Duplicate texts and the compilation of the Digest

Efforts to investigate the compilation of Justinian’s Digest go back in one way or another to Friedrich Bluhme’s 1820 article on the regular sequence of inscriptions in the Digest titles, a sequence that is especially visible in D 50.16 and 50.17.\(^1\) This includes the phenomenon of duplicate texts (\emph{leges geminae/geminatae}), on which Bluhme also compiled, in the same year, a special study.\(^2\) Duplicate texts tell us something about how the Digest commissioners worked, and especially about the different attitudes of the three committees towards excerpting texts for the Digest.

‘Duplicate texts’, taken widely, are instances of copying, intentional or unintentional, of an author by an editor or later author. They include copies that are not identical with the original or with one another. As an example of the wide use of the term, Olivier Verrey’s 1973 thesis concerned duplicate texts with two authors.\(^3\) A duplicate text with two authors is one copied by a later author from an earlier. Such copying was common and deserves study.\(^4\)

The present essay however concerns only texts by the same author, the same work (\emph{opus}) and the same book (\emph{liber}). These texts appear twice in the Digest in substantially similar though not always identical form.\(^5\) The reason for not including duplicates attributed to different authors or different works by the same author is that, to throw light on the compilation of the Digest, the intentional copying by the compilers of a text of one of the authors whose work they excerpted or edited is a specially revealing phenomenon.\(^6\)

It is true that, quite apart from duplications from different authors, duplications from different works of the same author occur in the Digest in at least four cases when one text is excerpted from the Papinian mass and other from the Appendix.\(^7\) Three of the four are duplicated in the same title. These duplications are significant because they show two things about the compilation of the Digest:

\begin{enumerate}
\item ‘Die Ordnung der Fragmente in den Pandektentiteln. Ein Beitrag zur Entstehungsgeschichte der Pandekten’, \emph{ZGR} 4 (1820) 257-471.
\item In his inaugural dissertation: \emph{Dissertatio de geminatis et similibus quae in Digesten inveniuntur capitibus} (1820).
\item O.Verrey, \emph{Leges geminatae à deux auteurs et compilation du Digeste} (1973), reviewed by C.Krampe, \emph{SZ} 93 (1976) 369-380.
\item F.Wieacker, \emph{Textstufen klassischer Juristen} (1960) 184 n.39: ‘indirekten geminatae’.
\item Bluhme, above n.1, p.344 n.78.
\item Bluhme, above n.2, p.18 insisted on the intentional character of these duplicates..\(^\text{8}\)
\item D 20.5.11 (Scae. 1 resp.) = 20.5.14 (Scae. 6 dig.); 15.1.54 (Scae. 1 resp.) = 15.1.58 (Scae. 5 dig.); 32.93 pr. (Scae 3 resp.) = 32.38.4 (Scae. 9 dig.); 10.2.41 (Paul 1 decr.) = 37.14.24 (Paul imp. sent. 1).
\end{enumerate}
Digest (i) the Appendix was separate from the three original masses. Had it been part of one of these, for instance the Papinian mass, the author’s two works would have been read together as part of a group in that mass and the duplication would have been noticed by the excerpters (ii) the editors of certain titles overlooked the duplication of texts from different masses that occurred in the title they were editing. This points to haste on the part of the editors of certain books of the Digest.

Intentional duplication by the compilers raises different issues. It may be assumed, with Bluhme, that the three collections of works known as the Sabinian, edictal and Papinian masses which make up the bulk of the Digest titles were read and excerpted by the commissioners, divided for that purpose into three committees. I have elsewhere tried to show that the works to be read and excerpted were allocated to the three masses on the basis of four criteria: authorship, subject-matter, literary genre and number of books. These criteria would not have been adopted unless the object was to ensure that the works of a given author, those dealing with a given subject-matter, or those belonging to a given literary genre, were read by the same group of commissioners, who could then compare texts and select the best. This was specially important as regards works dealing with the same subject-matter, such as the praetor’s edict, adultery, fideicommissa or the lex Iulia et Papia. But it was also important for their morale that the members of the three committees had, as it were, their own authors. Thus the Sabinian committee had Julian, the edictal committee Modestinus and the Papinian committee Papinian.

The criteria for allocating works to the committees presuppose that the commissioners were divided into groups charged with reading a defined list of works. The groups charged with reading the Sabinian, edictal and Papinian masses constituted the three initial committees. The Appendix works, though at first allocated to one of these three committees, were in the end hived off and read by an ad hoc group. The composition of this is unknown but it cannot have been one of the original three committees.

