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Developments in the Text of Alciatus' *Dispunctiones*

In previous articles in this journal I have sought to highlight the fundamental change wrought in the character of the written text by the invention of printing.¹ The economics of printing in the hand-press period resulted in a steady succession of new editions of any important text with a wide dissemination. This stream of editions permitted contemporary authors to introduce alterations in their existing text every few years; similarly, editors could introduce changes in the texts under their care. Editions of the 16th-18th century thus exhibit not so much a single version of a text with minor variants, but rather a succession of different recensions; the text has been transformed into a living, moving text. Further, the technology of hand-press printing was such as to produce variants even in different copies of the same edition. Accordingly, for texts transmitted through the medium of the early printed book the establishment of the text, the determination of the words written by the author – in short, the philological method – demands not only the collation of the different editions of a work, but also of the surviving copies of each edition.

It might be objected that this argument, albeit logically unexceptionable, tends only to the conclusion that any contemporary scholarship on early printed texts is entirely futile. With this conclusion I am in substantial agreement. The consciousness of futility, moreover, is all the more profound in that it is already manifest that contemporary developments in micro-technology are on the verge of revolutionising the study of early printed texts. The problem, in fact, stands shortly before solution. Just a few years ago an optical character reader was an expensive wonder; now such a machine is in daily use in every office and institute. Technical difficulties remain to be solved before they can be deployed in the field of early printed books: paper quality, badly printed letters, the general unevenness of early print, a mass of abbreviations, etc. But even if these minor difficulties still remain to be solved, the revolutionary potential of this technology is already apparent. It requires no great bound of the imagination to foresee the day when we shall read the texts of early printed books on the computer screen and in computer print-

¹ *Ius Commune* 15 (1988), pp. 231–42, and 18 (1991), pp. 207–24.

outs. The fundamental change, however, will lie in the fact that these texts will be based on a scanner-executed collation of the surviving exemplars of the various editions. With this development we will finally have achieved a philologically secure text – text in this period meaning rather a series of recensions – of works transmitted through the medium of the early printed book.

Are we, then, bound simply to await the fullness of time? Certainly, it would be foolish indeed to embark on a plan of research without taking this imminent development into account. However, this consideration should, I believe, channel our research rather than simply discourage it. Every printed textual tradition has to be considered on its merits. While it is true that a moving, developing text is a frequent pattern, it is not an invariable rule. Thus, for example, the text of Antonius Augustinus' *Emendationes et opiniones*, first published at Venice in 1543, went through at least seven editions in the course of the 16th century. It seems, however, that Augustinus never altered his text, which indeed is commensurate with the conception of the work as an announcement of the forthcoming Digest edition based on the Florentine manuscript by the Taurelli. The problem of different recensions, (though not, of course, that of variants between different copies of the first edition), is thus elided. Quite a different, and indeed more typical picture is presented by the *Annotationes in Pandectas* of Gulielmus Budaeus. This basic work of legal humanism was first published at Paris in 1508, and appeared in constantly revised form over the remainder of Budaeus' lifetime, in c. 1519, 1521, 1524, 1527, 1530 and 1535, thereafter being subjected to editorial intervention in the posthumous editions of 1556 and 1561. In the edition of Stephanus of 1535 the work extends to 381 pages; to follow its development it would be necessary to collate these 381 pages in each of the above editions. This is a mighty task, especially when one labours under the knowledge a) that the human eye will perform it inexactly, b) that it can in any case take no account of different states in different copies, and c) that it will shortly be accomplished with speed and accuracy by scanners.

Let us recapitulate, as an apologia for posterity, the limits within which we must still work as we approach the end of the pre-philological era in the study of the early printed text. The first requirement of any study of an early printed text is a copy of the text – literally a copy, however, for we must be able to take it with us into the libraries in order to collate it with other editions. Then we require a check-list of the editions and the library locations of the surviving copies. All existing

bibliographies in the field of legal history being worthless for this purpose, we must go directly to the few published library catalogues. This does not take us far, so very soon we have to start our travels; in the last decade of the 20th century the only way to discover what early printed books are to be found in a particular library is to visit it and look up its author catalogue.

