

## ἘΝΑΓΙΝΩΣΜΑ YET AGAIN

*Amicus Plato, sed magis amica veritas.*

Recently,<sup>1</sup> my good friend and colleague Bernard Stolte disputed the interpretation of two ‘technical’ legal terms (ἀνάγνωσμα and κεφάλαιον) used by Byzantine lawyers that had been proposed by R. Röhle.<sup>2</sup> In both cases, I am quite sure that Mr Röhle misinterpreted those words and that Mr Stolte gives them their correct meaning, so it would seem there is no need to write about the subject again. Nevertheless, I still have something to add.

As far as κεφάλαιον is concerned, it may be interesting to follow the history of this term as a means to distinguish early and late Byzantine legal texts. When Fabrot published the first edition of the Basilica (seven volumes that appeared in the years 1641-1647), the scholars of the time must have discovered soon enough that the scholia accompanying the text are of two kinds: some have been written by authors that lived in the tenth and eleventh century commenting on the Basilica text itself, while others are excerpts from earlier writings translating or commenting on Justinian’s legislation. Of course, the Byzantinists of the seventeenth century must have realized that these ‘old’ scholia, written by lawyers who had access to sixth century manuscripts of the Digest and the Code, are far more important than the ‘new’ ones; it would not surprise me if great scholars like Cujas, Ducange or Fabrot himself did already know that quotations using the term κεφάλαιον are one of the means to distinguish new scholia from old ones. If they did so – I must confess I never took the trouble to find out – their knowledge seems to have got lost afterwards, for when Byzantine legal studies started flourishing again in Germany in the nineteenth century, Heimbach explained this method in his *Prolegomena Basilicorum*<sup>3</sup> in terms that suggest he figured it out for himself. Nevertheless, in the early twentieth century this knowledge was apparently forgotten again, which is why Scheltema<sup>4</sup> explained it again and more fully forty years ago.

As Mr Röhle, in his article cited above, misunderstood the meaning of the term κεφάλαιον again – in his opinion, Byzantine lawyers would have called a fragment of the Digest δῖγεστον when they simply mentioned it and κεφάλαιον when they quoted parallel texts, which seems to me wildly improbable – it may be useful to repeat his explanation. In Greek texts of the sixth century, a fragment of the Digest was called a δῖγεστον (and a

<sup>1</sup> B.H. Stolte, ‘Further to understanding the marginal gloss of the corrector ordinarius in the codex Florentinus on fol. 439r’, *TRG* 73 (2005), pp. 385-389.

<sup>2</sup> R. Röhle, ‘Zum Verständnis der Randnotiz des *corrector ordinarius* im Codex Florentinus auf Fol. 439R’, *TRG* 72 (2004), pp. 263-267.

<sup>3</sup> C.G.E. Heimbach, *Basilicorum libri LX*. Vol. VI,1: *Prolegomena*, Lipsiae 1870 (repr. Amsterdam 1962), p. 20f.

<sup>4</sup> H.J. Scheltema, ‘Subseciva. III. Die Verweisungen bei den frühbyzantinischen Rechtsgelehrten’, *TRG* 30 (1962), pp. 355-357 (repr. in: N. van der Wal/J.H.A. Lokin/B.H. Stolte/R. Meijering [collegerunt], *H.J. Scheltema Opera minora ad iuris historiam pertinentia*, Groningen 2004, pp. 116-118

constitution of the Code a διάταξις); probably the Greek word was written in Latin letters: *digeston*. Latin texts<sup>5</sup> of the same period, such as the ‘paratitla’ and other additions to the Epitome Juliani and the letters of pope Gregory the Great, show that *digestum* was used in Latin in the same sense. The word *κεφάλαιον* may have been in use at that time<sup>6</sup> in the general sense of ‘chapter’ (of any kind of book), but in its ‘technical’ legal sense it belongs to the vocabulary of the later Byzantine lawyers who wrote scholia on the Basilica; when they quoted a text by mentioning the numbers of book, title and chapter (βιβ. – τιτ. – κεφ. –), they meant by it a chapter of the Basilica (corresponding to a δίδεστον, a διάταξις or even a fragment of one of Justinian’s Novels).

However, all this has no direct bearing on the Greek remark occurring in the codex Florentinus of the Digest (in the margin of f. 439<sup>r</sup> of the first volume) that formed the starting point of Mr Röhle’s article. For clarity’s sake I will quote it again, adding accents and breathings, which the sixth century scribe of course did not write:

τοῦτο τὸ ἀνάνγνωμα τελευταῖον ἔστιν τοῦ προλαβόντος τίτλου ὅπου τὸ σημεῖον.

