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A heretical hypothesis: on the beginning of the *Codex Justinianus*

Bernard H. Stolte*

Summary

In a recent paper published in this review (79 (2011), p. 253–296), L. Waelkens investigates the problem of the lacunose oldest western manuscripts of the Code, especially at their beginning. He argues that the first 13 titles of the *Codex Justinianus* had been compiled after the promulgation of its second edition and placed in front of the text of 534, where they did not in fact belong. This successful forgery would have led in various stages to the composition of the Code in its accepted form. This paper sets out to demonstrate that there is overwhelming evidence to the contrary: C. 1,1–13 have always been part of the *Codex repetitae praelectionis*, as is proven by, *inter alia*, *P.Oxy. 1814*, the *Collectio XXV Capitulorum*, the scholia of the *Basilica* and, *pace* Waelkens, even the *Collectio Tripartita*. The solution of the problem of the western medieval tradition of the Code has to be sought elsewhere.

Keywords

Codex Justinianus, *P.Oxy. 1814*, *Collectio XXV Capitulorum*, scholia of the *Basilica*, *Collectio Tripartita*

1. – Introduction: the problem

Recently our esteemed colleague Laurent Waelkens has advanced a startling hypothesis on the genesis of the first 13 titles of the *Codex Justinianus*, in a paper offered to Robert Feenstra on the occasion of his 90th birthday¹. Waelkens grapples with the notorious problem of the lacunose oldest western manuscripts of the Code, especially at their beginning. In established legal historiography, this remarkable phenomenon has given rise to the theory of the *Epitome Codicis*, an abridged version of the Code, which represents the lowest point in the fortunes of its textual transmission. In this theory of the decline and rise of the text of the Code, in the beginning there was the *Codex*

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¹ L. Waelkens, *L'hérésie des premiers titres du Code de Justinien. Une hypothèse sur la rédaction tardive de C. 1,1–13*, Tijdschrift voor Rechtsgeschiedenis, 79 (2011), p. 253–296.

repetitae praelectionis as promulgated by Justinian in 534, which had gradually been reduced to an epitome, to be restored again to close its original glory in various stages, from the twelfth century to the present day. Waelkens does not accept this view as far as the present opening of the Code in C. 1,1–13 is concerned. He notes that the oldest manuscripts of the Code contain hardly any passage from these 13 titles, and argues that these have never been part of the original Justinianic text, but are a later addition. The true beginning of the Code is at the present C. 1,14,1. *L'hérésie des premiers titres*: a nice 'double entendre' indeed.

Waelkens takes his cue from the *Collectio Tripartita*, a Byzantine collection of religious and ecclesiastical excerpts from the Justinianic legislation². Its first part comprises 13 titles consisting of imperial constitutions: Waelkens argues that these 13 titles had been compiled after the promulgation of the second edition of the Code and placed in front of Justinian's text of 534, where they did not in fact belong. This successful forgery would have led in various stages to the composition of the Code in its accepted form.

In short, the problem of an aspect of the so-called *Epitome Codicis* is explained with the hypothesis of a Byzantine forgery. The problem of the 'western' textual tradition of the Code is real, but for the present has to be left to western medievalists. This paper sets out to test the hypothesis of the forgery. In simple terms, the question is, whether the *Collectio Tripartita* drew for the excerpts in its first part on the existing Justinianic Code, or in fact fabricated these 13 titles. To anticipate my conclusion, in my view the evidence overwhelmingly opposes the suggestion that the titles 1–13 of the first book of the Code should have been a later interpolation in the *Codex repetitae praelectionis*. The problem of the textual transmission of the Code as transpiring from our western Latin manuscripts did not originate in Byzantium.

2. – Praemittenda: common ground

To begin with, the common ground on which every hypothesis will stand. In 529, Justinian promulgated the Codex Justinianus, which replaced the Codex Theodosianus. The difference between the two lies in the organisation of the material and the incorporation of imperial constitutions after 438. After the first Code, a period of intense legislation followed, to be concluded with the promulgation of the Digest and the Institutes in 533 and, in the following year 534, a second edition of the Code. Not only had this *Codex repetitae praelectionis* become necessary by reason of the codification of juristic writing (the Digest) and the issue of an official teaching manual with binding

² For its text see N. van der Wal / B.H. Stolte (eds), *Collectio Tripartita, Justinian on religious and ecclesiastical affairs*, Groningen 1994, with extensive preface.

force (the Institutes), but it had also become a desideratum in the light of the great number of constitutions issued by Justinian since the promulgation of the first Code on April 7th or 8th, 529. If we just count the constitutions from that moment onward which have been incorporated in the Code of 534, they number already 49. We know for a fact that not all constitutions from that period found their way to the second Code. In any case, the emperor is well known for his policy of reserving for himself the role of *fons omnis iuris*. The promulgation of an updated Codex reinforced that monopoly in the courts: it precluded quoting from other sources than *Digesta* and *Codex repetitae praelectionis*, as was the emperor's wish, although, as Justinian himself acknowledged, the 'ever-changing nature' would necessitate further legislation.

Justinian is also well known for his interventions in theological disputes and the affairs of the church. Numerous constitutions testify to that policy. We may note that he was not the first emperor to do so. It is only to be expected that the Codex Theodosianus and the (first and) second Code would show the results. A glance at the *Novellae post Codicem constitutiones* confirms that picture for the period between 534 and Justinian's death.

This, then, is the common ground: an 'interim' codification in 534 consisting of Digest (and Institutes) and Code, to be followed by a series of Novels, potentially covering every aspect of human life, including religious and ecclesiastical affairs. Waelkens, then, disputes the occurrence at the beginning of the second Code of 13 titles, which we now number as C. 1,1-13 and which deal with these religious and ecclesiastical affairs.

3. – P.Oxy. XV 1814

The strongest evidence of the presence of a number of titles on religion and church discipline in the original Code of 534 is indirect: the papyrus with a 'table of contents' of the titles 11-16 of the first book of its predecessor, the Code of 529³. The titles are numbered by Greek numerals, and the table lists the constitutions within each title. I really see no reasonable explanation of this document other than the traditional one, as set out in all the textbooks⁴. Waelkens plays down this established opinion: the absence of the present titles C. 1,12-13 between 11 and 14 'a incité les romanistes à y voir un morceau du Code de 529'⁵. There is rather more to it than that. It is highly

³ See now the detailed treatment by S. Corcoran, *Justinian and his two codes, Revisiting P.Oxy. 1814*, *Journal of Juristic Papyrology*, 38 (2008), p. 73-111, esp. 88-111.