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8 Bluhme, above n.1, pp. 55-60.
9 The names go back to Bluhme, above n.1 p.266.
12 T.Honoré, ‘Late Arrivals: The Appendix In Justinian’s Digest Reconsidered’, in Mapping the Law; Essays in Memory of Peter Birks (ed. A.Burrows and A.Rodger) 497-512.
The committee or commissioner who read a particular work decided in some cases, at the time of reading and excerpting a text, that it should be duplicated. The duplication occurred despite the instruction in *Deo auctore* that no similar or contradictory texts should if possible be included. Duplicate texts are ‘similar’ to one another, even when not edited in exactly the same form. But the phrase ‘*secundum quod possibile est*’ (if possible) left a margin of appreciation, and on occasion it was hardly possible to avoid duplication. This was true of some texts that were needed both for one of the general titles that end book 50 of the Digest, and also for an earlier, more specific title. When the Digest was promulgated C. Tanta/Dedoken recognised that the compilation might be criticised on the ground that it occasionally contained two similar texts. These exceptions are either due, it says, to human frailty or, as regards some brief repetitions, to considerations of utility. They are useful when the text concerns two different subjects or when to excise part of a text would have left the remainder confused.

The committee or commissioner reading the work from which the duplicate text is taken, will also, in these instances, have had to decide to which two titles the text should be allotted. The existence of duplications that appear in different titles implies that the commissioners had available from the start a list of available titles. This list could be and was modified as the excerpting and editing advanced, but it served the excerpters from the start as a first step towards assigning texts to the Digest titles in which they would ultimately appear. Though C. Deo auctore does not expressly require a list of projected titles to be available in advance, and though Bluhme thought that a complete list in advance of excerpting was ‘unthinkable’, there must have been from the start a *provisional* list of titles. Otherwise the classification of the texts into titles ‘according to our Codex and on the analogy of the perpetual edict as you

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13 C Deo auctore (15 Dec, 530) 4: Iubemus igitur vobis…libros ad ius Romanum pertinentes et legere et elimare, ut ex his omnis materia colligatur nulla (secundum quod possibile est) neque similitudine neque discordia derelicta, sed ex his hoc colligi quod unum pro omnibus sufficiat.

14 D 50.16: De verborum significacione; .50.17: De diversis regulis iuris antiqui.

15 C Tanta 14: Si quis autem in tanta legum compositione… simile forsitan raro inveniatur, nemo hoc vituperandum existimet, sed primum quidem inbecclitati humanae, quae naturaliter inest, hoc inscribat… Deinde sciat, quod similitudo in quibusdam et his brevissimis adsumpta non inutilis est, et nec citra nostrum propositionem hoc subsecutum: aut enim ita lex necessaria erat, ut diversis titulis propter rerum cognitioonem applicari eam oporteat, aut, cum fuerat alius diversis permixta, impossibile erat eam per partes detrahi, ne totum confundatur.


17 Bluhme, above n.1, p.278: ‘undenkbar’.
may think best’\textsuperscript{18} could not have been done at the time of excerpting. It would have been an exercise to be undertaken later, after the material excerpted for the Digest had been collected. That would have delayed the project, which Justinian was keen to have completed before the end of his third consulship.\textsuperscript{19}

The simpler method was to mark each text for a title or titles as it was excerpted. Sometimes there was no appropriate title in the edict or Codex, but one could be found in the work excerpted. Occasionally, when there was doubt about the proper title for a fragment, the matter may have been left for later consideration.\textsuperscript{20} But that cannot have been the usual procedure. Later on, some titles were amalgamated and others divided into two or more. In practice the final list of titles, apart from those reflecting the edict or Codex, owed much to the rubrics in Ulpian’s commentary ad edictum,\textsuperscript{21} and to a lesser extent ad Sabinum,\textsuperscript{22} with additions to cater for the more general titles at the beginning and end of the Digest.

**Duplication at the excerpting stage.**

Intentional duplications of a text from the same author, work and book, of which there are 63 or so,\textsuperscript{23} may have been decided on either at the excerpting or the editorial stage of the commissions’ work. To begin with the excerpting stage, in 34 of these texts one duplicate occurs in book 50.17\textsuperscript{24} and in 7 one

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\textsuperscript{18} C Deo acutore 4: Cumque haec materia summa numinis liberalitate collecta fuerit, oportet eam pulcherrimo opere extruere et quasi proprium et sanctissimum templum iustitiae consecrare et in libris quinquaginta et certos titulos totum ius digere, tam secundum nostri codicis quam editi perpetui imitationem, prout hoc vobis commodius esse patuerit…

\textsuperscript{19} In 533 AD: Tanta s.23: bene autem properavimus in tertium nostrum consulatum et has leges edere..

