomizes Nov. 17 (in the *Collectio CLXVIII Novellarum*); the rubric of this Novel reads: *Mandata principis* (SK 117/12).

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The third reason why the Epitome latina - and its Greek original - cannot be used for comparison with the *διαιρέσεις* of the Novels in ICb 2 concerns the above mentioned chapters. In the Epitome latina, every constitution is subdivided into a number of capitula. These chapters do not recommence with number one at the beginning of every new constitution, but constitute an uninterrupted rising sequence from 1 up to 564 throughout the entire Epitome latina.⁷⁰ The references to the *διαιρέσεις* of the Novels in ICb 2 make clear, that these *διαιρέσεις* restart with number one at the beginning of a new Novel.

4.5 Athanasios's Syntagma

The next possible candidate for comparison is the Syntagma of Justinian's Novels, compiled by Athanasios of Emesa, in combination with the collection of Novels which underlies the Syntagma.⁷¹ We have already seen, that Athanasios structured his Syntagma into titles, *διατάξεις*, and the smallest units: *κεφάλαια* or chapters. There is some evidence, that Athanasios adopted these chapters from his exemplar, at least partly: he sometimes explicitly mentions chapter such and such of constitution so-and-so.⁷² Athanasios does so in 10,2,25: Ἀνάγνωθι τὸ λε' καὶ λς' κεφάλαιον τῆσδε τῆς διατάξεως (...), (...) ὡς ἐν τῷ λς' κεφαλαίῳ φησίν. 'Read chapter 35 and 36 of this constitution (...), (...) like it is stated in chapter 36'. Another instance occurs in 10,2,44: Τὸ τελευταῖον κεφάλαιον συμβουλευτικῶς φησιν ἢ διάταξις (...) 'In its final chapter, the constitution says by way of advice (...)'.⁷³ Athan. 10,2 is based on what is Nov. 22 in the Collectio CLXVIII Novellarum. Sadly, in this one instance it is impossible to compare the chapters of the Novel concerned with *διαιρέσεις* in ICb 2, because Nov. 22 does not occur in this Basilica index. In view of the close relation between ICb 2 and the Index Coislinianus (ICb),⁷⁴ we might theoretically consult the latter index, but this option leads nowhere. Nov. 22 occurs in B. 28,4; 28,5; 28,7; 28,12 and 28,14.⁷⁵ ICb merely observes the occurrence of Nov. 22 in B. 28,4, and omits any mention of *διαιρέσεις*.⁷⁶

⁷⁰ All manuscripts of the Epitome latina have preserved these capitula. They probably already occurred in the Greek collection of Novels underlying the Epitome, but this is not completely certain: the capitula may also owe their existence to Julian himself; cf. Van der Wal, 'Textfassung', 20; Noailles, *Les collections*, II, 51; Biener, *Geschichte*, 59-60.

⁷¹ On Athanasios of Emesa and his Syntagma, cf. § 3.2 above. With respect to a comparison with the *διαιρέσεις* of the Novels in ICb 2, the Collectio Tripartita can be disregarded altogether, as it completely depends on Athanasios's Syntagma: the third part of the CollTrip. is derived from the first three titles of the Syntagma; cf. n. 23 above.

⁷² Cf. again Simon / Troianos, *Novellensyntagma*, X; Simon, 'Novellenexemplar', 140.

⁷³ Athan. 10,2,25 (Simon / Troianos, 320/15 and 28); Athan. 10,2,44 (Simon / Troianos, 330/4). These passages are referred to by Simon, 'Novellenexemplar', 140 n. 55.

⁷⁴ On this issue, cf. Van Bochove, 'Index titulorum', § 4 - § 7.

⁷⁵ Cf. the *Conspectus titulorum legum iustinianarum qui in hoc volumine commentantur* (A IV) after BT 1558; SK 146-187 test..

⁷⁶ Cf. cod. Coisl. gr. 151, f. 7^v, ll. 3-23 (l. 5, left margin); BT 1325 app., 1342 app., 1357 app., 1405 app. and 1413 app..

Athanasios's Syntagma itself does not qualify for comparison. First, ICb 2 alludes to the Novv. 149 and 161: these Novels are omitted in the Syntagma. Second, ICb 2 contains references to 47 other Novels which are also dealt with by Athanasios. However, there is no correspondence whatsoever with regard to the numbers of the Novels in ICb 2 and in the Syntagma: the numbers in the Syntagma - title and constitution - are entirely Athanasios's own.⁷⁷ Third, it is even possible to conclude, that Athanasios's κεφάλαια do not concur with the διαιρέσεις in ICb 2, on the basis of three Novels. Reference has already been made to Nov. 3. ICb 2 refers to the διαιρέσεις α', β' and γ' of this Novel. And we have already seen, that Nov. 3 consists of three text units. Nov. 3 appears in the Syntagma as title 1, constitution 9. In Athan. 1,9, the main body of the text of the Novel - viz. the plain text without rubric, inscription, opening words of the underlying original, and the date - takes up just one text unit, covering Nov. 3, c. 1-2.⁷⁸ The second Novel is Nov. 42. ICb 2 mentions διαίρεσις β' of this Novel. Thus, Nov. 42 consists of at least two text units. Nov. 42 appears in Athan. 1,5. Again, in the Syntagma the main body of the text of the Novel consists of merely one text portion, covering the entire Novel.⁷⁹ The third and final Novel is Nov. 57. Of this Novel, ICb 2 mentions διαίρεσις α' and β'. The text of the Novel therefore contains - at least - two text units. Athanasios deals with Nov. 57 in title 1, constitution 12 of his Syntagma. In Athan. 1,12, the main body of the text of Nov. 57 takes up one text portion.⁸⁰

As to the collection of Novels underlying the Syntagma, it, too, was certainly not used by the compiler(s) of ICb 2. Athanasios's exemplar contained 153 Novels, the most recent of which - viz. Nov. 144 according to the Collectio CLXVIII Novellarum - was issued in 572. For his Syntagma, Athanasios adapted the Novels in his exemplar thoroughly and exhaustively: Novels not dealt with by Athanasios simply did not occur in his exemplar.⁸¹ We have already seen, that the Novv. 149 and 161, which are alluded to in ICb 2, are missing in the Syntagma. Thus, they were also lacking in the collection underlying the Syntagma. Concerning Nov. 161, the reason for this is evident: the Novel was issued in 574. It is unknown, why Nov. 149 - promulgated in 569 - was absent in Athanasios's exemplar.⁸² A second reason why the compiler(s) of ICb 2 can't have used Athanasios's exemplar concerns the numbers of the Novels in that collection, or rather, the absence of numbers in that collection. When Athanasios alludes to Novels, he quotes their incipit (opening words) or rubrics, or mentions their place in his Syntagma. Simon explains this

⁷⁷ For all this, cf. again the Concordance at the end of this article.

⁷⁸ For the case of Nov. 3, cf. ICb 2, 117-119; § 4.2 above; Athan. 1,9 (Simon / Troianos, 58/13-16).

⁷⁹ For the case of Nov. 42, cf. ICb 2, 41-42; Athan. 1,5 (Simon / Troianos, 54/4-10).

⁸⁰ For the case of Nov. 57, cf. ICb 2, 127-129; Athan. 1,12 (Simon / Troianos, 62/5-12). Interestingly, Athanasios himself distinguishes two chapters in the text of his exemplar. Concerning the first, he remarks: Τὸ πρῶτον κεφάλαιον τῆς διατάξεως γενικὸν ἐστι. 'The first chapter of the constitution is universally valid' (62/5). And on the second: Τὸ δεύτερον κεφάλαιον τοπικόν. 'The second chapter has local validity' (62/7-8).

⁸¹ Cf. Simon, 'Novellenexemplar', 117 and 129-135.

⁸² Cf. Simon, 'Novellenexemplar', 130 (absence of Nov. 161), 135 (absence of Nov. 149).

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by arguing that the Novels in the collection underlying the Syntagma lacked numbers altogether.⁸³ In ICb 2, the Novels are invariably accompanied by numbers. A third and final - though in itself not decisive - reason may be derived from the rubrics of the Novels. Athanasios did not personally compose the rubrics of the Novels he dealt with, but adopted them from his exemplar.⁸⁴ The rubrics of the Novels in ICb 2 and in the collection which underlies the Syntagma are at variance with one another. Three examples may suffice. In ICb 2, Nov. 17 is accompanied by the rubric *Περὶ παραγγελμάτων ἀρχόντων* 'Instructions for governors'; in Athan. 4,3, this rubric reads: *Μανδάτα παρεχόμενα σὺν τοῖς κωδικίλλοις τοῖς κατὰ τόπον ἄρχουσιν* 'Mandates (i.e. instructions) issued to the provincial governors, together with their instrument of appointment'. Our second example concerns the rubric of Nov. 114. In ICb 2 it reads: *Περὶ θεῶν κελεύσεων* 'Imperial commands'; its counterpart in Athan. 22,6 reads: *Περὶ τοῦ τᾶς θείας κελεύσεις ὑπογραφήν ἔχειν τοῦ QUAESTOROS* 'Imperial commands require the signature of the quaestor'. Finally, in ICb 2, Nov. 120 bears the heading: *Περὶ ἐκποιήσεως καὶ ἐμφυτεύσεως ἐκκλησιαστικῶν πραγμάτων* 'Alienation and emphyteusis of ecclesiastical assets'; in Athan. 2,2, we read: *Περὶ διαφόρων ἐκκλησιαστικῶν κεφαλαίων* 'Various ecclesiastical subjects'.⁸⁵

4.6 Theodore's *Breviarium* and the *Index Reginae*

The next, and in this case highly interesting candidate for comparison is a Summa of, or rather, companion to the Novels of Justinian, known as the *Breviarium* compiled by the lawyer Theodore (*Breviary* or *Theod.*). In the present paragraph it will be discussed in combination with the so-called *Index Reginae*.

Theodore Scholastikos originated from Hermoupolis in the Thebaid in Upper-Egypt and lived in the second half of the sixth century. He wrote two Summaries. The first of these is a Summa of the Justinian Code, fragments of which have come down to us via the scholia to the Basilica and via some other sources. The second, almost completely preserved Summa is the already mentioned *Breviary* of Justinian's Novels: Theodore compiled it somewhere after the year 575. The *Breviary* lacks a systematical arrangement: Theodore simply adopted both the numbers and the sequence of the Novels in the

⁸³ Cf. Simon, 'Novellenexemplar', 117-122, and 139-140; cf. also Simon / Troianos, *Novellensyntagma*, IX.

⁸⁴ This is very clear from a number of instances in which Athanasios quotes a rubric and ends it with the words *καὶ τὰ ἐξῆς* 'and so forth': the latter phrase clearly shows, that the underlying original contained a longer text; cf. e.g. Athan. 1,12 (Simon / Troianos, 62/2); 1,13 (Simon / Troianos, 62/14); 4,16 (Simon / Troianos, 166/2); and 9,5 (Simon / Troianos, 280/17); cf. also Simon / Troianos, *Novellensyntagma*, IX.

⁸⁵ On Nov. 17 / Athan. 4,3, cf. ICb 2, 205-206 and Simon / Troianos, 144/1. On Nov. 114 / Athan. 22,6, cf. ICb 2, 111 and Simon / Troianos, 484/1. On Nov. 120 / Athan. 2,2, cf. ICb 2, 146-147 and Simon / Troianos, 86/6. More examples can be found in the cases of Nov. 42 / Athan. 1,5 (ICb 2, 41-42; Simon / Troianos, 54/1); Nov. 66 / Athan. 9,5 (ICb 2, 101-103; Simon / Troianos, 280/16-17); Nov. 146 / Athan. 3,5 (ICb 2, 50-51; Simon / Troianos, 130/9-16); and so forth.

Collectio CLXVIII Novellarum. In the Breviary, each summary of a Novel - or of a part of it in case of a long one - is followed by notes styled *παραπομπαί*, viz. cross-references which exclusively refer to parallel texts from the Code and other Novels. The text of Theodore's Breviary was edited by K.E. Zachariä (von Lingenthal); he mainly based himself on one manuscript, the only one to contain the full text of the Breviary: it concerns cod. Athon. *Μεγίστη Λαύρα* Θ 65.⁸⁶ In Zachariä's edition, the individual summaries are mostly subdivided into numbered paragraphs. These numbers owe their existence to Zachariä: they do not occur in the Athonensis. In establishing his paragraphs, however, Zachariä was clearly inspired by the external features of the text of the Breviary in the manuscript. For, in the Athonensis the text of the Novels is subdivided into smaller text units whose beginnings are marked by protrusion of the first letter of the first word. *Παραπομπαί* - if occurring, of course - mark the end of the individual text units. Zachariä's numbered paragraphs show a high degree of correspondence with the text units in the Athonensis, though they do not always concur.⁸⁷

The Index Reginae (IndReg) is a list of the Novels of Justinian, transmitted in cod. Paris. gr. 1349. The text of the Index was edited by (G.E.) Heimbach.⁸⁸ In the IndReg, the Novels bear the same numbers and are enumerated in the same sequence as the Novels in the Collectio CLXVIII Novellarum. However, the rubrics of the Novels in the IndReg do not correspond with those of the Novels in the Collectio. It was Zachariä who observed a strong resemblance between the rubrics in the IndReg on the one hand and those in the *πίναξ τῶν νεαροῶν* 'list of the Novels' which precedes Theodore's Breviary in the Athonensis on the other hand. Like this *πίναξ τῶν νεαροῶν*, Zachariä identified the IndReg as a title index - or rather, an index of rubrics - of Theodore's Breviary.⁸⁹

It is highly interesting to compare the combination of Theodore's Breviary / IndReg with ICb 2, for two reasons. First, the Novels in the Breviary / IndReg show a complete nume-

⁸⁶ For all this, cf. e.g. Van der Wal / Lokin, *Delineatio*, 57-58 and 128-129; Pieler, 'Rechtswissenschaft', 436 with the notes 66-71; Noailles, *Les collections*, I, 181-183; A. Schminck, *ODB*, s.v. Theodore Scholastikos; Van der Wal, *Manuale*, XIV; C.E. Zachariae, *Ἀνέκδοτα*, Leipzig 1843 (repr. Aalen 1969), IX-LXI (prolegomena, *passim*). Edition of the Breviary: Zachariae, *Ἀνέκδοτα*, 1-165. On the Athonensis (dating from the first half of the eleventh century), cf. RHBR, I, No. 31.

