MORE SIMPLE QUESTIONS ABOUT JUSTINIAN’S DIGEST

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Justinian’s Digest is one and a half times the length of the Bible and just as controversial. There is so much obscurity, so much difficulty and so much disagreement among scholars that it is difficult to know where to start to study the way in which it was compiled.

In 1995 I suggested, in the context of Bluhme’s Tables, that we should ask simple questions, often using the question: “Why?” For example: the compilers’ instructions were to follow the order of the Edict – so why did one committee start by reading the commentaries on Sabinus, which do not follow that order? I asked five simple questions about Bluhme’s Tables.¹

The same technique can usefully be applied to the prefaces to Justinian’s codification, or more widely to the whole process of compilation of the Institutes, Digest and Code. To understand what happened we need to keep on asking: “Why?”

Here are some of the questions. The questions are simple, but the answers may not be. I cannot answer them all.

• Who was the first person to have the idea of Justinian’s Digest? Whose brainchild was it?
• In Justinian’s instructions to the compilers three things were forbidden: comparison with the original sources, commentaries and abbreviations. Of those three only the third was mentioned in Omnem. Why?
• Why does Justinian refer to the prefaces some times as constitutiones and sometimes as orationes? Is there a difference? Does it matter?
• Which came first: Omnem or Tanta/Dedoken?
• Why did Omnem require students to study only thirty six books out of fifty?
• Why did Justinian send Omnem to the professors of law in Greek as well as Latin? (If they could not read Omnem in Latin, they could not read the Digest.)
• Was the Digest published or distributed in instalments?
• Why did Justinian’s Institutes not come into force on the date of Imperatoriam, 21 November 533?

¹ Pugsley, Justinian’s Digest and the Compilers (Vol. 1, Exeter, 1995), 18.

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I  Who was the first person to have the idea of Justinian’s Digest? Whose brainchild was it?

It might have been Justinian himself. He took most of the credit for the completed work. It might have been Tribonian. Justinian gave him some of the credit. It might have been Theophilus, the academic with an interest in legal history. Or it might have been someone else.

In modern English law there is an encyclopaedia of comparable size and complexity. It is Halsbury’s Laws of England, now in its fourth edition. Like Justinian’s Digest it is the work of specialist writers, but in this case modern writers, not extracts from works three to six hundred years old. Whose brainchild was Halsbury’s Laws of England?

There are disadvantages in dealing with this question in print. Clearly the answer is not going to be: Lord Halsbury; otherwise there is no point in asking the question. But there cannot be a discussion between the author and his readers as to other possible names, and it only remains to give the correct answer. It is more interesting, and more fun, to discuss the question orally with an audience. Who else, at the beginning of the twentieth century, might have done it? Perhaps Sir Frederick Pollock, legal historian, introductory textbook writer, prolific author of commentaries and case notes, legal polymath. I think of him as the modern Theophilus. And that would produce an interesting parallel: Tribonian and Lord Halsbury, government ministers; Theophilus and Professor Pollock, legal academics. But Halsbury and Pollock were not friends. It cannot have been Pollock.

So who was it? Of whom could it be said that his “unique contribution to legal literature lies in the great encyclopaedias which became, and remain today, authoritative and indispensable works of reference wherever English law is practised”? That sounds like someone of the same standing in legal history as Justinian or Napoleon. Who was it? I cannot hold up the answer any longer. The answer is, Stanley Bond.

And who was Stanley Bond? He was the sole proprietor of Butterworths. In effect he was Butterworths, legal publishers. In 1902 he was just twenty five. A government committee had just said that it would be impossible to produce a complete restatement of the law of England, case law and statutes in a single consecutive narrative. Bond decided to do just that. He could see the benefit to the legal professions of such a work. He could see the benefit to himself of a captive market with steady and assured sales if the work was a success. He needed a suitable patron or editor-in-chief. He approached the Lord Chancellor, Lord Halsbury, who said he would think about it and then disappeared on holiday in Nice. Bond followed him to Nice and surprised him in the foyer of his hotel.

