

A Sourcebook on Byzantine Law

Medieval Law and Its Practice

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A Sourcebook on Byzantine Law

Illustrating Byzantine Law through the Sources

By

Daphne Penna
Roos Meijering



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*IOANNIS HENRICI ANTONII LOKIN ANTECESSORIS
ΜΝΗΜΗΣ ΧΑΡΙΝ*



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Preface, or What This Book Is Not

When it comes to Byzantine legal sources, the Greek book by Spyros Troianos, *Οι Πηγές του Βυζαντινού Δικαίου* [= *The Sources of Byzantine Law*], which was revised and edited in Athens in 2011, remains indispensable. It is indeed fortunate that we now possess Italian and German translations of this book. In 2015, Pierangelo Buongiorno translated Troianos' book into Italian (*Le Fonti del diritto Bizantino*, Turin). Two years later, in 2017, Dieter Simon and Silvia Neye translated it into German (*Die Quellen des byzantinischen Rechts*, Berlin/Boston), also bringing its bibliographical references and indices up to date. Moreover, despite its age, the book *Historiae Iuris Graeco-Romani Delineatio. Les Sources du droit byzantine de 300 à 1453* by Nicolaas van der Wal and Jan Lokin, published in Groningen in 1985, still remains useful. In short, a student of Byzantine law has sufficient and excellent material that will help him or her to learn about and investigate the sources of Byzantine law.

What, then, is the point of the present book? To begin with, the book that you have before you derives from the classroom. It was born from our teaching experience. After the abolition of the study of Byzantinology in Groningen, the course on Byzantine law continued to be offered both to Dutch and foreign law students. In 1990, Roos Meijering had taken over teaching it from Jan Lokin. From the academic year 2007/2008, Meijering and I started teaching the course together, and, following the retirement of Meijering in 2017, I have been teaching it on my own, being assisted from time to time by my colleagues Frits Brandsma and Tom van Bochove. The core of the present book is based on the so-called 'Sourcebook' that Meijering and I have used in class for all these years. This 'Sourcebook' consisted of fragments of sources of Byzantine law which Meijering had selected and translated throughout the years, and in a later stage, a few sources were also added by myself. The 'Sourcebook' broadly followed the structure of the *Historiae Iuris Graeco-Romani Delineatio* mentioned above, but the 'Sourcebook' gathered all discussions of canon law into a single chapter (unlike the *Delineatio*, which includes multiple chapters on canon law, one after each of the chronological periods covered in the book). It was partly inspired by a short source reader compiled by Herman Scheltema and entitled *Florilegium jurisprudentiae graeco-romanae*, published in 1950. For many years now I had been thinking of using this 'Sourcebook' as the core of a book. In the year 2020, when the lives of all of us changed because of the pandemic, I decided that it was high time to begin this project, and Roos Meijering once again helped me throughout the process. Using Meijering's selection of Greek sources as a base, I started writing a theoretical text and introduction to accompany these sources, which would provide something like a basic background to help the reader understand the source under discussion and its relationship to other Byzantine sources. In some cases, I expanded the text and made additions to the sources. The result is the book that you have before you.

The present book is not intended to provide a thorough discussion on the sources of Byzantine law, nor is it a textbook about Byzantine law in general. Rather, the purpose of this book is to explain and illustrate Byzantine law through some sources; it provides a

selection of sources drawn from across the timeline of Byzantine law. It is by no means exhaustive. In other words, this book is only a tool that can help a student of Byzantine law (or anyone who is interested in Byzantine law) to find out what some of the sources actually look like and provide information about their basic background. As far as the timeline is concerned, the book begins with the sources before the time of Justinian and ends in AD1453, which marks the end of the Byzantine empire. Byzantine law, of course, continues even after 1453, but in this book we will not address post-1453 Byzantine legal sources. The book is further divided into six chapters, and the reader will notice that some chapters are much lengthier than others. Chapter length depends on the actual material and the importance of each period; for example, the second chapter is lengthy because it deals with the legislation of Justinian, which forms the backbone of most later Byzantine legislation, the new curriculum of legal studies and the teaching of law during this period. The last chapter includes only a brief selection of Byzantine sources of canon law.

