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(No) Problem for a Translator

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Tesserae iuris

II.1 (2021)



UNIVERSITAS
STUDIORUM

(No) Problem for a Translator
Bas. 3.1.44 / Nov. 123.28:
Did or didn't bishops have to pay *sportulae*?

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1. Should a translator always just faithfully translate a text as established by its editors? While translating the text of Bas. 3.1.44 within the framework of the new Groningen research project “Unravelling the Common Legal Heritage of Europe: Disclosing the *Basilica cum scholiis*”¹, I came across an interesting case leading to a dilemma which I can only partly solve. The *Basilica* chapter deals with clerics involved in legal proceedings, in particular with the *συνήθεια* (*sportulae* or court fees) they have to pay to either a cleric who summons them to court, or to the *ἐκβιβαστής* (*executor*), the court clerk or executor of the sentence, who does the same. One of the provisions embedded in the chapter concerns bishops. The provision observes that regarding the affairs of his own church, a bishop may not be subjected to any prosecution or distress, but that he shall neither pay a court fee when summoned to appear in court in relation with his personal affairs. Apparently, a bishop was exempt from paying *sportulae* when his own, personal affairs were at issue. The provision reads:

1. This research project aims at opening up the Groningen edition of the *Basilica cum scholiis*, by providing the Greek text of the *Basilica* including the *scholia* with legal commentary, an English translation, and in the long run a Greek-English lexicon / internet database of legal technical terms occurring in both the text and the *scholia* of the *Basilica*. The *Basilica* text (= BT): SCHELTEMA - VAN DER WAL - HOLWERDA (edd.), *Basilicorum Libri LX. Series A*, 8 vols. The *Basilica scholia* (= BS): SCHELTEMA - HOLWERDA - VAN DER WAL (edd.), *Basilicorum Libri LX. Series B*, 9 vols. BT and BS are always quoted after page and line. Both the text and the *scholia* can be consulted – albeit without the critical apparatus, the apparatus of *scholia* and that of testimonies – via the *Thesaurus Linguae Graecae* (TLG) (<http://www.tlg.uci.edu/>), Canon of Greek Authors and Works, No. 5065.001 (Text) and 5065.002 (Scholia). Since 5 March 2018, the *Basilica cum scholiis* are also available via BrillOnline Reference Works of Brill Publishers in Leiden (<https://referenceworks.brillonline.com/browse/basilica-online>). This internet edition does include all apparatuses and all prefaces of the print edition, and is fully searchable. Moreover, this edition has also been provided with a new internet preface compiled by B.H. Stolte, and very recently supplemented by STOLTE, *Thirty Years Later*, 163-186. Stolte’s internet preface has also appeared in printed form in *Fontes Minores* 13 (2021), 239-264. Finally, the *Basilica Online* edition is also accompanied by an Online bibliography, compiled by Th.E. van Bochove.

Ἐπίσκοπος δὲ ὑπὲρ τῶν πραγμάτων τῆς ἰδίας ἐκκλησίας μηδεμίαν μεθοδεῖαν ἢ ὄχλησιν ὑφιστάσθω· συνηθείας δὲ μηδὲ εἰ ὑπὲρ τῶν ἰδικῶν ὑπομνησθεῖη, ἀπαιτεῖσθω· τὰς ἐναγωγὰς δηλαδὴ τὰς κατὰ τῆς ἐκκλησίας προτιθεμένας τῶν οἰκονόμων ὑποδεχομένων ἢ ἐκείνων, οἵτινες ἐπὶ ταύτῃ τῇ αἰτίᾳ προβληθεῖεν².

(«Regarding the affairs of his own church, a bishop shall not be subjected to any prosecution or distress; but neither shall court fees (*sportulae*) be demanded from him if he is summoned to appear in court with regard to his own affairs; it goes without saying that the ecclesiastical administrators or those who have been put forward for that specific case, shall take up the actions brought against the church»).

The above mentioned dilemma concerns the phrase *μηδέ* in BT 101/11. At first sight, there appears to be nothing wrong. According to the critical apparatus of BT, *μηδέ* is transmitted in unison by all three manuscripts handing down the text of Bas. 3.1.44: Paris, Bibliothèque Nationale, cod. Coisl. gr. 151 (siglum: **Cb**); Rome, Biblioteca Apostolica Vaticana, cod. Vatic. gr. 903 resc. (siglum: **Va**); and Paris, Bibliothèque Nationale, cod. Paris. gr. 1352 (siglum: **P**)³. Thus, up to this point there is no problem for a translator.

2. Things change if we consult the continuation of the critical apparatus of BT, for the editors of the text of the *Basilica* observe here that *μηδέ* is also transmitted in the text of Nov. 123.28, the chapter of Justinian's Novel underlying Bas. 3.1.44, but that Kroll, the editor of the text of the Novel, deleted *μηδέ* as an interpolation⁴. Thus, if Kroll is right, the provision would turn into its opposite: when his own, personal affairs were involved, a bishop would have to pay *sportulae* after all. The relevant section of Nov. 123 – which was promulgated in the year 546 – reads:

2. Bas. 3.1.44 (BT 101/10-14). At first sight, the combination *συνηθείας* .. *ἀπαιτεῖσθω* may seem somewhat awkward. However, *συνηθείας* can only be understood as acc. plur. – also on the basis of *σπόρτουλα* (from τὸ σπόρτουλον) in the underlying passage from Nov. 123.28; cf. *infra* § 2 –, whereas *ἀπαιτεῖσθω* must be identified as third person singular present imperative, middle / passive voice, with 'he' or 'bishop' as its subject, which results in an impossible English rendering: 'he must be demanded for *sportulae*'. For this reason, the expression has been converted into the passive in the translation.

3. Cf. BT 101 app. crit. ad l. 11 *μηδὲ*: «*Cb Va P* (...)». On **Cb**, dating from the first half of the fourteenth century, cf. BURGSMANN - FÖGEN - SCHMINCK - SIMON, *Repertorium* 1 (= RHBR 1), No. 202. On **Va**, dating from the eleventh century, cf. SCHELTEMA - VAN DER WAL (edd.), *Basilicorum Libri LX. Series A Volumen 1, Praefatio*, vii-ix. On **P**, dating from the beginning of the thirteenth century, cf. RHBR 1, No. 166. For the manuscripts, cf. finally also STOLTE, *Basilica Online New Praefatio*, § 3.1.

4. BT 101 app. crit. ad l. 11 *μηδὲ*: «(...) *Nov.*, *del. Kroll tamquam interpolationem*».

ἐπίσκοπος δὲ ὑπὲρ τῶν πραγμάτων τῆς ἰδίας ἐκκλησίας μηδεμίαν μεθοδείαν ἢ ὄχλησιν ὑφιστάσθω· σπόρτουλα δὲ εἰ ὑπὲρ τῶν ἰδικῶν πραγμάτων ὑπομνησθεῖη, ἀπαιτεῖσθω· τὰς ἐναγωγὰς δηλαδὴ τὰς κατὰ τῆς ἐκκλησίας προτιθεμένας τῶν οἰκονόμων ὑποδεχομένων, ἢ ἐκείνων οἵτινες ἐπὶ ταύτῃ τῇ αἰτίᾳ προβληθεῖεν⁵.

