SOME SUGGESTIONS FOR THE STUDY OF INTERPOLATIONS

by

TONY HONORÉ (Oxford)

I. Principles

Roman legal science has moved through a revolution so far as the detection and study of interpolations by Justinian's commissioners are concerned. A radical movement, active until the Second World War, has slowly given way to a conservative backlash. At the same time much work has been done on intermediate layers of text between the classical originals and Justinian's overlay: Textstufen. These seem often to take the form of glosses on or explanations of words or passages in the original texts, and can therefore often be recognized by their relation to genuine parts of the text.

What about interpolations? In the new state of Roman legal science, how are these to be recognized? Of course, any general guide will be of limited value. This short contribution aims, however, with the help of simple examples, to illustrate thoughts which come to mind after a long period spent studying two of the authors whose work is most relevant to the topic: Ulpian and Tribonian. Ulpian contributed 40 or 41 percent of the material in the Digest, depending on whether one counts lines or words. Tribonian contributed the main interpolations—probably a high percentage of all those interpolations which were not merely a matter of routine, like the substitution of traditio or stipulatio for mancipatio.

The question I put to myself is therefore this: Does a good understanding of the style of the principal classical author represented in the Digest and the principal member of Justinian's codifying commission make it possible to detect interpolations with confidence? Can one advance any general principles which are helpful in uncovering interpolations?

A preliminary observation is in place. Interpolations could be inserted at various stages in the compilation of the Digest. They could be put in when the texts were excerpted, either by the commissioner making the excerpt, or by the chairman of the committee (Sabinian, edictal or Papinian), to which he belonged. Then again, they could be introduced when the commissioners went on to the editorial stage, and prepared a draft of the Digest, in its various books and titles, for Justinian. Finally, they could be inserted at the stage of final revision, perhaps at the behest of Justinian himself.

There is likely to be this difference between interpolations inserted at the first,
excerpting stage and at the second, editorial stage. At the first stage we are likely to find that the particular form of words, which the interpolators used, is distributed in a way which reflects the process of excerpting. For example, if a commissioner is reading the books of Ulpian ad Sabinum which deal with legacies, and finds a convenient way of expressing the idea 'unless the testator intended the contrary', this form of words will probably appear in the remaining books of Ulpian on legacies also. If it does not appear in exactly the form of its earliest use, it will perhaps do so in a closely related form, or with some elaboration which was not originally present. But we may expect a tendency to repeat or vary an interpolation in the books excerpted shortly after the first instance of it. If, on the other hand, the interpolation was introduced at the editorial stage, the tendency will be rather to repeat it within the title or book of the Digest in which it first appears. If, thirdly, the interpolation was incorporated in the text only at the final stage of the Digest commission's work, it will perhaps be unique, since it has had to be devised to meet some problem which the commission had overlooked at the earlier stages of its work. There is therefore, in principle, some prospect — if interpolations can be detected at all — of finding out, by the use of the criteria mentioned, at what stage of the commission's work they were introduced into the Digest.

It seems to me that five principles or guidelines are likely to be helpful in deciding for or against interpolations. The first two of these count against interpolation, the next two for it, and the fifth concerns the syntax of interpolations. The first two are as follows:

(i) if the expression in question is typical of or at least conforms to the general style of the jurist to whom it is attributed in the Digest, it is not likely to be interpolated;
(ii) if the expression as used in the Digest text by the apparent author fits naturally into the history of the use of that expression, it is probably not interpolated.

These two first points presuppose, what is now generally accepted, that there was considerable variation in the styles of the different classical jurists. No one who reads, for example, texts of Julian, Papinian and Ulpian in succession is likely to overlook their dissimilarities, even though they are separated in time by not much more than half a century. Many expressions are typical of one jurist, or a few, rather than the bulk. If we find that the occurrences of a given expression (say refragare) are concentrated in the works of a particular jurist, this is probably because the word was one which he used more frequently than his colleagues. So when the word occurs in his texts it is not likely to be interpolated (though of course it may be), but when it occurs, rarely, in the works of others, we should be on our guard lest this rare use is really an interpolation.

This assumes, of course, that neither post-classical editors or copiers, nor Justinian's commissioners selectively introduced expressions into the works of, say, Papinian. This cannot be proved, but is unlikely to be wrong. Post-classical editors or copiers, if they changed the texts at all systematically, would be sure to betray the age in which they were writing by using anachronistic expressions. When they do this, their intervention can be detected. For Justinian's commissioners there is another reason to reject selective interpolation. They all read and excerpted so much that they would have had, to bring about a concentration in the texts of a jurist, consciously to adopt a policy of interpolating a certain ex-