

# From Latin to Greek and Back Again: Translations, Interpolations, and Abuses of a Law of Theodosius II (*Cod. Theod.* 16.5.66)

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*Introduction: a law against the Nestorians*

ON 3 AUGUST 435, Theodosius II issued a law against the Nestorians, which came at a high point in the fallout between the bishops supporting Nestorius and imperial authority following the Council of Ephesus of 431.

The main controversy concerned the definition of Christ's nature. Nestorius, the former patriarch of Constantinople, held that divine and human nature remained separate in one and the same divine *persona/prosopon*: accordingly, Mary, who gave birth only to the incarnate Christ and not to the divine Logos, deserved the title of *Christotokos* instead of *Theotokos*. By contrast, Nestorius' detractors accused him of preaching two separate Christs (one God, one man), thereby denying the unity of natures in Christ—claims that Nestorius refuted, to judge from his extant writings.<sup>1</sup>

Among the main opponents of Nestorius, Cyril of Alexandria insisted that the divine and human natures in Christ were united without confusion or division. This union, brought about through the Incarnation, occurred at a real, ontological level

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<sup>1</sup> Cf. e.g. a Latin version of Nestorius' own testimony in *ACO* I.4 26.2–10. A. Grillmeier, *Christ in Christian Tradition* I (London 1975) 452–463, provides a balanced assessment of Nestorius' Christology. See also, in more detail, J. A. McGuckin, *St. Cyril of Alexandria: The Christological Controversy* (Leiden 1994) 126–174, and G. Bevan, *The New Judas: The Case of Nestorius in Ecclesiastical Politics, 428–451 CE* (Leuven 2016) 57–66.

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rather than being a mere external association of two separate natures. Therefore, the title *Theotokos* was not only theologically accurate but also a fundamental expression of salvation history, signifying that, through the Incarnation of the divine Logos, humanity could be elevated to share in the divine nature.<sup>2</sup> Inevitably, the doctrinal debate became entangled with patronage politics and personal enmities, with each faction striving to secure Theodosius' favor.<sup>3</sup>

Cyril's faction prevailed. Yet Nestorius' penalty, at least initially, was mild, as he merely returned to his former monastic life. It was only years later, in the face of tenacious opposition to the Council's outcome in the East, that the imperial administration resorted to more drastic measures, including the deposition and exile of many bishops, as well as the exile of Nestorius himself. Thus, this constitution tried to enforce the annihilation of the Nestorians—of their name, their books, and their right of assembly—as a means of imposing an orthodoxy that had met strong resistance in the East.<sup>4</sup>

*Research questions: a unique translation history*

While the Latin original is lost, we have an abridgment of this law in the *Theodosian Code* (16.5.66). Additionally, the Acts of the Council of Ephesus (*ACO* I.1.3 68) transmit a Greek version of

<sup>2</sup> See for instance Cyril's Second and Third Letters to Nestorius (*ACO* I.1.1 25.23–28.26 and 33.3–40.21). Among the vast literature on Cyril's Christology, I refer the reader to Grillmeier, *Christ in Christian Tradition* I 473–483, N. Russell, *Cyril of Alexandria* (London 2000) 39–46, and the in-depth diachronic study of H. van Loom, *The Dyophysite Christology of Cyril of Alexandria* (Leiden 2009). H. Chadwick, *East and West: The Making of a Rift in the Church* (Oxford 2003) ch. 8, discusses the contrasting Christologies of Nestorius and Cyril, their impact on the Councils of Ephesus and Chalcedon, and the resulting influence on the cult of Mary.

<sup>3</sup> Bibliography on the First Council of Ephesus is immense: for general orientation, T. Graumann, *The Council of Ephesus of 431: Documents and Proceedings* (Liverpool 2020) 56–62, and Bevan, *The New Judas* ch. 4.

<sup>4</sup> On this period see F. Millar, *A Greek Roman Empire: Power and Belief under Theodosius II* (Berkeley 2006) ch. 5, and Bevan, *The New Judas* ch. 6.

the unabridged constitution. Luckily, this version also gave rise to two back-translations into Latin, one in the Acts of the Council of Constantinople of 553, the other in the Latin Acts of Ephesus. Each was made in different contexts with radically diverging aims and approaches. This unique array of sources (the abridgement, Greek version of the full constitution, and the two Latin back-translation) enables us to tackle questions such as: how the compilers of the *Theodosian Code* selected and rearranged their material; which principles governed the translation of legal texts from Latin to Greek (and vice versa) in the fifth and sixth centuries; how previous legislation was updated, redeployed, and, sometimes, abused—all problems that have so far escaped the interest of most scholars.<sup>5</sup>

In other words, this article takes this constitution as a case study to illustrate methods and aims of legal translation while also showing that this practice changed remarkably in over a century in response to new readerships. Sample readings will exemplify not just the translation procedures, but also the errors and misunderstandings that could originate from them. More remarkably, the history of this constitution demonstrates that earlier laws could be interpolated during the translation process, resulting in a falsified version having a life—and validity—of its own.

<sup>5</sup> E. Doveve, “Un editto di Teodosio II nei Codici e negli *Acta conciliorum* (a. 436),” *Diritto@Storia* 12 (2014): (<https://www.dirittoestoria.it/12/innovazione/Dovere-Editto-Teodosio-II-Codici-Acta-conciliorum-a-436.htm>), compares the unabridged version with the *Cod. Theod.* fragment, without however addressing the issue of the translations. R. Devreesse, *Essai sur Théodore de Mopsueste* (Vatican City 1948) 235–236, briefly compares the two Latin back-translations. The only scholars to discuss *Cod. Theod.* 16.5.66 in the context of legal translations are W. Kaiser and S. Chronopoulos, “Studien zu den Novellen Justinians X. Unterschiede zwischen griechischen und lateinischen Ausfertigungen von Novellen am Beispiel des Gesetzes vom 15. Juni 535 über Darlehen an Bauern,” *ZRG* 129 (2012) 475–500, at 497–499. Their observations, however, are confined to highlighting analogies and differences between the *Cod. Theod.* abridgment and the Greek version.

*Historical context: One law, two languages*

Theodosius issued this constitution in both Latin and Greek “so that it may be clear and understood by all” (*ACO* I.1.3 68.30–31 ὡς πᾶσιν σαφῆ καὶ γνώριμον εἶναι). Although the bureaucracy of Theodosius’ Greek-speaking empire still largely functioned in Latin, Greek played an increasingly prominent role, especially for religious legislation. After all, Greek was the main language of debate in the Ecumenical Councils<sup>6</sup> and the Nestorian controversy was an almost exclusively Greek-speaking matter. Thus, this anti-Nestorian law contributes to the limited though tantalizing evidence for bilingual legislation in the fourth and fifth centuries.<sup>7</sup>

*Legal content*

A comparison between the *Cod. Theod.* abridgment and the full version in Greek shows that the Theodosian editors dispensed with much rhetorical padding, such as the initial threat that the shame of the heretics will endure after death (lines 7–11 in the Appendix below) and the justification of book-burning to protect public opinion (49–53). The command to disseminate the law with edicts (68–73)—a customary feature of the unabridged constitutions—was also left out.

In contrast, the Theodosian editors preserved the legal core:

1. Nestorians shall be called ‘Simonians’, just as an older law of Constantine ordained that Arians be called ‘Porphyrians’.
2. Nestorius’ books against the council of Ephesus shall be sought

<sup>6</sup> T. Mari, “Greek, Latin, and More: Multilingualism at the Ecumenical Council of Chalcedon,” *Journal of Latin Linguistics* 19 (2020) 59–87, with further references.

<sup>7</sup> Discussed by B. H. Stolte, “The Use of Greek in the Theodosian Code,” *Subseciva Groningana* 8 (2008) 147–160, at 148–154. See also Millar, *A Greek Roman Empire* 142–144. Only from Justinian onwards did novels start to be issued routinely in Greek for the Greek-speaking provinces: see S. Corcoran, “Roman Law and the Two Languages in Justinian’s Empire,” *BICS* 60 (2017) 96–116, at 111–112, and T. Van Bochove, “*Justinianus Latinograecus*: Language and Law during the Reign of Justinian,” in A. Garcea et al. (eds.), *Latin in Byzantium I Late Antiquity and Beyond* (Turnhout 2019) 199–242, at 201–202.

out and burned.

3. Gatherings are forbidden, as well as providing venues for them.
4. Contraveners shall be punished by confiscation of goods.

*The name of the heretics*

While prohibition of assembly, confiscation of goods, and the burning of heretical books were nothing new,<sup>8</sup> the most conspicuous feature of this constitution is the replacement of Nestorius' name with a term of stigma, as his followers are branded as 'Simonians'.

