

**PRELUDING THE BASILICA, BUT HOW?**  
**The final paragraph of the preface to the Prochiron reconsidered**

**1. Introduction**

The text of the Basilica as it has come down to us presents several peculiarities. It is, for instance, quite remarkable that the Digest fragments which the Basilica text derives from the Digest Summa of the elder Anonymous, are always preceded – at least in the older and better Basilica manuscripts – by the name of the original author of the Digest fragment concerned: *Ulpianu, Paulu, Gaiu, Idem*, etc. In the original Digest Summa, these names did still have some use, but in the text of the Basilica they were superfluous and void of sense. The same goes for the numbering of the chapters which, again in the older and better manuscripts, retains the numbers of the fragments of the Digest, even if certain numbers are lacking, especially where the Basilica skip Digest fragments whose content had been superseded by more recent Justinian laws. A final peculiarity of the text of the Basilica concerns the translations of the Latin *termini technici*, the so-called ἐξέλλητισμοί. In the two law books issued by emperor Basil the Macedonian (867-886), viz. the Prochiron and the Eisagoge, these ἐξέλλητισμοί are nearly always correct as far as their content is concerned. In the Basilica text, however, the ἐξέλλητισμοί sometimes contain curious mistakes. Moreover, it also occurs with some frequency that one *terminus technicus* has been rendered by two different ἐξέλλητισμοί, if the Basilica text unit is transmitted by more than one manuscript; sometimes, one of these manuscripts even contains the original Latin term.<sup>1</sup>

The above peculiarities caused Scheltema, and in his wake Van der Wal and Lokin, to argue that an official text of the Basilica probably never saw the light of day. Instead, they thought it likely that emperor Leo VI the Wise (886-912) merely had an elaborate table of contents compiled, thus following the example set by his father Basil who did so twice. This elaborate table of contents probably had the shape of an index titulorum dividing the text of the Basilica into 60 books and the books again into titles. For each title, the index enumerated the constituent parts: it listed which titles from the Digest and the Code and which Novels or chapters of Novels were to make up the new Basilica titles. The text of the Greek versions of Justinian's legislation was adopted into the Basilica titles

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1 For all this, cf. Van der Wal/Lokin, *Delineatio*, 82-83.

slightly later. This was the work of scribes or laymen without a thorough legal education: they rather mechanically ‘filled’ the newly formed titles of the Basilica with texts from Justinian’s legislation on the basis of the list drawn up earlier. In other words: the previously established *index titulorum* served as an editorial plan.<sup>2</sup>

The hypothesis of Scheltema, Van der Wal and Lokin readily explains inconsistencies and incongruities in the text of the Basilica: in the light of this hypothesis, flaws and errors such as those referred to above should be attributed to scribes and clerks who simply lacked the knowledge and skill to make the necessary adjustments. Moreover, the hypothesis also explains how it is possible that the prefaces to the Prochiron and the Eisagoge allude to two completed ἀνακαθάρσεις τῶν παλαιῶν νόμων: these purifications of the old laws resulted in two large compilations of laws, one in 60 books and one in 40 books, both effectuated during the reign of Basil the Macedonian. In their turn, they were followed by the 60 books of the Basilica text, compiled during the reign of Leo the Wise.<sup>3</sup> In the light of the hypothesis concerning an *index titulorum* serving as an editorial plan, the prefaces to the Prochiron and the Eisagoge do not allude to completed compilations of laws, but rather to two completed editorial plans.

## 2. Index titulorum

Apart from the text of the Basilica (with or without the scholia), some manuscripts also transmit indices titulorum.<sup>4</sup> Work on these indices has shown that some of them are more than just πίνακες – tables of contents – of manuscripts. For, these indices titulorum do not only divide the text of the Basilica into books and titles, while providing the titles with rubrics, but also come up with information regarding the internal structure of the Basilica

2 For this entire section, cf. e.g. H.J. Scheltema, ‘Probleme der Basiliken’, *TRG* 16 (1939), 320-346 (341-343) (repr. in: H.J. Scheltema, *Opera minora ad iuris historiam pertinentia*, (collegerunt N. van der Wal/J.H.A. Lokin/B.H. Stolte/ Roos Meijering), Groningen 2004, 170-188 (185-186)); H.J. Scheltema, ‘Über die Natur der Basiliken’, *TRG* 23 (1955), 287-310 (297) (= Scheltema, *Opera minora*, 290-306 (296-297)); N. van der Wal, *Les commentaires grecs du Code de Justinien*, ‘s-Gravenhage 1953, 25-26; Van der Wal/Lokin, *Delineatio*, 83; Th.E. van Bochove, *To Date and Not to Date. On the Date and Status of Byzantine Law Books*, Groningen 1996, 183.

3 Cf. e.g. Van der Wal/Lokin, *Delineatio*, 83; Van Bochove, *To Date and Not to Date* (note 2 above), 184. On the issue of the compilations of laws in 60, 40 and again 60 books, cf. Th.E. van Bochove, ‘Some Byzantine Law Books. Introducing the Continuous Debate Concerning Their Status and Their Date’, in: J.H.A. Lokin/B.H. Stolte, [a cura di], *Introduzione al diritto bizantino. Da Giustiniano ai Basilici*, [Collegio di Diritto Romano 2009. Pubblicazioni del CEDANT, 8], Pavia 2011, 239-266 (245-247 and 248).

4 For a survey of the extant indices titulorum, cf. Van Bochove, *To Date and Not to Date* (note 2 above), 185-186; Th.E. van Bochove, ‘Index Titulorum. Merely Table of Contents or Ἀρχὴ σὺν Θεῶ τῶν Βασιλικῶν?’, *SG* VI (1999), 1-58 (2-5).

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titles. The indices list the constituent parts of the Basilica titles by means of references to the legislation of Justinian: it concerns source references indicating the relevant books and titles from the Digest and the Code, and the numbers of the relevant Novels, all references usually accompanied by rubrics. Moreover, at least three of the extant indices titulorum show evidence of having been compiled towards the end of the ninth century. Two indices do so directly: it concerns the Index Coislinianus (ICb), the index titulorum covering all 60 books of the Basilica, and ICb 2, which covers the first nine Basilica books.<sup>5</sup> IPC, the third index which covers the books 45 – 50, provides indirect evidence.<sup>6</sup> Because of their dating, the indices titulorum coincide with the compilation of the text of the Basilica itself, and may even predate that text. Thus, the indices titulorum seem to substantiate the above hypothesis concerning an index titulorum serving as an editorial plan. In this way, the extant indices titulorum of the Basilica would appear to be a perfect prelude to this compilation of laws.

### 3. Three compilations of laws

All that glitters is not gold. For, the prefaces to Basil's two law books themselves appear to question the hypothesis that these prefaces would merely refer to two completed editorial plans in the form of indices titulorum, one in 60 books and one in 40 books, resp.

#### 3.1. *Prochiron preface: 60 books*

The relevant passage from the preface to the Prochiron – consisting of two fragments that are closely connected with respect to content – reads as follows:

Εἰ δέ τι ἑλλιπὲς ἔχοι τὸ παρ' ἡμῶν γραφόμενον – οὐδὲ γὰρ οἶόν τε ἀπείρων βιβλίων γραφὴν ἐν ταύτῃ τῇ συντομίᾳ περιληφθῆναι –, χρεῶν τοῖς φιλοπόνως ἐγκύπτουσιν ἐν τῷ παρ' ἡμῶν ἀρτίως ἀνακεκαθαμένῳ τοῦ νόμου πλάτει τὴν τοῦ ζητουμένου γνώσιν ἀρύσασθαι. (...) Ἐπειδὴ δὲ ἀνωτέρω ἀνακαθάρασεως τῶν παλαιῶν νόμων ἐνημενεύσαμεν, εἰδέναι χρὴ, ὅτι συναγροχότες ἐν ἐνὶ τεύχει τὰ ἀνηρημένα πάντα τεθείκαμεν, ὡς ἂν δῆλη καὶ σαφὴς ἡ τούτων ἀργία πᾶσι γνωρίζοιτο· τὰ μέντοιγε συνεστῶτα τῶν παλαιῶν νόμων ἐν τῷ οἰκείῳ

5 On the date of ICb, cf. Th.E. van Bochove, 'Working with ICb. Some observations on the present state of the Index Coislinianus as a research tool', in: V.A. Leontaritou/K.A. Bourdara/E.Sp. Papagianni, [Hrsg.], *Antecessor. Festschrift für Spyros N. Troianos zum 80. Geburtstag / Αντικίνησορ. Τιμητικός τόμος Σπύρου Ν. Τρωιάνου για τὰ ὀγδοηκοστὰ γενέθλιά του*, Athen / Αθήνα 2013, 197-216 (199-202); on the date of ICb 2, cf. Van Bochove, 'Index titulorum' (note 4 above), 14-16.

6 On the date of IPC, cf. Th.E. van Bochove, 'Index titulorum. II: IPC, the partial index of the Basilica in cod. Paris. gr. 1349', *SG VIII* (2009), 35-104 (42-51).

σχήματι μένοντα ἐν ἑτέραις ἐξήκοντα βίβλοις καθυπετάξαμεν, τοῖς βουλομένοις σπουδῆν καὶ περὶ τὴν γνῶσιν καὶ μάθησιν τοῦ πλάτους τῶν νόμων ἐγκαταλείψαντες.<sup>7</sup>

This passage clearly states that those who are looking for legal knowledge and for whom the Prochiron is not satisfactory to that end, have to take the trouble to bury themselves in the recently purified mass of the law: ἐν τῷ παρ' ἡμῶν ἀρτίως ἀνακαθαρισμένῳ τοῦ νόμου πλάτει. They have to gain the knowledge they seek from there. What follows is a specification: it concerns a purification of the old laws, an ἀνακάθαρσις τῶν παλαιῶν νόμων. The passage continues with the observation that all abolished laws have been put together in one book or volume, the ἐν τεύχῳ.<sup>8</sup> The old laws that are still valid have been arranged in 60 other books, while retaining their own form: τὰ μέντοιγε συνεστῶτα τῶν παλαιῶν νόμων ἐν τῷ οἰκείῳ σχήματι μένοντα ἐν ἑτέραις ἐξήκοντα βίβλοις καθυπετάξαμεν.

For the time being, the latter phrase with its reference to the valid laws being arranged into 60 *books* is the most important one: apparently, a book – βίβλος or βιβλίον – implies a complete, fully elaborated text.<sup>9</sup> The preface to the Prochiron confirms this elsewhere. In its lines 45-51, the preface alludes to the origin of the law book. We read that for the compilation of the law book the πλῆθος τῆς γραφῆς τῶν νόμων had been scrutinized. From each book of this πλῆθος the useful, necessary and frequently consulted

7 Prochiron preface, ll. 59-62 and 77-82 (Schminck, *Studien*, 58 and 60). Transl.: 'If our document lacks anything – for it is impossible to include the contents (lit. the writing) of countless books in this résumé –, then those who diligently lose themselves in the extension (τὸ πλάτος) of the law purged only recently by us, have to gain the knowledge they seek from there. (...) Above we made mention of a purification of the old laws. One must know, that we have collected all abolished regulations, and put them in one volume. In this way their invalidity ought to be obvious and clearly recognizable to all. What has remained valid of the old laws has been classified in sixty other books, retaining its own form. We have left the zeal for knowledge of the extension of the laws, and for the act of learning itself as well, to personal initiative'.

8 Van der Wal and Lokin observe that the hypothetical index *titulorum* serving as an editorial plan for the text of the Basilica, must also have specified which fragments from the relevant Digest title and which constitutions form the relevant Codex title had to be omitted in the Basilica text because of their abrogation by more recent Justinian law. The details could be derived from Basil's ἐν τεύχῳ which enumerated all abrogated laws. Van der Wal and Lokin argue that this procedure may be the reason why the ἐν τεύχῳ is no longer extant; cf. Van der Wal/Lokin, *Delinatio*, 83.

9 On the terms βίβλος and βιβλίον, cf. e.g. B. Atsalos, *La terminologie du livre-manuscrit à l'époque byzantine*. I<sup>re</sup> partie: Termes désignant le livre-manuscrit et l'écriture, [Ἑλληνικά. Περιοδικὸν Σύγγραμμα Ἑταιρείας Μακεδονικῶν Σπουδῶν. Παράρτημα, 21], Θεσσαλονίκη 1971, 46-87; A.-M. Talbot/E. Gamillscheg, *ODB*, s.v. Book; G. Cavallo, "Book", in *Brill's New Pauly*. Antiquity volumes edited by: Hubert Cancik and Helmuth Schneider. Brill Online, 2012. [Reference](http://referenceworks.brillonline.com/entries/brill-s-new-pauly/book-e220900). University of Groningen. 13 November 2012 <http://referenceworks.brillonline.com/entries/brill-s-new-pauly/book-e220900>, with further references.

items had been collected:<sup>10</sup> the phrase ἐκ τοῦ ἐκάστου βιβλίου shows that the term βιβλίον denotes a concrete text. Thus, the use of the term βιβλίον argues against the hypothesis that the Prochiron preface would refer to a completed editorial plan in the form of an index titulorum in 60 books.

### 3.2. *Eisagoge* preface: 40 books

Mutatis mutandis, the same appears from the preface to the *Eisagoge*. The relevant passage in this preface reads as follows:

Καὶ πρῶτον μὲν (sc. ἡ ἡμετέρα βασιλεία) τὰ ἐν πλάτει τῶν παλαιῶν νόμων κείμενα πάντα ἀνακαθάρασα, ἐν τεσσαράκοντα βιβλίοις ἀθόλωτον καὶ ἀνόθευτον τὸ πᾶν χύμα τοῦ νόμου ὡς πόμα θεῖον ὑμῖν ἐκέρασεν· (...), ἐκ τῶν εἰρημένων τεσσαράκοντα βιβλίων τῶν προκεκριμένων ὡς θεοδιδάκτων νόμων ἐκλεξαμένη ἐν τεσσαράκοντα τίτλοις ἰσαρίθμῳ ταῖς βιβλίοις, ἐν χειρσὶ φέρειν σωτήριον καὶ ψυχωφελῆ νόμον καὶ σύντομον καὶ σαφῆ καὶ εἰσαγωγικὸν ἐκείνων τῶν ἐν ταῖς τεσσαράκοντα βιβλίοις κειμένων ὑμῖν ἐφιλοτιμήσατο.<sup>11</sup>

This passage again consists of two fragments which belong closely together as regards content. The first fragment observes that all the extensive texts of the old laws have been purified, and that the result has been structured into 40 books. The second fragment – dealing with the *Eisagoge* itself – adds that from those 40 books a selection has been made in 40 titles, and that this selection – designated as law – constitutes a clear résumé of the regulations incorporated into the 40 books. At the same time, the selection serves as an introduction into those regulations.

10 Cf. Prochiron preface, ll. 46-49 (Schminck, *Studien*, 58): (...), τί ἂν ἐπινοήσαμεν, ὥστε καὶ τῶν ἀνθρώπων τὸν ὄκνον ἀποθέσθαι καὶ τὴν τῶν νόμων διδασκαλίαν εὐληπτον ποιῆσαι; Οὐδὲν ἕτερον ἢ ἐγκύψαι εἰς τὸ πλῆθος τῆς γραφῆς τῶν νόμων καὶ ἐξ ἐκάστου βιβλίου τὰ ἀναγκαῖα καὶ χρειώδη καὶ συγχῶς ζητούμενα ἀναλέξασθαι (...). Transl.: '(...), what could we think of, so as to make people lay aside their fear and render legal education easily comprehensible? Nothing but to become engrossed in the multitude of written laws and to collect from every single book the necessary, useful and frequently occurring items, (...)’.

11 *Eisagoge* preface, ll. 31-33 and 36-40 (Schminck, *Studien*, 6). Transl.: ‘First our majesty purged all the extensive texts of the old laws and poured the entire mass of the law, unsullied and unadulterated, into forty books, offering it to you as a divine drink. (...), our majesty has made a selection from the said forty books, which had been accepted on the grounds that they consisted of the laws taught by God, and set it down in forty titles, equalling the number of books, wishing to put into your hands out of the contents of those forty books a concise, clear and introductory law, which preserves and brings profit to the soul’. (Translation adopted from W.J. Aerts/Th.E. van Bochove/M.A. Harder/A. Hilhorst/J.H.A. Lokin/R. Meijering/S.L. Radt/J. Roldanus/B.H. Stolte/N. van der Wal, ‘The Prooimion of the *Eisagoge*: Translation and Commentary’, *SG VII* (2001), 91-155 (97 and 99)).

The passage in its entirety contains no less than three phrases implying that the term βιβλίον denotes a concrete, fully elaborated text: (1) τὰ ἐν πλάτει τῶν παλαιῶν νόμων κείμενα πάντα ἀνακαθάρασα, ἐν τεσσαράκοντα βίβλοις (...) τὸ πᾶν χύμα τοῦ νόμου (...) ὑμῖν ἐκέρασεν; (2) ἐκ τῶν εἰρημένων τεσσαράκοντα βίβλων τῶν (...) νόμων ἐκλεξαμένη, and finally (3) ἐκείνων τῶν ἐν ταῖς τεσσαράκοντα βίβλοις κειμένων. Thus, the use of the term βιβλίον argues against the hypothesis that the preface to the Eisagoge would merely refer to a completed index titulorum in 40 books.<sup>12</sup>

### 3.3. *Basilica text: 60 books*

If we take the information provided by the prefaces to the Prochiron and the Eisagoge literally, these prefaces appear to force us to accept that once there existed indeed two large, fully elaborated compilations of laws: one in 60 books (referred to in the Prochiron preface) and one in 40 books (mentioned in the Eisagoge preface), both completed during Basil's reign. They precluded the 60 books of the Basilica text, which was compiled during the reign of Leo the Wise. By our modern day standards, three large compilations of laws all dating from the later ninth century would seem to be too much of a good thing.<sup>13</sup> Apart from the index titulorum hypothesis, at least two attempts have been made to shed light on this matter.

## 4. First attempt: the proposed dating of the Prochiron to 907

In 1986, the German scholar Andreas Schminck proposed to date the Prochiron to the year 907. The law book would thus have been issued by Leo the Wise instead of by Basil, and it would follow the Eisagoge rather than precede it. In Schminck's view, Leo the Wise had the compilation of laws in 40 books, which had been completed shortly before the death of his father Basil, refashioned to form a compilation of laws in 60 books, viz. the Basilica. According to Schminck, however, the Basilica did not originate during the reign of Leo the Wise. He rather differentiated between a large compilation of laws issued in Leo's day, known as the Sixty Books, and the Basilica which came into being some 150 years later. The Basilica would have been compiled at the faculty of law in Constantinople, which was initiated by emperor Constantine IX Monomachos in the middle of the eleventh century – probably in the year 1047 – and headed by the νομόφυλαξ John Xiphilinos. In Schminck's

12 For the use of the term βιβλος or βιβλίον arguing against the index titulorum hypothesis, cf. also Van Bochove, *To Date and Not to Date* (note 2 above), 184-185.

13 Cf. again the résumé of this entire issue in Van Bochove, 'Some Byzantine Law Books' (note 3 above), 248; cf. also the literature quoted in note 37 below.

line of reasoning, it is the Sixty Books of Leo the Wise that would have been referred to in the preface to the Prochiron. The ἐν τεύχῳ, mentioned in the same preface, would have to be identified as the Collection of Novels of Leo the Wise.<sup>14</sup>

The dating of the Prochiron will make or break Schminck's view regarding the ἀνακάθαρσις τῶν παλαιῶν νόμων, resulting in the ἐν τεύχῳ and the compilation of laws in 60 books, mentioned in the preface to this law book. And this dating is a real bone of contention. Elsewhere, I have dealt with the dating of the Prochiron at length.<sup>15</sup> Here, suffice it to say that I hold on to the traditional dating of the Prochiron<sup>16</sup> to the first part of the reign of Basil the Macedonian, mainly on the basis of two criteria already established by Zachariä von Lingenthal. First, there is the rubric of the Prochiron in its entirety, which mentions emperor Basil the Macedonian, together with his sons Constantine and Leo as his co-rulers. Thus, the law book must have been promulgated during the joint rule of these three emperors, i.e. in the years between 870 and 879. Second, there is the dating of the oldest manuscripts handing down the text of the law book, viz. the codd. (Bodl. 715b) Laud. gr. 39 and Coisl. gr. 209.<sup>17</sup> To these manuscripts can be added cod. Paris. suppl. gr. 622, discovered after Zachariä von Lingenthal's day by Minoïdes Mynas. These three manuscripts date from the beginning of the tenth century,<sup>18</sup> which is, of course, a date by approximation. However, by virtue of their dating to the beginning of the tenth century, the manuscripts dispute a dating of the Prochiron to the year 907, because they may have been written prior to that year.

Apart from these dating criteria, it is highly questionable whether the ἐν τεύχῳ can be identified as the Collection of Novels of Leo the Wise. According to the Prochiron preface, the ἐν τεύχῳ exclusively listed laws that had already lost their validity. In his Novels, Leo did not only repeal earlier laws, but he also confirmed the legal validity of existing provisions, and even introduced some new regulations.<sup>19</sup> Moreover, recent

14 For all this, cf. Schminck, *Studien*, 27-33, 65-66, 78-80, 98-102 and 132; A. Schminck, *ODB*, s.v. Basilika. On the Sixty Books, cf. A. Schminck, "‘Frömmigkeit ziere das Werk’". Zur Datierung der 60 Bücher Leons VI., *SG III* (1989), 79-114. For a short résumé of Schminck's view, cf. Van Bochove, 'Some Byzantine Law Books' (note 3 above), 248-250 and 264-265.

