

## COMPREHENSIVE READING.

Some remarks with reference to a tractise in Cod. Paris. Gr. 1384

The research which since the 1940s has been done as part of the new edition of the *Basilica* - which was completed in 1988 with the publication of the last volume of the text<sup>1</sup> - has made an important contribution towards increasing the knowledge of legal education in the sixth century.<sup>2</sup>

It is the old *scholia* to the *Basilica* that provide information about the education as it was given at the faculties of law of Constantinople and Beirut. The old *scholia* are the remnants of writings of (among others) the *antecessores*, the professors at the above-mentioned faculties: these writings originated during the rule of Justinian. The old *scholia* were added to the text of the *Basilica* only much later, after the origin of the *Basilica* in the ninth century, possibly in the tenth century during the rule of Constantine VII Porphyrogenitus.<sup>3</sup> The old *scholia* do not refer to the *Basilica*, but directly to Justinian's legislation.<sup>4</sup>

One of the ways in which the old *scholia* originating from the educational writings can be recognized as such is the way in which these *scholia*, following the *constitutio Omnem* and the *constitutio Tanta/Δέδωκεν* quote the *Digest* i.e. according to the division of the *Digest* into *Partes*.<sup>5</sup>

When the instruction by the *antecessores* disappeared, the tradition of referring to the *Digest* by means of the division into *Partes*<sup>6</sup> also disappeared. In Justinian's days there had already developed a need for a concordance by means of which it could be determined what was to be understood by a *Pars* and which book of the *Digest* corresponded to which book of which *Pars* of the *Digest*. This need more or

- 1 *Basilicorum libri LX. Series A Volumen VIII. Textus libri LX*, Groningen 1988, edited by H.J. Scheltema †, D. Holwerda and N. van der Wal, who has been my teacher since the beginning of my investigation of the genesis of the *Basilica*, and to whom I dedicate this article.
- 2 For an extensive survey of this education (and of the writings of the *antecessores*) cf. H.J. Scheltema, *L'enseignement de droit des antécédents* [Byzantina Neerlandica, Series B: Studia. Fasc. 1], Leiden 1970.
- 3 Cf. Van der Wal/Lokin, *Delineatio*, 92. In a recent study, however, it has been stated that it was only towards the mid-eleventh century that at the faculty of law of Constantinople, under the supervision of the νομοφύλαξ John Xiphilinus, the old *scholia*, simultaneously with a large number of young *scholia*, were added to the text of the *Basilica* in the form of a *catena*-commentary: Schminck, *Studien*, 35, 48-52, 132.
- 4 Cf. H.J. Scheltema, 'Subseciva III. Die Verweisungen bei den frühbyzantinischen Rechtsgelehrten', *TRG* 30 (1962), 355-357.
- 5 Const. *Omnem* § 2 and § 3; const. *Tanta/Δέδωκεν* § 2 - § 8.
- 6 Scheltema, *L'enseignement* (n. 2 above), 62.

less remained after the disappearance of the instruction by the *antecessores*: for the writings of the *antecessores* containing references to the Digest by means of the division into *Partes* continued to be used.

Dr. M.Th. Fögen recently edited three treatises dealing with the division of the Digest into *Partes*.<sup>7</sup> The first treatise (which was handed down as part of the Appendix of the *Synopsis Basilicorum maior*<sup>8</sup> essentially originated in the days of Justinian and served as a concordance with the instruction by the *antecessores*.<sup>9</sup>

Even after Justinian's days attention continued to be paid to the division of the Digest into *Partes*: the second treatise, edited by Dr. Fögen, is dated by her in the tenth or eleventh century.<sup>10</sup> Finally, it was also in the eleventh century that the treatise Περὶ τῆς τῶν διγέστων διαίρεσεως by Michael Psellus originated.<sup>11</sup>

## II The treatise in Cod. Paris. gr. 1384

Also after the eleventh century there are still a few isolated instances in which the *Partes* of the Digest are mentioned. One instance is to be found in Cod. Paris. gr. 1384 on f. 170<sup>v</sup> where a puzzling<sup>12</sup> treatise has been handed down containing an enumeration of all legal sources (paraphrased as μέρη τοῦ νόμου in the treatise), including the Basilica. In the treatise there is at least one instance in which a *Pars* of the Digest is mentioned.

The treatise was first edited by Zachariä von Lingenthal,<sup>13</sup> although without any critical apparatus. The text of the treatise is given below.

