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Editing the *Basilica* and the Role of Palimpsests. Vind. suppl. gr. 200 and the Transmission of the Early Text

INTRODUCTION

The transmission of the text of the *Basilica*[1] has been precarious, with the result that we possess only three quarters of their sixty books, and those that have been preserved often survive in just one or two manuscripts. Given this state of affairs, any new discovery is welcome. As a brief glance at the history of editing the text will show, progress has often been made through the discovery of palimpsests, and it is fortunate that such discoveries have been made again in recent times in Vienna. It is also very fortunate that the inexorable progress of science, especially in the field of photography, has been such an enormous help in our attempts to read these palimpsests. It is only fitting to thank the experts, and, in the case of the Vind. suppl. gr. 200 (*Diktyon* 71664), especially those of the Technische Universität Wien.[2] Perhaps what follows may encourage them to keep up the good work, for the legal historians have not been idle, either. It is the purpose of this paper to present some provisional results of an exploration of the leaves of this Vienna manuscript.

THE EDITIONS OF THE *BASILICA*

In four centuries, three editions have appeared. For the *editio princeps* (1647), Fabrot used only a handful of manuscripts, all of them in Paris.[3] The second edition by Heimbach (1833–1850) was based on more manuscripts, especially the Coisliniani, now also in the National Library in Paris.[4] For the third edition (1953–1988), Scheltema *cum suis* used a more rigorous editorial method, but another striking difference is the number of palimpsests the editors brought to bear on the constitution of their text.[5] In the thirty years since the publication of the last volume, two further palimpsests have come to light, both in Vienna, on which more below. The collective evidence of these palimpsests, together with the few early manuscripts known to us, has made me think afresh on the early history of the text of what we usually call 'the *Basilica*'.

When Scheltema started preparing a new edition of the *Basilica* he made a fresh collation of all the manuscripts used by Heimbach. Of the sixty books, sixteen had been lost. Fragments had been transmitted in *testimonia*, which were exploited for a partial reconstruction, the *textus restitutus*. Zachariä von Lingenthal

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[1] Edition by Scheltema, Holwerda and Van der Wal, *Basilicorum libri LX*, published 1953–1988. Now also available online: https://referenceworks.brillonline.com/browse/basilica-online, with an unpaginated English preface (2018) in open access on the same site: Stolte, New Praefatio. The latter sets out to make available information dispersed over the Latin prefaces of the 17 volumes of the edition and to present the *modus procedendi* of Scheltema *cum suis*; it does not pretend to replace these prefaces or the other writings to which it repeatedly refers. Its only aim is to provide an easily-accessible overview of the principles on which the edition is based. An identical printed version of this preface has appeared in *Fontes Minores* XIII (2021), whose pagination will be recorded here as well. A more detached consideration of the edition and its predecessors, and some reflections on possible future work, may be found in Stolte, Thirty Years Later.

[2] The new multispectral images were produced and enhanced by Fabian Hollaus (*Centre of Image and Material Analysis in Cultural Heritage* in Vienna—http://hrsm.caa.tuwien.ac.at/, accessed 15.11.2020) as part of the SFHEA-project *Analysis and Conservation of Cultural Heritage—Modern Imaging and Material Analysis Methods for the Visualization, Documentation and Classification of Historical Written Material (Manuscripts)*, financed by the Austrian Federal Ministry of Science, Research and Economy. For additional information on the recovery of this palimpsest, see the contribution by Jana Grusková and Giuseppe De Gregorio in this volume.

[3] Stolte, Thirty Years Later, 168.

[4] Stolte, Thirty Years Later, 175.

[5] Stolte, New Praefatio, section 3.1 (pp. 243–247); see also Stolte, Thirty Years Later, 175–176.

had preceded Scheltema in using one palimpsest, which had come to light in the 19th century, and from which he had edited books XV–XVIII. The manuscript, a codex S. Sepulchri originally from Constantinople, and later in Berlin, was lost during the Second World War and rediscovered only much later in Cracow, where it now carries the shelf-mark 28/266 (*Diktyon* 9101); it had been inaccessible to Scheltema, who nevertheless managed to improve on Zachariä's edition (Π).[6] Unfortunately, no good photographs of this palimpsest are available as yet. In parenthesis, as far as I know this is the only example of a legal text having been erased in order to make place for another legal text.[7] Another palimpsest was discovered at the end of the 19th century, the so-called *Florilegium Ambrosianum*, in the lower layer of part of Ambr. F 106 sup. (*Diktyon* 42771), and was partially edited by Mercati and Ferrini.[8] Strictly speaking it is not a *Basilica* manuscript, but a derivative text, a selection. However, since it covers almost all sixty books it is especially important for the *libri deperditi*, and by reason of its age—10th/11th century—it is in any case a valuable instrument for our knowledge of the shape of the early text. A fresh investigation of this palimpsest by the Groningen editors yielded a number of new readings, which were incorporated into the edition (A). They also made new discoveries in a manuscript of the Vatican Library, Vat. gr. 903 (*Diktyon* 67534), whose lower layers turned out to contain portions of the *Basilica*, not yet known in the 19th century and now used for an edition for the first time. The *scriptio inferior*, dating to the 11th century, contains remains of two different manuscripts, one (Va) with fragments of books 2, 3, and 4, and the other (Vb) of books 11, 13, and 14.[9] The codex Vat. Reg. gr. Pii Secundi 15 (*Diktyon* 66374) has preserved palimpsested leaves from an 11th-century manuscript of the *Basilica* containing books 58–59 (ΠΣ), as already established by Mercati, who however did not live to edit them; we may note that it is *codex unicus* for books 58 and 59.[10] All these witnesses were exploited for the Groningen edition, where they have been described in the prefaces and may be traced through text and critical apparatus.

