

Kent Academic Repository

Full text document (pdf)

Citation for published version

Wibier, Matthijs (2019) The so-called Appendices to the Lex Romana Visigothorum: compilation and transmission of three Late Roman private legal collections. *Athenaeum. Studi di letteratura e storia dell'Antichità*. ISSN 0004-6574. (In press)

DOI

Link to record in KAR

<https://kar.kent.ac.uk/73725/>

Document Version

Author's Accepted Manuscript

Copyright & reuse

Content in the Kent Academic Repository is made available for research purposes. Unless otherwise stated all content is protected by copyright and in the absence of an open licence (eg Creative Commons), permissions for further reuse of content should be sought from the publisher, author or other copyright holder.

Versions of research

The version in the Kent Academic Repository may differ from the final published version.

Users are advised to check <http://kar.kent.ac.uk> for the status of the paper. **Users should always cite the published version of record.**

Enquiries

For any further enquiries regarding the licence status of this document, please contact:

researchsupport@kent.ac.uk

If you believe this document infringes copyright then please contact the KAR admin team with the take-down information provided at <http://kar.kent.ac.uk/contact.html>

**The so-called *Appendices to the Lex Romana Visigothorum*.
Compilation and Transmission of Three Late Roman Private Legal Collections**

ABSTRACT: This paper is the first study to map the transmission of the *Appendices to the Lex Romana Visigothorum*. Based on full collations of all (8+3) known witnesses, it establishes the *stemma codicum* for the *Appendices*, which differs markedly from the stemma of the *LRV* text in the same MSS. Furthermore, the philological analysis shows that *Appendix 3* is not so much a legal dossier as it is a medieval attempt to fill a lacuna, whereas the composite nature of *Appendix 1* (= *1a+b*) still leaves us with three *Appendices*. Moreover, Krüger and Mommsen were mistaken to claim that Vat. Reg. lat. 1128 and Hincmar relied on the *Appendices*. Finally, MS Berlin lat. fol. 270 must have been copied from MS Ivrea XXXV (17), which goes against palaeographers' *communis opinio* about their relative dating.

1. Introduction

The late antique legal codification known variously as Alaric's *Breviary* and the *Lex Romana Visigothorum* (henceforth *Brev.*) is one of the most influential transmission vessels of Roman legal texts. The substantial collection is perhaps not as famous as Justinian's *Corpus iuris civilis* and the *Theodosian Code*, yet there is no doubt that it is by far our most important source for the text of the first books of the *CTh.* and that of the immensely popular legal handbook known as *Pauli Sententiae*¹. In addition, its more than seventy

This paper results from research carried out for a forthcoming chapter on the *Appendices* as late Roman forensic texts. I would like to express my sincere gratitude to a number of people: librarians at the Biblioteca Apostolica Vaticana and the Universiteitsbibliotheek Leiden for providing access to original manuscripts; Serena Ammirati, Marco Fressura, and Dario Mantovani for many illuminating and stimulating discussions; the extraordinarily meticulous readers of *Athenaeum* for their many valuable observations and suggestions; and Sophie Chavarria for help with checking the collations. I am solely responsible for any errors and misconceptions in this paper. This research was supported financially by the ERC (FP7/2007-2013, nr. 341102, REDHIS).

¹ The standard version of the *Brev.* contains the following parts: (1) a very extensive selection from the *CTh.* (the so-called *Theodosianus Visigothicus*); (2) an extensive selection from the post-Theodosian *Novellae*; (3) the *Liber Gai* (a late antique reworking and update of Gaius' *Institutes*); (4) an extensive selection from *Pauli*

surviving manuscript witnesses tended to act as repositories for shorter legal works from Antiquity and the early Middle Ages. That is, a considerable number of legal texts that were not long enough to occupy a codex by themselves have come down to us by virtue of having been appended to a *Brev.* manuscript at some point during the Middle Ages². Although these shorter texts have been much neglected in general, studies have recently been slowly getting on the rise³.

This paper provides the first study of the transmission of a series of short appended collections simply known as the *Appendices to the Lex Romana Visigothorum*. These *Appendices* have received virtually no scholarly analysis. Somewhat bewilderingly, the few scholars who did give them their attention have assigned different (and hence highly confusing) numberings to the discrete textual blocks in which they survive. For the sake of clarity, I begin by giving a short outline that includes a concordance referencing the extant scholarship. I myself follow numbering adopted in the only critical edition available, namely that of Krüger, which is sensibly accepted by Liebs and Coma Fort⁴:

Appendix 1 = 1a+b (Appendix brevior Hänel; App. 2 Gaudemet; App. B Lambertini)

- preserved in 8 manuscripts (**OM AL N EBP**) (full details below);
- contains 28 excerpts from the *C.Greg.* (§§1-6), *Pauli Sententiae* (§§7-19), and the *CTh.* (§§20-23 + 24-28); none of these can be found in the *Brev.*; the excerpts carry no *interpretationes*
- §§1-23 are marked by a numbering sequence (= *App. 1a*), §§24-28 are newly numbered from 1 (= *App. 1b*);
- ends with *explicit*.

Sententiae; (5) selections from the *Codex Gregorianus* and (6) the *Codex Hermogenianus*; (7) one *responsum* of Papinian. Apart from the *Liber Gai*, the imperial laws and the juristic opinions tend to be equipped with *interpretationes*, explanatory scholia-like notes. The best treatments of the *Brev.* are Liebs 2002, pp. 166-176 and Liebs 2016. See also Gaudemet 1965, which despite several factual inaccuracies is extremely informative.

² No convenient tabulation exists. For a good overview and discussion, see Liebs 2002. See also the information compiled at <http://www.leges.uni-koeln.de/lex/lex-romana-visigothorum/>.

³ See, for example, Kaiser 2017a and 2017b.

⁴ For ease of referencing the text, the numbering of Krüger's edition should be preferred. See Liebs 2002, pp. 115-116, 141-147, 181; Coma Fort 2014, pp. 217-27. The use of alternative numberings should be discontinued.

Appendix 2 (= Appendix aucta Hänel; App. 3 Gaudemet; App. C Lambertini)

- preserved in 3 manuscripts (**EBP**), which all also preserve *Appendix 1a+b* but not *Appendix 3*, low in the stemma;
- placed before *Appendix 1a+b* in the manuscripts; follows *Brev.* without *explicit*;
- contains 13 excerpts from the *C.Th.* (§§1-5), the *C.Greg.* (§§6-7), and *Pauli Sententiae* (§§8-10 + 15-17), as well as three passages marked as *scedae* (§§11-14 + 15)⁵; the two longer *scedae* on absence in the courts (§§11-14) have also been transmitted separately from the *Appendix* in 3 manuscripts (**QRW**; see below); 3 of the 13 excerpts feature in the *Brev.* as well; the excerpts carry no *interpretationes*;
- no numbering of sections occurs in the manuscripts;
- ends with *explicit* (after which *Appendix 1a+b* follows).

Appendix 3 (= Appendix antiquior Hänel; App. 1 Gaudemet; App. A Lambertini)

- preserved in 2 manuscripts (**OM**), which also preserve *Appendix 1a+b* but not *Appendix 2*, high in the stemma;
- placed before *Appendix 1a+b* in the manuscripts; follows *Brev.* (ending with Papinian's *responsum*), from which it is punctuated by EXPLICIT GREGORIANI LIB(RI) XII · FELICITER AMEN in **O** (while **M** is damaged);
- contains 4 excerpts from the *C.Greg.* with *interpretationes*; all 4 also occur in the *Gregorianus* selection in the *Brev.*;
- no numbering of sections or excerpts occurs in the manuscripts;
- ends with *explicit* (after which *Appendix 1a+b* follows).

It emerges from this brief overview that we are dealing with three textual units that are marked off at their beginnings and ends by an *explicit*. The first *Appendix* occurs either alone, or it follows *App. 2*, or it follows *App. 3*. These latter two never occur on their own, nor do they occur together. The first *Appendix* has another important feature. It resets its section numbering at the 24th excerpt, which moreover coincides with a shift in subject

⁵ Presenting itself as an excerpt from *Pauli Sententiae* on the SC Silanianum, §15 refers to itself as *sceda*. It stands apart from the preceding two *scedae* by (1) treating a different legal topic and (2) having no transmission channel separate from the *App.*

matter⁶. This indicates that the first *Appendix* is in fact a combination of two separate collections, even though they are not punctuated by an *explicit*⁷. We will see that these two collections must have travelled together through the transmission process from a very early time on. In sum, even though the texts seemingly survive as three works, we are in fact dealing with four small legal collections here. In order not to confuse referencing too much, I propose to designate *Appendix 1* §§1-23 as *Appendix 1a*, and the remaining sections as *Appendix 1b* while preserving the section numbers 24-28. I refer to the textual block as *Appendix 1a+b*.

It is probably fair to say that the major reason behind the confusion in the scholarship is its complete lack of understanding about the textual tradition of the *Appendices*. Gaudemet and Lambertini based their numbering on the supposed order of texts in the manuscript tradition, even though *Appendix 2* and *Appendix 3* never occur together and have no connection to each other whatsoever. Moreover, one of Lambertini's fundamental assumptions is that the *Appendices* are basically not older than the oldest surviving manuscript—something that the stemma presented below will show is off the mark for *Appendices 1a+b* and 2⁸. These *Appendices* (the ones without *interpretationes*) may in fact very well predate the *Brev.* and are likely to be Late Roman⁹.

A similar lack of understanding has bedevilled the editorial history of the works, including Krüger's critical edition of 1890. The late sixteenth and early seventeenth humanist editions of the *Theodosian Code* include a few fragments that are only preserved in *Appendix 1a+b*. It was not until 1838 that Klenze first published an edition of part of the *Appendices* based on the mangled witness **B**, which suffered from the parchment sheets having been put together in the wrong way¹⁰. In 1849, Hänel published the first full edition of the three *Appendices*, but it is clear that this edition is not based on a good understanding

⁶ From details about judgments to the scope of imperial law. There is also a transition from *CTh.* book 4 (§§ 20-23) to book 1 (§§ 24-28).

⁷ Already observed by Hänel 1849, p. 453 nt. (a), taking *Appendix 1b* as a supplement rather than leaving the option open that it might have come into existence independently. Coma Fort 2014, p. 221 nt. 27 gives the roll call of those who have accepted this view. As we will see further below, the lack of an *explicit* suggests that the two parts were already merged when this Appendix was combined with either *App. 2* or *App. 3*.

⁸ In general, Lambertini's study suffers from a *petitio principii*: he assumes a late date for the *Appendices*, which he then uses to argue that they are characteristic of later supplements to the *Brev.*

⁹ See below.

