

## FINIUM REGUNDORUM AND THE AGRIMENSORES

For Domenico Maffei

*In cauda donum*

In recent years textual criticism of the Digest has concentrated on the so-called Vulgate, if we may call the medieval tradition of the Digest from the eleventh century onwards by that name. The focus of attention has been on the possibility that these medieval manuscripts have preserved traces of the Justinianic text independent of the codex Florentinus olim Pisanus, the famous sixth-century manuscript now in the Laurenziana. It is not my intention to go into this question now. While fully admitting that the principle *recentiores non deteriores* may apply here, too, I should like to reserve a treatment of this thorny problem for another occasion and only point out here that we are in danger of forgetting that *antiquiores non deteriores*, at least not by reason of their age. Whether we like it or not, our valuation of the medieval tradition of the Digest text is bound up with our judgement of the Florentine manuscript. That judgement is in turn dependent on our opinion of the not too numerous ancient witnesses that are available to us. Mommsen has been criticized for not paying enough attention to the vulgate manuscripts and relying too much on the Florentine. In my view this reproach is not entirely justified, not because I think his treatment of the medieval tradition is satisfactory, but because I think his method is not always understood correctly. However this may be, I should like to take a closer look at one of these ancient witnesses, namely the 'pre-vulgate' tradition of Finium regundorum, in the hope of contributing to the current discussion.<sup>1</sup>

The text of Digest 10,1 has been preserved independently of the codex Florentinus (F) in a collection known as the *Corpus agrimensorum* or *gromaticorum* (G). This title offers a unique opportunity to estimate the reliability of the text of F, as has already been noted by Mommsen.<sup>2</sup> The following is an attempt at presenting the results of a comparison of F with the Agrimensores.

Let it be said first of all that Mommsen with his usual critical acumen had seen all the questions and provided all answers that were within reach in his day. In his programmatic essay of 1862 he showed himself to be fully aware of the implications of this independent transmission of Finium regundorum and appended a collation of Digest 10,1 not only with Lachmann's edition of the Agrimensores,<sup>3</sup> but also with

1 Which is taking place, albeit in a limited circle. See D. Nörr in the first pages of his 'Zur neuen Faksimile-Ausgabe der littera Florentina', *Iura* 39 (1988, publ. 1991/2) 121 ff., where references to the relevant literature will be found.

2 Th. Mommsen, 'Über die kritische Grundlage unseres Digestentextes', *Jahrbücher des gemeinen Rechts* 5 (1862) 407-448, repr. *Gesammelte Schriften* II (Berlin 1905) 107-140, esp. 112-113, 115.

two of the so-called vulgate manuscripts (P and L) and the Greek transmission in Bas. 58,9. Lachmann's edition is not perfect, as Mommsen himself was to point out later.<sup>4</sup> Already before then, however, he had remedied its defects as far as Finium regundorum is concerned. For his editio maior of the Digest of 1870 he did not rely on Lachmann's edition, but had provided himself with a collation of the Vaticanus Palatinus Latinus 1564 made by Reinhard Kekulé on his behalf,<sup>5</sup> a manuscript whose readings had been reported very imperfectly by Lachmann.<sup>6</sup> I do not know whether he had also made a fresh collation of the other main witness of Finium regundorum, the Guelferbytanus Gudianus Latinus 105, which had been mainly followed by Lachmann. In any case, wherever necessary he distinguished between the two manuscripts in the apparatus criticus of his own edition by assigning them the sigla of respectively Gp and Gg - G denotes their consensus - (vol. I, pp. 306-308) and in so doing he provided through his Digest edition a better picture of the transmission of the Agrimensores than Lachmann had been able to do. Thus the matter seemed to have been dealt with satisfactorily in 1870.

To reopen the question of the role of the Agrimensores for the constitution of the Digest text of Finium regundorum and again to assess, on the basis of the result, the quality of F, should not be attributed to an a priori dissatisfaction with Mommsen's treatment, but rather to the prospect of progress since 1870. Since that year the Corpus agrimensorum has received detailed attention from various quarters, from Mommsen himself, from N. Bubnov, but above all from C. Thulin, who was the first personally to examine all available manuscripts;<sup>7</sup> finally, the status quaestionis of the transmission of the text has been summed up by M.D. Reeve in 1983,<sup>8</sup> where one may find references to the older literature.

It has to be admitted that all the work done since 1870, while considerably advancing our knowledge of the transmission of the Corpus agrimensorum, does not concern Finium regundorum overmuch. In fact Mommsen's editio maior is to remain the definitive edition of D. 10,1, as will transpire from the following pages. Yet the summary treatment of the parallel transmission of Finium regundorum in the handbooks of the sources of Roman law<sup>9</sup> has encouraged me to set out the matter in somewhat greater detail here.

3 F. Blume-K. Lachmann-A. Rudorff, *Die Schriften der römischen Feldmesser* I (Berlin 1848, repr. Hildesheim 1967), 276-280.

4 'Zum römischen Bodenrecht', *Hermes* 27 (1892) 79-114, esp. 114-117; 'Die Interpolationen des gromatischen Corpus', *Bonner Jahrbücher* 96-97 (1895) 272-292.

5 Praefatio XXXXI.

6 C. Thulin, 'Die Handschriften des Corpus agrimensorum Romanorum', *Abhandlungen der K. Preussischen Akademie der Wissenschaften* 1911, Anh. II, esp. 58 ff.

