

## JUSTINIAN'S DIGEST: THE DISTRIBUTION OF AUTHORS AND WORKS TO THE THREE COMMITTEES

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Bluhme-Krueger Ordo Librorum Iuris Veteris in Compilandis Digestis Observatus  
(updated in the light of modern scholarship) 37

### INTRODUCTION

This essay addresses a set of related problems about the compilation of Justinian's Digest. Suppose that, as scholars have long believed, Bluhme was right in detecting the existence of three separate masses of works to be read and excerpted by the Digest commissioners and of three separate committees (the Sabinian, the Papinian and the edictal) to read them.<sup>1</sup> How, then, was it decided which works to allot to each mass, and which works should be read together?<sup>2</sup> The allocation was crucial, because Tribonian could not personally supervise the selection of texts made by the committees, at any rate those on which he did not himself serve. How did he ensure that the best texts would be chosen?

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<sup>1</sup> F. Bluhme, "Die Ordnung der Fragmente in den Pandektentiteln," *ZGR* 4 (1820) 257-420 = *Labeo* 6 (1960) 50-96, 235-277, 368-404.

<sup>2</sup> T. Honoré, 'How Tribonian Organised the Compilation of Justinian's Digest' in *SZ* 121 (2004) at 18-25 touches on this topic.

Much inevitably turns on the reconstruction by Bluhme and Krueger of the order in which the works were read by the committees (the BK Ordo).<sup>3</sup> Their list allots works to masses on the basis of the sequences of inscriptions found in the Digest titles and seeks to fix the order in which they were read and excerpted within each mass. Krueger numbered the works in the presumed order in which they were read, listing first the Sabinian mass, then the edictal and Papinian masses. Despite some mistakes and uncertainties his numbering is for convenience retained in this essay. The mistakes and uncertainties should not, however, be exaggerated. The reworking of the BK Ordo by Mantovani<sup>4</sup> shows that, on the evidence available from the inscriptions, at most 48 of the 1,522 books read by the Digest commissioners, 3% of the total, were put by Bluhme and Krueger in a particular mass although the mass to which they were really assigned cannot be determined.<sup>5</sup>

The true figure is in my view lower, since about half the books that Mantovani lists as indeterminate were either placed by Bluhme in the correct mass,<sup>6</sup> or their correct mass can be fixed on the basis, set out in this article, of the way in which authors were allotted to masses.<sup>7</sup> It

<sup>3</sup> “Ordo librorum iuris veteris”, in T. Mommsen & P. Krueger, *Iustiniani Digesta* [*Corpus Iuris Civilis* 1, 16<sup>th</sup> stereotype ed.] (Berlin 1954) 927-931. A revised version of the Bluhme-Krueger Ordo is appended to this essay: below p.37.

<sup>4</sup> D. Mantovani, *Digesto e masse Bluhmiane* (1987) 90-103.

<sup>5</sup> All the works that Mantovani marks in his *Retractatio* (above n.4, pp.90-103) with ID (‘impossibile determinazione’), less the non-existent Proculus 3 *ex posterioribus Labeonis* (BK 266) and Valens 7 *actionum* (BK 272). The remaining ID works are: Paulus 6 *imperialium sententiarum*, 2 *de censibus*, 1 *de iure patronatus*, 1 *ad SC Silanianum*, 1 *de senatusconsultis*, 1 *ad SC Velleianum*, 1 *de intercessionibus feminarum*, 1 *ad orationem divi Severi*, 1 *ad legem Cinciam*, 1 *de poenis omnium legum*, 1 *ad regulam Catonianam*, 1 *de inofficioso testamento*, 1 *de tacitis fideicommissis*, 1 *de instrumenti significatione*, 1 *de gradibus et adfinibus*, 1 *de officio praefecti urbi*; Venuleius 6 *de interdictis*; Callistratus 4 *de iure fisci*; Ulpian 1 *de officio praefecti vigilum*; 1 *de officio praefecti urbi*; 1 *de officio quaestoris*; Arcadius Charisius 1 *de muneribus civilibus*; 1 *de officio praefecti praetorio*; Modestinus 1 *de differentia dotis*, 1 *de inofficioso testamento*; Gaius 1 *ad legem Glitiam*, 1 *regularum*; Aquila 1 *responsorum*; Anthianus 1 *ad edictum*; Gallus 1 *de verborum significatione*; Maecianus 1 *ex lege Rhodia*; Marcianus 1 *ad SC Turpillianum*; Papinianus 1 *αστυνομικός*; Quintus Mucius 1 *ορών*.

<sup>6</sup> All 14 books listed in the Appendix but doubted by Mantovani (Paul 6 - in reality 2 - *imperialium sententiarum*, Quintus Mucius 1 *ορών*, Venuleius 6 *de interdictis*, Anthianus 1 *ad edictum*) on which see Honoré, note 10. Two *libri singulares* of Modestinus (BK 141, 151) can safely be located in the edictal mass, since all the other works of Modestinus belong to this mass: below notes 158-71. Seven *libri singulares* of Paul (*de iure patronatus*, *ad SC Silanianum*, *ad SC Velleianum*, *de intercessionibus feminarum*, *ad orationem divi Severi* in the Sabinian mass; *de tacitis fideicommissis* and *de instrumenti significatione* in the Papinian) are in my view located in the correct mass in the BK Ordo (see below notes 268-87). This would account for 23 of the 48 books doubted.

<sup>7</sup> A *liber singularis* of Gaius (*ad legem Glitiam*?) should go in the Papinian mass and his *liber singularis regularum* should remain there; one of Papinian (*αστυνομικός*) goes in the Papinian mass or the Appendix: see below notes 119-24, 138-61. This covers another three doubtful cases..

is true that greater uncertainty attaches to the order in which works were read within each mass, a matter than is touched on only marginally in this essay.

The BK allocation of works to masses is broadly reliable. For ease of reference an updated version of it is appended to this essay. But the principles governing the allocation have hardly been studied. Clearly the task of allotting authors and works to masses fell to Tribonian as part of his *rei omnis gubernatio*.<sup>8</sup> This essay deals with how authors and works were allotted to the three masses before the reading and excerpting began. It does not, except incidentally, discuss either the sections of edictal commentary that were later transferred from the Sabinian to the edictal committee<sup>9</sup> or the allocation of works that, according to a long-standing opinion that I share, arrived after the three committees had begun to read the list of works assigned to them. These late arrivals form the subject of a separate essay on the Appendix and its sources.<sup>10</sup> In a major project such as the Digest there were inevitably some changes of plan as the work advanced.

## I. THE PRINCIPLES OF ALLOCATION

A number of factors guided the way in which authors and works were allotted to the three masses and were grouped together within each mass. I first set out the principles that seem to have guided the allocation and then examine the evidence for how they were applied to different authors and masses:-

(i) Each author was allocated to a mass. Thus, Julian went to the Sabinian mass, Modestinus to the edictal mass and Papinian to the Papinian mass. The only exception is Paul who, in view of the number of his works, especially *libri singulares*, was allocated half to the Sabinian and half to the Papinian mass.<sup>11</sup> The mass to which an author is allocated I shall call his ‘basic mass’. When an author’s works are read in succession, like the works of Modestinus in the edictal mass, they make up what I shall call an “author-group.”<sup>12</sup>

(ii) The author’s basic mass received all his works with three exceptions:

(a) a work of his was transferred to another mass when this was necessary to make up a group of works dealing with the same subject-matter. Thus, although Papinian’s basic mass is the Papinian mass, his *libri 2 de adulteriis* and *liber singularis de adulteriis* are put in the Sabinian mass, along with works of Ulpian and Paul *de adulteriis*, to complete a group

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<sup>8</sup> C. Deo auctore 3.

<sup>9</sup> BK 108-123; Bluhme (note 1), 283-87 [= *Labeo* 6 (1960) 61-63]; F. Wieacker, *Vom Römischen Recht* (2 ed. Stuttgart 1961) 280-81; A..M. (T.) Honoré and A. Rodger, ‘How the Digest Commissioners worked’, *ZSS (RA)*, 87 (1970) 276-79..

<sup>10</sup> T. Honoré, “Justinian’s Digest: the Appendix Reconsidered,” in *Mapping the Law. Essays on Memory of Peter Birks* (Oxford 2006) 497-512.

<sup>11</sup> Below notes 249-98.

<sup>12</sup> Within this author-group (BK 137-151) a *liber singularis* of Modestinus (BK 142) together with two of Ulpian (BK 143-144) make up a subject-group of works on excuses from tutelage. On subject -groups see below, ii(a).

dealing with adultery.<sup>13</sup> Such a group I call a “subject-group.” Works in subject-groups are read jointly or in succession in order to make it easier to choose the best texts on the subject.<sup>14</sup> Ancient authors copied one another a good deal, so that it saved time to read treatises on the same subject together. A readers had, however, to be alert to possibility that the later author might add to, modify or disagree with the earlier. With few exceptions, works relating to the same subject were read together in a group. Some 40 percent of the books read by the Digest commission were read in subject-groups.

(b) A work of the author in a given genre could be transferred from his basic mass to another mass to compose a group of works in the same genre. I shall term such a group a ‘genre-group’. Thus, the group of 41 books of *regulae* in the Sabinian mass<sup>15</sup> include Pomponius’ *liber singularis regularum*<sup>16</sup> and Scaevola’s *libri 4 regularum*<sup>17</sup> although Pomponius’ basic mass is the edictal<sup>18</sup> and Scaevola’s the Papinian.<sup>19</sup> But, in contrast with subject-groups, transfer to a genre-group was optional. For example, though six or seven authors of *regulae* come in the *regulae* group in the Sabinian mass (Neratius, Ulpian, Scaevola, Paul, Marcianus Pomponius and perhaps Gaius), two do not. Modestinus’ 10 books of *regulae*<sup>20</sup> remain with his other works in the edictal mass and Licinius Rufinus’ 12 or 13 books<sup>21</sup> are also in the edictal mass. Transfer on the basis of genre is optional because works in the same genre, unlike works on the same subject, do not necessarily deal with the same points of law. *Regulae*, for example, might be on almost any topic. But it was often convenient to read works of the same genre together or in close succession, since a later author might copy, develop or dissent from an earlier writer in that genre.

(c) Although the matter is controversial, there is in my view a third ground on which a work was sometimes transferred from an author’s basic mass to another mass. This could be done to make a group numerically balanced. Thus, though the edictal mass in not Paul’s basic mass, two of his works (*libri 4 ad Vitellium*, *2 de iure fisci*)<sup>22</sup> are appended, I have

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<sup>13</sup> BK 28-31.

<sup>14</sup> C. Deo auctore 5: *omnibus auctoribus iuris aequa dignitate pollutibus et nemini quadam praerogativa servanda, quia non omnes in omnia, sed certi per certa vel meliores vel deteriores inveniuntur*: confirmed by C. Tanta 1: *plus quam trecenties decem milia versuum a veteribus effusa quae necesse esset omnia et legere et perscrutari et ex his si quid optimum fuisset eligere.*

<sup>15</sup> BK 36-40, 42-46 and possibly 224. Two unrelated books of Ulpian’s *responsa* are inserted in this group at BK 41. This is done in my view for numerical reasons, explained in (c) below, so that the total number of books in the group would be 44, which is conveniently divisible into two sub-groups of 22 books each, the first being constituted by Neratius 15 reg. and Ulpian 7 reg. (BK 36-37). See below nn.227-30.

<sup>16</sup> BK 45.

<sup>17</sup> BK 38.

<sup>18</sup> Below nn.202-14.

<sup>19</sup> Below nn.125-31.

<sup>20</sup> BK 139.

<sup>21</sup> BK 175.

<sup>22</sup> BK 132,133.

argued, to the subject-group *ad Plautium*<sup>23</sup> in the edictal mass in order to create a group conveniently divisible into two sub-groups, each with an equal number of books.<sup>24</sup> These transfers are however on a small scale and are relatively rare. Apart from the 6 books of Paul just mentioned there appear to be two other cases of transfer for numerical reasons, that of Ulpian's 3 books *de officio consulis*<sup>25</sup> and Marcellus' *liber singularis responsorum*.<sup>26</sup>

(iii) of the works that are not transferred to another mass some form part of a subject- or genre-group, but others do not. Those that do not I shall call 'unattached'. Many *libri singulares* are unattached, because they are on specialised topics and so do not need to be read with other works. The composition of *libri singulares* did not count as a special genre of legal writing. Unattached works are important in fixing the author's basic mass because, if they do not form part of a subject- or genre-group, there was, apart from the occasional transfer on numerical grounds under (c) above, no reason to transfer them from the author's basic mass. This is important, for example, for Gaius, most of whose works form part of subject- or genre-groups in the Sabinian and edictal masses but whose unattached works are concentrated in the Papinian mass, which is therefore his basic mass.<sup>27</sup>

(iv) there can be composite groups. Thus the Julian group in the Sabinian mass<sup>28</sup> is mainly an author group but partly also a subject- and genre-group.<sup>29</sup> Various combinations of the three basic elements are possible.

The system described is sophisticated and may at first be difficult to grasp. This is unsurprising. Tribonian greatly admired sophistication, *subtilitas*.<sup>30</sup>

In the allocation of authors to masses prestige was important. The so-called Valentinian Law of Citations gave priority to the works of Papinian, Paul, Gaius, Ulpian, and Modestinus.<sup>31</sup> Tribonian modifies this, as we see from the so-called Florentine *Index Auctorum*, which records the books read by the Digest commission.<sup>32</sup> Composed by someone close to the commission in a mixture of Greek and Grecised Latin,<sup>33</sup> it lists Julian first,<sup>34</sup> Papinian second.<sup>35</sup> After Papinian

<sup>23</sup> BK 124-131.

<sup>24</sup> Honoré (above n.2) 39-40.

<sup>25</sup> Below nn.180-84..

<sup>26</sup> Below nn.227-30..

<sup>27</sup> Below nn.138-61

<sup>28</sup> BK 14-20.

<sup>29</sup> Below nn.53-57..

<sup>30</sup> C Deo auctore 6 (*nam qui non suptiliter factum emendat laudabilior est eo qui primum invenit*), 14 (*tua prudentia una cum aliis facundissimis viris studeat .....tam suptili quam celerrimo fini tradere*); C Tanta 18 (*ipse Iulianus legum et edicti perpetui suptlissimus conditor*).

<sup>31</sup> CTh. 1.4.3 (7 Nov. 426)

<sup>32</sup> See *Iustiniani Digesta*, in the stereotype edition (above, note 3)25-28. Though the *Index auctorum* is incomplete and contains some mistakes it is a contemporary list.

