

A WITNESS OF BYZANTINE LEGAL PRACTICE IN THE 12TH CENTURY
Some remarks on the construction of the *Ecloga Basilicorum**

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It is indeed my most ardent desire, if it is in my power to do so, “to mingle the Graces with the Muses”,¹ as the saying goes. But mundane preoccupations impel me in a different direction and I address myself, albeit with reluctance, to the routine duties imposed by necessity. (...) And though I should be at leisure to improve my style by reading through the works of the great writers of antiquity (...), I am instead kept at my desk in the Basileios Stoa² from early morning to late evening busying myself with the incessant perusal of innumerable legal documents.

From Agathias, perhaps the only Byzantine jurist with
whom Roos Meijering would have been at ease.³

* I would like to thank Prof. B.H. Stolte for his comments, Dr. R. Meijering for her suggestions in the translation of the Greek texts and Dr. M. Tantalos for his recommendations on this article.

1 A reminiscence of E. *HF* 673-675: οὐ παύσομαι τὰς Χάριτας ταῖς Μούσαισιν συγκαταμειγνύς, ἡδίσταν συζυγίαν.

2 The Basileios Stoa or Royal Stoa was the place where lawyers gathered to prepare their cases.

3 Agathias, *The Histories*, book 3,2-4 transl. by J.D. Frendo, (CFHB, 2 A, eds. H.G. Beck, A. Kambylis, R. Keydell), Berlin 1975, 68. The Greek text reads as follows: ἐθέλω γάρ, εἰ ἐπ’ ἐμοὶ εἴη, καὶ περὶ πλείστου ποιῶμαι ταῖς Μούσαις, φασί, τὰς Χάριτας καταμειγνύναι. καίτοι ἐτέρωθί με καθέλκουσιν αἱ φροντίδες, καὶ ἔπομαί γε οὐτὶ ἐκὼν εἶναι τῆ περιαιγούση ἀνάγκη. (...) δέον γὰρ τοὺς πάλαι σοφοὺς σχολαίτερον ἀναλέγεσθαι μιμήσεως ἕκατι ἅπαντα τε τὰ ἕκασταχοῦ ζυμφορόμενα γνωματεύειν ἐς τὸ ἀκριβές (...), ἀλλ’ ἐγώ γε ἡμενος ἐν τῆ βασιλείῳ στοᾷ βιβλίδια πολλὰ δικῶν ἀνάπλεα καὶ πραγμάτων ἐξ ἑωθινοῦ μέχρι καὶ ἐς ἥλιον καταδόντα ἐκμελετῶ καὶ ἀνελίττω (...) (ed. R. Keydell, *Agathiae Myrinaei Historiarum libri quinque*, (CFHB 2), Berlin 1967, 40). Agathias was a lawyer (scholastikos) in sixth-century Constantinople who was more interested in poetry and history than in law. On Agathias, see A. Cameron, *Agathias*, Oxford 1970.

1. Making a start with the *Ecloga Basilicorum*

Byzantine scholars often complain about the lack of Byzantine legal sources and especially of sources related to Byzantine legal practice. It is true that there are not sufficient sources that could give a complete overview of Byzantine justice in theory and in practice. It is true that we do need new editions of the preserved sources connected with Byzantine legal practice. We do nevertheless possess some such sources which still remain considerably neglected, despite the fact that they have been edited in rather recent times. One of these sources is the *Ecloga Basilicorum*, which was edited in 1988 by Ludwig Burgmann within the series “Forschungen zur byzantinischen Rechtsgeschichte”.⁴

The *Ecloga Basilicorum* is connected with the *Basilica*. The *Basilica*, ‘the imperial (laws)’, were promulgated around 900 during the reign of Emperor Leo VI the Wise, but preparation for this work had begun earlier under emperor Basil I, founder of the Macedonian dynasty. The compilers of the *Basilica* aimed at making one law, one collection consisting of all parts of the Justinianic legislation, but in Greek.⁵ Hence, the compilers of the *Basilica* used Greek summaries of and commentaries on Justinianic texts that they had at their disposal. The *Basilica* are divided into sixty books. The so-called *Ecloga Basilicorum*, as its conventional name implies,⁶ is a selection of the first ten *Basilica* books accompanied by a commentary dated to the middle of the twelfth century, presumably composed around the year 1142.⁷ As Burgmann mentions, its composer based his commentary on a selection of the *Basilica* that existed in his time. This selection is only known to us indirectly, since it has not reached us intact.⁸ The first ten *Basilica* books mainly cover issues related to justice, such as the organization of the courts, jurisdiction matters and competent courts, advocates, appeals, et cetera. The commentator offers lengthy comments on these

4 L. Burgmann, *Ecloga Basilicorum*, (Forschungen zur byzantinischen Rechtsgeschichte, Band 15), Frankfurt am Main 1998; this work is henceforth abbreviated as Ecl.B. Ruth Macrides has examined material of the *Ecloga Basilicorum*; cf. R. Macrides, ‘The competent court’, 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, 117-129 (118) (henceforth abbreviated as Macrides, ‘Competent court’).

5 The *Basilica* are based on all four parts of Justinian’s legislation: the *Codex*, the *Digest*, the *Novels* and some of the *Institutes*.

6 *Ecloga* (ἐκλογή) means ‘selection’.

7 See Σπ. Τρωϊάνος, *Οι πηγές του βυζαντινού δικαίου*, Γ΄ έκδοση συμπληρωμένη, Αθήνα/Κομοτηνή 2011, 278-279, which has been translated into Italian: Sp. Troianos, *Le fonti del diritto bizantino*, (Traduzione a cura di Pierangelo Buongiorno), Torino 2015, 184-185, and recently also into German: Sp. Troianos, *Die Quellen des byzantinischen Rechts*, (4. verbesserte und ergänzte Auflage. Übersetzt von D. Simon und S. Neye), Berlin / Boston 2017, 225. Troianos’s monograph is henceforth abbreviated as Troianos, *Πηγές* (= *Fonti* = *Quellen*). See also Ecl.B., XVI–XVII.

8 Ecl.B., XI.

books of the *Basilica*. The *Ecloga Basilicorum* is therefore valuable because it is one of the few works that could give us information about the actual Byzantine legal practice in the twelfth century.⁹ It is also a precious source of commentary on the first ten *Basilica* books; this is especially useful because not many *scholia* have been preserved on this first part of the *Basilica*.¹⁰

We know nothing about the author of the *Ecloga Basilicorum*: who he was and why he wrote such a commentary. The intention of the commentator is to explain the law in a simple and easy way and this is evidently reflected in his style of writing. His language is clear and uncomplicated and his examples are easy to understand.¹¹ He often uses expressions as ‘I have told you in an earlier chapter’ (Εἶπόν σοι ἐν τῷ (...) κεφαλαίῳ)¹² or ‘See also in this chapter that (...)’ (Ὅρα οὖν καὶ ἀπὸ τοῦ παρόντος κεφαλαίου)¹³ or ‘You have already learned there and there’ (Ἔμαθες ἐν τῷ (...) κεφαλαίῳ)¹⁴ or similar expressions.¹⁵ He begins his comments several times by providing an explanation in advance (προθεωρία) on the subject he is about to comment upon and uses as opening words Γίνωσκε ὡς ἐν προθεωρίᾳ ‘learn in advance that’¹⁶ or similar expressions, such as ταῦτα μαθὼν ὡς ἐν προθεωρίᾳ ‘having learned this in advance’.¹⁷ In explaining the material he also uses fictitious cases (*thematismoi*)¹⁸ and very often he poses a question and then gives the answer in the form of a definition or an example.¹⁹ The above information on the style of the author of the *Ecloga Basilicorum* is an indication that this work was connected with legal teaching and legal practice, as its editor also implies: ‘Die *Ecloga Basilicorum* war ein Werk für den

9 See, however, the problems that arise about its construction and its relation with older material under § 4. Digging into the *Ecloga Basilicorum*.

10 With the exception of *Basilica* book 8.

11 On the style of the commentator, see also Macrides, ‘Competent court’ (note 4 above), especially 118–119. See further § 4. Digging into the *Ecloga Basilicorum* below on the problem of how to recognize ‘his own style’.

12 Ecl.B. 12/26, comment on B. 2,1,42 = D. 1,3,33.

13 Ecl.B. 12/27, comment on B. 2,1,42 = D. 1,3,33.

14 Ecl.B. 13/18, comment on B. 2,1,44–45 = D. 1,3,35–36.

15 Ecl.B. 17/19, comment on B. 2,2,10 = D. 50,16,10: Οἶδας, ὅτι (...);

Ecl.B. 23/20, comment on B. 2,2,24 = D. 50,16,26: Ταῦτα μαθὼν, ὅρα τὸ ζητούμενον (...).

16 See, for example, Ecl.B. 23/11, comment on B. 2,2,24 = D. 50,16,26 and 44/1, comment on B. 2,2,98 pr. = D. 50,16,101 pr. and 47/8, comment on B. 2,2,106 = D. 50,16,109 and 73/16, comment on B. 2,2,217 = D. 50,16,225.

17 See, for example, Ecl.B. 67/1, comment on B. 2,2,205,2 = D. 50,16,213,2 and 109/10, comment on B. 2,3,59 = D. 50,17,59 and 497/26 comment on B. 10,3,33 = D. 4,3,33.

18 Ecl.B. 26/26, comment on B. 2,2,33 = D. 50,16,35: Ἡ, εἰ βούλει, οὕτως θεμάτισον (...); Ecl.B. 29/6, comment on B. 2,2,37,1 = D. 50,16,39,1: Καὶ ἐπὶ ληγάτου δὲ τοῦτο δυνατόν θεματίσαι (...).

