

THE LATIN BOOK OF LEGAL CONTENT : A SIGNIFICANT TYPE IN THE HISTORY OF THE ANCIENT BOOK

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Introduction

Unlike other textual types, the Latin manuscript of legal content is attested continuously between the first century BC and the sixth-seventh centuries AD. This makes it possible to trace a detailed history of formats and scripts of the manuscripts of this type. Furthermore, since most of the manuscripts illustrated here were unearthed in Egypt and the Middle East, they offer a chance to verify the degree of penetration of the Latin language and its scripts in the *pars Orientis*, and the mutual influence of Greek and Latin writings, many of the manuscripts being bilingual and digraphical.

The Latin book of legal content on *volumen*

The oldest manuscripts are fragments from papyrus rolls, which contain *adespota* commentaries on Roman law or fragments of individual known authors. Three of them show the use of cursive writings, executed with different degrees of calligraphy and showing remarkable similarities with the graphical habits of the Roman army and administration.

Oldest Latin literary papyrus of legal content on roll

P.Mich. VII 456 + P.Yale inv. 1158r is the oldest Latin fragment of legal content that has survived ; it can be dated back to the first century AD¹. The script is an ancient cursive, sloping to the right ; it is drawn with a flexible-pointed pen, like the one from P.Berol. inv. 8507r, the famous papyrus of the *oratio Claudiana*². Besides the *interpunctio* and a single abbreviation, the two lines of writing in red ink constitute a remarkable feature : they represent a further temporal primacy of this papyrus. The use of red ink should be interpreted in a functional rather than decorative sense, as suggested by the fact that the red and black script are identical³.

Datable papyrus roll in « calligraphic » cursive

P.Fay. 10 + P.Berol. inv. 11533 contains a commentary on a *praetor's* edict, from Ulpian's *Ad edictum*, book 45, where the author discusses the issue of the *testamentum militis*⁴. The edict itself, datable to 193 AD, provides a *terminus post quem* for the dating of the papyrus (no later than the half of the third century AD). The script is a particular cursive, very rapid but calligraphic, with larger initial letters at the beginning of the lines, some closer to capital script (R) and others to cursive (B features the ancient cursive form, with « *panse à gauche* »). Some larger letters can also be seen in the middle of words. The layout of the text in the column together with some graphical expedients, such as the considerable

¹ LDAB 4481. According to Parássoglou (1974), who matched the two fragments, they probably bear a commentary on the *praetor's* edict. For further considerations about the content of the papyrus, see Nörr (1990).

² LDAB 7682. A detailed analysis of both papyri can be found in Ammirati (2010).

³ Rubrics and distinctive writings originate with this function, the decorative purpose being totally secondary. On the use of red ink to mark corrigenda, see Cic. *Att.* 15, 4, 4 and 16, 11, 1 in Dorandi (2007) 88 and n. 46. On the use of red in books of legal content, a noteworthy reference is found in Petron. 46, 7. On the use of red ink in papyri, see Schubert (2005).

⁴ LDAB 4130.

extension of some upright strokes, would suggest that the roll was written in the Roman military context for which, considering its content, it may have been conceived⁵. A significant comparison can be made with the earlier script (first century AD) from PSI XIII 1307r, a papyrus containing the *acta diurna* of a Roman garrison.

Latest Latin book of legal content on volumen : P.Oxy. XVII 2103

P.Oxy. XVII 2103 is the latest and best preserved evidence of a Latin book of legal content on *volumen*; it contains part of book 4 from Gaius' *Institutiones*⁶. The script is a cursive capital datable to the third century AD, the strokes of the letters being very thick because of the use of a flexible pointed pen. The three surviving columns contain numerous lines of writing (ca. 40 each) and are very wide. Notably, the number 19 (XVIII) is found at the top of the best preserved column, probably added by a later hand, which leads to the assumption that this was the 19th column of the roll. Consequently, the roll must have contained only the 4th book of Gaius' work⁷. Like the other examples shown, the script is not a conventional book hand, but an adaptation from a cursive hand. The hand, probably accustomed to writing documentary texts (compare the script of P.Oxy. VIII 1114), here transcribed a literary text, probably not meant for commercial use, but for private use. Perhaps this was the hand of an officer of the Roman administration in Egypt. That would be suggested by the cursivity of the writing, the pronounced slope, the use of some technical abbreviations, the presence of ligatures, and the script running out of the external right margin of the column.