<sup>33</sup> The title is Greek: ΕΞ ΟΖΩΝ ΑΡΧΑΙΩΝ ΚΑΙ ΤΩΝ ΥΡ' ΑΥΤΩΝ ΓΕΝΟΜΕΝΩΝ ΒΙΒΛΙΩΝ ΣΥΝΚΕΙΤΑΙ ΤΟ ΠΑΡΟΝ ΤΩΝ ΔΙΓΕΣΤΩΝ ΗΤΟΙ ΤΟΥ ΠΑΝΔΕΚΤΟΥ ΣΥΝΤΑΓΜΑ.

the *Index* abandons precedence and lists the authors in presumed chronological order. Hence the third author is the Republican Quintus Mucius Scaevola, of whom the commission read just one book.<sup>36</sup> Julian's leading status in the age of Justinian is confirmed in C.Tanta.<sup>37</sup>

The ranking throws light on the relative standing of the three masses and the committees reading them. All 101 books of Julian went to the Sabinian mass.<sup>38</sup> Of the 62 books attributed to Papinian 58 went to the mass named after him.<sup>39</sup> The Sabinian mass is, it seems, the most honoured; next to it the Papinian. The edictal mass is not overlooked, for it is allotted all 69 books of Modestinus,<sup>40</sup> though on any view Modestinus comes below the other two. So, judging from the prestige of the authors allotted to it, the edictal mass ranks third. The allocation of Ulpian, Paul and Gaius confirms this ranking. Ulpian's basic mass, we shall see, is the Sabinian,<sup>41</sup> Gaius' the Papinian.<sup>42</sup> Paul is shared by those two masses.<sup>43</sup> So, of the six leading jurists (Julian plus the five listed in the Law of Citations) the Sabinian and Papinian masses have two and a half each, the edictal mass one. But the Sabinian mass trumps the Papinian not only in the volume of works read and excerpts made but by acquiring Julian, the greatest jurist, rather than Papinian, the second greatest, and by acquiring Ulpian, whereas Paul is shared by the Sabinian and Papinian masses. In the context of the Digest Ulpian is preferred to Paul, since the commissioners took more than twice as much from Ulpian as from Paul.<sup>44</sup>

I now go through the 37 Digest authors in order to fix their basic mass.<sup>45</sup> There were in fact more, since the inscriptions did not distinguish, as does modern scholarship, between various Pauls,<sup>46</sup> Scaevolae and Ulpianae,<sup>47</sup> some of whom may genuinely have borne those names.

<sup>34</sup> *Index auctorum* I Ιουλιανου

<sup>35</sup> *Index auctorum* II Papinianu.

<sup>36</sup> *Index auctorum* III Quintu Muciu Scaevola 1 ορων βιβλιον εν.

<sup>37</sup> C.Tanta 18 (quoted above, note 30) .

<sup>38</sup> *Digesta* 90, *de ambiguitatibus* 1, *ad Urseium Ferozem* 4, *ex Minicio* 6 (BK 14, 17,18,19)

<sup>39</sup> *Quaestiones* 37, *responsa* 19, *definitiones* 2 (BK 180,181,182).

<sup>40</sup> *Differentiae* 9, *de manumissionibus* 1, *regulae* 10, *de ritu nuptiarum* 1, *de differentia dotis*, 1, *excusationes* 6, *responsa* 19, *de enucleatis casibus*, 1, *de praescriptionibus* 1, *pandectae* 12, *de heurmaticis* 1, *de inofficioso testamento* 1 (BK 137,138, 140, 141, 142, 145,146, 147, 148, 149, 150, 151). One may add two *libri singulares* listed in the *Index auctorum* of which no excerpts appear in the Digest: *de legatis et fideicommissis* and *de testamentis*. His *de poenis* (BK 174) was also allotted to the edictal mass.

<sup>41</sup> Below notes 58-84.

<sup>42</sup> Below notes 138-61.

<sup>43</sup> Below notes 249-98.

<sup>44</sup> 41 % against 17 %.

<sup>45</sup> Above nn.11-12. Since the allocation of each author to a basic mass was crucial feature of the project the name of the jurist so allocated is given in boldface.

<sup>46</sup> D.Liebs I R.Hrzog, ed., *Restauration und Erneuerung. Die lateinische Literatur von 284 bis 374 n. Chr.* [*Handbuch der lateinischen Literatur der Antike*, 5] (Munich 1989) § 507.1 (Pseudo-Paulus I); 507.2 (Pseudo-Paulus II); 508.3 (Pseudo-Paulus III); 509.1 (Pseudo-Paulus IV).

<sup>47</sup> D. Liebs, in K.Sallmann, ed., *Die Literatur des Umbruchs; von der roemischen zur christlichen Literatur: 117 bis 284 n. Chr.* [*Handbuch der lateinischen Literatur der antike*, 4]

Thus, one suspects that the similarity of their names has fused Cervidius Scaevola, the well-known author of *Quaestiones, Responsa* and *Digesta*,<sup>48</sup> with another Scaevola, author of *Quaestionum publice tractatarum liber singularis*.<sup>49</sup>

Only in five cases is the allocation to a basic mass uncertain. Normally the basic mass is that in which the bulk of the author's work was read, but we have always to ask what works, if any, were transferred to another mass to form a subject- or genre-group or to achieve numerical balance.

## II. THE AUTHORS BASIC MASSES

### a. Authors whose basic mass is the Sabinian

As stated, the works of the most prestigious author, **Julian**, are in the Sabinian mass. They fall in a group<sup>50</sup> that lies between certain works of Ulpian<sup>51</sup> and a group belonging to the elementary genre of *institutiones* and *res cottidianae*.<sup>52</sup> The Julian group is mainly an author-group, composed of Julian's *digesta, de ambigitatibus, ad Urseium Ferozem* and *ex Minicio*, 101 books in all,<sup>53</sup> but sandwiched within it are excerpts from the *digesta* of Alfenus Varus,<sup>54</sup> an author who worked in the same genre. After Julian's last work come the *quaestiones* of Africanus,<sup>55</sup> a pupil of Julian whose work is mainly a comment on Julian's. Africanus' work had to be read with Julian's because of its subject-matter. But the Alfenus excerpts need not have been sandwiched between Julian's works. There the link is the genre, *digesta*. But not all *digesta* were read in the same mass, since the *digesta* of Celsus and Marcellus are read together in the edictal mass.<sup>56</sup> The explanation for the decision to read the *digesta* of Julian and Alfenus together is in my view partly numerical – the desire to balance a reading by one commissioner of 62 books of Julian's *digesta* with an equal stint made up of other related works.<sup>57</sup> This is not the place to pursue that theme, but clearly for **Julian, Africanus** and **Alfenus** the Sabinian is their basic mass. No works of theirs appear elsewhere.

A number of other authors belong to the Sabinian mass. Apart from Julian the most important is **Ulpian**. Most of his work, in 152 or 153 books, comes in the Sabinian mass, about 78 books in the edictal mass and 6 to 9 books to the Papinian mass. To begin with the Papinian mass, it has his 6 books on *fideicommissa*,<sup>58</sup> which fall in a subject-group by Valens, Ulpian,

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(Munich 1997), Liebs (note 46) § 428.5 (Pseudo-Ulpianus I); 428.6 (Ulpianus II); *HLL* 5 (1989) §§ 507.3 (Ulpianus III); 507.4 (Pseudo-Ulpianus II).

<sup>48</sup> BK 184, 187, 189, 191, 193, 267.

<sup>49</sup> BK 271; Liebs (note 47) § 415.7 (Scaevola IV).

<sup>50</sup> BK 14-20.

<sup>51</sup> BK 10-12 or 13.

<sup>52</sup> BK 21-27.

<sup>53</sup> BK 14, 17, 18, 19.

<sup>54</sup> BK 15, 16.

<sup>55</sup> BK 20.

<sup>56</sup> BK 134-5.

<sup>57</sup> Honoré (above n.2) 29-31.

<sup>58</sup> BK 195, 203.

Maecianus, Gaius, Paul and Pomponius.<sup>59</sup> The BK Ordo also assigns to a place near the end of the Papinian mass three *libri singulares* of Ulpian on the *officia* of the *praefectus vigilum*,<sup>60</sup> the *praefectus urbi*<sup>61</sup> and the *quaestor*.<sup>62</sup> According to Mantovani, however, all three are of indeterminate mass,<sup>63</sup> as is Paul's *liber singularis* on the urban prefect,<sup>64</sup> with which Ulpian's must have been grouped on the basis of subject-matter. Since Paul's monograph on the *praefectus vigilum* belongs in the Papinian mass,<sup>65</sup> Ulpian's *liber singularis* on the same subject should belong with it in a small subject-group. We do not know where the other two *libri singulares* belong. Hence, though the allocation of an author's unattached *libri singulares* to a mass usually points to his basic mass, these three *libri* of Ulpian do not show that the Papinian was his basic mass.

That leaves the Sabinian and edictal masses. Ulpian's 51 books *ad Sabinum* head the group of commentaries by him, Paul and Pomponius in the Sabinian mass.<sup>66</sup> His 83 books *ad edictum praetoris* and *ad edictum aedilium curulium*, grouped with those of Paul and Gaius are divided, roughly in the proportion of 1 to 2, between the Sabinian and edictal masses. The edictal commentaries were too bulky to be assigned to a single committee. Ulpian's 7 books of *regulae*,<sup>67</sup> 4 *de appellationibus*,<sup>68</sup> and 4 *ad legem Aeliam Sentiam*<sup>69</sup> fall in groups of like works in the Sabinian mass,<sup>70</sup> while his 20 books *ad legem Iuliam et Papiam*<sup>71</sup> go in the edictal mass with other commentaries on that law or laws.<sup>72</sup> All these fall in subject-groups and so do not settle Ulpian's basic mass, though they fall mostly in the Sabinian mass. That leaves a number of unattached works. His ten books of *disputationes* and ten *de omnibus tribunalibus*, along with six of *opiniones* and six *de censibus* are in the Sabinian mass.<sup>73</sup> His *liber singularis de sponsalibus*<sup>74</sup> is regarded as of uncertain mass.<sup>75</sup> But his *libri singulares pandectarum*,<sup>76</sup> *de officio curatoris reipublicae*,<sup>77</sup> and *de officio consularium*<sup>78</sup> are confirmed as Sabinian.<sup>79</sup> These

<sup>59</sup> BK 194-204; Mantovani (above n.4) 107-8. .

<sup>60</sup> BK 257.

<sup>61</sup> BK 258.

<sup>62</sup> BK 262.

<sup>63</sup> Mantovani (above n.4) 101.

<sup>64</sup> BK 259.

<sup>65</sup> BK 256.

<sup>66</sup> BK 1-3.

<sup>67</sup> BK 37.

<sup>68</sup> BK 64.

<sup>69</sup> BK 71.

<sup>70</sup> BK 36-40,42-45,64-67,70-71

<sup>71</sup> BK 162.

<sup>72</sup> BK 162-167.

<sup>73</sup> BK 10-13; Mantovani (note 4) 90.

<sup>74</sup> BK 32.

<sup>75</sup> Mantovani (note 4) 91.

<sup>76</sup> BK 85.

<sup>77</sup> BK 88.

<sup>78</sup> BK 89.

<sup>79</sup> Mantovani (note 4) 93.

35 unattached books point to the Sabinian as Ulpian's basic mass. So does the fact that he has about twice as many books in that mass as in the edictal mass. One work of his does not fit this scheme. His 3 books *de officio consulis*<sup>80</sup> go in the edictal mass and are not related by subject or genre to either the preceding *digesta* of Celsus and Marcellus<sup>81</sup> or the succeeding works by Modestinus. This exception is in my view to be explained on numerical grounds, for reasons explained in connection with the discussion of Modestinus' place in the edictal mass.<sup>82</sup>

There was good reason for Tribonian to assign Ulpian to the Sabinian mass. He provides more lines of text than any other author (40 or 41 % of the Digest) and, though not the greatest or second greatest lawyer, is treated as the leading author from the point of view of expounding the law. Indeed an Ulpian text come first in three-fifths of the Digest titles.<sup>83</sup> Consistently with the decision to treat Ulpian as the lead author, the Sabinian committee excerpted at a higher rate per book than the other committees: some ninety lines per book against between sixty-five and seventy-five.<sup>84</sup>

Three authors apart from Julian, Alfenus and Africanus have their only work in the Sabinian mass. One is **Florentinus** whose surviving work, twelve books of *institutiones*,<sup>85</sup> heads a group of institutional works by him, Marcianus, Ulpian, Gaius, Callistratus and Paul.<sup>86</sup> **Rutilius Maximus**<sup>87</sup> and **Claudius Saturninus**,<sup>88</sup> each with one *liber singularis*, are other Sabinian authors. The *Index auctorum* treats Venuleius Saturninus and Claudius Saturninus as the same,<sup>89</sup> though the inscriptions to their works distinguish them, since D 48.19.16 is inscribed Claudius Saturninus *libro singulari de poenis paganorum*, whereas 48.19.15 has Venuleius Saturninus *de officio proconsulis*. The commissioners, though not the compiler of the *Index auctorum*, therefore knew that these two authors were distinct.

Other Sabinian authors have at least one book transferred to another mass. **Marcianus'** 16 books of *institutiones*,<sup>90</sup> 2 *de appellationibus*,<sup>91</sup> 2 *de publicis iudiciis*,<sup>92</sup> 5 *regularum*<sup>93</sup> and 1 *ad formulam hypothecariam*<sup>94</sup> all fall into genre- or subject-groups in the Sabinian mass.<sup>95</sup> Apart

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<sup>80</sup> BK 136.

<sup>81</sup> BK 134-135.

<sup>82</sup> Below notes 180-84.

<sup>83</sup> Honoré, *Ulpian. Pioneer of Human Rights*<sup>2</sup> [Ulpian, 2<sup>nd</sup> ed.] (2002) 229 (260 titles out of 432).

<sup>84</sup> Sabinian 90.41; Papinian 73.54; edictal 65.93: Honoré and Rodger (note 9) 295, 306, 314.

<sup>85</sup> BK 21

<sup>86</sup> BK 21-27.

<sup>87</sup> BK 68: Mantovani (note 4) 92.

<sup>88</sup> BK 92: Mantovani (note 4) 93.

<sup>89</sup> *Index auctorum* XXI Βενουλειου 4 de poenis paganorum βιβλιον εν.

<sup>90</sup> BK 22.

<sup>91</sup> BK 66.

<sup>92</sup> BK 55.

<sup>93</sup> BK 40,42,44.

<sup>94</sup> BK 57.