15 Cf. Van Bochove, *To Date and Not to Date* (note 2 above), *passim*, in particular 29-56.

16 *Contra* Schminck's review of my monograph in *JÖB* 48 (1998), 350-354.

17 For all this, cf. C.E. Zachariae, *Ὁ Πρόχειρος Νόμος. Imperatorum Basilii, Constantini et Leonis Prochiron*, Heidelbergae 1837, LIV-LX; Van Bochove, *To Date and Not to Date* (note 2 above), 29 (résumé), with further references.

18 Cf. *RHBR*, I, Nos. 148, 206, and 209.

19 Cf. e.g. Van Bochove, *To Date and Not to Date* (note 2 above), 182-183; cf. also Σπ. Τρωϊάνος, *Οι πηγές του βυζαντινού δικαίου*, Αθήνα/Κομοτηνή 2011<sup>3</sup>, 251-252.

research has again confirmed that it is rather unlikely that Leo the Wise would have issued his Novels directly in the form of a Collection.<sup>20</sup>

Since Schminck published his study, one new source has come to light which seems to argue against the traditional dating of the Prochiron to the years 870-879. It concerns a Basilica scholion transmitted in cod. Taur. B I 20 (= T). The scholion in question – sch. T 1 ad B. 44,1,114 – quotes Proch. 33,30-32, a set of new provisions first promulgated by the emperor who issued the law book. The quotation is preceded by the following inscription: Ἐκ τοῦ ἐγχειριδίου τοῦ μετὰ τὰ βασιλικά διὰ κινναβάρεως.<sup>21</sup> The scholion indicates that the Prochiron was written after the Basilica. As the Basilica are usually dated to the reign of Leo the Wise, the scholion seems to suggest that the law book was issued during Leo's reign. Elsewhere, I have dealt with this scholion extensively,<sup>22</sup> therefore, I do not intend to repeat my entire line of reasoning. Here, it may suffice to emphasize just one point. What, if we accept both the information provided by the scholion – viz. that the Prochiron was compiled posterior to the Basilica –, and Schminck's view that the term τὰ βασιλικά owes its existence to a personal preference of the νομόφυλαξ John Xiphilinos, and that the Basilica came thus into being under his direction towards the middle of the eleventh century?<sup>23</sup> Ultimately, this would imply that the Prochiron would have been issued in the mid-eleventh century, i.e. some 150 years after the death of Basil the Macedonian and his sons Constantine and Leo, the emperors mentioned in the rubric of the law book. This ultimate consequence is absurd and impossible because of the dating of the oldest manuscripts handing down the Prochiron. The dating of the codd. Laud. gr. 39, Coisl. gr. 209 and Paris. suppl. gr. 622 to the beginning of the tenth century is simply incompatible with a dating of the Prochiron some time after the year 1047, the probable date of the foundation of the law school in

20 Cf. J. Signes Codoñer, 'The Corpus of Leo's Novels. Some suggestions concerning their date and promulgation', *SG VIII* (2009), 1-33 (*passim*); J. Signes Codoñer, 'Las Novelas de León VI el Sabio', in: Lokin/Stolte, *Introduzione al diritto bizantino* (note 3 above), 267-321 (*passim*).

21 Sch. T 1 ad B. 44,1,114 (ed. J. Dittrich, 'Die Scholien des Cod. Taur. B.I. 20 zum Erbrecht der Basiliken', *FM IX* (1993), 181-298 (245/1104). Transl.: 'From the Manual (published) after the Basilica; written in vermilion (red ink)'. There are two more scholia in the Taurinensis (which hands down the Synopsis Basilicorum Maior) containing quotations from the Prochiron. The first scholion pertains to SBM A 33,2 and quotes Proch. 1,14, preceded by the source reference ἐκ τοῦ ἐγχειριδίου and accompanied by the note μετὰ τὰ βασιλικά. The second scholion pertains to SBM A 65,1 and quotes Proch. 2,3, preceded by the same source reference and accompanied by the note μετὰ τὴν ἔκθεσιν τῶν βασιλικῶν; cf. Dittrich, 'Die Scholien des Cod. Taur. B.I. 20', 187 with the notes 1, 12 and 13. Dittrich has not edited the latter two scholia in their entirety, because they do not relate to the law of inheritance as laid down in the Basilica.

22 Cf. Van Bochove, 'Some Byzantine Law Books' (note 3 above), 262-266 (Appendix II: Some scholia in cod. Taur. B I 20).

23 Cf. again Schminck, *Studien*, 27-33, and 132.



Constantinople. The information provided by the scholion in the Taurinensis that the Prochiron would have been issued posterior to the Basilica is only credible if one accepts that the designation τὰ Βασιλικά cannot be looked upon as a personal preference of John Xiphilinos,<sup>24</sup> but must already have occurred long before the mid-eleventh century, i.e. in the early tenth century, – and that, consequently, the compilation of laws known by the name Basilica came into being during the reign of Leo the Wise. This line of reasoning is not merely interesting, as for instance Zachary Chitwood would have it: it is vital in the discussion concerning the origin of the Basilica, both the name and the compilation of laws.<sup>25</sup>

After all the observations made in the present paragraph, I hold on to the view that the information provided by the scholia in the Taurinensis is incorrect. Moreover, I hold on to the view that the Prochiron was issued prior to the Basilica, whereas this compilation of laws came into being during the reign of Leo the Wise, instead of towards the mid-eleventh century.

## 5. Second attempt: the hypothesis concerning a second edition of the Prochiron

The second attempt to shed light on the complicated issue of the three extensive compilations of laws, all dating from the later ninth century, was undertaken by the Spanish scholar Juan Signes Codoñer. In the year 2007, he and his colleague Francisco Andrés Santos published a monograph containing a Spanish translation of the Eisagoge

24 On this, cf. M.Th. Fögen/D. Simon, ‘Tractatus de peculiis’, *FM X* (1998), 261-318 (296 with note 35); cf. also Th.E. van Bochove, ‘Tenth Century Constantinople: Centre of Legal Learning? Second thoughts concerning the addition of the older scholia to the Basilica text’ (in print; to be published in the next volume of *FM*), § 5 (5) with note 41.

25 Cf. Z.R. Chitwood, *Byzantine Legal Culture under the Macedonian Dynasty, 867-1056*, Dissertation Princeton University, June 2012 (<http://arks.princeton.edu/ark:/88435/dsp01x346d4203>), 44 note 68: ‘Van Bochove, “Some Byzantine Law Books”, pp. 262-6 argues that the term τὰ βασιλικά was used in at least one case before the eleventh century, in the scholia transmitted by cod. Taur. B I 20. This would undercut Schminck’s argument that the term τὰ βασιλικά was used as a noun only starting in the eleventh century. While van Bochove’s argument is interesting, Schminck’s schema remains for the *Sixty Books/Basilika*, in my opinion, persuasive and cannot be overturned based on scholia in a manuscript which can be dated only on paleographical/codicological grounds.’ It is true that the Taurinensis dates from the middle of the eleventh century(!) – cf. RHBR, I, No. 285 – and that this dating is one by approximation, based on palaeographical grounds. Despite this, in my view the evidence of the scholia in T cannot be simply ignored, especially if one maintains both that the Prochiron was issued after the Basilica (in accordance with the scholia in T) and that the Basilica came into being in the mid-eleventh century (Schminck’s line of reasoning). In this respect, the dating of the oldest Prochiron manuscripts to the early tenth century creates an unsolvable inconsistency.

with the accompanying scholia.<sup>26</sup> In their monograph, the translation is preceded by an elaborate introduction – called *Estudio* –, for the greater part written by Signes Codoñer. Among other things, this introduction deals with the dating of the Prochiron and that of the Eisagoge, and with all the problems originating from and connected with those datings. Signes Codoñer’s inspiring and thorough study has induced me to reconsider some of my earlier views.

Regarding the dating of the Prochiron – in the above matter of the three extensive compilations of laws, the dating of the Eisagoge is not in issue –, Signes Codoñer more or less steered a middle course between Andreas Schminck’s view and that of my own. He adhered to the traditional dating of the Prochiron to the first part of the reign of Basil the Macedonian, viz. to the years 870-879, and even did not rule out a more precise dating to the year 872.<sup>27</sup> However, Signes Codoñer also assumed that the Prochiron was subject to a revision, effectuated during the reign of Leo the Wise. This revision would eventually have led to an official second edition of the Prochiron, probably published during the short reign of Leo’s brother Alexander, i.e. between 11 May 912 and 6 June 913.<sup>28</sup>

Signes Codoñer’s most important consideration arguing in favour of the existence of a revision of the Prochiron is his conclusion that the final paragraph of the preface to the law book, viz. its lines 77-82 (in Schminck’s edition; it concerns Signes Codoñer’s part D), does not belong to the original text, but must be regarded as a later addition. This line of reasoning allowed him to make a highly important distinction in the passage from the Prochiron preface as it has been quoted in § 3.1 above. In Signes Codoñer’s view, the Prochiron is to be regarded as a manual of law in forty titles, resulting from – and being part of – the work on the *πλάτος τῶν νόμων*, mentioned in the lines 61-62: *ἐν τῷ παρ’ ἡμῶν ἀρτίως ἀνακακαθαρισμένῳ τοῦ νόμου πλάτει*. This *πλάτος τῶν νόμων* ought to be taken in a very concrete sense: it would refer to a purified Greek version of the *Corpus Iuris Civilis*, compiled in the first regnal years of Basil the Macedonian. The final paragraph of the Prochiron preface, however, would not refer to Basil’s undertaking: instead, it would rather allude to his son Leo’s enterprise. For, the sixty books mentioned in the lines 79-81 – *τὰ μέντοιγε συνεστῶτα τῶν παλαιῶν νόμων ἐν τῷ οἰκείῳ σχήματι μένοντα ἐν ἐτέραις ἐξήκοντα βίβλοις καθυπετάξαμεν* – would have to be identified as the sixty books of the

26 J. Signes Codoñer/F.J. Andrés Santos, *La Introducción al Derecho (Eisagoge) del Patriarca Focio*, [Nueva Roma. Bibliotheca Graeca et Latina Aevi Posterioris, 28], Madrid 2007.

27 On the dating of the Prochiron, cf. Signes Codoñer, *Estudio* § 3.7: La datación del *Prochiron*, in: Signes Codoñer/Andrés Santos, *La Introducción al Derecho* (note 26 above), 189-267, in particular § 3.7.1: La *intitulatio* del *Prochiron* y la datación del *Zavordensis*, 189-201.

28 On the revision and the second edition of the Prochiron, cf. Signes Codoñer, *Estudio* § 3.7.7: La revisión del *Prochiron*, in: Signes Codoñer/Andrés Santos, *La Introducción al Derecho* (note 26 above), 240-246.

Basilica text, compiled in the beginning of the reign of Leo the Wise. As a later addition to the Prochiron preface, the entire final paragraph would be part of the second edition of the law book, effectuated after the death of Leo in response to the demand instigated by the Book of the Eparch: it would have been necessary to bring the Prochiron up-to-date in the light of the Novels of Leo, and because of the compilation of the Basilica text. Signes Codoñer also observed that the ἐν τεύχῳ referred to in line 78 – ἐν ἐνὶ τεύχει τὰ ἀνηρημένα πάντα τεθείκαμεν – cannot be identified as the Collection of Novels of Leo the Wise, but kept an alternative identification eventually in suspense.<sup>29</sup>

Despite Signes Codoñer's observations and conclusions with regard to the final paragraph of the preface to the Prochiron, I doubt that this paragraph should indeed be looked upon as a later addition. My hesitation is caused by my own research in the matter of the indices titulorum of the Basilica, new discoveries, and new insights inspired by Signes Codoñer's Estudio, all leading to a new interpretation of the phrase ἐν τῷ οἰκείῳ σχήματι μένοντα in line 80 of the Prochiron preface.

## 6. Cod. Ridolfi: Cujas' lost manuscript

In the Codex part of the Basilica text, the Greek versions of the constitutions normally go without an *inscriptio*, i.e. the part of the constitution mentioning the names of the emperor or emperors who originally promulgated the constitution concerned, and of the addressee(s). As a rule, the compilers of the Basilica text simply omitted the *inscriptio* as a redundant text unit. However, in the Basilica text, there is – at least – one exception to this.

In the sixteenth century, the French scholar and humanist Jacques Cujas (1522-1590), one of the most important protagonists of the French school of law, the *mos gallicus*, possessed a Basilica manuscript which is now sadly lost. It is certain that this manuscript – which is also known as the codex Ridolfi –, must have contained the Basilica

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29 On the final paragraph of the Prochiron preface as a later addition, cf. Signes Codoñer, Estudio § 3.7.6: El proemio del *Prochiron*, in: Signes Codoñer/Andrés Santos, *La Introducción al Derecho* (note 26 above), 224-240, in particular 231-240; on the ἐν τεύχῳ: 232, 235 and 236-238; on the πλάτος τῶν νόμων, cf. Signes Codoñer, Estudio § 3.7.8: El Πλάτος τῶν νόμων, 246-267, and § 3.7.6: El proemio del *Prochiron*, *passim*. It should be noted that here I have restricted myself to merely giving a concise résumé of Signes Codoñer's most important views and conclusions regarding the Prochiron, and in particular its preface, without attempting to discuss his entire line of reasoning. For a complete survey of all Signes Codoñer's views, also regarding the *Eisagoge*, cf. Signes Codoñer, Estudio § 3.9: Conclusiones sobre la cronología del *Prochiron* y la *Eisagoge*, 270-274 (273-274); cf. also the résumé in Van Bochove, 'Some Byzantine Law Books' (note 3 above), 252-254.

books 54-57, but it probably comprised the books 46-60.<sup>30</sup> From this Basilica manuscript Cujas quoted a number texts, especially in his commentaries on the Justinian Code, published under the titles *Paratitla in libros IX Codicis Justiniani*,<sup>31</sup> and *Ad tres postremos Codicis Justiniani libros commentarii*.<sup>32</sup> In particular in his *Commentarii*, Cujas restituted many Codex constitutions on the basis of his Basilica manuscript. In their turn, Scheltema and Van der Wal used the works by Cujas as testimonies of the text of the Basilica: they used the *Paratitla* and *Commentarii* in order to reconstitute the text of the books 54-59.<sup>33</sup>

In the *Commentarii*, and via the apparatus criticus and the apparatus testimoniorum of the Basilica text, I have come across four cases in which Cujas quotes the *inscriptio* of a Codex constitution:

- (1) C. 10,3,7 = B. 56,6,7 rest.: Αὐτοκράτωρ Ζήνων τῷ Δομνίνῳ.
- (2) C. 10,16,13 = B. 56,8,13 rest.: Αὐτοκράτωρ Ἀναστάσιος Ἀνθεμίου ἐπάρχῳ τῶν πραιτωρίων.
- (3) C. 10,19,9 = B. 56,8,24 rest.: Αὐτοκράτωρ Ἀναστάσιος Ἀνθεμίου ἐπάρχῳ τῶν πραιτωρίων.
- (4) C. 12,40,12 = B. 57,5,12 rest.: Αὐτοκράτωρ Ἰουστινιανός.<sup>34</sup>

Scheltema and Van der Wal did not regard the above *inscriptiones* as genuine Basilica text, and therefore relegated them to their critical apparatus: they considered the

30 Cf. H.J. Scheltema/N. van der Wal, [edd.], *Basilicorum Libri LX*, Series A Volumen VII: Textus librorum LIII – LIX, Groningen/s-Gravenhage 1974, xviii. On Cujas' lost Basilica manuscript, cf. Heimbach, *Prolegomena*, 171-172 and 177-180; Heimbach, *GRR*, 348, 349 and 353; § 8.3 below.

31 First edition: Paris 1579; cf. 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, 163 note 33. The *Paratitla* are accessible via Jacobi Cujacii J.C. praestantissimi Opera omnia in decem tomos distributa quibus continentur tam priora, sive quae ipse superstes edi curavit; quam posteriora, sive quae post obitum ejus edita sunt / jam a Carolo Annibale Fabroto J.C. disposita, Tomus II, Neapoli 1758, col. 1-630.

32 First edition: Lyon 1562; cf. Troje, *Graeca leguntur* (note 31 above), 256-257 with note 61. The *Commentarii* can be consulted via Cujas, *Opera omnia*, II (note 31 above), col. 641-1014.

33 Cf. Troje, *Graeca leguntur* (note 31 above), 256-257; Scheltema/Van der Wal, *Basilicorum Libri LX*, A VII (note 30 above), xviii-xix.

34 (1) Cujas, *Opera omnia*, II (note 31 above), col. 652; BT 2562 app. crit. ad l. 4 ἐάν. Transl.: 'Emperor Zeno to Dominos [viz. Dominikos]'. (2) Cujas, *Opera omnia*, II, col. 674; BT 2570 app. crit. ad l. 16 ἐάν. Transl.: 'Emperor Anastasios to Anthemios the praetorian prefect'. (3) Cujas, *Opera omnia*, II, col. 682; BT 2572 app. crit. ad l. 8 ἴνα. Transl.: 'Emperor Anastasios to Anthemios the praetorian prefect'. (4) Cujas, *Opera omnia*, II, col. 976; BT 2621 app. crit. ad l. 3 μηδέϊς. Transl.: 'Emperor Justinian'.

*inscriptiones* to be spurious, or thought that Cujas had fabricated them himself.<sup>35</sup> In the end, they concluded that Cujas can hardly have drawn the *inscriptiones* from the Basilica text, and that it is impossible to guess where he found them.<sup>36</sup>

It is true that the above *inscriptiones* do not tally with the usual pattern of the Basilica text, according to which *inscriptiones* (and *subscriptiones*) of Codex constitutions are left out. In view of this, Scheltema and Van der Wal had good reason to distrust Cujas' *inscriptiones*. However, no less than four cases would appear to be too much of a coincidence. It can simply not be ruled out that Cujas' manuscript did indeed contain the above *inscriptiones*, and that he did copy them from this manuscript after all. If this holds true, then how to account for the presence of the *inscriptiones* in Cujas' lost manuscript? If we do not look upon the presence of the *inscriptiones* as purely coincidental, then it would seem that there is only one logical answer to the above question: Cujas' lost manuscript cannot be regarded as a regular Basilica manuscript. It is possible to explain the presence of the *inscriptiones* in this manuscript by looking upon this presence as it being a remnant of a compilation of laws predating the Basilica text compiled in the days of Leo the Wise. Which compilation of laws might we here be dealing with? The possibility of Basil the Macedonian's compilation of laws in 40 books which is referred to in the preface to the Eisagoge (lines 32 and 37-38, quoted in § 3.2 above) is to be discarded, as the above four *inscriptiones* quoted by Cujas make their appearance in the books 56 and 57. The only remaining possibility is Basil's compilation of laws in 60 books which is referred to in the preface to the Prochiron, despite the fact that the mere existence of (remnants of) Basil's compilation of laws in 60 books is seriously disputed or completely denied.<sup>37</sup>

The above brings back to mind the final paragraph of the Prochiron preface which explicitly states that those of the old laws that had remained valid, were structured into 60 other books, while retaining their own form: τὰ μέντοιγε συνεστῶτα τῶν παλαιῶν νόμων ἐν τῷ οἰκεῖῳ σχήματι μένοντα ἐν ἑτέραις ἐξήκοντα βίβλοις καθυπετάξαμεν. It would seem possible to look upon the presence of the *inscriptiones* in Cujas' lost manuscript as a manifestation of the phrase ἐν τῷ οἰκεῖῳ σχήματι μένοντα, in this sense that in Basil's compilation of laws in 60 books Codex constitutions still kept their *inscriptiones* (and

35 Cf. the comment pertaining to case (1): 'Cuiacius praemittit verba (...) sine dubio spuria'; to case (2): 'Cuiacius praemittit verba (sine dubio spuria) (...)'; to case (3): 'Cuiacius praemittit verba (spuria) (...)'; and, finally, to case (4): 'quam Cuiacius praemittit inscriptionem (...) ipse confecisse videtur'.

36 Cf. Scheltema/Van der Wal, *Basilicorum Libri LX*, A VII (note 30 above), xix: 'Admirationem movet Cuiacium nonnullas earum constitutionum praebere integra munitas inscriptione, hoc est additis imperatoris et eius hominis, ad quem data est haec vel haec constitutio, nominibus. Quas e Basilicorum textu hausisse vix potuit; nec tamen ubi inveniit illas, ullo modo conicere possumus'.

37 On this, cf. Schminck, *Studien*, 65-66; Signes Codoñer, Estudio § 3.7.6: El proemio del *Prochiron* (note 29 above), 232-240, and Signes Codoñer, Estudio § 3.9: Conclusiones (note 29 above), 273-274; Van der Wal/Lokin, *Delineatio*, 82 and 84.

*subscriptions*). In any case, the occurrence of the above *inscriptions* in Cujas' lost manuscript is ultimately my first reason to doubt the conclusion that the final paragraph of the Prochiron preface must be regarded as a later addition to that preface.