19 Ecl.B. 18/7, comment on B. 2,2,10 = D. 50,16,10: Τί δέ ἐστι παραγραφὴ; Ἄκουσον (...); Ecl.B. 33/14, comment on B. 2,2,46 = D. 50,16,49: Τίς δέ ἐστι σουπερφικιάρτος; Ἄκουσον (...). The author has a preference for the verb ἀκούειν in imperative, thus ἄκουσον or ἄκουε ‘listen’.

Unterricht und zielte in irgendeiner Weise auf die Praxis'.²⁰ The aim of the author of the *Ecloga Basilicorum* is to comment upon and to explain the first ten books of the *Basilica*. To be precise, that is what has been preserved. Perhaps the original intention of its author was to comment on more books of the *Basilica*. It has been suggested that the author of the *Ecloga Basilicorum* has borrowed elements of the work of the canonist Aristenos.²¹

As Burgmann and Troianos have noted, the commentary contained in the *Ecloga Basilicorum* was presumably compiled by one author.²² Moreover, as its editor, Burgmann has suggested the commentator must have used annotated *Basilica* manuscripts that existed in his time.²³ Taking into account these preliminary observations, I will examine in this paper information related to the making of the *Ecloga Basilicorum*. The idea for this subject was born after a paper I presented at the 68th conference of the Société Internationale Fernand de Visscher (SIHDA) held in Naples in 2014, in which I had tried to examine how two Roman maxims about interpreting in doubtful and unclear cases had been transmitted into Byzantine law.²⁴ In unravelling the relevant Byzantine sources, I came across some interesting information regarding the *Ecloga Basilicorum*. In order to explain this information I will have to begin with the transmission of these two Roman maxims about doubtful cases in Byzantine law and, in the following, I will focus on the *Ecloga Basilicorum*.

2. Digest 50,17,56 and its transmission in the *Basilica* and the *Ecloga Basilicorum*

As is well known, the last title of the last book of Justinian's *Digest*, title 17, concentrates on various rules of law. In this title many basic maxims of Roman law have been included. The two *Digest* fragments D. 50,17,56 and D. 50,17,168 set out general rules for interpreting in doubtful and unclear cases. Here is the first *Digest* fragment:²⁵

D. 50,17,56

Gaius, *libro tertio de legatis ad edictum urbicum*:

Semper in dubiis benigniora praeferenda sunt.

20 L. Burgmann, 'Vier Richter des 12. Jahrhunderts', *JÖB* 32/2 (1982) (XVI. Internationaler Byzantinisten-kongreß Wien, 4. – 9. Oktober 1981. Akten II/2), 369-372 (370) (article henceforth abbreviated as Burgmann, 'Vier Richter').

21 On this issue, see Van der Wal / Lokin, *Delineatio*, 107 and Ecl.B., X.

22 Ecl.B., XV and Troianos, *Πηγές*, 279 (= *Fonti*, 184 = *Quellen*, 225) (note 7 above).

23 Ecl.B., XIV-XV.

24 The title of my paper was '*In dubiis et obscuris*. How to interpret in doubtful cases? Roman maxims and their application in Byzantine law'.

25 The translations of all *Digest* fragments in this paper are from A. Watson (ed.), *The Digest of Justinian*, (Transl. of Mommsen, ed. maior), 4 vols, Philadelphia 1985.

‘Gaius, Legacies in relation to the urban praetor’s edict, book 3:
In doubtful cases, the more generous view is always to be preferred.’

This *Digest* fragment has been transmitted in the second book of the *Basilica*. In fact, both two last titles of the *Digest*, namely titles 16 and 17, which deal with the meaning of words, expressions and various rules and maxims, are to be found in the second book of the *Basilica*. *Digest* fragment D. 50,17,56 reads as follows in the *Basilica*:

B. 2,3,56 = D. 50,17,56 (BT 54/5-6)
Ἐν τοῖς ἀμφιβόλοις τὸ φιλόανθρωπον ἐπικρατεῖ.

‘In doubtful cases the mild view is to be preferred.’

There are no *scholia* preserved for this particular *Basilica* fragment, but as the last editors note, there is a *scholion* on a later part of the *Basilica* text which makes reference to this rule. This is BS 285/7–8 (sch. Ca 4 ad B. 11,1,39 = D. 2,14,39).²⁶ Indeed, there we read the words of the scholiast ‘And also chapter 56 of this <title> says:’ and then he repeats the rule ἐν τοῖς ἀμφιβόλοις τὸ φιλόανθρωπον ἐπικρατεῖ. I have encountered one more *Basilica* *scholion* in which the rule is literally repeated²⁷ and another three *scholia* in which the same rule is expressed but in slightly different words.²⁸ Let us now examine the relevant comment of the author of the *Ecloga Basilicorum* on the *Basilica* fragment cited above:

Ecloga Basilicorum: comment on B. 2,3,56

Διέθετό τις ἐγγράφως καὶ ἐνεστήσατο κληρονόμους γ’ ἢ δ’ καταλιτῶν καὶ ληγάτα διαφόροις προσώποις· μετὰ ταῦτα λυπηθεὶς καθ’ ἐνὸς τῶν κληρονόμων ἐχάραξε τὴν διαθήκην καὶ

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- 26 On Ca (= cod. Coisl. gr. 152, dating from the second half of the twelfth century), cf. RHBR, I, No. 203.
27 BS 1466/22-23 (sch. Pa 10 ad B. 22,5,42 = D. 12,2,42): Φησὶ γὰρ καὶ βιβ. β’. τίτ. γ’. κεφ. νς’.· καὶ ἐν τοῖς ἀμφιβόλοις τὸ φιλόανθρωπον ἐπικρατεῖ. On Pa (= cod. Paris. gr. 1348, dating from the beginning of the thirteenth century), cf. RHBR, I, No. 161.
28 BS 2961/12-14 (sch. Pe 2 ad B. 48,13,12 = C. 7,4,14): διὸ ἐν ταῖς ἀμφιβόλοις σημασίας βέλτιόν ἐστί, καὶ μάλιστα ἐν τῇ ἐλευθερίᾳ, φειδοὶ αὐτῆς φιλοανθρωποτέραν περιλαμβάνειν γνώμην. On Pe (= cod. Paris. gr. 1349, dating from the eleventh century), cf. RHBR, I, No. 162. BS 3894/8-9 (sch. Pe 4 ad B. 60,51,30 = D. 48,19,28§16): Ἐπὶ γὰρ τῶν ἀσαφῶν τὸ ἥττον ἐπιλεγόμεθα καὶ ἐν τοῖς ἀμφιβόλοις τὸ φιλόανθρωπον νικᾷ. BS 3897/10 (sch. Pe 1 ad B. 60,51,39 = D. 48,19,42): Ἐν γὰρ τοῖς ἀμφιβόλοις τὸ φιλόανθρωπον νικᾷ (...); on Pe (= cod. Paris. gr. 1350, dating from the twelfth century), cf. RHBR, I, No. 163. It is not clear whether the final two *scholia* are “old” or “new”.

προσέγραψεν, ὅτι „διὰ μίσος ἑνὸς τῶν κληρονόμων ἐχάραξα τὴν διαθήκην“· εὗρέθη ἡ διαθήκη ἐσφραγισμένη καὶ ἔλινοτομήθη καὶ ἀνεσφραγίσθη. Εἰ μὲν αὐτοῦ μόνου τοῦ κληρονόμου τὸ ὄνομα ἐχάραγη, δίδονται καὶ τὰ ληγάτα καὶ ἔρρωνται καὶ αἱ ἐνστάσεις τῶν λοιπῶν κληρονόμων· εἰ δὲ καὶ τῶν λοιπῶν κληρονόμων τὰ ὀνόματα εὗρηται κεχαραγμένα, τότε ζητεῖται, πότερον αὐτὸν μόνον ἠθέλησε ζημιῶσαι καὶ ἐκβαλεῖν ἀπὸ τῆς ἰδίας κληρονομίας ἢ καὶ τοὺς λοιποὺς δι’ αὐτόν; καὶ εἰ ἔστιν ἀμφίβηλον, καὶ τὰ ληγάτα ἔρρωνται καὶ αἱ ἐνστάσεις τῶν λοιπῶν διὰ τὸ φιλόνηρον· ἐν γὰρ τοῖς ἀμφιβόλοις τὸ φιλόνηρον ἐπικρατεῖ.

Τὸ δὲ ἐρμηνευθὲν παρὸν νόμιμόν ἐστι νς' κεφ. τοῦ γ' τιτ. τοῦ β' βιβ.²⁹

‘Someone wrote a will and appointed three or four heirs and left also legacies to different persons; after that, because he was disappointed with one of the heirs, he erased the will and added that “because of hating one of the heirs, I erased the will”. His will was found sealed and was opened and unsealed.³⁰ If it is only the name of that heir that was scraped off, the legacies are given and the appointment of the other heirs is valid; if, however, the names of the other heirs are also found erased, then the question is, whether he wanted to damage and remove from his estate only him, or also the others because of him. And if it is doubtful, both the legacies and the appointment of the others are valid because of mildness; because *in doubtful cases the more mild view is to be preferred*.

The legal rule that has been interpreted here is the 56th chapter of the 3rd title of the 2nd book.’

