

Fragmenta Londiniensia Anteiustiniana: Preliminary Observations

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Abstract — This article gives a preliminary account of seventeen small parchment fragments, which have been the subject of detailed study by members of the team of the *Projet Volterra* since the end of 2009. The fragments have been identified as coming from a legal text in Latin, indeed possibly all from the same page, written in a fifth-century uncial book-hand, but with some numeration and glosses in Greek. The fragments contain part of a rubricated title, as well as the headings and subscripts to several imperial rescripts of third-century emperors (Caracalla, Gordian III and the Philips are explicitly named), organized in a broadly chronological sequence without intervening commentary. Three rescripts overlap with texts known from the Justinian Code (C.7.62.3, 4, and 7). It is argued here that the work in the fragments is from neither the first nor second editions of the Justinian Code, nor from a juristic miscellany (similar to the *Fragmenta Vaticana*, *Lex Dei*, or *Consultatio*). Despite the apparently anomalous presence of a tetrarchic rescript (otherwise typically

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attributed to the Hermogenian Code), the conclusion is that these fragments most plausibly represent the only known remains of a manuscript of the lost Gregorian Code. An appendix gives some sample texts, including all the material overlapping with the Justinian Code.

In November 2009 the team of the *Projet Volterra* (Simon Corcoran and Benet Salway) took temporary custody of 17 small scraps of parchment written in Latin. Originally acquired in 2001 in the disappointed expectation that they were from an early Latin bible, it had become clear that they were probably legal in nature, but no one had the inclination to grapple further with these meagre pieces. However, since the history of the transmission and survival of Roman legal works is at the research core of the *Projet Volterra*, it seemed too good an opportunity for the team to let slip by without some serious investigation.

Even from a fuzzy photocopy circulating before the actual fragments could be studied, it was clear that there were present the names of third-century emperors, fragments of subscript dates and a tentative overlap with a text from the Justinian Code (C.7.62.7). However, use of the Volterra database and other search tools (electronic and printed) had revealed no further Justinian Code overlap, making it impossible that the fragments could be from a manuscript of that code. Once possession was taken of the fragments, they were scanned and it was these digital images that served as the principal means of our further study. Within only a few days, all the previously suspected features were confirmed: the names of third-century emperors, subscript dates, and overlap with not one, but three, rescripts known from the Justinian Code. Further, several joins between fragments were identified. Our immediate conclusion, which was bolstered by later study and has not substantially changed in over two years, was that these were most likely fragments from a page of the lost Gregorian Code. However, given the lack of certainty, we decided that a less prescriptive name for the fragments was desirable. Since they had been acquired, had resided in, and had been worked on in London since 2001, and, since whatever work they represent is certainly some form of pre-Justinian legal text, it was decided to name the fragments *Fragmenta Londiniensia Anteiustiniana (FLA)*. In this article we give our preliminary conclusions, demonstrating our basic premise (these are the remains of a Gregorian Code manuscript) and reproducing some

samples of the highly fragmentary text. A full publication of the fragments as a small monograph is planned for 2013.

There are seventeen fragments in all, although one consists of two smaller fragments attached together at right angles. The fragments are typically 40–45mm long, and 15–16mm or 28–32mm tall, with the larger pieces worn along the central axis, and the smaller pieces often being those left when a larger piece has split in two. Several have a distinct “butterfly” shape, typical of having been used in “Greek binding” (widespread across the Near East). All the fragments must have been recovered from bindings. However, some appear to have been painted with reagents (to aid visibility of the lettering) and others repaired with Japanese rice-paper, so that they are likely to have been detached from their source book or books for some considerable time. The parchment is extremely high quality and well prepared, so fine indeed that it has proved impossible thus far to identify the flesh and hair sides of any of the fragments.

Every piece has some writing on at least one side, although most are written on both sides and clearly derive from a parchment codex. None of the fragments appears to have been palimpsested, although there are cases of textual transfer, probably from adjacent binding fragments. The clearest case of this is the Syriac transfer on *FLA* 12B. This last suggests that the page was cut up for binding in the Near East (broadly defined) some time between the ninth and thirteenth centuries.¹ Eastern provenance is also suggested by the fact that the Latin fragments were originally offered for sale with seventeen Greek fragments from seven separate manuscripts dating between the fifth and seventh centuries.² This should not be pressed too far, however, as the association of the Greek and Latin fragments need be no more than the coincidence of their recent ownership history.

The script, which is consistent across the fragments, is a small but clear bookhand of the uncial type, with several distinct features. It is in general fairly upright, with occasional inclina-

¹ Information courtesy of Sebastian Brock. Details of the Syriac will be more fully reported in our book.

² P. M. Head, “A New Manuscript of Jeremiah in Greek according to the Lucianic Recension,” *Bulletin of the International Organization for Septuagint and Cognate Studies*, 36 (2003), 1–11, and “Five New Testament Manuscripts: Recently Discovered Fragments in a Private Collection in Cambridge,” *J. Theological Stud.*, 59 (2008), 520–45; S. Corcoran and B. Salway, “A Newly Identified Greek Fragment of the *Testamentum Domini*,” *J. Theological Stud.*, 62 (2011), 118–35.

tion to the right, most obviously in R and S. The elegance of the *ductus* of this scribe is most clearly demonstrated in the returns at either end of the top of the T. This high quality of the writing is consistent with that of the parchment, reinforcing the impression that the commissioner made a considerable investment. Although very small, the script is cognate with the “BR” uncial considered typical of late antique legal manuscripts, which are generally known in larger formats, such as the fifth- or early sixth-century *Codex Theodosianus* fragment from Oxyrhynchus (*P. Oxy.* XV 1813) and the famous sixth-century Florentine Digest.³ Also notable, however, is the consistent use of a minuscule upright “d” (not the majuscule type with the exaggerated bowl curving left over the top of the upright). The fragments thus differ from manuscripts dated quite early, such as the half-uncial *Sententiae Pauli* from Leiden (which typically use minuscule “b d”),⁴ but also from the sixth-century uncial manuscripts, where the minuscule “d” appears only irregularly (as in the Florentinus). It seems best to categorize this script on its own as “B d R” (*Fig. 1*). In addition, the sole rubricated title is written in a different script, rustic capitals (*Fig. 2*). This variation for different registers of text is quite normal.

