

VESTIGIA DOCTORUM VIRORUM

Tracking the Legal Humanists' Manuscripts

The fundamental problem of the Digest textual tradition is already implicit in the edition of the Taurelli, father and son, published at Florence in 1553.¹ To Laelius Taurellus falls the credit for discovering the transposition of the penultimate and antepenultimate leaves of the Florentine manuscript, an error shared by all other extant manuscripts. Taurellus' important discovery was first communicated in detail by Antonius Augustinus in his *Emendationes et Opiniones* of 1543,² the opening chapter of which is devoted to demonstrating that all Digest manuscripts are thereby shown to be *exscriptae* from the Florentine. He concludes:³

Ex his apparet errorem Pisani librarii omnes librarios secutos, et negare audeo extare aliquem Digestorum librum quo non idem error sit. *Quibus consequens est, ex Florentinis ceteros omnes descriptos*; quod si verum est, ut esse ostendi, ad eorum librorum scripturam omnes libri emendandi, omnia negotia controversiaeque omnes transigendae sunt; quo nihil maius aut amplius dici posse videretur.

This was not, of course, to say that the Florentine was free from error, but rather that all other manuscripts were derived from it and could therefore only be more corrupt. Thus Augustinus closes the *Emendationes et Opiniones* with a reminder of the primary theme of the work:⁴

Neque enim optimi illi vetustissimique libri, a quibus omnes hi quibus hodie utimur emanarunt, omnibus mendis carent. Sed tamen tam multa librariorum et temporum peccato in ceteris mendosa reperiuntur ut praeclare de iure civili mereatur qui sacrosanctos illos thesauros patefecerit et eorum opes omnibus voluerit esse communes.

The descent of all Digest manuscripts from the Florentine is also emphasised by Franciscus Taurellus in his dedication of the edition to Duke Cosimo. Speaking of the transposition noted above, he continues:⁵

Hic error a nobis primum animadversus in omnes quos vidimus vel calamo vel typis descriptos libros inreperat. Cum igitur nullum Digestorum volumen praeposteri huius ordinis expers in manibus habeatur, *fatendum est et ex hoc cetera fluxisse ...*

- 1 Digestorum seu Pandectarum libri quinquaginta, ex Florentinis Pandectis repraesentati. Florentiae, in officina Laurentii Torrentini, 1553. 2°. [Copy: D:FMPI]
- 2 Emendationum et Opinionum libri quattuor. Ad Modestinum sive De excusationibus liber singularis. His libris maxima iuris civilis pars ex Florentinis Pandectis emendatur & declaratur. Venetiis, apud Iuntas, (expensis haeredum Lucaeantoni Iuntae), 1543. 4°. [Copy: D:FMPI]. Hereafter cited as *Emend. et Opin.*
- 3 *Emend. et Opin.* I.1. (p.XI, lines 6-13).
- 4 *Emend. et Opin.* IV.17. (p.CCL, lines 25-34)
- 5 *Op. cit.* (note 1), sig. 'leaf' 3r.

The Taurelli's edition, in apparent accord with this conclusion, does indeed seek to achieve a precise reproduction in print, down to the finest details, of the Florentine manuscript. And yet one important exception was admitted. In a significant number of cases the Taurelli included a word or short passage not to be found in the manuscript, albeit taking care to alert the user to its external provenance by enclosing it in brackets. The practice may seem strikingly familiar to the contemporary user of the Digest:

D.9.2.36.1 (Mommsen) Si dominus seruum, quem Titius mortifere uulnerauerat, liberum et heredem esse iusserit eique postea Maeuius *exstiterit heres, non habebit Maeuius* cum Titio legis Aquiliae actionem ...

exstiterit h.n.h. maeuius] PVLU, *om.F*

D.9.2.36.1 (Taurellus) Si dominus seruum quem Titius mortiferè uulnerauerat, liberum et heredem esse iusserit, eique postea Maeuius (*exstiterit heres, non habebit Maeuius*) cum Titio legis Aquiliae actionem.

These few cases were not the Taurelli's own conjectural restorations; they were to be found in the vulgate manuscript tradition. Neither Augustinus nor the Taurelli advance any explanation of how good readings could occur in the vulgate tradition but not in the Florentine if all manuscripts were in fact derived from the Florentine. Nor, *pari passu*, did Cuiacius explain how the transposition first occurring in the Florentine was shared by all the other vulgate manuscripts which he was urging scholars to investigate. For within just a few years of the publication of the Taurelli edition Cuiacius made a prominent and ringing denial of the Augustinus-Taurelli position. In the opening chapter of Book 2 of his masterwork, the *Observationes et Emendationes*, bearing a dedication dated 1556 and first published in 1559,⁶ he made the following explicit statement of method:⁷

Atque ea re sum omnibus studiosis auctor ut etsi editis Pandectis Florentinis nihil ad Pandectarum restitutionem praeterea quicquam desiderandum esse plerique vociferentur, quotquot poterunt alias tamen quascumque manuscriptas Pandectas conquirant certoque iudicio earum scripturam expendant & examinent; *nec enim fidem habendam esse censeo his qui ceteras omnes ex Florentinis dimanasse profitentur.*

By adopting Taurellus and Cuiacius as the prototypes of the champions of the Florentine and of the vulgate respectively, Savigny thus inadvertently gave the

6 Book 2 has the dedication, *Bartholomaeo Fayo V.C. Senatori Parisiensi*, and bears the subscription *Biturigis, XLX. Kalend. Septemb. 1556*. The earliest edition of which I have notice is contained in the collection of Cuiacius' works bearing the following title: *Commentarii ex libro XLI. Digestorum ad titulos VIII. De usurpationibus et usucapionibus ... Libri IIII. Observationum et Emendationum ... Lugduni, typis suis excudebat Ioannes Tornaesius, 1559. 2°*. Copies are evidenced in E:MBN, EL:C/Cai, F:PBN(2). I have not had access to this edition; all quotations from Cuiacius are taken from the following edition: *Iacobi Cuiacii ... Operum tomus primus (-quartus) ... Lugduni, sumptibus Ioannis Pillehotte, 1614. 2°*. [Copy: D:FMPI]

7 *Op. cit.* (note 6), col. 1368, (correcting *edictis* to *editis*).

controversy a distinctly modern twist.⁸ For the dichotomy expressed is not, at least in practice, between those who maintain that all manuscripts are derived from the Florentine and those who deny this; rather between those on the one hand who, conceding (albeit with manifest reluctance) the independent value of the vulgate tradition, would yet admit but the barest minimum of its readings; and those who would, as it were, open the floodgates. These conflicting positions of the conservative and liberal critics have one thing in common; in the legal humanist tradition both sides were interested in investigating the vulgate manuscript tradition. The same equivocation for a later period is nicely summarised in the chapter of Brenemannus' *Historia Pandectarum* (1722) devoted to the question *an omnia quae supersunt Pandectarum exempla ex Florentinis manaverint*.⁹ Here Brenemannus quotes Ulricus Huber, who believed that all manuscripts descended from the Florentine, to the effect that all variant readings in the vulgate tradition were either errors or conjectural emendations:¹⁰

Ex quo manifestum est omnes aliorum librorum varietates lectionum, praeter errores describentium, nihil aliud esse, quam doctorum hominum, qui describendo vel edendo praeferre, conjecturas. Proinde haec una criseos in Pandectis exercendae ratio superest, conjiciendi in emendandis Florentinae scripturae erroribus sagacitas.