7 Esp. the paper quoted in the previous note.

8 'Agrimensores', in: L.D. Reynolds (ed.), *Texts and Transmission. A Survey of the Latin Classics*, Oxford 1983, 1-6.

9 L. Wenger, *Die Quellen des römischen Rechts*, Vienna 1953, 593; F. Wieacker, *Römische Rechtsgeschichte*, I (Munich 1988) [Handbuch der Altertumswissenschaft X.3.1.1], 123.

The Corpus agrimensorum does not constitute a fixed body of texts. Manuscripts were made up according to need and the various branches of the textual tradition do not only show variety of readings but also of texts incorporated. One such compilation included the Digest title Finium regundorum at a very early moment of its existence, possibly still in Justinian's own time.<sup>10</sup> From there it made its way to the earliest extant manuscript of this redaction, namely the Vaticanus Palatinus lat. 1564 of the first quarter of the ninth century, referred to as P in the literature on the Corpus agrimensorum, but for which I shall retain Mommsen's siglum of Gp. Its granddaughter is the Gudianus Latinus 105 of Wolfenbüttel, about half a century younger, known as G and therefore here to be indicated as Gg. Gp was probably written in western Germany, whereas Gg stems from Corbie in France.<sup>11</sup> These two manuscripts have reached our time; in addition there is a somewhat later descendant, the twelfth-century Bruxellensis 10615-729. Strictly speaking, in the case of Finium regundorum only Gp counts, as the other two - even the once much estimated Gudianus - can be eliminated as *codices descripti*. This is particularly clear from a comparison of the Greek passage in l. 13, which is written correctly in Gp, but where Gg frequently confuses Α, Δ and Λ,<sup>12</sup> a kind of mistake easily made by a scribe who is not familiar with Greek uncial script. The value of the Gudianus consists of the fact that it has preserved parts of P that have since been lost, a situation that hardly arises in this case.

In addition to F and G Finium regundorum has been transmitted in the vulgate manuscripts, while there is also a very incomplete Greek version in Bas. 58,9 Περὶ ὄρων ἰθυντέων. No manuscripts of this title of the Basilica have been preserved, but a number of testimonia enabled the editors to reconstruct it in part.<sup>13</sup> The greatest disadvantage of this lacuna in the tradition of the Basilica is that we therefore also lack the scholia to this title. Even so, however, Bas. 58,9 is informative about the history of D. 10,1, as we shall see. As for the vulgate manuscripts, Mommsen has published his above-mentioned collation of Parisinus lat. 4450 (P) and Lipsiensis 873 (L). It should be noted that he did not give a full account of this collation in the critical apparatus. On the other hand the apparatus also contains some readings from the other two vulgate manuscripts Vaticanus lat. 1406 (V) and Patavinus lat. 941 (U). In so far as I have made use of these manuscripts I have relied on Mommsen's collation of L and checked that of P from a microfilm; I have further consulted a microfilm of V; as to U, I had to be content with Mommsen's apparatus. Together they give a satisfactory picture of the Digest vulgate of the 12th century, which is adequate for my purpose.

10 Mommsen, Interpolationen, 273: '... frühestens der zweiten Hälfte des sechsten Jahrhunderts'; 275: 'nicht wohl später als in der Mitte des 6. Jahrhunderts'; Thulin, Hss. des Corpus, 70.

11 Reeve, Agrimensores, 2-3.

12 Thulin, Hss. des Corpus, 68.

13 Scheltema-Van der Wal, A VII, 2651 ff.; see also their preface, esp. XIX-XX.

The *Corpus agrimensorum*, then, contains the full text of *Finium regundorum* and part of it even twice. Mommsen sets out the facts in the lower margin of vol I, p. 306 before the notes and apparatus. Gp and Gg show the following order:

- rubric
- l. 1-4 § 10 (307,11 possit); 'et cetera'
- l. 7
- l. 9-10
- l. 13
- 'Item post alia': l. 4 § 9-l. 6
- l. 8
- l. 11-13 (308,11 ita est, i.e. without the Greek)

The result of this is that l. 4 § 9-10 and the first two lines of l. 13 occur twice. Also elsewhere in the *Corpus agrimensorum* there are two fragments of *Finium regundorum*, namely l. 4 § 1 (306, 19-20) and l. 4 § 4 (306, 25-26). These have only been preserved by Gg, as the first few leaves of Gp have been lost after they had been copied in (the exemplar of) Gg. Wherever these *leges geminatae* occur, they have been distinguished by Mommsen as G<sup>1</sup> and G<sup>2</sup>.<sup>14</sup>

I am unable to explain this order of *Finium regundorum* in the *Agrimensores*. Perhaps someone started by excerpting it from a certain point of view, while in a second stage it was decided to supplement the lacking parts in a not entirely faultless operation. The occurrence of the two short excerpts in the beginning of the *Corpus* would be unrelated to that process.<sup>15</sup> For the purpose of this paper the matter is unimportant, as there are no real differences between G<sup>1</sup> and G<sup>2</sup>.<sup>16</sup>

In 1862 Mommsen considered the most important aspect of G to be its offering a standard against which the quality of F could be measured.<sup>17</sup> He listed five *lacunae* in F which could be filled in with the help of G:

- 306,10 <ad> iudicationem
- 306,18 <non> inique
- 307,14-15 rusticorum <nam in confinio praediorum> urbanorum
- 307,18 sive <flumen sive>
- 307,24 <primo et> decimo

Moreover he pointed out two debatable cases:

- 306,9 <Paulus libro XXIII ad edictum> et si forte
- 306,16 <res> scindi<sup>18</sup>

14 Mommsen's G<sup>1</sup> and G<sup>2</sup>, by the way, seem to mean properly Gg<sup>1</sup> and Gg<sup>2</sup>.

15 See Thulin, *Hss. des Corpus*, 70-71.

16 The only instance is 306,19 solo: socio G<sup>2</sup>; see below.

17 Grundlage, 113.

18 Note that Gp has rescindi, whereas Gg reads rei scindi; the i of rei is a correction, according to Thulin (*Hss. des Corpus* 67) of an s (res scindi).

