

## NOTE E DISCUSSIONI

THE *BREVIARY* PART OF MS BERLIN LAT. FOL. 270  
WAS COPIED FROM MS IVREA XXXV (17)\*

ABSTRACT. This paper establishes on philological grounds that manuscript Berlin lat. fol. 270 was copied from Ivrea XXXV (17) for the text of Alaric's *Breviary* and the *Appendices to the Lex Romana Visigothorum*. This goes against the *communis opinio* of palaeographers about the relative dating of these two manuscripts.

The texts preserved in manuscripts Ivrea XXXV (17) (= **E**)<sup>1</sup> and Berlin lat. fol. 270 (= **B**)<sup>2</sup> overlap only minimally. While missing its first quire, **E** carries a version of Alaric's *Breviary* (or *Lex Romana Visigothorum*) that has been amplified by additions from the full *Theodosian Code* and the *Sirmondian Constitutions*<sup>3</sup>. It also contains *Appendix 2* and *Appendix 1a+b* to the *Lex Romana Visigothorum*<sup>4</sup>. On the other hand, **B** is a composite codex that combines sets of folios from various manuscripts<sup>5</sup>. The first ten folios transmit the *Lex Romana Burgundionum*, ending with a colophon on fol. 10v that probably marked the end of the original codex. The following three folios, possibly in the same hand, preserve the end of the *Breviary*<sup>6</sup> followed by *Appendix 2* and *Appendix 1a*, §§ 1-19 *intesta* (= p. 258.8 ed. Krüger)<sup>7</sup>. Next, folios 14-16 feature excerpts from the *Theodosian Code* that are written in a distinctly different hand and that belong together with Berlin lat. fol. 636. It will be clear from this that the two manuscripts only share the end of the *Breviary* and the *Appendices* up to *Appendix 1a*, § 19.

It is perhaps not surprising, given the lack of scholarly interest in the *Appendices*, that the connection between the two manuscripts has never been clarified philologically. Thus far, scholars have proposed and defended relative datings on palaeographical grounds. The outcome of these discussions has consistently been to date **B** somewhat earlier than **E**. For example, Bischoff dates **B** (folios

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\* This paper has emerged from a comprehensive study of the textual tradition of the *Appendices to the Lex Romana Visigothorum*, published in this volume (pp. 000-000). Thanks are due to Serena Ammirati, Marco Fressura, Dario Mantovani, and the anonymous readers for «Athenaeum». This research was supported financially by the ERC (FP7/2007-2013, nr. 341102, REDHIS).

<sup>1</sup> Ivrea, Biblioteca Capitolare, XXXV (17). A digitised microfilm reproduction of the entire MS can be consulted via <https://www.beic.it/it/articoli/manoscritti-giuridici-medievali/>.

<sup>2</sup> Berlin, Staatsbibliothek Preussischer Kulturbesitz, lat. fol. 270. A digitised microfilm reproduction of the MS can be consulted via <https://www.beic.it/it/articoli/manoscritti-giuridici-medievali/>.

<sup>3</sup> For details, see J.M. Coma Fort, *Codex Theodosianus: historia di un testo*, Madrid 2014, pp. 146-147.

<sup>4</sup> On the *Appendices* and their numbering, see M. Wibier, *The So-Called Appendices to the Lex Romana Visigothorum. Compilation and Transmission of Three Late Roman Private Legal Collections*, «Athenaeum» 110/1 (2020), pp. XXX-XXX.

<sup>5</sup> See Coma Fort, *Codex Theodosianus* cit., pp. 141-142.

<sup>6</sup> From *filio familiae pecuniam dedit* of the *interpretatio* of *Codex Gregorianus Visigothicus* 10.1 (ed. P. Krüger, *Codices Gregorianus et Hermogenianus*, in P. Krüger - Th. Mommsen - W. Studemund [ed.], *Collectio librorum iuris anteustiniani* III, Berolini 1890, pp. 221-235, at p. 321, ll. 21-22 = *C. Greg. Vis. XI(V).1*, ed. G. Hänel, *Lex Romana Visigothorum*, Lipsiae 1849, p. 448, l. 34).

