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Rubrics, testimonies and indices Arguing pro and contra C. 1,13 as constituent part of the text of the Basilica

Th.E. van Bochove*

Summary

The present article focuses on the location of title 13 of the first book of the Justinian Code in the text of the Basilica. This location is not undisputed as Basilica title rubrics and textual testimonies such as the Basilica manuscripts do not concur, or even seem to contradict each other flatly. However, two *indices titulorum* of the Basilica – one of which saw its *edition princeps* only very recently – provide strong evidence that the compilers of the text of the Basilica adopted the Greek version of C. 1,13 into the text of B. 48,14.

Keywords

Index titulorum, title rubrics, testimonies, Basilica, Justinian Code

1. – Reading the critical apparatus pertaining to B. 48,14, in combination with the rubrics of B. 48,14 and B. 48,12 resp., prompts a number of questions regarding C. 1,13. Does this title from the Justinian Code actually belong to the text of the Basilica (= BT)? And if so, was it part of BT right from the beginning or was it perhaps added later on? And further, of which title of the Basilica was the Greek version of C. 1,13 a constituent part?

2. – In the Groningen edition of the Basilica, the text of B. 48,14 is composed of Greek versions from C. 7,6, C. 1,13 and C. 7,7, in that order. The title consists of five chapters: the text fragments from C. 7,6 are to be found in chapter 1, the fragments from C. 1,13 in the chapters 2 and 3, and those from C. 7,7 in the chapters 4 and 5¹. The text of B. 48,14 has been

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¹ Cf. BT p. 2240–2242. In the present article, the text of the Basilica (= BT) and the scholia (= BS) are quoted after page and line of the Groningen edition: H.J. Scheltema / N. van der Wal / D. Holwerda, (edd.), *Basilicorum libri LX*, Series A (text, 8 vols.), Series B (scholia, 9 vols.), Groningen – Djakarta – 's-Gravenhage 1953–1988. The text of the Basilica was compiled in the later ninth century.

handed down directly in two manuscripts, viz. the codd. Paris. gr. 1349 (*siglum* Pc) and Paris. gr. 1357 (*siglum* Pd)².

In their critical apparatus pertaining to chapter 4, Scheltema and Van der Wal observed the following:

c. 4 numero caret in Pd; in Pc cc. 2 et 3 numeris carent et c. 4 numero 2 notatur; unde suspicari possumus cc. 2 et 3, cum nec ulla scholia habeant, huc non pertinere; cf. et rubricam et Tip. s.l.; contra tamen suadent numerus huius capituli (4) in Syn. et Pira nec non ea quae supra ad l. 3 ex ICb dedimus³.

As appears from this comment, the counting of chapters of B. 48,14 is not beyond dispute: chapter 4 lacks a number in Pd, whereas Pc – having omitted numbers referring to the chapters 2 and 3 – provides chapter 4 with number 2. This state of affairs caused Scheltema and Van der Wal to suspect that the chapters numbered as 2 and 3 may not belong to B. 48,14, the more so because these chapters lack scholia. In corroboration of their conjecture, Scheltema and Van der Wal alluded to the rubric of B. 48,14 and to the Tipoukeitos. But in their comment, they also adduced three other testimonies – viz. the Synopsis Basilicorum Major, the Peira and the Index Coislinianus – which argue against their suggestion.

If the conjecture of the editors of BT is correct, then C. 1,13 has to be disregarded as a source of the text of B. 48,14, because the chapters numbered as 2 and 3 contain precisely the text fragments originating from C. 1,13.

3. – Basilica title rubrics are, generally speaking, nothing more than combinations of rubrics from the legislation of Justinian⁴. Any given Basilica title normally consists of fragments from one or more titles from the Digest, of constitutions from one or more titles from the Code, and of (parts from) one or more Novels: all these text units deal with one and the same subject matter. The rubric of the Basilica title in question consists of a combination of Greek versions of the Latin rubrics of those Digest- and Codex titles, and of the

² Cod. Paris. gr. 1349 (= Pc) dates from the eleventh century; cf. L. Burgmann / M.Th. Fögen / A. Schminck / D. Simon, *Repertorium der Handschriften des byzantinischen Rechts*, Teil I: Die Handschriften des weltlichen Rechts (Nr. 1 – 327), [Forschungen zur byzantinischen Rechtsgeschichte, 20], Frankfurt / M. 1995 (= RHBR, I), No. 162. Pc hands down *inter alia* B. 45 – B. 48 accompanied by scholia (pos. 2), the Rhopai (pos. 4) and the Index Reginae (pos. 7). Cod. Paris. gr. 1357 (= Pd) was written in the sixteenth century by John Mauromates; cf. RHBR, I, No. 171. Pd transmits *inter alia* the text of B. 46 – B. 52 (pos. 6). Pc and Pd are the *sigla* used by the editors of BT in order to designate the Parisinus 1349 and the Parisinus 1357 resp.; cf. H.J. Scheltema / N. van der Wal, [edd.], *Basilicorum libri LX*, Series A, Volumen VI: Textus librorum XLIII–LII, Groningen – 's-Gravenhage 1969, p. V–VI and XIII.

³ BT p. 2240 app. ad l. 12 c. 4. For the names and the abbreviations of the sources in this quotation, cf. e.g. Scheltema / Van der Wal, *Basilicorum libri LX*, A VI (*supra*, n. 2), p. IX–X.

⁴ On this issue in general, cf. Th.E. van Bochove, 'Επιγραφή, *Zur Entstehung der Titelrubriken der Basiliken*, Subseciva Groningana, VI (1999), p. 59–75.

original Greek rubric(s) of that (those) Novel(s). It goes without saying that all this is rather schematic: there are Basilica titles that exclusively consist of text units from one particular Digest- or Codex title, or of (parts from) one Novel, and so forth. This state of affairs has, of course, also consequences for the rubrics of those Basilica titles. But a Basilica rubric essentially constitutes a brief outline of the contents of the title to which it belongs.

In view of the above, one might expect the rubric of B. 48,14 to contain a Greek version of the Latin rubric of C. 1,13, if this Codex title should indeed happen to be constituent part of the text of the Basilica title. B. 48,14*rubr.* does not come up to these expectations. The rubric of C. 1,13 reads: *De his qui in ecclesiis manumittuntur*⁵. The rubric of B. 48,14 reads in its entirety: *Περὶ τοῦ πάντα τὸν καθ' οἴονοῦν τρόπον ἐλευθερούμενον Ῥωμαῖον νοεῖσθαι καὶ περὶ ἐλευθερίας κοινῶν δούλων καὶ περὶ τιμῆς δούλων*⁶. Evidently, this rubric does not contain a phrase that corresponds to the above Latin rubric of C. 1,13. Thus, B. 48,14*rubr.* seems indeed to corroborate the above conjecture of the editors of BT, thereby disqualifying C. 1,13 as a source of the text of B. 48,14. Do we have to conclude, then, that C. 1,13 must be completely disregarded as a source of the text of the Basilica?

Contrary to the rubric of B. 48,14, the rubric of B. 48,12 does contain a Greek version of the Latin rubric of C. 1,13⁷. The rubric of B. 48,12 reads: *Περὶ συμπαγνίας ἀπελεγχόμενης καὶ περὶ τῶν ἐν ἐκκλησίᾳ ἐλευθερούντων*⁸. It is clear that the phrase *περὶ τῶν ἐν ἐκκλησίᾳ ἐλευθερούντων* is a translation of the Latin words *de his qui in ecclesiis manumittuntur*, even though the Greek rendering is somewhat flawed⁹. Are we to conclude, then, that C. 1,13 does belong to the text of the Basilica after all, and that a Greek version of this title from the Justinian Code is a constituent part of the text of B. 48,12? Or do we have to assume that the compilers of the Basilica originally intended to adopt C. 1,13 into this Basilica title? There is clearly ample reason to investigate the issue concerning C. 1,13 in more detail.

⁵ C. 1,13*rubr.* Transl.: 'those who are manumitted in churches'.

⁶ B. 48,14*rubr.* (BT p. 2240/3–4). Transl.: 'everyone manumitted in whatever manner shall be considered Roman (citizen), manumission of slaves held in joint ownership, and the price of slaves'.

⁷ The editors of BT were, of course, well aware of this; cf. BT p. 2234 app. ad l. 4 ἐλευθερούντων: '(...); ceterum nota titulum C 1, 13 (de his qui in ecclesiis manumittuntur) non hic, sed in titulo B 48, 14 exstare, ubi tamen in rubrica nulla eius mentio fit'.

⁸ B. 48,12*rubr.* (BT p. 2234/3–4). Transl.: 'exposure of collusion and those who manumit in church'.

⁹ The text of the Basilica reads ἐλευθερούντων – transmitted by both Pc and Pd; cf. again BT p. 2234 app. ad l. 4 ἐλευθερούντων –: genitive plural of the present tense participle, active voice, whereas one would rather expect the passive voice ἐλευθερουμένων as the correct rendering of *manumittuntur*. The reading ἐλευθερούντων may well be the result of scribal error.

4. – The present paragraph will focus on the internal structure – viz. the ensemble of title number, rubric, constituent parts of the text accompanied by source references, and, finally, the counting of chapters – of B. 48,14 and B. 48,12 resp. in both Pc and Pd¹⁰, in order to find out what information the manuscripts themselves may yield in the issue concerning C. 1,13.

4.1. – With regard to the internal structure of B. 48,14 in Pc¹¹, it is exactly as the editors of BT observed in their critical apparatus. The rubric of this Basilica title lacks a Greek version of C. 1,13*rubr.* Pc also omits a source reference and numbers referring to the chapters 2 and 3 (but adds the note *σημείωσαι* in their stead); and the chapters 4 and 5 are numbered as 2 and 3 resp. Even though Pc does transmit the text of Greek versions of C. 1,13,1 and 2 within the framework of B. 48,14, the omission of a source reference and chapter numbers referring to these text units, the subsequent adaptation in the counting of the following chapters, and the omission of a Greek version of C. 1,13*rubr.* from the rubric of B. 48,14 seem to indicate that C. 1,13 ought indeed to be disregarded as a constituent part of this Basilica title.

4.2. – With regard to the internal structure of B. 48,12 in Pc¹², it can be observed that the phrase *περὶ τῶν ἐν ἐκκλησίᾳ ἐλευθερούντων* in the rubric seems to indicate that C. 1,13 might actually belong to this Basilica title. However, the main frame of B. 48,12 in Pc offers nothing to go by in this respect: all text fragments of B. 48,12 originate from D. 40,16, which is confirmed by Pc's only source reference pertaining to B. 48,12. As Pc hands down only one chapter number, the counting of chapters is useless as a provider of information.

4.3. – Regarding the internal structure of B. 48,14 in Pd¹³, the following can be observed. It is true that the rubric omits a Greek version of the rubric of C. 1,13. However, Pd does hand down Greek versions of C. 1,13,1 and 2, provides them with chapter numbers, and, finally, adds the relevant source reference. Despite the fact that a Greek version of its rubric is missing, C. 1,13 clearly functions as a constituent part of the text of B. 48,14: the source reference and the counting of chapters in Pd testify to that¹⁴.

4.4. – Concerning the internal structure of B. 48,12 in Pd¹⁵, it is to be remarked that the phrase *περὶ τῶν ἐν ἐκκλησίᾳ ἐλευθερούντων* in the rubric

¹⁰ I have consulted Pc and Pd on microfilm. The microfilms are kept in the Department of Legal History of Groningen University.

¹¹ For the details of the internal structure of B. 48,14 in Pc, cf. *infra*, Appendix I.

¹² The details are given in Appendix II.

¹³ For the details, cf. *infra*, Appendix III.

¹⁴ The editors of BT set less store by the Basilica text (including its chapters) in Pd than by that in Pc; on this, cf. Scheltema / Van der Wal, *Basilicorum libri LX*, A VI (*supra*, n. 2), p. VI: 'Qui textus (viz. the text of B. 46 – B. 52 in Pd), ut apparebit, si librorum XLVI – XLVIII textum cum codice Pc contuleris, satis sordet; etiam capitum numeri hic illic nulla ratione adscripti esse videntur'.