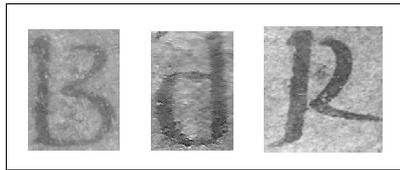


Fig. 1 B d R uncial illustrated from the fragments

There is a wide use across the fragments of abbreviations, typical of legal manuscripts, both by truncation, generally marked by interpuncts, and by suspension, often marked by overlinings.⁵ But there are numerous other punctuation marks and symbols,

³ B. Bischoff, *Latin Palaeography: Antiquity and the Middle Ages*, trans. D. Ó. Cróinin and D. Ganz (Cambridge 1990), 67 (“eastern (Byzantine) uncial”) and 69–70; G. Cavallo, *La scrittura greca e latina dei papiri* (Pisa-Rome 2008), 184–90, with figs. 153–160; Ammirati (note *), 64–83.

⁴ G. G. Archi, et al., eds., *Pauli Sententiarum: Fragmentum Leidense (Cod. Leid. B.P.L. 2589)* [*Studia Gaiana*, 4] (Leiden 1956) = *Codices Latini Antiquiores* X.1577; cf. also the Antinoopolis Georgics (*P. Ant.* I 29 = *Codices Latini Antiquiores* suppl. 1708). See Bischoff (note 3), 72–74.

⁵ For a list of the numerous abbreviations in the near contemporary Verona Gaius, see the *index notarum* in W. Studemund, *Gaii Institutionum commentarii quattuor* (Berlin 1874), 253–312.

not all of which are obvious in meaning. There are several Greek glosses, all written as supralinear translations for individual Latin words, although these have proved very difficult to read. In addition, several of the imperial constitutions, and possibly the title rubric, have had numeration added immediately to their left in Greek. Otherwise, however, there is no evidence for marginalia.⁶

Some palaeographers, to whom we have shown the fragments, have favored an earlier rather than later date. For the moment, however, we are cautious and suggest a broad fifth-century date, but perhaps closer to 500 than 400.

So what are the key “diagnostic” features of the London fragments as we try to make sense of what they might be? First, as just noted, on the basis of the palaeography, a fifth-century date for the fragments is reasonable. Secondly, the language of the fragments is either legal or otherwise consistent with this being a law-work. Thirdly, given that the glosses in Greek suggest that the original manuscript was most likely used in a Greek-speaking area and so probably in the eastern portion of the empire, it is also likely that the manuscript was copied there as well. In that case, the heavy use in the fragments of abbreviations typical of early legal manuscripts means that the London fragments must have been written before the ban upon such

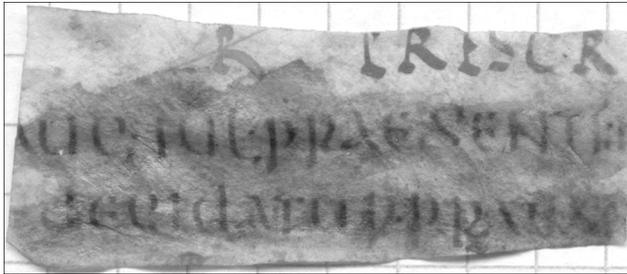


Fig. 2 FLA 1B, showing rubricated title in line 1

abbreviations was issued by Justinian in 533 (c. *Tanta* 22 = C.1.17.2.22).

⁶ For glosses and marginalia to Roman legal works, see K. Mac-Namee, *Annotations in Greek and Latin Texts from Egypt* [*American Studies in Papyrology*, 45] (New Haven 2007), 492–512.

Next, there is the title rubric (*FLA* 1B) (*Fig. 2*). This also is in a format standard for legal texts. However, no comparable rubric starting *praescriptio* is attested in any other legal work. There are also present some half-a-dozen headings and another half-a-dozen subscripts, both features typical of imperial constitutions as cited in legal works. The exact number of each is not entirely clear, since we have joined some partial headings or subscripts to make fuller ones, not necessarily correctly in each instance. In at least two cases, perhaps four, we have parts of both the heading and the subscript to the same constitution.

Four emperors are named explicitly:

(1) Antoninus, presumably Caracalla as sole ruler (211–217), is named once in a heading (*FLA* 12B).

(2) Gordian III (238–244) is named twice in headings (*FLA* 8A and 13A). He is also inferred twice in consular dates (*FLA* 2A and 13A) and once from the presence in the fragments of a text with a Justinian Code parallel (*FLA* 8A + 10B = C.7.62.3). At a minimum, there are three rescripts of his in the fragments.

(3) Philip I (244–249) is named once in a heading (*FLA* 13A) and once in a consular date (*FLA* 9B). He can also be inferred in a further heading, in which his son (4) Philip II (244–249) is named as Caesar, which also has a Justinian Code parallel (*FLA* 7B + 11A + 9B = C.7.62.4) (*Fig. 3*). Thus there appear to be in the fragments at least one rescript of Philip alone and another of Philip and his son.

Further, Diocletian and his colleagues of the First Tetrarchy (293–305), while not explicitly attested, are inferred from a Justinian Code parallel text (*FLA* 15B + 5A + 4A = C.7.62.7).

Of the various subscripts only four enable their consular dates to be identified, although not all with equal assurance. These are:

(1) [Ip]s(o) <sc. Gordiano> Aug. et Aviola = 239 (*FLA* 2A).

