

‘THERE IS SAFETY IN NUMBERS’ – WHEN WRITTEN IN FULL*

The Florentine *Index auctorum* and its *subscriptio* revisited

1.

In const. *Tanta* / *Δέδωκεν* § 20, the emperor Justinian (527-565) ruled that it ought to be known on the basis of which books of the old *iurisprudentes* the *Digest* was compiled. Justinian ordered this information to be given at the beginning of the *Digest*, so that it might be manifest for all on the foundation of which lawyers and of how many thousands of their books that temple of Roman justice, the *Digest*, had been erected. Moreover, in const. *Δέδωκεν* we read that Justinian had ruled the relevant information to be appended to that constitution.

Ne autem incognitum vobis fiat, ex quibus veterum libris haec consummatio ordinata est, iussimus et hoc in primordiis digestorum nostrorum inscribi, ut manifestissimum sit, ex quibus legislatoribus quibusque libris eorum et quot milibus hoc iustitiae Romanae templum aedificatum est. / Καὶ τοῦτο δὲ ἄριστον εἶναι κρίνοντες τὸ προθεῖναι τοῦ τῶν Digeston βιβλίου καὶ τοὺς ἔμπροσθεν νομοθέτας καὶ τὰ τούτων βιβλία καὶ ὅθεν ἡ συλλογὴ τῶν νῦν ἡμῖν ἀθροισθέντων ἐγένετο νόμων, τοῦτό τε γενέσθαι προσετάξαμεν καὶ διὰ καὶ γέγονεν· καὶ ἅμα γε τὰ περὶ τούτων ὑποτεθῆναι τῆδε τῆ θεῖα ἡμῶν διατάξει παρεκελευσάμεθα, ὅπως ἂν ἴπασιν

* Quotation borrowed from Sir David Attenborough. The present article is an elaborated and extended version of the lecture ‘Old and Less Old Light on an Old Issue. The subscriptio of the Florentine Index auctorum revisited’, given on 22 August 2016 during the 23rd International Congress of Byzantine Studies, Belgrade, 22–27 August 2016, at the Round Table “Law as a Means of Change in Byzantium”. The article is ultimately based on my study ‘Justinianus Latinograecus. Language and Law during the Reign of Justinian’, § 4.3.3 and § 7.3 (forthcoming in the volume *Latin in Byzantium. Contexts and Forms of Usage in Late Antiquity and Beyond*, to be edited by Alessandro Garcea, Michela Rosellini, and Luigi Silvano).

ἢ φανερόν, τί μὲν τὸ τῆς προτέρας ἀπειρίας τε καὶ ἀοριστίας ἦν, τί δὲ τὸ παρ' ἡμῶν ἐξευρημένον.¹

2.

The oldest manuscript of the *Digest*, the codex Florentinus – written in the sixth century, and most probably in Constantinople² – does indeed transmit what appears to be an official list of sources underlying the text of the *Digest*. It concerns the *Index Florentinus*, or rather, the so-called Florentine *Index auctorum*. In the manuscript, this *Index auctorum* bears the following heading:

Ἐξ ὅσων ἀρχαίων καὶ τῶν ὑπ' αὐτῶν γενομένων βιβλίων σύγκειται τὸ παρὸν τῶν Digeston ἦτοι τοῦ Πανδέκτου τοῦ εὐσεβεστάτου βασιλέως Ἰουστινιανοῦ σύνταγμα.³

This heading seems to echo Justinian's ruling in const. *Tanta* / *Δέδωκεν* § 20. And the main text of the *Index auctorum* is indeed highly suggestive of the sources underlying the text of the *Digest*. One example may suffice to illustrate the external features:

PAPINIANU quaestionon βιβλία τριάκοντα ἐπτά | *responson* βιβλία δεκαεννέα | *definition* βιβλία δύο | *de adulteriis* βιβλία δύο | *de adulteriis* βιβλίον ἕν | ἀστυνομικὸς βιβλίον ἕν.⁴

However, even though the above heading suggests an official nature of the *Index auctorum*, and even though the *Index* enumerates old Roman *iurisprudentes* while listing the titles of their works accompanied by the number of books of each work, it is not very likely that the

1 Const. *Tanta* / *Δέδωκεν*, § 20. On these constitutions, cf. e.g. the monograph by T. Wallinga, *TANTA / ΔΕΔΩΚΕΝ*. Two Introductory Constitutions to Justinian's Digest, Groningen 1989.