Face to face with the books themselves, the observation of elementary bibliographical principles will at least lead to a secure identification of edition and issue. By comparing a number of different copies major differences of state might, with good fortune, also come to light. But this is the one area in which we have to recognise that we are virtually powerless. I dare to predict that, once the means for their identification is in use, we will be astonished at just how many variants exist between different copies of the same edition. For the moment the problem is insoluble; there is, for example, simply no means of detecting a portion of reset text in the middle of a page – except, of course, by collating the whole text in a statistically significant number of copies of the edition. This is a job that only the scanner can accomplish. We may take some reassurance that, no matter what emerges, the problem is clearly secondary to the basic task of collating the different editions. For the moment therefore, the most – and, it should be added, the least – we can accomplish is the collation of the different editions.

The work of Andreas Alciatus (1492–1550) entitled *Dispunctiones*, first published at Milan by Aldus Minutius in 1518,² qualifies as the first work of legal humanism with a strictly juristic content. As such it naturally raises a host of fascinating questions. Here I wish to draw out some themes which are affected in a significant way by the progression of the text through its different recensions. This is possible in the present case since the work itself, in four books, is slim, while its textual tradition turns out to be simple.

In dealing with a text transmitted through the means of early printed books the first distinction which has to be observed is that between what we may call *primary* and *secondary* editions. Primary editions are those which offer, for the first time, a distinct recension of the text of the work; secondary editions are reprints of one of the primary editions. In the case of Alciatus' *Dispunctiones* there are only three primary edi-

² Paradoxorum ad Pratum lib. VI. Dispunctionum lib. IIII. In treis lib. Cod. lib. III. De eo quod interest lib. I. Praetermissorum lib. II. Declamatio una. [Milan, Alexander Minutianus, 1518]. 2°. [Copy: I:RBNC].

tions, published in 1518, 1523 and 1531.³ In other words, Alciatus revised his text only twice, in 1523 and 1531. A collation of these editions reveals that the latter revision is by far the more substantial. Let us observe what Alciatus wrote as an enthusiastic young scholar of 26, and what he still considered important enough to merit revision in the light of 13 further years of experience.

1. A Textual Emendation and a Backwater

The modern student of Alciatus may reflect that he is not alone in embarking on his research at just the wrong moment. Three years before the appearance of the *Dispunctiones* Alciatus published his first work, the *Annotationes* on the last three books of the Code. To this work was attached his *Opusculum*, in which he attempted, largely by conjecture, to restore the Greek words and phrases which were missing from contemporary editions of the Digest. This was the theme which was to dominate Alciatus' philological work throughout his lifetime. Just shortly after this work was published there came into his hands a list of all these Greek readings. For he had come upon the manuscript notebooks of Ludovicus Bologninus, which contained *inter alia* a substantially complete list of the Greek readings of the Florentine manuscript. This is the source which provided the basic material for the *Dispunctiones*. In the same group of works Alciatus published a revised edition of the *Opusculum*, now appearing as Book 2 of a work which he entitled *Praetermissa*. This is the work, in both its 1518 and 1531 revisions, that has to be studied in order to come to grips with Alciatus' philological method.

The *Dispunctiones*, on the other hand, are predicated upon the state of Alciatus' source material *after* he had access to the readings of the Florentine manuscript through Bologninus' notes. Given this relatively sound foundation, the textual emendations offered in the *Dispunctiones* required little revision in subsequent editions. Some cases, however, recall the "method" of the *Opusculum*.

In *Disp.* II.13 Alciatus restored the Greek word σαγήνη to the text of D. 47.10.13.7. There was, however, a second textual problem in the passage. Alciatus quotes the text in his first edition as follows:

³ I am preparing a descriptive bibliography of the legal works of Alciatus in which I shall discuss the relations of the different editions.

Si quis me prohibeat in mari piscari vel in diverticulum quod dicitur
σαγήνην ducere . . .

He comments that the omission of the Greek word had rendered the text incomprehensible: *Vox Graeca deest, quae totum sensum obnubilat ut vix quicquam sani ex eo eliciatur*. In fact, however, it is rather an error in the Latin which had destroyed the meaning of the text. Early printed texts of the Digest read *in diverticulum* – into a sidewater; the Greek word has then to furnish an object for *ducere*. Alciatus thus read, “If anyone prevents me from drawing what is called a [] into a side stream”, which explains his comment about the necessity of the Greek word to complete the sense.

In fact, however, the reading *in diverticulum* is a corruption, a *lectio facilior*, of the true reading, *everriculum*, meaning a drag net, and the following phrase runs, *quod Graece σαγήνη dicitur*. The sentence therefore means “If anyone prevents me from hauling a drag net, which in Greek is called a σαγήνη . . .”; there is no talk of a side stream. The correct version is introduced in Alciatus' third edition, in which the text quoted now reads:

Si quis me prohibeat in mari piscari vel verriculum, quod Graeci
dicunt σαγήνην, ducere . . .