¹⁵ The details are given in Appendix IV.

again seems to indicate that C. 1,13 might actually belong to B. 48,12. But the main frame of this Basilica title in Pd offers no further lead for this. Again, all text fragments derive from D. 40,16: the only source reference pertaining to B. 48,12 corroborates this. The counting of chapters in Pd might seem to argue in favour of the possibility of C. 1,13 being part of B. 48,12, but the occurrence of an extra (sixth) chapter in Pd must be regarded as an error.

5. – In their critical apparatus pertaining to B. 48,14, the editors of BT also alluded to the absence of scholia referring to the chapters 2 and 3 (= C. 1,13,1 and 2). The present paragraph will focus on the way in which the scholia belonging to B. 48,14 and B. 48,12 resp. have been transmitted, in order to find out if this sheds any light on the issue regarding C. 1,13. Scholia pertaining to B. 48,14 and B. 48,12 are exclusively handed down by Pc: for the present paragraph, Pd does not count, as this manuscript only transmits Basilica text¹⁶.

5.1. – Regarding the scholia belonging to B. 48,14¹⁷, it is again exactly as the editors of BT observed in their critical apparatus. All scholia pertain to the chapters 1, 4 and 5 (= C. 7,6,1, C. 7,7,1 and C. 7,7,2 resp.), and none to the chapters 2 and 3 (= C. 1,13,1 and 2). Theoretically, it would seem possible that the scribe who copied B. 48,14 with its scholia from his exemplar into Pc got confused by the length of the ensemble of scholia pertaining to chapter 1. Sch. Pc 2 ad B. 48,14,1 begins on fol. 180r, right margin l. 3, takes up the remainder of the right margin and the entire lower margin, and then continues to nearly the end of fol. 181v, covering all space of the folios concerned: the fol. 180v – 181v are void of main text and exclusively contain the text of the scholion, written right across the full width of the leaves. The final part of fol. 181v and the first half of fol. 182r hand down the sch. Pc 2a – 2e ad B. 48,14,1, again across the full width of the leaves; the second half of fol. 182r is left blank. The length of the above ensemble of scholia may have confused the scribe of Pc to such an extent that he unwittingly forgot to copy scholia pertaining to the chapters 2 and 3. However, confusion would have been more likely as a cause for omitting scholia if the scribe of Pc had continued copying B. 48,14 with its scholia on fol. 182r, immediately following the above set of scholia. As it is, he recommenced on a new leaf, viz. fol. 182v.

The omission of scholia pertaining to the chapters 2 and 3 is indeed striking. However, it is not the mere absence of scholia that is important. There are more Basilica chapters in Pc that go without scholia: in B. 48,8, for instance, the chapters 14 up to and including 27 lack scholia altogether¹⁸. But all these

¹⁶ Cf. Scheltema / Van der Wal, *Basilicorum libri LX*, A VI (*supra*, n. 2), p. V–VI.

¹⁷ The scholia are listed in Appendix V. In what follows, the abbreviation sch. stands for scholion.

¹⁸ Cf. BT p. 2221–2223.

chapters are accompanied by their respective chapter numbers¹⁹. The presence or absence of scholia belonging to a chapter is not decisive in establishing whether or not that chapter ought to be disregarded as a constituent part of a Basilica title. In B. 48,14, it is the combined absence of both chapter numbers and scholia pertaining to the chapters 2 and 3, followed by the adaptation in the counting of the next chapters, that matters, giving reason to disregard C. 1,13 as constituent part of this Basilica title²⁰.

5.2. – The scholia pertaining to B. 48,12²¹ shed no light whatsoever on the issue whether or not C. 1,13 may have been part of this Basilica title: all scholia belong to the chapters 1, 3, 4 and 5, viz. to text fragments derived from D. 40,16. The way in which these scholia have been written offers no lead, either: the final scholion pertaining to B. 48,12 occurs in the upper margin of fol. 176v, immediately followed by the first scholion referring to B. 48,13 (BS p. 2956/6-9).

6. – The present paragraph will deal with the rubrics of B. 48,14 and B. 48,12 in more detail.

6.1. – In § 3 above, it has been argued that a Basilica rubric constitutes a brief outline of the contents of the title to which it belongs. With regard to the rubric of B. 48,14, this seems to hold true, as this rubric contains Greek versions of the Latin rubrics of C. 7,6 and C. 7,7 resp. The rubric of C. 7,6 reads: *De Latina libertate tollenda et per certos modos in civitatem Romanam transfusa*²². This Latin rubric has a – seemingly watered down – Greek rendering in the phrase *περὶ τοῦ πάντα τὸν καθ' οἰονοῦν τρόπον ἐλευθερούμενον Ῥωμαίων νοεῖσθαι* from the rubric of B. 48,14. The rubric of C. 7,7 reads: *De servo communi manumisso*²³. This Latin rubric clearly underlies the phrase *περὶ ἐλευθερίας κοινῶν δούλων* from B. 48,14*rubr.* As we have seen, the latter rubric lacks a Greek version of the rubric of C. 1,13. But does this omission indeed disqualify C. 1,13 as a source of the text of B. 48,14?

A Basilica title may contain provisions from various titles from the Digest and the Code²⁴. But it is not a prerequisite for the rubric of that Basilica title to contain Greek versions of the rubrics of all those titles from the Digest and the Code. One example may suffice to illustrate this. B. 45,1 contains texts from successively D. 38,6; D. 38,12; C. 6,62; D. 38,13; D. 38,16;

¹⁹ Cf. Pc, fol. 162v – 166r.

²⁰ The editors of BT seem to have reasoned along the same lines; cf. again BT p. 2240 app. ad l. 12 c. 4: '(...); in Pc cc. 2 et 3 numeris carent et c. 4 numero 2 notatur; unde suspicari possumus cc. 2 et 3, cum nec ulla scholia habeant, huc non pertinere; (...)'

²¹ Cf. the list of these scholia in Appendix VI.

²² C. 7,6*rubr.* Transl.: 'abrogation of Latin freedom and its conversion into Roman citizenship which takes place in certain ways'.

²³ C. 7,7*rubr.* Transl.: 'manumission of a slave owned in common'.

²⁴ What is said here with reference to the Digest and the Code applies *mutatis mutandis* to the Novels as well.

D. 38,17; C. 6,56; C. 6,57; C. 6,58; C. 6,59; and, finally, again from C. 6,62²⁵. The rubric of B. 45,1 reads: Περὶ τῆς ἐξ ἀδιαθέτου κληρονομίας τῶν συγγενῶν²⁶. The rubric of e.g. C. 6,62 reads: *De hereditatibus decurionum naviculariorum cohortalium militum et fabricensium*²⁷. The rubric of B. 45,1 contains no trace whatsoever of a Greek version of this Latin rubric. Nevertheless, the Basilica title does contain provisions from C. 6,62. Seen against this background, it would seem possible for C. 1,13 to be constituent part of the text of B. 48,14, even though the rubric of this Basilica title omits a Greek version of the rubric of C. 1,13.

Basilica rubrics may provide the contents of the titles to which they belong with a description that is not entirely accurate. For instance, a rubric may contain a phrase hardly reflecting the actual contents of the title. *Vice versa*, the text of a title may contain provisions that are not referred to in the rubric of that title. Again, one example may suffice. The rubric of B. 48,13 reads: Περὶ τῶν ἐν πίστει καταλιμπανομένων ἐλευθεριῶν καὶ τιμῆς δούλων²⁸. In their critical apparatus, the editors of BT – while referring to the final part of this rubric – observed that the price of slaves is dealt with more extensively in the following title, viz. B. 48,14²⁹. In case of B. 48,13, then, appearances are apparently deceptive: the phrase καὶ τιμῆς δούλων in the rubric suggests that the title contains provisions concerning the price of slaves, whereas in actual fact the text of the title hardly mentions it³⁰. In case of B. 48,14, one could argue the other way round: again, the text of the title may contain provisions concerning the manumission of slaves in churches (C. 1,13), while the rubric of the title lacks an allusion to those provisions.

A Basilica rubric may, of course, tally perfectly with the contents of its title by providing Greek versions of the Latin rubrics of all the Digest- and Codex titles that have been incorporated into that Basilica title. In this case, however, it is quite possible that a Greek version deviates from its Latin original by the addition of a phrase. This may lead to emphasis on a particular item of the contents of the title. We have already seen that the rubric of B. 48,14 contains

²⁵ Cf. BT p. 2071–2088.

²⁶ B. 45,1*rubr.* (BT p. 2071/4). Transl.: ‘the intestate succession of the cognate relatives’. In the Groningen edition of the Basilica, this rubric is preceded by an angle bracket. In the editorial system of BT, this type of bracket is used to denote words that are absent from the manuscripts; cf. e.g. Scheltema / Van der Wal, *Basilicorum libri LX*, A VI (*supra*, n. 2), p. XII. As Pc does transmit the rubric of B. 45,1 (on fol. 7r), the addition of the angle bracket in BT must evidently be a printing error.

²⁷ C. 6,62*rubr.* Transl.: ‘the estates of decurions, shipowners, subordinate officials, soldiers and armourers’.

²⁸ B. 48,13*rubr.* (BT p. 2236/3–4). Transl.: ‘manumissions through *fideicommissa* (informal requests), and the price of slaves’.

²⁹ Cf. BT p. 2236 app. ad l. 4 καὶ τιμῆς δούλων: ‘(...) (ceterum fusius in titulo insequenti de pretio servorum agitur)’.

³⁰ Only one explicit reference occurs, viz. in the first chapter of the title; cf. BT p. 2236/8.

a Greek version of the Latin rubric of C. 7,7. After the words *περὶ ἐλευθερίας κοινῶν δούλων*, the Basilica rubric adds the phrase *καὶ περὶ τιμῆς δούλων*. The latter phrase has no counterpart in the rubric of C. 7,7, but its addition to the Basilica rubric can easily be explained and is in the context of B. 48,14 quite to the point. C. 7,7,1,5 contains detailed provisions concerning the price of slaves. In the form of a Greek translation, C. 7,7,1,5 has been adopted into the Basilica as B. 48,14,4,5³¹. For some unknown reason, the compiler of the rubric of B. 48,14 wished to draw special attention to the provisions concerning the price of slaves. He did so by adding the phrase *καὶ περὶ τιμῆς δούλων* to his rubric, thus slightly shifting its focus.

It is, of course, also possible that a Greek version of a rubric constitutes only a partial, or seemingly imperfect translation of its Latin original. This seems to be the case with regard to the representation of the rubric of C. 7,6 in B. 48,14*rubr.*: the phrase *περὶ τοῦ πάντα τὸν καθ' οἴονοῦν τρόπον ἐλευθερούμενον Ῥωμαῖον νοεῖσθαι* seems to be a watered down rendering of the Latin rubric *De Latina libertate tollenda et per certos modos in civitatem Romanam transfusa*, e.g. in view of the fact that the Greek phrase contains no trace whatsoever of a reference to the abolition of the *Latina libertas*. On close examination, however, the Greek version of the rubric of C. 7,6 appears to show great resemblance to the text of the first chapter of B. 48,14. This text reads: *Οἱ ὁπωσδήποτε νομίμως ἐλευθερούμενοι Ῥωμαῖοι νοοῦνται*³². Even though the phrase *οἱ ὁπωσδήποτε νομίμως ἐλευθερούμενοι* has been rendered freely by *πάντα τὸν καθ' οἴονοῦν τρόπον ἐλευθερούμενον*, it is evident that the Greek version of C. 7,6*rubr.* in the rubric of B. 48,14 is ultimately based on the text of the first chapter of the Basilica title, or rather on Theodore Scholastikos's extremely short Greek version of C. 7,6,1³³.

The above remarks show that Basilica title rubrics present somewhat complicated subject matter to deal with: they do not always provide accurate descriptions of the contents of the titles to which they belong. In the particular case of B. 48,14, this means that it would seem possible for C. 1,13 to be constituent part of the text of this Basilica title, whereas the rubric of B. 48,14 does not contain a Greek version of C. 1,13*rubr.* The omission of a Greek version of the latter rubric from B. 48,14*rubr.* does not automatically disqualify C. 1,13 as a source of the text of B. 48,14. But is the rubric of C. 1,13 truly

³¹ BT p. 2241/12–19.

³² B. 48,14,1 = C. 7,6,1 (BT p. 2240/5–6). Transl.: 'those manumitted legally in whatever way are considered to be Roman citizens'.