(2) [Gordiano] Aug. et Pomp(eiano) = 241 (*FLA* 2A + 13A). Ultraviolet imaging helped to reveal the second consul.

(3) Per[egrino et Aemiliano] = 244 (*FLA* 11A) (*Fig. 3*). Although only the first three letters remain, it is unlikely that this is instead part of the place of posting or issue, which only rarely appears in pre-Diocletianic rescripts in legal works.

Further, since this subscript occurs immediately before a rescript of the Philips, and may itself belong to a rescript of Philip alone, and carries the diurnal date (the only one sufficiently preserved in the fragments) of *III K. IUN.*, i.e. 30 May, it seems almost certain that the year is 244.

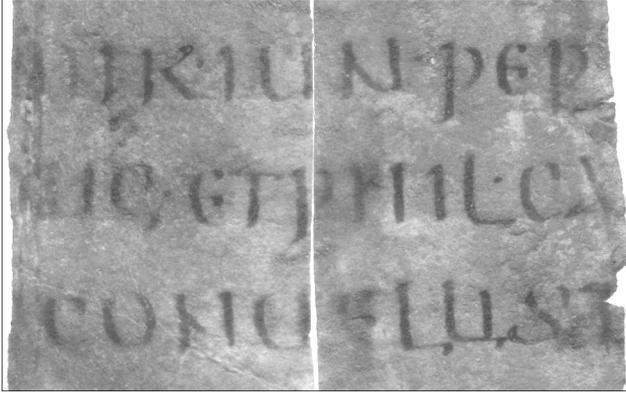


Fig. 3 The consulate of 244 followed by a heading with the Philips (*FLA* 7B and 11A)

(4) Phil(ippo) Aug. et [Titiano] = 245 (*FLA* 9B + 7B). Although the consul posterior is not preserved, the other two consulships of Philip, each with his son, in 247 and 248 are otherwise unattested in the legal sources, whereas the consulate of Philip and Titianus occurs frequently and so is the most plausible identification.⁷

The presence of the name Victorinus on one fragment (*FLA* 16B), if correctly interpreted, is probably not that of a consul posterior, but of an addressee, since what remains cannot be convincingly matched to any plausible consular date.⁸

The names of at least four addressees are attested (aside from the possible Victorinus above), three of which are new: Felicio

⁷ See, for instance, the listing in P. Krüger, ed., *Codex Iustinianus*, editio maior (Berlin 1877), *10; also T. Honoré, *Emperors and Lawyers*, 2nd ed. (Oxford 1994), 124.

⁸ E.g. 200: Severus (not the emperor) and Victorinus; 282: Probus Aug. V and Victorinus (not attested in the legal sources).

addressed by Gordian III (*FLA* 10B), Lucius(?) Marcianus addressed by Philip (*FLA* 2A), and Julius Praesens addressed by Caracalla (*FLA* 1B). Neo (*FLA* 15B) was already known from the Justinian Code parallel text (C.7.62.7). None is associated with any office (e.g. praetorian prefect)⁹ and each seems to be the private recipient of a private rescript.

There are three overlaps with rescripts from the Justinian Code in its surviving Second Edition of 534, all under the same title, *De appellationibus et consultationibus*: C.7.62.3 (Gordian III), 4 (the Philips), and 7 (Diocletian and the tetrarchs). Although the amount of overlapping text makes the identifications of the second and third certain, of the first only the phrase *sepiissime constitutum est* survives in the fragments, apart from a partial subscript, incomplete in both sources.¹⁰ This formulaic-sounding phrase may seem insufficient for a firm identification to be made. The broad sentiment “a ruling has often been made” is not rare, either along the lines of *saepe constitutum est*, which is typically but not solely Hermogenianic,¹¹ or of *saepe rescriptum est*, more common in earlier periods.¹² However, the use of the superlative *saepissime* is only attested twice in our surviving material and only once in conjunction with

⁹ Felicio occurs as a fictional prefect of Gordian III in *Scriptores Historiae Augustae*, Gord. 25.2 (R. Syme, *Ammianus and the Historia Augusta* (Oxford 1968), 173). The author of the *Historia Augusta* seems to have had a legal background (T. Honoré, *Law in the Crisis of Empire 379–455 AD: The Theodosian Dynasty and its Quaestors* (Oxford 1998), ch. 9). Perhaps this led him to lift suitable names from the codes? But others have suggested Suetonian echoes, thus from Claudius’ appointment of Felix as procurator of Judaea (Suet. *Div. Claud.* 28.1). See A. Chastagnol, “L’Histoire Auguste et les Douze Césars,” in *Bonner Historia-Augusta-Colloquium 1970 [Antiquitas, 4/10]* (Bonn 1972), 109–23, at 118.

¹⁰ All that is preserved in the London fragments is: *PP. XII K*. In the Justinian Code, two related manuscripts (P = Pistoia Arch. Cap. 106; L = BN Par. Lat. 4516), supported by the edition of Miraeus (Paris 1550), give *PP IIII* (Krüger, ed., *Codex Iustinianus* (note 7), LVI and 695).

¹¹ C.2.5.1; 4.44.3; 6.23.3; 7.45.7; 7.53.9; 7.56.4; 7.60.1; 8.37.5; 10.53.5; *P. Amherst II 27* = K. Bruns, *Fontes Iuris Romani Antiqui*, 7th ed. rev. O. Gradenwitz (Tübingen 1909), no. 92 = *Corpus Papyrorum Latinarum* no. 244. See Honoré (note 7), 170 n.394.

