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## Scholia and Index Titulorum

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Subseciva Groningana VIII



# Subseciva Groningana

Studies in Roman and Byzantine Law

VIII

Chimaira

Groningæ

MMIX

SUBSECIVA GRONINGANA VIII

Studies in Roman and Byzantine Law

Collegerunt et edenda curaverunt

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## Preface

Eight years have passed since the previous volume was published. Optimistic words in that volume's preface clearly have not come true. It is nevertheless a pleasure to present the fruits of research in Byzantine law from the intervening period and to show that the *Subseciva Groningana* are alive and well.

In recent years the never very numerous circle of students of the *ius graeco-romanum* has lost two outstanding members and contributors to the *Subseciva* in the past, Marie Theres Fögen and Giuliana Lanata. We remember them as colleagues and friends.

Our thanks go to Dr. Thomas E. van Bochove for considerable assistance in the technical production of the present volume.

The Editors



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## Abbreviations

B.; Bas.	Basilicorum libri LX, edd. H.J. Scheltema, D. Holwerda, N. van der Wal, Groningen 1953 ff.
BIDR	Bullettino dell' Istituto di Diritto Romano
BS	B., Series B: Scholia (quoted after page and line)
BT	B., Series A: Textus (quoted after page and line)
BZ	Byzantinische Zeitschrift
C.; CI; CJust	Codex Iustinianus; ed. P. Krüger [Corpus iuris civilis II]
CT; CTh; CTheod.	[Codex Theodosianus], Theodosiani libri XVI ..., ed. adsumpto apparatu Kruegeri Th. Mommsen, Berlin 1905
D.	Digesta, ed. Th. Mommsen [Corpus iuris civilis I]
EEBS	Ἐπετηρὶς Ἐταιρείας Βυζαντινῶν Σπουδῶν
FM	Fontes Minores
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, Prolegomena	C.W.E. Heimbach, Basilicorum libri LX, vol. VI, 1: Prolegomena, Leipzig 1870 (repr. Amsterdam 1962)
I.; Inst.	Iustiniani Institutiones, ed. P. Krüger [Corpus Iuris civilis I]
JGR	Jus Graecoromanum, edd. J. Zepos – P. Zepos
Krüger, editio maior	P. Krüger, Codex Iustinianus. Editio maior, Berlin 1877 (repr.: P. Krüger, Codex Iustinianus, [100 Jahre Bürgerliches Gesetzbuch. Pandektenrecht, 62], Goldbach 1998)
Mansi	G.D. Mansi, Sacrorum conciliorum nova et amplissima collectio, 53 vols. in 58 pts., Paris-Leipzig 1901-1927
Mommsen, Praefatio	Digesta Iustiniani Augusti. Recognovit ... Th. Mommsen, Berlin 1870, Praefatio
N.; Nov.; NT	Novellae, edd. R. Schöll – G. Kroll [Corpus iuris civilis III]

N/D; Noailles/Dain	Novellae Leonis edd. Noailles-Dain (quoted after page and line)
NL; 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 Σοφοῦ. Προλεγόμενα, κείμενο, απόδοση στη νεοελληνική, ευρετήρια και επίμετρο, Αθήνα 2007
ODB	The Oxford Dictionary of Byzantium, edd. A.P. Kazhdan / A.-M. Talbot / A. Cutler / T.E. Gregory / N.P. Ševčenko, 3 vols., New York/Oxford 1991
Pieler, Rechtsliteratur	P.E. Pieler, 'Byzantinische Rechtsliteratur', in: H. Hunger, Die hochsprachliche profane Literatur der Byzantiner, II [Handbuch der Altertumswissenschaft XII.5.2], Munich 1978, 341-480
RHBR	L. Burgmann et al., Repertorium der Handschriften des byzantinischen Rechts, Teil I. Die Handschriften des weltlichen Rechts (Nr. 1-327) [Forschungen zur byzantinischen Rechtsgeschichte 20], Frankfurt a.M. 1995
RIDA	Revue internationale des droits de l'antiquité
RJ	Rechtshistorisches Journal
RP	Γ. Ράλλης – Μ. Ποτλῆς, Σύνταγμα τῶν θεῶν καὶ ἱερῶν κανόνων τῶν τε ἁγίων καὶ πανευφήμων ἀποστόλων καὶ τῶν ἱερῶν οἰκουμενικῶν καὶ τοπικῶν συνόδων καὶ τῶν κατὰ μέρος ἁγίων πατέρων, τ. Α' – ΣΤ', Ἀθήνησιν 1852-1859 (repr. Athens 1992)
SG	Subseciva Groningana
SK	Novellae edd. Schöll-Kroll
SZ	Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, romanistische Abteilung
Theod. Nov.	Leges Novellae ad Theodosianum pertinentes, ed. adiutore Th. Mommseno P.M. Meyer, Berlin 1905
TM	Travaux et Mémoires
Tr.	Novellae Leonis ed. Troianos (quoted after page and line)
TRG	Tijdschrift voor Rechtsgeschiedenis
Van der Wal – Lokin, Delineatio	N. van der Wal – J.H.A. Lokin, Historiae iuris graecoromani delineatio. Les sources du droit byzantin de 300 à 1453, Groningen 1985

## SCHOLIA AND INDEX TITULORUM

### On the relation between the apparatus of scholia in cod. Paris. gr. 1349 and IPc

1. In the prolegomena to the edition of IPc, one highly important feature of cod. Paris. gr. 1349 – henceforward to be designated with the siglum Pc – has virtually been left untouched.<sup>1</sup> It concerns the fact that this manuscript abounds in scholia, nearly all of them being older scholia.<sup>2</sup> Dealing with Basilica scholia sometimes involves difficult issues like the questions how to distinguish between the older and the younger scholia, whether or not the scholia were added in the form of – or based on – a catena, when the scholia were first added to the text of the Basilica and whether or not they can be regarded as a kind of *glossa ordinaria*.<sup>3</sup> The scholia in Pc will be approached from a different angle, however. The present article will focus on the question whether or not the scholia in Pc are connected with IPc, and, if so, in what way. First, however, one important preliminary remark should be made: the following paragraphs are based on the assumption that both Pc and IPc must have had the same overall layout and external appearance as their (direct or ultimate) exemplars.

2. The question whether or not the scholia in Pc are connected with IPc can readily be answered in the affirmative. We have already seen that IPc hands down rubrics

<sup>1</sup> On IPc, cf. Th.E. van Bochove, 'Index titulorum, II. IPc, the partial index of the Basilica in cod. Paris. gr. 1349', *SG VIII* (the present volume), pp. 35-104. On cod. Paris. gr. 1349 (Pc), dating from the eleventh century, cf. 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, Band 20], Frankfurt/M. 1995 (= RHBR, I), No. 162.

<sup>2</sup> On this issue, cf. e.g. H.J. Scheltema/N. van der Wal, [edd.], *Basilicorum Libri LX*, Series A Volumen VI: Textus librorum XLIII – LII, Groningen/'s-Gravenhage 1969, p. v; H.J. Scheltema, 'Über die Scholienapparate der Basiliken', *Ἀριστοτέλειον Πανεπιστήμιον Θεσσαλονίκης. Ἐπιστημονικὴ ἐπετηρὶς ἐκδιδομένη ὑπὸ τῆς Σχολῆς τῶν Νομικῶν καὶ Οἰκονομικῶν Ἐπιστημῶν* 8 (1960-1963) (*Μνημόσυνον Περικλέους Βιζουκίδου*), pp. 139-145 (repr. in: N. van der Wal/J.H.A. Lokin/B.H. Stolte/R. Meijering, [collegerunt], *H.J. Scheltema Opera minora ad iuris historiam pertinentia*, Groningen 2004, pp. 359-364), passim.

<sup>3</sup> On all these issues, cf. e.g. H. Peters, *Die oströmischen Digestenkommentare und die Entstehung der Digesten*, I, [Berichte über die Verhandlungen der Königl. Sächsischen Gesellschaft der Wissenschaften zu Leipzig, Philologisch-historische Klasse, 65/1], Leipzig 1913; P.E. Pieler, 'Byzantinische Rechtsliteratur', in: H. Hunger, *Die hochsprachliche profane Literatur der Byzantiner*, II, [Handbuch der Altertumswissenschaft, XII,5,2], München 1978, pp. 341-480 (463-464); F. Pringsheim, 'Über die Basiliken-Scholien. I: Die Anonymos-Katene. – II: Die Unterscheidung der alten von den neuen Scholien', *SZ* 80 (1963), pp. 287-341; H.J. Scheltema, 'Über die angebliche Anonymuskatene', *TRG* 25 (1957), pp. 284-301 (repr. in: Van der Wal/Lokin/Stolte/Meijering, *H.J. Scheltema Opera minora*, pp. 315-326); Scheltema, 'Scholienapparate'; A. Schminck, *Studien zu mittelbyzantinischen Rechtsbüchern*, [Forschungen zur byzantinischen Rechtsgeschichte, Band 13], Frankfurt/M. 1986, pp. 45-52; N. van der Wal/J.H.A. Lokin, *Historiae iuris graeco-romani delineatio. Les sources du droit byzantin de 300 à 1453*, Groningen 1985, pp. 90-92 and 99-100.

accompanied by source references.<sup>4</sup> In its turn, Pc transmits a large quantity of scholia which can be characterized as Corpus iuris source references, viz. references pertaining to Basilica text units, and denoting the origin of those text units from the legislation of Justinian.<sup>5</sup> It is only logical to assume that the source references in IPc, and the relevant scholia in Pc served the same purpose, and that they are somehow connected. But in what way exactly? The answer to the latter question is slightly more complicated.

As it is, Pc hands down scholia which – alone or in conjunction with others – shed light on the origin of the source references in the manuscript, and ultimately on the relation between those source references in Pc and IPc as well. In BS, most of the relevant scholia feature as scholia pertaining to title rubrics of the Basilica.

(1) The first scholion occurs in B. 45,1, and seems to pertain to the rubric of this Basilica title. It reads: Βιβ. λη' τῶν Διγέστων τιτ. ς', τοῦ δὲ Κώδικος τιτ. ιδ' τοῦ ς' βιβ.<sup>6</sup> At first sight, this scholion appears to be a perfectly normal source reference, denoting the origin of the text of B. 45,1 from various parts of the Justinian legislation. D. 38,6 is indeed one of the constituent parts of B. 45,1. However, the reference to C. 6,14 is rather surprising, as this title from the Code does not occur in B. 45,1, despite the fact that D. 38,6 and C. 6,14 deal with the same subject matter.<sup>7</sup> In view of this, BS 2642/4 cannot simply be regarded as a source reference pertaining to the rubric of B. 45,1. Rather, it must have been a scholion pertaining to the rubric of D. 38,6, referring readers to the parallel title from the Code. Only in this way, BS 2642/4 acquires full significance.

(2) The second scholion is BS 2664/8, belonging to B. 45,1 as well. It reads: Οὔτος ὁ τίτλος νς' καὶ νζ' ἐστὶ τοῦ ς' βιβ. τοῦ Κώδικος.<sup>8</sup> In the present case, we are obviously not dealing with a source reference. C. 6,56 and 57 are indeed constituent parts of B. 45,1, but the text units from these two titles from the Code have been provided with source references of their own.<sup>9</sup> In the case of BS 2664/8, it is the location of the scholion that draws the attention. The scholion is not transmitted in the vicinity of the rubric of B. 45,1: evidently, it does not pertain to the rubric of this Basilica title. Pc hands down the scholion on f. 13<sup>v</sup>, as an interlinear gloss right above the words Ulpianu. Καὶ τῆς εὐγενοῦς καὶ τῆς ἀπελευθέρου, viz. the first words of B. 45,1,27 = D. 38,17,1 (BT 2078/12-13). Due to its

<sup>4</sup> Cf. Van Bochove, 'IPc', § 2.

<sup>5</sup> On the source references in Pc, cf. in particular § 4 below.

<sup>6</sup> BS 2642/4 (sch. Pc 1§ ad B. 45,1 rubr.). Transl.: 'book 38 of the Digest title 6, of the Code title 14 of the sixth book'. On this scholion, cf. also § 5 with note 83 below.