The obvious question, then, Brenemannus continues, was that already posed by Reinoldus: why bother with other manuscripts at all?¹¹

Quod si ita sese habeat, nescio quid solidae utilitatis praestare alii manuscripti codices possint?

The answer Reinoldus provides is as follows:

Si quid ergo ex manuscriptis codicibus petitur utilitatis, id forte in eo solo situm est, quod qui emendationem tentat ostendere queat non suo sese nimium fidere ingenio, sed et alios ante in ejusmodi sententiam concessisse.

This is perhaps not quite explicitly stating that the vulgate tradition was useful only as a *fons coniecturarum* - rather that it was somehow an elegant corroboration of

- 8 Geschichte des Römischen Rechts im Mittelalter, von Friedrich Carl von Savigny. Dritter Band. Heidelberg, 1822, at p.414. Idem, Zweite Ausgabe (1834), reprinted Bad Homburg 1961, vol.III. pp.449-450, (following Brenemannus, *Historia Pandectarum* [see note 9]).
- 9 *Historia Pandectarum, seu fatum exemplaris Florentini ... Trajecti ad Rhenum, apud Guilielmum vande Water, 1722. 4°*. [Copy: D:FMPI (photocopy)]. Hereafter cited as *Hist.Pand.*
- 10 *Hist. Pand.* III.2. (pp. 244-245), citing Ulricus Huber's *Digressiones Justinianae, Pars II, Lib. I. cap. I.*
- 11 *Hist.Pand.* III.2. (p.245), quoting Bernardus Henricus Reinoldus' annotations to Ioannes Mercerus' *Conciliator*: Joannis Mercerii J.C. *Conciliator sive ars conciliandorum eorum quae in jure contraria videntur, utendi[s]que iis quae vere contraria sunt*. Bernardus Henr. Reynold ... quartum edidit, recensuit & animadversiones adjecit. Ultrajecti, apud Guilielmum Broedelet, 1713. 8°. [Copy: NL: GUB], p.41, note 67. This edition is perhaps a reprint of that published in the previous year at Duisburg, where Reinoldus was professor; a copy is in Harvard Law Library (NUC: NM 0460491). Mercerus' work was published already in the 16th century: Biturigis, apud Germanum Lauerjatium, 1587. 8°.

one's own conjecture to discover that it had already been made by another. But about the necessarily conjectural origin of 'good' vulgate readings these scholars appear to have been convinced. Brenemann then concludes by citing Taurellus and Augustinus in support of the proposition that the vulgate manuscripts, even although all derived from the Florentine, were not to be neglected:¹²

Profecto non esse in totum negligendos alios libros, et Taurellus et Augustinus suismet ipsorum exemplis ostenderunt, quippe qui aliquoties ad eos recurrunt.

It was long in the future that Housman was to castigate the illogicality of the minimalist position. And it was precisely the prevailing text-critical ambience which Housman excoriated, that of late 19th century Germany, which envelops our modern edition of the Digest. Despite the fundamental 19th century revolution in the science of philology, it is an undeniable fact that Mommsen's edition of the Digest represents an advance over that of the Taurelli only in the reporting and identification of the corrections in the Florentine manuscript itself. As regards the basic problem, the handling of the vulgate tradition, the difference between the Taurelli and Mommsen edition resolves itself to this: the Taurelli reproduce the Florentine with a very few readings from the vulgate enclosed in brackets; Mommsen reproduces the Florentine with a very few readings from the vulgate rendered in Italics. In Mommsen's apparatus only a handful of vulgate manuscripts are considered.

If the great innovation of 19th century philology was the stemmatic method, that of the 20th century was the disclosure of its limitations.¹³ Indeed, it was the very case of the Digest tradition, with Kantorowicz's critique of the Mommsen edition, which provided one of the examples which led to a better theoretical understanding of the phenomenon of contamination.¹⁴ And yet, if the theoretical basis of the phenomenon of contamination in manuscript traditions is now well established, in the case of the Digest we have hardly begun to act on the consequences. This is by no means surprising. Given both the size of the text and the number of surviving manuscript copies, the task of assessing the vulgate tradition is overwhelming in its magnitude. Moreover, we know enough to be sure that in this tradition stemmatics has little part to play. At the same time, it is difficult to discern any substantial advantage which might emerge from any family groupings of manuscripts which the new computer-generated studies may reveal.¹⁵ In the end we will still have to face the awful consequence of contamination: that each individual reading has to be

12 *Hist.Pand.* III.2. (p.245).

13 See E.J. Kenney, *The Classical Text. Aspects of editing in the age of the printed book.* [= Sather Classical Lectures, Volume 44], Berkeley, Los Angeles, London, 1974, Chapters V and VI.

14 *Op.cit.* (note 13), at p.139.

15 See for the Codex the work of Carmen Tort-Martorell, *Tradición textual del Codex Iustinianus. Un estudio del Libro 2* [= *Ius Commune Sonderhefte* 45], Frankfurt am Main, Vittorio Klostermann, 1989.

considered on its merits.

When the primary sources of the vulgate tradition, the manuscripts themselves, lie untouched in such luxurious abundance, it may seem perverse to call attention here to a decidedly secondary source of variant readings. This secondary source, similarly neglected hitherto, is constituted by the scholarly writings of the legal humanists from the beginning of the 16th to the end of the 18th century. Given the imperfect dichotomy of the humanist theories of the Digest textual tradition throughout this period, the writings of the humanists present a rich secondary source of potential information. This is also true to a certain extent of all civilian legal writings from the pre-Accursian glosses onwards. But with the legal humanists of the 16th century the interest in the text of the Digest entered upon a new epoch. The humanists searched out, compared and collated manuscripts of the legal texts. While I know of no complete collation of a lost manuscript of the Digest, or a part of it, analogous to those which survive for classical authors, or to Politian's collation of the Florentine itself, nevertheless the writings of the humanists are full of citations of individual manuscripts which they themselves personally owned or consulted.

