David J. D. Miller/Peter Sarris: The Novels of Justinian. A Complete Annotated English Translation. Cambridge: Cambridge University Press 2018. XIX, 1192 p. in 2 volumes, continuously paginated. £ 185.00. ISBN: 978-1-107-00092-6.

This work is a major achievement, making the numerous Justinianic novels quickly accessible. I found the translation generally quite careful, and I think that the introduction and the annotation will provide most readers with the help they need to make sense of the text. However, unlike the *Codex Justinianus* translation (ed. Frier) also recently published by Cambridge University Press[1], this translation of the novels does not contain the Greek and Latin original texts. This is unfortunate, as this will doubtless keep many people from checking the originals. At the huge price tag these volumes sell for, adding facing originals should have been feasible. However that may be, readers who do not have Schoell/Kroll[2] on their desk (or shy away from the minuscule font it employs) might download my Amanuensis application (www.riedlberger.de/amanuensis), which includes the full text of both the Greek and Latin Novels.

The introduction by Peter Sarris covers most topics required for an understanding of the Novels, although something could have been said on the various types of enactments. Technical terms like edicts and pragmatic sanctions are used *passim* in the introduction and the commentary, without ever being defined; and their employ is not always correct. Thus, the thirteen so-called 'edicts' transmitted collectively under this name are not, technically speaking, edicts (with two exceptions),[3] although they are consistently called such in the annotation. Worse, n. 187 on p. 7 claims that 'pragmatic' "could be used as a noun in its own right to signify an imperial edict"; actually, pragmatics and edicts are two different types of enactments which are mutually exclusive.

1 B. W. Frier (ed.): The Codex of Justinian. A New Annotated Translation, with Parallel Latin and Greek Text. 3 vols. Cambridge 2016.

2 Corpus iuris civilis. Vol. 3: Novellae. Rec. R. Schoell. Opus Schoelli morte interceptum absolvit W. Kroll. 6. ed. Berlin 1954. Reprinted Hildesheim 2009.

3 These two exceptions are Edict 1 and perhaps Edict 6, although the latter text seems to be addressed to dignitaries.

The Justinianic enterprise is regularly (pp. 1, 2, 12, 13) called a "codification," without defining the term (or explaining the procedure), thus unnecessarily creating confusion. What Justinian's compilers did was take the existing Codices Gregorianus, Hermogenianus, and Theodosianus plus later enacted imperial constitutions as starting material; they then omitted, abridged, and rewrote at will to update this material to Justinianic concepts, and they rearranged it freely. If there was no constitution to be found in their raw material on a specific matter (because no emperor in the past 200 years felt obliged to change anything in this field), there was no entry in the Justinian Code on that particular topic. The Justinian Code therefore never provided a *systematic* overview over the whole law in vigor – is it still reasonable to call its creation a 'codification'? Perhaps not according to the definition most people would give for 'codification,' although this depends on one's personal definition, which therefore should be given. On p. 1, it is stated that the Justinian Code "sought to harmonise, unite and give renewed focus to all laws of general effect or significance issued by Roman emperors since the reign of Hadrian." But for the emperors between Hadrian and Diocletian, the Justinian Code did not exploit "all laws of general effect" but rather two limited collections of *rescripts* issued to private petitioners (i.e., the Gregorian and Hermogenian Codes); this material is very different from that employed from Constantine onwards. It is also not correct to say (p. 2) that the Theodosian Code was a "codification of all laws issued by Christian emperors since Constantine." The Theodosian Code was, on purpose, just a *collection* of material, including annulled and superseded laws. While in the case of the Justinian Code, one might, with a very lose definition, perhaps defend the usage of the word 'codification,' its employ for the Theodosian project is certainly out of the question. And while the Theodosian Code does include Julian's laws (who was not a Christian), it omits (e.g.) Magnus Maximus's (who was a good Catholic). The criterion was not Christianity, but whether an emperor was posthumously regarded as legitimate (i.e., whether he achieved the status of *divus*). On p. 2, we also read: "At the same time, a 'law of citations' had been established, officially defining which jurisconsults had canonical standing and which did not. Even those jurisconsults who made it through the Theodosian pruning, however, had still bequeathed to posterity some 1,500 books of opinions." The so-called 'law of citations' is actually just a section in Valentinian's *oratio* of 426, not an important enactment in its own right. It was not a Theodosian measure, nor was there a "Theodosian pruning," as we

find numerous jurists excerpted in the Digests who do not appear in the 'law of citations.'

