

A GREEK PALAEOGRAPHER LOOKS AT THE FLORENTINE PANDECTS

The Florentine Pandects may well be the most famous of all Latin manuscripts. My intention in this paper is to look at them from an unconventional point of view, treating them as a Greek manuscript. Although Greek palaeographers pay little or no attention to this remarkable document, there is in fact a good deal of Greek script in it, and one of the older books on the subject includes a photo of a page written entirely in Greek.¹ Apart from a number of single words, there are several such longer passages. A study of the Greek prompts me to make some observations, which concern the date of the manuscript, features of the script, and the subsequent history of the Pandects.

First the date. I suppose there are not now many scholars who accept the view expressed once by the well known French authority on Greek manuscripts, Alphonse Dain, who said that the Pandects were written in the south of Italy at the end of the sixth century.² He and others were no doubt impressed by the errors in the text of the Florentine copy and permitted themselves the inference that a considerable amount of time was needed in order to allow for the transcription of intermediate missing copies deriving ultimately from the official copy of 533. It should scarcely be necessary to say that the transcription of copies need not take long, and when a text is much in demand it can easily be corrupted within a few years. The debate has taken a stage further by the recent contribution of B. Stolte, who studied the composition of the Florentine copy and noticed that the division of labour between the scribes reflected in the composition of the quires suggests that they were aware of the seven so-called *partes* of the Digest. These matched the organisation of the legal curriculum as it existed for much of Justinian's reign. But some time between 557 and 565 the curriculum was changed and the *partes* were no longer important. It therefore looks as if the Florentine copy should be dated to Justinian's reign. The objection has been made that a later copy might simply reflect the structure of its exemplar as a matter of convenience owing to inertia, and that the exemplar may have been bound in seven volumes. But I am inclined to think that if such a large team of copyists had approached its task at a time when the sevenfold division had become irrelevant they would have dismantled the seven volumes and divided the task among themselves in a more straightforward fashion.³

My contribution to the discussion consists of an observation about the six-line Greek

1 W. Wattenbach, *Scripturae graecae specimina* (ed. 3, Berlin 1897) plate 7.

2 *Association Guillaume Budé, Congrès de Nice (24-27 Avril 1935), Actes du Congrès* (Paris 1935) 358-78, reprinted in D. Harlfinger (ed.), *Griechische Kodikologie und Textüberlieferung* (Darmstadt 1980) 337-52 (see p. 344).

3 B.H. Stolte, *SG* 1 (1984) 69-91; D.J. Osler, *RJ* 3 (1984) 18.

epigram on folio 10 verso which commemorates the achievements of Justinian:

Βίβλον Ἰουστινιανὸς ἄναξ τεχνήσατο τήνδε,
 ἦν ῥα Τριβωνιανὸς μεγαλῶ κάμε παμβασιλῆι,
 οἷά τις Ἡρακλῆι παναίολον ἀσπίδα τεύξας,
 ἧς ἔπι μαρμαίρουσιν ἀγάλματα πάντα θεμίστων·
 ἄνθρωποι δ' Ἀσίης τε δορυκτῆτου τε Λιβύσσης
 Εὐρώπης τε πίθονται ὅλου σμάντορι κόσμου.⁴

The script shows that it is not a later addition, but was written by the same scribe as the rest of the text on the page. It ends by saying that the men of Asia, Libya and Europe obey the ruler of the whole world, and an adjective describes Libya as conquered in war. The chronology of Justinian's campaigns is well known, and when the epigram alludes to Europe it may refer to the recovery of Italy. Was the epigram composed at some time after the first major success of Byzantine forces in Italy? A suitable occasion would be the moment when the good news reached Constantinople, but obviously that was not the only possible occasion. What is to be regarded as the first success of the Byzantine army? One possibility is the capture of Sicily in 535. But even if that event was welcomed enthusiastically in government circles, it has far less claim to be treated as a great victory than the entry into Rome on the 9th of December 536 reported by Procopius, *Gothic Wars* 1.14.14. News of the conquest will presumably not have reached the capital until some time in the new year. In that case the composition of the epigram is not earlier than 537. Certainly the view upheld by an authority as eminent as Bischoff that the Pandects are a dated manuscript of ca. 533 would have to be modified.⁵

But there is a problem, pointed out to me by Stolte. In the emperor's *constitutio* Tanta/Δέδωκεν 23, where reference is made to the conquests already achieved by 533, the Greek text refers to Persia and Libya, but the Latin speaks of Europe as well as part of the empire. This is rather odd, and must presumably be taken to refer to Illyricum and the Greek mainland, the only parts of the continent then effectively under the emperor's jurisdiction. Even by the normal standards of panegyric and propaganda this is fairly gross. But it does cast doubt on my interpretation as expounded so far.