NEW PALIMPSESTS

If Scheltema had already made extensive use of palimpsests, after the completion of the Groningen edition two further *Basilica* palimpsests were discovered in Vienna in the project Rinascimento virtuale at the beginning of this century.[11] One is in Vind. hist. gr. 10 (*Diktyon* 70887), the other in Vind. suppl. gr. 200. Both have been published in a detailed study by Jana Grusková and myself, which appeared in 2010. Jana Grusková dealt with the palaeographical and codicological aspects, while I contributed a legal historical analysis.[12] These two manuscripts increase the importance of palimpsests for our knowledge of the transmission of the *Basilica* text in terms not only of number, but also of date: we now have ten non-palimpsested manuscripts of different size, dating from the eleventh to the 16th century, and six palimpsests, also of varying size, but generally of earlier date. The primary script of almost all the palimpsests dates to the 11th century, whereas of the 'normal' codices only one is as old. It would of course require a more thorough analysis to make a precise comparison, but the following table gives an indication of the relative importance of these palimpsests against the background of the scarcity of non-palimpsested manuscripts, and at the same time it emphasizes how thin the thread of the transmission of the text is: rarely is a book of the *Basilica* found in more than two direct witnesses, and not infrequently a palimpsest is a *codex unicus*.

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[6] Stolte, New Praefatio, section 3.1 (pp. 245–247).

[7] The *Basilica* were replaced by Harmenopoulos' *Hexabiblos*, followed by some other texts; see Burgmann *et al.*, *Repertorium*, no. 92.

[8] Ferrini and Mercati, *Basilicorum libri LX*. See Pasini, *I palinsesti greci*, 223–229, esp. 225, with pl. 2. Additional leaves from the original manuscript have also been identified in the lower layer of Mess. gr. 158 (*Diktyon* 40819): see Rodriquez, Un "nuovo" palinsesto, 73–95, and cf. Rodriquez, Riflessioni, 625–645, esp. 625–627.

[9] Stolte, New Praefatio, section 3.1 (p. 245).

[10] Mercati, Nuovi frammenti.

[11] For additional leaves of a known palimpsest see also above, n. 8.

[12] Stolte and Grusková, Zwei neue Basiliken-Handschriften.

Age (provisional)	Palimpsested *Basilica* text	Number (in bold) of additional non-palimpsested manuscripts of the same text
XI	Va	books 2–4: **1/2**
XI	Vb	books 11 and 13–14: **2**
XII ex./ XIII in.	Π	books 15–18,2,16: **1** book 18,2,26–18,8,5: **0**
XI	ΠΣ	books 58–59: **0** book 60: **1**
XI[1]	Vind. hist. gr. 10	titles 2,2 and 2,3: **2** florilegium from books 3, 5, 6, 7, 8, 9, 10, 16: **variable but ≤ 2** florilegium from book 19: **0**
X[2]/ca. 1000	Vind. suppl. gr. 200	books 21–26: **1** books 28–29: **2**
X/XI	A	Florilegium of nearly all *Basilica* books, among which also *libri deperditi*: **some 0**

Given the tenuous transmission of the text of the *Basilica*, the discovery of the two Vienna palimpsests represented a significant development. The manuscript Vind. hist. gr. 10 turned out to contain 23 leaves with palimpsested *Basilica* text, and the manuscript Vind. suppl. gr. 200 to contain 48.[13] The *scriptio inferior* with the *Basilica* fragments in Vind. hist. gr. 10 has been dated to around 1000 or a little later, i.e. the first half of the 11th century, and that of Vind. suppl. gr. 200 to the second half of the 10th century.[14] Perhaps more important than these differences is the fact that, on closer inspection, Vind. hist. gr. 10 contains primarily a selection of *Basilica* fragments, and these often in a summarized version; only of titles 2 and 3 of book 2 does it offer a full text insofar as preserved on these leaves.[15] While this anthology is obviously most welcome, it is less valuable for our knowledge of the *Basilica* text than, e.g., the *Florilegium Ambrosianum*: this Milanese witness is also an anthology, but offers the full text of the fragments it has selected.[16] As a direct witness of the text, the *scriptio inferior* of Vind. suppl. gr. 200 is invaluable. If its dating is correct, it may well be our oldest *Basilica* manuscript.

THE GENESIS OF THE *BASILICA*: *STATUS QUAESTIONIS*

So far, we have spoken of the *Basilica* as if they are a fixed and stable collection, compiled and transmitted as a unitary text, even if they suffered some loss and corruption in the process of transmission. But what do we mean when we speak about 'the *Basilica*'? Scholars disagree about the genesis of the text we call by that name, which is not the original name and only came into use later. From the 530s onwards, Justinianic legislation, issued mainly in Latin, was circulating in Byzantium in the form of various Greek translations, summaries, and commentaries. At the end of the 9th century, it was the aim of emperors Basil the Macedonian and Leo the Wise to create order out of the chaos by compiling one authoritative Greek version, in which the titles of *Digest* and *Code* on the same subject and the related *Novels* would be amalgamated and placed under appropriate headings. How exactly they proceeded, and to what extent their efforts differed, is a matter of intense scholarly debate, and is bound up with the question of the status and chronological order of the middle-Byzantine law books, such as the *Prochiron* and the *Eisagoge*. If one consults the various historical surveys of Byzantine legal sources,[17] one reads that there was an ἀνακάθαρσις τῶν παλαιῶν νόμων resulting in a volume with abolished laws (ἕν τεῦχος); that collections existed in more than one format—in sixty, forty, and then again sixty books—; that these were organised in four or in six τεύχη or volumes; that Basil's *Sixty Books* were not the same as Leo's; that the name *Basilica* was later adopted for Leo's collection in sixty books; that Leo is supposed to have ordered ἐξελληνισμοί of Latin technical terms and the deletion of superfluous elements

[13] For details, see the tables in Grusková, Paläographisch-kodikologische Analyse, 133–138.
[14] For the results of a new paleographical analysis, see Giuseppe De Gregorio and Jana Grusková in this volume.
[15] See Stolte, Rechtshistorische Analyse, 140–146.
[16] See also above, p. 342.
[17] The standard accounts are Pieler, Byzantinische Rechtsliteratur; Van der Wal and Lokin, *Delineatio*; Troianos, *Peges*, with translations into Italian (P. Buongiorno, Turin, 2015) and German (D. Simon and S. Neye, Berlin, 2017), in both cases with additional bibliography.