The point at issue here is the meaning of ἀνάγνωμα. First of all, Mr Stolte is doubtlessly right in assuming that this is the correct form of the word; it does not matter much if the writer of this note wanted to use the variant form ἀνάγνωμα or left out the σ by mistake, but he certainly made a mistake in doubling the letters αν. Mr Röhle proposes reading ἀν’ ἀνάγνωμα, in which ἀν’ would be the shortened form of the preposition ἀνά (meaning ἄνω = *supra*, ‘further back’); but this seems to me as farfetched as to Mr Stolte, if only because τοῦτο (‘this here’) and ἀν’ (‘further back’, also ‘somewhere else’) form an irreconcilable contradiction. Furthermore, I agree with him too in believing that ἀνάγνωμα does not mean ‘a text read aloud’ (as assumed by Mr Röhle), but quite simply ‘a passage of a text’ or in the present case (viz. a remark written by the corrector in the margin of a Digest manuscript) ‘a fragment of the Digest’. Of course there is no doubt that in classical and in Byzantine Greek ἀναγινώσκειν meant, just like *legere* in Latin, ‘reading aloud’; but it is also true that in ancient and in Byzantine times, reading was practically always done aloud. In our own times, we have got used to the fact that literate people generally can read written and printed texts silently and at great speed; we only resort to reading aloud or to moving our lips without sound when we want to learn a text by heart. However, I believe that in Antiquity people who could read (a far smaller minority than nowadays in modern society) normally did it aloud; the ability to read silently and quickly must have been exceptional.

<sup>5</sup> See N. van der Wal, ‘Die Paratitla zur Epitome Juliani’, *SG II* (1985), pp. 93-137 (97 note 17). The glossators seem to have been the first to use the term *lex* in this sense.

<sup>6</sup> The division in chapters of Justinian’s Novels in modern editions was introduced by Contius in the sixteenth century; in Byzantine sources, one finds traces of a (different) division in διαίρεσεις.

Taking this situation into account, the careful and meticulous study of all passages in the scholia to the Basilica containing the word ἀνάγνωσμα presented by Mr Stolte is of course very useful, but perhaps unnecessary: one could already expect the word to mean just a text quoted to prove something, without any special need to read it aloud. This impression is strengthened considerably by the fact that in late Latin, *lectio* means exactly the same thing. I may be forgiven for quoting just one example: Ammianus Marcellinus describes in his history four different kinds of bad lawyers, one of which, he says, promises you to get you acquitted by the court no matter what crime you have committed, in the following words:

[Res gestae XXX 4] *Et si voluntate matrem tuam finxeris occidisse, multas tibi suffragari lectiones reconditas pollicentur, si te senserint esse nummatum.*

‘And if you pretend you have wilfully murdered your own mother, they promise you there are many hidden texts that plead in your favour – if they have got the impression that you are well-heeled.’

Of course, in Ammianus’ time, before the codification by Justinian, the sources of Roman law were such a complex mass of different writings that a lawyer could convincingly promise to produce, to prove his point, *lectiones reconditas*, hidden text passages that nobody had ever found or quoted before.

This being said, there is just one of the texts mentioning the word ἀνάγνωσμα in the scholia to the Basilica (BS 409/23) which Mr Stolte, in my opinion, completely misunderstands. He is not the first to do so. Already in 1913 Hans Peters<sup>7</sup> concluded from the version given by Heimbach (who mistakenly printed ἐπὶ ἀναγνωσμάτων ἰδικῶν instead of ἀπὸ ἀναγνωσμάτων ἰδικῶν) that in this text, Thalelaeus was referring to special lectures (‘Seminarübungen’) given by Patricius in Berytus around 500 A.D.; in 1925 Paul Collinet<sup>8</sup> agreed with this interpretation. However, in 1940 Scheltema<sup>9</sup> presented in his inaugural lecture the correct text of the manuscript (with ἀπὸ) and stated that according to Thalelaeus, Patricius had been refuting Eudoxius’ opinion by quoting texts referring

<sup>7</sup> H. Peters, *Die oströmischen Digestenkommentare und die Entstehung der Digesten*, I, [Berichte über die Verhandlungen der Königl. Sächsischen Gesellschaft der Wissenschaften zu Leipzig, Philologisch-historische Klasse, 65/1], Leipzig 1913, p. 64.

<sup>8</sup> P. Collinet, *Histoire de l’école de droit de Beyrouth*, [Études historiques sur le droit de Justinien, 2], Paris 1925, pp. 181, 194, and 238f..

<sup>9</sup> H.J. Scheltema, *Opmerkingen over Grieksche bewerkingen van Latijnsche Juridische bronnen*. Openbare les gehouden bij den aanvang zijner lessen als Privaat Docent in het Byzantijnsche recht aan de Universiteit van Amsterdam op Dinsdag 16 April 1940, Zwolle 1940, p. 8 (repr. in: Van der Wal/Lokin/Stolte/Meijering, *H.J. Scheltema Opera minora*, pp. 189-202 (193)); see also H.J. Scheltema, *L’enseignement de droit des antécédents*, [Byzantina neerlandica. Series B: Studia, I], Leiden 1970, p. 8 note 33 (repr. in: Van der Wal/Lokin/Stolte/Meijering, *H.J. Scheltema Opera minora*, pp. 58-110 (65 note 33)).

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specially to the problem (ἰδιὰ ἀναγνώσματα) instead of the general legal rules mentioned by Eudoxius; in other words, by applying the maxim *lex specialis derogat legi generali*. And so, Scheltema concluded in 1940, the study in Patricius' private house, where he is supposed to have lectured for a few selected students, disappears from the light of history. Why Mr Stolte has pulled it back again, out of a conviction that Scheltema was wrong or – more probably – by an oversight, I do not know. Anyway, I am quite sure that the word ἀναγνώσμάτων in this text does not refer to any lectures pronounced in a lectureroom of any kind; it means exactly the same as in all the other texts quoted in Mr Stolte's article.

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