I. The Digest Problem

1. — Ever since the time the knowledge and application of Roman law was revived, the establishment of the correct text of Justinian’s Digest has been a fundamental critical problem. The understanding of a given text is the alpha and omega of the scientific endeavour that started in Bologna, the basic aim of all study, teaching and practice. But how does the text actually read? Textual criticism—always swaying between the extremes of “scholasticism” and “humanism”, between the needs of education and practice on the one hand, and the insights of philology on the other—does not seem to have developed gradually. Centuries of animated critical discussion are followed by centuries during which scholars seem inclined to take one more or less established version for granted. However, the case was never closed altogether, and it never will be.

The Digest text which formed the basis of legal education in Bologna and in all the innumerable studia modelled on it, the text which consequently was spread to all parts of Europe by the jurists leaving the universities, was recorded at some unknown place and time, presumably somewhere in Italy in the eleventh century. "We cannot discuss here in full the problems concerning the text tradition of the Digest. By way of a general introduction Schulz, Einführung in das Studium der Digesten, Tübingen 1916, p. 1-62 is still useful. The Praefatio by Th. Mommsen to his Editio Maior, Berlin 1870, p. V-LXXXV [hereafter cited as Praef.] is fundamental. In addition to the latter an earlier study in which Mommsen announced the new edition should also be read: Ueber die kritische Grundlage unseres Digestentextes [1862], reprinted in his Gesammelte Schriften II, Berlin 1905, p. 107-140 [hereafter cited as Ges. Schr.]. For a recent discussion see Miquel, Mechanische Fehler in der Überlieferung der Digesten, ZSS RA 80 (1963) p. 233-286; Röhle, Digestorum editio maior und Theodor Mommsen, BIDR 3a S. XII (1970) p. 19-34; Troje, Graeca leguntur, Cologne–Vienna 1971, p. 5 ss. [hereafter cited as Graeca]. With regard to the codex which Mommsen signed Codex R there are two recent studies: Röhle, Das Berliner Institutionen- und
The glossators called it *vetus*, *antiqua* or *communis*. It must have been derived from the *Littera Florentina* (hereafter called F). However, it differs in many important aspects from this famous codex dating from the sixth century, which was worshipped as a relic since time immemorial, and still remains the oldest, finest, and most complete manuscript of the Digest we possess.

The text of the so-called *Littera Bononiensis*—which since the days of the humanists is often called Vulgate Digest in analogy with the Vulgate Bible—seems to have received a more or less established form towards the middle of the thirteenth century\(^2\), but—and this is important to be kept in mind—a final and authoritative *recensio* was never established\(^3\).

Therefore, strictly speaking, we should not talk about the Bononiensis; consequently, it is useless to speculate about an "archetype". Although school tradition definitely is a strong conservative force, and even though the Bolognese system of copying the text may have added too to this effect, the Littera Bononiensis remained a living text all the time. From the thirteenth century onwards the text was continually worked over, partly by collating it with the *Littera Florentina* (or *Pisana* as the glossators used to call it), and partly by more or less successful emendations. As far as legal science was concerned, there did not exist a paramount authority comparable to the Church, which had the power to keep watch over one, canonical version, and over orthodoxy simultaneously.

2. Keeping this in mind, it might seem that the start of the humanistic endeavour in the legal field was less revolutionary than some scholars tend to believe. Nevertheless, the fact that towards the end of the fifteenth century Poliziano began to collate the text of F anew, had consequences as far-reaching as Erasmus' edition of the Greek New Testament text in 1516. Theology and law, the two well established dogmatic sciences of the medieval university, met with a very serious challenge. Although the Bartolist establishment resisted vehemently and in some respects with considerable success, it was unable to suppress the critical discussion, which eventually would lead into an impasse\(^4\). Part of the problem was that the Florentina could not be inspected freely by all scholars. This problem was only solved in 1553, when the famous Torelli edition appeared, a truly great and international printing enterprise, protected by patents from the pope, the emperor, the kings of France and England, and the Duke of Florence. Although it had some major disadvantages, it nevertheless for the first time offered a complete picture of F.

But the needs of school and practice pressed for the establishment of a new and generally acceptable *recensio*, which would put an end to the unending and

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