The example that the commentator uses here refers to legacies and confirms the rule of the law: if there are doubts, the milder, the more philanthropic, the fairer solution should be followed. The word φιλόνηρον is used in Greek to describe the “mild view”. As a general remark I note that the principle of φιλόνηρία (= mildness) played an important role in Byzantium and scholars have discussed this issue to some extent.³¹ A good emperor had to be first of all φιλόνηρος, had to show mildness and mercifulness, and this Byzantine thought is reflected in many sources.³² And it was not only the emperor who had to be mild (φιλόνηρος). A good judge should also possess this virtue, according to many sources.

29 Ecl.B. 108/28–109/6.

30 In the Greek text ἔλινοτομήθη καὶ ἀνεσφραγίσθη = the thread was cut and the seal was broken.

31 On the term φιλόνηρία in legal texts, cf. especially Σπ. Τρωιάνος, ‘Ἡ ἐννοια τῆς φιλόνηρίας στα βυζαντινά νομοθετικά κείμενα’ in *Τιμητικός τόμος Μχ. Π. Σταθόπουλου*, Αθήνα / Κομοτηνή 2010, 2779–2802.

32 In the prefaces of laws, for example. See the title of the Isaurian *Ecloge* (8th c.), which reads: ‘Ἐκλογὴ τῶν νόμων ἐν συντόμῳ γενομένη παρὰ (...) καὶ ἐπιδιόρθωσις εἰς τὸ φιλόνηρότερον (...). Cf. A. Schminck, ‘Minima Byzantina. I. Ἐπιδιόρθωσις εἰς τὸ φιλόνηρότερον’, *SZ* 132 (2015), 469–474.

Michael Psellos (11th. c.), the well-known Byzantine philosopher describes in many of his writings the qualities of a good judge. A good judge, Psellos observes, has to be wise and fair (σοφὸς καὶ δίκαιος), but he also has to show mildness (φιλανθρωπία).³³ However, a general discussion of the notion of φιλανθρωπία in Byzantium goes beyond the scope of this paper.

The above comment in the *Ecloga Basilicorum* is a typical example of the style of the commentator, as described above. Rather than referring to the law in theory, he prefers to use an example to directly illustrate what the law means here. The law mentions that in doubtful cases the mild view is to be preferred. How is this rule reflected in legal practice? This is what the commentator is trying to explain by means of his example. What is interesting is that the commentator of the *Ecloga Basilicorum* uses at this point an example, which can be found in another *Basilica* book, different from the one that the commentator comments upon here. In particular, we come across the same example in the 7th. title of the 35th. *Basilica* book dealing with erasures in wills; here is the corresponding passage from the *Basilica*:³⁴

B. 35,7,2 = D. 28,4,2 (BT 1577/16-24):

Ἐὰν ὁ διαθέμενος προσγράψῃ διὰ τὸ μίσος ἐνδὸς τῶν κληρονόμων χαράξαι τὴν διαθήκην καὶ εὐρεθῇ ἐσφραγισμένη, εἰ μὲν αὐτοῦ μόνου τὸ ὄνομα ἐχαράγῃ καὶ ὑποκατάστατον εἶχεν, μόνος αὐτὸς ἀπωθεῖται, καὶ τὰ παρ' αὐτοῦ καταλειφθέντα ληγᾶτα δίδονται, ὅτε μόνην τὴν ἔνστασιν αὐτοῦ ἠθέλησεν ὁ διαθέμενος ἀκυροῦσθαι. Εἰ δὲ καὶ πάντων τῶν κληρονόμων τὰ ὀνόματα

33 E. Kurtz / F. Drexel (eds.), *Michaelis Pselli Scripta minora magnam partem adhuc inedita*. Vol. II: Epistolae, (Orbis Romanus. Bibliotheca di testi medievali, 13), Milano 1941, 47. Saradi includes many references to the principle of φιλανθρωπία occurring in the writings of Psellos; cf. H. Saradi, 'The Byzantine Tribunals: Problems in the application of justice and state policy (9th.-12th. c.)', *REB* 53 (1995), 165-204 (186-187). Tourtoglou has examined the issue of philanthropy in Byzantine law repeatedly. In one of his writings, he outlines philanthropic rules in Byzantine legislation and jurisprudence; cf. M. Τουρτόγλου, 'Ἐπιεικείες καὶ φιλόανθρωπες διατάξεις τοῦ Βυζαντινοῦ ποινικοῦ δικαίου ἀμβλύνουσες τὴν τραχύτητα τοῦ ποινικοῦ κολασμοῦ', *Πρακτικά τῆς Ακαδημίας Ἀθηνῶν* 76 (2001), 142ff. (repr. in: M. Τουρτόγλου, *Μελετήματα Ἱστορίας Ἑλληνικοῦ Δικαίου* 4 (2004), 9-35, in particular 25-35). During the 23rd. International Congress of Byzantine Studies in Belgrade in 2016, L. Paparriga-Artemiades presented the paper '«Τομαί» dans les ambiguïtés («ἀμφιβόλων») des lois byzantines. Éléments des approches interprétatives des scolastes byzantins'. The paper has been published in B. Krsmanović / L. Milanović / B. Pavlović (eds.), *Proceedings of the 23rd International Congress of Byzantine Studies, Belgrade, 22 – 27 August 2016*. Round tables, Belgrade 2016, 66-70. While examining questions of interpretation of Byzantine jurists, Paparriga-Artemiades also discussed the application of a milder view in certain legal cases. In her material, she used many fragments from the *Ecloga Basilicorum* as well. Cf. also L. Paparriga-Artemiades, 'Interventions de l'herméneutique juridique dans la résolution des ambiguïtés de la loi lors des contestations en justice à l'époque byzantine', *Humanitas* 69 (2017), 81-109 (https://doi.org/10.14195/2183-1718_69_4 (7 July 2017)).

34 In the edition of the *Ecloga Basilicorum* at the comment on B. 2,3,56 = D. 50,17,56 Burgmann adds: 'cf. B. 35,7,2 (D. 28,4,2)'.

περιεχάραζεν, τότε ζητούμεν, πότερον αὐτὸν μόνον ἠθέλησε ζημιῶσαι ἢ καὶ τοὺς ἄλλοὺς δι' αὐτόν· ἐν ἀμφιβόλῳ δὲ καὶ αἱ ἐνστάσεις τῶν λοιπῶν καὶ τὰ ληγᾶτα ἔρρωται διὰ τὸ φιλόανθρωπον [[αὐτοῦ]].

‘If the testator adds as a postscript that because of his hatred of one of the heirs he has made an erasure in the will and the will is found sealed, if only the name of that heir was scraped off and [the will] had a substitute [for that heir], then the legacies that he had left are given because the testator wanted to annul only the appointment of that heir. If, however, he scratched off the names of all the heirs, then we ask whether he wanted to damage only him or also the others because of him. And if it is doubtful, both the legacies and the appointment of the others are valid because of mildness.’

The fact that the commentator uses an example from another book of the *Basilica* can give us some information on how he made his compilation, but I will return to this issue after examining the second Roman maxim and its transmission in Byzantine law. By comparing this example (erasure of will and legacies) in the *Ecloga Basilicorum* and in the *Basilica*, we observe that the passage in the *Ecloga Basilicorum* is slightly longer than the corresponding *Basilica* fragment. Another difference between the two passages is that the commentator of the *Ecloga Basilicorum* uses more lively language. Rather than “describing” the example, he prefers to “live” the example himself. He uses the verb in the first person singular: “I erased the will”. For a better understanding of both passages, I also quote the *Digest* fragment from which the *Basilica* fragment B. 35,7,2 actually derives:

D. 28,4,2:

Idem (Ulpianus) libro quarto disputationum. Cancellaverat quis testamentum vel induxerat et si propter unum heredem facere dixerat: id postea testamentum signatum est. quaerebatur de viribus testamenti deque portione eius, propter quem se cancellasse dixerat. dicebam, si quidem unius ex heredibus nomen induxerit, sine dubio ceteram partem testamenti valere et ipsi soli denegari actiones: sed legata ab eo nominatim relicta debebuntur, si voluntas ea fuit testantis, ut tantum heredis institutio improbetur. sed si instituti nomen induxit et substituti reliquit, institutus emolumentum hereditatis non habebit. sed si omnia nomina induxerit, ut proponitur, adscripserit autem idcirco se id fecisse, quia unum heredem offensum habuit, multum interesse arbitror, utrum illum tantum fraudare voluit hereditate an vero causa illius totum testamentum infirmare, ut licet unus inductionis causam praebuerit, verum omnibus offuerit. et si quidem soli ei ademptam voluit portionem, ceteris nihil nocebit inductio, non magis quam si volens unum heredem inducere invitus et alium induxerit. quod si putavit totum testamentum delendum ob unius malum meritum, omnibus denegantur actiones: sed an

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legatariis denegari actio debeat, quaestio est. in ambiguo tamen interpretandum erit et legata deberi et coheredum institutionem non esse infirmandam.

‘Ulpian, *Disputations*, book 4: A person had canceled his will or erased it and said he was doing so on account of one of the heirs; this will was later sealed. The question was raised whether the will was in force and what the position was regarding the share of the one on whose account he had said that he had canceled [it]. I held that if in fact he erased the name of one of the heirs, undoubtedly the remaining part of the will stood, and actions would be denied only to him; but legacies specifically charged on him will be payable if it was the wish of the testator that only the institution of the heir should be disapproved. But if he erased the name of the institute and left that of a substitute, the institute will not have the benefit of the inheritance. But if he erased all the names, as it proposed, but added that the reason why he did so was because he was offended with one of the heirs, I think it matters a great deal whether he intended to deprive only him of the inheritance or intended rather to nullify the whole will because of him, so that although one provided the reason for the erasure, still it prejudiced all of them. And, indeed, if he intended that a share should be taken away from him alone, the erasure will not prejudice the others at all, any more than if, intending to erase one heir, he unintentionally erased another one as well. But if he thought that the whole will should be obliterated because of the demerits of one, all will be denied actions; but there is a question whether an action should be denied to the legatees. But in case of ambiguity, the interpretation to be adopted will be that the legacies are to be paid and also that the institution of the co-heirs is not to be nullified.’