<sup>95</sup> BK 21-27, 36-46, 52-56, 57-58, 64-66.

from these 26 books, his *liber singularis de delatoribus*<sup>96</sup> is an unattached work in that mass, which serves to confirm that it is his basic mass. One *liber singularis* is however in the Papinian mass,<sup>97</sup> where it forms a small subject-group with a *liber singularis* of Paul,<sup>98</sup> both *ad SC Turpillianum*.<sup>99</sup> **Neratius** also belongs to the Sabinian mass, which acquires not only his 15 books of *regulae*,<sup>100</sup> that head a *regulae* group,<sup>101</sup> but 7 unattached books of *membrana*.<sup>102</sup> So the Sabinian mass has 22 books of his total of 25. Three books of *responsa*, however, go the Papinian mass where, given their subject-matter, they form a small subject-group with Paul's 4 books *ad Neratium*,<sup>103</sup> based on Neratius' *responsa*.<sup>104</sup> **Macer** probably also belongs to the Sabinian mass, which has eight of his ten books. They include his two books each of *publica iudicia*,<sup>105</sup> *de officio praesidis*,<sup>106</sup> *de appellationibus*,<sup>107</sup> and *de re militari*.<sup>108</sup> Of these *iudicia publica* and appeals are grouped with others on the same subject,<sup>109</sup> but those on the office of governor and military law are unattached. This points to the Sabinian as his basic mass, but his two books on the Julian inheritance tax (*ad legem vicesimam hereditatum*)<sup>110</sup> come in the edictal mass immediately or shortly after the group of works *ad legem Iuliam and Papiam*.<sup>111</sup> It is not clear why they are in the edictal mass. Hence, though likely, it is not certain that Macer's basic mass is the Sabinian. **Arcadius Charisius** perhaps also belongs to the Sabinian mass, to which his unattached monograph *de testibus* is allotted.<sup>112</sup> The text from *de muneribus civilibus*,<sup>113</sup> a single long text at the end of a title, could end the Papinian mass – but then why is this important text put at the end of the title? It could alternatively be part of the Appendix. His *de officio praefecti praetorio*, in a title with only a single text,<sup>114</sup> is unplaceable. Finally **Labeo** should be accounted Sabinian, since all the texts from the first book of his *posteriora* epitomised Iavolenus

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<sup>96</sup> BK 63.

<sup>97</sup> BK 229.

<sup>98</sup> BK 228; Mantovani (note 4 ) 99.

<sup>99</sup> Mantovani (note 4) 99.

<sup>100</sup> BK 36.

<sup>101</sup> BK 36-46.

<sup>102</sup> BK 60.

<sup>103</sup> BK 217-218.

<sup>104</sup> C. Ferrini, "I libri di Paolo ad Neratium" [1894], in *Opere*, 2 (Milan 1929) 229-234; R.Greiner, *Opera Neratii. Drei Textgeschichten* (Karlsruhe, 1973) 139-150; A.M.(T).Honoré, "A Study of Neratius and a Reflection on Method," *TRG* 43 (1975) 238-39; Liebs (note 47) § 423 4.

<sup>105</sup> BK 52.

<sup>106</sup> BK 61.

<sup>107</sup> BK 65.

<sup>108</sup> BK 86.

<sup>109</sup> BK 52-56, 64-66.

<sup>110</sup> BK 168.

<sup>111</sup> BK 169; Mantovani (note 4) 97.

<sup>112</sup> BK 62; Mantovani (note 4) 92.

<sup>113</sup> BK 260; D 50.4.18

<sup>114</sup> BK 261; D 1.11.1; Mantovani (note 4) 101.

and some from the second book belong to that mass.<sup>115</sup> The attribution of this work by the BK Ordo<sup>116</sup> to Iavolenus was a mistake. The unattached works of Iavolenus come in the edictal mass,<sup>117</sup> to which Labeo's *posteriora* would also have been allotted if it had been regarded as a work of Iavolenus. The only other work of Labeo that became available to the compilers, his *pithana* epitomised by Paul,<sup>118</sup> belongs to the Appendix and so does not count in assessing his basic mass.

In the outcome the Sabinian is the basic mass of ten writers (Alfenus, Africanus, Claudius Saturninus, Florentinus, Julian, Labeo, Marcianus, Neratius, Rutilius and Ulpian) and probably of two more (Arcadius and Macer).

### **b. Authors whose basic mass is the Papinian.**

The **Papinian** group<sup>119</sup> is a self-contained author-group of 58 books but does not include quite all Papinian's works. As mentioned, his three books on adultery are assigned to the Sabinian committee to form part of a group of works by Ulpian, Papinian and Paul on that topic.<sup>120</sup> There is also his one-book *αστυνομικος*, with only one Digest text, which forms the whole title *de vi publica et si quod in ea factum esse dicatur*.<sup>121</sup> BK puts this in the edictal mass after the commentaries on the edict of the aediles<sup>122</sup> and before the transferred group of edictal commentaries.<sup>123</sup> Mantovani treats it as of uncertain mass.<sup>124</sup> There is no good reason to put it in the edictal mass. It belongs either in the Papinian mass as his basic mass or in the Appendix.

Another author whose basic mass is the Papinian is Cervidius **Scaevola**, whose 20 books of *quaestiones* and six of *responsa* come near its beginning<sup>125</sup> In both cases they are read jointly with Paul's work in the same genre,<sup>126</sup> Paul having been a pupil of Scaevola,<sup>127</sup> so that there was good reason to read these works together. Scaevola's books of *regulae*<sup>128</sup> go in the *regulae* group headed by Neratius in the Sabinian mass.<sup>129</sup> Osler has shown, convincingly, that the first two

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<sup>115</sup> A.M. (T) Honoré, "Labeo's *posteriora* and the Digest Commission", in A. Watson, ed., *Daube Noster* (Edinburgh 1974) 161-181; Mantovani (note 4) 117 n.48; Osler, "Following Bluhme: a note on Dario Mantovani, 'Digesto e masse Bluhmiane': *IVRA* 39 (1988) 150-3.

<sup>116</sup> BK 94.

<sup>117</sup> BK 152 and 153.

<sup>118</sup> BK 268.

<sup>119</sup> BK 180-182.

<sup>120</sup> BK 28-31.

<sup>121</sup> BK 111; D 43.10.

<sup>122</sup> BK 108-110.

<sup>123</sup> BK 112-123.

<sup>124</sup> Mantovani (note 4) 94.

<sup>125</sup> BK 184, 187, 198, 191, 193.

<sup>126</sup> BK 183, 186, 188, 190, 192.

<sup>127</sup> D 23.3.56.3; Liebs (note 47) §423.

<sup>128</sup> BK 38.

<sup>129</sup> BK 36-46.

books of Scaevola's *digesta* were read as part of the Papinian mass.<sup>130</sup> So his 40 books of *digesta* must have been assigned to that mass. But they cannot have been assigned to it from the outset, since otherwise they would have been read with his *quaestiones* and *responsa*, with which they overlap. Indeed they would in any case have been read early in the Papinian mass, since it was the practice in this mass to read the most substantial works near the beginning. The remaining 38 books of *digesta* form part, indeed the most substantial part, of the Appendix.<sup>131</sup> There are three authors whose only surviving work come in the Papinian mass. Aburnius **Valens** 7 books of *fideicommissa*<sup>132</sup> heads the *fideicommissa* subject-group in that mass.<sup>133</sup> **Hermogenianus'** 6 books of *iuris epitomae*<sup>134</sup> are in a genre-group along with Paul's *sententiae*,<sup>135</sup> a work of similar length and of the same type and period,<sup>136</sup> though the compilers could hardly have known this. **Tryphoninus'** 21 books of *disputationes* also come in the Papinian mass.<sup>137</sup>

The most surprising author whose basic mass is Papinian is **Gaius**. His 42 books on the urban and provincial edicts and that of the curule aediles<sup>138</sup> are grouped with the corresponding works of Ulpian and Paul in the Sabinian<sup>139</sup> and edictal masses<sup>140</sup> His 15 books *ad legem Iuliam et Papiam*<sup>141</sup> go in the edictal subject-group devoted to those laws.<sup>142</sup> The *institutiones* and *res cottidianae*<sup>143</sup> are part of a Sabinian genre-group of elementary works.<sup>144</sup> His *liber singularis ad formulam hypothecariam*<sup>145</sup> goes with a similar work of Marcianus in the Sabinian mass to form a small subject-group.<sup>146</sup> Two books on *fideicommissa*<sup>147</sup> fall in that subject-group in the Papinian mass.<sup>148</sup> All these works are in subject- or genre-groups, spread over all three masses, and so they do not serve to identify Gaius' basic mass. But his unattached works, comprising 19 books, (*regulae* 3,<sup>149</sup> *de manumissionibus* 3,<sup>150</sup> *de verborum obligationibus* 3,<sup>151</sup> *ad legem XII*

<sup>130</sup> Osler (note 115) 154-7.

<sup>131</sup> BK 267; Honoré (note 10) nn.85-93.

<sup>132</sup> BK 194, 201.

<sup>133</sup> BK 194-204.

<sup>134</sup> BK 206, 208, 210, 212, 214.

<sup>135</sup> BK 205, 207, 209, 211, 213.

<sup>136</sup> Liebs (note 46) §507.1; *Römische Jurisprudenz in Africa mit Studien zu den pseudopaulinischen Sentenzen*, 2<sup>nd</sup> ed., [Freiburger Rechtgeschichtliche Abhandlungen, n.F. 44] (Berlin 2005) 41-128.

<sup>137</sup> BK 219,221.

<sup>138</sup> BK 7-9, 98-99, 104-107, 110, 114-115, 118-119,122-123.

<sup>139</sup> BK 4-9.

<sup>140</sup> BK 95-99, 101-110, 112-123.

<sup>141</sup> BK 165.

<sup>142</sup> BK 162-167.

<sup>143</sup> BK 24-25.

<sup>144</sup> BK 21-27.

<sup>145</sup> BK 58.

<sup>146</sup> BK 57.

<sup>147</sup> BK 197.

<sup>148</sup> BK 194-204.

<sup>149</sup> BK 223.

*tabularum* 6,<sup>152</sup> *de casibus* 1,<sup>153</sup> *de tacitis fideicommissis* 1,<sup>154</sup> *ad SC Tertullianum* 1,<sup>155</sup> *ad SC Orfitianum* 1)<sup>156</sup> all fall in the Papinian mass. This must therefore be Gaius' basic mass. The *Index auctorum* lists a *liber singularis* 'dotalicion',<sup>157</sup> and the BK Ordo assigns the mysterious *lex Glitia*, with a single text, to the edictal mass.<sup>158</sup> To Mantovani, however, this latter work is of uncertain mass.<sup>159</sup> The BK Ordo puts Gaius' *liber singularis regularum* in the Papinian mass,<sup>160</sup> though Mantovani treats its mass as uncertain.<sup>161</sup> Two or three of these *libri singulares* should go in the Papinian mass with Gaius' other 19 unattached books, making 21 or 22 in all, but the *liber singularis regularum* perhaps belongs in the Sabinian mass (above, note 15). In the end, counting the works that belong to subject- and genre-groups, 23 or 24 books of Gaius' fall in the Papinian mass against 40 in the edictal mass and 25 or 26 in the Sabinian, though the Papinian is his basic mass. This paradoxical distribution, in which the basic mass has fewer books than the other two, serves to honour the Papinian mass, which secures in Papinian and Gaius two leading authors to compare with the Sabinian mass's Julian and Ulpian. The edictal mass secures more of Gaius' books than any other, but is not his basic mass.

**Venuleius** Saturninus' basic mass is also the Papinian. His 19 books of *stipulationes* is an unattached work in that mass, though it could have been grouped with Gaius 3 *de verborum obligationibus*.<sup>162</sup> Four books *de officio proconsulis* go in the Sabinian mass<sup>163</sup> with two of Paul on that subject<sup>164</sup> to form a small subject-group. Three books on *iudicia publica*<sup>165</sup> also belong to a Sabinian subject-group.<sup>166</sup> The rest of his works go in the Appendix<sup>167</sup> but will originally have been assigned to the Papinian mass as his basic mass.<sup>168</sup> **Claudius** Saturninus, on the other hand, belongs to the Sabinian mass.<sup>169</sup>

There are in all 7 authors (Gaius, Hermogenianus, Papinian, Scaevola, Tryphoninus, Valens, and Venuleius) whose basic mass is the Papinian.

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<sup>150</sup> BK 245.

<sup>151</sup> BK 246.

<sup>152</sup> BK 247.

<sup>153</sup> BK 215.

<sup>154</sup> BK 242.

<sup>155</sup> BK 243.

<sup>156</sup> BK 244.

<sup>157</sup> *Index auctorum* XX.12.

<sup>158</sup> D 5.2.4; BK 169.

<sup>159</sup> Mantovani (note 4) 97.

<sup>160</sup> BK 224.

<sup>161</sup> Mantovani (note 4) 99.

<sup>162</sup> BK 216.

<sup>163</sup> BK 91.

<sup>164</sup> BK 90.

<sup>165</sup> BK 53.

<sup>166</sup> BK 52-56.

<sup>167</sup> *Actionum* 10 and *interdictorum* 6 (BK 273,274).

<sup>168</sup> Honoré (note 10) nn.100-101.

<sup>169</sup> Above, notes 90-91.

### c. Authors whose basis mass is the edictal.

The basic mass of the remaining authors is the edictal. The first is **Modestinus**. The Modestinus group is an author-group amounting to 59 books<sup>170</sup> but it sandwiches<sup>171</sup> two *libri singulares* of Ulpian, *excusationes*<sup>172</sup> and *de officio praetoris tutelaris*,<sup>173</sup> which were read with Modestinus' 6 books of *excusationes* because they dealt with the same subject.<sup>174</sup> Mantovani regards two of Modestinus' *libri singulares* in this sequence as of uncertain mass.<sup>175</sup> But, given that no work of Modestinus is shown to belong to another mass, they are surely edictal and should come between BK 137 and 151.<sup>176</sup> Somewhere in this same sequence 2 *libri singulares* of Modestinus mentioned in the *Index auctorum* (*de testamentis* and *de legatis et fideicommissis*) should be added.<sup>177</sup> The only Modestinus work outside this sequence is his 4 books *de poenis* towards the end of the edictal mass.<sup>178</sup> One may suspect that this was a late arrival, and so was put in Modestinus' basic mass, but, along with other unattached works, towards the end.<sup>179</sup>

The Modestinus sequence, including the two *libri singulares* of Ulpian, comes to 67 books.<sup>180</sup> Ulpian's 3 books *de officio consulis* come just after the *digesta* of Celsus and Marcellus and before the sequence of Modestinus' works.<sup>181</sup> This work would normally be expected to go in the Sabinian mass as Ulpian's basic mass.<sup>182</sup> Its place at the beginning of the Modestinus sequence has no merit from the point of view of authorship, subject-matter or genre. In my view it can be explained as bringing the total of books in the sequence to 70, which can be divided into two lots of 35 each.<sup>183</sup> There are many ways of doing this, but one is to run one lot from BK 146 to 151,<sup>184</sup> the other from BK 136 to 144 with the addition of the two from the *Index auctorum*.

<sup>170</sup> BK 137-42, 146-151. Modestinus' supposed 4 books *de praescriptionibus* (D 45.1.101; BK 145) should, with Lenel *Pal.* I.732 and the *Index auctorum* be eliminated, though the commission did have his *liber singularis de praescriptionibus* (BK 148; *Index auctorum* XXXI.7)..

<sup>171</sup> BK 143, 144.

<sup>172</sup> BK 143.

<sup>173</sup> BK 144.

<sup>174</sup> BK 142-144.

<sup>175</sup> *De differentia dotis; de inofficioso testamento*: BK 141, 151.