⁴ See the most recent edition with commentary in M. Amelotti and L. Migliardi, *Le costituzioni giustinianee nei papiri e nelle epigrafi*, 2nd ed. Milan 1985, no. 1, p. 17-23. The papyrus is, understandably, dated firmly between 529 and 534 (p. 17). See also Corcoran, *Justinian (supra*, n. 3).

⁵ Waelkens, *L'hérésie*, p. 274. But cf., e.g., R. Seider, *Paläographie der lateinischen Papyri*, II,2: *Juristische und christliche Texte*, Stuttgart 1981, no. 34 (p. 98): '... der einzige sichere antike Textzeuge von Iustinians Codex vetus ...'.

probable that its 15th title had the rubric: *De auctoritate iuris prudentium*, containing two constitutions: the first being the so-called *lex citandi*, known to us as Codex Theodosianus 1,4,3, the second now lost⁶. In fact, the obvious explanation of all this is the promulgation of the Digest, which made this title superfluous. Therefore, it does not occur in the second edition.

Since it is difficult to explain away the connection with the first Code, and further since undeniably the papyrus begins with what must have been title 11 – the numeral is a reconstruction, but cannot be disputed – *De paganis sacrificiis et templis*, which is also C. 1,11 in the second Code⁷, how can there be doubt that the second Code contained these ‘religious’ titles from the beginning⁸. Surely we are not to suppose that they occurred in the first Code, but were omitted from the second edition?

4. – The *Collectio XXV Capitulorum*

The indirect evidence of P.Oxy. 1814 is strengthened by a Byzantine collection not discussed by Waelkens, the so-called *Collectio XXV Capitulorum*. These 25 chapters are 21 Greek constitutions also occurring in the present C. 1,1–4, followed by four Justinianic Novels. The collection was probably an appendix of the oldest systematic collection of canons, the *Collectio LX titulorum*, which itself has not been transmitted⁹. As Van der Wal and Lokin note, the 21 constitutions are a rather arbitrary selection from the ample material to be found in C. 1,1–13, but in the present context two incontrovertible facts seem to stand out: we find ourselves in the reign of Justinian himself, and an existing collection – as we shall see, the Code – must have been its source.

To begin with the latter: The constitutions follow the order of the Code, beginning with one constitution from the first and one from the second title, to be followed by 10 constitutions from title 3 and another 9 from title 4, all in the order in which they occur in these titles. This already strongly suggests that they are taken from the Code, but at two points the evidence is even stronger. The second constitution corresponds with the present C. 1,2,25, a Justinianic constitution from 530, and carries the *inscriptio* Ὁ αὐτὸς βασιλεὺς Ἰουλιανῶ ἐπάρχῳ πραιτωρίῳν. The first constitution, however, corresponding with C. 1,1,3, is not by Justinian, but by Theodosius and Valentinian in 448, so ‘the same emperor’ cannot refer to them. In other

⁶ Corcoran, *Justinian* (*supra*, n. 3), p. 97–99, on good grounds argues that it would have ‘regulated the relationship of the *Novus Codex* and the jurists’ (p. 99).

⁷ See the detailed treatment in Corcoran, *Justinian* (*supra*, n. 3), p. 100–106.

⁸ *Ibid.*, esp. p. 91 and 107.

⁹ See N. van der Wal / J.H.A. Lokin, *Historiae iuris graeco-romani delineatio, Les sources du droit byzantin de 300 à 1453*, Groningen 1985, p. 52 and p. 127–128.

words, it cannot refer to the preceding constitution in the *Collectio XXV Capitulorum*, but must refer to the source from which it has been taken. In C. 1,2 the constitutions from the Latin C. 1,2,19 onwards are all by Justinian; if that source must have contained one or more Justinianic constitutions preceding our const. 2, it must therefore have been similar to the present title C. 1,2. Should we not rather say, identical with? The same situation presents itself in the case of the 14th constitution, which corresponds with C. 1,4,22 and carries the *inscriptio* 'Ο αὐτὸς βασιλεὺς Μηνῆ ἐπάρχω πραιτωρίων. The 13th constitution is by Leo, corresponding with C. 1,4,14, and Leo cannot be 'the same emperor' of const. 14. Again the constitutions from C. 1,4,20 onward are by Justinian, to which the *inscriptio* clearly must refer. Again, the source is similar to, or rather identical with, C. 1,4.

As to the former point, the date of the Collection, there is strong circumstantial evidence. The four Novels seem to be a later addition to the 21 constitutions. In any case, the most recent Novel, ch. 22, is Nov. 137 of 565 – the last constitution to be issued by Justinian –, the other three are much older: of 539, 544 and 545 respectively. All the material thus belongs to Justinian's reign. That does of course not prove that the *Collectio XXV Capitulorum* dates from before his death, but for that evidence is supplied by the *Collectio L Titulorum* and its appendix, the *Collectio LXXXVII Capitulorum*. All this has been set out in detail by Van der Wal and Lokin¹⁰ and also by Spyros Troianos in his *Sources of Byzantine Law*¹¹. The consensus confirms a most probable date for the collection of 21 constitutions in the *Collectio XXV Capitulorum* between 545 and 550.

Since the *Collectio XXV Capitulorum* presupposes the 13 titles in question, Waelkens' hypothesis of an interpolation of 13 titles in front of the original beginning of the Code thus becomes only possible if we assume that these 13 titles were compiled already during Justinian's reign, but independently of the Code of 534, i.e., collecting constitutions not included in that Code and thus explicitly abolished in 534. This is improbable enough, and an interpolation of these 13 titles into the Code before Justinian's death unthinkable. I simply see no room for Waelkens' hypothesis: C. 1,1–13 must have been part of the original Code of 534.

5. – The Code in the sixth Century

Here I might as well stop, but there are some other points in Waelkens' paper that in my view incorrectly present the Byzantine evidence. The connecting thread of most cases is the fact that there is quite a lot of sixth-century

¹⁰ Van der Wal / Lokin, *Delineatio* (*supra*, n. 9), p. 52–53.

¹¹ Sp.N. Troianos, *Oi pēges tou byzantinou dikaiou*, 3rd ed., Athens–Komotini 2011, p. 191–194.

material, which, however, is either overlooked or misinterpreted. Obviously, everything that confirms the established opinion about the composition of the first book of the Code does not fit Waelkens' hypothesis. We have already found such confirmation in P.Oxy. 1814 and the Collectio XXV Capitulorum, but there is a huge amount of evidence to supplement this.