In a sort of intensified *damnatio memoriae*, the heretics are not just erased but branded "with despised name" (ὀνόματι κατεγνωσμένῳ) derived from the arch-heretic Simon Magus. Interestingly, these measures were inspired by a past constitution issued by Constantine against Arius and his followers in the aftermath of the Council of Nicaea in 325, in compliance with which the Arians were to be called 'Porphyrians' because their leader had followed the same blasphemy as the philosopher Porphyry of Tyre.<sup>9</sup> Mark Edwards explained this term on the basis that Arius' doctrine of the Son was perceived as dangerously close to Porphyry's conceptualization of the Platonic

<sup>8</sup> Prohibition of assembly: *Cod. Theod.* 16.5.4, 11, 15, 19, 20, 21, 26, 30, 45 (heretics in general), 16.5.7.3 (Manicheans), 16.5.10 (Tascodrogites), 16.5.12 (Arians and semi-Arians), 16.5.34 (Montanists and Eunomians), 16.5.36 (Eunomians), 16.5.54 (Donatists), 16.5.57 (Montanists). Confiscation of goods: 16.5.46 (heretics, Jews, and pagans), 16.5.57 (Montanists), 16.5.58 (Eunomians). Burning of books: *Coll. Leg.* 15.3.6 Diocl. (Manichaeans), *Cod. Theod.* 16.5.34 (Montanists and Eunomians), with later instances in P. Riedlberger, *Prolegomena zu den spätantiken Konstitutionen: nebst einer Analyse der erbrechtlichen und verwandten Sanktionen gegen Heterodoxe* (Stuttgart 2020) 680 n.88.

<sup>9</sup> S. Fernández, *Fontes Nicaenae Synodi: The Contemporary Sources for the Study of the Council of Nicaea* (Paderborn 2024) 178–180; H.-G. Opitz, *Athanasius Werke III.1.2: Dokumente zur Geschichte des Arianischen Streites* (Berlin 1934) 66–68 (Urkunde 33); and A. Smith, *Porphyrii Philosophi Fragmenta* (Stuttgart 1993) 30 (38T). For the date see H. C. Brennecke et al., *Athanasius Werke III.1.3* (Berlin 2007) xxxvii–xxxviii, and T. D. Barnes, "The Exile and Recalls of Arius," *JThS* n.s. 60 (2009) 109–129, at 127–128.

Logos.<sup>10</sup> Perhaps Constantine's religious legislation reveals a deeper engagement with theology than emerges from most juristic sources.

By the time Theodosius issued his law, the term *Simoniani* was not new, but was already in use to denote a gnostic sect supposedly founded by Simon Magus, as attested, among others, by Justin (*Apol.* 1.26.2–3), Irenaeus (1.23.2–4), Hippolytus (*Ref.* 6.20), Filastrius (29), Epiphanius (*Panarion* 21), and Augustine (*Haer.* 1).<sup>11</sup> There is, however, no recognizable correlation between the Gnostic Simonians and the Nestorians. Moreover, 'Simonians' as a derogatory term for Nestorians is not attested elsewhere, which suggests that this sanction became dead letter, considering that the word 'Nestorian' itself soon acquired a negative connotation.<sup>12</sup> The reception of this law shows that the term 'Simonian' caused bewilderment a century later (cf. 69–71 below).

*The Greek version (ACO I.1.3 68, par. 111): Ad verbum or ad sensum?*

As usually acknowledged, the ancients distinguished between two ways of translating: *ad verbum* (literal) and *ad sensum* (aimed at conveying the true sense of the text rather than reproducing the individual words). Genre and readership determined the type of translation. Cicero (*Opt.gen.* 14) and Horace (*Ars P.* 133–134) famously argued that literary works warrant no slavish renditions, but versions that do justice to the overall meaning. Jerome

<sup>10</sup> M. J. Edwards, "Why Did Constantine Label Arius a Porphyrian?" *AntCl* 82 (2013) 239–247.

<sup>11</sup> On Simonian Gnosticism see S. Haar, *Simon Magus: The First Gnostic?* (Berlin 2003) ch. 5; A. Ferreiro, *Simon Magus in Patristic, Medieval and Early Modern Traditions* (Leiden 2005) 35–54; and J. N. Bremmer, "Simon Magus: the Invention and Reception of a Magician in a Christian Context," *Religion in the Roman Empire* 5 (2019) 246–270.

<sup>12</sup> As confirmed by a later law of Theodosius II against the Nestorians, dating to February 448 (*ACO I.1.4 66, par. 138*, excerpted in *Cod.Iust.* 1.1.3), which does not employ the term 'Simonians'. See Millar, *A Greek Roman Empire* 187–190.

followed in their steps but made an exception for Scripture (*Ep.* 57.5). By contrast, literal translations were usually preferred for administrative texts, both to safeguard the meaning and to prevent charges of falsification.<sup>13</sup> The following will illustrate methods and limits of administrative translations.

### *Latinizing syntax*

Although Fergus Millar entertained the notion that both versions were issued in parallel,<sup>14</sup> a first draft must have been written in either language. The question then arises: which was written first? The (lost) Latin or the Greek version?

A hitherto unnoticed yet remarkable feature provides the answer. The Greek version, while perfectly idiomatic, tends to have a word order that is typical of Latin (subject – object – verb), in contrast to the customary word order of *koine* and patristic Greek (verb – subject – object).<sup>15</sup> Other translated documents, such as the Greek letters of Leo the Great, also display this tendency.<sup>16</sup> The Greek version, therefore, is probably a translation.

### *Nota infamiae*

In the passage establishing the infamy of the heretics (lines 15–

<sup>13</sup> See S. P. Brock, “Aspects of Translation Technique in Antiquity,” *GRBS* 20 (1979) 69–87, and B. Rochette, “Du grec au latin et du latin au grec: les problèmes de la traduction dans l’antiquité gréco-latine,” *Latomus* 54 (1995) 245–261.

<sup>14</sup> Millar, *A Greek Roman Empire* 177.

<sup>15</sup> For instance: τὸ ... σέβας τοὺς ... ἀσεβῶς ἔχοντας ... προσαγορεύεσθαι βούλεται (lines 1–7), ὃς ... βίβλους ... οὐ παιδέυσεως ὑπομνήματα καταλέλοιπε (34–38), τὸ ... πλήθος οὐδὲν πλάνης σπέρμα εὐρεῖν ποτε δυνήσεται (50–53), Ἡ ... σου ἐξουσία ταύτην ἡμῶν τὴν διάταξιν εἰς γνώσιν ἀπάντων ... ἔλθειν παρασκευάσει (68–73). On word order in postclassical Greek see G. C. Horrocks, *Greek: a History of the Language and its Speakers* (Chichester 2010) 108–109.

<sup>16</sup> Cf. for instance Pope Leo’s *Epist.* 51 (Latin: *ACO* II.4 25.6–26.4, par. 24 ~ Greek: *ACO* II.1.1 51.14–52.3, par. 16), *Epist.* 104 (Latin: *ACO* II.4 55.7–57.16, par. 54 ~ Greek: *ACO* II.1.2 58.35–60.41, par. 18), *Epist.* 139 (Latin: *ACO* II.4 91.27–93.26, par. 82 ~ Greek: *ACO* II.1.2 63.35–65.35, par. 22).

17 in the Appendix), the *Cod.Theod.* fragment is more succinct than the Greek version. While the Greek has the flowery τούς ὁμογνώμονας αὐτοῦ καὶ τῆς ἀσεβείας κοινωνούς (“those who share his opinions and participate in his impiety”), *Cod.Theod.* has the plain *gregalibus* (“followers”). There is no equivalent in the Latin for τῆς ἀσεβείας κοινωνούς, which indicates a cut by the Theodosian editors.<sup>17</sup>

More remarkably, the Latin *nota congrui nominis eius inuratur gregalibus* (“his followers shall be branded with the mark of an appropriate name”) is matched in the Greek by a very different expression: ὀνόματι περιβαλεῖν κατεγνωσμένῳ (“to clothe with a despised name”). Both phrases, however, are idiomatic: the Latin *notam inurere* (“to brand with a mark”) recalls earlier expressions such as *nota infamiae* (or *stigma*: the mark of infamy impressed on the forehead of fugitive slaves), and the *nota censoria*, the sanction inflicted by Roman censors for dishonorable acts.<sup>18</sup> In Late Antiquity this became a dead metaphor to signify the loss of social status, which entailed forfeiture of privileges and rights.<sup>19</sup> In this case, it denotes the new infamous name of the Nestorians. But the Greek counterpart ὀνόματι περιβαλεῖν (“to surround with a name”) is also an idiomatic dead metaphor, as περιβάλλω denotes the act of putting a cape or a garment on somebody, hence, figuratively, giving a name.<sup>20</sup> Thus, the Greek

<sup>17</sup> Cf. my observations at 57 below.

<sup>18</sup> Cf. Cic. *Clu.* 129.10, *Sull.* 88.1; Plin. *Ep.* 9.13.16.

<sup>19</sup> On late antique *infamia* see Riedlberger, *Prolegomena* 353–373, and L. Atzeri, “Il lessico dell’infamia nella legislazione imperiale tardoantica,” in I. Piro (ed.), *Scritti per Alessandro Corbino* I (Rome 2016) 123–155, with parallels for *notam inurere* at 139. On *stigma* see C. Setién García, “El uso del término στίγμα (*stigma*) y su tradición latina en la literatura cristiana primitiva,” *RELat* 20 (2020) 71–90.

<sup>20</sup> Cf. for instance Eustath. *Engastrim.* 22.4 προπατόρων ἢ προφητῶν ὀνόματα περιβαλλόμενοι “endowed with the name of patriarchs and prophets,” Procl. *In Pl. Alc.* 98.7 τῷ ὀνόματι τούτῳ τοὺς φορτικούς ἐραστάς περιβαλεῖν “to call the vulgar lovers with this name.” Procop. *Vand.* 3.10.33 (ὄνομά τε καὶ σχῆμα

version renders the Latin concepts with equally idiomatic phrases.

