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“There is Safety in Numbers” – when written in full

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Subseciva Groningana X

Subseciva Groningana

Studies in Roman and Byzantine Law

X

In Honour of Roos Meijering



Chimaira

Groningæ

MMXIX

SUBSECIVA GRONINGANA X

Studies in Roman and Byzantine Law

Collegerunt et edenda curaverunt

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PREFACE

Thirty-five years ago, on December 2nd, 1983, the *Subseciva Groningana* proudly presented themselves with prefaces in Dutch and Latin on facing pages. Both their name and date were a tribute to the founder of what had become the ‘Groningen School’ of Graeco-Roman Law, Professor Herman Jan Scheltema, who had died two years earlier, and whose own series of *subseciva* had pointed the way to where we are now. Scheltema’s *subseciva* had not been just ‘left-overs’, as their name seemed to suggest. True, they were occasional pieces in comparison to the edition of the *Basilica cum scholiis*, which he, with the help of Nicolaas van der Wal and Douwe Holwerda, had completed in manuscript just before his death, but these misleadingly brief papers contain many of the discoveries he had made while preparing the edition. Indeed, it was for their sake that he had set himself the Herculean task of editing the *Basilica*: in search of information about Justinian’s legislation.

The *Subseciva Groningana* did not and do not pretend to equal that achievement. Their name continues to refer to origin and main direction of what their editors imagined in 1983. The tenth issue now lies before the reader. Tom van Bochove has again acted as a meticulous copy-editor. As usual, Karen Mulders has done the lion’s share of the invisible work.

This volume is dedicated to Roos Meijering, in gratitude for her contribution to editions and papers during the years she has occupied herself with the – to her *taetra* – *jurisprudencia*. Special mention should be made here of her part in the preparation of the *Theophili Paraphrasis Institutionum*. Our best wishes accompany her in her retirement.

Thirty-five years and ten volumes: the numbers suggest a jubilee and a milestone. That is as it may be: they also are a reminder that some time has passed since the idea of a Groningen series of occasional publications on Graeco-Roman law was first floated, and that the hour has come for the founding editors to make way for the next generation. In 2015 our colleague and friend Nicolaas van der Wal passed away. The remaining two editors, having contributed to this tenth volume, have decided to step aside, with best wishes for the new team. A new development is that previous issues of the *Subseciva Groningana* can now be found in our online archive: <https://ugp.rug.nl/sg/>.

May the *Subseciva* prosper!

Groningen, 2 December 2018

Jan H.A. Lokin
Bernard H. Stolte

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ABBREVIATIONS*

AARC	Atti dell'Accademia Romanistica Costantiniana
Actes de Docheiariou	N. Oikonomidès (éd.), Actes de Docheiariou, (Archives de l'Athos, XIII), Paris 1984
Actes de Saint-Pantéléèmon	P. Lemerle/G. Dagron/S. Ćirković (éd.), Actes de Saint-Pantéléèmon, (Archives de l'Athos, XII), Paris 1982
Actes de Vatopédi, I	J. Bompaire/J. Lefort /V. Kravari/C. Giros (éd.), Actes de Vatopédi. I. Des origines à 1329, (Archives de l'Athos, XXI), Paris 2001
Actes de Vatopédi, II	J. Lefort/V. Kravari/Ch. Giros/K. Smyrlis (éd.), Actes de Vatopédi. II. De 1330 à 1376, (Archives de l'Athos, XXII), Paris 2006
AG	Archivio giuridico
ASD	Annali di Storia del diritto
AT	Annali Triestini. Annali della Regia Università degli Studi Economici e Commerciali di Trieste
Athan.	Athanasius of Emesa, Syntagma of the Novels of Justinian, edd. D. Simon/Sp. Troianos, Das Novellen-syntagma des Athanasios von Emesa, [Forschungen zur byzantinischen Rechtsgeschichte, Band 16], Frankfurt/M. 1989
AUPA	Annali del Seminario Giuridico dell'Università degli Studi di Palermo
B.	Basilicorum libri LX, edd. H.J. Scheltema/D. Holwerda/N. van der Wal, Groningen 1953-1988 (Basilica praefatio, ed. Schminck, Studien, 22-23)
BICS	Bulletin of the Institute of Classical Studies
BIDR	Bullettino dell'Istituto di Diritto Romano

