Playing the Judge: Law and Imperial Messaging in Severan Rome

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ABSTRACT

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This dissertation analyzes the interplay between imperial messaging or self-representation and legal activity in the Roman Empire under the Severan dynasty. I discuss the unusual historical circumstances of Septimius Severus' rise to power and the legitimacy crises faced by him and his successors, as well as those same emperors' control of an increasingly complex legal bureaucracy and legislative apparatus. I describe how each of the four Severan rulers—Septimius Severus, Caracalla, Elagabalus, and Severus Alexander—employed different approaches to imperial legislation and adjudication in accordance with their idiosyncratic self-presentation and messaging styles, as well as how other actors within Roman legal culture responded to Severan political dynamics in their own work.

In particular, this dissertation is concerned with a particularly—and increasingly—urgent problem in Roman elite political culture; the tension between theories of imperial power that centered upon rulers' charismatic gifts or personal fitness to rule, and a more institutional, bureaucratized vision that placed the emperor at the center of broader networks of administrative control. While these two ideas of the Principate had always coexisted, the Severan period posed new challenges as innovations in imperial succession (such as more open military selection of emperors) called

earlier legitimation strategies into question. I posit that Roman law, with its stated tendency towards regularized, impersonal processes, was a language in which the Severan state could more easily portray itself as a bureaucratic institution that might merit deference without a given leader being personally fit to rule.

This dissertation begins by discussing the representational strategy of Septimius Severus, who deployed traditional imperial messaging tropes in strikingly legalistic forms. I then explore how this model of law as a venue for or language of state communication might explain otherwise idiosyncratic features of the *constitutio Antoniniana*, an edict promulgated by Septimius Severus' son Caracalla that granted citizenship to all free inhabitants of the Empire. I next discuss two unusual features of the corpus of rescripts issued by Severus Alexander, the last Severan emperor: specifically, the relabeling of rescripts issued by Elagabalus, Alexander's cousin and predecessor, as products of Alexander's reign; and the idiosyncratic frequency with which rescripts issued under Alexander's authority cite prior imperial (and particularly Severan) precedent. Finally, I discuss how jurists responded to Severan (and particularly late Severan) political and legal culture: late Severan jurists are particularly inclined to justify their legal decisionmaking in terms of the desirable consequences of a given decision's universal promulgation, and similarly likely to justify their opinions by citing to an impersonal 'imperial authority' rather than to named figures. I argue that these changes reflect both state and scholarly attempts to wrestle with increasingly unstable imperial selection processes, and to articulate a vision of Roman governance that might function in the new world of the third century C.E.

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Divo Augusto, bene merenti, cani optimo

INTRODUCTION

LAW AND THE SEVERANS

As a young boy, before he learned his Latin and Greek literature (in which he was later extremely fluent), Septimius Severus would play no game with the other boys but one in which he would pretend to be a judge (ad iudices)*, a game in which he, with the* fasces *and axes borne before him, would sit and give judgment* (iudicaret) *as the others stood around him in a line*.[1]

The *Historia Augusta*'s (*HA*) *vita Severi* begins with the future emperor putting on a show. While Septimius Severus did not know the written languages in which Roman power expressed itself, this account depicts the boy as familiar with a different sort of imperial grammar; he imitates, instead, a visual and performative account of imperial control. With the symbolic cues of *imperium* before him, Septimius Severus acted like the emperor he would eventually be. However, for the young Septimius playing an emperor did not mean playing soldiers—leading troops into battle to expand his territory—or a tyrant dominating his subjects (as in the story's potential inspiration, Herodotus' account of young Cyrus, who plays with other boys by pretending to be their king and ordering them to perform different tasks).[2] Septimius played the judge; he asserted power by deciding imaginary cases, before imaginary litigants seeking imaginary justice. While the *HA* is not averse to a digressive anecdote,[3] this one does some work; Septimius Severus is shown, even as a young child, to understand that power could be mediated through interaction, spectacle, and performance. Importantly, Septimius here is shown to understand lawmaking as a paradigmatically