“Hello Bond, what are you doing here?” I replied: “I’ve come for my answer, my Lord.” “But I am on holiday,” Halsbury replied. “I’m sorry, my Lord,” I said, “but I must have a reply one way or the other.” “Well, Bond,” he said, “I admire you for your cheek ... and, yes, I’ll do it. Only, Bond, the labourer is worthy of his hire ... eh?” “Name your fee, my Lord,” I replied. He named it and it was a stiff one. I pulled out my cheque book

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and wrote him a cheque for the lot. “Done, my Lord,” I said. The cheque was for 10,000 guineas.5

Bond prepared an outline scheme, assembled an editorial board, appointed contributors, and the work commenced. The first volume was published on 14 November 1907. By 1910 ten volumes had been published, and no one knew how many were to come. But Bond had a captive market. Subscribers agreed “to take all subsequent volumes as issued”. In the end there were twenty eight volumes of text and three volumes of Tables and Index. The work took ten years to complete. A second edition was started in 1931, and we now have the fourth edition. The benefits to a publisher of a successful encyclopaedia are enormous.

Did Justinian’s Digest start in the same way? One might think of a team of Latin-speaking specialist scribes, perhaps refugees from Italy, looking for a way to make money by cornering a publishing market. We know that Justinian left the production and distribution of the Digest to private enterprise.6 He laid down rules for the scribes, but he did not organise them. But the Digest came into force just two weeks after its official promulgation on 16 December 533. How could Justinian be sure that private enterprise could act so efficiently and so fast? Answer: because the idea came from private enterprise which had already planned the production and distribution process.

And Justinian helped them. He gave the Institutes force of law.7 That was not particularly useful from a legal point of view. The Institutes lay down broad general principles, without the detail that is necessary for the decision of individual cases, but which sometimes conflict with the rules and cases in the Digest. That confuses rather than clarifies the law. But if the Institutes have force of law, every serious lawyer and law student must buy a copy, and that guarantees the publishers’ market.

He protected them. Reference to original sources was forbidden. No commentaries were allowed. Citation had to be from the authorised works. And he banned inferior copies with abbreviations such as students might make. That was emphasised in Deo Auctore, 13: no abbreviations, even of the number of the books; everything had to be written out in full.8 It is confirmed in Tanta, 22, with the addition of a triple sanction: a codex with any abbreviations anywhere in it cannot be cited in court at all and the scribe will be liable to the criminal sanction for falsum and the civil sanction of double damages to an innocent purchaser. It is repeated in Omnem, 8. Indeed of the three prohibitions (no comparison with original sources, no commentaries and no abbreviations) it is the only one that appears in Omnem. It was very important. That would discourage amateur

4 Ibid.
6 Wallinga, Tanta/Dedoken Two Introductory Constitutions to Justinian’s Digest (Groningen, 1989), 93-95.
7 Imperatoriam, 6.
8 Cp. The English statute, 4 Geo. II, c. 26 (1731): “[All documents] shall be written in such a common legible Hand and Character, as the Acts of Parliament are usually engrossed in, and the Lines and Words of the same to be written at least as close as the said Acts usually are, and not in any Hand commonly called Court Hand, and in Words at length, and not abbreviated.”
production by students or others and protect the hold on the market of the professional
team who had had the original idea.

II  In Justinian’s instructions to the compilers three things were forbid-
den: comparison with the original sources, commentaries and abbre-
viations. Of those three only the third was mentioned in Omnem, 8.
Why?
The omission of the first two is surprising from two points of view: what was prohibited,
and who was instructed not to do it. First, Justinian was very keen on these prohibitions
as a matter of substance. The prohibition of reference back to the original sources first
appears in Haec quae necessario at the beginning of the first Code in 528. It was repeated
in much greater detail in Summa, where those who dared to ignore it were threatened
with punishment for the crimen falsi. It appears again in Deo Auctore at the beginning
of the Digest and in Tanta at the end. The prohibition of commentaries is set out in Deo
Auctore and in more detail with the consequences in Tanta. They were very serious
offences. It is understandable that both provisions were very important to Justinian for
the success of his law reforms.

Secondly, it was important that the instructions should be addressed to the right
people, the people who otherwise were most likely to compare original sources and to
write commentaries. That would not include the senate and all peoples to whom Tanta
was addressed, but it would include the antecessores, professores constituti, to whom
Omnem was addressed, and any others who subsequently took up an academic career. In
fact, if the instruction was to be given to one group only, it seems to have been given to
the wrong one!

So why were those two prohibitions omitted from Omnem? It cannot sensibly have
been done intentionally. The rules were valid and remained in force for everyone,
including the academics. It would have been sensible to remind everyone, and especially
the academics.

If the omission was not intentional, it must have occurred by mistake, because the
compilers were in a hurry to meet Justinian’s deadline. The same hurry was responsible
for D 50.16 (a glossary of words and phrases not in alphabetical order), the Index
Auctorum (a mixture of Greek and Latin) and other problems in Omnem itself, such as
the omission of any reference to D 22 in Omnem, 4.