¹⁰ Klenze 1838. For a general discussion, see Coma Fort 2014, pp. 217-218.

of the transmission, nor of the relations between *Appendix 1a+b* and *Appendix 2*¹¹. Krüger published an edition of only *Appendix 1a+b* and *Appendix 2* with substantial apparatus in 1890 as part of the generally high-quality *Collectio librorum iuris anteiustiniani in usum scholarum*, but his edition falls far short of the standards of textual criticism. In addition to not splitting the first *Appendix* into its constituent parts, the main shortcomings of his edition are (1) that it is based on only a selection of the manuscripts known to him; and (2) that Krüger did not establish the relations between the manuscripts and based his editorial choices purely on his sense of what must be correct. Although his judgment and his corrections are often very sound, his neglect to clarify the transmission led him to include elements in the text that can be excluded from it with certainty on stemmatic grounds¹². Similarly, he failed at least once to fill an important and obvious lacuna from a parallel tradition of the *Theodosian Code*¹³. If we add the various typos in his apparatus and his misreadings of manuscripts, the reliability of Krüger's edition of the *Appendices* clearly becomes problematic.

This paper hopes to achieve several things. First and foremost, it establishes the textual transmission process of *Appendices 1a+b*, *Appendix 2*, and *Appendix 3* on the basis of full collations of all known witnesses. Moreover, with a stemma in place for these texts, we are in a much better position to look beyond the archetypes and discuss the dating of the texts. The entire discussion should provide a solid basis for a new critical edition of the *Appendices*, which is bound to be of considerable interest to students of legal culture in late antique Gaul.

2. The manuscripts preserving the *Appendices*

As already briefly mentioned, eight manuscripts (MSS) are currently known to preserve one or more of the *Appendices*. There are three further witnesses that carry two *scedae* of *Appendix 2* (§§11-14) as part of a miscellaneous selection of Roman and Visigothic materials. We will see below that it is likely that these MSS extracted the *scedae* from an

¹¹ For example, he labelled *Appendix 1a+b* as *brevior*, while considering the combination of *1a+b* and *2* an *Appendix aucta*. The inserted *explicit* pleads against this, and we will see below that *Appendix 2* appears to have had a life of its own without *Appendix 1a+b* as well.

¹² *Appendix 2* §4 (see below).

¹³ *Appendix 1b* §27, whose *titulus* can be restored from *CTh.* 1.22.

early MS of *Appendix 2* rather than from the source of *Appendix 2*. I here present a succinct listing of all relevant MSS. For detailed palaeographical and codicological discussions, see the learned discussions in Coma Fort¹⁴. I present the MSS in line with the order in which they fit in the stemma.

Appendices¹⁵

- O** Vatican City, Biblioteca Apostolica Vaticana, Ottobonianus latinus 2225, fol 185v-186r (*Appendix 3*), 186r-187v (*Appendix 1a+b*); 8th/9th cent. (France)
- M** Montpellier, Bibliothèque Interuniversitaire, Section Médecine H 84, fol. 137v-138r (*Appendix 3*), 138r-139r (*Appendix 1a+b*); later 8th cent. (Autun or Couches)¹⁶
- A** Paris, Bibliothèque Nationale de France, Nouvelles acquisitions latines 1631, fol. 96v-98v = *olim* Aurelianus 207 (Orléans, Bibliothèque municipale, 207) (*Appendix 1a+b*); 9th-10th cent. (Orléans or Fleury)
- L** Paris, Bibliothèque Nationale de France, latin 4403, fol. 207r-v (*Appendix 1a §5 conveneris secundum iuris - §23 ex libello data* = 254.16-258.8 ed. Krüger, with lost sheets on both sides); around 800 (Southern France)
- N** Paris, Bibliothèque Nationale de France, latin 4419, fol. 76v-78r (*Appendix 1a+b*); the first part of this MS contains not the full *Brev.* but the epitome known as *Epitome Monachi*; 9th/10th cent. (Sens?, France)
- E** Ivrea, Biblioteca Capitolare, XXXV (17), fol. 246v-248r (*Appendix 2*), 248r-250r (*Appendix 1a+b*); very early 9th cent. (Southern? France)¹⁷
- B** Berlin, Staatsbibliothek Preussischer Kulturbesitz, lat. fol. 270, fol. 12v-13v (*Appendix 2*), 11r-v (*Appendix 1a §1-19 intesta* = 257.5 ed. Krüger, followed by loss of sheets)¹⁸; first quarter 9th cent. (Western or Southern France)

¹⁴ The MSS are traceable via his table of contents. For the dating, I rely on the least controversial average as found in the convenient doxographies on <http://www.leges.uni-koeln.de/lex/lex-romana-visigothorum/>.

¹⁵ I have consulted the original MSS of **O W**, digital photos of **M A N B**, digitised microfilms of **L E P Q R**.

¹⁶ About the background of this codex, see the discussion at Coma Fort 2014, pp. 131-135.

¹⁷ This paper will establish that **E** is the exemplar from which **B** was copied; hence **E** must predate **B**. Since the scholarship has been more in agreement about **B**'s dating, while **E**'s dating has been volatile, I push **E** somewhat back in time (in comparison to Bischoff 1998, nr. 1562) rather than move **B** forward.

¹⁸ Note that in this MS the folio numbering is disrupted because of erroneous binding. The preserved text of *App. 1a* appears on fol. 11r-v, yet fol. 12r-v present the end of the *Brev.* Fol. 12v continues with *App. 2*,

P Paris, Bibliothèque Nationale de France, latin 4406, fol. 53r-55r (*Appendix 2*), 55r-56v (*Appendix 1a+b*); third quarter 9th cent. (Southern France, perhaps Lyon)

*scedae on absence only*¹⁹

Q Paris, Bibliothèque Nationale de France, latin 4406, fol. 57r-58r; later 9th cent. (France)

R Paris, Bibliothèque Nationale de France, latin 4410, fol. 1v + latin 4406, fol. 68r; third quarter 9th cent. (Eastern? France)

W Leiden, Universiteitsbibliotheek, Vossianus Latinus Q 47, fol. 2v-3v; mid to later 9th cent. (Western France)

In addition to these witnesses, it has been held that *Appendix 2* §4 served as the source of an interpolation at the very end of the *Theodosianus Visigothicus* in Vatican Library, Reginensis latinus 1128 (at fol. 100v, immediately before the *explicit* that marks the transition to the *Novellae*). The interpolated text is a constitution from the *CTh.* that does not appear in the *Brev.* and that is otherwise only preserved by the *Appendix*. This observation convinced Krüger that the interpolator used *Appendix 2* for this addition. He even included the garbled citational inscription of Reg. lat. 1128 in his edition of the *Appendix*. Yet a close inspection of the textual rapport between the *Appendix* and the version in Reg. lat. 1128 allows us to exclude with virtual certainty that Krüger's view is correct:

Appendix 2 §4 (E, my bracketing and underscores)

EX CORPORE THEODOSIANI:

IMP. VALENTINIANUS ET THEODOSIUS AA. FLORO PPO. [sub titulo]. professio uniuscuiusque inmutari contra statuta legum nostrarum pro calumniantium inconstantia et uarietate non poterit. DAT. III KAL. IAN. ANTONIO ET SIAGRIO

whose complete text ends exactly at the bottom of fol. 13v. The natural transition would be to *App. 1a*, whose text in fact starts exactly at the top of fol. 11r. A later hand has renumbered these folios 13, 11-12.

¹⁹ As mentioned in the overview in the introduction above, *App. 2* includes three so-called *scedae*. Only the two longer ones, which both deal with absence in the courts (§§11-12, §§13-14), have been transmitted separately as well. The third *sceda* (§15) concerns the SC Silanianum. I will refer to the first two by the shorthand “the *scedae on absence*” throughout this paper.

Vat. Reg. lat. 1128, fol. 100v (collated from the original MS; my underscores)
EX CORPORE THEODOSIANI LIBRUM SUB TITULO XXVIII CONSTITUTIO SEXTA:
IDEM AAA FLORO PRAF. PRAET. professio uniuscuiusque inmutari contra statuta
legum nostrarum pro calumniantium inconstantia et uarietate non poterit. DATA KAL.
IUN. CONSTANTINOPOLIM ANTONIO ET SYAGRIO

Krüger's reasoning remains entirely implicit, but it seems plausible that the citational inscription in Reg. lat. 1128 played the decisive role for postulating its dependence on *Appendix 2*. It is indeed the case that the *Appendix* inscribes its excerpts from the *CTh.* with the words EX CORPORE THEODOSIANI. Only at §1 do we find the supplement LIB. VI TIT. XXVII. It is possible, however, that at §§2-5 more precise indications about the place of these constitutions inside the *CTh.* have fallen out at some point before the archetype. This is at least strongly suggested by the element *sub titulo* in §4 (quoted above), which is somewhat oddly placed between the addressee's name and the first word of the actual constitution. As the inscription of §1 indicates (as well as the inscriptions of *Appendix Ia+b*), this is the kind of information one would expect in a citational inscription. And this is exactly where it is found in Reg. lat. 1128. This must have led Krüger to infer that the Vatican MS preserved the more complete citational inscription that had been lost from the tradition of *Appendix 2* by the time **E** was produced. This scenario could also straightforwardly account for some of the additional information such as Constantinople as the place of issuing.

At the end of the day, however, this line of arguing will have to face one problem that in my view is insurmountable, namely the presence of IDEM AAA. Given that there were three emperors in the consular year of Antonius and Syagrius (382 CE), the triplet AAA is likely to be more accurate than the two names the *Appendix* preserves (Valentinian and Theodosius, with Gratian lacking)²⁰. Could this once more point to an older, less corrupted moment in the transmission of *Appendix 2*? The answer is probably no, because the element IDEM almost certainly never featured in the *Appendix*; the immediately preceding constitution is after all one of Constantine. The compiler of the *Appendix* must, therefore, have inserted the names of Valentinian and Theodosius here (and perhaps

²⁰ See for example *CTh.* 1.2.8 for these three emperors and the consular date of Antonius and Syagrius.

originally also Gratian). On the other hand, it is entirely plausible that IDEM was found in the full *CTh.*, since it is found regularly when introducing a constitution of the same emperors as the one immediately preceding it²¹. Since, then, Vat. Reg. lat. 1128 seems to contain more accurate information about the *CTh.* than the *Appendix* ever had, it is virtually impossible that the source behind this witness's interpolation was *Appendix 2*.

Two more points about the inscription in the Vatican MS should be made. First, the rather extensive citational inscription is to some extent in line with that of §1, which mentions the book number and the *titulus* number. However, citing a *constitution* by number is only paralleled in *Appendix 1a* §§1, 3, 5-6, for the *Gregorian Code* rather than for the *CTh.* It is not paralleled in *Appendix 2*. Since inscriptional practices were relatively flexible²², this observation does not necessarily have much importance, but the least we can say is that it is out of line with the Theodosian section of which it forms part in *Appendix 2*. The misplaced element *sub titulo*, however, is in line with the fuller inscription at §1. Second, technically speaking, the inscription of Reg. lat. 1128 has a very minor textual oddity, namely *ex corpore Theodosiani librum sub*. From other collections, it is clear that one expects either a nominative or an ablative (not an accusative) for the book, often abbreviated to *lib.* or *lib̄*. (as is the case at §1). In addition, one expects a book number to be indicated, which is lacking here. Hänel, Krüger, and Mommsen all ascribed the constitution to *CTh.* 4.20.2²³. As such, it is likely that a scribe at some point encountered *lib.iu*, *lib̄.iu*, or *libro iu* and turned it into *librum* (perhaps mistaking a horizontal stroke over the numeral (*iū*) for a suspended nasal (*-m*)²⁴). This indicates that the inscription has gone through a copying process and was not composed by the scribe of Reg. lat. 1128. It is not possible to say much about when this corruption occurred (i.e. how often it was copied): it may but need not already have been present in the exemplar of the Vatican MS²⁵.