Siglum: P Cod. Paris. gr. 1384

“Ἐξ μέρη εἰσὶ τοῦ νόμου. πρῶτον μέρος τοῦ νόμου ἐστὶν οἱ κώδικες, εἰσὶ δὲ βιβλία β’.  
τὸ δεύτερον ὑπάρχει τὰ δίγεστα, ὅπερ ἐστὶν ἐλληρικῶς πανδέκτης, ἔχων πτυχία δ’.

- 5 τὸ τρίτον ἐστὶ βιβλίον περὶ ἰουδίκης, ἦγουν περὶ κρίσεως, ἔχον βιβλία ζ’· καὶ τὸ γ’ τῶν ζ’ τούτων βιβλίων ἔχει η[β]’ δέλτους, δια-

7 M.Th. Fögen, ‘Zur Einteilung der Digesten: Drei byzantinische Traktate’, *FM V* (1982), 1-26.

8 N.G. Svoronos, *La Synopsis Major des Basiliques et ses appendices* [Bibliothèque byzantine, Études. 4: Recherches sur la tradition juridique à Byzance], Paris 1964, 26.


9 Fögen, ‘Einteilung’ (n. 7 above), 17/18.

10 Fögen, ‘Einteilung’ (n. 7 above), 23.

11 This treatise was edited by G. Weiß, *Oströmische Beamte im Spiegel der Schriften des Michael Psellos* [Miscellanea Byzantina Monacensia 16], München 1973, 296-298.

12 Cf. the characterization of the treatise by Fögen, ‘Einteilung’ (n. 7 above), 18 n. 45: ‘Eine sehr knappe und verwirrt Darstellung des gesamten überlieferten Rechts bis zum βιβλίον τοῦ λέωντος’.

λαμβάνου [των] περι χωρικῶν πραγ-  
 μάτων, τέταρτος τόπος ὄν τῶν νομικῶν  
 10 διγέστων· ὁ δὲ ἀριθμὸς τῶν βιβλίων τῶν  
 διγέστων [ὁ ἀριθμὸς] ἐστὶ ν'. τὸ δὲ τέταρτον τοῦ  
 νόμου εἰσὶν αἱ νεαραὶ συντάξεις. τὸ  
 πέμπτον δὲ ἐστὶ τοῦ Λέοντος βιβλίον, τὸ πᾶν  
 ἔχον ξ' τίτλους. ἐστὶ δὲ τὸ ἕκτον μέρος τοῦ  
 15 νόμου ἢ καλουμένη ἰνστιτούτα, ἥτις ὑπάρχει  
 ἢ συναγωγή καὶ διδάσκαλος καὶ πυλῖς  
 ἀπάντων τῶν νόμων, ἔχον ἐν ἑαυτῷ δ' βι-  
 βλία αὐθις, τέλος τοῦ νόμου.

- (1) ἔξ : ἔξε P  
 (5) ἰουδικης: γιουδίκης P  
 ἦγουν: εἶγουν P  
 (6) ἔχου: ἔχων P  
 γ':  P  
 (7) τούτων: τούτον P  
 η[β]' δέλτους: ἠβδέλτους P, ἠνδέλτους Zach.  
 (7/8) διαλαμβάνου [των]: διαλάμβανωντων P, διαλαμβανόντων Zach.  
 (12) νεαραὶ: ναι ἀραὶ P  
 (13) Λέοντος: λέωντος P  
 βιβλίου: βιβλίων P  
 (14) ἔχου: ἔχων P  
 (15) ἰνστιτούτα: ἥτις τοῦτα P  
 (16) πυλῖς: πύλης P, Zach.  
 (17) τῶν νόμων: τὸν νόμου P  
 ἔχου: ἔχων P

### III Commentary

The text, as it was rendered above, raises quite a number of questions that will not all be dealt with in this article. It is clear that in the treatise there are six legal sources (μέρη τοῦ νόμου), i.e. the Code in twelve βιβλία (ll. 1-2), the Digest in four πτυχία (ll. 3-4) and fifty βιβλία (ll. 10-11), the Novels (ll. 11-12), the Basilica in sixty τίτλοι (ll. 12-14), and the Institutes in four βιβλία (ll. 14-18). As a separate legal source the *scriptor* of the treatise mentions the *Pars de iudiciis* of the Digest (ll. 5-6). The information that this *Pars* contains seven books is substantially correct. However, what is meant by the information that the Digest consists of four πτυχία?