The transition from roll to *codex*

The bulk of Latin manuscripts of legal content are in the form of the *codex*. In the long debate on the origin and adoption of the *codex* as the predominant book format, many different opinions have been expressed about the contexts where this phenomenon preferentially took place: the topic has long been debated in the literature on the history of Roman law, especially in juristic papyrology⁸. Many have expressed opinions in favour of an archival birth of the *codex*, connected to a continuous bureaucratization of the peripheral administrations modeled on that of the central administration and to a reorganization aimed at better efficiency⁹. From this point of view, the functionality of the new format has been strongly underlined: the *codex*-book becomes the « material » collector of juridical rules, more specifically of imperial constitutions. This seems to be due to two reasons: 1) the obligation to quote rules in tribunals; 2) the theory of the sources of law, originated in Rome during the post-Classical period. The development of juridical science, therefore, would be strongly related to the practice¹⁰.

Yet, in the literature on the history of Roman law, it has been frequently underlined that both the juridical-pagan context and the Christian context have jointly given a strong impulse to the shift from roll to *codex*¹¹. In the case of manuscripts of high formal quality, this interaction is particularly significant, as Christianity and juridical practice share an

⁵ The ability for soldiers to make their wills without observing the general rules, this circumstance not invalidating it, is one of the oldest and most widely recognized prerogatives granted to the military class. A history of this privilege is traced in the passage of Ulpian contained in P.Fay. 10 + P.Berol. inv. 11533. See Brand (1968) 123–124 and n. 4; Scarano Ussani (1983) 187, n. 1. As for the text, compare *Dig.* 29, 1, 1. In the script of the papyrus some graphic similarities may be noted with the script of *diplomata militaria*.

⁶ LDAB 1067; Nelson (1981) 46–55.

⁷ This is already suggested rightly by the editors: see P.Oxy. XVII, p. 173–175.

⁸ Roberts / Skeat (1985); van Haelst (1989); Bagnall (2009).

⁹ Coriat (1997) 632: « L'avènement du *codex* doit être mis en relation avec l'affirmation d'un régime politique centralisé, doté d'une bureaucratie rationnelle qui organise ses archives pour agir avec plus d'efficacité. »

¹⁰ Kupiszewski (1990).

¹¹ Kupiszewski (1990); Migliardi Zingale (2004–2005).

authoritative conception of the text ; both God's law and human law need to be put in writing, and their « scriptural authority » is further confirmed by an idea of authority deeply related to the new format¹².

Latin literary manuscripts of legal content in the form of the *codex*

Manuscripts from fourth to fifth centuries AD

Latin literary evidence of legal content on *codex* was mostly unearthed from excavations in urban sites (Antinoopolis, Hermoupolis, Oxyrhynchus). The evidence is ample and extremely varied from a bibliological, graphic and textual point of view.

Among the manuscripts datable between the fourth and the fifth centuries, a taste for a squarish, angular script, influenced by contemporary bureaucratic scripts, is prevailing. These *codices* bear writings which cannot be included in a specific canon of book scripts. The graphic signs are not homogeneous : there are forms of half-uncial where the same letter is traced in different ways in the same manuscript¹³ ; sometimes a slope is prevailing¹⁴ ; other times the letters are perfectly upright¹⁵ ; in many cases, as it has been already pointed out, the shape of the letters is very squarish¹⁶. In a bibliological perspective a distinction can be made between current use copies and manuscripts of higher quality¹⁷.

The presence of both Greek and Latin scripts by the same hand in a manuscript appears in different ways : Greek commentaries to the work of Latin jurists, where names of the authors, titles of the works, legal matters to be explained are written in Latin characters¹⁸ ; procedural collections, where legal matters typical of the Eastern areas are rightly indicated with their Greek names¹⁹ ; petitions, for the correct compilation in Latin is required for the approval of requests ; the often extensive commentaries in the margins of manuscripts containing Latin legal texts²⁰. In this perspective, it can presumptively be assumed that the manuscript of legal content has exercised its influence on the practice of setting manuscripts with margins wide enough to contain annotations²¹. Elsewhere the layout of the text in the page is not as airy, since each page contains many lines of writing ; the space between them is extremely compressed and there are numerous technical abbreviations.

According to Giovanna Nicolaj, the common peculiarity of all these manuscripts is their intrinsic diversity ; unlike the codes of the law, which have a prescriptive value, these texts were conceived for practical use, and therefore were written in hybrid scripts²². They must have circulated among teachers, students, lawyers, i.e. in an extremely varied context, yet characterized by the same attitude towards the script : that script, if not expressed in a particular type of writing, was certainly developed in a shared cultural and professional context.