³³ Cf. BT p. 2240 app. ad l. 5 c. 1: 'Nota textum huius capituli non e Thalelao, sed e Theodoro haustum esse (cf. sch. 1)'. The text of B. 48,14,1 is in fact a verbal quotation of the first sentence of that scholion; cf. BS p. 2964/6 (sch. Pc 1 ad B. 48,14,1 = C. 7,6,1): Θεοδώρου. Οἱ ὁπωσδήποτε νομίμως ἐλευθερούμενοι Ῥωμαῖοι νοοῦνται. (...). On Theodore Scholastikos, cf. e.g. Th.E. van Bochove, *ΔΙΑΙΠΕΣΙΣ, ICB 2 and the incorporation of Justinian's Novels into the text of the Basilica*, Subseciva Groningana, VII (2001), p. 45–89 (63–64, with further references in n. 86).

missing from B. 48,14*rubr.*? The Basilica rubric may refer to C. 1,13 implicitly. Title 13 of the first book of the Justinian Code deals with manumission of slaves in churches. The first part of the rubric of B. 48,14 states that ‘everyone manumitted in whatever manner shall be considered Roman citizen’: πάντα τὸν καθ’ οἰονοῦν τρόπον ἐλευθερούμενον Ῥωμαῖον νοεῖσθαι. Might not the phrase καθ’ οἰονοῦν τρόπον ἐλευθερούμενον from B. 48,14*rubr.* include manumission of slaves in churches? Might not this phrase implicitly refer to the rubric of C. 1,13: *De his qui in ecclesiis manumittuntur*³⁴?

6.2. – *Mutatis mutandis*, the above remarks apply to the rubric of B. 48,12 as well. The text of this Basilica title exclusively consists of fragments ultimately derived from D. 40,16³⁵. The rubric of this title from the Digest reads: *De collusionione detegenda*³⁶. This Latin rubric clearly underlies the first half of the rubric of B. 48,12: περὶ συμπαιγνίας ἀπελεγχομένης. As we have already seen, the second half of this rubric – viz. the phrase περὶ τῶν ἐν ἐκκλησίᾳ ἐλευθερούντων – constitutes a Greek version of the Latin rubric of C. 1,13. The rubric of B. 48,12 is the only indication that C. 1,13 might be part of this Basilica title: the remainder of the internal structure of B. 48,12 in both Pc and Pd offers no further lead in this respect. In spite of this, we cannot exclude the possibility that the constitutions dealing with the manumission of slaves in churches (C. 1,13,1 and 2) have been incorporated into the wrong Basilica title³⁷, i.e. into B. 48,14, instead of into B. 48,12, as the rubric of the latter Basilica title would have had it.

7. – In their critical apparatus pertaining to B. 48,14, Scheltema and Van der Wal also referred to a number of testimonies. One of these is the Tipoukeitos (= Tip.). The Τιπούκειτος ‘What is to be found where’ is an elaborate table of contents of the complete text of the Basilica, which preserves their original order. It was written towards the end of the eleventh century; its author may have been a judge called Patzes³⁸.

7.1. – The résumé of the contents of B. 48,14 in the Tipoukeitos reads:

Τί(τλος) ἰδ΄. Περὶ τοῦ πάντα τὸν καθ’ οἰονοῦν τρόπον ἐλευθερούμενον Ῥωμαῖον νοεῖσθαι, καὶ περὶ ἐλευθερίας κοινῶν δούλων, καὶ περὶ τιμῆς δούλων.

³⁴ Suggestion of Prof. B.H. Stolte.

³⁵ Cf. again BT p. 2234 – 2235.

³⁶ D. 40,16*rubr.* Transl.: ‘discovery of collusion’.

³⁷ Suggestion of Prof. B.H. Stolte.

³⁸ On the Tipoukeitos in general, cf. e.g. L. Burgmann, *Oxford Dictionary of Byzantium*, s.v. Tipoukeitos; P.E. Pieler, *Byzantinische Rechtsliteratur*, in: H. Hunger, *Die hochsprachliche profane Literatur der Byzantiner*, II, [Handbuch der Altertumswissenschaft, XII,5,2], München 1978, p. 341–480 (462); 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. 102–103 and 135; N. van der Wal, *Probleme bei der Restitution verlorengegangener Basilikenbücher*, Subseciva Groningana, III (1989), p. 143–154 (146–147).

Καὶ περὶ κοινοῦ δούλου καὶ τῆς ἐλευθερίας αὐτοῦ, καὶ τοῦ πεκουλ(ίου). καὶ περὶ τοῦ ἐὰν ὁ δοῦλος λογοθεσίσις ὑπόκειται, διὰ πόσου καιροῦ ὀφείλει ὀρίζειν ὁ ἄρχων. καὶ περὶ τοῦ τιμήματος τοῦ δούλου, τοῦ ἀτεχνουῦς, τοῦ τέχνην ἐπισταμένου ἱατροῦ, νοταρίου, εὐνούχου. Καὶ περὶ πολλῶν κοινὸν ἐχόντων δούλων, καὶ τοῦ ἐνὸς τὸ λάχος αὐτοῦ ληγατεύσαντος, τί γίνεται³⁹.

The above passage begins with the title number and the rubric of B. 48,14. What follows is an allusion to the contents of B. 48,14,4,1-3: a slave owned in common, his release and the *peculium*. Next occurs a reference to the contents of B. 48,14,4,4: a *servus communis* charged with the keeping of accounts. After that comes an allusion to the provision laid down in B. 48,14,4,5: the price of slaves. The final sentence of the passage is a somewhat inaccurate introductory phrase into the subject matter of B. 48,14,5⁴⁰: the words τί γίνεται provide a clear illustration of the fact that the Tipoukeitos can not be used independently, but only as an aid to and together with the text of the Basilica themselves⁴¹.

Evidently, the above passage does not refer to the manumission of slaves in churches. Thus, the Tipoukeitos would seem to justify the conclusion that C. 1,13 does not belong to B. 48,14. On close examination, however, the Tipoukeitos does not refer to manumission resulting in Roman citizenship either: apart from the rubric – which the compiler of the Tipoukeitos adopted directly from the Basilica –, the passage quoted above does not allude to the contents of the first chapter of B. 48,14. The main text of Tip. 48,14 covers only the contents of B. 48,14,4 and 5, which are ultimately derived from C. 7,7: the first three chapters, originating from C. 7,6 and C. 1,13, are missing⁴². B. 48,14,1 is undoubtedly a constituent part of the text of this Basilica title: it has been transmitted by Pc and Pd, and both manuscripts mark it as κεφάλαιον α΄ ‘chapter 1’. The omission of a reference to the contents of this

³⁹ Tip. 48,14 (edd. St. Hoermann nata de Stepski-Doliwa / E. Seidl, *M. Κριτοῦ τοῦ Πατζῆ Τηπούκειτος, Librorum LX Basilicorum summarium, Libros XXXIX–XLVIII*, [Studi e Testi, 179], Città del Vaticano 1955, p. 280/1–8). Transl.: ‘title 14. Everyone manumitted in whatever manner shall be considered Roman (citizen), manumission of slaves held in joint ownership, and the price of slaves. And a slave held in joined ownership, and his manumission, and the *peculium*; and, when a slave is charged with the keeping of accounts, in the course of how much time the magistrate must decide; and the price of the slave, of one who has no profession and of one who knows the profession of physician, secretary, eunuch (!). And when many own a slave in common, and one has bequeathed his share, what happens then’.

⁴⁰ Cf. the first sentence of B. 48,14,5 = C. 7,7,2 (BT p. 2241/24 – p. 2242/1): Δύο ἢ πλείονες ἐπικοινωνοῦν δούλων εἶχον, ἀλλὰ εἷς ἐξ αὐτῶν αὐτῷ τῷ ἰδίῳ δούλῳ τὸ ἴδιον μέρος, ὅπερ ἐν αὐτῷ εἶχεν, ἐληγάτευσεν ‘two or more persons held a slave in joint ownership, but one of them bequeathed his own share, which he had in the slave, to this slave himself’.

⁴¹ On this final issue, cf. again L. Burgmann, *Oxford Dictionary of Byzantium*, s.v. Tipoukeitos.

⁴² This was already observed by the editors of the text of the Tipoukeitos; cf. Hoermann nata de Stepski-Doliwa / Seidl, *Τηπούκειτος* (*supra*, n. 39), p. 280 app. ad l. 4: ‘c. 1–3 Ed. desiderantur in Tip’.

chapter in the main text of Tip. 48,14 questions the evidential value of the Tipoukeitos as a testimony arguing in favour of the conclusion that C. 1,13 does not belong to B. 48,14, the more so, because the state of affairs regarding B. 48,14 is by no means an exception: the Tipoukeitos abounds in the omission of references to chapters which are indeed constituent parts of the text of Basilica titles⁴³.

7.2. – The résumé of the contents of B. 48,12 in the Tipoukeitos reads:

Τί(τλος) ιβ'. Περὶ συμπαιγνίας ἀπελεγχομένης καὶ περὶ τῶν ἐν ἐκκλησίᾳ ἐλευθερούντων.

Καὶ περὶ τοῦ εἰ συμπαιζοντος δεσπότητος ἐλεύθερος ὁ δοῦλος κριθῆ. καὶ πῶς δοῦλος γίνεται τοῦ διελέγξαντος τὴν συμπαιγνίαν. Καὶ διὰ πόσου καιροῦ ὀφείλει ἐλέγχειν, καὶ πότε ὁ καιρὸς ὑπερεκτείνεται. καὶ περὶ τοῦ ἐξ ἀπελευθέρου εἰς εὐγένειαν ἀναβοῶντος. Καὶ περὶ τοῦ ἀπειπόντος περὶ τῆς εὐγενείας, πότε ἔρρωτ(αι) ἢ μὴ ἢ ψῆφος. Καὶ ὅτι πρὸς ἅπαξ ἀναψηλαφᾶται ἢ περὶ τῆς συμπαιγνίας ψῆφος. καὶ περὶ τοῦ πολλῶν θελόντων ἐλέγξει τὴν συμπαιγνίαν, τίς προτιμᾶται. ζῆτ(ει) περὶ τούτου τοῦ παρόντος βιβ. τιτ. κγ' κεφ β'⁴⁴.

The above passage begins with the title number and the rubric of B. 48,12: the compiler of the Tipoukeitos adopted these again directly from the Basilica. The main text of Tip. 48,12 contains no trace whatsoever of a reference to the contents of C. 1,13: the résumé – which can only be used together with its counterpart in the Basilica – refers exclusively to collusion, its exposure, and related issues, viz. the contents of the main text of B. 48,12 = D. 40,16⁴⁵. An allusion to the contents of chapter 4 is missing. The passage ends with a reference to B. 48,23,2.

Again, the rubric is the only indication that C. 1,13 might be part of B. 48,12: the main text of Tip. 48,12 offers nothing to go by in this respect.

⁴³ One example may suffice to illustrate this. Cf. B. 48,8 in Tip. 48,8 (Hoermann nata de Stepski-Doliwa / Seidl, *Τιπούκειτος* (*supra*, n. 39), p. 274–277, with the apparatus): the Tipoukeitos lacks references to the chapters 4, 11, 13, 15, 19, and 34, whereas the chapters concerned do belong to the text of B. 48,8. The editors of the Tipoukeitos have marked the references to, or résumés of individual Basilica chapters by adding the relevant chapter number between brackets; they had to base themselves on Heimbach's Basilica edition, of course. What caused the compiler of the Tipoukeitos to omit certain Basilica chapters can only be surmised, though it is possible that he simply skipped extremely short ones.

⁴⁴ Tip. 48,12 (Hoermann nata de Stepski-Doliwa / Seidl, *Τιπούκειτος* (*supra*, n. 39), p. 278/21–30). Transl.: 'title 12. Exposure of collusion and those who manumit in church. And if, in collusion with his master, a slave is judged free; and how he becomes the slave of the person who has exposed the collusion. And in the course of how much time he must expose (it), and when the period of time is overextended; and he who proclaims from freedman to the status of a free-born person. And the opponent (in the trial) concerning the status of a free-born person, when the sentence is or is not valid. And that the sentence (in the trial) concerning collusion is retried once; and when many want to expose collusion, who is preferred; on this, look up title 23 chapter 2 of the present book'.