\textsuperscript{20} Bluhme, above n.1, p.297.

\textsuperscript{21} Bluhme, above n.1, p.283.

\textsuperscript{22} Soubie, above n.16, p.97.

\textsuperscript{23} Bluhme, above n.1, pp.344-5 counts only 49, because he omits a number of duplications in which the editing has produced variations, so that the two versions are similar rather than identical.

\textsuperscript{24} D 50.17.28 = 23.3.33; 50.17.44 = 14.4.9.2; 50.17.47.1 = 17.2.20; 50.17.48 = 24.2.3; 50.17.70 = 1.16.6 pr.; 50.17.72 = 22.1.49; 50.17.81 = 17.1.56 pr.; 50.17.85 pr. = 23.3.70; 50.17.88 = 45.1.127; 50.17.103 pr. = 2.4.21; 50.17.115 pr. = 3.6.2; 50.17.119 = 4.7.4.1; 50.17.126 pr. = 5.3.13.8; 50.17.130 = 44.7.60; 50.17.137 = 11.7.14.1; 50.17.141 pr. = 45.1.78 pr.; 50.17.144.1 = 41.2.8; 50.17.145 = 42.8.6.9; 50.17.150 = 43.8.2.42; 50.17.152.1 = 43.16.1.12; 50.17.152.2 = 43.16.1.14; 50.17.153 = 41.2.8; 50.17.156.1 = 43.18.1.4; 50.17.156.2 = 43.19.3.2; 50.17.157 pr. = 43.24.11.7; 50.17.159 = 44.2.1.4.2; 50.17.173 pr. = 42.1.19.1; 50.17.173.3 = 44.4.8 pr.; 50.17.183 = 4.1.7 pr.; 50.17.192.1 = 28.4.3; 50.17.195 = 35.1.52; 50.17.197 = 23.2.42; 50.17.207 = 1.5.25; 50.17.211 = 2.11.7.
occurs in book 50.16.\textsuperscript{25} These titles are both general, in that they are not confined to a particular branch of the law but concern words generally and rules or maxims of law generally. There are five others that occur in other titles that may have been regarded as general: three in D 5.1 (\textit{De iudiciis}),\textsuperscript{26} one in 1.3 (\textit{De legibus et senatusconsultis}),\textsuperscript{27} and one in 50.13 (\textit{De obligationibus et actionibus}).\textsuperscript{28} Hence in 46 out of 63 duplicates one version of the text occurs in what clearly is or may have been regarded as a general title. In none of these 46 does the special title belong to the same book as the general title.\textsuperscript{29} So, whether the editing was done title by title or by book (as is more probable), the duplication is unlikely to have occurred at the editorial stage. Indeed the fact that 34 of the 46 duplications one of which occurs in a general title belong to the list of works read and excerpted by the edictal committee\textsuperscript{30} is a strong argument for their having been duplicated at the excerpting stage.

In these instances the committee or commissioners excerpting the text must have taken the view that, as a text not only fitted the immediate context but had a more general bearing, it was necessary to include it twice in the Digest. On the whole duplication was rare, though there may have been some texts that were duplicated at the excerpting stage but where the duplication was rejected at the editorial stage. Even in the title \textit{De diversis regulis iuris antiqui} only a minority of texts, 34 out of 211, were duplicated. Hardly any of these duplications could have been made when the general titles were edited, because in that case the editor of the general title would have had to call to mind a suitable text in a more specific title, find the text and copy it for the general title. In \textit{De verborum significatione} and \textit{De Diversis regulis iuris antiqui} this would have meant going back to a title already edited, often long before. Even if permissible, this would have caused delay at a stage when it was pressing to finish on time.