[1] SHA *Sev.* 1.4: *in prima pueritia, priusquam Latinis Graecisque litteris imbueretur, quibus eruditissimus fuit, nullum alium inter pueros ludum nisi ad iudices exercuit, cum ipse praelatis fascibus ac securibus ordine puerorum circumstante sederet ac iudicaret.*
[2] For the Cyrus narrative, see Hdt. 1.114.
[3] See White 1967: 116.

imperial moment; he asserts power over the other children by sitting before them and hearing their cases. The *HA*'s reader knows what awaits this boy, and is thus primed to understand Septimius' later career as informed by his childish games. Later, Septimius Severus and the dynasty he founded would play the judge on the grandest scale for almost half a century (specifically, from 193 to 235 C.E.); they ruled as the Roman Empire produced some of the most influential legal texts of the Classical period, and Severan emperors' attempts to develop a persuasive theory of legitimacy within the rapidly disintegrating symbolic and ideological framework of the late Principate would forever alter Rome, from its skyline to its sanctuaries.

My dissertation considers how this self-representational project affected Roman courts. Septimius and his successors inherited an office with near-total control over Roman law; the emperor issued legislation (by which I mean autonomously instigated pronouncements claiming to alter individuals' legal standing or obligations),[4] responded to petitions asking both for special legal dispensations and for simple clarity on points of existing law, and appointed a wide range of officials—from praetors to governors to prefects—tasked with fairly applying the rules. This work constituted a large part of the imperial portfolio, quite likely in practical terms (although our

[4] To define terms, throughout this dissertation I will use 'adjudication' to refer to the resolution of fact-pattern-specific disputes between specified parties; while the reasoning used in resolving the dispute may have precedential effect, the goal of an adjudicative process is primarily to clarify the pre-existing legal obligations of the parties to the adjudication. By contrast, I use 'legislation' to refer to proceedings which positively alter legal obligations, whether for specific parties (in the form of a grant made in response to a request) or more broadly through the promulgation of a new rule. This distinction broadly follows Kenneth Culp Davis's separation of "adjudicative facts" and "legislative facts." Davis 1942: 402-10; for the use of 'legislation' to refer specifically to imperial communications of the Classical Roman period, see Coriat 1997: 9. I use 'lawmaking' or 'lawgiving' in contexts when distinguishing between adjudicative and legislative behavior is impossible, irrelevant, or both.

evidence on the day-to-day functioning of the imperial court remains imperfect)[5] but also as something subjects expected from an emperor worth listening to. Cassius Dio, a Greek historian writing in the Severan period, tells the apocryphal story of a woman demanding that an emperor who did not listen to his subjects cease being emperor entirely: "for example, when he [Hadrian] passed a woman on the road who had need of something or other, he first told her 'I have no time;' then when she shouted back 'then don't be emperor' (καὶ μὴ βασίλευε)' he stopped and spoke with her."[6] Dio offers this story as an example of Hadrian's good temper, but it is only legible in light of a widely held normative belief that listening to subjects is what a good emperor *does*; lawgiving offered a formal, clear framework for this sort of listening, one that allowed emperors to visibly wield their power for the benefit of other actors within Rome's political system. While this state of affairs is not uniquely Severan—imperial control over lawmaking dates back to the Hadrianic period, if not to Actium—the Severan emperors used their position within Rome's legal milieu to accomplish something distinctive; they portrayed themselves not only as providing law to a grateful populace, but as having meaningful, and personally idiosyncratic, relationships with law and legalism that inflected their representation in various nonlegal media.

[5] Fergus Millar has collected much of our surviving evidence of the imperial workload and suggests that a great deal of time was spent responding to petitions and hearing cases; Millar 1977: 188-204.

[6] Dio Cass. 69.6.4: ἀμέλει γυναικὸς παριόντος αὐτοῦ ὁδῷ τινι δεομένης, τὸ μὲν πρῶτον εἶπεν αὐτῇ ὅτι 'οὐ σχολάζω,' ἔπειτα ὡς ἐκείνη ἀνακραγοῦσα ἔφη 'καὶ μὴ βασίλευε,' ἐπεστράφη τε καὶ λόγον αὐτῇ ἔδωκεν.