We suggest therefore that Omnem, 8 should originally have referred, after ut nemo
audeat, to the prohibition of comparison with the original sources, followed by the
prohibition of commentaries and finally the prohibition of abbreviations in the same
order as in Deo Auctore and Tanta. And the answer to our question “Why were the first
two omitted?” becomes “By mistake, because the compilers were in such a desperate
hurry.”
III Why does Justinian refer to the prefaces sometimes as *constitutiones* and sometimes as *orationes*? Is there a difference?

The general term is *constitutio*. All the prefaces are *constitutiones*. But sometimes the word *oratio* is used. Thus *Imperatoriam* is *oratio nostra quam eisdem libris praeposuimus* (our oration which we placed as a preface to the *Institutes).*9 Tanta and Dedoken are *nostrae orationes tam Graeca lingua quam Romanorum quas aeternas fieri optamus* (our orations, in Greek and Latin, which we wish to be made permanent).*10 And *Omnem* itself is *praesentem divinam orationem* (this divine oration).*11

One might think that in this context an *oratio* is a *constitutio* which is addressed orally to a public audience, a group of enthusiastic law students (*cupidia legum juventus*), the senate, or a meeting of *antecessores, professores constituti* (professors designate). The oral version would be an *oratio*, the written version a *constitutio*. *Deo Auctore*, addressed simply to Tribonian, was a *constitutio*, but not an *oratio*. You do not address individuals as if they were public meetings.*12

The distinction even appears in the drafting. The *orationes* end with a direct exhortation in the imperative: *accipite, ostendite*;13 *gratias quidem amplissimas agite summae divinitati ... Hasce itaque leges et adorate et observe*;14 *Incipite igitur*.15 *Deo Auctore* ends less directly in the subjunctive: *Haec igitur omnia ... tua prudentia ... studeat*.16

But there is a problem: *Omnem*, 8: *Illud autem, quod jam cum ab initio hoc opus mandantes in nostra oratione et post completum in alia nostris numinis constitutione scripsimus, et nunc utilitter ponimus, ut nemo audeat ... (sigla ponere).*

This appears to say that *Deo Auctore* was an *oratio*, and *Tanta/Dedoken* was a *constitutio*. And Mommsen gives the full cross-references: *Deo Auctore*, 13, *Tanta/Dedoken*, 22. The conclusion would be that *oratio* and *constitutio* were interchangeable words.*17

That conclusion offends common sense. If our sources use two different words the natural explanation is that there were two different concepts. The word *oratio* suggests that it was oral, which *Deo Auctore* was not. And the two *orationes* of *Omnem*, pr., have become one *constitutio* in *Omnem*, 8. Our text does not fit *Deo Auctore* and *Tanta/Dedoken*.

Is there another possibility? There is. Justinian’s first *Code* was announced in 528 in a *constitutio ad senatum*, in fact an *oratio*, and promulgated in 529 in a constitution addressed to Mena, the praetorian prefect, in fact an ordinary *constitutio*.
As the text stands, that will not fit either, because it goes straight on to the prohibition of abbreviations, which, however, was not mentioned in *Haec quae necessario* or in *Summa*. But if we are right in thinking that all three prohibitions should have been included in *Omnem* in the standard order (no comparison with original sources, no commentaries, no abbreviations) that difficulty disappears.

We conclude, therefore, that *Haec quae necessario, Imperatoriam, Tanta/Dedoken and Omnem* were all originally *orationes*, and their written versions were *constitutiones*; and that *Summa* and *Deo Auctore* were *constitutiones* but not *orationes*.

**IV** Does it matter?

Yes, because it helps to explain the relationship between *Tanta* and *Dedoken*. It has always been assumed that one is a revision and translation of the other, though there is no agreement on which is the original and which the translation and it is not clear why the unrevised original was published as well as the revised translation. Broadly speaking, both versions deal with the same topics in the same order, but there are differences in detail which one would not expect to find in a faithful translation. *Tanta* is addressed “to the senate and all peoples” and *Dedoken* “to the senate, the people and all the cities of the world”. The existence of these small differences is difficult to explain if we are dealing with an original text and a translator’s version. But if we have an original speech and an interpreter’s oral version, produced fast on the spur of the moment, these small differences are not surprising. The Greek speaker knew that he was addressing “the people”, the Latin speaker knew that he was not.