By comparing this same example (erasure of will and legacies) in the three texts (*Ecloga Basilicorum*, *Basilica* and *Digest*), it is clear that the most extensive text is the *Digest* fragment. In the *Digest* fragment the argumentation of every case and the intentions of the testator are explained in detail. As in most cases, the *Basilica* passage here is a summary of the corresponding *Digest* fragment. The passage from the *Ecloga Basilicorum* is the most vivid of the three in its use of language. The commentator successfully manages to capture the core of the *Digest* and *Basilica* fragments in sufficient words. Here is a schematic approach of the corresponding passages:

B. 2,3,56 = D. 50,17,56

[No *Basilica scholia* preserved here]

↓

comment of *Ecloga Basilicorum* → uses example from B. 35,7,2 = D. 28,4,2
[No *Basilica scholia* preserved here]

3. Digest 50,17,168 and its transmission in the *Basilica* and the *Ecloga Basilicorum*

The second *Digest* fragment that deals with dubious cases is D. 50,17,168, which reads as follows:

D. 50,17,168pr:

Idem (Paulus) libro primo ad Plautium. Rapienda occasio est, quae praebet benignius responsum.

‘Paul, Plautius, book 1: The occasion of offering a mild reply must be seized.’

The counterpart of this fragment in the *Basilica* reads:

B. 2,3,168 = D. 50,17,168 (BT 63/13-14):

Ἐν τοῖς ἀσάφεσι τὸ φιλάγαθον ἐρμηνεύομεν.

‘In unclear cases we interpret in a mild way.’

In the *Basilica* fragment the word φιλάγαθον is used to describe the “mild way”. In the only preserved *Basilica scholion* on this particular *Basilica* text fragment, the scholiast advises the reader to check some other references in other books of the *Basilica* and their comments.³⁵ I have encountered two more *scholia* in other *Basilica* books that refer to this rule while using the same word φιλάγαθον, both the noun³⁶ and the corresponding adverb φιλαγάθως.³⁷

35 BS 20/11–12 (sch. P 1 ad B. 2,3,168 = D. 50,17,268): Ζήτει κεφ. θ'. καὶ τὰ ἐκεῖ <παρα>γεγραμμένα καὶ βιβ. ιθ'. τίτ. α'. κεφ. πγ'. δ'. (cf. C. 4,40,3 et 4?) καὶ βιβ. μδ'. τίτ. ιη'. η'. καὶ βιβ. λε'. τίτ. ιδ'. λζ'. On P (= cod. Paris. gr. 1352, dating from the beginning of the thirteenth century), cf. RHBR, I, No. 166.

36 BS 2960/29-2961/1 (sch. Pc 1 ad B. 48,13,12 = C. 7,4,14): (...) καὶ πάντες οἱ τυκτόμενοι ἐλευθεροῦνται, κἄν πολλοὶ ὄσιν, ἐπειδὴ ἐν τοῖς ἀμφιβόλοις κρατεῖ τὸ φιλάγαθον. (This is an old *scholion* by Theodorus).

37 BS 2713/6-7 (sch. Pc 2 ad B. 45,4,8 = C. 6,61,5): (...) καὶ ταῖς τῶν νόμων διαφοραῖς σκαζούσας δίκας φιλαγάθως ἐρμηνεύειν, (...). Just after this *scholion* there is another *scholion* numbered by the editors as 2b, which reads (BS 2713/20-21): σκαζούσας δίκας φιλαγάθως ἐρμηνεύειν – Θαλελαίου. Τοῦτο καὶ ἐν τοῖς Πρώτοις λέγει, ὅτι δεῖ τοὺς νόμους φιλαγάθως ἐρμηνεύειν. Indeed, as Thalelaeus mentions, we have seen that this rule, to interpret the laws in a mild way, has been put down in the first books of the *Basilica* – to be precise, in the second *Basilica* book. The *scholion* 2b is not a *scholion* on the *Basilica* text, but is related to sch. Pc 2 ad B. 45,4,8 = C. 6,61,5, which is a *kata podas*. 2b is a *scholion* of

Once again, it is the *Ecloga Basilicorum* that offers more information about this *Basilica* passage and its application. The commentator gives here two examples, both included in his comment on B. 2,3,168; the first example is a case of slave twins and the other a case of a son under guardianship. Here is the corresponding comment:

• **Text 1.**³⁸

The case of the slave twins.

Ecloga Basilicorum, comment on B. 2,3,168 = D. 50,17,168:

Οἷον ὡς ἐπὶ θέματος· τελευτών τις ἔγραψεν ἐν τῇ ἰδίᾳ διαθήκῃ· „ἡ δούλη μου Μαρία ἔστω ἐλευτέρα, ἐὰν ἄρρην πρῶτον τέκῃ”· μετὰ τελευτὴν τοῦ διαθεμένου τέτοκεν ἡ Μαρία ἐν μιᾷ γαστρὶ καὶ ἄρρην καὶ θῆλυ, καὶ δῆλον οὐκ ἦν, ποῖον πρῶτον ἐτέχθη, καὶ ἦν ἀμφιβολία, ἄρα γενήσεται ἐλευτέρα ἡ Μαρία καὶ ἔσσονται καὶ τὰ τεχθέντα ἐλεύθερα ὡς ἀπὸ ἐλευθέρως γεννηθέντα ἢ μή τί γε διὰ τὸ εἶναι ἀδηλον καὶ ἀσαφὲς τὸ ποῖον πρῶτον ἐτέχθη, καὶ ἡ Μαρία ἐναπομένει τῷ ζυγῷ τῆς δουλείας τρυχομένη καὶ τὰ τεχθέντα ἔσσονται δοῦλα. Λέγομεν οὖν, ὅτι καὶ ἡ Μαρία ἐλευθερωθήσεται καὶ τὰ τεχθέντα εὐγενῆ ἔσσονται ὡς ἀπὸ ἐλευθέρως τεχθέντα· ἐν γὰρ τοῖς ἀσαφέσι καὶ μὴ καθαρῶς καταλαμβανομένοις τὸ φιλάγαθον ἐρμηνεύομεν, φιλάγαθον δέ ἐστι τὸ εἰπεῖν πρῶτον γεννηθῆναι τὸ ἄρρην καὶ διὰ τοῦτο γενέσθαι καὶ πάντα ἐλευθέρους.³⁹

‘To take an example; someone at his death wrote in his own will: “Let my slave Maria be free if she gives birth first to a boy.” After the death of the testator, Maria gave birth at the same delivery to a boy and a girl, and it was not clear which [child] was born first; and there was doubt whether Maria will become free and the born [children] will also become free, as having been born from a free woman, or, because it is unclear and doubtful which was born first, both Maria continues to be worn out by the burden of slavery and the children will be slaves. Well, we say that both Maria will become free and the children will be freeborn, because they have been born from a free woman; for in obscure and unclear cases, we interpret in a mild way; and it is mild to say that the boy was first born and that because of this, all will become free.’

Thalelaeus on the *kata podas* Pc 2 ad B. 45,4,8 = C. 6,61,5. See the explanation by the editors in H.J. Scheltema / D. Holwerda (edd.), *Basilicorum Libri LX*. Series B Volumen VII: Scholia in libros XLII,2 – XLVIII, Groningen / 's-Gravenhage 1965, *praefatio*, v.

38 I refer to this first passage from the *Ecloga Basilicorum* as “Text 1” because I would like to compare it further on with other texts.

39 Ecl.B. 150/2-12.

The case of the son under guardianship.

Ecloga Basilicorum, comment on B. 2,3,168 = D. 50,17,168:

Καὶ ἄλλους δὲ πολλοὺς προσφόρους εὐρήσει τις θεματισμοὺς τῷ παρόντι κανόνι, οἷον ὡς ἐπὶ θέματος: Πέτρος τις ἐτελεύτησε καταλιπὼν ἄνηβον παῖδα ὑπὸ ἐπίτροπον· ἀνεφύη τούτῳ Παῦλός τις καὶ ἔλεγε δανεῖσαι τούτῳ νομίσματα καὶ δέξασθαι καὶ ἐγγυητάς· ὁ ἄνηβος ὥμοσε μὴ χρεωστεῖν. Καὶ ζήτησις ἦν, ἅρα συνηλευθερώθησαν τῆς ἐνοχῆς καὶ οἱ ἐγγυηταὶ ἢ μή τί γε ὁ μὲν ἄνηβος ἐσεῖται ἐλεύθερος, οἱ δὲ ἐγγυηταὶ ἀπαιτηθήσονται· ἐποίει δὲ τὴν ζήτησιν ἢ τοῦ ὄρκου ἀσάφεια· οὐδὲ γὰρ ἐδήλωσεν ἐν τῷ ὄρκῳ ὁ ἄνηβος, ὅτι „οὐ χρεωστῶ, διότι οὐδ’ ὄλως ἐδανεισάμην“, ἢ ὅτι „οὐ χρεωστῶ διὰ τὸ μὴ παρεῖναι τὸν ἐπίτροπόν μου κατὰ τὸν καιρὸν τοῦ δανείου“. Τοιαύτης οὕσης τῆς ἀμφιβολίας διὰ τὴν ἀσάφειαν τοῦ ὄρκου λέγομεν καὶ τοὺς ἐγγυητάς συνηλευθεροῦσθαι διὰ τὸ τὰ ἀσαφῆ πρὸς τὸ φιλάγαθον ἐρμηνεύεσθαι· φιλάγαθον δὲ ἐστὶ τὸ λέγειν ἐλευθεροῦσθαι καὶ τοὺς ἐγγυητάς σὺν τῷ ἀνήβῳ.