As far as the language is concerned, we have opted for simple language. At many points, the reader will also notice some patterns of classroom teaching, a bit of '*antecessorian* teaching' to use a Byzantine term; for example, sometimes we provide some 'theory in advance' or a legal commentary, or we point out the special characteristics of a source that should help the reader better understand the material. In some cases, we also provide tables, schematic approaches to the sources or other features that may help further elucidate the source and understand its nature and relationship to other sources. We have also decided not to include many footnotes in the actual text, but to add relevant select bibliographies after every section. As far as the translations of the sources are concerned, if no translator is specifically named, they have all been done by Roos Meijering. At the final stage of this book, we also had considerable help from Bernard Stolte, whom we would like to thank for his invaluable comments and suggestions on our manuscript. Matthew McHaffie had the courage to read and reread this book, edit the English and help us with the bibliographical references. We thank him not only for his highly professional work, but also for his genuine effort to make this book better in many ways. We owe further thanks to Marios Tantalos for his suggestions on the bibliography and his great patience in reviewing the manuscript and helping with all kinds of corrections. We would also like to thank Marcella Mulder and Kate Hammond from the editing house Brill who have helped us in all practical matters arising from transforming the manuscript into an actual book. The costs for the three beautiful maps made by Peter Palm were covered by the foundation *Het Groningsch Rechtshistorisch Fonds*, which we would also like to thank.

Teaching the Seminar of Byzantine Law all these years together with Roos Meijering has always been a highlight of the academic year, and my favourite course to teach. There is nothing better for a young scholar of Byzantine law, to be thrown into the sources and try to teach this material with the assistance of an experienced and cunningly intelligent scholar. The knowledge that imbues teaching conditions such as these is remarkable, and there is an immense amount of fun to be had in teaching a difficult subject with someone else for the select few. For we knew from the beginning that we were teaching for a select few, and there have been years in which the number of the instructors was actually larger than the number of students. The small number of stu-

dents, however, created a sphere of intimacy, and there have been students who were extremely motivated and provided excellent pieces of work, something that all teachers dream of. Moreover, our two different characters and approaches to Byzantine law gave some extra colour to the actual teaching, for we were both present at almost all lectures: on the one hand, Meijering insisted on discussing (Byzantine legal sources about) plants, 'coppiced wood' and trees, scaring the students away on the first day with the difficult Greek and emphatically letting them know that they should temper their expectations about the course; I, on the other hand, tried to focus on more legal matters in an attempt to open up the course and make the material easier and more attractive, all the while building my case for the importance of Byzantium. I recall so many funny moments between Meijering and myself, and I hope that the students enjoyed the lessons. I know we did.

Daphne Penna

Groningen, September 2022

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- 1 Mosaic from the church of Hagia Sophia of Constantinople (Istanbul, Turkey), depicting on the right Emperor Constantine I offering a model of the city to the Virgin Mother. On the left, Emperor Justinian offers to the Virgin Mother a model of the Hagia Sophia. [Photo: Myrabella, https://commons.wikimedia.org/wiki/File:Hagia_Sophia_Southwestern_entrance_mosaics_2.jpg. Last accessed March 14, 2022] 19
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- 8 Codex Parisinus graecus 1350 [National Library of France (Bibliothèque nationale de France—BnF), available online: <https://gallica.bnf.fr/ark:/12148/btv1b10722500s/f51.item> (date of access 30/08/2022)] 162