2 On the codex Florentinus, cf. e.g. D. Baldi, 'Il Codex Florentinus del Digesto e il 'Fondo Pandette' della Biblioteca Laurenziana (con un'Appendice di documenti inediti)', *Segno e Testo*. International Journal of Manuscripts and Text Transmission 8 (2010), 99-186; W. Kaiser, 'Zur Herkunft des Codex Florentinus. Zugleich zur Florentiner Digesten-handschrift als Erkenntnisquelle für die Redaktion der Digesten', in: A. Schmidt-Recla (Hrsg.), *Sachsen im Spiegel des Rechts: ius commune propriumque*, Köln 2001, 39-57; W. Kaiser, 'Schreiber und Korrektoren des Codex Florentinus', *SZ* 118 (2001), 133-219 (with further references in 133-134 note 1).

3 *Index auctorum*, rubr.

4 *Index auctorum* II, 1-6.

Index can be identified as the official list of sources underlying the text of the *Digest*. For, in that case one would expect complete concurrence between the authors and works enumerated in the *Index auctorum* and the fragments of the writings of the *iusprudentes* incorporated into the text of the *Digest*. As it is, there are marked inconsistencies: the *Index* lists authors and works not occurring in the *Digest*, and vice versa.⁵ If the *Index auctorum* cannot be regarded as the official list of sources underlying the *Digest* text, then how is it to be looked upon?

3.

The *Index auctorum* is a curious and somewhat enigmatic document that has evoked various comments in order to shed light on its nature. The *Index* has for instance been characterized as a library, or, more strictly, as a list of manuscripts in the order in which they were to be found in the library: the *Index* would originally have constituted a list of the works in the imperial law library in Constantinople, dating from the fourth century AD, viz. predating the *Law of Citations* issued in 426.⁶ Whatever one may think of this exact definition, the *Index auctorum* itself provides some clues which may be indicative of its nature and of its role in the sixth century.

4.

In the first place, at its very end the *Index* contains a tantalizing *subscriptio* indicating the total number of lines of all the books of the authors referred to. The *subscriptio* reads:

Ἐχουσι στίχ(ων) ὄλ(α)ς [μυριάδας τριακοσίας].⁷

5 Cf. P. Krüger, *Index librorum ex quibus Digesta compilata sunt*, in: Th. Mommsen (ed.), *Digesta Iustiniani Augusti*, Vol. I – II, Berolini 1868 – 1870 (repr. as: Id., *Digesta Iustiniani Augusti* (Editio maior), Vol. I – II, (100 Jahre Bürgerliches Gesetzbuch. Pandektenrecht, 61), Goldbach 2001), Vol. II, 59*-67*; L. Wenger, *Die Quellen des römischen Rechts*, (Österreichische Akademie der Wissenschaften. Denkschriften der Gesamtakademie, Band 2), Wien 1953 (repr. as: (100 Jahre Bürgerliches Gesetzbuch. Pandektenrecht, 47), Goldbach 2000), 588-589 with the notes 105-108.

6 Cf. D. Pugsley, ‘On Compiling Justinian’s *Digest* (3): ‘The Florentine Index’’, *The Journal of Legal History* 14/2 (1993), 94-105, in particular 94-96.

