THE SO-CALLED *APPENDICES TO THE LEX ROMANA VISIGOTHONURUM.*

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 Visigothonurum.* 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 Visigothonurum* (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.* In addition, its more than seventy 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 us by virtue of having been ap-

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* 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 *Theodianus Visigothicus*); (2) an extensive selection from the post-Theodosian *Novellae,* (3) the *Liber Gai* (a late antique reworking and update of Gais’ *Institutes*); (4) an extensive selection from *Pauli 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 Liesb 2002, pp. 166-176 and Liesb 2016. See also Gaudemet 1965, which despite several factual inaccuracies is extremely informative.

Athenaeum 108/1 (2020), pp. 150-180
pended to a Brev. manuscript at some point during the Middle Ages. Although these shorter texts have been much neglected in general, studies have recently been slowly getting on the rise.

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 Fort:

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 CTb. (§§ 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.

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 CTb. (§§ 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); the two longer scedae on absence in the courts (§§ 11-14)

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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. 217-227. The use of alternative numberings should be discontinued.
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.
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 matter 6. This indicates that the first Appendix is in fact a combination of two separate collections, even though they are not punctuated by an explicit7. 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

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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.
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 *2*. These *Appendices* (the ones without *interpretationes*) may in fact very well predate the *Brev.* and are likely to be Late Roman.

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 way. 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 of the transmission, nor of the relations between *Appendix 1a+b* and *Appendix 2*. 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 antejustiniani 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 grounds. Similarly, he failed at least once to fill an important and obvious lacuna from a parallel tradition of the *Theodosian Code*. 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.

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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.

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.
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 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 Fort 14. I present the MSS in line with the order in which they fit in the stemma.

*Appendices*15

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 3*), 78r-79v (*Appendix 2*), 79v-82r (*Appendix 1a+b*); 8th cent. (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 OW, digital photos of MANB, digitised microfilms of LE PQ R.

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

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:

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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, 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 short-hand «the scedae on absence» throughout this paper.
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

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 statu-
ta 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 ex-
cerpts 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 1a+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 Constan-
tinople as the place of issuing.

At the end of the day, however, this line of arguing will have to face one pro-
blem 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). 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 fea-
tured 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 originally also Gratian).

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20 See for example CTh. 1.2.8 for these three emperors and the consular date of Antonius and Sya-
grius.
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 it. 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 inscriptive practices were relatively flexible, 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 lib. (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. 4.20.2. As such, it is likely that a scribe at some point encountered lib.iu, lib.iu, or libro iu and turned it into librum (perhaps mistaking a horizontal stroke over the numeral (iū) for a suspended nasal (-m)). 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 MS.

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.

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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.
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 \( \omega \) 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.

![Stemma Diagram]

The sign \( \omega \) 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,

\(^{26}\) For *Appendix 2*, the archetype is E. For *Appendix 3*, a.
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 \( \sigma \) reflects a copying process that had gradually introduced these scribal «errors»\(^{27}\). Here are some peculiar archetype readings\(^{28}\):

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 furtur et OM, quos (quo A) eisdem (hisdem L) et ALNPBE (et \( \textit{om.} N \))
257.20 rescissionem] res cessionem OM LN, recessionem A PE
259.2 deliciosa (relinquosa vel relegata \textit{malimi})] relegiosa OM A, religiosa NPE
259.10 tua edi] tuae OM A, tue di N, tuendi PE

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 \textit{si certum petitur}] \textit{om.} OM
255.4 paternis secundum edicti] paternis similis elicti OM
255.19 in] \textit{om.} OM
255.19 petitori] petiruti OM
255.20 pater familias] pater uiuii familias OM
256.2 iudex] inde OM
256.5 ex] \textit{om.} OM
256.15 X] \textit{om.} OM
256.22 ciuilem (ciuili AP, ciuile L)] uel OM
257.17 de scripti] describere OM
258.1 Ulaientinianus] Lentiniuranus OM
258.1 et] \textit{om.} OM
259.3 praesidentem propri] 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)

\(^{27}\) 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.
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] INSTITUO 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, cóminus N, quominus EBP, lac. L
254.4 si] om. ANEBP, lac. L
254.6 iiii (iii O) GREGORIANI LIB. II TIT. XUII SI UT SE HEREDITATIS ABSTINEAT (ABSTINEAT M]) iii tit 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] t cett. om. A, om. NEP, lac. LB
259.13 t iiii 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.

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 (a). 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 work\(^{30}\). I append variant readings for Appendix 3 as well, though with the caveat that this very short text has almost no truly unambiguous readings to exclude dependence of O on M\(^{31}\):

\(^{29}\) 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.

\(^{31}\) The only edition of Appendix 3 is that of Hänel, which I have used for the purposes of collating.
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 formally:

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 MS. 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

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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.

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.
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(=α), 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 quasitis] quasit 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 (). At the same, common variants in AL against a consensus in NEBP and OM point out that AL also have an ancestor (a) on which NEBP do not depend:

255.12 potest] potest interp A, potest INTP N EG. L
255.18 duplam] duplum AL
255.19 cogetur] cogitur interp A, cogetur INTP N EG L
256.3 pronuntiet] pronunciet interp A, pronunciet INTP N EG L
256.6 possint] possint interp A, possint INTP NON 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 consss.] 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 consss.] om. L
257.17 ultimas definitiones] ultima his definitiones L
257.18 adicimus] didicimus 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.