(e.g., the prooimia of the *Novels*). One reads much less, if anything at all, about different versions of the texts themselves, but by delving deeper one discovers such differences.

Taking all this into account, we must allow for the possibility that the text of the *Basilica* as represented in our edition is the outcome of a complex process, a text that may have looked different in the early stages, of which we would dearly love to have physical evidence in the form of manuscripts. The older a manuscript is, the closer it is to these early stages. For that reason, the palimpsests we have, and which, as we have seen, are generally older than the available non-palimpsested witnesses of the text, may turn out to be especially interesting for our knowledge of the early developments. Any differences give rise to the obvious question whether there is a link with different stages in the genesis of 'the' *Basilica* as has just been outlined. At this point we shall take a closer look at the lower layer of Vind. suppl. gr. 200.

VINDOBONENSIS SUPPL. GR. 200

The manuscript Vind. suppl. gr. 200 has been described in great detail in 2010 by Jana Grusková.[18] Recently, Giuseppe De Gregorio has further scrutinized the palaeography of the Vienna palimpsest. The *scriptio superior*, with a Lectionary of the Gospels, has been dated to the 12th century. Of interest here is the *scriptio inferior* of ff. 1–48, dated as 'second half of the 10th century'.[19] These 48 leaves preserve portions of books 21–26 and 28–29 of the *Basilica*.[20] Before the discovery of these leaves our information about these books of the *Basilica* was based primarily on the 13th-century Parisinus gr. 1348 (Pa) (*Diktyon* 50957), and in the case of (parts of) books 28–29 also on the 12th-century Florentine Laurentianus Plut. 80.11 (F) (*Diktyon* 16718), which unfortunately has lost several leaves; in addition there are the usual *testimonia*. Scheltema based his edition on these three sources. In 2010, having studied the leaves insofar as I had been able to read them, I noted that the version of the *Basilica* we find in the lower layer of leaves 1–48 is distinguished by three characteristics:[21]

1. Fragments that stem from Justinian's *Digest* do not contain the names of the jurists who originally wrote these fragments (*inscriptiones*).

2. It contains Latin *termini technici* where in other manuscripts these Latin elements are replaced by Greek translations (ἐξελληνισμοί).

3. When a passage stems from (the beginning of) a Justinianic *Novel*, it also contains the introductory prooimion, which is normally omitted in other *Basilica* manuscripts. I further noted a fuller version of constitutions drawing on CJ VIII,40 than one finds in the only other manuscript of the *Basilica* at this point, Paris. gr. 1348 (Pa).

In 2018, I was able to study the manuscript again, this time from improved images made, once more, by the Technische Universität Wien. As in all palimpsests, not everything can be read, but the lower layer has yielded a few more of its secrets. Although a full and systematic collation has yet to be made, the results of this renewed study enable me to improve on and to add greater precision to my observations in 2010. On the basis of these readings the following notes may be added to these earlier observations:

ad 1:[22] I have not found one single *inscriptio* in Vind. suppl. gr. 200. The contrast with Paris. gr. 1348, however, is not as marked as I suggested in 2010. It is true that Pa does have names of jurists by way of *inscriptio*, but not consistently: in the books represented also by the Vindobonensis they are found in Pa in books 21–23, but not in 24–26, with the exception of 25,1,4; and in varying frequency in books 28–29, which also holds good for the Laurentianus (F).

ad 2:[23] In 2010, I had noted a greater presence generally of Latin *termini technici* in our palimpsest[24] than in the Parisinus, where they had been replaced by so-called ἐξελληνισμοί, at the same time pointing out that technical terms had not escaped 'exhellenization' in all cases. This has been confirmed by renewed study. More

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[18] Grusková, Paläographisch-kodikologische Analyse, 123–132.

[19] See Giuseppe De Gregorio and Jana Grusková in this volume; Grusková, Paläographisch-kodikologische Analyse, 124.

[20] Detailed information about the content in Grusková, Paläographisch-kodikologische Analyse, tables III (pp. 135–137) and IV (p. 138).

[21] Details in Stolte, Rechtshistorische Analyse, 146–151.

[22] Stolte, Rechtshistorische Analyse, 146.

[23] Stolte, Rechtshistorische Analyse, 147–148.

[24] See also Grusková, Paläographisch-kodikologische Analyse, 130.

examples could be added, but more important is the fact that neither the Parisinus nor the Vindobonensis are consistent. True, the general picture remains the same: the Vindobonensis has considerably more Latin terms than the Parisinus, but over the eight books represented in the Vienna palimpsest the same legal concept is not either Latin or Greek. E.g., *mandaton* is found, but also ἐντολή, *procurator* but also φροντιστής, etc. These two Latin terms, often also written in Greek letters (μανδάτον, προκουράτωρ) are much more frequent in the Vindobonensis than in the Parisinus. The occurrence of the ἐξελληνισμοί demonstrates that the process of exhellenization has been more thorough in the tradition to which the Parisinus belongs than that of the Vindobonensis. Whether this is entirely due to the later date of the Parisinus is possible, but not certain.

ad 3:[25] In 2010, I noted a series of differences between the Parisinus—and thus the edition—and our Vindobonensis in the summaries of certain constitutions from the *Code*. Since all these constitutions turned out to belong to book 8 of the *Codex*, I had left open the possibility that these differences were connected with the version used for book 8 by the compilers of the *Basilica*. The established understanding is that for book 8 this was not the *index* of Thalelaios, but that of Anatolios,[26] and perhaps the version used for the Vindobonensis was yet another *index*. Insofar as I have been able to read the palimpsest, I have checked all places where a constitution from book 8 of the *Codex* is represented in Vind. suppl. gr. 200, but have not found further divergences from the text of Pa and the edition. The differences noted in 2010 are there, but not necessarily to be attributed to the fact that book 8 of the *Code* is a special case. Obviously, all other fragments representing the *Code* have to be checked as well.