Τὸ δὲ ἐρμηνευθὲν νόμιμόν ἐστι κεφ. ρζη’ τοῦ γ’ τιτ. τοῦ β’ βιβ.⁴⁰

‘And one will find many other fictitious cases relevant for this rule; to bring an example: someone named Peter died leaving behind a son in the age of puberty under guardianship; a certain Paulus came forward against him and said that he [Paulus] had lent money to him [the boy] and had also received guarantors. The son under puberty swore that he did not owe. And the question was, whether the guarantors were also freed from the obligation, or the boy under puberty will be free (from the obligation), but there will be a claim against the guarantors. It was the uncertainty of the oath that caused the question; because the boy in puberty did not specify in the oath “I do not owe because I have not borrowed at all”, or “I do not owe because my guardian was not present at the time of the loan”. Since this doubt was due to the uncertainty of the oath, we say that the guarantors are also freed, because unclear cases are interpreted in a mild way; and it is mild to say that also the guarantors are freed together with the boy in puberty.

The legal rule that has been interpreted here is the 168th. chapter of the third title of the second book.’

The first example mentioned by the commentator here (female slave and twins) is included in another part of the *Basilica*, different from the one that the commentator explains here. In particular, this same example is found in the 18th. title of the 44th. *Basilica* book on ques-

40 Ecl.B. 150/13-25.

tions of legacies (Περὶ πραγμάτων ἀμφιβόλων ληγατευομένων καὶ περὶ ἀφανῶν προσώπων), which corresponds to the 5th. title of the 34th. book of the *Digest* entitled “About dubious cases” (*De rebus dubiis*).⁴¹ The 44th. *Basilica* book has not been preserved and has been reconstructed by the last editors on the basis of other Byzantine sources.⁴² In the 18th. title of this *Basilica* book we read the same example about the female slave, who, according to the will, would become free only if she would give birth first to a boy and the legal question that arose after the birth of twins, a boy and a girl.

I will now quote this same example from the *Basilica* and, in the following, the *Digest* fragment from which the *Basilica* passage derives, in order to compare these passages with the same example in the *Ecloga Basilicorum*:

• **Text 2.**

The case of the slave twins in the *Basilica*.

B. 44,18,10 = D. 34,5,10 (BT 2043/12/15):

Εἰ δὲ ἐλευθερίαν ὑπὸ αἴρεσιν ἐάσω δούλη τὴν ἐὰν πρώτων ἄρρην τέκη, καὶ ἐν μιᾷ γαστρὶ ἄρρην καὶ θῆλυ τέκη καὶ μὴ δεῖκνυται, ποῖον πρότερον, ὁ ἄρρην δοκεῖ προτίκτεσθαι καὶ ἡ μήτηρ ἐλευθεροῦται καὶ ἡ θυγάτηρ εὐγενῆς τίκτεται· ἐν γὰρ τοῖς ἀμφιβόλοις τὸ φιλάγαθον προκρίνομεν.⁴³

‘If I grant freedom to a female slave under the condition that if she gives birth first to a boy, and at the same time she gives birth to both a boy and a girl and it is not clear which [child] was first [born], it is considered that the boy was born first and the mother is freed and the daughter is born free; because in cases of doubt we prefer the more mild view.’

41 In the edition of the *Ecloga Basilicorum* at the comment on B. 2,3,168 = D. 50,17,168, Burgmann adds in his *apparatus fontium*: compare for instance B. 46,1,12 = D. 1,5,15-16, which reads (BT 2119/1-3): Τρυφονίνου. Ἐὰν εἴπω Μαρίαν ἐλευθέραν εἶναι, εἰ τρεῖς τέκοι, καὶ τέκη μὲν ἐν μιᾷ γαστρὶ ἐν ἡ δύο, ἐν ἄλλῃ δὲ δύο ἢ τρία, τὸ ὕστερον ὡς ἐξ ἀπελευθέρας τίκτεται. In this example the slave Maria will be freed if she gives birth to triplets, and the slave gave birth to one or two babies and afterwards to two or three. In this case she is also freed. This example reminds us of that mentioned in Ecl.B. 150/2-12, comment on B. 2,3,168 = D. 50,17,168.

42 Mainly on the basis of the legal work *Tipoukeitos*; see in detail the critical apparatus and the apparatus of testimonies of the *Basilica* edition: BT 2042-2046.

43 There are no *scholia* preserved for this *Basilica* book.

- **Text 3.**

The case of the slave twins in the *Digest*.

D. 34,5,10,1:

Ulpianus libro sexto disputationum. (...). Plane si ita libertatem acceperit ancilla: “si primum marem pepererit, libera esto” et haec uno utero marem et feminam peperisset: si quidem certum est, quid prius edidisset, non debet de ipsius statu ambigi, utrum libera esset nec ne, sed nec filiae: nam si postea edita est, erit ingenua. sin autem hoc incertum est nec potest nec per supilitatem iudiciale manifestari, in ambiguis rebus humaniorem sententiam sequi oportet, ut tam ipsa libertatem consequatur quam filia eius ingenuitatem, quasi per praesumptionem priore masculino edito.

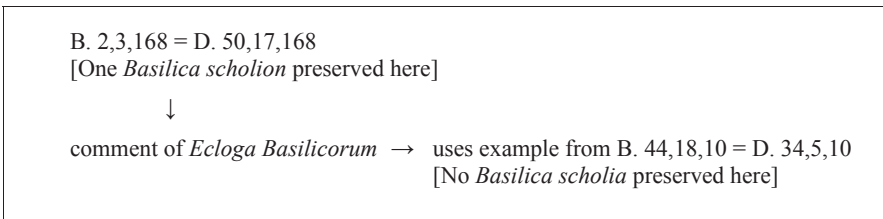
‘Ulpian, *Disputations*, book 6. (...). It is clear that if a female slave has received freedom on the following terms, “let her be free if the first child she bears is male” and she gives birth at the same confinement to two children, one male and one female, then provided, that it is certain which child was born first, there is no reason for doubt to arise either about her status, that is, whether or not she is free, or about that of the female child, since, if she was the second to be born she will be of free birth. However, if there is uncertainty as to the order of the births and no clarification can be secured even by careful judicial investigation, then, since the circumstances are controversial, the more humane view should be adopted whereby the slave obtains her freedom and her daughter the status of being freeborn on the presumption that the male child was the firstborn.’

As is usually the case, the *Basilica* text is shorter than the *Digest* fragment. By comparing the versions of the same example in all three texts (*Ecloga Basilicorum*, *Basilica* and *Digest*, – Texts 1, 2 and 3), it is clear that the example as presented by the commentator of the *Ecloga Basilicorum* comes closest to the version of the example in the *Digest*. A minor difference between the two is that in the example in the *Ecloga Basilicorum*, the female slave has the name Maria. For the rest, the two versions, that in the *Ecloga Basilicorum* and that in the *Digest*, are rather similar. Especially in their beginning, both texts are very similar in giving the condition of the legacy in a more lively form, in brackets within the text.

I would like to emphasize the fact that here the commentator of the *Ecloga Basilicorum* once again⁴⁴ uses an example taken from another part of the *Basilica*, different from the one that he comments upon, which in turn corresponds to another part of the *Digest*. As I hope to have shown by comparing the three passages (from the *Ecloga Basilicorum*, the

44 The commentator did the same in his comment on B. 2,3,56, which was examined above.

Basilica and the *Digest*) dealing with the same case of the slave twins, the text of the *Ecloga Basilicorum* bears the greater resemblance to the text of the *Digest*. Theoretically, one could argue that this resemblance could be an indication that the commentator had the *Digest* at his disposal and took the example from there. It is far more probable, though, that the commentator of the *Ecloga Basilicorum* took his example not from the *Digest* – nor from the *Basilica* –, but presumably from another Greek text that was a translation of the *Digest* or, in any case, related to this part of the *Digest*. Here is a schematic approach of the passages related to D. 50,17,168 and its transmission in the *Basilica* and the *Ecloga Basilicorum*:



4. Digging into the *Ecloga Basilicorum*

The most plausible scenario would be that the commentator of the *Ecloga Basilicorum* had another text at his disposal, something presumably related to the teaching of the *antecessores*, the law professors at the time of Justinian, and there saw the examples I discussed above and used them in his commentary. *Scholia* of the *antecessores* were, after all, still circulating in the eleventh and twelfth centuries. We have manuscripts dated to the eleventh and twelfth centuries that contain old *scholia* on the *Basilica*. As stated above, *scholia* have not been preserved on this particular *Basilica* part, but at the time of the *Ecloga Basilicorum*, *scholia* of the *antecessores* did exist. It is therefore very plausible that the commentator saw the above example (as well as the example mentioned in his comment on B. 2,3,56) in a *scholion* or a work connected with the *antecessores* and used it in his commentary. The two examples examined so far form another argument in favour of the theory that the author of the *Ecloga Basilicorum* presumably based his work on commented *Basilica* manuscripts that he had at his disposal, something that Burgmann, the editor of the *Ecloga Basilicorum*, has already suggested.⁴⁵