¹² C.1.54.2; 2.16.1; 2.43.3; 2.55.1; 3.36.18; 4.2.3; 4.10.2; 4.19.6; 4.31.1; 4.65.11; 5.4.(12) (Krüger, ed., *Codex Iustinianus* (note 7), 409); 5.38.4; 5.48.1; 5.54.2; 6.30.4; 7.10.1; 7.57.3; 8.22.1; 9.34.4; 10.60.1; 10.64.1; *Frag. Vat.* 275. Honoré associates the phrase especially with his secretaries nos. 4 (211–213) and 13 (241–246). See Honoré (note 7), 89 n.206 and 122 n.667. Other similar formulations are: *saepe decretum* (C.5.39.1) and *saepe statuta* (C.9.25.1).

constitutum.¹³ Further, given that this latter instance occurs under the same Justinian title as the other two parallel texts, it would seem perverse to reject the match between our fragments and the Justinian Code as simply coincidence.

In each of the cases of overlap, this either confirms or allows joins or associations between fragments: three fragments in each case, namely *FLA* 8, 10, and 3; 7, 11, and 9; 15, 5, and 4. A further three fragments seem also to be associated with each other and to provide some material intervening between two of the other sets of Justinian Code overlap fragments (*FLA* 13, 2, and 6), and indeed to suggest a clear chronological progression from rescripts of Gordian, to those of Philip alone or with his son. This means that twelve of the seventeen fragments belong closely together. We would posit that the title rubric (*FLA* 1), perhaps joined to the fragment mentioning Caracalla (*FLA* 12), should also be associated. This leaves just three fragments unassigned (*FLA* 14, 16, and 17). Thus, we do not just have fragments from the same work, but very probably from the same page of the same work.

Another feature of the fragments is that each rescript seems to start on a new line. Indeed the heading of a rescript is stepped out into the margin in at least two clear cases (*FLA* 8A and 13A). The corollary of this is that where a rescript ends mid-line, the rest of the line is left blank. Thus the subscripts on *FLA* 13A + 2A match blank lines on *FLA* 6A; similarly *FLA* 7B + 11A match 9B. Further, where one rescript follows another (*FLA* 8A + 10B; 13A + 2A; 7B + 11A) and indeed where the single attested title rubric is followed by a rescript (*FLA* 1B), there is no sign of any inter-connecting text or commentary, nor any statement about the derivation of the material quoted. It also seems as though a later hand has gone through and numbered the titles and constitutions in Greek (*FLA* 12B, 8A, 13A). The use of numerical citation for the codes is common in eastern sources (less so in western) from at least the fifth century.¹⁴ It appears, therefore, as though the work in the fragments consisted solely of runs of imperial constitutions arranged under titles. Further, those constitutions seem to be private rescripts of third-century emperors.

¹³ C.5.14.6: *saepissime sit rescriptum*. C.7.62.3: *saepissime constitutum est*.

¹⁴ Note Gregorian citations in *Scholia Sinaitica* 1.3; 4.10; *Appendix Lex Rom. Vis.* 1.1, 3, 5, 6.

Given the above features of the London Fragments, can we suggest a plausible identification with any of the known late antique codes or other legal works and collections which typically contain imperial constitutions? First, we can exclude the *Codex Theodosianus* (437), since it contained no third-century material, starting only with Constantine in 313, and was in any case not intended to contain private rescripts. We can also exclude the Breviary of Alaric or *Lex Romana Visigothorum* (506), since, although it did contain third-century rescripts, it survives intact and there is no overlap with the London Fragments.

Next, we can rule out the revised edition of the Justinian Code (the *Codex repetitae praelectionis* of 534). First, copies of the revised code should have obeyed Justinian's ban on abbreviations. Secondly, although, as we have seen, three constitutions overlap between the London fragments and the Code, the sequences are quite different. Where we have adjacent rescripts in the Code (C.7.62.3–4), by contrast in the London Fragments the first of these, that of Gordian, is followed by a second rescript of Gordian (that to Felicio), while the rescript of the Philips is preceded by one of Philip alone. Thus the London Fragments contain four rescripts where the Justinian Code has only two. Indeed, if our provisional reconstruction is correct, there is at least one additional rescript of Gordian in this sequence in the London Fragments.

The Justinian Code, however, had been issued in a First Edition in 529 (the *Novus Codex*), which does not survive. Its revision for the Second Edition of 534 necessitated the addition, excision, emendation, and relocation of material.¹⁵ Thus all the divergences between the revised Code as we have it and the London Fragments, if they were to be from the *Novus Codex*, could be explained by the various editorial interventions of Justinian's commissioners. It must be said that we cannot definitively prove that this is not the case. However, we would expect the changes to be greatest in areas of law where Justinian legislated extensively between 529 and 534. This does not seem to apply to Book 7 title 62, which contains thirty-seven constitutions dating from 529 or before, with only two later texts (C.7.62.38–39) representing additions in the revised code. Neither of these additions is of any far-reaching consequence, such as would have necessitated the widespread reorganization of the title. It might

¹⁵ See S. Corcoran, "Justinian and his Two Codes: Revisiting *P. Oxy.* 1814," *J. Juristic Papyrology*, 38 (2008), 73–111.

be argued that the fragmentary title rubric need not be related to the rest of the fragments, and could be something on *praescriptio longi temporis*, which was therefore included in the First Edition only to be emended away in the Second, as a result of Justinian's reforms in this area of the law, when he abolished the difference between *res Mancipi* and *nec Mancipi* (C.7.31.1).¹⁶ However, it seems more likely that the fragments all come from the same page, so that the rubric fragment does adhere to the others and should be restored as "prescr[iptio rei iudicatae]."¹⁷ This makes sense in terms of the subject matter of the London fragments, which is consistently reflected in the language of most of the fragments: namely appeals and related procedural issues. Thus the title would contain material dealing with the issue of when or if a previous judicial determination barred further action on or later revival of a case. Under the terms of the Praetor's Edict,¹⁸ this would have fallen under "exceptio rei iudicatae," but with the eclipse of the old divided procedure a more general *praescriptio rei iudicatae* becomes standard in *cognitio* procedure according to third-century texts.¹⁹ We can see how this makes sense in terms of the rescripts probably present under this title in the London fragments. For instance, the rescript of the Philips to Probus (FLA 7B + 11A + 9B = C.7.62.4) makes it clear that, since he did not appeal at the time against his nomination as town scribe, the formal rulings or decisions confirming his appointment cannot now be challenged. Given the lack of apparent remodelling of the titles on appeals in the revised Justinian Code and the lack of attestation of this title in other legal works of the fifth and sixth centuries, including the Theodosian Code, which is substantially

¹⁶ W. W. Buckland, *A Text-Book of Roman Law from Augustus to Justinian*, 3rd ed. rev. P. Stein (Cambridge 1963), 249–51. The term *longi temporis praescriptio* and related phrases occur frequently in titles from Book Seven of the Code, but *praescriptio* is never the first word: C.7.22, 33, 34, 35; cf. 7.37, 39, 40.