In so short a passage this seems a disturbingly high number of corrections and therefore to reflect rather badly on the quality of F. It is true that these are all cases in which a scribe has inadvertently passed over something in his exemplar, but the corrector has failed to note these omissions as well. For the sake of clarity it should be added that there are a number of errors in G where F shows the correct reading:

- 306,7 est G, interest F
- 306,19 socio G, solo F<sup>19</sup>
- 306,21 duobus G, dolus F
- 306,26 utrum G, trium F
- 307,10 pluresve G, tres pluresve F
- 307,25 his G, is F
- 307,26 ideoque G, idque F
- 307,28 inundato G, inundatio F
- 307,36 tale G, tale est F
- 307,37 habeat G, habeant F
- 308,2 ordinatim G, ordinati F
- 308,4 permutatus G, permutatos F

I pass over minor errors, easily corrected by conjecture or simply orthographical, such as 307,2 adiudicare G, adiudicari F; pandictarum G, pandectarum F.

In 1862 Mommsen noted that there was not one case in which G corrected a 'Verschreibung' of F,<sup>20</sup> but in fact there are some, witness his own edition:

- 306,22 autem in F, aut enim G
- 307,3 habe{b}at quoniam F, habebit quam G
- 307,5 ad F, an G
- 308,3 successionam F, -um G<sup>21</sup>

Finally, there are two cases in which F and G concur in the same error:

- 307,36 eos, read: eo
- 308,6 his, read: is

From these variant readings it is possible to draw certain conclusions about the relation between F and G, but before doing so I should like to recall Thulin's description of the Palatinus,<sup>22</sup> and add to it a few words about Finium regundorum in particular. Its date in the ninth century seems undisputed. There are few abbreviations and compendia; in Finium regundorum *et* is consistently represented

19 According to Lachmann's apparatus (ad 267,24) Gg has solo at p. 9, but socio at p. 162. I have not been able to check this, but Turnebus' edition of the Agrimensores (Paris 1554) of the same passage, made on the basis of Gg, indeed reads solo (p. 43), and so does Sichardus' edition of the Lex Romana Visigothorum and related material (Basel 1528), where this passage has been edited from Gp on fol. 171v. The relevant leaves of Gp itself have now been lost. Cf. Blume, Feldmesser II, 42; Thulin Hss. des Corpus, 41-42; see also below, Appendix.

20 Grundlage 115.

21 Neither the collation (p. 139) nor the apparatus are correct.

22 Hss. des Corpus, 41 ff.

as &, and *quoniam* is once (307,1) written as *qnm* with a stroke over *nm*. In words ending in *-um*, the *m* is sometimes represented by a stroke. Words are separated through intervals, though not in the Greek in l. 13. *Leges* begin with full inscription, the name of the jurist in capitals, the rest in the 'standard' script,<sup>23</sup> the number of the book in Roman numerals, with two exceptions: l. 7 (307,24) *primo decimo*, corrected by the first hand to *primo & decimo*, and l. 9 (307,33) *octauo*, the former an important one.<sup>24</sup> There are very few corrections and to me they seem to stem always from the first scribe, with the possible exception of *usumfructum/-uum* at 307,12.<sup>25</sup>

I assume that in Gp we have a faithful copy of the first manuscript in which *Finium regundorum* was incorporated in the *Corpus agrimensorum*. My main argument is the Greek passage in l. 13. Here we cannot rely on Mommsen's apparatus. Although the apparatus is supposed to distinguish between the *Gudianus* and the *Palatinus*, the siglum G here actually stands for Gg, as it gives the readings of the *Gudianus* only. A superficial glance at the *Palatinus* suffices to learn that its scribe was perhaps not used to Greek uncials, but was trying his very best to copy them out, hardly making any mistakes:

308,12 OPONA (ORON F)

ibid. TIXION (TEIXION F)

308,13 BAΘOCOYTON (BAΘOCHTOCOYTON F)

In these three cases the correct readings of F demonstrate that we cannot exclude the possibility that the exemplar of G may have contained them as well. F and Gp concur in two readings which Mommsen has not put in the text:

308, 12 and 13 ΑΠΟΛΙΠΕΙΝ

Though grammatically possible, the two aorist infinitives probably have been rejected in favour of their indicative counterparts because of the other infinitives in the passage. The accentuation they show in F, suggesting the indicative instead of the aorist, is a later addition<sup>26</sup> and therefore should not carry any weight, whereas in Gp there are no accents or breathings. Two other common readings are:

308,13 ΤΑΦΟΝ

308,14 ΕΛΕΑΝ

The reading τάρρον instead of τάρρον is a conjecture first suggested by Leunclavius.<sup>27</sup> ΕΛΕΑΝ for ΕΛΑΙΑΝ can be explained as indistinguishable in

23 In three inscriptions on fol. 126v the capitals continue by mistake, in the second occurrence of l. 13 changing into standard script in the middle of the word *TABULARum*.