### *Diva memoria*

The same phenomenon is recognizable in the phrase *divae memoriae*, a standard Latin reference to a past divinized emperor (here, Constantine).<sup>21</sup> In the Greek (line 31), this phrase is matched by its equivalents τῆς θείας λήξεως.<sup>22</sup> While the Latin *memoria* refers to the honours paid to the divinized emperor, the Greek λήξις originally indicates the post-mortem ‘lot’ or ‘destiny’ (hence, the heavenly dwelling) of the late ruler. Once again, the Greek version shows a good idiomatic equivalent for the Latin.

### *Prose rhythm and editorial rearrangement*

As outputs of highbrow prose, late Latin constitutions adhere to the rules of late antique prose rhythm, in which metrical clausulae of the classical period (such as cretic-trochee, double cretic, first paeon-trochee, etc.) overlap and coexist with new accentual clausulae, which are determined by patterns of stressed syllables. The most frequent clausulae of the accentual type are:

1. *cursus planus* (ó~~ó~ *illum dedúxit*)
2. *cursus tardus* (ó~~ó~~ *ire tentáverit*)
3. *cursus velox* (ó~~~~ó~ *hóminem recepístis*)

In Late Antiquity, the phonetic distinction between long and short syllables was lost, but the rhetorical teaching still favored

βασιλέως περιβαλλόμενον “assuming the name and wearing the attire of a king”) puns on the metaphoric and literal meaning of the phrase.

<sup>21</sup> 20 times in *Cod.Theod.*, once *Sirm.*, 5 in post-Theodosian *Novels*, 22 in *Nov.Iust.*, 19 in *ACO*. For this and the following queries I used the *Amanuensis* databases.

<sup>22</sup> An alternative phrase is τῆς εὐσεβοῦς λήξεως. Either expression is attested 5 times in *Cod.Iust.* and 48 in *Nov.Iust.* Further parallels in F. Morelli, “L’imperatrice e i lebbrosi: un pagamento del duca di Alessandria e curatore della *domus divina* Athanasios per una fondazione di Aelia Theodora,” in J.-L. Fournet et al. (eds.), *Mélanges Jean Gascou: textes et études papyrologiques* (Paris 2016) 303–338, at 326.

purely metrical clausulae. Consequently, new accentual patterns tended to merge with the old meters. For this reason, modern scholars have called this type of prose rhythm *cursus mixtus*.<sup>23</sup>

Since the unabridged constitutions closely adhere to *cursus mixtus*, the absence of clausula from a sentence-ending in the *Cod. Theod.* fragment may mark the places where the Theodosian editors intervened. A comparison with the Greek version (*ACO*) supports this hypothesis. Consider the initial sentence of 16.5.66, especially the underlined phrases:

*Damnato portentuosae superstitionis auctore Nestorio nota congrui nominis eius inuratur gregalibus, ne Christianorum appellatione abutantur.*

Now that Nestorius, the author of a monstrous superstition, has been condemned, his followers shall be branded with the mark of an appropriate name, lest they misuse the name of Christians.

Νεστορίου τοίνυν τοῦ τῆς τερατώδους διδασκαλίας ἡγεμόνος κατακεκριμένου, λείπεται τοὺς ὁμογνώμονας αὐτοῦ καὶ τῆς ἀσεβείας κοινωνοὺς ὀνόματι περιβαλεῖν κατεγνωσμένῳ, ἵνα μὴ τῇ τῶν Χριστιανῶν ἀποχρώμενοι προσηγορία τοιοῦτων ὀνόματι κοσμοῖντο ὧν τοῦ δόγματος δυσσεβοῦντες ἐξέστησαν.

Therefore, now that Nestorius, the leader of a monstrous teaching, has been condemned, it remains to apply to those who share his opinions and participate in his impiety a despised name, lest they—as they abuse the appellation of Christians—be adorned by the name of those whose doctrine they have impiously deserted.

Both *inuratur gregalibus* and *appellatione abutantur* yield subpar clausulae: *inurátūr grĕgálībūs* is a *cursus tardus* with no recognizable meter; *appellatiōnĕ ābūtántūr* is a *trispodaicus*, a pattern that rhythmical writers of the period generally tried to avoid, all the more

<sup>23</sup> On *cursus mixtus* in the late Roman constitutions see F. Di Capua, *Il ritmo prosaico nelle lettere dei papi e della cancelleria romana dal IV al XIV secolo II* (Rome 1939) 67–85, and R. G. Hall and S. M. Oberhelman, “Rhythmical Clausulae in the *Codex Theodosianus* and the *Leges novellae ad Theodosianum pertinentes*,” *CQ* 35 (1985) 201–214.

so considering that it is with hiatus (also usually avoided) and it is not matched by any meter.

In the corresponding passage in the Greek we find a more elaborate sentence. In place of the jussive subjunctive *inuratur*, we find the impersonal *λείπεται* followed by the infinitive *περιβαλεῖν*. It is therefore possible that the Latin original had a similar impersonal phrase, such as *provisum est*, followed by an infinitive or a complementary final clause (*ut* + subjunctive). In addition, the lost Latin original probably included an equivalent to *τῆς ἀσεβείας κοινωνούς* as a counterpart to *eius gregalibus* / *τοῦς ὁμογνώμονας αὐτοῦ*. Most remarkably, while *Cod. Theod.* has the plain final clause *ne ... abutantur*, the corresponding sentence in Greek is more elaborate. The participial clause *ἀποχρώμενοι* matches *abutantur*, whereas the Greek phrase contains a further explanation (“lest they [...] be adorned by the name of those whose doctrine they have impiously deserted”), which the *Cod. Theod.* abridgement lacks. In short, irregular clausulae in the *Theodosian Code* may well mark editorial cuts.

#### *Prose rhythm in the Greek version*

Prose rhythm matters in Greek too. In contrast to Latin *cursus mixtus*, late antique and Byzantine Greek prose rhythm is purely accentual. Its golden rule can be summarized as follows: those clausulae that have an even number of syllables (two, four, six) between the two final stressed syllables of a sentence are preferred; those that have an odd number of syllables are avoided. After the last stress there can be one, two, or even no unstressed syllables.<sup>24</sup> The Greek translations of various letters of Leo the Great adhere to prose rhythm as much as their originals.<sup>25</sup>

<sup>24</sup> W. Meyer, *Der accentuirter Satzschluss in der griechischen Prosa vom IV. bis XVI. Jahrhundert* (Göttingen 1891) 6–7. See also W. Hörandner, *Der Prosarhythmus in der rhetorischen Literatur der Byzantiner* (Vienna 1981) 26–37, and, briefly, W. Hörandner and A. Rhoby, “Metrics and Prose Rhythm,” in S. Papaioannou (ed.), *The Oxford Handbook of Byzantine Literature* (Oxford 2021) 407–429, at 419–424.

<sup>25</sup> Di Capua, *Il ritmo prosaico* II 101–104.

Does this apply to the Greek version of our law? Roughly 34 out of 41 clauses display a rhythmical clausula, which accounts for 82% of the whole text with a prevalence of double dactyl (meaning a double sequence of one stressed syllable followed by two unstressed syllables).<sup>26</sup> This looks like yet more proof of the accuracy of the Greek version. Not only does it translate Latin phrases with equally idiomatic expressions in Greek, but it also imitates the Latin chancery style in adhering to a clausulated rhythm.

*A dubious back-translation in the Acts of Constantinople:*

*The ‘Simonians’ and the Three Chapters Controversy*

Over a century later, Theodosius’ constitution against the ‘Simonians’ resurfaced in the Acts of the Council of Constantinople in 553 (*ACO* IV.1 91–92, par. 25). Justinian summoned the council with two seemingly irreconcilable aims: on the one hand, to reconfirm the Christology which emerged from the Council of Chalcedon; on the other, to reconcile the decrees of Chalcedon with the miaphysite faction, which was still strong in Justinian’s empire and treated with sympathy by the empress Theodora. This led to the condemnation of the person and writings of Theodore of Mopsuestia (Nestorius’ teacher, d. 428, who was suspected of being too close to the Nestorius’ views on the dual nature of Christ), the writings of Theodoret of Cyrrhus (d. 457) against Cyril, and Ibas of Edessa’s (d. 457) letter to Mari the Persian, which also criticized Cyril and his Christology. Since these three subjects of condemnation were known as the ‘Three Chapters’, the debate over their orthodoxy came to be called the Three Chapters Controversy.<sup>27</sup>

It is important to note that, except for a few documents, the Acts of Constantinople are solely available in a Latin translation

<sup>26</sup> For instance, ἀξίαις κολάζεσθαι (line 4), προσαγοιρεύεσθαι βούλεται (6), δυσσελβοῦντες ἐξέστησαν (20), etc.