²¹ To be sure, IDEM also makes little sense in Vat. Reg. lat. 1128, because the immediately preceding constitution is one of Arcadius and Honorius.

²² See the inscriptions of *Appendices 1a+b* and 2 throughout, as well as those of the *Consultatio*.

²³ See Krüger 1890, apparatus at *App.* 2 §4; Mommsen 1904, apparatus at *CTh.* 4.20.2

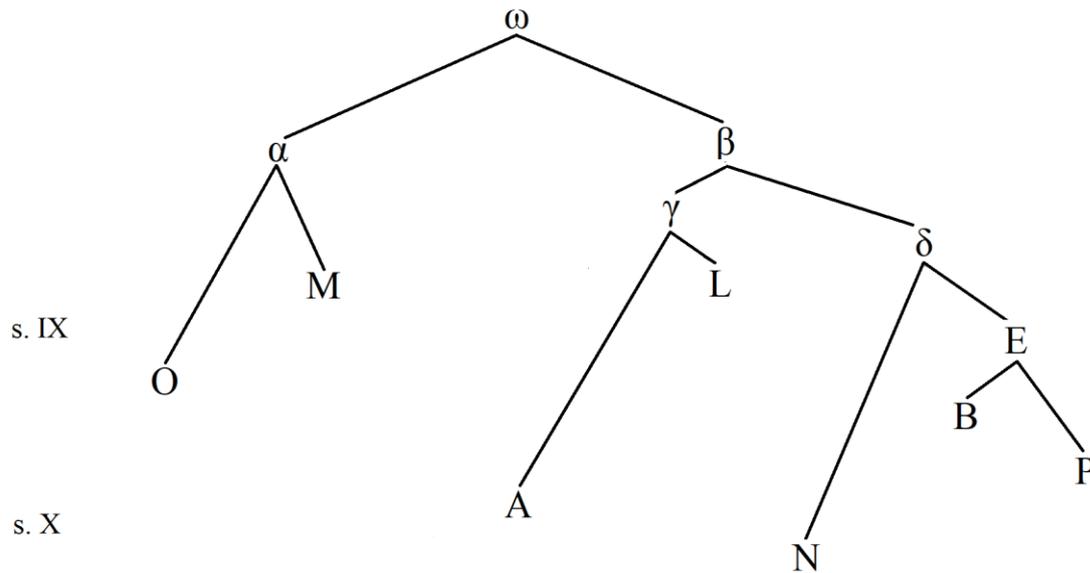
²⁴ Horizontal strokes to indicate numerals are not very common in medieval MSS. See Bischoff 1990, p. 176.

²⁵ In general, it is exceedingly hard to say anything about the source(s) of this MS. One of the major questions concerning this MS is the transmission background of the *Tituli ex corpore Ulpiani*, of which it is the only direct witness.

All wilder conjectures aside, however, the discussion above leads us to exclude that the constitution as found in Vat. Reg. lat. 1128 was extracted from a MS of *Appendix 2*. It has, therefore, no place in the remainder of my discussion here, nor should its inscription be printed in an edition of *Appendix 2*.

3. The stemmas of the MS tradition

This section establishes the relations between the full witnesses of the *Appendices*, including those witnesses that have been preserved fragmentarily. Since **QRW** raise a series of problems of a different order, I have reserved those for the next section. Two crucial caveats are in place at the outset of this discussion. First, the stemmas developed here are valid only for the *Appendices* and do not pretend to be accurate for the other texts in the same MSS. We will in fact see further below that the relations between these same MSS for the *Brev.* parts are very different. I will argue that this points to a practice of equipping *Brev.* MSS with select short further materials culled from various other sources. Second, it should be clear from the two lists given above that the tradition of *Appendix 1a+b* is the centrepiece of any analysis of the tradition. *Appendix 3* and *Appendix 2* are added to the mix where appropriate. I begin by presenting the stemma and will then offer a justification based on full collations of all MS witnesses. The *sigla* follow the conventions of classical scholarship, with ω representing the archetype of the entire extant tradition (here, of *Appendix 1a+b*) and with Greek letter marking hyparchetypes now lost. The *sigla* for the individual extant MSS are those of section 2 above.



The sign ω in the stemma above designates the archetype of *Appendices 1a+b*, i.e. the last common ancestor of all surviving MS witnesses of this *Appendix*²⁶. Before we do anything else, we need to address the question whether the archetype is likely to have been identical to the original. This is important for several reasons, including for attempts to date the texts. Given that all MSS share several readings that are either nonsensical or ill at place, we are led to conclude that ω reflects a copying process that had gradually introduced these scribal “errors”²⁷. Here are some peculiar archetype readings²⁸:

253.4 inrogans] ignorans **OM A**, ignoras **NPBE**, *lac.* **L**

254.1 pactoque] pactuque **OM ANPBE**, *lac.* **L**

257.3 quo eis defertur et] quos eisdem fertur et **OM**, quos (quo **A**) eisdem (hisdem **L**) et **ALNPBE** (et *om.* **N**)

257.20 rescissionem] res cessionem **OM LN**, recessionem **A PE**

259.2 deliciosa (relinquosa *vel* relegata *malim*)] relegiosa **OM A**, religiosa **NPE**

259.10 tua edi] tuae **OM A**, tue di **N**, tuendi **PE**

²⁶ For *Appendix 2*, the archetype is **E**. For *Appendix 3*, **α**.

²⁷ Designations such as “corruption”, “error”, “correction”, “superior reading”, etc. are always based on qualitative judgments of the text. Since this kind of labelling is open to challenges, it is best to mark them with inverted commas. For ease of reading, however, I usually leave these out.

²⁸ The numbers are the page and line numbers of Krüger’s edition. Small caps mark rubrication.

In the light of these readings, it must be accepted that the archetype was not the original, and that the original must predate the archetype.

The next step is to demonstrate that **OM** stand apart as a branch from the rest of the tradition. This can be done by showing that **OM** have shared variants, which in some cases must be considered shared corruptions, while in other cases they preserve the archetypal readings against the other MSS. Let us first turn to a selection of shared “corruptions”:

- 253.1 de postulando] de pontolando **OM**
- 253.6 nulla] nullius **OM**
- 254.14 SI CERTUM PETITUR] *om.* **OM**
- 255.4 paternis secundum edicti] paternis similis elicti **OM**
- 255.19 in] *om.* **OM**
- 255.19 petitori] petitori **OM**
- 255.20 pater familias] pater uiii familias **OM**
- 256.2 iudex] inde **OM**
- 256.5 ex] *om.* **OM**
- 256.15 X] *om.* **OM**
- 256.22 ciuilem (ciuili **AP**, ciuile **L**)] uel **OM**
- 257.17 de scripti] describere **OM**
- 258.1 Ualentinianus] Lentinianus **OM**
- 258.1 et] *om.* **OM**
- 259.3 praesidentem propria] praesidentum tempore propria **OM**
- 259.5 instaurare] in ista uere **OM**

It should be reasonably clear that in all these cases the readings preserved by the other MSS against **OM** must be considered more complete, or better (generally) for reasons of grammar and syntax. Furthermore, the fact that **OM** share identical variations can hardly be the result the chance. Quite to the contrary, the best explanation is that they derived them from a common ancestor that the other MSS did not have. Next, it is also possible to show that **OM**'s common ancestor does not depend on any of the other MSS and thus forms a separate branch, since the other witnesses contain oddities at many places where **OM** preserve superior (and hence presumably archetypal) readings. Here are several cases:

- 253.1 CONSTITUTIO] INSTITUETHIO **A**²⁹, INSTITUTIO **EBP**, *om.* **N**, *lac.* **L**
- 253.2 existimationis **M**, exaestimationes **O**] exactionis **A**, exactione(m) **NEBP**,
lac. **L**
- 253.14 qui minus] cominus **A**, cōminus **N**, quominus **EBP**, *lac.* **L**
- 254.4 si] *om.* **ANEBP**, *lac.* **L**
- 254.6 III (III **O**) GREGORIANI LIB. II TIT. XVII SI UT SE HEREDITATIS ABSTINEAT
(ABSTENEAT **M**)] iii tī *cett.* *om.* **AN**, *om.* **EBP**, *lac.* **L**
- 254.17 te] *om.* **ALNEBP**, *lac.* **L**
- 255.8 Paulus] *om.* **ALNEBP**
- 256.2 et] *om.* **ALNEBP**
- 256.12 calculi] cauculi **ALEBP**, caucoli **N**
- 259.8 tit. III de officium ----com omnium] f̄ *cett.* *om.* **A**, *om.* **NEP**, *lac.* **LB**
- 259.13 f̄ iii de assessoribus domesticis et cancellariis] *om.* **ANEP**, *lac.* **LB**

In all these cases **OM** have readings that have a better claim to being archetypal than the oddities and omissions that are shared across the other MSS. Since, as we have seen, **OM** also share lacunae and oddities against the rest of the tradition, we must conclude that both groups do not directly depend on one another. Rather, they are two distinct families that branch off in different directions from their last common ancestor, the archetype ω .

Within the family **OM**, it can further be shown straightforwardly that neither **O** nor **M** is a copy of the other but that they depend on a common hyparchetype (α). In a few cases, **O** contains more or more accurate information than does **M** (as confirmed by the rest of the tradition). Since in such cases the information must have come down to **O** from the archetype, **M** cannot be its exemplar. Here are some cases of variants in **M** that a copyist of that MS could not easily have corrected into the archetypal readings by intelligent guess work³⁰. I append variant readings for *Appendix 3* as well, though with the caveat that this

²⁹ The first O has been cancelled by the scribe (by striking it through diagonally).