* It should be noted that in this list of Abbreviations, papyri and non-legal authors and their works are not referred to separately. In the individual contributions contained in the present volume, the non-legal authors and works are quoted in accordance with the system of Lewis and Short, A Latin Dictionary, vii-xi; OLD, I, xviii-xxix; LSJ, xvi-xxxviii; and Lampe, A Patristic Greek Lexicon, ix-xliii. Papyri are quoted in accordance with the checklist of editions of Greek, Latin, Demotic and Coptic Papyri, Ostraca and Tablets (founding editors: John F. Oates and William H. Willis), www.papyri.info/docs/checklist, October, 2018.

BMGS	Byzantine and Modern Greek Studies
BNJ	Byzantinisch-neugriechische Jahrbücher
BS	B., Series B: Scholia (quoted after page and line)
BT	B., Series A: Textus (quoted after page and line)
ByzSym	Byzantina Symmeikta
BZ	Byzantinische Zeitschrift
C.	Codex Iustinianus; ed. P. Krüger [Corpus iuris civilis II]
CFHB	Corpus Fontium Historiae Byzantinae
CIL	Corpus Inscriptionum Latinarum
Coll.	Mosaicarum et Romanarum Legum Collatio
CollTrip.	Collectio Tripartita, ed. N. van der Wal/B.H. Stolte, Collectio Tripartita. Justinian on Religious and Ecclesiastical Affairs, Groningen 1994
CQ	Classical Quarterly
CTh.	Codex Theodosianus, ed. Th. Mommsen (adsumpto apparatu P. Kruegeri), Theodosiani libri XVI cum constitutionibus Sirmondianis. Vol. I, pars prior: Prolegomena; pars posterior: Textus cum apparatu. Berolini 1905
D.	Digesta, ed. Th. Mommsen [Corpus iuris civilis I]
Darrouzès, Regestes V	J. Darrouzès, Les registres des actes du Patriarcat de Constantinople. Vol. I: Les actes des Patriarches. Fasc. V: Les registres de 1310 à 1376, Paris 1977
Darrouzès, Regestes VI	J. Darrouzès, Les registres des actes du Patriarcat de Constantinople. Vol. I: Les actes des Patriarches. Fasc. VI: Les registres de 1377 à 1410, Paris 1979
Diritto@Storia	Diritto@Storia. Rivista Internazionale di Scienze Giuridiche e Tradizione Romana (www.dirittoestoria.it)
DOP	Dumbarton Oaks Papers
DS	Ch. Daremberg/E. Saglio, Dictionnaire des Antiquités grecques et romaines d'après les textes et les monuments
Ecl.B.	Ecloga Basilicorum, ed. L. Burgmann, Ecloga Basilicorum, [Forschungen zur byzantinischen Rechtsgeschichte, Band 15], Frankfurt/M. 1988
ED	Enciclopedia del Diritto
EEBΣ	Ἐπετηρὶς Ἐταιρείας Βυζαντινῶν Σπουδῶν
Eis.	Eisagoge, ed. K.E. Zachariä von Lingenthal, in: Zepos, JGR II, 229-368 (Eisagoge praefatio, ed. Schminck, Studien, 4-11)