<sup>7</sup> Cf. D. 38,6 rubr.: *Si tabulae testamenti nullae extabunt, unde liberi* 'if there shall be no written testament, whence the children', and C. 6,14 rubr.: *Unde liberi* 'whence the children'.

<sup>8</sup> BS 2664/8 (sch. Pc 22§ ad B. 45,1,27 = D. 38,17,1). Transl.: 'this title is (title) 56 and 57 of the sixth book of the Code'.

<sup>9</sup> Cf. BT 2083/1 – 2086/3; BS 2669/23 (sch. Pc 4§ ad B. 45,1,36 = C. 6,56,3), and BS 2672/24 (sch. Pc 4\* ad B. 45,1,40 = C. 6,57,1) resp.

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location, BS 2664/8 must have belonged to the rubric of D. 38,17, or to be more precise: the scholion must have been connected to a note stating the book- and title number of this Digest title, because of the opening words οὗτος ὁ τίτλος. And we do find such a note very close by in the right margin of f. 13<sup>v</sup>, in the form of a source reference indicating the origin of B. 45,1,27 from D. 38,17,1: Τοῦ αὐτοῦ βιβ. τιτ. ιζ' διγ. α'.<sup>10</sup> In the latter scholion, it is the phrase τοῦ αὐτοῦ βιβ. that catches the eye. The scribe of Pc apparently knew that B. 45,1,27 originated from book 38 of the Digest, the same book as the preceding series of text units. He therefore wrote τοῦ αὐτοῦ βιβ.<sup>11</sup>

(3) The third scholion is BS 2680/5. It reads: Οὗτος ὁ τίτλος ἐστὶ τοῦ ζ' βιβ. τοῦ Κωδ.<sup>12</sup> Pc transmits this scholion on f. 23<sup>r</sup>, immediately following the phrase τίτλος β' (BT 2089/2), i.e. the title indication of B. 45,2. Thus, BS 2680/5 would indeed appear to be a Basilica scholion, belonging to the rubric of this Basilica title or to its title indication. However, C. 6,15 is not a constituent part of B. 45,2. As a Basilica scholion, BS 2680/5 is meaningless. In actual fact, the scholion must originally have been a Digest scholion, pertaining to the rubric or to the title indication of D. 38,7, and referring readers to the parallel title in the Code: D. 38,7 and C. 6,15 deal with the same subject matter. The words οὗτος ὁ τίτλος in BS 2680/5 imply a note stating the book- and title number of D. 38,7. Pc hands down this note in the form of a source reference: on f. 23<sup>r</sup>, immediately following the rubric of B. 45,2 (after BT 2089/3 δίδωσι), we read βιβ. λη' τῶν Διγ. τιτ. ζ' κεφ. β'.<sup>13</sup>

(4) The next scholion is BS 2682/30. It reads: Οὗτος ὁ τιτ. ἐστὶ τοῦ ζ' βιβ.<sup>14</sup> In the present case, it is again the location that catches the eye. Pc transmits this scholion on f. 24<sup>r</sup>, as the first scholion in the upper margin. Although the scholion belongs to B. 45,2, it is clear that the phrase οὗτος ὁ τίτλος does not refer to the title indication of this Basilica title, for this occurs on f. 23<sup>r</sup>. Because of its location, BS 2682/30 must originally have been a Digest scholion belonging to D. 38,8: the text units of B. 45,2 that originate from this Digest title commence in the ll. 2-3 of the main text of f. 24<sup>r</sup> with the words Ἡ συγγενικὴ κληρονομία (BT 2090/11). Moreover, BS 2682/30 alludes to C. 6,15, and we have already seen that this title from the Code is not a constituent part of the text of B. 45,2.<sup>15</sup> Again, the words οὗτος ὁ τίτλος must have followed a note stating the book- and

<sup>10</sup> BS 2664/5 (sch. Pc 19\* ad B. 45,1,27 = D. 38,17,1). Transl.: 'of the same book (of the Digest), title 17, fragment 1'.

<sup>11</sup> On this phrase, cf. § 4.1 below.

<sup>12</sup> BS 2680/5 (sch. Pc 2§ ad B. 45,2 rubr.). Transl.: 'this title is (title) 15 of the sixth book of the Code'.

<sup>13</sup> BS 2680/6 (sch. Pc 3§ ad B. 45,2 rubr.). Transl.: 'book 38 of the Digest, title 7, chapter 2'.

<sup>14</sup> BS 2682/30 (sch. Pc 1 ad B. 45,2,6 = D. 38,8,1). Transl.: 'this title is (title) 15 of the sixth book (of the Code)'.

<sup>15</sup> After BS 2680/5 – which as a Digest scholion belongs to D. 38,7 –, BS 2682/30 is the second scholion that refers readers of a Digest title – in this case D. 38,8 – to C. 6,15 as the parallel title from the Code. This is not an error. D. 38,7, D. 38,8 and C. 6,15 deal with the same subject matter. The rubric of D.

title number of a Digest title, in this case those of D. 38,8. Pc hands down this note in the left margin of f. 24<sup>f</sup>, in the form of the source reference pertaining to B. 45,2,6: Τοῦ αὐτοῦ βιβ. τιτ. η' κεφ. α' .<sup>16</sup>

(5) The fifth scholion is BS 2691/5, again belonging to B. 45,2. The scholion reads: Οὗτος ὁ τιτ. ις' ἐστὶ τοῦ ς' βιβ.<sup>17</sup> Pc hands down the scholion in l. 5 of the upper margin of f. 27<sup>f</sup>. In this case, too, the phrase οὗτος ὁ τίτλος does not refer to the title indication of B. 45,2. Because of its location, BS 2691/5 must originally have been a Digest scholion, in this case pertaining to D. 38,9: the text units from this Digest title commence in the ll. 10-11 of the main text of f. 27<sup>f</sup> with the words Ulpianu. Τὸ τῆς διαδοχῆς (BT 2094/1). Apart from the location of BS 2691/5, there is its allusion to C. 6,16: this title from the Code is not a constituent part of the text of B. 45,2, but of B. 40,2 (BT 1789/18-20). The allusion to C. 6,16 has only meaning in a Digest context: as a Digest scholion, BS 2691/5 refers readers of D. 38,9 to its parallel title in the Code.<sup>18</sup> In the present case, the words οὗτος ὁ τίτλος must have come after a note stating the book- and title number of D. 38,9. Pc hands down this note in the left margin of f. 27<sup>f</sup>, in the form of the source reference belonging to B. 45,2,25: Βιβ. λη' τῶν Διέστων τιτ. θ' διγ. α'.<sup>19</sup>

(6) The next case is the first part of BS 2695/7-9, also belonging to B. 45,2. The scholion reads in its entirety: Οὗτος ὁ τιτ. οὐκ ἔστιν ἐν τῷ Κώδικι. Μέμνηται δὲ ταύτης τῆς διακατοχῆς Ἰνστιτ. γ' τιτ. θ' καὶ φησιν αὐτὴν κοινὴν εἶναι καὶ ἐκ διαθήκης καὶ ἐξ ἀδιαθέτου.<sup>20</sup> Pc transmits this scholion in the lower margin of f. 28<sup>v</sup>, in the tenth and ninth lines from below. Because of the location of the scholion, the words οὗτος ὁ τίτλος cannot refer to the title indication of B. 45,2. Rather, we are again dealing with a Digest scholion, in this case belonging to D. 38,14: the text unit from this Digest title begins in the ll. 12-13 of the main text of f. 28<sup>v</sup> with the words Iulianu. Ὁσάκις νόμος (BT 2095/7). Moreover, if BS 2695/7-9 were to be regarded as a Basilica scholion, then the contents of the scholion would be rather pointless. For, the scholion would then observe that B. 45,2 does not occur in the Code: οὗτος ὁ τιτ. οὐκ ἔστιν ἐν τῷ Κώδικι. A superfluous statement, as no Basilica

38,7 reads *Unde legitimi* 'whence the legitimate heirs', that of D. 38,8 *Unde cognati* 'whence the cognate relatives'. C. 6,15 rubr. reads *Unde legitimi et unde cognati*.

<sup>16</sup> BS 2684/28 (sch. Pc 11\* ad B. 45,2,6 = D. 38,8,1). Transl.: 'of the same book (of the Digest), title 8, chapter 1'.

<sup>17</sup> BS 2691/5 (sch. Pc 1 ad B. 45,2,25 = D. 38,9,1). Transl.: 'this title is (title) 16 of the sixth book (of the Code)'; cf. BS 2691 app. ad loc.

<sup>18</sup> D. 38,9 and C. 6,16 do indeed deal with the same subject matter; cf. their resp. rubrics: *De successorio edicto* 'the edict regulating succession'.

<sup>19</sup> BS 2694/11 (sch. Pc 20\* ad B. 45,2,25 = D. 38,9,1). Transl.: 'book 38 of the Digest, title 9, digeston 1'. In the present scholion, Pc seems to read κεφ. instead of διγ.

<sup>20</sup> BS 2695/7-9 (sch. Pc 1 ad B. 45,2,27 = D. 38,14,1). Transl.: 'this title does not occur in the Code. Book 3 of the Institutes, title 9 does mention this (type of) possession and states that it is common to both testamentary and intestate succession'.

title occurs in the Justinian Code. In a Digest context, the scholion is more to the point: the observation that D. 38,14 has no parallel title in the Code is correct. In BS 2695/7-9, the words οὗτος ὁ τίτλος must have followed a note stating the book- and title number of D. 38,14. This note is to be found in the right margin of f. 28<sup>v</sup>, in the source reference belonging to B. 45,2,27: Τοῦ αὐτοῦ βιβ. τῶν Διγ. τιτ. ιδ' κεφ. α'.<sup>21</sup>

(7) The next case concerns the first part of BS 2695/25-26. This scholion, too, belongs to B. 45,2. In its entirety, it reads: Οὗτος ὁ τίτλος οὐκ ἔστιν ἐν τῷ Κώδικι. Εἴρηται ταῦτα ἐν τῇ ἀρχῇ τοῦ ς' τιτ.· ἀνάγνωθι τὰ ἐκεῖ παραγεγραμμένα.<sup>22</sup> Pc hands down this scholion in l. 1 of the upper margin of f. 29<sup>f</sup>. With regard to the present scholion, the same can be said as in the previous case, *mutatis mutandis* of course. The phrase οὗτος ὁ τίτλος οὐκ ἔστιν ἐν τῷ Κώδικι in BS 2695/25 must originally have been a Digest scholion pertaining to D. 38,15: the text fragments from this Digest title begin in l. 4 of the main text of f. 29<sup>f</sup> with the words Modestinu. Πρώτη τῶν (BT 2095/12). The note originally preceding the words οὗτος ὁ τίτλος and containing the book- and title number of D. 38,15 occurs in the left margin of f. 29<sup>f</sup>, in the source reference belonging to B. 45,2,28: Τοῦ αὐτοῦ βιβ. τῶν Διγ. τιτ. ιε' κεφ. α'.<sup>23</sup>

The next cases are rather similar to the preceding ones, and will be dealt with more summarily.

(8) In B. 45,5, BS 2724/4 (Pc, f. 47<sup>v</sup>, left margin, l. 2): Οὗτος ὁ τίτλος ἡ' ἔστι τοῦ ς' βιβ.<sup>24</sup> The reference to C. 6,18 in this scholion cannot be regarded as the source reference pertaining to B. 45,5,2 = C. 6,18,1, as this Basilica chapter has been provided with a source reference of its own.<sup>25</sup> Thus, BS 2724/4 must originally have been a Digest scholion, referring readers of D. 38,11 to the parallel title in the Code. The words οὗτος ὁ τίτλος must originally have followed a note stating the book- and title number of D. 38,11. This note occurs in the main text on f. 47<sup>v</sup>, in an interlinear gloss – viz. the source reference belonging to B. 45,5,1 = D. 38,11,1 – between the rubric of B. 45,5 and the beginning of chapter 1: Βιβ. λη' τῶν Διγ. τιτ. ια' κεφ. α'.<sup>26</sup>

<sup>21</sup> BS 2695/23 (sch. Pc 5\* ad B. 45,2,27 = D. 38,14,1). Transl.: 'of the same book of the Digest, title 14, chapter 1'.