7 *Index Auctorum*, *subscr.*

This note was written by scribe / Manus I, viz. the scribe responsible for the *Index auctorum* in its entirety. In the codex Florentinus, this scribe inter alia also copied the constitutions *Deo auctore*, *Tanta*, *Omnem*, and, moreover, the *Index titulorum*, and the first four books of the *Digest*.⁸ Sadly, the *scriptio* omits the actual number of lines, viz. 3.000.000: in the manuscript, the text of the note breaks off after ολ. However, Mommsen's supplement μυριάδας τριακοσίας is no coincidence, for this is the number that occurs in const. *Tanta* / *Δέδωκεν* in order to indicate the total amount of lines of the works of the *iusprudentes*:

(...), a praefato viro excelso suggestum est duo paene milia librorum esse conscripta et plus quam trecenties decem milia versuum a veteribus effusa, (...) / (...)· νῦν δὲ τὰς ἀπάντων τῶν ἔμπροσθεν νομοθετησάντων συναγαγόντες γνώμας ἐκ τοῦ πλήθους ἀπὸ τῶν βιβλίων, ἅπερ ἦν μὲν ἀμφὶ τὰ δισχίλια, ἀριθμὸν δὲ εἶχε στίχων οὐκ ἐλάττω μυριάδων τριακοσίων, (...).⁹

The total amount of 3.000.000 lines occurs in const. *Omnem*, as well:

Et antea quidem, quemadmodum et vestra scit prudentia, ex tanta legum multitudine, quae in librorum quidem duo milia, versuum autem tricies centena extendebatur, (...).¹⁰

Mommsen's supplement in the text of the *scriptio* is based on the phrase *trecenties decem milia versuum* / στίχων οὐκ ἐλάττω μυριάδων τριακοσίων.¹¹ The evidential value of the *scriptio* seems to be rather limited, the more so because the text as established by Mommsen is not beyond dispute.

4.1.

According to Röhle, the scribe of the *Index auctorum* had no reason to write a note indicating the total amount of lines of the works of the *iusprudentes*. Instead, it would have

8 Cf. Kaiser, 'Schreiber und Korrektoren' (note 2 above), 137, 143-144, and 146; Mommsen, *Digesta Iustiniani Augusti* (note 5 above), Vol. I, LVI* app. ad l. 14. It should be noted that Kaiser's findings strongly deviate from Mommsen's prolegomena in the latter's editio maior. Based on a thorough palaeographical analysis, Kaiser distinguishes for the codex Florentinus no less than fourteen scribes (Mommsen: ten) and eight correctors (Mommsen: two correctores ordinarii); Kaiser, 'Schreiber und Korrektoren', 136-139 and 170-173. Regarding the scribes, I have followed Kaiser's findings.

9 Const. *Tanta* / *Δέδωκεν*, § 1.

10 Const. *Omnem*, § 1.

11 Cf. again Mommsen, *Digesta Iustiniani Augusti* (note 5 above), Vol. I, LVI* app. ad l. 14.

been his intention to indicate something far more elementary, as was already observed by Henrik Brenkman (1681-1736). In his day, Brenkman read $\sigma\lambda$ instead of $\omicron\lambda$ in the text of the *subscriptio*, and he regarded this number 230 as a reference to the total amount of lines of the *Index auctorum* itself. On this basis, Röhle re-counted the lines of the *Index*, and reached a total number of 231 lines. Therefore, Röhle proposed to read the text of the *subscriptio* – while providing it with a Latin translation – as follows:

ἔχουσι στίχ(οι) $\sigma\lambda$ – extant versus ducenti triginta.

Following Brenkman, Röhle argued that the number 230 would refer to the total amount of lines of the *Index*. The scribe who copied the *Index* would have produced the *subscriptio* as the basis for his payment per line for his copying work.¹²

4.2.

Sadly, the exact reading of the final part of the text of the *subscriptio* on f. 5^r of the codex Florentinus cannot be ascertained: both $\sigma\lambda$ and $\omicron\lambda$ appear to be possible. The reading λ seems reasonably certain; however, regarding the letter directly preceding the λ – either \omicron or σ –, only traces of ink are discernible.¹³ Nevertheless, there is a number of observations to be made.

