



TONY HONORÉ AND THE JUSTINIAN'S DIGEST, CHARACTER AND COMPILATION

David PUGSLEY*

Para citar este artículo puede utilizarse el siguiente formato:

David Pugsley (2014): "Tony Honoré and the Justinian's Digest, Character and Compilation", en *Revista europea de historia de las ideas políticas y de las instituciones públicas*, nº 8 (diciembre 2014). Puede leerse este artículo en línea en el siguiente sitio: <http://www.eumed.net/rev/rehipip/08/honore.html>.

RESUMEN: Estudio sobre la importancia de una obra capital de uno de los mejores romanistas del siglo XX, el professor de la Universidad de Oxford Tony Honoré sobre el Digesto. Honoré ha escrito sobre responsabilidad y falta, sobre la obra jurídica de uno de los más grandes jurisconsultos de todos los tiempos Ulpiano, sobre Gayo, sobre Triboniano, y además ha sido miembro de muchos organismos internacionales relacionados con el Derecho romano y el Derecho comparado.

PALABRAS CLAVE: Digesto, Triboniano, Ulpiano, Tony Honoré.

RESUM: Estudi sobre l'importància dels treballs del millor romanista britànic, Tony Honoré, de la prestigiosa Universitat d'Oxford, on va donar classes de dret romà i de dret comparat europeu. Els seus llibres sobre Tribonià, Gai i Ulpià són modèlics. Més a més, Honoré va participar activament en diversos organismes internacionals de Dret comparat.

PARAULES CLAU: Digest, Tribonià, Ulpià, Tony Honoré.

Professor Tony Honoré has been writing about the compilation of Justinian's Digest since his inaugural lecture as Regius Professor of Civil Law at the University of Oxford in 1969. After a series of articles about particular topics his first thoughts were collected in *Tribonian* (1978).¹ Since his retirement he has returned to the subject, and after another series of articles about particular topics his second thoughts have been collected in *Justinian's Digest: Character and Compilation*, Oxford University Press, 2010, 150 pp + 88 pp., with addenda, bibliography and index.

This book is not easy reading. As we have come to expect from Honoré it is full of details, so full that it is difficult to see the general picture. There are lots of references back to his original views on particular topics both in *Tribonian* and in individual articles, and discussion of them in the light of subsequent literature and his own further research; but there is no clear summary of his second thoughts. Let us try to remedy this.

* Lecturer. School of Law. University of Exeter. Expertise in Roman Law, Comparative Law and History of the Western Circuit. Member of the International Faculty of Comparative Law of Strasbourg.

¹ Tony Honore, *Tribonian*, London, 1978.

1. *First thoughts (1978)*

The three committees began work immediately after *Deo Auctore* on 15 December 530 and ended about 9 July 532 (p. 142). The Papinianic compilers finished reading and excerpting the P Mass on 25 January 532, shortly after the end of the Nika riots, and then read the Appendix, which they finished on 9 July 532. "While the results probably need some amendment in detail there is no reason why the suggested dates for the excerpting of each group should be as much as a week wrong." (p. 172). The three committees then proceeded to edit the books of the Digest: the Sabinianic committee edited books 1, 4, 7, etc; the Papinianic committee edited books 2, 5, 8, etc; and the Edictal committee edited books 3, 6, 9, etc. (p. 184). They had completed the first eighteen books by 18 October 532, each committee editing two books per month, and finished in the middle of March 533. (p. 185). That left plenty of time for a final revision of the first draft and the production of enough copies before *Tanta/Dedoken* on 16 December 533, three years from the start of the excerpting. (p. 142). There is a convenient table of dates at the front (pp. vii-ix), with dates about Tribonian and the Digest in italics, and a detailed table of dates for the whole excerpting stage in Appendix One (pp. 257-286).

Those dates (apart from the beginning and the end) depend on a number of propositions: (i) that the P compilers read the Appendix; (ii) that Constantinus chaired the P committee; and (iii), for the precise calculations, that the Appendix contained 3 books, and no more, of Proculus *ex posterioribus Labeonis*, and 7 books, and no more, of Valens *actionum*.

2. *Second thoughts (2010)*

The table of dates has disappeared from the front, and all the dates have disappeared from Addendum A (pp. 151-161). Nika has disappeared from the index, though it still appears in the text (p. 40). Proculus and Valens have been excluded from the Appendix, and a number of other alterations have been made in it. (p. 161). The Appendix is no longer assigned to the P compilers (pp. 118-127), or to Constantinus (p. 127). But July 532 still appears in the text (pp. 18, 27). The three committees responsible for excerpting are no longer retained for the editorial stage (p. 108), and 18 October 532 and March 533 disappear with them. The final revision is no longer mentioned at all (Bluhme did not think there was one, 263, 352).

There remains a section on the time-table (pp. 18-22). Even if we do not know what the dates were, "there must have been a time-table, since otherwise there was no way of ensuring that the three committees proceeded in tandem and finished at the same time." (p. 20). But the simple way to ensure that everyone finished at the same time is to instruct the committee that finished first to help the others, which is probably the reason for the re-transfer of two sections of edictal commentary from the S committee to the E committee soon after the beginning of stage one. In any case there was no mention of time or a time-table in *Deo Auctore*: the instruction was simply *tam suptili quam celerrimo fini tradere*. (p. 78).