## 7. Cod. rescr. Vind. Suppl. gr. 200

My second reason to doubt the above conclusion ensues from a number of details concerning the Basilica text as it has been transmitted in a recently discovered palimpsest manuscript: it has come to light in the framework of the EU funded international project 'Rinascimento virtuale – Digitale Palimpsestforschung'. It concerns cod. rescr. Vind. Suppl. gr. 200. The *scriptura inferior* of the Vindobonensis Supplementum graecum 200, ff. 1-48, dates from the second half of the tenth century (possibly around the year 1000), and hands down parts from the books 21 – 26 and 28 – 29 of the Basilica.<sup>38</sup>

### 7.1. *The Vindobonensis: its features*

In his observations concerning the importance of the manuscript from a legal historical point of view, the Dutch scholar Bernard Stolte has drawn the attention to a number of striking details in which the text as transmitted by the lower script of the Vindobonensis strongly deviates from that in the only other manuscript handing down the relevant portion of the Basilica text, viz. cod. Paris. gr. 1348 (= Pa).<sup>39</sup>

(1) First, in its Digest part of the Basilica text, Pa transmits the names of the original authors of the Digest fragment concerned, whereas the Vindobonensis omits these names: in the palimpsest from Vienna, phrases like *Ulpianu*, *Paulu*, *Gaiu*, etc. do not occur.<sup>40</sup>

38 On cod. rescr. Vind. Suppl. gr. 200, cf. J. Grusková, 'Zwei neue Basiliken-Handschriften in der Österreichischen Nationalbibliothek. I: Paläographisch-kodikologische Analyse', in: Ch. Gastgeber, [ed.], *Quellen zur byzantinischen Rechtspraxis. Aspekte der Textüberlieferung, Paläographie und Diplomatik*. Akten des internationalen Symposiums Wien, 5.–7. 11. 2007, [Österreichische Akademie der Wissenschaften, philosophisch-historische Klasse. Denkschriften, 413. Band. Veröffentlichungen zur Byzanzforschung, Band XXV], Wien 2010, 107-138 (123-132 and 135-138); B.H. Stolte, 'Zwei neue Basiliken-Handschriften in der Österreichischen Nationalbibliothek. II: Rechtshistorische Analyse', in: Gastgeber, *Quellen zur byzantinischen Rechtspraxis*, 139-182 (146-151 and 167-182).

39 Cod. Paris. gr. 1348 dates from the beginning of the thirteenth century, and *inter alia* transmits the Basilica books 20-30, accompanied by scholia; cf. RHBR, I, No. 161 (pos. 1). Pa is the siglum used by the editors of BT in order to designate the Parisinus 1348; cf. H.J. Scheltema/N. van der Wal, [edd.], *Basilicorum Libri LX*. Series A Volumen III: *Textus librorum XVII – XXV*, Groningen/'s-Gravenhage 1960, v and xiv.

40 Cf. Stolte, 'Rechtshistorische Analyse' (note 38 above), 146; cf. also Grusková, 'Paläographisch-kodikologische Analyse' (note 38 above), 130.

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(2) Second, the Vindobonensis hands down Latin *termini technici* written in Latin characters, but mostly provided with Greek word endings, such as *mandaton*, *contraria*, *in factum*. Sometimes, the *termini technici* occur in a mixed script, as in the case of *intercessionon*, or they are completely written in Greek, as for instance *στυπρὸν* or *μανδάτων*.<sup>41</sup> Instead of the Latin *termini technici*, Pa transmits Greek translations – such as they are – of these terms: it concerns *ἐξέλλητισμοί*, already referred to in § 1 above. With regard to the Latin technical terms in the Vindobonensis, Stolte observes the following – and his comments are too important not to quote them in full:

Aus anderen byzantinischen juristischen Schriften (...) sind uns diese Termini sehr vertraut, aber in der Basilikenüberlieferung sind sie oft bzw. meistens “hellenisiert”. Daß sie im Wiener Palimpsest noch in lateinischen Buchstaben bzw. in lateinischer Form begegnen, deutet darauf hin, daß wir es mit einer älteren Phase dieser Überlieferung zu tun haben. Hier hat Pa oft die hellenisierte, also jüngere Form. Wenn man diese beiden Punkte zusammen betrachtet, sind sie eine Warnung, daß wir uns die Tradition des Basilikentextes nicht als einen einheitlichen Vorgang vorstellen müssen. Die Sache wird noch dadurch kompliziert, daß man über diese *termini technici* keine allgemeinen Aussagen machen kann (...).

Das Palimpsest zeigt also kein einheitliches Bild: Es kennt bestimmte “Hellenisierungen”, es hat aber auch viele Wörter und Redensarten der Juristensprache des sechsten Jahrhunderts bewahrt. Es wäre m. E. denn auch verfehlt, zu sagen, daß die Basilikenhandschriften zuerst alle z. B. *stupron* hatten und später alle das mit *μοιχεία* ersetzt haben; dies gilt auch für *in solutum* bzw. *ἐν προσημίσει* (usw.). Die Frage muß vielmehr lauten, ob bei der Entstehung der Basiliken die “Hellenisierung” systematisch durchgeführt oder eher der Willkür der Schreiber vorbehalten geblieben ist. Oder, noch problematischer: Hat es einen Zweig der Basilikenüberlieferung gegeben, der nie *stupron*, *in solutum* usw.

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41 For the examples of the Latin *termini technici* given in the main text, and for their exact location in the Vindobonensis, cf. Grusková, ‘Paläographisch-kodikologische Analyse’ (note 38 above), 130. It should be noted that Latin *termini technici* also occur in another newly found palimpsest manuscript from Vienna, viz. the lower script of cod. Vind. hist. gr. 10, also known as the Florilegium Basilicorum Vindobonense; cf. Stolte, ‘Rechtshistorische Analyse’, 142. The Florilegium Vindobonense was written by two different scribes – hand A and hand B, both dating from ca. the year 1000, or the first half of the eleventh century – and contains parts of and extracts from the books 2, 3, 5 – 10, 16 and 19 of the Basilica; on the Florilegium in general, cf. Grusková, ‘Paläographisch-kodikologische Analyse’, 108-122 and 133-134; Stolte, ‘Rechtshistorische Analyse’, 139-146 and 153-166; cf. finally J. Grusková, *Untersuchungen zu den griechischen Palimpsesten der Österreichischen Nationalbibliothek. Codices historici. Codices philosophi et philologici. Codices iuridici*, [Österreichische Akademie der Wissenschaften, philosophisch-historische Klasse. Denkschriften, 401. Band. Veröffentlichungen zur Byzanzforschung, Band XX], Wien 2010, 37-41.

gehabt hat? Wir sind eben nicht in der Lage, etwas mit Sicherheit über die älteste Phase des Basilikentextes auszusagen. Derartige Überlegungen gelten auch für die Juristennamen.

Meines Erachtens ist nur eines sicher: Es ist undenkbar, daß es zuerst keine Juristennamen oder keine lateinischen *termini technici* gegeben hat, die dann später nachgetragen worden sind. Daß es vor den Basiliken Handschriften mit Übersetzungen der verschiedenen Teile der justinianischen Gesetzgebung gegeben hat, die dann bei der Herstellung der Basiliken benutzt worden sind, ist klar, aber dafür bedürften wir keines Beweises. Inwieweit wir uns aber einen einheitlichen Vorgang bei der Anfertigung der Basilikenhandschriften vorstellen müssen, steht auf einem anderen Blatt. Insoweit sind sich die beiden Wiener Palimpseste sogar einig.<sup>42</sup>

(3) Third, the text as handed down by the Vindobonensis is sometimes more extensive than its counterpart in Pa, and may even diverge from it considerably. This is for instance the case with regard to a number of fragments originally stemming from book 8 of the Justinian Code, viz. B. 26,1,74 = C. 8,40,1 (BT 1252/28-29); B. 26,1,91 = C. 8,40,27 (BT 1254/27-30: here, the Vindobonensis presents a text that is both longer than and fully divergent from that in Pa); and, finally, B. 26,1,93 = C. 8,40,29 (BT 1255/3-5). With regard to the fragments from the Justinian Code, Stolte comments:

Insgesamt vermitteln die Blätter 27 und 9 [sc. des Palimpsestes], die das Ende des Basilikentitels 26,1 enthalten, den Eindruck, eine ausführlichere Fassung des Basilikentextes darzustellen. Zwar ist diese Fassung an mehreren Stellen dieselbe wie die in der Handschrift Pa, aber die Abweichungen sind zu zahlreich und vor allem zu umfangreich, um als reine *variae lectiones* betrachtet zu werden. Diese Palimpsestfassung muß auf eine andere Quelle zurückgehen als die in Pa vertretene. (...) Wie dem auch sei, auf jeden Fall muß man versuchen, sich eine Vorstellung der Textgeschichte zu machen, die erklären kann, wie sich zwei ziemlich ähnliche, jedoch verschiedene Fassungen des achten Codexbuches in der Überlieferung des Basilikentextes etablieren konnten.<sup>43</sup>

More extensive versions occur in the Novel part of the Basilica text as well. In B. 28,15,1 = Nov. 39 praef. c. 1 (BT 1438/5-1440/15), the lower script of the Vindobonensis – as far as it has been preserved and is still legible – transmits the preface to Nov. 39 in its

42 For this entire section, cf. Stolte, 'Rechtshistorische Analyse' (note 38 above), 147-148 (the quotations are borrowed from both pages).

43 For all this, cf. Stolte, 'Rechtshistorische Analyse' (note 38 above), 148-150 (the quotation stems from p. 150).



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entirety, whereas Pa and cod. Laurent. plut. 80,11 (= F)<sup>44</sup> hand down an abridged version of that preface. In B. 29,3,1 = Nov. 100 (BT 1484/4-1486/15), Pa and F commence with the *dispositio* of Nov. 100, whereas the palimpsest from Vienna hands down the beginning of the preface to this Novel. And in B. 29,7,1 = Nov. 61 (BT 1503/7-1505/13), Pa and F begin straightaway with the *dispositio* of Nov. 61; at the relevant spot, the Vindobonensis is barely readable, but there is sufficient reason for the conclusion that in this case, too, the manuscript must have transmitted the preface to the Novel. Stolte comments:

Aus diesen drei Stellen kann man die Schlußfolgerung ziehen, daß der Schreiber des Palimpsestes oder seine Vorlage den Anfang einer Novelle regelmäßig inklusive des jeweiligen *prooimion* abgeschrieben haben. Übrigens weisen jüngere Handschriften nicht selten an Stellen, wo ein solches *prooimion* fehlt, ein Scholion mit dessen Text auf.<sup>45</sup>

With regard to the *scriptura inferior* of the Vindobonensis, Stolte's overall conclusion reads:

Zusammenfassend stellt sich heraus, daß der Codex Vind. Suppl. gr. 200 rescriptus gegenüber Pa und F eine Sonderstellung einnimmt. Im allgemeinen hat er auf dem Weg, der von den Texten des sechsten Jahrhunderts zu der späteren Basilikenüberlieferung geführt hat, die Merkmale der älteren Stufen beibehalten, ohne gegen jüngere Einflüsse völlig immun gewesen zu sein. Als solcher ist er ein wertvoller Zeuge, der eine eingehendere Überprüfung verdient, als dies hier möglich war. Ein derartiges zusätzliches Studium würde gewiß neues Licht auf die Überlieferungsgeschichte der Basiliken werfen.<sup>46</sup>

### 7.2. *The Vindobonensis: determining its place in the history of the transmission of the text*

Where do we stand in all this? On the one hand, we are confronted with a palimpsest manuscript somehow reflecting an earlier phase in the transmission of the Basilica text. On the other hand, this manuscript shows evidence of having been subject to more recent influences. Would it, despite all Stolte's nuancing remarks and his call for caution, already

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44 Cod. Laurent. plut. 80,11 dates from the twelfth century, and hands down the books 28 and 29 of the Basilica, accompanied by scholia; cf. RHBR, I, No. 71 (pos. 1). F is the siglum used by the editors of BT in order to denote the Laurentianus; cf. H.J. Scheltema/N. van der Wal, [edd.], *Basilicorum Libri LX*, Series A Volumen IV: Textus librorum XXVI – XXXIV, Groningen/'s-Gravenhage 1962, v-vi.

45 For this entire section, cf. Stolte, 'Rechtshistorische Analyse' (note 38 above), 150-151 (the quotation is derived from p. 151).

46 Stolte, 'Rechtshistorische Analyse' (note 38 above), 151.

be possible to shed some new light on the early history of the transmission of the Basilica text, or is any attempt in that direction premature? And has all the above any bearing on the preface to the Prochiron, in particular its final paragraph? It would appear that two of the above features of cod. rescr. Vind. Suppl. gr. 200 as described by Stolte contribute to an answer to these questions.

First, there is the occurrence of the Latin *termini technici*, either in Latin characters with Greek word endings, or in a mixed script, or in Greek transcription. In the Vindobonensis, these terms have kept the form they must have had in the legal language of the sixth century. In other words, these technical terms have somehow retained their original form. This again calls to mind the sentence in the final paragraph of the Prochiron preface – quoted in § 3.1 above – which states that all provisions of the old laws that had remained valid were divided over 60 other books, while retaining their own form: τὰ μέντοιγε συνεστῶτα τῶν παλαιῶν νόμων ἐν τῷ οἰκείῳ σχήματι μένοντα ἐν ἐτέραις ἐξήκοντα βίβλοις καθυπετάζαμεν. It is quite possible to look upon the occurrence of ‘unexhellenized’ Latin *termini technici* in the Vindobonensis as yet another echo of the phrase ἐν τῷ οἰκείῳ σχήματι μένοντα: it may well be that in the 60 books referred to in the final paragraph of the Prochiron preface, the Latin technical terms indeed remained ‘unexhellenized’ and that they were only gradually superseded by ἐξελληνισμοί later on, viz. in the text of the Basilica. Seen from this perspective, the Basilica text as it has come down to us in the manuscripts, may be qualified as a text which is frozen in the process of its formation. The Vindobonensis appears to be a clear representative of this process, mirroring a transitional stage showing features of both the 60 books mentioned in the Prochiron preface, and the 60 books of the Basilica text. For the rest, there is good reason to connect the phrase ἐν τῷ οἰκείῳ σχήματι μένοντα from the final paragraph of the Prochiron preface with Latin *termini technici* remaining ‘unexhellenized’, i.e. retaining their own form. For, the final paragraph of the preface, while referring to the 60 books, opposes a passage from the main text of the Prochiron preface which comes up with information regarding the law book itself. In the relevant passage, one clause states that in the Prochiron itself, Latin terms have been translated into Greek: (...), τῶν δὲ ῥωμαϊκῶν λέξεων τὴν συνθήκην εἰς τὴν ἐλλάδα γλῶσσαν μετεποιήσαμεν, (...).<sup>47</sup> This phrase contrasts with ἐν τῷ οἰκείῳ σχήματι μένοντα: thus, the Prochiron with its ἐξελληνισμοί contrasts with the 60 books in which Latin *termini technici* remained ‘unexhellenized’. Moreover, this contrast also attaches the final paragraph of the Prochiron preface securely

47 Prochiron preface, ll. 52-53 (Schminck, *Studien*, 58). Transl.: ‘(...), we have converted Latin terms into the Greek language, (...)’. On the entire passage dealing with the law book itself – Prochiron preface, ll. 42-59 (Schminck, *Studien*, 58) –, cf. e.g. Van Bochove, ‘Some Byzantine Law Books’ (note 3 above), 243-244; Van Bochove, *To Date and Not to Date* (note 2 above), 58-63.

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to the main text of that preface, and in this way constitutes another reason to doubt the conclusion that the final paragraph must be regarded as a later addition to that preface.

Second, there are the extended versions of the Justinian Novels 39, 100 and 61. In the Vindobonensis, these Novels are accompanied by their prefaces, which are evidently functioning as integral parts of the main text. As such, the above Novels do not fit in with the overall pattern of the Novel part of the Basilica text: here, the Novels normally go without their preface. Seen against this background, the occurrence of the prefaces to the Novels 39, 100 and 61 in the Vindobonensis may be looked upon as yet another manifestation of the phrase ἐν τῷ οἰκείῳ σχήματι μένοντα from the final paragraph of the Prochiron preface. It may well be that in the text of the 60 books mentioned in this final paragraph, the Justinian Novels had kept their own form, viz. remained accompanied by their prefaces. Thus, we appear to have a close parallel to the *inscriptiones* accompanying a number of Codex constitutions in Cujas' lost Basilica manuscript – referred to in § 6 above –, and yet another reason to doubt the conclusion concerning the final paragraph as a later addition to the Prochiron preface. There is more to the prefaces to the Novels 39, 100 and 61 in the Vindobonensis. For, their presence calls to mind a passage from the preface to the Basilica. In the relevant passage, the author of this preface – in all probability Leo the Wise himself – informs us as to how he dealt with the legislation of Justinian:

Τοιγαροῦν τὰς πάσας τῶν νόμων πραγματείας ἡμεῖς σωματοποιησάμενοι ἐν τεύχεσιν ἕξ συνεκεφαλαιώσαμεν, πᾶν μὲν ἐναντίον καὶ τὴν χρῆσιν οὐ παρεχόμενον ἐν τοῖς πράγμασι – διὰ τὸ ὡς εἰκὸς πολλὰ τῶν τῆς ἀρχαιότητος νομοθετημάτων παρευδοκιμηθῆναι τοῖς ὕστερον – ὑπεξελόντες καὶ ἀποκρίναντες, πᾶν δέ, ὃ μὴ ἀναγκαῖον, ἀλλὰ περιττὸν ἐδόκει, ἀποτεμόντες τῆς συνυφάνσεως.<sup>48</sup>

Among other things, Leo tells us that he removed from the text what appeared to be unnecessary and superfluous: πᾶν δέ, ὃ μὴ ἀναγκαῖον, ἀλλὰ περιττὸν ἐδόκει, ἀποτεμόντες

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48 Basilica preface, ll. 19-23 (Schminck, *Studien*, 22). Transl.: 'Therefore, we have organized all the books of law as a body, and we have brought [those works] together under one heading, in six volumes; we have removed and set apart all contradictory elements and what is no longer useful in practice – because of the fact that (as is only likely) many regulations dating from ancient times are surpassed by more recent ones, and we have cut off from the text all that seemed not necessary but superfluous'. On the Basilica preface in general, cf. e.g. Schminck, *Studien*, 17-54 (in particular 24-27 and 54), and 132 (Leo's authorship of the preface); Van Bochove, *To Date and Not to Date* (note 2 above), 187-221 *passim*; Th.E. van Bochove, 'Ὁὐ κελεύομεν' συνεκεφαλαιώσαμεν καὶ ῥαδίαν ἔντευξιν παρέσχομεν. Some remarks with respect to the nature of the preface to the *Basilica*', in: Sp. Troianos, [ed.], *Analecta Atheniensiā ad ius Byzantinum spectantia*, I, [Forschungen zur byzantinischen Rechtsgeschichte. Athener Reihe, 10], Athen – Komotini 1997, 155-168.

τῆς συνυφάνσεως. In the Basilica text, this is exactly what happened to the Justinian Novels: these Novels were only adopted into the Basilica text, after their prefaces had been cut loose from their original context. The prefaces were regarded as redundant text units. The occurrence of the prefaces to the Novels 39, 100 and 61 in the Vindobonensis can be regarded as an indication that it is quite possible that the ultimate exemplar of this manuscript was written prior to the Basilica preface.<sup>49</sup>

With regard to the first striking feature of the Vindobonensis discussed by Stolte – viz. the absence of the names of lawyers who originally wrote the Digest fragments; see § 7.1 (1) above –, there seems to be no satisfactory explanation, unless it is supposed that the names of these lawyers were systematically left out from the Digest part of the text of the 60 books mentioned in the Prochiron preface. However, it is exactly the presence of those names that might have been considered as a perfect echo of the phrase ἐν τῷ οἰκείῳ σχήματι μένοντα.

Differences between the versions of book 8 of the Justinian Code in the palimpsest from Vienna and in cod. Paris. gr. 1348 – the final feature discussed by Stolte; see § 7.1 (3) above – may be explained along the same lines. The Codex part in the 60 books referred to in the final paragraph of the Prochiron preface may have diverged considerably from the Codex part in the Basilica text, even though in this case, too, there seems to be no obvious connection with the phrase ἐν τῷ οἰκείῳ σχήματι μένοντα. However, it is quite possible that the compilers of the Basilica text adopted the text of the Codex part of the 60 books mentioned in the Prochiron preface, and modified it considerably.

The latter two features do not seem to have an obvious link with the phrase ἐν τῷ οἰκείῳ σχήματι μένοντα: apparently, this phrase does not cover or explain every detail in which the Vindobonensis differs from the Basilica manuscript(s) Pa (and F). However, the Vindobonensis offers enough to draw a conclusion. For, the *scriptura inferior* of cod. Vind. Suppl. gr. 200 situates the final paragraph of the Prochiron preface exactly between the main text of that preface on the one hand, and the Basilica preface on the other, both from a thematical and a chronological perspective. The occurrence of Latin *termini technici* in the Vindobonensis can be connected with the phrase ἐν τῷ οἰκείῳ σχήματι μένοντα in the final paragraph of the Prochiron preface. In its turn, this phrase contrasts with the phrase τῶν δὲ ῥωμαϊκῶν λέξεων τὴν συνθήκην εἰς τὴν ἐλλάδα γλώσσαν μετεποιήσαμεν from the main text of that preface, thus tying the final paragraph and the

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49 Mutatis mutandis, the same applies to the *inscriptiones* accompanying the Codex constitutions in Cujas' lost Basilica manuscript: the presence of these *inscriptiones* indicates that the ultimate exemplar of this manuscript may have been written prior to the Basilica preface, i.e. before the *inscriptiones* were cut loose from their original context as redundant text units.

main text of the Prochiron preface closely together, i.e. without a chronological gap between the two. The occurrence of the prefaces to the Novels 39, 100 and 61 in the main text of the Vindobonensis can also be connected with the phrase ἐν τῷ οἰκείῳ σχήματι μένοντα. This time, the latter phrase contrasts with the sentence πᾶν δέ, ὃ μὴ ἀναγκαῖον, ἀλλὰ περιττὸν ἐδόκει, ἀποτεμόντες τῆς συνυφάνσεως in the Basilica preface. On the basis of this contrast, it can be argued that ἐν τῷ οἰκείῳ σχήματι μένοντα reflects a textual state preceding that of the Basilica text, thereby predating the Basilica preface as well. In other words: the Basilica preface can be regarded as the *terminus ante quem* for the final paragraph of the preface to the Prochiron.