⁴⁵ Cf. again BT p. 2234 – 2235.

Nevertheless, on the basis of the rubric we again cannot exclude the possibility that the compilers of the *Basilica* originally intended to adopt the constitutions dealing with the manumission of slaves in churches into B. 48,12.

8. – An other source referred to by the editors of BT is the *Synopsis Basilicorum Major* (= SBM). The SBM is an abridged version of the *Basilica*, probably written in the tenth century. It is arranged alphabetically, this arrangement being based on the key words of the headings. Under these key words, the author of the SBM collected the relevant excerpts from the *Basilica* with exact textual quotations. The SBM is usually transmitted with an appendix occurring in two forms⁴⁶. The relevant passage from the SBM reads as follows:

Ἀνάγν. καὶ βιβ. μῆ' τιτ. ιδ' κεφ. δ', ἐν ᾧ φησιν· Ἔστω δὲ τὸ τίμημα τοῦ δούλου, εἴτε ἄρρενος εἴτε θηλείας, εἰ μὲν ἀτεχνῆς ἐστίν, εἴκοσι νομισμάτων, ἐὰν ἐστὶν ὑπὲρ τοὺς δέκα ἐνιαυτούς· εἰ δὲ ἐλάττων ἐστὶ, δέκα νομισμάτων. εἰ δὲ τέχνην ἐπίσταται, χωρὶς νοταρίου καὶ ἱατροῦ, τριάκοντα νομισμάτων. ἐὰν δὲ νοτάριος ἐστὶν ἢ ἱατρός, ὁ μὲν νοτάριος ἕως πενήκοντα νομισμάτων, ὁ δὲ ἱατρός ἕως ἐξήκοντα. ἐὰν δὲ εὐνοῦχοι ᾧσιν οἱ δούλοι μείζονες τῶν δέκα ἐνιαυτῶν χωρὶς τέχνης, νομισμάτων πενήκοντα· ἐὰν δὲ τέχνην ἴσασιν ὁ νομισμάτων· ἐὰν δὲ τῶν δέκα ἐνιαυτῶν ἦττονες ᾧσι, λ' νομισμάτων⁴⁷.

The above passage contains an exact quotation from the *Basilica*, viz. BT p. 2241/12–19, albeit with some minor variant readings⁴⁸. The introductory phrase ἀνάγν. καὶ βιβ. μῆ' τιτ. ιδ' κεφ. δ', ἐν ᾧ φησιν proves short and sweet that the quotation originates from chapter 4 of B. 48,14, and that this *Basilica* title has at least four numbered chapters. In this way, the passage from the SBM indirectly confirms that the Greek versions of C. 1,13,1 and 2 are constituent parts of B. 48,14, and that they are numbered as the chapters 2 and 3 of this title respectively. The SBM sheds no light on B. 48,12⁴⁹.

⁴⁶ Cf. L. Burgmann, *Oxford Dictionary of Byzantium*, s.v. *Synopsis Basilicorum*; on the SBM in general, cf. also Pieler, *Rechtswissenschaft* (*supra*, n. 38), p. 462 with n. 175; N.G. Svoronos, *Recherches sur la tradition juridique à Byzance, La Synopsis major des Basiliques et ses appendices*, [Bibliothèque byzantine, Études, 4], Paris 1964; Van der Wal / Lokin, *Delineatio* (*supra*, n. 38), p. 92–93 and 134.

⁴⁷ SBM Δ 38,33 (ed. K.E. Zachariä von Lingenthal, in: J. Zepos / P. Zepos, *Jus Graecoromanum*, V: *Synopsis Basilicorum*, Athens 1931 (repr. Aalen 1962), p. 235). Transl.: 'read also book 48, title 14, chapter 4, in which it is said: The price of the slave, whether male or female, if he has no profession, shall be 20 solidi, when he is above the age of 10 years; when he is younger, 10 solidi; if he knows a profession with the exception of that of secretary and of physician, 30 solidi; when the slave is secretary or physician, the secretary (will cost) up to 50 solidi, the physician up to 60; when the slaves, being older than 10 years without having a profession, are eunuchs, (they will cost) 50 solidi; when they know a profession, 70 solidi; when they are younger than 10 years, 30 solidi'.

⁴⁸ For these variant readings, cf. BT p. 2241 app. ad ll. 12–19.

⁴⁹ Cf. BT p. 2234 apparatus testimoniorum.

9. – The Peira is the next source alluded to by the editors of BT. The Peira is a collection of excerpts from the statements of verdicts and treatises of Eustathios Rhomaios. It was composed in the mid-eleventh century by an unknown colleague of his. The work is divided into 75 titles⁵⁰. The relevant passage from the Peira reads:

Καὶ βιβ. μὴ τίτ. ιδ' κεφ. δ'· “Ἔστω ἡ τιμὴ τοῦ δούλου, εἴτε ἄρρην εἴτε θηλυῖα, εἰ μὲν ἄτεχνός ἐστιν, κ' νομίσματα, ἐὰν ὑπὲρ τοὺς ἰ' ἐνιαυτούς· εἰ δὲ ἐλάττων ἐστί, ἰ' νομίσματα. εἰ δὲ τέχνην ἐπίσταται, χωρὶς νοταρίου καὶ ἱατροῦ, ἕως λ' νομίσματα. ἐὰν δὲ νοτάριος ἐστὶν ἢ ἱατρός, ὁ μὲν νοτάριος ἕως ν' νομισμάτων, ὁ δὲ ἱατρός ἕως ξ'. ἐὰν δὲ εὐνοῦχοι ὦσιν οἱ δοῦλοι μείζονες τῶν ἰ' ἐνιαυτῶν χωρὶς τέχνης, νομίσματα ν'· ἐὰν δὲ τέχνην ἴσασι, νομίσματα ο'. ἐὰν δὲ τῶν ἰ' ἐνιαυτῶν ἤττονές εἰσι, λ'”⁵¹.

What has been said in the previous paragraph with regard to the passage from the SBM applies to the above passage from the Peira as well: it quotes BT p. 2241/12–19. The phrase καὶ βιβ. μὴ τίτ. ιδ' κεφ. δ' again proves that this quotation originates from chapter 4 of B. 48,14, and that this Basilica title has at least four numbered chapters. Thus, the Peira, too, indirectly confirms that the Greek versions of C. 1,13,1 and 2 do belong to B. 48,14, and that they are numbered as its chapters 2 and 3 respectively. Like the SBM, the Peira sheds no light on B. 48,12⁵².

10. – The final source referred to by Scheltema and Van der Wal is the Index Coislinianus, also designated with the *siglum* ICb. The manuscript handing down this index titulorum covering all 60 books of the Basilica – cod. Coisl. gr. 151 – dates from the first half of the fourteenth century, but the core of ICb itself goes back to the later ninth century and predates Novel 78 of emperor Leo VI the Wise⁵³.

⁵⁰ Cf. D. Simon, *Oxford Dictionary of Byzantium*, s.v. Peira; cf. further e.g. N. Oikonomides, *The 'Peira' of Eustathios Rhomaios, An abortive attempt to innovate in Byzantine law*, Fontes Minores, VII (1986), p. 169–192 (repr. in: N. Oikonomides, *Byzantium from the ninth century to the Fourth Crusade, Studies, texts, monuments*, [Variorum, Collected Studies, 369], [Aldershot] – Brookfield (USA) 1992, No. XII); Pieler, *Rechtswissenschaft (supra, n. 38)*, p. 469; Van der Wal / Lokin, *Delineatio (supra, n. 38)*, p. 101 and 135; L. Burgmann, *Peira 51, Übersetzung und Kommentar*, in: Κατευόδοι. In memoriam Nikos Oikonomides, hrsg. von Sp. Troianos, [Forschungen zur byzantinischen Rechtsgeschichte, Athener Reihe, 15], Athen 2008, p. 5–26.

⁵¹ Peira 28,21 (ed. K.E. Zachariä von Lingenthal, in: J. Zepos / P. Zepos, *Jus Graecoromanum*, IV: Practica ex actis Eustathii Romani – Epitome legum, Athens 1931 (repr. Aalen 1962), p. 124–125). For the translation of this passage, cf. *supra*, n. 47. The SBM and the Peira quote exactly the same passage from the Basilica, albeit with some minor variant readings; cf. again BT p. 2241 app. ad ll. 12–19.

⁵² Cf. again BT p. 2234 apparatus testimoniorum.

⁵³ On the Index Coislinianus (= ICb) in general, cf. Th.E. van Bochove, *Index titulorum*, II: *IPc, the partial index of the Basilica in cod. Paris. gr. 1349*, Subseciva Groningana, VIII (2009),

10.1. – The passage in ICb pertaining to B. 48,14 reads:

τιτ. ιδ' περι τῶν ἐν ταῖς ἐκκλησίαις ἀπολυομένων· βιβ. α' τοῦ Κωδ. τιτ. ιγ' κεφ. α'· βιβ. ζ' τοῦ Κωδ. τιτ. ς' κεφ. α' περι κληρικῶν· βιβ. ζ' τοῦ Κωδ. τιτ. ζ' κεφ. α'· περι ἐλευθερίας κοινῶν δούλων καὶ τιμῆς· τιτ. ιδ' περι τοῦ πάντα τὸν καθ' οἰονοῦν τρόπον ἐλευθερούμενον Ῥωμαῖον νοεῖσθαι καὶ περι ἐλευθερίας κοινῶν δούλων καὶ περι τιμῆς δούλων⁵⁴.

The first phrase in the above passage – τιτ. ιδ' – occurs in the margin of the manuscript: it has been erased, but is still clearly legible. The passage continues with a set of source references denoting the three building blocks of the text of the Basilica title: C. 1,13, C. 7,6 and C. 7,7, in that order. The references are accompanied by rubrics. The rubric accompanying C. 7,6 – περι κληρικῶν – is rather mystifying, as this title from the Code only deals with the abolition of the *Latina libertas* and its transformation into Roman citizenship: clerics do not occur in C. 7,6. The rubric accompanying C. 7,7 is followed by a second occurrence of the note τιτ. ιδ', again written in the margin of the manuscript, and by the rubric of B. 48,14, which is identical to its counterpart in BT.

In the above passage from ICb, the phrase περι τῶν ἐν ταῖς ἐκκλησίαις ἀπολυομένων· βιβ. α' τοῦ Κωδ. τιτ. ιγ' κεφ. α' proves that text units from C. 1,13 are indeed constituent parts of B. 48,14, despite a variation in the accompanying title rubric (ἀπολυομένων in stead of ἐλευθερουμένων). Thus, ICb argues against the conclusion that C. 1,13 should be disregarded as a source of the text of B. 48,14.

10.2. – The passage in ICb pertaining to B. 48,12 reads:

τιτ. ιβ' περι συμπαιγνίας ἐλεγχομένης καὶ περι τῶν ἐν ἐκκλησίᾳ ἐλευθερουμένων· βιβ. μ' τῶν Διγ. τιτ. ις' κεφ. α'⁵⁵.

p. 35–104 (46 with further references in the notes 62–65). On the date of ICb, cf. Van Bochove, *Index titulorum*, II, p. 50–51 with the notes 87 and 88. On cod. Coisl. gr. 151, cf. RHBR, I (*supra*, n. 2), no. 202. In the present article, ICb will be quoted after book and title of the Basilica, preceded by the *siglum* ICb and followed by a reference to the relevant page and line with accompanying critical apparatus of BT. For convenience's sake, these references will be accompanied by the exact location of the quotation concerned in the Coislinianus 151 (the *siglum* Cb, followed by folio and line number).

⁵⁴ ICb B. 48,14 (BT p. 2240 app. ad l. 3 περι; Cb fol. 11r l. 32 – fol. 11v l. 2). Transl.: 'title 14. Those released in churches, book 1 of the Code, title 13, chapter 1; book 7 of the Code, title 6, chapter 1: clerics; book 7 of the Code, title 7, chapter 1: manumission of slaves held in joint ownership and (their) price. Title 14: everyone manumitted in whatever manner shall be considered a Roman citizen, manumission of slaves held in joint ownership, and the price of slaves'.

⁵⁵ ICb B. 48,12 (BT p. 2234 app. ad l. 3 ἀπελεγχομένης, and ad l. 4 ἐλευθερούντων; Cb fol. 11r ll. 28–30). Transl.: 'title 12. Exposure of collusion and those who are manumitted in church: book 40 of the Digest, title 16, chapter 1'.