Thus Alciatus simply alters the legal text he is quoting. He makes no mention of this fact; nor does he identify the origin of this new reading, whether manuscript or conjecture; nor does he state whether it is his own intervention or that of a previous scholar. The procedure, however, is absolutely typical of Alciatus' philology, as indeed it is of humanist scholarship in general. Whereas such incidents are rare in the *Dispunctiones*, because of the relatively sound basis from which the work started, they are extremely frequent in the *Opusculum*.

In trying to identify Alciatus' source, we are immediately made acutely aware of our dilemma. The reading *verriculum* or *everriculum* is also found in Budaeus' *Annotationes Reliquae*. But is it in the first edition of 1526 or the second edition of 1528? Did Alciatus take it from Budaeus, or did Budaeus take it over from Alciatus, altering his text in a later edition? Or is the source perhaps one of the early humanist editions of the Digest – Blaublommus' editions of 1523–24 or 1528–29, for example, or Stephanus' edition of 1527, or Haloander's edition of 1529? All these editions will be found to be rather scarce, and scattered in libraries across the globe – libraries whose holdings are, for the most part, unknown to us.

From the information at my disposal, I reconstruct the case as follows. Budaeus' reading of *everriculum* is indeed already present in the first edition of the *Annotationes Reliquae*, and he seems to present it as his own conjecture: "Lego, vel *everriculum* quod Graece σαγήνη dicitur". The explanation of the reading continues, "*Verriculum* et *everriculum* rete est piscatorium, *sagena* a Graecis dictum". Doubtless Alciatus had a copy of Budaeus' work, (although we should not forget the difficulties of acquiring recent publications in the 16th century). But the real inspiration of Alciatus' renewed interest in the text of the Digest around 1529 was the publication of Haloander's edition of the Digest. It was Haloander who rekindled Alciatus' enthusiasm for criticism of the Digest text after an interval of over a decade. The focus of his interest remained what it had been before, namely the Greek texts which had disappeared from the Digest text in the Middle Ages. Chapter after chapter of his major new work from this period, the *Parerga* (first published after much delay in 1538) betray Haloander as his major new source. Haloander, too, was the inspiration for the 1531 revision of the *Paradoxa* collection, including the *Dispunctiones*.

Haloander's text at this point reads:

vel *everriculum*, quod Graeci σαγήνην dicunt.

It will be seen that the readings of all three, Budaeus, Haloander, and Alciatus, differ in some points of detail. Perhaps some other source will emerge which will solve the puzzle. But the main point is that the reading *verriculum* was not in the first edition of the *Dispunctiones*, so that the Digest text quoted had a quite different nuance. This reading appeared only in the 1531 revision of the work. We can state definitively, therefore, that it was not the source of Budaeus' and Haloander's reading. It is probable that Alciatus took this reading, along with the great majority of his other textual emendations, from Haloander's Digest, and, typically, did not trouble about the other minor differences in his text.

2. Ex quorundam sententia

In the dedication of the *Dispunctiones* to Ioannes Selva Alciatus alludes anonymously to two predecessors in the task of emending the legal texts. One of these, it would seem, was of little account:

Extitere qui ante nos paucas quasdam notulas hoc tractatu vulgaverint, sed illi quidem non dicam aridi et ieiuni (quandoquidem id a

nobis etiam ultro affectatum est), sed nullius plane iudicii literaturaeque fuerunt, ut non iniuria temeritatem damnes ea quae ipsi ignorant publicae editioni mandantium.

The use of the plural is part of the form; the individual meant is doubtless Pius Antonius Bartolinus, who had published a short *Auctarium* containing emendations of seventy legal texts about the year 1494–95. (This had subsequently received a larger circulation by being included in miscellanies of humanist annotations.) More favourable is the allusion to a second predecessor:

... contra et alios cernere est perquam eruditos qui tamen quod fere omnia ad humanitatis studia deflectant iurisconsultis ipsis non aeque magno sunt usui.

This is a reference to Budaeus, and alludes to the want of juristic content in the French humanist's *Annotationes*. Having identified the two individuals, and having been alerted to their shortcomings, the reader of the *Dispunctiones* would then be able to proceed in the assurance that Alciatus himself is the true pioneer.