## 8. Florilegium Ambrosianum, cod. Paris. gr. 1357 and cod. Ridolfi

My next reason to doubt the conclusion that the final paragraph of the Prochiron preface ought to be looked upon as a later addition to that preface derives from two – or rather three – testimonies that appear to be closely related.

### 8.1. *The Florilegium Ambrosianum: its features*

The first testimony is the Florilegium Ambrosianum (siglum: A). This Florilegium is an anthology of chapters, assembled from (nearly) all 60 books of what is now known as the text of the Basilica. The Florilegium has been preserved in the *scriptura inferior* of cod. rescr. Ambros. F 106 sup.; this lower script dates from the second half of the tenth century.<sup>50</sup> In my 1996 monograph, I have put forward the proposition that the ultimate exemplar of A may have constituted an earlier stage in the genesis of the text of Leo VI's compilation of laws – the Basilica –, a draft perhaps, but this view has met with severe criticism.<sup>51</sup> However, is my hypothesis really too audacious, highly questionable, or hardly

50 On cod. (rescr.) Ambros. F 106 sup., cf. e.g. Van Bochove, *To Date and Not to Date* (note 2 above), 107-121 *passim*, and 151-156 *passim*; cf. also M.T. Rodriquez, 'Un "nuovo" palinsesto dei Basilici', *Néa Póμn. Rivista di ricerche bizantinistiche* 7 (2010), 73-95 (further references in note 3): a detailed palaeographical analysis of the *scriptura inferior* occurs on the pages 83ff. Scheltema and Van der Wal used the Florilegium Ambrosianum in establishing the text of the Basilica: they provided the Florilegium with the siglum A; cf. H.J. Scheltema/N. van der Wal, [edd.], *Basilicorum Libri LX*, Series A Volumen I: Textus librorum I – VIII, Groningen/Djakarta/s-Gravenhage 1955, ix-x; see also H.J. Scheltema/D. Holwerda/N. van der Wal, [edd.], *Basilicorum Libri LX*, Series A Volumen VIII: Textus libri LX, Groningen 1988, xv-xvii. A is missing in RHBR, I.

51 Cf. Van Bochove, *To Date and Not to Date* (note 2 above), 120-121. *Contra* the proposition: Schminck, review (note 16 above), 352; F. Gorla, review of *To Date and Not to Date* in *SZ* 116 (1999), 411-417 (415); Τροιάνος, *Οι πηγές* (note 19 above), 256 note 147; Signes Codoñer, *Estudio* § 3.7.6: El proemio del *Prochiron* (note 29 above), 236 note 646 (relevant passage on page 237).

defensible, as most recently Troianos and Signes Codoñer would have it? There are three features of the Florilegium Ambrosianum that merit closer attention.

(1) First, A hands down ‘unexhellenized’ Latin *termini technici*,<sup>52</sup> and, as e.g. Stolte argues, the occurrence of these terms somehow reflects an earlier phase in the transmission of the Basilica text.<sup>53</sup> The presence of ‘unexhellenized’ technical terms in the Florilegium Ambrosianum brings back to mind the occurrence of these terms in cod. rescr. Vind. Suppl. gr. 200, mentioned in § 7 above: in A, too, these terms may be looked upon as an echo of the phrase ἐν τῷ οἰκείῳ σχήματι μένοντα in the final paragraph of the Prochiron preface.

(2) Second, within individual titles, the Florilegium Ambrosianum sometimes displays a division into chapters which strongly deviates from the chapter division of the corresponding titles in regular Basilica manuscripts. A good example of this occurs in B. 60,58.<sup>54</sup> Diverging chapter divisions in the Florilegium Ambrosianum may of course have been the work of the compiler of this anthology. However, the compiler may also have adopted these chapter divisions from his direct (or ultimate) exemplar, viz. the compilation of laws on which he based his anthology. In the latter case, the chapter divisions in this compilation of laws did not concur with their counterparts in regular Basilica manuscripts:

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Signes Codoñer concludes: ‘En efecto, el *Florilegium* parece una obra derivada y no un arquetipo de los *Basilicos*’.

- 52 On this, cf. e.g. Stolte, ‘Rechtshistorische Analyse’ (note 38 above), 142, referring to BT 382 app. crit. ad l. 4 (pertaining to B. 7,15 rubr.): here, A reads διφενδεύη instead of διεκδικῆ, and εἰς νόξαν instead of εἰς ἐξέτασιν; cf. also Rodríguez, ‘Un “nuovo” palinsesto’ (note 50 above), 86; E.C. Ferrini/J. Mercatì, [edd.], *Basilicorum libri LX*. Volumen VII: Editionis Basilicorum Heimbachianae supplementum alterum. Reliquias librorum ineditorum ex libro rescripto Ambrosiano, Lipsiae/Mediolani 1897, ix and x. More ‘unexhellenized’ technical terms in A can easily be found via the apparatus criticus of BT and the edition of Ferrini/Mercatì.
- 53 Cf. again Stolte, ‘Rechtshistorische Analyse’ (note 38 above), 147-148; cf. also N. van der Wal, ‘Der Basilikentext und die griechischen Kommentare des sechsten Jahrhunderts’, in: A. Guarino/L. Labruna, [edd.], *Symteleia Vincenzo Arangio-Ruiz*, [Biblioteca di Labeo, 2], Napoli 1964, 1158-1165 (1162 note 16); L. Burgmann/M.Th. Fögen, ‘Florilegium Lesbiacum’, *FM* V (1982), 107-178 (114); L. Burgmann, ‘Λέξεις ῥωμαϊκά. Lateinische Wörter in byzantinischen Rechtstexten’, in: W. Hörandner/E. Trapp, [eds.], *Lexicographica byzantina. Beiträge zum Symposium zur byzantinischen Lexikographie (Wien, 1.-4.3.1989)*, [Byzantina Vindobonensia, Band XX], Wien 1991, 61-79 (65 with note 15).
- 54 Cf. BT 3112 app. crit. ad l. 7 c. 2: ‘(...); ceterum in A cc. 2-5 numeris 5-8 notantur et cc. 6 et 7 numeris carent; nos numeris notandi codicis Pe rationem (cum qua consentit Syn.) servavimus; (...)’. Pe is the siglum indicating cod. Paris. gr. 1350, dating from the twelfth century and handing down book 60 of the Basilica, accompanied by numerous scholia; cf. Scheltema/Holwerda/Van der Wal, *Basilicorum Libri LX*, A VIII (note 50 above), v-vi; RHBR, I, No. 163; cf. finally Van Bochove, *To Date and Not to Date* (note 2 above), 155 with note 27.

the ultimate cause of this may have been the existence of no less than two different compilations of laws.

(3) The above notion is further inspired by the third and final feature of the Florilegium Ambrosianum that deserves closer attention. For, A is the most important witness of the division into four volumes or τεύχη.<sup>55</sup> the compilation of laws on which the compiler of A based his anthology was distributed over four τεύχη, whereas according to its preface, the text of Leo VI's Basilica was distributed over six volumes.<sup>56</sup> Thus, it is highly probable that we are indeed dealing with two different compilations of laws, one distributed over four τεύχη – the prototype of A – and one distributed over six – the text of the Basilica –, but both compilations of laws consisting of 60 books.

### 8.2. *The Parisinus 1357: its features*

The second testimony is cod. Paris. gr. 1357 (siglum: Pd). The Parisinus 1357 was written in the sixteenth century by the scribe John Mauromates. The manuscript inter alia hands down the books 46-52 of what is now known as the text of the Basilica.<sup>57</sup> Four features of Pd stand out.

55 It concerns a number of notes being part of, preceding or following A<sup>1</sup>, viz. the tables of contents of the next fifteen books; cf. Ferrini/Mercati, *Basilicorum libri LX*. Volumen VII (note 52 above), 1: πίναξ σὺν Θεῷ τοῦ β' τεύχους 'with God's help, table of contents of the second volume'; 5: πίναξ τοῦ γ' τεύχους 'table of contents of the third volume'; 10: ἀρχὴ σὺν Θεῷ τοῦ γ' βιβλίου ἧτοι τοῦ γ' τεύχους βιβλίου λα' τίτλος α' 'with God's help, beginning of the third book, that is of the third volume, book 31, title 1'; τέλος τοῦ γ' τεύχους 'end of the third volume'; πίναξ σὺν Θεῷ τοῦ δ' τεύχους 'with God's help, table of contents of the fourth volume'; and finally 13: τεύχος δ', βιβλίον μζ', τίτλος α' 'volume 4, book 46, title 1'. On the use of the siglum A<sup>1</sup>, cf. H.J. Scheltema/N. van der Wal, [edd.], *Basilicorum Libri LX*, Series A Volumen II: Textus librorum IX – XVI, Groningen/Djakarta/s-Gravenhage 1956, xvi note 1. Cf. also Van Bochove, *To Date and Not to Date* (note 2 above), 115-116, with further references in note 60.

56 Cf. again Basilica preface, ll. 19-20: Τοιγαροῦν τὰς πάσας τῶν νόμων πραγματείας ἡμεῖς σωματοποιησάμενοι ἐν τεύχεσιν ἕξ συνεκεφαλαιώσαμεν, (...). Transl.: see note 48 above. On the six τεύχη, see e.g. also N. van der Wal, 'Spuren einer Einteilung in sechs Bände der Basiliken in den jüngeren Scholien', *TRG* 25 (1957), 274-283; Van Bochove, *To Date and Not to Date* (note 2 above), 115 with note 59, 189-191 with the notes 7-17, 192-193 with the notes 23-25, and 206 with note 10.

57 Cf. H.J. Scheltema/N. van der Wal, [edd.], *Basilicorum Libri LX*, Series A Volumen VI: Textus librorum XLIII – LII, Groningen/s-Gravenhage 1969, v-vi; RHBR, I, No. 171. Pd is the siglum used by Scheltema and Van der Wal.

- (1) The Parisinus 1357 is a clear representative of the distribution over four τεύχη.<sup>58</sup> This feature connects Pd firmly with the Florilegium Ambrosianum.
- (2) In individual titles in Pd, chapter numbers are sometimes added without fixed order.<sup>59</sup> In this respect, too, Pd may be connected with the Florilegium Ambrosianum.<sup>60</sup>
- (3) Pd contains far more ‘unexhellenized’ Latin *termini technici* than other (and older) manuscripts handing down the Basilica text.<sup>61</sup> The Parisinus 1357 shares this feature with A, and also with cod. rescr. Vind. Suppl. gr. 200. Moreover, the omission of ἐξελληνισμοί may again be seen as an echo of the phrase ἐν τῷ οἰκείῳ σχήματι μένοντα.
- (4) In its Digest part of the books 46-52, Pd altogether omits the names of the lawyers who originally wrote the Digest fragments: phrases like *Ulpianu, Paulu*, etc. do not occur.<sup>62</sup>

58 It concerns the note on f. 123<sup>r</sup>, preceding the πίναξ of the books 46-60: καὶ τοῦ τετάρτου τῶν νόμων τεύχους πίναξ. Transl.: ‘and table of contents of the fourth volume of the laws’. For the details, cf. Van Bochove, *To Date and Not to Date* (note 2 above), 116, with further references in note 61.

59 Cf. Scheltema/Van der Wal, *Basilicorum Libri LX*, A VI (note 57 above), v-vi: ‘(...); folia 129 et quae sequuntur textum librorum XLVI–LII continent scholiis egentem. Qui textus, ut apparebit, si librorum XLVI–XLVIII textum cum codice Pc contuleris, satis sordet; etiam capitum numeri hic illic nulla ratione adscripti esse videntur’; cf. e.g. BT 2121 app. crit. ad l. 14 c. 2 (pertaining to the chapter division in B. 46,2): ‘hic numerum 3 (ut Pc) adscr. Pd; numerum 2 non habet et numeros 4–10 nulla ratione dispositos exhibet (numerus 6 deest)’. Pc = cod. Paris. gr. 1349, dating from the eleventh century and inter alia handing down B. 45–48, accompanied by numerous scholia; cf. Scheltema/Van der Wal, *Basilicorum Libri LX*, A VI, v, and RHBR, I, No. 162.

60 Examples of correspondence between Pd and A regarding the chapter division of individual titles can be found via the apparatus of testimonies and the critical apparatus of BT; cf. e.g. (in B. 46,1) BT 2117 app. crit. ad l. 9 δουλεια: ‘hinc incipit c. 3 in Pd et A’; ad l. 12: ‘c. 3 numero 4 notatur in Pd et A; capita insequentia numeris nostris uno maioribus notantur’; BT 2119 app. crit. ad l. 4: ‘c. 13 numero 16 in Pc et numero 14 in Pd notatur, et sic deinceps; A in capitibus quae servat eosdem atque Pd habet numeros’; in B. 49,3: BT 2285 app. crit. ad l. 20; in B. 50,2: BT 2338 app. crit. ad l. 6 δούλος, BT 2339 app. crit. ad l. 8 δ ἡγόρασεν, ad l. 13 c. 43, ad l. 20, BT 2340 app. crit. ad l. 19, etc. A striking case of textual correspondence between Pd and A (except for minor variant readings) occurs in B. 47,1,5: here, Pd and A transmit a Greek version of D. 39,5,6 which radically differs from the version handed down by Pc (and incorporated into the Basilica text). The version in Pc originates from the Digest Summa of the elder Anonymus – as usual in BT –, whereas the version in Pd and A may stem from the Digest Summa of Cyril; for all this, cf. BT 2128 app. crit. ad l. 11.

61 Cf. Scheltema/Van der Wal, *Basilicorum Libri LX*, A VI (note 57 above), vi: ‘Admirationem nostram movet quod hic potissimum codex pauciores exhibet exhellenismos quam alii (et quidem antiquiores) codices, quibus Basilicorum textus nobis traditur. Permultas continet artis voces latinis litteris scriptas eius generis, quod in scholiis solet, non vero – aut saltem perraro – in Basilicorum textu occurrere’. Examples of ‘unexhellenized’ Latin technical terms in Pd can easily be found via the critical apparatus pertaining to BT 2117-2430.

62 Cf. BT 2117 app. crit. ad l. 6 Gaïus: ‘nomina iurisconsultorum solus habet Pc, om. Pd’; see also the Digest part of the books 46-52 in BT 2117-2430.



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The omission of these names is again a feature shared by the Parisinus 1357 and cod. rescr. Vind. Suppl. gr. 200.

### 8.3. *Cod. Ridolfi once more*

The third and final testimony is Cujas' now sadly lost manuscript which has already been mentioned in § 6 above: the so-called codex Ridolfi. This manuscript is generally understood to have comprised the books 46-60: the manuscript may have consisted of two bulky halves each containing a number of books. However, Cujas himself used the phrase 'le plus gros tome de Basiliques' in order to denote the manuscript. The Parisinus 1357 is regarded as an apographum of the first part of the codex Ridolfi.<sup>63</sup> The latter manuscript once belonged to the library of cardinal Niccolò Ridolfi (1501-1550) – whence its name. In the catalogue of this library, published much later by Dom Bernard de Montfaucon O.S.B. (1655-1741), the codex Ridolfi occurs in the following entry: *Quartus tomus Basilicorum, incipiens a 46<sup>o</sup>. libro et pergens usque ad sexagesimum.*<sup>64</sup> On the basis of this entry, it can be concluded that the codex Ridolfi – from which Cujas copied the above four *inscriptions* originally belonging to Codex constitutions – is to be regarded as a testimony of the distribution over four τέυχη. In § 6 above, the four *inscriptions* copied by Cujas have been characterized as a possible echo of the phrase ἐν τῷ οἰκεῖῳ σχήματι μένοντα from the final paragraph of the Prochiron preface. The compilation of laws divided into 60 books and contained in four τέυχη has apparently more than one feature linking it to this final paragraph.

## 9. Interim summary, Basil's 60 books and the preface to the Epitome legum

On the basis of the above paragraph, it can be argued that there must have existed a full-scale compilation of laws consisting of 60 books distributed over four τέυχη or volumes. This compilation of laws is represented by the Florilegium Ambrosianum, cod. Paris. gr.

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63 For all the details, cf. Heimbach, *Prolegomena*, 171-172; Heimbach, *GRR*, 348, 349 and 353; 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*, 3 vols., Paris 1843-1846 (repr. Osnabrück 1966), II, 432-434. Cujas used the phrase 'le plus gros tome de Basiliques' in a letter to one of the Pithou brothers, dating from 20 June 1571, and quoted by Heimbach, *Prolegomena*, 172 with note 117.

64 *Catalogus librorum manuscriptorum cardinalis Radulphi, ex codice 3769 Bibliothecae Colbertinae, quae nunc Regiae adjuncta est. Libri graeci promiscue in capsula 21. Num. 15*, in: B. de Montfaucon, *Bibliotheca bibliothecarum manuscriptorum nova: ubi, quae innumeris pene manuscriptorum bibliothecis continentur, ad quodvis literaturae genus spectantia et notatu digna, describuntur et indicantur*, II, Parisiis 1739, 777; cf. also the literature quoted in the previous note.

1357 and the codex Ridolfi. In its Digest part, the compilation of laws is characterized by the omission of the names of the lawyers who originally wrote the Digest fragments. Moreover, the compilation also contained many ‘unexhellenized’ Latin *termini technici*. Of course, the question presents itself which compilation of laws we are dealing with. Because of its distribution over four τεύχη, the compilation cannot be equated with the text of the Basilica: according to its preface, this compilation of laws was distributed over six τεύχη. An identification as the large compilation of laws mentioned in the preface to the Eisagoge is equally impossible, because this compilation of laws consisted of 40 books (see § 3.2 and § 3.3 above), whereas the compilation distributed over four τεύχη counted 60. The most likely candidate for identification would appear to be the compilation of laws in 60 books, which is mentioned in the final paragraph of the preface to the Prochiron, quoted in § 3.1 above. Is it possible to substantiate this suggestion? As a matter of fact, it is.

It has already been pointed out that the Florilegium Ambrosianum and the Parisinus 1357, representing the compilation of laws in 60 books distributed over four τεύχη, share two important features with cod. rescr. Vind. Suppl. gr. 200, viz. the omission of the names of the original authors of the Digest fragments, and the occurrence of many ‘unexhellenized’ Latin *termini technici* instead of ἐξελληνισμοί, thereby strongly suggesting a connection between the manuscripts. In the present line of reasoning, the Vindobonensis appears to be a veritable cornerstone. For, in § 7.2 above it has been observed that this manuscript contains both ‘unexhellenized’ Latin *termini technici* and extended versions of the Novels 39, 100 and 61: these Novels are accompanied by their respective prefaces. It has been argued that both features of the Vindobonensis can be seen as echos of the phrase ἐν τῷ οἰκείῳ σχήματι μένοντα in the final paragraph of the Prochiron preface, and that the Vindobonensis situates this final paragraph exactly between the main text of the Prochiron preface and the preface to the Basilica, both thematically and chronologically. If we now continue this line of reasoning, then the Vindobonensis enables us to identify positively the compilation of laws in 60 books mentioned in the final paragraph. For, on the basis of the features shared between the Vindobonensis, the Florilegium Ambrosianum and the Parisinus 1357, it can be argued that the compilation of laws in 60 books referred to in the final paragraph of the Prochiron preface is to be identified as the compilation of laws in 60 books distributed over four τεύχη. The latter compilation itself adds to this identification, as the codex Ridolfi – one of its representatives – in all probability transmitted Cujas’ four *inscriptiones* originally belonging to Codex constitutions. In § 6 and § 7 with note 49 above, it has already been observed that the presence of these *inscriptiones*, too, may be seen as a manifestation of the phrase ἐν τῷ οἰκείῳ σχήματι μένοντα, reflecting a textual state predating the preface to the Basilica, viz. before the *inscriptiones* were cut loose from their original context as

redundant text units, in accordance with the sentence *πάν δέ, ὃ μὴ ἀναγκαῖον, ἀλλὰ περιττὸν ἔδδοκει, ἀποτεμόντες τῆς συνυφάνσεως* in the latter preface.