45 Ecl.B., XIV.

If the author of the *Ecloga Basilicorum* did indeed use older material deriving from the time of the *antecessores* as a base for his commentary – and that must be the case as described above – the question that arises is to what extent he used this material and how. In other words, is the commentary of the *Ecloga Basilicorum* all written by the commentator himself, or are parts of it taken from other scholiasts and inserted into the *Ecloga Basilicorum*? Can we speak, then, of one homogeneous style of the commentator, or are there different styles within his commentary based on what was actually derived from other (older) sources? This problem has also been raised by Burgmann.⁴⁶

There are parts of the *Ecloga Basilicorum* that can obviously be attributed to the commentator himself. These are parts in which the commentator informs us of what the legal practice was in his own time when he remarks ‘today (σήμερον) this and this occurs (...)’, or uses similar wording and adds contemporary information on the law of procedure.⁴⁷ Burgmann notes that it is not surprising that the author of the *Ecloga Basilicorum* offers more contemporary information when it comes to ‘Gerichtsverfassung’, the composition of courts and information on judges; the work aims to explain legal practice.⁴⁸ The commentator also provides names of contemporary judges and makes references to officials who lived in his own day and sometimes also to contemporary political situations.⁴⁹ As Macrides has shown, the commentary of the *Ecloga Basilicorum* allows us to reconstruct the courts of the twelfth century and the rules for their jurisdictions.⁵⁰ What seems most plausible is that the commentator of the *Ecloga Basilicorum* must have been someone at home in the courtroom and someone who knew well the legal practice of the day; most probably, he was a judge himself as in one of his comments he does in fact refer to a judgment in which he had taken part.⁵¹ Further, the author of the *Ecloga Basilicorum* also uses material that is definitely

46 Ecl.B., XIV: ‘Der Anteil des alten Materials und der Grad der Selbständigkeit des Kommentators sind im Einzelfall kaum zu bestimmen’.

47 Ecl.B. 28/9, comment on B. 2,2,37pr. = D. 50,16,39pr.: (...) ἀλλὰ καὶ σήμερον ἐν τοῖς δικαστηρίοις (...); Ecl.B. 29/27, comment on B. 2,2,37,2 = D. 50,16,39,2: Σήμερον δὲ (...). Dr. L. Paparriga, who has recently studied material of the *Ecloga Basilicorum* (see footnote 33), confirms that when the commentator uses the expression ‘today this and this happens’, he mostly refers to issues of the law of procedure.

48 Burgmann, ‘Vier Richter’ (note 20 above), 370 and Macrides, ‘Competent court’ (note 4 above), 118-126 on the information that the *Ecloga Basilicorum* provides about the existing courts in the twelfth century.

49 See on this Burgmann, ‘Vier Richter’ (note 20 above) and Macrides, ‘Competent court’ (note 4 above), especially 119 with the relevant references to the *Ecloga Basilicorum*.

50 Macrides, ‘Competent court’ (note 4 above), 118-126, especially 119.

51 See Ecl.B., XVIII and Macrides, ‘Competent court’ (note 4 above), 118.

dated after Justinian, such as Novels of the Emperors Leo VI the Wise, Romanus I, Constantine VII, Basil II, Constantine X and Alexios I.⁵²

Moreover, when reading the *Ecloga Basilicorum* one observes some elements that are consistent and contribute to the style of only one author.⁵³ For example, in several cases the author of the *Ecloga Basilicorum* begins with a preliminary piece of information. After that, he addresses the reader with the sentence Ταῦτα μαθὼν, ὅρα τὸ ζητούμενον (...) or Ταῦτα μαθὼν ὅρα τὸ προκειμένον (...) ('Having learned this, take into consideration the following / related') or a similar expression and he then gives an example or refers to the law or highlights a rule;⁵⁴ in most of the cases he gives a specific example. With the help of the *Thesaurus Linguae Graecae* (= TLG) I have counted the sentence Ταῦτα μαθὼν, ὅρα τὸ ζητούμενον (...) (or a similar sentence) twenty-six times in the *Ecloga Basilicorum*. I think the sentence is characteristic of the author of the *Ecloga Basilicorum*. I have not encountered such a sentence in the *Basilica scholia*.⁵⁵ So there seems to be a consistent pattern of the comments of the author of the *Ecloga Basilicorum* consisting of a short introduction, followed by the sentence that makes a bridge to the concrete example he is about to use or to the law or rule he will refer to. His structure is very clear. A favorite verb of the author of the *Ecloga Basilicorum* is the verb σαφηνίζω 'to make clear', often used in the sentence σαφηνίσω δέ σοι τὸ λεγόμενον 'I will make the text clear to you', or something similar. Again, this verb occurring in such a sentence is characteristic of the author of the *Ecloga Basilicorum* and according to the TLG it occurs thirteen times in his work⁵⁶ and just two times in the *Basilica scholia*.⁵⁷ I do not imply that the commentator of the *Ecloga Basilicorum* is unique in these methods. We do, after all, encounter such or similar expressions in the writings of the *antecessores*.⁵⁸ Nonetheless, one observes in the *Ecloga Basilicorum* a consistent

52 See in detail Ecl.B. 621-622, the index of Burgmann mentioning post-Justinian Novels referred to in the *Ecloga Basilicorum*.

53 I have also referred to some general characteristics of his style at the beginning of this article, in § 1. Making a start with the *Ecloga Basilicorum*.

54 See for example Ecl.B. 23/10-20, comment on B. 2,2,24 = D. 50,16,26; Ecl.B. 44/1-18, comment on B. 2,2,98pr. = D. 50,16,101pr.; and Ecl.B. 73/16-27, comment on B. 2,2,217 = D. 50,16,225.

55 We do come across the phrase ταῦτα μαθὼν 'having learned' five times in the *Basilica scholia*, but in these cases it is mostly used to refer to a case that the scholiast discusses; cf. e.g. BS 781/9 (sch. Ca 3 ad B. 14,1,49 = D. 17,1,49): Μετὰ ταῦτα μαθὼν ὁ Τίτιος, (...) 'having learned this, Titius (...)'.
56 See, for example, Ecl.B. 116/15, comment on B. 2,3,79 = D. 50,17,79; Ecl.B. 133/13, comment on B. 2,3,111 = D. 50,17,117; Ecl.B. 187/25, comment on B. 5,1,3 = C. 1,2,3.

57 BS 191/14 (sch. Ca 1 ad B. 11,1,7 = D. 2,14,7) and BS 194/19-20 (sch. Ca 13 ad B. 11,1,7 = D. 2,14,7).

58 For this, see the standard work by H.J. Scheltema, *L'enseignement de droit des antecessores*, (Byzantina neerlandica. Series B: Studia, I), Leiden 1970 (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, 58-110; see also Ecl.B., XIII.

pattern, as described above, and a preference for specific words and expressions⁵⁹ that all together lead – to a great extent – to a homogeneous style of writing.

In the examples of the commentator of the *Ecloga Basilicorum* we often come across the names Peter and Paul. Hagiotheodorites, one of the younger *Basilica* scholiasts, uses the same names in his examples, and in the past Triantaphyllopoulos has examined the question whether Hagiotheodorites could actually have been the author of the *Ecloga Basilicorum*.⁶⁰ Triantaphyllopoulos pointed out, for example, that the expression ἐξ ὀρθοῦ⁶¹ was used both in the *Ecloga Basilicorum* and the *scholia* of Hagiotheodorites, but he concluded that Hagiotheodorites could not have been the author of the *Ecloga Basilicorum*. According to Triantaphyllopoulos, Hagiotheodorites' style was more elaborate and showed better legal knowledge. He added, however, that the author of the *Ecloga Basilicorum* seems to have been influenced by the teaching of Hagiotheodorites and suggested that the author was presumably a pupil of this *Basilica* scholiast.⁶² According to Triantaphyllopoulos, Hagiotheodorites used Latin legal terms, wrote in a lively style and used preliminary explanations (προθεωρίαι), and all these elements were contrary to the style and method of the commentator of the *Ecloga Basilicorum*. Triantaphyllopoulos, however, wrote this article in 1946, before the critical edition of the *Ecloga Basilicorum* and, as he pointed out, he had some reservations because he had based his arguments only on short fragments of the *Ecloga Basilicorum*.⁶³ Indeed, now that we have Burgmann's critical edition of this Byzantine legal source, it is clear that the above observations by Triantaphyllopoulos on the style and method of the commentator of the *Ecloga Basilicorum* cannot hold out.⁶⁴

59 I have mentioned a few of these expressions. We encounter more such words and expressions in the commentary.

60 See K. Τριανταφυλλόπουλος, 'Περιορισμός διαφέροντος καὶ Βυζαντινὰ ἀντιλήψεις', *Ἀρχεῖον Ἰδιωτικοῦ Δικαίου* 13 (1946), 137-164 (especially 159-162) (repr. in K. Τριανταφυλλόπουλος, *Ἄπαντα*, Β 2, Αθήνα 2009, 721-746 (especially 743-746); *Ἄπαντα* Β is a collection of his articles published under the auspices of the Academy of Athens, consisting of two volumes. On Hagiotheodorites, see D. Penna, 'Hagiotheodorites: the last *antecessor*? Some remarks on one of the 'new' *Basilica* scholiasts', *SG IX* (2014), 399-427 (henceforth abbreviated as Penna, 'Hagiotheodorites'). The commentator of the *Ecloga Basilicorum* uses the name Peter 626 times and the name Paul 450 times.