However, let us return to the epigram. My case should not rest simply on the occurrence of the word Europe. The last three words describe the emperor as the ruler of the whole universe. It seems to me much harder to escape the interpretation

4 In E. Cougny's appendix to the Didot edition of the *Anthologia Palatina* (Paris 1890) it is numbered 3.191.

5 B. Bischoff, *Paläographie des römischen Altertums und des abendländischen Mittelalters* (Berlin 1979) 90, 97. Bischoff does not define the date quite as narrowly to the year 533 as Stolte (op. cit. 78) implies, but it is clear that he has revised his earlier formulation 'in justinianischer Zeit' as given in his *Mittelalterliche Studien* ii (Stuttgart 1967) 257 (in an article reprinted from *BZ* 44 (1951) 27-55). In the English version of his manual, *Latin palaeography: Antiquity and the Middle Ages* (Cambridge 1990) the reference on p. 70 is not explicit, but on p. 75 he says 'c. 533'.

of these words as a boast that Italy had been recovered.

I turn now to the script. My observations, like those of other recent students, derive from consultation of the facsimile and not the original, a serious disadvantage for the type of observation that I am about to make. Nevertheless I must record what I believe to be a fact. Among the longer passages of Greek there are many where the accents and breathings have all been written, although this was certainly not the normal practice in uncial manuscripts. Often when one finds accents and breathings in an uncial manuscript, close inspection shows that they have been added at a later date. It is tempting to assume that this is what has happened in the Pandects, and indeed S. Bernardinello has recently done so, suggesting that they are due to Leonzio Pilato, whose hand was quite correctly identified in the Pandects by F. Di Benedetto.⁶ Bernardinello's candidate can, I believe, be eliminated, because his hand is very untidy, whereas the facsimile shows that the accents and breathings are neatly written. But his view is not intrinsically implausible. However, having looked very carefully at the facsimile, I have come to the conclusion that as a general rule the accents and breathings are so neatly executed, and the colour of the ink seems to correspond so exactly, that they must be thought of as the work of the original scribes. I add a list of the folios which in my opinion justify this opinion: 24rv, 111v, 161v, 239v, 248v, 283r, 361rv, 364rv, 378r-379r; vol. 2 28r, 29r, 38r, 76r, 225v, 228r, 232v, 233r, 234r, 422r, 428r, 430r, 446v, 452r, 455v, 456r. Why the scribes should have inserted the diacritical signs so frequently and yet not consistently throughout remains a mystery. But in the papyri the same lack of consistency is observable.

Some more very minor observations about the script. In places the letter phi is written very large, in a way that reminds one of the gross form seen in the so-called Coptic or Alexandrian style of uncial. The folios in question are 378-82 and in vol. 2 91v.⁷ I mention this not in order to venture on a new hypothesis about the origin of the Pandects but in order to show how careful one must be in using letter forms as evidence for the history of uncial script.

In vol. 2 455v I noticed that the scribe used a compendium at the end of the line. He has the curving downward stroke for the syllable alpha-iota, which is perfectly normal among later scribes and would not be surprising at this early date in a book with fewer calligraphic aspirations. E.A. Lowe in his description⁸ referred only to the abbreviation of the words καὶ and πρὸς.

6 S. Bernardinello in *Bisanzio e l'Italia: Raccolta di studi in memoria di Agostino Pertusi* (Milan 1982) 9 n. 33.

7 See also Wattenbach's plate mentioned in n. 1.

8 *Codices Latini Antiquiores* 3.295. He did not specify the folios on which these compendia are to be seen.

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ceptionem doli placuit obstare quonia
pater per filiam alteram utrum habere
uoluit:

Tryphoninus libro sexto disputationum
fuit quae estionis ansis uaheres filia
patricum fratribus contenta dote
abstineat se bonis compellatur eam
conferre et diuus marcus prescripsit
non compelli abstinentem se ab here
ditate patris ergo non tantum data
apud maritum remanebit sed et pro
sa exigitur etiam a fratribus ex testa
ae ris alieni loco accessit enim ab bonis
patris:

de uentre in possessionem non it
tendo et cu patore eius titulus
Ulpianus libro quadragensimo primo
ad edictum sic uti liberorum meorum
quia in rebus huiusmodi sunt ut pat
rae tor habuit ita etiam eos qui non
dant natis in propter spei nascen
di non neglexit nam et haec a parte dicti
eos tui tui est dum uentre in possessionem
in possessionem non ita in possessionem
onem in eorum tabulas bonorum
possessionis praegnate messetuli
epicuri propter totum modum nec dicere
se praegnate sufficit quare nec te
net datae cognationis possessionis ni
si uere praegnata fuit et mortis tem
poris et eo quod in possessionem

I take the opportunity of correcting a misleading suggestion in the recent and very useful exhibition catalogue of E. Spagnesi.⁹ He refers to a corrector's note at D. 48, 22, 9, vol. 2 folio 427r. There is a lacuna in the text and according to Spagnesi the corrector marked the fact by writing a Greek word which he tentatively interprets as 'ricerca'. This is extremely dubious. Both here and at the other lacuna on folio 424v there are mysterious marks in the margin, but I do not see how to interpret either of them as a Greek word.