<sup>27</sup> On the doctrinal and historical context of the second Council of Constantinople see R. Price, *The Acts of the Council of Constantinople of 553* (Liverpool 2009) 1–42, and Chadwick, *East and West* 55–57.

from Greek made in the immediate aftermath of the council. With the constitution against the ‘Simonians’, we have thus a back-translation of the Greek version from over a century prior. However, notable discrepancies emerge from a comparison between the Greek version and this new back-translation. Consider the following passage:

*ACO* I.1.3 68.8–9:

Νεστορίου τοίνυν τοῦ τῆς τερα-  
τώδους διδασκαλίας ἡγεμόνος  
κατακεκριμένου [...]

Therefore, now that Nestorius, the  
leader of a monstrous teaching,  
has been condemned [...]

*ACO* IV.1 91.13–14:

*Iterum igitur doctrina Diodori et  
Theodori et Nestorii impiorum et  
pestiferorum uisa est nobis abomi-  
nanda esse.*

Thus, we established that the  
teaching of the impious and  
mischievous Diodorus, Theo-  
dore, and Nestorius had to be  
abhorred.

Strikingly, it is not just Nestorius who is condemned, but also Theodore of Mopsuestia (one of the theologians under attack at the council) and Diodorus, a former bishop of Tarsus (d. ca. 390) who had been Theodore’s teacher. Despite playing an important role in the defense of Nicene orthodoxy in the fourth century, Diodorus had already been condemned as a forerunner of Nestorius by a local synod in Constantinople, probably in 507.<sup>28</sup> Thus, the posthumous condemnation of Theodore and Diodorus alongside Nestorius in this new version is the outcome of a blatant interpolation intended to provide additional evidence to the condemners of the Three Chapters.<sup>29</sup>

<sup>28</sup> On Diodorus and his works see Grillmeier, *Christ in Christian Tradition* I 260–270; M. Simonetti, “Diodore of Tarsus,” *Encyclopedia of Ancient Christianity* I (2014) 713–714; J. Behr, *The Case Against Diodore and Theodore: Texts and their Contexts* (Oxford 2011) 48–53. On the date of this synod see L. Abramowski, “La prétendue condamnation de Diodore de Tarse en 499,” *RHE* 60 (1965) 64–65; F. K. Haarer, *Anastasius I: Politics and Empire in the Late Roman World* (Cambridge 2006) 140–142; Behr 101.

<sup>29</sup> This is also suggested by another law ascribed to Theodosius II (*ACO* IV.1 92.13–93.2, par. 26), which features alongside the one under study and

*Interpolations and updates*

Not only is Theodore's name interpolated throughout,<sup>30</sup> but also the punishment of the 'Simonians'. While the *Cod.Theod.* abridgment and the Greek version outline confiscation of goods as the punishment for those who transgress the law, this version also adds death sentence (*ACO IV.1 92.7 eius post gladii ultionem omnis substantia fisco addicetur* "after the sword's revenge, let all his substance be added to the Privy Purse"). This change aligns with the sanctions against heretics in other Justinianic laws (*Cod.Iust.* 1.5.14 ὁ δὲ παραβαίνων ἐσχάτως κινδυνεύει, 1.5.16 τῶν ἐσχάτων τιμωρίων ἀξίους). In other words, the interpolator conformed the punishments of the 'Simonians' to those in place against unrepentant heretics.

*Literal rendering and arbitrary paraphrase*

Consider this passage:

*ACO I.1.3 68.7–8:*

[...] ὡς ἂν ὀνειδέσει περιβληθέντες αἰωνίαν ὑπομένοιεν τῶν ἁμαρτημάτων ἀτιμίαν καὶ μήτε ζῶντες τιμωρίας μήτε θανόντες ἀτιμίας ἐκτὸς ὑπάρχοιεν.

[...] so that, assailed with reproaches, they may endure eternal dishonour for their sins, and may not escape punishment while alive or dishonour after death.

*ACO IV.1 91.11–13:*

*Iustum igitur circumdari eos confusione suorum peccatorum et in tali vocabulo permanere in aeternum quatenus nec vivi liberentur et post mortem permaneant contempti et condemnati.*

Therefore, it is right that they be surrounded by the shame of their sins and that they continue to be scorned and condemned under this designation.

*Confusio* is Christian Latin for 'shame', 'humiliation'.<sup>31</sup> Yet the phrase *confusione circumdari* is unattested: this is not idiomatic

likewise condemns Theodore and Diodorus, plus Theodoret, but has no known antecedent.

<sup>30</sup> Cf. *ACO I.1.3 68.18 τὰς αὐτοῦ Νεστορίου τοῦ ἁθεμίτου τε καὶ ἱεροσύλου ἀσεβεῖς βίβλους* ~ *IV.1 91.25–26 sacrilegos codices ab eis expositos, et maxime a Theodoro et Nestorio*; *ACO I.1.3 68.27 ὁ ... Νεστόριον μιμούμενος* ~ *IV.1 92.5–6 si quis ... Theodoro et Nestorio adsenserit.*

<sup>31</sup> *TLL IV 269, s.v. confusio 5.*

Latin. The translator attempted to render *ὄνειδεσι περιβληθέντες* (“surrounded with reproaches”), with little regard for idiomaticness.

At the same time, literal renderings force the translator to rearrange the syntax arbitrarily. First, he replaces the final clause with an infinitive governed by *iustum est* (which is not in the Greek). Second, translating *ὑπάρχοιεν* with *permaneant* (instead of a copula) requires that *μήτε ἀτιμίας ... μήτε τιμωρίας ἐκτός* be rendered rather freely with *contempti et condemnati*. *Liberentur* fills the gap between *vivi* (*ζῶντες*) and *post mortem permaneant* (*θανόντες ... ὑπάρχοιεν*), for the sake of *isocolia*. From *ad verbum* to *ad sensum* is but a step.<sup>32</sup>

The same phenomenon occurs shortly below. The Greek *ὄνόματι περιβαλεῖν κατεγνωσμένῳ* (“to clothe with a despised name”) is split into two clauses: *nominationem mereri* (picking up *ὄνόματι*) and *confusionem indui* (idiomatic rendition of *περιβαλεῖν* and elaborating on *κατεγνωσμένῳ*, while also being a common phrase in Christian Latin).<sup>33</sup> In short, offhand rephrasing coexists with, and is sometimes caused by, overly literal translation.

#### *Lost in translation*

Some phrases even qualify as mistakes. So for instance the following sentence, concerning the condemnation of Porphyry’s writings:

ACO I.1.3 68.16–17:

ὃς (viz. Porphyry) τὴν ἀληθῆ  
θρησκείαν ἐπιχειρήσας τῆ τοῦ  
λόγου δυνάμει καταγωνίσασθαι  
βίβλους ἐαυτῷ οὐ παιδεύσεως

ACO IV.1 91.25–27:

*qui ausus est et existimavit veram  
fidem humanorum potentia verborum  
circumscribere et codices pestilentes et  
ineruditos ad memoriam relinquere*

<sup>32</sup> Cf. S. Lundström, *Übersetzungstechnische Untersuchungen auf dem Gebiete der christlichen Latinität* (Lund 1955) 131–133.

<sup>33</sup> Cf. e.g. Vulg. Job 8:22 *Qui oderunt te induentur confusione* “Those who hated you shall be clothed in shame,” Ps 108:29 *Induantur qui detrahunt mihi pudore, et operiantur sicut diploide confusione sua* “Let those who detract me be clothed with humiliation: and let them be covered with their shame as with a double cloak”; Ps 132:18: *inimicos eius induam confusione* “I will cover in shame his enemies.”

ὑπομνήματα καταλέλοιπε.

(Porphyry), who, having attempted to battle against the true religion by the power of reason, left behind books, but not records of (true) learning.

*posterorum.*

who dared to and thought he could limit the true faith with the power of human words and to leave pestilent and uncouth books to the memory of posterity.

First, ἐπιχειρήσας is translated twice (*ausus est / existimavit*). Second, *pestilentes* probably indicates a lacuna in the Greek version, where it is missing (cf. 72 below). Third, τοῦ λόγου is rendered with the plural *verborum humanorum* perhaps because the translator understands λόγος as “speech” or “argument,” a meaning that Latin *verbum* lacks in the singular, though admitted in the plural. More importantly, the translator ascribes to ὑπομνήματα (there, “treatises”) the generic (and, here, wrong) sense of “reminder.” Consequently, he is forced to treat οὐ παιδεύσεως as a genitive of quality and render it incorrectly as *in-eruditos* (and intrude the conjunction *et*, which is not in the Greek). These semantic mistakes suggest that the translator was probably a Latin speaker striving to be literal but forced to rearrange his product to make it presentable.<sup>34</sup>

*A comparison with other Greek documents from the Acts of Constantinople*

This ‘dodgy’ version stands in stark contrast to the few other documents from the Acts of Constantinople that are extant in Greek, such as Patriarch Eutychius’ letter to Pope Vigilius,<sup>35</sup> the dogmatic sentences,<sup>36</sup> and the canons.<sup>37</sup> Comparison of the Greek and Latin versions of these other documents shows that their Latin translation is extremely literal. It proceeds word-by-word and follows the word order of the exemplar so thoroughly

<sup>34</sup> Cf. Lundström, *Übersetzungstechnische Untersuchungen* 131–136.

<sup>35</sup> *ACO* IV.1 App. I.1 235.1–236.29 (Greek) ~ IV.1 15.2–16.15, par. 10 (Latin).