The identification of the compilation of laws in the final paragraph of the Prochiron preface as the compilation of laws in 60 books distributed over four τεύχη may account for divergent chapter divisions in the Florilegium Ambrosianum and the Parisinus 1357 on the one hand, and the Parisinus 1349 and the Basilica text on the other (§ 8.1 (2) and § 8.2 (2) above). Moreover, the identification may also explain the use of different Summae of the Digest, e.g. in B. 47,1,5 = D. 39,5,6: the Summa of Cyril in the Florilegium Ambrosianum and the Parisinus 1357 as opposed to that of the elder Anonymous in the Parisinus 1349 and BT (note 60 above). After all, it is quite possible that Leo the Wise had the compilation of laws in 60 books issued by his father Basil – viz. the one distributed over four τεύχη – refashioned in order to form his own compilation of laws in 60 books distributed over six τεύχη, i.e. the text of the Basilica.<sup>65</sup> In the course of this process of refashioning, several notable changes may have been made to the text: the addition of the names of the lawyers who originally wrote the Digest fragments, an adaptation in the chapter division of individual titles, the selection of another Summa of Digest fragments or of another Greek version of Codex constitutions, a beginning of the process of substituting the Latin *termini technici* by ἐξελληνισμοί, and the cutting away of text fragments regarded as superfluous, such as *inscriptiones* and *subscriptions* of Codex constitutions, the prefaces of Novels, etc., to name but a few changes. In this process of refashioning, Leo's own Novels may have played an important part of their own: the Novels of Leo the Wise again seen as 'kodifikationsbegleitende Legislation'.<sup>66</sup> In this

65 The idea that Leo refashioned the compilation of laws in 60 books first issued by his father Basil is also inspired by the explicit statement of John Skylitzes (second half of the eleventh century) that Leo continued the unfinished work of Basil in the field of secular law after the latter's untimely death. While supplementing the relevant passage in his exemplar – viz. the Vita Basilii, c. 33 –, Skylitzes writes: οὐκ ἔσχε δὲ καιρὸν προκαταληφθεὶς θανάτῳ. ἐξεπλήρωσε δὲ τὸ ἔργον Λέων ὁ υἱὸς αὐτοῦ μετὰ ταῦτα 'His (= Basil's) premature death did not allow him time. His son Leo completed the work afterwards'; John Skylitzes, *Σύνοψις ἱστοριῶν*, Βασίλειος ὁ Μακεδὼν ὁ Κεφαλᾶς, c. 16 (ed. J. Thurn, *Ioannis Scylitzae Synopsis Historiarum*, [Corpus Fontium Historiae Byzantinae (Series Berolinensis), Vol. 5], Berlin / New York 1973, 134/78-80). On Skylitzes and his work in general, cf. e.g. the recent monograph John Skylitzes, *A Synopsis of Byzantine History 811–1057*. Translated by John Wortley, with Introductions by Jean-Claude Cheynet and Bernard Flusin and Notes by Jean-Claude Cheynet, Cambridge 2010; for the above passage, see page 132 with note 55; cf. also Van Bochove, *To Date and Not to Date* (note 2 above), 175-176. On the Vita Basilii, c. 33, cf. § 11 with the notes 121-123.

66 On the role of Leo's Novels in the genesis of the Basilica text, cf. M.Th. Fögen, 'Legislation und Kodifikation des Kaisers Leon VI.', *SG III* (1989), 23-35; J.H.A. Lokin, 'The Significance of Law and Legislation in the Law Books of the Ninth to Eleventh Centuries', in: A.E. Laiou/D. Simon, [eds.], *Law and Society in Byzantium: Ninth - Twelfth Centuries*, [Proceedings of the Symposium on Law and Society in Byzantium, 9th – 12th Centuries, Dumbarton Oaks, May 1-3, 1992], Washington, D.C. 1994, 71-91 (82ff.) (repr. in: J.H.A. Lokin, *Analecta Groningana ad ius graeco-romanum*

respect, it is quite remarkable that apart from the Florilegium Ambrosianum, the lower script of cod. rescr. Ambros. F 106 sup. also hands down (remains of) thirteen Novels of Leo the Wise, with numbers and rubrics divergent from their counterparts in Leo's Collection of 113 Novels as transmitted by cod. Marc. gr. 179.<sup>67</sup> On the basis of the fact that the Florilegium Ambrosianum is a representative of the compilation of laws in 60 books distributed over four τεύχη, and is thus also to be regarded as a representative of the compilation in 60 books mentioned in the final paragraph of the Prochiron preface, it can be argued that Leo's Novels somehow played a role in the refashioning of Basil's 60 books into the 60 books of Leo's Basilica text.

There seems to be only one clear objection to the above identification of the compilation of laws mentioned in the final paragraph of the Prochiron preface as the compilation of laws in 60 books distributed over four τεύχη, and the attribution of the latter compilation to Basil the Macedonian. For, in the preface to the Epitome legum – probably dating from 913/914, and revised in 921 – reference is made to a compilation of laws in 60 books distributed over four τεύχη and issued by Leo the Wise.<sup>68</sup> The relevant passage reads:

Ἐπὶ τούτῳ ζήλω θεῖῳ κινηθεὶς ὁ γαληνότατος καὶ πρῶτατος ἡμῶν βασιλεὺς – Λέοντα λέγω, τὸν κράτιστον βασιλέα, τόν, ὡς ἔπος εἰπεῖν, ῥήτορα ἐν ῥήτορσι καὶ φιλόσοφον ἐν φιλοσόφοις – ἐπισυλλέξας συλλήβδην σχεδὸν ἅπαντα τὸν νόμον ἀπὸ τε τοῦ δυοδεκαδέλτου,

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*pertinentia*, (ed. by Th.E. van Bochove), Groningen 2010, 183-199 (192ff.)); J.H.A. Lokin, 'The Novels of Leo and the Decisions of Justinian', in: Troianos, *Analecta Atheniensia* (note 48 above), 131-140 (= Lokin, *Analecta Groningana*, 175-182); Van Bochove, *To Date and Not to Date* (note 2 above), 210 with note 31; § 10 (2) below. Critical regarding a connection between the Novels of Leo and the text of the Basilica is Signes Codoñer, 'The Corpus of Leo's Novels' (note 20 above), 1-8 and 30-33; cf. also Signes Codoñer, 'Las Novelas de León VI el Sabio' (note 20 above), 273-281 and 312-317.

67 In the Ambrosian palimpsest, the Novels of Leo the Wise make up one quire of the original manuscript; cf. Ferrini/Mercati, *Basilicorum libri LX*. Volumen VII (note 52 above), v and xv. On the anthology of Leo's Novels in the Ambrosianus in general, cf. e.g. N. van der Wal, 'La tradition des Nouvelles de Léon le Sage dans le manuscrit palimpseste Ambrosianus F 106 sup.', *TRG* 43 (1975), 257-269; Van der Wal provided a critical edition of the divergent rubrics; Van Bochove, *To Date and Not to Date* (note 2 above), 116-118; Sp. Troianos, 'Die Novellen Leons VI.', in: Troianos, *Analecta Atheniensia* (note 48 above), 141-154 (144) (repr. in: Sp. Troianos, *Historia et Ius*. II: 1989 – 2004, Athen 2004, 603-619 (608); Signes Codoñer, 'The Corpus of Leo's Novels' (note 20 above), 13-14; Signes Codoñer, 'Las Novelas de León VI el Sabio' (note 20 above), 297ff. On cod. Marc. gr. 179, dating from the end of the twelfth / beginning of the thirteenth century, cf. RHBR, I, No. 296.

68 Cf. e.g. Heimbach, *Prolegomena*, 117; Heimbach, *GRR*, 316; Van der Wal, 'Spuren einer Einteilung' (note 56 above), 274; Van Bochove, *To Date and Not to Date* (note 2 above), 116 with the notes 62-64. On the Epitome legum in general, cf. e.g. Schminck, *Studien* (note 7 above), 109-131 and 132; Troianos, *Oiπηγές* (note 19 above), *passim*, in particular 264-267.

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τῶν διγέστων Ἰουστινιανοῦ καὶ ἰνστιτούτων μετὰ τῶν καλουμένων «νεαρῶν» καὶ ἐν ἐξήκοντα βιβλίοις ἐπεκτείνας διὰ Συμβατίου πρωτοσπαθαρίου καὶ λοιπῶν θεῶν εὐνόμων ἀνδρῶν. Καὶ ὡς λόγος εἰπεῖν, ἐκάστη πραγματεία τὰ ἴδια «ἔδικτα» ἀπολαβοῦσα, τὴν τε τραχύτητα τοῦ νόμου σὺν ταῖς ἐκέισε λέξεσιν ἐγκειμέναις εἰς πρῶτητα λειώσας καὶ ταῦτα ἐπὶ τέσσαρσι βιβλίοις διαστήσας, πάσῃ τῇ ὑψηλίῳ ὡς πολιοῦχος ὑπάτευσεν ὁ καλλίνικος καὶ πρᾶτατος ἡμῶν βασιλεύς.<sup>69</sup>

In this passage, the author of the preface – in all probability Symbatios<sup>70</sup> – tells us short and sweet that Leo the Wise collected nearly all laws from the legislation of Justinian, and had them structured in 60 books with the help of Symbatios and others: apparently, we are here dealing with the 60 books of the Basilica text. The author of the preface then continues by stating that every topic received its own ‘edict’: ἐκάστη πραγματεία τὰ ἴδια «ἔδικτα» ἀπολαβοῦσα. The meaning of this phrase is not very clear: does it perhaps allude to the thematical arrangement of the Basilica text into titles? Finally, Symbatios observes that Leo polished the roughness of the law including its technical terms to evenness, and, moreover, distributed it all over four books, or rather volumes: τὴν τε τραχύτητα τοῦ νόμου σὺν ταῖς ἐκέισε λέξεσιν ἐγκειμέναις εἰς πρῶτητα λειώσας καὶ ταῦτα ἐπὶ τέσσαρσι βιβλίοις διαστήσας.

The distribution of the 60 books over four volumes – βιβλία in the meaning of τεύχη – is, of course, in stark contrast with the preface to the Basilica which explicitly states that the 60 books were divided over six τεύχη. It is for this very reason that Schminck would have the words ταῦτα ἐπὶ τέσσαρσι βιβλίοις διαστήσας refer to Theophilos’s Paraphrase of the Institutes.<sup>71</sup> This identification by Schminck is incorrect. For, he completely ignores

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69 Epitome legum preface, ll. 62-71 (ed. Schminck, *Studien*, 116-118). Transl.: ‘Therefore, inspired by divine zeal, our most serene and mild emperor – I mean Leo, the most powerful emperor, the (to put it correctly) orator amongst orators and philosopher amongst philosophers – summarily collected almost the entire law from the compilation of the Twelve Books (viz. the Justinian Code), from the Digest of Justinian and from the Institutes, together with the so-called ‘Novels’; he spread [all this] over 60 books with the assistance of Symbatios the protospatharios and other godly men, experts in the field of law. And, in a manner of speaking, every topic received its own ‘edicts’; and having made smooth to mildness the roughness of the law together with the technical terms contained therein and having divided all this over four books, our gloriously triumphant and most mild emperor ruled the entire world as protector of a city’.

70 Cf. the literature on the Epitome legum quoted in note 68 above.

71 Cf. Schminck, ‘Frömmigkeit ziere das Werk’ (note 14 above), 106 note 108: ‘Vgl. auch Prooimion der *Epitome legum* Z. 69-70: “... καὶ ταῦτα ἐπὶ τέσσαρσι βιβλίοις διαστήσας ...”; dieser Passus kann nicht, wie dies gemeinhin geschieht (...) auf die Einteilung der *Basiliken* in “τεύχη” bezogen werden, weil die *60 Bücher* – ihrem Prooimion (Z. 19-20) zufolge – nicht vier, sondern sechs τεύχη umfaßten (was dem Verfasser der *Epitome legum* zweifellos bekannt war) und weil die Aufteilung eines aus “ἐξήκοντα βιβλίοις” (Prooimion der *Epitome legum* Z. 66) bestehenden Werkes “ἐπὶ τέσσαρσι βιβλίοις” widersinnig gewesen wäre; vielmehr muß es sich bei diesen “τέσσαρσι βιβλίοις” um ein von den

the evidence regarding the distribution of the 60 books over four τεύχη as presented by the Florilegium Ambrosianum, cod. Paris. gr. 1357 and the codex Ridolfi. But there is more. The passage quoted above also contains the phrase σὺν ταῖς ἐκεῖσε λέξεσιν ἐγκειμέναις. So much is clear that this phrase refers to technical terms.<sup>72</sup> However, why does Symbatios emphatically mention *termini technici*? And why does he refer to them as being part of a polishing process? I can think of only one answer that makes sense. Symbatios is referring to *termini technici* that had not yet been substituted by ἐξελληνισμοί. The existence of Latin technical terms which had retained their original sixth century form is what made the legal texts ‘rough’, at least in the eyes of Symbatios. One could perhaps argue that Symbatios is here alluding to Theophilos’s Paraphrase which abounds in ‘unhellenized’ technical terms, so much so that it proved necessary to provide the Paraphrasis with its own glossary explaining these terms, viz. the lexicon ἄδερ.<sup>73</sup> One could even be tempted to argue that Symbatios indicates that it was Leo the Wise who took the first step towards the compilation of this glossary, and that the archetype of the lexicon ἄδερ would thus have originated during Leo’s reign.<sup>74</sup> However, the dating of the lexicon ἄδερ is far from certain. Burgmann comes up with a dating between the ninth and the thirteenth century, and distinguishes two possibilities within this period, without showing a preference for either of them: a dating either in connection with the phenomenon of the ἐξελληνισμοί of the early emperors of the Macedonian dynasty, or with the law school founded by emperor Constantine IX Monomachos towards the middle of the eleventh century.<sup>75</sup> Moreover,

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60 Büchern unterschiedenes Werk (nämlich die Institutionen-Paraphrase) handeln, was überdies auch durch das Verb “διαστήσας” bestätigt wird.’; cf. also the German translation in Schminck, *Studien*, 119.

72 Cf. Schminck’s translation (Schminck, *Studien*, 119): ‘(...) mitsamt den darin enthaltenen Fachausdrücken (...)’; cf. also the Latin translation in Zachariae, *Ὁ Πρόχειρος Νόμος* (note 17 above), 293: ‘(...) cum terminis technicis ibi occurrentibus (...)’. It should be noted that in his note 54 on the same page, Zachariae confirms the reading ἐπὶ τέσσαρσι βιβλίοις in the above passage, because the Parisinus 1357 testifies that τὸ τέταρτον τεύχος contained the books 46-60 of the Basilica, even though the Basilica are generally believed to have been divided into six volumes.

73 On this lexicon, cf. L. Burgmann, ‘Das Lexikon ἄδερ – ein Theophilosglossar’, *FM VI* (1984), 19-61.

74 Cf. in this sense Schminck, ‘Frömmigkeit ziere das Werk’ (note 14 above), 106 note 106, relating to his observations on page 89 regarding the occurrence of Latin *termini technici* in Theophilos’s Paraphrase. Schminck suggests a date of the ultimate exemplar of the lexicon ἄδερ in Leo’s early regnal years: ‘(...) vermutlich zu ebendieser Zeit (also ca. 888) (...)’.

75 Cf. Burgmann, ‘Das Lexikon ἄδερ’ (note 73 above), 27: ‘Sollte sie sich bewahrheiten, wäre die Entstehungszeit des Lexikons ἄδερ auf die Zeit zwischen dem 9. und dem 13. Jahrhundert eingrenzbare. Vermutlich wird es auch dann noch Ansichtssache bleiben, ob man das Lexikon eher dem ἐξελληνισμός der Makedonen zuordnet oder der Zeit der Gründung der Rechtsschule durch Konstantinos IX. Monomachos, einer Zeit, in der die lateinischen Rechtstermini wieder *à la mode* waren’. Schminck, ‘Frömmigkeit ziere das Werk’ (note 14 above), 106 note 106 implies that Burgmann would have had a preference for the earlier date: ‘(...) die Urform des Lexikons ἄδερ, das

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Symbatios's phraseology τὴν τε τραχύτητα τοῦ νόμου σὺν ταῖς ἐκεῖσε λέξεσιν ἐγκειμέναις εἰς πρῶτητα λειώσας indicates an intervention in an existing text containing technical terms rather than the compilation of a separate glossary explaining these terms. Finally, in the phrase σὺν ταῖς ἐκεῖσε λέξεσιν ἐγκειμέναις, the words ἐκεῖσε ἐγκειμέναις refer to the directly preceding phrase τοῦ νόμου, but ultimately to the phrase ἐν ἐξήκοντα βιβλίοις ἐπεκτείνας, the 60 books in which Leo restructured the entire Justinian legislation. Thus, the words σὺν ταῖς ἐκεῖσε λέξεσιν ἐγκειμέναις do not allude to the lexicon ἄδεται, and the phrase ταῦτα ἐπὶ τέσσαρσι βιβλίοις διαστήσας cannot be seen as a reference to Theophilus's Paraphrase of the Institutes. By way of contrast, especially the Parisinus 1357 neatly fits in with the picture painted by Symbatios. For, this manuscript is a clear representative of the compilation of laws in 60 books – ἐν ἐξήκοντα βιβλίοις ἐπεκτείνας –, containing a large amount of 'unexhellenized' Latin *termini technici* – σὺν ταῖς ἐκεῖσε λέξεσιν ἐγκειμέναις –, and the sum of it all distributed over four τεύχη – ταῦτα ἐπὶ τέσσαρσι βιβλίοις διαστήσας.

In spite of all the above, Symbatios's narrative appears to be flawed, because he attributes the compilation of laws in 60 books distributed over four τεύχη to Leo, while he remarks that it was this emperor who 'polished' this compilation together with its technical terms, viz. by substituting them by ἐξελληνισμοί. How, then, is this to be explained? In this case, too, I can think of only one answer that makes sense. It is quite possible that Symbatios was well aware of Basil's compilation of laws in 60 books distributed over four τεύχη, containing Latin *termini technici* in their original form. Of course, he also must have known of Leo's refashioning of this compilation into one arranged in six τεύχη, and of the latter emperor's aspiration to 'exhellenize' the technical terms. Symbatios may have wished to give Leo full credit by deliberately ignoring all Basil's activities in the field of secular law, and by attributing all results to Leo. In this respect, it is perhaps significant that Symbatios sings Leo's praise rather exuberantly: Leo the orator amongst orators and the philosopher amongst philosophers, and as gloriously triumphant and most mild emperor the ruler of the entire world. In the end, Symbatios leaves us a somewhat obscure account by fusing together Basil's and Leo's accomplishments.

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L. Burgmann (...) als "Theophilosglossar" erkannte und (S. 27) "auf die Zeit zwischen dem 9. und dem 13. Jahrhundert" datierte, wobei er ausdrücklich die Möglichkeit erwähnte, daß "man das Lexikon eher dem ἐξελληνισμός der Makedonen zuordnet".

### 10. Cod. Coisl. gr. 151 and Index Coislinianus

There is one more manuscript that ultimately questions Signes Codoñer's conclusion that the final paragraph of the Prochiron preface ought to be looked upon as a later addition to that preface. It concerns cod. Coisl. gr. 151, dating from the first half of the fourteenth century, and inter alia handing down the text of the first nine books of what is now known as the Basilica. The editors of BT used the siglum Cb in order to designate the Coislinianus.<sup>76</sup> The text transmitted by Cb shows marked differences compared to that handed down by cod. Paris. gr. 1352 (siglum: P),<sup>77</sup> and also to the text presented by the Basilica testimonia. Differences occur mainly in the first book, so much so that Zachariä von Lingenthal doubted the authenticity of the text of that book in both Cb and P, and, basing himself on the testimonia, came up with a restitution of that text. Scheltema and Van der Wal adopted Zachariä's point of view: in their edition, the text of the first book is restituted.<sup>78</sup> Schminck observed that Cb is to be regarded as a representative of an earlier, official stage of the text preceding the original version of the Sixty Books of Leo the Wise: in his eyes, the text of the Forty Books referred to in the preface to the Eisagoge (see § 3.2 above), and issued by Basil the Macedonian is the most likely candidate. Schminck argued that the extensive consideration of provisions of ecclesiastical law (in Cb) hardly fits in with the intentions of Leo the Wise, but so much the better with those of the patriarch Photios, who presumably took part in the compilation of the Forty Books.<sup>79</sup>

76 On cod. Coisl. gr. 151, cf. RHBR, I, No. 202 (with pos. 2); Scheltema/Van der Wal, *Basilicorum Libri LX*, A I (note 50 above), v; Scheltema/Van der Wal, *Basilicorum Libri LX*, A II (note 55 above), v.

77 The Parisinus 1352 dates from the beginning of the thirteenth century, and hands down the Basilica preface, and B. 1 – B. 18, accompanied by scholia; cf. RHBR, I, No. 166 (with pos. 1); Scheltema/Van der Wal, *Basilicorum Libri LX*, A I (note 50 above), v; Scheltema/Van der Wal, *Basilicorum Libri LX*, A II (note 55 above), v; Scheltema/Van der Wal, *Basilicorum Libri LX*, A III (note 39 above), v.

78 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<sup>e</sup> 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); Scheltema/Van der Wal, *Basilicorum Libri LX*, A I (note 50 above), xi; cf. also e.g. Schminck, *Studien*, 52-54 with further references; Th.E. van Bochove, 'The Basilica between Quellen-forschung and textual criticism', (in print), § 7 - § 15, dealing with the Novel part of the first book.

79 Cf. Schminck, *Studien*, 53: '(...). Vielmehr muß diese (sc. Textfassung des Cod. Coisl.) eine frühere (offizielle) Textstufe repräsentieren, die wegen der Divergenzen zu der Textfassung in der *Synopsis maior* auch der ursprünglichen Version der *60 Bücher* Leons VI. vorausgehen und daher am ehesten



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With regard to cod. Coisl. gr. 151, there are several details which taken together contest the view that this manuscript would be a representative of the text of Basil's 40 books.

(1) First, in its Digest part, Cb completely omits the names of the lawyers who originally wrote the Digest fragments.<sup>80</sup> Cb shares this feature with cod. rescr. Vind. Suppl. gr. 200 and cod. Paris. gr. 1357, in this way suggesting a connection with these manuscripts. In the end, the shared feature also suggests a connection between the Coislinianus and the compilation of laws in 60 books mentioned in the final paragraph of the Prochiron preface, viz. the compilation distributed over four τεύχη.

(2) Second, on its ff. 1<sup>r</sup>–18<sup>r</sup>, Cb hands down the Index Coislinianus (ICb).<sup>81</sup> This index titulorum covers all 60 books of what is now known as the Basilica text. If only because of this, ICb strongly contests the suggestion that Cb would be a representative of Basil's 40 books: 60 versus 40 books appears to be irreconcilable, unless one simply denies the existence of a connection between ICb and the text of the first nine books in Cb, by arguing that the joint occurrence of both textual entities in Cb is purely coincidental, resulting from the vicissitudes of the transmission through the centuries. However, there is more to be said about this.