That it may be quite some time before a pressing need is felt to tap this secondary source may well constitute a blessing in disguise. For there are considerable difficulties in investigating this material, difficulties which we have hardly begun to tackle. Indeed, as regards a detailed, technical study of the philology of the legal humanists existing scholarship is for practical purposes non-existent; we do not even have an accurate list of the editions of the works of Cuiacius. A profounder study of the method, terminology and general assumptions of the humanists in their own right is a prerequisite for plundering them as a source for currently useful information. The correct approach to the legal humanists is itself dependent upon the establishment of its necessary conditions. We need adequate indexing of the corpus of an author's work, so that we can identify all the occasions in which he has dealt with the point in question; we need the author's text established through the identification of all its versions by the collation of the different editions; and we need instant recall of all philological usages of the author, such as *antiqui codices*, in order to understand how they are employed. In my view, the fulfilment of these conditions will only become a serious proposition when computer technology has been successfully applied in the field of early printed books. I would identify three essentials which the computer will enable us to furnish:

- 1 The provision of a repertorium of the editions of early printed books, giving the locations of the surviving exemplars; it should be recalled that the first requirement of a descriptive bibliography of an author's writings is the comparison of different exemplars of the same edition.
- 2 The reading of the texts themselves into the computer memory by means of

OSLER

optical character readers, thus allowing for adequate indexing through the computer's word-search facility.

- 3 The machine-based collation of different versions of the text in different editions, and the identification of all divergences.

This is for the future, of course; yet the magnitude of the anterior task of dealing with the manuscript sources will, I suspect, leave sufficient time for the development, or rather refinement, of the necessary technology.

The analysis which is here submitted of the treatment of a Digest text by Andreas Alciatus emerges from the current pre-philological era in the study of early printed texts. What constitutes of necessity but a pale reflection of the facilities which the future scholar will have automatically at his fingertips has been established, first, by collating the different editions of Alciatus' works by eye, and secondly by routinely recording all occurrences of philological usages in the corpus of Alciatus' work. The case may thus serve to illustrate both the difficulties and the possible rewards of ransacking the works of the founding fathers of philology for contemporary philological purposes.

What remains today by far the best guide to the textual scholarship on the Digest in the first half of the 16th century is without doubt the *Emendationes et Opiniones* of Antonius Augustinus, published at Venice in 1543.¹⁶ Until now no other scholar has even approached Augustinus' range and grasp of the primary sources, or his insight into the scholarship of his predecessors and contemporaries. In a single sentence Augustinus provides the key to the understanding of Alciatus' textual work on the Digest:¹⁷

Ad praeceptorem meum venio, in cuius libris, quos multos multa eruditione atque elegantia in maximis docendi et respondendi occupationibus scripsit, *Tusci libri aut Florentini appellantur nonnunquam Bolognini et Haloandri Digesta.*

This vital fact captures the essential secret of Alciatus' work on the Digest text. Alciatus' philological work is to be divided into three distinct phases:

- 1 The earliest publications of 1515, in which his knowledge of the Florentine manuscript is limited to a few citations published by such predecessors as Politian and Budaeus.
- 2 The works of 1518, in particular the *Dispunctiones*, when he had access to the readings of the Florentine through the manuscript notes left by Ludovicus Bologninus.
- 3 The works of 1531 and later, which follow and derive from Haloander's edition of the Digest, published in 1529.

In citing his basic sources, namely Bologninus and Haloander, Alciatus displays all the imprecision that is characteristic of humanist scholarship: very often he cites no

16 The full title is given in note 2, *supra*.

17 *Emend. et Opin.* III.3. (p.CXLVII, lines 6-10).

source whatsoever, sometimes an *antiquus codex*, sometimes *antiqui codices*, sometimes the Florentine manuscript by name, with a bewildering array of variant forms in each case. What he studiously avoids is to identify explicitly his two real sources. Augustinus seeks to excuse him in this respect on the grounds that the terms of Bologninus' bequest made it difficult for anyone using his papers to acknowledge his source explicitly.¹⁸ This, however, does not explain why a circumlocution could not be employed, or a clear general statement made of the secondary character of the source in the preface. The explanation is in any case spurious, for it simply ignores the question why Haloander, too, is never cited by name. The true reason is very simple to identify: the character of humanist philology. The humanists simply did not consider it important to identify their sources with precision, and the existence of a few exceptional cases ought not to obscure this incontrovertible fact.

In the present case, Alciatus' method of citation of his sources was perilously dangerous, both for the textual integrity of the Digest, and for his own posthumous reputation. Alciatus' philological work on the Digest was directed mainly towards the restoration of the Greek words and passages which had been either omitted or mistranslated in the Middle Ages. Both his primary sources, Bologninus and Haloander, turn out to be badly contaminated in this respect. Both, it is true, offer almost exclusively the readings of the Florentine manuscript; almost, but not quite. Ex facie, Bologninus' notes represent nothing other than a transcription of the readings of the Florentine manuscript. For the most part that is indeed what they are. Yet somehow a handful of conjectural readings has infiltrated itself surreptitiously into this vast body of material. Haloander's edition, as regards the Greek readings, is similarly dependent on the Florentine, as Haloander stresses at great length in the preface; but here, too, a few conjectural readings have found their way into the text. In accord with the standard practice of humanist textual scholarship, sources are not even remotely identified in either Bologninus or Haloander; thus there is no way anyone with Bologninus or Haloander before his eyes may separate the wheat from the chaff.

Accordingly, when Alciatus cites readings from his two sources and attributes them to the Florentine, or to *antiqui codices* (often no more than a cypher for the Florentine in any case), he is entering the danger zone. Certainly, the odds are stacked in his favour. On the one hand he very often does not trouble to cite a source of any description, and on the other the vast majority of the readings in his two sources are indeed derived from the Florentine. Nevertheless, by bad luck he is deceived in a small number of cases. In these few cases he is led accidentally to attribute to the Florentine or other manuscripts what in reality are but conjectural

18 *Emend. et Opin.* III.3. (p.CXLVII, lines 14-23).

OSLER

readings.

The number of such cases is very limited. Yet Cuiacius later did not hesitate to allege openly that Alciatus had deliberately lied about the readings of the Florentine manuscript:¹⁹

Caetera etiam Alciatus perfidiose, dum reponit hoc loco Graecam vocem ἀσυναιτώδης, usurpata auctoritate antiqui libri, qualem nullum viderat unquam, sicut et aliis multis locis hodie constat falso eum usum esse auctoritate Pand. Florentinarum, securum posteritatis.