24 See below.

25 Twice, but see Mommsen's apparatus: 'eadem manu'.

26 See N.G. Wilson, 'A Greek Palaeographer Looks at the Florentine Pandects', elsewhere in this volume.

27 See Mommsen's note ad loc. with the critical apparatus.

pronunciation. All these readings probably occurred in the exemplars of F and G. This view is supported by the reconstructed version of Bas. 58,9,13 (BT 2652,10-14), which also has τῶφον.

If we compare the rendering of this Greek passage in Gp with that in Gg against the background of the western provenance of both manuscripts, the quality of the Palatinus stands out clearly, in absolute terms as well as in comparison with the Gudianus.

It is worth noting that the Gudianus, though practically without independent value for the tradition of Finium regundorum in the Corpus agrimensorum,<sup>28</sup> contains a few corrections which the Palatinus does not have. A closer look, however, reveals that these corrections are always very late and are made, I suspect, ingenii rather than codicum ope; it is even possible to guess whose ingenium was involved.<sup>29</sup> Examples are:

- 306,21 et dolus: et duobus G; over *et* is written *a* in Gg
- 307,15 hi: hii G (twice); second *i* deleted in both cases in Gg.
- 307,25 is: his G; *h* deleted in Gg
- 307,26 idque; ideoque G; *eo* expunged and deleted in Gg.

These corrections seem to have been made by the same hand that introduced word-divisions where they were lacking and added some breathings and accents in the Greek of l. 13.<sup>30</sup>

To resume, we may draw certain inferences about the relation between F and G. G cannot have been copied from F, as is proven on the one hand by the lacunae in F and on the other hand by the mistakes in G. If the lacunae have been filled in by conjecture, which is extremely unlikely, it is difficult to see why such mistakes as *duobus* instead of *dolus* (306,21) should not have been corrected, too. G rather makes the impression of having been written carefully, which leads to the conclusion that neither F nor G have been corrected with sufficient care. Or perhaps we should say that the exemplars of their correctors were no better. An indication to the latter view is to be found in Bas. 58,9: BT 2651,16=D. 10,1,4,11 Ποταμοῦ ἢ δημοσίας ὁδοῦ παρεντεθειμένης renders *sive flumen sive via publica intervenit*. According to the critical apparatus one of the sources for the reconstruction of this passage of the Basilica, the Vindobonensis iuridicus graecus 2 (olim 3), lacks ποταμοῦ ἢ, precisely the lacuna in F, *flumen sive*. It seems probable that the Greek version was made on the basis of a manuscript that had the same defect as F, which can be explained as caused by homoioteleuton. The correct version of G corresponds with the other source for the text of the Basilica at this point, the Tipucitus. It is one of the cases from which we may infer an ancient varietas lectionum in the Digest tradition.

28 The exception is 306,19 solo in Gg<sup>2</sup>, i.e., on p. 9 (see above).

29 Adr. Turnebus; see below, Appendix.

30 In a different (older?) hand 307,17 <h>ortorum Gg (hortorum Gp) and 308,4 permutatus G, -os (-o- written over -u- by the corrector) Gg.

It remains to draw a comparison with *Finium regundorum* in the vulgate tradition. It is true that in this respect Mommsen's apparatus is not complete, but at the same time we cannot say that we have not been warned by Mommsen himself. The square brackets indicate that he believed the Bolognese manuscripts to be of no use whatever in this title, the round brackets moreover indicate that he had made a full collation only of P, not of VLU.<sup>31</sup> This is slightly surprising in the case of L, of which he claimed to have made such a collation already in 1862;<sup>32</sup> it certainly holds good for V, of which his critical apparatus gives but an incomplete picture. Nevertheless a more detailed comparison of V does not yield information which alters the impression one gets from the vulgate manuscripts through this apparatus. In the following remarks I employ the siglum S, Mommsen's *codex secundi ordinis*, as an abbreviation of convenience for the consensus of the oldest vulgate manuscripts, especially P and V, without necessarily agreeing with everything Mommsen says about it.<sup>33</sup> As far as *Finium regundorum* is concerned, and no more than that, the following facts may be observed.

- 1 As regards the readings of the vulgate manuscripts in places where F can be corrected with the help of G, none of them justify the assumption that the scribe of S had at his disposal an independent source other than his own wits:

306,10 <ad>iudicationem: S read *iudicationem*, which was corrected in P and V to *adiudicationem*, the reading of L and U from the beginning.

306,18 <non> inique: S probably read *inique*, as is witnessed by L and V; attempts at correction through the insertion of *num* in P<sup>34</sup> and *an* in L, which is also the original reading of U.

307,14-15 *rusticorum* <nam in confinio praediorum> *urbanorum*: S lacked the bracketed words; attempts at improvement through the insertion of *in* between *rusticorum* and *urbanorum* in L and V.

307,18 *sive* <flumen sive> *via*: S lacked the same words as F. Attempt at conjectural improvement in P and V by changing *sive* into *si vero*; the resulting reading *si vero via* is also the original reading of L and U.

307,24 <primo et> *decimo*: S read *decimo* (or *X*); *undecimo* probably is the correct reading. *Primo* (et) *decimo* seems suspicious,<sup>35</sup> but may stem from an exemplar with *XI*. However this may be, the Palimpsest bears out the attribution to the eleventh instead of the tenth book of Modestinus' *Pandects*.<sup>36</sup>

As to Mommsen's two possibilities at 306,9 and 306,16, S read as F.