It is a standard practice of the humanists to refer to other scholars in this veiled fashion with some such phrase as *ut quidam sentiant*, *vir alioquin eruditus*, *licet alii aliter sentiant*. Thus in different chapters of the *Dispunctiones* we are left to identify, for example, *plerique etiam eruditi humanioris literaturae professores*, *quidam*, *alii*, *quidam grammatici*, *quosdam*, and again *alii*.⁴ Contemporary scholars would no doubt have recognised these allusions immediately, but for us it takes considerable immersion in the sources in order to identify these references with security. Sometimes even a close acquaintance with the sources will prove insufficient.

Disp. I.21 is concerned with the rubric to C. 7.44: *De sentiis ex periculo recitandis*. Reading Alciatus' final version we learn that some scholars would emend *periculo* to *breviculo*. He writes: "Ex quorundam sententia legendum videtur: De sentiis ex *breviculo* recitandis". He goes on to discuss the implications of this reading. In the end, however, he rejects it on the evidence of *vetusti codices* of the Code itself, and the rubric of the Codex Theodosianus. Yet this conclusion seems to be at variance with the promise of the heading of the chapter: "Rubricam C. De senten. ex periculo recitandis vitio scriptorum labe non carere, quapropter declarata vera lectio". The solution to this riddle lies in the growth of Alciatus' text.

⁴ Respectively in *Disp.* II.21; II.25; III.3, III.8, & III.13; III.18; III.21; IV.21.

The identification of the *quidam* in this case lies to hand. It is, in fact, no more than a convenient rhetorical device to permit Alciatus to alter the whole thrust of his text, while at the same time leaving its form substantially intact. Originally, with a confidence which was later to prove illusory, Alciatus had written not *ex quorundam sententia legendum videtur*, but *non dubito quin legendum sit*. The change was executed in the final version of 1531. At the same time the final sentence was added: *In vetustis tamen codicibus, itemque Theodosiano Codice vulgata lectio approbatur* ... The phrase *vetusti codices* is a typically vague humanist usage which may refer to manuscripts, of whatever antiquity, or even to early printed editions (in the context it can scarcely mean "ancient writings", another possible meaning). The Theodosian Code mentioned here and on a number of other occasions in the *Dispunctiones* is not, it should be noted, a reference to the fragment of the *Lex Romana Visigothorum* (known after its first editor as the *Epitome Aegidii*) published by Petrus Aegidius at Antwerp in 1517, just in time, as it might seem, for Alciatus to make use of it for the *Dispunctiones*. In fact, the new communications medium did not permit information to flow just as quickly and smoothly as this. All the references to the Theodosian Code in the *Dispunctiones* were added in the final recension of 1531, and are derived from the edition of the *Lex Romana Visigothorum* published by Ioannes Sichardus at Basel in 1528.⁵

3. A remarkable *volumen antiquissimum*

One of the most intriguing puzzles presented by the *Dispunctiones* is the question of the existence of Alciatus' *volumen antiquissimum*. In the preface to Book 1 of the *Dispunctiones* Alciatus describes in considerable detail an early manuscript of the Digest, in two volumes, which he claimed to own. The readings which he attributes to this manuscript are frequently cited in the *Dispunctiones* and occasionally also in other later publications. The truth of Alciatus' assertion has been disputed from the 16th century to the present day. Broadly speaking, it would be

⁵ Codicis Theodosiani libri XVI ... Basileae, excudebat Henricus Petrus, 1528. 2^o. [Copy:D:FMPI].

Disp. I.21 Sichardus IV.15, f. 43r;

Disp. III.4 Sichardus II.17, f. 16v;

Disp. III.7 Sichardus IV.1, ff. 36v-37r;

Disp. IV.3 Sichardus XI.11, f. 78v.

fair to say that Alciatus' ancient manuscript has been a matter of ridicule in the humanist tradition from Cuiacius to Bynkershoek, while its existence has been stoutly upheld by modern scholars. Although this dichotomy is perhaps sufficient to indicate which is the more probable view, discussion of this question must be reserved for another occasion. Here I wish to present an interesting piece of evidence which emerges from a collation of the different editions of the *Dispunctiones*.

In *Disp.* I.12 Alciatus discusses a minor textual corruption occurring in D. 39.4.9.pr. The corruption is also present in the Florentine manuscript, where the text reads as follows:

Locatio vectigalium, quae calor licitantis ultra modum solitae conductionis inflavit, ita demum admittenda est . . .