13 C.E. Zachariae, *Fragmenta versionis graecae legum Rotharis Longobardorum regis*, Heidelberg 1835, 20.

And what should one think of the remark that the Basilica consist of sixty τίτλοι? And why is the *Pars de iudiciis* mentioned as a separate legal source?

The basic question that should be asked is on which particular source the *scriptor* of the treatise drew his knowledge concerning the legal sources. One problem in answering this question is the circumstance that the contents (and consequently the exemplar(s) as well) of Cod. Paris. gr. 1384 are of a very heterogeneous nature:<sup>14</sup> the manuscript, for instance, contains a copy of the *Prochiron*, the *Ecloga privata* (with appendix), fragments from a different appendix of the *Ecloga* - including the *Lex nautica Rhodiorum* -, and fragments of the *Ecloga ad Prochiron mutata*.<sup>15</sup> On the leaves preceding the leaf containing the treatise can be found copies of *Eisagoge* XIX, 5 (f.168<sup>r</sup>, under the heading Περὶ δευτερογαμουδιτος γυνή), the twentieth Novel of Leo VI the Wise (f.168<sup>r</sup> - 170<sup>r</sup>, under the heading Περὶ ὑποβόλων, and preceded by an extensive rubric<sup>16</sup>) and two verse inscriptions.<sup>17</sup>

A comparison of the treatise to the *Synopsis legum* by Michael Psellus<sup>18</sup> reveals that there are strong similarities between these texts:

- ll. 3/4 of the treatise: τὸ δεύτερον ὑπάρχει τὰ δίγεστα ὅπερ ἐστὶν ἑλληνικῶς πανδέκτης. *Synopsis legum* l.14: ὑπάρχει δὲ τὰ δίγεστα ἑλληνικῶς πανδέκτης.
- ll. 9/10 of the treatise: τέταρτος τόπος ὃν τῶν νομικῶν διγέστων. *Synopsis legum* l. 25: Τέταρτος τόπος πέφυκε τῶν νομικῶν διγέστων.
- l. 12 of the treatise: αἱ νεαραὶ συντάξεις. *Synopsis legum* l. 43: αἱ νεαραὶ συντάξεις.
- ll. 13/14 of the treatise: (τὸ πέμπτον δὲ ἐστὶ) τοῦ Λέοντος βιβλίον, τὸ πᾶν ἔχον ξ' τίτλους. *Synopsis legum* ll. 44/45: τοῦ Λέοντος βιβλίον, | τὸ πᾶν ἐξηκοντάβιβλον πάντας τοὺς νόμους ἔχον.
- l. 15 of the treatise: ἡ καλουμένη ἰσσιτιοῦτα. *Synopsis legum* l. 54: ἡ κλησὶς ἰσσιτιοῦτα.
- the *scriptor* of the treatise has used the term πτυχίον in l. 4. This term also appears in the *Synopsis legum* (ll. 10, 20).

The above-mentioned similarities between the *Synopsis legum* by Michael Psellus and our treatise are so extensive that they justify the supposition that the *Synopsis legum* was the ultimate source from which the *scriptor* of the treatise drew his

14 Cf. the remarks of L. Burgmann, 'Die Novellen der Kaiserin Eirene', *FM* IV (1981), 6 n. 27; the same, 'Eine Novelle zum Scheidungsrecht', *FM* IV, 107.

15 H. Omont, *Inventaire sommaire des manuscrits grecs de la Bibliothèque Nationale. Seconde partie: ancien fonds grec. Droit-histoire-sciences*, Paris 1888, 34.

16 Cf. L. Burgmann, 'Eine griechische Fassung der "Assisen von Ariano"', *FM* V (1982), 181 including n. 10.

17 Zachariae, *Fragmenta versionis* (n. 13 above), 19 including n. 10.

18 G. Weiß, 'Die Synopsis legum des Michael Psellos', *FM* II (1977), 147-214.

knowledge concerning the legal sources. However, this supposition should be considered carefully: for one could be tempted to consider the treatise *Περὶ τῆς τῶν διγέστων διαρρέσεως*, also written by Michael Psellus, to be the source of the treatise in Cod. Paris. gr. 1384, since there are similarities between these texts as well: e.g. the treatise *Περὶ τῆς τῶν διγέστων διαρρέσεως* contains phrases like τοῦ νομικοῦ πτυχίου (l. 2), and τὸ δὲ δεύτερον εἰς ἑπτὰ βιβλία διείλοντο, ἃ δὲ [τῶν] δεῖ ἰουδικίως ἦτοι περὶ κρίσεως προσηγόρευται (ll. 16-17): these phrases could be connected with the phrases ἔχων πτυχία δ' and τὸ τρίτον ἐστὶ βιβλίον περὶ ἰουδικῆς ἡγουν περὶ κρίσεως, ἔχον βιβλία ζ'. in the treatise in Cod. Paris. gr. 1384 (ll. 4 and 5/6 resp.).