The fact that not all fragments can be described in a single way reveals the variety of Latin scripts in a period marked by the growing importance of Latin in the *pars Orientis*,

¹² Radiciotti (1998) 153 : « Quando, a partire dal quarto secolo, l'affermazione del libro in forma di codice si fa più netta, una parte di questo successo è legata a due prodotti librari di qualità elevata ed assai simili : il codice che raccoglie le leggi divine, ovvero le Sacre Scritture e quello delle leggi umane, i *codices* tardoromani. » See also Radiciotti (2005).

¹³ See e.g. P.Vindob. L 59 + 92 (LDAB 5862).

¹⁴ See e.g. P.Grenf. II 107 (LDAB 3911).

¹⁵ See e.g. P.Ant. I 22 (LDAB 4132).

¹⁶ See e.g. P.Berol. inv. 6757, *fragmentum de iudiciis* (LDAB 4133).

¹⁷ Compare the layout of P.Vindob. L 90 + P.Berol. inv. 11753 + P.Berol. inv. 21294, *fragmentum de formula Fabiana*, (LDAB 3525) and P.Amh. II 27 (LDAB 6133).

¹⁸ See e.g. P.Laur. II 38 (LDAB 117810). For the content, see Bartoletti Colombo (1971).

¹⁹ See e.g. P.Berol. inv. 11324, a recently identified fragment containing a passage from Ulpian about the practice of *skopelismos* (edition and commentary to be published soon in a BKT volume, forthcoming).

²⁰ See P.Ryl. III 476 (LDAB 5813).

²¹ Compare McNamee (1997), especially 627.

²² Nicolaj (2001) 482 ; see also Radiciotti (2008) 139.

directly influenced by the rise of Roman law, which had not yet undergone codification. In my opinion, this helps clarify the reason why a great part of the Latin literary evidence of legal content shows professional scripts strongly influenced by the cursive elements of coeval bureaucratic writings²³. Officials are the primary users of these books, which featured the graphical aspects most familiar to them. Books of law mirror the particular professional interests of people who are at the same time producers and users of Latin books of literary content²⁴. If the users of books of both literary and legal content belong to the same professional category, those books can be expected to share the same morphological characteristics.

Towards codification : from Theodosius II to Justinian

Other manuscripts find their historical-cultural reason in the unification of the law promoted by the issuing of a code of law, during the fifth and sixth centuries, when an authoritative idea of the text is first conceived and becomes visible in the adoption of specific graphical and bibliological features. This passage marks a significant watershed in the history of the Latin book.

The process of codification, launched by Theodosius II and completed in 438 with the promulgation of the Code bearing his name, has bibliological consequences, promoting a period of stabilization in the script adopted for the manuscript of legal content. As Giovanna Nicolaj rightly pointed out, it is from the time of Theodosius rather than Justinian that late antique manuscripts of legal content begin to have a precise and recognizable graphical and bibliological design²⁵.

The way the Code was released is clearly illustrated in the sources, especially in *Gesta senatus Romani de Theodosiano publicando*, itself dating back to 438²⁶. That the central authority took particular care in the graphic design of the Code is demonstrated by the rules in the Code itself dealing with the authenticity of the official documents of the Emperor, aimed at preserving their *fides*. It can also be added that Theodosius himself enjoyed the art of writing²⁷. The script chosen is uncial, the same adopted in contemporary religious manuscripts. It is possible to notice a common intent, i. e. a systematic transcription of human and divine laws. I believe that this parallel activity can be connected with the growing Christianization of the imperial court, which gives rise to an increasing involvement of emperors in religious, even dogmatic matters.

As Paolo Radiciotti rightly showed, in the Eastern part of the Empire, uncial script (b, d, and b-d uncials) is attested in high-quality scriptural manuscripts, both digraphical and bilingual²⁸. Some of these skills are shared by manuscripts of legal content datable to the fourth century and to the Theodosian period, which proves a gradual preference for this script : examples of this can be seen in P.Ant. I 22, P.Oxy. XVII 2089 and P.Vindob. L 26²⁹.

A strong inclination towards the choice of the BR type of uncial can be seen in P.Oxy. XV 1813, containing the Theodosian Code : a fragment from a parchment *codex* of

²³ Radiciotti (2008) 139.