In the above passage, the phrase τῆς β' has been written in the margin of the manuscript. What follows is the rubric of B. 48,12 with two variant readings (ἐλεγχομένης in stead of ἀπελεγχομένης, and ἐλευθερουμένων in stead of ἐλευθερούντων)⁵⁶, accompanied by a source reference denoting the origin of the text of the Basilica title. On the basis of the rubric, we again cannot exclude the possibility that the compilers of the Basilica originally intended to adopt C. 1,13 into B. 48,12, in spite of the fact that the only source reference accompanying the rubric unequivocally mentions D. 40,16.

11. – Up to now, the riddles concerning C. 1,13 have persisted. Some sources confirm that C. 1,13 is indeed a constituent part of the text of B. 48,14. Two sources do so directly, viz. Pd – via its counting of chapters of B. 48,14 and an explicit source reference – and ICb B. 48,14 – via an explicit source reference with accompanying rubric –; the SBM and the Peira do so indirectly, both by handing down an exact quotation from B. 48,14,4, accompanied by a phrase denoting the origin of the quotation⁵⁷. Other sources doubt whether C. 1,13 truly belongs to B. 48,14. Pc does so by omitting scholia, a source reference and chapter numbers pertaining to B. 48,14,2 and 3 (= C. 1,13,1 and 2), by adding the note σημείωσαι in their stead, and by adapting the counting of the following chapters. Tip. 48,14 casts its doubt by omitting references to the contents of B. 48,14,2 and 3, though the evidential value of this omission is questionable. And the rubric of B. 48,14 does so by omitting a Greek version of the Latin rubric of C. 1,13 – even though the Basilica rubric may refer to this Latin rubric implicitly –: B. 48,14*rubr.* occurs in Pc, Pd, Tip. 48,14, and ICb B. 48,14⁵⁸. Finally, the compilers of the Basilica may have had the intention to adopt C. 1,13 into B. 48,12, as the rubric of this Basilica title does contain a Greek version of C. 1,13*rubr.*: the rubric of B. 48,12 occurs in Pc, Pd, Tip. 48,12 and ICb B. 48,12⁵⁹.

In the issue concerning C. 1,13 in relation to the Basilica, the sources present, yet again, an ungodly jumble⁶⁰. Do we have to conclude, then, that the riddles with regard to C. 1,13 will remain unsolved? Fortunately, that need not be the case.

⁵⁶ On the variants ἐλευθερουμένων and ἐλευθερούντων, cf. also *supra*, n. 9.

⁵⁷ Pd: § 4.3 with Appendix III; ICb B. 48,14: § 10.1; the SBM: § 8; the Peira: § 9.

⁵⁸ Pc: § 4.1 with Appendix I, and § 5.1 with Appendix V; Tip. 48,14: § 7.1; B. 48,14*rubr.*: § 6.1; this rubric in Pc: Appendix I; in Pd: Appendix III; in Tip. 48,14: § 7.1; and in ICb B. 48,14: § 10.1. The occurrence of B. 48,14*rubr.* in the Tip. and in ICb has limited value as these sources seem to have copied this rubric straight from the Basilica.

⁵⁹ B. 48,12*rubr.*: § 6.2; this rubric in Pc: Appendix II; in Pd: Appendix IV; in Tip. 48,12: § 7.2; in ICb B. 48,12: § 10.2. Again, the evidential value of the occurrence of the rubric of B. 48,12 in the Tip. and in ICb is limited: both sources seem to have copied this rubric directly from the Basilica themselves.

⁶⁰ Cf. W. Ashburner [ed.], *Νόμος Ῥοδίων Ναυτικός, The Rhodian Sea-Law*, Oxford 1909 (repr. Aalen 1976), p. CCXX.

12. – Pc itself contains new evidence that sheds light on the problems concerning C. 1,13. Apart from B. 45 – B. 48 *cum scholiis*, the manuscript also transmits IPc, viz. the partial index titulorum of the Basilica covering the books 45 up to and including 50⁶¹. In the prolegomena to IPc, it has been observed that this index is not a bare listing of Basilica titles with accompanying rubrics. On the contrary, the index provides detailed information regarding the contents of the individual Basilica titles by means of source references to Justinian's legislation. By using the phrase κεφάλαιον accompanied by a number, the index also indicates Basilica chapters. All this makes IPc an excellent tool to decide whether or not C. 1,13 is to be looked upon as a constituent part of the Basilica text.

12.1. – The passage in IPc relating to B. 48,14 reads:

Τίτλος ιδ'. Κεφάλαιον α'· περὶ τοῦ πάντα τὸν καθ' οἰονοῦν τρόπον ἐλευθερούμενον Ῥωμαῖον εἶναι· βιβ. ζ' τοῦ Κωδ. τιτ. ζ'. Κεφάλαιον β'· περὶ ἐλευθερουμένων ἐν ἐκκλησίᾳ δούλων· βιβ. α' τοῦ Κωδ. τιτ. ιγ'. Κεφάλαιον δ'· περὶ ἐλευθερίας κοινῶν δούλων· βιβ. ζ' τοῦ Κωδ. τιτ. ζ'⁶².

The above passage provides a full description of B. 48,14, as it both mentions the building blocks of the text of this Basilica title – indicated by rubrics and source references –, and denotes the chapters in which the individual text units begin. IPc has the fragments from C. 7,6 begin in B. 48,14,1, those from C. 1,13 in B. 48,14,2, and those from C. 7,7 in B. 48,14,4. The uninterrupted rising sequence in the counting of κεφάλαια proves that we are dealing with Basilica chapters. It is true that regarding the counting of chapters the Basilica manuscripts are not always accurate⁶³. The more extensive a Basilica title and the more Corpus iuris text fragments accompanied by Basilica chapter indications it contains, the greater the possible margin for error and deviation. *Mutatis mutandis*, the same applies to Basilica κεφάλαια in the indices titulorum, including IPc⁶⁴. However, the underlying principle

⁶¹ On IPc, cf. the prolegomena to the critical edition of this index in Van Bochove, *Index titulorum*, II (*supra*, n. 53), p. 35–57. In what follows, IPc will be quoted after the lines of new edition.

⁶² IPc ll. 170–177 (ed. Van Bochove, *Index titulorum*, II (*supra*, n. 53), p. 80). Transl.: 'title 14. Chapter 1: Everyone manumitted in whatever manner shall be a Roman citizen; book 7 of the Code, title 6. Chapter 2: Slaves manumitted in Church; book 1 of the Code, title 13. Chapter 4: Manumission of slaves held in joint ownership; book 7 of the Code, title 7'.

⁶³ This is, of course, especially evident when the text of a Basilica title has been handed down by more than one manuscript: one arbitrary glance at the apparatus criticus of BT will show that the manuscripts may come up with countings of chapters that deviate from one another considerably; cf. e.g. BT p. 2164 app. ad l. 18 (B. 48,2,17–24; B. 48,2 is transmitted by Pc and Pd). Cf. also the counting of chapters of B. 48,12 in Pc and Pd: § 4.2 with Appendix II and § 4.4 with Appendix IV.

⁶⁴ With regard to B. 45,1, e.g., IPc hands down no less than eleven Basilica chapter indications, viz. κεφ. α', κεφ. ι', κεφ. ιβ', κεφ. ιγ', κεφ. ιδ', κεφ. κς', κεφ. λβ', κεφ. λς', κεφ. μ', κεφ.

of the counting of Basilica chapters is evident: with each κεφάλαιον indication, IPc marks the beginning of a new series of text fragments originating from one and the same title from the Digest or the Code, or from one of Justinian's Novels. IPc omits references to individual Digest fragments or Codex constitutions. However, the number of fragments from one Digest title or constitutions from one Codex title that has been incorporated into a Basilica title can be deduced indirectly from the succession of Basilica chapters: basically, every individual Digest fragment or Codex constitution occupies one Basilica chapter. With regard to its text, B. 48,14 is reasonably small and has a convenient arrangement. This means, that the counting of chapters of this title in IPc may be considered reliable.

In the above passage, then, IPc refers to C. 7,7 by means of the phrase κεφάλαιον δ' · περι ἔλευθερίας κοινῶν δούλων · βιβ. ζ' τοῦ Κωδ. τιτ. ζ'. With this phrase, the index proves that B. 48,14 has at least four numbered chapters, and that the text units from C. 7,7 commence in B. 48,14,4. C. 1,13 is referred to with the phrase κεφάλαιον β' · περι ἔλευθερουμένων ἐν ἐκκλησίᾳ δούλων · βιβ. α' τοῦ Κωδ. τιτ. ιγ'. With this phrase, IPc proves that C. 1,13 is indeed a constituent part of B. 48,14, and that, because the text units from C. 7,7 commence in κεφάλαιον δ', the two constitutions from C. 1,13 occupy two regularly numbered chapters in B. 48,14, viz. κεφάλαιον β' and κεφάλαιον γ'.

12.2. – The passage in IPc relating to B. 48,12 reads:

Τίτλος ιβ'. Κεφάλαιον α' · ὅτε κατὰ συμπαιγνίαν τοῦ δεσπότου ἐλεύθερος ὁ δοῦλος κριθῆ καὶ τοῦτο ὑποδειχθῆ · βιβ. μ' τῶν Διγ. τιτ. ις'⁶⁵.

This passage alludes to D. 40,16. IPc refers to this title from the Digest by means of an explicit source reference and a rubric. This rubric seems to be based – at least partly – on the text of the first chapter of the Basilica title, rather than on the Latin rubric of D. 40,16⁶⁶. The passage mentions only one Basilica chapter, viz. κεφάλαιον α'. Thus, IPc indicates that B. 48,12 consists of text fragments originating from one title – and one title only – from the

μς', and κεφ. ν*'; cf. IPc ll. 1–29 (ed. Van Bochove, *Index titulorum*, II (*supra*, n. 53), p. 60–62). In κεφ. ν*', the * indicates a letter which can no longer be read. Differences between IPc and BT concerning the counting of chapters of B. 45,1 occur from κεφ. κς' onwards: κεφ. κς' = c. 27 (BT p. 2078/12), κεφ. λβ' = c. 36 (BT p. 2083/1), κεφ. λς' = c. 40 (BT p. 2084/16), κεφ. μ' = c. 44 (BT p. 2086/4), κεφ. μς' = c. 49 (BT p. 2087/1), and κεφ. ν*' = c. 56 (BT p. 2087/21).

⁶⁵ IPc ll. 163–166 (ed. Van Bochove, *Index titulorum*, II (*supra*, n. 53), p. 80). Transl.: 'title 12. Chapter 1: When a slave is judged free in collusion with his master, and this is discovered; book 40 of the Digest, title 16'.

⁶⁶ Cf. B. 48,12,1 = D. 40,16,1 (BT p. 2234/5–6): 'Ἐὰν συμπάϊζοντος δεσπότου ἐλεύθερος ὁ δοῦλος κριθῆ (...); D. 40,16*rubr.*: *De collusione detegenda*.

legislation of Justinian: D. 40,16. The above passage contains no trace whatsoever of a reference to C. 1,13.

13. – The partial index titulorum of the Basilica in cod. Paris. gr. 1349 presents direct evidence that C. 1,13 does indeed belong to the text of the Basilica. IPc clearly states that C. 1,13 is a constituent part of B. 48,14 rather than of B. 48,12. But what is the value of this new evidence? What does IPc contribute to the solution of the problem concerning the exact location of C. 1,13 in the text of the Basilica? For, the confusion with regard to this location, as appearing from the rubrics of B. 48,12 and B. 48,14, and the counting of chapters in the latter Basilica title, still persists. Is it possible to uncover the origin of the above confusion? In order to answer this question, it is necessary to assess the evidential value of IPc in relation to the other sources dealt with in the present article.