6. – Sixth-century manuscripts of the Code

First, the direct evidence of sixth-century manuscripts of the Code. Part of the problem Waelkens seeks to address is the poor transmission of the text of the Code. Contrary to the case of the Digest, we do not have a complete manuscript dating to the time of the promulgation of the Code. In fact, apart from a few scraps of papyrus now in Paris and Florence¹² and a palimpsested leaf in Cologne¹³, only one sixth-century Latin manuscript has reached our day and even that only in part. It consists of leaves that have survived as the lower layer of the present Veronensis LXII (60) and, in the eighth century, were palimpsested and rewritten with Cresconius' *Concordantia canonum* in a pre-Caroline minuscule¹⁴. It was discovered in 1817 by Immanuel Bekker and transcribed in 1821 and 1822 by Bluhme and Mayer. After a renewed study Paul Krüger published a full facsimile in 1874¹⁵, which was printed with the same type-face as had been used for Studemund's facsimile of the even more famous *codex Veronensis* of Gaius' Institutes. Krüger used the manuscript for his *editio maior* of 1877.

Forty leaves (fol. 4–81 with numerous exceptions) of the original manuscript have been preserved in palimpsested form in the present Veronensis LXII. Unfortunately this is just a tiny portion of that original manuscript: if they are imaginarily completed to a full *Codex*, it would have numbered circa 461 folia, or 922 pages. The Verona fragments thus constitute 8.68 % of the original manuscript. They contain – with several lacunae – C. 4,48,2–8,53,35 and smaller tracts of books XI and XII. Scattered over the leaves there are four Greek constitutions, the importance of which is not to be underestimated: for these constitutions, the Veronensis is *codex unicus*. It is unfortunate that Book One should have been lost. Not only is it this book with which we are concerned here, but it is also the part of the Code in which the majority of the Greek constitutions are found. Undoubtedly the manuscript from which the Veronese palimpsest leaves stem still had them in their original form.

¹² P.Reinach Inv. 2219 (but perhaps of the first Code) and PSI XIII 1347, for which see Amelotti / Migliardi, *Le costituzioni giustinianee nei papiri e nelle epigrafi*, nos. 2–3 (p. 24–31).

¹³ Cologne, Historisches Archiv GB Kasten B Nr. 130 (E.A. Lowe, *Codices Latini Antiquiores*, VIII 1167).

¹⁴ Lowe, *Codices Latini Antiquiores*, IV 513.

¹⁵ P. Krueger, *Codices Iustiniani Fragmenta Veronensis*, Berlin 1874.

One of its precious features is that it carries *scholia* ('glossae') in Greek¹⁶. In theory one might expect to read references to the first book of the Code, which thus could provide evidence of its contents. In Zachariä's edition two such references occur, nos. 6 ad C. 4,49,21 *bonae fidei*, and 98 ad C. 5,27,7 *pr. nefario*. As read in that edition they seem to refer to C. 1,53 and to 1,10,44 respectively, but neither of the two make sense. In fact, the first one probably should read 4,53 (meaning our present 4,54,6)¹⁷. As to the second one, I am unable to offer a solution. It is to be hoped that a renewed study of this palimpsest with the latest technological means will lead to revised readings, both of the main text and of the scholia. They might yield references to the first book, for which, alas, no direct sixth-century witness has been preserved.

7. – Latin indirect witnesses around the antecessor Julian

Since the Novels were *Novellae post Codicem constitutiones*, commentators had occasion to point out their relation to the Code. In the Latin-speaking West, Justinian's Novels have circulated already early in the form of the *Epitome Iuliani*. Scheltema's interpretation of this text as an 'index' of the Novels for Latin-speaking students has found wide acceptance¹⁸. For the wider context one may now refer to Kaiser's excellent book¹⁹. Suffice it to say that, in direct or indirect relation to the *Epitome Iuliani*, a text that undoubtedly is to be dated in Justinian's reign, we find references to the Code, among which several to its first book. As we shall see, none of them leaves room for Waelkens' hypothesis.

7a. – Dictatum de consiliariis

Under this name, as an appendix to the *Epitome Iuliani*, a text has been transmitted which contains recommendations of the type 'if you get a question

¹⁶ The Greek *scholia* have not been included in Krüger's facsimile. Bluhme's apographum is the present ms. Mc 303 in the University Library of Tübingen. They have been edited by K.E. Zachariä von Lingenthal, *Die griechischen Scholien in der rescribierten Handschrift des Codex in der Bibliothek zu Verona*, Zeitschrift für die geschichtliche Rechtswissenschaft, 15 (1850), p. 90–132 = *Kleine Schriften zur römischen und byzantinischen Rechtsgeschichte*, I (Leipzig 1973), p. 313–355; see also H.J. Scheltema, *Subseciva*, I: *Die Veronensischen Kodexscholien*, Tijdschrift voor Rechtsgeschiedenis, 30 (1962), p. 252–253 (= *Opera minora ad iuris historiam pertinentia*, Groningen 2004, p. 111–112).

¹⁷ See also Zachariä's note 9 *ad loc.* (p. 102 = p. 325). Bluhme read AB (with a stroke over the two letters), Zachariä emended and interpreted this as A' B(ιβ), which leads me to conjecturing Δ' B(ιβ). The uncial A, Δ and Λ are easily confused. As to 54 instead of 53, small divergences in numbers are common.

¹⁸ H.J. Scheltema, 'Subseciva, XIII: *Die Epitome Novellarum Iulians*', Tijdschrift voor Rechtsgeschiedenis, 31 (1962), p. 282–284 (= *Opera minora*, p. 142–144); Idem, *L'enseignement de droit des antécédents*, Leiden 1970, p. 47–52 (= *Opera minora*, p. 91–95).

¹⁹ W. Kaiser, *Die Epitome Iuliani, Beitrag zum römischen Rechtsunterricht im frühen Mittelalter und zum byzantinischen Rechtsunterricht*, Frankfurt a.M. 2004.

on ..., read then ...', directing the addressee to specific passages in Digest, Code and Novels. Whether or not Julian is the author, it is a witness for the contents of the Corpus iuris civilis at the time of writing²⁰. Liebs²¹ lists 37 references to the Code, five of which to Book One. They occasionally number the titles: if we do not count *primus* and (*pen*)*ultimus*, there are six such cases, two of which (7 and 14) relate to a *quintus titulus* of the first book, which corresponds with the present title C. 1,5. Another one (36) refers to C. 1,2,23 as an unnumbered constitution in an unnumbered title: *in libro Codicis titulo De rebus ecclesiasticis constitutione principis nostri*. These three references together prove that the author worked in Justinian's time and used a Code which began with a series of titles on religious and ecclesiastical affairs. Would that Code be in any way different from the one we know?