The introduction repeatedly mentions that there was no official edition of the Justinianic Novels. This is doubtless correct. Less convincing, however, is the claim that things were different with the post-Theodosian Novels: "emperors in the fifth century produced collections of their own novels as a sort of appendix to the *Codex Theodosianus*" (p. 13), "the fifth-century novel collections had been the product of a world in which [...] simultaneous emperors [...] 'gifted' their novels to each other" (p. 14). In actuality, the only extant hint at such an official collection is that Theodosius II transmitted his new laws to Valentinian III (Nov. Theod. 2, Nov. Val. 26), so in all likelihood in the shape of a dossier of some sort. But otherwise it is clear that at least some of the post-Theodosian novels we possess today derive either from recipients' archives (indication of receipt in novels by Majorian, e.g. no. 2, and Anthemius, e.g. no. 1) or even from posted copies (e.g., Nov. Val. 27), hence not from an official edition. At any rate, I do not see evidence to support the idea of official novel collections in the fifth century, issued by emperors explicitly as *addenda* to the Theodosian Code. In other words: I believe that in this respect, there is not much difference between the post-Theodosian novels and the Justinianic ones.

The annotation to the individual novels is, when it comes to juristic questions, quite often exclusively based on Berger's *Encyclopedic Dictionary of Roman Law*. Regularly, Berger is quoted verbatim or very closely paraphrased. However, I am not sure whether a description such as "a gift made on the assumption the donor would pre-decease the donee" (p. 59, n. 16) helps to understand the concept of *donatio mortis causa* much. The note could have been used to explain what a *donatio mortis causa* was really about, or to point to current research output (e.g., Rüger[4]) or at least to the relevant page range in our standard handbook (i.e., Kaser[5]). When explaining *querela inofficiosi testamenti* (p. 363, n. 10), Berger's explanation is shortened and paraphrased in a way that the result is technically no longer correct. At any rate, for basic terms like the "Twelve Tables" (p. 235, n. 4) or "peregrini" (p. 545, n. 13),

4 D. Rüger: Die *donatio mortis causa* im klassischen römischen Recht. Berlin 2011 (Freiburger rechtsgeschichtliche Abhandlungen N.F. 62).

5 M. Kaser: Das römische Privatrecht. 2 Bde. 2., neubearb. Aufl. München 1971 und 1975 (Handbuch der Altertumswissenschaft X 3,3).

some readers might expect more explanations and more comprehensive references than a single Berger page number.

As it is unavoidable in such a comprehensive work, the annotation also includes some real mistakes in fact. N. 4 on p. 313 states that Honorius became emperor in 393 (which is correct), while Arcadius was appointed to rule only in 395 (which is wrong; he was Augustus from 383). N. 1 on p. 688 claims that "after the foundation of Constantinople, it had become normal for one consul to be appointed in Rome, and the other to be appointed for the new capital in the East." In actuality, the matter is a great deal more complicated than this.[6] The main note to the novel on castration (n. 1, p. 933) lacks the crucial piece of information that castration within the Roman Empire had been harshly persecuted since the time of Domitian. The claim that slaves castrated after a fixed date received freedom is also not fully correct: the novel clearly limits this favor to slaves castrated *within* the Roman Empire; yet the eunuchs of Late Antiquity are regularly importations from beyond the frontiers (as castration within the Empire was prohibited), so few would have been able to benefit from Justinian's law. On p. 1010, the phrase "what they acquire will be their own and not become the *peculium* of their master" has a note at *peculium*, explaining it as "personal fund or property." While "property" gives the correct sense here, this is only the case because the Greek phrase is a brachylogy and, strictly speaking, itself incorrect; what the author of the novel means (but does not say) is "a *peculium*, i.e. something belonging to their master." At any rate, the thing to remember about *peculium* is that it is pseudo-property: apparently belonging to a dependent person, it is in actuality owned by the master.