<sup>36</sup> *ACO* IV.1 App. II.1 239.3–14 and 239.15–240.2 (Greek) ~ IV.1 208.1–11 and 214.16–28 (Latin).

<sup>37</sup> *ACO* IV.1 App. III 240.1–245.8 (Greek) ~ IV.1 215.8–220.14 (Latin).

as to use nouns and constructions that may not be idiomatic in Latin, but closely mirror the Greek.<sup>38</sup> Occasionally, technical Greek terms with no direct equivalent Latin have been rendered with periphrases.<sup>39</sup> In short, the Latin compilers of the Acts of Constantinople aimed at a pedantically *ad verbum* translation that mirrored the Greek even at the cost of introducing semantic and syntactic anomalies. This conforms to the trends for translating administrative texts in the sixth century.<sup>40</sup> By contrast, the infelicities of this interpolated version of Theodosius' anti-'Simonian' law make it a *unicum* within the Acts of Constantinople.

*Pelagius I between debunking and acceptance*

The Three Chapters controversy did not end with the Council

<sup>38</sup> For instance: *ACO* IV.1 241.30–31 κατὰ τούτην τὴν ἀσεβῆ ἐπινοθεῖσαν παρὰ Θεοδώρου ἔννοιαν ~ IV.1 Can. III 216.33–217.1 *secundum istum impium intellectum quem Theodorus execrandus adinvenit* (the prefix *ad-* mirrors ἐπι-; *ACO* IV.1 242.32–33 εἴ τις μὴ ἀναθεματίζει Ἄρειον [...] καὶ Ὠριγένην μετὰ τῶν ἀσεβῶν αὐτῶν συγγραμμάτων ~ IV.1 Can. XI 218.8–9 *si quis non anathematizat Arium [...] Origenem cum impiis eorum conscriptis* (with prefix *con-* mirroring συν-); *ACO* IV.1 243.2–3 ὑπὸ παθῶν ψυχῆς [...] ἐνοχλούμενον ~ IV.1 Can. XII 218.16–17 *a passionibus animae patientem* (barely grammatical construction with *figura etymologica*, but faithful to the Greek syntax). On the Latin of the Acts of Constantinople see Price, *The Council of Constantinople* x–xi.

<sup>39</sup> Thus *unaquaque naturam suam habentem subsistentiam* (*ACO* IV.1 Can. VII 217.17) translates ἰδιοὑποστάτους (IV.1 242.10).

<sup>40</sup> Justinian's constitution *Tanta* / δέδωκεν (issued in 533) notably limited the Greek translations of the *Digest* to literal, word-by-word translations, which are called κατὰ πόδα; a good example is the Latin *Authenticum* of Justinian's novels. On legal κατὰ πόδα see Corcoran, *BICS* 60 (2017) 108–110. On legal translations at the time of Justinian see M. Baratin, "La traduction selon Justinien ou la littéralité en milieu bilingue," in J.-M. Fournier et al. (eds.), *Grammaticalia: Hommage à Bernard Colombat* (Paris 2019) 245–256, and C.-H. Lavigne, "Droit, traduction, langue et idéologie: *Kata poda* ou la traduction pas à pas selon Justinien 1<sup>er</sup>," *Traduction, Terminologie, Rédaction* 18 (2005) 183–202. On conciliar acts see S. Petri, "Il diacono Rustico, traduttore e teologo," *Koinonia* 33 (2009) 171–200, at 176–178, and T. Mari, "The Latin Translations of the Acts of the Council of Chalcedon," *GRBS* 58 (2018) 126–155.

of Constantinople. In fact, the outcome of the Council sparked outrage in the West. After Pope Vigilius had been forced to subscribe to the decisions of the Council, many Western dioceses broke communion with Rome. The resulting schism lasted well into the seventh century.<sup>41</sup> Pelagius,<sup>42</sup> at that time a deacon of Rome, contested the council's outcome with a treatise in defense of the Three Chapters (*De defensione trium capitulorum*). Pelagius' stance would change drastically after Justinian appointed him pope in 556, and much of his pontificate would be spent disavowing his earlier dissident work and persuading schismatic bishops to return to communion with Rome.<sup>43</sup>

In his treatise, Pelagius responded to an otherwise unattested pamphlet against Theodore and demonstrated the unreliability of Theodosius' law that he saw cited there by comparing it with the *Justinianic Code*. Neither *Cod.Iust.* 1.1.3 (abridgement of a 448 law of Theodosius II, *ACO* I.1.4 66, par. 138)<sup>44</sup> nor *Cod.Iust.* 1.5.6 ( $\cong$  *Cod. Theod.* 16.5.66) makes any mention of Theodore.<sup>45</sup> The very fact that the council's delegates tampered with an old imperial letter contravened the rules in force, as the constitution

<sup>41</sup> See C. Alzati, "‘Pro sancta fide, pro dogma patrum’. La tradizione dogmatica delle Chiese italiciane di fronte alla questione dei Tre Capitoli," in *Atti del Convegno Como e Aquileia. Per una storia della società comasca* (Como 1991) 49–82; Chadwick, *East and West* 57–58; C. Sotinel and R. A. Markus, "Introduction," in C. Chazelle et al. (eds.), *The Crisis of the Oikoumene: The Three Chapters and the Failed Quest for Unity in the Sixth-century Mediterranean* (Turnhout 2007) 1–10; Price, *The Council of Constantinople* 99–104.

<sup>42</sup> "Pelagius 3," *Prosopographie chrétienne du Bas-Empire* II (2000).

<sup>43</sup> See Price, *The Council of Constantinople* 30–33. On the beginning of Pelagius' pontificate and his disavowal of his earlier work see J. Moorhead, *The Popes and the Church of Rome in Late Antiquity* (London 2015) 100–103, and F. Battistella, *Pelagius I. und der Primat Roms: ein Beitrag zum Drei-Kapitel-Streit und zur Papstgeschichte des 6. Jahrhunderts* (Hamburg 2017) 29–36.

<sup>44</sup> On which see G. Barone Adesi, "Intorno ad una costituzione di Teodosio II (C.I,1,3)," *Rivista italiana per le scienze giuridiche* 18 (1974) 45–77 [repr. *Il diritto romano nella legislazione degli imperatori cristiani* (Rome 2019) 3–37], and cf. 53 n.12 above.

<sup>45</sup> Pelag. *Defens.* 3.13.9–22 ed. Devreesse (= *PL* Suppl. IV.1 1323).

*Summa* of 529 made clear that citing in court old constitutions in a different form from the *Code* would qualify as forgery (*crimen falsi*).<sup>46</sup> Citing an interpolated constitution as evidence to support the council's decisions in 554 amounted to breaking the law Justinian had established 25 years earlier.

*Pelagius II and the redeployment of an interpolation*

These interpolations did not discourage a later successor (and namesake) of Pelagius, Pelagius II,<sup>47</sup> from extensively quoting the interpolated constitution to persuade the schismatic bishops of Histria to rejoin Rome (*Ep. III ad episcopos Histriae*, dating to 586 and probably written by the deacon and future pope Gregory the Great:<sup>48</sup> *ACO* IV.2 125.17–29). Here, the ‘dodgy’ back-translation of Theodosius’ law features alongside theological authorities such as Cyril, Augustine, and Leo the Great. What originally was an illegal interpolation ended up being treated as an autonomous piece of legislation.

*A literal back-translation in the Latin Acts of Ephesus:  
The Synodicon of Rusticus the Deacon*

Another, more consistent, opponent of the condemnation of the Three Chapters was Rusticus, a deacon of Rome and a nephew of Pope Vigilius. Because of his opposition to the Council of Constantinople, Rusticus had to suffer exile in Egypt. After his punishment was reduced to confinement, he resided in the Acoemete Monastery in Constantinople, a place of staunch Chalcedonian partisanship. There, from 564 to 566, he produced a Latin translation of first the Acts of Chalcedon and then those of Ephesus. Rusticus’ aim was to demonstrate that nowhere in those Councils had the Three Chapters been condemned. These translations constitute the largest part of his

<sup>46</sup> Van Bochove, in *Latin in Byzantium* I 215–216.

<sup>47</sup> “Pelagius 4,” *Prosopographie chrétienne du Bas-Empire* II.

<sup>48</sup> As argued by P. Meyvaert, “A Letter of Pelagius II composed by Gregory the Great,” in J. C. Cavadini (ed.), *Gregory the Great: a Symposium* (Notre Dame 1995) 94–116.

*Synodicon*.<sup>49</sup>

For the Acts of Ephesus, Rusticus reworked an earlier Latin translation, which can be safely dated to ca. 550 and is transmitted in the *Collectio Turonensis*, as well in some parts of another collection (*Salzburgensis*) that have not been corrected against Rusticus.<sup>50</sup> Schwartz based his edition of the Latin Acts of Ephesus on Rusticus' translation, while signaling the readings of the ancient version in his critical apparatus.

*Rusticus' corrections*

A sample passage with the Greek version (Γ), the earlier Latin back-translation of the *Collectio Turonensis* (Τ), and Rusticus' corrected version in the *Synodicon* (Ρ) will show the extent of Rusticus' corrections and his translation method. Divergent readings are underlined.