³⁰ In general, the selection of variants for presentation throughout this paper is informed by the idea that only “uncorrectible” variants are significant when trying to establish or exclude dependency between two individual manuscripts.

very short text has almost no truly unambiguous readings to exclude dependence of **O** on **M**³¹:

253.5 kal.] id. **M**

254.13 Mart. Saturnino et Gallieno] Mart *cett. om.* **O**, *om.* **M**

254.1 quam tibi] quamdiu **M**

254.12 de ea re] de here **M**

258.3-6 *damnum suscepit* **M** *in nescio quo saeculo*

H. 6 computari] conpotari **M**

H. 9 pro] post **M**

H. 1 GREG] *damnum suscepit* **M** *in nescio quo saeculo*

H. *quartum excerptum fere deest in* **M** *eiusdem damni causa*

The exact opposite scenario, i.e. that **M** contains more or more accurate information than **O**, can also be observed a few times. Even though dependence of **M** on **O** is unlikely for chronological reasons, it is useful to exclude the feasibility of this hypothesis formally³²:

253.13 in] *om.* **O**

254.4 IIII (iiii·iii **M**)] *om.* **O**

255.1 haberes] ab heres **O**

256.11 UIII] *om.* **O**

258.14 UIII ID. DEC] Uii·kaF·iD̄·DECEMB̄ **O**

259.10 non minus] nomninus **O**

H. 2 Ualeriae] Uariae **O**

H. 17 de tit. u **M**] de **O** *et Hänel*

³¹ The only edition of *Appendix 3* is that of Hänel, which I have used for the purposes of collating. Hänel does not use line numbers. I have started numbering from the opening of *Appendix 3* on p. 452, with *DE LIBRO SECUNDO GREGOR.* as line 1, continuously up to the *explicit* a few lines into p. 453 (line 40 on continuous numbering).

³² On the potential dangers of creating false certainty about relative chronology on palaeographical grounds, see the discussion below about the relations between **E** and **B**.

H. 36 de ea] dea **O**

H. 36 REDDITIS INSTRUMENTUM CREDITUM PETATUR] *om.* **O**

H. 38 consequentibus] consequentibus **O**

It is my contention that in all these cases we are dealing with missing or distorted information that cannot easily be restored to the archetypal form, at least not without the help of a further MS³³. It is therefore overwhelmingly plausible to conclude that the undistorted readings (i.e. those confirmed by other parts of the tradition) came down to **O** and **M** from the archetype. Since we observe independent individual variations in both MSS, we must infer that, while they share a common hyparchetype, there is no ground to posit direct dependence between the two witnesses. The question of the archetype of *Appendix 3* poses additional complications because the witnesses of this *Appendix* transmit its excerpts twice, once as part of the *Appendix* and once as part of the *Brev.* itself. We will see further below that studying these parallel transmissions suggests that *App. 3* may primarily have been a lacuna filler rather than a legal dossier connected to legal practice.

The relations within in the other family, **ALNEBP**(= β), can be established in much the same way. First of all, full collations show that **AL** stand apart from **NEBP**. There are cases in which **AL** preserve readings superior to **NEBP** (as confirmed by **OM**):

255.13 etsi ultra consanguineas] etsi ultra etsi consanguineas (-neis **P**) **NEBP**

256.8 quin inutiliter *Krüger*, qui non utiliter **OM AL**] qui non utilitate (-i **N**)
NEBP

256.16 quaesiti] quaesit **NEBP**

257.21 dat. III non. Dec.] data id dec **N**, data id non dec **EP**, *lac.* **B**

The shared variants in **NEBP** indicate that they have a hyparchetype in common that **AL** do not share (δ). At the same, common variants in **AL** against a consensus in **NEBP** and **OM** point out that **AL** also have an ancestor (γ) on which **NEBP** do not depend:

255.12 potest] potest interp' **A**, potest INT \bar{P} N \bar{E} G. **L**

³³ Note that at 258.14 it is not clear which principal day should be removed to correct **O**. Deletion of the second one, i.e. the archetypal **ID.**, strikes me as certainly not less likely than deletion of the first.

- 255.18 duplam] duplum **AL**
 255.19 coetur] cogitur interp̄ **A**, coetur INT̄P̄N̄EG **L**
 256.3 pronuntiet] pronunciet interp̄ **A**, pronunciet INT̄P̄N̄EG **L**
 256.6 possint] possint interp̄ **A**, possint INT̄P̄NON EG **L**
 257.12 VII] *om.* **AL**

The obvious inference is that **AL** forms a sub-family of its own. In much the same way as we have seen for **OM**, it can further be established that **A** and **L** have no direct dependency relationship. **A** in particular has a number of lacunae that exclude that **L** got its fuller text from **A**:

- 256.3 de omnibus] *om.* **A**
 256.8 sed] *om.* **A**
 256.12 saepius] *om.* **A**
 256.19 ista sententia in libro quarto habetur] *om.* **A**
 257.22 u c cons.] *om.* **A**
 258.8 dat III kal Dec Med. Ricomere et Clearcho cons.] *om.* **A**
 258.10 Lib.] *om.* **A**

At the same time, we can similarly rule out that **A** depended for its text on **L**, because **L** carries lacunae and unique variants where **A** sides with the rest of the tradition:

- 255.2 III non Sept., non Sept. **A**] *om.* **L**
 257.12 V et Licinio cons.] *om.* **L**
 257.17 ultimas definitiones] ultima his definitiones **L**
 257.18 adicimus] diducimus **L**
 257.22 A III et Equitio u. c. cons.] *om.* **L** *et add.* INT̄P̄N̄EḠ
 258.6 Constantinopoli] *om.* **L**
 258.6 et Syagrio cons.] *om.* **L**

The most straightforward conclusion to draw from the occurrence of unique lacunae in both MSS is that neither was copied from the other. Their distinctive commonalities indicate in turn that they must rely on a common ancestor (γ).

What about the relations within the group **NEBP**? The evidence shows clearly that **EBP** are closely related while **N** stands apart from these three. The following unique features of **N** indicate that **EBP** cannot have derived their readings from **N**, which are in line with the rest of the tradition:

255.10 adierint (adherent **OM**, adhierint **P**)] agerent **N**

256.9 omnes] *om.* **N**

256.20 senatus *Kr.*, senato **OMA**, senatu **LPBE**] ea natā **N**

258.3 plenum recenseat] plenum ire censeat **N**

258.19 casibus impetratum] çuı şıbı imperatum **N**

259.10 non minus criminalia] nominis criminalalia **N**

These cases make it very hard to maintain that the text in **EBP** came down via **N**. In much the same way, we find variants that are common only to **EBP**, i.e. in places where **N** preserves the same readings as the rest of the tradition. This means that **N**'s text must derive from a point in the tradition that is not dependent on **EBP**. Here are some cases³⁴:

253.8 existimatio] estimatio **EBP**

253.8 ob id] obstet **EBP**

253.11 debitori tuo] debitor est tio **E**, debitor ē tio **BP**

253.12 extitisti] institutus **EB**, institutio **P**

254.6 III GREGORIANI LIB. II TIT. XVII SI UT SE HEREDITATIS ABSTINEAT] *om.* **EBP**

The correct inference here is that **N** and **EBP** share a common ancestor (**δ**) that the other MSS did not have; and that, at the same time, there is no direct dependence between **N** and **EBP** in either direction.

The most complicated question regarding the transmission is that of the relations between **EBP**. The main reason is that these witnesses tend to share variant readings while showing very few individual variations that allow straightforward mapping. It does certainly not help that **B** is fragmentary for *Appendix 1a+b*. In order to get more certainty

³⁴ Noting that **B** is only partially preserved, I leave out further cases where **EP** side against the tradition while **B** is lacunose.

about the relations, we will have to base ourselves primarily on the text of *Appendix 2*, and for **E** and **P** on the other texts contained in these MSS. In doing so, we will have to assume that the stemma for all the works in these three individual codices is the same as that for *Appendix 1a+b*. Finally, we will see that there is a problem with the traditional relative dating of **E** and **B** in the scholarship. While **B** is generally considered older than **E** on palaeographical grounds³⁵, my collations indicate that **B** must in fact have been copied from **E**.

The easier task is to establish that **P** is directly dependent on **E**. This was already argued for by Mommsen for the *Theodosianus* part of both MSS and by Meyer for the post-Theodosian *Novels*³⁶. While shared lacunae in **E** and **P** at various places in the *Theodosianus* point out a close affiliation, the most important evidence here is that marginal annotations in a different hand in **E** have often ended up in the main text in **P**, exactly at the points where an insertion mark was added in **E**³⁷. This state of affairs can be explained via different routes, but the strongest and most plausible of those is dependence of **P** on **E**. Collations of the text of *Appendix 1a+b* show, furthermore, that **P** has many unique variants and lacunae where **E** sides with the tradition, while the opposite is never the case. Some examples where **E** (and **B**) preserve more information or better readings:

253.1 XII] *om.* **P**

254.16 creditoribus] hereditatibus **P**

254.16 iuris formam] iuris secundum formam **P**

259.16 adsciscere tantum] *om.* **P**

The same pattern can be observed for the text of *Appendix 2*. Here are cases where **P** deviates from the consensus of **EB**:

261.17 acc̄p] *om.* **P**

261.30 scedam] s(e)c(un)d(um) **P**

262.7 te] *om.* **P**

³⁵ For the most convenient overview of the convergence among palaeographers, see the pages on **E** and **B** at www.leges.uni-koeln.de/lex/lex-romana-visigothorum/.

³⁶ Mommsen 1904, pp. lxxviii-lxx; Meyer 1905, pp. vi, xxxiii.

³⁷ For example, **E** (fol. 98v mg) > **P** (fol. 3ra); **E** (109v mg) > **P** (15va); **E** (138v mg) > **P** (48va).

263.1 ad] in **P**

263.20 ita] *om.* **P**

In short, then, **E** cannot have derived its more detailed text from **P**. To be sure, these variants also demonstrate that **B** cannot have derived its text from **P**. In other words, **P** is the exemplar of neither. I should at this point reiterate that **E** nowhere has less information (for example in the form of lacunae) as compared to **P**, for the entire text of both *Appendix 1a+b* and *Appendix 2*. All these indications, including not least Mommsen's observations about the incorporated marginalia, tip the balance quite clearly towards considering **P** as offspring of **E**³⁸.

Finally, we must address the matter of **B**'s position. We have already seen two things. First, **B** is not copied from **P**. Second, **B** stays very close to **E** almost invariably, showing very little individual variation. In the list given above for *Appendix 1a+b*, for example, **B** sides with **E** in the first three cases, being lacunose for the fourth. For *Appendix 1a+b*, I have only been able to spot the following two variations that are minor but not easily corrected:

254.14 iiii] iii **B**

255.3 v] iiii **B**

Yet for a more solid handle on **B**, it is worth shifting our attention to *Appendix 2*, which this MS preserves in its entirety. Let us turn immediately to most telling evidence. At the transition from §16 to §17, *Appendix 2* reads (263.15-17):

(...) *quaestionem qui in suspitione quacumque ratione ueniunt.*

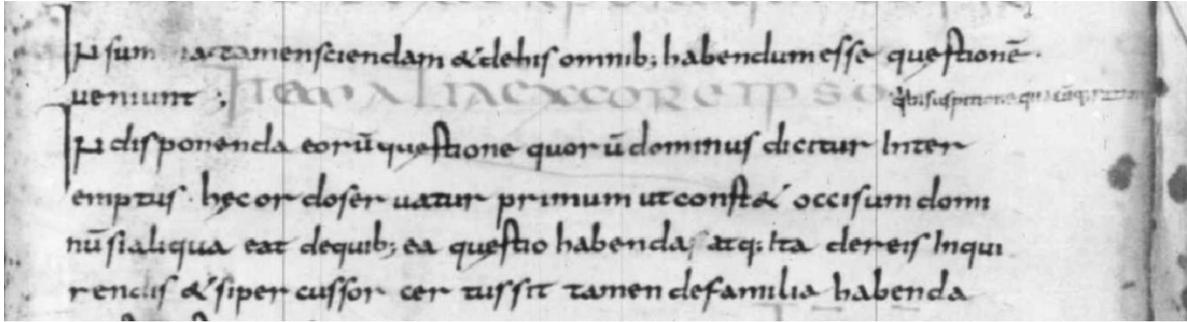
§17 ITEM ALIA EX CORPORE IPSO

in disponenda eorum quaestione (...)