However, there is a number of reasons why the suggestion that the treatise *Περὶ τῆς τῶν διγέστων διαρρέσεως* might be the source of our text should be rejected: firstly, two lines from the *Synopsis legum* are quoted almost literally in our treatise;<sup>19</sup> secondly, the treatise *Περὶ τῆς τῶν διγέστων διαρρέσεως* only mentions the Justinian Code and (the seven *Partes* of) the Digest: our text mentions the Code, the Digest, the *Pars de iudiciis*, the Novels, the Basilica and the Institutes. This complete enumeration can be found in the *Synopsis legum*. Thirdly, the order in which the legal sources are listed in our text is identical to the order in the *Synopsis legum*. Thus there is sufficient ground for concluding that it was not the treatise *Περὶ τῆς τῶν διγέστων διαρρέσεως* that was the source of our text, but the *Synopsis legum*,<sup>20</sup> even though the method of working of the *scriptor* of our text can no longer be traced exactly.

The fact that the *Synopsis legum* can be identified as the ultimate source of the treatise in Cod. Paris. gr. 1384 implies that the *Synopsis* can also be used for the interpretation of our treatise: a number of difficulties in our text can be solved with the help of the *Synopsis legum*.

1 Pointed out above was the incongruity that the treatise first lists the Digest as having four πτυχία, whereas a few lines further down the number of books of the Digest appears to be fifty.

The *Synopsis legum* mentions the Digest in l. 14: ὑπάρχει δὲ τὰ δίγεστα ἑλληνικῶς πανδέκτης. Subsequently, in l. 19 of the *Synopsis* the first *Pars* of the Digest, the *Πρῶτα*, is referred to: τετράβιβλος δ' ἡ σύνταξις κλήσις πρῶτα τῶν πρώτων. It is indeed possible that the *scriptor* of the treatise in Cod. Paris. gr. 1384 (as far as listing the legal sources was concerned), at reading the *Synopsis legum*, memorised its contents and, when he committed the treatise to writing it was due to

19 Ll. 14 and 25 of the *Synopsis*: cf. the above-made comparison.

20 For a comparison of the treatise *Περὶ τῆς τῶν διγέστων διαρρέσεως* to the *Synopsis legum*, see W. Wolska-Conus, 'L'école de droit et l'enseignement du droit à Byzance au XI<sup>e</sup> siècle: Xiphilins et Psellos', *TM* 7 (1979), 80-82.

self-dictation<sup>21</sup> that he confused the ll. 14 and 19 of the *Synopsis* in such a way that he attributed four πτυχία to the Digest: as a result of this process the *scriptor* had ὑπάρχει δὲ τὰ δίγιστα ἑλληνικῶς πανδέκτης τετράβιβλος in mind, thereby skipping four lines of the *Synopsis*. The term πτυχίον either echoes l. 10 of the *Synopsis* (πτυχίον δωδεκάβιβλον) or the *scriptor* anticipated l. 20 of the *Synopsis* (ἑπτάβιβλον πτυχίον).

Thus the *Synopsis legum* reveals the phrase ἔχων πτυχία δ' of the treatise to be a reference to the first *Pars* of the Digest; moreover, as a result of his comprehensive reading and failing memory the *scriptor* used the term πτυχίον in a different meaning from the one used by Michael Psellus in the *Synopsis*: in the treatise the term πτυχίον is an equivalent of βιβλίον, in the *Synopsis legum* πτυχίον means 'volume', 'a total of books'.<sup>22</sup>

However, it is quite possible that the *scriptor* thought that the Digest contained four *Partes*, the third of which was known as *de iudiciis* (l. 5 of the treatise): he may have come to this misconception by confusing ll. 14 and 19 of the *Synopsis legum*. In this case the *scriptor* used the term πτυχίον in the meaning of 'complete unit of books', i.e. in the same meaning as Psellus uses the term.<sup>23</sup> What also contributed to the idea of the *scriptor* that the Digest contained four *Partes* is the circumstance that he mixed up two countings, i.e. his own counting of the legal sources (the six μέρη τοῦ νόμου), and the counting of the *Partes* of the Digest in the *Synopsis legum*.