(1) Near the text of the *subscriptio*, the parchment of f. 5^r is damaged which in all probability caused the loss of the final part of that text. However, both directly above and below the line, the *subscriptio* is accompanied by four horizontal strokes framing the text. Exactly between the final two strokes, there is an angled gap which caused Röhle to observe that it cannot be decided whether or not the text continues,¹⁴ despite the fact that these final two strokes are still quite clearly visible along the frayed border of the parchment. It was this fact that caused Mommsen to argue that after $\omicron\lambda$ at least one letter got lost, and possibly

12 For all the details, cf. R. Röhle, ‘Die subscriptio des Index Florentinus’, SZ 93 (1976), 310-311.

13 Cf. codex Florentinus, f. 5r. Here, and in what follows, I have consulted the facsimile Iustiniani Augusti Digestorum seu Pandectarum codex Florentinus olim Pisanus phototypice expressus, a cura della Commissione ministeriale per la riproduzione delle Pandette, Roma 1902-1910, Vol. I fasc. I, (1902). See the reproduction of the facsimile of the subscriptio, appended at the end of this article.

14 Röhle, ‘Die subscriptio des Index Florentinus’ (note 12 above), 310.

more, up to a maximum of six.¹⁵ Röhle's proposition to read the text of the *subscriptio* as ἔχουσι στίχ(οι) σλ does not take into account the distinct possibility – suggested by the frame of the horizontal dashes accompanying the *subscriptio* – that its text may have been longer than can presently be discerned in the manuscript.

(2) In the context suggested by Röhle, the use of ἔχουσι in the meaning *extant* 'there are' (viz. 230 lines) is rather unusual, to say the least of it. If the scribe who copied the *Index auctorum* had really intended to say: 'I have written 230 lines' in order to indicate the basis for his payment, he would have done better to use a phrase like ἔγραψα στίχους σλ', or εἰσὶ στίχοι σλ'. Instead, the scribe was almost predestined to confuse his client and future readers besides. For, by writing ἔχουσι στίχ σλ without clearly indicating the subject of ἔχουσι – στίχ is an abbreviation –, he may easily have led them to believe that the βιβλία written by the *iusprudentes* were the subject of ἔχουσι, and that these books counted 230 lines: στίχ σλ serving as the object of ἔχουσι. This would hardly have served the purpose of the scribe of the *Index*, if it was really his intention to indicate the basis for his payment.

(3) As already observed, the *Index auctorum* was copied by scribe / Manus I, who also copied the constitutions *Deo auctore*, *Tanta*, *Omnem*, and the *Index titulorum*, and the first four books of the *Digest*.¹⁶ Why would this scribe only have referred to the number of lines of the *Index auctorum* as the basis for his payment, while his copying assignment was far more extensive than the *Index* alone?

(4) In view of the fact that scribe / Manus I copied both the *Index auctorum* including its *subscriptio* and the constitutions *Tanta* and *Omnem* with their respective mention of the 3.000.000 lines, it is no more than logical to suppose that it was indeed his intention to have his *subscriptio* refer to the total amount of lines of the works of the *iusprudentes* as listed in the *Index*: thus, the βιβλία mentioned in the main text of the *Index* indeed serving as the subject of ἔχουσι. In view of the room available in the manuscript – again suggested by the frame of the horizontal dashes surrounding the *subscriptio* –, it is quite possible that scribe / Manus I did indeed write 3.000.000 in the form of an abbreviation, as already supposed by Mommsen.¹⁷ The scribe may have written – or copied from his exemplar – MT, with the

15 Mommsen, *Digesta Iustiniani Augusti* (note 5 above), Vol. I, LVI* app. ad l. 14: 'Intercidisse autem post ολ litteram minimum unam efficitur ex lineolis, quibus concluditur haec subscriptio ut aliae codicis Florentini: nam cum lineolae eae non collocentur nisi supra et infra litteras ipsas, hic adsunt tam supra quam infra locum exesum eum, qui est pone litteras ολ. deesse posse elementa etiam plura ad sex usque adnotavit Rohdius.'.

16 Cf. § 4 with note 8 above.

17 Cf. once more Mommsen, *Digesta Iustiniani Augusti* (note 5 above), Vol. I, LVI* app. ad l. 14.

letter τ (standing for τριακοσίας) written directly above the letter μ (standing for μυριάδας), despite the fact that Justinian had repeatedly forbidden the use of abbreviations.