¹⁷ This may, of course, be only the beginning of a longer title rubric.

¹⁸ *Edictum Perpetuum* 44.7 (Bruns (note 11), 236).

¹⁹ E.g. C.7.56.1 (222) and 7.58.1 (197/211); D.42.1.63 (Macer, *De Appell.*) and 44.2.29 pr. (Papinian, *Responsa*). See M. Kaser, *Das römische Zivilprozessrecht*, 2nd ed. rev. K. Hackl [*Handbuch der Altertumswissenschaft*, 10.3.4] (Munich 1996), 487, 499. For the later development of the concept "res iudicata pro veritate habetur," see D. Gaurier, *L'autorité de la chose jugée* [*Centre de recherches en histoire du droit et des institutions Cahiers*, 4] (Brussels 1995).

intact,²⁰ it seems better to suppose that the title *Praescriptio rei iudicatae* did not lie in the *Novus Codex* of 529.

Another argument against the *Novus Codex* is that the text of the tetrarchic rescript appears to have been rather shorter in the London fragments, suggesting that we can see the editing process for the Justinian Code in action in the divergences between the two versions (*FLA* 15 + 5 + 4 compared to C.7.62.7). The London version begins with “Hi,” missing in the Code. Of greater significance, the Code text appears to have more words than can easily be accommodated in any putative line length for the fragments. It seems likely that the original rescript focused only on the issue of concern to Neo, namely *civilia munera*, but that this has been made more wide-ranging and therefore generally relevant in the Justinian Code version by being expanded to refer to the decurionate and *honores* in general. Such alteration seems most likely to have been made when the original text was edited for the *Novus Codex*, since it is hard to see what would have motivated further tampering with this text for the *Codex repetitae praelectionis*, when attention needed to be directed to more substantive legal changes.

One small point of format should also be noted. It is standard in the late antique legal works for the headings of imperial constitutions to take the form: “Imp. Quidam Aug. cuidam”. If the same emperor was the issuer of successive constitutions, this would be abbreviated to: “Idem Aug. cuidam”. This pattern is attested in early manuscripts of the Theodosian Code,²¹ the *Fragmenta Vaticana*,²² the revised Justinian Code of 534²³ and, notably, even in the partial surviving index for Book I of the *Novus Codex* of 529.²⁴ There are three exceptions to this. The

²⁰ Book XI, containing titles on appeals (including material taken into C.7.62), is preserved intact. Book IV, containing material relating to *praescriptio longi temporis* and *res iudicata*, is incomplete.

²¹ See the apograph of the burnt Turin palimpsest in P. Krüger, *Codicis Theodosiani Fragmenta Taurinensia* [Abhandlungen der Königlich Preußischen Akademie der Wissenschaften zu Berlin, philosophisch-historische Klasse, 2] (Berlin 1880); also the facsimile of the Paris *C.Th.*: H. Omont, *Code Théodosien: livres VI-VIII. Reproduction réduite du manuscrit en onciale, latin 9643 de la Bibliothèque nationale* (Paris 1909).

²² See the apograph in T. Mommsen, *Codicis vaticani n. 5766 in quo insunt iuris antejustiniani fragmenta quae dicuntur vaticana* (Berlin 1860).

²³ See the apograph of the Verona Palimpsest (Bib. Cap. LXII (60)): P. Krüger, *Codicis Justiniani Fragmenta Veronensia* (Berlin 1874).

²⁴ *P. Oxy.* XV 1814, lines 9 and 12.

Codex Hermogenianus in the Breviary omits the emperors' names altogether, presumably reflecting the fact that all texts in that code were attributed to the tetrarchs and to repeat them even by the formula "Idem Augg. et Caess." would have been redundant.²⁵ The Breviary Gregorianus, in contrast, always gives the emperors' names, even in the few cases where the same emperor issued succeeding constitutions.²⁶ This is the pattern we find also in the London fragments. In both the cases where Gordian is named, this occurs in the heading to a rescript which is clearly following on from another rescript of Gordian (*FLA* 8A and 13A). It looks as though this was a distinct feature of the Gregorian Code and was not employed in either edition of the Justinian Code.

Moreover, the presence of three rescripts overlapping between the London Fragments and the Justinian Code is of considerable significance. As Justinian himself tells us, the Code was assembled from the material in the three pre-existing codes, Gregorian, Hermogenian, and Theodosian plus post-Theodosian constitutions.²⁷ Therefore, all the material in the Justinian Code dating from 437 and before should come from one of the three codes, although the specific derivations of individual texts is not recorded in the Code. Given the substantial survival of the Theodosian Code and Theodosius II's explicit discussion of its content (*C.Th.* 1.1.5–6), we either know or can infer that for all Justinian Code texts dating between 313 and 437 their source is the Theodosian Code. Only four anomalous texts of Constantine and Licinius seem not to fit this pattern and for want of any better solution are usually supposed to derive from the Hermogenian Code.²⁸ All the earlier material, namely up to 305, should therefore derive from the Gregorian or Hermogenian Codes. The presence of rescripts of the third-century, but not later, in the London

²⁵ *C.Herm. Vis.* 1.1; 2.1. Also *C.Herm.* 3.1 as in G. Hänel, *Codicis Gregoriani et Codicis Hermogeniani fragmenta* [*Corpus Iuris Romani Antejustiniani*, 2] (Bonn 1837), col. 68*, or P. Krüger, *Collectio librorum iuris antejustiniani*, 3 (Berlin 1890), 244–45.