The inscription of Nov. Iust. 167, a prefectoral edict, has a plural ("the prefects say") but mentions just one such prefect. N. 2 on p. 1029 explains this as a scribal mistake: a copyist became confused by the multitude of names the single cited prefect bears and accordingly put the rest of the phrase in the plural. In actuality, it is invariably the college of pretorian prefects that 'speaks' in the case of a prefectoral edict (just as does the college of emperors in the case of an imperial edict). Consequently, one must not touch the verb,

6 R. S. Bagnall/A. Cameron/S. R. Schwartz/K. A. Worp: Consuls of the Later Roman Empire. Atlanta 1987 (Philological Monographs of the American Philological Association 36), 13–18.

but we rather have to assume a lacuna in which the name of the other prefects disappeared.[7]

One recurring glitch in the translation must be noted: the abbreviation *pp. Aug.*, to be found dozens of times among the imperial titles contained in subscriptions of individual novels (in our sample: at the end of 66, 129, 144) is erroneously expanded to *pius princeps, Augustus*; correct would be *perpetuus Augustus*.[8]

Checking the translations was out of the question for all the novels, especially not in the depth I wanted to do it. Instead, I focused on five novels, where I indeed verified the translation word for word.

Nov. Iust. 37

This *novella* is extant only in Latin, and in all likelihood, there never was a Greek version of it, as it refers exclusively to Africa.

> *pr. Venerabilem ecclesiam nostrae Carthaginis Iustinianae ceterasque omnes Africanae dioeceseos sacrosanctas ecclesias imperialibus beneficiis relevare noctu dieque festinamus*
>
> We take pains by night and day to support the venerable church of our *Carthago Justiniana*, and all the other churches of the diocese of Africa, with marks of imperial favour

Sacrosanctus, which qualifies the "other" churches, is omitted in the translation; this is relevant, as thus the church of Carthage seems even more singled out than it already is.

> *1. Cum igitur Reparatus vir sanctissimus sacerdos eiusdem nostrae Carthaginis Iustinianae*
>
> Whereas the most holy Reparatus, priest of that same city of our *Carthago Justiniana*

Sacerdos in late antique sources overwhelmingly (although not exclusively) means "bishop," which at any rate would be the correct translation here.

7 D. Feissel: Documents, droit, diplomatique de l'Empire romain tardive. Paris 2010 (Bilans de recherche 7), 424–425.

8 There is an abundance of evidence that *perpetuus Augustus* is correct, from centuries before Justinian to the time after him. Just to cite a few Justinianic instances: the subscriptions of CI. 1,18 and of the constitutions Imperatoriam, Omnem and Δέδωκεν all have *perpetuus Augustus*, it can be found twice on the Justinianic rescript from Didyma (Feissel [note 7] 264), and more often in Greek renderings of this formula (Feissel 516–517).

2. venerabiles ecclesiae tam nostrae Carthaginis Iustinianae quam omnium civitatum Africanae dioeceseos

the venerable churches of our *Carthago Justiniana*, and of all the cities of Africa

Dioecesis is omitted in the translation. This is relevant, though, as the prefecture/diocese[9] of Africa also includes (e.g.) the island of Sardinia, hence goes beyond Africa proper. For an idiomatic translation, one could have translated *omnes civitates* with "all other cities" instead of "all the cities" (cf. ThLL ll. 9.2.614.51–615.6).