On Alciatus' *antiquus liber* I reserve discussion for another occasion, but as regards the Florentine it can be affirmed that this allegation is wholly without foundation; all false citations of the Florentine manuscript by Alciatus arise from error and were made in complete good faith. In this controversy it has been customary to cite Augustinus on the side of Alciatus.²⁰ Yet on closer inspection Augustinus' view seems just a shade more ambiguous, more sceptical, than at first sight it might appear. Augustinus first cites the difficulty with Bologninus' will as a ground for Alciatus' failure to mention his source directly, and further suggests that another reason might have been the consideration that Bologninus was too insignificant a scholar to be cited frequently by name.²¹ He continues:²²

Huc accessit, quod ut omnes probi viri solent, facile dicentibus ita Florentiae scriptum esse credit. Sed sive his de causis sive ob alias, quas in tanto viro credendum est optimas fuisse, loca quaedam Digestorum aliter Florentiae scripta sunt quam ab ipso referantur.

At the root of the problem lies Alciatus' *credulitas*:²³

... quamvis is cum ea aetate esset in qua nos sumus [i.e. age 25], aliam interpretationem probaverit ab illo deceptus qui adulterinam constitutionis partem pro Florentina ei vendidit; usque eo verum est quod Epicharmus dicebat, nervos atque artus esse sapientiae non temere credere; sed vere etiam a Cicerone in quadam epistula scriptum est ut quisque est vir optimus, ita difficillime esse alios improbos suspicatur.

This all seems so overwrought that we begin to wonder about its sincerity; we could almost believe that Augustinus would have been surprised to learn that in the case in question his explanation is absolutely correct. For if Augustinus believed wholeheartedly in what he wrote here, it is difficult to understand a remark he makes elsewhere. Alciatus had re-interpreted D.10.1.13 on the grounds that the

19 Operum tomus secundus (cit., note 6). col.1516.

20 P.E. Viard, André Alciat (1492-1550), (Paris,1926), pp.260-261. G.L. Barni, 'Notizie del giurista e umanista Andrea Alciato su manoscritti non glossati delle Pandette', *Bibliothèque d'Humanisme et Renaissance* 20 (1958) 25-35, at p.30. H.E. Troje, *Graeca Leguntur. Die Aneignung des byzantinischen Rechts und die Entstehung eines humanistischen Corpus iuris civilis in der Jurisprudenz des 16. Jahrhunderts*, (Köln/Wien,1971), pp.24-25.

21 *Emend. et Opin.* III.3. (p.CXLVII, lines 23-24).

22 *Emend. et Opin.* III.3. (p.CXLVII, lines 24-29).

23 *Emend. et Opin.* III.3. (p.CL, line 31, to p.CLI, line 4). The quotation continues, 'Ab eadem credulitate manavit ...'

standard version of the text was based on a mistranslation.²⁴ Whereas the vulgate translation spoke of *quinque pedes*, the original Greek of the Florentine manuscript read δύο πόδας. In fact, however, the vulgate translation is perfectly correct, for the Florentine reads πέντε πόδας. The mechanism of Alciatus' error is the standard one: Bologninus' notes have the erroneous reading δύο πόδας, which Alciatus naturally took to be the reading of the Florentine. Augustinus, however, who identified precisely how errors arose in Alciatus' work in this respect, comments as follows:²⁵

... in qua nescio qua de causa Alciatus noster scriptum esse Florentiae ait τὰ δὲ ἄλλα δένδρα δύο πόδας, cum non δύο sed πέντε sit.

In the context this seems a strange remark. Why does he not say that Alciatus must have been misled by trusting his unreliable source? That an element of scepticism lurked in Augustinus' mind is suggested by a text which drew his particular attention. In D.48.17.1.1 the Florentine manuscript reads as follows:

Expilatores qui sunt atrociores fures hoc enim est expilatores in opus publicum vel perpetuum vel temporarium dari solent ...

The *hoc* has been added above the line, and *dari* has been changed from *dare*; Mommsen indicates that these alterations were executed by the ancient corrector of the manuscript. The text of early editions of the Digest, such as would have been before the eyes of the humanists, indicates by the standard means of leaving a gap, or by the addition of the word *Graecum*, that a Greek word is missing in this text. In Book I.11 of his *Parerga* of 1538 Alciatus attempts to restore this text as follows:²⁶

'Expilatores - inquit Ulpianus - qui sunt atrociores fures, id est λωποδύται, in opus publicum dari solent.' Quibus verbis apparet eos dici expilatores qui viatoribus noctu pallia et vestes diripiunt, quo crimine infamis fuit apud Graecos Phayllus, ut est apud Aristophanis Ἀχαρνεύσω interpretem. Sunt autem atrociores fures quoniam noctu furtum committunt vi privatae adiunctum - metu enim, relicto pallio, diffugiunt viatores; tametsi verisimile sit *expoliatores* a iureconsulto eos potius esse dictos. Dictionem vero Graecam eo modo reponendam et antiqui plerique codices et Etruscae Pandectae nobis indicarunt, cum alii aliter coniectura inani comminiscerentur.

Alciatus cites the text with the Greek word λωποδύται. He then explains the meaning of the word. A possible objection is raised: this meaning of λωποδύται is more apposite to *expoliatores* than to *expilatores*. Then he dismisses the importance of this objection. By using the 'strongly corroborative adversative particle' *vero*,²⁷ he

24 *Dispunctiones* II.6, in the collection bearing the title: *Paradoxorum ad Pratum lib.VI. Dispunctionum lib.III. In treis lib. Cod. lib.III. De eo quod interest lib.I. Praetermissorum lib.II. Declamatio una.* [Milan, Alexander Minutianus, 1518]. 2°. [Copy: I:RBNC].

25 *Emend. et Opin.* II.11. (p.CXXVI, lines 1-3).

26 *Παρέργων* iuris libri tres, cum argumentis capitum in eosdem & indice vocum, rerum, auctoritatum & locorum notatu dignorum. Basileae, ex officina Hervagiana, 1538. 2°. [Copy: D:FMPI]. Hereafter cited as *Parerga*.

emphasises that despite this objection *λωποδύται* is the true reading. He then explains why it is the true reading, namely because it is the reading of the Florentine and other manuscripts. The last sentence then means:

However, both the Florentine and a number of other old manuscripts have shown that the Greek word should be restored in that way [i.e. as stated], although other scholars [i.e. Budaeus]²⁸ have been inventing other readings by vain conjecture.

The implicit statement of method here - the need to rely on manuscript evidence rather than conjecture for the restoration of the Greek to the Digest - is Alciatus' standard position from the *Dispunctiones* of 1518 onwards.²⁹ Amidst over a hundred Greek texts tackled in his works from that date onwards we find only a handful of conjectures, and these are advanced tentatively and in one case with the explicit warning that an accurate restoration would require manuscript evidence.³⁰ The point is made explicitly in another chapter of the *Parerga* (II.7):

... videmus et Laurentium Vallam et eius professionis alios, etiam doctissimos, dum Graecas voces Pandectis nostris restituere volunt, nisi quatenus antiquorum codicum praesidio usi sunt non decimo quoque loco vera divinasse ...