<sup>22</sup> BS 2695/25-26 (sch. Pc 1 ad B. 45,2,28 = D. 38,15,1). Transl.: 'this title does not occur in the Code. These things are said in the beginning of title 6; read what is written there beside it'. It is possible that the word εἴρηται marks the beginning of a new scholion; on this, cf. BS 2695 app. ad l. 25 εἴρηται.

<sup>23</sup> BS 2695/32 (sch. Pc 4\* ad B. 45,2,28 = D. 38,15,1). Transl.: 'of the same book of the Digest, title 15, chapter 1'.

<sup>24</sup> BS 2724/4 (sch. Pc 1 ad B. 45,5 rubr.); cf. BS 2724 app. ad l. 4 τοῦ ς' βιβ.: 'scil. Codicis'. Transl.: 'this title is (title) 18 of the sixth book (of the Code)'.

<sup>25</sup> Cf. BT 2114; the source reference in question is BS 2725/24 (sch. Pc 5\* ad B. 45,5,2 = C. 6,18,1).

<sup>26</sup> BS 2724/5 (sch. Pc 2§ ad B. 45,5 rubr.). Transl.: 'book 38 of the Digest, title 11, chapter 1'.



(9) In B. 46,1, BS 2727/4 (Pc, f. 49<sup>v</sup>, upper margin, l. 1): Οὔτος ὁ τιτ. οὐκ ἔστιν ἐν τῷ Κώδικι· κεῖται δὲ γ', δ', ε' τῆς α' ἰνστιτ.<sup>27</sup> The observation of the scholion that 'this title does not occur in the Code' is pointless in a Basilica context, as in the cases No. (6) and No. (7) above. Again, we are clearly dealing with a Digest scholion. The note originally preceding the words οὔτος ὁ τίτλος and containing the book- and title number of D. 1,5 occurs in l. 2 of the main text of f. 49<sup>v</sup>, immediately following the phrase Τίτλος α' (BT 2117/3): Βιβ. α' τῶν Διγ. τιτ. ε' κεφ. β'.<sup>28</sup>

(10) In B. 46,2, BS 2737/4 (Pc, f. 52<sup>v</sup>, left margin, ll. 25-27): Οὔτος ὁ τίτλος οὐκ ἔστιν ἐν τῷ Κώδικι· ἔστι δὲ ιζ' τῆς α' ἰνστιτ.<sup>29</sup> As in the previous case, we are dealing with a Digest scholion, because the phrase οὔτος ὁ τίτλος οὐκ ἔστιν ἐν τῷ Κώδικι is meaningless in a Basilica context. The words οὔτος ὁ τίτλος must originally have followed a note stating the book- and title number of D. 4,5. Pc transmits this note in l. 10 of the main text of f. 52<sup>v</sup>, directly following the phrase Τίτλος β' (BT 2121/2): Βιβ. δ' τῶν Διγ. τιτ. ε' κεφ. β'.<sup>30</sup>

(11) In B. 46,3, BS 2744/4 (Pc, f. 55<sup>f</sup>, l. 6 of the upper margin and the ll. 1-2 of the right margin): Οὔτος ὁ τιτ. οὐκ ἔστιν ἐν τῷ Κώδικι· ἔστι δὲ α' τῆς β' ἰνστιτ.<sup>31</sup> BS 2744/4, too, must originally have been a Digest scholion, for the same reason as in the previous case. The phrase οὔτος ὁ τίτλος must originally have been preceded by a note stating the book- and title number of D. 1,8. Pc hands down this note in l. 10 of the main text of f. 55<sup>f</sup>, following the rubric of B. 46,3, in the form of the source reference pertaining to B. 46,3,1 = D. 1,8,1: Βιβ. α' τῶν Διγ. τιτ. η' κεφ. α'.<sup>32</sup>

(12) In B. 47,1, BS 2750/4 (Pc, f. 57<sup>v</sup>, left margin, ll. 7-8): Οὔτος ὁ τίτλος γγ' ἐστὶ τοῦ η' βιβ. τοῦ Κώδικος.<sup>33</sup> The scholion refers to C. 8,53, and this title from the Code has indeed been adopted into B. 47,1: B. 47,1,35 = C. 8,53,1 (BT 2136/1). However, BS 2750/4 cannot be regarded as the source reference pertaining to B. 47,1,35, as this Basilica chapter has been provided with a source reference of its own.<sup>34</sup> BS 2750/4 must originally have

<sup>27</sup> BS 2727/4 (sch. Pc 1 ad B. 46,1 rubr.). Transl.: 'this title does not occur in the Code; however, we do have (the titles) 3, 4 and 5 of the first book of the Institutes'.

<sup>28</sup> This note is the source reference pertaining to B. 46,1,1; it has been omitted from BS. Instead of κεφ. β', read κεφ. γ'. Transl.: 'book 1 of the Digest, title 5, chapter 2 (3)'.

<sup>29</sup> BS 2737/4 (sch. Pc 1 ad B. 46,2 rubr.). Transl.: 'this title does not occur in the Code; however, there is (title) 16 of the first book of the Institutes'.

<sup>30</sup> The present note is the source reference belonging to B. 46,2,1; this note, too, has been omitted from BS. Transl.: 'book 4 of the Digest, title 5, chapter 2'.

<sup>31</sup> BS 2744/4 (sch. Pc 1 ad B. 46,3 rubr.). Transl.: 'this title does not occur in the Code; however, there is (title) 1 of the second book of the Institutes'.

<sup>32</sup> BS 2744/5 (sch. Pc 2§ ad B. 46,3 rubr.). Transl.: 'book 1 of the Digest, title 8, chapter 1'.

<sup>33</sup> BS 2750/4 (sch. Pc 1 ad B. 47,1 rubr.). Transl.: 'this title is (title) 53 of the eighth book of the Code'.

<sup>34</sup> Viz. BS 2768/26 (sch. Pc 2\* ad B. 47,1,35 = C. 8,53,1).

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been a Digest scholion, referring readers of D. 39,5 to the parallel title in the Code. The words οὔτος ὁ τίτλος must originally have followed a note stating the book- and title number of D. 39,5. Pc transmits this note in l. 7 of the main text of f. 57<sup>v</sup>, immediately following the title indication Τίτλος α', in the form of the source reference belonging to B. 47,1,1: Βιβ. τῶν Διγ. λθ' τιτ. ε' κεφ. α'.<sup>35</sup>

(13) Finally, in B. 47,3, BS 2790/4 (Pc, f. 77<sup>v</sup>, upper margin, l. 1): Οὔτος ὁ τιτ. νς' ἐστὶ τοῦ η' βιβ. τοῦ Κωδ.<sup>36</sup> With regard to the present scholion, the same can be said as in the previous case, again *mutatis mutandis*. As B. 47,3,45 = C. 8,56,1 (BT 2156/14) has been provided with a source reference of its own,<sup>37</sup> BS 2790/4 cannot be looked upon as the source reference pertaining to this Basilica chapter. Rather, the scholion must have been a Digest scholion, referring readers of D. 39,6 to the parallel title in the Code. The note originally preceding the phrase οὔτος ὁ τίτλος and containing the book- and title number of D. 39,6 is handed down by Pc in l. 1 of the main text of f. 77<sup>v</sup>, directly following the title indication Τίτλος γ': Βιβ. τῶν Διγ. λθ' τιτ. ς' κεφ. α'.<sup>38</sup>

The conclusion from the above is obvious: all οὔτος ὁ τίτλος scholia in Pc are in actual fact Digest scholia. The phrase οὔτος ὁ τίτλος itself must originally always have been preceded by a Digest book- and title indication. In Pc, these indications have been detached from their original context and transformed into source references denoting the origin of the relevant Basilica text unit from the relevant Digest title. Other Basilica manuscripts handing down scholia provide clear proof that the phrase οὔτος ὁ τίτλος did originally indeed follow a Digest book- and title number, and show how such a scholion looked like. One example may serve to illustrate this. In a scholion belonging to the rubric of B. 16,6 we read: Βιβ. ζ' τῶν Διγ. τιτ. ς' κεφ. α'. οὔτος ὁ τίτλος οὐκ ἔστιν ἐν τῷ Κώδικι.<sup>39</sup>

**3.** In the preceding paragraph it has been established that the οὔτος ὁ τίτλος scholia in Pc are in actual fact all Digest scholia, and that the phrase οὔτος ὁ τίτλος itself must originally always have been preceded by a reference to a book and title from the Digest. It has also been observed that in Pc these references occur in the form of source references pertaining to the Digest part of the text of Basilica titles. Do we have any clue as to when

<sup>35</sup> BS 2750/5 (sch. Pc 2§ ad B. 47,1 rubr.). Transl.: 'book 39 of the Digest, title 5, chapter 1'.

<sup>36</sup> BS 2790/4 (sch. Pc 1 ad B. 47,3 rubr.). Transl.: 'this title is (title) 56 of the eighth book of the Code'.

<sup>37</sup> Viz. BS 2807/29 (sch. Pc 3\* ad B. 47,3,45 = C. 8,56,1).

<sup>38</sup> BS 2790/5 (sch. Pc 2§ ad B. 47,3 rubr.). Pc reads κεφ. δ' instead of κεφ. α'; cf. BS 2790 app. ad loc. Transl. 'book 39 of the Digest, title 6, chapter 1'.

<sup>39</sup> BS 995/4-5 (sch. P 1 ad B. 16,6 rubr.). Transl.: 'book 7 of the Digest, title 6, chapter 1; this title does not occur in the Code'. P = cod. Paris. gr. 1352, dating from the beginning of the thirteenth century; cf. RHBR, I, No. 166. Some other clear examples: BS 585/4-5; BS 972/4-5; BS 991/4-5; BS 1217/4-5; BS 1219/4-5. The above scholia originate from P, the final two excepted: these are transmitted by Pa, viz. cod. Paris. gr. 1348, written in the beginning of the thirteenth century; cf. RHBR, I, No. 161.

the οἷτος ὁ τίτλος scholia, accompanied by their respective references to book and title from the Digest, were first written?

The scholia in Pc themselves do not present direct evidence regarding their time of origin. In order to find an answer to the above question, we have to turn to other Basilica manuscripts handing down scholia.

(1) In one instance, the phrase οἷτος ὁ τίτλος occurs in a scholion bearing the heading τοῦ Ἀνωνύμου. It concerns BS 177/4-5: Τοῦ Ἀνωνύμου. Οἷτος ὁ τίτλος τρίτος ἐστὶ τοῦ β' βιβ. τοῦ Κώδικος· κείται δὲ ὁ ὅρος τοῦ πάκτου βιβ. ν' τιτ. ιβ' διγ. γ' ἦτοι βιβ. – τιτ. –.<sup>40</sup> Through its heading, the present scholion ascribes the phrase οἷτος ὁ τίτλος explicitly to the younger Anonymos/Enantiophanes – and it is the only scholion to do so. The heading itself may be accidental, viz. the result of the work of a later scholiast who for some unknown reason attributed a οἷτος ὁ τίτλος scholion to the younger Anonymos. If, however, this scholiast from the later Byzantine period did not err in his attribution, then the younger Anonymos would have written the οἷτος ὁ τίτλος scholion somewhere between 577 and 620.<sup>41</sup> It is possible that the younger Anonymos/Enantiophanes is ultimately indeed responsible for BS 177/4-5 – and for other scholia of the same type, too –, but in that case the question arises why he would have written these notes, and for whom. In the Enantiophanes's day, who would be interested to learn which titles from the Digest and from the Code deal with the same subject matter? The specific knowledge which title from the Digest has which parallel title in the Code would seem more appropriate in a purely educational setting, in particular regarding law students receiving their tuition from the *antecessores*.<sup>42</sup>

One feature of the system of legal education in Justinian's day is the way in which the *antecessores* quoted the books of the Digest dealt with in their lectures. For, they did not refer to those books by using their standard numbers in the Digest – viz. from 1 up to and

<sup>40</sup> BS 177/4-5 (sch. Ca 1§ ad B. 11,1 rubr.). Transl.: 'of the Anonymos. This title is the third of the second book of the Code; the definition of pact occurs in book 50, title 12, digeston 3, i.e. book – title –'. The phrase ἦτοι βιβ. – τιτ. – was presumably added to the scholion some time after the genesis of the Basilica text. In all probability, we are dealing here with the addition of a scholiast who intended to renumber D. 50,12,3 into its counterpart in BT, but who somehow failed to write down the correct book- and title number of the Basilica. BS 177/6 contains the Digest book- and title number originally preceding the phrase οἷτος ὁ τίτλος, in the present case D. 2,14. Ca = cod. Coisl. gr. 152, dating from the second half of the twelfth century; cf. RHBR, I, No. 203.