- 2 The only readings in which S goes with G against F are to be found in l. 4 § 5

31 See Praefatio LXXXXV, but cf. LXXII and esp. LII f. with LIII n. 1.

32 p. 138.

33 Praefatio XXXXV f., LXIII ff.

34 According to Mommsen *num* is to be attributed to P<sup>2</sup> (collation of 1862) or, which is the same, Pa (critical apparatus), in both cases the reading of the earlier stage being left open. To judge from the microfilm, *num* may even be the original reading.

35 Amm Marc. 30,6,5 has *secundo et decimo* (Kühner-Holzweissig, *Grammatik der lateinischen Sprache* I [Hannover 1912, repr. Darmstadt 1986], 642).

36 I, 726, fr. 143.



and l. 11. At 307,3 GS (PVLU) has *quam*, while F reads *quoniam*. At first sight this seems a strong case for the defenders of a more independent position of the vulgate tradition. A closer look at the manuscripts, however, reveals that the difference with F is not only in *quam*, but also in the insertion of *horum* between *habeat* and *quam*. This *horum* is unnecessary and not supported by G; the reading *horum, quam* smacks of a conjectural emendation of the problematical *quoniam* of F. At 308,3 S probably had *successionum*<sup>37</sup> against F (-am), but F's reading is so obviously impossible and a genitive plural so evidently what is to be expected, that not too much weight should be attached to this.

3 In all cases where F has the better reading than G it is most probable that S read as F. Although the agreement of two manuscripts in a correct reading does not prove anything, of course, these cases furnish additional proof that no manuscript with a text similar to G was available to the scribe of S. Nowhere is there a trace of S following such a text, not even as a suggested alternative.

4 There are also genuine variant readings between FG on the one hand and S on the other, where at least theoretically the possibility of S preserving the authentic reading should be considered:

306,10 *dirigere* FG, *dirimere* S (PVL), U ?

307,3 *fines* FGU, *partes* S (PVL)

307,17 *locus huic* FG, *huic locus* S (PVLU)

The first two cases concern the meaning of *fines*. In 306,10 it means 'boundaries' if we read *dirigere* with FG, in 307,3 'land'. In the first case the difference between *g* and *m* (*dirigere/-imere*) corresponds with the difference of interpretation of *fines*: *dirimere* requires the interpretation of 'land', or, to put it the other way round, the interpretation of 'land' may have given rise to the reading *dirimere*. In the second case the interpretation of 'land', obviously required here, may have caused the less ambiguous reading *partes*. Between the readings of 307,17 there is not much to choose. These minor differences will be found everywhere; cf., e.g., 306,22 *hoc in* FP, *in hoc* GLV (U ?).

5 There are also obvious defects in S as against FG:

307,6 *et scribit ... 7 non possumus* FG, om. S (VaLU; P<sup>a</sup>?<sup>38</sup>). The explanation is a homoioteleuton,

37 Thus Pand V; P has a gloss explaining it as *successorum*.

38 It is evident that the passage is present in P as the result of correction: between *et uicinum fundum* (307,5) and *ne(c) utile quidem* (307,8) there are two lines of text totalling 175 letters, i.e. an average of 87,5 letters per line, condensed into what was originally the space of one so as to make up the complete passage. Inspection of the manuscript itself may shed additional light on the correction, which involved the adding of 93 letters. The two lines before and after the correction in P contain 66 and 86 letters respectively. This may seem a high variation, but this is due to the use of compendia. Now assuming that P<sup>a</sup> may have read just as V<sup>a</sup>, the original line would have contained 69 letters, which is perfectly feasible.

but it is worth noting that in F the position of this passage is as follows:

RUMIUDICIUMACCIPEREPOSSUMUSET  
 SCRIBITPOMPONIUSNONPOSSENOSACCI  
 PERETQUIAEGOETSOCIUSMEUSINHACACTI  
 ONEADUERSARIIESSNONPOSSUMUSSED

As *possumuset* and *possumussed* both occur at the end of a line, this position may have contributed to the *saut du même au même*, in other words it would confirm the relation between F and S.

307,25 *ceteris* FG, *ei* PL (Mommsen with question-mark), om. V<sup>a</sup>, *ei* suppl. V<sup>b</sup>.<sup>39</sup> *Ceteris* (*qui*) requires *possident* (G and F post corr.), whereas *ei* (*qui*) explains *possidet* (S). The Tipucitus bears out the plural of FG: Καὶ ὅτι ὁ τὸ πολὺ κεκτημένος ἀπομετρεῖ τοῖς ἥττονας ἔχουσι τόπους.

307,35 *Idem* FGL, *Julianus* S? (PV, according to Mommsen's apparatus; P<sup>a</sup> [*Idem* superscr. P<sup>b</sup>] according to the 1862 collation). This case is more informative than is suggested by Mommsen's apparatus, which tells us even less than his 1862 collation. My evidence stems from a closer look at the two manuscripts on microfilm. In P one now reads something like 'Iulid'; a closer look at the manuscript itself may reveal the original reading. Yet one wonders what it was, for in V this turns out to be a complicated case. V<sup>a</sup> basically omits l. 9; it shows the following text:

(l. 8,1) ... *subiectis locis. Iulianus lib. li dig. Iudicium communi dividundo familierciscunde ... agitur. Papinianus li.ii responsorum. In finalib. etc..* A signpost before *Iulianus* refers to the margin where we read the following: *Paul. l. xii dig. Iudicium finium regundorum manet quamvis ... fundum*, i.e. l. 9 with the wrong inscription. The scribe of S probably jumped from *Iulianus libro* in 307,33 to (*Idem libro*) *quinquagensimo* in 307,35; corrections may have been imperfect or not understood properly by the scribes of V (and P?). V's inscription of l. 9 with *Paul. 12 dig.* remains to be explained.<sup>40</sup>

A study of merely one title of the Digest, of under two pages out of a total of nearly 1800, may not seem to justify any but the most cautious conclusions. Yet these two pages offer a rare opportunity hardly to be found anywhere else. The ancient tradition of *Finium regundorum* in the *Corpus agrimensorum*, independent of F, allows a glimpse at another sixth-century Digest manuscript. It is true that it is an indirect glimpse, but one we are otherwise only awarded in the case of the ancient fragments on papyrus and parchment. It is especially fortunate that it concerns a title from the *Digestum Vetus*, as the history of the transmission of this part of the Digest is generally agreed to be more complicated than the rest, which makes evidence all the more welcome.

The results of a renewed investigation of *Finium regundorum* are not spectacular. They come under two headings: first, the transmission of the text, and second, the presentation of the transmission in Mommsen's *editio maior*.

39 This is a supplement within a correction: in territorio ... *minorem locum* om. V<sup>a</sup> (*homoiotel.*), in territorio habere dicitur qui maiorem locum ins. V<sup>b</sup>, inter dicitur et qui ins. *ei et in maiorem exp.* a V<sup>c</sup>. V<sup>a</sup>, V<sup>b</sup> and V<sup>c</sup> stand for the several stages of this process and should not be taken as an indication of different hands.

40 Another mistake in the name of a jurist without proper explanation at 306,12: *Gaius FGP, Paulus V.*

1 The case of D. 10,1 actually confirms what has been the traditional view since Mommsen: S was copied from F and may occasionally have been improved upon with the help of an epitome, but only occasionally and clearly not in the case of Finium regundorum. That defects of S were being noticed may be seen from the attempted improvements, which usually occur as corrections in P and V and were already established when L and U were written. Some corrections may have been present already in S itself, or made in S before it was copied in P and other manuscripts. There is no reason to suppose the availability of independent sources here. G proves on the one hand the fact that a number of errors of F need not have occurred in all ancient Digest manuscripts, on the other that these manuscripts need not generally have been of higher quality than F.

The resulting inference should be, I think, that the reliability of the Florentine as representation of the Justinianic Digest text is not as absolute as sometimes has been thought, but not as bad as the champions of the vulgate manuscripts would have it. Especially the possibility that the vulgate tradition would have preserved authentic variant readings that are not in F remains to stand in need of proof in each individual case. The existence of such cases has been made probable by Mommsen, Kantorowicz and others, but the burden of proof still rests on those who maintain these authentic variants in other cases.

The uncertainty about what constitutes an authentic Justinianic reading stems from different causes, or rather from lack of knowledge of what happened in different stages of the transmission of the Digest text. For a long time already we have taken into account the possibility that the Digest tradition has not flown from the fountain-head of one authenticated copy stemming directly from Justinian's chancery, but that already the earliest copies showed certain variations. In the meantime we have moreover accepted the presence of emendations in S on the basis of a Digest epitome, emendations therefore preserving authentic Justinianic readings in the vulgate manuscripts which all descend from S. The hypothetical character of this epitome, however, means that the traces of ancient textual variations should perhaps not in the first place be sought in the vulgate manuscripts, but in the other ancient witnesses. They deserve to be rescued from oblivion. This brings us to Mommsen's edition.

2 Criticism of Mommsen's editio maior has been raised on various occasions and has always been mixed with admiration for Mommsen's achievement. To this chorus I should like to add the following voice. Some of the ancient witnesses we now possess were unavailable to Mommsen when he made his edition. Of the vulgate tradition he never intended to give more than the barest outline. It would be foolish to search his edition for more than has been put into it. It should be judged on what it positively offers, namely the presentation of F, details of other witnesses that are given explicitly, and the way the data have been used for the edition. As far as

Finium regundorum is concerned and, I repeat, no further than that, Mommsen's presentation of F and G, though not absolutely flawless, is excellent, but his presentation of the Greek of l. 13 in G in the apparatus criticus is misleading, as he omits to tell us that he is reporting from the Gudianus only. The presentation of the Paris Digest manuscript, too, is good but not perfect. The possibility to consult a microfilm of the Vaticanus has helped to clarify and add to the apparatus. At no single place in the text, however, a different choice than Mommsen made seems to be justified. While admitting that a full collation of at least P and V would be desirable,<sup>41</sup> I am not so sure that it would help us overmuch with the reconstruction of the Digest text as it was current in the age of Justinian. That it would be of the first importance for other purposes goes without saying.

One final observation. I have consulted the new facsimile of the Florentine that was published recently<sup>42</sup> at the title *Finium regundorum* and was able to compare it with the older reproduction of 1902-1910. Regrettably it has to be said that the older one is better legible at fol. 161v. Whether this is due to the quality of the reproduction or to deterioration of the manuscript since the first decade of this century I am unable to say.

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41 There are more corrections and additions to be made to Mommsen's apparatus than those listed in this paper.

42 *Justiniani Augusti Pandectarum Codex Florentinus*. Curaverunt A. Corbino, B. Santalucia [with a introduction by H.C. Vicario], 2 vols, Florence 1988.