The text clearly cannot stand, and Mommsen notes the simple solution, which is found in Gebauer's edition, of emending the *quae* to *quam*. Alciatus presents a different reading which he attributes to his ancient manuscript:

Aliter in exemplari nostro fideliori legitur quam in aliis soleat, nimirum his verbis:

Locatio vectigalium, quae calores licitantes ultra modum solitae conductionis inflavit, admittenda est . . .

This does indeed make grammatical sense, since now we have an object for *inflavit*. However, it makes little practical or legal sense; according to this reading, the leasing of the tax contracts has inflated the excitement of the bidding beyond the usual contract price. How can excitement be inflated beyond the price? Moreover, it is not the inflation of the *calor*, the excitement, which is legally relevant, but the inflation of the *locatio* because of the *calor*. Could a pristine, pre-Accursian manuscript have exhibited such a reading?

The difficulties presented by this reading eventually impinged themselves on Alciatus himself. In the final version of the text, something of a minor miracle seems to occur. Alciatus' manuscript would seem to have changed its reading of its own accord:

Aliter in exemplari nostro fideliori legitur quam in aliis soleat, nimirum his verbis:

Locatio vectigalium, quae calore licitantis ultra modum solitae conductionis inflatur, admittenda est . . .

This reading makes much better sense; now the *locatio* has been inflated by the *calor* of the bidding. But what are we to make of Alciatus'

exemplar fidelius? Various solutions present themselves. It is possible, of course, that in his concern for textual exactitude Alciatus re-consulted his manuscript, and discovered that he had misread it at three points. Alternatively, the readings – in both cases – may be considered to bear the appearance of nothing so much as heavy-handed humanist conjectural emendations, falsely attributed to a non-existent manuscript. The latter seems to me the likely solution. It should be said, however, that the very fact of the alteration of the reading is not *ipso facto* decisive. Given the way that Alciatus altered his text, it is quite feasible that, having in the meantime thought of a better reading, Alciatus would not scruple simply to change his existing text, ignoring the fact that he was thereby attributing the reading to his *volumen antiquissimum*. There are abundant examples of this very phenomenon in the moving text of Alciatus' philological works.

4. Vir minus quam mediocris

The polemical style of youth gives way to the equanimity of maturity. Alciatus was concerned to efface any trace of the brash young radical from the text he had written in his mid twenties. His first objective, then, was to appear less impolite to his fellow scholars. *Plerique etiam eruditi humanioris literaturae professores hac in re hallucinati sunt* attracted his attention; less offensive, perhaps, to write in 1531 *hallucinati videntur* (*Disp.* II.21). Again, *hoc modo Vallae temeritas coercetur* was a slight to a great scholar; for posterity a milder, defensive posture was struck by alluding rather to *Vallae impetus* (*Disp.* III.13).

Another scholar for whom initial criticism is attenuated in the final edition of the *Dispunctiones* is the Italian humanist, Petrus Crinitus, author of the philological miscellany *De honesta disciplina* published in 1505. Crinitus was known in legal humanist circles for having entertained Budaeus on his sojourn in Florence in 1505, and also for a few chapters of the *De honesta disciplina* which discuss juridical subjects. Alciatus' antipathy to Crinitus is evident already in the *Opusculum*, where he rather gratuitously dismisses a Greek restoration to the Digest which Crinitus had correctly executed (D. 47.11.9):

Restitutus est hic locus iam diu, etiam in quibusdam impressis codicibus, etsi plures qui annotationes edidere sibi ascribant, digladien-turque tanquam de re maxima.

This line was continued three years later in the first edition of the *Dispunctiones*. Here the rubric to *Disp.* IV.3 prominently announced the exposure of *Petri Criniti error*; this is expunged in the third edition. Again in the final version he repudiates an argument of Crinitus on the grounds that he offered no evidence in its support:

... cum autorem hac in re nullum laudet Crinitus, non arbitror ...

In the original version, however, he had gone out of his way to impugn the entire scholarly credentials of Crinitus:

... cum auctoritatis aequae ac doctrinae vir minus quam mediocris fuerit Crinitus, non arbitror ...

The change in this case is not, however, simply cosmetic, nor does it merely reflect Alciatus' growing conservatism. The argument of the chapter is worth following in some detail since it concerns a very famous quotation from the text of the Greek constitution Δέδωκεν.