<sup>7</sup> These three folios should be read in the order 13, 11, 12, as they have been bound incorrectly.

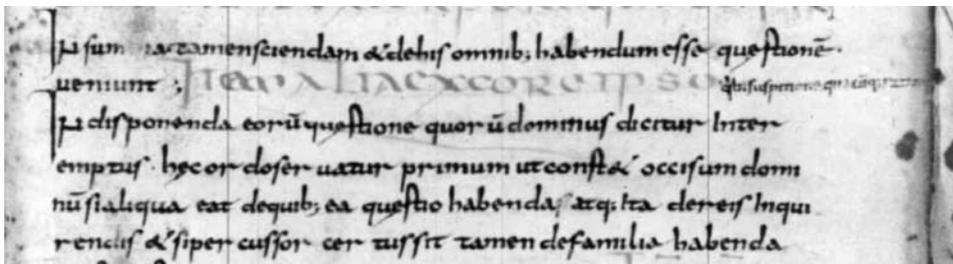
1-13) to the first quarter of the ninth century while placing E in the second quarter of the same century<sup>8</sup>. Similarly, Liebs suggests B was produced in the eighth or ninth century, E in the ninth or tenth century<sup>9</sup>. Yet a philological analysis, based on collations of the overlapping texts, demonstrates beyond any doubt that B was copied from E and must hence – however slightly – postdate E.

The main evidence are the following two places where E was corrected and B shows anomalies that must have resulted from misreading E's corrections. First and foremost, there is the case of the omitted relative clause at the end of *Appendix 2*, § 16. Krüger's edition reads (p. 263, ll. 15-17; all underscores are mine):

... quaestionem qui in suspitione quacumque ratione ueniunt.  
 § 17 item alia ex corpore ipso  
 in disponenda eorum quaestione...

A photo of the manuscript shows clearly that E's scribe left out the relative clause, which was then added in smaller script by himself or a corrector in the partly open space following the rubrication:

The relevant part can be transcribed as follows:



Ivrea, Biblioteca Capitolare XXXV (17), fol. 248r

(photo: <http://www.beic.it/it/articoli/manoscritti-giuridici-medievali>)

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E(fol. 248r)

*qu(a)estione(m) ·*  
*ueniunt item alia ex cor(por)e ipso · <sup>qu(i) in suspitione quacu(m)que ratione</sup>*  
*in disponenda eoru(m) quaestione*

It should be clear that E was repaired (1) by inserting the missing clause in the open space underneath the word it is supposed to follow, and (2) by marking the clause and the place of insertion with a dot. However, given the placement of the missing clause on the next line, and given that the insertion marks are quite minute, it is conceivable that a copyist of E might proceed linearly and keep the inserted clause immediately after the rubrication. This is where B draws our attention:

<sup>8</sup> B. Bischoff, *Katalog der festländischen Handschriften des neunten Jahrhunderts (mit Ausnahme der wisigotischen)*, Teil I. Aachen - Lambach, Wiesbaden 1998, p. 77, 327.

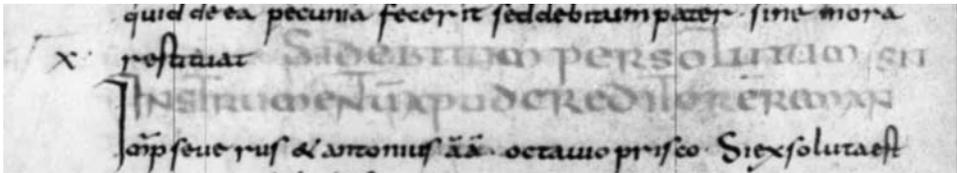
<sup>9</sup> D. Liebs, *Die römische Jurisprudenz in Gallien (2. bis 8. Jahrhundert)*, Berlin 2002, pp. 99, 110. For a convenient overview of various dating proposals, see <http://www.leges.uni-koeln.de/en/mss/codices/berlin-sb-lat-fol-270/> and <http://www.leges.uni-koeln.de/en/mss/codices/ivrea-bc-xxxv-17/>.