²⁶ *C.Greg. Vis.* 2.4.1–2; 3.6.2–3, 4–5.

²⁷ *c. Haec pr.* (528), *c. Summa* 1 (529) [Krüger, ed., *Codex Iustinianus* (note 7), 1 and 3]; cf. the Greek version of *c. Imperatoriam maiestatem* 2 [J. H. A. Lokin, et al., eds., *Theophili antecessoris paraphrasis institutum* (Groningen 2010), 950–51].

²⁸ S. Corcoran, "Hidden from History: the Legislation of Licinius," in J. Harries and I. Wood, eds., *The Theodosian Code: Studies in the Imperial Law of Late Antiquity*, rev. ed. (London 2010), 105–107, and *The Empire of the Tetrarchs: Imperial Pronouncements and Government AD 284–324*, rev. ed. (Oxford 2000), 36–37, 280.

Fragments, together with such a coincidence of material with the Justinian Code, makes it almost certain that the fragments either represent one or other of those codes, or a work which drew on them. Given that neither the Gregorian nor Hermogenian Code is substantially preserved, the chronological division between them is deduced from the scattering of specific ascriptions of dated texts to one or other code preserved in various pre-Justinian legal works.²⁹ From this it is clear that all the pre-Diocletianic rescripts are attributable to the Gregorian Code. For the reign of Diocletian the pattern is less clear. The material up to 291 is almost entirely Gregorianic. The rescripts of 293 and 294 are overwhelmingly Hermogenianic; indeed, that code seems to have consisted almost solely of rescripts from those two years alone. One text of 295 is attributed to the Hermogenian Code, and one each of 295 and 297 (or 302) to the Gregorian. Essentially therefore, the Justinian Code material up to 291 is assignable to the Gregorian Code, material of 293–294 to the Hermogenian, with the rather limited and uneven later material not easily assignable. Indeed, the division of texts of the 290s overall is probably even less neat than this.³⁰

The presence of pre-Diocletianic rescripts in the London Fragments at once rules out their identification with the Hermogenian Code. However, the presence in the fragments of a rescript apparently of the First Tetrarchy attributable to 293 or 294 would previously have been taken as a sign of Hermogenian origin.³¹ In fact, attribution to the First Tetrarchy is not secure, for, while Krüger in his Code editions prints a heading with “AA et CC,” the manuscript attestation is divergent, the Caesars in some cases only starting to be present from the rescript that comes *after* that to Neo.³² If the true heading contained only the Augusti (hesi-

²⁹ For the content of the Gregorian and Hermogenian Codes, see Corcoran, *The Empire of the Tetrarchs* (note 28), ch. 2; A. Cenderelli, *Ricerche sul Codex Hermogenianus* (Milan 1965); M. U. Sperandio, *Codex Gregorianus: origini e vicende* (Naples 2005).

³⁰ See most recently S. Corcoran, “The Gregorianus and Hermogenianus Assembled and Shattered,” *Mélanges de l’École française de Rome: antiquité*, 125 (2013) (forthcoming).

³¹ Thus C.7.62.7, the text parallel to that in the London fragments, is restored into his reconstruction by Cenderelli (note 29), 170. See also S. Connolly, *Lives Behind the Laws: The World of the Codex Hermogenianus* (Bloomington and Indianapolis 2010), 199.

³² See Krüger, ed., *Codex Justinianus* (note 7), 696–97. Thus the *Summa Perusina* (7.62.7) gives the heading as: “Idem a. Neoni” (F. Patet-

tantly adopted in our reconstruction of Example 3 in the Appendix), much of the following discussion would be unnecessary. However, the poor attestation of subscript dates in this title means that the uncertainties over the headings cannot easily be resolved.³³ Therefore the consequences of the rescript to Neo being tetrarchic and thus probably also Hermogenianic must be addressed. Could the fragments be a work which drew on both the codes? First, there is no evidence that the sequences of the two codes were interwoven before the production of the First Edition of the Justinian Code in 529. Otherwise, there are three surviving pre-Justinian legal works, which cite imperial constitutions extensively, and can give an idea of how such works might look and how this compares with the London fragments. These works are the *Fragmenta Vaticana* (early fourth century, later revised), the *Lex Dei* (widely referred to as the *Mosaicarum et Romanarum Legum Collatio*; late fourth century) and the *Consultatio veteris cuiusdam iurisconsulti* (mid or later fifth-century).³⁴ First, they all quote the classical jurists extensively, whether from their genuine works or later pseudonymous compilations (like the *Sententiae Pauli*). Precise details of the sources of the quotations are always given. Nothing in the London Fragments currently appears to reflect such juristic works and there are certainly no explicit references to any of the jurists or their writings.

Secondly, the *Lex Dei* quotes the Gregorian and Hermogenian Codes, and the *Consultatio* quotes both those codes and also the Theodosian Code. In all cases the details of code, book, and title are given. Further, both authors pen their own passages of additional exposition or comment.³⁵ Neither of these features can so

ta, *Adnotationes Codicum Domini Justiniani (Summa Perusina)* (Rome 1900; repr. Florence 2008), 248).

³³ Thus the constitution preceding the rescript to Neo, C.7.62.6, which carries the uninformative subscript “sine die et consule,” is usually considered part of a larger edict of the First Tetrarchy on judicial procedure issued in 294 (Corcoran, *The Empire of the Tetrarchs* (note 28), 171–73).