(«A bishop is not to be subject to any prosecution or vexation over the affairs of his church; if he should be summonsed over affairs of his own, he is to be charged a *sportula*, while for actions brought against the church, it is, of course, the stewards, or else those appointed for that purpose, who face them»).

The translator is now faced with a full-blown dilemma: should he without further ado still follow the text as established by the editors of the *Basilica*, or should he take Kroll's interpolation into account, viz. accept as *Basilica* text the text of the Novel without μηδέ, and then omit the translation of this phrase? The ensuing legal consequence of this would be that a bishop when summoned to court in connection with his own affairs would indeed have to pay a court fee. In short, the issue at stake is: did or didn't bishops have to pay *sportulae*?

3. At first sight, reading Kroll's critical apparatus pertaining to Nov. 123.28 does not seem to bring a solution to the above dilemma any closer. For the witnesses adduced by Kroll present an ungodly jumble, as so often in Byzantine law⁶. Some sources omit μηδέ, thereby clearly indicating that a bishop had to pay a court fee when his private affairs were at issue. Other sources include μηδέ, thereby evidently showing that bishops were exempt from the payment of *sportulae*. Kroll concluded his short comment with the observation that the addition of μηδέ was both an old and a patently obvious interpolation:

5. Nov. 123.28 (SK = SCHÖLL - KROLL (edd.), *Novellae*, 615/15-21). Transl. MILLER - SARRIS, *The Novels of Justinian*, 2, 820. In a comment of one of the referees pertaining to this passage, it has been suggested that it is at least in theory possible that μηδέ was omitted from an earlier manuscript in the course of the transmission of the text of the Novel, as the result of a *saut du même au même* in the copying process of the word ΔΕΜΗΔΕ: the second ΔΕ could have been instrumental in the omission of the preceding sequence of letters ΔΕΜΗ. However, it has also been observed that the deletion of μηδέ is not easy to reconcile with the following sentence from the Novel (SK 615/21-23): ὁ δὲ παρὰ ταῦτα εἰσπράξει σπόρτουλα τολμῶν ἐν διπλῷ ὅπερ ἔλαβε τῷ ἀπαιτηθέντι προσώπῳ ἀποδοῦναι συνωθεισθῶ 'One daring to exact *sportulae* in contravention of this is to be made to repay to the one so charged double what he received, (...)'. To this can be added that if μηδέ is accepted as the genuine reading in the text of Nov. 123.28, it fits in perfectly with that text: as a second negation, μηδέ is the perfect corollary of SK 615/16 μηδεμίαν.

6. On this, see ASHBURNER (ed.), Νόμος Ῥοδίων Ναυτικός, ccxx.

«*ei S ζ (Ath. Theod. Nomoc. XIV tit.)] μηδὲ εἰ (δὲ εἰ add. s. v. in litura L, εἰ om. Nomoc.^{dm}), MLB (Iul.) tam antiqua quam manifesta interpolatione*»⁷.

(I) Μηδέ omitted. In this comment, the following sources omit μηδέ, thus indicating that bishops had to pay *sportulae*:

3.1. S = The *Collectio LXXXVII capitulorum* (Coll. 87), the appendix to the *Collectio L titulorum* which was compiled ca. 550 by John Scholasticus, formerly lawyer and priest in Antioch. He was sent to Constantinople in order to represent the Church of Antioch at the imperial court. After Justinian's death in 565, John became patriarch of Constantinople (John III, 565-577). The Coll. 87 contained secular law dealing with ecclesiastical and religious affairs: it consisted of 87 chapters containing text portions from Justinian's Novels. Originally, John Scholasticus had his Coll. 87 – compiled before 565 – circulate separately. After Justinian's death, John came up with a second recension of his *Collectio L titulorum*: on this occasion, he provided the Coll. 87 with its own rubric and prologue, and added it as an appendix to the 50 titles⁸. The relevant passage reads:

ο'. περὶ τοῦ μηδεμίαν δῆλῃσιν ἢ μεθοδίαν ὑπομένειν ἐπίσκοπον ὑπὲρ τῶν τῆς ἐκκλησίας αὐτοῦ πραγμάτων· εἰ δὲ ὑπὲρ ἰδικῶν, καὶ σπόρτουλα ἀπαιτήσθω, μόνον τῶν οἰκονόμων ἢ τῶν ἐπὶ τούτῳ προβαλλομένων τὰς ἀγωγὰς ὑπομενόντων⁹.

3.2. ζ = *Authenticum* (Auth.), or to be more precise, the Greek collection of Novels underlying the *Authenticum*. The Auth. itself is a Latin κατὰ πόδας rendering, used as an auxiliary for Latin students in the Latin course on Justinian's Greek Novels, this course being part of Justinian's system of legal education as taught by the *antecessores*. The *Authenticum* stems from a bilingual collection of Novels: the Latin text was originally written between the lines of the Greek original, in such a way that every Latin word corresponded exactly with the Greek word right below it. At a moment which can no longer be specified, the Auth. was detached from its original: scribes started to copy only the Latin text. The *Authenticum* must have originated shortly after May

7. SK 615 app. crit. ad l. 17 εἰ.

8. On the Coll. 87, cf. VAN BOCHOVE, *ΔΙΑΙΠΕΣΙΣ*, 74 with further references in note 121; HARTMANN - PENNINGTON (eds.), *The History*, 350 (General Index, s.v. *John III Scholasticus with Collectio LXXXVII Capitulorum*); TROIANOS, *Die Quellen*, 148-150; *infra* § 5.1.

9. Coll. 87, c. 70 (ed. HEIMBACH, 'Ανέκδοτα, 206).

556: the most recent law incorporated into the *Authenticum* is Novel 134, dating from May 1st 556¹⁰. The relevant passage from the *Authenticum* reads:

*Episcopus enim pro rebus suae ecclesiae nullam exactionem molestiamque sustineat, sportularum vero si pro talibus causis admoneatur, exigatur; actiones videlicet contra ecclesiam propositas oeconomis suscipientibus aut illis qui in ea causa ordinati sunt*¹¹.

3.3. Ath. = *Athanasius Scholasticus* of Emesa, *Syntagma Novellarum* (Ath.). The lawyer *Athanasius* lived in the second half of the sixth century. He aimed at facilitating the consultation of the Novels of Justinian, which in those days made up the bulk of the imperial legislation used in legal practise. By means of supplying basic information and of bringing down the Novels to their bare essentials, *Athanasius* wished to provide lawyers with a systematic introduction into the subject matter of those Novels, without having the intention to substitute them. In order to achieve his aim, he divided the Novels known to him – viz. the Novels of Justinian and Justin – into 22 thematically arranged titles. In their turn, the titles were subdivided into διατάξεις or constitutions, each one of which consisted of an entire Novel. The constitutions were again subdivided into smaller units: κεφάλαια or chapters. *Athanasius* partly created these chapters himself, and partly adopted them from his exemplar: the

10. On the *Authenticum*, cf. e.g. VAN BOCHOVE, *ΔΙΑΙΠΕΣΙΣ*, 58-59 with note 61; VAN BOCHOVE, *Basilica Online Bibliography*, Nos. 375-380; TROIANOS, *Quellen*, 93-94, 99, 152; *infra* § 5.2.