I. NOTES ON SCHOLARSHIP

This particular sort of engagement with legal work not only affects our understanding of Severan ideologies of rule, but of Roman constitutionalism and law more broadly. In recent years, the Severan period has come under welcome scrutiny as a period of tremendous innovation in political messaging in its own right, rather than as a staging ground for narratives of classical decline or as a vestigial precursor to the late antique. The Severan period has not historically been known for its literary production, outside of the jurists; the two major exceptions to this rule, Cassius Dio (whom Millar straightforwardly dismisses as "no Polybius"[7]) and the medical author Galen, arguably prove it. Furthermore, the violence and political instability of the Severan era seem to suggest that its political order was less the result of any particular ideological program that might be worthy of analysis, than a simple matter of bribery and warfare.[8] However, scholarship on Severan politics has expanded enormously in recent years. While this expansion may be partly attributed to increasing interest in the third century C.E. *tout court*,[9] the Severan period has also drawn the attention of historians as a result of its incredible dynamism; Severan imperial messaging expressed radically different political values over relatively brief periods,[10] and the combination

[7] Millar 1964: 171.

[8] For the difficulties this shift presented for imperial communications, see Kemezis 2014: 63-64 (discussing the challenges posed by the political moment of the late 190s for "Antonine-style consensus rule").

[9] See, for example, Borg 2013 (examining funerary practices throughout the third century C.E. to demonstrate the persistence of aristocratic display and, potentially, of economic circumstances permitting such display), de Blois 2001 (discussing the political instability of the third century and its effects on juristic production), Mennen 2011 (discussing prosopographic evidence from the third century in order to track the increasing importance of equestrians throughout the period).

[10] The classic example of which might be Septimius Severus holding an elaborate funeral for Pertinax (on which see Dio Cass. 75.4-5) and taking *Pertinax* as part of his official nomenclature only two years before having himself formally adopted into the Antonine *gens* and taking

of a strong, centralized monarchy with unstable or contested succession led to frequent renogotiations of political relationships that had previously been rather more static. This efflorescence in the study of Severan history and propaganda extends to fields as diverse as religion, dynasticism, and honorific prosopography in media from portraiture to numismatics to monumental building projects.[11] These authors, however, have paid comparatively little attention to legal texts as their own distinctive medium of imperial communication or propaganda; the massive legal developments of the Severan period appear in these discussions, if at all, as an index of the impact of an ideological project that existed largely outside of them.[12] My dissertation contributes to this literature of Severan state communication by showing how the same sorts of tensions visible in Severan sculpture, coinage, and other media we traditionally understand as symbolically freighted can be seen in Severan law; while my claims do not necessarily alter our

Commodus—whom Pertinax succeeded and whose assassination he may well have overseen—as his putative brother and ordering the death of Pertinax' father-in-law. *Ibid.* 76.7-8.

[11] Much of this work is specific to individual figures within the Severan period; those are discussed in more detail in their appropriate chapter. However, for a brief overview of recent scholarship on Severan messaging as a whole, see Baharal 1996 (focusing on dynastic themes within Severan messaging), Bryant 1999 (focusing on representations of the Severan family), Hekster 2015: 143-57 (discussing family relationships as depicted in Severan representations of the Juliae Domna and Maesa), Langford 2013 (discussing the importance of maternal depictions of Julia Domna in media associated with the transition between Septimius Severus and Caracalla), Leitmeir 2011 (analyzing sculpture of the later Severans and its use in communicating dynastic resemblance), Lichtenberger 2011 (discussing the role of Septimius' Severus' African heritage and accompanying religious themes in representation of Severus and his family), Lusnia 2014 (discussing the importance of *restitutio urbis* in Severan architectural programs within the city of Rome), Rowan 2013 (discussing religious themes in Severan communicative media, with a particular focus on numismatics), Schöpe 2014 (examining Severan prosopography and, specifically, the increasing importance of nonsenatorial figures within the Severan court).

[12] For example, Clare Rowan's treatment of religious themes in Caracallan representation describes the *constitutio Antoniniana* as an "extraordinary decree," but only touches on it briefly and makes no claims as to its communicative or representative force besides the sentence "A mass bestowal [of citizenship] was revolutionary." Rowan 2013: 127.

conceptions of what, exactly, this apparatus was trying to say, I aim to enrich our understanding of how it said what it said.