⁸⁷ I have consulted a microfilm of the Athonensis. Cf. also Zachariae, *Ἀνέκδοτα*, XXIX-XXX; Van der Wal, *Manuale*, XIV with n. 15; Van der Wal, 'Textfassung', 20 n. 38 i.f.; cf. n. 153 below.

⁸⁸ On the IndReg in general, cf. e.g. Noailles, *Les collections*, II, 182-185; (C.W.E.) Heimbach, Prolegomena, 171; G.E. Heimbach, *Ἀνέκδοτα*, II, Leipzig 1840 (repr. Aalen 1969), LXVI-LXIX; Simon, 'Novellenexemplar', 124 n. 13. Edition of the IndReg: Heimbach, *Ἀνέκδοτα*, II, 237-246. On the Parisinus (dating from the eleventh century), cf. RHBR, I, No. 162. The Parisinus transmits *inter alia* the books 45 - 48 of the Basilica, accompanied by numerous scholia. The IndReg occurs on the ff. 236^v - 238^v (pos. 7, written by hand B).

⁸⁹ Cf. Zachariae, *Ἀνέκδοτα*, XXVI-XXVII and I n. 1. In the Athonensis, the *πίναξ τῶν νεαροῶν* occurs on the ff. 164^r - 167^r, directly preceding and entirely based on Theodore's Breviary, though not compiled by Theodore himself.

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rical correspondence with the Novels in ICb 2.⁹⁰ Second, the IndReg is more than a bare listing of the numbers and the rubrics of the Novels in Theodore's Breviary. The IndReg also provides detailed information if, and where individual Novels occur in the text of the Basilica: the IndReg does so by means of the addition of a large number of notes indicating which (parts of) Novels occur in which book and title - and sometimes even chapter - of the Basilica. In these notes, we come across the phrases οὐδὲ αὕτη κεῖται (indicating that the relevant Novel is lacking in the text of the Basilica), and, more importantly, ἡ ὅλη νεαρά (meaning that the Novel concerned occurs in the text of the Basilica in its entirety). We also meet the term διαίρεσις accompanied by Greek numbers.⁹¹ Thus, at long last we encounter a close parallel with regard to the phrases ἡ ὅλη νεαρά and διαίρεσις in ICb 2. Is it possible to find out the meaning of the phrase διαίρεσις in the IndReg? And if so, does this imply, that we can use the IndReg in order to solve the mystery of the διαίρεσις in ICb 2?

Zachariä dealt with the first of the above questions in the prolegomena to his edition of Theodore's Breviary, though he did so only implicitly. We have already seen, that he identified the IndReg as an index of rubrics of the Breviary on the basis of the strong correspondence between the rubrics in the IndReg and those in the πίναξ τῶν νεαρῶν preceding the Breviary in the Athonensis. Zachariä then hypothesized, that the author of the IndReg used the Breviary rather than the Collectio CLXVIII Novellarum for his purpose, viz. in order to indicate if and where a Novel occurred in the text of the Basilica.⁹² Zachariä returned to the above hypothesis many years later. In 1877, he published a study in which he drew the attention to the value of a number of Byzantine legal sources - among which the Index Reginae -, for both the textual criticism of the Basilica and the restitution of the text of Basilica books which lack direct manuscript transmission. He assessed the value of these sources on the basis of one working example, i.e. by presenting a complete restitution of the text of the first book of the Basilica on the basis of the testimonies from later legal literature.⁹³ Zachariä then made some remarks concerning the

⁹⁰ Cf. again the Concordance at the end of the present article.

⁹¹ For the details, cf. Heimbach, Ἀνέκδοτα, II, 237-246. For a discussion of the notes alluding to the Basilica, cf. the literature on the IndReg quoted in n. 88 above.

⁹² Cf. Zachariae, Ἀνέκδοτα, XXVII: 'Index vero noster (i.e. the πίναξ τῶν νεαρῶν in the Athonensis) rubricas epitomatas CLXVIII Novellarum continens mirum quantum convenit cum Indice Reginae, i.e. Indice Novellarum, quem (...) nuperrime (...) Heimbachius (Ἀνέκδ. To. II) (...) edidit. Unde mihi suspicio est, auctorem huius Indicis, quum notare vellet, quo quaeque Novella loco et an omnino in Basilicis collocata esset, non ipsam CLXVIII Novellarum collationem, sed potius Theodori Breviarium ad collationem instituendam adhibuisse'.

⁹³ For all this, cf. K.E. Zachariä von Lingenthal, 'Beiträge zur Kritik und Restitution der Basiliken', *Mémoires de l'Académie impériale des sciences de St.-Petersbourg*, 7^e série, XXIII, 6, St.-Petersbourg 1877, 1-39 (repr. in: K.E. Zachariä von Lingenthal, *Kleine Schriften zur römischen und byzantinischen Rechtsgeschichte. Sammlung der in Zeitschriften und Serienwerken erschienenen selbständigen Abhandlungen 1840 - 1894*. Band I: 1840 - 1879, [Opuscula. Sammelausgabe seltener und bisher nicht selbständig erschienener wissenschaftlicher Abhandlungen, Band IV/1], Leipzig 1973, 575-613 (1-15 (= 575-589))).

transmission of B. 1 in the manuscripts. The text of B. 1 is handed down by two manuscripts, viz. the codd. Paris. gr. 1352 and Coisl. gr. 151, the latter manuscript being none other than the text bearer of ICb 2. The Parisinus underlies Fabrot's edition of B. 1, the Coislinianus that of Heimbach, who regarded the text transmitted by the latter manuscript as the authentic Basilica text. Regarding the text of B. 1, the two manuscripts deviate from one another, in that the Parisinus presents the text of the Coislinianus in a strongly abbreviated form. Subsequently, Zachariä observed, that the text of the Coislinianus strongly diverged from his restitution. For, in the Codex part of B. 1 the Coislinianus contains constitutions which according to the explicit statement of some testimonies do not belong to the Basilica text. Moreover, the Coislinianus presents constitutions from the Code mostly in their Greek original or in a verbatim Greek translation, whereas the testimonies restrict themselves to quoting Thalelaios's version of the relevant constitution. Zachariä explained these peculiarities of the Coislinianus (or its prototype) as the result of the work of its scribe - being a cleric -, who in accordance with his own purposes would have interpolated the true Basilica text as represented by the testimonies.⁹⁴ Thus, Zachariä regarded his restitution of the text of B. 1 on the basis of the testimonies as the authentic Basilica text. Zachariä's point of view had some far-reaching consequences. For, the editors of the Groningen edition of the Basilica accepted Zachariä's ideas and, consequently, edited the text of the first book of the Basilica on the basis of the testimonies, regarding the texts presented by both the Coislinianus and the Parisinus as spurious.⁹⁵

Zachariä used the IndReg for the final part of his restitution of B. 1: the text of this part originates from Justinian's Novels. Seven Novels make their appearance in the first book of the Basilica, viz. the Novv. 37, 131, 42, 109, 144, 146 and 132, in that sequence. On Nov. 37, the IndReg reads: Λζ'· περι τῶν ἐν Ἀφρικῇ ἐκακλησιῶν. Βιβ. α' τῶν Βασιλικῶν τιτ. <α'> κεφ. με' διαίρεσις β', γ', δ', ε' 'Novel 37: the Churches in Africa. Book 1 of the Basilica, title 1, chapter 45: sections 2, 3, 4, 5'. The lemma IndReg Nov. 131 reads: Πλα'· περι ἐκκλησιαστικῶν κα<νόν>ων καὶ πραγμάτων ἀποκαταστάσεως καὶ ὀρφανοτρόφων. Βιβ. α' τιτ. α' κεφ. μθ' διαίρεσις κ', κα', κγ', κδ' 'Novel 131: ecclesiastical canons, restitution of goods, and orphanages. Book 1, title 1, chapter 49: sections 20, 21, 23, 24'. The lemma IndReg Nov. 42: Μβ'· περι ἐπισκόπων ἀναθεματισθέντων. Βιβ. α' τῶν Βασιλικῶν τιτ. α' κεφ. ν' 'Novel 42: anathematized bishops. Book 1 of the Basilica, title 1, chapter 50'. In the lemma IndReg Nov. 109 we read: Ρθ'· περι αἰρετικῶν. Βιβ. α' τιτ. α'

⁹⁴ For all this, cf. Zachariä von Lingenthal, 'Beiträge', 15-16 (= 589-590); cf. also Schminck, *Studien*, 52-53 with further references. On the Coislinianus, cf. n. 1 above. On the Parisinus 1352 (dating from the beginning of the thirteenth century), cf. RHBR, I, No. 166.

⁹⁵ Cf. H.J. Scheltema / N. van der Wal, [edd.], *Basilicorum Libri LX*, Series A Volumen I: Textus librorum I - VIII, Groningen / Djakarta / 's-Gravenhage 1953, praefatio, p. XI: 'Hoc volumen unum tantum continet librum restitutum, librum I sc. Formam enim qua datur hic liber in codicibus Cb (= Coisl. gr. 151) et P (= Paris. gr. 1352) non genuinam esse demonstravit Zachariae von Lingenthal (...), cuius argumenta hic repetere non opus est. Vulgo eum secuti sumus in restituendo hoc libro, hic illic tantum ab eo dissentimus'.

κεφ. με' ἡ ἄλλη νεαρά 'Novel 109: heretics. Book 1, title 1, chapter 45: the entire Novel'. The lemma IndReg Nov. 144: <Ρμδ'> περι Σαμαρειτῶν. Βιβ. α' τιτ. α' κεφ. να' 'Novel 144: Samaritans. Book 1, title 1, chapter 51'. IndReg Nov. 146 reads: Ρμς' ὅτι δεῖ τοὺς Ἑβραίους ἀναγινώσκειν τὰς γραφὰς καὶ ἔβραιοί. Βιβ. α' τιτ. α' κεφ. νγ' ἡ ἄλλη νεαρά 'Novel 146: Hebrews must read the Scriptures also in Hebrew. Book 1, title 1, chapter 53: the entire Novel'. Finally, the lemma IndReg Nov. 132 reads: Ρλβ' περι αἰρετικῶν. Βιβ. [α' τιτ.] α' κεφ. νδ' ἡ ἄλλη νεαρά 'Novel 132: heretics. Book 1, title 1, chapter 54: the entire Novel'.⁹⁶ In his restitution, Zachariä observed, that Theod. 37, § 2 - § 5 are the underlying source of B. 1, 1, 45-48; that B. 1, 1, 49 originates from Theod. 131, § 21, § 22, § 24 and § 25; and that B. 1, 1, 50 stems from Theod. 42 § 2. He then remarked, that B. 1, 1, 51 is based on the original text of Nov. 109 - initio et fine truncata -; B. 1, 1, 52 on Nov. 144, c. 1 and 2; B. 1, 1, 53 on Nov. 146, c. 1, 2 and 3; and, finally, B. 1, 1, 54 on Nov. 132.⁹⁷ The IndReg uses the term διαίρεσις in connection with the Novv. 37 and 131; the phrase ἡ ἄλλη νεαρά occurs in connection with the Novv. 109, 146 and 132. Evidently, Zachariä considered the term διαίρεσις as a reference to Theodore's Breviary, and the phrase ἡ ἄλλη νεαρά as an allusion to the original text of Justinian's Novels.⁹⁸ Thus, we seem to have a positive identification of the term διαίρεσις in the Index Reginae: it would refer to the (un-numbered) text units in the subdivision of the summaries of the Novels in Theodore's Breviary. Does this imply, that we can identify the διαίρεσις of the Novels in ICb 2 as references to the text portions in Theodore's Breviary?