²⁴ The scripts of many manuscripts of legal content are strikingly comparable to those of manuscripts bearing literary texts : compare for example the scripts of P.Haun. III 45 + P.Arangio-Ruiz s.n. (LDAB 4134) and P.Ryl. III 472, a Latin fragment of liturgical content (LDAB 5542).

²⁵ Nicolaj (2001) 480 : « Quando già nel V secolo si è deciso di reggere il mondo con un Codice certo, stabile e promulgato di leggi, di esso sono partiti dalla cancelleria imperiale esemplari ufficiali destinati alle amministrazioni dell'Impero e da doppiare poi ancora da scribi d'ufficio, i *constitutionarii*. »

²⁶ See Atzeri (2008).

²⁷ *C. Th.* 1, 1, 5 ; 9, 19, 3 ; *Nov. Th.* 2, 2 ; Nicolaj (2001) 481 and n. 14.

²⁸ Radiciotti (1998) 178.

²⁹ LDAB 4132 ; 5759 ; 6056.

large format, with squared written space, and wide and well proportioned margins³⁰. The script is a calligraphic uncial, almost roundish. Given the high quality of parchment, the careful layout and script, and the absence of annotations in the margins, P.Oxy. XV 1813 could be regarded as an official copy of the Code.

A progressive evolution, through which the format and the script of the legal book become uniform, can be seen in some items datable to the first half of the sixth century, which bear texts of legal matters but not the Code itself. These include PSI XI 1182 (LDAB 1068), the famous Florentine parchments with the *Institutiones* of Gaius, or P.Vindob. L 95 (LDAB 6399), written in a roundish uncial, with the R typical of the BR type and half-uncial B, outlined with the alternation of thick and thin strokes. The presence of *notae iuris* in what survives leads us to reasonably assume that it contained a text on legal matters.

As can be inferred from these papyri, the emerging graphic trend for the Code also influences the look of cognate works, such as monographs of jurists and commentaries on Roman law. This is not surprising, especially considering which authors and works of Roman law survived through papyrological evidence : Gaius and Ulpian in particular. It is likely that because these were fundamental works of legal science, their writing practices were assimilated to normative texts like law codes and they underwent the same graphical and format development. Therefore, with the codification begun in the fifth century, the graphical and bibliological scenario tends to become more uniform.

Two predominant graphic tendencies start to emerge : the first one, with rounded scripts and with the axis of the writing perfectly upright, originated from Constantinople³¹ ; the other one, with very squarish, angular letters, steeply sloping to the right, with contrasting thin and thick strokes, probably originated from the Middle East³². Perhaps this was related to the flourishing in Late Antiquity of legal schools in Syria and Palestine, where a taste for inclination and squarish, angular letters can be found in the scripts of local languages as well as in Greek and Latin scripts³³.

I believe that all the evidence in BR uncial can be interpreted as the product of conscious choices by the central authority in Constantinople, now aware of the need to make its legal issuing fully recognizable. Aside from the script, those choices concern the format of the new *codex*. If we look at the evidence from this period, we find only large or extremely large-format books, with an airy layout, mostly a single column of writing and wide margins³⁴. The script is always the BR uncial, with which, in bilingual and digraphical manuscripts, the biblical majuscule is associated³⁵. Those manuscripts in very sloping, angular scripts have in common with the BR group the large size of the letters, the clarity of the script, the large to very large format of the page, and the possibility that they were duplicated in Egypt³⁶. Yet some remarks can be made : 1) the Latin script of this group seems to share many features with the local Greek script, the inclined ogival majuscule³⁷ ; 2) there are numerous graphical similarities with those fourth and fifth centuries manuscripts with squarish, angular scripts, of which they are a probable evolution³⁸.

³⁰ For a definition and illustration of the characteristics of the BR type of uncial, the works of Elias Avery Lowe are still essential, especially Lowe (1972). P.Oxy. XV 1813 = LDAB 6120.

³¹ See Lowe (1972).

³² Van der Wal (1983).

³³ Radiciotti (1997) 140–142.

³⁴ Compare PSI XIII 1347 (LDAB 6272) and P.Vindob. L 110 (LDAB 6397).

³⁵ This can be seen in the Florentine *Digests*, Florence, Biblioteca Medicea Laurenziana, ms. s.n. (LDAB 7619). On this coexistence, see Radiciotti (1998) 180, with bibliography. On the biblical majuscule, see Cavallo (1967).