Moreover, the suggestion that Alciatus was not here explicitly stating that *λωποδύται* was the reading of the manuscripts, but that the manuscripts had somehow indicated that *this was the way one should go about such restorations* (*illo modo* meaning *in this way*, rather than *as stated*), while it would nicely elide the difficulty, seems to be excluded by another treatment of the same text by Alciatus a few years after the publication of the *Parerga*. In a lecture on the Digest title *De acquirenda vel amittenda possessione*, delivered in 1540, Alciatus happened to mention our text in passing. He writes:³¹

Unde et *expilare* verbum, cum quid furto subtrahitur cuius adhuc nullus sit dominus, [*infra, De cri.*

27 Lewis and Short, ad verbum.

28 Budaeus suggested two possible conjectural readings in this text, namely *συλαγωγοί* and *συληταί*. At the end of the passage he has the note, 'Demosthenes etiam id genus fures *λωποδύτας* appellat. Effractores autem *τοιχωρύχοι* dicuntur, et *διορύκται*.' (An explanation of *λωποδύται* was not in the first edition: Altera aeditio Annotationum in Pandectas. Vaenundatur Badio [Paris, 1526], at f.6r. [Copy: EL:C/C].)

29 See especially the preface to the *Dispunctiones*: '... non sine summa trepidatione quicquam innovare ausus fui, etiam si certissimis fere rationibus adducerer, donec emendatissimis quoque codicibus nostras annotationes comprobari posse cognovissem; cum igitur et plura a nobis collata exemplaria fuissent, cum item Etruscorum Pandectas obiter ceu per transennam legere mihi datum esset, decrevi pauculas aliquas de multis insigniores tamen in codicillum observationes redigere.'

30 Cf. *Parerga* I.20; I.22; I.40, each with the tentative formulation, 'Sed quid si ... legamus/legas?' In the last case he adds, 'Quibus in verbis apparet quidem duplicem esse mendam, sed quae corrigi non nisi praesidio antiquorum codicum possit.'

31 Opera omnia in quatuor tomos legitime digesta, nativo suo decori restituta, indice locupletiss. adaucta. Basileae, apud Thomam Guarinum, 1582. 2°. Tom.I, coll.1411-1412. [Copy: D:FMPI].

exp. haer., leg.2. et l.fin.], vel si sit, cum dominus fugit et pro derelicto habet[ur], ut in iis contingit qui Graece λωποδύται [sic] vocantur, id est [qui] noctu vi adhibita fugientes viatores palliis spoliant: [leg.1. §.1. De effracto.; dixi l.i. c.xi. παρεργῶν].

There thus seems no escaping the conclusion that Alciatus was indeed espousing the reading λωποδύται, and in doing so that he attributed it to *et antiqui plerique codices et Etruscae Pandectae*.

This interpretation leaves us with a problem. Alciatus' attribution of the reading λωποδύται to the Florentine manuscript alone would have caused little difficulty. The word as a possible reading in this text has its origin in Budaeus' *Annotationes reliquae* of 1526.³² This was subsequently printed by Haloander in his Digest edition of 1529. Alciatus therefore took it to be what the vast majority of Haloander's Greek readings are, namely the reading of the Florentine. Hence the mistake. Yet something is fundamentally different here. Sometimes Alciatus attributes the reading of Haloander directly to the Florentine, sometimes vaguely to manuscript sources by using some such expression as *antiqui codices*. What is puzzling here is that Alciatus would seem to attribute the reading to both the Florentine and other manuscripts. This caused Augustinus considerable difficulty:³³

Alciatus ... lib. I παρεργῶν Noricam editionem probat et, quod nollem fecisset, addit: Dictionem Graecam eo modo reponendam et antiqui plerique codices et Etruscae Pandectae nobis indicarunt. Neque enim est ullum eo loco verbum Graecum in illis Pandectis.

Quod nollem fecisset: which I wish he had not done. This remark perhaps stops short of an allegation of bad faith, but it is nevertheless clearly a critical remark to address to one's former master. Augustinus understood well the mechanism whereby erroneous allegations of the Florentine came to appear in Alciatus' work; yet there was something askew here, given the double allegation. Alciatus' statement embodied an apparent element of deliberation, as opposed to simple carelessness, and yet, as regards the Florentine, it was simply false.

Augustinus treats Alciatus' scholarship with great circumspection in the *Emendationes et Opiniones*, and this is the only passage in which there is a whisper of criticism. Yet before aligning ourselves with Augustinus here, we have to ask what possible motivation Alciatus could have had, in the context, for stating that λωποδύται was found in a manuscript if this was not the case. On the other hand the conjectural origin of the reading from Budaeus through Haloander seems clearly established. Without endorsing Augustinus, we might set the error down to forgetfulness, oversight, false recollection, or any of a hundred incidents of scholarship. But in fact I believe the solution to the puzzle raised by Augustinus is far more interesting. The case illustrates nicely that humanist scholarship, even when

32 λωποδύται is not in fact one of Budaeus' suggested readings (see note 28, supra), but is given as a word of like meaning in his note.

33 *Emend. et Opin.* IV.16. (p.CCXLI, lines 13-19).

apparently at its weakest, still repays consideration.

Alciatus had in fact first treated of this text long before, in his *Opusculum* of 1515.³⁴ In this work he attempted to restore, largely by conjecture, the missing Greek word or phrase to some seventy texts of the Digest. Our text is already treated in this work, where Alciatus advocates the reading *τοιχωρύχοι*. He writes:³⁵

τοιχωρύχοι, id est muricidae, sunt effractores parietum, praesertim nocturni fures ... Nam hic expilatorem non puto capiendum pro fure haereditario, quia nil faceret ad titulum; alioquin legendum esset κληρονόμιον κλέπτην, quae vox cum antiquae lectionis vestigiis non admodum congruit.

What does he mean by the phrase *antiquae lectionis vestigia*? I detect three distinct meanings of *antiqua lectio* in Alciatus' work. The most frequent meaning of *antiqua* - or more usually *vetus* - *lectio* is the transmitted vulgate reading, the reading which has been handed down over the centuries. Thus, for example, the Greek reading in D.1.1.6.1 was transmitted in the vulgate tradition as the meaningless gibberish *fonai monai*. Alciatus writes:³⁶

Si quis parum a veteri lectione velit immutare, is legat φωνή μόνη.

Thus the *vetus lectio* here is the vulgate reading. This usage is emphasised in the Greek restoration of D.1.3.3 in the same work where he also advocates sticking closely to the transmitted reading (suggesting *θαμινά* for *entomina*):³⁷

... ita enim a veteri vulgataque lectione minimum discedimus.

The second possible meaning I have found only once in the corpus of Alciatus' work. *Antiqua lectio* here means the true or original reading. This usage is evidenced in the rubric to Chapter I.12 of the *Dispunctiones*:

In titulo De publicanis quoddam responsum *antiquae lectioni* restituendum esse.