As for the *Novels*, I had noted three cases in which a *Novel* had been incorporated in the *Basilica* text in Vind. suppl. gr. 200 in a longer version than the one we know from Pa and thus from the Groningen edition. In all three cases these *Novels* were represented with the full text of their prooimion, whereas these are the parts that normally are lacking in the *Basilica*. Since no other cases of *Basilica* text with the beginning of a *Novel* are found in the 48 palimpsested leaves of the Vindobonensis, I can only say that the three cases we have are consistently different in this respect.

As to particular readings of Vind. suppl. gr. 200, the following table sets out individual passages in the *Basilica* in which our palimpsest diverges from or confirms readings chosen by Scheltema *cum suis*. In addition to readings from Paris. gr. 1348, I have tried to include the evidence from *testimonia* where available. The table, in the order of the *Basilica*, does not contain cases already mentioned and discussed in some detail in 2010.[27] I reiterate that it is not based on a full collation.[28] I have concentrated on those passages where the critical apparatus of the Groningen edition pointed to divergent readings or textual problems.

	Basilica	**Vind**	**BT**	
1	21,2,10	38v	1035,8	§ 1 habent Vind Syn, om. Pa Tip
2	22,5,54	35r	1088,26–27	ἀπόντι θατέρῳ ... δικαζομένῳ Vind A, ἀπόντος θατέρου ... δικαζομένου Pa
3	23,3,15	45r	1121,7	προκατάρξεως Vind, κατάρξεως Pa | κακῇ Vind post corr.
4	23,3,17	45r	1121,20	οὐκ ἐκέρδανεν Vind Hb, ἐκέρδανεν Pa, ἂν ἐκέρδανεν scr.? Scheltema (app. ad loc.)
5	23,3,24	44v	1123,15ff.	τῷ τῶν πραγμάτων αὐτοῦ φροντίστη Pa, τῷ συνηγόρῳ αὐτοῦ Vind Peira | πραγματείας τρόπῳ Pa, om. Vind Peira | 19 τῷ ὁμολογήσαντι Vind Pa, τὸν ὁμολογήσαντος Peira | περὶ ἐπερωτήσεως Pa, τῆς μελλούσης ζημίας Vind Peira
6	23,3,25	44v	1124,4	κακῇ πίστει Vind Pa, καλῇ πίστει Peira
7	23,4,6	11r	1142,1–2	ἐν τοῖς Pa, ἐν τοῖς αὐτοῖς Vind NovT | ἢ καὶ Vind Pa, εἰ καὶ NovT (cf. app. NovT 694,14)

[25] Stolte, Rechtshistorische Analyse, 148–151.

[26] Van der Wal and Lokin, *Delineatio*, 82; Troianos, *Peges*, 258 (transl. Simon 206).

[27] References to the edition (fn. 1) are by page and line numbers, in order to provide access to the critical apparatus. Please note that line numbers will differ from those in the *Thesaurus Linguae Graecae*, where the lines are numbered for each fragment separately. Moreover, the length of lines in BT (Bibliotheca Teubneriana) and *TLG* is different, and these differences add up the longer a fragment is. The line numbering in Grusková, Paläographisch-kodikologische Analyse, and in her table III, follows the *TLG*, whereas Stolte, Rechtshistorische Analyse, refers to BT. Sigla as in BT (see also Stolte, New Praefatio, sections 3.1 [pp. 244–245] and 5.1 [pp. 253–254]), with the addition of Vind = Vind. suppl. gr. 200, and NovT = Justinian's *Novellae* ed. Schöll-Kroll.

[28] I gratefully acknowledge help from Jana Grusková in some places where I got stuck.

	Basilica	Vind	BT	
8	24,8,2	8v	1177,13	τὸν Vind Pa, τῶν A | λόγον Vind Pa, λόγοις A
9	24,8,7	8v	1178,4	ἡ φανερὰ ἀπαίτησις Pa, ὁ CERTOS Vind
10	24,9,1	8r	1179,5–7	οὐτιλίαν ἀγωγὴν τὴν τοῦ ἐναγομένου καὶ τοῦ ἐναγόντος σκοποῦσαν τὸ διαφέρον Pa, UTILIAN ἤγουν ARBITRARIAN σκοπούμενος τοῦ χρησίμου τοῦ ἐνάγοντος καὶ τοῦ ἐναγομένου Vind
11	24,9,10	33r	1180,24	ἀρβιτραρίας [crux] ἢ τὸ Pa (vide app. ad loc.), ARBITRARIAS ἢ τὸ Vind
12	24,10,10	14v	1182,3	noxalía : νοχαλία Pa, νοξαλία Vind
13	24,10,18	14v	1182,26–27	ordinem Digestorum tuentur Vind Tip contra Pa (cf. app. ad loc.)
14	25,1,13	31r	1190,22	πράγματι Pa, πράγματι καὶ τὴν IN FACTUM Vind
15	25,1,13	31r	1190,23	παραφυλακὴν Tip, περὶ φυλακὴν Pa, φυλακὴν Vind
16	25,1,32	25r	1194,2	περὶ ἐνεχύρων Pa, CONTRARIA Vind
17	25,1,35	25r	1194,14	εἰς τὸ διπλοῦν Pa, om. Vind A
18	25,1,42	32v	1195,24	καταβάλλω Vind, καταβ$^{\lambda\lambda\prime}$ Pa (vide app. ad loc.)
19	25,1,44	32r	1196,3	ἀγωγὴ Pa, ἀγωγὴ καὶ ἐκβάλλεται Vind A
20	25,1,45	32r	1196,6	ἀγωγῇ om. Vind
21	25,1,46	32r	1196,9–10	καὶ αὐτὸν ἐναχθῆναι Vind Pa (vide app. ad loc.)
22	25,1,47	32r	1196,13–14	ἐὰν δὲ πταίσματι ... καταδικάζεται Pa, om. Vind
23	25,1,49	32r	1196,18	τῆς habet Vind, om. Pa, suppl. Hb
24	25,2,6	26v	1199,22	ἀνδράποδα Vind Syn, om. Pa
25	25,2,5	26v	1200,5	ἐξωτικοῦ Vind Pa, -κῶν Peira
26	25,4,1	22v	1212,7	μὴ ἔχων Pa, ὡς μὴ ἔχων Vind
27	25,4,3	22v	1212,18	τις Pa, om. Vind
28	25,4,5	22v	1212,24	τοῦ δεσπότου Pa, om. Vind
29	25,4,17	19v	1214,6	ἐν προτιμήσει Vind Pa (cf. app. ad loc.)
30	26,1,8	16r	1242,22	ἐπιλέξεται ... ἐπερωτήσας Vind Tip, om. Pa (homoiot.)
31	26,1,14	30r	1243,19	ἢ Vind, om. Pa Peira
32	26,5,108	21v	1290,1–4	ἐντολὴν (confirmat Tip) ... 4 ἡ γὰρ ἐντολὴ Pa, μανδάτον ... τὸ γὰρ μανδάτον Vind
33	26,5,122	20v	1291,14	ἡ Pa, om. Vind
34	26,5,124	20v	1291,18–19	ἐν ἐπιλογῇ Pa, supra eadem verba scripsit ιν σολουτουμ Vind (cf. app. ad loc.)
35	26,5,126	20v	1291,23–26	φροντιστής ... -οῦ Pa, προκουράτωρ ... -ορος Vind
36	26,5,131	20v	1292,8	τὴν ἐντολὴν ἤτοι προτροπήν Pa, τὸ μανδάτον Vind, τὴν ἐντολὴν Tip
37	26,5,132	20v	1292,10	ἐν ἐπιλογῇ Vind Pa (vide app. ad loc.) | ἀντὶ ἀργυρίων Pa Tip, om. Vind Syn (vide app. ad loc.)
38	26,6,1	20r	1293,6–8	διαφέρει ... χρήματα Pa, om. Vind (vide app. ad loc.)
39	26,6,6	20r	1293,15	χρεῶν γένηται A, χρεῶν γίνεται Vind, χρεωστῆται Pa (vide app. ad loc.)
40	28,8,29	42r	1382,21	μετὰ χρόνον F, ὡρισμένως Vind Pa A (vide app. ad loc.)
41	28,8,39	47r	1385,7	περὶ προικὸς F Pa, ἀγωγῆς τῆς προικὸς Vind A
42	28,14,18	5v	1433,10	ἐξ ἀρχῆς F Pa : ἑξῆς Vind (cf. app. ad Nov 22,46 pr. [NovT 182,5])