B (fol. 13v)

*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*

That is, B misplaces the relative clause precisely at the point where a linear reading of E might have led us. For this reason, it is very hard to imagine that B did not rely directly on E for this part of the text. If we also consider that B failed to preserve the insertion marks and as such contains less information, we must conclude that E was B's exemplar.

A second case can be added. When filling in the *titulus* of *Gregorianus Visigothicus* 11<sup>10</sup>, E's rubricator reached the end of the second line – and presumably the end of the space left for him by the copyist of the body text – when he finished the penultimate syllable (PERMAN-). Rather than simply carrying on by adding the last syllable (-sit) in the margin, he decided to write it in the little open space right above the penultimate syllable. The photo will make things clearer than the transcription alone:



Ivrea, Biblioteca Capitolare XXXV (17), fol. 245v

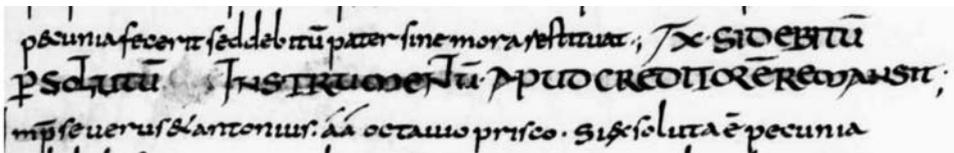
(photo: <http://www.beic.it/it/articoli/manoscritti-giuridici-medievali>)

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E (fol. 245v)

SI DEBITUM PERSOLUTUM SIT  
INSTRUMENTUM APUD CREDITOREM REMAN-

Now, B bears traces of how the positioning of -sit in E might have led a linear reader-copyist astray:



Berlin, Staatsbibliothek Preussischer Kulturbesitz, lat. fol. 270, fol. 12r

(photo: <http://www.beic.it/it/articoli/manoscritti-giuridici-medievali>)

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B (fol. 12r)

SI DEBITUM(M)  
P(ER)SOLUTUM(M) SFF INSTRUMENTUM(M) APUD CREDITORE(M) REMANSIT

It must be noted the B's scribe or rubricator had before him a text that had the word *sit*

<sup>10</sup> This is the numbering of Krüger, *Codices Gregorianus et Hermogenianus* cit. (= *titulus* X(I) in the ed. of Hänel, *Lex Romana Visigothorum* cit.).

after *persolutum* – an element that on linear reading is unlikely to strike anyone as a grammatical oddity. However, once he reached the end of the *titulus*, he must not simply have noted the incomplete form *REMAN-*, but he must also have been able to repair the text in the correct way on the basis of his exemplar. If we accept that it is not obvious to move *sit* to the end of the line without the kind of visual clue that **E** contains, we must conclude that **B**'s scribe or rubricator here had **E** in front of him.

These two cases should suffice to establish the dependency of **B** on **E** for the *Breviary* part of **B**<sup>11</sup>. It is harder to say what the exact consequences are for the absolute dating of **E** and **B**'s *Breviary*. However, considering that palaeographical studies appear to vary more widely in their dating of **E** than they do for **B**<sup>12</sup>, I am inclined to think that **E** should be somewhat backdated, probably to the early ninth century.

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<sup>11</sup> Beyond these two cases, the manuscripts preserve exceedingly similar reading and as such do not yield much significant evidence for establishing their relation.

<sup>12</sup> See the overview at <http://www.leges.uni-koeln.de/en/lex/lex-romana-visigothorum/>.