In this chapter Alciatus is not rejecting another scholar's suggested innovation in favour of the transmitted vulgate reading; he is restoring the text from the vulgate to the true, pristine reading. And thirdly we find the meaning of an 'ancient' manuscript. Thus in the rubric to *Dispunctiones* I.11 he writes:

In titulo De privilegiis creditorum Papiniano tribuitur responsum quoddam corruptissimum ... Id nos *ex antiqua lectione* sic reponimus ...

Thus the phrase *antiquae lectionis vestigia* could mean, first, the traces of the vulgate

34 In tres posteriores Codicis Iustiniani [libros] annotationes, in quibus obiter quamplurima aliorum authorum loca explanantur. Eiusdem Opusculum, quo Graecae dictiones fere ubique in Digestis restituuntur. Argentinae, Ioannes Schottus pressit, 1515. 2°. [copy: EL:O/StJ]. The Opusculum is hereafter cited as *Opusc.*

35 *Opusc.* sig. g4r (f.37r).

36 *Opusc.* sig. f4v (f.28v).

37 *Opusc.* sig. f5v (f.29r).

reading; but here there is no gibberish transmitted in the vulgate. Secondly, it could mean the traces of the true reading, which would remain ambiguous. Thirdly it might mean the traces of an ancient, that is manuscript reading. In the end the phrase ought not perhaps to be dissected like this, but considered as a whole, with the accent on *vestigia*. Can we find a distinct meaning for *vestigia* as a philological usage in Alciatus' work?

The expression *vestigia* in a philological context is used only three times in Alciatus' work; on each occasion it is used to indicate the traces of pseudo-Greek letters depicted by Latin scribes for the Greek readings in early manuscripts of the Digest. The first usage is particularly relevant since it occurs in the very same work, just a few pages before the instance under discussion. Restoring the Greek to D.4.9.1.3, Alciatus suggests in passing a number of Greek restorations to C.2.55.4.6. He concludes:³⁸

Sane in quibusdam codicibus desunt ibi Graecae dictiones, quas ex nostro exemplari potes restituere. Nos hunc locum ita discussimus coniectati ex antiquo codice in quo *paucula quaedam vestigia* adhuc supererant.

There are three difficulties of humanist philological terminology in this short passage. Briefly, the reference *in quibusdam codicibus* may refer to manuscript or printed copies; I suspect it means no more than contemporary texts, and I doubt whether *quibusdam* has any numerical connotation. Secondly, *ex nostro exemplari* in standard humanist usage could easily mean *from my manuscript copy*; what I take it to mean here, however, is rather, *from this work, the Opusculum, which you, reader, have in front of you*. Thirdly, the case which interests us, the *antiquus codex* in which there were still *paucula quaedam vestigia*. *Antiquus codex* could mean an early printed edition. Yet it is unlikely that traces of the Greek reading were to be found in such a context. The obvious interpretation is that Alciatus is here citing an early manuscript of the Code which retained, as these manuscripts often do, distinct, if incoherent, traces of Greek letters which might provide a clue for conjectural restoration.

The second occurrence of the word *vestigia* in Alciatus' work is particularly interesting since it involves the very phrase *antiquae lectionis vestigia*. This occurs in Book 2 of the *Parerga* (1538) and concerns D.26.7.46.1, which contains the Greek word ἐπιμεληταί. Alciatus' discussion of the text in the *Parerga* runs as follows:

Alterum est quod Paulus ait, Reipublicae curatores qui apud Graecos vocentur μηδικοί [discussion of μηδικοί]. Nobis tamen *antiquae lectionis vestigia quaedam* indicarunt non μηδικοί sed ἐκδικοί scriptum, de quibus alibi non pauca scripsimus. Alii apud Paulum legunt ἐπιμεληταί, quod haec vox generaliter curatorem significat [discussion of ἐπιμεληταί]. Sed mihi prior lectio antiquorum codicum apicibus magis accedere videtur.

38 *Opusc.* sig. f6r (f.30r). Alciatus' text reads *erant super*.

OSLER

The phrase *antiquae lectionis vestigia quaedam* raises the same demand for definition here, but in this case the last sentence puts the matter beyond dubiety. That the reading is said to approach more closely to the *apices* of *antiqui codices* can only be a reference to a manuscript.

The final example contains no ambiguity. It occurs in *Parerga* IX.18, and involves the citation of a manuscript which Alciatus claimed personally to have owned. According to his asseveration here, this manuscript had the Greek word *ἀσυναπτῶς* in D.45.1.133, where the Florentine and other manuscripts read *ergo si actum sit*. Alciatus writes:

Sic autem legendum esse testimonio est antiquus meus codex. At doctores nostri, dictionem Graecam non intellegentes, Latinas voces supposuerunt, et pro dictione *Graeca*, quam librarii effinxerant iudicantes Graecam vocem deesse, scripserunt *ergo*, et pro *ἀσυναπτῶς* *si actum sit*, sane quam ridicule.

He concludes:

... sed ex *vestigiiis antiquorum librorum* apparet verius esse quod ego reposui.

In a separate treatment of the same text in his legal commentary on this Digest title, the final statement runs:³⁹

... sed ex *vestigiiis antiqui codicis* apparet verius esse quod ego reposui.

For our purposes the essential point is that Alciatus here is clearly once again using the word *vestigia* in a technical, philological sense to refer to traces of Greek letters in an early manuscript, themselves incomplete and mangled, but serving as a guide to the reconstruction of the original Greek reading. Other humanist sources also use the term *vestigia* in precisely this way, to such an extent that we might even regard it as a *terminus technicus* of humanist philology.⁴⁰

The evidence of humanist philological usage, and in particular that of Alciatus himself, would thus seem to indicate that the phrase *antiquae lectionis vestigia* in the *Opusculum* should be understood as a reference to a manuscript with traces of Greek in it. Certainly, this evidence is offset to an extent by the consideration that a humanist scholar was perfectly capable of employing the same term to mean something quite different a few lines later; this we have seen already in the case of Alciatus' usage of *antiqua lectio*. Yet I believe it is too much of a coincidence that at this point Alciatus uses precisely the apposite phrase, well attested in his philological lexicon, for traces of Greek in a manuscript. Surely this is the key to the mystery

39 *Op.cit.* (note 31), Tom.II, col.943.