On the basis of the above observations, it can be argued that there is more than enough reason to hold on to the text of the *subscriptio* as established by Mommsen. The words ἔχουσι στίχ(ων) ὄλ(α)ς indicate that the information provided by the *Index auctorum* and the constitutions *Omnem* and *Tanta / Δέδωκεν* ought at least to be taken seriously. The *subscriptio* of the *Index auctorum* and the reference to the 3.000.000 lines in the above passages from *Omnem* and *Tanta / Δέδωκεν*¹⁸ show that the *Index* and the constitutions, in particular *Tanta / Δέδωκεν*, are somehow connected, even though the *Index* cannot be regarded as the official list of the sources of the *Digest* as announced in *Tanta / Δέδωκεν* § 20, and as the heading of the *Index* would have us believe.¹⁹

5.

In the second place, as already observed above, both the *Index auctorum* and const. *Tanta* were written by one and the same scribe, viz. Manus I. This means that the scribe was bilingual, as the *Index* is in Greek, whereas *Tanta* is in Latin. Apart from the *subscriptio* of the *Index*, a sample of the Greek of the scribe may be found in the passage from the main text of the *Index auctorum* quoted above.²⁰ From this sample it appears that scribe / Manus I wrote perfectly normal Greek in the indications of the amount of books, such as βιβλία τριάκοντα ἑπτὰ and βιβλία δεκαεννέα. However, in his Greek he also embedded Latin words, in particular titles of works written by the *iurisprudentes*, for example *de adulteriis*; he even wrote Latin words completely in Latin script, but provided with Greek wordendings, in accordance with the Greek declension system: *PAPINIANU, quaestionon, responson, and definition*. All this results in a curious mix of Greek and Latin, which is somewhat surprising at first sight. On close inspection, however, this rather technical Latinogreek of the *Index auctorum* resembles the technical language used by the *antecessores*, the professors teaching law during the reign of Justinian. The *antecessores* lectured in Greek but incorporated many Latin technical terms – in both Greek and Latin script – provided with Greek wordendings.²¹ If nothing else, the *Index auctorum* is a testimony of a well-known legal practise in sixth century Constantinople: the use of – technical – Latin in a Greek context.

18 Cf. § 4 with the notes 9 and 10 above.

19 Cf. § 1 with note 1, and § 2 with note 3 above.

20 *Index auctorum* II, 1-6; § 2 with note 4 above.

21 Many examples in L. Burgmann, ‘Λέξεις ῥωμαϊκά. Lateinische Wörter in byzantinischen Rechtstexten’, in: W. Hörandner / E. Trapp (eds.), *Lexicographica byzantina. Beiträge zum Symposion zur*

6.

In the third place, attention has already been drawn to the fact that the *Index auctorum* does not contain abbreviations, apart from the *subscriptio* – viz. στίχ(ων) ὄλ(α)ς, and in all probability MT standing for μυριάδας τριακοσίας – and three other, minor exceptions, i.e. Greek numbers not written in full. It concerns:

Γαίου ad edictum provinciale βιβλία λβ'
 (Γαίου) de verborum obligationibus βιβλία γ'
 Παύλου ad legem Aeliam Sentiam βιβλία γ'.²²

Despite these exceptions, it can be stated that, generally speaking, the names of the *iusprudentes*, the titles of their works, and the number of books of those works are all written in full. This lack of abbreviations has been explained as the result of Justinian's prohibition of the use of *sigla*. The scribe who wrote the final version of the *Index* would have carried out this prohibition to the letter, and refrained from every abbreviation.²³

7.