In § 2 above, it has already been observed that the Index Coislinianus shows evidence of having been compiled towards the end of the ninth century. This dating is based on the reference to C. 1,16: ICb lists this title from the Code, which deals with decrees of the senate, as a constituent part of the text of the sixth title of the second book. But both manuscripts handing down the text of book 2 title 6 – Cb and P – omit this Codex title altogether. The absence of C. 1,16 in both manuscripts is caused by Nov. Leon. 78 which deprived senatorial decrees of their legal force. On the basis of this, it has been concluded that the core of the text of ICb must predate Nov. Leon. 78: the dating of

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der Fassung der (im *Eisagoge*-Prooimion erwähnten) 40 Bücher Basileios' I. entsprechen dürfte. Für diese Annahme spricht auch die besonders extensive Berücksichtigung kirchenrechtlicher (...) Bestimmungen, (...) die (...) kaum mit den Intentionen Leons VI., sehr wohl aber mit denjenigen des – an den 40 Büchern Basileios' I. vermutlich beteiligten – Patriarchen Photios in Einklang zu bringen sein dürfte. Der Cod. Coisl. bietet also einen älteren Text als die von Zachariä rekonstruierte Fassung und beweist damit, daß es neben und vor den *Basiliken* noch (eine) andere Textfassung(en) der makedonischen "ἀνακάρσις τῶν παλαιῶν νόμων" gab". Schminck's point of view regarding the version of the text presented by Cb was followed by Signes Codoñer; cf. Signes Codoñer, *Estudio* § 3.9: *Conclusiones* (note 29 above), 272-273.

80 Cf. the comment of Scheltema and Van der Wal pertaining to B. 2,1,1 = D. 1,1,1 (BT 15 app. crit. ad l. 5 Οὐλίτ.): 'nomina iuriconsultorum solus P in margine exhibet, Cb prorsus omittit; quod semel notavisse sufficiat.'

81 Cf. RHBR, I, No. 202 pos. 1. ICb was written by hand B, the main text of Cb by hand A.

this Novel of Leo the Wise is to be regarded as the *terminus ante quem* for the dating of the ultimate original of the text of ICb. Leo promulgated his Novel somewhere between 886 and 899. Thus, the core of the text of ICb must have been compiled prior to the year 899 at the latest.<sup>82</sup>

The presence of the reference to C. 1,16 in the Index Coislinianus and the omission of this Codex title from book 2 title 6 in the main text of Cb under influence of Nov. Leon. 78 shows that there must indeed be a connection between ICb and the text of the first nine books in Cb. It is hardly possible to qualify the joint transmission of both textual entities in the same manuscript as purely coincidental, and, thus, to argue that Cb would be a representative of Basil's 40 books. On the contrary, it is quite possible to argue that the text version handed down by Cb is a representative of Basil's 60 books, and that ICb covered the compilation of laws in 60 books distributed over four τεύχη. For, the above dating of the ultimate exemplar of the Index Coislinianus prior to the year 899 at the latest explicitly admits the possibility that this index titulorum was originally compiled during the reign of Leo's father Basil the Macedonian, viz. preceding the genesis of the 60 books of the Basilica text in Leo's day. Moreover, the effect of Nov. Leon. 78, resulting in an intervention in the text of book 2 title 6 – i.e. the deletion of a Greek version of C. 1,16 – may be seen as a clear indication that Leo's Novels did indeed play an important part in his refashioning of Basil's 60 books, as has been suggested in § 9 with note 66 above. It is quite possible that book 2 title 6 of Basil's compilation of laws in 60 books originally contained a Greek version of C. 1,16, in accordance with ICb, and that this Codex title was cut loose from the text because of Nov. Leon. 78, resulting in the text of book 2 title 6 of the Basilica.

At least two details of ICb seem to oppose a dating of this index titulorum to the reign of Basil the Macedonian, and, thus, an association of ICb with Basil's 60 books. In the first place, ICb commences with the note Ἀρχὴ σὺν Θεῷ τῶν Βασιλικῶν. This note precedes the indication of the first book: Βιβλίον α' τῶν Βασιλικῶν.<sup>83</sup> In fact, many book indications in ICb – but not all<sup>84</sup> – are accompanied by the phrase τῶν Βασιλικῶν. The latter phrase seems to imply that the ultimate exemplar of ICb must have been compiled during Leo's reign after all. If this ultimate exemplar were to be dated to Basil's reign, one

82 For all the details, cf. again Van Bochove, 'Working with ICb' (note 5 above), 199-202.

83 ICb B. 1 (Heimbach, Vol. I, xv not. b; Cb f. 1<sup>f</sup>, ll. 1-2). Transl. of both notes: 'With God's help, beginning of the Basilica'; 'Book one of the Basilica'. For the way of quoting ICb, cf. Van Bochove, 'Working with ICb' (note 5 above), 198. It should be observed that in his note Heimbach omitted both passages quoted in the main text.

84 Τῶν Βασιλικῶν is lacking in the indications of the books 10 – 31 and 42, viz. 23 out of 60 books all told; cf. Cb ff. 4<sup>v</sup>-8<sup>f</sup> and 10<sup>f</sup>.

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would expect the phrase τῶν Βασιλικῶν to be missing completely.<sup>85</sup> However, it is uncertain when the Byzantines themselves started to use the phrase τὰ Βασιλικά in order to designate Leo's compilation of laws in 60 books: it may have been during Leo's reign, or (slightly) later.<sup>86</sup> Moreover, it is not impossible that the text of the index titulorum itself was adapted during Leo's reign, or that it underwent alterations in the course of its transmission: the phrase τῶν Βασιλικῶν may have been added to the book indications in ICb later on. In the second place, in at least two cases ICb refers to the division into six τεύχη. In book 25 title 6, ICb reads (after a source reference indicating Nov. 53,8): Ζήτει τοῦ α' βιβ. βιβ. ζ' τιτ. κη' κεφ. ια'; and in book 47 title 1, we come across a passage containing two references to the volumes 2 and 6 resp.: Ζήτει τῶ (leg. τοῦ) β' βιβ. βιβ. ιε' τιτ. α' κεφ. οδ' εἰς τὸ τέλος περι τῶν δωρηθέντων· ζήτει τῶ (leg. τοῦ) ζ' βιβ. βιβ. νζ' τιτ. ζ' κεφ. ιθ'.<sup>87</sup> These notes seem to prove that ICb covers the 60 books of the Basilica text, distributed over six τεύχη, in accordance with the Basilica preface. However, in both cases we are clearly dealing with scholia of the type first recognized by Van der Wal.<sup>88</sup> The scholia must have crept into the text of ICb at a moment which cannot be further specified, but so much is certain that the references to the division into six τεύχη do not belong to the text of the ultimate original of ICb.

In view of all the above, it is at the very least possible to argue that the core of the Index Coislinianus may go back to the reign of Basil the Macedonian and that this index titulorum covers this emperor's compilation of laws in 60 books, viz. the compilation of laws mentioned in the final paragraph of the Prochiron preface.

(3) Third, there is the absence of the preface to the Basilica from the Coislinianus.<sup>89</sup> Of course, this absence bears the hallmark of every argumentum e silentio, and should

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85 It may be noted that in the most important references to the compilation of laws in 60 books distributed over four τεύχη – viz. those in the Florilegium Ambrosianum and cod. Paris. gr. 1357 – τῶν Βασιλικῶν is missing altogether; cf. the notes 55 and 58 above.

86 On the name τὰ Βασιλικά, cf. § 4 with the notes 14 and 21-25 above.

87 ICb B. 25,6 (BT 1223 app. crit. ad l. 3; Cb f. 7', ll. 21-22); transl.: 'Look up in the first book (= volume), book 6, title 28, chapter 11'; in the apparatus of BT, both the source reference and the note are lacking. ICb B. 47,1 (BT 2127 app. crit. ad l. 4 ζῶη; Cb f. 11', ll. 9-10); transl.: 'Look up in the second volume, book 15, title 1, chapter 74 towards the end, on things donated; look up in the sixth volume, book 56, title 6, chapter 19'.

88 Cf. Van der Wal, 'Spuren einer Einteilung' (note 56 above), *passim*; cf. also the commentary of Scheltema and Van der Wal in BT 2127 app. crit. ad l. 4 ζῶη.

89 The Basilica preface is transmitted in cod. Paris. gr. 1352, and via the Synopsis Basilicorum Maior, including its Appendices. In these Appendices, the preface is sometimes counted as chapter 57 of the Ecloga Novellarum Leonis (SBM App. B III 1); cf. Schminck, *Studien*, 17-21; Van Bochove, *To Date and Not to Date* (note 2 above), 195 and 198-202; RHBR, I, 402 (Index der Autoren und Werke, s.v. Basiliken, Proimion).

therefore be used with due caution. Nevertheless, the absence of the Basilica preface is striking: in a manuscript handing down the first book of an important collection of laws, one would rather expect the presence of a preface, assuming that the collection of laws has been provided with one. Weak though it by itself may be, this line of reasoning does admit the possibility that the main text of Cb is not a representative of the Basilica text. At first sight, this even seems to argue in favour of Schminck's point of view that Cb would represent the text of Basil's 40 books. Things change, however, if the absence of the Basilica preface from Cb is looked upon in conjunction with the presence of ICb. For, this gives substance to the possibility that the text presented by Cb may be regarded as a remnant of the text of Basil's 60 books.

(4) Fourth, in the Codex part of its first book, Cb transmits constitutions from the Code mainly in their Greek original, or in a verbatim translation of the Latin text containing but few abbreviations, whereas the witnesses of the text of the first Basilica book used by Zachariä for his reconstruction of B. 1 merely contain Thalelaios's index of these constitutions. Zachariä explained the inconsistencies between the text of the first book in Cb and that in the testimonies by assuming interpolations made by the scribe of Cb or of its prototype.<sup>90</sup> On this basis alone, it could already be argued that the Coislinianus 151 does indeed represent another, earlier version of the text,<sup>91</sup> be it Basil's 40 books, as Schminck would have it, or the compilation of laws in 60 books mentioned in the final paragraph of the Prochiron preface. A detail in Heimbach's Basilica edition seems to point to the latter option. For, basing his edition of the first book mainly on Cb, Heimbach provided the first constitution from the Code (C. 1,1,1) making its appearance in the first book of the Basilica with the following Greek version of the original Latin *inscriptio*:

Οἱ βασιλεῖς Γρατιανός, Οὐαλεντινιανός καὶ Θεοδοσίος αἰώνιοι Αὐγούστοι πρὸς τὸν λαὸν τῆς Κωνσταντινουπόλεως.<sup>92</sup>

90 Cf. Zachariä von Lingenthal, 'Beiträge zur Kritik' (note 78 above), 15-16 (= *Kleine Schriften*, I (note 78 above), 589-590). According to Zachariä, this scribe may have been a cleric who felt the urge to present the text of the first book, which deals with the Holy Trinity and with the catholic faith, in a very extensive form. With this in mind, he replaced the authentic Basilica text by the original Greek constitutions or by verbatim translations (κατὰ πρόδαξ), stemming partly from the old scholia, partly from other sources.

91 Despite Zachariä's serious misgivings on the subject, *mutatis mutandis*; cf. again Zachariä von Lingenthal, 'Beiträge zur Kritik' (note 78 above), 16 (= *Kleine Schriften*, I (note 78 above), 590); cf. also Van Bochove, 'The Basilica between Quellenforschung and textual criticism' (note 78 above), § 8 with note 48.

92 Cf. Heimbach, Vol. I, 1. Transl.: 'The emperors Gratian, Valentinian, and Theodosios, perpetual augustoi, to the People of Constantinople'.

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At first sight, this *inscriptio* seems to offer an exact parallel for the four *inscriptiones* of Codex constitutions stemming from Cujas' lost Basilica manuscript, the codex Ridolfi (see § 6 and § 8.3 above). It would appear that in the case of C. 1,1,1 in Cb, too, we are dealing with an echo of the phrase ἐν τῷ οἰκείῳ σχήματι μένοντα from the final paragraph of the Prochiron preface, and that we would thus again have a clear reference to Basil's compilation of laws in 60 books. However, Cb f. 23<sup>r</sup> contains no trace whatsoever of this Greek version of the *inscriptio* of C. 1,1,1. In all probability, Heimbach adopted the *inscriptio* from Fabrot's Basilica edition,<sup>93</sup> without indicating his source. In his turn, Fabrot seems to have based the *inscriptio* of C. 1,1,1 on a marginal gloss in the Parisinus 1352 f. 1<sup>r</sup>, barely legible on the microfilm consulted. The gloss is preceded by the source reference βιβ. α' τοῦ Κωδ. ττ. α'.<sup>94</sup> Thus, the *inscriptio* of C. 1,1,1 in Heimbach's Basilica edition cannot be used as evidence.

There is, however, more to be said about the constitutions from C. 1,1 in the Coislinianus 151. For, in the Codex part of its first book, Cb hands down constitutions which are lacking in the Basilica text, according to the explicit testimony of the twelfth century canonist Theodore Balsamon.<sup>95</sup> In his commentary on the Nomocanon XIV Titulorum, Balsamon writes:

Ἡ πρώτη διάταξις τοῦ α' τίτλου τοῦ α' βιβλίου τοῦ κώδικός ἐστι κεφ. α' τοῦ α' βιβλίου τῶν βασιλικῶν (...): ἡ δὲ ε', ζ', ζ' καὶ η' διάτ. οὐκ ἐτέθησαν εἰς τὰ βασιλικά.<sup>96</sup>

In this terse statement, Balsamon observes that C. 1,1,5-8 have not been adopted into the text of the Basilica. Balsamon's testimony is confirmed by the Synopsis Basilicorum Maior (= SBM).<sup>97</sup> SBM Λ, III, 1 quotes B. 1,1,5 = C. 1,3,26, preceded by the heading:

93 Cf. C.A. Fabrot, [ed.], *Τῶν Βασιλικῶν Βιβλία Ξ'. Βασιλικῶν Libri LX*, Vol. I, Parisii 1647, 1.

94 Transl.: 'book 1 of the Code, title 1'. In the gloss, the name of the emperor Valentinian is still recognizable.

95 On Theodore Balsamon (born between ca. 1130 and 1140, died after 1195), cf. e.g. G.P. Stevens, *De Theodoro Balsamone. Analysis operum ac mentis iuridicae*, [Corona Lateranensis, 16], Roma 1969; various articles in N. Oikonomides, [ed.], *Byzantium in the 12<sup>th</sup> Century. Canon Law, State and Society*, [Society of Byzantine and post-Byzantine Studies. Diptycha – Paraphylla, 3], Athens 1991; Τρωιάνος, *Οι πηγές* (note 19 above), 358-363.

96 Balsamon, Comment. in Nomoc. XIV Tit. 1,1 (RP, I, 35/14-19 *passim*); transl.: 'The first constitution of the first title of the first book of the Code is chapter 1 of the first book of the Basilica (...); the constitutions 5, 6, 7 and 8 were not incorporated into the Basilica'. Cf. also Balsamon's commentary on Nomoc. XIV Tit. 1,5 (RP, I, 43/2-3), pertaining to C. 1,1,7.

97 On the Synopsis Basilicorum Maior (probably dating from the middle of the tenth century), cf. e.g. Van der Wal/Lokin, *Delineatio*, 92-93 and 134; Τρωιάνος, *Οι πηγές* (note 19 above), 275-278; N.G. Svoronos, *Recherches sur la tradition juridique à Byzance. La Synopsis major des Basiliques et ses appendices*, [Bibliothèque byzantine. Études, 4], Paris 1964.

Ἀνάγν. βιβ. α' τιτ. α' κεφ. ε', ἐν ᾧ φησι' (...).<sup>98</sup> By numbering C. 1,3,26 as B. 1,1,5, the SBM backs up the evidence provided by Balsamon that only the first four constitutions of C. 1,1 were adopted into the Basilica, and numbered as B. 1,1,1-4. On its ff. 23<sup>f</sup>-24<sup>v</sup>, the Coislinianus 151 hands down extensive Greek versions of C. 1,1,1-4, and on f. 32<sup>f</sup>, an elaborate version of C. 1,3,26. Between these two text units, viz. on the ff. 24<sup>v</sup>-32<sup>f</sup>, Cb intercalates extensive Greek versions of the constitutions 5, 6, 7 and 8 from the first title of the first book of the Codex (followed by C. 1,3,29):<sup>99</sup> it concerns exactly those constitutions from C. 1,1 that ought to be lacking according to the testimony of Balsamon. Thus, Balsamon – supported by the SBM – proves that in the Codex part of its first book, Cb does not transmit the Basilica text.

At this point, the Index Coislinianus again comes into play. With reference to the titles 1 and 3 of the first book of the Code, ICb reads:

Τίτλος α'. Περὶ τῆς ἀνωτάτω τριάδος καὶ πίστεως καθολικῆς καὶ περὶ τοῦ μηδένα τολμᾶν δημοσίως περὶ αὐτῆς ἀμφισβητεῖν. Βιβ. α' τοῦ Κωδ. τιτ. γ'. Κεφάλαιον η'. Περὶ ἐπισκόπων καὶ κληρικῶν καὶ ὀρφανοτροφείων καὶ βρεφοτροφείων καὶ πτωχείων καὶ ξενοδοχείων καὶ ἀσκητηρίων καὶ μοναστηρίων καὶ περὶ προνομίων αὐτῶν καὶ ἰδιοκτιῶν πεκουλίων καὶ ἀγοραζομένων αἰχμαλώτων καὶ περὶ γάμων κληρικῶν κεκωλυμένων ἢ ἐπιτετραμμένων.<sup>100</sup>

In this passage, τίτλος α' indicates the beginning of the first title – being the only one – of the first book of the compilation of laws in 60 books covered by ICb. The phrase περὶ τῆς ἀνωτάτω τριάδος (...) ἀμφισβητεῖν is, of course, a Greek translation of the rubric of C. 1,1, whereas the phrase περὶ ἐπισκόπων (...) ἐπιτετραμμένων is a Greek rendering of the rubric

98 SBM Λ, III,1 (Zepos, JGR, V, 409); transl.: 'read book 1 (viz. of the Basilica), title 1, chapter 5, which states: (...)'. See also B. 1,1,5 = C. 1,3,26 (BT 2/5-6), with the app. test. ad loc. It should be noted that SBM Σ, I, 1-2 (Zepos, JGR, V, 508) quote B. 1,1,5-6 = C. 1,3,26 and C. 1,8,1 resp. (see also BT 2 app. test. ad loc.), preceded by the heading Ἀνάγν. βιβ. α' τιτ. α' κεφ. ιε' καὶ ιζ', ἐν οἷς φησι' 'read book 1 (sc. of the Basilica), title 1, the chapters 15 and 16, which state:'. The chapter numbers ιε' and ιζ' are in all probability to be looked upon as erroneous: one would expect ε' and ζ'; cf. Zachariä von Lingenthal, 'Beiträge zur Kritik' (note 78 above), 2 (= *Kleine Schriften*, I (note 78 above), 576) ad Κεφ. ε' and Κεφ. ζ'. Apparently, chapter indications ought to be treated with due caution.

99 For all this, cf. also Heimbach, Vol. I, 1-13.

100 ICb B. 1 (Heimbach, Vol. I, xv not. b; Cb f. 1<sup>f</sup>, ll. 3-9). Transl.: 'Title 1. The Highest Trinity and the Catholic Faith; let nobody dare to argue about it in public. Book 1 of the Code, title 3. Chapter 8. Bishops and clerics and orphanages and hospitals for infants and poorhouses and inns and hermitages and monasteries and their privileges and privately owned working capital and ransoming prisoners and forbidden or permitted marriages of clerics'. The above passage from ICb is identical with its counterpart in ICb 2; cf. ICb 2, ll. 3-14 (Van Bochove, 'Index titulorum' (note 4 above), 22).

of C. 1,3.<sup>101</sup> The phrase βιβ. α' τοῦ Κωδ. τιτ. γ' is a source reference, clearly belonging to the Greek rendering of the rubric of C. 1,3. Κεφάλαιον ἡ' requires some comment in its own right. Elsewhere, I have argued that in indices titulorum of the Basilica the term κεφάλαιον has no connection with a subdivision of the text of the titles from the Digest or the Code, or of the text of the Novels, but always indicates a chapter of the Basilica text.<sup>102</sup> With regard to the Index Coislinianus, this point of view ought to be slightly modified. I still hold on to the view that κεφάλαιον has no bearing on a subdivision of the text of the various parts of the Justinian legislation, but I no longer think that ICb is to be regarded as an index titulorum covering the 60 books of the Basilica text (see § 10 (2) above). Be that as it may, the phrase κεφάλαιον is tied in with the subdivision (into chapters) of the titles of the text of the compilation of laws covered by ICb. Nevertheless, κεφάλαιον ought to be used with due caution, if only because the chapter division of a text in Byzantine legal manuscripts is not always reliable, especially if the text concerned is extensive, or handed down by more than one manuscript: in the latter case, the counting of chapters in the individual manuscripts may be fairly divergent. In the case at hand, however, κεφάλαιον may be used without too much risk, because C. 1,1 only contains eight constitutions, on the understanding, of course, that every constitution takes up one κεφάλαιον in the text of the compilation of laws covered by ICb.