This is the text that Krüger prints and that must be correct. Given **P**'s dependence on **E**, however, it is remarkable that **P** is the only witness that unambiguously has this reading. **E**

³⁸ It is, of course, not possible to say much about how many MSS should be posited between **E** and **P**. A stemma is always a schematic representation, in which only MSS whose existence can be taken as certain are marked out.

and **B** both have anomalies at this very place. I begin with a reproduction of the microfilm photo of **E**:



Ivrea, Biblioteca Capitolare XXXV (17), fol. 248r (photo: <http://www.beic.it/it/articoli/manoscritti-giuridici-medievali>) photo available under CC BY 4.0 (<http://www.beic.it/it/articoli/copyright>)

Transcription of the relevant part:

E qu(a)estione(m) ·
ueniunt ITEM ALIA EX COR(POR)E IPSO ·qu(i) in suspitione quacu(m)que ratione
in disponenda eoru(m) quaestione

The small and partly marginal scribbling indicates that **E**'s scribe must have left out the clause starting with *qui*. The scribe himself or a later corrector³⁹ then noticed the omission and added the phrase underneath the word after which it should have been inserted, probably because the citational inscription left part of the line blank (as the other inscriptions on this page do as well). We find identical signs (·) both before the omitted phrase and at the place of insertion in the text. Nonetheless, given that the dots are very small, it is imaginable that a scribe focusing his attention more on reproducing this manuscript than on making sure the text would be as sensible as possible might proceed in linear fashion and insert the smaller phrase *after* the citational inscription. This is exactly what happened in **B**, which reads (fol. 13v):

³⁹ Further corrections in various hands throughout **E** (e.g. fol. 180r, 232v, 245r, 245v) suggest that the present correction may very well be the work of a later corrector (cf. Mommsen 1904, pp. lxvii-lxviii). Nonetheless, the similarities between smaller writing and main text (and the uniqueness of using the dot as correction sign) do not rule out a scribal correction altogether. To be sure, this is no importance to the point of this paper.

B qu(a)estione(m) ueniunt IT(EM) ALIA EX COR(POR)E IPSO
qui in suspitione quacu(m)que ratione in disponenda eor(um) quaestione

It is exceedingly hard to believe that **B** was not copied from **E**. Both MSS reflect the same anomaly, namely an omission at the end of §16 that was inserted at the opening of §17⁴⁰. However, **E**'s smaller script reveals awareness of the slip on the part of the scribe or corrector, and it clearly reflects his remedial efforts. **B** simply presents the (misunderstood) remedy as part of the text, and in that sense preserves less information. But note that **B** inserts the phrase precisely at the place where **E** furnishes it to a reader-scribe without a strong text critical orientation⁴¹. At the same time, we should note that the positioning in **E** also allowed legally more adroit scribes to fix the text in (what must be) the correct way. The copyist of **P**, which we have seen must also be a copy of **E**, has the *qui* phrase in the right place, namely between *quaestionem* and *veniunt*⁴². This restoration is not impossible on the basis of the situation in **E**: even a scribe who missed the insertion mark may have considered the smaller writing as tagged onto *quaestione(m)*⁴³. Therefore, this more “correct” reading in **P** as compared to its ancestor **E** does not invalidate my earlier claim that **P** depends on **E**. Finally, the misplacement of the phrase in **B**, as against **P**, also demonstrates that **P** is not dependent on **B**: **P** must have corrected the text on the basis of **E**,

⁴⁰ Similarly, **E** fol. 245v and **B** fol. 12r share an anomaly that points in the same direction. **E** has added the last syllable (-SIT) of REMANSIT above -MAN, presumably because with -MAN the end of the line was reached. The element SIT is positioned on the preceding line following PERSOLUTUM (after a small space). Now, **B** clearly has PERSOLUTUM ~~SH~~ INSTRUMENTUM APUD CREDITOREM REMANSIT. That is, **B**'s scribe added SIT after PERSOLUTUM but erased it once he realised, by the end of the *titulus*, that it was the last syllable of PERMANSIT. Therefore, **B**'s scribe must have had **E** in front of him. I owe this observation to one of *Athenaeum*'s anonymous readers.

⁴¹ **B**'s dependence on **E** is further suggested by a single lacuna: 262.27 per] *om.* **B**. Harder to judge is the significance of two interpolations as against **EP**: 260.14 Honorio nb.] honorio ii nb **B**; 263.11 et centum] et in centum **B**.

⁴² Note that several of the unique readings of **P** can be understood as attempts to fix up the text. Examples are 254.16 creditoribus] hereditatibus **P**; 261.6 cessit **EB**] cesset **P** (where **P**'s reading is probably correct).

⁴³ Within the same witness **E**, we see similar repair attempts at fol. 193v, 201v, and 224r, where omitted syllables in the *rubrica* are added in the space above. Compare also 181v.

something it could not easily have done on the basis of **B**. In sum, all the evidence indicates strongly that **B** and **P** are both independent copies of **E** ⁴⁴.

This should be sufficient justification for the stemma presented above. To be sure, the relations are valid for all *Appendices* in all MSS (though not for the *Brev.* parts of these MSS). The separate transmission of the two *scedae* on absence embedded in *Appendix 2* is examined in the next section

4. Indirect tradition (1): the *scedae* on absence in witnesses QRW

Approximately one third of *Appendix 2* (§11-14) is formed by the text of two legal injunctions on absence in the law courts. They follow on three brief extracts from *Pauli Sententiae*, of which the first mentions the same matter (§8). The text of these two *scedae* is also transmitted by itself three times in **QRW**. Entitling the text block *sceda de trina conuentione*, these MSS sandwich it between Alaric's *commonitorium* and a short text entitled *scriptione de litis expensis* [sic] of unknown origin. For the study of the transmission of *Appendix 2*, the question to be raised is that of the relevance of **QRW** for the textual constitution of §11-14. Their testimony will be particularly useful if they turn out not to be dependent on **E**. So, what is the relation of **QRW** to **E**?

It should come as no surprise that textually speaking the **QRW** hang together as a family (φ) against **E** ⁴⁵. Furthermore, collations make clear that the *scedae* in φ were not drawn from **E** or its dependents. We can similarly exclude that **E** or an ancestor with the text of *Appendix 2* drew the *scedae* from the φ -family⁴⁶. This is because both groups display variant readings that bind the MSS of each group together. Since both groups preserve readings that must be correct, they cannot have derived their text from the other group. Let

⁴⁴ Ironically enough, this means that **E** is the principal witness for establishing the text of *Appendix 2*, the one MS that Krüger did not care to use.

⁴⁵ A stemma for *Appendix 2* is depicted at the end of this section.

⁴⁶ That is, the *scedae*, which some legal historians have found uncharacteristic of Roman law (e.g. Hänel 1849, p. xxi), cannot on stemmatic grounds be shown to be a later interpolation into the *Appendix*. The interpolation viewpoint is also implausible because the contents of the *scedae* are clearly foreshadowed in the *Pauli Sententiae* excerpt at §8. For the (limited) discussion about the *scedae*, see Lambertini 1991, p. 185; Liebs 2002, pp. 144-145; Coma Fort 2014, p. 224.

us begin with the rarer scenario, namely the situation in which **QRW** preserve readings superior to those of **E**:

262.13 SCEDA EDICTI quae post trinam] SCEDAM ENIM DE TRINA **E**

262.22 *retinere*] *tenere* **E**

The reading of **QRW** in the first case is far superior not only from a grammatical perspective but also in terms of content. **E**'s *enim* is ill at place and must be a corruption of some sort⁴⁷. The distorted text must then have been fixed up with *de*, which could be easily supplied from the formulations found earlier on. The reading *quae post* in **QRW**, however, is much more precise, and not easily restored from the reading in **E**. If this is indeed likely, we may infer that the last common ancestor of **QRW** did not get that reading by copying off (and “correcting”) **E** (or an immediate ancestor) with the same variant reading. In the case of *retinere*, **QRW** preserve a slightly more preferable reading than does **E**. But since the grammatically sound reading in **E** is unlikely to have struck any scribe as a mistake, let alone one in need of fixing, I am not persuaded that it was easily “corrected” into *retinere* by a copyist. While no certainty is possible, it seems on balance rather more likely that **QRW** preserve a reading closer to what must have been in the original. In sum, **QRW** therefore seem to go back to a version of the *scedae* that does not depend on **E**.

The validity of the opposite claim, namely that the *scedae* text in **E** does not depend on the ϕ -family, can be straightforwardly established:

261.31 *cum*] *om.* **QRW**

262.17 *ut*] *om.* **QRW**

262.26 *iuris ac legum*] *iuri sacri legum* **QR^{ac}W**

263.2 *si*] *om.* **QRW**

263.3 *se*] *om.* **QRW**

The long and short of this is that both families have a common source further back, and that this source does not map onto any position in the stemma of the direct witnesses developed

⁴⁷ It could, for example, be the result of resolving an abbreviation for *ed(ict)* into the more common *en(im)*.

above. One important corollary is that the main building blocks for constituting the *scedae* text are **E** and **φ**.

Before blindly rushing into an examination of the relations within the **φ**-family, however, we must face a rather important transmission-related question: does the *scedae* text in **φ** actually derive from a MS of *Appendix 2*, or did **φ** rather take the text directly from the *source* of *Appendix 2*? In other words, are **QRW** witnesses for *Appendix 2* to begin with, or are both families rather witnesses for the *scedae* text *before it entered Appendix 2*? And how can this be decided? Several points are worth considering. First, the *scedae* consists of two quoted edicts that are both preceded by an explanatory passage in the voice of an advisor or instructor (§11, 13). **QRW** include both of these explanations as well, although they omit the *Appendix*'s use of *item* to connect the first of them (§11) to the preceding excerpts taken from *Pauli Sententiae*. It cannot be decided on the present evidence whether the author-compiler of *Appendix 2* found the two explanatory passages in his source or wrote them himself. Their presence in **QRW** can therefore not be used to argue that the **φ** family relied on *Appendix 2*, but neither can it establish that **φ** and the compiler of *Appendix 2* drew from the same source⁴⁸.