10. Confugas etiam, qui ad venerabiles ecclesias et earum fines convolare festinant et suae saluti prospicere

If fugitives take the step of fleeing for sanctuary to venerable churches and their precincts to save their lives

It should be "to the venerable churches," i.e., *venerabilis* is attributive, not restrictive (in other words: there are no non-venerable churches which are devoid of asylum). "To save their lives" is too restricted. *Suae saluti prospicere* does not presuppose mortal danger by necessity, but possibly 'just' a corporeal punishment or a deportation. The Latin is quite clear on the idea of rushing, flocking (*festinare, convolare*), which is not rendered by "to take the step." So perhaps "who hasten to flock to the venerable churches and their precincts and to seek sanctuary."

11. *sacrosanctae ecclesiae saepe dictae nostrae Carthaginis Iustinianae vel aliis venerabilibus ecclesiis Africanae dioeceseos*

the holy church of our oft-mentioned city of *Carthago Justiniana*, or to any other venerable churches of the African diocese

Again, *venerabilis* is not restrictive; the translation should be "to any other of the venerable churches." Note that here, *sacrosanctus* and *dioecesis* are correctly rendered.

9 Traditionally, Africa is a diocese; after Justinian installed a prefect there, it should be a prefecture, but Justinian himself fluctuates between both appellations (cf. CJ 1,27,1,10, 1,27,1,43 and CJ 1,27,1,15, 1,27,1,19). To tell the truth, I would have been very grateful for a note on *dioecesis*, as this is strange and would arguably deserve some comment.

> *12. temeratoribus eorum poena decem librarum auri subdendis, aliaque gravissima nostri numinis indignatione plectendis omnibus qui nostram dispositionem quocumque modo vel tempore violare temptaverint vel violare concesserint.*
>
> while those who infringe them [our orders, PR] are to be subjected to a fine of ten pounds of gold, and all who try to violate our decree in any way or at any time, or who allow it to be violated, are also to be smitten by our Divinity's gravest displeasure.

Although technically correct, this translation might turn out to be confusing. I expect any unprepared reader with little knowledge of the original sources to construe it in the following way: whosoever transgresses Justinian's orders (which give specific benefits to the African churches) has to pay a fine of ten pounds of gold; in addition, God's wrath will befall him. But Justinian actually says that apart from the fixed fine, transgressors can be sure of encountering his (i.e., Justinian's) displeasure. The problem is *nostrum numen*, translated as "our Divinity," which is very easy to misunderstand in a text with so many references to churches, bishops, and God. But *numen* invariably refers to the emperor himself, not to God; a looser, but unambiguous and hence preferable, translation would have been "Our Majesty," with the capital "O" marking the majestic plural.

As to the annotation: p. 354, n. 1 claims that the "Donatists were a rigorist faction within the African Church"; but they were certainly not "within," but rather had their own schismatic Church in competition with the Catholic Church there. Furthermore, it is asserted that "Arianism argued that within the Holy Trinity, God the Father preceded and was separate and superior in authority to God the Son." Yes, there was a heretic called Arius in the early 4th century who had held such views; but he had nothing to do with the community insulted as "Arians" from the late fourth century onwards. These people (better called Homoeans) execrated Arius just as much as the Catholics did, and they had no theological common ground with him. Actually, in the course of the fourth century "Arians" was a popular insult applied to any group a given theologian rejected, and for some reason or other this pejorative label eventually stuck exclusively with the Homoeans. For reasons of convenience, it is acceptable to speak of (say) "Arian Vandals," but "Homoean Vandals" would be better, as otherwise misunderstandings as apparent in the cited remark (i.e., ascribing Arius' views to Homoeans) might arise.

Nov. Iust. 45

καὶ ὡς προσήκει τὰ περὶ τούτων διακριθῆναι.

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This is the third phrase of the *praefatio*; it has been skipped in the translation ("Thus, it is appropriate to decide on their claims").