By using the phrase βιβ. α' τοῦ Κωδ. τιτ. γ'. Κεφάλαιον ἡ', then, ICb indicates that the constitutions from C. 1,3 commence in chapter 8 of the first title of the first book of the compilation of laws in 60 books covered by the index. This means that ICb allocates the constitutions from C. 1,1 seven chapters in the text of the first title of the first book. Thus, according to ICb, there are more constitutions from C. 1,1 in the first title of the first book of the compilation of laws in 60 books than according to the indirect witnesses of the Basilica text: these testimonia allot the constitutions from C. 1,1 only four chapters. In other words, by means of the phrase κεφάλαιον ἡ', the Index Coislinianus indicates that the constitutions 5, 6 and 7 from C. 1,1 occur in the text of the first title of the first book, whereas these constitutions ought to be lacking according to the explicit testimony of Balsamon and the Synopsis Basilicorum Maior. However, as we have already seen, extensive Greek versions of C. 1,1,5-7 do occur in cod. Coisl. gr. 151, viz. on its ff. 24<sup>v</sup>-28<sup>v</sup>. Thus, the Index Coislinianus concurs with the main text of the Coislinianus 151, and

101 On the Greek rendering(s) of the rubric of C. 1,3, cf. Th.E. van Bochove, 'Terminus technicus. A note on the handling of technical terms in *indices titulorum* of the *Basilica*', *SCDR XXVI* (2013), 219-232 (222-226); this article is part of the monographic section *Estudios de lexicografía jurídica bizantina en fuentes de época macedonia, siglos ix-x d. C.* in the just mentioned volume of the *Seminarios Complutenses*.

102 On the use of κεφάλαιον in ICb 2, cf. Van Bochove, 'Index titulorum' (note 4 above), 11, 12, 13, 16 and 17; on κεφάλαιον in IPc, cf. Van Bochove, 'Index titulorum. II' (note 6 above), 36-38, 53 and 54.

contradicts the indirect witnesses of the Basilica text. Because ICb and Cb conjointly oppose Balsamon and the SBM – and via these testimonies the Basilica themselves – with regard to C. 1,1,5-7, it can be concluded that ICb does not cover the 60 books of the Basilica text of Leo the Wise, and that Cb does not transmit the text of the first nine books of that compilation of laws. Rather, we can conclude that Cb is to be regarded as a representative of the text of Basil's compilation of laws in 60 books, and that, as an index titulorum, ICb covers the latter compilation. By means of (the issue of) C. 1,1,5-7, the Index Coislinianus and cod. Coisl. gr. 151 together provide material evidence for the existence of the compilation of laws in 60 books issued by Basil the Macedonian, and referred to in the final paragraph of the Prochiron preface.

But what about C. 1,1,8? In a recent study,<sup>103</sup> Stolte has convincingly argued that in all probability, this constitution is a later addition to the Justinian Code, because it can hardly have been an authentic part of the original Codex repetitae praelectionis of 534. C. 1,1,8 cannot be regarded as an imperial constitution. Moreover, it has not been part of the editing process which led to the compilation of the Code. It is a letter of Pope John II (470-535; papacy: 533-535), showing features of an unedited copy stemming from a perhaps papal archive, and seems to have been added at the end of C. 1,1 by some overzealous functionary. Stolte also argued that a full Greek translation of this letter of Pope John II occurs in the Coislinianus 151, but that the texts handed down by Cb, including this Greek translation, do not fit in with the format of the texts provided by the indirect witnesses of the Basilica: these testimonia present summaries of the texts from the Code, whereas Cb contains translations of the full Latin text, or the same Greek text as the Code. Stolte observed that the Greek texts in Cb may be genuine Byzantine versions of constitutions, but that they do not stem from the textual tradition of the Basilica: they must have been copied from other sources. With regard to Cb and the Parisinus gr. 1352 (= P), and in particular to the Greek version of C. 1,1,8 in Cb, Stolte concluded:

The latter's (viz. Scheltema c.s.) edition contains the text as reconstructed from testimonia, while the text handed down in Cb and P is a spurious, interpolated version, which has been edited by Heimbach in the belief that it was the authentic text. All this is not to say that the Greek version of C. 1,1,8 which has been preserved in Cb is spurious. Just as the Latin text we read in our editions of the Code is a genuine papal letter but – in my view – a spurious

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103 B.H. Stolte, 'Not in the Code, nor in the Basilica: C. 1.1.8 and its translation in the Basilica', *AUPA* LIV (2010-2011), 289-300.



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passage in the Code, this Greek version is undoubtedly a genuine full translation of the Latin text, albeit an interpolation in the Basilica.<sup>104</sup>

By means of the phrase ἡ δὲ (ε', ζ', ζ' καὶ) ἡ' διάτ. οὐκ ἐτέθησαν εἰς τὰ βασιλικά (see the present paragraph with note 96), Theodore Balsamon explicitly confirms that C. 1,1,8 is not a part of the text of the Basilica. However, this does not necessarily mean that we have to look upon the Greek translation of C. 1,1,8 transmitted by Cb as an interpolation in the Basilica text, or that we must consider the entire text version handed down by Cb as spurious. The reason for this is, of course, that we do not have to regard the text handed down by Cb as a (direct) witness of the Basilica text. As we have seen above on the basis of the Index Coislinianus in combination with the main text of the Coislinianus 151, Cb is rather to be looked upon as a representative of Basil's compilation in 60 books. It can be argued that the Greek version of C. 1,1,8 did indeed occur in the text of this compilation, but that it was deleted from that text when Leo the Wise had his father's compilation in 60 books refashioned in order to form his own compilation: the 60 books of the text of the Basilica (see § 9 with the notes 65-67 above). The extensive Greek versions of Codex constitutions in Cb may be explained by regarding them as yet another echo of the phrase ἐν τῷ οἰκειῷ σχήματι μένοντα in the final paragraph of the Prochiron preface: it is quite possible that the compilers of the text of Basil's 60 books adopted these extensive versions exactly as they found them in whatever source available to them.

With respect to C. 1,1,8, however, it is ICb that presents a bit of a problem. For, by having the constitutions from C. 1,3 commence in κεφάλαιον ἡ', the index titulorum allocates C. 1,1 seven chapters all told. Therefore, ICb does not assign C. 1,1,8 a chapter of its own in the first book of Basil's collection of laws in 60 books.<sup>105</sup> How are we to explain this? As we have already seen, Stolte argued that what is now C. 1,1,8 is most probably a later addition to the Justinian Code. ICb seems to corroborate this by allocating C. 1,1 just seven chapters. Even the main text of Cb points in that direction by the way in which C. 1,1 is transmitted in the manuscript. On its ff. 23<sup>f</sup>-28<sup>v</sup>, Cb hands down C. 1,1,1-7 en bloc, as some sort of textual unity. C. 1,1,8 commences on f. 28<sup>v</sup>, after an ornamental

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104 For all this, cf. Stolte, 'Not in the Code, nor in the Basilica' (note 103 above), 289 and 291-296 *passim*, with further references to the work of Zachariä von Lingenthal, and the editors of BT. The quotation is to be found on p. 295.

105 It should be noted that in Heimbach's edition of the first book, all constitutions stemming from C. 1,1 have been provided with chapter numbers: C. 1,1,1 = (κεφ.) α', C. 1,1,2 = (κεφ.) β', etc., up to and including C. 1,1,8 = (κεφ.) η'; cf. Heimbach, Vol. I, 1-5 and 8. However, these chapter numbers must have been added by Heimbach himself. With regard to C. 1,1, Cb lacks κεφάλαιον numbers altogether. The first κεφάλαιον number occurs on f. 32<sup>f</sup>, at C. 1,8,1: here, we read in the right margin α'. The chapter numbers in Heimbach's edition cannot be used as evidence.

line which seems to act as a divide between the text of C. 1,1,1-7 and that of C. 1,1,8.<sup>106</sup> Moreover, the Greek translation of the letter of Pope John II is preceded by the heading Ἰωάννου ἐπισκόπου πόλεως Ῥώμης,<sup>107</sup> whereas the first seven constitutions from C. 1,1 are completely void of headings.<sup>108</sup> The heading on f. 28<sup>v</sup> marks what is now C. 1,1,8 for what it truly is: not an imperial constitution, but a papal letter, written by John, bishop of Rome, and, as such, not belonging to the original Justinian Code of 529. How the Greek translation of this papal letter finally ended up in the ultimate exemplar of Cb, can only be surmised. It would seem possible that this translation already occurred in a (Greek?) copy of the Justinian Code used as a source by the compilers of Basil's 60 books, and that the translation was already marked as a divergent text or a later addition in that copy, but this scenario is not very likely. The ornamental line and the heading preceding the Greek translation in Cb rather point to a source ultimately divergent from that of C. 1,1,1-7. The Index Coislinianus suggests the same by allocating C. 1,1 only seven chapters in the first book of Basil's compilation. Moreover, it is not even very likely that with regard to C. 1,1 the compilers of the ultimate exemplar of Cb (and ICb) consulted an official copy of the Justinian Code, as C. 1,1,6 in Cb contains a passage stating that copies of this edict of Justinian ought to be sent to the Ephesians, and so on.<sup>109</sup> This announcement may be looked upon as a note added to the main text of C. 1,1,6 in the imperial chancery, very similar to notes occurring in the Novels of Justinian.<sup>110</sup> This note does not point to an official collection such as the Justinian Code as the source drawn upon by the compilers of Basil's 60 books with regard to the texts from C. 1,1 in Cb: the note rather indicates a private collection or some archive of documents as source. Because of all this, it seems more likely that the compilers of Basil's 60 books and of the archetype of ICb consulted a – private? – copy of the Justinian Code, in which C. 1,1 comprised only seven numbered constitutions, but that they knew indirectly, i.e. from another source such as the Collectio Tripartita, that the original Latin letter of Pope John II had been added at the end of C. 1,1,

106 In the texts originating from C. 1,1, Cb contains one more ornamental line, viz. on f. 26<sup>f</sup>, shortly before the final passage of C. 1,1,6 starting with the words Τὸ αὐτὸ Ἐφεσίους; see Heimbach, Vol. I, 5. Because of its location, this ornamental line seems to have no other function than marking the transition from the main text of C. 1,1,6 – Justinian's edict to the inhabitants of Constantinople, aimed against Nestorianism, and Eutyches and his followers – to the announcement concerning copies of that edict to be sent to the Ephesians, etc.

107 Transl.: 'Of John, bishop of the city of Rome'. In his edition, Heimbach did not adopt this heading. Following Fabrot, he rendered it as Ἰωάννης Ἐπίσκοπος, Πάπας Ῥώμης 'Bishop John, Pope of Rome'; cf. Heimbach, Vol. I, 8 with not. m.

108 Again following Fabrot, Heimbach provided C. 1,1,7 with the heading Ἐπιφανίῳ Ἀρχιεπισκόπῳ. This heading is lacking in Cb; cf. Heimbach, Vol. I, 5 with not. x.

109 It concerns the final passage of C. 1,1,6 mentioned in note 106 above.

110 Cf. e.g. Nov. 22 *in fine* (SK 186/33-187/21).

after constitution 7.<sup>111</sup> Subsequently, they must have drawn the Greek translation of this papal letter from a different, unknown source. If all this holds true, then the issue of the Greek translation of what is now C. 1,1,8 in Cb presents a fine, though rather complicated example of the working of the phrase ἐν τῷ οἰκείῳ σχήματι μένοντα in the final paragraph of the Prochiron preface.

Be all this as it may, after all the above it can be concluded that cod. Coisl. gr. 151 does indeed hand down a text divergent from that of the Basilica. However, Cb does not transmit (a part of) the text of Basil's 40 books referred to in the preface to the Eisagoge. The combination of the Index Coislinianus and the main text of the Coislinianus 151 makes clear that Cb is a representative of the compilation of laws in 60 books issued by Basil the Macedonian and mentioned in the final paragraph of the preface to the Prochiron.

### 11. Prochiron preface: its final paragraph in detail

Where do we stand after all the above with regard to that final paragraph? In § 5 above, we have already seen that Signes Codoñer argues in favour of an official, second edition of the Prochiron, probably published during the short reign of Leo's brother Alexander, after a revision of the law book effectuated during the reign of Leo the Wise himself. Keystone in Signes Codoñer's line of reasoning is the final paragraph of the Prochiron preface: this paragraph would have been added to the preface in the framework of that revision. Signes Codoñer divides this preface – as edited by Schminck – into four different parts.<sup>112</sup> Part A takes up the lines 1-32; it consists of some general reflections regarding the concept of justice, enriched with a number of quotations from the Bible. Part B fills the lines 33-62, and deals with the Prochiron itself: its significance, its objective and the most important aspects of its compilation. Part B also alludes to the corpus of the laws (τὸ πλάτος τοῦ νόμου) purified recently by the compilers of the law book. Part C covers the lines 63-76; this part contains the utter rejection of the law book preceding the Prochiron,

111 The *Collectio Tripartita* numbers the letter of the Pope as C. 1,1,8; cf. CollTrip. 1,1,8 (ed. N. van der Wal/B.H. Stolte, *Collectio Tripartita. Justinian on Religious and Ecclesiastical Affairs*, Groningen 1994, 14/4-5): ἡ. Ἐπιστολὴ τοῦ πάπα πρὸς Ἰουστινιανὸν ἀποδεχομένη τὰ παρ' αὐτοῦ περὶ τῆς ὀρθοδόξου πίστεως γραφέντα, ἅτινα τῇ ἐπιστολῇ ὑποτέτακται. Transl. (Stolte): 'Letter of the Pope to Justinian approving what was written by him about the orthodox faith, which has been appended to the letter'. It is striking that the CollTrip. contains full Greek versions of C. 1,1,3 and C. 1,1,5-7, but omits a full Greek version of C. 1,1,8. The addition of the full Greek versions to the CollTrip. is most probably to be looked upon as an interpolation; for all this, cf. Van der Wal/Stolte, *Collectio Tripartita*, preface, xxvi; Stolte, 'Not in the Code, nor in the Basilica' (note 103 above), 292 with note 3, and 296.

112 Cf. Signes Codoñer, *Estudio* § 3.7.6: El proemio del *Prochiron* (note 29 above), 229-231.

identified as the *Ecloga* issued by the Isaurian emperors Leo III and Constantine V. Part D consists of the lines 77-82, viz. the final paragraph of the preface containing more detailed information regarding the purification of the laws mentioned in part B. The relevant fragments from the Prochiron preface have already been quoted in § 3.1 above, but for convenience's sake they are here repeated:

Εἰ δέ τι ἔλλιπες ἔχοι τὸ παρ' ἡμῶν γραφόμενον – οὐδὲ γὰρ οἶόν τε ἀπείρων βιβλίων γραφὴν ἐν ταύτῃ τῇ συντομίᾳ περιληφθῆναι –, χρεῶν τοῖς φιλοπόνως ἐγκύπτουσιν ἐν τῷ παρ' ἡμῶν ἀρτίως ἀνακεκαθαμένῳ τοῦ νόμου πλάτει τὴν τοῦ ζητουμένου γνῶσιν ἀρύσασθαι. (...) Ἐπειδὴ δὲ ἀνωτέρω ἀνακαθάρσεως τῶν παλαιῶν νόμων ἐμνημονεύσαμεν, εἰδέναι χρὴ, ὅτι συναγχοτότες ἐν ἐνὶ τεύχει τὰ ἀνηρημένα πάντα θεείκαμεν, ὡς ἂν δῆλη καὶ σαφὴς ἡ τούτων ἀργία πᾶσι γνωρίζοιτο· τὰ μέντοιγε συνεστῶτα τῶν παλαιῶν νόμων ἐν τῷ οἰκείῳ σχήματι μένοντα ἐν ἑτέραις ἐξήκοντα βίβλοις καθυπετάξαμεν, τοῖς βουλομένοις σπουδῆν καὶ περὶ τὴν γνῶσιν καὶ μάθησιν τοῦ πλάτους τῶν νόμων ἐγκαταλείψαντες.<sup>113</sup>

The first fragment in this passage – the phrase Εἰ δέ τι ἔλλιπες (...) ἀρύσασθαι – belongs to part B, the second fragment, viz. the sentence Ἐπειδὴ δὲ ἀνωτέρω (...) ἐγκαταλείψαντες, constitutes part D.

Signes Codoñer's main reasons to regard part D as a later addition to the Prochiron preface are as follows. First, he argues that part D is surprising and against the logic of the account of the preface: he observes that the detailed information regarding the purification of the laws is out of place, breaking through the line of reasoning and the narrative of the preface. One would rather expect to find this information in part B, preceding the rejection of the *Ecloga* contained in part C. Moreover, part D also refers to two works not mentioned earlier in the preface: the *ἐν τεύχῳ* of the abrogated laws and the 60 books of still valid regulations. Second, Signes Codoñer observes that on a purely formal level, the real introductory clause to the final paragraph – εἰδέναι χρὴ, ὅτι in l. 78 – reveals its origin: a gloss or specifying addition to the main text. The phrase εἰδέναι χρὴ, ὅτι is very common in texts from the Macedonian era, and serves to introduce new information or additions to a primary text: for instance, it occurs frequently in *De ceremoniis aulae byzantinae*, a work compiled by order of Constantine VII Porphyrogenetos.<sup>114</sup>

113 Prochiron preface, ll. 59-62 and 77-82. For the translation, see note 7 above.

114 For all this, cf. Signes Codoñer, *Estudio* § 3.7.6: El premio del *Prochiron* (note 29 above), 230-232 and 238. It should be noted that Signes Codoñer puts forward one more argument. After part D, the Prochiron preface contains one more sentence, viz. the lines 82-83 in Schminck's edition: Τῆς μέντοιγε παρουσίας πραγματείας ἀρχὴ τέθειται, ὁπόθεν καὶ ἡ καθ' ἡμᾶς φύσις τὴν ἀρχὴν εἴληφεν 'Meanwhile, the beginning of the present work is set there, whence our own nature, too, received its origin'. This final sentence of the preface, which appears to have no logical connection with the

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Signes Codoñer's interpretation of part D may be briefly summarized as follows. First, he argues that the Πλάτος τῶν νόμων mentioned in part D does indeed take up the ἀνακεκαθαρμένον πλάτος τοῦ νόμου occurring in part B, but that – contrary to the prevailing conviction – the Πλάτος τῶν νόμων is not specified by the reference to the 60 books: the two are not to be associated with each other.<sup>115</sup> Second, Signes Codoñer observes that for a better understanding of part D it would be helpful to know what the author of the preface was referring to in his statement that he had arranged the 60 books ἐν τῷ οἰκείῳ σχήματι. Signes Codoñer comes up with two possibilities. In his view, the phrase ἐν τῷ οἰκείῳ σχήματι may mean that nothing changed in the regulations contained in the Corpus Iuris Civilis. It is also possible, however, that ἐν τῷ οἰκείῳ σχήματι indicates that the regulations incorporated in the 60 books had been adopted into those books in accordance with a fixed sequence of the texts. The Basilica provide an idea what this fixed sequence of texts implies. For, within the titles of the Basilica, the texts stemming from the Corpus Iuris tend to occur in the established order of Digest, Code and Novels.<sup>116</sup> Third, Signes Codoñer attempts to substantiate the latter possibility: might it be possible that the phrase ἐν τῷ ἰδίῳ (read: οἰκείῳ) σχήματι indeed refers to the structuring of the chapters in the 60 books in accordance with an already established sequence of the sources, in this particular case that of Digest-Code-Novels? If so, then one might be tempted to identify those 60 books with the Basilica, which also consist of 60 books. Subsequently, Signes Codoñer quotes the second half of the preface to the Basilica in order to find possible parallels between the account of Leo the Wise's compilation of the Basilica, and how part D of the Prochiron preface relates that of the 60 books. For convenience's sake, the relevant part of the Basilica preface is here repeated:

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preceding text of part D, is a transitional clause introducing the first title of the Prochiron which deals with (matters of) matrimonial law. According to Signes Codoñer, the location of this transitional clause would have been far more logical at the end of part C, where the author, after the rejection of the Ecloga, observes (lines 74-76): Ὁ δὲ γε παρ' ἡμῶν ἀρτίως συλλεχθεὶς τε καὶ συντεθεὶς εἰς τε σύστασιν τῶν καλῶς νομοθετηθέντων καὶ εὐχέρειαν τῆς αὐτῶν γνώσεως ἐπινηνόνηται 'But the Manual, that has just been compiled and put together by us, is meant to perpetuate the rightly promulgated laws as well as to facilitate the acquaintance with them'. The present location of the transitional clause supposes a sudden interruption with the preceding lines of part D, which exclusively refer to the ἐν τεύχος and the 60 books. In this way, the transitional clause adds to the idea that part D is a later addition to the preface; cf. Signes Codoñer, *El proemio del Prochiron*, 238-239.

115 Cf. Signes Codoñer, *Estudio* § 3.7.6: *El proemio del Prochiron* (note 29 above), 232-233 (the Πλάτος τῶν νόμων and the 60 books).