<sup>41</sup> On the younger Anonymos/Enantiophanes, and on his works (all written between 577 – 620), cf. the literature quoted in Th.E. van Bochove, 'ΔΙΑΙΠΕΣΙΣ. ICb 2 and the Incorporation of Justinian's Novels into the Text of the Basilica', *SG VII* (2001), pp. 45-89 (50-51 notes 27-29).

<sup>42</sup> On the system of legal education in Justinian's day, cf. H.J. Scheltema, *L'enseignement de droit des antecessores*, [Byzantina neerlandica. Series B: Studia, I], Leiden 1970 (repr. in: Van der Wal/Lokin/Stolte/Meijering, *H.J. Scheltema Opera minora*, pp. 58-110); Van der Wal/Lokin, *Delineatio*, pp. 38-46.

including 50 –, but in accordance with the division of the Digest into *partes*. In this division, the books 1 – 4 of the Digest are designated as τὰ πρῶτα, the books 5 – 11 form the *pars de iudiciis*, the books 12 – 19 the *pars de rebus*, and so on. The method of quoting the Digest in accordance with its division into *partes* fell into disuse soon after the year 557, concurrently with the disappearance of the teaching of the *antecessores*. Texts in which the Digest is referred to in accordance with its division into *partes* can be dated to the reign of Justinian.<sup>43</sup> There is a number of instances in which scholia that have been edited as scholia pertaining to Basilica title rubrics, mention the division of the Digest into *partes*.

(2) The first instance is BS 449/4. It reads: Βιβ. ιζ' τῶν Διγ. ἡγουν τῶν δὲ ῥέβους βιβ. ζ'. Ζήτει τὸ ζ' κερ.<sup>44</sup> This scholion is the – somewhat defective – source reference pertaining to B. 12,1,1 = D. 17,2,1; it clearly alludes to the Digest *pars de rebus*. The accompanying οὔτος ὁ τίτλος scholion reads: Οὔτος ὁ τιτ. λζ' ἐστι τῆς δ' βιβ. τοῦ Κωδ. Ζήτει [[τοῦ α' βιβ.] βιβ. β' τιτ. γ' κερ. κγ' ἕως τοῦ κδ'· ζήτει τὸ γ' βιβ. τῶν Ἰνστιτ. τιτ. κε'.<sup>45</sup>

(3) The next case is BS 626/4-5: Ζήτει βιβ. ιγ' τῶν Διγ. τιτ. ζ' ἢ <β'> τῶν δερέβους καὶ βιβ. δ' τοῦ Κωδ. τιτ. κγ'.<sup>46</sup> The present scholion seems to be a Basilica scholion urging readers of B. 13,1 to consult D. 13,6 and C. 4,23. However, this interpretation is rather pointless in view of the fact that D. 13,6 and C. 4,23 are the constituent parts of B. 13,1: the text of these titles from the Digest and the Code has been adopted into this Basilica title. It is, therefore, far more likely that in the case of BS 626/4-5 we are dealing with a defective Digest rubric scholion (pertaining to D. 13,6 rubr.), in which the reference to its parallel title from the Code (C. 4,23) has been incorporated. The scholion contains an

<sup>43</sup> On the division of the Digest into *partes*, and on its role in the system of legal education, cf. e.g. H.J. Scheltema, 'Subseciva. III. Die Verweisungen bei den frühbyzantinischen Rechtsgelehrten', *TRG* 30 (1962), pp. 355-357 (356-357) (= Van der Wal/Lokin/Stolte/Meijering, *H.J. Scheltema Opera minora*, pp. 116-118 (117-118)); Scheltema, *L'enseignement*, pp. 8-9 (= Van der Wal/Lokin/Stolte/Meijering, *H.J. Scheltema Opera minora*, pp. 64-65); B.H. Stolte, 'The Partes of the Digest in the Codex Florentinus', *SG I* (1984), pp. 69-91 (73-74); Van der Wal/Lokin, *Delineatio*, pp. 38-40.

<sup>44</sup> BS 449/4 (sch. Ca 1\* ad B. 12,1 rubr.). Transl.: 'book 17 of the Digest, i.e. book 6 of the (books) *de rebus*. Look up: chapter 60'. The phrase ζήτει τὸ ζ' κερ. is probably a later addition to the scholion.

<sup>45</sup> BS 449/5-6 (sch. Ca 2\* ad B. 12,1 rubr.). Transl.: 'this title is (title) 37 of the fourth book of the Code. Look up: of the first volume, book 2, title 3, chapter 23 up to 24; look up: book 3 of the Institutes, title 25'. In the present scholion, the phrase ζήτει [[τοῦ α' βιβ.] βιβ. β' τιτ. γ' κερ. κγ' ἕως τοῦ κδ' is without any doubt a later addition, referring to the text of the Basilica (B. 2,3,23 and 24). The brackets of deletion enclosing τοῦ α' βιβ. must be considered as an error: τοῦ α' βιβ. is in actual fact an occurrence of the first volume of the Basilica division into six τεύχη; on this division, cf. N. van der Wal, 'Spuren einer Einteilung in sechs Bände der Basiliken in den jüngeren Scholien', *TRG* 25 (1957), pp. 274-283. The above phrase from BS 449/5-6 is identical with a passage in BS 535/5-6 (sch. P 1 ad B. 12,1 rubr.) (= Van der Wal, 'Spuren einer Einteilung', p. 277 No. 4).

<sup>46</sup> BS 626/4-5 (sch. P 1 ad B. 13,1 rubr.). Transl.: 'look up: book 13 of the Digest title 6, or (book 2) of the (books) *de rebus*, and book 4 of the Code title 23'.

incomplete reference to the Digest *pars de rebus*, which has been supplemented by the editors of BS.<sup>47</sup>

(4) The next Basilica title rubric scholion in which a Digest *pars* occurs, has been handed down imperfectly. Consequently, its edition shows some textual emendation. It concerns BS 700/5: Βιβ. <ι>ζ' τῶν Διγ. [τιτ.] α' κερ. α' ..... τῶν δερεβους.<sup>48</sup> Despite the defective state of the scholion, it is clear that we are dealing with a scholion originally pertaining to a title rubric of the Digest, and containing the reference to a Digest book- and title number – in this case D. 17,1 – preceding the following οὔτος ὁ τίτλος scholion: Οὔτος ὁ τίτλος λε' ἐστὶ τοῦ δ' βιβ. τοῦ Κωδ.<sup>49</sup> In the context of B. 14,1, BS 700/5 is the source reference belonging to B. 14,1,1 = D. 17,1,1. The Digest *pars* mentioned by the scholion is the *pars de rebus*. This reference to the *pars de rebus* is confirmed by another note, transmitted by Ca on the same folio as BS 700/5, viz. f. 129<sup>v</sup>, in l. 1 of the main text: Βιβ. ιζ' τῶν Διγ. τιτ. α'. βιβ. ζ' τῶν δερεβους Θεοφίλου.<sup>50</sup>

(5) The next case is BS 813/6-7: Καὶ βιβ. ιζ' τῶν Διγέστων τιτ. α' κερ. α' καὶ βιβ. ζ' τῶν de rebus. Σύμφωνόν ἐστι δύο ἢ καὶ πλειόνων εἰς ταῦτόν ἀρέσκεια καὶ συναίνεσις.<sup>51</sup> The present scholion requires some comment. The editors of BS regard ἀρέσκεια as doubtful and propose ἄρεσκος as an alternative.<sup>52</sup> There is, however, yet another possibility. The final part of the scholion is nothing more than a definition of pact. This definition occurs almost verbatim in the text of the Basilica, viz. in B. 11,1,1: Ὑπὶ. Σύμφωνόν ἐστι δύο ἢ

<sup>47</sup> It should be noted that Ca, on f. 108<sup>r</sup>, in l. 2 of the main text, between the phrase Βιβ. ιγ' τιτ. α' (BT 711/2-3) and B. 13,1 rubr. (BT 711/4), hands down the following note: Βιβ. τῶν Διγ. ιγ' τιτ. ζ' διατ. (leg. διγ.) α' ὅπερ ἐστὶ β' τῶν δερεβους ἔστι δὲ κγ' τιτ. τοῦ δ' βιβ. τοῦ Κωδ. 'Book 13 of the Digest, title 6, digeston 1, which is (book) 2 of the (books) *de rebus*; (this title) is title 23 of the fourth book of the Code'. This note is as yet unpublished: it does not occur on BS 601 or in BT 711 app.; neither has it been incorporated into the *Addenda et emendanda ad hoc volumen* (H.J. Scheltema/D. Holwerda, [edd.], *Basilicorum Libri LX*, Series B Volumen II: Scholia in libros XII - XIV, Groningen/Djakarta's-Gravenhage 1954, p. viii), or in the *Addenda et corrigenda ad Vol. II Ser. B* (H.J. Scheltema/D. Holwerda, [edd.], *Basilicorum Libri LX*, Series B Volumen III: Scholia in libros XV – XX, Groningen/Djakarta's-Gravenhage 1957, p. xi). The note – which can be characterized as a rubric scholion of B. 13,1 originally pertaining to D. 13,6 rubr. – contains a new reference to the Digest *pars de rebus*. Before ἔστι δὲ κγ' τιτ., a phrase οὔτος ὁ τίτλος seems to be missing.

<sup>48</sup> BS 700/5 (sch. Ca 2 ad B. 14,1 rubr.). Transl.: 'book 17 of the Digest, title 1, chapter 1 .... of the (books) *de rebus*'.

<sup>49</sup> BS 700/4 (sch. Ca 1 ad B. 14,1 rubr.). Transl.: 'this title is (title) 35 of the fourth book of the Code'.

<sup>50</sup> Cf. BT 737 app. ad l. 3 τίτλος α'. Transl.: 'book 17 of the Digest, title 1; book 6 of the (books) *de rebus*, of Theophilus'. Is the phrase Θεοφίλου perhaps to be interpreted as an indication that it is the *antecessor* Theophilus's Greek version of D. 17,1 that underlies the text of B. 14,1, instead of the *Summa* of the elder Anonymos?

<sup>51</sup> BS 813/6-7 (sch. P 2 ad B. 14,1 rubr.). Transl.: 'and book 17 of the Digest, title 1, chapter 1, and book 6 of the (books) *de rebus*; a pact is the approval and consent of two or even more persons with regard to the same thing'. The phrase 'approval' is based on the proposed reading ἀρεστόν; cf. the main text.

<sup>52</sup> Cf. BS 813 app. ad l. 7 ἀρέσκεια: incertum (an ἄρεσκος?).

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πλειόνων εἰς ταῦτόν ἀρεστόν καὶ συναίνεσις.<sup>53</sup> On the basis of BT 625/6, might it not be possible to read ἀρεστόν instead of ἀρέσκεια? Be that as it may, so much is clear that BS 813/6 – in the context of B. 14,1 serving as the source reference of B. 14,1,1 = D. 17,1,1 – must originally have been a scholion pertaining to D. 17,1 rubr., mentioning the equivalent of this Digest book in the *pars de rebus*. As a Digest title rubric scholion, BS 813/6 was accompanied by a οὗτος ὁ τίτλος scholion referring readers of D. 17,1 to the parallel title in the Code. The relevant scholion reads in its entirety: Οὗτος ὁ τίτλος λε' ἐστὶ τοῦ δ' βιβ. τοῦ Κώδικος· ἔχει δὲ καὶ τὸν λς' τίτλον.<sup>54</sup> The final phrase ἔχει δὲ καὶ τὸν λς' τίτλον may have been added to the scholion after the genesis of the text of the Basilica, by a scholiast who no longer understood that the original scholion was a Digest rubric scholion. This scholiast probably thought that the phrase οὗτος ὁ τίτλος referred to B. 14,1, and added as his comment that, apart from C. 4,35, this Basilica title contains C. 4,36 as well.