In the previous section, the words 'seem' and 'would' have been used on purpose, because Zachariä was wrong. Of course, his line of reasoning regarding the identification of the term διαίρεσις makes perfect sense and is only too understandable in view of his - correct - identification of the Index Reginae as an index of rubrics of Theodore's Breviary. However, the IndReg itself proves, that Zachariä's reasoning cannot be correct. From his

⁹⁶ Cf. Heimbach, *Ἀνέκδοτα*, II, 239 (Nov. 37), 244 (Nov. 131), 239 (Nov. 42), 243 (Nov. 109), 245 (Novv. 144 and 146), and 244 (Nov. 132). With regard to quotations from the IndReg, I have generally adopted Heimbach's text and readings, with some tacit emendations and modifications, based on a consultation of a microfilm of the Parisinus 1349. It should be noted, that (1) abbreviations are dealt with in accordance with the system used in the edition of ICb 2; thus, βιβ. stands for βιβλίον, and τιτ. for τίτλος; contrary to ICb 2, however, κεφάλαιον has been written as κεφ. The phrases διαίρ. and βασιλ. have been rendered in full (διαίρεσις and βασιλιῶν resp.). (2) The use of square and angle brackets ([] and <> resp.) is in accordance with the system underlying the edition of the Basilica; on this, cf. e.g. Scheltema / Van der Wal, *Basilicorum libri LX*, A I, p. XVII. The lemma IndReg Nov. 132 requires some comment of its own: Heimbach read βι. ... α κεφ. κδ'. ἡ ἄλλη νεαρά. On the microfilm of the Parisinus (f. 238'), I have been unable to read (and thus verify) everything Heimbach read; however, the manuscript does certainly not read κδ', but νδ'.

⁹⁷ Cf. Zachariä, 'Beiträge', 13-15 (= 587-589).

⁹⁸ This is abundantly clear from Zachariä's footnotes. On Nov. 131 he wrote: 'Allein der Index Reginae giebt an, dass die διαίρεσις κ', κα', κγ', κδ' d.i. die capp. 21, 22, 24, 25 aus Theod. Breviar. Nov. 131 den Text (sc. der Basiliken) gebildet haben'. His comment on Nov. 109: 'Der Text der Nov. 109. Der Index Reginae sagt: Βιβ. α' τιτ. α' κεφ. με' ἡ ἄλλη νεαρά'; cf. Zachariä, 'Beiträge', 14 (= 588), notes 1 and 3. Cf. also p. 15 (= 589), notes 1 and 2.

point of view, the term *διαίρεσις* refers to the Breviary, whereas the phrase *ἡ ὅλη νεαρά* alludes to the full text of Justinian's Novels. The lemma IndReg Nov. 12 reads in full: *Ιβ' περι ἀθεμιτογαμιῶν. Βιβ. κη' τῶν Βασιλικῶν τιτ. ς' κεφ. α' ἡ ὅλη νεαρά, πλὴν τῆς ὑπέρας διαιρέσεως.*⁹⁹ 'Novel 12: unlawful marriages. Book 28 of the Basilica, title 6, chapter 1: the entire Novel, except the final section'. This lemma clearly proves, that the term *διαίρεσις* pertains to a subdivision of individual Novels into smaller text portions. Equally important is the conclusion that the phrases *διαίρεσις* and *ἡ ὅλη νεαρά* - contrary to Zachariä's point of view - evidently refer to one and the same textual entity, and not to different works. If we confine ourselves merely to the IndReg, we face two possibilities. First, *διαίρεσις* and *ἡ ὅλη νεαρά* both allude to Theodore's Breviary. We would then have to assume, that the scribe of the IndReg or its prototype, or perhaps even the compiler of the notes indicating which (parts of) Novels occur in which book and title of the Basilica, consulted a copy of those Basilica which exclusively contained texts from the Breviary: Theodore's summaries of complete Novels, referred to by the phrase *ἡ ὅλη νεαρά*, and parts of those summaries, alluded to by numbered *διαιρέσεις*. This first possibility is extremely unlikely, as the Basilica manuscripts nearly always transmit the full text of Justinian's Novels.¹⁰⁰ The second possibility is, of course, that *διαίρεσις* and *ἡ ὅλη νεαρά* do not allude to Theodore's Breviary, but rather refer to the full text of the Novels of Justinian. In either case, Zachariä's identification of the term *διαίρεσις* is untenable.

It is possible to put the entire above issue in a wider context by studying rubrics and references to *διαιρέσεις* in the IndReg in conjunction with ICb 2. If we first focus on B. 1, ICb 2 provides the following data. On Nov. 37, ICb 2 remarks: *Κεφάλαιον με'. Νε. λζ' περι τῶν ἐν Ἀφρικῇ ἐκκλησιῶν διαίρεσις β', γ', δ', ε'.* '(Book 1 of the Basilica, title 1), chapter 45. Novel 37: the Churches in Africa; sections 2, 3, 4, 5'. On Nov. 131, ICb 2 reads: *Νε. ρλα' περι ἐκκλησιαστικῶν κανόνων διαίρεσις κ', κα', κβ', κγ', κδ'.* 'Novel 131: ecclesiastical canons; sections 20, 21, 22, 23, 24'. The lemma on Nov. 42 reads: *Κεφάλαιον μθ'. Νε. μβ' περι ἐπισκόπων ἀναθεματισθέντων διαίρεσις β'.* '(Book 1 of the Basilica, title 1), chapter 49. Novel 42: anathematized bishops; section 2'. With regard to Nov. 109, ICb 2 reads: *Κεφάλαιον ν'. Νε. ρθ' περι αίρετικῶν καὶ γυναικῶν αὐτῶν ἡ ὅλη νεαρά.* '(Book 1 of the Basilica, title 1), chapter 50. Novel 109: heretics and their wives; the entire Novel'. On Nov. 144, ICb 2 provides the following lemma: *Κεφάλαιον νβ'. Νε. ρμδ' περι Σαμαρειτῶν ὅλη.* '(Book 1 of the Basilica, title 1), chapter 52. Novel 144: Samaritans; the entire Novel'. With regard to Nov. 146, we read: *Κεφάλαιον νγ'. Νε. ρμς' περι Ἑβραίων πῶς δεῖ τὰς γραφὰς ἀναγινώσκειν ὅλη.* '(Book 1 of the Basilica, title 1), chapter 53. Novel 146: Hebrews, how to read the Scriptures; the entire Novel'. Finally, on Nov. 132 ICb 2 comes up with the lemma: *Κεφάλαιον νδ'. Νε. ρλβ' ἴδικτον Κωνσταντινουπολίταις ἢ περι αίρετικῶν.* '(Book 1 of the Basilica, title 1), chapter 54. Novel 132:

⁹⁹ Cf. Heimbach, *Ἀνέκδοτα*, II, 238.

¹⁰⁰ It may suffice to refer to the text and accompanying critical apparatus of any given title of the Basilica.

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edict to the people of Constantinople, or [the edict] on heretics'.¹⁰¹ The above data show a good deal of correspondence with those provided by the IndReg, but there are also differences. With regard to the phrases *διαίρεσις* and *ἡ ὅλη νεαρά*, the following can be observed. The references for Nov. 37 are completely identical: both ICb 2 and the IndReg mention the *διαιρέσεις β', γ', δ', and ε'*. The two indices also concur with respect to Nov. 131, with the exception that the IndReg fails to mention *διαίρεσις κβ'*. Of Nov. 42, ICb 2 mentions *διαίρεσις β'*; the IndReg omits this reference. On Nov. 109, there is again complete correspondence: in connection with this Novel, both indices use the phrase *ἡ ὅλη νεαρά*. The same applies to Nov. 146: here, too, we find the phrase *ἡ ὅλη νεαρά* (*ὅλη* in ICb 2). Differences occur again in the remaining Novels: for Nov. 144, ICb 2 comes up with the reference *ὅλη*, whereas the IndReg omits this term. Regarding Nov. 132, it is the other way round: in this case, it is the IndReg that uses the phrase *ἡ ὅλη νεαρά*, whereas ICb 2 omits it. A comparison of the rubrics of the Novels in our two indices produces the following result. The rubrics of the Novv. 37, 42 and 144 are completely identical. Minor divergences occur in the rubrics of the Novv. 109 and 146. In Nov. 109, ICb 2 adds *καὶ γυναικῶν αὐτῶν* after *αἰρετικῶν*, whereas the IndReg omits those words. Regarding the rubric of Nov. 146, it is the IndReg that is the more extensive by the addition of the words *καὶ ἐβραϊστὶ* after *γραφάς*; moreover, there is some variation in the use of words. Major divergences occur in the rubrics of the Novv. 131 and 132. In ICb 2, the rubric of Nov. 131 reads: *Περὶ ἐκκλησιαστικῶν κανόνων*, to which the Index Reginae adds *καὶ πραγμάτων ἀποκαταστάσεως καὶ ὀρφανοτροφῶν*. To make things worse, ICb 2 transmits the rubric of Nov. 131 twice. At its second occurrence, the rubric reads (strongly deviating from the IndReg): *Ne. ρλα' περὶ ἐκκλησιαστικῶν κανόνων καὶ προνομίων ἢ περὶ ἐκκλησιαστικῆς καταστάσεως* 'Novel 131: ecclesiastical canons and privileges or the status of the Church'.¹⁰² Finally, IndReg Nov. 132 rubr. simply reads: *περὶ αἰρετικῶν*; by way of contrast, we read in ICb 2: *Ἰδικτον Κωνσταντινουπολίταις ἢ περὶ αἰρετικῶν*.

At first sight, the degree of correspondence between the IndReg and ICb 2 seems far greater than the differences¹⁰³ between the two indices. One could even argue, that ICb 2 corroborates the ideas of Zachariä, in view of the fact that in B. 1 out of seven pairs of rubrics no less than three are completely identical, and two show only minor divergencies. Moreover, the explicit mention of *διαίρεσις β'* of Nov. 42 in ICb 2 seems to support Zachariä's point of view, that Theod. 42 § 2 underlies B. 1, 1, 50. The correspondence concerning the *διαιρέσεις* of the Novv. 37 and 131 would also seem to indicate, that it is Theodore's Breviary that underlies (parts of) the text of B. 1.¹⁰⁴ However, this picture

¹⁰¹ For all this, cf. ICb 2, 35-54.

¹⁰² Cf. ICb 2, 152-153. Nov. 131 occurs for the second time in B. 5,3.

¹⁰³ No attention has been paid to small differences between the IndReg and ICb 2 regarding e.g. the numbers of *κεφάλαια* and variation in rendering the phrase *ἡ ὅλη νεαρά* / *ὅλη*: it is the manuscript transmission, or even scribal preference and error that may be held responsible for differences like these.

¹⁰⁴ Cf. again Zachariä, 'Beiträge', 13-14 (= 587-588).

changes in view of a very important difference that has so far remained undiscussed. It concerns the difference in structure, and ultimately in nature between the two indices. The lemmata in the IndReg first quote the number and the rubric of the Novel concerned, and only then provide information if and where (parts of) the Novel occur in the text of the Basilica. ICb 2 first mentions the location in the Basilica, and quotes the number, the rubric and the *διαίρεσεις* of the Novels only after that; moreover, ICb 2 also alludes to titles of the Digest and the Code.¹⁰⁵ In short, the IndReg is a pure index of Novels - viz. of Theodore's Breviary -, whereas ICb 2 is an index of the Basilica. One could argue, that this difference is only trivial, and that it merely implies, that the IndReg and ICb 2 are each other's complement. But there is more to this. His identification of the IndReg as an index of rubrics of Theodore's Breviary has - almost inevitably - led Zachariä to connect the term *διαίρεσεις* with the Breviary. The occurrence of the term *διαίρεσεις* in ICb 2 demonstrates, that Zachariä's line of reasoning, however understandable it may be, is by no means self-evident. Being an index of the Basilica, ICb 2 does not automatically focus the attention on the Breviary, thus connecting the term *διαίρεσεις* with Theodore's work. The occurrence of *διαίρεσεις* in ICb 2 considerably broadens the perspective from which to look upon the phenomenon *διαίρεσεις*. In this way, it is not the IndReg that helps us to identify the *διαίρεσεις* in ICb 2; rather, it is the latter index that sheds light on the use of the term in the former.

Despite the above remarks, we still seem to smell Theodore's Breviary in connection with ICb 2 and its *διαίρεσεις*: in the first book of the Basilica, the rubrics of the Novv. 37 and 42 - both being accompanied by numbered *διαίρεσεις* - are identical in ICb 2, the IndReg and the Breviary. Even so, in its rendering of rubrics ICb 2 does provide some clues, that it is the original text of Justinian's Novels rather than the Breviary that underlies the Novel part of B. 1. If we analyse the rubrics of the Novels in ICb 2, the Collectio CLXVIII Novellarum, Theodore's Breviary and the Index Reginae, the following picture emerges with respect to B. 1.¹⁰⁶ We have already seen, that the rubric of Nov. 131 appears on two locations in ICb 2. The first time it reads: *Περὶ ἐκκλησιαστικῶν κανόνων*, the second time: *Περὶ ἐκκλησιαστικῶν κανόνων καὶ προνομίων ἢ περὶ ἐκκλησιαστικῆς καταστάσεως*. Especially the latter rubric corresponds with the rubric in the Collectio: *Περὶ ἐκκλησιαστικῶν κανόνων καὶ προνομίων*. The only difference is the addition of the phrase *ἢ περὶ ἐκκλησιαστικῆς καταστάσεως* in ICb 2: it may concern an explanatory note which was added to the text at a moment which can no longer be specified. The above rubrics clearly deviate from their counterparts in the IndReg and Theod.. In the IndReg we read: *Περὶ ἐκκλησιαστικῶν κανόνων καὶ πραγμάτων ἀποκαταστάσεως καὶ ὀρφανοτρόφων*. The Breviary merely adds *ἴσον θείου τύπου* 'copy of an imperial rescript' after *ὀρφανο-*

¹⁰⁵ One glance at the editions of the IndReg and ICb 2 may suffice to illustrate the difference in structure and nature.