³⁴ Extensive recent discussions of each work as follows: M. de Filippi, *Fragmenta Vaticana: storia di un testo normativo*, 2nd ed. (Bari 1998); R. M. Frakes, *Compiling the Collatio Legum Mosaicarum et Romanarum in Late Antiquity* (Oxford 2011); G. Zanon, *Indicazioni di metodo giuridico dalla Consultatio veteris cuiusdam iurisconsulti* [Law and Argumentation, 6] (Naples 2009).

³⁵ In addition the author of the *Lex Dei / Collatio* quotes extensively from the Old Testament, using a pre-Vulgate text. See E. Schrage, “La

far be identified in the London Fragments. The *Fragmenta Vaticana* differ from both the *Lex Dei* and *Consultatio* in that the author of the work, of which they form only a small remaining part, seems to have eschewed authorial comment and simply assembled catenae of imperial constitutions and juristic quotations arranged under titles. This bareness would seem to be closer to the style of the London fragments. The sole manuscript of the *Fragmenta Vaticana*, however, does not consistently lay out each rescript or citation on a new line, and it also uses “idem Aug.” very freely. The third- and fourth-century constitutions quoted do not appear to derive from the codes, the only such attributions being later interlinear annotations.³⁶ Thus the author appears to have been working quite independently of his slightly older contemporaries, Gregorius and Hermogenian.

None of the three works discussed offers a close parallel to the London fragments. However, each differs from the others and survives by the slenderest manuscript transmission. This suggests that they are far from exhausting the possibilities of the types of juristic works that might have existed. It is certainly not possible to assert that the London Fragments are not the sole remains of another late antique miscellany. This would indeed be an easy explanation of the apparent presence of both Gregorian and Hermogenian material in a single text.

However, the uncertain division of material of the 290s between the Gregorian and Hermogenian Codes makes another option possible. It is clear that the Hermogenian Code consisted primarily of rescripts of 293 and 294. However, saying this does not mean that some rescripts of those years could not have ended up in the Gregorianus. There are some ascriptions of such rescripts to the Gregorian Code in the *Consultatio* (9.18–19) and, given that the code definitely included material of 295 and later (*Lex Dei (Collatio)* 6.4 and 15.3),³⁷ these attributions need not be automatically doubted, despite the fact that no manuscript of the *Consultatio* survives and its text rests principally upon the 1577 edition of Cujas.³⁸ Attributing the tetrarchic rescript to the

date de la *Collatio Legum Mosaicarum et Romanarum* étudiée d'après les citation bibliques,” in *Mélanges Felix Wubbe* (Fribourg 1993), 401–17, and Frakes (note 34), 82–97.

³⁶ de Filippi (note 34), 24–25.

³⁷ Corcoran, *The Empire of the Tetrarchs* (note 28), 298.

³⁸ See especially E. Volterra, “Le sette costituzioni di Valentiniano e Valente nella *Consultatio*,” *BIDR* (3rd ser.), 24 (1982), 171–204 (= *Scritti giuridici*, 6 [*Antiqua*, 66] (Naples 1994), 381–414); Zanon (note 34), 1–26.

Gregorian Code would thus be the easiest solution to interpreting the London Fragments, which could thereby be identified as the only known remains of a Gregorian Code manuscript.

As far as can be ascertained, the constitutions in both the Gregorian and Hermogenian Codes were arranged chronologically under their titles, although explicit evidence is limited. The arrangement may be inferred from the fact that it is used in both the Theodosian and Justinian Codes which drew on the earlier codes as models. The other works which quote the codes tend to pick and choose texts as suits their argument, and so need not reflect the order of their sources. However, the citation in the *Lex Dei (Collatio)* (10.3–6) of four Hermogenian texts all from the same title given in date order may preserve the Hermogenian sequence. More significantly, the Breviary Gregorianus, which, as we have already seen, seems to reflect the distinct heading style of its source (in which it matches the practice of the London fragments), also places texts in chronological order in the few cases where it reproduces more than one rescript under the same title.³⁹ Can we see this feature of the Gregorian Code reflected in the London fragments? We must first say that our reconstruction is still provisional and must be treated with caution. However, an optimistic interpretation would see the following series of rescripts placed under the title rubric “Praescriptio rei iudicatae”:

Imp. Ant. Aug. Iulio Praesenti.

[Imp. Gord. Aug. Victori]. (= C.7.62.3)

Imp. Gord. Aug. Felicioni. Dated 241?

Imp. Gord. Aug. [ignoto?]. Dated 239

Imp. Phil. Aug. Lucio Marcian[o]. Dated 30 May 244

[Imp. Phil.] Aug. et Phil. Ca[es. Probo]. Dated 245 (possibly 247 or 248) (= C.7.62.4)

[Imp. Diocl. et Max. Augg. (et Caess. ?) N]jeoni. (= C.7.62.7)

Before the discovery of the 241 consulate by means of ultraviolet photography, we had had a good chronological sequence. For, despite the uncertainties of our reconstruction, the progression from 239 to 244 to 245 was very satisfying, and indeed that sequence is still almost certainly correct and should not change. However,

³⁹ *C.Greg. Vis.* 3.6.1–5; 3.7.1–2; 3.8.1–2; 4.11.1–2; 4.12.1–2.

reading the consulate for 241 before that for 239 has upset the pattern. Of course, we can suggest that the consulate has not been correctly restored, but it is hard to see what other plausible consular year can be read. Is it perhaps a scribal error? Or were the texts imperfectly chronological, arranged by emperor, but not necessarily by year? For the moment, this is as far as we can progress.

What, therefore, at this stage of research is our provisional conclusion about the work contained in the London Fragments? There are three principal candidates for identification. The First Edition of the Justinian Code remains possible, but we think there are too many points against it. Given that the section in question was probably little altered between the First and Second Editions, we think there are insufficient overlaps and a lack of attestation for the form of the title. The style for imperial repetitions in headings is divergent, as is the length of the tetrarchic rescript.