It follows that the titles 50.16 and 50.17 on the meaning of words and on rules of ancient law must have featured in the provisional list of titles available to the commissioners when they began their work of reading and excerpting. These were the main slots for texts that possessed not merely a specific but a general importance.\textsuperscript{31} In many instances of duplication the version in the general title

\textsuperscript{25} D 50.16.26 = 41.3.10.2; 50.16.76 = 40.12.19; 50.16.94 = 31.21; 50.16.101.3 = 32.81 pr.; 50.16.104 = 27.1.2.7; 50.16.167 = 32.55.1; 50.16.168 = 45.1.127.
\textsuperscript{26} D 5.1.6 = 3.1.1.5; 5.1.10 = 4.4.21; 5.1.13 = 10.3.2.
\textsuperscript{27} D 1.3.6 = 5.4.3
\textsuperscript{28} D 50.13.6 = 44.7.5.4. This text may have been duplicated at the editorial stage: below n.36.
\textsuperscript{29} Above nn. 24-28.
\textsuperscript{30} Below n.66.
\textsuperscript{31} Soubie, above n.17, 160: ‘valeur générale’.
looks like an exact copy or slightly shorter version of that in the specific title. But we must remember that not only had the committee or commissioner reading the original to decide that it should be duplicated, but each duplicated text had to be edited twice, once by the editor or editors of the specific title and once by the editor or editors of the general title. These editors might be different commissioners and neither might be the same as the one who had originally directed the text to be duplicated. A difference between the two versions of a duplicated text may sometimes be explained by their having been differently edited for the specific and general titles.

Thus, in one case what looks like a shortened version in the general title may be an exact copy of the original, the word omitted having been put in by the editor of the more specific title to make it read more coherently. There may be other duplicates in which this explains the apparent omission of a word or phrase in the general title. In another instance, concerning the judge who makes the case his own, the text belongs more naturally to the more general title *De obligationibus et actionibus*, where it forms part of a discussion by Gaius of the obligations that came to be termed quasi-contrasts and quasi-delicts. The text reappears, with some extra material, presumably to give content to the final element in the oddly named title *De variis et extraordinaris cognitionibus et si iudex litem suam fecisse dicetur*.

Not all the duplications concern a text inserted in two titles one of which is more specific and the other more general. In some the duplicated text was regarded as relevant to two specific titles and was inserted in each. An example is the explanation of the term *praevaticator*, which is inserted in the title on *praevaticatio* also in that on *infamia*. There are ten more duplications of this sort, making in all eleven in which the two titles are both specific but belong to

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32 Ten duplicates: D 5.4.3 = 1.3.6; 14.4.9.2 = 50.17.44; 22.1.49 = 50.17.72; 23.3.70 = 50.17.85 pr.; 4.4.8 pr. = 50.17.173.3; 4.1.7 pr. = 50.17.183; 23.2.42 pr. = 50.17.195; 35.1.52 = 50.17.197; 1.5.25 = 50.17.207; 23.3.33 = 50.17.28.

33 Fourteen duplicates: D 5.1.10 = 4.4.21 (without *autem is*); 50.16.101.3 = 32.81 pr. (without *recte*); 50.17.28 = 23.3.33 (without *hoc enim*); 50.17.47.1 = 17.2.20 (without *nam*); 50.17.81 = 17.1.56 pr. (without *etenum*); 50.17.88 = 45.1.127 (without *enim*); 50.17.103 pr = 2.4.21 (without *tamen*); 50.17.115 pr = 3.6.2. (without *quin etiam*); 50.17.126 pr. = 5.3.13.8 (without *enim*); 50.17.144.1 = 45.1.78 pr (without *quia*); 50.17.145 = 42.8.6.9 (without *enim*); 50.17.150 = 43.8.2.42 (without *etim*); 50.17.156.1 = 43.18.1.4 (without *nam*); 50.17.192.1 = 28.4.3 (without *sed*); 50.17.211 = 2.11.7 (without *nam*).

34 D 50.17.47.1 = 17.2.20 (without *nam*, which may have been inserted text in title 17.2.20 to make the text run on coherently from 17.2.19).

35 E.g. D 5.1.10 = 4.4.21; 50.17.115 pr. = 3.6.2.

36 D 44.7.5.6 = 50.13.6 (without *in factum actione, et in quantum de ea re aequum religioni iudicantis visum fuerit, poenam sustinebit*); Bluhme, above n.1, p.305-306.

37 D 3.2.4.4 (Qui notantur infamia) = 47.15.1 (De praevaticatione).
different books of the Digest. There are two more which belong to different titles from the same book. These may be duplicates made either at the excerpting or the editorial stage if the task of editing, as is probable, was assigned book by book.