Epit.	Epitome legum, ed. K.E. Zachariä von Lingenthal, in: Zepos, JGR IV, 261-585 (Epitome legum praefatio, ed. Schminck, Studien, 112-119)
FM	Fontes Minores
Gai. Epit.	Gai Epitome, ed. B. Kübler, Gai Institutionum epitome, in: Iurisprudentiae anteustinianae reliquias in usum maxime academicum compositas a P.E. Huschke, II, 2, Leipzig 1927 ⁶ , 395-431
Gaius	Gai Institutiones, ed. M. David, Gai Institutiones secundum codicis Veronensis apographum Studemundianum et reliquias in Aegypto repertas..., [Studia Gaiana, Vol. I], Leiden 1964 (unless indicated otherwise)
Hb. I-V; Heimbach, Vol. I-V	C.W.E. Heimbach, Basilicorum libri LX, 5 vols., Leipzig; I: 1833, II: 1840, III: 1843, IV: 1846, V: 1850
Heimbach, GRR	C.W.E. Heimbach, Griechisch-römisches Recht im Mittelalter und Neuzeit, in: Allgemeine Encyclopädie der Wissenschaften und Künste, hrsg. von J.S. Ersch und J.G. Gruber, 1. Section, 86. Theil, Leipzig 1868 (repr. Graz 1976), 191-471
Heimbach, Manuale	see: Heimbach, Prolegomena
Heimbach, Prolegomena	C.W.E. Heimbach, Basilicorum libri LX, vol. VI: Prolegomena et Manuale Basilicorum continens, Leipzig 1870 (partial repr. Amsterdam 1962)
Hex.	Const. Harmenopoulos, Hexabiblos, ed. G.E. Heimbach, Const. Harmenopuli Manuale legum sive Hexabiblos cum appendicibus et legibus agrariis. ..., Lipsiae 1851 (repr. Aalen 1969)
Inst.	Iustiniani Institutiones, ed. P. Krüger [Corpus Iuris civilis I]
Il Filangieri	Il Filangieri. Rivista periodica mensile di scienze giuridiche e politico-amministrative
ILS	Inscriptiones Latinae Selectae
Index	Index. Quaderni camerti di studi romanistici
IURA	IURA. Rivista internazionale di diritto romano e antico
JGR	Jus Graecoromanum, edd. J. Zepos – P. Zepos
JJP	The Journal of Juristic Papyrology

JÖB	Jahrbuch der Österreichischen Byzantinistik
Julian.	Julianus, Epitome Latina of the Novels of Justinian, ed. G. Haenel, Iuliani Epitome Latina Novellarum Iustiniani, Lipsiae 1873 (repr. Osnabrück 1965)
Krüger, Editio maior	P. Krüger, Codex Iustinianus. Editio maior, Berlin 1877 (repr.: [100 Jahre Bürgerliches Gesetzbuch. Pandektenrecht, 62], Goldbach 1998)
Labeo	Labeo. Rassegna di diritto romano
LSJ	H.G. Liddell/R. Scott/H. Stuart Jones, A Greek – English Lexicon (with revised Supplement, ed. P.G.W. Glare, 1996), Oxford 1940 ⁹ (repr. 2018)
Mansi	G.D. Mansi, Sacrorum conciliorum nova et amplissima collectio, 53 vols. in 58 pts., Paris-Leipzig 1901-1927
MM	F. Miklosich/J. Müller, Acta et Diplomata Graeca Medii Aevi, Vol. I – VI, Wien 1860-1890 (repr. Aalen 1968)
Mo. ed. mai.	Mommsen, editio maior; see: Mommsen, Praefatio
Mommsen, Praefatio	Th. Mommsen, Digesta Iustiniani Augusti. Editio maior, 2 vols., Berlin 1868-1870; Vol. I: Praefatio (repr.: [100 Jahre Bürgerliches Gesetzbuch. Pandektenrecht, 61], Goldbach 2001)
Nov.	Novellae, edd. R. Schöll/G. Kroll [Corpus iuris civilis III]
Nov. Leon.	Novellae Leonis Sapientis, edd. P. Noailles/A. Dain, Les Nouvelles de Léon VI le Sage. Texte et traduction, Paris 1944; ed. Σπ. Τρωιάνος, Οι Νεαρές Λέοντος Γ' του Σοφού. Προλεγόμενα, κείμενο, απόδοση στη νεοελληνική, ευρετήρια και επίμετρο, Αθήνα 2007
NNDI	Novissimo Digesto Italiano (Torino, 1957-1979)
Nov. Maj.	Novellae Majoriani, ed. P.M. Meyer (adiutore Th. Mommseno), Leges Novellae ad Theodosianum pertinentes, (= Theodosiani libri XVI cum constitutionibus Sirmondianis, Vol. II), Berolini 1905
Nov. Marc.	Novellae Marciani, ed. P.M. Meyer (adiutore Th. Mommseno), Leges Novellae ad Theodosianum pertinentes, (= Theodosiani libri XVI cum constitutionibus Sirmondianis, Vol. II), Berolini 1905