7b. – Paratitla Iuliani

Two manuscripts of the Epitome Iuliani contain *Paratitla*: Vienna, ÖNB 2160 and Leipzig, Hänel 6²². Among these are some 50 references to the Code, ten of which actually refer to C. 1,2–5 and are listed by Waelkens²³. These refer to the first book as *liber I*, but to the titles by their rubrics only. In fact, hardly ever is a title indicated by its number within a book. One exception occurs at the end, where C. 1,5,17 is indicated as *legem principis nostri de Samaritis positam in libro Codicis titulo V*. A little earlier there is one peculiar case, for which the textual basis is not strong and where modern editors make different choices²⁴. The manuscripts' *paradosis* is '*in interiori libri Codicis titulo primo*', and the reference undoubtedly is to C. 1,14,2–3. Neither *interiori*, nor *primo* sounds likely, and certainly not in combination. It would, of course, be in favour of Waelkens' hypothesis if C. 1,14 would be indicated as *titulus primus*, but what, then, are we to make of *in interiori*? Van der Wal's conjecture, emending both into '*in i libro Codicis titulo xiiii*' seems to be too radical; indeed, as we have seen, neither *primo* nor *xiiii* identifying *titulo* are in agreement with normal usage in the Paratitla, which omit numerals. This is the more remarkable, since the next paratitlon notes that '*Kap. cclxxi latiore facit titulum De constitutionibus principum in libro primo Codicis relatam*', thus referring to C. 1,14 in the usual way!

²⁰ Ed. by G. Hänel, *Iuliani Epitome Latina Novellarum Justiniani*, Leipzig 1873, p. 198–201.

²¹ D. Liebs, *Die Jurisprudenz im spätantiken Italien (260–640 n. Chr.)*, p. 235–244, esp. 241–242. Cf. also Kaiser, *Die Epitome Iuliani* (*supra*, n. 19), p. 266 ff.

²² N. van der Wal, *Die Paratitla zur Epitome Iuliani*, Subseciva Groningana, II (1985), p. 93–137; Liebs, *Die Jurisprudenz* (*supra*, n. 21), p. 246–264. The old edition by G. Hänel (*Iuliani Epitome Latina Novellarum Justiniani*, Leipzig 1873, p. 202–208) is almost unusable.

²³ Waelkens, *L'hérésie*, p. 274 with n. 98.

²⁴ Van der Wal (*supra*, n. 22), p. 131 l. 391–393 with critical apparatus [note '*dubitans*' *scr.*!]; Liebs (*supra*, n. 21), p. 275, 'CVIII constitutio'; cf. Waelkens, *L'hérésie*, p. 274 with n. 99.

What does not seem to be in dispute is the date of the Paratitla, which speak of Justinian as an emperor still alive: *princeps noster*. They are placed between 556 or 557 and 565²⁵. Once again, we are dealing with evidence from Justinian's own lifetime, without any indication that the status of these constitutions was in any way in doubt. On the contrary, there is no sign whatsoever that they were not part of the authentic text. It would be difficult to reconcile these references to C. 1,2–5 with a beginning of the Code at C. 1,14.

8. – Byzantine indirect witnesses

I have mentioned the Latin witnesses first, as Waelkens' problem is the western manuscripts of the Code. The *Epitome Iuliani* was able to provide a bridge between the Byzantine and the western world, since it was compiled in the incompletely bilingual world of Constantinople, where it took its inception from the language problem, posed by legal texts in one language to speakers of the other. When Latin-speaking (aspiring) jurists became a rarity in the Byzantine capital, the *Epitome Iuliani* lost its usefulness and was only transmitted in the western world. The language problem, however, had been as pressing for their Greek-speaking counterparts, and it is hereto that we must now turn.

Just as the Institutes and the Digest, the Code presented the problem of what was a foreign language for the majority of the population. It therefore gave rise to the need of translations, summaries and commentaries, in short every help for the reader, first-year student and experienced lawyer alike. We are well-informed about the form such helps took, the majority of which originates in legal teaching. They soon virtually supplanted the original Latin texts, of which very few have survived. In the present context, the most interesting genre of these Greek texts is that of the summary, of which we do not have independent manuscripts, but abundant evidence in indirect transmission. It proves that Greek 'Summae' circulated in which the constitutions had been summarised in the order in which they occurred in the Code.

One of these was a 'Summa' from which the first part of the *Collectio Tripartita* derives, another that from which its *Paratitla* stem²⁶. Other examples are found in the various collections, but most of all in the *Basilica* and their *scholia*, of which more below. Many of these texts can be dated approximately, with probable *termini post* and *ante quem*. But in as far as corroboration is needed, what is most striking is the fact that nowhere is any trace to be found

²⁵ Van der Wal, *Die Paratitla* (*supra*, n. 22), p. 97–98; Liebs (*supra*, n. 21), p. 259–260.

²⁶ For these, see below, section 13.

of a different numeration of the titles of the first book of the Code from the present one.

We shall see that it is the cumulative evidence of these texts that corroborates a straightforward explanation of the first part of the *Collectio Tripartita*, namely that it is a summary of the first 13 titles of the Code, and that these titles have always been part of the Code.

9. – *Collectio Tripartita* and *nomocanones*

For Waelkens, the *Collectio Tripartita* and ‘*nomocanons*’ play a key role. To avoid misunderstandings, it seems useful to explain at this point the term *nomocanones* as it is usually understood and to provide their background.

When the emerging christian church began to adopt a formal structure and to legislate, it gradually acquired a ‘*corpus canonum*’. When it became a state church, inevitably the ecclesiastical and secular spheres became inextricably bound up with one another. Those in search of legislation relevant to the church could not restrict themselves to the *canones*, but had also to take into account the *nomoi*, laws issued by the secular legislator – the emperor. Since the year 534, the Digest (and Institutes), Codex Justinianus and subsequent imperial Novels were the only legally binding source from which they could be quoted. In fact, two corpora had emerged: a *corpus canonum* and a *corpus iuris civilis* – both terms used *avant la lettre* –, neither of which had acquired a fixed size in Justinian’s reign. The Justinianic legislation had become available in Greek, i.e., its Latin parts circulated in Greek translations and summaries, which were *in loco parentis*.