<sup>176</sup> The only Modestinus work outside this sequence is his 4 books *de poenis* at BK 174, towards the end of the mass.

<sup>177</sup> *Index auctorum* XXXI 10,11.

<sup>178</sup> BK 174.

<sup>179</sup> The unattached works begin after a small subject-group on military law at BK 171-2.

<sup>180</sup> BK 137 to 144 = 30 book, 146-151 = 35 books; *Index auctorum* XXXI 10,11 provides 2 more *libri singulares* of Modestinus.

<sup>181</sup> BK 137-151; Mantovani (note 4) 95-96.

<sup>182</sup> Above, notes 58-84.

<sup>183</sup> If Bluhme has correctly analysed the successive sections of Celsus and Marcellus *digesta*, the odd- and even- numbered sections also come to 35 books each.

<sup>184</sup> *Responsorum* 19, *pandectarum* 12 and 3 *libri singulares*.

Apart from Modestinus<sup>185</sup> the edictal mass acquires Iuventius **Celsus**' only surviving work, his *digesta*.<sup>186</sup> It has the only works of eight other writers: **Proculus**,<sup>187</sup> **Terentius Clemens**,<sup>188</sup> **Mauricianus**,<sup>189</sup> **Arrius Menander**,<sup>190</sup> **Tarrutienus Paternus**,<sup>191</sup> **Tertullianus**,<sup>192</sup> **Licinius Rufinus**<sup>193</sup> and **Papirius Iustus**.<sup>194</sup> Several of these come towards the end of the mass and constitute a sort of mass coda to which otherwise unassigned authors were allotted. This coda is analogous to the *libri singulares* of Paul and others which form codas in the Sabinian and Papinian masses.<sup>195</sup>

**Iavolenus**' 15 books *ex Cassio*<sup>196</sup> and 14 *epistularum*,<sup>197</sup> form a short author-group in the edictal mass, which also has his 5 books *ad Plautium*,<sup>198</sup> the latter grouped with other commentaries *ad Plautium*.<sup>199</sup> His basic mass is therefore the edictal. The BK Ordo allotted his 10 book selection from Labeo's *posteriora* to the Sabinian mass.<sup>200</sup> Since the initial allocation of this work was to the Sabinian mass, the compilers must have regarded it as a work of Labeo rather than Iavolenus, as does the *Index auctorum*.<sup>201</sup> Otherwise it would have gone to the edictal mass, as Iavolenus' basic mass. **Pomponius**' basic mass is also edictal. His *ad Sabinum*<sup>202</sup> goes in the Sabinian mass in a subject-group with the Sabinian commentaries of Ulpian and Paul.<sup>203</sup> His *liber singularis regularum*<sup>204</sup> falls in the *regulae* group in that mass.<sup>205</sup> Five books on *fideicommissa*<sup>206</sup> are in the Papinian mass group on that topic.<sup>207</sup> His historical works (*libri enchiridii*),<sup>208</sup> are probably attracted by Gaius on the Twelve Tables, the only other historical work read by the commission, to a small historical genre-group.<sup>209</sup> His 7 books *ad Plautium*<sup>210</sup> are in the edictal mass with

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<sup>185</sup> Above notes 170-84.

<sup>186</sup> BK 134.

<sup>187</sup> BK 155, 157.

<sup>188</sup> BK 164.

<sup>189</sup> BK 166.

<sup>190</sup> BK 171.

<sup>191</sup> BK 172.

<sup>192</sup> BK 161, 173.

<sup>193</sup> BK 175.

<sup>194</sup> BK 177.

<sup>195</sup> BK 72-93, 225-259.

<sup>196</sup> BK 152.

<sup>197</sup> BK 153.

<sup>198</sup> BK 127, 130

<sup>199</sup> BK 124-131.

<sup>200</sup> BK 94.

<sup>201</sup> *Index auctorum* VII Λαβεωνος 2 posteriorum βιβλια δεκα.

<sup>202</sup> BK 2.

<sup>203</sup> BK 1-3.

<sup>204</sup> BK 45.

<sup>205</sup> BK 56-46.

<sup>206</sup> BK 199, 202.

<sup>207</sup> BK 194-204.

<sup>208</sup> BK 248, 249.

<sup>209</sup> BK 247.

other commentaries *ad Plautium*.<sup>211</sup> All these are in subject- or genre-groups. But Pomponius' unattached works, 39 books *ad Quintum Mucium*<sup>212</sup> and 15 *variarum lectionum*<sup>213</sup> go in the edictal mass, which must therefore be his basic mass. It is to the edictal mass that two works of his that appear in the Appendix<sup>214</sup> will have been initially assigned. **Callistratus** also belongs to the edictal mass, with 6 books *de cognitionibus*,<sup>215</sup> 4 *edicti monitorii*,<sup>216</sup> and 4 *de iure fisci*.<sup>217</sup> Of these the first two books *edicti monitorii* are mistakenly grouped in the edictal mass with the edictal commentaries of Ulpian, Paul and Gaius.<sup>218</sup> His 2 books of *quaestiones*<sup>219</sup> accompany a *quaestiones* group in the Papinian mass,<sup>220</sup> and his 3 of *institutiones*<sup>221</sup> belong to the institutional group in the Sabinian mass.<sup>222</sup> Most of his books (14 out of 19), including all 14 unattached books, point to the edictal as his basic mass.

**Marcellus** presents a difficulty. His 31 books of *digesta*,<sup>223</sup> grouped with those of Celsus in a genre-group,<sup>224</sup> and his 6 *ad legem Iuliam et Papiam*,<sup>225</sup> in a subject-group of commentaries,<sup>226</sup> come in the edictal mass, which is *prima facie* his basic mass. But his *liber singularis responsorum*, an unattached work, goes in the Sabinian mass.<sup>227</sup> Mantovani, reviewing its position in that mass, would move it from BK 59 to the end of the *regulae* group running from BK 37 to BK 46. It would then be 46 bis in the BK Ordo. Mantovani's argument is that 10 of the 14 texts from Marcellus' *responsa* come immediately after the *regulae* group, which already contains another extraneous work, Ulpian's 2 books of *responsa*.<sup>228</sup> If Mantovani is right, the *regulae* in the group preceding Marcellus' *responsa* come to 41 books (Neratius 15, Ulpian 1 + 7, Scaevola 4, Paul 8, Marcianus 5, Pomponius 1). The extraneous works (2 of Ulpian's *responsa* and one of Marcellus' *responsa*) could have been added to yield 44 books, an even number easily divided into two sub-groups of 22 books each. For example the 44 books could have been split into the 22 made up by the first two items in the sequence (Neratius 15 reg. and

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<sup>210</sup> BK 126, 128, 131.

<sup>211</sup> BK 124-133.

<sup>212</sup> BK 154.

<sup>213</sup> BK 156.

<sup>214</sup> *epistularum* 20 *de senatusconsultis* 5: BK 269,270.

<sup>215</sup> BK 160.

<sup>216</sup> BK 100, 176. They come towards the end of the edictal mass: Mantovani (note 4) 94,97.

<sup>217</sup> BK 158. Mantovani (note 4) 96 thinks that this work might belong to the Appendix. If so, D 49.14 would be the only title in the Digest that begins with Appendix texts (49.14.1-3).

<sup>218</sup> BK 95-100 but see Mantovani (note 4) 94..

<sup>219</sup> BK 185.

<sup>220</sup> BK 183-4.

<sup>221</sup> BK 26.

<sup>222</sup> BK 21-27.

<sup>223</sup> BK 135.

<sup>224</sup> BK 134-135.

<sup>225</sup> BK 167.

<sup>226</sup> BK 162-167.

<sup>227</sup> BK 59.

<sup>228</sup> BK 41.

Ulpian 7 reg.)<sup>229</sup> and the 22 made up by the rest.<sup>230</sup> That is speculative, but Mantovani's proposal makes this explanation possible.

The edictal mass emerges as the basic mass of twelve and perhaps thirteen or even fifteen authors: certainly Callistratus, Celsus, Clemens, Iavolenus, Licinius Rufinus, Mauricianus, Menander, Modestinus, Papirius, Pomponius, Proculus, Tarrutienus Paternus and probably Marcellus. To judge from the coda of this mass, it is the residuary mass for authors not otherwise assigned, such as Menander, Tarrutienus, Licinnius, and Papirius,<sup>231</sup> to whom, it will be seen, we may plausibly add Aelius Gallus and Iulius Aquila.

#### d. Authors of uncertain mass

There remain five authors of uncertain mass: Aelius Gallus, Aquila, Furius, Quintus Mucius Scaevola and Maecianus. The single text of **Gallus**<sup>232</sup> comes at the end of the edictal mass in the generally regular title *de verborum significatione*. Though Mantovani treats it as of uncertain mass,<sup>233</sup> it may really belong to the end of the edictal mass, since, as we saw, a collection of one-work authors forms a major element of its coda.<sup>234</sup> The same is true of Iulius **Aquila**, from whose book of *responsa* we have two texts, one at the end of the edictal mass<sup>235</sup> and the other at the end of a title. The latter may be a codal text.<sup>236</sup> Furius **Anthianus**' 5 books *ad edictum*,<sup>237</sup> of which only one book or collection of texts was available to the compilers, belongs to the Appendix.<sup>238</sup> So does **Quintus Mucius Scaevola**'s *opov*.<sup>239</sup> Their original mass cannot be determined because there are no works by these authors outside the Appendix. The basic mass of Volusius **Maecianus** is uncertain. His *iudicia publica* in 14 books<sup>240</sup> are in the Sabinian mass in a group with works by Macer, Venuleius, Paul and Marcianus on that subject.<sup>241</sup> His 16 books on *fideicommissa*<sup>242</sup> go in the Papinian mass with the similar works of Valens, Ulpian, Gaius, Paul and Pomponius.<sup>243</sup> This leaves the *liber singularis ex lege Rhodia*, with a single text<sup>244</sup> that follows the Sabinian mass<sup>245</sup> and precedes an Appendix text.<sup>246</sup> The BK Ordo puts it in the

<sup>229</sup> BK 36-37.

<sup>230</sup> BK 38-46 bis.

<sup>231</sup> BK 171,172,175,177.

<sup>232</sup> D 50.16.157.

<sup>233</sup> Mantovani (note 4) 97.

<sup>234</sup> Above, notes 187-95.

<sup>235</sup> D 26.7.34.

<sup>236</sup> D 26.10.12.

<sup>237</sup> *Index auctorum* XXXVI.

<sup>238</sup> BK 275; Honoré (note 10) nn. 40-48.

<sup>239</sup> BK 264; Honoré (note 10) nn.24-31.

<sup>240</sup> BK 56.

<sup>241</sup> BK 52-56.

<sup>242</sup> BK 196, 200.

<sup>243</sup> BK 194-204.

<sup>244</sup> D 14.2.9

<sup>245</sup> D 14.2.6-8.

<sup>246</sup> D 14.2.10 (Lab. 1 pith.)

Sabinian mass.<sup>247</sup> To Mantovani it is of uncertain mass.<sup>248</sup> It cannot be placed, and might even belong to the Appendix. So it is impossible to determine Maecianus' basic mass.

### e. Paul

**Paul** is unique. He has no single basic mass. This is because his 309 books<sup>249</sup> outstrip those of any other author, even Ulpian's 239, and include 60 *libri singulares*. The *Index auctorum* makes a distinction between longer works and *libri singulares*, for which it uses the term μονοβιβλα. It lists these for Ulpian, Paul, Marcianus and Modestinus but not for Gaius or Papinian. The separate listing suggests that the commission dealt with them in a different way from the longer works. For Paul the *Index* records 49<sup>250</sup> *libri singulares* out of 60.<sup>251</sup> The other eleven are not listed in the *Index auctorum* but excerpts from them appear in the Digest.<sup>252</sup> On the other hand there are ten books mentioned in the Index but no fragments from them are inserted in the Digest.<sup>253</sup> The BK Ordo attributed 24 of Paul's *libri* to the Sabinian mass, 24 to the Papinian mass, and one to the edictal mass. Mantovani treats this allocation as uncertain in 15 cases,<sup>254</sup> seven of which were placed by BK in the Sabinian mass,<sup>255</sup> seven in the Papinian mass,<sup>256</sup> and one in the edictal mass.<sup>257</sup> The allocations that he finds to be secure are always in the Sabinian (17 *libri singulares*)<sup>258</sup> or the Papinian masses (also 17).<sup>259</sup> BK puts only one *liber singularis* of

<sup>247</sup> BK 93.

<sup>248</sup> Mantovani (note 4) 93.

<sup>249</sup> This figure includes his 23 books of *breuia* listed by the Index auctorum XXV.4, of which 1-5 and 16-23 seem to belong to the edictal committee, 6-8 to the Sabinian. The intervening 7 books have been divided so that about two-thirds go to the Sabinian committee, to which I have chosen to assign books 9-13, with 14-15 going to the edictal committee.

<sup>250</sup> Treating *ad senatusconsultum Libonianum* (BK 230) and *ad senatusconsultum Claudianum* (BK 231) as separate.

<sup>251</sup> At times it is questionable whether two titles evidenced in the sources refer to the same or different works e.g. *de liberali causa* and *de articulis liberalis causae*, and whether some of the work listed in the *Index auctorum* really existed (*de actionibus, ad municipalem, de instrumento et instructo*): Liebs (note 47), 155-174; Liebs (note 46) 67-71 but, whatever the truth, the overall picture is not seriously affected.

<sup>252</sup> Below n. 267.

<sup>253</sup> F.Schulz, *History of Roman Legal Science* (Oxford 1946), 146.

<sup>254</sup> *De iure patronatus; ad senatusconsultum Silanianum; de sentusconsultis, ad senatusconsultum Velleianum; de intercessionibus feminarum; de excusatione tutelarum; ad orationem divi Severi; ad legem Cinciam; de poenis omnium legum; ad regulam Catonianam; de inofficioso testamento; de tacitis fideicommissis; de instrumenti significatione; de gradibus et adfinibus; de officio praefecti urbi*; see Mantovani (note 4) 90-103.

<sup>255</sup> BK 35,48,78,79,80,81

<sup>256</sup> BK 232,234,236,237,238,254,259.