The question at issue was the meaning of such titles as *exconsul* and *exquaestor*. Crinitus had maintained that these titles referred very simply to a former holder of these dignities. Alciatus disputed this, using as his main evidence the Greek version of the text of Δέδωκεν. This was not then in currency, being available only in the Florentine manuscript, but a Latin version of the constitution, the constitution *Tanta*, was found in the Code. Among the manuscript notes of Bologninus Alciatus found a version of the Greek text of Δέδωκεν. In this he noted that the Greek word ταμίης was used as the equivalent of the Latin *exquaestor*. But ταμίης was also in standard usage as the equivalent of *quaestor* itself. Hence, Alciatus continued, the two terms *quaestor* and *exquaestor* must be of identical meaning.

Unknown to Alciatus, his argument was based on a wholly unsound foundation. Bologninus' manuscript notes are based not upon the Florentine manuscript itself, but on the collation which Angelus Politianus made of the manuscript in 1490. In transcribing the text of Δέδωκεν, Politian found the first page very difficult to read. He made a note that the passage was illegible, and left a space. How, then, does it come about that a complete Greek version of the text is to be found in Bologninus' notes? The answer is that one of Bologninus' collaborators has supplied the missing passage by back-translating from the Latin of *Tanta*. This extended humanist conjecture, as we should perhaps consider it, is to be found on its own on a leaf of Bologninus' notes. It was then copied separately with the rest of the genuine Greek

text, thus rendering it impossible to see the join.⁶ This was the source which Alciatus held in his hand.

In the genuine text of Δέδωκεν there is no trace of the word ταμίας, and so Alciatus' whole argument collapses. It is clear that, over the years, Alciatus came to have doubt in his interpretation. In his original text Alciatus cited Isidore as supporting the contention that *exconsules* were those of consular dignity, whether former or present consuls, and including also the sons of those who had held this rank. The words which follow this argument make sense only if we realise that they first appeared in the revision of 1523; Alciatus continues: *quod tamen non probo*. Evidently doubt continued to grow in Alciatus' mind. By 1531 one of his new sources, Sichardus' Theodosian Code, had suggested a very different conclusion. In his final addition to his text he notes that in this source, *exantistes dicitur qui antistes olim fuit*. Alciatus has now come full circle; best perhaps, to omit the reference to *Petri Criniti error*, and, in the circumstances, not to insist that *auctoritatis aequae ac doctrinae vir minus quam mediocris fuerit Crinitus*.

5. Alciatus' *columnella*

We possess an early contemporary reaction to Alciatus' *Dispunctiones* in the form of a letter written by Budaeus to Christophorus Longolius on 21st February, 1520. At this point Budaeus had not yet managed to secure his own copy of the work, and so had only been able to read it quickly in the copy of a friend. As a typical humanist scholar, what excited Budaeus most was a reference to himself. This, needless to say, was the only part of the work which he studied in any detail. In *Disp.* III.2 Alciatus suggested that a text of Livy would render signal support to the main thesis of Budaeus published in his *De asse* a few years previously. This was all too much. The content of his letter to Longolius is summarized by Delaruelle in his répertoire of Budaeus' correspondence:⁷

⁶ See Tammo Wallinga, *Tanta/Δέδωκεν*. Two introductory constitutions to Justinian's Digest. Utrecht 1989, at pp. 18–21.

⁷ LOUIS DELARUELLE, *Répertoire analytique et chronologique de la correspondance de Guillaume Budé*, Toulouse et Paris, 1907, Slatkine Reprints, Genève 1969, pp. 97–98.

G. B[udé] a lu rapidement les *Dispunctiones* . . . Il est tombé sur un passage dans lequel Alciat, en rétablissant dans un texte l'expression *quindecies sestertium*, déclare qu'il l'explique de la même façon que G. B. En même temps, il ajoute un texte unique de Tite-Live à ceux qu'avait rassemblés G. B., et il a le front de s'écrier que, sans l'appui de cette colonne d'airain, tout l'édifice du *de Asse* serait exposé à la ruine! G. B. proteste vivement contre pareille prétention: son œuvre est assez solide pour n'avoir pas besoin qu'Alciat y vienne mettre la main . . .

In a footnote Delaruelle identifies the relevant passage of the *Dispunctiones* as follows:⁸ "*Alciati Opera*, édit. de Bâle, 1571, in-folio, au t. II, col. 45". There is, of course, nothing remarkable about this citation of a late, random edition of Alciatus' work, for the principle "any old edition will do" remains to this day standard practice in the field of legal history. Yet there is a lesson for us here. It is precisely Delaruelle who, in a section prefixed to his biography of Budaeus, published in 1907, makes an elaborate attempt to identify the editions of Budaeus' works.⁹ Having located a copy of the second edition of the *Annotationes* in Ghent, he can but lament, "Je n'ai pas eu le temps de collationner l'exemplaire de Gand avec l'édition *princeps*".¹⁰ In the end his attempt to establish the relations of the editions and their reprints is entirely erroneous. But the attempt as such, let alone the very contemplation of executing a collation of printed editions, shows a measure of understanding of the nature of the problem far in advance of its time.