There is a second reason why the difference between an oration and a written text may be important. When an orator refers to something (or someone) he can make his meaning clear by picking it up, or touching it, or pointing at it, or in some other way identifying it. When the oration is written down, his meaning may no longer be clear, so that some additional words of explanation are needed. They could be conveniently introduced by the words *id est* (*i.e.*). That expression occurs four times in *Tanta* and five times in *Omnem*, but never in *Deo Auctore* – which is not surprising if the first two were orations and the third was not.

**V** *Id est*

(i) *Tanta*, 9: *nec non per alios viros magnificos et studiosissimos perfecta sunt [id est CONSTANTINUM ...*

(ii) *Tanta*, 12: *et in tribus voluminibus [id est, institutionum et digestorum seu pandectarum nec non constitutionum] perfecta et in tribus annis consummata ...*

(iii) *Tanta*, 22: *omnia enim [id est et nomina prudentium et titulos et librorum numeros] per consequentias litterarum volumus ...*

(iv) *Tanta*, 23: *Leges autem nostras, quae in his codicibus [id est institutionum seu elementorum et digestorum vel pandectarum] posuimus ...*

18 Wallinga, *op. cit.*, 52.
In *Omnem* the *id est* explanations ((v), (vii), (viii) (ix)) are pedantic and unimportant. This is not suitable work for a senior compiler like Theophilus. These are last minute additions by some junior member of the team who was not altogether sure what he was supposed to be doing or was not very good at doing it. And he ran out of time at the end. There is no explanation of *ceterorumque* in (x), though one would have expected one after (i) and (vi). There is no explanation of *Haec tria volumina* in (xi), though there had been an explanation of *in tribus voluminis* in (ii). And there is no explanation of *hoc opus* in (xii). Even in the first half of *Omnem* there are omissions: in *Omnem*, 2, an explanation of the *primum volumen quod nobis emanavit auctoribus* would be helpful, but is missing.

The *id est* explanations in *Tanta* are more interesting, particularly (ii) and (iv). *Tanta*, 12, as it has been transmitted to us, says that the *Institutes, Digest* and *Code* were completed in three years. That is clearly wrong: either the three works took six years, 528-534; or the *Digest* (and the *Institutes*) took three years, 530-533. As it stands the text is so obviously and badly wrong that it cannot have been written by Tribonian or any senior compiler. Either the three volumes or the three years are wrong; but Justinian was so keen on the number three that this cannot have been an oversight. How is it to be explained? On the basis that in the original oration the *id est* phrase did not occur. There were only three volumes and three years; the orator had the three volumes in front of him, and they were clearly three volumes of the *Digest*. When the oration was transcribed it was no longer so obvious which the three volumes were, and our junior annotator thoughtlessly introduced his *id est* explanation, without noticing what a mess he was making.

*Tanta*, 23, is similar. Justinian’s *Institutes* came into force on 21 November 533. That was the date of *Imperatoriam*, which contains no hint of a delay in their entry into force and expressly says *plenissimum nostrarum constitutionum robur eis accommodavimus*, (we have accorded them exactly the same legal force as our constitutions).19 The *Institutes* were undoubtedly in force from 21 November to 16 December 533. *Tanta*, 11, confirms the state of the law: *praedictos libros constitutionum vicem habere jussimus; quod et in oratione nostra, quam eisdem libris praeposuimus, apertiusdeclaratur* (we ordered the

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said books to have the same legal value as constitutions, which is set out more clearly in our oration which we placed as a preface to the *Institutes*. And then, suddenly and unexpectedly tucked away in a minor phrase in *Tanta*, 23, we find that the *Institutes* are only to enter into force on 30 December 533, at the same time as the *Digest*. How did that happen? In the oration it would have been clear which *codices* were meant. In the written version it was no longer so clear, and our junior annotator, noting that *codices* were plural and that they were equated with constitutions, jumped to the erroneous conclusion that they were the *Institutes* and the *Digest* and inserted the *id est* explanation accordingly.

*Dedoken* was treated in a similar but not quite the same way, perhaps by a different annotator. *Dedoken*, 9, is basically the same as *Tanta*, 9; but when the Latin orator comes to Dorotheus he expressly names Beirut, while the Greek orator calls him a teacher “in the city of the laws”, and the annotator adds, “that means the famous and splendid metropolis of Beirut”. *Dedoken*, 12, omits entirely the *id est* phrase in *Tanta*, 12. In *Tanta*, 19, the Latin orator expressly addresses the senate and everyone in the world; the Greek orator simply addresses everyone, and the annotator adds, “that means the senate and everyone else within our jurisdiction”. *Dedoken*, 22, speaks directly of numbers and names and the whole text, *Tanta*, 22, simply says “everything” and the annotator adds the *id est* explanation, “names and titles and numbers”. *Tanta*, 23, and *Dedoken*, 23, both insert the *Institutes* in the same way.