<sup>257</sup> BK 170

<sup>258</sup> *De dotis repetitione; de adsignatione libertorum; regularum; de portionibus quae liberis damnatorum conceduntur; de conceptione formularum; de iudiciis publicis; de appellationibus; ad legem Fufiam Caniniam; de libertatibus dandis; de liberali causa; de secundis tabulis; de iure codicillorum; de centumviralibus (septemviralibus) iudiciis; de adulteriis; ad orationem divi*

Paul, with a single text, in the edictal mass, and this allocation is insecure.<sup>260</sup> So it seems likely that no *libri singulares* of Paul were allotted to the edictal mass. The possible exception is his *de excusatione tutelarum*, allotted by BK to the Sabinian mass.<sup>261</sup> This should have been read in the edictal mass as part of a subject-group along with works of Modestinus and Ulpian.<sup>262</sup> But two of the three surviving texts from this work of Paul fall in the Sabinian mass,<sup>263</sup> while the third is in the edictal mass.<sup>264</sup> One must agree with Mantovani that the correct mass remains uncertain.<sup>265</sup>

The edictal mass therefore contains at most one *liber singularis* of Paul, and moreover one allocated to it, if at all, as part of a subject-group. This suggests that the other 14 *libri singulares* whose mass is uncertain belong in the Sabinian or Papinian masses, which each have at least 17 of these monographs securely allotted to them.<sup>266</sup> Presumably the 11 monographs listed in the *Index auctorum* from which no Digest texts have been excerpted also belong to the Sabinian or Papinian masses.<sup>267</sup>

A few of the *libri* that Mantovani regards as of indeterminate mass have in my view have been placed by BK in the correct mass.<sup>268</sup> Five seem to belong to the Sabinian mass. One is *de iure patronatus*,<sup>269</sup> with three texts. D 38.1.28 seems to be correctly placed in the Sabinian mass, with D 38.1.17 moved to an earlier place in the same title and mass to qualify what Paul says in 38.1.16. The third text from this work is codal<sup>270</sup> and might come from this work or from a *liber singularis de iure patronatus quod ex Iulia et Papia venit*, a work attributed to Paul in the *Index auctorum*.<sup>271</sup> *Ad SC Silanianum*<sup>272</sup> is similar. All three texts come in the Sabinian mass. D

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*Marci Antonini et Commodi; de variis lectionibus; de poenis militum* (BK33,34,39,49,51,54, 67,69,72,73,74,75,76,77,81,84,87). Four of these belong to subject-groups: *regularum*, *de publicis iudiciis*, *de appellationibus* and *de adulteriis*. The rest are unattached.

<sup>259</sup> *De cognitionibus; de concurrentibus actionibus; de usuris; ad SC Turpillianum; ad SC Libonianum (et edictum Claudianum); ad senatusconsultum Claudianum; de poenis paganorum; de forma testamenti (de testamentis); ad sc. Tertullianum; ad sc. Orfitianum; ad legem Falcidiam; de iure libellorum; de articulis liberalis causae (?); de iuris et facti ignorantia; de iure singulari; de officio adsectorum; de officio praefecti vigilum* (BK 225,226,227,228,230, 231,233,235,239,240,241,250,251,252,253,255,256). All these appear to be unattached.

<sup>260</sup> D 1.3.29 (*ad legem Cinciam*: BK 170); Mantovani (note 4) 97.

<sup>261</sup> BK 82.

<sup>262</sup> BK 142-144.

<sup>263</sup> D 27.1.26; 26.3.4.

<sup>264</sup> D 27.1.11

<sup>265</sup> Mantovani (note 4) 83.

<sup>266</sup> Above notes 258-9.

<sup>267</sup> *De actionibus; de donationibus inter virum et uxorem; de extraordinariis criminibus; υποθηκαρια; de instructo et instrumento* (== *de instrumenti significatione?*; Liebs (note 47), 166 no.55); *de iure patronatus ex lege Iulia et Papia; ad legem Velleam, de legibus; de legitimis hereditatibus; ad municipalem; de officio praetoris tutelarum*.

<sup>268</sup> Above note 6.

<sup>269</sup> BK 35.

<sup>270</sup> D 25.3.9

<sup>271</sup> *Index auctorum* XXV 63

29.5.10 and 12, with a qualifying fragment from Tryphoninus at 29.5.11, come before the Sabinian subject-group on *publica iudicia*,<sup>273</sup> while 29.5.7 is moved to an earlier position where it qualifies a text of Paul. *Ad SC Velleianum*<sup>274</sup> and *de intercessionibus feminarum*<sup>275</sup> each provide a single text (D 16.1.23 and 24) at the end of the Sabinian mass in the title *Ad SC Velleianum*. There is no reason to suppose that they have been shifted from another mass. *Ad orationem divi Severi*<sup>276</sup> yields three texts. Two of these qualify texts of Ulpian in the Sabinian mass,<sup>277</sup> while the third<sup>278</sup> ends the Sabinian mass and does not belong to the Papinian mass, since the last text in the title, D 27.9.14, which belongs to the Papinian mass,<sup>279</sup> has a mistaken repetition of PAULUS in the inscription. There is, again, no reason to suppose that 27.9.13 has been transferred from another mass. Two more *libri singulares* of Paul that have been doubted belong in my view in the Papinian mass. In *de tacitis fideicommissis* one text<sup>280</sup> is inserted between two texts from Paul's *decreta* in the Papinian mass while the other<sup>281</sup> comes between a text from Paul *de cognitionibus*,<sup>282</sup> which belongs to the Papinian mass, and two texts *ad SC Orfitianum and Tertullianum*,<sup>283</sup> both in the same mass.<sup>284</sup> The order of texts in this title 50.16 is generally reliable. In *de instrumenti significatione*<sup>285</sup> one text appears at the end of the Papinian mass and before the Appendix.<sup>286</sup> The other qualifies a text of Paul *ad Sabinum* on *suppellex*.<sup>287</sup> No other *liber singularis* of Paul is assigned to the Appendix, and so the Papinian mass is to be preferred.

The figures suggest that the number of Paul's *libri singulares* allocated to these two masses were about equal. The two masses were joint heirs, as it were, to these works.

There are on my count 98 books of Paul in the Sabinian mass,<sup>288</sup> 86 in the Papinian mass,<sup>289</sup> and 104 in the edictal mass.<sup>290</sup> Twenty are indeterminate, including those *libri singulares* that may be

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<sup>272</sup> BK 48.

<sup>273</sup> BK 52-56.

<sup>274</sup> BK 79.

<sup>275</sup> BK 80.

<sup>276</sup> BK 83

<sup>277</sup> D 27.9.2,4

<sup>278</sup> D 27.9.13.

<sup>279</sup> Paulus 9 resp.; BK 188.

<sup>280</sup> D 49.14.49.

<sup>281</sup> D 50.16.229.

<sup>282</sup> D 50.16.228: BK 225.

<sup>283</sup> D 50.16.230,231.

<sup>284</sup> BK 240 and 239, respectively.

<sup>285</sup> BK 238.

<sup>286</sup> D 32.99.

<sup>287</sup> D 33.10.4, between two texts of Paul ad Sab.

<sup>288</sup> *Ad Sabinum* 16; *ad edictum* 24 (including ed. 48 fin. – 51 transferred from edictal mass: above note 9); *brevia* 10?; *epitomarum Alfeni digestorum* 8; *institutionum* 2; *de adulteriis* 3; *regularum* 7; *ad leg. Iuniam* 2; *de off. proconsulis* 2; *ad leg. Aeliam Sentiam* 3 and 17 *libri singulares* (above n.258).

either Sabinian or Papinian.<sup>291</sup> The works in the edictal mass are nearly all grouped according to subject-matter: *ad edictum praetoris* 53, *brevia* (about) 15<sup>292</sup>; *ad edictum aedilium* 2; *ad Plautium* 18; *ad legem Iuliam et Papiam* 10.<sup>293</sup> The apparent exceptions are 4 books *ad Vitellium* and 2 *de iure fisci*.<sup>294</sup> But are these works really unattached, or do they form part of the *ad Plautium* group? Though they are not related by subject-matter to the group *ad Plautium* that they follow, they may have been put in to make up a numerical balance.<sup>295</sup> Of the other unattached works, Paul's 2 books *ad legem Iuniam*<sup>296</sup> go in the Sabinian mass, while 3 books *manualium*<sup>297</sup> and 3 *decretorum*<sup>298</sup> are in the Papinian mass. So it is probably right to think of Paul as having two basic masses, the Sabinian and the Papinian, to which his residuary works are more or less evenly assigned.

### III. IDENTITY AND CHARACTER OF THE GROUPS

The allocation of authors and works to masses depends, as has been seen, on the existence within each mass of groups of works. The grouping was essential in order that the works dealing with the same subject should be read together or in close succession. In that way the best texts on the subject could be chosen and excerpted for inclusion in the Digest. This accounts for the existence of subject-groups. But there were also two other classes of group, author-groups and genre-groups.<sup>299</sup> In these cases it was convenient, but not essential, to read works by the same author or belonging to the same genre together or in close succession. The members of a committee would by this means become familiar with a particular author's style and mode of thought, or with the characteristics of a certain genre of legal writing. This would make for greater speed and economy than if the reader were to be continually switching from one author or genre to another.

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<sup>289</sup> *Quaestionum* 26; *responsorum* 23; *de fideicommissis* 3; *sententiarum* 5; *ad Neratium* 4; *manualium* 3; *decretorum* 3; *imperialium sententiarum* 2 (of 6: transferred to Appendix) and 17 *libri singulares* (above n.259).

<sup>290</sup> *Ad edictum* 54 (not counting 48 fin.–51 transferred to the Sabinian mass: above n.9); *brevia* 1-5, 16-23 (?); *ad ed. aedilium curulium* 2; *ad Plautium* 18; *ad Vitellium* 4; *de iure fisci* 2; *de censibus* 2; *ad leg. Iuliam et Papiam* 10.

<sup>291</sup> Above nn. 252,255,256. One of these may belong to the edictal mass: above n. 254-58. These figures include as determinate the *libri singulares* that Mantovani treats as indeterminate but that I think can be allocated to the Sabinian or Papinian masses respectively (above nn.267-87).

<sup>292</sup> The 23 books of Paul's *brevia* seem to have been available to the commissioners, but their distribution between the Sabinian and edictal masses is uncertain, apart from the few from which excerpts survive.

<sup>293</sup> BK 96, 102, 103, 109, 124, 163.

<sup>294</sup> BK 132, 133.

<sup>295</sup> Honoré (note 2) 39-40; above n.22-24.

<sup>296</sup> BK 50.

<sup>297</sup> BK 220.

<sup>298</sup> BK 222.

<sup>299</sup> Above nn.13-21.

A group that belonged predominantly to one of these three main classes could be mixed in that it could incorporate an element of another class. For example the Julian group in the Sabinian mass is an author group that incorporates a genre element and a subject element.<sup>300</sup> Not all the works assigned to the three committees were assigned in groups, pure or mixed, of these three types. *Libri singulares*, unless forming part of a subject-group, tended not to be attached to any subject- or genre-group. Some four-fifths of the books read by the commission were, however, read in groups of one of these types.<sup>301</sup>

It can be assumed that the division into groups was part of Tribonian's design for the execution of the Digest project, his *gubernatio*. The allocation of an author's work to a mass other than his basic mass depended on the existence in the other mass of a group to which his work was to be transferred. Beginning from a list of authors and their works of the sort enshrined in the *Index auctorum*, and a decision as to their basic mass, the identity of these groups had to be worked out in advance. This in turn affected the balance between the three masses, which had to be settled from the outset, so that the commissioners assigned to each committee knew the extent of their overall responsibilities for reading and excerpting the classical authors.

To identify a group demands care and their precise boundaries are sometime in doubt. The groups that Rodger and I proposed in 1970<sup>302</sup> paid too little attention to subject-matter and too much to numerical balance. We assumed that all the works read were divided into groups, including the unattached works. That is uncertain. But the grouping remains a major feature of the enterprise and to settle the composition of the groups that can be detected is important. The works that comprise a group should be consistent with the Digest inscriptions, and should be based on a particular author, subject or genre, though there can be combinations of these elements and (in my view) sometimes additions to secure numerical balance.

A serious effort was made to draw together all the works dealing with the same subject-matter. But there are a few cases in which works on the same topic were not read together. Rutilius Maximus on the *lex Falcidia* comes in the Sabinian mass (BK 68) and Paul on the same statute in the Papinian mass (BK 241). Paul's *liber singularis de adulteriis* (BK 77) was not read with the rest of the adultery group, which included his three-book work on adultery (BK31), though it was in the same mass. His *liber singularis* on excuses from guardianship may or may not have been read with the works of Modestinus and Ulpian on this subject in the edictal mass.<sup>303</sup> Paul and Venuleius *de officio proconsulis* (BK 90-91) were not read with Ulpian *de officio proconsulis* (BK 47) and may not have been read together.<sup>304</sup> Modestinus *de inofficioso testamento* does not seem to have been read with the monograph by Paul on the subject in the Papinian mass.<sup>305</sup>

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<sup>300</sup> Above nn.50-59.

<sup>301</sup> On my calculation 81 %: below notes 332-34.

<sup>302</sup> Honoré and Rodger (note 9), 285-314.

<sup>303</sup> Above notes 261-65.

<sup>304</sup> Mantovani (note 4) 93.

<sup>305</sup> BK 151, 236.

In general, however, when it was desirable to read two or more works together, either jointly or in succession, and the evidence of inscriptions leaves open whether they were in fact grouped, I have assumed that they were. An example is that of commentaries on the same office, *lex* or *senatusconsultum* or the same specialised branch of the law. Thus the BK Ordo puts in succession in the Sabinian mass Paul's 3 and Ulpian's 4 books *ad legem Aeliam Sentiam*.<sup>306</sup> In the edictal mass we have Menander and Paternus' 4 books *de re militari*.<sup>307</sup> The Papinian mass has Paul's and Gaius' monographs on the *sc. Tertullianum* and *sc. Orfitianum*, each pair of which should have been read together,<sup>308</sup> as in the case of the same authors' works on secret trusts (*tacit fideicommissa*),<sup>309</sup> and Paul and Marcianus on the *SC Turpillianum*.<sup>310</sup>

Works of the same genre are not grouped together to the same extent as those belonging to subject-groups. It was not essential, for example, to gather together all *regulae* or *quaestiones*. Though these genres had enough in common to be worth reading alongside one another their subject-matter was variable and could range across large areas of the law. I have treated Gaius on the Twelve Tables<sup>311</sup> and Pomponius' *enchiridia*<sup>312</sup> works concerned with legal history, as a group of this sort.

Groups normally begin with the most important or longest work. Thirty-four groups appear to satisfy the criteria set out. The Labeo *posteriora* group (BK 94,265) is not included, since it probably consists wholly or in part of works that arrived late and were put at the end of the Sabinian mass, to which they were assigned. The military law group (BK 171-172) in the edictal mass is included, although it is possible that it also consists of late arrivals.

#### (a) Groups in the Sabinian mass

In this mass eleven groups can be detected:-

- (i) *ad Sabinum* group (BK 1-3) 103 books (Ulpian 51, Pomponius 36, Paul 16).
- (ii) middle edictal commentaries group<sup>313</sup> (BK 4-9, 112-123) 80 books (Ulpian 30, Paul ed. 25, Paul brev. 8, Gaius ed. prov.12, Gaius ed. urb. 5).
- (iii) Ulpian "ten book group" (BK 10-11) 20 books (Ulpian 10, Ulpian 10).
- (iv) Julian group (BK 14-20) 125 books (Julian 90 + 1 + 4 + 6, Alfenus 7, Paul 8, Africanus 9).

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<sup>306</sup> BK 70-71.

<sup>307</sup> BK 171-172.