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Abbreviations

B.	<i>Basilicorum libri LX</i> , ed. H.J. Scheltema, D. Holwerda, and N. van der Wal, Groningen: 1953–1988, available also online at: https://referenceworks.brillonline.com/browse/basilica-online (date of access: 19/03/2022)
BS	B., Series B: Scholia (quoted after page and line)
BT	B., Series A: Textus (quoted after page and line)
Ca	Codex Graecus Coislianus 152
C.	<i>Codex Justinianus</i> , ed. P. Krüger, <i>Corpus Iuris Civilis</i> , vol. 11, 9th edn, Berlin: 1914
cap.	Caput, chapter
CTh.	<i>Codex Theodosianus</i> , ed. Th. Mommsen, Berlin: 1905
D.	<i>Digesta</i> , ed. Th. Mommsen, <i>Corpus Iuris Civilis</i> , vol. 1, 12th edn, Berlin: 1911
Frier, <i>Codex</i>	<i>The Codex of Justinian: A New Annotated Translation, with Parallel Latin and Greek Text</i> , 3 vols., ed. B.W. Frier et al., Cambridge: 2016. This translation is based on an earlier translation by Justice Fred H. Blume.
F	Codex Laurentianus plut. LXXX 11
FM	<i>Fontes Minores</i> , vols. I–XIII, Forschungen zur byzantinischen Rechtsgeschichte, Frankfurt am Main/Berlin: 1976–2021
JGR	J. Zepos and P. Zepos, <i>Jus Graecoromanum</i> , vols. I–VIII, Athens: 1931 (repr. Aalen: 1962)
JÖB	Jahrbuch der Österreichischen Byzantinistik
Nov.	<i>Novellae</i> , ed. R. Schöll, and G. Kroll, <i>Corpus Iuris Civilis</i> , vol. III, Berlin: 1895. This is the critical edition of the <i>Novels</i> . On the right side of every page directly facing the Greek text the so-called <i>Authenticum</i> text is also given.
ODB	<i>The Oxford Dictionary of Byzantium</i> , ed. A.P. Kazhdan, 3 vols., New York/Oxford: 1991 (published online in 2005)
Pa	Codex Parisinus Graecus 1348
Pc	Codex Parisinus Graecus 1349
pr.	<i>principium</i> , that is the first unnumbered section of a constitution in the <i>Code</i> , or of a fragment in the <i>Digest</i> or the <i>Institutes</i> .
RhP	G.A. Rhalles and M. Potles, <i>Σύνταγμα τῶν θείων καὶ ἱερῶν κανόνων</i> , 6 vols., Athens: 1852–1859 (repr. 1966)
RIDA	<i>Revue internationale des droits de l'antiquité</i>
sch.	scholion
Scheltema, <i>Opera Minora</i>	H.J. Scheltema, <i>Opera Minora ad iuris historiam pertinentia</i> , ed. N. van der Wal, J.H.A. Lokin, B.H. Stolte, and R. Meijering, Groningen: 2004
SG	<i>Subseciva Groningana. Studies in Roman and Byzantine Law</i>
SZ	<i>Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Romanistische Abteilung</i>
Theoph.	<i>Theophili antecessoris Paraphrasis Institutionum</i> , ed. J.H.A. Lokin, R. Meijering, B.H. Stolte, and N. van der Wal; trans. by A.F. Murison, Groningen: 2010

- Troianos, *Pêges* = *Quellen* Sp. Troianos, *Οι πηγές του βυζαντινού δικαίου*, 3rd edn, Athens-Komotini: 2011, which has been translated into Italian: *Le fonti del diritto bizantino*, trans. by Pierangelo Buongiorno, Turin: 2015. This book has also been updated and translated into German: Sp. Troianos, *Die Quellen des byzantinischen Rechts*, trans. D. Simon and S. Neye, Berlin/Boston: 2017.
- Van der Wal and Lokin, *Delineatio* N. van der Wal, and J.H.A. Lokin, *Historiae Iuris Graeco-Romani Delineatio. Les Sources du droit byzantine de 300 à 1453*, Groningen: 1985

General Note on the Bibliography

As mentioned in the preface, at the end of every chapter—and in some cases after a specific section—we provide a select bibliography. The bibliography is divided into: i. primary sources, including editions and translations, and ii. secondary literature. The proposed bibliographies are by no means exhaustive.

For all chapters of the present study, the following two books addressing the sources of Byzantine law are invaluable:

- 1) Troianos, *Pèges = Quellen*.
- 2) Van der Wal and Lokin, *Delineatio*.

The following bibliographical resources remain useful despite their age:

- Pieler, P.E. 'Byzantinische Rechtsliteratur', in H. Hunger, *Die hochsprachliche profane Literatur der Byzantiner*, vol. 2. Munich: 1978, pp. 341–480. Pieler's study has been updated and translated into modern Greek by E. Papagianni and Sp. Troianos, which can be found in the Greek edition of Hunger's book, as follows: P.E. Pieler, 'Νομική Φιλολογία', in H. Hunger, *Βυζαντινή λογοτεχνία. Ἡ λόγια κοσμική γραμματεία τῶν Βυζαντινῶν*, vol. 3 (Athens: 1994), pp. 183–379. Finally, K.E. Zachariä von Lingenthal, *Geschichte des griechisch-römischen Rechts* (Berlin: 1892; repr. Aalen: 1955) remains indispensable.