116 Cf. Signes Codoñer, *Estudio* § 3.7.6: *El proemio del Prochiron* (note 29 above), 233-234 (ἐν τῷ οἰκείῳ σχήματι).

Τοιγαροῦν τὰς πάσας τῶν νόμων πραγματείας ἡμεῖς σωματοποιησάμενοι ἐν τεύχεσιν ἐξ συνεκεφαλαιώσαμεν, πᾶν μὲν ἐναντίον καὶ τὴν χρῆσιν οὐ παρεχόμενον ἐν τοῖς πράγμασι – διὰ τὸ ὡς εἰκὸς πολλὰ τῶν τῆς ἀρχαιότητος νομοθετημάτων παρευδοκιμηθῆναι τοῖς ὕστερον – ὑπεξελόντες καὶ ἀποκρίναντες, πᾶν δέ, ὃ μὴ ἀναγκαῖον, ἀλλὰ περιττὸν ἐδόκει, ἀποτεμόντες τῆς συνυφάνσεως. Ἔπειτα δὲ τὰ ἀνὰ μέρος καὶ κατὰ διασπορὰν περὶ τοῦ αὐτοῦ πράγματος εἰρημμένα εἰς μίαν τίτλου περιοχὴν καταστήσαντες, οἷον ὅσα περὶ γάμου, ὅσα περὶ ληγάτων, ὅσα περὶ ἐπιτρόπων καὶ ἀπλῶς ὅσα σύστοιχα καὶ πρὸς τὴν αὐτὴν ὑπόθεσιν ὀρώντα, ταῦτα ἐξ ἀλλήλων ἀδιάσπαστα καὶ ἐν τῇ συντάξει τηρήσαντες, ἐν ἐξήκοντα ὅλοις βιβλίοις ἀπαρτίσαμενοι, παρέσχομεν τῇ περὶ τοὺς νόμους φιλοπονίᾳ ῥαδίαν μὲν τὴν ἔντευξιν, τελείαν δὲ τὴν παντὸς οὐτινοσοῦν ζητουμένου διάκρισιν, μηδενὸς νομοθετήματος ὀρθὴν φέροντος τὴν ψῆφον παραλειφθέντος ἐκ τῆς ἄνω τοῦ χρόνου φορᾶς καὶ μέχρι τῆς ἡμῶν βασιλείας θεθεπισμένων.<sup>117</sup>

In this passage, Signes Codoñer distinguishes three parallels with part D of the Prochiron preface. (1): The Basilica preface relates the compilation of a body of law, a *corpus*, incorporating all works of Justinian law. The process of compiling this body of law is expressed succinctly by the participle σωματοποιησάμενοι. According to Signes Codoñer, this phrase somehow reflects the implicit idea of the expression Πλάτος τῶν νόμων in part D of the Prochiron preface. (2): The Basilica preface states that all that was contradictory and not useful in practice, was removed from the *corpus* of Justinian law, and that all that appeared not necessary but superfluous was cut loose from the text: πᾶν μὲν ἐναντίον καὶ τὴν χρῆσιν οὐ παρεχόμενον ἐν τοῖς πράγμασι – διὰ τὸ ὡς εἰκὸς πολλὰ τῶν τῆς ἀρχαιότητος νομοθετημάτων παρευδοκιμηθῆναι τοῖς ὕστερον – ὑπεξελόντες καὶ ἀποκρίναντες, πᾶν δέ, ὃ μὴ ἀναγκαῖον, ἀλλὰ περιττὸν ἐδόκει, ἀποτεμόντες τῆς συνυφάνσεως. Signes Codoñer connects these lines with the phrase ἐν ἐνὶ τεύχει τὰ ἀνηρημένα πάντα θεθεϊκαμεν from

117 Basilica preface, ll. 19-31 (Schminck, *Studien*, 22). Transl.: ‘Therefore, we have organized all the books of law as a body, and we have brought [those works] together under one heading, in six volumes; we have removed and set apart all contradictory elements and what is no longer useful in practice – because of the fact that (as is only likely) many regulations dating from ancient times are surpassed by more recent ones; we have cut off from the text all that seemed not necessary but superfluous. Thereupon, we have brought into a section consisting of one title, all things said split up and dispersed, [but] relating to the same subject, for instance, the things concerning marriage, the things concerning bequests, the things concerning guardians, and, to put it plainly, all things belonging together and dealing with the same subject-matter; keeping these things inseparable from one another in this compilation, (and) having completed [all this] in sixty books altogether, we have supplied those diligently studying the laws with an easy accessibility and with a perfect decision concerning any problem whatsoever; in doing all this, not a single regulation containing a right judgement, and originating from laws promulgated in the course of time from an early date until our imperial rule was omitted.’. The first lines of this passage have already been quoted in § 7.2 (with note 48 above).

part D of the Prochiron preface: after reading both passages, he deems it possible that this ἐν τεύχος of the abrogated laws may have contained the entire legislation removed from the above *corpus* of Justinian law. (3): Finally, the Basilica preface indicates that after the removal of all redundant and antiquated rulings, a work was published in 60 books, structured into titles, every title containing all regulations pertaining to one and the same subject matter. Prior to the compilation of the 60 books, these rulings had occurred separately in the various parts of the *corpus* of the law, i.e. the Justinian legislation: Ἐπειτα δὲ τὰ ἀνά μέρος καὶ κατὰ διασπορὰν περὶ τοῦ αὐτοῦ πράγματος εἰρημένα εἰς μίαν τίτλου περιοχὴν καταστήσαντες, (...) καὶ ἀπλῶς ὅσα σύστοιχα καὶ πρὸς τὴν αὐτὴν ὑπόθεσιν ὀρώντα, ταῦτα ἐξ ἀλλήλων ἀδιάσπαστα καὶ ἐν τῇ συντάξει τηρήσαντες, ἐν ἐξήκοντα ὅλοις βιβλίοις ἀπαρτισάμενοι. The structure of the Basilica titles neatly fits in with this description in the Basilica preface. Moreover, in the Basilica titles a fixed sequence of the sources is discernible, viz. Digest-Code-Novels – as we have seen, Signes Codoñer’s interpretation of the phrase ἐν τῷ οἰκείῳ σχήματι in part D of the Prochiron preface. The author of the Basilica preface concludes that his compilation is easily accessible for those who wish to study the laws and that it provides the perfect solution for any problem they seek to solve: παρέσχομεν τῇ περὶ τοὺς νόμους φιλοπονία ῥαδίαν μὲν τὴν ἔντευξιν, τελείαν δὲ τὴν παντὸς οὐτινοσοῦν ζητουμένου διάκρισιν. According to Signes Codoñer, the latter sentence somehow picks up – albeit in different wordings – the final statement of part D of the Prochiron preface: τοῖς βουλομένοις σπουδῆν καὶ περὶ τὴν γνῶσιν καὶ μάθησιν τοῦ πλάτους τῶν νόμων ἐγκαταλείψαντες.<sup>118</sup>

Signes Codoñer argues that the above parallels between the compilation of the 60 books referred to in part D of the Prochiron preface and that of the 60 books of the Basilica in their preface can hardly be coincidental: in his view, these parallels rather suggest that the 60 books alluded to in the Prochiron preface are in actual fact non other than the 60 books of the Basilica. Subsequently, since the Prochiron was published during the reign of Basil the Macedonian, and, thus, before Leo the Wise promulgated the Basilica (and his Novels), Signes Codoñer poses the question how it might be explained that the Prochiron preface can actually refer to the 60 books of the Basilica. According to him, there is only one possible answer, viz. the supposition that part D of the Prochiron

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118 For all this, cf. Signes Codoñer, Estudio § 3.7.6: El proemio del *Prochiron* (note 29 above), 234-235 (substantiation of the interpretation of ἐν τῷ οἰκείῳ σχήματι and quotation of the second half of the Basilica preface); 235-236: parallels between the Basilica preface and part D of the Prochiron preface; (1) σωματοποιησάμενοι and Πλάτος τῶν νόμων (235); (2) removal of superfluous and antiquated regulations, and ἐν ἐνὶ τεύχει τὰ ἀνηρημένα πάντα θεθείκαμεν (235-236); (3) the thematic arrangement of the Basilica titles, the fixed order of the sources in those titles (ἐν τῷ οἰκείῳ σχήματι), and especially the observations regarding those who wish to study the laws (236).

preface was added posterior to the compilation of the Prochiron and the main text of its preface.<sup>119</sup>

It is true that part D of the Prochiron preface seems to cause a breach in the line of the narrative and the logic of that preface. It is equally true that part D refers to two works not mentioned earlier in the preface – the ἐν τεύχος of the abrogated laws and the 60 books of still valid regulations –, and that one might rather expect to find this information in part B, preceding the rejection of the Ecloga contained in part C. In this sense, part D and its contents appear indeed out of place – at least, by our modern-day standards. It may also be true that the real introductory clause to the final paragraph – εἰδέναι χρῆ, ὅτι in line 78 – reveals the origin of part D: a gloss or specifying addition to the main text. All this, however, is counterbalanced by the transitional clause, viz. the clause connecting part D with the main text of the preface. This transitional clause reads: Ἐπειδὴ δὲ ἀνωτέρω ἀνακαθάρσεως τῶν παλαιῶν νόμων ἐμνημονεύσαμεν. There is only one phrase in the main text of the Prochiron preface that alludes to a purification, viz. the lines 59-62 occurring in part B: Εἰ δέ τι ἔλλιπὲς ἔχοι τὸ παρ’ ἡμῶν γραφόμενον – οὐδὲ γὰρ οἶόν τε ἀπέριων βιβλίων γραφήν ἐν ταύτῃ τῇ συντομίᾳ περιληφθῆναι –, χρεὼν τοῖς φιλοπόνως ἐγκόπτουσιν ἐν τῷ παρ’ ἡμῶν ἀρτίως ἀνακαθαρθένῳ τοῦ νόμου πλάτει τὴν τοῦ ζητουμένου γνώσιν ἀρύσασθαι. The ἀνακάθαρσις τῶν παλαιῶν νόμων mentioned in part D is a direct echo of the phrase ἐν τῷ παρ’ ἡμῶν ἀρτίως ἀνακαθαρθένῳ τοῦ νόμου πλάτει in part B. It can be argued that part B and part D do indeed refer to one and the same purification of the old – Justinian – laws. It is true that part D may be regarded as a later addition to the Prochiron preface, some sort of afterthought by our modern-day standards, but in my view it remains uncertain when part D was added: this may have happened in Basil the Macedonian’s day. The above transitional clause, however, clearly indicates that all new information contained in that part D has a direct bearing on the purified πλάτος τοῦ νόμου of part B: this view is at the very least highly defensible. In other words: it is very well possible that the ἐν τεύχος of the abrogated laws and the 60 books of the still valid regulations of the Justinian legislation do indeed specify Basil’s purified corpus of the laws after all. It is perfectly

119 Cf. Signes Codoñer, Estudio § 3.7.6: El proemio del *Prochiron* (note 29 above), 236 and 238: ‘Los paralelos que observamos entre la concepción de los *LX libros* del proemio del *Prochiron* y la de los *Basílicos* en el proemio de León VI pienso que no son casuales y que apuntan, tal como sugirió Schminck por otros caminos, a que los *LX libros* aludidos al final del proemio del *Prochiron* no sean en realidad sino los *Basílicos* de León. (...) En efecto, dado que el *Prochiron*, tal como concluimos por diversos indicios, fue compuesto en el reinado de Basilio I y por lo tanto antes de que León VI promulgase los *Basílicos* (y las *Novelas*) ¿cómo explicar entonces que en su proemio se haga mención a esta obra? La única solución al dilema pasa, a mi entender, por suponer que el párrafo final del proemio del *Prochiron* (que denominamos parte D) fue añadido con posterioridad a la composición de la obra.’



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feasible that the phrases συναγοχότες ἐν ἐνὶ τεύχει τὰ ἀνηρημένα πάντα τεθείκαμεν and τὰ μέντοιγε συνεστῶτα τῶν παλαιῶν νόμων ἐν τῷ οἰκειῷ σχήματι μένοντα ἐν ἑτέραις ἐξήκοντα βίβλοις καθυπετάξαμεν in part D directly relate to Basil's dealings with civil law, and substantiate his ἀνακεκαθαρμένον πλάτος τοῦ νόμου.

According to Signes Codoñer, the phrase ἐν τῷ οἰκειῷ σχήματι μένοντα in part D of the Prochiron preface would indicate that the regulations incorporated in the 60 books had been adopted into those books in accordance with a fixed sequens of the sources: the established order of Digest-Code-Novels. However, this need not be the case. In earlier paragraphs, I have argued<sup>120</sup> that the phrase may relate to the fact that in some manuscripts Latin *termini technici* have remained untranslated (absence of ἐξελληνισμοί), as in the *scriptura inferior* of cod. Vind. Suppl. gr. 200 (§ 7.1 (2) and § 7.2), the Florilegium Ambrosianum (§ 8.1 (1)), and cod. Paris. gr. 1357 (§ 8.2 (3)). Ἐν τῷ οἰκειῷ σχήματι μένοντα may also be connected with the presence of the prefaces of Novels in the Vindobonensis (§ 7.1 (3) and § 7.2), and that of *inscriptiones* of Codex constitutions in Cujas' lost manuscript, the codex Ridolfi (§ 6). Finally, the phrase ἐν τῷ οἰκειῷ σχήματι μένοντα may pertain to the presence of extensive Greek versions of Codex constitutions – in particular C. 1,1,8 – in cod. Coisl. gr. 151 (§ 10 (4)).

With regard to parallels between part D of the Prochiron preface and the Basilica preface, the following can be observed. In the present case, it is – generally speaking – a matter of which text was written first, and was thus able to inspire the other. Departing from the notion that part D of the Prochiron preface was written prior to the preface to the Basilica, it may be argued that the Πλάτος τῶν νόμων mentioned in part D inspired Leo the Wise in his use of the participle σωματοποιησάμενοι. The reference to the ἐν τεύχος of the abrogated laws may have caused Leo to reflect on the removal of all redundant and antiquated rulings. And the final statement of part D – τοῖς βουλομένοις σπουδῆν καὶ περὶ τὴν γνῶσιν καὶ μάθῃσιν τοῦ πλάτους τῶν νόμων ἐγκαταλείψαντες – may have inspired Leo to write παρέσχομεν τῇ περὶ τοὺς νόμους φιλοπονία ῥαδίαν μὲν τὴν ἔντευξιν, τελείαν δὲ τὴν παντὸς οὐτινοσοῦν ζητουμένου διάκρισιν.

There is an additional reason to position part D of the Prochiron preface with its reference to the ἐν τεύχος of the abrogated laws in Basil's reign. For, there is an important non-legal source that provides information regarding Basil's dealings with secular law. It concerns a passage in the *Vita Basilii*, the biographical history of Basil the Macedonian, compiled ca. 950 (possibly in the period 957-959) by order of his grandson Constantine

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120 Signes Codoñer, *Estudio* § 3.7.6: El proemio del *Prochiron* (note 29 above), 233 with note 643 rightly observes that in my 1996 monograph, I refrained from explaining the phrase ἐν τῷ οἰκειῷ σχήματι μένοντα.

VII Porphyrogennetos, accompanied by a preface composed by the latter emperor himself. The relevant passage reads:

Εὐρών δὲ καὶ τοὺς πολιτικοὺς νόμους πολλὴν ἀσάφειαν καὶ σύγχυσιν ἔχοντας διὰ τὴν ἀγαθῶν ὥσπερ καὶ πονηρῶν συναναστροφὴν, λέγω δὴ τὴν τῶν ἀνηρημένων καὶ πολιτευομένων ἀδιάκριτον καὶ κοινὴν ἀναγραφὴν, καὶ τοὺτους κατὰ τὸ προσήκον καὶ ἐνδεχόμενον προσφόρως ἐπινωρθώσατο, τὴν τῶν ἀνηρημένων ἀχρηστίαν περιελών, καὶ τῶν κυρίων ἀνακαθάρας τὸ πλῆθος, καὶ ὥσπερ ἐν συνόψει κεφαλαίοις διὰ τὸ εὐμνημόνευτον τὴν προτέραν ἀπειρίαν περιλαβόν.<sup>121</sup>

In his apparatus of sources and parallel places, Ševčenko has drawn the attention to similarities in diction between the above passage and the Prochiron preface,<sup>122</sup> but there is more to this. The *Vita Basilii* explicitly refers to abrogated laws, and does so even twice: λέγω δὴ τὴν τῶν ἀνηρημένων καὶ πολιτευομένων ἀδιάκριτον καὶ κοινὴν ἀναγραφὴν and τὴν τῶν ἀνηρημένων ἀχρηστίαν περιελών resp. The only other explicit reference to abrogated laws occurs in part D of the Prochiron preface: ὅτι συναγοχότες ἐν ἐνὶ τεύχει τὰ ἀνηρημένα πάντα τεθεϊκαμεν, ὡς ἂν δήλη καὶ σαφὴς ἡ τούτων ἀργία πᾶσι γνωρίζοιτο. The two accounts fit in with each other. In my view, this is sufficient reason to connect these two sources, and, thus, to position part D in the reign of Basil.<sup>123</sup>

Finally, Signes Codoñer ultimately identifies the 60 books mentioned in part D of the Prochiron preface as the 60 books of the Basilica. Again, this need not be the case. In previous paragraphs, in particular § 9, we have seen that there is another suitable candidate: a full-scale compilation of laws consisting of 60 books distributed over four

121 *Vita Basilii*, c. 33 (ed. I. Ševčenko, *Chronographiae quae Theophanis Continuati nomine fertur liber quo Vita Basilii imperatoris amplectitur*, [Corpus Fontium Historiae Byzantinae (Series Berolinensis), Vol. 42], Berlin/Boston 2011, 126-128). Transl. (Ševčenko): ‘He (viz. Basil) also found Civil Law in great disarray, lacking in clarity, because good laws had currency along with bad ones – I refer to the indiscriminate codifying of obsolete laws together with those in force. He amended the Civil Law, as far as was fitting and possible, in a suitable fashion, by abrogating the useless and the obsolete and clarifying the body of those <laws> that remained in force, and by compressing their formerly immense bulk into chapters, as in a synopsis, so that they could be easily committed to memory’. On the *Vita Basilii* in general, cf. now the Introduction to the present edition, composed by Cyril Mango after Ševčenko’s death in 2009, pages 3\*-13\*; further literature may be found in Ševčenko’s list of Works Consulted, pages 36\*-55\*.

122 Cf. Ševčenko, *Chronographiae* (note 121 above), 126-128, app. FP (Fontes et loci paralleli) ad c. 33,6 περιελών – 33,8 περιλαβόν.

123 On the *Vita Basilii* c. 33, cf. also Van Bochove, *To Date and Not to Date* (note 2 above), 64-65, and in particular 174-176. Curiously, Signes Codoñer does not take the testimony of chapter 33 of the *Vita Basilii* into account, even though he refers to this work in another context; cf. Signes Codoñer, Estudio § 3.5: La promulgación de la *Eisagoge* y los escolios, in: Signes Codoñer/Andrés Santos, *La Introducción al Derecho* (note 26 above), 165-182 (180).

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τεύχη or volumes. It is quite possible that the four τεύχη of this compilation inspired Leo the Wise to have his Basilica issued in six τεύχη, as reported in the Basilica preface. The compilation of laws in 60 books distributed over four τεύχη is represented by the lower script of cod. Vind. Suppl. gr. 200 (§ 7), the Florilegium Ambrosianum (§ 8.1), cod. Paris. gr. 1357 (§ 8.2), the codex Ridolfi (§ 6 and § 8.3), and cod. Coisl. gr. 151 (§ 10). All these manuscripts and textual witnesses share a number of features, though not all consistently at the same time. That the compilation consisted of 60 books is obvious from the codex Ridolfi (at least the books 54-57, but probably 46-60; § 6 and § 8.3), the Florilegium Ambrosianum (anthology of chapters from nearly all 60 books; § 8.1), the Parisinus (books 46-52; § 8.2), and the Coislinianus (all 60 books, covered by the Index Coislinianus; § 10 (2)). The four τεύχη appear in Florilegium Ambrosianum, the Parisinus and the codex Ridolfi (§ 8.1 (3), § 8.2 (1) and § 8.3 resp.). In its Digest part, the compilation of laws is characterized by the omission of the names of the lawyers who originally wrote the Digest fragments, a feature shared by the Vindobonensis, the Parisinus and the Coislinianus (§ 7.1 (1), § 8.2 (4) and § 10 (1) resp.).<sup>124</sup> Moreover, the compilation also contained many ‘unexhellenized’ Latin *termini technici*, as appears from the Vindobonensis, the Florilegium Ambrosianum and the Parisinus (§ 7.1 (2), § 8.1 (1) and § 8.2 (3) resp.). A final feature is the occurrence of text fragments normally lacking in the Basilica text, such as the prefaces of Novels in the Vindobonensis (§ 7.1 (3)) and *inscriptiones* of Codex constitutions in the codex Ridolfi (§ 6). Three of the above manuscripts provide more details, in particular with regard to the dating of the compilation, viz. the codex Ridolfi, the Vindobonensis and the Coislinianus. The codex Ridolfi does so via the presence of *inscriptiones* of Codex constitutions, indicating a time frame preceding the Basilica preface (§ 6, § 7.2 with note 49, and § 9). The Vindobonensis does so via a combination of two of its features. The joint presence of ‘unexhellenized’ Latin *termini technici* and the prefaces to Justinian Novels indicates a time frame situated between the main text of the Prochiron preface and the preface to the Basilica, both chronologically and thematically (§ 7.2 and § 9). The Coislinianus does so via the dating of the Index Coislinianus (§ 10 (2)). Moreover, the combination of the main text of the Coislinianus and the Index Coislinianus presents very clear evidence that the manuscript is not a representative of the Basilica text (presence of extensive Greek versions of Codex constitutions lacking in the Basilica text; § 10 (4)).

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124 In its Digest part, the Florilegium Ambrosianum, too, appears to lack the names of original authors of the Digest fragments, but this may be due to the fact that the Florilegium Ambrosianum is not a regular manuscript but merely an anthology. It is possible that the names of the lawyers did occur in the ultimate exemplar of A – though this does not seem very likely in view of the connection between A and the Parisinus 1357; cf. § 8 above –, and that they were subsequently omitted when the anthology was first compiled.

## 12. Conclusion

The overall conclusion of the present study is rather straightforward. There is no compelling reason why we should have to regard the final paragraph of the Prochiron preface as a later addition to that preface, viz. as one made in Leo's day. On the contrary, we may look upon that paragraph as an essential part of the preface, and we may regard part D with its references to the ἐν τεύχῳ of the abrogated laws and in particular to the 60 books as a perfect prelude to the Basilica. One question remains, of course: what about the compilation of laws in 40 books referred to in the preface to the Eisagoge? I wish I knew....

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