This work requires reading legal texts in light of broader political discourses surrounding law and constitutionalism under the Principate. Of course, explaining what is meant by that methodological declaration requires some definitional work—discourse is not a stable term, and neither is constitutionalism or, for that matter, law. I use 'discourse' here in a sense rather like Pocock's "paradigm"; these legal texts were products of an imperial or epi-imperial[13] culture that "functioned paradigmatically to prescribe what [one] might say and how [one] might say it."[14] In other words, that culture was marked by a certain shared set of values or evaluative criteria, as well as widely understood symbolic or metaphoric relationships between real-world actions and those preferred values, and understanding Roman law as a Roman historian requires reconstructing that particular environment as an actor in its own right that influenced legal communication.[15] More specifically, I believe properly understanding the claims contained within legal texts of the Severan period requires reading those texts in the language of *ius* that informed their production, and placing them within a shared evaluative framework valuing legalism and what Straumann has termed "constitutional values" of either popular or aristocratic sovereignty (depending on whose values are being expounded) bounded by traditionalizing, proceduralist norms of decision and a strong distrust of inappropriate deployment of force.[16]

[13] I refer here to juristic texts, which were produced by individuals who were, by the Severan period, largely employed within the imperial bureaucracy, but who wrote those texts while acting outside of that official capacity. See *infra* Ch. IV, notes 11-65.
[14] Pocock 1989: 25.
[15] See *ibid.* 28 ("To know a language is to know the things that may be done with it, so that to study a thinker is to see what he attempted to do with it.").
[16] See Straumann 2016: 54-62.

While this dissertation does not aim to establish the salience of constitutionalism or constitutionalist thought in political discourse of the Principate, three examples of the form may be useful to show the importance of law to broader conceptions of imperial legitimacy. In his *Res Gestae*, Augustus claims that he, "by means of new laws which I put forward (*legibus novis me auctore*), restored many *exempla* of our ancestors which were passing out of our age, and also handed down my own *exempla* of many things for posterity to emulate."[17] Augustus here pointedly portrays himself not only as a lawmaker, but as a moralist who uses that legislative authority to engage in a sort of instructive work; *leges novae* are the means Augustus here uses to place himself in a restrospective and prospective exemplary chain.[18] Here, Augustus represents himself not only as using law to order subjects' lives, but also to engage in a sort of institutionally empowered exhortation towards moral improvement.[19] The emperor not only shows his citizens how good men should act, but enshrines those notions in a generally applicable law which purports to restrain Augustus' behavior no less than that of anyone else.[20]

[17] *Res Gestae* 8: *Legibus novis me auctore latis multa exempla maiorum exolescentia iam ex nostro saeculo reduxi et ipse multarum rerum exempla imitanda posteris tradidi*. On Augustus' 'moral legislation' as critical to his broader representational strategies, see Galinsky 1981.

[18] This idea of exemplarity, or of the use of specific *exempla* of past greatness in normative reasoning, is itself a rich discourse in Roman moralistic thought. For a brief introduction to exemplarity in this context, see Roller 2004: 3-4 (providing "the main features of . . . 'exemplary' discourse in Roman culture, a discourse linking actions, audiences, values, and memory."); for a more detailed explanation of the mechanics of exemplary reasoning, see Morgan 2007: 122-59, and for a brief discussion of the value of law as a vessel for exemplary reasoning in the Severan period—focused primarily on juristic authors—see Ando 2015.

[19] This theory of law as a tool of 'exhortation' is discussed (in the later context of the third century and Dominate) by Ramsay MacMullen; MacMullen 1976: 29.

[20] Notably—although this does not appear in the *Res Gestae* for obvious reasons—the *domus Augusta* did not appear to be immune to Augustus' moral demands; Augustus' own daughter and granddaughter were banished on the grounds that they were *omnibus probris contaminatas*. See Suet. *Aug.* 65.