11. Auth. 123.28 (SK 615/13-18). In a comment pertaining to this text fragment from the *Authenticum*, one of the referees rightly observed that, if regarded as a κατά πόδας, the phrase *sportularum vero si pro talibus causis admoneatur, exigatur* does not seem to correspond exactly with the text of the Greek Novel. To this the following can be brought forward: the *Authenticum* is not a κατά πόδας of the Greek text of the Novel in the *Collectio CLXVIII Novellarum*, but of that in the Collection of 135 Novels; on this, cf. *infra* § 5.2. The Greek text need not have been identical in both Collections. It is possible, for instance, that *sportularum* in the phrase quoted above is the Latin rendering of συνήθειας in the Greek original, in which case the compiler of the *Authenticum* has read συνήθειας as a genitive singular instead of an accusative plural; on this, cf. *supra* note 2. The phrase *pro talibus causis* may be explained along the following lines: the compiler of the *Authenticum* may not have read ὑπὲρ τῶν ἰδικῶν πραγμάτων in his Greek original, but ὑπὲρ τῶν ἑαυτῶν πραγμάτων ‘concerning his own personal affairs’, which is very closely related as regards meaning. This Greek text must of course have been written in uncial script: ΥΠΕΡΤΩΝΕΑΥΤΩΝΠΡΑΓΜΑΤΩΝ or perhaps even as ΥΠΕΡΤΩΝΑΥΤΩΝΠΡΑΓΜΑΤΩΝ, which may have led the compiler of the *Authenticum* to misread ΤΩΝΑΥΤΩΝ as τῶν αὐτῶν instead of τῶν αὐτῶν standing for τῶν ἑαυτῶν: ultimately, this resulted in the mistaken Latin rendering *pro talibus causis*. Other explanations are also possible.

Collection of Novels used by him for the compilation of his book. This was how the *Syntagma* of the Novels of Justinian originated. What has come down to us is the second, revised edition of this work, written between May 572 and August 577. The second edition contains important supplements and improvements. As it is, many Justinian Novels suffer from a lack of systematic cohesion: in many cases, they are not concerned with one specific item, but deal with a multitude of very heterogeneous and highly divergent subjects. In view of the thematic structure of the *Syntagma*, this would have led to the fragmentation of individual Novels, and the subsequent dispersion of minor text portions from those Novels over the various titles of the *Syntagma*. *Athanasius*, however, had no wish to meddle with the Novels in that way; on the contrary, he rather wanted to avoid the division of the Novels over the individual titles of his *Syntagma*. In order to achieve this, he provided most titles with annotations, or in his own words: τὰ παράτιτλα τοῦ τίτλου ‘the parallel titles of the title’. These parallel titles can be defined as notes on any given title of the *Syntagma*. As regards content, the parallel titles refer to other titles of the *Syntagma* and the Novels included there: those Novels contain rulings concerning the same subject matter as the one dealt with in the main title to which the relevant paratitlon belongs. As regards form, there are two types of paratitla: they either merely refer to a certain aspect of the Novel alluded to, or they provide the text of the ruling to be found in the Novel concerned. In the second edition of his *Syntagma*, *Athanasius* also came up with an additional, twenty-third title, provided with its own rubric: Περὶ διαφόρων ἀναγνωσμάτων ‘On various places’ (in the text of the *Syntagma*). *Athanasius*’s remarks in this last title are of the same nature as the regular paratitla to most of the 22 titles of the first edition, and can be looked upon as paratitla to the *Syntagma* in its entirety¹². The relevant passage from the *Syntagma* relating to bishops having to pay *sportulae* reads:

Ἐπίσκοπος δὲ αἰτιαθεὶς ὑπὲρ ἰδίας αἰτίας διδότην σπόρτουλα, μηδαμῶς δὲ ἐναγέσθω ὑπὲρ τῆς ἰδίας ἐκκλησίας, ἀλλ’ ὁ οἰκονόμος αὐτοῦ, (...) ¹³.

12. On *Athanasius* of Emesa in general, cf. VAN BOCHOVE, *ΔΙΑΙΠΕΞΙΣ*, 48-49 with notes 19-22; VAN BOCHOVE, *Basilica Online Bibliography*, Nos. 406-421; TROIANOS, *Quellen*, 112-114 and 392 (*Index*); *infra* § 5.3.

13. Athan. 1.2.47 (SIMON - TROIANOS, *Das Novellensyntagma*, 42/4-6). The first three titles of *Athanasius*’s *Syntagma* constitute the third (= Novel) part of the *Collectio Tripartita* (= Coll. Trip.). Thus, Athan. 1.2.47 = Coll. Trip. III.1.2.49 (VAN DER WAL - STOLTE, *Collectio Tripartita*, 124/10-11). On the third part of the Coll. Trip., cf. VAN DER WAL - STOLTE,

Curiously, a paratitlon pertaining to the fifth title of the *Syntagma* explicitly states that a bishop does *not* have to pay *sportulae*. Thus, *Athanasius* seems to contradict himself:

Ἐπίσκοπος δὲ αἰτιαθεὶς μὴ παρεχέτω σπόρτουλα, μηδὲ ἐναγέσθω ὑπὲρ τῆς ἰδίας ἐκκλησίας, ἀλλ' ὁ οἰκονόμος αὐτοῦ¹⁴.

3.4. Theod. = *Theodorus Scholasticus, Breviarium Novellarum* (Theod. Brev.). The lawyer Theodore originated from Hermoupolis in the Thebaid in Upper-Egypt and lived in the second half of the sixth century. He wrote two Summaries. The first of these is a *Summa* of the Justinian Code, fragments of which have come down to us via the *scholia* to the *Basilica* and via some other sources. The second, almost completely preserved *Summa* is the *Breviarium* of Justinian's Novels, compiled somewhere after the year 575. The *Breviarium* lacks a systematical arrangement: Theodore simply adopted both the numbers and the sequence of the Novels in the *Collectio CLXVIII Novellarum*. In the *Breviarium* each summary of a Novel – or of a part of it in case of a long one – is followed by notes styled παραπομπαί, viz. cross-references which exclusively refer to parallel texts from the Code and other Novels¹⁵. In the *Breviarium* we read:

Οὐκ ἐνάγεται ἐπίσκοπος ὑπὲρ τῆς ἐκκλησίας αὐτοῦ, ἀλλ' ὁ οἰκονόμος κατέχεται. ἀνάγνωθι βι. α' τοῦ κώδ. τί. γ' διάτ. λβ'. Ἐπίσκοπος ὑπομνησκόμενος ὑπὲρ οἰκείου πράγματος σπόρτουλα δίδωσιν¹⁶.