<sup>308</sup> BK 239,240,243,244.

<sup>309</sup> BK 237, 242.

<sup>310</sup> BK 228-229.

<sup>311</sup> BK 247

<sup>312</sup> BK 248, 249.

<sup>313</sup> Before the transfer of BK 112-123 from the Sabinian to the edictal mass: above, note 9.

(v) institutional group (BK 21-27) 42 books (Florentinus 12, Marcianus 16, Ulpian 2, Gaius 7, Callistratus 3, Paul 2).

(vi) adultery group BK 28-31) 11 books (Ulpian 5, Papinian 2 + 1, Paul 3).

(vii) *regulae* group (BK 36-46, 59?) 44 books (Neratius 15, Ulpian 7 +1 + 2, Scaevola 4, Paul 7 +1, Marcianus 5, Pomponius 1, Marcellus 1?)

(viii) *iudicia publica* group (BK 52-56) 22 books (Macer 2, Venuleius 3, Paul 1, Marcianus 2, Maecianus 14)

(ix) *formula hypothecaria* group (BK 57-58) 2 books (Marcianus 1, Gaius 1)

(x) appeals group (BK 64-66) 9 books (Ulpian 4, Macer 2, Marcianus, Paul 1).

(xi) *lex Aelia Sentia* group (BK 70-71) 7 books (Paul 3 Ulpian 4).

I have omitted Ulpian's 6 books of *opiniones* and *de censibus* (BK 12-13), which might, like (iii) above, be considered a group based on authorship and numerical equality. Mantovani would however place *de censibus* between the *iudicia publica* group and the end of the Sabinian mass.<sup>314</sup> The possible 'office of proconsul' group at BK 90-91 is also omitted, since the precise location of these works of Paul and Venuleius in the Sabinian mass is uncertain,<sup>315</sup> and they are not grouped with Ulpian's major work on that topic.<sup>316</sup> In all 465 books are included in these eleven Sabinian groups, of which 234 (all except iii, iv, v and vii) are grouped by subject-matter, 145 mainly by authorship (iii and iv) and 86 (v,vii) by genre. The larger groups come at the beginning of the mass, the smaller ones later, and the mass, as originally conceived, ends mostly with short works, especially *libri singulares*. The total number of books initially allocated to the Sabinian mass can be estimated in the following way. From the total of 546 embodied in our earlier study<sup>317</sup> subtract the last four books of Gaius' *res cottidianae*,<sup>318</sup> of which Tribonian had available only an epitome of 3 books,<sup>319</sup> Iavolenus' 10 *ex posterioribus Labeonis*, which was probably a late arrival,<sup>320</sup> and 4 of the *libri singulares* (Paul 2, Ulpian 1, Maecianus 1) that Mantovani regards as of uncertain mass.<sup>321</sup> To the remaining 528 books add 13 *libri singulares* of Paul to make up his notional total of 30 such books in this mass, and restore Ulpian's *de*

<sup>314</sup> Mantovani (note.4), 90.

<sup>315</sup> Mantovani (note 4), 93.

<sup>316</sup> BK 47 (Ulp. 10 off. proc.).

<sup>317</sup> Honoré & Rodger (note 9), 295.

<sup>318</sup> BK 24.

<sup>319</sup> Schulz (note 253), 167-68..

<sup>320</sup> Honoré (note 10) nn.62-72.

<sup>321</sup> Mantovani (note 4), 91-93 lists Paul 1 *de iur. patron.*, 1 *ad SC Silian.*, 1 *de SCC.*, 1 *ad SC Velleian.*, 1 *de intercess. fem.*, and 1 *ad orationem divi Severi*; Ulp. 1 *de sponsalibus*; Maecianus 1 *ex lege Rhodia*. In my view 5 of the seven *libri singulares* of Paul belong to the Sabinian mass: above, notes 268-79.

*sponsalibus*,<sup>322</sup> since the Sabinian is his basic mass.<sup>323</sup> This yields an initial allocation of 542 books, of which 465 (86 %) are in groups - a high proportion. Of these 234 (43 %) are in subject-groups, 145 (27 %) in author-groups, 86 (16 %) in genre-groups.

### (b) Groups in the Papinian mass

In this mass thirteen groups can be detected:-

(xii) Papinian group (BK 180-182) 58 books (quaestiones 37, responsa 19, definitiones 2).

(xiii) *quaestiones* group (BK 183-184) 48 books (Paul 26 Scaevola 20 Callistratus 2).

(xiv) *responsa* group (BK 186-193) 29 books (Paul 23, Scaevola 6).

(xv) *fideicommissa* group (BK 194-204) 39 books (Valens 7, Ulpian 6, Maecianus 16, Gaius 2, Paul 3, Pomponius 5).

(xvi) *sententiae-iuris epitomae* group (BK 205-214) 11 books (Paul 5, Hermogenianus 6).

(xvii) Neratius *responsa* group (BK 217-218) 7 books (Neratius 3, Paul 4).

(xviii) Tryphoninus group (BK 219-222) 27 books (Tryphoninus 21 Paul 6).

(xix) SC Turpillianum group (BK 228,229) 2 books (Paul 1 Marcianus 1).

(xx) *tacita fideicommissa* group (BK 237,242) 2 books (Paul 1 Gaius 1)

(xxi) SC Tertullianum group (BK 239,243) 2 books (Paul 1 Gaius 1).

(xxii) SC Orfitianum group (BK 240,244) 2 books (Paul 1 Gaius 1).

(xxiii) historical group (BK 247-249) 9 books (Gaius 6 Pomponius 3).

(xxiv) *praefectus vigilum* group (BK 256-257) 2 books (Paul 1 Ulpian 1)..

In all 238 books fall in these thirteen groups. As before the larger groups come first, the smaller later, and the mass ends with a number of short works, mainly *libri singulares*. The total of

<sup>322</sup> BK 32; above, notes 74-80.

<sup>323</sup> Above, notes 58-84.n.60-86.

books in the Papinian mass, excluding the Appendix, which is not part of it,<sup>324</sup> may be estimated as follows. From the 291 listed in our earlier study<sup>325</sup> subtract 11 of the *libri singulares* (Paul 5,

Ulpian 3, Arcadius 2<sup>326</sup> whose mass is doubted by Mantovani.<sup>327</sup> Add, however, 13 *libri singulares* of Paul to make up the total of 30 notionally assigned to each of the Sabinian and Papinian masses. One *liber singularis* of Papinian should be added, assuming it belongs to this mass rather than the Appendix.<sup>328</sup> The revised total is therefore 294 books. The 238 grouped works amount to 81% of this total, the 97 in genre-groups (xiii,xiv,xvi,xxiii) to 33%, the 85 in author-groups (xii,xviii) to 29%, and the 56 in subject-groups (xv,xvii,xix,xx,xxi,xxii, xxiv) to 19%. The tendency to group works by subject-matter is less in the Papinian than in the Sabinian mass. This is because the Papinian mass has a higher proportion of case-law collections such as *quaestiones* and *responsa*..

### (c) Groups in the edictal mass

This mass yields 10 groups:-

(xxv) early edictal commentaries group (BK 95-100) 68 ½ books (Ulpian 25, Paul 27 + 5, Gaius 8 ½ +1, Callistratus 2).

(xxvi) later edictal commentaries group (BK 101-107) 73 ½ books (Ulpian 26, Paul 26 + 10?, Gaius 9 ½ + 2)

(xxvii) edict of the curule aediles group (BK 108-110) 6 books (Ulpian 2, Paul 2, Gaius 2).

(xxviii) transferred edictal commentaries group (BK 112-123) 12 books (Ulpian 3 ½. Paul 4 ½, Gaius 4).

(xxix) commentaries *ad Plautium* group (BK 124-131) 30 books (Paul 18, Iavolenus 5, Pomponius 7).

(xxx) Celsus-Marcellus group (BK 134-135) 70 books (Celsus 39, Marcellus 31).

<sup>324</sup> Mantovani (note 4) 112; Osler (note 115), 144-6; Honoré (note 10) nn.49-104) contra Bluhme (note 1) 309-10 [= *Labeo*, 6(1960), 73-74].

<sup>325</sup> Honoré & Rodger (note 9) 314.

<sup>326</sup> Mantovani (note 4) 99-101, doubts Paul 1 *de poenis omnium legum*, 1 *ad regulam Catonianam*, 1 *de inofficioso testamento*, 1 *de tacitis fideicommissis*, 1 *de instrumenti significatione*, 1 *de gradibus et adfinibus*, 1 *de officio praefecti urbi*; Ulpian 1 *officio praefecti vigilum*, 1 *officio praefecti urbi*, 1 *officio quaestoris*; Arcadius 1 *de muneribus civilibus*, 1 *de officio praefecti praetorio*, Marcianus 1 *ad SC Turpillianum*, and Gaius 1 *regularum*. In my view two of these seven *libri singulares* of Paul, one of Ulpian and those of Gaius and Marcianus belong to the Papinian mass: above nn.160-1, 280-87, 323-24.

<sup>327</sup> Above, n.5.

<sup>328</sup> ἀστυνομικός; above, note 7.

(xxxix) Modestinus group (BK 136-144, 146-151 + Index XXXI 10-11) 70 books (Modestinus 63 +2, Ulpian 2 +3).

(xxxix) Iavolenus group (BK 152-153) 29 books (Iavolenus 15 + 14).

(xxxix) commentaries *ad legem Iuliam et Papiam* group (BK 162-167) 77 books (Ulpian 20, Paul 10, Clemens 20, Gaius 15, Mauricianus 6, Marcellus 6).

(xxxix) military law group (BK 171-172) 8 books (Menander 4 Tarrutienus 4).

In this mass the size of the groups does not decline as the reading progresses. Five of the eight groups in the edictal mass comprise between 65 and 77 books, so that group size remains steady. The total number of grouped books is 429. Our earlier estimate of the total for the mass was 573,<sup>329</sup> from which should be deducted 12 books of edictal commentary transferred from the Sabinian mass and 12 of those (Papinian 1, Modestinus 2, Callistratus 4, Paul 3, Gallus 1, Aquila 1) whose mass is doubted by Mantovani.<sup>330</sup> However Modestinus' *2 libri singulares* can be restored to the edictal mass in view of the fact that it is Modestinus' basic mass; and two more of his *libri singulares* from the *Index auctorum* can be added to group (xxxix).<sup>331</sup> The case for adding 3 books of Ulpian *de officio consulis* to this group was argued earlier.<sup>332</sup> Taking the initial mass total, then, as 556 books, the grouped books form 77 % of the mass. Those in subject-groups (xxv,xxvi,xxvi,xxvii,xxviii,xix,xxxiii,xxxix) come to 263 books (47%), those in author-groups (xxxix,xxxix) to 96 (18%) and those in genre-groups (xxx) to 70 (13%).

Combining the figures for the three masses, the initial assignment of 1,394 books consists of 1132 arranged in groups (465 Sabinian, 238 Papinian, 429 edictal). Of these 553 are grouped according to subject-matter (Sabinian 234, Papinian 56, edictal 263), 326 according to authorship (Sabinian 145, Papinian 85, edictal 96) and 253 according to genre (Sabinian 86, Papinian 97, edictal 70). Some 262 books are unattached. Of the total 81 % are in groups, 40 % grouped by subject-matter, 23% by authorship, and 18% by genre. The remaining 19% are unattached.

Some 20 books of dubious mass<sup>333</sup> need to be added to these figures and distributed between the individual masses.<sup>334</sup> As between the three committees, the general picture is that of a roughly

<sup>329</sup> Honoré & Rodger (note 9), 306.

<sup>330</sup> Mantovani (note 4), 94-97.

<sup>331</sup> Above, notes 175-77.

<sup>332</sup> Above, notes 25,80,182-4.

<sup>333</sup> Mantovani (note 4) 90-103 but see notes 6, 7, 322-23, above. Those of indeterminate mass that remain are: Paul 2 *de censibus.*, 1 *de senatusconsultis*, 1 *ad legem Cinciam*, 1 *de poenis omnium legum*, 1 *ad regulam Catonianam.*, 1 *de inofficioso testamento*, 1 *de gradibus et adfinibus*, 1 *de officio praefecti urbi*; Callistratus 4 *de iure fisci*; Ulpian 1 *de officio praefecti urbi*, 1 *de officio quaestoris*; Arcadius 1 *de muneribus*, 1 *de officio praefecti praetorio*; Aquila 1 *responsorum*; Gallus 1 *de verborum significatione*; Maecianus 1 *ex lege Rhodia*.

<sup>334</sup> The Appendix of works not initially assigned to one of the committees comes to 110 books, to which must be added two each from Labeo's *posteriora* and Scaevola's *digesta* read by the

equal number of books to be read by the Sabinian and edictal committees (542 and 556 respectively) and little more than half that number (294) by the Papinian committee.

(d) Leading works.

Reading and excerpting works in groups related by subject-matter is more effective if one of them is taken as the leading work, so that it forms the basis of the excerpts to be taken. It can be supplemented by excerpts from other works on the same subject. It was an important decision, and one that only Tribonian could have taken, to treat Ulpian as the leading author for the Digest as a whole.<sup>335</sup> If we look at the 18 groups related by subject-matter and listed above<sup>336</sup> Ulpian is the leading author in nine of them, including the most important: the commentaries *ad Sabinum* (i), all the groups of commentary *ad edictum* (ii,xxv,xxvi, xxvii,xxviii), the appeals group (x), the commentaries *ad legem Iuliam et Papiam* (xxxiii) and probably, despite appearances, the *fideicommissa* group (xv).<sup>337</sup> Paul is the lead author in seven: one is substantial, the *ad Plautium* group in the edictal mass (xxix). The other six groups are small, the *lex Aelia Sentia* in the Sabinian mass (xi), and five groups of 2 books each in the Papinian mass (xix,xx,xxi,xxii,xxiv). His role is important but not comparable in scale to that of Ulpian. Ulpian leads groups amounting to 479 books, Paul to 58. Papinian rather than Ulpian may be the lead author in the adultery group (vi). Macer heads *iudicia publica* (viii), Menander military law (xxxii), Neratius his *responsa* group (xvii) and either Gaius or Marcianus the *formula hypothecaria* group (ix).

The author-groups are naturally headed by their respective authors: Ulpian (iii), Julian (iv), Papinian (xii), Tryphoninus (xviii), Modestinus (xxix), Iavolenus (xxx). The genre-groups have a variety of leaders. Florentinus heads the institutional group (v), Neratius the *regulae* group (vii) in the Sabinian mass. Paul heads the *quaestiones*, *responsa* and *sententiae-iuris epitomae* groups (xiii,xiv,xvi) in the Papinian mass, Gaius the legal history group in that mass (xxii). Celsus leads the Celsus-Marcellus *digesta* group (xxviii) in the edictal mass. In groups of this type Paul is the most prominent author. He heads groups amounting to 88 books.