Commentary on Selected Readings

1, **2** Preferred reading confirmed by Vind.

3 Conjectured readings προκατάρξεως and κακῇ confirmed by Vind.

5 Note the different exhellenisms: τῷ τῶν πραγμάτων αὐτοῦ φροντίστῃ Pa, τῷ συνηγόρῳ αὐτοῦ Vind Peira.

6, **8** Vind confirms readings of Pa.

9 A clear example of an older phase of the text which we read in Pa and therefore in the Groningen edition. The Latin *Digest* text (D. 13,3,1 pr.) states that 'Qui certam numeratam pecuniam petit, illa actione utitur 'si certum petetur'. The action becomes in the Vindobonensis ὁ CERTOS, for which the Parisinus has ἡ φανερὰ ἀπαίτησις.

10 The Latin *Digest* text to which this *Basilica* fragment goes back forms the beginning of the title D. 13,4 *De eo quod certo loco dari oportet*. It consists of two fragments, one taken from Gaius' commentary on the provincial edict and the other from Ulpian's commentary on the edict of the (Roman) praetor. (The latter passage continues for much longer than the beginning which is of interest here.) In the *Basilica* there is no clear distinction between the two fragments: the beginning of Ulpian's text has been amalgamated with Gaius' text into one fragment, as is also clear from the fact that there they form one sentence. The text as transmitted in the Parisinus and adopted in the Groningen edition makes sense, but diverges from the Vindobonensis. The version we read in the Vind reads ΄Ο ἔν τινι τόπῳ ἐπερωτήσας ἑαυτῷ τι δοθῆναι δύναται καὶ ἀλλαχοῦ κινεῖν UTILIAN ἤγουν ARBITRARIAN σκοπούμενος τοῦ χρησίμου τοῦ ἐνάγοντος καὶ τοῦ ἐναγομένου· διὸ καὶ αὔξει καὶ μειοῦται τὸ ποσόν. It diverges from Pa in reflecting the words *aribitraria actio* and *utilitatem* of the Latin text. The scribe of the Vindobonensis has written UTILIAN and ARBITRARIAN in Latin script; the adjective *arbitraria* occurs a few more times further down, also in Latin letters. (We may note in passing that Vind has Στίχος and Πάμφιλος instead of Πέτρος and Παῦλος [BT 1179,8]). The two summaries are sufficiently different to raise the question whether perhaps their ultimate 6th-century sources were different texts.

11 Vind confirms Pa.

13 Preferred reading confirmed by Vind.

14 Not unlike our no. **9**, the Vindobonensis preserves an older stage in the transmission of the summary of the original Latin text. The last part of D. 13,7,13 pr. reads 'sed et ipse debitor aut vindicare rem poterit aut in factum actione adversus emptorem agere'. The *Basilica* read at this point: καὶ κατὰ τοὺ ἀγοραστοῦ τὴν ἐπ᾽ αὐτῷ τῷ πράγματι in Pa, followed only in Vind by καὶ τὴν IN FACTUM.

17 The Latin text does not speak of liability *in duplum*, and only has *furti teneri*. Vind and A thus follow the *Digest*.

19, **22** Here Pa seems to have the better readings.

23 Conjectured reading τῆς confirmed by Vind.

24 Preferred reading confirmed by Vind.

27, 28 Here Pa seems to have the better readings.

29 Vind confirms the infelicitous exhellenism ἐν προτιμήσει of *in solutum* in Pa.

31 Conjectured reading confirmed by Vind.

32, **35** Vind transmits Latin technical terms where Pa has exhellenisms.