It is, of course, quite possible that the prohibition of *sigla* did indeed play its part. However, this does not explain the official heading of the *Index auctorum*, nor the inconsistencies between the *Index* and the *Digest* as regards authors and works.²⁴

A possible explanation of these inconsistencies is the suggestion that the *Index auctorum* as transmitted by the codex Florentinus is the result of some sort of refashioning or upgrading. The *Index* may originally have constituted a working document, viz. an inventory or a stock-taking of legal sources available in Constantinople, composed prior to the

byzantinischen Lexikographie (Wien, 1.-4.3.1989), (Byzantina Vindobonensia, Band XX), Wien 1991; N. van der Wal, 'Die Schreibweise der dem Lateinischen entlehnten Fachworte in der frühbyzantinischen Juristensprache', *Scriptorium* 37 (1983), 29-53; J.H.A. Lokin / R. Meijering / B.H. Stolte / N. van der Wal (edd.), *Theophili Antecessoris Paraphrasis Institutionum*. With a translation by A.F. Murison, Groningen 2010, prolegomena, xxiii-xxvi, and Index X a: *Regulae Iuris* (p. 993), Index XI: *Latin Clauses* (995-996), and Index XII: *Latin Words and Expressions* (996-1028). On *Index auctorum* II,3 definition, cf. Van der Wal, 'Schreibweise', 41 note 34.

22 *Index auctorum* XX,1, XX,7, and XXV,21.

23 Cf. Pugsley, 'The Florentine Index' (note 6 above), 101-102. On Justinian's prohibition of *sigla*, cf. § 7 and § 8 below.

24 Cf. § 2 with the notes 3 and 5 above.

drafting of *Tanta / Δέδωκεν* and prior to the compilation of the *Digest*, to be used in the actual process of that compilation.²⁵ It may very well be that after the *Index* had been composed, and while the books referred to in that *Index* were being read by the commission entrusted with the compilation of the *Digest*, other legal works written by the *iusprudentes* turned up, or that works mentioned in the *Index* were rejected by the commission, and were thus not selected for incorporation into the *Digest* text.²⁶

Moreover, if the notion of the origin of the *Index auctorum* as a working document holds true, it may also explain the accidental occurrence of abbreviations and Greek numbers in the *subscriptio* and in the main text of the *Index*, and the curious Latinogreek therein. The compiler(s) of the *Index* was (were) quite probably Greek speaking, and working in the Greek context of sixth century Constantinople, but they had to cope with Latin *iusprudentes* and their Latin book titles. At a moment which cannot be further specified – though it would appear to be after the completion of the *Digest* text, perhaps synchronous with the drafting of const. *Tanta / Δέδωκεν* –, the original form of the *Index auctorum* as a working document may have been upgraded in order to transform it into the official list of sources of the *Digest* referred to in const. *Tanta / Δέδωκεν* § 20. This may account for the official heading of the *Index auctorum*, and the nearly complete absence of abbreviations in the main text of the document, quite possibly under the influence of Justinian’s prohibition of *sigla*: both the heading and the lack of abbreviations may be the result of the refashioning of the *Index*.

25 The notion of the origin of the *Index auctorum* as an inventory of available sources is by no means new, of course; cf. e.g. F. Ebrard, ‘Das zeitliche Rangverhältnis der Konstitutionen De confirmatione Digestorum ‘Tanta’ und ‘Δέδωκεν’’, *SZ* 40 (1919), 113-135 (128-130); Wenger, *Quellen* (note 5 above), 589-591; D. Mantovani, *Digesto e masse bluhmiane*, (Università degli Studi di Milano, Facoltà di Giurisprudenza. Pubblicazioni dell’Istituto di Diritto Romano, 21), Milano 1987, 148. According to Honoré, the *Index auctorum* records the books read by the *Digest* commission; it was composed by someone close to that commission in a mixture of Greek and Grecized Latin; T. Honoré, *Justinian’s Digest: Character and Compilation*, Oxford 2010, 51.