2 The passage καὶ τὸ γ' τῶν ζ' τούτων βιβλίων ἔχει ἡβδέλτους, διαλαμβάνων τῶν περὶ χωριτικῶν πραγμάτων, τέταρτος τόπος ὄν τῶν νομικῶν διγέστων (ll. 6-10 of the treatise) is more difficult to explain. If in this passage no emendations are made, and if this passage is not considered against the background of the *Synopsis legum*, what should we then understand by τὸ γ' (that is to say, if this is the correct reading, for γ' is not certain palaeographically) τῶν ζ' τούτων βιβλίων? How should we interpret ἡβδέλτους? And how should we explain περὶ χωριτικῶν πραγμάτων? Starting from the treatise itself, one could be tempted to look for the explanation of the complete passage in the third book of the *Pars de iudiciis* of the Digest and to try and connect this book with both ἡβδέλτους and περὶ χωριτικῶν πραγμάτων. The third book of the *Pars de iudiciis* (book seven of the Digest) deals


21 For this whole process which takes place during the making of a text, whereby an exemplar is used, cf. A. Dain, *Les manuscrits* [Collection d'études anciennes], Paris 1975<sup>3</sup>, 40 ff.

22 The standard meaning of πτυχίον is 'little book': E.A. Sophocles, *Greek Lexicon of the Roman and Byzantine Periods*, Cambridge (Mass.)/Leipzig 1914, repr. Hildesheim/Zürich/New York 1983, 960. In the *Synopsis legum* the Justinian Code is referred to as a πτυχίον δωδεκάβιβλον (l. 10); the *Pars de iudiciis* of the Digest consisting of seven books is known as ἑπτάβιβλον πτυχίον (l. 20).

23 Also in the meaning 'complete unit of books' πτυχίον is an equivalent of βιβλίον in the treatise: l. 13 talks about τοῦ Λέοντος βιβλίον: this refers to the Basilica.

with the usufruct, ἡβδέλτος is a non-existing word, χωρτικός means ‘of country-folk’, ‘rustic’.<sup>24</sup> Accordingly, an explanation of our passage that is connected with the right to usufruct of e.g. land is possible. The *scriptor* of the treatise - partly because of the fact that he mixed up the countings of the μέρη τοῦ νόμου and of the *Partes* of the Digest, and as a result of that thought that the Digest contained four *Partes* - possibly thought that the third book of the *Pars de iudiciis* (τὸ γ’ τῶν ζ’ τούτων βιβλίων), dealing with the right to usufruct of land (δωλαμβάνον περὶ χωρτικῶν πραγμάτων), was the fourth *Pars* of the Digest (τέταρτος τόπος ὄν τῶν νομικῶν διγέστων).


However, it is clear that our passage should be interpreted on the basis of the *Synopsis legum*, i.e. ll. 23 and 24; after all, the ll. 20-22 of the *Synopsis* - in which the *Pars de iudiciis* is referred to - form the basis for the ll. 5 and 6 of the treatise; l. 25 of the *Synopsis* is almost quoted literally in ll. 9/10 of our text. The ll. 23/24 of the *Synopsis legum* read: Τὸ τρίτον δὲ συνάθροισμα καλεῖται δὲ δε ρέβους, | ὀκτάβιβλόν τι σύνταγμα χωρητικὸν πραγμάτων.

The symbol which we interpret as γ’ is in Cod. Paris. gr. 1384 written as . It is possible that in the manuscript the horizontal stroke which serves to indicate the ordinal number and which is normally written above the corresponding letter in this case merged with the accent<sup>25</sup> and, as a result, ended up on the right-hand side above the γ. The symbol ‘ ’ could be interpreted as a dihaeresis which the *scriptor*, more than once, writes above a ι.<sup>26</sup> The reading γ’ is confirmed by τὸ τρίτον in l. 23 of the *Synopsis legum*.