Another approach to the same question is to see if **E** and **QRW** have any fairly obvious “errors” in common. If this turns out to be the case, we can be confident that the shared source of **E** and **φ** already contained those errors. Their presence would in turn point to a copying process predating the shared source. Now, if we make the (arguably somewhat contestable) assumption that the compiler of *Appendix 2* incorporated the *scedae* in a version free from errors, any errors shared between **E** and **φ** are likely to reflect a copying process postdating the compilation of *Appendix 2*. To be sure, while this assumption need not be correct, I think it may still put us in a position to make a plausible case; I see no other way to take on this rather important question on the present evidence. The following cases are in my view significant:

261.33 litterae] litteras **E QR**, literas **W**

262.18 custodiri benefica] custodiri beneficia **E**, custodire bene pia **QRW**

262.22 praua cupiditate] prae cupiditate **E**, pra cupit ita **W**

⁴⁸ I see no compelling reasons to consider the slightly shifted topic of §§15-17 (but still within the law of succession) as a sign of a different hand. In fact, the use of the term *sceda* at §15 suggests the opposite to me.

- 262.23 lapsu] lapso **E QW**, lapsu **R^{ac}**
 262.28 despexit] dispexit **E**, dispexerit **QRW**
 263.4 leges] legis **E QRW**

Several of these variants are rather minor. For example, the reading *lapso* at 262.23 in most witnesses may at first glance simply seem a scribal lapsus that may have occurred independently at several places⁴⁹. It is remarkable, however, that it would have occurred independently and gone uncorrected at the exact same place on several occasions, something that on this reasoning must also have happened for *lit(t)eras*, *dispex(er)it*, and *leges*. These variants are of interest because they reveal a pattern of “corruptions” of common words in fairly common usages that could have been restored easily but were not in fact fixed. Be this as it may, the most complicated case is probably *praua cupiditate*. This is the reading found in **QR**, and it makes brilliant rhetorical sense. The reading of **E**, *prae*, does not produce a good sentence. While *praua* is thus by far the most attractive reading, **W**’s *pra* indicates quite strongly that the archetype reading was *pra* or *prae*, and that *praua* must be considered an emendation made in a common ancestor of **QR** that was not a direct source of **W** (**σ** in the stemma below). In short, *praua* may very well be the correct reading, but it did not come to us from the archetype⁵⁰. Next, in the case of *custodiri benefica*, we are dealing with an extremely long and rhetorical sentence. The reading of **QRW** is quite clearly problematic. The reading of **E** is much better, although this would urge us to insert a full stop after *beneficia* or after *beneficia principum*. The first option creates a sentence that makes little sense in terms of its contents. The second option creates similar problems for the following sentence, whose subject must be *principum prouidentia*. Printing *benefica* instead of *beneficia*, an emendation already found in Hänel’s edition, solves all these problems elegantly and must be correct. If this is so, *beneficia* should be considered the replacement of an unfamiliar form by a more familiar term. The rather

⁴⁹ Note that **R**’s scribe corrected it.

⁵⁰ I should add here that I am sceptical about the plausibility of the alternative view, namely that *praua cupiditate* was the archetype reading and did in fact come down to **QR** from the archetype. On this hypothesis, we must assume that the exact same textual element corrupted twice in different branches of the stemma, at independent points (**E** and **W**). I consider this scenario exceedingly unlikely. Rather, it is much more likely that some anomaly triggered (and hence explains) the three different readings we find in the MS tradition. In other words, I see no good reason why the two-against-one rule should not apply here.

strange reading in **QRW** at this very same locus suggests that the archetype already had an anomaly here—quite possibly *beneficia*, which was then misread (or ‘fixed up’) as *bene pia* in ϕ ⁵¹. In sum, we may infer that the last common source of **E** and **QRW** contained several textual anomalies that point to a copying process anterior to itself. Since I consider it plausible to assume that the original copy of *Appendix 2* contained a text without (grammatical) “errors”, I am inclined to accept that the shared source for the two *scedae* in **E** (and its ancestry) and in ϕ was a text of *Appendix 2* rather than of the naked *scedae*⁵². **QRW** are, therefore, relevant in constituting the *scedae* text in *Appendix 2*.

In order to clarify how **QRW** can assist the editor, we need to establish briefly the exact composition of the ϕ -family. First, there is good reason to conclude that **QR** shared an ancestor that **W** did not have. On the one hand, we find two places in which **QR** have a joint divergence against the rest of the tradition:

262.16 sic] si **QR**

262.22 pra cupit ita **W**, prae cupiditate **E**] praua cupiditate **QR**

The weight of the first case is somewhat limited. After all, it might be argued that we are dealing with a “correctible error” here; yet I should add that *si* instead of *sic* does not create a syntactic problem. The second case is very revealing, as has already been highlighted above. On balance, therefore, the most straightforward way to account for **W**’s readings is that they came down from the archetype unmediated through **Q** or **R**; even in the case of *sic*, it is more plausible to presume it perpetuates the archetypal reading than to consider it a correction of *si*.

Next, **W** has a laundry list of unique deviations from **QR** and the rest of the tradition, thus indicating that **QR** do not depend on **W** either. Here are some instances:

262.9 admonere procures] admonere ut monere procuris **W**

262.15 est] *om.* **W**

262.16 declarat] dederat **W**

⁵¹ The letters *f* and *p* might be quite easily confused in many scripts.

⁵² By way of full disclosure, I should state that one of the anonymous readers for *Athenaeum* disagrees on the plausibility of my assumption, while s/he acknowledges that no decisive evidence either way has been uncovered.

262.17 est] *om.* **W**

262.21 peruaserant] perseuerant **W**

262.23 ut] *om.* **W**

262.27 trinis] ternis **W**

Although our evidence is not exceedingly decisive, it does suggest quite clearly that **QR** and **W** branch off as two independent sprouts from ϕ .

Finally, **Q** and **R** can be shown to be *gemelli*. We have already seen that they share a hyparchetype against **W**. While they display little individual variation as compared to each other, a few places allow us to infer with certainty that they do not directly depend on one another. Take this *vacat* in **Q**:

261.30 litteris **RW**] li----te **Q**

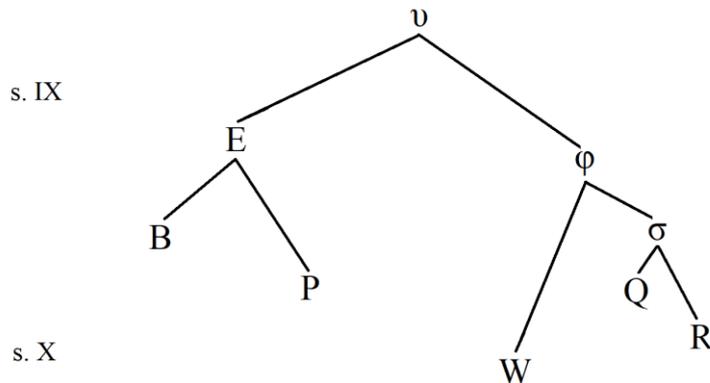
I submit that the restoration into *litteris* is not a straightforward affair. For this reason, **R** is very unlikely to have relied on **Q** for its text. Then:

262.1 uenire distulerint **QW**] uenirent **R**

262.2 contumacia probationi **QW**] commoneat si uenire distulerint probatione **R^{ac}**
(-i **R^{pc}**)

These two cases are connected. **QW** have the archetypal reading, while **R** leaves out *distuleri-* in the first line. Judging from **R**'s insertion of *uenire distulerint* into the next line, it seems that some sort of repair was attempted. Perhaps a direct ancestor of **R** (but probably not of **Q**) inserted the two words interlineally. These then ended up in the wrong place in **R**, which also reflects further attempts (esp. *commoneat*) to fix the text. But whether or not this is how things transpired, the crucial point for now is that **Q** cannot have got its archetypal reading from **R**; it is simply impossible to believe that even a very skilled scribe would have been able to guess the precise archetypal reading without help from a MS carrying that reading.

The stemma for *Appendix 2* alone should take the following form:



5. Indirect tradition (2): Mommsen's mistaken view of Hincmar's source

The *Appendices* preserve many excerpts for which they are the only surviving witness. In principle, then, this should make it relatively straightforward to trace their possible use by later authors. Their survival in a considerable number of MSS makes this question all the more acute. That being said, however, I have not been able to find any vestiges of an indirect tradition of the *Appendices* (other than MSS **QRW**) with the help of the existing databases⁵³. Nonetheless, there is some confusion that has resulted from Mommsen's insistence that the ninth-century bishop Hincmar of Reims relied on *Appendix 1a* §21⁵⁴. This can be shown to be a misconception, and it will be useful to present the evidence briefly in order to dispel this idea once and for all:

Appendix 1a §21 (ed. Krüger, 257.18-21) = *CJ* 7.44.3.1

huic adicimus sanctioni ut sententia quae dicta fuerit, cum scripta non esset, ne (nec ***CJ***) nomen quidem sententiae habere mereatur

⁵³ I have already discussed above why I am very hesitant to consider Vaticanus Reginensis latinus 1128 as relying on *Appendix 2*. Furthermore, I leave out humanist editions of the *CTh.*; at least Cujas and Gothofredus were familiar with *Appendix 1a+b*. It cannot be shown that either relied on a witness different from those discussed in this paper.

⁵⁴ See the *apparatus* at *CTh.* 4.17.1. This suggestion is accepted as a certainty by Liebs 2002, p. 144.

Hincmar, *Opusculum LV capitulorum* (ed. Schieffer, *MGH*, conc. 4, suppl. 2, p. 268, lines 22, 27-28)

inquit sanctus Gregorius (... *there follows a quote from Gregory the Great, Reg. epist. 13.49, ll. 126-132 ...*) et item in libro VI titulo XVIII inter alia praecipitur, ut sententia, si sine scripto dicta fuerit, nec nomen sententiae habere mereatur.

Gregory the Great, *Epistles* (ed. Norberg, *CCSL* 140A, *Reg. epist. 13.49, ll. 133-136*)

legendum est titulo XLIII (XVIII some MSS) libro VII (VI most MSS) constitutione III, quia scriptis debuit iudicari; nam ibi inter alia praecipitur, ut sententia, si sine scripto dicta fuerit, nec nomen habere sententiae mereatur.

From comparing these three passages, it should be clear that Hincmar relied on Gregory. Not only do both writers share reformulations in comparison to the original law as found in the *Appendix* and in the *CJ*, but it is also the case that Hincmar's corrupted reference to the book and *titulus* numbers is identical to corruptions found in the MS tradition of Gregory. The only feasible explanation, *pace* Mommsen, is therefore that Hincmar relied on a MS of Gregory with these corruptions. To seal the deal, we should note that Hincmar mentions Gregory explicitly several lines before the passage under scrutiny. And given that Gregory mentions the Digest and the Novels of Justinian explicitly on the previous page⁵⁵, we can do little else but conclude that his source for the passage quoted above must have been the *CJ*.