Editorial duplicates

Other duplicates, perhaps six in all, have apparently been inserted not at the excerpting but the editorial stage. They include three texts that occur twice in the same title. In the title on partnership the editor framed a long passage about shared expenses which included an opinion of Julian that, if medical expenses were incurred by a partner in the course of a journey on partnership business, they should be shared by the partners. The editor repeats the substance of this text, differently worded, at a later point in the title, in order to limit an opinion of Labeo, cited by Pomponius, that distinguishes between expenses incurred because the partnership exists and those incurred in pursuance of partnership objects. Only the latter are to be shared.

In the title on the recovery of dowry there is a text of Ulpian that deals with the case when a husband manumits dotal slaves with his wife’s consent. If his wife wishes to make him a gift, he is not liable to her for any condition imposed on

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38 D. 1.10.1.2 (De officio consulis) = 40.2.20.4 (De manumissionis vindicta); 7.4.28 (Quibus modis usus fructus vel usus amittitur) = 33.2.13 (De usu et usu fructu et reeditu et habitatione et operis per legatum vel fideicommissium datis); 11.7.6.1 (De religiosis et sumptibus funerum) = 1.8.7 (De divisione rerum et qualitate); 20.1.4 (De pignoribus et hypothecis) = 22.4.4 (De fide instrumentorum); 23.2.34.3 (De ritu nuptiarum) = 1.9.9.(De senatoribus); 29.3.1.1 (Testamenta quemadmodum aperiantur inspicientur et describantur) = 2.15.6 (De transactionibus); 32.7.2 (De legatis et fideicommissis) = 34.3.14 (De liberatione legata); 37.13.1 pr. (De bonorum possessione ex testamento militis) = 29.1.44 (De testamento militis); 41.2.10.2 (De acquirenda vel amittenda possessione) = 19.2.46 (Locati conducti); 48.7.7 (Ad legem Iuliam de vi privata) = 4.2.13 (Quod metus causa gestum erit).

39 Book 43 has 33 titles, whereas book 17 has two, so that to allocate the editing by title would have made the amount of material in each allocation very variable. On the other hand allocation by book, though books vary in length, would have been less variable. There are books which seem to have had the same editor or editors throughout, since all the titles begin with the same mass, though this is not always the one with most texts: books 8,20,33 and 45. C. Omnem 4 boasts that in book 20 (each title) begins with a text of Papinian.

40 Below nn.51-52.

41 D 17.2.52.4 : sed et si quid in medicos impensum est, pro parte socium agnoscer e debere rectissime Iulianus probat.

42 D 17.2.60 (Pomp. 12 Sab.).

43 D 17.2.61: Secundum Iulianum tamen et quod medicis pro se datum est recipere potest, quod verum est.
the slave as the price of giving him his freedom. This part of the text, which comes from the Sabinian mass, is repeated towards the end of the title, and inserted in the edictal mass, where it is contrasts with an opinion of Papinian, also inserted in the edictal mass, that deals with manumission by the husband without the wife’s consent, and a text of Paul that makes the point that the slave is no longer part of the dowry because, when a donation to manumit is permissible, permission to manumit is like a donation.

In the title on final and interlocutory judgments and their effect a text of Ulpian early in the title limits judgment against a person who has earned a stipend for armed military service to the amount he is able to pay. This text from the edictal mass is repeated later in the same title, which has been edited in a complex way, as an example of persons who are liable only ‘so far as they are able’. Here the second instance puts the point in a more general context, but in the same title.

In these three instances the duplication can perhaps be attributed to the editor of the title, who decided that it could properly be used twice in that title. That does not explain the duplication of a Iavolenus text in the title on dowry. In that title two versions of a text from Iavolenus on Labeo’s posteriora are included in close proximity. As the first states, Labeo took the view that when a woman’s debtor promised to pay the debt to her future spouse as a dowry, the woman could nevertheless sue to recover the debt before marriage. The debtor would not then be liable to the husband. Iavolenus disagrees, since the obligation of the debtor was suspended until its cause (the marriage) is settled. The second text reads as a revised and shortened version of the first. In it Labeo is not mentioned, and it is simply stated that the woman cannot sue to recover the debt before marriage. In this instance it is likely that the title editor intended to substitute the second, simpler, version for the first. Either he forgot to strike out the first version or there was a mistake in copying the title. Both texts belong to the Appendix, which comes at the end of this long title, but between them are inserted two texts, one of Papinian from the Papinian mass and one of Proculus.