As to the annotation: it suffers from relying on a highly problematic article by Bond.[10] She claimed that Constantine excluded people struck by *infamia* (which, according to Bond, soon included all heterodox, even pagans) from the city councils *with the consequence* of financially drying out the cities, and that only Justinian had the redeeming idea of excluding the heterodox while still making them pay. Much of the financial straits of late antiquity were therefore, according to Bond, due to this exclusion which was furthermore proactively used as a 'loophole': convert to a heterodox creed, and you do not need to pay for civic *munera* any longer! She could only arrive at this conclusion by ignoring much of the evidence (cf. CTh 16,5,48, Nov. Theod. 3 § 6, stating that heterodox of course have to shoulder the financial burdens of council members) and misunderstanding the few texts she used. Justinian is therefore not "closing down [...] a legal loophole that had inadvertently provided city councillors with a perverse incentive to adopt heterodox religious positions," but is simply confirming the status which emperors had been maintained for many generations. This could not prevent some heretics from *trying* to escape the curial burdens by pointing to their social exclusion, but just as Justinian himself clearly says in this Novel 45: there is no law, old or recent, that would them allow to do so, and together with Justinian, we must wonder why his pretorian prefect presented this flimsy argument to him in the first place.

Just as unpopular as membership in the curia was service as a *cohortalinus* in the staff a provincial governor, a hereditary position entailing grave financial burdens. Several anti-heretical laws remove heretics from the state service (*militia*), explicitly excluding however the unpopular *militia cohortalina* from this prohibition. P. 398, n. 4, claims "in this instance, the emperor is referring to local citizens charged with [...] responsibilities to the local governor." I do not understand "local citizens," and I also do not see why this instance

10 S. Bond: Altering Infamy. Status, Violence, and Civic Exclusion in Late Antiquity. In: ClAnt 33, 2014, 1–30.

should be any different from all the other anti-heretical laws with the *militia cohortalina* disclaimer. The note refers to the annotation of Nov. Iust. 6 (p. 98, n. 6), which, in turn, claims that "such positions [...] could be well remunerated [and] the government typically had little difficulty finding men to fill them." This, I believe, is wrong, and the only reference given for this extraordinary claim is the annotation of Nov. Iust. edict. 10 (p. 1065, n. 1) which, in turn, rightly states that *militia cohortalina* is a hereditary obligation, giving the correct page range in Jones' LRE. I have the impression that some confusion arose through these internal references going back and forth, making conflicting claims on different pages.

In n. 6 on p. 399, it is asserted that *infamia* "could also affect one's ability to make a will or inherit," which is wrong.[11] The reference there to Gardner is mistaken, as she on the cited page range discusses the property of being *intestabilis* (not of being *infamis*). The claim (taken over from Bond) that "the extension of *infamia* to religious dissidents was a major legal innovation of emperors in late antiquity" seems unconvincing, as before Justinian, exceedingly few groups were afflicted with that (namely until the mid-fifth century exclusively Manichaeans and Donatists).

Nov. Iust. 66

The translation is sound, although one might prefer a technical translation of τύποι (not "directives," but "rescripts"), and perhaps "issues in pending cases" instead of "issues in cases launched." The annotation is correct, too, yet one may wonder whether this particularly important novel – on validity of enactments, the requirement of publication, different language version of the same laws – would not have deserved much more comment.

Nov. Iust. 129

εἰ μὲν πάντες ἐφεξῆς οἱ πρὸς τὸν κλῆρον καλούμενοι τῆς αὐτῆς αὐτῷ πλάνης ὑπάρχοιεν, διοικήσει τὰ περὶ τῆς οὐσίας ὡς ἂν ἐθελήσει εἰ δέ γε τῶν ἐκ τοῦ αὐτοῦ βαθμοῦ καλουμένων τινὲς τῆς αὐτῆς τῷ πατρὶ πλάνης ὑπάρχοιεν, τούτοις οὐ περαιτέρω καταλείψει τῶν δύο τῆς

11 P. Riedlberger: Prolegomena zu den spätantiken Konstitutionen. Nebst einer Analyse der erbrechtlichen und verwandten Sanktionen gegen Heterodoxe, Stuttgart-Bad Cannstatt 2020, 353–393.