26 Some 95 years ago, Rotondi argued that there may be a connection between the order of the writings of the *iusprudentes* in the *Index auctorum* and the order as established by Bluhme within the masses of the *Digest*; cf. G. Rotondi, ‘L’Indice fiorentino delle Pandette e l’ipotesi del Bluhme’, in: G. Rotondi, *Scritti giuridici*. Volume I: Studi sulla storia delle fonti e sul diritto pubblico romano, Milano 1922, 298-339; Wenger, *Quellen* (note 5 above), 590. In more recent years, Rotondi’s view was criticized by Mantovani and in his wake Kaiser; cf. Mantovani, *Digesto e masse bluhmiane* (note 25 above), 135-148; W. Kaiser, ‘Digestenentstehung und Digestenüberlieferung. Zu neueren Forschungen über die Bluhme’schen Massen und der Neuausgabe des Codex Florentinus’, *SZ* 108 (1991), 330-350. On Bluhme’s Massentheorie, cf. F. Bluhme, ‘Die Ordnung der Fragmente in den Pandectentiteln: Ein Beitrag zur Entstehungsgeschichte der Pandecten’, *Zeitschrift für geschichtliche Rechtswissenschaft* 4 (1820), 257-472.

8.

In the previous paragraphs, reference has already been made to the prohibition of *sigla*,²⁷ viz. Justinian's ruling prohibiting scribes to use abbreviations while copying the text of his codification. This prohibition occurs in const. *Deo auctore*, § 13; const. *Omnem*, § 8; const. *Tanta* / *Δέδοκεν*, § 22; and, finally, const. *Cordi*, § 5.²⁸ This means that scribe / Manus I of the codex Florentinus who copied the *Index auctorum*, wrote the prohibition of *sigla* no less than three times, because he was also responsible for the constitutions *Deo auctore*, *Tanta*, and *Omnem*.²⁹

In *Deo auctore*, promulgated on 15 December 530, and commissioning the compilation of the *Digest*, we merely read that in order to prevent any future uncertainty arising from the actual written text of the *Digest*, Justinian ordered this text to be written without deceitful *sigla* and enigmatic abridgements, which by themselves and by their defects caused many contradictions. In case of the occurrence of the numbers of books or anything similar, Justinian did not allow these to be rendered by means of special signs of numbers, but only by means of a full sequence of letters:

Ne autem per scripturam aliqua fiat in posterum dubitatio, iubemus non per siglorum captiones et compendiosa aenigmata, quae multas per se et per suum vitium antinomias induxerunt, eiusdem codicis textum conscribi: etiam si numerus librorum significatur aut aliud quicquam: nec haec etenim per specialia sigla numerorum manifestari, sed per litterarum consequentiam explanari concedimus.³⁰

In const. *Tanta* – issued on 16 December 533 and granting the completed *Digest* full force of law –, the ban on the use of *sigla* is more outspoken, for here the prohibition comes under the rule of criminal law. Justinian decided that it was the penalty on account of *falsum* (forgery)³¹ that threatened those who in the future would dare to write down the emperor's laws by means of obscure abbreviations. The emperor expressly stated his wish that in the *Digest* everything, viz. the names of the *iusprudentes*, and the titles and the numbers of

27 On this prohibition in general, cf. e.g. Wallinga, TANTA / ΔΕΔΩΚΕΝ (note 1 above), 96-100. The expression *sigla* stems from the phrase *singula littera* 'single letters', i.e. one separate letter standing for one entire word.

28 The versions of the prohibition in *Δέδοκεν* and *Cordi* shall not be further discussed in the present article.

29 Cf. again § 4 with note 8 above.

30 Const. *Deo auctore*, § 13.

31 On the crime of *falsum* (forgery), cf. e.g. Wallinga, TANTA / ΔΕΔΩΚΕΝ (note 1 above), 101-102 with further references.

their books, ought to be made clear by means of a succession of letters, and not by means of abbreviations. Justinian continued: he who has acquired a copy of the *Digest* containing abbreviations in whatever part of the book or volume, should know that he is the owner of a useless copy. For, we do not give licence to quote anything in court from a copy that displays the evil of abbreviations in any of its parts. The scribe using *sigla* while copying the text will not only be subject to the penalty imposed on the *crimen falsi*, in accordance with what has already been said, but he will also repay the owner of the copy – or the client who commissioned it – double its price, provided that owner or the client is unaware of the existence of *sigla* in his copy:

Eandem autem poenam falsitatis constituimus et adversus eos, qui in posterum leges nostras per siglorum obscuritates ausi fuerint conscribere. Omnia enim, id est et nomina prudentium et titulos et librorum numeros, per consequentias litterarum volumus, non per sigla manifestari, ita ut, qui talem librum sibi paraverit, in quo sigla posita sunt in qualemcumque locum libri vel voluminis, sciat inutilis se esse codicis dominum: neque enim licentiam aperimus ex tali codice in iudicium aliquid recitare, qui in quacumque sua parte siglorum habet malitias. ipse autem librarius, qui eas inscribere ausus fuerit, non solum criminali poena (secundum quod dictum est) plectetur, sed etiam libri aestimationem in duplum domino reddat, si et ipse dominus ignorans talem librum vel comparaverit vel confici curaverit (...).³²

The version of the prohibition of *sigla* in const. *Omnem* – also promulgated on 16 December 533, but exclusively addressed to the *antecessores* (Justinian’s professors of law), because it regulated the emperor’s new curriculum for the study of law – contains no new information, but only adds that no judge will allow a reading aloud from a copy of the *Digest* containing abbreviations, but will order that copy to be regarded as not written:

(...), nemine iudice ex tali libro fieri recitationem concedente, sed pro non scripto eum haberi disponente.³³

We have already seen that scribe / Manus I of the codex Florentinus used abbreviations and numbers while copying the text of the *Index auctorum*, including its *subscriptio*.³⁴ Far worse is that this also happened in the main text of the *Digest*. For, on one occasion the scribe – who was responsible for the first four books of the *Digest* – wrote actual Roman numerals.

32 Const. Tanta, § 22.

33 Const. Omnem, § 8.

34 Cf. § 6 above.

He did so in the inscriptions of a large number of fragments in the third title of the first book, while indicating the relevant number of the relevant book of the ancient *iusprudentes*. One example may suffice to illustrate this:

Iulianus libro LVIII digestorum.³⁵

It can only be concluded that scribe / Manus I did not carry out his copying assignment to the letter, viz. in complete accordance with Justinian's prohibition of *sigla*, despite the fact that he copied this prohibition no less than three times. Theoretically speaking, this should have had some serious consequences, also for the codex Florentinus itself. For, by not strictly abiding by the prohibition of *sigla*, scribe / Manus I had rendered the Florentinus useless for its owner or the client who had commissioned it. Under the terms of the prohibition of *sigla* in const. *Tanta* (and in const. *Omnem*, too), scribe / Manus I was clearly guilty of committing forgery, and had to be punished accordingly. In addition to this, he was obliged to repay the owner of the codex Florentinus, or the client who had commissioned it, double its price, provided the owner or the client was unaware of the existence of the numbers and the abbreviations in his *Digest* copy. Moreover, by carrying out his copying task in defiance of the prohibition of *sigla*, scribe / Manus I had also effectively disqualified the codex Florentinus of the *Digest* for an eventual use in the courts of law. Under the terms of the ban in const. *Tanta*, it was strictly forbidden to quote from the Florentinus in legal proceedings. And in strict observance of the version of the ban of *sigla* in const. *Omnem*, every judge had no other choice than to prohibit every quotation from the codex Florentinus, and to order the manuscript to be regarded as not written. With regard to the codex Florentinus of the *Digest*, there would indeed have been safety in numbers, had they been written in full.

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35 D. 1,3,10 inscr. Roman numerals occur in the inscriptions of no less than 31 of the 41 fragments in total, viz. in D. 1,3,5-15, 17-19, 21, 24-28, 30-32, and, finally, 34-41.

‘THERE IS SAFETY IN NUMBERS’

Appendix

Reproduction of the facsimile of the *subscriptio* of the *Index auctorum* in cod. Florentinus, f. 5^r (*Iustiniani Augusti Digestorum seu Pandectarum codex Florentinus olim Pisanus phototypice expressus*, a cura della Commissione ministeriale per la riproduzione delle Pandette, Vol. I, fasc. I, Roma 1902)