It is certainly possible that the work could be an otherwise unattested pre-Justinian miscellany or commentary, which combined material from the Gregorian and Hermogenian Codes. However, such works tend to be explicit in citing their sources and make wide use of the classical jurists in addition to the code constitutions. For neither feature is there evidence in the London Fragments.

So we are left with the Gregorian Code. Most of our diagnostic features fit that code very well, if not perfectly. We have constitutions in broadly chronological sequence arranged under titles, with no further commentary or authorial additions. We have suitable third-century emperors and dates, and indeed it does not stretch credibility to accept the rescript of Diocletian and his colleagues as a Gregorian text. Our tentative reconstruction of the surviving page of the code shows diagnostic material on the supposed recto and top of the verso. The lack of further clear diagnostic features on the rest of the verso may simply mean that we are dealing with an extensive text (such as the long edict C.7.62.6), therefore with less likelihood of such features turning up on a fragment.

However, we must also remember that the Gregorian Code was widely cited and quoted from the fourth to sixth centuries

and logically must have existed in numerous copies.⁴⁰ In principle, it seems much less likely that another unattested juristic work hanging by a manuscript thread should turn up. Surely, given that this is a fifth-century manuscript from the code's heyday, this is the long overdue recovery of a fragment of such a major work. Therefore, our conclusion is that we have here part of the lost Gregorian Code.

Finally, what life history can we reconstruct for our fragments? First, the text was written, probably in the eastern empire, in the fifth century. The original codex must have been a fine quality product. It was then used and annotated by a Greek-speaking lawyer. It became redundant on the publication of the Justinian Code in 529, and the manuscript was likely recycled, maybe palimpsested, not long thereafter. One leaf, left unpalimpsested, was instead perhaps used as a cover or paste-down, and then later recycled a second time some time around 1000, when it was cut up as binding reinforcement, somewhere in the Near East, together with at least one scrap from a Syriac manuscript. Whatever book now contained the fragments probably reached western Europe in the nineteenth or twentieth centuries, where, on its being rebound, the fragments recovered from the bindings were not discarded, but were even repaired and treated in various ways. Finally, they emerged onto the London manuscripts market in 2001.

Appendix

Here are presented three sample texts showing the overlap of the fragments with the Justinian Code (overlap shown in bold). These texts are not intended as formal editions, but preliminary versions giving an idea of the nature and extent of the surviving material, and its relation to the Justinian Code. The uncertainties of the readings of individual letters and words are not fully indicated. Square brackets [] indicate missing text, round brackets () expansions of abbreviations, and brace brackets { } scribal deletion.

⁴⁰ For a full list of material reflecting the Gregorian Code, see D. Liebs, *Römische Jurisprudenz in Gallien (2. bis 8. Jahrhundert)* [Freiburger rechtsgeschichtliche Abhandlungen (n.F.), 38] (Berlin 2002), 100.

Example 1. FLA 8A + 10B + 3B (with restorations based on C.7.62.3)

[Imp. Gord. Aug. Victori: Appellatione interposita, licet ab iudice repudiata sit, in praeiudicium deliberationis nihil fieri debere et in eo statu omnia esse, quo tempore pronuntiationis fuerint]

- (1) **sepissime c(on)stitut(um) e(st). P(ro)P(osita) XII**
K(al).[...] /
- (2) γ Imp. Gord. Aug. Felicioni: Hon[... reco/co-?] /
- (3) gnoscere nec enim q(ui)p(pe) a[...] /
- (4) app(ellatio)nis au[xi]lio c(au)sas accusa[tioni?]s quas
c(on)pl[...] /
- (5) rei uerita[t]e e(ss)et ut allegas [a]dmod(um) te e(ss)e
paup[erem? ...] /
- (6) tas tibi s(ed) cautionis sollemnitas remitter[...] /

We have provisionally placed fragments *FLA* 13A + 2A (and possibly 6A), despite their poor legibility, so that they occupy at least part of the gap between Example 1 above and Example 2 below. If correct, this would mean that these intervening fragments give what is perhaps part of the subscript date for the rescript to Felicio (the consular year for 241), followed by another rescript of Gordian, to an unidentified recipient, dated to the year 239, and then followed by a heading of Philip (reigning alone) addressed to Lucius Marcianus, which is likely to belong to the rescript dated 30 May 244 in Example 2 below.

Example 2. FLA 7B + 11A + 9B (with restorations based on C.7.62.4)

- (1) [...]nisi inplo[...]
- (2) [...]s meae n(on) fa[...]rae c(on)[...] *vacat* /
- (3) [...]ti libelli fac[...]erer[.] fidu-/
- (4) [...]III K. Iun. Per[egrino et Aemiliano cons. (30 May 244)]
vacat [.] *vacat* /
- (5) [Imp. Phil.] **Aug. et Phil.** Ca[es. Probo. Si ad scribatum
nominatus] **non pro-**/
- (6) [uocasti] **conuelli st**[atuta non possunt. PP... P]hil. Aug.
et /
- (7) [Titiano con]ss. (245) *vacat* /



Fig. 4 FLA 15B and 5A adjacent: the rescript to Neo

Example 3. FLA 15B + 5A (Fig. 4) and 4A (with restorations based on C.7.62.7)

- (1) [Imp. Diocl. et Max. Augg.⁴¹ N]eoni: Hi **qui ad ciuili**[a munera⁴² deuocant]**ur, licet uaca**[tionem] /
- (2) [a principibus accepe]**rint, si app(ellatio)nis{i} aux**[ilio non utantur, consensu suo nominationem] /

[confirmant. Cum igitur ad munus uocatus appellaueris a praeside prouinciae, iuste te appellasse ostende].

⁴¹ We have provisionally and hesitantly restored a short heading without the Caesars, which currently seems best to suit the layout of the fragments. If correct, this would remove the apparent anomaly of a tetrarchic rescript in the Gregorian Code.

⁴² The phrase “uel decurionatum uel honores,” which appears in C.7.62.7 at this point, is probably an interpolation by Justinian’s editorial commission.