The most important sources regarding B. 48,12 and B. 48,14 are, of course, the codd. Paris. gr. 1349 and Paris. gr. 1357 – dating from the eleventh- and the sixteenth centuries resp.⁶⁷ –, as these two manuscripts transmit the text of the Basilica titles in question directly. The Tipoukeitos, the Synopsis Basilicorum Major and the Peira – dating from the end of the eleventh-, the tenth-, and the mid-eleventh centuries, resp.⁶⁸ – depend on the Basilica text. As such, they carry less weight than Pc and Pd: the Tip., the SBM and the Peira can only be regarded as indirect testimonies of BT. More important than the three sources just mentioned is the Index Coislinianus: the core of ICB goes back to the later ninth century⁶⁹. The ultimate original of ICB was written in the same period as the text of the Basilica, and could in fact be a remnant of the supposed index titulorum which as an editorial plan may have underlain the genesis of the text of the Basilica. According to the proposition originally formulated by Scheltema, and in his wake by Van der Wal and Lokin⁷⁰, the compilers of the Basilica first drew up a detailed table of contents indicating which titles from the Digest and the Code and which Novels were to make up the new Basilica titles. The text of the Greek versions of the Justinian legislation was adopted into this newly formed framework of Basilica titles slightly later: scribes detached the Greek versions from their original context and copied them into the Basilica titles on the basis of the list drawn up earlier. If the ninth century ultimate original of ICB can indeed be considered as a remnant of this editorial plan – which would seem likely –, then the

⁶⁷ Cf. *supra*, n. 2.

⁶⁸ Cf. again *supra*, § 7, § 8 and § 9.

⁶⁹ Cf. *supra*, § 10 with n. 53.

⁷⁰ Cf. H.J. Scheltema, *Über die Natur der Basiliken*, *Tijdschrift voor Rechtsgeschiedenis*, 23 (1955), p. 287–310 (297) (repr. in: H.J. Scheltema, *Opera minora ad iuris historiam pertinentia*, ed. N. van der Wal, J.H.A. Lokin, B.H. Stolte et R. Meijering, Groningen 2004, p. 290–306 (297)); N. van der Wal, *Les commentaires grecs du Code de Justinien*, 's-Gravenhage 1953, p. 25–26; Van der Wal / Lokin, *Delineatio* (*supra*, n. 38), p. 83.

evidential value of ICb is greater than that of the Tip., the SBM and the Peira, as ICb does not depend on BT. In the case of ICb, it is rather the other way round. ICb is nevertheless to be used with caution, if only for the fact that the index as it has come down to us in Cb is an amalgam consisting of Corpus iuris source references with accompanying rubrics, and of Basilica title rubrics⁷¹.

Regarding IPc, the following can be observed. There are marked differences between this index titulorum and the text of the Basilica as handed down by Pc⁷². The differences demonstrate that, as a source, IPc does not depend on the text of the Basilica. Thus, IPc is of the same calibre as the Index Coislinianus. IPc, too, goes back to the later ninth century, partly on the basis of its close connection with ICb⁷³. Like the latter index titulorum, IPc may very well be a remnant of the above mentioned editorial plan. But contrary to ICb, caution is less necessary while using IPc. The reason for this is the fact that IPc has retained its original character far better than the Index Coislinianus: IPc is a pure listing of Corpus iuris source references with accompanying rubrics, unspoiled by Basilica title rubrics⁷⁴. As a source with an evidential value not depending on the text of the Basilica, IPc is more reliable than ICb.

All in all, IPc may play an important part in uncovering the origin of the confusion with regard to the exact location of C. 1,13 in the text of the Basilica, if we accept the assumption that IPc – or, rather, its ultimate exemplar – is indeed a remnant of the editorial plan underlying the genesis of BT. It goes without saying that what follows must be regarded as reconstruction.

14.1. – With regard to B. 48,14, the above implies that the compilers of the editorial plan of the Basilica first selected the Corpus iuris titles that were to make up the text of this Basilica title: C. 7,6, C. 1,13 and C. 7,7. The reasoning behind this selection and behind the order of these Corpus iuris titles in B. 48,14 cannot be reconstructed, but it is possible to catch a glimmer of the working method of the compilers. C. 7,6 consists of only one constitution. The compilers resolved that a Greek version of this constitution was to be the first chapter of B. 48,14. In its turn, C. 1,13 contains two constitutions. The compilers decided that Greek versions of these two constitutions should be numbered as the chapters 2 and 3 of B. 48,14. Finally, C. 7,7 consists of,

⁷¹ See, e.g., the first nine books of the Basilica in ICb; cf. Th.E. van Bochove, *Index Titulorum: Merely Table of Contents or Αρχή συν Θεῶν Βασιλικῶν?*, Subseciva Groningana, VI (1999), p. 1–58 (13–14). What is said there about ICb 2 applies to ICb as well, *mutatis mutandis* of course.

⁷² Cf. Van Bochove, *Index titulorum*, II (*supra*, n. 53), p. 38–42. To the differences mentioned in the latter article can be added the counting of chapters in B. 48,14: IPc marks C. 1,13 as κεφάλαιον β' and C. 7,7 as κεφάλαιον δ', whereas Pc omits chapter numbers referring to the constitutions from C. 1,13, and marks C. 7,7 as κεφάλαιον β'.

⁷³ Cf. Van Bochove, *Index titulorum*, II (*supra*, n. 53), p. 46–51.

⁷⁴ On the general features of IPc, cf. Van Bochove, *Index titulorum*, II (*supra*, n. 53), p. 36–38.

again, two constitutions. The compilers determined that Greek versions of these constitutions should form the chapters 4 and 5.

In their editorial list – the ultimate exemplar of IPC –, the compilers laid down their selection by means of Basilica chapter numbers indicating the beginning of the respective text units, and Greek versions of the relevant Corpus iuris rubrics accompanied by source references. With regard to the constitution from C. 7,6, they came up with the phrase κεφάλαιον ἀ· περι τοῦ πάντα τὸν καθ' οἰονοῦν τρόπον ἐλευθερούμενον Ῥωμαίων εἶναι· βιβ. ζ' τοῦ Κωδ. τιτ. ζ'. The rubric in this passage is not a verbatim translation of the Latin rubric of C. 7,6: *De Latina libertate tollenda et per certos modos in civitatem Romanam transfusa*. It is rather based on Theodore Scholastikos's extremely short Greek version of C. 7,6,1, οἱ ὅπωςδῆποτε νομίμως ἐλευθερούμενοι Ῥωμαῖοι νοοῦνται⁷⁵. For some unknown reason – though it may have been a deliberate one –, the compilers changed the phrase οἱ ὅπωςδῆποτε νομίμως ἐλευθερούμενοι from Theodore's version into πάντα τὸν καθ' οἰονοῦν τρόπον ἐλευθερούμενον, a change that may ultimately have played a key role in the issue concerning C. 1,13. The choice of the compilers to use Theodore's version may have been motivated by considerations as regards contents. While consulting their copy of the Code, the compilers probably read Thalelaios's extensive explanatory remarks on C. 7,6,1: these remarks include a nearly complete κατὰ πόδας translation of Justinian's constitution⁷⁶. Having read the remarks, the compilers may have reached the conclusion that Thalelaios's dealings with Justinian's ruling concerning the abolition of the *Latina libertas* were too elaborate for their purposes, or that this ruling was too outdated or complicated to be adopted in full. Considerations like these may underlie their decision to select Theodore's version for the text of B. 48,14⁷⁷. In their editorial list, the compilers made their decision known

⁷⁵ Cf. *supra*, § 6.1 with the notes 32 and 33.

⁷⁶ Thalelaios's remarks can be found in BS p. 2964/12 – p. 2970/9 (sch. Pc 2 – 2e ad B. 48,14,1 = C. 7,6,1). The κατὰ πόδας translation occurs in BS p. 2965/9 – p. 2969/14. The phrase κατὰ πόδας is a technical term denoting a translation from either Greek to Latin, or Latin to Greek. With regard to the Code, it concerns a Greek translation originally written between the lines of a Latin constitution. Each word of the Greek translation corresponded to the Latin original that was written right below that word. On the κατὰ πόδας of the Code in general, cf. e.g. N. van der Wal, *La relation entre le 'κατὰ πόδας' et le commentaire du Code Justinien de Thalélée*, *Revue historique de droit français et étranger*, 30 (1952), p. 546–552; Van der Wal, *Les commentaires grecs* (*supra*, n. 70), p. 49–63; D. Holwerda, *Le Code de Justinien et sa traduction grecque, La mise en page du texte du Code et de sa traduction κατὰ πόδας*, *Classica et Mediaevalia*, 23 (1962), p. 274–292 (repr. in: *Exempla Philologica*, Vier Aufsätze von D. Holwerda, hrsg. von J.H.A. Lokin, S.L. Radt und B.H. Stolte, Groningen 2000, p. 1–15); H.J. Scheltema, *L'enseignement de droit des antécédents*, [Byzantina neerlandica, Series B: Studia, I], Leiden 1970, p. 32–40 (repr. in: H.J. Scheltema, *Opera minora* (*supra*, n. 70), p. 58–110 (81–87)).

⁷⁷ The Codex part of the text of Basilica titles normally consists of Thalelaios's Greek version (also called index) of the original Latin constitutions; on this, cf. e.g. N. van der Wal, *Der*

by providing the source reference to C. 7,6 with a rubric based on Theodore's version of C. 7,6,1. This version may have been accessible to them in the form of a scholion in the margin of their copy of the Code. It is equally possible, though, that the compilers had a complete Codex version of Theodore at their disposal.

With regard to the two constitutions from C. 1,13, the compilers came up with the phrase κεφάλαιον β' · περι ἑλευθερουμένων ἐν ἐκκλησίᾳ δούλων · βιβ. α' τοῦ Κωδ. τιτ. γ'. The rubric in this passage is an accurate translation of the original Latin rubric of C. 1,13: *De his qui in ecclesiis manumittuntur*.

Finally, with regard to the two constitutions from C. 7,7, the compilers wrote down the phrase κεφάλαιον δ' · περι ἑλευθερίας κοινῶν δούλων · βιβ. ζ' τοῦ Κωδ. τιτ. ζ'. The rubric in this passage is an accurate rendering of the Latin rubric of C. 7,7: *De servo communi manumisso*. It would appear that the compilers of the editorial plan had at least some basic knowledge of Latin and that they had access to a copy of the Code containing title rubrics in Latin. This may have been a copy completely in Latin, but it is more likely that they used a copy of Thalelaios's Greek version of the Code, with only the rubrics in Latin⁷⁸. In both copies, the main text may have been accompanied by marginal scholia in Greek.

On the basis of the framework of the previously established editorial list, the text of the Greek versions of C. 7,6, C. 1,13 and C. 7,7 was incorporated into B. 48,14. Acting on the instructions of the compilers of the editorial plan, a scribe copied these Greek versions directly from their original context into the new Basilica title: in all probability, he used the same copy of the Justinian Code as the compilers had done. From the editorial list, he added the relevant chapter numbers and source references to the new Basilica text units. This reconstruction accounts for the form of B. 48,14 as it finally ended up in Pd, viz. plain Basilica text provided with chapter numbers and accompanied by source references, but without scholia⁷⁹.

Basilikentext und die griechischen Kommentare des sechsten Jahrhunderts, in: Synteleia Vincenzo Arangio-Ruiz, ed. A. Guarino e L. Labruna, [Biblioteca di Labeo, 2], Napoli 1964, p. 1158–1165 (1158); Pieler, *Rechtsliteratur* (*supra*, n. 38), p. 453 n. 84; Van der Wal / Lokin, *Delineatio* (*supra*, n. 38), p. 82. It is, of course, possible that in the particular case of C. 7,6,1, Thalelaios's index had somehow been lost and that the compilers of the editorial index titulorum of the Basilica had no other option than using the version of Theodore Scholastikos. If, however, Thalelaios's index of C. 7,6,1 was indeed unavailable, then the preservation of the antecessor's explanatory remarks pertaining to this constitution is quite remarkable. A final possibility is that in the case of C. 7,6,1, Thalelaios did not produce an index, but merely restricted himself to explanatory notes, in which he did incorporate a κατὰ πόδας translation.

⁷⁸ Generally speaking, the Latin title rubrics of the Corpus iuris remained untranslated in the sixth century legal literature. However, there are some exceptions, such as the rubrics in the Codex part of the Collectio tripartita, and the antecessor Anatolios, who is known to have translated Latin rubrics into Greek in his Summa of the Code; for all this, cf. Van Bochove, *Titelrubriken der Basiliken* (*supra*, n. 4), p. 68–71 with further references; cf. also Van Bochove, *Index titulorum* (*supra*, n. 71), p. 7–8.