40 See e.g. Budaeus, *Annotationes and Annotationes reliquae*, at the following texts (page references to the editions: Parisiis, ex officina Roberti Stephani, 1535. 2°; and Basileae, apud Nic. Episcop. iuniorem, 1557. 2°): D. 2.13.7.1 (*Annot.* 172/129A), D. 47.2.43.9 (*Annot.* 144/108C), D. 47.2.43.9 (*Annot. Rel.* 3/292D), D. 50.13.1.pr. (*Annot. Rel.* 128/388C), D. 50.16.239.2 (*Annot. Rel.* 141/398C).

which Augustinus could not solve in 1543. Alciatus' reference to *et antiqui plerique codices et Etruscae Pandectae* in the *Parerga* is, as usual, inexact, but recalls the fact that he had once seen traces of Greek in a manuscript. Indeed, the connection between the two passages is made by Alciatus himself.

Although the *Parerga* were first published in 1538, we know from Alciatus' correspondence that he was working on the book in the years immediately preceding 1531, and that he at first anticipated publishing it in that year.⁴¹ Thus we find a note in another work dating to 1531 already alludes to the *Parerga*:⁴² and a chapter of the work is entitled *De Codice Theodosiano nuper edito*,⁴³ a reference to Sichardus' edition of 1528. The *Parerga* thus reflects the same background as the revision of the *Opusculum* which Alciatus' published in 1531. In this revision Alciatus made the following short addition to his text:

τοιχωρύχοι, id est muricidae, sunt effractores parietum, praesertim nocturni fures ... Nam hic expilatorem non puto capiendum pro fure haereditario, quia nil faceret ad titulum; alioquin legendum esset κληρονόμιον κλέπτην, quae vox cum antiquae lectionis vestigiis non admodum congruit <in qua fere λωποδύται legitur; sunt hi qui vestes hominibus auferunt>.

We have to consider that this revision of the text of the *Opusculum* was executed at precisely the same time that Alciatus wrote the chapter of the *Parerga* in question. The one thus complements the other. In the *Parerga* Alciatus stated that λωποδύται was the reading of *antiqui codices*, and if our analysis of the meaning of *antiquae lectionis vestigia* is correct, Alciatus would thus be reiterating here that the reading λωποδύται was to be found in a manuscript.

At first encounter this may seem incomprehensible. In the first version he states that he saw a manuscript, but the reading was impossible to decypher; then he alters this text, solely on the strength of Haloander's edition, to state explicitly that the reading of this manuscript was λωποδύται. This apparent absurdity loses its mystery as soon as one acquires a closer acquaintance with the level of inaccuracy in the citation of sources which constituted the norm in humanist philology. The manner in which Alciatus altered his text in the successive revisions of the *Opusculum* speaks volumes in this respect. I will cite but two examples which are particularly relevant here since they also seem to concern manuscript evidence, or the lack of it.

41 'Cudo nunc noua quaedam studiosis (ut arbitror) non displicitura, nam et de verb. oblig. commentarios latinos quotidie apparo et ea praeter Παρέργων alios.' Letter to Bonifacius Amerbach of 27 August 1529, in: A. Hartmann (ed.), *Die Amerbachkorrespondenz*, Basel 1942 ff., letter 1372 (vol. III, 439-440, at 440, lines 30-33). On Alciatus' initial intentions, and the first delay, see further his letters to Amerbach of 31 Aug. 1529 (letter 1374, Vol. III, 441-443, at 442, lines 33-34); of 29 Sept. 1530 (letter 1467, vol. III, 537-538, at 538 lines 24-29); and of 5 Jan. 1531 (letter 1486, vol. IV, pp.2-3, at p.2, line 9 to p.3, lines 1-2).

42 *Paradoxa* II.8: added in the third edition of 1531 we find the anticipatory note, *ut παρεργῶν lib.III. ostendi*.

43 *Parerga* II.26.

The first example is from the revision of 1518,⁴⁴ and relates to D.1.3.2. In this text Marcian quotes a passage from a lost work of the Stoic philosopher Chrysippus entitled *περὶ νόμου*. Alciatus' treatment of the text in the first edition runs as follows:⁴⁵

Chrysippus in libro quem fecit ...] Adde, me auctore, *περὶ θεμίστων* ... ex indicii veteris scripturae coniectavi.

Let us pass over the vexed question of the meaning of the phrase *ex indicii veteris scripturae*. At any rate, Alciatus states that he has conjectured on the basis of certain clues, manuscript or otherwise, in arriving at the reading *περὶ θεμίστων*. By 1518, however, he had access to the true reading, *περὶ νόμου*, through Bologninus' manuscript notes of the readings of the Florentine. This, then, is how the revised text appears:

Chrysippus in libro quem fecit ...] Adde, me auctore, *περὶ νόμου* ... ex indicii veteris scripturae coniectavi.

In other words, simply because it is practically convenient for the shape of his text, he makes a clean excision of the former reading, *περὶ θεμίστων*, and substitutes the reading of the Florentine which he found in Bologninus, *περὶ νόμου*, leaving the statement *ex indicii veteris scripturae coniectavi* to stand intact.

The second example is drawn from the same 1531 revision which affects our text. In D.14.3.5.8 the reading of the Florentine manuscript is *νεκροθάπτας*. Alciatus' earlier treatment of the text reported what were in fact two erroneous conjectures:⁴⁶

In vacuo illo loco *ταφέα* reponendum, ut sentit Budaeus. Albucius tamen Aurelius *κτεριστήν* mavult.

In his edition Haloander was to print the latter of these conjectures, *κτεριστήν*, not the reading of the Florentine. As was his standard practice, Alciatus adopted Haloander's reading, believing that it was founded ultimately on manuscript authority. And in revising his text he states as much explicitly:

In vacuo illo loco *ταφέα* reponendum, ut sentit Budaeus. Albucius tamen Aurelius *κτεριστήν* mavult, <*cui antiqui codices consentiunt*>.

A study of such revisions leads to the inescapable conclusion that the manner of the revision of the individual sections of the work depended solely on the convenience of the existing text. The real source, whether Bologninus or Haloander, is never once mentioned. Whether a reading was simply substituted, an earlier choice of alternatives excised, a personal endorsement added, or manuscript authority

44 From 1518 onwards the *Opusculum* was incorporated in Alciatus' collection of works, *Paradoxa* etc., as Book 2 of the *Praetermissa*.

45 *Opusc.* sig. f5r (f.29r).

46 *Opusc.* sig. f16 (f.30v). In the first edition the latter conjecture is attributed to Fabius Calvus.

alleged, depended on nothing other than whim and the existing format of the passage of the *Opusculum* requiring to be altered. The two examples given above reveal, first, that Alciatus did not take care to distinguish between conjecture and manuscript reading, and secondly that the reading found in Haloander could be attributed directly to a manuscript source. Viewed in this light the addition of the words *in qua fere λωποδύται legitur*, referring to a previous allegation of manuscript authority, made on the strength of Haloander's edition, loses altogether its mysterious character. On the contrary, such a wildly inaccurate mode of citation of sources reflects precisely how Alciatus set about revising his text. We should therefore not be misled by the imprecision, so remarkable to our eyes, of the method by which Alciatus attributes the word λωποδύται to the *antiquae lectionis vestigia*, into dismissing this interpretation as impossible. The character of Alciatus' revision of this work in both 1518 and 1531 indicates that not only is such an allegation of manuscript authority possible, but is actually standard practice.