3.5. Nomoc. XIV tit. = *Nomocanon XIV titulorum*. It was the lawyer designated as the younger *Anonymus* / *Enantiophanes* who compiled the *Nomocanon* of Fourteen Titles, somewhere in the period between 577-620. The true name of this lawyer remains obscure. Apart from the *Nomocanon*, the younger *Anonymus* / *Enantiophanes* also produced παραγραφαί on the Digest (or, rather, on the Greek *Summa* of the Digest composed by the elder *Anonymus*, which underlies the Digest part of the *Basilica* text): the παραγραφαί survive in the *Basilica scholia*. The Dutch scholar B.H. Stolte has

Collectio Tripartita, XXXIV-XXXV.

14. Athan. 5.P.1.8 (SIMON - TROIANOS, *Das Novellensyntagma*, 218/4-5).

15. On Theodore of Hermoupolis in general, cf. VAN BOCHOVE, *ΔΙΛΙΠΕΣΙΣ*, 63-64 with notes 86-87; VAN BOCHOVE, *Basilica Online Bibliography*, Nos. 488-501; TROIANOS, *Quellen*, 115-116 and 397 (*Index*); *infra* § 5.4.

16. Theod. Brev. 123.60-61 (ZACHARIAE, Ἐνέκδοτα, 130).

convincingly argued that the younger *Anonymus / Enantiophanes* may also be held responsible for the *Collectio Tripartita*¹⁷. The relevant passage from the *Nomocanon* of Fourteen Titles reads as follows:

Ἐπίσκοπος ὑπὲρ τῶν ἰδίων πραγμάτων ἐναγόμενος δίδωσι σπόρτουλα, ὑπὲρ δὲ τῆς ἐκκλησίας αὐτοῦ μὴ ὀχλείσθω, ἀλλ' ὁ οἰκονόμος, ἢ ὁ ἐπὶ τούτῳ προβαλλόμενος¹⁸.

*

(II) Μηδέ included. The following sources from Kroll's comment include μηδέ, thereby evidently observing that bishops did *not* have to pay court fees when their private affairs were at issue.

3.6. M = Venice, Biblioteca Nazionale di San Marco, cod. Marc. gr. 179 (siglum: **M**), dating from the twelfth / beginning of the thirteenth century¹⁹.

3.7. L = Florence, Biblioteca Laurenziana, cod. Laurent. plut. gr. 80, 4 (siglum: **L**), written in the second half of the thirteenth century²⁰. In SK 615 app. crit. ad l. 17 εἰ, Kroll observes with regard to the reading μηδὲ εἰ in **L** that this manuscript adds above the line in erasure (in a smudge) δὲ εἰ²¹.

17. Cf. STOLTE, *The Digest Summa*, 47-58; VAN DER WAL - STOLTE, *Collectio Tripartita*, XV n. 10, XXI and XXXII. On the Coll. Trip. in general, cf. VAN DER WAL - STOLTE, *Collectio Tripartita*, XIII-LVIII; HARTMANN - PENNINGTON, *The History*, 347 (General Index, s.v. *Collectio tripartita*). On the younger *Anonymus / Enantiophanes*, cf. VAN BOCHOVE, *ΔΙΛΙΠΕΣΙΣ*, 50-51 with notes 86-87; VAN BOCHOVE, *Basilica Online Bibliography*, Nos. 399-405; TROIANOS, *Quellen*, 154-156 and 393 (*Index*). On the *Nomocanon* of Fourteen Titles, cf. finally HARTMANN - PENNINGTON, *The History*, 353 (General Index, s.v. *Nomokanon of 14 Titles*); TROIANOS, *Quellen*, 154-158.

18. Nomoc. XIV tit., 9.1 (RHALLER - POTLES, *Σύνταγμα*, 176. Text also in: PITRA, *Iuris ecclesiastici Graecorum historia*, 540-541.

19. On **M**, cf. RHBR 1, No. 296.

20. On **L**, cf. RHBR 1, No. 67.

21. Kroll also remarks that εἰ is omitted by two further manuscripts, handing down the *Nomocanon XIV titularum* in the adaptation of Michael and Theodore (Bestes): Dublin, Library of Trinity College, cod. Dubl. Trin. Coll. 494 (twelfth century) and Munich, Bayerische Staatsbibliothek, cod. Monac. 122 (twelfth century; SCHMINCK - GETOV, *Repertorium* 3, No. [501]). Both manuscripts appear to include μηδέ. It should be noticed that the manuscript from Dublin is probably the modern-day cod. Dubl. Trin. Coll. gr. 199; cf. SCHMINCK - GETOV, *Repertorium* 2, No. 331; SCHMINCK, *Das Prooimion*, 364 (= 516).

3.8. B = The text of the *Basilica*, compiled in the later ninth century, in the present case Bas. 3.1.44, of course in the edition of Heimbach²².

3.9. Iul. = The *antecessor Julianus* (Iul.). In his classroom, this *antecessor* gave a Latin course on Justinian's Greek Novels for an audience consisting of students whose mother tongue was Latin. The most important of *Julianus's* writings is his completely preserved Latin index of the Greek Novels, known under the title *Juliani Epitome latina Novellarum Justiniani*. In the *Epitome*, the Novels are referred to as constitutiones. Every constitution is subdivided into a number of *capitula*. These chapters do not recommence with number one at the beginning of every new constitution, but constitute an uninterrupted rising sequence from 1 up to 564 throughout the entire *Epitome latina*. *Julianus* also produced two sets of paragraphai or notes. The first of these is known under the name *Scholia anonyma in constitutiones aliquot*: it is incomplete. The second – complete – set consists of short comments which are known as *Paratitla*. The relation between the *Scholia* and the *Paratitla* remains unclear. In his teachings, *Julianus* may also have used a Latin *κατὰ πόδας*, much like the *Authenticum*, though not the *Authenticum* itself: the *Epitome Juliani* predates the *Authenticum*, or rather, the Greek collection underlying the *Epitome* predates the Greek original of the *Authenticum*. *Julianus* lectured in Constantinople in the year 555/556²³. In the *Epitome latina* we read:

*Nullus episcopus pro rebus ecclesiae suae executionem uel molestiam patiat; sportulas autem nec pro suis negotiis admonitus praestet. Actiones autem contra ecclesias propositas oeconomi suscipiant, uel illi, qui in hac causa praepositi sunt*²⁴.

*

3.10. An additional problem in the dilemma whether or not bishops had to pay *sportulae* – incorporation or omission of μηδέ – is that in his unrivalled

22. HEIMBACH, *Basilicorum libri LX*, 1, 106. On the *Basilica* text and on its genesis in the later ninth century, cf. VAN BOCHOVE, *Basilica Online Bibliography*, Nos. 158-162; TROIANOS, *Quellen*, 202-211.

23. On Julian and his writings, cf. VAN BOCHOVE, *ΔΙΑΙΠΕΣΙΣ*, 60 with note 66; VAN BOCHOVE, *Basilica Online Bibliography*, Nos. 442-451; TROIANOS, *Quellen*, 71, 93-94, 97-100, and 154.