61 The expression ἐξ ὀρθοῦ can have more than one meaning. In the *Ecloga Basilicorum* and the *Basilica scholia* it can mean, for example, 'at the beginning' or 'precisely'. See Τριανταφυλλόπουλος, 'Περιορισμός' (note 60 above), 159-160; in *Ἄπαντα*, 743-744.

62 Τριανταφυλλόπουλος, 'Περιορισμός' (note 60 above), 159-162; in *Ἄπαντα*, 743-746.

63 Τριανταφυλλόπουλος, 'Περιορισμός' (note 60 above), 159-162; in *Ἄπαντα*, 743-746.

64 I have already referred to the style of the commentator of the *Ecloga Basilicorum*. See the references in footnotes 15-19 and footnote 53 above.

Regarding the Latin terms, it is true that the commentator uses their Greek equivalent, but most of the time he also mentions the Latin term, explaining what it means,⁶⁵ and sometimes he uses only the Latin term.⁶⁶ We therefore need to re-examine the connection between Hagiotheodorites and the commentator of the *Ecloga Basilicorum*. Both have a lively style, use the names Peter and Paul in their examples, provide preliminary explanations, and use rhetorical questions in their comments, and in fact there are more linguistic resemblances between them than the use of ἐξ ὀρθοῦ. Both use, for example, the verb ἀκούειν, usually in an imperative form (ἄκουε / ἄκουσον).⁶⁷ In short, there are many resemblances between the styles of both authors, but there are also a few differences. A difference is, for example, that Hagiotheodorites states that questions were actually posed to him and he gives his answer as in, ‘I was asked (...)’ or ‘he asked (...)’, and then follows the answer, the *lysis*.⁶⁸ This is a clear indication that he was a teacher. The main problem in identifying the author of the *Ecloga Basilicorum* as the *Basilica* scholiast Hagiotheodorites is the dating of both authors, something that Triantaphyllopoulos also noted, and on this point I agree with him. This is also related to the question of the identity of the Hagiotheodorites who wrote the *scholia* on the *Basilica*, since no first name is mentioned in his *scholia*, and the family of Hagiotheodorites had produced quite a few functionaries in the secular and ecclesiastical fields in the twelfth century. In another article I have explained why I agree with Triantaphyllopoulos and Schminck in believing that the jurist Constantine Hagiotheodorites seems to be the author of these *Basilica scholia*.⁶⁹ Constantine Hagiotheodorites died presumably between 1130 and 1137, and it is therefore difficult to identify him as the commentator of the *Ecloga Basilicorum* as it was composed in 1142. The date of Constantine Hagiotheodorites’ death, however, remains uncertain⁷⁰ and no definite conclusions can therefore be drawn regarding the identification of the commentator of the *Ecloga Basilicorum* as the Hagiotheodorites who wrote *scholia* on the *Basilica*.

65 For example, Ecl.B. 109/17, comment on B. 2,3,59 = D. 50,17,59: (...) οὐσοῦφρουκτος γὰρ κατὰ Ῥωμαίους ἢ γρήσις λέγεται (...) and Ecl.B. 147/4-5, comment on B. 2,3,158 = D. 50,17,158: κατὰ δὲ τῶν ἐνεχῶρων πραγματικῆν, τὴν λεγομένην Ῥωμαίσι Σερβιάν (...).

66 For example, Ecl.B. 131/33, comment on B. 2,3,111,1 = D. 50,17,111,1: (...) καὶ ἡ ἰνφάκτουμ ἢ προλεχθεῖσα (...) and Ecl.B. 131/26-27, comment on B. 2,3,111,1 = D. 50,17,111,1: (...) καὶ ποναλία ἄγωαί εἰσιν ἢ φοῦρη καὶ ἡ βιβονόρουμ ῤαπτόρουμ καὶ ὁ Ἄκουῖλος (...).

67 For Hagiotheodorites see, for example, BS 3403/13 (sch. Pe 99* ad B. 60,12,52 = D. 47,2,52), BS 3427/27 (sch. Pe 6 ad B. 60,12,70 = D. 47,2,70) and BS 3314/32 (sch. Pe 14 ad B. 60,10,10 = D. 13,1,10). For the commentator see footnote 19 above.

68 For example, BS 3178/32-33 (sch. Pe 44 ad B. 60,4,5 = D. 9,3,5); BS 3255/29-31 (sch. Pe 7 ad B. 60,6,18 = C. 6,2,1) and BS 3403/11-12 (sch. Pe 99* ad B. 60,12,52 = D. 47,2,52).

69 See Penna, ‘Hagiotheodorites’ (note 60 above), 401-404.

70 See <http://db.pbw.kcl.ac.uk/jsp/narrativeunit.jsp?NarrativeUnitID=23957>, the online database “Propography of the Byzantine World” (06/11/2018).

Besides the names Peter and Paul, the commentator of the *Ecloga Basilicorum* also uses the names of the Evangelists Matthew, Marc, Luke and John in his examples, and apart from these the names Gregory, Gregorianus, Georgios, Demetrios and Constantine. He also uses names in pairs, such as Luke-Marc or Luke-Matthew or Marc-Peter or Peter and Paul, which would correspond to the pairs Titius-Stichus or Primus-Secundus of the earlier scholiasts. In fact, by comparing the *Basilica scholia* with the commentary of the *Ecloga Basilicorum* we see that the names of Matthew, Luke, Georgios, Gregory and Gregorianus are used only in the examples of the commentator of the *Ecloga Basilicorum*.⁷¹

The question arises whether the commentator used these names in examples of his own, or whether he simply copied examples from earlier scholiasts and only replaced the names, for example, used Peter instead of Primus, or Matthew instead of Stichus. In trying to answer this question, one would have to compare the examples occurring in the *Ecloga Basilicorum* that include these names with “old” *Basilica scholia* and trace down the origin of the examples of the commentator.⁷² The problem is that the commentary is restricted to the first ten *Basilica* books and unfortunately not many *scholia* have been preserved for this part of the *Basilica*.⁷³ In particular, no *scholia* have been preserved for the first, fourth, fifth, ninth and tenth *Basilica* books. According to the Groningen edition of the *Basilica*, there is only one *scholion* preserved for the third *Basilica* book, nine *scholia* for the sixth book and several *scholia* for the second and seventh *Basilica* books. In these preserved *scholia* we have no examples with names such as Primus, Secundus, Tertius, Stichus, et cetera, so we are not able to make comparisons with the commentary of the *Ecloga Basilicorum*.⁷⁴ For the

71 In the examples of the commentator of the *Ecloga Basilicorum* we encounter the name Matthew thirty-one times, the name Luke eleven times, the name Georgios twenty-five times, the name Gregory nineteen times and Gregorianus ten times, the name Marc 174 times, the name John forty-five times, the name Demetrius once and the name Constantine thirteen times. Regarding the name Constantine, the commentator also refers to the *Novels* of the Emperor Constantine Porphyrogenetos (see the *index locorum* by Burgmann in Ecl.B., 621) and to a Constantine *epi ton kriseon Maggilitis* (παρά τῷ ἐπὶ τῶν κρίσεων κυρῷ Κωνσταντίνῳ τῷ Μαγγιλίτη, Ecl.B. 354/14-15, comment on B. 9,1,1,4 = D. 49,1,1,4).

72 The “old” *Basilica scholia* date from the sixth century and derive from the writings of the *antecessores*, the law professors from the time of Justinian. Some “old” *scholia* are attributed to two lawyers, Theodorus of Hermoupolis and Athanasius of Emesa, the so-called *scholastikoi*, who lived at the end of the sixth century. The “old” *scholia* were presumably added to the text of the *Basilica* from the tenth century onwards. These *scholia* are called “old” to distinguish them from the “new” *Basilica scholia* that were written in the eleventh and twelfth centuries by Byzantine jurists.

73 I follow the edition of H.J. Scheltema / D. Holwerda / N. van der Wal, *Basilicorum Libri LX*, Groningen / Djakarta / 's-Gravenhage 1953-1988: Series A (Textus), Vol. I - VIII; Series B (Scholia), Vol. I - IX. Text and *scholia* have been edited separately in this edition. See also Ecl.B., XIV, note 54.

74 Although no names are mentioned in the example, there is a similarity between BS 11/7-11 (sch. P 2 ad B. 2,2,9 = D. 50,16,9) and the comment of the commentator of the *Ecloga Basilicorum* on this *Basilica* fragment (Ecl.B. 17/8-16). The commentator is more lively in his wording, though.

eighth *Basilica* book many *scholia* have been preserved in two manuscripts: most of them occur in cod. Leid. Voss. gr. F 19 (V)⁷⁵ and very few in cod. Paris. gr. 1352 (P). However, the commentator of the *Ecloga Basilicorum* comments on a very small part of the eighth *Basilica* book and again I cannot find any concrete examples to compare. It is in any case clear, however, that the commentator very often uses examples with names, includes contemporary information in his commentary and is interested in the legal practice of his day. His style of writing gives the impression that we are dealing with one author. Hence, even if he has used older material, it seems that he smoothly incorporates it into his own work.

We have seen in this paper that the commentator of the *Ecloga Basilicorum* uses examples from other parts of the *Basilica*, different from the part he is commenting upon. The two examples that I discussed in detail in this paper were examples that I encountered coincidentally during research I did for a paper presented some years ago.⁷⁶ I suspect that there are more such examples to be found in the *Ecloga Basilicorum*.⁷⁷ A question that remains open is the relation between the *Ecloga Basilicorum* and the preserved *scholia* pertaining to other *Basilica* books. As mentioned above, the commentary of the *Ecloga Basilicorum* is restricted to the first ten *Basilica* books, and regarding these books there are not very many *Basilica scholia* extant. Hence the question that arises is whether the commentator of the *Ecloga Basilicorum* uses examples taken from *scholia* on other *Basilica* books, something he does when it comes to the *Basilica* text, as we saw in the two examples discussed in this paper. Trying to find an answer to this question is like trying to find a needle in a haystack, because one would have to compare all examples in the commentary of the *Ecloga Basilicorum* with the examples in all extant *Basilica scholia*.