Nov. Theod.	Novellae Theodosii, ed. P.M. Meyer (adiutore Th. Mommseno), <i>Leges Novellae ad Theodosianum pertinentes</i> , (= Theodosiani libri XVI cum constitutionibus Sirmondianis, Vol. II), Berolini 1905
Nov. Val.	Novellae Valentiniani, ed. P.M. Meyer (adiutore Th. Mommseno), <i>Leges Novellae ad Theodosianum pertinentes</i> , (= Theodosiani libri XVI cum constitutionibus Sirmondianis, Vol. II), Berolini 1905
NRHD	<i>Nouvelle revue historique de droit français et étranger</i> , 1877-1921
ODB	<i>The Oxford Dictionary of Byzantium</i> , edd. A.P. Kazhdan/A.-M. Talbot/A. Cutler/T.E. Gregory/N.P. Ševčenko, 3 vols., New York/Oxford 1991
OLD	<i>Oxford Latin Dictionary</i> , 2 vols., (Vol. I: A-L, Vol. II: M-Z), ed. P.G.W. Glare, Oxford 2012 ²
Paul. Sent.	<i>Pauli Sententiae</i> , ed. E. Seckel/B. Kübler, <i>Iulii Pauli libri quinque Sententiarum ad filium</i> , in: <i>Iurisprudentiae anteiustinianae reliquias in usum maxime academicum compositas a P.E. Huschke</i> , II, 1, Leipzig 1911 ⁶ , 1-161
Peira	<i>Peira Eustathii Romani</i> , ed. K.E. Zachariä von Lingenthal, in: <i>Zepos</i> , JGR IV, 9-260
PG	J.-P. Migne, <i>Patrologiae cursus completus. Series graeca</i> 1-161, Paris 1857-1866
Pieler, Rechtsliteratur	P.E. Pieler, 'Byzantinische Rechtsliteratur', in: H. Hunger, <i>Die hochsprachliche profane Literatur der Byzantiner</i> , II (Handbuch der Altertumswissenschaft XII.5.2), Munich 1978, 341-480
PLP	E. Trapp/R. Walther/H.-V. Beyer/K. Sturm-Schnabl/E. Kislinger/S. Kaplaneres/I. Leontiadis (Hrsg.), <i>Prosopographisches Lexikon der Palaiologenzeit</i> , Vol. I-XII, Wien 1976-1996
Proch.	<i>Prochiron</i> , ed. K.E. Zachariä (von Lingenthal), in: <i>Zepos</i> , JGR II, 107-228 (<i>Prochiron praefatio</i> , ed. Schminck, <i>Studien</i> , 56-61)
PWRE	Pauly & Wissowa, <i>Real-Encyclopädie der classischen Altertumswissenschaft</i>