ACO I.1.3 68.8–10

Γ

Νεστορίου  
τοίνυν  
τοῦ τῆς τερατώδους  
διδασκαλίας  
ἡγεμόνος  
κατακεκριμένου  
λείπεται  
τοὺς ὁμογνώμονας  
αὐτοῦ  
καὶ τῆς ἀσεβείας  
κοινωνοὺς  
ὄνοματι  
περιβαλεῖν  
κατεγνωσμένῳ.

ACO I.3 181.12–14

Τ

Nestorii  
igitur  
monstruosae  
doctrinae  
principe  
occultato  
superest  
unianimes  
eius  
et impietatis  
socios  
nomini  
subiacere  
vituperando.

Ρ

Nestorio  
igitur  
monstruosae  
doctrinae  
principe  
condemnato  
superest  
unianimes  
eius  
et impietatis  
socios  
nomini  
subicere  
vituperando.

A comparison reveals mistakes of three kinds. The genitive *Nestorii* of the old version replicated mechanically Νεστορίου,

<sup>49</sup> ACO I.3 181–182, par. 68. On Rusticus' life and works see "Rusticus 11," *Prosopographie chrétienne du Bas-Empire II*; Petri, *Koinonia* 33 (2009) 172–174; and, briefly, Moorhead, *The Popes* 103–104.

<sup>50</sup> See Schwartz, ACO I.3 VIII–XII.

without realizing that it is part of a genitive absolute: Rusticus corrects to an ablative to match *principe* / ἡγεμόνος.<sup>51</sup> The old version's *occultato* suggests that the translator read (or misunderstood) κατακεκρυμμένου because of iotacism,<sup>52</sup> while Rusticus' *condemnato* shows that he used a Greek manuscript with the correct reading.<sup>53</sup> The error *subiacere* may have originated independently in the manuscript tradition of the *Turonensis*.

*Prose rhythm in Rusticus' translation*

The following sentence about the term 'Simonians' illustrates another feature of the translation attached to the Latin Acts of Ephesus:

ACO I.1.3 68.13–14

Γ

προσῆκει

γάρ

τοὺς ἐν τῇ τοῦ θεοῦ ἀποστροφῇ

τὸ ἐκείνου

μιμουμένους

δυσσέβημα

τὴν αὐτὴν

ἐκείνῳ

κληροῦσθαι

προσηγορίαν.

ACO I.3 181.17–18

T/R

*Oportet*

*enim*

*eos qui in divinitatis aversione*

*illorum*

*imitantur*

*impietatem*

*appellationem*

*illi*

*sortiri*

*consimilem.*

Again, this is a literal, word-by-word translation. The most remarkable difference lies in τοὺς μιμουμένους becoming a relative clause because a substantivized participle in Latin in combination with an object (e.g. *oportet enim illorum impietatem in divinitatis aversione imitantes appellationem illi sortiri consimilem*) would make for a cumbersome and obscure sentence. Secondly, *illorum* in place of ἐκείνου may originate from a reading ἐκείνων in the

<sup>51</sup> Lundström, *Übersetzungstechnische Untersuchungen* 219–220, defines this phenomenon as “syntaktische Transkription.”

<sup>52</sup> Cf. the reading κατακεκριμένου of MS. V in Schwartz's apparatus.

<sup>53</sup> As he did with the Acts of Chalcedon, ACO II.3.1 27.2: *Rusticus ex latinis et Graecis exemplis maxime Acoemit(ensis) monast(eri) emendavi.*

exemplar. Thirdly, the terms translating τὴν αὐτήν and προσηγορίαν result as swapped, presumably to make the clausula *sortīrī cōnsīmīlēm* (cretic-tribrach / *tardus*).<sup>54</sup> Rusticus preserves this feature of the old translation: despite its scrupulous accuracy, the most significant alterations in phrasing and word order occur at sentence ending.

Γ	T/R
ὑπάρχοιεν	ěssě nōscāntuř (cretic-trochee / <i>planus</i> )
δυσσεβούντες ἐξέστησαν	agentes ĩmpĭē rēcěssěruřt (a more natural word order would place the adverb before its related participle <i>agentes</i> : the transposition enables a <i>cursus velox</i> )
εὐρεῖν ποτε δυνήσεται	aliquando póterit ĩnevĕtrě (proparoxytone + ditrochee / <i>velox</i> )
δημεύσει τῶν ὑπαρχόντων τιμωρηθήσεται	rerum suarum confiscatiōně mŭltābĭtuř (ditrochee / <i>tardus</i> )

‘Simonians’ and simony

Whenever Rusticus noted divergences between the old translation and his Greek exemplar, he recorded them in the margins. In philological terms, he supplied a critical apparatus. Luckily, some manuscripts preserved these *adnotationes Rustici*, which provide valuable insights into his method and his library.<sup>55</sup> One of his marginal remarks concerns the anti-‘Simonian’ constitution and provides valuable information about his milieu. Rusticus recorded a variant reading for the sentence *Oportet enim eos qui in divinitatis aversione illorum imitantur impietatem, appellationem illi sortiri consimilem* (“for it is appropriate that those who in turning away

<sup>54</sup> Other instances of *consimilis* in place of *similis* for the sake of clausula in clausulated prose: *Cod. Theod.* 6.9.2.1 (*honóre cōnsīmīlēš*); *Symm. Ep.* 3.51 *emendatiōně cōnsīmīlēš*, *Orat.* 1.13 *lŭcě cōnsīmīlē*; *Hormisdas Ep.* 137.2 *Thiel impietātě cōnsīmīlēš*.

<sup>55</sup> On the *adnotationes Rustici* to the Acts of Ephesus see Schwartz, *ACO* I.3 XVI–XVII. In Schwartz’s edition they feature in a dedicated section of the apparatus; in *PL Suppl.* IV 546–596 they are printed as a running text.

from God imitate his impiety should inherit the same appellation as he”):

*In Acym(etensi) solo: eos qui Christi paupertatem in divino mysterio factam aversantur*

In the Acoemetes’ manuscript only: “those who turn away from Christ’s poverty, which was accomplished in the divine mystery”

This critique of “those who turned away from Christ’s poverty” refers to the sin of simony, the buying and selling of sacraments and ecclesiastical offices, which was named after Simon Magus, who had attempted to bribe Peter to obtain the power to administer the Holy Spirit (Acts 8:9–25). None of this was in the original law of Theodosius, which had called the Nestorians ‘Simonians’ because it compared Nestorius to the arch-heretic Simon Magus, with no mention of purchase of ecclesiastical offices. It is only from the sixth century onwards that simony became an increasingly pressing topic in church governance. Popes Gelasius (in 494: *Ep.* 14.24, p.375 Thiel) and Hormisdas (in 517: *Ep.* 25.4, p.791 Thiel) and the council of Tours of 567 (can. 28, *SC* 354 p.390) condemn active attempts to bribe high ecclesiastics into granting ordinations. Finally, Gregory the Great defined simony not just as malpractice, but also as a heresy.<sup>56</sup>

These attempts were, however, ineffectual. Civil authorities did not outright condemn payments to the Church in return for offices. Instead, they regulated and, to some extent, legitimated them by setting limits to consecration fees payable for ordaining bishops, as shown by Cassiodorus writing on behalf of Athalaric to Pope John II in 533 (*Var.* 9.15, *CCSL* 96 p.364) and by

<sup>56</sup> I. Rosé, “Simon le Magicien hérésiarque? L’invention de la *simoniaca heresis* par Grégoire le Grand,” in F. Mercier et al. (eds.), *Aux marges de l’hérésie: inventions, formes et usages polémiques de l’accusation d’hérésie au Moyen Age* (Rennes 2018) 201–238, and A. Recchia, *Symoniaca heresis: denaro e corruzione nella Chiesa da Gregorio Magno a Graziano* (Vatican City 2022) 23–39, discuss Gregory’s use of the phrase *simoniaca haeresis* and its antecedents.

Justinian's *Nov.* 123 in 546.<sup>57</sup>

The interpolation reported by Rusticus suggests that the link between Simon Magus and simony had become so thoroughly established in ecclesiastical discourse around the mid-sixth century that the intended sense of heretic was no longer intelligible, and the interpolation thus sought to connect Nestorians to clergymen with misbegotten wealth. In short, the variant reading noted by Rusticus confuses 'simonians' with 'simoniacs' and tells us something about his intellectual environment.

*Translations and textual criticism*

The fact that Rusticus' translation is extremely literal can assist in spotting textual problems. Let us consider again the following sentence in the Greek version of the Acts of Ephesus (Γ), in the dubious version of the Acts of Constantinople (C), in the old Latin translation (attested in the *Collectio Turonensis* and, partly, *Salzburgensis*: T and S), and in Rusticus' reworking of it (R). An m-dash indicates terms that are not included in one version but are present in others.