The following contributions represent general works on Byzantine law:

- Lokin, J.H.A. and Th.E. van Bochove. 'Compilazione—educazione—purificazione. Dalla legislazione di Giustiniano ai Basilica cum scholiis', in J.H.A. Lokin and B.H. Stolte, eds. *Introduzione al diritto bizantino. Da Giustiniano a Basilici*. Pavia: 2011, pp. 99–146.
- Morolli Ceccarelli D. *Il diritto dell'impero romano d'Oriente: Introduzione alle fonti e ai protagonisti*, Rome: 2016.
- Pitsakes, C. 'Byzantine Law: A Constituent of European Legal Tradition', in Sp. Flogaitis and A. Pantelis, eds. *The Eastern Roman Empire and the Birth of the Idea of State of Europe*. London: 2005, pp. 251–289.
- Scheltema, H.J. 'Byzantine Law', in J.M. Hussey, ed. *The Cambridge Medieval History*, vol. 4: *The Byzantine Empire*, part 11: *Government, Church and Civilisation*. Cambridge: 1967, pp. 55–77, repr. in Scheltema, *Opera Minora* (see abbreviations), pp. 38–57.
- Simon, D. 'Anfang und Ende der byzantinischen Rechtsgeschichte', *FM*, 8 (2021), pp. 1–23.
- Stolte, B.H. 'Byzantine Law: The Law of the New Rome', in H. Pihlajamäki, M.D. Dubber, and M. Godfrey, eds. *The Oxford Handbook of European Legal History*. Oxford: 2018, pp. 229–248.
- Stolte, B.H. 'Legal Thought', in A. Kaldellis and N. Siniosoglou, eds. *The Cambridge Intellectual History of Byzantium*. Cambridge: 2017, pp. 141–166.

- Stolte, B.H. 'The Law of New Rome: Byzantine Law', in D. Johnston, ed. *The Cambridge Companion to Roman Law*. Cambridge: 2015, pp. 355–373.
- Stolte, B.H. 'Justice: Legal Literature', in E. Jeffreys et al., eds. *The Oxford Handbook of Byzantine Studies*. Oxford: 2008, pp. 691–698.
- Stolte, B.H. 'Is Byzantine Law Roman Law?', *Acta Byzantina Fennica*, n.s., 2 (2005), pp. 111–126.
- Stolte, B.H. 'Balancing Byzantine Law', *FM*, 11 (2005), pp. 57–75.

Useful too are the contributions of E. Papagianni to J.N. Dillon, ed., and D.A. Smart, trans. *Brill's New Pauly Supplements 11—Volume 10: History and Culture of Byzantium*, published online: 2018 (orig. as M. Landfester, J. Rupke and H. Schneider, eds. *Byzanz: Historisch-kulturwissenschaftliches Handbuch*. Der Neue Pauly—Supplemente, 2, ed. F. Daim. Stuttgart: 2016). Papagianni's contributions include the following:

- 4.1. Byzantine law: a new legal system on an ancient foundation
- 4.2. Canon law and its status in the Byzantine legal system
- 4.3. Legislation
- 4.4. Courts and justice

It is also highly recommended that you consult the following bibliography, compiled by Th.E. van Bochove, which is available online and is (ir)regularly updated by its author:

- Van Bochove, Th.E., *A Bibliography of Byzantine Law, A: Books on Byzantine Law, New, Revised and Augmented Edition*, published 5 January 2021 on Academia.edu (https://www.academia.edu/45025705/A_Bibliography_of_Byzantine_Law)
- Van Bochove, Th.E., *Bibliography of Byzantine Law, B: Articles on Roman and Byzantine Law, History and Culture*, new, extended version published 10th June 2021 on Academia.edu (https://www.academia.edu/49198096/Bibliography_of_Byzantine_Law_B_Articles_on_Roman_and_Byzantine_Law_History_and_Culture_New_extended_version)

Both these bibliographies can also be found at the author's personal website: <https://www.rug.nl/staff/t.e.van.bochove/research>.

Van Bochove has also collected and categorised into sections (and subsections) the bibliography related to the *Basilica*. His *Basilica* bibliography is available online by BRILL at the following link: <https://referenceworks.brillonline.com/browse/basilica-online>.

Finally, the journal *Subseciva Groningana. Studies in Roman and Byzantine Law* focuses on Byzantine law, and all ten volumes that have been published up to now are available online at the following link: <https://ugp.rug.nl/sg>.