¹⁰⁶ The issue of the Novv. 37 and 42 will be discussed in the final paragraph of this article.

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τρόφων.¹⁰⁷ The rubric of Nov. 109 reads in ICb 2 *Περὶ αἵρετικῶν καὶ γυναικῶν αὐτῶν*; in the Collectio *Περὶ αἵρετικῶν τῇ πίστει γυναικῶν* 'Female heretics in faith', and in Theod. and the IndReg simply *Περὶ αἵρετικῶν*. The addition of *καὶ γυναικῶν αὐτῶν* in ICb 2 seems to echo the phrase *τῇ πίστει γυναικῶν* in the Collectio.¹⁰⁸ The rubric of Nov. 144 is not very instructive: it is identical in all sources under discussion and simply reads *Περὶ Σαμαρειτῶν*.¹⁰⁹ The state of affairs regarding the rubric of Nov. 146 seems somewhat confusing. We have already seen, that the rubrics of this Novel in ICb 2 and the IndReg resemble one another. We only encounter some variation in the use of words and the addition of the phrase *καὶ ἐβραΐστί* after *γραφάς* in the IndReg. In the Collectio, the rubric of Nov. 146 simply reads: *Περὶ Ἑβραίων*. It is impossible to draw any conclusion from this. By way of contrast, the corresponding rubric in the Breviary is extremely elaborate: *Περὶ τοῦ ἀναγινώσκειν τοὺς Ἑβραίους τὰς γραφὰς ἑλληνιστὶ καὶ ἐβραΐστί, καὶ περὶ ἀναίρεσεως τῆς δευτερώσεως, καὶ περὶ τῶν μὴ ὁμολογούντων κρίσιν ἢ ἀνάστασιν ἢ τοὺς ἀγγέλους κτίσμα Θεοῦ εἶναι* 'Hebrews must read the Scriptures in Greek and in Hebrew. Abrogation of (Jewish) tradition. Those who don't acknowledge the (last) judgement, the resurrection, or that angels are God's creation'. In case of the rubric of Nov. 146, it would appear, that the versions in ICb 2 and the IndReg ultimately draw on the rubric in Theodore's Breviary.¹¹⁰ The rubric of Nov. 132 is the final one to be dealt with. It reads in ICb 2: *Ἰδικτον Κωνσταντινουπολίταις ἢ περὶ αἵρετικῶν*. Its counterpart in the Collectio reads: *Ἰδικτον περὶ πίστεως Κωνσταντινουπολίταις* 'Edict on the faith to the people of Constantinople'. In the Breviary, we come across the rubric: *Ἰδικτον περὶ αἵρετικῶν* 'Edict on heretics', and in the IndReg: *Περὶ αἵρετικῶν*. In case of the rubric of Nov. 132, then, the phrase *Κωνσταντινουπολίταις* seems to indicate, that it is the rubric in the Collectio that underlies the rubric in ICb 2; the addition of *ἢ περὶ αἵρετικῶν* may again be explained as an explanatory note.¹¹¹ In view of all this, the evidence presented by ICb 2 in the first book of the Basilica seems to point to the Collectio CLXVIII Novellarum as the ultimate source of the rubrics of the Novels in ICb 2, but the evidence is insufficient to draw firm conclusions.

In order to find conclusive evidence, that it is not the Breviary of Theodore which underlies ICb 2 we have to turn away from the first book of the Basilica - at least for the

¹⁰⁷ Cf. the rubric of Nov. 131 in ICb 2, 38 and 152-153; in the Collectio: SK 654/16-17; in the IndReg: Heimbach, *Ἀνέκδοτα*, II, 244; in Theod.: Zachariae, *Ἀνέκδοτα*, 140.

¹⁰⁸ Cf. the rubric of Nov. 109 in ICb 2, 44; in the Collectio: SK 517/2-3; in the IndReg: Heimbach, *Ἀνέκδοτα*, II, 243; in Theod.: Zachariae, *Ἀνέκδοτα*, 104.

¹⁰⁹ Nov. 144 rubr. in ICb 2, 48; in the Collectio: SK 709/2; in Theod.: Zachariae, *Ἀνέκδοτα*, 155; in the IndReg: Heimbach, *Ἀνέκδοτα*, II, 245.

¹¹⁰ Cf. Nov. 146 rubr. in ICb 2, 50-51: *Περὶ Ἑβραίων πῶς δεῖ τὰς γραφὰς ἀναγινώσκειν*; in the IndReg: *ὅτι δεῖ τοὺς Ἑβραίους ἀναγινώσκειν τὰς γραφὰς καὶ ἐβραΐστί* (Heimbach, *Ἀνέκδοτα*, II, 245); in the Collectio: SK 714/7; in Theod.: Zachariae, *Ἀνέκδοτα*, 156. On the rubric of Nov. 146 in ICb 2 and the Collectio, cf. also § 5 below.

¹¹¹ Nov. 132 rubr. in ICb 2, 53-54; in the Collectio: SK 665/2-3; in Theod.: Zachariae, *Ἀνέκδοτα*, 143; in the IndReg: Heimbach, *Ἀνέκδοτα*, II, 244.

time being. In B. 3, ICb 2 contains the following reference: Νε. ρκγ' και νε. ρλζ'. περι ἐκ- κλησιαστικῶν διαφόρων κεφαλαίων διαίρεσις θ' και ἐφεξῆς μέχρι τῆς ξε'. 'Novel 123 and Novel 137: various ecclesiastical subjects; section 9 and what follows as far as section 65'.¹¹² At first sight, this reference does not seem very remarkable. However, we can draw one very important conclusion. The joint entry of the two Novels - νε. ρκγ' και νε. ρλζ' - and the διαίρεσις specification of this entry - διαίρεσις θ' και ἐφεξῆς μέχρι τῆς ξε' - clearly demonstrate, that as far as ICb 2 is concerned, the Novv. 123 and 137 constitute one coherent textual entity. The IndReg treats these Novels as separate entities.¹¹³ Theodore did the same: his Breviary contains separate summaries of both Nov. 123 and Nov. 137.¹¹⁴ In his summary of Nov. 123, Theodore even added a παραπομπή to the summary of Nov. 137: ἀνάγνωθι τὴν ρλζ' νεαράν, λέγουσαν, ὅτι λ' ἐτῶν ὀφείλει εἶναι ὁ πρεσβύτερος 'Read Novel 137, which states, that the presbyter must be 30 years old'.¹¹⁵

There are, of course, more striking differences between ICb 2 on the one hand and the IndReg / Theodore's Breviary on the other. One further example may suffice. It concerns Nov. 3, already discussed in § 4.2. On this Novel, ICb 2 observes in B. 3: Νε. γ' περι τοῦ ὠρισμένου εἶναι τὸν ἀριθμὸν τῶν κληρικῶν τῆς μεγάλης ἐκκλησίας Κωνσταντινουπόλεως διαίρεσις α', β', γ'. The lemma IndReg Nov. 3 reads: Γ'. περι κληρικῶν Κωνσταντινουπόλεως. Βιβ. γ' τῶν Βασιλικῶν τιτ. β' 'Novel 3: clerics of Constantinople. Book 3 of the Basilica, title 2'. Finally, we read in the Breviary: Νεαρά γ'. Περι κληρικῶν Κωνσταντινουπόλεως. 'Novel 3. Clerics of Constantinople'.¹¹⁶ ICb 2 transmits a rubric that is far more extensive than its counterparts in the IndReg and the Breviary, and, moreover, that reveals the essence of the contents of the Novel under discussion. The rubric of Nov. 3 in ICb 2 explicitly mentions the restriction of the number of clerics of the Great Church of Constantinople, whereas the rubrics in the IndReg and Theod. - which are completely identical - only contain a vague reference to clerics of Constantinople. Moreover, ICb 2 refers to the διαίρεσις of Nov. 3, while the IndReg only mentions the location of the Novel in the Basilica and omits any allusion to its subdivision into διαίρεσις.

The above is sufficient proof that the ensemble of the Index Reginae and Theodore's Breviary is not the source on which the compilers of ICb 2 drew with respect to the Novel part of their index.

¹¹² ICb 2, 115-116.

¹¹³ Cf. Heimbach, Ἀνέκδοτα, II, 244 (lemma of Nov. 123, consisting of the number and the rubric of the Novel, accompanied by detailed διαίρεσις specifications referring to B. 3 and B. 4, the former of these corresponding exactly with the specification in ICb 2), and Heimbach, Ἀνέκδοτα, II, 245 (lemma of Nov. 137, merely consisting of the rubric of the Novel and a lacuna in stead of the number).

¹¹⁴ Theod. 123 (Zachariae, Ἀνέκδοτα, 125-132); Theod. 137 (Zachariae, Ἀνέκδοτα, 151-152).

¹¹⁵ Theod. 123 § 30 i.f. (Zachariae, Ἀνέκδοτα, 127).

¹¹⁶ ICb 2, 117-119; lemma IndReg Nov. 3: Heimbach, Ἀνέκδοτα, II, 237; Theod. 3 rubr.: Zachariae, Ἀνέκδοτα, 12.

4.7 *The Collectio Ambrosiana*

In § 4.2, we have already seen, that in establishing the text of a number of Novels, Schöll and Kroll could also rely on the testimony of cod. Ambros. L 49 sup.. In actual fact, the Novels transmitted by the Ambrosianus constitute a separate collection, known as the *Collectio Ambrosiana* (CollAmb.). In its original form, this collection contained eleven titles, and probably came into existence somewhere between March 545 and May 546. The compiler of the collection mainly used texts derived from ecclesiastical law, but he also incorporated Novels dealing with for instance matrimonial law and the law of inheritance. Some time after Justinian's death - the precise moment can no longer be specified -, the collection was reworked: an unknown revisor added numerous fragments derived from the *Syntagma* of Athanasios of Emesa. This revisor also added three more titles, and devised the subdivision of the titles into numbered chapters.¹¹⁷

There are two reasons why the compiler(s) of ICb 2 cannot have used the *Collectio Ambrosiana*. First, the number of Novels which occur in both ICb 2 and the CollAmb. is very restricted indeed: of all 49 Novels alluded to in the Basilica index, only six appear in the CollAmb., viz. the Novv. 3, 5, 16, 86, 131 and 133.¹¹⁸ Second, chapter numbers occurring in Novels incorporated into the CollAmb. do not belong to the original text of the Novel concerned, but owe their existence to the revisor of the *Collectio Ambrosiana*.¹¹⁹

4.8 *The Collectio XXV capitulorum and the Collectio LXXXVII capitulorum*

The next candidates for comparison with the διατάξεις of the Novels in ICb 2 are two small collections, both exclusively containing law concerning ecclesiastical and religious matters. It concerns the *Collectio XXV capitulorum* and the *Collectio LXXXVII capitulorum*.

The *Collectio XXV capitulorum* (Coll25) probably served as an appendix to the - not extant - *Collectio LX titulorum*. This appendix contained secular law dealing with ecclesiastical and religious matters: it originally contained 21 randomly selected Greek constitutions from the first four titles of the first book of Justinian's Code. Each individual constitution made up one chapter of the appendix. The *Collectio LX titulorum* and its original appendix came into existence some time before ca. 550. Somewhat later, four Novels were added to the core of the 21 chapters of the appendix: thus originated the Coll25.¹²⁰

The *Collectio LX titulorum* is only known via the prologue of its successor and substitute, the - still extant - *Collectio L titulorum*. The latter collection was compiled ca.

¹¹⁷ On the *Collectio Ambrosiana*, cf. e.g. Troianos, 'Collectio Ambrosiana', *passim*, esp. 41-43; Noailles, *Les collections*, I, 237-240; Simon / Troianos, *Novellensyntagma*, XVIII; Van der Wal, *Manuale*, XIII.

¹¹⁸ Cf. again the Concordance at the end of this article.

¹¹⁹ Cf. again Noailles, *Les collections*, II, 52. It is the revisor's subdivision into chapters that plays its part in the case of Nov. 12, referred to in n. 53 above.

¹²⁰ On the *Collectio XXV capitulorum*, cf. e.g. Van der Wal / Lokin, *Delineatio*, 52 and 127-128; Noailles, *Les collections*, I, 228-230; A. Schminck, *ODB*, s.v. *Collectio 25 capitulorum*; Van der Wal, *Manuale*, XIII n. 11; edition of the Coll25: Heimbach, *Ἀνάκδοτα*, II, 145-201.