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

- 255.10 adierint (adherint \textit{OM}, adhierint \textit{P}) agerent \textit{N}
- 256.9 omnes \textit{om. N}
- 256.20 senatus \textit{Kr.}, senato \textit{OMA}, senatu \textit{LPBE} ea natā \textit{N}
- 258.3 plenum recenseat plenum ire censeat \textit{N}
- 258.19 casibus impetratum čuï şibi imperative \textit{N}
- 259.10 non minus criminalia nominis criminalalia \textit{N}

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

- 253.8 existimatio] estimatio \textit{EBP}
- 253.8 ob id] obstet \textit{EBP}
- 253.11 debitori tuo] debitor est tio \textit{E}, debitor e tio \textit{BP}
- 253.12 exstitisti] institutus \textit{EB}, institutio \textit{P}
- 254.6 III \textit{GREGORIANI LIB. II TIT. XVII SI UT SE HEREDITATIS ABSTINEAT] om. \textit{EBP}}

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

The most complicated question regarding the transmission is that of the relations between \textit{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 \textit{B} is fragmentary for \textit{Appendix 1a+b}. In order to get more certainty about the relations, we will have to base ourselves primarily on the text of \textit{Appendix 2}, and for \textit{E} and \textit{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

34 Noting that \textit{B} is only partially preserved, I leave out further cases where \textit{EP} side against the tradition while \textit{B} is lacunose.
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 grounds 35, 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 accep] om. P
261.30 scedam] s(e)c(um)d(um) P
262.7 te] om. P
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.

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. LXVIII-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).
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.
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 iii] iii B
255.3 v] iii 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 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(PORE) IPSO
   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 corrector then

39 Further corrections in various hands throughout E (e.g. fol. 180r, 232v, 245v) suggest that the present correction may very well be the work of a later corrector (cf. Mommsen 1904, pp.LXVII-
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):

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

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 § 17 \(^{40}\). 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 orientation \(^{41}\). 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, 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 conventione, these MSS sandwich it between Alaric’s comminitorium 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 particular 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-family.46 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 us begin with the rarer scenario, namely the situation in which QRW preserve readings superior to those of E:

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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 Lamberti 1991, p. 185; Liebs 2002, pp. 144-145; Coma Fort 2014, p. 224.
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 sort. 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*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 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

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47 It could, for example, be the result of resolving an abbreviation for ed(ict) into the more common en(im).
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 source 48.

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 secdae 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, prae cupidit ita W
262.23 lapsu] lapso E QW, lapsu Rα
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 places 49. 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(terae), dispexit(it), and legis. 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

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 secdae at § 15 suggests the opposite to me.
49 Note that R’s scribe corrected it.
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 archetype\textsuperscript{50}. 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 providentia. 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 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\textsuperscript{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\textsuperscript{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:

\begin{itemize}
  \item 262.16 sic] si QR
  \item 262.22 pra cupit ita W, prae cupiditate E] praua cupiditate QR
\end{itemize}

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

\textsuperscript{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.

\textsuperscript{51} The letters f and p might be quite easily confused in many scripts.

\textsuperscript{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.
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
- 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“p)

These two cases are connected. QW have the archetypal reading, while R leaves out distulerint- 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 interlinearly. 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 databases. Nonetheless, there is some confusion that has resulted from Mommsen’s insistence that the ninth-century bishop Hincmar of Reims relied on Appendix 1a, § 21. 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

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)

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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.
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 page \(^5\), 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 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 me-

\(^5\) 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.
chanical 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. 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 0, and that the scribe-editor of E found this text worthy of inclusion, 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. The text in E is clearly the result of a sustained effort to amplify its exemplar with as much further legal texts as possible. In this light, it is interesting to note that E has both Appendix 2 and Appendix 1a+b, both from different sources.

Moreover, witness N reflects a similar practice of producing a version of the Brev. with the addition of further legal material from other sources. 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 constitutions. 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 century. Both of these do not have the Appendix. The exact relations between the three MSS have not been clarified in complete detail and deserve

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56 See for the discussion, Mommsen 1904, pp. LXXV-LXXXI, 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.

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.

further study, but inspection of Hānel’s apparatus indicates that none of these MSS depends on one of the others. 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 archetype. 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 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

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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.
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 a (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 witnesses 65:

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 a preserved more accurate as well as more detailed information than the parallel excerpts in the Gregorianus selection of a. It is therefore inconceivable that Appendix 3 was compiled from a’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 a. 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 a. The only mildly remarkable case is:

H.7 patrimonio] patremunio OM 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 a (and hence on a’s scribe).

While Appendix 3 can thus not be positively connected to the lineage of a, 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.

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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 Macedonianu, 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.
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.)
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 mutuum 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 MA (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 uius] 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 quaudendum 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 (a) 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 priori, the presence of Appendix 1a+b in a (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 a and 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 a, which omitted at least one excerpt altogether, and which did not feature the titulus on the SC Macedonianum. If this

67 Note once more that most of the Gregorianus selection featured in the missing quire from L.
68 Hänel 1849, p. XXI already noted that App. 3 was appended to a lacunose Gregorianus selection.
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 era. 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 scriptoria. 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.

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 older.

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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.

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).
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 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 at the point 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 reference. This is especially clear for Appendix 2, which has three excerpts that overlap with the Brev., 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 secedae 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 made. 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 's exemplar.

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.

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72 Liebs 2002, pp. 143-144.
73 § 5 = Brev. 4.16.1 (= CTh. 4.18.1); §§ 8-9 = Paul. 5.5A.6-6a.
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