44 D 24.3.24.4: Si vir voluntate mulieris servos dotales manumiserit, si quidem donare ei mulier voluit, nec de libertatis causa impositis ei praestandis tenebitur….
45 D 24.3.62.
46 D 24.3.63 (Paul 2 Iul. Pap.).
47 De re iudicata et de effectu sententiarum et de interlocutionibus.
48 D 42.1.6 pr: Miles, qui sub armata militia stipendia meruit, condemnatus eatenus, qua facere potest, cogitur solvere.
49 D 42.1.18, reading quatenus instead of quae, and by way of giving a further example of D 42.1.16 (Ulp. 63 ed.): sunt qui in id quod facere possunt conveniuntur….
50 D 23.3.80 = 23.3.83.
from the edictal mass, concerned with a different topic, the provision of a dowry for a daughter.

Two other duplicates were perhaps added at the editorial stage. They both occur in the same book but in different titles. In one the principle that the use of money can be lost only through death and *capitis diminutio* occurs twice.  

In the other the rule expressed is that in interdicts fruits are taken into account from the time when the interdict is issued, not before.  

If we assume that the editorial unit was a book rather than a single title, as seems likely, the editor or editors of books 7 and 43 could have duplicated the texts to make the reasoning, or general principle clearer.

*The Authors duplicated.* The number of duplicated texts comes to about 63. Of these nearly half (31) are texts of Ulpian, just under a quarter (15) texts of Paul. Eight other authors, Callistratus (1), Celsus (1), Gaius (4), Iavolenus (2), Marcellus (2), Modestinus (4), Papinian (2) and Cervidius Scaevola

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51 D 7.9.7.1 (Usufructuarios quemadmodum caveat)= 7.5.10 pr. (De usufructu earum rerum quae usu consumuntur vel minuuntur): quoniam pecuniae usus aliter amitti non potest quam his casibus  
52 D 43.1.3 (De interdictis sive extraordinariis actionibus, quae pro his competunt) In  
interdictis exinde ratio habetur fructuum, ex quo edita sunt, non retro= 43.16.1.40 (De vi et vi armata): ex die, quo quis dejectus est, fructuum ratio habetur, quamvis in ceteris interdictis ex quo edita sunt, non retro computatur.  
53 Above n.40.  
54 D 3.1.1.5 = 5.1.6 (ed.); 3.2.4.4 = 47.15.1 (ed.); 5.1.10 = 4.4.21 (ed.); 4.7.4.1 = 50.17.119 (ed.); 5.3.13.8 = 50.17.126 pr. (ed.); 41.3.10.2 = 50.16.26 (ed.); 50.17.130 = 44.7.60 (ed.); 11.7.6.1 = 1.8.7 (ed.); 11.7.14.1 = 50.17.137 (ed.); 14.4.9.2 = 50.17.44 (ed.); 17.2.20 = 50.17.47.1 (ed.); 17.2.54.2 = 17.2.61 (ed.); 24.3.2.4 = 24.3.62 (ed.); 37.13.1 pr. = 29.1.44 (ed.); 42.8.6.9 = 50.17.145 (ed.); 42.1.6 pr. = 42.1.18 (ed.); 43.8.2.42 = 50.17.150 (ed.); 43.16.1.12 = 50.17.152.1 (ed.); 43.16.1.14 = 50.17.152.2 (ed.); 43.16.1.40 = 43.1.3 (ed.); 41.2.10 = 19.2.46 (ed.); 43.19.3.2 = 50.17.156.2 (ed.); 43.18.1.4 = 50.17.156.1 (ed.); 43.24.11.7 = 50.17.157 pr. (ed.); 7.9.7.1 = 7.5.10 pr. (ed.); 32.7.2 = 34.3.14 (ed.); 1.25 = 50.17.207 (1 leg. Iul. Pap.); 1.10.1.2 = 50.16.20.4 (2 off. cons.); 1.16.6 pr. = 50.17.70 (1 off. proc.); 32.55.1 = 50.16.167 (25 Sab.); 23.3.33 = 50.17.28 (36 Sab.).  
55 D 2.4.21 = 50.17.103 pr. (ed.); 3.6.2 = 50.17.115 pr. (ed.); 24.2.3 = 50.17.48 (35 ed.); 40.12.19 = 50.16.76 (51 ed.); 1.3.14 = 50.17.141 pr. (54 ed.); 45.1.78 pr. = 50.17.144.1 (62 ed.); 41.2.8 = 50.17.153 (65 ed.); 2.11.7 = 50.17.211 (69 ed.); 44.2.14.2 = 50.17.159 (70 ed.); 42.1.19.1 = 50.17.173 pr. (6 Plaut.); 44.4.8 pr. = 50.17.173.3 (6 Plaut.); 33.2.13 = 7.4.28 (13 Plaut.); 5.4.3 = 1.3.6 (17 Plaut); 23.3.70 = 50.17.85 pr. (6 quaest.); 32.56 = 50.16.168 (4 Sab.).  
56 D 48.7.7 = 4.2.13 (5 cogn.)  
57 D 31.21 = 50.16.94 (20 dig.)  
58 D 10.3.2 = 5.1.13 (7 ed. prov.); 29.3.1.1 = 2.15.6 (17 ed. prov.); 20.1.4 = 22.4.4 (1 form. hyp.); 44.7.4.4 = 50.13.6 (3 rer. cott.)  
59 22.1.49 = 50.17.72 (3 post. Lab.); 23.3.80 = 23.3.83 (6 post. Lab.)
also have duplicated texts. But the most prominent Digest authors, Ulpian and Paul, who provided just over 40 and 17 percent of the whole Digest material, have a slightly higher percentage (48 and 23 percent respectively) of duplicated texts. Some prominent authors, such as Julian and Pomponius, did not provide any.