550 by John Scholastikos, formerly lawyer and priest in Antioch. He was sent to Constantinople in order to represent the church of Antioch at the imperial court. After Justinian's death in 565, John became patriarch of Constantinople (John III, 565-577). John Scholastikos provided his *Collectio L titulorum* with its own appendix. This appendix is known as the *Collectio LXXXVII capitulorum* and contained secular law dealing with ecclesiastical and religious affairs: the *Collectio LXXXVII capitulorum* (Coll87) consisted of 87 chapters containing text portions from Justinian's Novels. Originally, John had his Coll87 - compiled before 565 - circulate separately. After Justinian's death, John came up with a second recension of his *Collectio L titulorum*: on this occasion, he provided the Coll87 with its own rubric and prologue, and added it as an appendix to the 50 titles. Apart from the Coll87, John also added the Coll25 to the second recension of his work: it is probably also John Scholastikos who added the four Novels to the original core of 21 chapters of the Coll25.¹²¹

The chapters of both the Coll25 and the Coll87 cannot underly the *διατιθέσεις* of the Novels in ICb 2. The reasons are of the same nature as those with regard to the *Collectio Ambrosiana*. First, the number of Novels occurring in the Coll25 and in the Coll87 is very limited. ICb 2 alludes to 49 Novels: four of those occur in the Coll25, six appear in the Coll87.¹²² Second, the chapter numbers of the Novels in both the Coll25 and the Coll87 do not belong to the original text of the Novel concerned, but owe their existence to John Scholastikos.¹²³

4.9 *The younger Anonymos / Enantiophanes*

Our final candidate for comparison is the collection - or rather, the résumé - of the Novels used by the younger Anonymos / Enantiophanes. We have already seen, that he can be held responsible for the *Collectio Tripartita*. In the third part of the CollTrip., the Enantiophanes simply adopted the first three titles from Athanasios's *Syntagma* of Justinian's Novels, regarding both text and numbers of titles and constitutions. In the *Nomocanon XIV titulorum* (and in his notes on the Digest preserved in the *Basilica scholia*), however, he drew on a different source, viz. a résumé of the Novels. In the *Nomocanon*, he quoted Novels not epitomized by Athanasios after the numbers and the rubrics they carried in this résumé. Novels that had been dealt with by Athanasios were

¹²¹ On all this, and on the *Collectio LXXXVII capitulorum* in particular, cf. e.g. Van der Wal / Lokin, *Delineatio*, 52-53, 60 and 127-128; Noailles, *Les collections*, I, 230-235; A. Schminck, *ODB*, s.v. *Collectio 87 capitulorum*; Van der Wal, *Manuale*, XIII n. 11; editions of the Coll87: Heimbach, *Ἀνέκδοτα*, II, 202-234 and I.B. Pitra, *Juris ecclesiastici Graecorum historia et monumenta*, II, Rome 1868 (repr. Farnborough 1963), 385-405. I have consulted the former edition.

¹²² For the specific details, cf. the Concordance. It should be noted, that in the Concordance chapter 22 of the Coll25 only refers to Nov. 137: ICb 2 lists this Novel in the same lemma as (and in conjunction with) Nov. 123. The latter Novel does not occur in the Coll25; cf. ICb 2, 115-116; Heimbach, *Ἀνέκδοτα*, II, 180-185. By way of contrast, Nov. 137 is missing in the Authenticum and in the Epitome Juliani; cf. SK 695 text.; Van der Wal, *Manuale*, 194-195.

¹²³ Cf. yet again Noailles, *Les collections*, I, 52, referring to the Coll87, without mentioning John's name.

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referred to by the numbers of title and constitution in the latter's Syntagma, but their text was derived from the résumé.¹²⁴

The résumé of the Novels used by the Enantiophanes (Anon.) is based on a collection closely related to the collection translated by the antecessor Julian. This appears from the fact that the numbers by which the Enantiophanes quotes complete Novels resemble the numbers by which Julian refers to complete Novels. The two collections share another essential feature: in both collections, the individual chapters of the Novels are numbered in an uninterrupted rising sequence throughout the entire resp. collection.¹²⁵ On the basis of these similarities, Simon, Troianos and Weiß hypothesized, that the Enantiophanes's Greek résumé might be a Greek index written by the same antecessor Julian who compiled the Latin index which is known under the title *Epitome Juliani*.¹²⁶ Van der Wal contested this view: while admitting that the two series of numbers quoted by the Enantiophanes and Julian show a good deal of correspondence, he argued, that the series of numbers are far from identical.¹²⁷

The collection of Novels underlying the résumé used by the Enantiophanes cannot have been used by the compilers of ICb 2, for three reasons. First, the number of Novels of which we have knowledge is very restricted: ICb 2 alludes to 49 Novels, of which only ten occur in the writings of the younger Anonymos / Enantiophanes. Second, of those ten Novels, eight are accompanied by numbers that completely differ from those of the Novels in ICb 2.¹²⁸ Third and finally, as in the case of the (collection underlying the) *Epitome Juliani*, the chapters of the Novels were numbered in an uninterrupted rising sequence,¹²⁹ whereas the *διαρρέσεις* of the Novels in ICb 2 recommence with number 1 at the beginning of a new Novel.

4.10 Conclusion?

None of the textual subdivisions occurring in the collections of Novels discussed above has enabled us to identify the *διαρρέσεις* of the Novels in ICb 2, or determine their origin. The combination of the Index Reginae and Theodore's Breviary came closest to a positive identification because of the occurrence of *διαρρέσεις* in the IndReg. However, this combination had to be disqualified, too. Does this mean, that we are left with no positive result whatsoever? Fortunately, that need not be the case.

¹²⁴ On the younger Anonymos / Enantiophanes and his writings in general, cf. § 3.3 with the notes 27-29 above. On the collection(s) of Novels used by the Enantiophanes, cf. e.g. Stolte, 'Digest Summa', 53-54; Van der Wal / Stolte, *Collectio Tripartita*, XVIII, XX and XXXIV-XXXV with further references. Cf. Van der Wal, *Manuale*, XII with n. 5.

¹²⁵ Cf. D. Simon / Sp. Troianos / G. Weiß, 'Zum griechischen Novellenindex des Antecessor Julian', *FM* II (1977), 1-29 (4-11).

¹²⁷ Cf. again Van der Wal, *Manuale*, XII n. 5, under reference to pp. 196-198 (synoptic tables) and Van der Wal, 'Enantiophanes'.

¹²⁸ For the specific details, cf. again the Concordance.

¹²⁹ Cf. the table compiled by Van der Wal, *Manuale*, 198.

5. *ICb 2 and recension L of the Collectio CLXVIII Novellarum: incorporating Justinian's Novels into the text of the Basilica*

The Concordance at the end of this article reveals a complete numerical correspondence between the Novels in ICb 2 and the *Collectio CLXVIII Novellarum*, a fact that has so far remained unmentioned. In order to identify the διατιθέσεις of the Novels in ICb 2 and determine their origin, we have to look into the direction of the *Collectio* after all.

In 1981, Van der Wal published an article dealing with the constitution of the text of the Novels in *cod. Laurent. plut. 80.4*, which has already been referred to in the previous paragraph.¹³⁰ In its presentation of the text, the latter manuscript strongly deviates from the only other manuscript transmitting the entire *Collectio*, viz. the Marcianus 179. In the Laurentianus, the text of the *Collectio* has been altered by the omission of both complete Novels and minor text portions, by modifications and by transpositions of passages from one Novel to another. All omissions, modifications and transpositions taken together show, that the text of the *Collectio* has undergone some sort of systematic update, aiming at the elimination of useless repetitions and of passages containing rules abrogated by more recent Novels: apparently, the author of the text version represented by the Laurentianus wanted to produce a compilation that exclusively contained valid rules of law.¹³¹ In short, the text version of the *Collectio CLXVIII Novellarum* in *cod. Laurent. plut. 80.4* represents a separate recension of the *Collectio*, in what follows to be designated as recension L.

Recension L shows a good deal of correspondence with the Novel part of the text of the Basilica: with one exception - Nov. 149¹³² -, all Novels omitted from recension L in their entirety are missing in the text of the Basilica as well. Moreover, the greater part of the modifications can also be observed in the Basilica text, as can the omission of the majority of the minor text portions. And last but not least: the transpositions of passages from one Novel to another occur likewise in the Basilica. The observation of this high degree of correspondence between recension L on the one hand and the text of the Basilica on the other is by no means new, of course: it has been noted several times over the last 450 years or so, and various attempts have been undertaken to explain the correspondence.¹³³ In the end, all explanations revolve around the basic question whether or not

¹³⁰ Cf. N. van der Wal, 'La version florentine de la Collection des 168 Nouvelles', *TRG* 49 (1981), 149-158; § 4.2 with n. 49 above.

¹³¹ Cf. Van der Wal, 'La version florentine', 150 and 152. For all the relevant details, cf. pp. 150-151 (omission of complete Novels; a list of the omitted minor passages occurs in 150 n. 4), 151-152 (transposition of passages from one Novel to another) and 152 (modifications). It should be noted, that Van der Wal's rendering of data is more accurate than that of Noailles, *Les collections*, II, 117ff.; on this issue, cf. Van der Wal, 'La version florentine', 150 n. 4 i.f.

¹³² On the issue of Nov. 149, cf. Van der Wal, 'La version florentine', 152 n. 7.

¹³³ Cf. e.g. Antonio Agustín (1517-1586) ad Nov. 2 in his edition of Julian's *Epitome latina*, *apud* Biener, *Geschichte*, 565, no. 7; Biener, *Geschichte*, 136 and 151; J.A.B. Mortreuil, *Histoire du droit Byzantin ou du droit Romain dans l'empire d'Orient, depuis la mort de Justinien jusqu'à la prise de Constantinople en 1453*, II, Paris 1844 (repr. Osnabrück 1966), 115-118; Heimbach, *Prolegomena*, 133-134;

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recension L predates the Basilica text, and, thus, whether it is recension L that underlies the text of the Novels in the Basilica, or the text of the Basilica that somehow served as basis for the adaptation of the text of the Novels as represented in the Laurentianus, or even for the compilation of the Laurentianus itself. Scheltema and Van der Wal, partly in the wake of Zachariä von Lingenthal, have convincingly shown, that recension L predates the Basilica text: for, the most important feature of recension L - transposition of passages from one Novel to another - does not only occur in the text of the Basilica, but also in those of the Prochiron and the Eisagoge. These two law books date from the reign of Basil the Macedonian (867-886), and, thus, precede the Basilica which were compiled during the reign of Basil's son and successor Leo the Wise (886-912).¹³⁴ In a critical review of Van der Wal's article, Simon seems to play down the importance of (Scheltema's and) Van der Wal's conclusion by arguing, that nobody would wish to contradict him in his observation that Antonio Agustín's hypothesis is untenable: according to this hypothesis, a lawyer from the post-Basilica era would have modified recension L on the basis of those Basilica. Simon qualifies this hypothesis by present-day standards as grotesque.¹³⁵ Be that as it may, it is important to emphasize the above conclusion, if only because regarding the text of the Novels - including its variant readings and testimonies - we have to rely on the standard edition of the *Collectio CLXVIII Novellarum*, published by Schöll and Kroll in 1894. The preface of this edition fails to make any reference to the discussion concerning the relation between recension L and the Basilica text. To make things even worse, in their apparatus of testimonies Schöll and Kroll repeatedly observe, that particular details of the text of the Novels in the Laurentianus originate from the text of the Novels in the

C.E. Zachariae a Lingenthal, *Imp. Iustiniani pp. A. Novellae quae vocantur sive constitutiones quae extra Codicem supersunt ordine chronologico digestae*, 2 vols., Leipzig 1881, praefatio, p. vi; Noailles, *Les collections*, II, 124-130.

¹³⁴ Cf. H.J. Scheltema, '1. Korreferat zu P.J. Zepos, 'Die byzantinische Jurisprudenz zwischen Justinian und den Basiliken'', in: *Berichte zum XI. Internationalen Byzantinisten-Kongreß, München 1958*. Korreferate, München 1958, 35-41 (37). For the exact details, cf. Van der Wal, 'La version florentine', 153-155. On the (recently disputed) dating of both the Prochiron and the Eisagoge, cf. Schminck, *Studien*, 14-15 and 62-107; Th.E. van Bochove, *To Date and Not to Date. On the Date and Status of Byzantine Law Books*, Groningen 1996, 7-81.