Γ	C	T/S	R
ACO I.1.3 68.16–17)	ACO IV.1 91.25–27	ACO I.3 181.19–21)	ACO I.3 181.19–21
ὅς	<i>qui</i>	<i>qui</i>	<i>qui</i>
[...] βίβλους	[...] <i>codices</i>	[...] <i>libros</i>	[...] <i>libros</i>
εαυτῶ	—	<i>sibimet</i>	<i>sibimet</i>
—	<u><i>pestilentes</i></u>	—	<u><i>sceleratos</i></u>
οὐ παιδεύσεως	<i>et ineruditos</i>	<i>non eruditionis</i>	<i>non eruditionis</i>
ὑπομνήματα	<i>ad memoriam</i>	<i>commenta</i>	<i>commenta</i>
καταλέλοιπε.	<i>relinquere</i>	<i>dereliquit.</i>	<i>dereliquit.</i>
	<i>posterorum.</i>		

<sup>57</sup> On which see S. R. Huebner, "Currencies of Power: The Venality of Offices in the Later Roman Empire," in A. Cain et al. (eds.), *The Power of Religion in Late Antiquity* (Farnham 2009) 167–179; R. Lizzi Testa, "La vendita delle cariche ecclesiastiche: interdizioni canoniche e provvedimenti legislativi dal IV al VI secolo," *CrSt* 33 (2012) 449–474 (with a focus on Cassiodorus' *Var.* 9.15); and M. Cristini, "Alcune osservazioni sulla simonia nell'Impero d'Oriente del VI secolo," *ByzZeit* 116 (2023) 751–762.

who ( <i>viz.</i> Porphyry) [...] left behind books, but not records of true learning.	who [dared to] leave pestilential and ignorant books to the memory of posterity.	who [...] left behind books for himself, not records of true learning.	who [...] left behind wicked books for himself, not records of true learning.
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The Greek has no counterpart to *pestilentes / sceleratos*. In addition, the clause as it stands in the Greek version is unbalanced, because ὑπομνήματα is paired with οὐ παιδεύσεως, whereas βίβλους is left alone. This may well indicate a lacuna between εαυτῶ and οὐ παιδεύσεως. Moreover, the old translation lacks *sceleratos*, which was restored by Rusticus. This means that both the version of the Acts of Constantinople and the old translation of the Acts of Ephesus were based on a manuscript that already displayed this lacuna. Rusticus then filled it in using a manuscript with a more complete text.

Perhaps Constantine's law against the 'Porphyrians' which inspired the constitution under discussion can provide additional help in filling this lacuna. Athanasius (*De decretis* 39.1) and others (Socr. 1.9, Gelas. Cyz. 2.36) transmit a Greek version,<sup>58</sup> while there are two Latin versions of this law.<sup>59</sup> Besides, there are Syriac and Ethiopic versions.<sup>60</sup> Let us focus on the following sentence in the Latin and Greek versions:

<sup>58</sup> Cf. 52 n.9 above.

<sup>59</sup> Edited in parallel by C. H. Turner, *Ecclesiae Occidentalis Monumenta Iuris Antiquissima* I.2.4 (Oxford 1939) 632–633.

<sup>60</sup> The Syriac version is edited by F. Schultheß, *Die Syrischen Kanones der Synoden von Nicaea bis Chalcedon* (Berlin 1908) 1–2; reprinted by Opitz, *Dokumente* 66–68, in parallel with the Greek and the two Latin versions. For the Ethiopic version see A. Bausi, "The Accidents of Transmission: On a Surprising Multilingual Manuscript Leaf," *Adamantius* 22 (2016) 303–322, at 314–317, alongside the Greek text and one Latin version (from the Collection of Theodosius the Deacon).

Greek  
(Ath. *Decr.* 39.1)

Πορφύριος [...] ἄξιον εὐρατο μισθὸν καὶ τοιοῦτον ὥστε ἐπονείδιστον μὲν αὐτὸν πρὸς τὸν ἐξῆς γενέσθαι χρόνον καὶ πλείστης ἀναπλησθῆναι κακοδοξίας, ἀφανισθῆναι δὲ τὰ ἀσεβῆ αὐτοῦ συγγράμματα [...]

Porphyry [...] met the appropriate punishment, and so severe was this punishment that he was disgraced from then henceforth and had been branded with the utmost infamy while his wicked writings have been destroyed...

Latin version 1  
(transmitted in multiple collections, most notably the *Collectio Dionysio-Hadriana*)

*Porphyrius [...] dignam mercedem invenit meritis suis ut omne tempus, tamquam qui de iniquitate gloriam captaverit, exprobrabilis habeatur, cuius decreta impiissima placuit pessimari [...]*

Porphyry [...] met the appropriate punishment for his misdeeds, so that he was deemed as deserving of blame, like someone who gained fame through wrongdoing, whose wicked claims We resolved to destroy...

Latin version 2  
(solely transmitted by the Collection of Theodosius the Deacon: Verona, Biblioteca Capitolare, LX [58])

*Porphyrius [...] condignam mercedem invenit ac talem ut in posterum tempus inproperio digna repperiatur ac multum mala gloria repleatur et corrumpantur eius impij libri [...]*

Porphyry [...] met the appropriate punishment, and so severe was this punishment that in the future, it (*sic*: matching *mercedem*) would be found worthy of blame and would be branded with bad reputation, and his wicked writings would be destroyed...

Theodosius' anti-'Simonian' law imitates the enactment of Constantine according to which Arius' writings had to be destroyed. Perhaps *pestilentes* in the Acts of Constantinople or Rusticus' *sceleratos* translated something akin to ἀσεβεῖς.<sup>61</sup>

### Conclusion

The multiple versions of Theodosius II's constitution against the 'Simonians' resurface at crucial moments of the theological

<sup>61</sup> Schwartz supplied tentatively in apparatus <ἀσεβείας>, although, given that Rusticus' translation is pedantically literal, an adjective seems better suited here.

debate in the fifth and the sixth centuries, from the Christological definition of Ephesus to the Three Chapters controversy. But this law is not just an obscure curiosity of ecclesiastical history. Rather, it tells a unique story about how a piece of legislation could be translated, interpolated, and abused.

Translation from Latin to Greek and vice versa was a crucial practice for the successful administration of the empire, and the many versions of this law provide insight into how the principles and aims of legal translation changed between the 430s and the 550s. Two of these versions (the Latin-to-Greek version and the Latin back-translation in the Acts of Ephesus) are literal. Yet literalness could be achieved in considerably different ways. The Greek translator aimed at a literal rendering, which follows a Latinizing syntax, while nonetheless being elegantly idiomatic. Over a century later, new habits are in place. The back-translation in the Latin Acts of Ephesus is so mechanically word-for-word that basic constructs such as a genitive absolute are overlooked. Although Rusticus' corrections often restored the text, his aim was not to achieve stylistic elegance but to adhere to the original as meticulously as possible.

The role of prose rhythm in the study of translations has not so far received sufficient attention. Absence of *cursus mixtus* clausulae in the *Theodosian Code* may well mark editorial abridgment, as confirmed by the comparison with the Greek version. In turn, the Greek version too follows the late antique chancery style in the use of clausulae. In the Latin Acts of Ephesus, the most notable divergences in terms of word order result from the need for clausulae. In short, prose rhythm provides valuable yet unacknowledged orientation in navigating these texts.

Most remarkably, the translations of this law also tell a story of abuse and misunderstandings. The version attached to the Acts of Constantinople shows that a copy of the old law had been interpolated to give support to the opponents of the Three Chapters before the Council of 553. This version displays both mistakes resulting from *ad verbum* translations and offhand paraphrases *ad sensum*—a bizarre mix that may betray lack of

familiarity with Greek. Finally, one of Rusticus' variant readings reveals that the term 'Simonians' as originally intended by Theodosius had become incomprehensible to sixth-century readers and was instead interpreted on the basis of ecclesiastic concerns about simony. Translations of juristic texts—and the distortions arising from them—may reveal more about translators and compilers than about the originals, and thus uncover unexpected aspects of cultural history.

## APPENDIX

The *Cod. Theod.* fragment vis-à-vis the full Greek version<sup>62</sup>

<i>Cod. Theod.</i> 16.5.66 <sup>63</sup>	<i>ACO</i> I.1.3 68 <sup>64</sup>	
<i>Idem AA. Leontio Praefecto Urbi.</i>	Αντίγραφον θείου νόμου	0
	Τὸ τῆ εὐσεβεστάτῃ θρησκείᾳ παρ' ἡμῶν ὀφειλόμενον σέβας τοῦς περὶ τὸ θεῖον ἀσεβῶς ἔχοντας δίκαις τε ἀξίαις κολάζεσθαι καὶ ὀνόμασι τῆ αὐτῶν φαυλότητι	5
	πρέπουσι προσαγορεύεσθαι βούλεται, ὡς ἂν ὀνειδεσι περιβληθέντες αἰωνίαν ὑπομένοιεν τῶν ἀμαρτημάτων ἀτιμίαν καὶ μῆτε ζῶντες τιμωρίας μῆτε θανόντες ἀτιμίας ἐκτὸς ὑπάρχοιεν.	10
<i>Damnato portentuosae superstitionis auctore Nestorio</i>	Νεστορίου τοίνυν τοῦ τῆς τερατώδους διδασκαλίας ἡγεμόνος κατακεκριμένου,	
<i>nota congrui nominis eius inuratur gregalibus,</i>	λείπεται τοὺς ὁμογνώμονας αὐτοῦ καὶ τῆς ἀσεβείας κοινωνοὺς ὀνό-	15

<sup>62</sup> Line numbering of the Greek is mine. Sections that correspond but appear at different points in the Greek and Latin versions are marked with distinct styles of underlining.