(e) Unattached works

The 19% of unattached works consist of those that do not appear to belong to a group constituted by subject-matter, authorship or genre. They include the codal sequences in the Sabinian and Papinian masses that consist largely of *libri singulares*. In the original BK Ordo *libri singulares* or shortish works, mainly by Gaius, Ulpian and especially Paul, ran in the Sabinian mass between BK 68 and 89 and in the Papinian mass between BK 224 and 244 and from 249 to 262. Even if some of these works are of indeterminate mass,<sup>338</sup> and a few belong to subject-groups,<sup>339</sup> long sequences of *libri singulares* remain, including some grouped by subject-matter. Thus,

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Sabinian and Papinian committees respectively at the end of their initial masses: Honoré (note 10) nn.61-98.

<sup>335</sup> Above, notes 82-84.

<sup>336</sup> Above, notes 312-34.

<sup>337</sup> Mantovani (note 4) 98.

<sup>338</sup> Above note 333.

<sup>339</sup> Above notes 323-24.

there are at least 10 *libri singulares* of Paul,<sup>340</sup> three of Ulpian<sup>341</sup> and one of Rutilius Maximus<sup>342</sup> between BK 68 and 89. There are at least thirteen *libri* of Paul,<sup>343</sup> three of Gaius,<sup>344</sup> and one of Marcianus<sup>345</sup> between BK 224 and 244, and 6 of Paul<sup>346</sup> and 1 of Ulpian<sup>347</sup> between BK 249 and 262. The plan was to place minor works at the end of the Sabinian and Papinian masses. It is true that the *posteriora* of Labeo end the Sabinian mass, but this work was probably a late arrival, not part of the original assignment.<sup>348</sup>

On the other hand the edictal mass ends with an assortment of unattached works by a variety of authors, many represented by only one work. Does this coda to the edictal mass possess a structure? After the group *ad legem Iuliam et Papiam* (BK 162-167) we have, apart from two *libri singulares* that are clearly in the wrong mass,<sup>349</sup> 49 or 50 books in the last part of the edictal mass beginning at BK 168, omitting BK 169 and 170<sup>350</sup> and proceeding from BK 171 to 179 (Macer 2,<sup>351</sup> Menander 4, Tarrutienus Paternus 4, Tertullian 1, Modestinus 4, Rufinus 12 or 13, Callistratus 2, Papirius Iustus 20). This sequence includes the subject-group on military law by Menander and Tarrutienus, since in both cases their only surviving work was on military law. That makes 49 or 50 books, perhaps two more, since it is possible that Aelius Gallus and Iulius Aquila also belong here.<sup>352</sup> Like Menander, Papirius, Paternus and Rufinus they are one-work authors. The grouping, if any, was not by subject-matter, authorship, or genre, except in the sense that a number of one-work authors were grouped together. The Modestinus work does not fit this pattern, but given that his *de poenis* (between BK 165 and 177) is detached from the rest

<sup>340</sup> Paul 1 *ad legem Fufiam Caniniam*, 1 *de libertatibus dandis*, 1 *de liberali causa*, 1 *de iure codicillorum*, 1 *de centumviralibus iudiciis*, 1 *de adulteriis*, 1 *ad orationem divi Antonini et Commodi*, 1 *ad orationem divi Severi*, 1 *de variis lectionibus*, 1 *de poenis militum*.

<sup>341</sup> Ulpian 1 *pandectarum*, 1 *de officio curatoris reipublicae*, 1 *de officio consularium* (BK 85, 88, 89).

<sup>342</sup> Rutilius 1 *ad legem Falcidiam* (BK 68)

<sup>343</sup> Paul 1 *de cognitionibus*, 1 *de concurrentibus actionibus*, 1 *de usuris*, 1 *ad SC Turpillianum*, 1 *ad SC Libonianum*, *ad SC Claudianum*, 1 *de poenis paganorum*, 1 *de forma testamenti*, 1 *de tacitis fideicommissis*, 1 *de instrumenti significatione*, 1 *ad SC Tertullianum*, 1 *ad SC Orfitianum*, 1 *ad legem Falcidiam* (BK 225, 226, 227, 228, 230, 231, 233, 235, 237, 238, 239, 240, 241) Mantovani (note 4) 99-100.

<sup>344</sup> Gaius 1 *de tacitis fideicommissis*, 1 *ad SC Tertullianum*; 1 *ad SC Orfitianum* (BK 242, 243, 244); Mantovani (note 4) 100.

<sup>345</sup> Marcianus 1 *ad SC Turpillianum*; (BK 229); above note 310.

<sup>346</sup> Paul 1 *de iure libellorum*, 1 *de articulis liberalis causae*, 1 *de iuris et facti ignorantia*, 1 *de iure singulari*, 1 *de officio adsectorum*, 1 *de officio praefecti vigilum* (BK 250, 251, 252, 253, 255, 256); Mantovani (note 4) 101.

<sup>347</sup> Ulpian 1 *de officio praefecti vigilum* (BK 257); above notes 323-24.

<sup>348</sup> Honoré (above n.10 ) nn.62-72.

<sup>349</sup> Gaius 1 *ad legem Glitiam*(BK 169); Paul 1 *ad legem Cinciam* (BK 170); above nn.157-161, 260.

<sup>350</sup> Above, note 349.

<sup>351</sup> BK 168; above notes 108-111.

<sup>352</sup> Above, notes 232-36

of his works, which come in the earlier sequence BK 137-151, it would not be surprising if it was a late arrival.

A number of unattached works come earlier in the Sabinian and Papinian masses. In the Sabinian mass Paul *de dotis repetitione*<sup>353</sup> comes between the Julian group and Paul *de adsignatione libertorum*.<sup>354</sup> Paul *de adsignatione libertorum*, in turn, comes before Ulpian *de officio proconsulis*.<sup>355</sup> Paul *de portionibus quae liberis damnatorum conceduntur* and *de conceptione formularum*<sup>356</sup> come between the *regulae* group<sup>357</sup> and *iudicia publica*.<sup>358</sup> These insertions cannot be explained by subject-matter, authorship or genre. The explanation rests either with numerical balance,<sup>359</sup> or with filling a gap when one senior commissioner was waiting for a colleague to catch up and embark on the next group of works. If the 60 *libri singulares* of Paul were fairly evenly distributed between the Sabinian and Papinian masses, as seems likely,<sup>360</sup> these committees could have been free to insert one or more of these *libri* between groups in order not to waste time.

In the Papinian mass a similar insertion can be noted. Gaius *liber singularis de casibus*<sup>361</sup> is inserted between the *sententiae-iuris epitomae* group<sup>362</sup> and the Neratius *responsa* group.<sup>363</sup> Since the Papinian is Gaius' basic mass,<sup>364</sup> the Papinian committee may have been free to insert one of his *libri singulares* at a convenient point in their reading to avoid a gap or make up a numerical balance between the 5 books of Paul and the 6 of Hermogenianus in the *sententiae-iuris epitomae* group.

The edictal mass is different in that it contains no sequence of *libri singulares* and no unattached *libri singulares* whose position in the mass has been confirmed.<sup>365</sup> It consists rather, up to the commentaries *ad legem Iuliam et Papiam*, of a series of groups with no intermediate works other than Paul 4 *ad Vitellium* and 2 *de iure fisci*, between the group *ad Plautium* and the Celsus-Marcellus *digesta* group, and Ulpian 3 *de officio consulis*, between the Celsus-Marcellus *digesta* group and the Modestinus works. In both these cases I have argued that the explanation is numerical. These unrelated works were added at the end of one group and the beginning of another to make up an even number of books conveniently divisible between two

<sup>353</sup> BK 33; Mantovani (note 4), 91.

<sup>354</sup> BK 34; Mantovani (note 4), 91.

<sup>355</sup> BK 47.

<sup>356</sup> BK 49, 51; Mantovani (note 4) 91.

<sup>357</sup> BK 36-46.

<sup>358</sup> BK 52-56.

<sup>359</sup> Above, notes 22-26, 56-57, 80-84, 180-84, 294-95.

<sup>360</sup> Above, notes 249-287.

<sup>361</sup> BK 215; Mantovani (note 4) 99.

<sup>362</sup> BK 206-214.

<sup>363</sup> BK 217-218.

<sup>364</sup> Above, notes 113-33.

<sup>365</sup> Papinian 1 *αστυνομικος*, Gaius 1 *ad legem Glitiam* and Paul 1 *ad legem Cinciam* (BK 111, 169, 170) are of uncertain mass (Mantovani (note 4) 94, 97) and should go in the Papinian mass (Papinian and Gaius) or in the Sabinian or Papinian mass (Paul).

commissioners.<sup>366</sup> But how are we to explain the sequence of works between the Iavolenus group (BK 152-153) and the commentaries *ad legem Iuliam et Papiam* (BK 162-167)? The sequence begins with Pomponius' 39 books *ad Quintum Mucium* and includes his 15 books *variarum lectionum* besides Proculus' 11 books of *epistulae*, Callistratus' 6 *de cognitionibus* and Tertullian's 8 books of *quaestiones*. Mantovani considers Callistratus' 4 books *de iure fisci* and Paul's 2 *de censibus* (BK158-159) to be of uncertain mass.<sup>367</sup> The sequence cannot exactly be described as a Pomponius group, though his works dominate it and so justify treating the edictal mass as his basic mass. The various works in this group, if it is a group, are not related by subject-matter or genre. It is tempting to think of a numerical pattern by which, disregarding the works of uncertain mass,<sup>368</sup> the 39 books of Pomponius *ad Quintum Mucium* balance the 40 following books by him and others.

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<sup>366</sup> Honoré (note 2) 39-40; above notes 180-84.

<sup>367</sup> Mantovani (note 4) 96.

<sup>368</sup> The unattached Paul 2 *de censibus* of which we have only one text at the end of the title *de censibus*, is not likely to belong in the edictal mass. It should have been and perhaps was in a subject-group with Ulpian *de censibus* in the Sabinian mass.

#### IV. CONCLUSION

The thrust of this essay has been to show that the distribution by Tribonian of authors and works to the three Digest masses and the consolidation of four-fifths or more of the books in groups within the masses formed part of a coherent and sophisticated scheme. The scheme was designed to ensure that the best texts were selected for inclusion in the Digest and that the work proceeded quickly, thus giving effect to the instruction in C. Deo auctore 14 to the commissioners charged with the Digest project: *tam suptili quam celerrimo fine tradere*.

#### **Bluhme-Krueger Ordo Librorum Iuris Veteris in Compilandis Digestis Observatus (updated in the light of modern scholarship)**

Krueger's numbering of the works, in italics, is retained in the interests of convenience. Authors' names are given in the nominative case.

*Abbreviations*


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A = group based on authorship  
 S = group based on subject-matter  
 G = group based on literary genre  
 N = work added or inserted to achieve numerical balance  
 Sab. = Sabinian mass  
 ed. = edictal mass  
 Pap. = Papinian mass  
 App. = Appedix  
 ID = mass impossible to determine

**IA** = Index auctorum  
**H** = according to Honoré  
**M** = according to Mantovani  
**O** = according to Osler

**Sabinian mass**

(i) *ad Sabinum group. S.*

1. Ulpianus 51 ad Sabinum
2. Pomponius 36 ad Sabinum
3. Paulus 16 ad Sabinum

(ii) *middle edictal commentaries group. S.*

4. Ulpianus. 81 ad edictum lib.26-51 init.
5. Paulus 78 ad edictum lib. 28-48 init.
6. Paulus 23 brevium lib. 6-8
7. Gaius 30 ad edictum provinciale lib.9-18
8. Gaius ad edictum urbanum 2 lib. de testamentis
9. Gaius ad edictum urbanum 3 lib. de legatis

(iii) *Ulpian group. A.*

10. Ulpianus 9 disputationum
11. Ulpianus 10 de omnibus tribunalibus

*Unattached*

12. Ulpianus 6 opinionum.
13. Ulpianus 6 de censibus (position in mass doubted by **M**).

*(iv) Julian group. A.*

- 14. Iulianus 90 digestorum
- 15. Alfenus Varus 7 dig (IA 40 dig).
- 16. Paulus 8 epitomarum Alfeni digestorum.
- 17. Iulianus de ambiguitatibus
- 18. Iulianus 4 ad Urseium Ferozem
- 19. Iulianus 6 ex Minicio
- 20. Africanus 9 quaestionum.

*(v) institutional group. G.*

- 21. Florentinus 12 institutionum
- 22. Marcianus 16 institutionum
- 23. Ulpianus 2 institutionum
- 24. Gaius 3 rerum cottidianarum (**IA** 7 rer. cott.)
- 25. Gaius 4 institutionum
- 26. Callistratus 3 institutionum
- 27. Paulus institutionum

*(vi) adultery group. S.*

- 28. Ulpianus 5 de adulteriis
- 29. Papinianus 2 de adulteriis
- 30. Papinianus 1 de adulteriis
- 31. Paulus 3 de adulteriis.

*Unattached*

- 32. Ulpianus 1 de sponsalibus (ID, **M**; Sab., **H**)
- 33. Paulus 1 de dotis repetitione
- 34. Paulus de adsignatione libertorum
- 35. Paulus 1 de iure patronatus (ID, **M**; Sab., **H**).

*(vii) regulae group. G.*

- 36. Neratius 15 regularum
- 37. Ulpianus 7 regularum
- 38. Scaevola 4 regularum
- 39. Paulus 1 regularum
- 40. Marcianus 5 regularum lib.1-2
- 41. Ulpianus 2 responsorum
- 42. Marcianus 5 regularum lib.3-4
- 43. Paulus 7 regularum
- 44. Marcianus 5 regularum lib.5
- 45. Pomponius 1 regularum
- 46. Ulpianus 1 regularum
- 46 *bis* (from Krueger 59)? Marcellus 1 responsorum (repositioned, **M**; N, **H**)

*Unattached*

- 47. Ulpianus 10 de officio proconsulis

- 48. Paulus 1 ad SC Silanianum (ID, **M**; Sab., **H**)
- 49. Paulus 1 de portionibus quae liberis damnatorum conceduntur
- 50. Paulus ad legem Iuniam
- 51. Paulus 1 de conceptione formularum

(viii) *iudicia publica group. S.*

- 52. Macer 2 publicorum iudiciorum
- 53. Venuleius 3 de iudiciis publicis
- 54. Paulus 1 de iudiciis publicis
- 55. Marcianus 2 de iudiciis publicis
- 56. Maecianus 14 de iudiciis publicis

(ix) *formula hypothecaria group. S.*

- 57. Marcianus 1 ad formulam hypothecariam
- 58. Gaius 1 de formula hypothecaria

*Unattached*

- 59. Marcellus 1 responsorum (to 46 bis.)
- 60. Neratius 7 membranarum
- 61. Macer 2 de officio praesidis
- 62. Arcadius Charisius 1 de testibus
- 63. Marcianus 1 de delatoribus

(x) *appeals group. S.*

- 64. Ulpianus 4 de appellationibus
- 65. Macer 2 de appellationibus
- 66. Marcianus 2 de appellationibus
- 67. Paulus 1 de appellationibus

*Unattached*

- 68. Rutilius 1 ad legem Falcidiam.
- 69. Paulus 1 ad legem Fufiam Caniniam

(xi) *lex Aelia Sentia group. S.*

- 69. Paulus 3 ad legem Aeliam Sentiam
- 70. Ulpianus 4 ad legem Aeliam Sentiam.