In short, reliance on the *Appendices* by later authors and texts before the humanist editions of the *CTh*. remains untraced and unproven for now.

6. The traditions of *Appendix 1a+b* and *Appendix 2* vs. the tradition of the *Breviary*

With the stemmas for the *Appendices* in place, it is worth considering how they relate to the stemma of the *Breviary* text contained in the same MSS. This may throw more light on when the *Appendices* were attached to the MS tradition of the *Brev.*, which may in turn help

⁵⁵ *Reg. epist. 13.49.101,108*. It should be noted that Gregory's access to the Justinianic corpus in full remains moot. Strictly speaking, he cites only a single passage from the Digest, and he quotes two Novels in Latin *kata poda* translations of the Greek. Only one of these corresponds to the versions in the *Authenticum*. See Kaiser 2008, pp. 605-607.

to set firmer boundaries for dating the *Appendices*. I should preface the discussion by saying that this is not the place to re-examine in detail the entire transmission of the *Brev.*, arguably one of the most complicated chapters of the transmission history of Latin texts. In what follows, I largely rely on Mommsen's excellent discussion in the prolegomena of his edition of the *Codex Theodosianus*; where possible, I have checked specific claims with the help of microfilms and digital photos. The results of this type of analysis for *Appendix 3* are so revealing about its compilation that I have decided to discuss that case in a section of its own. The following considerations are particularly helpful for the study of *Appendix 1a+b* and *Appendix 2*.

First, the stemmas of the *Appendix 1a+b* and the *Brev.* do not overlap. The stemma of the *Appendix* that we have seen above represents, it is needless to say, a mechanical account of the copying process of this *Appendix* alone. The same mechanical account does not hold for the *Brev.* part of these same MSS. In particular, it has been pointed out that **OM AL** and **EBP** stand at different sides of the main division in the tradition of the *Brev.* These two groups are textually very remote, and both groups occupy quite marginal positions within larger MS sub-families whose members generally do not carry the *Appendices*⁵⁶. This means that there is no way we may infer that the last common ancestor of all these MSS, somewhere in the very early stages of the *Brev.* tradition, had *Appendix 1a+b* (and, by extension, the other two). Rather, we must conclude that *Appendix 1a+b* became attached to a *Brev.* MS at some point not later than archetype **ω**, and that the scribe-editor of **E** found this text worthy of inclusion⁵⁷, even though he had drawn the *Brev.* part of his MS from a different source. **E** drew its text of *Appendix 1a+b* from **δ** (the hyparchetype it shares with **N**). I note briefly that this mix-and-match approach fits well with **E**'s large number of interpolations into its *Theodosianus Visigothicus* from the full CTh.; much of the added material was never part of the *Brev.*⁵⁸. The text in **E** is clearly the result of a sustained effort to amplify its exemplar with as much further legal texts as

⁵⁶ See for the discussion, Mommsen 1904, pp. lxxv-lxxxii, lxvii-lxviii, pointing out that **OM** and **AL** within their sub-family appear to take relatively disparate positions.

⁵⁷ Once again, the *sigla* (such as **E**) are nodes in a schematic representation of the relations between the MSS. They are shorthands, which may mask the historical existence of further, now untraceable MSS (e.g. a virtually identical exemplar).

⁵⁸ For a discussion, see Mommsen 1904, pp. lxvii-lxviii. An example is the interpolation of the chapter *De fide catholica* (CTh. 16.1); **P** has this chapter as well.

possible. In this light, it is interesting to note that **E** has both *Appendix 2* and *Appendix 1a+b*, both from different sources⁵⁹.

Moreover, witness **N** reflects a similar practice of producing a version of the *Brev.* with the addition of further legal material from other sources⁶⁰. **N** does not contain a full version of the *Brev.*, but an adaptation known as the *Epitome Monachi*. This work at many places preserves or epitomises *interpretationes* rather than constitutions themselves, generally providing its legal provisions with the subscriptions of the constitutions⁶¹. The work is at present known from three MSS. Apart from **N** (9th-10th cent.), there are two witnesses that may both date to the late eighth century⁶². Both of these do not have the *Appendix*. The exact relations between the three MSS have not been clarified in complete detail and deserve further study, but inspection of Hänel's apparatus indicates that none of these MSS depends on one of the others⁶³. As such, we can be fairly certain that the *Epitome Monachi* had at least one earlier manuscript generation. If it can be shown that **N** stemmatically relies directly on the archetype of the *Epitome Monachi* without the inference of a hyparchetype shared with one of the other MSS, we may at best posit a fifty percent chance that the *Appendix* came down from the archetype⁶⁴. This would place δ (the hyparchetype of **N** and **E**) not later than the eighth century—since the *Epitome*'s archetype in that case relied on δ . Given the early dates of **M** and **L**, our stemma could well tolerate this date. Yet the absence of the *Appendix* in the two earlier witnesses prevents from

⁵⁹ I.e. the stemma indicates that *Appendix 2* did not derive from δ .

⁶⁰ *Appendix 1a+b* is preceded in this MS by a brief text (not otherwise attested) entitled *de meretricibus et infamis*.

⁶¹ The work is seriously understudied. For a brief discussion, see Liebs 2002, pp. 249-254. See also Coma Fort 2014, pp. 331-335; Gaudemet 1965, pp. 46-47.

⁶² **64** (# Hänel): Berlin, Staatsbibliothek Preussischer Kulturbesitz, Phillipps 1735 (Burgundy, 8th-9th cent.), fol. 1v-157v; **63** (# Hänel): Paris, BnF, BnF, latin 4403B (Luxeuil, late 8th cent.), fol. 1-95r. Note that **N** = **62** (# Hänel).

⁶³ For example, all three witnesses have unique lacunae in their main texts, which virtually excludes that they depend on one another. (I have left omitted subscriptions out of consideration here, as it is conceivable that as recurring elements they may be more easily noticed, fixed, and/or restored). A critical edition of the *Epitome Monachi* based on modern ideas of textual transmission and criticism, and with an interest in the epitome as a chapter in the history of the *Brev.*, remains a desideratum.

⁶⁴ The fifty percent scenario only holds if the other two MSS share a hyparchetype. If they all independently go back to the archetype, the chance is one third, and the hypothesis should be rejected on the basis of the two-against-one rule.

making a justified inference that the *Epitome*'s archetype carried *Appendix 1a+b*. Without further evidence, the opposite, namely its absence, may in fact be the more plausible supposition.

The tradition of *Appendix 2* raises questions about the order in which the *Appendices* have been preserved in **E**, as well as about how **QRW** factor into the picture. It was already mentioned that *Appendix 1a+b* reached **E** by migrating through the stemma of the *Brev.* Note in this connection also **E**'s dependence on the hyparchetype **δ**, which presupposes repeated copying and increased circulation of *Appendix 1a+b*. But it is not clear how **E** was put together. The fact that *Appendix 2* is located physically before *Appendix 1a+b* indicates at the very least that *Appendix 2* was added before *Appendix 1a+b* was added. Yet it is impossible to say whether a scribe-compiler sought to supplement a copy of merely the *Brev.* with further materials and that he found *Appendix 2* before he found *Appendix 1a+b*; or whether the main source of **E** was a *Brev.* already equipped with *Appendix 2*, to which the scribe added *Appendix 1a+b* from **δ**. On the other hand, **QRW** appear to indicate that *Appendix 2* had a life before **E**. Just what sort of life is not easy to tell. Perhaps, since **QRW** all preserve the *scedae* on absence in connection with Alaric's *commonitorium*, some association with the *Brev.* can be presumed before **E**.

7. The *Breviary* and the background of *Appendix 3*

Appendix 3 consists of four excerpts ascribed to the *Gregorian Code*. Two of these have *interpretationes*, while the other two carry the remark *interpretatione non eget*. All these four rescripts, including the *interpretatio* material, occur also in the selection from the *Gregorianus* that is part of the *Breviary* itself in many of the MSS, including **OM**. In other words, the excerpts of *Appendix 3* have a parallel transmission within the same physical MSS. This situation offers an opportunity to collate the versions of *Appendix 3* against those of the *Gregorianus* selection—first of all in **OM** but also across the tradition of the *Brev.* We will see in this section that this exercise repays the effort very much, since it will allow us to establish how and when (in stemmatic terms) *Appendix 3* was compiled.

For starters, the evidence makes clear beyond doubt that the text of *Appendix 3* was not based on the *Gregorianus* selection as it was found in **α** (the hyparchetype of **OM**). This is because **O**(Greg.) and **M**(Greg.) share a major lacuna (namely the entire fourth

excerpt) and a few oddities against **OM**, whose readings must be considered superior on the basis of other witnesses⁶⁵:

H.23 agenti] adgenti **O**(Greg.) **M**(Greg.)

H.27 patris mutuum datum **OM**, patris datum mutuum *CJ* 4.28.5] patris datum
O(Greg.) **M**(Greg.)

H.28 perpetua (perpetuam **OM**)] in perpetua et **O**(Greg.) **M**(Greg.)

H.37-9 *om.* **O**(Greg.) **M**(Greg.)

From these cases, we must conclude that the text of *Appendix 3* at **α** preserved more accurate as well as more detailed information than the parallel excerpts in the *Gregorianus* selection of **α**. It is therefore inconceivable that *Appendix 3* was compiled from **α**'s *Gregorianus* selection. Furthermore, it is very hard to find any archetypal variants in the text of *Appendix 3* that may be considered “conjunctive errors” with the *Gregorianus* selection of **α**. Together with the evidence just presented, the existence of such conjunctive variants would point to reliance on a direct ancestor of the *Gregorianus* selection in **α**. The only mildly remarkable case is:

H.7 patrimonio] patremunio **OM^{ac}** **M**(Greg.), *lac.* **O**(Greg.)

On closer thought, however, this variant may very well be the result of a scribal quirk. Note that all these instances depend directly and (quite) immediately on **α** (and hence on **α**'s scribe).

While *Appendix 3* can thus not be positively connected to the lineage of **α**, it can on the other hand be tied quite closely to another MS in the *Brev.* tradition, namely **A**⁶⁶. As a matter of fact, **OM** and **A**(Greg.) share several remarkable variants against **O**(Greg.) **M**(Greg.) and (much of) the rest of the tradition. The most decisive cases are:

H.5 qua tamen parte] quam eam partem **OM A**(Greg.)

⁶⁵ There are a few cases that are significant but harder to judge, such as *Appendix 3*'s use of the chapter heading *De senatusconsulto Macedoniano*, which is lacking in **O**(Greg.) and **M**(Greg.). This *titulus* probably occurred in the *Gregorian Code*, because it is also found in the *CJ*. This will be discussed below.

⁶⁶ We cannot compare **L**'s readings, because **L** misses a quire with most of the *Gregorianus* selection.