## APPENDIX: A NOTE ON LEGAL HUMANISM AND THE AGRIMENSORES

The case of *Finium regundorum* is in certain respects typical for the history of humanistic scholarship. Texts like the *Corpus agrimensorum* could be expected to attract wide attention in humanistic circles, and so they did. In fact the student of this subject ends up with a Who's Who of humanists, jurists and non-jurists alike: even a list of the names inscribed in the manuscripts as their users and owners makes impressive reading. I should like to leave biographical detail on one side and to offer instead a rough sketch of the way the title *Finium regundorum* was edited and used by the humanists.

In the 16th century both the Palatinus and the Gudianus were known to the humanists and used for editions. Joh. Sichardus used the Palatinus, then known as *Codex Fuldensis*, for an appendix to his edition of the *Lex Romana Visigothorum* of Basel 1528,<sup>43</sup> but of the Digest title *Finium regundorum* this only concerned the fragments 1 and 4 of lex 4, which occurred in the now lost beginning of this manuscript. As far as I know the full text of D. 10,1 further on in the manuscript did not receive explicit attention on that occasion.

Of greater interest is the work by Petrus Gallandius, Regius Professor of Latin, and Adrianus Turnebus, Regius Typographus, in 1554, who edited a gromatic collection<sup>44</sup> from the Gudianus, which the two Parisian humanists had found in the monastery of S. Bertin in S. Omer. It is on this edition that I should like to dwell a little longer, restricting myself to *Finium regundorum*, which occurs in Gg on p. 161-165 and in the edition on p. 177-182. According to the preface the edition of the book was the result of a joint effort, but tradition has it that Turnebus is responsible for *Finium regundorum*. Although I am unable to say whether this is correct, I shall henceforth use Turnebus' name when speaking about the editor(s).

The edition is a truly humanistic product. On the one hand there can be no doubt that it was made on the basis of the Gudianus: not only do Gallandius and Turnebus mention no other source, but the manuscript itself shows traces of emendation, some of which can be related to the edition and have already been mentioned above.<sup>45</sup> On the other hand and perhaps more significantly, the edition also contains a great number of readings which may be classified as silent corrections. Here are some examples (Turn. = edition of 1554):

306,7 est Gg, interest Turn.

306,16 rei scindi (-i in ras.<sup>46</sup> et fortasse postea del.) Gg, rescindi Turn.

43 Thulin, Hss. des Corpus, 41-42.

44 De agrorum conditionibus et constitutionibus limitum. Siculi Flacci lib. I. Frontini lib. I. Aggeni Urbici lib. II. Hygeni Gromatici lib. II. Variozum auctorum ordines finitionum. De iugeribus metiendis. Finium regundorum. [etc., edited by Gallandius and Turnebus], Parisiis, Apud Adr. Turnebum typogaphum Regium, 1554. According to Reeve, *Agrimensores* 3, 'the first recognizable edition of the *Agrimensores*'.

45 Cf. Blume, *Feldmesser* II, 43, and above, p. 67.

46 Thulin (Hss. des Corpus 67) gives res as the primary reading; cf. above, n. 18.

306,21 duobus Gg, dolus Turn.<sup>47</sup>

306,26 utrum Gg, trium Turn.<sup>48</sup>

307,3 et in pro Gg, et ii pro Turn.

307,10 pluresve Gg, tres pluresve Turn.

307,11 singuli Gg, si singuli Turn.

307,26 ideoque (eo postea del.) Gg, idque Turn.

307,28 inundato Gg, inundatio Turn.

307,36 tale Gg, tale est Turn.

307,36 eos Gg, eo Turn.

308,12 ff.: the Greek passage appears in the edition in almost the same form as in F; in Gg breathings, accents and a few, but not all, corrections have been added, and it may be mentioned here once more that word-division marks have been scattered over the pages of Gg.

If the late corrections in Gg are in fact by Turnebus, it would be superfluous to distinguish between these explicit emendations and the silent ones that we find in the edition: none of them would be a witness of anything other than Turnebus' skill as a classicist and as supervisor of the King's press in Paris at the same time. In itself the limited resemblance between a manuscript and its edition is not necessarily a bad thing, but the lack of a critical apparatus entirely obliterates the extent of Turnebus' editorial activity. As far as Finium regundorum is concerned, his edition, a normal product of a humanistic scholar-printer, was to remain the representation of this title as transmitted through the Corpus agrimensorum.

The date of publication of the book is significant, too. Only the year before, in 1553, had Taurellus published his quasi-facsimile of the codex Florentinus.<sup>49</sup> For the first time scholars could read Finium regundorum and check the extent to which their editions diverged; and so, of course, could Turnebus.

Taurellus faithfully exhibited the five so-called lacunae by reproducing F without further comment,<sup>50</sup> but there are slight discrepancies at 306,22 (autemin F, aut enim Taur.), at 307,5 (ad F, an Taur.) and at 308,3 (successionam F, -um Taur.). These slight discrepancies may be attributed to misreading the Florentina, but this will not suffice to explain a major one at 307,3: habebit quam Taur. The remarkable fact is that Taurellus' *habebit quam* actually is the reading of G; the vulgate, it will be remembered, had *horum habeat quam* at this point. It

47 Gg has a correction of the preceding *et* into *a* (see above, p. 67), of which there is no trace in the edition. In the *Variarum lectionum annotationes* (247-256) there is a note ad loc. about a manuscript reading '& dolus & duobus exinde'. This manuscript, about which some information is given on pp. 256-257, has been identified by Thulin as Paris. lat. 7229, which I have not seen (C. Thulin, 'Humanistische Handschriften des Corpus agrimensorum Romanorum', *Rheinisches Museum für Philologie* NF 66 (1911) 417-451, esp. 424-425). About the possible origin of this reading see Blume, 'Über die Handschriften der Agrimensoren', *Rheinisches Museum für Jurisprudenz* 7 (1835) 173-248, esp. 187-188.