⁷⁹ Cf. *supra*, § 4.3 with Appendix III, and § 5.

As the scribe could confine himself to simply copying the Greek versions of C. 7,6, C. 1,13 and C. 7,7 directly from their original context, the only creative thing he had to do was composing the title rubric of B. 48,14. And so he did. In order to create this rubric, he again consulted the editorial list. From this list, he simply copied the rubrics of C. 7,6 – *περὶ τοῦ πάντα τὸν καθ' οἰονοῦν τρόπον ἐλευθερούμενον Ῥωμαίων εἶναι* – and of C. 7,7 – *περὶ ἐλευθερίας κοινῶν δούλων* –, and combined them. The scribe did not add the rubric of C. 1,13, in spite of the fact that, acting on the instructions of the list, he did copy the Greek versions of C. 1,13,1 and 2 and numbered them as the chapters 2 and 3 of the text of B. 48,14. He may have omitted the rubric of C. 1,13, because he was under the impression that the phrase *καθ' οἰονοῦν τρόπον ἐλευθερούμενον* from the rubric of C. 7,6 already contained an implicit reference to the rubric of C. 1,13⁸⁰: the scribe may simply have deemed it unnecessary to add the latter rubric. In this way, the change made by the compilers of the editorial list in Theodore's version of C. 7,6,1 – *πάντα τὸν καθ' οἰονοῦν τρόπον ἐλευθερούμενον* instead of *οἱ ὁπωσδήποτε νομίμως ἐλευθερούμενοι* – may indeed have played a crucial role in the issue concerning C. 1,13. The above reconstruction accounts for the genesis of the title rubric of B. 48,14 as it appears in Pd: *περὶ τοῦ πάντα τὸν καθ' οἰονοῦν τρόπον ἐλευθερούμενον Ῥωμαίων νοεῖσθαι καὶ περὶ ἐλευθερίας κοινῶν δούλων*, i.e. the present day rubric of B. 48,14 without its final extension in Pc, the phrase *καὶ περὶ τιμῆς δούλων*. The latter phrase must have been added to the rubric at a moment which can no longer be specified.

Somewhere in the course of the transmission of the Basilica text, an other scribe may have been fairly confused by the above rubric of B. 48,14 and the text of the title as appearing in his exemplar. Confronted with the omission of the rubric of C. 1,13 from B. 48,14*rubr.*, and noticing that, despite this omission, Greek versions of C. 1,13,1 and 2 did occur in the text of the Basilica title, numbered as its chapters 2 and 3, and accompanied by a source reference, this second scribe may have started to doubt whether the chapters 2 and 3 truly belonged to B. 48,14. This doubt may have inspired him to copy the text of these chapters from his exemplar along with the rest of the text of the title, but to omit the chapter numbers and the source reference, to add the marginal note *σημειῶσαι* in their stead, and, finally, to adjust the counting of the following chapters. This reconstruction accounts for the form of the text of B. 48,14 as it finally ended up in Pc⁸¹.

It is, of course, impossible to determine when exactly all the above may have taken place. However, it would seem possible to make a guess in this respect. We have already seen that Pc lacks scholia pertaining to the chapters 2 and 3 of B. 48,14: it has been held that the combined absence of both

⁸⁰ On this, cf. *supra*, § 6.1 with n. 34.

⁸¹ Cf. *supra*, § 4.1 with Appendix I.

chapter numbers and scholia relating to these text units is striking⁸². Is it too bold to venture the suggestion that in the case of B. 48,14 these chapter numbers and scholia were omitted for the very same reason, and that these omissions were effectuated at the moment when the other scholia were in process of being *added* to the text of the Basilica title? In other words: might not the scribe who omitted the chapter numbers and the source reference pertaining to B. 48,14,2 and 3, and who adjusted the counting of the following chapters, have omitted scholia relating to these chapters 2 and 3 for the very same reason, i.e. because he doubted whether these chapters truly belonged to B. 48,14? And might it not be possible that he did all this while he was in process of *adding* the other scholia to the text of B. 48,14? In view of the fact that Pc transmits almost exclusively old scholia⁸³, it would not seem illogical to suppose that the above adjustments to the counting of chapters in B. 48,14 took place when the old scholia were added to the text of the Basilica. This may have been during the reign of emperor Constantine VII Porphyrogenetos in the tenth century⁸⁴, but this view is not undisputed⁸⁵.

14.2. – Applied to B. 48,12, the above assumption that the ultimate exemplar of IPc is a remnant of the editorial plan underlying the genesis of BT comes down to the following. The compilers of the editorial plan first decided that B. 48,12 would consist of only one Corpus iuris title: D. 40,16. They did not intend to adopt C. 1,13 into this Basilica title.

In their editorial list, the compilers laid down their decision by means of only one Basilica chapter number indicating the beginning of the text units from D. 40,16, and a Greek version of the rubric of this Digest title accompanied by the relevant source reference. Thus, they came up with the phrase κεφάλαιον α' ὅτε κατὰ συμπαίγνιαν τοῦ δεσπότου ἐλεύθερος ὁ δούλος κριθῆ καὶ τοῦτο ὑποδειχθῆ· βιβ. μ' τῶν Διγ. τιτ. ις'. The rubric in this passage is not a verbatim translation of the Latin rubric of D. 40,16: *De collusione detegenda*. It is based – at least partly – on the text of the first chapter of the Basilica title, or rather on the Greek version of the Digest fragment underlying this Basilica chapter, viz. the elder Anonymos's Greek version of D. 40,16,1⁸⁶. It is not clear why the compilers used this version instead of producing a more literal translation of the Latin title rubric, unless it might

⁸² Cf. *supra*, § 5.1 with Appendix V.

⁸³ Cf. e.g. Scheltema / Van der Wal, *Basilicorum libri LX*, A VI (*supra*, n. 2), p. V (with further references).

⁸⁴ Cf. e.g. Pieler, *Rechtswissenschaft* (*supra*, n. 38), p. 447 and 463; Van der Wal / Lokin, *Delineatio* (*supra*, n. 38), p. 90–92.

⁸⁵ On this issue, cf. A. Schminck, *Studien zu mittelbyzantinischen Rechtsbüchern*, [Forschungen zur byzantinischen Rechtsgeschichte, 13], Frankfurt/M. 1986, p. 33–35 and 45–52.

⁸⁶ Cf. *supra*, § 12.2 with n. 66. On the elder Anonymos, cf. e.g. the literature quoted in Th.E. van Bochove, *To date and not to date: On the date and status of Byzantine law books*, Groningen 1996, p. 183 n. 49.

be that they failed to understand the rather technical meaning of the words *De collusione detegenda* straightaway, and had to find out their purport on the basis of the Greek version of D. 40,16,1.

The text of B. 48,12 seems to have originated in very much the same way as that of B. 48,14. On the basis of the previously established editorial list, the text of the Greek version of D. 40,16 was incorporated into B. 48,12. A scribe detached this version from its original context – viz. a copy of the elder Anonymos’s Greek version of the Digest, in all probability the same copy that was used by the compilers –, and wrote it down into the new Basilica title. From his exemplar, the scribe may also have copied the numbers of the individual Digest fragments, thus forming the new chapters of B. 48,12. From the editorial list, he added the source reference to the new Basilica title. Thus originated the form of text of B. 48,12 as it finally ended up in Pc and in Pd⁸⁷. It should be added that the occurrence of a sixth chapter of this title in Pd is to be regarded as a scribal error; it remains unknown why Pc hands down only one chapter number.

Concerning the rubric of B. 48,12 in both Pc and Pd, the following can be observed. The scribe did not simply copy the rubric of D. 40,16 from the editorial list, but came up with a version of his own: *περὶ συμπαιγνίας ἀπελεγχομένης*. This version is a verbatim translation of the original Latin rubric *De collusione detegenda*. At first sight, it would appear that the scribe had a better knowledge of Latin than the compilers of the editorial list who produced the rubric *ὅτε κατὰ συμπαιγνίαν τοῦ δεσπότου ἐλεύθερος ὁ δούλος κριθῆ καὶ τοῦτο ὑποδειχθῆ*, but this is not necessarily true. One could argue that the scribe was capable of producing a literal translation of the Latin rubric only after its purport had been unravelled by the compilers. The addition of a Greek version of the rubric of C. 1,13 – *καὶ περὶ τῶν ἐν ἐκκλησίᾳ ἐλευθερούντων* – to the rubric of B. 48,12 in both Pc and Pd ultimately remains a mystery⁸⁸. It may be the result of scribal error, but we have no way of telling when this error may have occurred. The only thing we can be reasonably certain about is that the compilers of the editorial plan underlying the genesis of the text of the Basilica did *not* intend to make C. 1,13 a constituent part of B. 48,12.

⁸⁷ Cf. *supra*, § 4.2 with Appendix II, and § 4.4 with Appendix IV.

⁸⁸ It should again be noted that the Greek version of C. 1,13*rubr.* also occurs in the Index Coislinianus: regarding B. 48,12, ICb hands down the rubric of B. 48,12 as it appears in Pc and Pd, albeit with two variant readings; cf. *supra*, § 10.2 with the notes 55 and 56. The fact that ICb here transmits a regular Basilica title rubric is yet another indication that this index titulorum is to be used with caution. Or is the occurrence of the Greek version of C. 1,13*rubr.* in B. 48,12 in ICb perhaps to be interpreted as an indication that the confusion concerning the exact location of C. 1,13 in BT originated at a very early date?

Appendices

I

The internal structure of B. 48,14 in cod. Paris. gr. 1349 (Pc)

- fol. 180r, l. 7: the title indication τίτλος ιδ' (BT p. 2240/2).
- ll. 8–12: the rubric *περὶ τοῦ πάντα τὸν καθ' οἰονοῦν τρόπον ἐλευθερούμενον Ῥωμαῖον νοεῖσθαι καὶ περὶ ἐλευθερίας κοινῶν δούλων καὶ περὶ τιμῆς δούλων* (BT p. 2240/3-4). In l. 12, the rubric is followed by the source reference *βιβ. ζ' τοῦ Κωδ. τιτ. ζ' κεφ. α'*⁸⁹.
- ll. 13–14: the text of B. 48,14,1 = C. 7,6,1 (BT p. 2240/5-6). In the left margin at l. 13, Pc has added the number *α'* standing for *κεφάλαιον α'* 'chapter 1'.
- fol. 182v, ll. 1–2: the text of B. 48,14,2 = C. 1,13,1 (BT p. 2240/7-8). The right margin lacks a source reference and a chapter number; in their stead, however, occurs the remark *ση(μείωσα)* 'nota bene'.
- ll. 3–7: the text of B. 48,14,3 = C. 1,13,2 (BT p. 2240/9–11). Here, too, the right margin is void of a chapter number, but again we find the note *ση(μείωσα)*.
- fol. 182v, l. 8 –
fol. 183v, l. 22: the text of B. 48,14,4 = C. 7,7,1 (BT p. 2240/12 – p. 2241/23). In the right margin at l. 8 of the main text of fol. 182v, Pc has added two numbers, viz. *β'* and *α'*, in that order. The number *β'* stands for *κεφάλαιον β'* 'chapter 2', marking the text unit as the second chapter of B. 48,14. The number *α'* is more difficult to explain. It may concern a correction of some sort, e.g. in the sequence of chapters⁹⁰. It is equally possible, though, that the number *α'* refers to C. 7,7,1, the first text unit from C. 7,7 to be adopted into B. 48,14. Immediately below the two numbers follows the source reference *βιβ. ζ' τοῦ Κωδ. τιτ. ζ' κεφ. α'*⁹¹.

⁸⁹ BS p. 2964/4 (sch. Pc 1§ ad B. 48,14*rubr.*). Transl.: 'book 7 of the Code, title 6, chapter 1'. In the system of BS, this scholion is qualified as a scholion pertaining to the rubric of the title, written in small letters between the lines of the main text. In all probability, it is the location of the scholion in Pc – intercalated in the main text of fol. 180r, immediately following the rubric and preceding the text of chapter 1 which begins in the next line – that has contributed to this qualification. However, the scholion is rather to be regarded as a source reference belonging to chapter 1, and denoting the origin of the text of that chapter from C. 7,6,1.