On this interpretation, then, Alciatus is saying in the *Opusculum* of 1515 that a manuscript had traces of a Greek reading in D.47.18.1.1. In his revision of 1531 he is saying, on the strength of Haloander, that a good manuscript reading (so we might paraphrase his approach) was λωποδύται. In the *Parerga* of 1538 he is saying that λωποδύται was the reading of the Florentine and the other manuscript he had seen with Greek *vestigia*. If this is the correct interpretation of what Alciatus is saying, an obvious question presents itself: could it possibly be true that he had seen a manuscript with traces of Greek in this text?

There is no Greek word here in the Florentine manuscript. The Florentine dates almost certainly to the time of Justinian; it was copied by Greek speaking scribes; it was corrected by a contemporary corrector; a 6th century scholion, probably by the Digest compiler Dorotheus, translates the whole text very closely and renders *expilatores* by the phrase οἱ ἐκδύοντες τοὺς ἀνθρώπους⁴⁷ - surely an awkward circumlocution if a technical Greek word for *expilatores* stood in the text. All the evidence seems to deny the likelihood that a Greek word ought to stand in this text.

Yet, even in the most unlikely circumstances, even the most unlikely humanist scholar can still point us in the right direction. A survey of all the surviving 12th century manuscripts of the *Digestum novum* reveals only the customary indications of missing Greek, either a gap in the text or the addition of the word *Graecum*; all that is, except one. The black swan is Torino E.1.12. This manuscript has vestiges of Greek letters in this text (fol. 170v). The pseudo-Greek letters make no sense as they stand, and it is difficult to guess what word may have lain behind them; they seem to spell ΤΩΠΕΣ, as a Greek transliteration of the last five letters of *expilatores*. These letters sit neatly on the line of the text and fill a gap between the preceding ē

47 BS 3606, 12; cf. BT 2929, 4, where the same expression occurs.

[est] and the following § *Expilatores*.⁴⁸

Without inspecting the manuscript itself, there is no sense in commenting at length on the phenomenon. In general, we may say that it raises the usual two possibilities for a vulgate reading, namely that it represents a good reading derived through *contaminatio* from a lost manuscript source, or that it is a Medieval conjecture, whether true or false. The analogous possibilities in the case of a garbled Greek reading in the vulgate where there is no Greek in the Florentine are that it indicates that a Greek word is indeed required in this text, or that it is a Medieval addition. One perhaps ought not altogether to reject the capacity for dealing with Greek in the Middle Ages, especially in the 12th century; the gibberish here might, then, have its ultimate origin in an intact Greek word conjectured by a Medieval scholar with a capacity for Greek.

Yet I tend to reject this explanation. The pseudo-Greek letters in Torino E.1.12 seem to me in all probability to represent precisely what they represent in all other such cases in the Digest tradition: a Latin scribe's attempted representation, either directly or at one or more removes, of a good Greek reading in the manuscript tradition. If this is indeed the case, we must conclude that even Greek readings, or at least indications of them, may be found in the vulgate tradition where the Florentine is silent. Truly there is more in the vulgate tradition than is dreamt of in Mommsen's edition; and truly there is more than madness in the method of the humanists.

DOUGLAS J. OSLER

48 See plate at p. 95.

seruieralli pena. ul' honestiores:
pena relegationis afficiendi er.

Parc. l. i. p. iud. Sed si ncliu furtu
fecer. ad ius ordinariu remittendi
Paul. l. i. sig. **P**iles qui in furto
bancario apprehensus e: igno
minia muti debz. Ve effractionibz.
l. p. l. et expilauibz. R
iii. de offi. **O**mnis qui car
cere effracto euaser: sum
du supplam diu frs emlio
tioni rescripser: Saturnin' p. ba
cos quide. arrete eruperunt. siue
effractus foribz. siue conspiratioe
cu' cetis qui in ead' custodia erunt:
capite puniendos. q' si p. neqle
gentia custodi' euaser: leuius pu
niendos. **E**xpilatores qd' e' ato

Parc. l. ii. p. iud. **O**mnis eu. ante r
scripser. electione ce. utru' quisue
lit crim' expilate hrditatis extra
ordine ap' pfectu urb' ul' ap' pre
fidem agere: an hrditate a posses
sionibz. iure ordinario uenditae.
Paul. l. iii. R. **R**es hrditarias ei
um hrdum fuisse comites: 7 id
cu' qui expilate hrditatis crimen
obicit: 7 opuniunt: 7 coheredi p. fu
isse uideri.
Hermog. l. iii. q. i. **U**xor. expi
late hrditatis crimine id arcon
toto q' dicitur pecunia abstrul. erit. qn
quentio abstinere iussit. p. un
na affrica un' erat: 7 urbe. 7 italia.
oportet aut' eque 7 ineffractori
7 in cetos supra scriptos. causa co

beret' paccutione ex
pilate hrditatis. sicut oratione
dnu orare cauet'

Ip. l. viii. de offi. **S**i expilate
hrditatis crim' intendatur p'ses
p. uincit' cognitione sua scemo
dare debz. cum n' furtu agi n' pot.
solum sup' auxilium p'fidis. appu
ret aut' expilate hrditatis crim'.
eo casu intendi posse: quo casu fur
tu agi n' pot. scil' aut' adita hrdita
tem. ul' p' adita antiqua res ab h'r
de possesse s. Nam in hoc casu fur
tu actione ne oportet: palam e. qui
uis ad exhibendu agi posse. cu' qui
uenditae. turus exhiberi desider:
palam sit.

Parc. l. ii. p. iud. **O**mnis eu. ante r
scripser. electione ce. utru' quisue
lit crim' expilate hrditatis extra
ordine ap' pfectu urb' ul' ap' pre
fidem agere: an hrditate a posses
sionibz. iure ordinario uenditae.

Paul. l. iii. R. **R**es hrditarias ei
um hrdum fuisse comites: 7 id
cu' qui expilate hrditatis crimen
obicit: 7 opuniunt: 7 coheredi p. fu
isse uideri.

Hermog. l. iii. q. i. **U**xor. expi
late hrditatis crimine id arcon
toto q' dicitur pecunia abstrul. erit. qn
quentio abstinere iussit. p. un
na affrica un' erat: 7 urbe. 7 italia.
oportet aut' eque 7 ineffractori
7 in cetos supra scriptos. causa co

Paul. l. i. **S**i rem. hrditaria
ignotans in ea causa ce. surripui
si: furtu te facere. R. paul. rei h'r
ditatis furtum n' sit. licet p' q'