24. Iul., const. 115, 47, capit. 473 (HAENEL, *Iuliani Epitome*, 158).

Manuale Novellarum, the Dutch scholar N. van der Wal appears to follow Kroll's view according to which μηδέ would be an interpolation which should therefore be omitted from the text of Nov. 123.28²⁵. However, in the critical edition of Bas. 3.1.44, Van der Wal accepted μηδέ as a genuine, integral part of the text of this *Basilica* chapter. Van der Wal's dealing with Nov. 123.28 is only too understandable, as in his résumé of the Novel he was exclusively focussed on its content and relied on the text as established by (Schöll and) Kroll. In the case of the *Basilica* text, however, Van der Wal's role was entirely different. As co-editor of Bas. 3.1.44, Van der Wal had to take the *Basilica* manuscript tradition into account. The question is, of course, whether or not Kroll was right in his supposition that the occurrence of μηδέ in the text of Nov. 123.28 is indeed to be looked upon as an old and manifest interpolation. And: how should a translator proceed from all the above?

4. As already observed above, μηδέ is transmitted by all three manuscripts handing down the text of Bas. 3.1.44, viz. **Cb**, **Va** and **P**²⁶. Moreover, μηδέ also occurs in **M** and **L**, the two manuscripts directly handing down the text of Nov. 123.28²⁷, the source underlying Bas. 3.1.44. The occurrence of μηδέ in these manuscripts is, of course, no coincidence, as **M** and **L** are the direct textual witnesses of the *Collectio CLXVIII Novellarum*, the Collection of Novels that underlies the Novel part of the *Basilica* text. Or to be more precise, it is recension L of the *Collectio CLXVIII Novellarum* that underlies the *Basilica* text²⁸. The transmission of the text of Bas. 3.1.44 / Nov. 123.28 including μηδέ in the five manuscripts mentioned above should carry considerable weight for a translator in his decision whether or not to translate μηδέ.

5. With regard to the other sources adduced by Kroll²⁹, it should be taken into account that even though these sources are indeed all testimonies of the text of Nov. 123.28, they can certainly not all be looked upon as testimonies or representatives of the *Collectio CLXVIII Novellarum*, or, rather, recension L of that Collection. Despite Justinian's explicit assertion that,

25. VAN DER WAL, *Manuale Novellarum*, No. 307: «(...)»; dans les procès concernant eux-mêmes, les évêques payent les sportules normales; (...)».

26. Cf. *supra* § 1 with note 3.

27. *Supra* § 3.6 and § 3.7.

28. VAN DER WAL, *La version florentine*; VAN BOCHOVE, *ΔΙΑΙΠΕΣΙΣ*, 76-87 *passim*.

29. See *supra* § 3.1 - § 3.5, and § 3.9.

should the need arise, he intended to issue an official collection (*congregatio*) of Novels after the promulgation of his *Codex repetitae praelectionis* in 534³⁰, this intention was never crowned with fruition. There never existed an officially promulgated Collection of Justinian's Novels. The *Collectio CLXVIII Novellarum* was just one of the private collections circulating in the sixth century³¹. In these private collections, the text of the Novels must have been essentially the same, of course, but we cannot rule out the existence of (in itself) minor differences, such as the omission of *μηδέ* or, on the contrary, the incorporation of that phrase.

5.1. As the direct source of the *Collectio LXXXVII capitulorum*³² is unknown – which collection of Novels, or was the text of Nov. 123 perhaps consulted immediately after its promulgation by the imperial chancery in 546? –, it is impossible to be more specific regarding the omission of *μηδέ* from Coll. 87, c. 70.

5.2. We have already seen that the *Authenticum* stems originally from a bilingual collection of Novels. The collection of Greek Novels underlying the *Authenticum* contained 135 Novels³³. In this Greek collection, the Novels were provided with numbers often strongly deviating from their counterparts in the *Collectio CLXVIII Novellarum*³⁴. Moreover, the rubrics of the Novels in both collections showed differences as well, on the understanding that these rubrics can be regarded as original. Nov. 123 in the Collection of 168 Novels bears number 134 in the *Authenticum*, thus implying that Nov. 123 carried number 134 in the collection underlying the *Authenticum*. The rubric of Nov. 123 reads: (Νεαρὰ) ρκγ'. Περὶ ἐκκλησιαστικῶν διαφόρων κεφαλαίων, that of Auth. 134: (CXXXIV) *De sanctissimis et deo amabilibus et reverentissimis episcopis et clericis et monachis*³⁵. As the *Authenticum* is a *κατὰ πόδας* of its Greek original, and *nec* is lacking in the section quoted in § 3.2 above, it is

30. Cf. const. *Cordi* § 4: (...). *hoc etenim nemini dubium est, quod, si quid in posterum melius inveniatur et ad constitutionem necessario sit redigendum, hoc a nobis et constituatur et in aliam congregationem referatur, quae novellarum nomine constitutionum significetur.* (534).

31. Cf. e.g. TROIANOS, *Quellen*, 92 and 93-94 with notes 122-124.

32. On the Coll. 87, cf. *supra* § 3.1.

33. See *supra* § 3.2; TROIANOS, *Quellen*, 94 note 123.

34. Cf. the concordance in VAN DER WAL, *Manuale Novellarum*, 194.

35. SK 593/14-15 (rubric of Nov. 123), SK 593/14-17 (rubric of Auth. 134).

no more than logical to suppose that μηδέ was lacking in the Greek original of this section as well. Thus, the value of the *Authenticum* as a source arguing in favour of Kroll's suggestion that the presence of μηδέ in Nov. 123.28 in the *Collectio CLXVIII Novellarum* ought to be looked upon as an interpolation is not beyond dispute, to say the least of it.

5.3. For the compilation of his *Syntagma*, *Athanasius* of Emesa³⁶ did not draw upon the *Collectio CLXVIII Novellarum*: he based himself on another Collection containing 153 Novels, adapting the Novels in this exemplar thoroughly and exhaustively. This Collection of 153 Novels was not unlike its counterpart containing 168 Novels, but there were also differences³⁷. The Novels in the Collection underlying the *Syntagma* were unnumbered: *Athanasius* alluded to those Novels by quoting their opening words (*incipit*), or their rubrics – simply adopting them from his exemplar, instead of composing them himself –, or both. It is not uncommon that rubrics of Novels in the Collection of 153 Novels differed from their counterparts in the *Collectio CLXVIII Novellarum*. For example, we have already seen that the rubric of Nov. 123 in the latter collection reads ρκγ'. Περὶ ἐκκλησιαστικῶν διαφόρων κεφαλαίων. *Athanasius* referred to this – unnumbered – Novel in his exemplar by quoting its rubric Περὶ ἐπισκόπων καὶ κληρικῶν and its *incipit* Περὶ διοικήσεως καὶ προνομίων καὶ ἄλλων διαφόρων κεφαλαίων³⁸.