Yet Delaruelle's difficulty when he came to Alciatus is precisely that still facing us today. No matter how much care we invest in the identification and collation of the editions of an author we are studying, as soon as we set to work actually understanding his text we come into contact with the whole wide world of other writers and works used by our author. It soon becomes apparent that our brave efforts represent no more than a drop in the ocean. Thus even Delaruelle, having set out to list the editions of Budaeus' *Annotationes*, when faced with the scholar standing nearest to Budaeus, was driven back on the edition which lay most conveniently to hand: Basel 1571. This edition, however, reproduces the final recension of the *Dispunctiones*; and this text is entirely misleading if we wish to understand Budaeus' comment of 21st February 1520.

⁸ DELARUELLE, Répertoire (n. 7 supra), at p. 97, note 4.

⁹ LOUIS DELARUELLE, Guillaume Budé. Les origines, les débuts, les idées maîtresses, Paris 1907, Slatkine Reprints, Genève 1970, at pp. XX-XXIII.

¹⁰ DELARUELLE, Budé (n. 9 supra), at p. XXI, lines 1-2.

In the original version of *Disp.* III.2, already the rubric warned of a detail *ab oculatissimis viris in hac re praevaricatum*; in 1531 this was expunged. In the first edition Budaeus was *Gallicus scriptor, vir pluri-mae eruditionis*; later this was changed to an apparently higher dignity: *Budaeus Parisiensis, vir clarissimus*. But to understand Budaeus' complaint, and his sarcastic dismissal of Alciatus' *columnella*, we have to retrieve a sentence deleted from the final version of the text. What was at issue was a passage of Livy which Alciatus offered as lending support to Budaeus' thesis, a support indignantly rejected by Budaeus. In the final version in the *Dispunctiones* we read only:

... demonstrat gravissimus autor T. Livius. Is Belli Punici libro quarto ...

The original text reads:

... demonstrat gravissimus autor T. Livius, *ut valde admirer quo nam modo oculatissimum alioqui virum Budeum locus hic praeterierat, unde operis sui firmissimam columnam poterat erigere*. Is Belli Punici libro quarto ...

This is the crucial phrase which caused a distinct estrangement between the two founding fathers of the legal humanist tradition in its earliest years. The background to this incident would be incomprehensible without a knowledge of what stood in the text of Alciatus which Budaeus had read; and this will not be found in any of the late and frequent reprints of the *Dispunctiones* which lie conveniently to hand in our research libraries.

6. Accursius – ridiculous, or not quite so?

A famous topos inherited by the 16th century legal humanists from their predecessors among the classical scholars of late 15th century Italy was the polemic against the Accursian Gloss. This is one of the most consistent themes of Budaeus' *Annotationes in Pandectas*, and finds also an echo, albeit less strident, in the works of Alciatus. Budaeus was later to take advantage of the opportunities created by the character of early printing to attenuate the more unrestrained turns of phrase generated by his initial enthusiasm. This was a general policy executed systematically throughout the body of the *Annotationes*.

With Alciatus the case is rather different. A few derogatory remarks were present in his first version and remain to be read in his final text.

Thus the comment in *Disp.* I.3, *quos obices dum remove quærit Accursius, mera aegrotantium somnia affert*, might easily have proceeded from the pen of Beroaldus or Budaeus. But perhaps because he had adopted a more balanced approach than his predecessors from the beginning, Alciatus feels it necessary to alter his original comment on only one occasion in the *Dispunctiones* (I.18). In discussion was the meaning of the unusual word *trophima* in D. 16.3.26.2. In the first edition Alciatus had written:

... ut ridiculum sit Accursii dicterium, qui cum hanc vocem non intellexisset, *solvat*, inquit, *Apollo*, quasi quae eum praeterierint nemo absolvere sciat praeter Apollinem.

This is one of the very few places in the *Dispunctiones* which Alciatus troubled to alter in the second edition of 1523. Accursius is now to be seen in a rather more favourable light. In place of the above passage Alciatus substituted the following:

... ut non omnino damnandus sit Accursius, qui id ingenue fassus est se non intelligere.