Understandably, it became expedient to have a collection in which *canones* and *nomoi* were gathered together, but no legislator ever provided for that need. Private initiative filled that gap, according to individual ideas and designs. The collective name for these compilations is *nomocanones*, an imprecise concept covering all sorts²⁷: chronological collections as well as thematic, but as far as the secular legislation is concerned, always drawing on and quoting book, title and *digeston* (fragment) resp. *diataxis* (constitution) in the Justinianic legislation. Quotations from the Novels show a greater variety, since these had not been assembled in an ‘official’ collection and therefore were cited without numbers or with the number they carried in a private collection.

One such a collection of secular legislation pertaining to the church is the *Collectio Tripartita*. Insofar as they were relevant to the church, its first part presents the constitutions assembled in the Code, to which I shall return presently, its second part passages from Digest and Institutes, and its third

²⁷ But not as imprecise as Waelkens seems to assume; the term as such is in any case never used for the *Collectio Tripartita*.

part the Novels. For details I refer to the preface of our edition²⁸. We proposed a date between 577 and 619 for its compilation, at an earlier rather than later moment within that period. The *Collectio Tripartita* thus originated at a moment when, as we have seen in the preceding sections, the 13 titles in question already had been in existence for circa half a century.

10. – The Codex Justinianus in Byzantium and the *Collectio Tripartita*

The established opinion has always been that compilations such as the *Collectio Tripartita* and the *Nomocanon XIV Titulorum*, to name an example of the genre of *nomocanones* in the proper sense of the word, could not have been made until after the promulgation of the Code. After all, they quoted extensively from the first 13 titles of book I, and it had never entered anyone's head that these titles could be anything else than a part of the authentic Justinianic Code of 529.

In this view, the compilation of the *Collectio Tripartita* provides a *terminus ante quem* for the Code in its present form. Waelkens reverses the chronology: he maintains that the first 13 titles were later added after the example of what he calls 'nomocanons'. Only thus, he argues, can the lacunose beginnings of our oldest manuscripts of the Code be explained; the authentic beginning of the Code is at what is now C. 1,14 *De legibus et constitutionibus principum et edictis*. I do not believe this to have been the case, but the arguments of Waelkens deserve to be considered seriously. The following sections aim at dealing with them one by one, not only the arguments he uses explicitly, but also the related difficulties passed over silently. What will remain is the same problem Waelkens has tried to solve: that our western medieval manuscripts of the Code are lacunose. What will also remain is the established opinion: that Justinian made his Code begin with title C.1,1 *De summa trinitate et de fide catholica et ut nemo de ea publice contendere audeat*.

11. – The beginning of the Code in the Basilica and their scholia

The *Basilica* are a Greek version of the Justinianic legislation, compiled circa 900. It did not aim at bringing that legislation up to date. Rather it rearranged the Justinianic material in that it brought together provisions from Digest, Code and Novels bearing on the same subject and, as much as possible,

²⁸ For *nomocanones* generally, see Van der Wal / Lokin, *Delineatio* (*supra*, n. 9); for the curious treatment of the Novels in the third part of the *Collectio Tripartita* see now B.H. Stolte, *Le Novelle di Giustiniano nel Nomocanone in Quattordici Titoli*, in: *Novellae Constitutiones, L'ultima legislazione di Giustiniano tra Oriente e Occidente* da Triboniano a Savigny, a cura di L. Loschiavo, G. Mancini, C. Vano, Naples 2011, p. 59–69.

selecting for Digest and Code the same summarizing versions, whereas the Novels usually occur in the version of the *Collectio CLXVIII Novellarum*.

Waelkens raises doubt on the inclusion of the first 13 titles of the Code of 534 in the Basilica. According to him, the compilers did not have at their disposal a copy of the Code in which these titles preceded C. 1,14: 'Les rédacteurs des Basiliques n'en disposaient pas'. This simply is not true, as we will see²⁹. The rubric of the first title of the Code was also that of the first title of the Basilica. These 13 titles were taken into account, but some constitutions had lost a great deal of their usefulness.

By 900, the orthodox faith was hardly an issue and church councils had confirmed it time and again. The opening of the Code, with the *lex Cunctos populos*, must have become hardly understandable. That constitution, and similar ones, could be summarized in the briefest possible way or omitted entirely. It is, therefore, not a full translation of *Cunctos populos* that was put at its beginning, but the heart of its significance in an already christian empire, namely a definition of what a christian is:

Χριστιανός ἐστὶν ὁ πιστεύων μίαν εἶναι θεοτήτα ἐν ἴσῃ ἐξουσίᾳ τοῦ πατρὸς καὶ τοῦ υἱοῦ καὶ τοῦ ἁγίου πνεύματος· ὁ γὰρ παρὰ τὰ εἰρημένα δοξάζων αἰρετικὸς ἐστὶν.

A christian is he who believes that there is one Deity in equal authority of the Father and the Son and the Holy Spirit. For he who holds a different opinion is a heretic.

Here we have the substance of C. 1,1,1: '... patris et filii et spiritus sancti unam deitatem sub pari maiestate credamus ... reliquos vere ... haeretici dogmatis infamiam sustinere ...'.

Waelkens devotes ample space to this constitution³⁰, but at the end of the day this 'Edict of Thessalonica' of 380 undeniably was incorporated in the Codex Theodosianus as CTh 16,1,2. For the compilation of his own Code, Justinian drew on the Codices Theodosianus, Hermogenianus and Gregorianus. Whatever may or may not have inspired Theodosius I, for Justinian the empire was a christian empire. Even if we would accept, as Waelkens does, that Theodosius I cannot have imposed christianity as the official religion of the empire, Theodosius II would have had no problem with christianity in that position, and Justinian found the sixteenth book of the Codex Theodosianus opening with the title *De fide catholica*. Justinian's interest and active interference in the Church is too well known to be in need of explanation here.

²⁹ See below, the next section, and also B.H. Stolte, *Not in the Code, nor in the Basilica, C. 1,1,8 and its Translation in the Basilica*, *Annali del Seminario Giuridico dell'Università di Palermo* [AUPU], 54 (2010–2011), p. 289–300.

³⁰ Waelkens, *L'hérésie*, p. 261–273.

For him, religion was too important to be left at the end of his Code. He simply transposed religious and ecclesiastical affairs from the end to the beginning³¹, and for the Basilica the same point of view was adopted.

Constitutions from the first 13 titles are found dispersed over the Basilica³². What is more important, however, no trace is found of a numeration of the Code which admits of the assumption that the true beginning of the Code was at C. 1,14.