Now, what are the consequences of all this in the issue whether or not bishops had to pay *sportulae*? Because there are apparently differences between Nov. 123 in the Collection of 168 Novels and its unnumbered counterpart in the Collection of 153 Novels, it is feasible that in the latter Collection μηδέ was lacking, thus indicating that bishops did indeed have

36. See *supra* § 3.3.

37. For all the details, cf. SIMON, *Das Novellenexemplar*.

38. SK 593/14-15 (rubric of Nov. 123 in the Collection of 168 Novels); SIMON - TROIANOS, *Das Novellensyntagma*, 22/1 (rubric of the Novel in the Collection of 153 Novels), and 22/3 (*incipit* of the Novel). It should be noticed that the addressee of the Novel, viz. Peter, holds different positions. In Nov. 123 in the *Collectio CLXVIII Novellarum* he is referred to as *magister officiorum*: 'Ο αὐτὸς βασιλεὺς Πέτρῳ τῷ ἐνδοξοτάτῳ μαγίστρῳ τῶν θεῶν ὀφφικίων (SK 593/18-19); in the Collection of 153 Novels – and in the Collection of Novels underlying the *Authenticum*, too – he holds the position of *praefectus praetorio*: 'Ο αὐτὸς βασιλεὺς Πέτρῳ ἐπάρχῳ PRAETORION (SIMON - TROIANOS, *Das Novellensyntagma*, 22/2). Cf. also the commentary in SK 593 app. crit. ad l. 18.

to pay *sportulae* when their own, personal affairs were at issue. It cannot be entirely ruled out that when composing title 1, constitution 2, chapter 47 of his *Syntagma*, it was *Athanasius* himself who omitted the phrase *μηδέ*, but this is not very likely: he perused the Novels in his exemplar and seems to have made little mistakes³⁹. To this, the following can be added. In § 3.3 above, it has been observed that *Athanasius* seems to have contradicted himself by first writing that bishops did have to pay *sportulae*, and subsequently in a paratitlon that they did not: *ἐπίσκοπος δὲ αἰτιαθεὶς ὑπὲρ ἰδίας αἰτίας διδότην σπόρτουλα* in Athan. 1.2.47 versus *ἐπίσκοπος δὲ αἰτιαθεὶς μὴ παρεχέτω σπόρτουλα* in Athan. 5.P.1.8. How is this apparent contradiction to be explained? It is, of course, always possible to argue that it was not *Athanasius* himself who added *μή* to Athan. 5.P.1.8, but a later user who consulted the *Syntagma*, and who somehow knew that bishops did *not* have to pay *sportulae*. However, if this is indeed the case, then why did that user only add *μή* to the paratitlon, and did he refrain from adding the phrase to Athan. 1.2.47, the relevant passage in the main text of the *Syntagma*? Another interpretation is equally possible, though, viz. by looking upon the apparent contradiction between Athan. 1.2.47 and Athan. 5.P.1.8 as a deliberate correction or supplement on *Athanasius's* part. It is not unlikely that it was *Athanasius* himself who added *μή* to the paratitlon, because after the completion of the first edition of his *Syntagma* he had somehow found out from another source that the text of the Novel in his exemplar – the Collection of 153 Novels – was incorrect in its statement that bishops did have to pay *sportulae*, and that he had therefore made a mistake in his *Syntagma*. It is quite possible that *Athanasius* wanted to remedy this mistake, and for that reason decided to insert *μή* in the text of the paratitlon. We have already seen that the paratitla were added to the second edition of the *Syntagma* (though this is not completely certain)⁴⁰, and Athan. 5.P.1.8 may well have presented *Athanasius* the perfect opportunity to rectify his earlier mistake in Athan. 1.2.47 – even though this rectification did cause a contradiction... Be that as it may, the above considerations strongly mar the cogency of Kroll's suggestion that the presence of *μηδέ* in Nov. 123.28 in the *Collectio CLXVIII Novellarum* ought to be seen as an interpolation.

39. Cf. SIMON, *Das Novellenexemplar*, 140 with notes 56 and 57.

40. On this, cf. SIMON, *Paratitla Athanasii*, 143-145 and 156-157.

5.4. As the lawyer Theodore of Hermoupolis⁴¹ simply adopted both the numbers and the sequence of the Novels in the *Collectio CLXVIII Novellarum* while compiling his *Breviarium*, I cannot explain why Theodore omitted a negation in Theod. Brev. 123.60-61, his résumé of the relevant section of Nov. 123.28, thereby indicating that a bishop did have to pay *sportulae*: Ἐπίσκοπος ὑπομνησκόμενος ὑπὲρ οἰκείου πράγματος σπόρτουλα δίδωσιν. It is, of course, always possible to argue that οὐκ or an equivalent thereof was already missing in Theodore's copy of the Collection of 168 Novels, or that he deliberately omitted the negation, but both explanations do somehow not appear to be entirely satisfactory. Here, I can only add Zachariä (von Lingenthal)'s succinct comment, in which he noted the presence of the negation μηδέ in the text of Nov. 123.28, and concluded that a negation should be supplemented in Theod. Brev. 123.60-61. Zachariä also pointed out that in Heimbach's opinion a negation was missing in Athan. 1.2.(47)⁴². Thus, both Zachariä (as editor of Theodore's *Breviarium*) and Heimbach (as editor of *Athanasius's Syntagma*) intended to do exactly the opposite of what Kroll actually did. While the latter deleted μηδέ from his edition of the text of Nov. 123.28 on the basis of the absence of a negation in (*inter alia*) Theodore's *Breviarium* and *Athanasius's Syntagma*, both Zachariä and Heimbach suggested to insert a negation in their respective editions on the basis of the presence of μηδέ in the text of Nov. 123.28 in the *Collectio CLXVIII Novellarum*.

5.5. With regard to the Novels in the *Nomocanon* of Fourteen Titles, its compiler, the younger *Anonymus / Enantiophanes*⁴³, used the system of *Athanasius* of Emesa's *Syntagma Novellarum* by citing the Novels after the numbers of title and constitution in the *Syntagma*. This system of the *Syntagma* was adopted directly, or indirectly via the *Collectio Tripartita*: we have already seen that the *Enantiophanes* also compiled the Coll. Trip., and that in the third (= Novel) part of the Coll. Trip. he simply adopted the first three titles of *Athanasius's Syntagma*⁴⁴. Thus, it would seem possible that for the text of

41. On him, see *supra* § 3.4.

42. Cf. ZACHARIAE, 'Ανέκδοτα, 130 note 36: «Nov. 123 c. 28: σπόρτουλα δὲ μηδὲ εἰ ὑπὲρ τῶν ἰδικῶν πραγμάτων ὑπομνησθεῖν ἀπαιτεῖσθω. *Unde negatio apud nostrum supplenda esse videtur. Sed Athanasius I, 2 (Heimb. Av. I p. 12): ἐπίσκοπος δὲ αἰτιαθεὶς ὑπὲρ ἰδίας αἰτίας διδότην σπόρτουλα, ubi tamen similiter negationem deesse, iudicium est Heimbachii l. l. not. 87*».