36 Vind transmits Latin technical terms where Pa has exhellenisms.

34, **37** The Groningen editors had noted at the words ἐν ἐπιλογῇ: 'in solutum' male exhellenisatum' with a reference to the same (mis)translation a few lines down in Bas. 26,5,132 (our no. **37**). This infelicitous exhellenism is found in both places in the Vindobonensis as well, but at Bas. 26,5,124 one reads with some difficulty ιν σολουτουμ, written over these words as an interlinear scholion. Our no. **29** is evidence of an equally unsatisfactory alternative exhellenism, ἐν προτιμήσει, and here, too, Vind goes with Pa.

37 The reading ἀντὶ ἀργυρίων of Pa is confirmed by Tip and supported by the Latin text of the *Code* (*pro pecunia*); the reading of A is in doubt (see the apparatus), and Vind does not have it.

38 In addition to the note in the critical apparatus this is evidence of a *Basilica* manuscript without these words.

39 Preferred reading confirmed by Vind.

40 The readings of the *Basilica* manuscripts are evidence of two different exhellenisms, μετὰ χρόνον (F) and ὡρισμένως (Vind Pa A). Whether these are meant to replace *ex intervallo* or *interposito tempore* remains an open question. Both are to be found in this *Digest* fragment, but, although the summary in the *Basilica* is an adequate rendering of the legal content, it phrases the rule differently. For renderings of *ex intervallo* see Bas. 11,2,7,5 = D. 2,14,7,5 with scholia: μετὰ χρόνον (BT 626,17), μεταχρόνως (BS 211,7), but also ἐξ ἰντερβάλ(λ)ο (BS 190,25; 197,21).

42 Bas. 28,4,18 draws on Nov. 22,46–47 pr. The manuscripts F and Pa read at BT 1433,10 ἐξ ἀρχῆς, which does not make sense. The textual tradition of the *Novels* has preserved this reading in the manuscript Laurentianus Plut. 80.4 (*Diktyon* 16711), but the manuscript Marcianus gr. Z. 179 (*Diktyon* 69650) has ἑξῆς, which is supported by the Authenticum's *deinceps*. Schöll and Kroll prefer ἑξῆς, and so does Zachariä von Lingenthal. The Vindobonensis proves that the *Basilica* are also divided on this point.

THE VALUE OF THE VINDOBONENSIS SUPPL. GR. 200 FOR THE EDITION OF THE *BASILICA*: A PROVISIONAL CONCLUSION

The combined results of 2010 and the present investigation leave no doubt about the value of our palimpsest for the constitution of the text of the *Basilica*. It is also beyond doubt that, if the editors had known it, they would have printed the reading of the Vindobonensis in a significant number of cases. The established understanding is that we are dealing with the development of a body of texts that starts with the Justinianic legislation, is transformed in the writings of the *antecessores*, and leads to the *Basilica*, losing its Latin characteristics in the process. True, we cannot in all cases observe every stage of that process and must sometimes conjecture on the basis of documented instances of other, similar cases, but that basis is solid and is now even reinforced by the evidence of the Vindobonensis. If, then, we have two manuscripts of the *Basilica*, our Vienna palimpsest and one other codex, and the Vindobonensis transmits a reading that clearly represents an earlier stage in that process than the other manuscript, we may at least infer that the Vindobonensis testifies to an older version, perhaps the original version, of the *Basilica*. Generally speaking, the editors have selected older versions where more than one was available to them. All this takes its departure from the hypothesis that there was one original version, of which the others are later developments, and presupposes that it is the aim of an edition to reconstruct this original version. The attraction of this hypothesis is enhanced by a long tradition in legal scholarship of using the *Basilica* predominantly for textual criticism of the Justinianic texts. For that purpose it is useful to reconstruct not so much the *Basilica* as the original 6th-century Greek texts which were adopted, and perhaps adapted, to compile the *Basilica*. The problem lies in the evidence of the manuscripts available to us. Sometimes a reading has been transmitted that clearly is a misinterpretation of the Latin version. However, we cannot always be sure that this misinterpretation was not already in the original version of the *Basilica*. The critical apparatus of Scheltema's edition contains many examples of conjectures about an older version of the—suspicious—reading they had printed. The only reason why the editors did not put the older and 'better' version in the text was that they lacked firm evidence of its being still present in the *Basilica*. Therefore they printed the 'misinterpreted' version in the text and wrote in the critical apparatus, e.g., *interpres antiquus scripserat* [reconstructed 6th-century reading] *quae male vertit exhellenista*. The surprise of the Vindobonensis was that it confirmed the presence of that conjectured version in the *Basilica*.[29] No doubt Scheltema would have adopted it and relegated the later 'misinterpretation' to the apparatus.

The bottom line seems to me that the Vindobonensis proves that a greater number of features of these 6th-century texts were still present in early *Basilica* manuscripts than we were allowed to think on the basis of the—few—codices known to us so far. In the case of the portion of the *Basilica* preserved in the Vindobonensis we mostly had only the Parisinus.

Bearing this in mind, we may now look at the overall picture presented by the 42 cases in the table in section 5. As a rule, the text of the edition is based on Pa and *testimonia*. If the Vindobonensis agrees with the Parisinus, there is no reason to change the text, and at best we may enrich the apparatus with that information. Where the Vindobonensis diverges from the Parisinus, sometimes it stands alone, and sometimes it is supported by one or more *testimonia*. Especially where these *testimonia* follow the Vindobonensis and the reading is more plausible, that reading is to be preferred over the Parisinus. It is my belief that in almost half of the 42 cases in the table discussed above, the editors would have selected the reading of the Vindobonensis, even against the evidence of the tradition of the text insofar as it was available to them at the time. That is not to say that the Vindobonensis always has the better text. In at least three cases the Parisinus is to be preferred: **22**, **27**, **28**, and probably also **19** and the second reading in **37**. But **1**, **2**, **3**, **5**, **7**, **9**, **10**, **13**, **14**, **16**, **23**, **24**, **30**, **31**, **32**, **35**, **39**, and **42** should be accepted or at least considered very carefully. Or not at all? For an answer to that question we must look again at the genesis of the *Basilica*.

[29] Examples in Stolte, Rechtshistorische Analyse, 147.