(6) The next case is BS 1735/4. This scholion reads: Βιβ. β' τῶν Διγ. τιτ. ε' καὶ βιβ. ιβ' τῶν Διγ. τιτ. [ε'], τῶν DERÉBUS α'.<sup>55</sup> In the context of B. 24,2, the scholion is to be regarded as the source reference of B. 24,2,1 = D. 12,5,1. BS 1735/4 mentions the equivalent of D. 12 in the *pars de rebus*.<sup>56</sup>

(7) The final case seems to be somewhat less convincing. It concerns the first part of a rather extensive scholion, viz. BS 1493/4-19. The relevant part of the scholion reads: Τὸ καλούμενον δερέβους σύνταγμα ἔχει βιβλία η', ὧν τὸ πρῶτον βιβλίον τὸ δωδέκατον τῶν Διγέστων ἦτοι τὸ παρὸν κγ' βιβ. τῶν Βασιλικῶν καὶ φησιν ἀτύκτα περὶ πραγμάτων χρεωστουμένων. (...).<sup>57</sup> The reason to regard this passage with some suspicion is that it was clearly written after the genesis of the text of the Basilica: the phrase ἦτοι τὸ παρὸν κγ' βιβ. τῶν Βασιλικῶν refers without any doubt to that compilation of laws. It is, however, perfectly possible that the above passage is a commentary of a scholiast on an older marginal gloss. In all probability, this gloss – presumably occurring in the scholiast's exemplar – was a scholion originally pertaining to the rubric of D. 12,1, and mentioning the equivalent of this book from the Digest in the *pars de rebus*. The scholion was

<sup>53</sup> B. 11,1,1 = D. 2,14,1 (BT 625/5-6). Transl.: 'Ulpian. A pact is the approval and consent of two or more persons with regard to the same thing'.

<sup>54</sup> BS 813/4-5 (sch. P 1 ad B. 14,1 rubr.). Transl.: 'this title is (title) 35 of the fourth book of the Code; it also contains title 36'.

<sup>55</sup> BS 1735/4 (sch. Pa 1 ad B. 24,2 rubr.). Transl.: 'book 2 of the Digest, title 5, and book 12 of the Digest, title [5], the first of the (books) *de rebus*'. In Pa, the text of the scholion has been written in red ink; cf. BS 1735 app. ad l. 4. I do not understand the reference to D. 2,5 in this scholion.

<sup>56</sup> It should be noted that for some unknown reason Pa transmits the present scholion twice. The text of the second scholion contains some minor variants; cf. BS 1735/5 (sch. Pa 2 ad B. 24,2 rubr.): Βιβ. β' τῶν Διγ. τιτ. ε'· βιβ. ιβ' τῶν Διγ. τιτ. ε', α' τῶν δερ[έβους].

<sup>57</sup> BS 1493/4-6 (sch. Pa 1 ad B. 23,1 rubr.). Transl.: 'the so-called compilation *de rebus* contains eight books, the first of which is book 12 of the Digest, viz. the present 23<sup>rd</sup> book of the Basilica; and it deals straightaway with things credited. (...)'

immediately followed by a οὗτος ὁ τίτλος phrase referring readers of D. 12,1 to the parallel titles in the Code. The οὗτος ὁ τίτλος phrase has been preserved as BS 1495/1: Οὗτος ὁ τιτ. [[α' καὶ]] β' ἐστὶ τοῦ δ' βιβ. τοῦ Κωδ.<sup>58</sup> In his commentary on the original gloss, the scholiast explained the reference to the Digest *pars de rebus* by observing that it consisted of eight books, the first of which was D. 12. He then added the counterpart of this book in the text of the Basilica. For his explanation of the *pars de rebus*, the scholiast may have used a special treatise dealing with the division of the Digest into *partes*.<sup>59</sup> Seen against this background, BS 1493/4-6 may be used as evidence, if only with caution.

All in all, there is enough evidence to conclude that the οὗτος ὁ τίτλος scholia, always preceded by the relevant reference to book and title from the Digest, originated from the teaching of the *antecessores* in Justinian's day, in particular from their lectures on the Digest.<sup>60</sup> The scholia mentioning the Digest *partes* quote the books of the Digest twice: every time, they refer to those books according to their numbers in the relevant *pars* side by side with their numbers *ex ordine* from 1 up to and including 50. This double way of quoting the books of the Digest does not need to cause suspicion, or to give rise to the thought that the scholia in question have been interpolated at some point. It is perfectly possible that the *antecessores*, while lecturing on the Digest and commencing with a new book, deliberately combined the two ways of quoting the Digest for the benefit of their students, as a kind of reminder.

4. So far, ample attention has been given to the οὗτος ὁ τίτλος scholia in Pc, and to the relation of these scholia with Corpus iuris source references occurring in the same manuscript. How and where does IPc – or, rather, its ultimate exemplar – fit into all this? Is it possible to establish a direct connection between the index titulorum and the scholia in Pc? The source references in Pc shed some light on this.

4.1 In § 2 case No. (2) above, attention has been drawn to the phrase τοῦ αὐτοῦ βιβ. 'of the same book' in BS 2664/5, the source reference indicating the origin of B. 45,1,27 from D. 38,17,1. It has been argued that the scribe of Pc apparently knew that B. 45,1,27

<sup>58</sup> BS 1495/1 (sch. Pa 8§ ad B. 23,1 rubr.). Transl.: 'this title is (title) 1 and 2 of the fourth book of the Code'. The brackets of deletion enclosing α' καὶ deserve some comment. If BS 1495/1 is regarded as a Basilica scholion belonging to B. 23,1 rubr. – which may be what induced the editors of BS to use these brackets –, then the deletion of α' καὶ is not unjustified, as C. 4,1 does not occur in B. 23,1. If, however, BS 1495/1 is seen as a Digest scholion pertaining to D. 12,1 rubr. – which originally must have been the case –, then the deletion of the phrase α' καὶ is unnecessary, as the scholion refers readers of D. 12,1 to its parallel titles in the Code, viz. C. 4,1 and 2.

<sup>59</sup> On this, cf. M.Th. Fögen, 'Zur Einteilung der Digesten: Drei byzantinische Traktate', *FM V* (1982), pp. 1-26. On the date of these treatises (tenth – eleventh centuries, or perhaps somewhat later), cf. pp. 18, 23 and 25.

<sup>60</sup> However, some of the scholia may have been written by the younger Anonymos/Enantiophanes; cf. case No. (1) (BS 177/4-5) above.

originated from book 38 of the Digest, the same book as the preceding series of text units, and that he therefore wrote τοῦ αὐτοῦ βιβλίου. The question is how the scribe of Pc knew this. It is, of course, highly likely that this scribe simply copied the phrase τοῦ αὐτοῦ βιβλίου from his direct exemplar, but this merely delays the question, or rather, pushes it backwards in time. What made the scribe of the, perhaps even ultimate, exemplar of Pc write τοῦ αὐτοῦ βιβλίου? It is possible that this scribe, while compiling the text of the Basilica directly from its sources, knew full well that B. 45,1,27 originated from book 38 of the Digest, the same book as the preceding series of text units. It would seem equally possible, though, that the scribe was working on the basis of an index titulorum like IPc, or rather, its ultimate exemplar, which goes back to the later ninth century. This list provided him with detailed instructions which provisions from the Justinian legislation were to be adopted into any given title of the books 45 – 50 of the Basilica. For all these titles, the index contained full source references, enumerating them one after the other. Eventually, this may be what led the scribe of the (ultimate) exemplar of Pc to write τοῦ αὐτοῦ βιβλίου in the source reference pertaining to B. 45,1,27: one glance at his index titulorum would have told him that B. 45,1,27 and the following chapters originated from the same book of the Digest as B. 45,1,14 and the next chapters, viz. D. 38. As a result, the scribe confined himself to the phrase τοῦ αὐτοῦ βιβλίου, if only for convenience sake. Evidently, the latter phrase does not prove that the scribe – while compiling the text of the Basilica – did indeed consult an index titulorum, but it is at least a possible explanation. Be that as it may, the source reference pertaining to B. 45,1,27 does not stand on its own: there are fourteen cases, in which source references in Pc commence with the phrase τοῦ αὐτοῦ βιβλίου. In eight instances, this phrase alludes to a book from the Digest,<sup>61</sup> whereas the books from the Code are referred to six times.<sup>62</sup> In view of this, the use of the phrase τοῦ αὐτοῦ βιβλίου may be looked upon as an indication that in the ultimate exemplar of Pc, the source references were added to the text of the Basilica with the help of an index titulorum.

**4.2** The source references in Pc present another detail which may indicate the use of an index titulorum. Pc hands down 65 source references denoting the origin of Basilica text units from the Digest and the Code.<sup>63</sup> Of those 65 source references, seven mention only

<sup>61</sup> (1) BS 2649/17 (sch. Pc 2\* ad B. 45,1,13 = D. 38,13,1); (2) BS 2653/4 (sch. Pc 15\* ad B. 45,1,14 = D. 38,16,1); (3) BS 2664/5 (sch. Pc 19\* ad B. 45,1,27 = D. 38,17,1) (= § 2 No. (2) above); (4) BS 2684/28 (sch. Pc 11\* ad B. 45,2,6 = D. 38,8,1) (= § 2 No. (4) above); (5) BS 2695/23 (sch. Pc 5\* ad B. 45,2,27 = D. 38,14,1) (= § 2 No. (6) above); (6) BS 2695/32 (sch. Pc 4\* ad B. 45,2,28 = D. 38,15,1) (= § 2 No. (7) above); (7) BS 2826/19 (sch. Pc 2§ ad B. 48,3,3 = D. 40,4,1); and, finally, (8) BS 2889/8 (sch. Pc 2§ ad B. 48,5,1 = D. 40,6,1 (immo ad B. 48,5,2 = D. 40,7,1)).

<sup>62</sup> (1) BS 2672/24 (sch. Pc 4\* ad B. 45,1,40 = C. 6,57,1); (2) BS 2674/33 (sch. Pc 3\* ad B. 45,1,44 = C. 6,58,2); (3) BS 2677/19 (sch. Pc 4\* ad B. 45,1,49 = C. 6,59,2); (4) BS 2679/12 (sch. Pc 4\* ad B. 45,1,56 = C. 6,62,3); (5) BS 2783/14 (sch. Pc 1 ad B. 47,1,70 = C. 8,54,1); and, finally, (6) BS 3017/27 (sch. Pc 4\* ad B. 48,24,4 = C. 7,23,1).