The reasons for duplication. Since Justinian sought to avoid repetitions in the Digest, why were over sixty texts duplicated? Some 46 of these, we saw, provide material for general titles, for instance those on rules of ancient law or the meaning of words. These topics were of interest to classical lawyers, since Aelius Gallus wrote a monograph on the meaning of words pertaining to law64 and several well-known authors composed books of *regulae*, which brought together principles of law or maxims.65

The two titles that end the Digest are not, therefore, a post-classical invention. They reflect a greater interest, perhaps specially in the law schools, in the abstract formulation of the law and, from the point of view of style, in pithy maxims. They could be said to reflect academic concerns. This seems borne out by the fact that, of the 46 duplicates that occur in a general title, 34 were excerpted by the edictal committee,66 8 by the Sabinian committee,67 3 by the Papinian committee,68 and one as part of the Appendix.69 The edictal committee

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60 D 4.1.7 = 50.17.183 (3 dig.); 28.4.3 = 50.17.192.1 (29 dig.)
61 D 27.1.2.7 = 50.16.104 (2 excus.); 35.1.52 = 50.17.195 (6 diff.); 32.81 pr. = 50.16.101.3 (9 diff.); 23.2.42 = 50.17.197 (1 rit. nupt.)
62 D 17.1.56 pr. = 50.17.81 (3 resp.); 23.2.34.2 = 1.9.9 (4 resp.)
63 D 45.1.127 = 50.17.88 (5 quaeest.)
64 De verborum quae ad ius pertinent significatione 1 - a work attributed to the edictal mass (BK 178).
66 D. 1.3.6 (Paul 17 Plaut.); 5.1.6 (Ulp. 6 ed.); 5.1.10 Ulp. 10 ed.); 5.1.13 (Gai. 7 ed. prov.);
50.16.26 (Ulp. 6 ed.); 50.16.76 (Paul 51 ed.); 50.16.94 (Cels. 20 dig.); 50.16.101.3 (Mod. 9 diff.);
50.16.104 (Mod. 2 excus.); 50.17.103 pr. (Paul 1 ed.); 50.17.115 pr. (Paul 10 ed.);
50.17.119 (Ulp. 13 ed.); 50.17.126 pr. (Ulp. 15 ed.); 50.17.130 (Ulp. 18 ed.); 50.17.137 (Ulp. 25 ed.);
50.17.141. pr. (Paul 54 ed.); 50.17.144.1 (Paul 62 ed.); 50.17.145 (Ulp. 66 ed.);
50.17.150 (Ulp. 68 ed.); 50.17.152.1 (Ulp. 69 ed.); 50.17.152.2 (Ulp. 69 ed.); 50.17.153 (Paul 65 ed.);
50.17.156.1 (Ulp. 70 ed.); 50.17.156.2 (Ulp. 70 ed.); 50.17.157 pr. (Ulp. 71 ed.);
50.17.159 (Paul 70 ed.); 50.17.173 pr. (Paul 6 Plaut.); 50.17.173.3 Paul 6 Plaut.); 50.17.183 Marc. 3 dig.);
50.17.192.1 (Marc. 29 dig.); 50.17.195 Mod. 7 diff.); 50.17.197 (Mod. 1 rit. nupt.);
50.7.207 (Ulp. 1 leg. Iul. Pap.); 50.17.211 (Paul 69 ed.);
67 D. 50.13.6 (Gai. 3 rer. cott); 50.16.167 (Ulp. 29 ed.); 50.16.168 (Paul 4 Sab.); 50.17.28 (Ulp. 30 Sab.); 50.17.44 (Ulp. 29 ed.); 50.17.47.1 (Ulp. 31 ed.); 50.17.48 (Paul 35 ed.);
50.17.70 (Ulp 1 off. proc.);
68 D 50.17.81 (Pap. 3 resp.); 50.17.85 pr. (Paul 6 qu.); 50.17.88 (Scae. 5 qu.).
duplicates for the general titles 23 texts from the edictal commentaries of Ulpian, Paul and Gaius, whereas the Sabinian committee duplicates only 6 texts from the commentaries ad Sabinum and on the edict. The edictal committee also duplicates texts of Celsus, Marcellus and Modestinus. The Sabinian committee, on the other hand, does not duplicate a single text of Julian, though Julian was regarded as in some ways the greatest classical author. This difference in the approach of the excerpting committees is to be expected if, as I have argued elsewhere, the edictal committee was headed by a law professor (Theophilus), the Sabinian and Papinian committees by two ministers (Tribonian and Constantinus).