¹³⁵ Cf. D. Simon, 'Vom Leid der Textkritik', *RJ* 1 (1982), 23-26 (24): 'Der Umstand, daß diese Textumformungen auch in den Novellenstellen beobachtet werden können, welche in die Basiliken aufgenommen wurden, hat im 16. Jh. (Antonius Augustinus (read: Hombergk zu Vach; cf. Noailles, *Les collections*, II, 128)) zu der These geführt, die Version L sei nach dem Muster der Basiliken von einem Juristen der Nach-Basiliken-Zeit modifiziert worden. Eine heute grotesk anmutende These, woran auch der Umstand, daß Biener, Heimbach und Noailles sie für diskutabel hielten, nichts ändert. Wenn v.d.W. also, unter Akzentuierung eines Arguments, welches schon Zachariae von Lingenthal angeführt hat - die vor den Basiliken liegenden makedonischen Gesetzbücher (Epanagoge (= Eisagoge) / Prochiron) haben in ihren Novellenexzerpten jene Umformungen ebenfalls - die Augustinus-These für erledigt erklärt, wird ihm keiner widersprechen wollen'.

Basilica.¹³⁶ In short, Schöll and Kroll suggest, that the Basilica text underlies recension L. And that is certainly not the case.

It is recension L that underlies the Novel part of ICb 2: the Basilica index contains clear indications to that effect. Before the evidence can be put forward, however, one important preliminary remark has to be made: the following starts from the premise that the ultimate exemplar of ICb 2 precedes the compilation of the text of the Basilica.¹³⁷

First, then, there is the case of Nov. 146. The lemma of this Novel in ICb 2 occurs in B. 1 and reads: Νε. ρμζ'· περι' Ἐβραίων πῶς δεῖ τὰς γραφὰς ἀναγινώσκειν.¹³⁸ The rubric in this lemma is completely identical with its counterpart in recension L: in cod. Laurent. plut. 80.4, the rubric of Nov. 146 reads: Περι' Ἐβραίων πῶς δεῖ τὰς γραφὰς ἀναγινώσκειν.¹³⁹ As this form of the rubric occurs in no other collection of Novels, we have a clear indication that the rubric of Nov. 146 in ICb 2 ultimately originates from recension L.

Second, we have already seen, that ICb 2 deals with the Novv. 123 and 137 as one coherent textual entity: the index mentions these Novels in a joint entry, and provides them with one διαίρεσις specification. The relevant entry occurs in B. 3,1 and reads: Νε. ρκγ' καὶ νε. ρλζ'· περι' ἐκκλησιαστικῶν διαφόρων κεφαλαίων διαίρεσις θ' καὶ ἐφεξῆς μέχρι τῆς ξε'.¹⁴⁰ Apart from the Basilica text, recension L is the only source in which conflation of the text bodies of the Novv. 123 and 137 is found: in fact, it belongs to the above mentioned category of transpositions and, thus, to the most important feature of recension L.¹⁴¹ With regard to the Novel part of his index, the compiler of the ultimate exemplar of ICb 2 has evidently consulted a copy of recension L. It would seem, that this copy somehow enabled the compiler (or compilers) of the index to recognize the existence of two different Novels (123 and 137) in the conflated state of the text: the copy may have contained a scholion providing the relevant information.¹⁴²

¹³⁶ Cf. e.g. SK 28 test. ad Nov. 5, c. 1: 'cap. I habent B 4,1,1 (inde L in nov. 123 post cap. 33, ...)'; SK 17 test. ad Nov. 2, c. 5: 'cap. V (- διακρίναντι 30) insertum nov. 91,2 extat in B 28,13,1 et inde in L'; SK 554 test. ad Nov. 117, c. 5: '(...) Eadem excerpta cum parte novellae LIII c. 6 contaminata extant B 28,12 (...), unde ea reliqua parte huius capituli omissa repetiit L', and so on. Cf. also Van der Wal, 'La version florentine', 154.

¹³⁷ I will return to this issue shortly; for the time being, cf. Van Bochove, 'Index titulorum', § 9.

¹³⁸ ICb 2, 50-51; on Nov. 146 in ICb 2, cf. also § 4.6 above.

¹³⁹ Cf. SK 714 app. ad l. 7 περι' Ἐβραίων.

¹⁴⁰ ICb 2, 115-116; cf. also § 4.6 with the notes 112-113 above.

¹⁴¹ For the specific details, cf. Van der Wal, 'La version florentine', 151 no. 5; SK 593-625 test. and 695 test.; cf. also Noailles, *Les collections*, II, 122.

¹⁴² It should be noted, that such a scholion is missing in cod. Laurent. plut. 80.4; cf. SK 593-625 test. and app. ad Nov. 123, and SK 695-699 test. and app. ad Nov. 137. The Basilica manuscripts - including the recently published scholia on B. 3,1,8 and 9 - lack the relevant information as well; cf. BT 83-103 app. ad B. 3,1,8-48; BT 112-118 app. ad B. 4,1,2-16; B.H. Stolte, 'Of nomoi and kanones. Notes on Codex Vaticanus Graecus 2645', *SG VI* (1999), 121-126 (§ III, pp. 122-126). Despite this, Byzantine lawyers knew, that Nov. 123 had been altered considerably by Nov. 137; cf. e.g. Athanasios's remark added to Athan. 1,2,9 (Simon / Troianos, 24/17-18). Cf. also Theodore Balsamon's comment on Nomoc. 1,28

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Our third and final piece of evidence, produced by Nov. 17, is less unequivocal. In ICb 2, the lemma of Nov. 17 occurs in B. 6,3 and reads: Νε. ιζ'. περι παραγγεμάτων ἀρχόντων ἢ ὅλη νεαρά. 'Novel 17: instructions for governors; the entire Novel'.¹⁴³ In the *Collectio*, the rubric of this Novel reads: *Mandata principis* 'Imperial mandates'. In the Marcianus, this rubric is rendered as δεμανδάτα πρικίπισ, in the Laurentianus (f. 27^v) as ΠΤΑΝΣΑΤΑ ΠΡΙΝΚΪΠΙΣ παραγγέλματα ἀρχόντων. The corresponding rubrics of the Novel in the Authenticum, Athanasios's Syntagma, Theodore's Breviary, and the Index Reginae all use the term *mandata*, either in Latin or in Greek transcript:¹⁴⁴ the explanatory note added to the rubric in the Laurentianus is the only source to come up with the term παραγγέλματα. The compiler of the ultimate original of ICb 2 may have consulted a copy of recension L already containing that note, but it is equally possible that he 'invented' the explanation himself and used it as rubric for Nov. 17.

The above may suffice to demonstrate, that recension L underlies the Novel part of ICb 2. We have started our line of reasoning with the premise that the ultimate exemplar of ICb 2 predates the compilation of the text of the Basilica. The following remarks serve to put this matter into the right perspective. In l. 97, ICb 2 mentions C. 1,16 as constituent part of B. 2,6. However, the text of the Basilica itself omits this Codex title. How is this to be explained? C. 1,16 deals with decrees of the senate. Now, in his 78th Novel, emperor Leo the Wise deprived senatorial decrees of their legal force. Fögen has convincingly shown that Leo the Wise promulgated his Novels concurrently and in conjunction with the genesis of the text of the Basilica.¹⁴⁵ Nov. Leon. 78 is one of the many cases in which a Novel of Leo led to an adjustment in the Basilica text: it is this Novel that caused the omission of C. 1,16. On this ground, it has been concluded that Leo's Novel can be regarded as the *terminus ante quem* for the dating of the ultimate original of ICb 2, including its reference to C. 1,16: the core of the text of ICb 2 predates Nov. Leon. 78 which was issued between 886 and 899. In its turn, this dating forms the basis for the identification of the nature of the ultimate original of ICb 2: the text of the index is a remnant of an editorial list that indicated which provisions from Justinian's legislation were to make up the titles of the Basilica, and that was compiled prior to the actual text of the Basilica.¹⁴⁶ In short, there is ample reason to believe, that the ultimate exemplar of ICb 2 predates the compilation of the text of the Basilica. What all this comes down to is, that the dating of ICb 2 itself can be regarded as a further *terminus ante quem* for the dating of

(RhP I, 67/8-9); on this comment in general, cf. B.H. Stolte, 'Balsamon and the Basilica', *SG III* (1989), 115-125 (120-121 and 124).

¹⁴³ ICb 2, 205-206.

¹⁴⁴ For all this, cf. SK 117/12 and app. ad loc.; for the rubric in the IndReg, cf. Heimbach, *Ἀνεκδότα*, II, 238; on the rubric in Julian's *Epitome latina*, cf. n. 69 above.

¹⁴⁵ For this, cf. M.Th. Fögen, 'Legislation und Kodifikation des Kaisers Leon VI.', *SG III* (1989), 23-35.

¹⁴⁶ For all this, cf. Van Bochove, 'Index titulorum', 14-16 with the notes 58-70 (§ 9). On the nature of ICb 2, cf. also § 1 of the latter article, and §§ 1-2 of the present article.

recension L. As such, it can be added to the termini referred to by Zachariä von Lingenthal, Scheltema and Van der Wal, viz. the Prochiron and the Eisagoge.

The dating of the ultimate original of ICb 2 to the later ninth century, the nature of the index and the conclusion that recension L underlies its Novel part finally bring us back to the issue of the phrase *διαίρεσις*. As recension L is the source of the Novels in ICb 2, the division into *διαίρεσεις* must be connected with that recension. But in what way? § 4.2 above has shown, that the fragmentary division into chapters which occurs in cod. Laurent. plut. 80.4 does not match the division into *διαίρεσεις*. We can only conclude, that the compiler(s) of the archetype of ICb 2 used a copy of recension L in which the text of the Novels was subdivided into *διαίρεσεις*. It may have been a copy written in uncial script, but this can - sadly enough - never be proved. What the *διαίρεσεις* exactly looked like remains a mystery. Their beginnings may have been marked by numbers in view of the fact that the *διαίρεσεις* in ICb 2 are accompanied by numbers. However, it is equally possible that these numbers owe their genesis to the compiler(s) of the ultimate original of ICb 2, in that they added the numbers to an already existing thematic subdivision of the text based on the contents of the Novels concerned.¹⁴⁷ Be that as it may, the compilers of the Basilica consulted a copy of recension L in which the text of the individual Novels was subdivided into *διαίρεσεις*. The compilers used this manuscript in two ways: first, they scrutinized its contents in order to select the individual (parts of) Novels for their editorial list, of which ICb 2 is a remnant. Second, while being guided by this editorial list, they had the text of the Novel part of their new compilation of laws (viz. the Basilica) copied from this manuscript.

The conclusion that a copy of recension L underlies both the ultimate original of ICb 2 and the text of the Basilica enables us to shed new light on a highly complicated set of problems concerning the Novel part of the first book of the Basilica.

In § 4.6 above, we have observed that Zachariä von Lingenthal - correctly - identified the Index Reginae as an index of rubrics of the Breviary of Theodore of Hermoupolis, and that this index guided him in his restitution of the Novel part of B. 1. For, Zachariä almost inevitably identified the term *διαίρεσις* in the IndReg as a reference to the Breviary, whereas he regarded the phrase *ἡ ἄλλη νεαρά* as an allusion to the original text of the Novels of Justinian. On this basis, he adopted text units from the Breviary in those cases where the IndReg uses the term *διαίρεσις* (Novv. 37 and 131); where the IndReg comes up with the phrase *ἡ ἄλλη νεαρά* (Novv. 109, 146 and 132), Zachariä incorporated the original text of the Novels into his reconstructed version. We have already seen, that the line of

¹⁴⁷ The Index Reginae contains an indication for the existence of such a textual subdivision with respect to content. In lemma IndReg Nov. 162 (Heimbach, *Ἀνέκδοτα*, II, 246), the accompanying note mentions the section on donations: Βιβ. μζ' τίτ. α' κεφ. ζ'· *διαίρεσις περι δωρεῶν* 'Book 47 (of the Basilica), title 1, chapter 7: section on donations'.

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reasoning underlying Zachariā's restitution of B. 1 is ultimately based on the assumption that the phrases *διαίρεσις* and *ἡ ἄλλη νεαρά* in the IndReg denote different works. As such, it has proved to be untenable: in its lemma of Nov. 12, the IndReg itself clearly shows, that the terms under discussion refer to one and the same textual entity. Without being substantiated, the suggestion has been made that in the IndReg, in the notes indicating which (parts of) Novels occur in which book and title of the Basilica, the terms *διαίρεσις* and *ἡ ἄλλη νεαρά* both allude to the full text of the Novels of Justinian. With regard to B. 1, this suggestion can now be substantiated on the basis of ICb 2. While referring to the first book of the Basilica, both the IndReg and ICb 2 come up with a rubric of Nov. 146. The rubric of this Novel in the IndReg originates from Theodore's Breviary, its counterpart in ICb 2 was taken from recension L. Or to be more precise: it is exactly in the Novel part of B. 1 that ICb 2 reveals its first firm piece of evidence that recension L underlies the Novel part of this Basilica index. Thus, ICb 2 connects the phrases *διαίρεσις* and *ἡ ἄλλη νεαρά* with recension L.¹⁴⁸

Despite this, we still encounter Theodore's Breviary in the first book of the Basilica: ICb 2 lists the Novv. 37 and 42 - both being accompanied by numbered *διαίρεσεις* -, while providing them with rubrics identical to those in the Breviary.¹⁴⁹ The two manuscripts handing down the text of B. 1 confirm this picture: both the Coislinianus 151 (ff. 43^v-44^r, 44^v resp.) and the Parisinus 1352 (ff. 5^v, 6^r (?) resp.)¹⁵⁰ transmit the relevant text portions from the Novv. 37 and 42 in the version of Theodore. The presence of the relevant parts of Theodore's summary of Nov. 37 in the text of the Basilica can easily be explained. In the course of his reign, Justinian issued a number of Novels in Latin, a language that even in his own day was all but incomprehensible to his Greek speaking subjects. Even though these Latin Novels did belong to the original *Collectio CLXVIII Novellarum*, they were soon substituted by Greek summaries: it is in this form that the *Collectio* is handed down by our manuscripts, the Marcianus 179 and the Laurent. plut. 80.4.¹⁵¹ The above is exactly what happened in the case of Nov. 37. Justinian promulgated this Latin Novel in the year 535. It was incorporated into the original *Collectio*, but at a moment which can no longer be specified, the Latin original was replaced by its Greek counterpart from Theodore's Breviary. In this version, Nov. 37 finally reached the text of the Basilica. But this is not the complete story. Of the two manuscripts transmitting the *Collectio*, the Laurentianus is the

¹⁴⁸ Further evidence for this is, of course, to be found in the joint entry of the Novv. 123 and 137 in ICb 2.