VI Which came first: *Omnem* or *Tanta*/Dedoken?

We should expect *Tanta*/Dedoken to come first, formally giving official approval to the *Digest*, followed by *Omnem*, making arrangements for teaching the new system. And in fact in its first sentence *Omnem* cites both orations, *nostras orationes tam Graeca lingua quam Romanorum*. They are to be reproduced in writing as constitutions with permanent effect, *quas aeternas fieri optamus*.

But there is a problem. As we have seen, *Tanta*, 22, prohibited and punished the use of abbreviations, and added at the end: *quod et antea a nobis dispositum est et in Latina constitutione et in Graeca quam ad legum professores dimisimus* (which had previously been laid down by us in a constitution in Latin and Greek which we have sent to the professors of the laws).

That is generally assumed to be a reference to *Omnem*, though there is no sign of a Greek version and no reason why Justinian’s *antecessores* should need one. Four of them had helped to produce the *Digest* in Latin, and the others could not teach the *Digest* if they could not read Latin. But no other constitution has survived to which it could refer. In that case *Tanta* cites *Omnem*, which cites *Tanta*. Mommsen annotates *Tanta*, 22, *cp. const. Omnem*, 8, where *cp.* covers a problem which he does not solve.

Could it refer to anything else? *Antea*, in stead of *jam*, suggests that it was some time previously. And *Tanta* speaks of *legum professores*. Justinian’s compilers were

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20 The Watson translation calls him “the appointed teacher of law in the city,” but the word order is against that: literally “in the city of the laws.” Mommsen’s Latin version has “*doctore in legum urbe creato*.”
antecessores and were always so described (Deo Auctore, 3; Tanta, 11; Dedoken, 9 and 11, which awkwardly transliterates antecessor into Greek in stead of using a Greek word for professor as it does in Dedoken, 22). Omnem was addressed to the antecessores not to the professores. It is only at the beginning of Omnem that they appear, not as legum professores, but as professores legitimae scientiae constituti. What is the difference between a professor and a professor constitutus? It is normal to appoint professors, but unusual to refer to them as appointed professors after they have taken up the appointment. But before they have taken up the appointment, before they have really started to be professors, it is appropriate to refer to them as appointees, or perhaps better as professors designate.\(^\text{21}\)

In that case the Latin/Greek constitution in Tanta, 22, was not sent to the antecessores, but to the previous professors of the laws. Omnem, 1, is very damning in its account of them. They frequently taught the wrong things, and did not teach enough, so that the students were left to study on their own: his igitur solis a professoribus traditis Pauliana responsa per semet ipsos recitabant. Those professors were not Justinian’s antecessores, but they were the professors in post, and it is not surprising that Justinian should have sent a constitution to them.

The professors were not very good lawyers and in the Greek-speaking part of the empire they may not have been good linguists, so that writing to them in Greek, as well as in Latin, was a good idea. And arrangements had to be made for teaching the new law in the Digest. Whatever he said to them Justinian was not impressed by their reply. He appointed his antecessores to replace the legum professores in Rome, Constantinople and Beirut, and closed down altogether the law schools in Alessandria, Caesarea and elsewhere. It is not surprising that that Latin/Greek constitution has not survived, but it would not be surprising to find references to it and some of its contents in Omnem and Tantal/Dedoken.

Omnem, pr., refers to itself as praesentem divinam orationem. Omnem, 5, refers to this legal science in praenti tempore a nobis sortita, meaning the complete Digest in fifty books. But Omnem, 5, also refers to oratio nostra and tempus nostrum in the context of thirty six books out of fifty; et quod jam primis verbis orationis nostrae posuimus, verum inveniatur, ut ex triginta sex librorum recitatione fiunt juvenes perfecti et ad omne opus legitimum instructi et nostro tempore non indigni. Nostro tempore must refer to an earlier stage of the law syllabus, and oratio nostra to an earlier oration. That was the oratio, published as a constitutio that was sent to the previous legum professores.

Omnem was addressed to the new professores legitimae scientiae constituti, replacing the previous oratio/constitutio, but the two were confused when Tanta was republished in the second Code in 534, and since there had not been a Greek version of Omnem, the reference to the Greek version was deleted.