43. Cf. *supra* § 3.5.

44. Cf. *supra* note 13; § 3.5 with note 17; SIMON - TROIANOS, *Das Novellensyntagma*,

the Novels in the *Nomocanon XIV titularum*, the *Enantiophanes* drew ultimately on the Collection of 153 Novels which also underlay *Athanasius's Syntagma*. However, this is certainly not the case. For, with respect to the *Nomocanon* – and also with regard to his notes on the Digest preserved in the *Basilica scholia* – he appears to have consulted a different source, viz. yet another Collection of the Novels of Justinian⁴⁵. In this Collection, the Novels carried numbers that strongly diverged from those in the *Collectio CLXVIII Novellarum*⁴⁶. Moreover, the Collection consulted by the *Enantiophanes* has one, particularly striking feature: the individual chapters of the Novels are numbered in an uninterrupted rising sequence throughout the entire Collection⁴⁷. In the *Nomocanon*, the *Enantiophanes* quoted Novels not epitomized by *Athanasius* after the numbers and the rubrics they carried in this Collection. Novels that had been dealt with by *Athanasius* were referred to by the numbers of title and constitution in the latter's *Syntagma*, but their text was derived from the Collection. The reason why the *Enantiophanes* used this other Collection for the *Nomocanon* of Fourteen Titles is that he most probably regarded the text of the Novels in the *Syntagma* / Coll. Trip. incompatible with the scope and character of the *Nomocanon*⁴⁸.

After all this, where do we stand in the issue whether or not bishops had to pay *sportulae*? In § 3.5, we have already seen that in Nomoc. XIV tit. 9.1, the *Enantiophanes* observed that bishops were indeed obliged to pay: ἐπίσκοπος ὑπὲρ τῶν ἰδίων πραγμάτων ἐναγόμενος δίδωσι σπόρτουλα. In the Novel used by the *Enantiophanes* for his résumé in Nomoc. XIV tit. 9.1, a negation (οὐκ or οὐδέ) was apparently lacking. Moreover, one final observation may be added here. The *Enantiophanes* was familiar with *Atha-*

Einleitung, XVIII and XIX-XX.

45. It should be noticed that this Collection of Novels consulted by the *Enantiophanes* did not contain the full text of the Novels: he merely used an extract or résumé ('Novellenauszug'), based on such a full-blown collection, and provided with the same numbers of Novels as those in the underlying Collection; on this, cf. VAN DER WAL, *Wer war der "Enantiophanes"?*, 133-134. In what follows, however, the phrase 'Collection of Novels' will be used for convenience sake.

46. Cf. the concordance of the numbers compiled by VAN DER WAL, *Wer war der "Enantiophanes"?*, 136.

47. Cf. VAN DER WAL, *Manuale Novellarum*, XII with note 5.

48. On the collection(s) of Novels used by the *Enantiophanes* in general, cf. e.g. STOLTE, *Digest Summa*, 53-54; VAN DER WAL - STOLTE, *Collectio Tripartita*, XVIII, XX and XXXIV-XXXV with further references; STOLTE, *Le Nouvelle*, in particular 65, 66 and 68-69.

nasius's Syntagma via the Coll. Trip. Yet, he appears to completely ignore the fact that it was quite possibly *Athanasius* himself who corrected the statement in Athan. 1.2.47 (ἐπίσκοπος δὲ αἰτιαθεὶς ὑπὲρ ἰδίας αἰτίας διδόντω σπόρτουλα) into its opposite in Athan. 5.P.1.8 (ἐπίσκοπος δὲ αἰτιαθεὶς μὴ παρεχέτω σπόρτουλα)⁴⁹. There is an easy explanation for this: the *Enantiophanes* ignored *Athanasius's* correction because he had merely adopted the first three titles of the *Syntagma* in the third part of the Coll. Trip. The *Enantiophanes* may simply have been unaware of *Athanasius's* correction in Athan. 5.P.1.8. And this detracts from the evidential value of Nomoc. XIV tit. 9.1 as a testimony arguing in favour of Kroll's suggestion that the presence of μηδέ in Nov. 123.28 should be looked upon as an interpolation: had the *Enantiophanes* known about the correction, he would conceivably have incorporated it into the *Nomocanon*.

5.6. We have already seen that the *antecessor Julianus* is mainly known through his *Epitome latina Novellarum Justiniani*⁵⁰. The *antecessor* based his *Epitome* on yet another collection containing 124 Greek Novels⁵¹. In the *Epitome latina*, every constitution is subdivided into *capitula*, which constitute an uninterrupted rising sequence from 1 up to 564 throughout the entire *Epitome*. Such a sequence of *capitula* may already have occurred in the Greek Collection underlying the *Epitome*, but the German scholar Kaiser has argued that the sequence of *capitula* in the *Epitome* itself must derive from *Julianus* himself⁵². The Collection of 124 Novels is closely related to the Collection of Novels used by the *Enantiophanes*: the numbers by which the latter cites complete Novels resemble the numbers by which *Julianus* refers to complete Novels⁵³. Moreover, there is another common feature: both Collections display the uninterrupted rising sequence of *capitula*⁵⁴. On the basis of these similarities, it has been argued that the *Enantiophanes's* Greek Collection might actually be a Greek index composed by

49. Cf. *supra* § 5.3.

50. Cf. *supra* § 3.9.

51. TROIANOS, *Quellen*, 94 note 123 and 99.

52. Cf. NOAILLES, *Les collections de nouvelles*, 51; VAN DER WAL, *Die Textfassung*, 20; KAISER, *Die Epitome Iuliani*, 187-191 and 195-202.

53. Cf. again the concordance compiled by VAN DER WAL, *Wer war der "Enantiophanes"?*, 136.

54. Cf. again VAN DER WAL, *Manuale Novellarum*, XII with note 5.

*Julianus*⁵⁵. This view has been contested by Van der Wal: while admitting that the two series of numbers quoted by the *Enantiophanes* and *Julianus* show a good deal of correspondence, he argued that the series of numbers are far from identical⁵⁶.

The question whether or not bishops had to pay *sportulae* when their own, personal affairs were at issue, has its own role to play in the above matter. For, in the *Epitome latina* *Julianus* wrote that bishops did not have to pay: *Nullus episcopus (...); sportulas autem nec pro suis negotiis admonitus praestet*. This implies the presence of the negation οὐ or οὐδέ (or μή / μηδέ) in the corresponding text fragment in the Collection of 124 Novels, the source of the *Epitome*. In the *Nomocanon*, the *Enantiophanes* observed that bishops were indeed obliged to pay *sportulae*: ἐπίσκοπος ὑπὲρ τῶν ἰδίων πραγμάτων ἐναγόμενος δίδωσι σπόρτουλα. This implies that in the Collection of Novels underlying the *Enantiophanes*'s *Nomocanon* of Fourteen Titles a negation was missing. Now, if this Greek Collection was indeed compiled by the *antecessor Julianus*, this would mean that *Julianus* had flatly contradicted himself in two different sources, by writing *nec* in the *Epitome latina* indicating that bishops did not have to pay *sportulae*, and by omitting οὐ or οὐδέ (or μή / μηδέ) in the Greek index underlying the *Nomocanon*, thus indicating that they had to do so after all. If *Julianus* had indeed compiled the Collection of Novels later consulted by the *Enantiophanes*, one might expect the latter to have inserted a negation οὐδέ or μηδέ in the relevant text unit in *Nomoc. XIV tit. 9.1*. The *Enantiophanes* failed to do so. Thus, it makes rather more sense to argue in favour of a different origin for the Greek Collection of Novels underlying the *Nomocanon* by arguing that it was not compiled by the *antecessor Julianus*. The fact that the latter wrote in the *Epitome latina* that bishops did not have to pay *sportulae* more or less corroborates Van der Wal's point of view regarding the authorship of the Greek Collection forming the basis of the *Enantiophanes*'s *Nomocanon*. Be that as it may, *Julianus*'s *Epitome latina* confirms the existence of yet another Collection of Greek Novels handing down the phrase οὐδέ or μηδέ in the passage concerning bishops and *sportulae*, whether or not to be paid by them.