RDR	Rivista di Diritto Romano. Periodico di storia del diritto romano di diritti antichi e della tradizione romanistica medioevale e moderna (www.ledonline.it/rivistadirittoromano)
RÉB	Revue des Études Byzantines
RHBR, I	L. Burgmann/M.Th. Fögen/A. Schminck/D. Simon, Repertorium der Handschriften des byzantinischen Rechts, Teil I. Die Handschriften des weltlichen Rechts (Nr. 1-327), [Forschungen zur byzantinischen Rechtsgeschichte 20], Frankfurt/M. 1995
RHD Rhom. ag.	Revue historique de droit français et étranger, 1922- Ῥωμαϊκαὶ ἀγωγαί (ed. R. Meijering, ‘Ῥωμαϊκαὶ ἀγωγαί. Two Byzantine Treatises on Legal Actions’, FM VIII (1990), 1-152
RIDA	Revue internationale des droits de l’antiquité
RISG	Rivista Italiana per le Scienze Giuridiche
RJ	Rechtshistorisches Journal
RP	Γ. Πάλλης/Μ. Ποτλῆς, Σύνταγμα τῶν θεῶν καὶ ἱερῶν κανόνων τῶν τε ἀγίων καὶ πανευφήμων ἀποστόλων καὶ τῶν ἱερῶν οἰκουμενικῶν καὶ τοπικῶν συνόδων καὶ τῶν κατὰ μέρος ἀγίων πατέρων, τ. Α΄ – ΣΤ΄, Ἀθήνησιν 1852-1859 (repr. Athens 1992)
SBM	Synopsis Basilicorum maior, ed. K.E. Zachariä von Lingenthal, in: Zepos, JGR V, 1-599
SCDR	Seminarios Complutenses de Derecho Romano. Revista Internacional de Derecho Romano y Tradición Romanística
Schminck, Studien	A. Schminck, Studien zu mittelbyzantinischen Rechtsbüchern, [Forschungen zur byzantinischen Rechtsgeschichte, Band 13], Frankfurt/M. 1986
SDHI	Studia et Documenta Historiae et Iuris
SG	Subseciva Groningana
SK	Novellae edd. Schöll/Kroll
SS	Studi Senesi
SZ	Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, romanistische Abteilung

TheodBrev.	Theodorus of Hermoupolis, Breviarium of the Novels of Justinian, ed. C.E. Zachariae, Ἀνέκδοτα. III: Theodori scholastici Breviarium Novellarum ..., Lipsiae 1843 (repr. Aalen 1969)
Theoph.	Theophili antecessoris Paraphrasis graeca Institutionum Iustiniani, edd. J.H.A. Lokin/R. Meijering/B.H. Stolte/N. van der Wal. With a Translation by A.F. Murison, Groningen 2010
Tit. Ulp.	Tituli ex corpore Ulpiani, ed. F. Schulz, Die Epitome Ulpiani des Codex Vaticana Reginae 1128, Bonn 1926
TM	Travaux et Mémoires
TRG	Tijdschrift voor Rechtsgeschiedenis
Van der Wal/Lokin, Delineatio	N. van der Wal/J.H.A. Lokin, Historiae iuris graeco-romani delineatio. Les sources du droit byzantin de 300 à 1453, Groningen 1985
VIR	Vocabularium Iurisprudentiae Romanae, 5 vols., (Vol. I: A-C; Vol. II: D-G; Vol. III: H-M; Vol. IV: N-Q; Vol. V: R-Z), edd. O. Gradenwitz, B. Kübler, et al., Berolini 1903-1987
VV	Vizantijskij Vremennik
Zepos, JGR	J. Zepos/P. Zepos, Jus Graecoromanum, Vol. I – VIII, Athenis 1931 (repr. Aalen 1962)
ZfgR	Zeitschrift für geschichtliche Rechtswissenschaft, 1815-1850
ZRG	Zeitschrift für Rechtsgeschichte, 1861-1878

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

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

1.

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

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

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

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

2.

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

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

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

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

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

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

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

3 *Index auctorum*, rubr.

4 *Index auctorum* II, 1-6.

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

3.

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

4.

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

Ἔχουσι στίχ(ων) ὅλ(α)ς [μυριάδας τριακοσίας].⁷

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

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

7 *Index Auctorum*, subscr.

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

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

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

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

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

4.1.

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

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

9 Const. *Tanta* / Δέδωκεν, § 1.

10 Const. *Omnem*, § 1.

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

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

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

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

4.2.

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

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

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

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

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

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

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

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

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

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

16 Cf. § 4 with note 8 above.

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

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

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

5.

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

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

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

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

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

6.

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

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

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

7.

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

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

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

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

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

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

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

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

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

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

8.

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

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

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

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

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

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

29 Cf. again § 4 with note 8 above.

30 Const. *Deo auctore*, § 13.

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

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

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

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

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

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

32 Const. Tanta, § 22.

33 Const. Omnem, § 8.

34 Cf. § 6 above.

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

Iulianus libro LVIII digestorum.³⁵

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

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

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Appendix

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