<sup>63</sup> Apart from these, Pc transmits eleven source references pertaining to the Novel part of the text of Basilica titles, viz. (1) BS 2706/13 (sch. Pc 11\* ad B. 45,3,8 = Nov. 118); (2) BS 2706/19 (sch. Pc 2\*



books and titles from the Digest and the Code, while ignoring the resp. subdivisions of the titles into fragments and constitutions.<sup>64</sup> There are 28 source references in which the subdivision of the titles from the Digest into fragments occurs: in 27 of those, we come across the term *κεφάλαιον* (or rather its abbreviation *κεφ.*),<sup>65</sup> whereas only one source reference uses the abbreviation *διγ.*, standing for the phrase *δίγεςτον*.<sup>66</sup> 30 source references mention the subdivision of the titles from the Code into constitutions: eight do so by using the phrase *διάταξις* in its abbreviation *διατ.*,<sup>67</sup> 22 by using the term *κεφάλαιον* (again in its abbreviation *κεφ.*).<sup>68</sup>

ad B. 45,3,9 = Nov. 164); (3) BS 2726/6 (sch. Pc 2§ ad B. 45,6,1 = Nov. 21); (4) BS 2726/9 (sch. Pc 2\* ad B. 45,6,2 = Nov. 36); (5) BS 2726/16 (sch. Pc 2\* ad B. 45,6,3 = Nov. 117, c. 3); (6) BS 2785/5 (sch. Pc 2\* ad B. 47,1,75 = Nov. 52); (7) BS 2785/11 (sch. Pc 2\* ad B. 47,1,76 = Nov. 162); (8) BS 2809/27 (sch. Pc 2\* ad B. 47,3,49 = Nov. 87 praef.); (9) BS 3019/4 (sch. Pc 1\* ad B. 48,26 rubr.); (10) BS 3019/20 (sch. Pc 2\* ad B. 48,26,2 = Nov. 119 c. 2); and, finally, (11) BS 3020/3 (sch. Pc 2\* ad B. 48,26,3 = Nov. 162 cc. 2§1, 3). These source references provide insufficient information to detect a pattern. On the enigmatic issue of the presence of Nov. 162 in B. 48,26 – in stead of Nov. 156, as IPc and ICb would have it, cf. Van Bochove, ‘IPc’, § 3.3 and § 4.2 (1).

<sup>64</sup> (1) BS 2642/4 (sch. Pc 1§ ad B. 45,1 rubr.); (2) BS 2707/5 (sch. Pc 2§ ad B. 45,4 rubr.); (3) BS 2725/24 (sch. Pc 5\* ad B. 45,5,2 = C. 6,18,1; in this scholion, Pc reads *τιτ. ιε´* in stead of *τιτ. ιη´*); (4) BS 2783/14 (sch. Pc 1 ad B. 47,1,70 = C. 8,54,1; cf. note 62, No. (5) above); (5) BS 2826/19 (sch. Pc 2§ ad B. 48,3,3 = D. 40,4,1; cf. note 61, No. (7) above); (6) BS 2931/4 (sch. Pc 1§ ad B. 48,8 rubr.); (7) BS 2983/4 (sch. Pc 1§ ad B. 48,19 rubr.).

<sup>65</sup> (1) BT 2073 app. ad l. 20 c. 10 (note pertaining at B. 45,1,10 = D. 38,12,1); (2) BS 2649/17 (sch. Pc 2\* ad B. 45,1,13 = D. 38,13,1; cf. note 61, No. (1) above); (3) BS 2653/4 (sch. Pc 15\* ad B. 45,1,14 = D. 38,16,1; cf. note 61, No. (2) above); (4) BS 2680/6 (sch. Pc 3§ ad B. 45,2 rubr.); (5) BS 2684/28 (sch. Pc 11\* ad B. 45,2,6 = D. 38,8,1; cf. note 61, No. (4) above); (6) BS 2694/11 (sch. Pc 20\* ad B. 45,2,25 = D. 38,9,1; in this scholion, Pc reads *κεφ. α´* in stead of *διγ. α´*); (7) BS 2695/23 (sch. Pc 5\* ad B. 45,2,27 = D. 38,14,1; cf. note 61, No. (5) above); (8) BS 2695/32 (sch. Pc 4\* ad B. 45,2,28 = D. 38,15,1; cf. note 61, No. 6 above); (9) BS 2700/4 (sch. Pc 1§ ad B. 45,3 rubr.); (10) BS 2724/5 (sch. Pc 2§ ad B. 45,5 rubr.); (11) Pc f. 49<sup>v</sup>, in the main text following *τίτλος α´* (BT 2117/3) (unpublished scholion pertaining at B. 46,1 rubr.; cf. IPc app. test. ad B. 46,1,1); (12) Pc f. 52<sup>v</sup>, in the main text following *τίτλος β´* (BT 2121/2) (unpublished scholion pertaining at B. 46,2 rubr.; cf. IPc app. test. ad B. 46,2,1); (13) BS 2744/5 (sch. Pc 2§ ad B. 46,3 rubr.); (14) BS 2750/5 (sch. Pc 2§ ad B. 47,1 rubr.); (15) BS 2790/5 (sch. Pc 2§ ad B. 47,3 rubr.); (16) BS 2810/4 (sch. Pc 1§ ad B. 48,1 rubr.); (17) BS 2818/4 (sch. Pc 1\* ad B. 48,2 rubr.); (18) BS 2826/4 (sch. Pc 1§ ad B. 48,3 rubr.); (19) BS 2851/4 (sch. Pc 1§ ad B. 48,4 rubr.); (20) BS 2889/4 (sch. Pc 1§ ad B. 48,5 rubr.); (21) BS 2889/8 (sch. Pc 2§ ad B. 48,5,1 = D. 40,6,1 (this scholion pertains rather to B. 48,5,2 = D. 40,7,1); cf. note 61, No. (8) above); (22) BS 2916/4 (sch. Pc 1\* ad B. 48,6 rubr.); (23) BS 2919/4 (sch. Pc 1§ ad B. 48,7 rubr.); (24) BS 2938/4 (sch. Pc 1§ ad B. 48,9 rubr.); (25) BS 2941/4 (sch. Pc 1§ ad B. 48,10 rubr.); (26) BS 2949/4 (sch. Pc 1§ ad B. 48,11 rubr.); and, finally, (27) BS 2954/4 (sch. Pc 1§ ad B. 48,12 rubr.).

<sup>66</sup> (1) BS 2664/5 (sch. Pc 19\* ad B. 45,1,27 = D. 38,17,1; cf. note 61, No. (3) above).

<sup>67</sup> (1) BS 2669/23 (sch. Pc 4§ ad B. 45,1,36 = C. 6,56,3); (2) BS 2672/24 (sch. Pc 4\* ad B. 45,1,40 = C. 6,57,1; cf. note 62, No. (1) above); (3) BS 2674/33 (sch. Pc 3\* ad B. 45,1,44 = C. 6,58,2; cf. note 62, No. (2) above); (4) BS 2677/19 (sch. Pc 4\* ad B. 45,1,49 = C. 6,59,2; cf. note 62, No. (3) above); (5) BS 2679/12 (sch. Pc 4\* ad B. 45,1,56 = C. 6,62,3; cf. note 62, No. (4) above); (6) BS 2688/11 (sch. Pc 3\* ad B. 45,2,15 = C. 6,55,1); (7) BS 2768/26 (sch. Pc 2\* ad B. 47,1,35 = C. 8,53,1); (8) BS 2807/29 (sch. Pc 3\* ad B. 47,3,45 = C. 8,56,1).

<sup>68</sup> (1) BS 2649/4 (sch. Pc 2\* ad B. 45,1,12 = C. 6,62,2; in this scholion, read *βιβ. ζ´* in stead of *βιβ. ε´*); (2) BS 2786/4 (sch. Pc 1§ ad B. 47,2 rubr.); (3) BS 2824/27 (sch. Pc 3§ ad B. 48,2,23 = C. 7,1,1); (4)

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Is it possible to explain the frequent use of the term *κεφάλαιον*? The source references in Pc mention the resp. subdivisions of the titles from the Digest and the Code into fragments and constitutions 58 times. In no less than 49 cases, we come across the term *κεφάλαιον*. This can hardly be coincidental. The notion that the phrase *κεφάλαιον* would always allude to a Basilica chapter, and that, thus, the Corpus iuris source references would have been contaminated with allusions to the subdivision of Basilica titles into chapters can be ruled out as well. On the one hand, the terms *δίγεςτον* and *διάταξις* do occur in the source references, thus implying that, where a subdivision is mentioned, it is generally speaking either the subdivision of Digest titles into fragments or the subdivision of titles from the Code into constitutions that is meant. On the other hand, in twelve out of the 27 above cases in which a source reference denoting the origin of a Basilica text unit from the Digest displays the term *κεφάλαιον*, this term is accompanied by a number corresponding with the first of the following series of Digest fragments rather than with the relevant Basilica chapter number.<sup>69</sup> Similarly, in ten out of the 22 above cases in which the phrase *κεφάλαιον* occurs in a source reference denoting the origin of a Basilica text unit from the Code, *κεφάλαιον* is accompanied by a number corresponding with the first of the following series of constitutions rather than with the relevant Basilica chapter number.<sup>70</sup> The other cases remain undecided, as in these source references the relevant Basilica chapter number is identical with the number of the relevant Digest fragment or constitution from the Code. However, it is highly likely that in those cases, too, we are dealing the resp. subdivisions of the titles from the Digest and the Code into fragments and constitutions. In the source references in Pc, the term *κεφάλαιον* has evidently substituted the phrases *δίγεςτον* and *διάταξις* on a large scale.

How, then, to account for the massive presence of the term *κεφάλαιον* where one would rather expect *δίγεςτον* or *διάταξις*?

Arguing that the transmission of the Basilica text and scholia through the centuries may be held responsible would seem too simple a line of reasoning in the case of Pc: this manuscript – while dating from the eleventh century – is one of the oldest Basilica

BS 2844/19 (sch. Pc 5§ ad B. 48,3,62 = C. 7,2,4); (5) BS 2929/14 (sch. Pc 4\* ad B. 48,7,33 = C. 7,11,1); (6) BS 2938/30 (sch. Pc 4§ ad B. 48,9,2 = C. 7,18,1); (7) BS 2942/33 (sch. Pc 4§ ad B. 48,10,7 = C. 7,14,1); (8) BS 2951/19 (sch. Pc 5\* ad B. 48,11,5 = C. 7,21,1); (9) BS 2956/4 (sch. Pc 1§ ad B. 48,13 rubr.); (10) BS 2964/4 (sch. Pc 1§ ad B. 48,14 rubr.); (11) BS 2971/18 (sch. Pc 9\* ad B. 48,14,4 = C. 7,7,1); (12) BS 2973/4 (sch. Pc 1§ ad B. 48,15 rubr.); (13) BS 2976/4 (sch. Pc 1§ ad B. 48,16 rubr.); (14) BS 2979/4 (sch. Pc 1§ ad B. 48,17 rubr.); (15) BS 2981/4 (sch. Pc 1§ ad B. 48,18 rubr.); (16) BS 2988/4 (sch. Pc 1§ ad B. 48,20 rubr.); (17) BS 3006/4 (sch. Pc 1 ad B. 48,21 rubr.); (18) BS 3009/4 (sch. Pc 1§ ad B. 48,22 rubr.); (19) BS 3014/4 (sch. Pc 1§ ad B. 48,23 rubr.); (20) BS 3016/4 (sch. Pc 1§ ad B. 48,24 rubr.); (21) BS 3017/27 (sch. Pc 4\* ad B. 48,24,4 = C. 7,23,1; cf. note 62, No. (6) above); and, finally, (22) BS 3018/4 (sch. Pc 1\* ad B. 48,25 rubr.).

<sup>69</sup> It concerns the cases (1), (2), (3), (4), (5), (6), (7), (8), (11), (12), (21) and (24) from note 65 above.

<sup>70</sup> Viz. the cases (1), (3), (4), (5), (6), (7), (8), (9), (11) and (21) from note 68 above.

manuscripts and is pure in that it (almost) exclusively hands down older scholia.<sup>71</sup> This renders the presence of the term *κεφάλαιον* in no less than 49 source references even more striking, the more so since other scholia in Pc do hardly ever use the phrase *κεφάλαιον*.