Of course it might be objected that by 900 the supposed interpolated version of the Code had established itself in such a way that no trace of a different numeration had remained. Indeed, as far as the distribution of the summarized passages of the Code over the new structure of 60 books of the Basilica is concerned, that might be true. Where this is unthinkable, however, is in the *scholia*. In order fully to understand this, a closer look at the genesis and the manuscripts of the Basilica is called for.

The Greek summarizing versions used for the text of the Basilica are the versions made already in the sixth century, most of them during the reign of Justinian himself. When in the tenth century the so-called 'old' scholia were added it is again the sixth-century versions and commentaries that were laid under contribution³³. Often these scholia contain references to the source on which they originally drew, i.e., in our case, the Code. In the case of the Digest references are often made to the *partes*, or at least to the 'Legalfolge' of the Digest by book and title. Since, on the evidence of our manuscripts, these references were not systematically corrected to adapt them to the new arrangement of the Basilica, we may expect the same to have occurred in the case of the Code, as in fact it has.

It is therefore especially in the 'old' scholia that we may expect to find features stemming from the sixth-century texts. It is there that Latin quotations occur, but also references directly to the Code with numbers of book, title and constitution. Two questions arise. Are there such references to C. 1,1–13,

³¹ See also Corcoran, *Justinian* (*supra*, n. 3), p. 85 with n. 40 with literature, esp. his reference to Cassiodorus / Epiphanius, *Historia Ecclesiastica Tripartita* [CSEL 71] 9,7 quoting the text of the constitution of 380. It goes with C. 1,1,1 in omitting *nec conciliabula eorum ecclesiarum nomen accipere* against CTh 16,1,2 and is again a very early witness, easiest explained if the Code of 534 included this text. Waelkens does not discuss this text, nor does it occur in the critical apparatus of our editions of the Code. See F. De Marini Avonzo, *Due citazioni del Codex Iustinianus nella Historia Tripartita di Cassiodoro*, in: *Scritti per il XL della morte di P.E. Bensa*, Milan 1969, p. 95–106 (repr. in her *Dall'impero cristiano al medioevo, Studi sul diritto tardoantico*, Goldbach 2001, p. 125–134).

³² For the complicated case of C. 1,13 see Th.E. van Bochove, *Rubrics, testimonies and indices, Arguing pro and contra C. 1,13 as constituent part of the text of the Basilica*, *Tijdschrift voor Rechtsgeschiedenis*, 78 (2010), p. 351–380.

³³ For an explanation of the term 'old' scholia see, e.g., Van der Wal / Lokin, *Delineatio* (*supra*, n. 9), p. 90–91 and 133–134. See also H.J. Scheltema, *L'enseignement de droit des antécédents*, Leiden 1970, for the Code esp. p. 32–42.

and, if so, can they be dated reliably to the sixth century and especially to Justinian's reign? And do such references point to a composition of book I of the Code with or without the present first 13 titles?

12. – References to C. 1,1–13 in the Basilica and their scholia

For the presence and distribution of passages from the first 13 titles of book I of the Code in the Basilica the reader is referred to the tables at the end of each volume of the series A of the Groningen Basilica edition³⁴. As to the first book of the Basilica, the transmission of the text is complicated: two very different versions have been handed down. Heimbach had relied on the Parisian manuscript Coislinianus gr. 151. The edition by Scheltema, Van der Wal and Holwerda, however, has followed Zachariä von Lingenthal, who had pointed out the high probability of an interpolated version in that manuscript and proposed a different version, to be reconstructed from testimonies³⁵. Whichever of the two versions one considers to be genuine, both testify to the presence of passages from the first 13 titles of the Code in the very first title of the Basilica. Other passages occur in Bas. III,1.3; IV,1; V,1; VI,3; VII,4.12.17; XXI,1; XXVIII,1; XXXVII*,4³⁶; XLVIII,14 and LX,54.

Scholia further document the availability and actual use of C. 1,1–13 in the sixth century. Insofar as annotations are concerned that originally were written in explanation of the text of the Code, they may be of interest to test the hypothesis advanced by Waelkens. Three possibilities may be distinguished: either they concern a commentary on C. 1,1–13, or they are references to these titles from elsewhere, or again they refer to one of the other titles of the first book of the Code. In this last-mentioned case, according to this hypothesis, the reference might contain evidence of a copy of the Code which lacked the first 13 titles in that it referred to a title in book I by a number that was lower by 13 than in our present numeration.

Obviously it is easiest to check the scholia of the first-mentioned category, since one may simply read the Basilica titles listed above insofar as they contain scholia. The two other categories require nothing less than reading all the scholia on the Basilica, in other words 3954 pages. I have restricted myself to those titles in which constitutions from C. 1,1–13 have been incorporated in the text of the Basilica and which have been transmitted with scholia³⁷. In

³⁴ For an overview of this in the Byzantine tradition, also outside the Basilica, see Heimbach's *Manuale Basilicorum*, in the sixth volume of his Basilica edition, Leipzig 1870. For the first book, however, see what follows, with the next note.

³⁵ For this problem and the older literature, see now B.H. Stolte, *Not in the Code, nor in the Basilica* (*supra*, n. 29).

³⁶ Lost, but the presence of C. 1,4,30 in Bas. 37,4 reliably testified: see the Scheltema edition, vol. A, V, p. 1661, *app. ad l.* 4.

³⁷ In the last volume of Series B of the Basilica edition there is a consolidated index of titles.

these scholia I have been unable to find any indication of a different numeration of the titles. One may of course object that such divergences would have been eliminated in the process of editing these texts when they were being added as scholia to the *Basilica*. This, however, is extremely unlikely. Indeed, one of the clearest indications of a scholion being ‘old’ rather than ‘new’ – the latter composed on the basis of the text of the *Basilica* instead of the original Justinianic texts – precisely is the presence of ‘unedited’ references: in the case of the Code they give the numbers of book, title and *diataxis*. If these numbers had been edited, surely it would have been in order to adapt them to the numeration of the *Basilica*?