48 It may be noted that the Palatinus at this point has a correction of *alterutrum* into *alterutrium*.

49 *Digestorum seu Pandectarum libri quinquaginta ex Florentinis Pandectis repraesentati*, Florentiae, In officina Laurentii Torrentini Ducalis Typographi, 1553.

50 See above, p. 64.

remains to be investigated whether this is pure coincidence. Finally, two other silent corrections occur at 307,36 (eos FG, eo Taur.) and at 308,6 (his FG, is Taur.). The *Adnotata* (fol. + iiii) only record the vulgate reading of 307,18: 'in vet. si vero via'.

While Taurellus could not yet know of Turnebus' edition, it is most likely that Turnebus was familiar with the tradition of *Finium regundorum* in the Digest independent of the *Corpus agrimensorum*. Whether he also knew of the publication of the codex Florentinus I am unable to say; his silence about the fact and the way he emends the Greek passage in l. 13 are perhaps indications to the contrary.

As interesting as the editions of Taurellus and Turnebus is the subsequent history of scholarship relating to our Digest title. The presence of *Finium regundorum* in the *Corpus agrimensorum* was noted by the jurists, but not exploited systematically for the purpose of textual criticism. It became customary for Digest editions to contain a general reference to the *Auctores finium regundorum*, under various names, at the beginning of the title, but we see little or no attempt at bringing them to bear on the Digest text. The familiar 'lacunae' are dealt with as they always had been in the vulgate tradition. Divergent readings of the *Corpus agrimensorum*, often indicated as 'apud Frontinum' or similar words, are sometimes given, but never systematically. As far as I know, in 1571 Contius' was the first Digest edition to record them systematically.<sup>51</sup> Not even Brenkman in his efforts to collect all available material<sup>52</sup> quite managed to control the variant readings from this source; the readings he has stem from Contius, if I am not mistaken.<sup>53</sup> Contius in his turn almost certainly drew on Turnebus' edition, and we have already met the degree of accuracy with which the latter edited his source. Cuiacius used the *Auctores finium regundorum*, again I think through Turnebus, in order to explain the title *Finium regundorum* and vice versa,<sup>54</sup> but while he was aware of divergent readings<sup>55</sup> these did not seem to attract his interest in the *Observationes*. But when Leunclavius proposed to emend τᾱφον into τᾱφρον in the Greek passage in l. 13, he paid no attention to the *Agrimensores*.<sup>56</sup>

It would not be difficult to fill many pages on this theme and the trail one would

51 *Digestorum seu Pandectarum pars secunda quae de iudiciis est*. Lugduni, Apud Gulielmum Rouillium, 1571, 408-414. Contius gives Taurellus' text with variant readings in the margin. See the note ad rubr.: 'Vide Iulium Frontinum de limitibus agrorum et Aggenum Urbicum, et in eodem libro hunc titulum transcriptum'; in the notes this source is styled 'liber de limitibus'.

52 B.H. Stolte, *Henrik Brenkman (1681-1736). Jurist and Classicist*, Groningen 1981, with references.

53 Unfortunately I have not yet been able to check Brenkman's notebooks in Göttingen on this point; reading the notes of the Gebauer-Spangenberg edition suffices to be able to sketch the general picture.

54 See his *Observationes et Emendationes*, lib. X c. ii [ed. princ. 1570; *Opera omnia* III (Naples 1758) 253-255].

55 See, e.g., his commentary in lib. XXIII Pauli ad edictum, on D. 10,1,4,11 [*Opera omnia* V (Naples 1758) 341].

56 *Notata*, lib. II c. xxxiii [ed. princ. 1593, repr. in Voellus-Iustellus, *Bibliotheca iuris canonici veteris*, II (Paris 1661) 1446-1447 and in *Thesaurus iuris romani ... cum praefatione Everardi Ottonis*, III (Leyden 1727, repr. Basel 1744), 1511-1512]. Cf. Plutarch, Solon c. 23.

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have to follow in order to do so would be an exciting one. Considerations of time and space prevent me from chasing the humanists just now. Two points may be offered as conclusion to this appendix.

First, the way *Finium regundorum* had been edited by Turnebus and Taurellus obscured the insight of their contemporaries into the full extent of the textual divergences between its two lines of transmission. On the one hand two of the ten readings from the *Corpus agrimensorum* cited in the margin of Contius' Digest edition are in fact base on Turnebus' conjectures: 307,3 *et hi pro indiviso*, and 307,11 *utputa si singuli*; on the other hand Taurellus' silent corrections obscure real divergences between F and G, such as at 307,3.

Second, even where the humanists were aware of the divergences, these did not lead them to conclusions about the history of the Digest text.

The ultimate inference, then, should perhaps be that we have not advanced very much since the humanists on this issue, or rather, that we have failed to build on the data they had already assembled. The scholar to whom these lines are offered is the last person we may blame for this state of affairs, but it is a sobering thought that on more than one occasion we find ourselves still stuck in The Beginnings of Legal Humanism.

B.S.