Apart from the source references, the abbreviation *κεφ.* standing for *κεφάλαιον* occurs in only three scholia.<sup>72</sup> The first scholion – BS 2668/11 – is a *παρείθη* scholion.<sup>73</sup> The use of the term *κεφάλαιον* in this scholion may be accidental, or due to scribal error. The latter two scholia – BS 2810/15 and BS 2813/31 – both bear the heading τοῦ Ἐνατιοφανοῦς. In both scholia, the term *κεφ.* occurs in a reference to a Novel, viz. Nov. 119, c. 2 and Nov. 22, c. 8 resp.. The Enantiophanes quotes these Novels according to their numbers in the Collection of 168 Novels. This is quite remarkable in view of the fact that the younger Anonymos/Enantiophanes is known to have used a collection – or rather résumé – of Novels strongly diverging from the Collection of 168 Novels.<sup>74</sup> However, the allusions to Nov. 119, c. 2 and Nov. 22, c. 8 are both correct as regards contents.<sup>75</sup> The fact that Pc hands down at least two scholia in which the younger Anonymos/Enantiophanes refers to Novels from the Collection of 168 Novels is all the more striking as Pc transmits five other scholia in which the younger Anonymos/Enantiophanes quotes Novels according to the numbers in his usual résumé.<sup>76</sup> At present, I can offer no satisfactory explanation for the Enantiophanes's allusions to Novels from the Collection of 168 Novels – including the use of the term *κεφάλαιον* – other than hypothesizing that at some point the references to Nov. 119, c. 2 and Nov. 22, c. 8 were inserted in order to substitute the allusions to his original résumé of Novels.

Pc hands down six other scholia in which *κεφάλαιον* – occurring in various case-forms and meanings – is written in full. In the first scholion bearing the heading Θαλελαίου, it has the meaning of a new chapter in the sense of a new theme or issue, in the second scholion – a *κατὰ πόδας* translation of a Latin constitution – *κεφάλαιον* means chapter of a Novel. In the third scholion *κεφάλαιον* refers to a testamentary disposition, in the fourth to the capital sum of money lent at interest. The fifth scholion is again a *κατὰ*

<sup>71</sup> On this, cf. again § 1 with note 2 above.

<sup>72</sup> BS 2668/11 (sch. Pc 46\* ad B. 45,1,28 = D. 38,17,2), BS 2810/15 (sch. Pc 2 ad B. 48,1,1 = D. 40,1,1), and BS 2813/31 (sch. Pc 2 ad B. 48,1,8 = D. 40,1,8).

<sup>73</sup> I hope to return to scholia of this type in a future article.

<sup>74</sup> On this, cf. e.g. B.H. Stolte, 'The Digest Summa of the Anonymus and the Collectio Tripartita, or the Case of the Elusive Anonymi', *SG II* (1985), pp. 47-58 (53-54); N. van der Wal/B.H. Stolte, *Collectio Tripartita. Justinian on Religious and Ecclesiastical Affairs*, Groningen 1994, pp. XVIII, XX, and XXXIV-XXXV; N. van der Wal, *Manuale Novellarum Justiniani. Aperçu systématique du contenu des Nouvelles de Justinien*, Groningue 1998<sup>2</sup>, pp. XII with the notes 5 and 6, and 196-198; Van Bochove, 'Incorporation of Justinian's Novels', pp. 74-75.

<sup>75</sup> Cf. BS 2810/15-17 with R. Schöll/G. Kroll, [edd.], *Novellae*, [Corpus iuris civilis (editio stereotypa secunda), III], Berlin 1899 (SK), p. 573/22-28, and BS 2813/30-31 with SK 151/34-152/12.

<sup>76</sup> It concerns Nov. 41 in BS 2729/26 (sch. Pc 2 ad B. 46,1,6 = D. 1,5,8), Nov. 69 in BS 2702/25 (sch. Pc 6 ad B. 45,3,2 = D. 38,10,4), Nov. 81 in again BS 2702/25 and in BS 2729/15 (sch. Pc 3 ad B. 46,1,5 = D. 1,5,7), and, finally, Nov. 117 in BS 2644/16 (sch. Pc 1 ad B. 45,1,3 = D. 38,6,3); for all this, cf. Van der Wal, *Manuale Novellarum*, pp. 196-197.

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πόδας translation of a Latin constitution: in this scholion, the phrase ἐν κεφαλαίῳ is the rendering for *summatim* ‘summarily’. In the sixth and final scholion, κεφάλαιον refers to a specific case of the *lex Iulia maiestatis*, the Julian law concerning lese-majesty, viz. the case in which a father of sons *in potestate* was sentenced for *perduellio* – high treason (committed against the emperor and the state) – after his death.<sup>77</sup>

A possible explanation for the presence of the term κεφάλαιον may be sought in the use of an index titulorum.<sup>78</sup>

In the prolegomena to the edition of IPc, a description has been given of its general features: for each title of B. 45 – B. 50, the index contains full references to the Justinian legislation, consisting of Greek versions of title rubrics from the Digest and the Code and of original rubrics from the Novels. In its turn, each of those rubrics is followed by a note mentioning the relevant book and title from the Digest and the Code, and the number of the Novel concerned. With one exception, IPc omits any reference to the resp. subdivisions of the titles from the Digest and the Code into fragments and constitutions. Regarding the Basilica themselves, IPc transmits only book-, title- and chapter numbers. When mentioning Basilica chapters, IPc systematically uses the phrase κεφάλαιον, always accompanied by a number.<sup>79</sup>

Close inspection of the external appearance of IPc in the manuscript – which has been consulted on microfilm – reveals that there is more to the above concise description, and that there is more to be said about the references to the Digest and the Code.<sup>80</sup> For, concerning these references – and concerning the references to the Novels as well, for that matter –, the index has been divided into columns. The first column contains the title rubrics, whereas the second column contains the notes mentioning the relevant books and titles, always corresponding with the rubrics in the first column. And in what originally may have been a third column, we find the Basilica chapter indications accompanied by numbers indicating the beginning of a new series of text units from the Digest or the Code within the resp. Basilica titles. In IPc itself, however, the second and third columns are completely fused together: any distinction between them has disappeared. Consequently,

<sup>77</sup> (1) BS 2709/14 (sch. Pc 4 ad B. 45,4,3 = C. 6,60,3); (2) BS 2711/10 (sch. Pc 2 ad B. 45,4,6 = C. 6,61,2); (3) BS 2914/12 (sch. Pc 5 ad B. 48,5,41 = D. 40,7,40); (4) BS 2853/15 (sch. Pc 3 ad B. 48,4,4 = D. 40,5,4); (5) BS 2676/21-22 (sch. Pc 2 ad B. 45,1,48 = C. 6,58,12); (6) BS 2651/3-5 (sch. Pc 6 ad B. 45,1,14 = D. 38,16,1) in conjunction with BT 2074/20-22 (B. 45,1,14,3 = D. 38,16,1,3) and D. 48,4,11.

<sup>78</sup> Basically, I owe the idea of this explanation to Prof. B.H. Stolte.

<sup>79</sup> For all this, cf. Van Bochove, ‘IPc’, § 2 with the notes 9-15.

<sup>80</sup> If what follows, the Novels will be disregarded. On the one hand, the entries of the Novels in IPc do display a subdivision of the text – viz. that into *διαρρέσεις* –, unlike the references to the Digest and the Code. On the other hand, the aim of the present subparagraph is to find a possible explanation for the frequent occurrence of the term κεφάλαιον in the source references pertaining to the Digest and the Codex part of the Basilica text in Pc. On the external appearance of IPc in Pc, and especially on the use of the term κεφάλαιον, cf. Van Bochove, ‘IPc’, § 5.2; cf. also § 2, § 5.4 and § 5.6 of the latter article.

the distinction between the notes mentioning the books and titles from the Digest and the Code on the one hand, and the Basilica chapter numbers indicating the beginning of series of text units from those titles on the other hand, has disappeared as well. As a result, in the external appearance of IPc in the manuscript, the phrase κεφάλαιον, though always accompanied by a Basilica chapter number, seems to be part of the resp. subdivisions of the Digest and the Code into fragments and constitutions.

Ultimately, the following may be what lies at the root of the frequent occurrence of the term κεφάλαιον in the source references pertaining to the Digest- and the Codex part of the text of the Basilica titles in Pc. For, if we assume that IPc itself strongly resembles its ultimate exemplar, then in the latter index titulorum, too, the term κεφάλαιον would have appeared to be part of the resp. subdivisions of the titles from the Digest and the Code. If we again depart from the notion that in the ninth century the scribes who first wrote the text of the Basilica, were working on the basis of an index titulorum like the ultimate exemplar of IPc, then it would seem possible that they were under the impression that in their index titulorum the phrase κεφάλαιον was part of the subdivisions of the titles from the Digest and the Code. While copying the relevant text units from the Digest and the Code, incorporating them into the new Basilica titles, and providing them with source references, they may understandably but erroneously have changed the source references in that they substituted the terms δίδεστον and διάταξις by the phrase κεφάλαιον, influenced as they were by the index titulorum.

Along these lines of reasoning, the massive presence of the term κεφάλαιον in the source references in Pc may in the end be seen as an indication for the use of an index titulorum like the ultimate exemplar of IPc.

**5.** It is a well known fact that the Digest Summa of the elder Anonymos constitutes the Digest part of the Basilica text,<sup>81</sup> whereas the Codex part is mostly derived from the *antecessor* Thalelaios's Greek version of the Code.<sup>82</sup> In the previous subparagraph, it has been suggested that the scribes who incorporated the Basilica text directly from these

<sup>81</sup> On the elder Anonymos, cf. e.g. C.W.E. Heimbach, *Basilicorum libri LX*. Vol. VI,1: Prolegomena, Lipsiae 1870 (repr. Amsterdam 1962), pp. 54-56; C.W.E. Heimbach, 'Griechisch-römisches Recht im Mittelalter und in der Neuzeit. Einleitung, I. Periode von 534-867, II. Periode von 867-1453', in: J.S. Ersch/J.G. Gruber, *Allgemeine Encyclopädie der Wissenschaften und Künste*, I. Section, 86. Theil, Leipzig 1868 (repr. Graz 1976), pp. 191-471 (249-250); Pieler, 'Rechtswissenschaft', pp. 435-436; H.J. Scheltema, 'Das Kommentarverbot Justinians', *TRG* 45 (1977), pp. 307-331 (308-315) (repr. in: Van der Wal/Lokin/Stolte/Meijering, *H.J. Scheltema Opera minora*, pp. 403-428 (404-412)); Stolte, 'Digest Summa'; L. Burgmann, 'Neue Zeugnisse der Digestensumme des Anonymos', *FM* VII (1986), pp. 101-116.

<sup>82</sup> Cf. e.g. N. van der Wal, 'Der Basilikentext und die griechischen Kommentare des sechsten Jahrhunderts', in: A. Guarino/L. Labruna, [edd.], *Synthese Vincenzo Arangio-Ruiz*, [Biblioteca di Labeo, 2], Napoli 1964, pp. 1158-1165 (1158); Pieler, 'Rechtswissenschaft', p. 453 n. 84; Van der Wal/Lokin, *Delineatio*, p. 82.

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sources into the new Basilica titles, also added the source references. Is it possible to corroborate this suggestion?

The source references handed down by Pc predate the text of the Basilica. There is clear evidence to that effect.

First, there is the evidence provided by the οὔτος ὁ τίτλος scholia. In § 2 and § 3 above, it has been established that all οὔτος ὁ τίτλος scholia in Pc are in actual fact Digest scholia, and that scholia of this type ultimately originate from the lectures of the *antecessores*. It has also been observed that in Pc the οὔτος ὁ τίτλος scholia lack a point of reference: the phrase οὔτος ὁ τίτλος marks the beginning of scholia standing on their own, without their original meaning immediately being clear. Obviously, the scholia must always have been preceded by a reference to a book and title from the Digest. In Pc, these references have been detached from their original context and transformed into source references. Because of the fact that the source references pertaining to the Digest part of the Basilica text in Pc must once have been part of the οὔτος ὁ τίτλος scholia, it can be concluded that these source references ultimately date from the sixth century and originate from the lectures of the *antecessores*.

Second, there is the evidence produced by BS 2642/4. This scholion has already been dealt with in § 2, and reads: Βιβ. λη' τῶν Διγέστων τιτ. ζ', τοῦ δὲ Κώδικος τιτ. ιδ' τοῦ ζ' βιβ.<sup>83</sup> The scholion pertains to the rubric of B. 45,1, and functions as source reference for the text of this Basilica title. This is correct for D. 38,6, as this title from the Digest is indeed one of the constituent parts of B. 45,1. The reference to C. 6,14 is inaccurate, however, because this title from the Code does not occur in B. 45,1, despite the fact that D. 38,6 and C. 6,14 deal with the same subject matter. As a solution, it has been argued that BS 2642/4 cannot be regarded as a source reference, but must rather have been a scholion pertaining to the rubric of D. 38,6, referring readers of this Digest title to the parallel title from the Code. At the present stage, it is possible to go one step further and be more specific. BS 2642/4 is a Basilica source reference after all. Originally, however, this scholion must simply have been a οὔτος ὁ τίτλος scholion in disguise, viz. lacking the phrase οὔτος ὁ τίτλος. The allusion to C. 6,14 can be regarded as evidence that the scholion, though functioning as a Basilica source reference, is essentially older than the text of the Basilica: it originates from the lectures of the *antecessores*.