⁹⁰ Suggestion of Prof. B.H. Stolte.

⁹¹ BS p. 2971/18 (sch. Pc 9* ad B. 48,14,4 = C. 7,7,1). Transl.: 'book 7 of the Code, title 7, chapter 1'.

fol. 184r, l. 1 – the text of B. 48,14,5 = C. 7,7,2 (BT p. 2241/24 – p. 2242/19).
 fol. 185r, l. 4: In the left margin at l. 1 of the main text of fol. 184r, Pc has again added two numbers, viz. β' and γ', in that order. The number γ' stands for κεφάλαιον γ', marking the text unit as the third chapter of B. 48,14⁹². The number β' may again be explained as a correction, or as a reference to C. 7,7,2, the second text unit from C. 7,7 to be adopted into B. 48,14. Somewhat further down in the left margin, at l. 4 of the main text of fol. 184r, occurs the reference τὸ κατὰ πόδας⁹³.

II

The internal structure of B. 48,12 in cod. Paris. gr. 1349 (Pc)

- fol. 175v, l. 14: the title indication τίτλος ιβ' (BT p. 2234/2). In the same line, this phrase is followed by the source reference βιβ. μ' τῶν Διγ. τιτ. ιζ' κεφ. α'⁹⁴, referring to the first chapter of the title.
- ll. 15–17: the rubric περὶ συμπαιγνίας ἀπελεγχομένης καὶ περὶ τῶν ἐν ἐκκλησίᾳ ἐλευθερούντων (BT p. 2234/3-4). In l. 17, the rubric is followed by the phrase Γαίῦς, i.e. the name of the lawyer who originally wrote the Digest fragment underlying the text of B. 48,12,1.
- fol. 175v, l. 18 – the text of B. 48,12,1 = D. 40,16,1 (BT p. 2234/5–7). In the
 fol. 176r, l. 3: right margin at l. 18 of the main text of fol. 175v, Pc has added the number α' standing for κεφάλαιον α'.
- fol. 176r, ll. 3–13: the text of B. 48,12,2 = D. 40,16,2 (BT p. 2234/8–13). Pc omits a chapter number referring to this text unit.

⁹² Cf. BT p. 2241 app. ad l. 24 c. 5: 'c. 5 numero 3 notatur in Pc (...)'.
⁹³ BS p. 2972/17 (sch. Pc 7* ad B. 48,14,5 = C. 7,7,2). On the term κατὰ πόδας, cf. *supra*, n. 76. In the present case, the phrase τὸ κατὰ πόδας indicates that in compiling the text of B. 48,14,5, its compilers used the κατὰ πόδας translation of C. 7,7,2 from § 2 onwards, while the preceding clauses seem to have constituted the beginning of Thalelaios's index; on this, cf. BT p. 2242 app. ad l. 1 ὁπότε: 'hinc incipit τὸ κατὰ πόδας (inde a § 2 h.c.), ut indicat sch. 7; quae praecedunt initium indicis Thalelaii effecisse videntur'.

⁹⁴ BS p. 2954/4 (sch. Pc 1§ ad B. 48,12*rubr.*). Transl.: 'book 40 of the Digest, title 16, chapter 1'.

- ll. 13–15: the text of B. 48,12,3 = D. 40,16,3 (BT p. 2234/14–15). Again, the margin is void of a chapter number.
- ll. 16-19: the text of B. 48,12,4 = D. 40,16,4 (BT p. 2234/16-18). Again, a chapter number is missing.
- fol. 176r, l. 20 – fol. 176v, l. 4: the text of B. 48,12,5 = D. 40,16,5 (BT p. 2235/1–4). Again, a chapter number is lacking.

III

The internal structure of B. 48,14 in cod. Paris. gr. 1357 (Pd)

- fol. 181v, ll. 13–15: the title indication τίτλος ιδ', directly followed by the rubric *περὶ τοῦ πάντα τὸν καθ' οἰονοῦν τρόπον ἐλευθερούμενον Ῥωμαίων* (leg. Ῥωμαίων) νοεῖσθαι καὶ περὶ ἐλευθερίας κοινῶν δούλων (BT p. 2240/2-4). In the left margin at l. 14 occurs the source reference βιβ. α' τοῦ Κωδ. τιτ. ιγ'⁹⁵, clearly alluding to chapter 2.
- ll. 16–17: the text of B. 48,14,1 = C. 7,6,1 (BT p. 2240/5–6). In the left margin at l. 16, Pd has added the number α' standing for κεφάλαιον α'.
- ll. 17–18: the text of B. 48,14,2 = C. 1,13,1 (BT p. 2240/7–8). In the left margin at l. 17 occurs the number β' standing for κεφάλαιον β'.
- ll. 19–22: the text of B. 48,14,3 = C. 1,13,2 (BT p. 2240/9–11). In the left margin at l. 19 we find the number γ' standing for κεφάλαιον γ'.
- fol. 181v, l. 22 – fol. 182r, l. 28: the text of B. 48,14,4 = C. 7,7,1 (BT p. 2240/12 – p. 2241/23). The margin at l. 22 of fol. 181v is void of a chapter number. In its stead, however, Pd has added the source reference βιβ. ζ' τοῦ Κωδ. τιτ. ζ'⁹⁶.
- fol. 182r, l. 29 – fol. 182v, l. 30: the text of B. 48,14,5 = C. 7,7,2 (BT p. 2241/24 – p. 2242/19). Again, the margin lacks a chapter number⁹⁷.

⁹⁵ BT p. 2240 app. ad l. 3 *περὶ*. Transl.: 'book 1 of the Code, title 13'.

⁹⁶ The editors of BT did not incorporate this source reference into their critical apparatus.

⁹⁷ The absence of numbers referring to the chapters 4 and 5 has been noted in the apparatus of BT; cf. BT p. 2240 app. ad l. 12 c. 4 and p. 2241 app. ad l. 24 c. 5.

IV

The internal structure of B. 48,12 in cod. Paris. gr. 1357 (Pd)

- fol. 180r, ll. 6–7: the title indication τίτλος ιβ', immediately followed by the rubric *περὶ συμπαιγνίας ἀπελεγχομένης καὶ περὶ τῶν ἐν ἐκκλησίᾳ ἐλευθερούντων* (BT p. 2234/2–4).
- ll. 8–11: the text of B. 48,12,1 = D. 40,16,1 (BT p. 2234/5–7). In the right margin at l. 8, Pd has added the number α' standing for *κεφάλαιον α'*. Following this chapter number we find the source reference βιβ. μ' τῶν Διτ. (leg. Διγ.) τιτ. ιζ' κεφ. α'⁹⁸.
- ll. 11–17: the text of B. 48,12,2 = D. 40,16,2 (BT p. 2234/8–13). In the right margin at l. 11, Pd has added the number β' standing for *κεφάλαιον β'*.
- ll. 18–19: the text of B. 48,12,3 = D. 40,16,3 (BT p. 2234/14–15). In the right margin at l. 18 we find the number γ' standing for *κεφάλαιον γ'*.
- ll. 19–21: the text of B. 48,12,4 = D. 40,16,4 (BT p. 2234/16–18). In the right margin at l. 19 occurs the number δ' standing for *κεφάλαιον δ'*.
- ll. 22–23: the text of B. 48,12,5^{pr.} = D. 40,16,5^{pr.} (BT p. 2235/1–2). In the right margin at l. 22, Pd transmits the number ε' standing for *κεφάλαιον ε'*.
- ll. 23–26: the text of B. 48,12,5,1 = D. 40,16,5,1 (BT p. 2235/2–4). In the right margin at l. 23, Pd (erroneously) provides this paragraph with its own number ζ' standing for *κεφάλαιον ζ'*⁹⁹.

V

The scholia pertaining to B. 48,14 (cod. Paris. gr. 1349) (Pc)

- fol. 180r, l. 12 of the main text, directly following the rubric: sch. Pc 1§ ad B. 48,14*rubr.* (BS p. 2964/4).
- fol. 180r, upper margin l. 3 – right margin l. 3: sch. Pc 1 ad B. 48,14,1 = C. 7,6,1 (BS p. 2964/6–11).

⁹⁸ BT p. 2234 app. ad l. 5 c. 1.

⁹⁹ Cf. BT p. 2235 app. ad l. 2 *πολλῶν*.

- fol. 180r, right margin l. 3 –
fol. 181v, main text l. 38: sch. Pc 2 ad B. 48,14,1 = C. 7,6,1 (BS p. 2964/12 – p. 2969/14).
- fol. 181v, main text l. 38 –
fol. 182r, main text l. 20: sch. Pc 2a – 2e ad B. 48,14,1 = C. 7,6,1 (BS p. 2969/15 – p. 2970/9).
- fol. 182v, upper margin l. 1 –
left margin l. 5: sch. Pc 1 ad B. 48,14,4 = C. 7,7,1 (BS p. 2970/11–20).
- fol. 182v, left margin l. 5 –
lower margin l. 6: sch. Pc 2 ad B. 48,14,4 = C. 7,7,1 (BS p. 2970/21–33).
- fol. 182v, lower margin ll. 6–8: sch. Pc 3 ad B. 48,14,4 = C. 7,7,1 (BS p. 2971/1–3).
- fol. 183r, upper margin ll. 1–2: sch. Pc 4 ad B. 48,14,4 = C. 7,7,1 (BS p. 2971/4–5).
- fol. 183r, upper margin ll. 2–4: sch. Pc 5 ad B. 48,14,4 = C. 7,7,1 (BS p. 2971/6–7).
- fol. 183r, upper margin ll. 4–6: sch. Pc 6 ad B. 48,14,4 = C. 7,7,1 (BS p. 2971/8–10).
- fol. 183v, upper margin ll. 1–3: sch. Pc 7 ad B. 48,14,4 = C. 7,7,1 (BS p. 2971/11–13).
- fol. 183v, upper margin ll. 3–6: sch. Pc 8 ad B. 48,14,4 = C. 7,7,1 (BS p. 2971/14–17).
- fol. 182v, right margin at l. 8
of the main text: sch. Pc 9* ad B. 48,14,4 = C. 7,7,1 (BS p. 2971/18).
- fol. 184r, upper margin l. 1 –
lower margin l. 2: sch. Pc 1 ad B. 48,14,5 = C. 7,7,2 (BS p. 2971/20 – p. 2972/5).
- fol. 184r, lower margin ll. 2–4: sch. Pc 2 ad B. 48,14,5 = C. 7,7,2 (BS p. 2972/6–8).
- fol. 184r, lower margin ll. 4–7: sch. Pc 3 ad B. 48,14,5 = C. 7,7,2 (BS p. 2972/9–11).
- fol. 184r, lower margin ll. 7–8: sch. Pc 4 ad B. 48,14,5 = C. 7,7,2 (BS p. 2972/12–13).
- fol. 184v, upper margin l. 1: sch. Pc 5 ad B. 48,14,5 = C. 7,7,2 (BS p. 2972/14).

fol. 184v, upper margin ll. 2–3: sch. Pc 6 ad B. 48,14,5 = C. 7,7,2 (BS p. 2972/15–16).

fol. 184r, left margin at l. 4 of the main text: sch. Pc 7* ad B. 48,14,5 = C. 7,7,2 (BS p. 2972/17).

VI

The scholia pertaining to B. 48,12 (cod. Paris. gr. 1349) (Pc)

fol. 175v, l. 14 of the main text, immediately following the title indication τίτλος ιβ': sch. Pc 1§ ad B. 48,12*rubr.* (BS p. 2954/4).

fol. 175v, left margin l. 13 – lower margin l. 10: sch. Pc 1 ad B. 48,12,1 = D. 40,16,1 (BS p. 2954/6–22).

fol. 176r, upper margin ll. 1–3: sch. Pc 1 ad B. 48,12,3 = D. 40,16,3 (BS p. 2954/24–26).

fol. 176r, upper margin l. 3 – right margin l. 1: sch. Pc 1 ad B. 48,12,4 = D. 40,16,4 (BS p. 2954/28–31).

fol. 176r, right margin ll. 2–6: sch. Pc 1 ad B. 48,12,5 = D. 40,16,5 (BS p. 2955/1–2).

fol. 176v, upper margin ll. 1–3: sch. Pc 2 ad B. 48,12,5 = D. 40,16,5 (BS p. 2955/4–6).