*Unattached*

- 72. Paulus 1 de libertatibus dandis
- 73. Paulus 1 de liberali causa
- 74. Paulus 1 de secundis tabulis
- 75. Paulus 1 de iure codicillorum
- 76. Paulus 1 de centumviralibus iudiciis
- 77. Paulus 1 de adulteriis
- 78. Paulus 1 de senatusconsultis (ID, **M**; S or P, **H**).
- 79. Paulus 1 ad SC Velleianum (ID, **M**; S or P, **H**).

- 80. Paulus 1 de intercessionibus feminarum (ID, **M**; S or P, **H**)
- 81. Paulus 1 ad orationem divi Antonini et Commodi
- 82. Paulus 1 de excusationibus tutelarum (ID, **M**; S or P, **H**)
- 83. Paulus ad orationem divi Severi (ID, **M**; S or P, **H**)
- 84. Paulus 1 de variis lectionibus
- 85. Ulpianus 1 pandectarum
- 86. Macer 2 de re militari
- 87. Paulus 1 de poenis militum
- 88. Ulpianus 1 de officio curatoris reipublicae
- 89. Ulpianus 1 de officio consularium
- 90. Paulus 2 de officio consulis
- 91. Venuelius Saturninus 4 de officio proconsulis
- 92. Claudius Saturninus 1 de poenis paganorum
- 93. Volusius Maecianus 1 ex lege Rhodia. (ID, **M**)

*Group probably formed from late arrivals. S.*

93 bis (from 265). Labeo 10 posteriorum a Iavoleno epitomatorum lib.1-2 init.(for later books see 265.

94. Iavolenus 10 ex posterioribus Labeonis lib.1-2 init.(for later books see 265 bis)

### **Papinian mass**

(xii) *Papinian group. A.*

- 180. Papinianus 37 quaestionum
- 181. Papinianus 19 responsorum
- 182. Papinianus 2 definitionum

(xiii) *quaestiones group. G.*

- 183. Paulus 26 quaestionum
- 184. Scaevola 20 quaestionum
- 185. Callistratus 2 quaestionum

(xiv) *responsa group. G.*

- 186. Paulus 23 responsorum lib.1-7
- 187. Scaevola 6 responsorum lib.1
- 188. Paulus 23 responsorum lib.8-15
- 189. Scaevola 6 responsorum lib.2-4
- 190. Paulus 23 responsorum lib.16-19
- 191. Scaevola 6 responsorum lib.5
- 192. Paulus 23 responsorum lib.20-23
- 193. Scaevola 6 responsorum lib.6

(xv) *fideicommissa group. S.*

- 195. Ulpianus 6 fideicommissorum lib. 1-4
- 194. Valens 7 fideicommissorum lib. 1-4
- 196. Maecianus 16 fideicommissorum lib. 1-8

197. Gaius 2 fideicommissorum  
 198. Paulus 3 fideicommissorum lib.1-2  
 199. Pomponius 5 fideicommissorum lib.1-2  
 203. Ulpianus 6 fideicommissorum lib.5-6  
 200. Maecianus 16 fideicommissorum lib.9-16  
 201. Valnes 7 fideicommissorum lib.5-7  
 202. Pomponius 5 fideicommissorum lib.3-5  
 204. Paulus 3 fideicommissorum lib.3

(xvi) *sententiae-iuris epitomae group. G.*

205. Paulus 5 sententiarum lib.1 init.  
 206. Hermogenianus 6 iuris epitomarum lib.1  
 207. Paulus 5 sententiarum lib.1 fin- 2  
 208. Hermogenianus 6 iuris epitomarum lib.2  
 209. Paulus 5 sententiarum lib.3  
 210. Hermogenianus 6 iuris epitomarum lib.3  
 211. Paulus 5 sententiarum lib.4  
 212. Hermogenianus 6 iuris epitomarum lib.4  
 213. Paulus 5 sententiarum lib.5  
 214. Hermogenianus 6 iuris epitomarum lib.5-6

Unattached

215. Gaius 1 de casibus  
 216. Venuleius Saturninus 19 stipulationum

(xvii) *Neratius responsa group. S.*

217. Neratius 3 responsorum  
 218. Paulus 4 ad Neratium

(xviii) *Tryphoninus group. A.*<sup>369</sup>

219. Tryphoninus 21 disputationum lib.1-12  
 220. Paulus 3 manualium  
 221. Tryphoninus 21 disputationum lib.13-21  
 222. Paulus 3 decretorum

Unattached

223. Gaius 3 regularum  
 224. Gaius 1 regularum (ID, M; P, H)  
 225. Paulus 1 de cognitionibus  
 226. Paulus 1 de concurrentibus actionibus  
 227. Paulus 1 de usuris

(xix) *SC Turpillianum group S.*

228. Paulus 1 ad SC Turpillianum  
 229. Marcianus ad SC Turpillianum

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<sup>369</sup> According to M 219-222 form a group of works read together, whose exact arrangement cannot be reconstructed.

Unattached

- 230. Paulus 1 ad SC Libonianum
- 231. Paulus 1 ad SC Claudianum
- 232. Paulus 1 de poenis omnium legum (ID, **M**; S or P, **H**)
- 233. Paulus 1 de poenis paganorum
- 234. Paulus 1 ad regulam Catonianam (ID, **M**; S or P, **H**)
- 235. Paulus 1 de forma testamenti
- 236. Paulus 1 de inofficioso testamento (ID, **M**; S or P, **H**)

(xx) *tacita fideicommissa group*. S.

- 237. Paulus 1 de tacitis fideicommissis (ID, **M**; P, **H**)
- 242. Gaius 1 de tacitis fideicommissis

Unattached

- 238. Paulus 1 de instrumenti significatione (ID, **M**; P, **H**)
- 241. Paulus 1 ad legem Falcidiam

(xxii) *SC Trebellianum group*. S.

- 239. Paulus 1 ad SC Tertullianum
- 243. Gaius 1 ad SC Tertullianum

(xxiii) *SC Orfitianum group*. S.

- 240. Paulus 1 ad SC Orfitianum
- 244. Gaius 1 ad SC Orfitianum

Unattached

- 245. Gaius 3 de manumissionibus
- 246. Gaius 3 de verborum obligationibus

(xxiv) *historical group*. G.

- 247. Gaius 6 ad legem XII tabularum
- 248. Pomponius 2 enchiridii
- 249. Pomponius 1 enchiridii

Unattached

- 250. Paulus 1 de iure libellorum
- 251. Paulus 1 de articulis liberalis causae
- 252. Paulus 1 de iuris et facti ignorantia
- 253. Paulus 1 de iure singulari
- 254. Paulus 1 de gradibus et adfinibus et nominibus eorum (ID, **M**; S or P, **H**)
- 255. Paulus 1 de officio adsectorum

(xxv) *praefectus vigilum group*. S.

- 256. Paulus 1 de officio praefecti vigilum
- 257. Ulpianus 1 de officio praefecti vigilum

Unattached

258. Ulpianus 1 de officio praefecti urbi (ID, **M**; S or P, **H**)  
 259. Paulus 1 de officio praefecti urbi (ID, **M**; S or P, **H**)<sup>370</sup>  
 (258 and 259 form a subject-group but whether in the Sabinian or Papinian mass is uncertain)  
 260. Arcadius Charisius 1 de muneribus civilibus (ID, **M**; S or P, **H**)  
 261. Arcadius Charisius de officio praefecti praetorio (ID, **M**; S or P, **H**)  
 262. Ulpianus 1 de officio quaestoris (ID, **M**; S or P, **H**).

### edictal mass

(xxv) *early edictal commentaries group*. S.

95. Ulpianus 81 ad edictum lib.1-25  
 96. Paulus 78 ad edictum lib.1-27  
 97. Paulus 23 brevia lib.1-5  
 98. Gaius 30 ad edictum provinciale lib.1-8, 19  
 99. Gaius ad edictum praetoris urbani lib. (9)

Unattached

100. Callistratus 4 edicti monitorii lib. 1-2 (see 176)

(xxvi) *later edictal commentaries group*. S.

101. Ulpianus 81 ad edictum lib.56-81  
 102. Paulus 78 ad edictum lib.53-78  
 103. Paulus 23 brevium lib. 16  
 104. Gaius 30 ad edictum provinciale lib.21 fin-30  
 105. Gaius ad edictum praetoris urbani tit. de praediatoribus  
 106. Gaius ad edictum praetoris urbani tit. qui neque sequantur neque ducantur  
 107. Gaius ad edictum praetoris urbani tit. de re iudicata

(xxvii) *edict of the curule aediles group*. S.

108. Ulpianus 2 ad edictum aedilium curulium  
 109. Paulus 2 ad edictum aedilium curulium  
 110. Gaius 2 ad edictum aedilium curulium

Unattached

111. Papinianus 1 αστυνομικός (ID, **M**; P or Appendix, **H**)

(xxviii) *transferred edictal commentaries group*. S.

112. Ulpianus 81 ad edictum lib. 54-55 init.  
 113. Paulus 78 ad edictum lib. 50-51  
 114. Gaius 30 ad edictum provinciale lib. 20  
 115. Gaius ad edictum praetoris urbani tit. de liberali causa  
 116. Ulpianus 81 ad edictum lib.55 fin.

<sup>370</sup> Numbers 258 and 259 form a subject-group but whether in the Sabinian or Papinian mass is uncertain.

- 117. Paulus 78 ad edictum lib. 52
- 118. Gaius ad edictum provinciale lib. 21
- 119. Gaius ad edictum praetoris urbani tit. de publicanis
- 120. Ulpianus 81 ad edictum lib.52 fin-53
- 121. Paulus 78 ad edictum lib. 48 fin.49.
- 122. Gaius ad edictum provinciale lib.19
- 123. Gaius ad edictum praetoris urbani tit. de operis novi nuntiatione, de damno infecto, de aquae pluviae arcendae

(xxix) *commentaries ad Plautium group. S.*

- 124. Paulus 18 ad Plautium lib. 1-14
- 125. Iavolenus 5 ad Plautium lib.1
- 126. Pomponius 7 ad Plautium lib.1
- 127. Iavolenus 5 ad Plautium lib.2
- 128. Pomponius 7 ad Plautium lib.2-3 (2, **H**)
- 129. Paulus 18 ad Plautium lib. 15-18
- 130. Iavolenus 5 ad Plautium lib. 3-5
- 131. Pomponius 7 ad Plautium lib.4-7 (3-7, **H**)
- 132. Paulus 4 ad Vitellium N, **H**)
- 133. Paul 2 de iure fisci (N, **H**)

(xxx) *Celsus-Marcellus digesta group. G.*

- 134. Celsus 39 digestorum
- 135. Marcellus 31 digestorum

(xxxii) *Modestinus group. A.*

- 136. Ulpianus 3 de officio consulis (N, **H**)
- 137. Modestinus 1 d manumissionibus
- 138. Modestinus 9 differentiarum
- 139. Modestinus 10 regularum
- 140. Modestinus de ritu nuptiarum
- 141. Modestinus 1 de differentia dotis
- 142. Modestinus 6 excusationum
- 143. Ulpianus 1 de officio praetoris tutelaris
- 144. Ulpianus 1 excusationum
- (142-144 forms a subject-group on excuses from tutorship within the Modestinus group)
- 145. Modestinus 4 de praescriptionibus (non-existent, the sole text so inscribed coming from his book 4 pandectarum, BK 149)
- 146. Modestinus 19 responsorum
- 147. Modestinus 1 de enucleatis casibus
- 148. Modestinus 1 de praescriptionibus
- 149. Modestinus 12 pandectarum
- 150. Modestinus 1 de heurematicis
- 151. Modestinus 1 de inofficioso testamento

(xxxii) *Iavolenus group. A.*

152. Iavolenus 15 ex Cassio  
153. Iavolenus 14 epistularum

Unattached

154. Pomponius 39 ad Quintum Mucium  
155. Proculus 11 epistularum lib. 1-6  
156. Pomponius 15 variarum lectionum  
157. Proculus 11 epistularum lib.7-11  
158. Callistratus 4 de iure fisci (ID, **M**)  
159. Paulus 2 de censibus (ID, **M**; S or P, **H**)  
160. Callistratus 6 de cognitionibus  
161. Tertullianus 8 quaestionum

(xxxiii) *commentaries on lex Iulia et Papia group. S.*

162. Ulpianus 20 ad legem Iuliam et Papiam  
163. Paulus 10 ad legem Iuliam et Papiam  
164. Terentius Clemens 20 ad legem Iuliam et Papiam  
165. Gaius 15 ad legem Iuliam et Papiam  
166. Mauricianus 6 ad legem Iuliam et Papiam  
167. Marcellus 6 ad legem Iuliam et Papiam

Unattached

168. Macer 2 ad legem vicensimam hereditatis  
169. Gaius 1 ad legem Glitiam (ID, **M**; P, **H**)  
170. Paulus 1 ad legem Cinciam (ID, **M**; S or P, **H**)

(xxxiv) *military law group. S.*

171. Arrius Menander 4 re de militari  
172. Tarrutienus Paternus 4 de re militari

Unattached

173. Tertullianus 1 de castrensi peculio  
174. Modestinus 4 de poenis  
175. Licinius Rufinus 12 or 13 regularum  
176. Callistratus 4 edicti monitorii (including lib. 1-2 from 100)  
177. Papirius Iustus 20 constitutionum  
178. Aelius Gallus 1 de verborum quae ad ius pertinent significatione  
179. Iulius Aquila 1 responsorum

## Appendix

263. Paul 2 (IA 6) imperialium sententiarum in cognitionibus prolatarum (ID, **M**; App., **H**, **O**)  
264. Quintus Mucius Scaevola 1 ὁρῶν (ID, **M**; App. **H**, **O**)  
265. Labeo 10 posteriorum a Iavoleno epitomatorum lib. 2 fin.-10

- 265 bis. Iavolenus 10 posteriorum Labeonis lib. 2 fin.-10  
266. Proculus 3 ex posterioribus Labeonis<sup>371</sup>  
267. Scaevola 40 digestorum lib. 3-40  
268. Labeo 8 πίθωνων a Paulo epitomatorum  
269. Pomponius 20 epistularum  
270. Pomponius 5 de senatusconsultis  
271. Scaevola 1 quaestionum publice tractatarum  
272. Valens 7 actionum<sup>372</sup>  
273. Venuleius Saturninus 10 actionum  
274. Venuleius Saturninus 6 de interdictis  
275. Furius Anthianus 1 (IA 5) ad edictum (ID, **M**; App., **H**)
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<sup>371</sup> Nonexistent, the sole text with th inscription IDEM referring rather to 265 bis.

<sup>372</sup> Nonexistent, the sole text so inscribed referring rather to 273.