The end of Bas. 60,54 with its scholia is a good illustration of the way in which the opening titles of the Code figure in the *Basilica* and their scholia. First a table of the contents of the *Basilica* title and the corresponding parts of the *Corpus iuris*:

<i>Basilica</i>	<i>Corpus iuris</i>
Περὶ παραγγελιῶν καὶ ἐξοριζομένων καὶ περιοριζομένων	D.: <i>De interdictis et relegatis et deportatis</i> ; C.: <i>varie</i>
60,54,1–17	D. 48,22,1–18
60,54,18	C. 1,3,13
60,54,19	C. 1,6,3
60,54,20–25	C. 1,7,1–6
60,54,26	C. 1,9,3
60,54,27	C. 1,9,16
60,54,28	C. 1,9,18,3
60,54,29–30	C. 1,10,2

In the compilation of the *Basilica*, the starting-point has clearly been the Digest title 48,22, the rubric of which has been translated into Greek. After the Digest part³⁸, a number of relevant constitutions have been added, all from the part of the Code that is of interest here. In the scholia, references are made both to other passages of the *Basilica* and to the Code, often without specifying which of the two is meant. Two indications may help the reader: numbers and the use of the word *kef(alaion)* or *diat(axis)*. If numbers of books are higher than 12, obviously the Code cannot have been meant. If a specific text is indicated as *kef(alaion)* (‘chapter’), this almost always means that the reference is to the *Basilica*, whereas *diataxis* (‘constitution’) indicates the Code. A good example of *diataxis* and *kefalaion* figuring side by side is found in one and the same scholion – or at least that is the way it has been interpreted

³⁸ The reader is referred to the critical apparatus of the *Basilica* text, in which Scheltema c.s. draw inferences for the constitution of the Latin text of the Digest.

by the scribe of the only surviving manuscript of this book of the Basilica, Paris. gr. 1350. In sch. 1 *ad* Bas. 60,54,21 (=C. 1,7,2) [BS 3923,9] we read:

Ἐὰν λέγηται τις ἀπὸ Χριστιανῶν εἶναι καὶ τελευτήσῃ διαθήσει, δύναται κινεῖν κατὰ τῆς διαθήκης αὐτοῦ ἐντὸς εἴκοσι ἐνιαυτῶν. Οἱ γὰρ ἀπὸ Χριστιανῶν οὐ καλῶς διατίθενται δηλονότι· ἔγνωσ γὰρ ἐκ τῆς α΄ διατ. τοῦ παρόντος τιτ., ὅτι δημεύονται. Ἀνάγνωθι δὲ καὶ τὴν γ΄ καὶ δ΄ διατ. τοῦ παρόντος τιτ. Ζήτει βιβ. α΄ τιτ. α΄ κεφ. να΄ κ΄ καὶ βιβ. λθ΄ τιτ. α΄ κεφ. ξ΄ περὶ τὰ τέλη καὶ βιβ. λε΄ τιτ. ις΄ κεφ. ιγ΄ καὶ βιβ. μα΄ τιτ. δ΄ κεφ. ιζ΄ καὶ κ΄.

If someone is said to be no longer a christian and he dies testate, it is possible to move against the will within five years. For ex-christians cannot make a valid will, of course. You know from the *first constitution of the present title*, that their estate is confiscated. Read also the *third and fourth constitution of the present title*. Look up book 1 title 1 *chapter* 51, 20, and *book* 39, title 1, *chapter* 60 about the end, and *book* 35, title 16, *chapter* 13, and *book* 41 title 4 *chapters* 17 and 20' [my italics]³⁹.

First reference is made to the Code, for which *diataxis* is used; then follow references to the Basilica, indicated by the book numbers as well as by the use of the word *kefalaion*.

Incidentally, a second scholion to this same Basilica fragment and edited as BS 3923,15) uses the technical term *DE INOFFICIOSO*, partly written in Latin letters. The Basilica text in its transmitted form does not suggest this, but the Latin text of C. 1,7,2 speaks of *inofficiosis actionibus*. This entirely fits the legal language of the sixth century and is additional evidence of the fact that originally it had not been written as a comment on the Greek Basilica text.

To give an example of a text which definitely refers to the Code, here is another scholion from the same title of the Basilica, the text of which at this point gives a summary of C. 1,10,1, in words entirely different from those of the *Collectio Tripartita* (see also the next section). The following scholion has been added to the text:

BS 3924,3–10:

Ἰουδαῖος μὴ κτήσῃται δοῦλον Χριστιανόν. Φησὶ γὰρ ἡ περὶ Σαμαρειτῶν νεαρά, ὅτι ἅμα τῇ κτήσῃ ἐλευθεροῦται ὁ δοῦλος. Ὅμοιον δὲ λέγει καὶ ἡ λζ΄ νεαρά. Γενικῶς δὲ ἀγορεύει ἡ β΄ διάτ. τοῦ παρόντος τιτ., ὡς ἐὰν ὁ μὴ ὢν Χριστιανὸς σχῆ δοῦλον Χριστιανόν, ἐκπίπτει αὐτοῦ καὶ λ΄ λιτρῶν χρυσοῦ προστιμᾶται. Ταῦτα δὲ νόει, ἐὰν ἀγνοῶν ἐκτήσατο. Εἰ γὰρ <ἐν> εἰδήσει τοῦτο πεποιήκε,

³⁹ Not all numbers make sense, but the general picture is clear enough: there are references which can be traced to the Code and those that relate to the Basilica. It is well known that numbers are easily corrupted in transmission.

κεφαλικῶς τιμωρεῖται, ὡς δηλοῖ ἡ προαναπεφωνημένη α΄ διατ. τοῦ προκειμένου τίτλου. Μέμνησο τῆς γ΄ διατ. τοῦ ζ΄ τιτ. τοῦ παρόντος βιβ.

A Jew may not acquire a Christian slave. For the Novel on the Samaritans says that the slave is freed at the moment of the acquisition [Nov. 144,2,4]. Similar words are spoken by Novel 37⁴⁰. In general the second constitution of the present title states that, if a non-Christian acquires a Christian slave, he loses ownership and is punished to pay a penalty of 30 pounds gold. Mind you, that is if he has acquired unwittingly. For if he has done so knowingly, he is punished by death, as is made clear by the first constitution of the title which lies in front of you [C. 1,10,1], a constitution which has been promulgated earlier. Remember the third constitution of the sixth title of the present book [C. 1,6,3].

The references are clearly to the Code, not to the Basilica, and confirm that these words were spoken to an audience that, literally, had the Code ‘on their desks’⁴¹, in which the first 13 titles must have occurred in a form corresponding with our modern edition. The *terminus post quem* is 572, the year in which Justin II issued Novel 144. (I am unable to explain the reference to Novel 37). The ‘student’ is spoken to directly. No attempt has been made to adapt this text – stemming from a class room in which the Code was being taught – to its new environment: the Basilica.

On the basis of what has been seen so far, in my view there can be no doubt that C. 1,1–13 were present in the Codex Justinianus when the jurists of the sixth century wrote their commentaries.