¹⁴⁹ Cf. ICb 2, 36-37 and 41-42; Zachariae, *Ἀνέκδοτα*, 50 and 55.

¹⁵⁰ On cod. Coisl. gr. 151, cf. again n. 1 above; on cod. Paris. gr. 1352, cf. n. 94 above. It should be noted, that the Parisinus does not transmit the text of Theod. 42 § 2 in its main text on f. 6^r. However, f. 5^v does hand down several paragraphs of Theod. 37 in the left margin. For this reason, Theod. 42 § 2 probably occurs in the margin of f. 6^r, even though I have been unable to verify this, as the margin of the folio is badly damaged by humidity and barely readable on the microfilm consulted. BT 9 test. ad B. I,1,50 testifies to the presence of Theod. 42 § 2 in the Parisinus (P).

¹⁵¹ On the omission of Latin Novels from the *Collectio*, and their substitution by Greek summaries (Theodore or Athanasios) in general, cf. for instance Van der Wal, 'La version florentine', 149; Noailles, *Les collections*, I, 124, 179 and 182; Van der Wal / Lokin, *Delineatio*, 58-59.

only one to hand down the text of Nov. 37 in the version of Theodore.¹⁵² This fact alone again points into the direction of an ancestor of the Laurentianus as the underlying source of the Novel part of the text of the Basilica. On the understanding that in ICb 2, as in the Index Reginae, the phrases *διαίρεσις* and *ἡ ὅλη νεαρά* refer to text bodies originating from one and the same source, Theod. 37 must have reached the text of the Basilica via a prototype of cod. Laurent. plut. 80.4, viz. the copy of recension L: incorporation of Theod. 37 directly from the Breviary into the text of the Basilica is extremely unlikely, if only for reasons of economy. The side by side occurrence of the phrases *διαίρεσις* and *ἡ ὅλη νεαρά* in ICb 2 rather indicates, that the compilers of the Basilica consulted one, and only one manuscript transmitting Novels of Justinian in whatever version. If this holds true, one might expect that the terms *διαίρεσις* and *ἡ ὅλη νεαρά* can both be applied indiscriminately to Theodore's Breviary and the full text of the Novels of Justinian. And this is indeed the case. The term *διαίρεσις* in the reference to Nov. 37 in ICb 2 can be taken to indicate a text portion from the Breviary originating from the manuscript transmitting recension L,¹⁵³ whereas the appearance of *διαίρεσις* in the joint entry of the Novv. 123 and 137 in ICb 2 clearly connects the term with the full text of Justinian's Novels in the same copy of recension L. The phrase *ἡ ὅλη νεαρά* in the lemma of Nov. 146 in ICb 2 evidently designates the full text of the Justinian Novel in recension L. ICb 2 does not contain the phrase *ἡ ὅλη νεαρά* denoting the Breviary: for this, we have to turn to another partial index of the Basilica, viz. IPc. This index occurs in cod. Paris. gr. 1349, on the ff. 1^r-6^v, and covers B. 45 - B. 50.¹⁵⁴ IPc designates the entire Nov. 36 as constituent part of the text of B. 45,6. On f. 2^r, in l. 8, the Parisinus transmits the following note: Περὶ τῶν ἐν Ἀφρικήν διαδόχων ἡ ὅλη νεαρά: νε. λς'. Κεφ. β'. 'Successors in Africa, the entire Novel; Nov. 36. Chapter 2 (viz. of title 6 of book 45 of the Basilica)'. The rubric in this lemma in IPc is identical with the rubric of Theod. 36. Justinian issued his 36th Novel in Latin: as such, it became part of the original *Collectio*, but was soon substituted by the Greek summary from Theodore's Breviary, and in this version it finally ended up in the

¹⁵² Cf. SK 244 test.: 'Nov. XXXVII (...) Latine tantum extat. – Epit. Theod. 37 (inde L et B. 1,1, 49-52), (...)'. On the absence of Theod. 37 in the Marcianus and its presence in the Laurentianus, cf. also Noailles, *Les collections*, II, 30-31 and 117-118.

¹⁵³ The presence of minor text units from Theodore's Breviary in the copy of recension L and their designation by the term *διαίρεσις* allows us to shed some new light on the external appearance of the actual text of the Breviary in cod. Athon. *Μεγίστη Λαύρα* Θ 65. As we have seen, the latter manuscript transmits the text of the summaries of the Novels in the Breviary with a subdivision into smaller sections whose beginnings are marked by protrusion of the first letter of the first word, while *παραπομπάι* mark the end of the individual sections; cf. § 4.6 with the notes 86-87. The occurrence of minor text portions (read: sections) from the Breviary in the copy of recension L - which must have existed prior to the late ninth century - makes it quite possible, that the subdivision of the text of the Breviary in the Athonensis (dating from the first half of the eleventh century) originates from Theodore himself. It should be added, that the compilers of the Basilica naturally did not find Theodore's *παραπομπάι* in their copy of recension L.

¹⁵⁴ On IPc, cf. Van Bochove, 'Index titulorum', 3 with n. 10; Van Bochove, *To Date and Not to Date*, 185 n. 63. On the Parisinus 1349, cf. n. 88 above.

text of the Basilica. Again, the Laurentianus is the only manuscript handing down Theod. 36 instead of the original Latin Nov. 36.¹⁵⁵ Once more, a text portion from the Breviary must have reached the Basilica text via the copy of recension L. Ipso loco, the Basilica text does indeed contain Theod. 36 in its entirety.¹⁵⁶ Thus, while using the phrase ἡ ἔλλη νεαρά, IPc refers to a text portion from Theodore's Breviary as it must have been present in the copy of recension L. In short, two partial indices of the Basilica - ICb 2 and IPc - demonstrate, that the phrases διαίρεσις and ἡ ἔλλη νεαρά can both denote texts from Theodore's Breviary as well as from the full text of the Novels of Justinian as represented in recension L. The side by side occurrence of the terms under discussion in ICb 2, combined with the important conclusion on the basis of the lemma IndReg Nov. 12 - διαίρεσις and ἡ ἔλλη νεαρά alluding to one and the same textual entity -, makes it highly likely, that all the relevant text portions from the Breviary and the full text of the Novels originated from one and the same manuscript, viz. a copy of recension L. Sadly enough, this manuscript did not survive: likely as its existence may have been, it remains conjecture. So much for the reference to Nov. 37 (and related matters) in ICb 2.

But what about the occurrence of Nov. 42 in the version of Theodore in both ICb 2 and the text of the Basilica? Justinian issued this Novel - dating from the year 536 - in Greek, and it is transmitted by both the Marcianus and the Laurentianus, so the presence of Theod. 42 § 2 in the Basilica text and the clear reference to the Breviary in ICb 2¹⁵⁷ cannot be explained along the same lines as in the case of Nov. 37. There seems to be only one logical explanation: for some unknown reason, the copy of recension L that was used by the compilers of the ultimate original of ICb 2 and the Basilica text, handed down Nov. 42 in the version from Theodore's Breviary instead of Justinian's own original Greek Novel. This explanation is less far-fetched than it may appear at first sight. For, the above copy of recension L need not necessarily have contained exactly the same text body as cod. Laurent. plut. 80.4. Attention has already been drawn to Nov. 149: the Laurentianus omits this Novel, but it does occur in the text of the Basilica, viz. in B. 6,3,42-45.¹⁵⁸ Is it too bold to venture the suggestion that Nov. 149 did occur in the copy of recension L underlying the Novel part of the Basilica text, but for some unknown reason got lost in the course of the transmission, and is thus lacking in the Laurentianus 80.4?

¹⁵⁵ Cf. SK 243 test.: 'Nov. XXXVI (...) Latine tantum extat. - Epit. Theod. 36 (inde L et B. 45,6,2), (...)'; cf. also Noailles, *Les collections*, II, 30-31 and 117-118.

¹⁵⁶ Cf. B. 45,6,2 (BT 2115/19-24) and Theod. 36 (Zachariae, *Ἀνέκδοτα*, 50).

¹⁵⁷ Cf. SK 263 test.: 'Nov. XLII (...) Graece extat in ML, (...)'; presence in B. 1: BT 9/1-2, SK 266 test.; reference in the index: ICb 2, 41-42.

¹⁵⁸ On the omission of Nov. 149 from the Laurentianus, cf. SK 723 test.; Noailles, *Les collections*, II, 120; Van der Wal, 'La version florentine', 150. On the presence of the Novel in the Basilica text, cf. Van der Wal, 'La version florentine', 152 n. 7. Nov. 149 is to be found in BT 187/19-189/17; interestingly, it is only handed down by the Coislinianus 151: the Parisinus 1352 omits the chapters 42-45; cf. BT 187 app. ad ll. 19 and 29, 188 app. ad ll. 11 and 31. The presence of Nov. 149 in the Basilica text is explicitly attested by the IndReg and ICb 2; cf. Heimbach, *Ἀνέκδοτα*, II, 245 and ICb 2, 207-208.

The conclusion that a copy of recension L underlies the Novel part of ICb 2 and the Basilica text, has also consequences for both Zachariä's reconstructed version of the Novel part of B. 1, and the corresponding text handed down by the manuscripts.

On more than one occasion we have seen, that Zachariä restituted the text of the Novel part of B. 1 mainly on the basis of the Index Reginae, departing from the - tacit and incorrect - premise that the phrases *διαίρεσις* and *ἡ ὅλη νεαρά* in that index allude to different literary works. With regard to the Novv. 37 and 131, he adopted the versions from Theodore's Breviary, because the IndReg refers to those Novels while using the term *διαίρεσις*. For the Novv. 109, 146 and 132, he used the original text, because in those cases the IndReg comes up with the phrase *ἡ ὅλη νεαρά*. Of the two manuscripts directly transmitting the text of B. 1,¹⁵⁹ cod. Coisl. gr. 151 presents the following texts in the Novel part of the first book of the Basilica: on ff. 43^v-44^r, we read all the relevant paragraphs from Theod. 37; ff. 44^{r/v} read Nov. 131 (SK 662/28-663/31); on f. 44^v, we read Theod. 42 § 2; ff. 44^v-45^v read Nov. 109 (SK 517/15-519/35); ff. 45^v-46^v read Nov. 144 (SK 709/11-710/23); ff. 46^v-47^v read Nov. 146 (SK 715/13-717/23); finally, f. 47^v reads Nov. 132 (SK 665/7-666/3). It appears, that with the exception of the Novv. 37 and 42, all texts in the Coislinianus originate from the full text of the Novels of Justinian. The presence of Theod. 37 in the Basilica text has been accounted for, the occurrence of Theod. 42 can be explained by assuming that the copy of recension L underlying the Novel part of the Basilica somehow contained Theodore's summary of the Novel instead of the full text. Of Nov. 131, the Coislinianus presents the text portion corresponding with chapter fourteen from the Schöll / Kroll edition.¹⁶⁰ Finally, the Novv. 109, 144, 146 and 132 are quoted in their entirety, with omission of (parts of) their prefaces and epilogues, which is usually the case in the text of the Basilica. In its Novel part of B. 1, ICb 2 (ll. 35-54) refers to the same seven Novels which make their appearance in the Coislinianus: the index uses the term *διαίρεσις* in connection with the Novv. 37, 131 and 42, and the phrase (*ἡ*) *ὅλη (νεαρά)* in connection with the Novv. 109, 144 and 146; Nov. 132 lacks a specification. ICb 2 clearly alludes to the Novv. 37 and 42 in the version of Theodore, but this issue has already been clarified. Again on the understanding that in ICb 2, as in the Index Reginae, the phrases *διαίρεσις* and *ἡ ὅλη νεαρά* refer to text bodies originating from one and the same source - viz. the copy of recension L -, we can conclude, that in its Novel part of the first book of

¹⁵⁹ Cod. Paris. gr. 1352 should be disregarded, as it hands down only tiny scraps of text, even though these fragments do originate from all the Novels that make up the Novel part of B. 1: on f. 5^v, we read all the relevant fragments from Nov. 37 in the version of Theodore; ff. 5^v/6^r read Nov. 131 (starting with SK 662/28ff., directly followed by Theod. 131 § 21-25); f. 6^r reads Theod. 42 § 2 (?; cf. n. 150 above), Nov. 109 (starting with SK 518/23-25, followed by fragments from an unknown version), Nov. 144 (SK 709/11-13), Nov. 146 (SK 715/13-17) and Nov. 132 (SK 665-666, partially omitted); for all this, cf. also BT 8-14 app..