THE POSITION OF THE VINDOBONENSIS SUPPL. GR. 200 IN THE TEXTUAL TRADITION OF THE *BASILICA*

In 2014 Tom van Bochove plausibly argued[30] that certain features of the Vindobonensis speak for an older version of the text of the *Basilica*, which one also finds in other manuscripts, such as the manuscript Parisinus gr. 1357 (*Diktyon* 50967), the lost manuscript of the French humanist lawyer Jacques Cujas (also known as the *Codex Ridolfi* after its former owner), the *Florilegium Ambrosianum*, and the Paris manuscript Coislinianus 151 (*Diktyon* 49290). Van Bochove links these common characteristics with the genesis of the *Basilica*. On the basis of my analysis published in 2010, he considers the lower layer of Vind. suppl. gr. 200, together with the other witnesses just mentioned, to be a representative of Basil's *Sixty Books*, to be distinguished from Leo's *Sixty Books*, which were soon called τὰ βασιλικὰ νόμιμα or simply τὰ Βασιλικά. He could well be right, but it is not the only possible conclusion. What do the early manuscripts of the '*Basilica*' in fact tell us?

Annoyingly, if we survey all manuscripts of the *Basilica* that have survived to our time (and they are not many!), they do not neatly divide into an older group (consisting of the mss. just mentioned), and a younger one that shows characteristics which correspond to the changes ordered by Leo the Wise. Moreover, all the initiatives of Basil and Leo recorded in our sources must have taken place within the very short time-span of their reigns—that is, forty-five years at most, and probably much less, some twenty years. If the imperial commands had been followed religiously, after the early 10th century no manuscripts would have been written with 'old' characteristics, such as Latin *termini technici*, or with 'superfluous' elements.[31] In my view, the transmission of the text as we know it does not correspond to that pattern. Even if we look at the five manuscripts Van Bochove considers to be representatives of the *Sixty Books* of Basil the Macedonian, they are at least problematic as a group: the *Florilegium Ambrosianum* is precisely that, a florilegium; the *Codex Ridolfi* has not survived and is known only from what Cujas tells us about it; Paris. gr. 1357 is a late copy (by John Mauromates, 16th century); Coislin. 151 is itself much later than our palimpsest (14th century), but contains an *index titulorum* of all sixty books of the *Basilica* in a different hand that points to an older version; and our Vienna palimpsest, Codex suppl. gr. 200, definitely has old features, but not consistently. None of the five share exactly the same characteristics. An exact dating of Vind. suppl. gr. 200 would have been invaluable, but we have to be content with an approximate dating to half a century. While I leave the decision to palaeographers, I note that they do not opt for a dating before 912. In all this, we should remind ourselves that the *fata libellorum* may have cruelly distorted our image of the transmission of the text. Where does all this leave editors of the *Basilica*?

The commands of the legislator have been preserved in prefaces of shorter law books and in a preface to the *Basilica*. In the past couple of decades, a few scholars have displayed an enormous amount of ingenuity in their attempts to explain what exactly happened during the reigns of Basil and Leo. The main problem is that the actual manuscripts of what we collectively refer to as the *Basilica* seem to tell a slightly different story—or, if you like, to document only a limited success of all these commands. As is generally accepted, and also followed by Van Bochove, the most likely chronological sequence that led to the *Basilica* as they have been transmitted is as follows:

1. The (mainly) Latin codification of Justinian circulated in various Greek versions, summaries and commentaries. These versions stem from the first few generations of jurists, some of whom had actually helped to compile *Digest* and *Code*, or at least as *antecessores* had taught them to their mainly Greek-speaking students. They contain the Latin *termini* typical for the early Byzantine legal language.

2. Under Basil the Macedonian, the existing law was purified (ἀνακάθαρσις τῶν παλαιῶν νόμων) and a revised version prepared. The origin of the *Basilica* may have been—and this is a hypothesis of the late Scheltema—simply a list of books with titles, the latter drawing on the *rubricae* of *Digest* and *Code*. An example has been transmitted as the so-called *Index Coislinianus*, an index of all sixty books on ff. 1–18r of Coislin. 151. Such an index would then be expanded by adding references to books and titles of Justinian's *Digest* and *Code*, supplemented by *Novels* where such were relevant for the subject indicated by the title. The ensemble

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[30] Van Bochove, Preluding the *Basilica*, esp. 280–287. The part pertinent to the present subject is summarized at p. 317.

[31] Of the shorter law books, the most recent is probably the *Epitome legum*. In its preface Leo is described as 'having smoothed the roughness of the law together with the words occurring there into softness' (τήν τε τραχύτητα τοῦ νόμου σὺν ταῖς ἐκεῖσε λέξεσιν ἐγκειμέναις εἰς πρᾳότητα λειώσας, ll. 68–69 Schminck). Schminck, *Studien*, 121–128 argues for 912, against the traditional dating to 921. The λέξεις are no doubt the (Latin) *Fachausdrücke*, as Schminck translates.

would constitute a working-list of the material to be inserted under the various rubrics, and this filling out of the titles could be left to 'private initiative'. This would explain why we have manuscripts in which the same chapters sometimes have different versions.

3. A measure of uniformity was achieved by selecting versions of *Digest*, *Code*, and *Novels* that were preferred over others, or perhaps had emerged as the most frequently used. An example is the *Digest Summa* of the so-called Elder Anonymus, which we find not only in the *Basilica*, but also in canonical collections.

4. The Latin *termini technici* were replaced by Greek equivalents, the *exhellenismoi*. Sometimes they were clumsy translations of the Latin into Greek, apparently not made by lawyers.

5. By way of explanation, scholia were added, often by selecting other, more extensive versions of the same fragments that had also originated in the activity of the jurists of these first few generations ('old scholia').

6. Florilegia, following the *ordo librorum* (*Florilegium Ambrosianum* and the text of the *Ecloga Basilicorum*), or reordering the fragments (*Synopsis Basilicorum Maior*), came into being.