55. Cf. SIMON - TROIANOS - WEISS, *Zum griechischen Novellenindex*, 4-11; see also TROIANOS, *Quellen*, 100 with note 155.

56. Cf. the synoptic tables in VAN DER WAL, *Manuale Novellarum*, 196-198; see also VAN DER WAL, *Wer war der "Enantiophanes"?*, *passim*.

6. Which conclusions can be drawn from all the above?

(1) There is indeed no problem for the translator of Bas. 3.1.44: as the manuscript tradition is uniform – **Cb**, **Va** and **P** all hand down $\mu\eta\delta\acute{\epsilon}$ ⁵⁷ –, there is no reason not to translate $\mu\eta\delta\acute{\epsilon}$ as an integral part of the *Basilica* text. In accordance with Bas. 3.1.44, bishops did not have to pay *sportulae*.

(2) There should be no problem for a translator of Nov. 123.28 in the *Collectio CLXVIII Novellarum*, as both manuscripts handing down this Collection – **M** and **L**⁵⁸ – do transmit $\mu\eta\delta\acute{\epsilon}$ as an integral part of the text. However, a serious problem is here caused by the fact that contrary to the manuscript tradition, modern translations of Justinian's Novels – such as that by Miller and Sarris⁵⁹, and also the recent Dutch translation by Forrez and Spruit⁶⁰ – disregard $\mu\eta\delta\acute{\epsilon}$ altogether. The translators have – quite understandably – without further ado accepted Kroll's edition of the text of Nov. 123.28 as the genuine text, despite the fact that this text is based on Kroll's conviction that the occurrence of $\mu\eta\delta\acute{\epsilon}$ ought to be looked upon as an old and patently obvious interpolation, and should therefore be deleted from the text.

(3) The presence of $\mu\eta\delta\acute{\epsilon}$ in the text of Nov. 123.28 is not such an old and patently obvious interpolation as Kroll would have it. The sources adduced by him as evidence for his point of view – the *Collectio LXXXVII capitulorum*, the *Authenticum*, *Athanasius* of Emesa, Theodore of Hermoupolis, and the *Nomocanon XIV Titulorum* – are indeed all testimonies of the text of the Novel, but what Kroll intended to provide was an edition of the text of the Novel as featuring in the *Collectio CLXVIII Novellarum*. Some of the above mentioned sources are clearly based on other Collections of Novels: the *Authenticum*, *Athanasius's Syntagma*, the *Enantiophanes's Nomocanon* of Fourteen Titles⁶¹. Moreover, it is quite possible that *Athanasius* even corrected himself in the second edition of his *Syntagma*. If nothing else, the present study demonstrates that the text of one and the same Novel in the various Collections of Novels need not necessarily have been identical in all those Collections: $\mu\eta\delta\acute{\epsilon}$ lacking in the Collection of 135

57. *Supra* § 1 and § 4.

58. *Supra* § 3.6, § 3.7 and § 4.

59. *Supra* § 2 with note 5.

60. Nov. 123.28, Dutch translation by R. Forrez and J.E. Spruit in SPRUIT - LOKIN -VAN DER WAL (red.), *Corpus Iuris Civilis. Novellae*, 125-126.

61. *Supra* § 5.2 (*Authenticum*), § 5.3 (*Athanasius*) and § 5.5 (*Nomocanon*).

Novels underlying the *Authenticum*, in the Collection of 153 Novels underlying the *Syntagma*, in the Collection underlying the *Nomocanon*, and in the copy of the Collection of 168 Novels underlying Theodore of Hermoupolis's *Breviarium*⁶²; μηδέ occurring in the *Collectio CLXVIII Novellarum* represented by M and L (and edited by Kroll), and in the Collection of 124 Novels underlying the *antecessor Julianus's Epitome latina*⁶³. All in all, the confusion and complexity regarding the transmission of the text of the Novel in the various Collections of Novels (omission or incorporation of μηδέ) is too great to warrant a far-reaching intervention as that by Kroll: deletion of μηδέ from the direct transmission of the text of Nov. 123.28 in the Collection of 168 Novels. So much is clear that the path of a translator is not always strewn with roses.

Abstract: Reading the critical apparatus pertaining to Bas. 3.1.44 reveals an interpolation in the text of the underlying source of this *Basilica* chapter: Nov. 123.28, resulting in the question whether or not a bishop had to pay *sportulae* when his own private affairs were at issue: μηδέ included, or omitted from the text as a result of this interpolation. As a consequence, a translator is confronted with a dilemma: should he or she translate the interpolated text, or hold on to the text as transmitted by the manuscripts? The present study discusses and weighs the evidence pro and con adduced by Wilhelm Kroll – one of the editors of the text of the Novel – in his critical apparatus, and concludes that the transmission of the text of the Novel in the manuscripts and in the other testimonies is far too complicated to warrant Kroll's conclusion that the inclusion of μηδέ in the text of Nov. 123.28, and in its wake in Bas. 3.1.44 is an old and manifest interpolation, and should therefore be deleted from the text. In the case at issue, a translator should hold on to the text as handed down by the manuscripts.

Keywords: Bas. 3.1.44 / Nov. 123.28, interpolation?, translation problem?, συνήθεια / *sportulae*, μηδέ, bishops.

Sources: Athanasius Scholasticus Emisenus, *Syntagma Novellarum* (Athan. 1.2.47; Athan. 5.P.1.8); *Authenticum* (Auth. 123.28); *Basilicorum libri LX* (Bas. 3.1.44); *Collectio Tripartita* (Coll. Trip. III.1.2.49); *Collectio LXXXVII capitulorum* (Coll. 87, c. 70); *Collectio CLXVIII Novellarum* (Nov. 123.28); Julianus antecessor, *Epitome latina Novellarum Justiniani* (Iul., const. 115, 47, capit. 473); *Nomocanon XIV Titulorum* (Nomoc. XIV tit., 9.1); Theodorus Scholasticus Hermopolitanus, *Breviarium Novellarum* (Theod. Brev. 123.60-61).

62. *Supra* § 5.4.

63. *Supra* § 5.6.

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