With regard to the next stage in the manuscript's history we have to note the presence of a few brief annotations in Latin, in Beneventan script. They are of the 9th or 10th century, more or less contemporary with the Greek note discussed below. In vol. 1 the notes at 146v and 183v *istinc* and *usque huc* mark off Books 9-11, and at 256r we have again *istinc* at the beginning of Book 18. On 257r there is a gloss *id est substantia*. The note at the end of vol. 2 is faded.¹⁰

Beneventan script is characteristic of Italy south of Rome and of Dalmatia. Its presence tends to confirm the tradition that the book came to the west via Amalfi; the tradition existed already c. 1280, when a Pisan chronicler stated that his fellow-countrymen took the manuscript from Amalfi in 1140.¹¹ The Amalfitans were already established in Constantinople by 944, when the German envoy Liutprand mentions them (*Antap.* 5.21). Whether the notes were made there or not is unclear, and indeed one might ask why an Amalfitan in a trading station should want a copy of the *Digest*. Books 9-11 are the fifth, sixth and seventh books *de iudiciis*; on the other hand Book 18 is part of the law of sale.

On the history of the Pandects I can make one fresh observation. It concerns the brief note in Greek first spotted by Agustín at volume 2 folio 157v relating to D. 37, 9, about the rights of an unborn child.¹² The note corrects the order of this section and another, *de coniungendis cum emancipato liberis eius*. What needs to be said about it is that while the first half is in uncial script the second half is in minuscule of an early type, most probably to be dated to the ninth century. So the note proves that in the ninth century the Pandects were still being used in a circle where Greek was the first language. This will almost certainly have been in Constantinople. Although the Greek communities of southern Italy and Sicily in theory provide an alternative, it is very hard to imagine provincial administrators turning to a manuscript like the Pandects in an effort to sort out a legal problem. A far more

9 E. Spagnesi, *Le Pandette di Giustiniano: Storia e Fortuna della 'Littera Florentina'* (Florence 1983) 28.

10 See V. Brown, *Mediaeval Studies* 40 (1978) 252 and *The Beneventan script*, ed. 2, vol. 2: *Hand list of Beneventan manuscripts* (Rome 1980) 45; J. Miquel, *SZ* 80 (1963) 283 n. 115a. The observations of B. Bischoff and F. Newton are acknowledged.

11 A. Pernice, *SZ* 6 (1885) 300. The key words are: Malfi e lo suo ducato, unde li Pisani anno le Pandecta, pigliarno ne' MC.XL. Pernice rejects the unsupported assertion of Odofred (d.1265) that the Pandects came direct from Byzantium to Pisa.

12 See plate at p. 4.

plausible notion is that the note is due to someone working through the manuscript at the time when the *Basilica* was being prepared, c. 900.

Having drafted the preceding paragraph I came across a more recent paper by Stolte in which he reaches a similar conclusion by a different route. He argues that the scholia on the *Basilica* relating to D. 27, 1, 14, 4 demonstrate knowledge of the text written by the first hand in the Pandects, i.e. before correction, and this knowledge must be as late as the ninth century or even later.¹³ Since the Pandects have been corrected at this point the inference to be made is not quite certain; perhaps the fact in question points to the existence of another copy of the Digest.

As to the later history of the Pandects, my view about the use made of them by Burgundio of Pisa is that it is not demonstrated by the frequent marginal marks indicating the Greek words or passages; I do not think these look like his autograph. However, I do not wish to cause alarm and despondency by denying what seems to be a received opinion. It seems to me that there are a few other places where brief Latin notes are found in what certainly could be his hand: 251r, 347v, volume 2 430v. Of these three notes the third is perhaps least likely to be his. I base my opinion on the published facsimiles of his signatures on documents and the marginal notes of his that I have been able to identify in Greek manuscripts owned by him and used for his versions into Latin.¹⁴

As a footnote to the history of the Pandects during the Renaissance I will mention a small fact which seems to have escaped notice. The humanist Scipione Fortegueria, a pupil of Politian and close associate of Aldus Manutius, tells us in his lecture on the value of Greek studies, *De laudibus literarum graecarum*, published by Aldus in 1504, that he had consulted the Pandects. One need not jump to the conclusion that he had made a thorough examination; it may well be that he had simply been present when his master Politian examined the manuscript in 1490. But this shows how much we still have to learn about the activities of prominent humanists.

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13 See ΣΧΟΛΙΑ: *Studia ... D. Holwerda oblata*, ed. W.J. Aerts, J.H.A. Lokin, S.L. Radt, N. van der Wal (Groningen 1985) 135-141, esp. p. 137.

14 N.G. Wilson, *Scrittura e Civiltà* 7 (1983) 161-76.