7. Later, probably in the 11th century, 'original' new comment was written on the *Basilica* ('new scholia').

Steps 2–4 were the result of initiatives and/or legislation by Basil and Leo. The reported sixty, forty and then again sixty books suggest some tinkering with the concept of a consolidated representation of the Justinianic legislation. Steps 5–7 are 'private' initiatives and bear witness to interest in and use of the *Basilica*. I propose to see this less as a well-organized, top-down introduction of new legislation, than as a modernisation of the use of existing legislation, a process during which some changes in the law were effected as well, some successful, others less so. The end of the process is the *Basilica cum scholiis*, a *thesaurus jurisprudentiae graeco-romanae*. The older manuscripts may represent individual steps towards that goal.

The extant manuscripts all testify to some stage in the genesis of what ultimately became 'the' *Basilica*. The palimpsest in Vind. suppl. gr. 200 is no exception. Whether its lower layer contains a part (e.g., the third τεῦχος of six, or the second of four) of 'the' *Basilica* is dependent on what we mean by 'the' *Basilica*. As I have said, the manuscripts differ, among other things, as to the *inscriptiones* of *Digest* fragments, the form of the fragments of *Code* and *Novels*, and the extent of exhellenization. Vind. suppl. gr. 200 lacks such inscriptions and is still fairly 'unexhellenized'. It is consistent in the former, but emphatically not in the latter. Whether 'the' *Basilica* contained the names of the jurists, we cannot be sure. We have manuscripts with and without those names, and this does not seem to depend on their age. The testimony of the late 6th-century *Collectio Tripartita* tells us that the *Digest Summa* of the Elder Anonymus in all probability did contain this information.[32] On exhellenization we have the information of the Eisagogè (τῶν δὲ ῥωμαϊκῶν λέξεων τὴν συνθήκην εἰς τὴν ἑλλάδα γλῶσσαν μετεποιήσαμεν [ll. 52–53 Schminck]). As I have stated more than once, my belief is that, once replaced, these Latin *termini technici* did not return. If a late manuscript still has them, they have escaped exhellenization. Then there is the form in which constitutions of the *Code* and *Novels* appear. Vind. suppl. gr. 200 sometimes has the former in a divergent form, the latter in a more extensive form than other manuscripts. But as far as I can see, these fragments from Justinian's legislation, the *digesta* and διατάξεις, may diverge in shape, but not as to their identity. The content of the *Basilica* seems to have been stable from the start (the *indices titulorum* with their content),[33] but the form of individual fragments less so. And *Basilica* in forty books are mentioned just once, but they have not left one single physical trace.

Van Bochove may be right in attributing the version preserved in Vind. suppl. gr. 200 to Basil's *Sixty Books*.[34] Personally, I consider the evidence of the transmission of the text as too chaotic to go further than admitting that possibility. A more important and challenging question seems to me, how to deal with that evidence.

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[32] Van der Wal and Stolte, *Collectio Tripartita*, 96–110, and Preface, xxx.

[33] See most recently Van Bochove, Preluding the *Basilica*, 268–269 with references to his previous papers on the subject.

[34] Van Bochove's earlier suggestion (*To Date and Not To Date*, 107–121) that we should interpret the *Florilegium Ambrosianum* as such a representative has been received with some scepticism (Troianos, *Peges*, 256 fn. 147 [German transl. p. 205 fn. 149]: 'bold, but rather doubtful').

VINDOBONENSIS SUPPL. GR. 200 AND EDITING THE *BASILICA*

So, what about editing the *Basilica*? As far as the scholia are concerned, Scheltema chose to edit each individual manuscript. In his view, each set of scholia represented an individual scholar's activity and choice; in Byzantium, no *recensio Bononiensis* or *Glossa ordinaria* created the unity of the western tradition of the *Corpus iuris civilis*. One may wonder whether, to some extent, the transmission of the *Basilica* text proves a similar lack of unity as the scholia do. For a long time, lack of witnesses and poor insight into the genesis of the *Basilica* have obfuscated the problematic textual tradition and perhaps left too much hope that the Lachmannian method, if we may still call a traditional editorial method by that name, would yield the original *Basilica* text. This problem has been exacerbated by the fact that large portions of the *Basilica* are transmitted in just one or two manuscripts—or not at all. In the meantime, further witnesses have come to light in the form of palimpsests, and Vind. suppl. gr. 200 is a prime example. It does two things splendidly: it shows a stage at which the text of the *Basilica* has many features stemming from its 6th-century origins, and by doing so it gives us what, ever since the humanists, has driven interest in the *Basilica cum scholiis*: information about the Justinianic age.

As I pointed out in conclusion in my recent stock-taking of the state of editorial work on the *Basilica*, and alluded to above, Van Bochove's view 'undermines the foundation of all editions since Fabrot and we would have to accept that a sizable portion of the witnesses of these editions cannot be taken to belong to the direct transmission of the *Basilica*. At the same time, I would venture to suggest that the differences regard the outward characteristics of the transmission, but not the substance of the text'.[35] That problem is not new and certainly not Van Bochove's fault. It is not a fault at all, but a challenge, bound up with the problem of how to reconcile the needs of a practical edition with the need to present the refractory evidence of the textual transmission. As we have seen, the genesis of the *Basilica* was a complex process which took place over a short period of time. If we reserve the name '*Basilica*' for Leo's compilation in sixty books, Vind. suppl. gr. 200 and some other manuscripts might have to remain outside the scope of the edition. If we wish to reconstruct the original version—if there ever was one—the reverse would hold good, and Paris. gr. 1348 would not count for much, if it were not relegated to the status of *testimonium*. Both would be impractical and even foolish. But it would be equally foolish not to make the reader aware of the lack of a tidy, 'Lachmannian', tradition of the text they are reading. At the end of the day, the *Basilica* in whatever form have preserved the gradual process of 'hellenizing' the Latin inheritance of Roman legislation. Individual manuscripts document the stages of that process. The lower layer of Vind. suppl. gr. 200 is especially valuable in that it clearly provides a snapshot of a point half-way on that journey: it preserves Latin where other manuscripts have already lost it, it has exhellenisms where one would perhaps not expect them, and sometimes the two seem to its scribe to have been interchangeable. Basil or Leo, *Sixty Books* or *Basilica*, the Vindobonensis, like every manuscript, is indispensable if we want to follow that journey.

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[35] Stolte, Thirty Years Later, 186.

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