The phrase περὶ χωρητικῶν πραγμάτων in ll. 8/9 of the treatise can be explained on the basis of l. 24 of the *Synopsis*: this line works out the previous one (in which Psellus mentions the *Pars de rebus* of the Digest) in more detail: the *Pars de rebus* is a unit of eight books (ὀκτάβιβλόν τι σύνταγμα), its contents (χωρητικόν<sup>27</sup>) dealing with the law of things, exhellenized by Psellus with the term πραγμάτων. A number of manuscripts of the *Synopsis legum* has the reading χωρητικῶν instead of χωρητικόν<sup>28</sup>: confusion of ο and ω frequently occurs. Therefore it is very well possible that the *scriptor* of our treatise read χωρητικῶν in his exemplar. When he was writing the treatise, the *scriptor*, however, did not dictate to himself χωρητικῶν, but χωρητικῶν: for, as a result of iotacism η and ι sound

24 LSJ<sup>9</sup>.

25 Informative for the way in which this could have happened is the *scriptor*'s manner of rendering υ’ in l. 11 of the treatise.

26 I owe the palaeographical interpretation of the symbol  to my teacher Prof. Dr. D. Holwerda.

27 χωρητικός means ‘able to contain’: LSJ<sup>9</sup> s.v.

28 Codd. Athos, Iberon 4440/320, Paris. Suppl. gr. 627, Paris. gr. 478, Marc. gr. 266, Scor. X-II-6, Marc. App. gr. XI, 26, Vind. iur. gr. 13.

identical with self-dictation - the third stage of the copying process.<sup>29</sup> Subsequently, the *scriptor* must have thought that his exemplar dealt with the right to usufruct of land: this, too, could have induced him to mention book seven of the Digest - indicated by him as the third of the seven books of the *Pars de iudiciis* (τὸ γ' τῶν ζ' τούτων βιβλίων) and considered by him to be the τέταρτος τόπος of the Digest - separately in his treatise; inevitably he had to add διαλαμβάνου (περὶ) in order to make clear that book seven of the Digest deals with usufruct: after all, it was exactly because the *scriptor* thought that his exemplar dealt with the right to usufruct of land (περὶ χωριτικῶν πραγμάτων) that he was no longer able to see the correct meaning of χωρητικός. The superfluous τῶν in l. 8 of the treatise originated through progressive assimilation: the *scriptor* here anticipated χωριτικῶν πραγμάτων.

As a result of the comprehensive reading of the *scriptor* the original meaning of l. 24 of the *Synopsis legum* - the information that the *Pars de rebus* is a unit of eight books dealing with the law of things - has been lost completely, but it can be concluded that, considering l. 24 of the *Synopsis*, the treatise must refer to the *Pars de rebus* of the Digest.

What exactly is the meaning of ἡβδέλτους in l. 7 of the treatise? We know by now that ll. 6-10 of the treatise refer to the *Pars de rebus* of the Digest. Considering the fact the *scriptor*, in mentioning the different legal sources (except in the case of the Novels) indicates the number of books of the legal source concerned, it is to be expected that he does the same with the *Pars de rebus*. The numerical indication concerning the number of books of the *Pars de rebus* is created when ἡβδέλτους is emended into η[β]' δέλτους.<sup>30</sup> The reading η' is confirmed by l. 24 of the *Synopsis legum*: ὀκτάβιβλόν τι σύνταγμα. The phrase ἔχει η[β]' δέλτους now contains the substantially correct information that that which, considered against the background of the *Synopsis legum* should be interpreted as a reference to the *Pars de rebus* of the Digest, consists of eight δέλτοι.

The term δέλτος means 'writing tablet', 'any writing'.<sup>31</sup> Dionysius of Halicarnassus uses the term δέλτος in the technical sense of 'table' in the expression 'law of the twelve tables'.<sup>32</sup> It is in this meaning that δέλτος is also used in the *Basilica*.<sup>33</sup> In the passage of the *Synopsis legum* that formed the basis for our treatise (ll. 8-54) the term δέλτος does not occur, but in l. 89 of the *Synopsis* Psellus

29 Many errors in manuscripts, iotacistic ones, too, originated during the stage of (silent) self-dictation. Cf. the example of A. Dain, *Les manuscrits* (n. 21 above), 45: ἐρίσης instead of αἰρήσεις.