There is a long and very detailed chapter on the distribution of the authors and works to the committees. (pp. 46-78). Honoré concludes that this was all "part of a coherent and sophisticated scheme." (p. 78). But there is no apparent

overall pattern. In particular, after Julian's Digest the S committee read works grouped by content (institutions, adultery, *regulae, judicia publica*), and after the Digests of Celsus and Marcellus the E committee read works grouped by author (Modestinus, Javolenus, Pomponius). It is unlikely that that was part of a general plan. The compilers of each Mass probably decided what to read next as they went along.

There is a section on Sub-delegation? Was there a further division of work among the compilers inside each committee? (pp. 30-42). Bluhme had already considered this possibility:

„S. 16. Suchen wir nun aber nach besondern Eigenthuemlichkeiten im ersten Abschnitt des Compilationsgeschaefts, so moechte zuerst die Frage entstehen, ob die Compileren nicht etwa die Arbeit noch weiter unter sich geteilt haetten? Die Sache ist an sich gar nicht unwarscheinlich, denn fuer diese mehr vorbereitenden Maassregeln scheint ein Verein von fuenf bis sechs Personen noch immer zu zahlreich. Allein es ist sehr bedenklich, dass durchaus keine sichere Spur von einer solchen weitem Trennung zu entdecken ist, und doch wuerden wir dann gewiss einen aehnlichen Wechsel in der Zusammensetzung der kleinern Abtheilungen von Excerpten finden, wie er in der Verknuepfung der drei Hauptmassen ueberall sichtbar ist.“ (Bluhme, 339-340).²

Cp. *Tribonian*, p. 151, n.107: “Bluhme did not think the work was sub-divided within the committees,” which is not quite what Bluhme said. Honoré disagrees: “It seems that it is a feature of the principal works excerpted separately that, though groups consist largely of works related to one another in substance or authorship, we also find numerical patterns that point to the sub-division of the work of excerpting into equal or nearly equal lots.” (p. 42). “But the specific division into groups that we put forward represents only one possible way in which the works may have been divided up.” (p. 21) “We did not argue that it was the only way, though we should have made this clearer.” (p. 21, n. 93). Honoré agrees with Bluhme that sub-division would be a sensible way to speed up the work (p. 31). He adds a further argument based on the rate of excerpting. The details of the excerpting rates set out in Appendix One in 1978 have been omitted entirely in Addendum A in 2010; but they still appear in the text (pp. 33-39, 136). Honoré notes that there is a drastic drop in the excerpting rates in the last books of Julian's Digest (p. 33), Papinian's *quaestiones* (p. 35), and Scaevola's Digest (p. 39). He attributes that to a change of compiler. But there is a similar drop in the excerpting rates in the last books of the Digests of Celsus and Marcellus. Using the figures in Appendix One (1978) we can see that the excerpting rate in the first 48 books was 34; the excerpting rate in the last 22 books was 17.2; and that applied to *both* compilers. It had nothing to do with a change of compilers, and there is no reason to disagree with Bluhme.

In any case it is not clear what all these statistics about the rate of excerpting actually prove. D.1.2 contains two fragments: one from Gaius, 15 lines in Lenel's text, and one from Pomponius, 423 lines in Lenel's text. Does the second fragment take 28 times as much time as the first? Yes, for the scribe

² Friedrich Bluhme, „Die Ordnung der Fragmente in den Pandektentiteln“, in *Zeitschrift für geschichtliche Rechtswissenschaft*, vol. 4, pp. 257-472, reprinted by Keip Verlag, Goldbach, 1997.

who had to copy it out. Yes, for anyone reading it out loud. But how long did it take for the compiler selecting texts? In fact it may be quicker to select one long fragment than to spend time choosing a number of shorter fragments with a much smaller total number of lines. And the compiler who read that book of Pomponius may have been in a hurry. It was one of the last books in the P Mass, possibly the very last (D.50.16.239). He may have been in a hurry to finish. The same applies to the longest fragment in the Digest, D.38.10.10, which has 480 lines in Lenel. Bluhme places it near the end of the P Mass, though its exact position cannot be ascertained, but the excerpting compiler probably did not spend much time on it.

But the question is wider. What does the number of lines excerpted from a book prove about the time spent on reading the book as a whole, including all the lines not excerpted? Nothing. When there is no fragment at all from a book what does that prove? – that the compilers did not have a copy of that book? – that they had a copy but were in such a hurry that they glanced through it quickly and found nothing useful? – or that they had a copy and read it very carefully but still found nothing? Honoré omits the excerpting rates from Addendum A (2010). He is right to do so. But he should omit them from his text as well.

When Bluhme submitted his manuscript to Savigny, he suggested (10 August 1820)³ that Bluhme should move his First Table to the front and add an introduction summarising his theory, which of course Bluhme did. It would have been most helpful if that had also been done for this book.

<p><i>Recibido el 27 de mayo de 2014. Aceptado el 3 de enero de 2015</i></p>
--

³ *Friedrich Carl von Savigny Briefwechsel mit Friedrich Bluhme, 1820-1860*, edited by Dieter Strauch, Bonn, 1962, pp. 6-7.