13. – The titles of the first part of the *Collectio Tripartita*

We now finally come to the *Collectio Tripartita*, to which Waelkens pays such extensive attention⁴². As already said in the preface of our edition, its first part has in all probability been taken from an existing Greek Summa of the Code. Let us have a closer look.

The first part of the *Collectio Tripartita* differs from the other two in two respects at least. First, its rubrics are in both Latin and Greek. Second, it contains so-called *paratitla*, literally, ‘what is outside the title’, i.e., passages on the same subject-matter, but to be found outside the title in question. It shares this feature with the third part, for the *Syntagma* of Athanasius had them, too. There is a difference, though: the *paratitla* of the *Syntagma Novellarum* only refer to other Novels by their place in the same *Syntagma*, whereas the *paratitla* of the first part of the *Collectio Tripartita* refer to other con-

⁴⁰ The Novels are not identified after the *Coll. CLXVIII Novellarum*, which is another indication of the early origin of this scholion.

⁴¹ If the word προκειμένου is to be interpreted so literally.

⁴² Waelkens, *L’hérésie*, p. 273–296.

stitutions of the Codex Justinianus (as well as to Novels, which need not concern us here) in a particular way, by giving

‘the numbers of book, title and constitution, the – Latin, where applicable – first word of the constitution and a summary of (part of) its contents. If the same text is referred to in different places in these paratitla, the summaries are mostly identical, which suggests that they have been borrowed from an existing source. This is proved even more clearly by words that have become meaningless in their isolation (...). When these summaries in the paratitla regard constitutions from C. 1,1–13, they are always different from the summaries of the same constitutions in the text. It follows that they have not been written by the same author [as the one who wrote the latter], which is proved even more clearly by the fact that occasionally two summaries of the same text seem to have been made on the basis of different versions of that text’⁴³.

Therefore, at the moment the author of the *Collectio Tripartita* compiled his work, which was between 577 and 619, there must have been at least two *Summae* of the Code available to him to draw on, both including C. 1,1–13. Unless we resort to the hypothesis that not only had 13 additional titles been compiled for the first book of the Code and provided with Latin rubrics, but different summaries had been made, too, we must accept the existence of a first book of the Code introduced by the 13 titles under discussion. This conclusion is reinforced by the fact that, again, no trace of a different numeration of the titles of the first book has been found. The alternative explanation, that two authors each had compiled, independently and with different texts, 13 similar titles with summaries of constitutions on religious and ecclesiastical affairs, I find too bizarre to contemplate.

14. – The *Collectio Tripartita* and other Byzantine collections

The evidence of the *Collectio Tripartita* is confirmed in the most successful of the *nomocanones*, the *Nomocanon XIV Titulorum*, dating between 619 and 629. Interestingly, never does it refer to the *Collectio Tripartita* itself, but always directly to the Code. This is most conspicuous in its opening chapter, ‘On theology, the orthodox faith, canons and ordinations’, where, after the relevant canons, it simply lists (Nom. 1,1,1):

Βιβ. α’ τοῦ Κώδικος τίτ. α’ διατ. α’ ε’ ζ’ ζ’ η’.

Book 1 of the Code, title1, const. 1.5.6.7.8.

Of course it might be objected that ‘the deed had been done’ and that by then the status of the first 13 titles had been established beyond doubt. But

⁴³ I quote from Van der Wal / Stolte (*supra*, n. 2), Preface, p. XXVI–XXVII.

if originally these titles were not part of the Code, is it then credible that no trace of this is to be found in the doctrinal debates of the sixth century?

15. – The beginning of the text of the Code

Waelkens' hypothesis involves the reversal of Code and *Collectio Tripartita* in the sense that C. 1,1–13 would have come into existence after the model of the first part of the *Collectio Tripartita*.

From the preceding pages it will be obvious that I do not at all believe this to have been the chronology of events. It is unthinkable that already in Justinian's lifetime, the very emperor who had jealously reserved for himself the prerogative of sole legislator, a successful interpolation should have been accomplished of 13 entire titles at the front of his Code, together with Latin rubrics, and that no trace of their absence at the moment of its promulgation in 529 should have been left in our sources. On the contrary, much evidence is available of their presence during Justinian's reign and immediately after. The earliest traces of their absence do not appear until several centuries later, and not in the vicinity of the emperor in Constantinople, but in the West, where the transmission of the Digest had been precarious and that of the Greek passages in the Code almost totally had failed. Surely it is there that we should look for the cause of the problem, not in the East where the Byzantine tradition provides abundant evidence of the beginning of the Code with 13 titles on religious and ecclesiastical affairs, independently confirmed by P.Oxy. 1814?

The fourth section of Waelkens' paper, on the genesis of C. 1,1–13, does not convince me, to put it mildly, since these titles were already there, the product of the committee responsible for the *Codex repetitae praelectionis*, of the jurists mentioned in the Const. *Cordi*. What is in need of elucidation is not the genesis of the C. 1,1–13 in the sixth century as a supplement to the Code, but the decline and rise of the transmission of its text in the Middle Ages. If the *rédacteurs médiévaux*, of whom Waelkens speaks, have been inspired by the *Collectio Tripartita*, it is the same inspiration as that of the humanists, in fact the very same inspiration which has given rise to a western interest in the Byzantine tradition of the text of the *Corpus iuris civilis*, as a source of restitution of lost or defective passages.

It is true that the Justinianic legislation has been translated and excerpted. It is true that in ecclesiastical circles the need of an anthology of secular legislation pertaining to the affairs of the Church has led to special collections. It is further true that a considerable number of imperial constitutions bearing on religious and ecclesiastical matter were in Greek, or were available to the compilers of the Code in Greek. It is finally also true that the most complete extract of this secular legislation is the *Collectio Tripartita*.

Waelkens' problem is an unfortunate accident of the textual tradition of the Code. Fate has decreed that the beginning of the Code, with its frequent use of Greek, should have fared so badly in the West. In Byzantium, however, the fortunes of transmission have been even worse; if after the first generation of manuscripts such as the *codex Veronensis* the Latin text was copied at all in that part of the world, no such manuscript of the Code has been preserved. What we do have, on the other hand, is a multitude of translations, summaries and commentaries, almost none of them preserving the original text of the Code, but collectively providing a majestic tool which helps us to restore that text. Let us not complicate things unnecessarily by explaining the defective beginning of the Code in our oldest manuscripts by an unsubstantiated hypothesis. Ockham's razor forces us to abandon such a theory and to accept the simple explanation that the beginning of the Code was at the present C. 1,1,1, and that it was the first constitution of the first of 13 titles. No better proof than the *Collectio Tripartita*.