There is, however, some information that I would like to add here. In a very few examples, the commentator has used names that one would expect to encounter in “old” *scholia*, such as the names Cratistus, Cratinus, Titius and Sticnus. This rightly raises suspicions that on these occasions the commentator must have used “old” *scholia*, and it is therefore worth further investigating this issue. In only one example in his whole commentary does the commentator of the *Ecloga Basilicorum* use the names Cratistus and Cratinus. This example is also about the rule of interpreting the law in a mild way in case of doubts when it comes to granting freedom to a slave. In explaining the law in the second book of the *Basilica*, the commentator uses the example of someone who had a slave under the name Cratistus and wanted to free him in his will. But he made a mistake in his will and instead of writing ‘I free my slave Cratistus’, he wrote ‘I free my slave Cratinus’. In this

75 On the Vossianus F 19, dating from the second half of the sixteenth century, cf. RHBR, I, No. 96.

76 See § 1. Making a start with the *Ecloga Basilicorum* with note 24 above.

77 In his *apparatus fontium*, Burgmann adds references to the *Basilica* in many comments of the *Ecloga Basilicorum*; on the explanation of his *apparatus fontium*, see Burgmann, Ecl.B., XXXII.

case, the law is mildly interpreted and the slave is freed.⁷⁸ We come across the same example in an anonymous *Basilica scholion* written for another *Basilica* book, which partly deals with giving freedom in a will.⁷⁹ The comment in the *Ecloga Basilicorum* is by no means identical with this *scholion*. The comment is much longer and the commentator presents his example extensively and once again in very lively language. The commentator has the slave defending himself by saying: ‘even if my master mentioned Cratinus in the will, he meant me instead of Cratinus and wanted to free me and was mistaken by one syllable and that is why I should not be harmed’.⁸⁰ It is quite possible that the commentator saw this *Basilica scholion* and was probably inspired by it, but he did not copy it as such. In any case, as I mentioned above, the cases in which the commentator uses names that we would expect in “old” *scholia* are very few.⁸¹

Regarding the older material that the commentator uses, it is worth noting that he mentions the name of the *antecessor* Thalelaeus twice. In his comment on the *Basilica* fragment B. 8,1,42 = C. 2,9,3 the commentator explains that the word *παραχρήμα* ‘instantly’ in that section means ‘within three days’ and adds that Thalelaeus explains it in this case in the same way.⁸² This *paragraphe*⁸³ of Thalelaeus has been preserved, and there we read that he indeed explains *παραχρήμα* as a period of three days.⁸⁴ The commentator refers further to a *paragraphe* of Thalelaeus when commenting on B. 9,3,45,1 = D. 42,1,45,1, which is about the possibility of a judge increasing or decreasing the penalty in a criminal case. This *paragraphe* of Thalelaeus is also extant.⁸⁵ The commentator also refers to Theodorus of

78 Ecl.B. 85/25-86/3, comment on B. 2,3,20 = D. 50,17,20.

79 BS 2840/32-2841/3 (sch. Pc 1 ad B. 47,3,54 = D. 50,4,54).

80 Ecl.B. 85/32-34, comment on B. 2,3,20 = D. 50,17,20: (...) ὁ κύριός μου Κρατίνου μνημονεύσας ἐν τῇ διαθήκῃ αὐτοῦ ἐμοῦ τοῦ Κρατίστου ἐμὲ μνηστο καὶ ἐμὲ ἐλευθερον ἤθελεν εἶναι καὶ περὶ μίαν συλλαβὴν ἐπλανήθη, καὶ οὐ κατὰ τι διὰ τοῦτο βλαβήσομαι.”

81 The names of Cratistus and Cratinus are mentioned only in the example I just described, and the name Titius is only mentioned in Ecl.B. 104/30, comment on B. 2,3,47,1 = D. 50,17,47,1. We encounter the name Sticnus in the following five comments of the commentator: Ecl.B. 288/26-289/4, comment on B. 7,8,12 = D. 2,4,12; Ecl.B. 300/16-30, comment on B. 7,12,5-7 = D. 2,6,1-3; Ecl.B. 324/18-30, comment on B. 7,16,13 = D. 2,11,13; Ecl.B. 328/12-18, comment on B. 7,17,2 = D. 2,12,2 and Ecl.B. 412/9-18, comment on B. 9,4,3 = D. 42,2,3.

82 Ecl.B. 347/10-12, comment on B. 8,1,42 = C. 2,9,3: Τὸ δὲ „παραχρήμα“ ἐπὶ τοῦ παρόντος θέματος ἐντὸς γ’ ἡμερῶν νόει· οὗτο γὰρ καὶ ὁ Θαλέλαιος αὐτὸ ἐρμηνεύει καὶ ἐν τοῖς δικαστηρίοις παρεδέχθη καὶ πολιτεύεται.

83 A *paragraphe* was a note, an explanation by an *antecessor* on the *rheton*, the original (Latin) text of Justinian’s legislation.

84 BS 90/13 (sch. V 4 ad B. 8,1,42 = C. 2,9,3): (...) ἐκ τοῦ παραχρήμα, τουτέστιν ἐντὸς τριῶν ἡμερῶν (...).

85 See Ecl.B. 402/15-17, comment on B. 9,3,45,1 = D. 42,1,45,1 and the *paragraphe* of Thalelaeus in BS 1315/4-11 (sch. Pa 2 ad B. 21,3,3 = C. 2,11,3) to which the commentator refers.

Hermoupolis by name seven times and he uses the summaries of the *Novels* compiled by Theodorus.⁸⁶

5. Conclusion

In conclusion, I think that there are elements in the writing of the commentator of the *Ecloga Basilicorum* that clearly contribute to one style and therefore one author. We saw in this paper that the author uses examples for his commentary that are taken from other books of the *Basilica* than the ones he is commenting upon and he takes these examples presumably from another work that existed in his time and that was related to the writings of the *antecessores*. From examining the style of the commentator of the *Ecloga Basilicorum* it is my impression that generally speaking, he has successfully integrated the examples that he adopts from this other work (or other works?) into his own commentary. In other words, when reading his comments we are not disrupted by “foreign” elements; the examples he uses do not come out of the blue in his text but are smoothly incorporated into it. He uses specific patterns to explain his material, making it easy for the reader to follow his thoughts and commentary. There are elements in his style that strongly remind us of the style of Hagiotheodorites, who belongs to the younger generation of *Basilica* scholiasts. We do not know how and to what extent the *Ecloga Basilicorum* was used in practice, but there is evidence showing that this work must have been used by legal practitioners of later periods as well. In some manuscripts we find parts of the commentary of the *Ecloga Basilicorum* inserted as *scholia* to the *Hexabiblos*, the legal collection composed by the judge Constantine Harmenopoulos in fourteenth-century Thessaloniki.⁸⁷ This proves that the commentary of the *Ecloga Basilicorum* remained useful even for later generations of Byzantine jurists who dealt with legal practice. It is worth noting that the *Hexabiblos* of Harmenopoulos became an influential text in the south-eastern part of Europe.⁸⁸ Hence, through the

86 Ecl.B. 187/15, comment on B. 5,1,2 = C. 1,2,2; Ecl.B. 193/16, comment on B.5,2,1 = N. 120,1; Ecl.B. 196/4 and 197/1 and 197/12, comment on B. 5,2,6 = N. 120,6; Ecl.B. 197/21, comment on B. 5,2,9 = N. 120,7,1; Ecl.B. 199/3, comment on B. 5,2,11 = N. 120,9.

87 Ν.Π. Μάτσης, ‘Τὰ σχόλια εἰς τὴν Ἑξάβιβλον τοῦ Ἀρμενοπούλου καὶ ἡ Ἑκλογία ἐκ τῶν 10 πρώτων βιβλίων τῶν Βασιλικῶν’, *BNJ* 21 (1971-74 [1976]), 169-176; Matses has counted 61 *scholia* in the *Hexabiblos* deriving from the *Ecloga Basilicorum*.

88 See on this Κ.Γ. Πιτσάκης, *Κωνσταντίνου Ἀρμενοπούλου, Πρόχειρον Νόμων ἢ Ἑξάβιβλος*, Αθήνα 1971, 70-79 and Κ. Γ. Πιτσάκης, ‘Πόλεις καὶ περιβάλλον στὰ βυζαντινὰ νομικὰ κείμενα. Ἡ συλλογὴ τοῦ Ἰουλιανοῦ τοῦ Ἀσκαλωνίτου στὴν Ἑξάβιβλο τοῦ Κωνσταντίνου Ἀρμενοπούλου’, in Σπ.Ν. Τρωιάνος / Κ. Γ. Πιτσάκης, *Φυσικὸ καὶ δομημένο περιβάλλον στὶς βυζαντινὲς νομικὲς πηγές*, (Ἵλικό, φυσικὸ καὶ πνευματικὸ περιβάλλον στὸν Βυζαντινὸ καὶ Μεταβυζαντινὸ κόσμον, 12), Αθήνα 1998, 63-162 (87-90 with bibliography).

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Hexabiblos, part of the commentary of the *Ecloga Basilicorum* acquired a second life, thereby following the tradition and fate of many other Byzantine legal texts.

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