30 I owe this textual emendation to Prof. Holwerda.

31 LSJ<sup>2</sup>, s.v.

32 D.H. II, 27: ... ἐν τῇ τετάρτῃ τῶν λεγομένων δώδεκα δέλτων, ἃς ἀνέθεσαν ἐν ἀγορᾷ.

33 BT 16, 7-9 (B. II, 1, 7) Παπριανός. Εἰσῆχθη δὲ ἢ ἀπὸ τοῦ δυοδεκαδέλτου ἢ τῶν τοῦ δήμου δογμάτων ἢ τῶν τῆς συγκλήτου θεσπισμάτων ἢ βασιλικῶν δογμάτων ἢ τῆς αὐθεντίας τῶν σοφῶν.



does mention the law of the twelve tables.<sup>34</sup> Consequently it is quite possible that the *scriptor* of our treatise was familiar with the term δέλτος via the *Synopsis legum*, and that, during the process of writing down that part of the treatise in which the *Pars de rebus* of the Digest is referred to, l. 89 of the *Synopsis* played tricks on our *scriptor*.<sup>35</sup>

The ν in Zachariä's reading ἠνδέλτους cannot be explained palaeographically. However, Cod. Paris. gr. 1384 reads ἠβδέλτους instead of ἠνδέλτους.<sup>36</sup> This reading confirms the assumption that the *scriptor* was reminded of l. 89 of the *Synopsis legum* during the writing of the text of the treatise.<sup>37</sup> The combination ἠβδέλτους in l. 7 of the treatise could have originated as follows: the *scriptor*, writing about what should be interpreted as a reference to the *Pars de rebus* of the Digest, and intending to write ἠ βιβλία, silently dictated to himself ἠ during the third stage of the copying process, but, having in mind l. 89 of the *Synopsis*, continued writing βδέλτους as if he had dictated to himself a ι and as if he was writing δωδεκαδέλτους (represented as ιβ δέλτους): here, too, the *scriptor* mixed up η and ι as a result of iotacism. Moreover, the *scriptor* apparently did not quite know what δέλτος means: as a result of his failing to understand the semantics of δέλτος he used this term as an equivalent of βιβλίον.

After the above discussion the following can be remarked as regards the ll. 6-10 of the treatise: as a result of a combination of factors, the *scriptor* of the treatise completely misunderstood his exemplar. Firstly, he confused his own counting of the legal sources (the μέρη τοῦ νόμου) with the counting of the *Partes* of the Digest in the *Synopsis legum* by Michael Psellus. Secondly, he twice made a iotacistic error: in the first case (χωρητικὸν/χωριτικῶν) this error resulted in the *scriptor* losing sight of the original meaning of l. 24 of the *Synopsis* and reaching a completely different interpretation of this line (i.e. taking the line to refer to the right to usufruct of land in stead of to the law of things); in the second case (ἠβδέλτους) the iotacistic error, in connection with the fact that the *scriptor* combined the wrong lines of the *Synopsis* in his mind, has resulted in totally ignoring the numerical indication concerning the number of books of the *Pars de rebus* of the Digest in l. 24 of the *Synopsis*.

The combination of these factors caused the *scriptor* to confuse the *Pars de rebus* of the Digest with book seven of the Digest and, partly influenced by the phrase τὸ

34 *Synopsis legum* 87-90: Πολιτικὸν δὲ νόμιμον, τοπικὸν καὶ χρεώδες, | ὃ πάλιν τριμερές ἐστὶ τούτου γὰρ τοῦ νομίμου | ἔστιν ὁ δωδεκάδελτος τῶν δώδεκα λογίων, | τὰ βασιλέων δόγματα, οἱ νόμοι τῶν πραιτῶρων. This passage ultimately goes back to the Basilica-passage that was quoted above in n. 33.

35 It is even possible that the *scriptor* considered the law of the twelve tables to be a legal source.

36 Dr B.H. Stolte and Dr Roos Meijering drew my attention to this reading; they both gave me their views on many other points as well for that matter. I gratefully used their advice.

37 A further clue might be the circumstance, that l. 88 of the *Synopsis* starts with ὃ πάλιν τριμερές ἐστὶ. Cf. l. 6/7 of the treatise: καὶ τὸ γ' ... ἔχει.

δεύτερον ὑπάρχει τὰ δίγεστα, ὅπερ ἐστὶν ἑλληνικῶς πανδέκτης, ἔχων πτυχία δ'. (ll. 3/4 of the treatise) to interpret book seven of the Digest as a separate *Pars*, after the *Pars de iudiciis*. Considered against the background of ll. 23/24 of the *Synopsis legum* by Psellus, the ll. 6-9 of the treatise should be read as if it had read καὶ τὸ γ' τούτων τῶν βιβλίων ἔχει ἡ δέλτους (in the meaning of βιβλία) χωρητικὸν πραγμάτων. The phrase τέταρτος τόπος ὄν τῶν νομικῶν διγέστων (ll. 9-10 of the treatise) does not belong to the previous passage (even though this was the intention of the *scriptor* as he considered book seven of the Digest to be a separate (the fourth) *Pars* of the Digest which he thought he could conclude from his exemplar): in l. 25 of the *Synopsis legum* Psellus starts with the treatment of the fourth *Pars* of the Digest, i.e. the *umbilicus*.