The third and final piece of evidence is the fact that nine source references in Pc allude to the subdivisions of the titles from the Digest and the Code into fragments and constitutions by using the terms διγέστον and διάπαξις resp..<sup>84</sup> The use of these terms clearly indicates a sixth century origin.<sup>85</sup>

<sup>83</sup> BS 2642/4 (sch. Pc 1§ ad B. 45,1 rubr.); cf. § 2 case No. (1) above; cf. also note 64 No. (1).

<sup>84</sup> Cf. the notes 66 and 67 above.

<sup>85</sup> On this, cf. B.H. Stolte, 'Further to understanding the marginal gloss of the corrector ordinarius in the codex Florentinus on fol. 439r', *TRG* 73 (2005), pp. 385-389 (387 with note 9). Stolte refers to the use of the phrase διγέστον only.

Is it possible to establish when the references to books and titles from the Digest were detached from their original οὔτος ὁ τίτλος context, and when they were transformed into source references?

The answer to these questions is closely connected with the location of the source references in Pc. The manuscript hands down scholia in the upper-, lower- and outer margins of its leaves. However, the source references are mostly found elsewhere. The editors of the Basilica scholia have provided 33 source references with an asterisk – the sign \* –, thereby indicating that in Pc these source references have been written in a second, younger hand.<sup>86</sup> While checking the source references on the microfilm of Pc, I have been unable to verify this. Even if the 33 source references were indeed written by a second scribe – which might theoretically be the case –, there is no cause for trouble. For, the second scribe may have added the relevant source references shortly after the first scribe wrote the main text and the vast majority of the scholia in Pc. The second scribe may even have consulted the exemplar of Pc, and copied the source references directly from that manuscript. Moreover, the source references marked by an asterisk date from the sixth century anyway: in some of them we come across the terms δίδεστον and διάταξις.<sup>87</sup> More important and to the point is the fact that 24 source references marked by an asterisk have been written in the inner margins of the leaves of Pc,<sup>88</sup> viz. the margins that are free from regular scholia. The remaining nine source references provided with an asterisk<sup>89</sup> do occur in the outer margins of the leaves, but they have been written in places that are free

<sup>86</sup> On the meaning of the sign \*, cf. e.g. H.J. Scheltema/D. Holwerda, [edd.], *Basilicorum Libri LX*, Series B Volumen VII: Scholia in libros XLII,2 – XLVIII, Groningen/s-Gravenhage 1965 (repr. Groningen 2003), p. ix (Uncini, signa): ‘stellula indicat scholia, quae in marginibus manu recentiore scripta sunt’. For a specification of the source references marked by an asterisk, cf. the notes 63-68 above.

<sup>87</sup> Cf. again the notes 66 and 67 above.

<sup>88</sup> It concerns BS 2649/17 (sch. Pc 2\* ad B. 45,1,13 = D. 38,13,1); BS 2653/4 (sch. Pc 15\* ad B. 45,1,14 = D. 38,16,1); BS 2684/28 (sch. Pc 11\* ad B. 45,2,6 = D. 38,8,1); BS 2694/11 (sch. Pc 20\* ad B. 45,2,25 = D. 38,9,1); BS 2695/23 (sch. Pc 5\* ad B. 45,2,27 = D. 38,14,1); BS 2695/32 (sch. Pc 4\* ad B. 45,2,28 = D. 38,15,1); BS 2818/4 (sch. Pc 1\* ad B. 48,2 rubr.); BS 2916/4 (sch. Pc 1\* ad B. 48,6 rubr.); BS 2649/4 (sch. Pc 2\* ad B. 45,1,12 = C. 6,62,2); BS 2929/14 (sch. Pc 4\* ad B. 48,7,33 = C. 7,11,1); BS 2951/19 (sch. Pc 5\* ad B. 48,11,5 = C. 7,21,1); BS 2971/18 (sch. Pc 9\* ad B. 48,14,4 = C. 7,7,1); BS 3017/27 (sch. Pc 4\* ad B. 48,24,4 = C. 7,23,1); BS 2664/5 (sch. Pc 19\* ad B. 25,1,27 = D. 38,17,1); BS 2672/24 (sch. Pc 4\* ad B. 45,1,40 = C. 6,57,1); BS 2674/33 (sch. Pc 3\* ad B. 45,1,44 = C. 6,58,2); BS 2677/19 (sch. Pc 4\* ad B. 45,1,49 = C. 6,59,2); BS 2679/12 (sch. Pc 4\* ad B. 45,1,56 = C. 6,62,3); BS 2688/11 (sch. Pc 3\* ad B. 45,2,15 = C. 6,55,1); BS 2768/26 (sch. Pc 2\* ad B. 47,1,35 = C. 8,53,1); BS 2807/29 (sch. Pc 3\* ad B. 47,3,45 = C. 8,56,1); BS 2725/24 (sch. Pc 5\* ad B. 45,5,2 = C. 6,18,1); BS 2706/13 (sch. Pc 11\* ad B. 45,3,8 = Nov. 118); and, finally, BS 2726/9 (sch. Pc 2\* ad B. 45,6,2 = Nov. 36).

<sup>89</sup> Viz. BS 3018/4 (sch. Pc 1\* ad B. 48,25 rubr.); BS 2706/19 (sch. Pc 2\* ad B. 45,3,9 = Nov. 164); BS 2726/16 (sch. Pc 2\* ad B. 45,6,3 = Nov. 117 c. 3); BS 2785/5 (sch. Pc 2\* ad B. 47,1,75 = Nov. 52); BS 2785/11 (sch. Pc 2\* ad B. 47,1,76 = Nov. 162); BS 2809/27 (sch. Pc 2\* ad B. 47,3,49 = Nov. 87 praef.); BS 3019/4 (sch. Pc 1\* ad B. 48,26 rubr.); BS 3019/20 (sch. Pc 2\* ad B. 48,26,2 = Nov. 119 c. 2); and, finally, BS 3020/3 (sch. Pc 2\* ad B. 48,26,3 = Nov. 162 cc. 2§1, 3).

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from other scholia. All this can be looked upon as a clear indication that the source references provided with an asterisk are an integral part of the Basilica text in Pc, rather than that they belong to the apparatus of scholia in the manuscript.

The same can be inferred from the 38 source references which in BS have been provided with the sign §. In the editorial system of BS, this sign indicates that scholia thus marked have been written in small letters between the lines of the main text of Pc.<sup>90</sup> To one of the 38 source references – viz. BS 2826/19 (sch. Pc 2§ ad B. 48,3,3 = D. 40,4,1) –, Scheltema and Holwerda have added the following comment: ‘sch. 2 tamquam pars textus post finem capituli praecedentis inseritur in Pc’.<sup>91</sup> This comment could be applied to more of the 38 source references marked with the sign §, to some more than to others, of course. It is, however, important to note that all 38 source references marked with the sign § do indeed occur between the lines of the main text, e.g. directly following the rubric of a Basilica title and preceding the text of the first chapter of that title. The fact that the above 38 source references are all interlinear glosses and as such oppose the apparatus of scholia in the upper-, the lower- and the outer margins of the leaves of Pc, speaks volumes: it strongly argues in favour of the conclusion that the source references must be regarded as an integral part of the Basilica text, and are inextricably bound up with it.<sup>92</sup> The source references in Pc cannot be regarded as regular scholia.

The above leads to the conclusion that the references to the books and titles from the Digest must ultimately have been detached from their original sixth century οὗτος ὁ τίτλος context and transformed into source references during the formation of the text of the Basilica in the later ninth century.<sup>93</sup> It must indeed have been the scribes who in the process of consulting the instructions in their index titulorum and of, while closely

<sup>90</sup> On the meaning of the sign §, cf. e.g. Scheltema/Holwerda, *Basilicorum libri LX*, Series B Volumen VII, p. ix (Uncini, signa): ‘hoc signum indicat scholia, quae litteris minutis inter lineas textus interscripta sunt’. For a specification of the source references marked by the sign §, cf. again the notes 63-68 above.

<sup>91</sup> BS 2826 app. ad l. 19.

<sup>92</sup> The same can be inferred from other Basilica manuscripts, e.g. the Florilegium Ambrosianum (A) and cod. Paris. gr. 1357 (Pd). Both manuscripts transmit Basilica text accompanied by source references, but without any regular scholia. The source references handed down by A and Pd in the context of B. 45 – B. 50 have been incorporated into the apparatus of testimonies attached to the edition of IPc. On the Florilegium Ambrosianum – written in the tenth century –, cf. e.g. Th.E. van Bochove, *To Date and Not to Date. On the Date and Status of Byzantine Law Books*, Groningen 1996, pp. 109-110 with the notes 20-21, and p. 228. The Parisinus 1357 dates from the sixteenth century and hands down the text of B. 46 – B. 52; on Pd, cf. RHBR, I, No. 171.

<sup>93</sup> On the dating of the text of the Basilica, cf. e.g. Heimbach, *Prolegomena*, pp. 110-111; Heimbach, GRR, pp. 312-313; Pieler, ‘Rechtswissenschaft’, pp. 455-456; Van der Wal/Lokin, *Delineatio*, pp. 81-86; cf. also A. Schminck, ‘“Frömmigkeit ziere das Werk”. Zur Datierung der 60 Bücher Leons VI.’, *SG III* (1989), pp. 79-114. It should be noted that Schminck distinguishes between the Sixty Books of Leo the Wise on the one hand and the Basilica on the other; on the latter issue, cf. Van Bochove, *To Date and Not to Date*, pp. 107-121. Here, suffice it to say that I consider what Schminck describes as the Sixty Books of Leo the Wise, to be the text of the Basilica.



following those instructions, copying the Digest Summa of the elder Anonymos and subsequently incorporating it as the text of the Digest part into the new Basilica titles, also added the source references to the newly formed Basilica text. All in all, there clearly is a chronological gap between the source references of the Basilica text in Pc on the one hand and the apparatus of scholia in the same manuscript on the other. Or to be more precise, there is a chronological gap between the addition of the source references to the Basilica text on the one hand, and the addition of the apparatus of scholia to the (direct) exemplar of Pc on the other.

6. The results of the present article may be summarized as follows. There is a connection between the apparatus of scholia in cod. Paris. gr. 1349 and the partial index titulorum of the Basilica in the same manuscript. Or to be more precise: between the Corpus iuris source references in Pc on the one hand and IPc on the other. The source references in Pc, and especially the references to the Digest, predate the text of the Basilica and originate from the sixth century legal teaching of the *antecessores*. The source references cannot be regarded as regular scholia in the sense that they belong to the apparatus of scholia in Pc: they are rather to be looked upon as an integral part of the Basilica text in that manuscript. The source references present circumstantial evidence – the use of the phrase τοῦ αὐτοῦ βιβ. and the very frequent occurrence of the term κεφάλαιον where one would rather expect δίδεστον or διάταξις – indicating the use of an index titulorum. The ninth century scribes who first compiled the Basilica text by copying the Digest Summa of the elder Anonymos (and Thalelaios's Greek version of the Code and the original text of the Novels, too, of course), and by incorporating these texts into the new Basilica titles, consulted this index – viz. the (ultimate) exemplar of IPc or an index very similar to it – which had been compiled before they started their work. Acting on the editorial instructions laid down in the index titulorum, the scribes detached the notes mentioning the books and titles of the Digest from their original sixth century οὗτος ὁ τίτλος context, and added them as source references, together with the references to the Code and the Novels, to the relevant Digest-, Codex- and Novel part of the text of the Basilica.