<sup>63</sup> Text T. Mommsen, *Theodosiani libri XVI* II (Berlin 1905) 879–880; transl. C. Pharr, *The Theodosian Code and Novels and the Sirmondian Constitutions* (Princeton 1952) 463, slightly modified with input from Millar, *A Greek Roman Empire* 176–177.

<sup>64</sup> Transl. Millar, *A Greek Roman Empire* 176–177, modified with input from P. R. Coleman-Norton, *Roman State and Christian Church* II (London 1966) 700–701.

<i>ne Christianorum appellatione abutantur:</i>	ματι περιβαλεῖν κατεγνωσμένω, ἵνα μὴ τῆ τῶν Χριστιανῶν ἀπο- χρώμενοι προσηγορία τοιούτων ὀνόματι κοσμοῖντο ὧν τοῦ δόγμα- 20 τος δυσσεβοῦντες ἐξέστησαν.
<i>sed quemadmodum Arriani lege divinae memoriae Constantini ob similitudinem impietatis Porphyriani a Porphyrio nuncupantur, sic ubique participes nefariae sectae Nestorii Simoniani vocentur, ut, cuius scelus sunt in deserendo deo imitati, eius vocabulum iure videantur esse sortiti.</i>	Διὰ ταῦτα νομοθετοῦμεν τοὺς ἀπανταγοῦ τῆς Νεστορίου ἀθεμίτου δόξης κοινωνοὺς Σιμωνιανοὺς ὀνομάζεσθαι 25 (προσῆκει γὰρ τοὺς ἐν τῇ τοῦ θεοῦ ἀποστροφή τὸ ἐκείνου μιμουμένους δυσσέβημα τὴν αὐτὴν ἐκείνω κληροῦσθαι προσηγορίαν, ὃν τρόπον Ἀρειανοὶ 30 νόμω τοῦ τῆς θείας λήξεως Κων- σταντίνου Πορφυριανοὶ διὰ τὸ ὅμοιον τῆς ἀσεβείας ἐκ Πορφυ- ρίου προσαγορεύονται, ὃς τὴν ἀληθῆ θρησκείαν ἐπιχειρήσας τῇ 35 τοῦ λόγου δυνάμει καταγωνίσα- σθαι βίβλους ἐαυτῶ οὐ παιδεύ- σεως ὑπομνήματα καταλέλοιπε)
<i>Nec vero impios libros nefandi et sacrilegi Nestorii adversus venerabilem orthodoxorum sectam decretaque sanctissimi coetus antistitum Ephesi habiti scriptos habere aut legere aut describere quisquam audeat: quos diligenti studio requiri ac publice comburi decernimus.</i>	καὶ μηδένα τολμᾶν τὰς αὐτοῦ Νεστορίου τοῦ ἀθεμίτου τε καὶ ἱεροσύλου ἀσεβεῖς βίβλους περὶ τῆς εὐαγοῦς τῶν ὀρθοδόξων θρη- σκείας καὶ κατὰ τῶν δογμάτων τῆς ἐν Ἐφέσῳ τῶν ἐπισκόπων ἀγίας συνόδου κατέχειν ἢ ἀνα- 45 γινώσκειν ἢ μεταγράφειν, ἅς δεῖ σπουδῆ πάση ζητήσαντας δημο- σίᾳ ἐμίπρασθαι
<i>Ita ut nemo in religionis disputatione alio quam supra dicto nomine faciat mentionem aut quibusdam eorum habendi concilii gratia in aedibus aut villa aut suburbano suo aut alio quolibet loco conventiculum clam aut aperte praebeat,</i>	(τούτῳ γὰρ τῷ τρόπῳ πάσης ἀσεβείας ρίζοθεν ἐκκοπέισης τὸ ἀπλοῦν καὶ εὐαπάτητον πλήθος οὐδὲν πλάνης σπέρμα εὐρεῖν ποτε δυνήσεται), μὴδὲ μνήμην τῶν οὕτως ἀπολλυμένων ἀνθρώπων ἐν τινὶ τῆς θρησκείας διαλέξει ἐτέρῳ 55 τῷ Σίμωνος ὀνόματι ποιέσθαι ἢ οικίαν αὐτοῖς ἢ ἀγρὸν ἢ προ- άστειον ἢ ὄντιναοῦν ἄλλον τόπον συνόδου ἔνεκα λεληθότως ἢ φανερῶς παρασχεῖν. 60
<i>quos omni conventus celebrandi licentia</i>	Τοὺς γὰρ τοιούτους ὀρίζομεν

*privari statuimus, scientibus universis  
violatorem huius legis publicatione  
bonorum esse coercendum.*

πάσης συνόδου ἀδείας  
στερίσκεσθαι, προδήλου ὄντος  
ἅπασιν ὡς ὁ παραβαίνων τε τὸν  
νόμον τοῦτον καὶ Νεστόριον  
μιμούμενος δημεύσει τῶν  
ὑπαρχόντων τιμωρηθήσεται. 65

Ἡ μεγίστη τοίνυν καὶ περιφανής  
σου ἐξουσία ταύτην ἡμῶν τὴν  
διάταξιν εἰς γνώσιν ἀπάντων τῶν  
τάς ἐπαρχίας οἰκούντων δια-  
τάγμασι συνήθως ἐλθεῖν παρα-  
σκευάσει. Τὸν νόμον δὲ τοῦτον τῇ  
τε Ῥωμαίων τῇ τε Ἑλλήνων  
τεθείκαμεν γλώττη, ὡς πᾶσιν  
σαφῆ καὶ γνώριμον εἶναι. 70 75

*Dat. III non. Aug. Constantinopoli D.  
n. Theodosio A. XV et qui fuerit  
nuntiatu cons.*

*Subscriptio deest*

The same Augusti (*viz.* Theodosius  
II and Valentinian III) to Leon-  
tius, Prefect of Constantinople.

Copy of an imperial law

The reverence owed by us to the  
most pious religion demands that  
those who behave impiously  
toward God should be punished  
with appropriate penalties and be  
designated (5) by names suitable to  
their depravity, so that, assailed  
with reproaches, they may endure  
eternal dishonour for their sins,  
and may not escape punishment  
while alive or dishonor (10) after  
death.

Now that Nestorius, the author of  
a monstrous superstition, has been  
condemned, his followers shall be  
branded with the mark of an ap-  
propriate name, lest they misuse  
the name of Christians. But just as  
the Arians, by a law of Constan-  
tine of sainted memory, are called  
Porphyrrians, after Porphyry, on

Therefore, now that Nestorius, the  
leader of a monstrous teaching,  
has been condemned, (15) it  
remains to apply to those who  
share his opinions and participate  
in his impiety a despised name,  
lest they—as they abuse the  
appellation of Christians—be  
adorned by the name (20) of those

account of the similarity of their impiety,

so adherents of the nefarious sect of Nestorius shall everywhere be called ‘Simonians,’ in order that they may appear to have rightly received the name of him whose crime they have imitated in deserting God.

Nor indeed shall anyone dare to have or to read or to copy the impious books of the lawless and blasphemous Nestorius, written against the venerable doctrine of the orthodox and against the decrees of the most holy synod of bishops held at Ephesus. We decree that these books shall be diligently and zealously sought out and publicly burned.

Moreover, no person shall make mention of such heretics by any other than the aforesaid name in any religious disputation; nor shall any person, either secretly or openly, provide a conventicle for any of them to hold an assembly, in any house or field or suburban

whose doctrine they have impiously deserted.

For these reasons, we decree that the people everywhere who share in the unlawful doctrines of Nestorius (25) be called ‘Simonians’. For it is appropriate that those who in turning away from God imitate his impiety should inherit the same appellation as he, (30) just as the Arians, by a law of the piously remembered Constantine, are called, on account of the similarity of their impiety, ‘Porphyrians’ after Porphyry, who, having attempted to battle against (35) the true religion by the power of reason, left behind books, but not records of (true) learning.

(We also decree) that no one should dare to possess or read or copy the impious books of the (40) lawless and blasphemous Nestorius concerning the pure religion of the orthodox, and against the doctrines (45) of the holy synod of the bishops at Ephesus. These books must be sought out with every eagerness and burned publicly (for in this way, once every (50) impiety has been uprooted, the simple and easily-deceived populace will never be able to find any seed of error); nor is it permitted in any discourse of religion to make any mention of these men who have thus perished (55) by any name other than that of Simon, or to provide, secretly or openly, a house or a field or suburb or any

location or in any other place whatsoever.

We establish that said people shall be deprived of all privileges of holding assemblies, as everyone shall know that the contravener of this law shall be punished by the confiscation of property.

Given on the third day before the Nones of August at Constantinople in the fifteenth consulate of our Lord Theodosius, and whoever will be announced [= 3 August 435].

*December, 2024*

other location for any of them to hold an assembly. (60)

For we establish that said people shall be deprived of all right of assembly, as it is clear to everyone that any person who contravenes (65) this law and imitates Nestorius shall be punished by the confiscation of property.

Therefore, your Greatest and Eminent Authority will see to it that this our constitution should come (70) to the notice of all those dwelling in the provinces by means of edicts as usual. We have issued this law in the language of both Romans and Greeks, (75) so that it may be clear and understood by all.

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