In a number of instances the rule (*regula*) that appears in Digest 50.17 seems to have been formulated in a more abstract way than the text from which it was apparently derived. It is consistent with the suggested outlook of the edictal committee that in D 50.16 there are 158 texts from the edictal mass, against 62 from the Sabinian mass and 14 from the Papinian. In D 50.17 there are 111 texts from the edictal mass against 71 from the Sabinian and 28 from the Papinian.

The balance is somewhat different if we look the texts duplicated not in titles one of which is general but in two titles each of which is special. Here we find 5 duplications by the edictal committee against three by the Sabinian and two

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69 D. 50.17.72 (Iav. 3 post. Lab.)
Bluhme, who counts fewer genuine duplications, gives figures of 34 for the edictal mass, 12 for the Sabinian and 3 for the Papinian: above n.1 p.345.
70 Index auctorum I: C. Tanta 18.
72 E.g. D 50.16.76: ‘Dedisse’ intellegendus est etiam is, qui permutavit vel compensavit; cf. 40.12.18.1-19: …vel permutavit vel compensavit eo nomine (nam et is dedisse intellegendus est); 50.17.137: Qui auctore iudice comparavit, bonae fidei possessor est; cf. 11.7.14.1: sed si adita fuerit postea hereditas, res emptori auferenda non est, quia bonae fidei possessor est et dominium habet, qui auctore iudice comparavit; 50.17.152.1: Deiecit et qui mandat; cf. 43.16.1.12: deiecit autem etiam est videtur qui mandavit; 50.17.152.2: In maleficio ratihabito mandato comparatur; cf. 43.16.1.14: rectius enim dicietur in maleficio ratihabitionem mandato comparari; 50.17.156.2 Cum quis in ali locum successerit, non est aequum eo nocere hoc, quo adversus eum non nocuit, in cuius locum successit; cf. 43.24.11.7: cum enim successerit quis in locum eorum, aequum non est nos noceri hoc, quod adversus eum non nocuit, in cuius locum successimus; 50.17.173 pr. In condemnatione personarum, quae in id quod facere possunt damnantur, non totum quod habet extorquendum est, sed et ipsarum ratio habenda est, ne egeant; cf. 42.1.19.1: is quoque, qui ex causa donationis convenitur, in quantum facere potest condemnatur et quidem is solus deducto aere alieno….immo nec totum quod habet extorquendum ei puto, sed et ipsius ratio habenda est, ne egeat.
73 D. 3.2.44 (Ulp. 6 ed.); 7.4.28 (Paul 3 Plaut.); 37.13.1 pr. (Ulp. 55 ed.); 41.2.10.7 (Ulp. 69 ed.); 48.7.7 (Call. 5 cogn.).
74 D. 11.7.6.1 (Ulp. 25 ed.); 20.1.4 (Gai. 1 form. hyp.); 29.3.1.1 (Gai. 17 ed. prov.).
by the Papinian committee. The edictal committee has more duplications, but not overwhelmingly more.

On the whole, therefore, duplicated texts, like the general titles with which the Digest ends, reflect the concerns of the edictal committee. These were more academic and less oriented towards practice than those of the other committees.

Tony Honoré

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75 D 23.2.34.3 (Pap. 4 resp.); 32.7.2 (Ulp. 1 fid.).