¹⁶⁰ In actual fact, this is the only difference between Zachariä's restitution of the Novel part of B. 1 and the text version presented by the Coislinianus: Zachariä quoted Nov. 131 in the version of Theodore, whereas the Coislinianus transmits the full text of the Novel.

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the Basilica, ICb 2 shows complete correspondence with the text version presented by cod. Coisl. gr. 151.¹⁶¹

The combination of ICb 2 with its use of the phrases *διαίρεσις* and *ἡ ὅλη νεαρά*, and the text version of the Novel part of B. 1 presented by the Coislinianus renders Zachariä von Lingenthal's restitution of the Novel part of B. 1 simply superfluous. Moreover, the same combination also shows, that, at least as far as the Novel part of B. 1 is concerned, cod. Coisl. gr. 151 does hand down the true, authentic Basilica text after all.¹⁶² For the Novel part of B. 1, the compilers of the Basilica followed exactly the same method of working as for any other Novel part of whatever Basilica title: first, they scrutinized the contents of their copy of recension L in order to select the individual (parts of) Novels for their editorial list; second, while being guided by this list, they had the text of the Novel part of the first book of the Basilica copied straight from this manuscript.

One question still remains: is it possible to come up with a satisfactory explanation for the use of the phrases *διαίρεσις* and *ἡ ὅλη νεαρά* in the notes on the Novels in the Index Reginae? As we have seen in § 4.6, these notes indicate which (parts of) Novels occur in which book and title of the Basilica. While correctly identifying the IndReg as an index of rubrics of Theodore's Breviary, Zachariä hypothesized, that the author of the notes in the IndReg used the Breviary rather than the *Collectio CLXVIII Novellarum* in order to indicate if and where a Novel occurred in the text of the Basilica. In its turn, this hypothesis almost inevitably led him to his untenable point of view that the term *διαίρεσις* would allude to the Breviary, whereas the phrase *ἡ ὅλη νεαρά* would refer to the full text of Justinian's Novels.

On the one hand, it is clear, that the notes on the Novels in the IndReg must have been written after the compilation of the text of the Basilica: in the notes, we come across the phrase *οὐδὲ αὕτη κεῖται* which indicates that the Novel to which the note belongs, is lacking in the text of the Basilica. On the other hand, the use of the phrases *διαίρεσις* and *ἡ ὅλη νεαρά* in the notes in the IndReg suggests a strong correspondence between these notes and an index titulorum of the Basilica of the same nature as ICb 2. In view of this, the following explanation may be put forward: some time after the genesis of the text of the Basilica, the author of the notes which have come down to us via the IndReg wanted to know if, and where individual Novels of Justinian occurred in the text of Leo the Wise's new compilation of laws: the Basilica. For his purposes, the author worked on the basis of an already existing index of rubrics of Theodore's Breviary: a prototype of the IndReg

¹⁶¹ With the sole exception of Nov. 132, because ICb 2 lacks a specification in its lemma of this Novel.

¹⁶² In this matter, I thus agree with the Heimbach brothers, while disagreeing with Schminck who argued, that in B. 1 (and elsewhere, too) the text presented by the Coislinianus would correspond with the text of Basil the Macedonian's "Forty Books", referred to in the preface to the Eisagoge; for all this, cf. Schminck, *Studien*, 52-53 (including full references to the relevant literature written by the Heimbach brothers).

without the notes.¹⁶³ For the compilation of his notes on the individual Novels, the author probably consulted an existing index titulorum of the Basilica of the same nature as ICb 2, simply adopted references to Novels from that index and incorporated them into his notes.¹⁶⁴ Thus, the phrases *διαίρεσις* and *ἡ ὅλη νεαρά* in the notes on the individual Novels in the IndReg do not refer to Theodore's Breviary, but to the original Collectio (recension L), even though these notes are added to an index of rubrics of Theodore's Breviary. This explanation is not exactly new: basically, we owe it to Heimbach.¹⁶⁵

6. Summary

Three testimonies from Byzantine legal literature - viz. the work of Garidas, Athanasios's Syntagma of Justinian's Novels and a note on the Digest written by the Enantiophanes - show, that the phrase *διαίρεσις* can very well denote an individual text unit of restricted size, i.e. a section or paragraph.

Both the term *διαίρεσις* and the phrase *ἡ ὅλη νεαρά* in the references to the Novels of Justinian in ICb 2 pertain to the text of the Novels in a copy of recension L of the Collectio CLXVIII Novellarum: all other collections of Novels, in whatever form they have come down to us, disqualify. The term *διαίρεσις* in ICb 2 denotes a section, i.e. a text unit of restricted but otherwise indeterminable size, within the text of the Novels: in the copy of recension L, the Novels were evidently subdivided into smaller text portions. The individual *διαίρεσεις* may have been numbered, but it is equally possible, that the numbers were added by the compilers of the text of the Basilica. They used this, and only this, copy of recension L for the compilation of the Novel part of the text of the Basilica. The compilers first scrutinized the contents of the manuscript in order to select the individual (parts of) Novels for their editorial list, of which the ultimate original of ICb 2 is a remnant. Next, while being guided by this list, they had the text of the Novel part of the Basilica copied straight from the same manuscript.

The copy of recension L also underlies the Novel part of the first book of the Basilica: for this part, the compilers of the Basilica followed exactly the same method of working as

¹⁶³ The entire Index Reginae - viz. the combination of the index of rubrics of the Breviary and the notes on the individual Novels - is transmitted in cod. Paris. gr. 1349. This manuscript dates from the eleventh century; cf. again n. 88 above. This dating does not argue in favour of the possibility of the entire Index Reginae in the Parisinus being an autograph of the author of the notes, though the possibility cannot be excluded.

¹⁶⁴ Both the Index Coislinianus (ICb) and ICb 2 are handed down by cod. Coisl. gr. 151, dating from the first half of the fourteenth century; cf. once more § 1 with n. 1 above. Naturally, this dating precludes the possibility of direct use of ICb / ICb 2 by the author of the notes in the Index Reginae. Moreover, even though the notes in the Index Reginae show a good deal of correspondence with ICb / ICb 2, there are also numerous differences; on this, cf. again § 4.6 above, *passim*.

¹⁶⁵ Cf. Heimbach, *Ἀνέκδοτα*, II, p. LXVIII: 'Ex his, quae in medium protulimus, fortasse et de horum scholiorum origine constare poterit. Sunt enim, ni fallor, ex Basilicorum tabula, qualem Codex Coislinianus CLI. habet (viz. the Index Coislinianus), deducta ad unum omnia. (...)'

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for any other Novel part of whatever Basilica title. With regard to the Novel part of B. 1, cod. Coisl. gr. 151 transmits the authentic Basilica text after all.

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VAN BOCHOVE

Concordance

ICb 2	NT	Auth	Jul	Athan	Theod	IndReg	CollAmb	Coll25	Coll87	Anon
3	3	3	5	tit. 1,9	3	3	tit. 2		cap. 20	
<5>	5	5	4	tit. 1,13	5	5	tit. 4,1-26		cap. 6-11	
8	8	8	15	tit. 4,1	8	8				
13	13	13	23	tit. 4,2	13	13				
15	15	15	30	tit. 4,24	15	15				
16	16	16	12	tit. 1,10	16	16	tit. 2			
17	17	17	21	tit. 4,3	17	17				21
20	20	20	25=120	tit. 7,1	20	20				
24	24	24	17	tit. 4,4	24	24				
25	25	25	18	tit. 4,5	25	25				
26	26	26	19	tit. 4,6	26	26				
27	27	27	20	tit. 4,7	27	27				
28	28	28	27	tit. 4,8	28	28				28
29	29	29	28	tit. 4,9	29	29				29
30	30	30	22	tit. 4,10	30	30				
31	31	31	39	tit. 4,11	31	31				
35	35	37	26	tit. 22,3	35	35				
37	37	39		tit. 2,6	37	37				112
41	41= 50	49	38	tit. 4,12	41	41				
42	42	43	10	tit. 1,5	42	42				
49	49	58	44	tit. 7,3	49	49				45
57	57	57	51	tit. 1,12	57	57			cap. 19	
66	66	68	60	tit. 9,5	66	66				
69	69	73	63	tit. 4,13	69	69				
80	80	81	74	tit. 4,14	80	80				
86	86	128	69	tit. 1,3	86	86	tit. 3,1-16			
93	93	100	86	tit. 7,6	93	93				
95	95	94	88	tit. 4,18	95	95				
102	102	32	95	tit. 4,19	102	102				
103	103	33	96	tit. 4,20	103	103				
109	109	104	102	tit. 3,1	109	109				
111	111	106	104	tit. 2,5	111	111				128
113	113	110	106	tit. 4,16	113	113				
114	114	109		tit. 22,6	114	114				
119	119	114	110	tit. 10,10	119	<119>				106
120	120	115	111	tit. 2,2	120	120		capit. 24	cap. 14-17	109

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123	123	134	115	tit. 1,2	123	123			cap. 28-87	
123+137	123+137	134+ -	115+ -	tit. 1,2+1,17	123+137	123+<137>		capit. 22		
126	126		113	tit. 7,7	126	126				
128	128	133	124	tit. 20,1	128	<128>				
131	131	119	119	tit. 2,3	131	131	tit. 1,1-2+ 53-75	capit. 25	cap. 22-26	110
132	132	130		tit. 3,4	132	132				
133	133	131		tit. 1,14	133	<133>	tit. 4,27-54	capit. 23		
134	134	127		tit. 4,22	134	134				130
135	135			tit. 16,4	135	<135>				
144	144			tit. 3,3	144	<144>				
145	145	123		tit. 4,23	145	145				
146	146	124		tit. 3,5	146	146				
149	149				149	149				
161	161				161	161				

Concordance: Numbers in general based on the testimonia referred to by R. Schöll / G. Kroll, [edd.], *Novellae*, [Corpus Iuris Civilis. Editio stereotypa secunda, vol. III], Berlin 1899 (many reprints), in the apparatus of their edition; N. van der Wal, *Manuale Novellarum Justiniani. Aperçu systématique du contenu des Nouvelles de Justinien*, Groningen 1998², 194-200 (Tables. III: Les numéros des Nouvelles dans les collections). **ICb 2:** Index titulorum of B. 1 - B. 9, ed. Van Bochove, *SG VI* (1999), 16-58. **NT:** Collectio graeca CLXVIII Novellarum, ed. Schöll / Kroll; § 4.1, § 4.2 and § 5 above. **Auth:** Authenticum, ed. Schöll / Kroll; § 4.3 above. **Jul:** Juliani Epitome latina Novellarum Justiniani, ed. G. Haenel, *Juliani epitome latina Novellarum Iustiniani*, Leipzig 1873 (repr. Osnabrück 1965, second repr. in P. Fiorelli / A.M. Bartoletti Colombo, *Juliani epitome latina Novellarum Iustiniani*. Secondo l'edizione di Gustavo Hänel e col glossario d'Antonio Agustín, [Legum Iustiniani imperatoris vocabularium], Firenze 1996); § 4.4 above. **Athan:** Athanasios of Emesa, Syntagma of the Novels of Justinian, ed. D. Simon / Sp. Troianos, *Das Novellensyntagma des Athanasios von Emesa*, [Forschungen zur byzantinischen Rechtsgeschichte, Band 16], Frankfurt / M. 1989; § 4.5 above. **Theod:** Theodore of Hermoupolis, Breviarium of the Novels of Justinian, ed. C.E. Zachariae, *Ἀνέκδοτα*, Leipzig 1843 (repr. Aalen 1969), 1-165; § 4.6 and § 5 above. **IndReg:** Index Reginae, ed. G.E. Heimbach, *Ἀνέκδοτα*, II, Leipzig 1840 (repr. Aalen 1969), 237-246; § 4.6 and § 5 above. **CollAmb:** Sp. Troianos, 'Die Collectio Ambrosiana', *FM II* (1977), 30-45; § 4.7 above. **Coll25:** Collectio XXV capitulorum, ed. Heimbach, *Ἀνέκδοτα*, II, 145-201; § 4.8 above. **Coll87:** Collectio LXXXVII capitulorum, ed. Heimbach, *Ἀνέκδοτα*, II, 202-234 (ed. consulted) and I.B. Pitra, *Juris ecclesiastici Graecorum historia et monumenta*, II, Rome 1868 (repr. Farnborough 1963), 385-405; § 4.8 above. **Anon:** résumé of the Novels of Justinian used by the younger Anonymos / Enantiophanes: Van der Wal, *Manuale*, 196-198; § 4.9 above.