- H.7 patris uiuente] patris suae uiuente **OM**, patris ui uiuente **A**(Greg.)
- H.11 dereliquit] dereliquid **OM A**(Greg.)
- H.20-1 *titulus deest in plerisque codicibus*, AD SENATUSCONSULTUM
MACEDONIANUM **CJ** 4.28.tit] X DE SENATUM CONSULTUM MACEDONIANUM
EX (*om.* **A**(Greg.)) INFRA SCRIPTA (SCRIPTO **A**(Greg.)) **OM A**(Greg.),
- H.27 patris datum] patris mutuuum datum **OM A**(Greg.) *et in nonnullis codicibus*
- H.27 disquiri] de his (is **M**) queri (quaeri **O**) **OM A**(Greg.)
- H.36 INSTRUMENTUM (-TIS **O**(Greg.) **M**(Greg.))] STRUMENTIS **M A**(Greg.), *lac.* **O**

It should be clear from these collations that **OM** have a considerable number of readings in common with **A**(Greg.), which suggests a close filiation between *Appendix 3* and **A**. As for the precise nature of the relation, it can be excluded that *Appendix 3* drew from **A** itself, since **A** contains several lacunae and distortions of its own:

- H.4 ad te] aditae **A**(Greg.)
- H.10 promissionis] proportionis **A**(Greg.)
- H.14 uiuus] tuus **A**(Greg.)
- H.19 PP XII KAL. IUL. ROMAE DUOBUS ASPRIS] *om.* **A**(Greg.)
- H.20 INTERPRETATIONE non eget] *om.* **A**(Greg.)
- H.35-6 praestaretur, non quaerendum est, quid de ea pecunia] *om.* **A**(Greg.)

In all these cases, *Appendix 3* contains more information than **A**(Greg.). **A** can therefore not have been the source of *Appendix 3*. But given several remarkable shared variants, notably the *tituli* with INFRA SCRIPTA and STRUMENTIS, we must conclude that *Appendix 3* in its archetypal form (**α**) had a close relation with a MS much like **A**. If we further take it that *Appendix 3* was compiled on the basis of the *Gregorianus* selection in the *Brev.*, we must look for a MS that is genetically related to **A** but preserved more or better information at the places listed above. While **L**, **β**, **γ**, and **ω** are all good candidates a priori⁶⁷, the presence of *Appendix 1a+b* in **α** (having come down from **ω**) urges us very strongly to draw the conclusion that *Appendix 3* was compiled on the basis of **ω**. This conclusion has at least two major implications. On the one hand, *Appendix 3* was compiled at point **α** and

⁶⁷ Note once more that most of the *Gregorianus* selection featured in the missing quire from **L**.

postdates ω . It is therefore a much later product, it seems, than the other *Appendices*. On the other hand, *Appendix 3* seems to supplement problematic parts in the *Breviary Gregorianus* selection of α , which omitted at least one excerpt altogether, and which did not feature the *titulus* on the SC Macedonianum⁶⁸. If this is indeed a reasonable assessment, we should probably consider *Appendix 3* first and foremost as a scribal supplement to the somewhat mutilated *Brev.* tradition that led up to α . It is less likely that we should consider *Appendix 3*, as some have suggested, as a practising lawyer's case dossier from the Visigothic era⁶⁹. Finally, α 's supplementation from ω also presupposes that α 's *Breviary* text was not in fact drawn from ω but from another exemplar. This idea sits well with Mommsen's refusal to see a very close relation between our **OM** and **AL**. In addition, it would make good sense of the order in which *Appendix 3* and *Appendix 1a+b* occur in **OM**: having copied the *Brev.*, the scribe supplemented missing parts for the *Gregorianus* from ω , as well as *Appendix 1a+b*.

8. Questions of dating and composition

The dating of the *Appendices* has been a controversial matter, with suggestions ranging from a fifth-century Roman setting to eighth-century Merovingian or Carolingian scriptoria⁷⁰. The main challenge here has been that the texts themselves do not provide very specific anchors apart from the sources on which they rely. Now that we have a much clearer picture of the transmission of the *Appendices*, it is possible to explore briefly what information the textual tradition is able to offer in this regard.

⁶⁸ Hänel 1849, p. xxi already noted that *App. 3* was appended to a lacunose *Gregorianus* selection.

⁶⁹ Liebs 2002, p. 181; cf. also Gaudemet 1965, p. 16. At first glance, the excerpts of *App. 3* might be read as all pertaining to a legal conflict between brothers and sisters after the death of their *pater familias*. Yet not only is this primarily suggested by the first two excerpts, it is also the case that a large proportion of the excerpts in the *Gregorianus Visigothicus* deal with succession and/or are addressed to women. At the end of the day, any attempt to read *App. 3* as a case dossier will have to deal with the philological points raised above. While both approaches are not mutually exclusive, I remain sceptical about the forensic reading.

⁷⁰ For the first view, see Liebs 2002, pp. 144, who is followed by Coma Fort 2014, pp. 217-227 (with doxography); Krüger's inclusion of *Appendix 1a+b* and *Appendix 2* in the *Collectio librorum iuris anteiustiniani* suggests he held it for possible that they predated the Visigothic era. For the view that all *Appendices* date to and are typical of the 8th century, see Lambertini 1991, pp. 190-191.

What can be said about the date of ω ? As we have seen, **M** can with considerable confidence be dated to the second half of the eighth century. **L** has been assigned to the same period on palaeographical grounds. The stemma allows us to infer that these two MSS are at least two generations removed from ω . It is obviously very hard to say anything about how long each generation existed before it was copied. I would suggest that a conservative estimate would place ω in the earlier eighth or later seventh century. But it is possible that it is older⁷¹. I have not been able to link the “archetype errors” to the transition of one specific script type to the other.

For *Appendix 2*, much the same reasoning holds. The archetype ν must obviously predate **E**, which gets us in all likelihood into the eighth century, perhaps earlier. In this case, too, the “archetype errors” seem relatively little specific.

We have seen that *Appendix 3* must have been compiled on the basis of ω at the point **a** was made, quite possibly in the eighth century.

Other than these transmission-based reflections, it is very hard to find strong indications for a precise dating. As Liebs has suggested, *Appendix 1a+b* and *Appendix 2* both seem to have been compiled without the *Breviary* as a point of reference⁷². This is especially clear for *Appendix 2*, which has three excerpts that overlap with the *Brev.*⁷³, and as such appears to reflect no policy of using or supplementing the *Brev.* All the same, *Appendix 1a+b* presupposes a legal library that included at least the *CTh.*, the *Gregorian Code*, and *Pauli Sententiae* in versions beyond the *Brev.* Moreover, the *scedae* refer to the *benefica providentia principis* as if emperors are still around. Finally, as Lambertini has suggested, the so-called *ius abstinendi* discussed in *Appendix 1a* 3-5 seems to have fallen by the wayside by the time the *Brev.* was made⁷⁴. All of this pleads for an earlier rather than a later date in the window stretching from the promulgation of the *CTh.* (in 438) to ω 's exemplar.

⁷¹ **O** appends after *Appendix 1a+b* a list of mostly Merovingian kings that ends with the Carolingian Pepin III. The list includes the number of years the reigns lasted. Given its absence in **M AL**, however, we cannot retroject the list into ω . We are therefore not restricted to dating ω after Pepin's death (in 768).

⁷² Liebs 2002, pp. 143-144.

⁷³ §5 = *Brev.* 4.16.1 (= *CTh.* 4.18.1); §§8-9 = *Paul.* 5.5A.6-6a.

⁷⁴ Lambertini 1991, pp. 143 nt. 31.

9. Conclusion: towards a new edition of the *Appendices*

It has been my aim in this paper to clarify the transmission process of the *Appendices* to the *Lex Romana Visigothorum*. The stemmas indicate clearly which witnesses carry most weight in establishing a reliable text. Such an edition should be of interest to historians of the late antique West. We are, after all, not dealing with a single text, but rather with a small corpus of this type of collections, to which we may add the fairly similar *Consultatio* as well. In other words, these texts offer valuable information about a cultural praxis. They have a lot to offer for the study of how the large and well-attested codification projects were received and used in the lawyerly world of late antique Gaul.

Bibliography

- Bischoff 1990 B. Bischoff, *Latin Palaeography: Antiquity and the Middle Ages*, Cambridge 1990.
- Bischoff 1998 B. Bischoff, *Katalog der festländischen Handschriften des neunten Jahrhunderts (mit Ausnahme der wisigotischen). Teil I, Aachen-Lambach*, Wiesbaden 1998.
- Coma Fort 2014 J.M. Coma Fort, *Codex Theodosianus: historia de un texto*, Madrid 2014.
- Gaudemet 1965 J. Gaudemet, *Le Bréviaire d'Alaric et les epitome (Ius Romanum Medii Aevi pars I.2b αα β)*, Milano 1965.
- Hänel 1849 G. Hänel, *Lex Romana Visigothorum*, Lipsiae 1849.
- Kaiser 2008 W. Kaiser, *Nachvergleichen von Novellen- und Codexzitaten in einer frühmittelalterlichen Sammlung mit Exzerpten aus dem Register Gregors d. Gr. (Reg 13, 49 [50])*, «ZRG RA» 125 (2018), pp. 603-644.
- Kaiser 2017a W. Kaiser, *Ein unerkannter Auszug aus den Libri II de verborum, quae ad ius pertinent, significatione des Aelius Gallus*, «ZRG RA» 134 (2017), pp. 310-352.

- Kaiser 2017b W. Kaiser, *Schemata zur agnatischen und kognatischen Verwandtschaft nach Römischem Recht in Handschriften mit westgotisch-römischem Recht*, «ZRG RA» 134 (2017), pp. 353-408.
- Klenze 1838 C. Klenze, *Institutio Gregoriana aus der Pitouschen jetzt Berliner Handschrift zum erstenmale herausgegeben*, «Zeitschrift für geschichtliche Rechtswissenschaft» 9 (1838), pp. 235-299.
- Krüger 1890 P. Krüger, *Appendices Legis Romanae Wisigothorum Duae*, in P. Krüger - Th. Mommsen - W. Studemund (ed.), *Collectio librorum iuris anteiustiniani in usum scholarum*, volumen III, Berolini 1890, pp. 247-263.
- Lambertini 1991 R. Lambertini, *Appendices Breviarum*, in Id., *La codificazione di Alarico II* (seconda edizione), Torino 1991, pp. 119-192.
- Liebs 2002 D. Liebs, *Die römische Jurisprudenz in Gallien (2. bis 8. Jahrhundert)*, Berlin 2002.
- Liebs 2016 D. Liebs, *Lex Romana Visigothorum*, in A. Cordes - H. Lück (ed.), *Handwörterbuch zur deutschen Rechtsgeschichte* (zweite Auflage), Band 3, Berlin 2016, pp. 918-923.
- Meyer 1905 P.M. Meyer: *Leges Novellae ad Theodosianum pertinentes*, Berlin 1905.
- Mommsen 1904 Th. Mommsen: *Theodosiani libri XVI cum constitutionibus Sirmondianis*, Berlin 1904 (repr. Berlin 1962).

Matthijs Wibier
 University of Kent, Canterbury
 m.h.wibier@kent.ac.uk