\(^{21}\) See Pugsley, Justinian’s Digest and the Compilers (Vol. 2, Exeter, 2000), 161-163.
Why did *Omnem* require students to study only thirty six books out of fifty?

The whole of classical juristic law was compiled and abridged in fifty books, all of which had force of law. But students were only required to study thirty six of them. This is an extraordinary provision. The *Code Napoléon* has 2282 articles, but students were not, and are not, told that they can stop at article 1750, and we should be amazed if they were. The whole point of a codification is to cover all the law, and all the law should be studied. But Wenger simply says: “[d]ie Buecher 37-50 waren dem Studium im spätern Leben überlassen” without comment or any sign of surprise.

It is a remarkable provision as a matter of substance. Students must study the *vindicatio*, the *actio Publiciana* and the *exceptio rei venditae et traditae* in book six but not ownership, possession and *usucapio* in book forty one. They must study half of the law of delict in book nine, but not the other half in book forty seven. They must study the special contracts in books twelve to nineteen and the extra material brought forward in books twenty and twenty one, but not the general law of stipulations in books forty five and forty six. They must study the law of wills and legacies in books twenty eight to thirty six, but not the law of intestate succession in books thirty seven and thirty eight. And, of course, the two long titles at the end of the *Digest*, D. 50.16 and 17, on definitions and legal rules, need not be studied at all.

It is a remarkable provision in the context of a law syllabus lasting five years. If the last fourteen books were to be included it would have to be substantially revised, but the quick solution of leaving them out of the syllabus altogether is quite extraordinary.

The thirty six book provision appears twice in *Omnem*. In the *principium* Justinian simply says: *ex libris autem quinquaginta nostrorum digestorum sex et triginta tantummodo sufficere tam ad vestram expositionem quam ad juventutis eruditionem judicamus*, (now out of the fifty books of the *Digest* we think that thirty six are enough for you to teach and for the students to learn). There is not a word of justification or of explanation as to what is to be done with the last fourteen books.

*Omnem*, 5, says a little more, but not much: *duabus aliis partibus [id est, sexta et septima nostrorum digestorum] quae in quattuordecim libros compositae sunt, eis depositis, ut possint postea eos et legere et in judiciis ostendere*. The students may read them later and cite them in court. We should have thought that if they can be cited in court, it would be better to read them straight away; and we still have no explanation for the thirty six book rule.

The words *eis depositis* are obscure. Watson and Monro translate: “[The books] must be put on one side” so that they can be read later. Bianchini translates: “siano loro affidate” (the books should be entrusted to the students) so that they can be read later. And we are still left asking: “Why?” Would it not be better to read them all as soon as possible?

Why should any law-giver whose work comes into force straight away (or at two weeks notice, which is almost the same thing) say that nearly a third of it need not be studied straight away? Where does the thirty six book rule come from?

22 Wenger, *Die Quellen des römischen Rechts* (Vienna, 1953), 636.
The answer must be that the *Digest* was published and distributed to the law schools in three instalments or volumes and in three stages. The first volume contained books one to nineteen, and is referred to in *Omnem*, 2: *quia ilico tradendum eis est primum volumen quod nobis emanavit auctoribus*. There is no explanation, with or without *id est*, what this first volume was. It cannot have been the first *Code*, although that was the first thing published by Justinian, because the students did not study it until year five. It cannot have been the *Institutes*, because the students were required to study the first part of the *Digest* as well. It must therefore have been the first volume of the *Digest* itself.

The second volume contained books twenty to thirty six, which are treated as a unit of seventeen books in *Omnem*, 5: *omnis ordo librorum singularium a nobis compositis et in decem et septem libros partitus*.

The third volume contained books thirty seven to fifty, which are treated as a unit of fourteen books in *Omnem*, 5: *duabus aliis partibus ... quae in quattuordecim libros compositae sunt*. *Haec autem tria volumina a nobis composita*, says *Omnem*, 7, are to be distributed to the students at Rome, Constantinople and Beirut, but nowhere else. Again there is no explanation, with or without *id est*, which three volumes were meant, but it naturally refers to the first volume and the two groups of books previously mentioned.

When the second volume was published and distributed the law syllabus contained thirty six books out of fifty in the *Digest*, although they had not yet entered into force. When the third volume was published and distributed, and the whole *Digest* came into force, the syllabus needed revising and updating, but that revision and updating had not taken place in time for Justinian’s deadline on 16 December 533.