7. Quis vir Tribonianus

Criticism of Tribonian for having mangled the classical jurists in the compilation of Justinian's Digest is one of the basic dogmas of legal humanism, which receives its most comprehensive statement in the *Antitribonianus* of Franciscus Hotomanus. At least so runs the cliché. It might be thought that a rather more differentiated approach would prove fruitful in studying a movement which spanned three centuries, and encompassed scholars in every country of western Europe. Not only is it enlightening to compare the approach of different humanists in different times and places, but even the views of individual scholars can show a significant development. In *Disp.* III.11 Alciatus discusses C. 10.32.26, a constitution which he pronounces to be irreligious. He concludes that this may have been included in the Code only because its compiler, Tribonian, as described by the Suda, was himself an atheist: *omnium deorum contemptorem & praesertim a fide Christi abhorrentem*. In the third edition, however, Alciatus attempts to discount this evidence by adding the following note:

... cui tamen auctori vix est ut ego assentiendum putem, cum apud gravissimae existimationis historicos aliter de Triboniano traditum sit.

What really had to be revised, however, was the whole chapter, *Disp.* IV.7, in which, according to the rubric, *Iustiniani inconstantia in condendis legibus sugillatur, tum ex Graecis autoribus refertur quam improbus vir Tribonianus fuerit*. A few deft touches of the brush altered the general impression created by his picture: "*quam improbus vir Tribonianus fuerit*" became a neutral "*quis vir Tribonianus fuerit*". Initially Alciatus had said regarding Justinian: "*ut non absimilem illi arbitrer quem Vergilius notat – Qui leges fixit pretio atque refixit*". An element of distance was achieved by the change to the more anonymous, "*ut non absimilem illi arbitrari quis possit*". Again, the forthright "*Triboniani ipsius improbitas nemini ignota esse debeat*", gave way to the neutral, "*ut iam Triboniani ipsius mores nemini ignoti esse debeant*".

However, more was required than these cosmetic changes. In the final version Alciatus adds a long polemic against the *grammatici*, the humanists or classical scholars, who carried on a polemic against Accursius and the great Medieval jurists:

Sunt tamen qui aliter de Triboniano sentiant, nec temere grammaticis de iureconsulto credendum arbitrentur, quandoquidem etiamnum videamus, et saepissime experiamur, quanto supercilio id hominum genus, quo iure, qua iniuria, et mortuos et viventes insecetur, quamque suis in studiis hi sibi placeant, moriae beneficio felices, alios omnes contemnant, et epistolis ante ipsos legum codices praefixis Accursium, Bartolum caeterosque acerbissimis conviciis dilacerent . . .

And who, indeed, was principally responsible for this development? Not just an anonymous *quis*, but the very subject of *arbitrer* himself. The permanence of print does not permit Alciatus to disown his past quite so easily. Evidently the radical spirit of Alciatus' youth had faded rather more quickly than it had in the first humanist polemicist to ridicule the lawyers, whom Alciatus here taxes in an impromptu couplet:

Tandem Valla silet, solitus qui parcere nulli est.

Si quaeris quid agat, nunc quoque mordet humum.

Re-writing History

Collating the primary editions of works of 16th century scholarship may be a laborious task, but its rewards are great. By this means we can observe Alciatus at his desk, pen in hand, indicating for us the questions discussed in the *Dispunctiones* which remained of particular concern to him years after the initial composition of the work. His attempt to re-

write his text, it must be said, has proved remarkably successful. Copies of the editions of 1518 and 1523 are rare. It was the final version, that of 1531, that passed into all the subsequent editions of the *Paradoxa* collection, and of the editions of the *Opera omnia*, which have been used by subsequent generations of scholars.

Now, five centuries after these works were written, the mask is about to slip. The standard methodology of today – reading an early printed “text” in a random late edition – is about to become the discredited method of yesterday. Even a small sample of examples from the first juridical work of legal humanism is sufficient to reveal how essential is the observation of the philological method for understanding the work of the first philologists. Following the development of the text of the *Dispunctiones* is fundamental for an appreciation of Alciatus’ philology, of his attitude to Accursius, and of his opinion of Tribonian: all basic themes of legal humanist scholarship. It is fundamental also for understanding his relations with his fellow scholars, in particular his difficulties with Budaeus. Yet for the moment such exercises in collating early printed texts must remain limited, isolated, and subject to human error. Perhaps they can at least serve to indicate the great strides in our knowledge of printed texts which the new technology is about to facilitate. The prospect opens before us of coming to know Alciatus and Budaeus not just as they wanted to be remembered, but as they really were.