3 In the ll. 11 and 12 of the treatise the *scriptor* mentions the fourth legal source in his enumeration, i.e. the Novels. It is somewhat surprising that the *scriptor* uses the terminology νεαραὶ συντάξεις: for the Novels are normally referred to as νεαραὶ (μετὰ τὸν Κώδικα) διατάξεις.<sup>38</sup> In the line of the *Synopsis legum* forming the basis for the ll. 11/12 of the treatise, however, we also come across σύνταξεις: Πρὸς τούτοις μέρος πέφυκεν αἱ νεαραὶ συντάξεις (l. 43). Consequently, there is no reason for emending ll. 11/12 of the treatise.

4 In the ll. 12-14 the *scriptor* mentions the fifth legal source, i.e. the Basilica, referred to by him as τὸ Λέοντος βιβλίον. It is remarkable that the *scriptor* has the Basilica consist of sixty titles (instead of sixty books). As far as the ll. 12-14 of the treatise are concerned, the *scriptor* drew from the ll. 44/45 of the *Synopsis legum*: Εἶτα συνοπτικώτατον τοῦ Λέοντος βιβλίον, |τὸ πᾶν ἐξηκοντάβιβλον πάντας τοὺς νόμους ἔχον. A number of manuscripts of the *Synopsis legum* has the variant ἐξηκοντάτιτλον instead of ἐξηκοντάβιβλον.<sup>39</sup> It is therefore quite possible that the *scriptor* of the treatise had an exemplar in front of him in which this textual variant also occurred. The reading ἐξηκοντάτιτλον explains the puzzling fact that in the treatise the Basilica consist of sixty titles.

5 In ll. 14-18 of the treatise the *scriptor* mentions the Institutes as the last legal source. In the ll. 16/17 the Institutes are considered (among other things) to be: πυλὶς ἀπάντων τῶν νόμων. Cod. Paris. gr. 1384 and Zachariä, however, give the text πύλης ἀπάντων τῶν νόμων. The line of the *Synopsis legum* forming the basis of this phrase is l. 50: Ἔστι καὶ μέρος ἕτερον οἷον πυλὶς τῶν νόμων. In the manuscript tradition of the *Synopsis* there are no textual variants concerning πυλὶς.

38 Van der Wal/Lokin, *Delineatio* (n. 3 above), 37.

39 Codd. Vat. gr. 845, Vat. Pal. gr. 19, Laur. gr. LXXX, 6, Scor. T-III-13 and the Sirmondianus. According to the stemma compiled by Weiß, 'Synopsis legum' (n. 18 above), 157 all these manuscripts ultimately go back to a 'Hyparchetyp' β. Concerning the Codd. Vat. Pal. gr. 19 and Laur. gr. LXXX, 6, cf. the remarks of N. van der Wal, *TRG* 47 (1979), 286 n. 6.

This is the reason why in the text of the treatise as it was represented above πύλης has been corrected into πυλῖς. In this case, too, the *scriptor* may have confused η and ι as a result of self-dictation.

#### IV Conclusion

By identifying the *Synopsis legum* by Michael Psellus as the ultimate source from which the *scriptor* of the treatise drew his knowledge as regards the legal sources, it has proved possible to solve a number of difficulties in the text of the treatise (and its interpretation).

The treatise was written shortly after the mid-twelfth century: Cod. Paris. gr. 1384 can be dated in the year 1166.<sup>40</sup> The *Synopsis legum* by Michael Psellus, as a didactic poem intended for the legal education of the future emperor Michael VII Ducas<sup>41</sup> (emperor from 1071-1078), was written some time before the year 1070. Thus the treatise in Cod. Paris. gr. 1384 is an early testimony for the way in which the *Synopsis legum* left its marks in the legal literature of the later Byzantine period.

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40 Immediately following the treatise f.170<sup>v</sup> reads: ,σχοδ' ἔτει ἐγράφη ἰωδ. ιδ'.'. Cf. Zachariae, *Fragmenta versionis* (n. 13 above), 21.

41 Cf. Weiß, 'Synopsis legum' (n. 18 above), 147.