περιουσίας οὐγκιῶν, τοῦ λειπομένου πρὸς τοὺς τὰ ὀρθὰ θρησκεύοντας ἀγομένου, πλὴν εἰ μή τις τυχὸν Χριστιανοῖς ἐξ αὐτῶν καταλείψει πρεσβεῖα.

[...] should all those called to the inheritance, without exception, be in the same error as his, he will make dispositions on his property in whatever way he wishes; but if only some of those called in the same degree should be in the same error as his, he will leave those no more than two *unciae* of his estate, the rest going to those of the true religion, except if one of them, perhaps, leaves legacies to Christians.

It might be better to render ἐφεξῆς as "in order," because this is the basic meaning, and the idea of the different classes of people called in "in due sequence" returns with τῶν ἐκ τοῦ αὐτοῦ βαθμοῦ καλουμένων; however, "without exception" admittedly provides the same result. The last bit is misunderstood. What Justinian wants to say: imagine there are, e.g., two children, one Orthodox, one Samaritan. In principle, our Samaritan testator could not give more than one sixth to the Samaritan child, five sixths going the Orthodox child. There is one exception, though: if the Samaritan testator *also* defines legacies in favor of Orthodox recipients to the debit of one of his Samaritan heirs, the worth of these legacies can be deducted from the share that must go otherwise to the Orthodox side. So, our Samaritan father could, for example, give two sixths to the Orthodox child and four sixths to the Samaritan child, *provided* that he defines a legacy of at least three sixths payable by the Samaritan child to one or more Orthodox Christians among his potential heirs. All of this means: ἐξ αὐτῶν does not belong to "one," but to "Christians" (which is suggested by the word order anyway).

As to the annotation: it is sound, although p. 861, n. 10 might perhaps be misunderstood: "I. e. if all heirs are Samaritans, a testator may divide his inheritance as he wishes." It is important to understand that Justinian is talking about *potential intestate heirs*, not about the (actual) heirs (as defined in the testament). So, if you have two children, one Orthodox, one Samaritan, you cannot simply skip the Orthodox one (so that this child is not heir at all and does not count) and give all to the Samaritan one.

Nov. Iust. 144

Σαμαρείτην δὲ στρατεύεσθαι παντελῶς οὐ συγχωροῦμεν, ἀλλ᾽ οὐδὲ πολιτικὸν μετιέναι φρόντισμα

We absolutely do not permit a Samaritan to be in the government service, nor to take on a curial function [...]

Rather: "a civil post"; cf. how πολιτικός is otherwise used in the Novels.

As to the annotation: my only concern is no. 6 on p. 942, where "rhetor" (another function not permitted to Samaritans) is explained as "legal advocate." After all, the list had already mentioned jurists, and immediately after the rhetors follows the prohibition of any teaching activity. So "rhetor" could very well mean teacher.

I almost feel bad noting so many minor observations in such a major work we should be immensely grateful to have. As any attentive reader of my translation comments will observe, they mostly pertain to very minor points which do not affect the general sense. Translating the enormous corpus of the long (and more often than not obscure) Justinianic novels is an achievement this reviewer finds quite impressive. Much is the same is true regarding the annotations; I am afraid that a translation with the amount of annotation I would like to have would be too bulky to ever be published! Nevertheless, I do believe that both annotation and introduction would have profited from more specialized literature (so, to start with, Kaser instead of Berger; and not just pointing to a dictionary, but to real research literature, which is available in abundance for each and every of these terms).

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Empfohlene Zitierweise

Peter Riedlberger: Rezension zu: David J. D. Miller/Peter Sarris: The Novels of Justinian. A Complete Annotated English Translation. Cambridge: Cambridge University Press 2018. In: Plekos 22, 2020, 265–275 (URL: http://www.plekos.uni-muenchen.de/2020/r-nov_iust.pdf).