³⁶ Compare P.Ryl. III 474 (LDAB 2558) ; PSI I 55 (LDAB 2553) ; PSI XIII 1350 (LDAB 2552).

³⁷ On the inclined ogival majuscule and its first evidence, see Cavallo (1977) 100.

³⁸ Compare the scripts of P.Grenf. II 107 and PSI I 55.

As seen in other older manuscripts, the simultaneous presence of Greek and Latin script is a structural feature, because those books, produced and circulating in the *pars Orientis*, are mostly conceived for Graeco-speaking users, who employ Latin as the language of law and administration³⁹.

The Justinian Code is promulgated in two phases, corresponding to the publication of the two versions of the Code in 529 and 535. Both are attested through evidence in the two graphic tendencies outlined⁴⁰.

Book production in these two styles can be divided into three main groups according to the kind of text borne. The first group consists of copies of the *Corpus Iuris Civilis*, influencing the second group, coeval juristic literature *tout court* (commentaries on Roman law, collections of *responsa / sententiae*, works of Roman jurists), and the third : literature in general, especially, but not exclusively, Graeco-Latin bilingual glossaries⁴¹. These three categories together seem to point to some of the occupations and cultural interests of the leading class in the Eastern part of Roman Empire in Late Antiquity⁴².

The scenario so far described leads us to assume that during the fourth-sixth centuries continuously, the whole Middle East area was extremely fertile for book innovation, and that this abundance was given a decisive input by the juristic environment, related to law science and its own language, Latin : from the imperial court, through law science schools, to the personal copies of bureaucrats all over the Empire. Unlike the Western provinces, the Eastern ones enjoy a period of relative peace and prosperity.

What has been discussed so far clearly shows a developing and constant progress between the fourth and the sixth centuries, which proves that no decline ever took place.

The scenario is completely different in the West : no Latin book of legal content on *volumen* has survived between the end of the first century AD, when the latest Latin *volumina* from Herculaneum can be dated, and the mid-third century, when it is possible to place the shift from roll to *codex* for Latin books in the Eastern part. The surviving ones consist only of *codices*, the oldest ones not earlier than the beginning of the fifth century.

The « graphic propulsive push » attested in the East is not observed in the West, which is affected by the periodical and devastating inflow of foreign populations, and whose books and script identity is preferably represented, in Late Antiquity, in the imitative forms of the flourishing proto-imperial Latin world. Significantly, different attitudes are shown towards the types of uncial, b-d and BR, in the West : the former is confined to the glosses, the latter is not accepted as a typical script for manuscripts of legal content, which are less characterized and diversified from other kind of literary manuscripts than in the East⁴³ ; besides, there is not much variety of juristic works attested. Manuscripts of legal content are written in uncial, with different degrees of graphic and book complexity, and half-uncial. No manuscripts of legal content written in capital script in the West are attested.

³⁹ For the simultaneous presence of Greek and Latin script as a structural feature, see Radiciotti (1997) 109.

⁴⁰ See P.Oxy. XV 1814 (LDAB 6324) and P.Sorb. inv. 2219 (LDAB 2555). On both, see Corcoran (2008) 74 and (2009) 432.

⁴¹ 1. Copies of *Corpus Iuris Civilis* : for the BR type, see e.g. P. Pommersf. L 1–6 (LDAB 2556) ; P.Ryl. III 479 (LDAB 2554) ; PSI XIII 1346 (LDAB 5941) ; PSI XIII 1347 (LDAB 6272). An almost complete list with description can be found in Lowe (1972) ; for the sloping type, see P.Ryl. III 474 ; PSI I 55 ; PSI XIII 1350. 2. Coeval juristic literature *tout court* : for the BR type, see P.Heid. L 4 (LDAB 2557) ; PSI XIII 1348 (LDAB 5796) ; P.Strasb. L 3+6B (LDAB 4137) ; for the sloping type, see P.Ness. II 11 (LDAB 6469) ; PSI XIII 1349 (LDAB 6273). 3. Literature in general : for the BR type, see *Folium Walraffianum* (LDAB 6279) ; P. Ant. s.n. (LDAB 2559) ; P.Oxy. VIII 1099 (LDAB 4162) ; for the sloping type, see P.Ness. II 1 (LDAB 4166) and P.Vindob. L 62 (LDAB 6194).

⁴² Cavallo / Manfredi (1975).

⁴³ Radiciotti (1998) 169–175.

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