This notion of imperial self-interest being subjected to generally applicable laws, and of that subjection as relevant to broader conceptions of imperial legitimacy, is visible throughout the Principate; two later—but both pre-Severan—examples make this clear. The *lex de imperio Vespasiani*,[21] a *lex* recorded on bronze tablets delineating the powers of the emperor Vespasian, analogizes the senate's grant of power to the new *princeps* to that given to his Julio-Claudian predecessors; for example, the *lex* empowers Vespasian to make treaties with the phrase "let [Vespasian] make a treaty with whomever he should wish, as was permitted for the Divine Augustus, Tiberius Iulius Caesar Augustus, and Tiberius Claudius Caesar Augustus Germanicus."[22] This formula recurs four times throughout the text; Vespasian's powers are granted to him not because of his military supremacy over Vitellius, or personal qualities that render him uniquely fit to lead, but instead the senate's willingness to grant Vespasian powers in accordance with a constitutional framework developed in earlier circumstances and that ought to be applied in this similar instance.[23] This sort of constitutional talk—in which the *princeps* is rendered politically legible through assimilation with earlier, legitimated instances of the same powers being granted to similar figures—was uniquely amenable to embodiment in law, itself a discourse associated with precedentiality, generality, and regularity. The *lex* is remarkably self-conscious about its generic status (concluding with a section establishing its supremacy over other *leges, rogationes, plebisue scita, senatusue consulta*) and analogizes its imperial grant to a sort of conformity with legal precedent.

[21] *CIL* 6.930 (=ILS 244). Capitoline Museums, Inv. No. NCE 2553. See also Brunt 1977.
[22] *foedusue cum quibus uolet facere liceat ita, uti licuit diuo Aug(usto), Ti(berio) Iulio Caesari Aug(usto), Tiberioque Claudio Caesari Aug(usto) Germanico*.
[23] See, for example, Peachin 2007 (referring to the *lex* as an instance of exemplary reasoning), Hurlet 1993 (imagining the *lex* as reaching towards earlier Julio-Claudian accounts of legitimacy).

One final example of imperial constitutionalism mediated through legal work is Pliny's *Panegyricus*, a speech given in thanks for his appointment as suffect consul that listed the virtues of the emperor Trajan.[24] Amidst an extensive—to say the least—discussion of Trajan's personal moral continence and restraint in exercising imperial power, Pliny praises Trajan's procedural fairness and willingness to hold his court to the same standards as other Roman tribunals:

> People now fear not informers, but the law. . . . it is said to your procurator's agent—and to your procurator as well—"come to trial (*in ius veni*), follow me to the tribunal"! For a tribunal of imperial affairs has been established, just like all the others unless you consider the magnificence of its litigant.[25]

These specific cases support Pliny's more general claim that—at least under Trajan—"the *Princeps* is not above the laws, but instead the laws are above the *Princeps*."[26] This example shows most clearly how law could serve as a medium for presenting an image of Trajan as subject—or subjecting himself—to historically legitimate political structures; imperial lawmaking was understood (at least by elite audiences such as Pliny) as a venue for the performance of tyranny and its opposite, a moment in which a good emperor would demonstrate his goodness by subordinating his whim to general, impartial commands of the sort that are most commonly found in law. The *Panegyricus* is many things, but history is not one of them; I take no position on Trajan's actual adjudicative behavior or understanding of his relationship to law. That said, the fact that this language of impartiality was employed by Pliny as a way to praise and legitimate an

[24] For an introduction to the *Panegyricus*, complete with a withering analysis of its style and readability, see Radice 1968; for more recent work on the *Panegyricus* as an example of imperial/senatorial interaction in the early second century C.E., see the essays collected in Roche 2011, as well as Levene 1998.
[25] Plin. *Pan.* 36.2-4.
[26] *Ibid.* 65.1; see also Tuori 2016b: 184-92 (discussing the importance of law to Pliny's praise of Trajan in his *Panegyricus* and letters).

emperor suggests that Straumann's model of constitutionalism as a Pocockian discourse was both present in the Principate and profoundly legalist in its expressions or enactments.

My dissertation enriches our understanding of Roman constitutionalism by extending it temporally and deepening it generically. While this model of Roman law as a substrate through which constitutional values could be expressed is not original to me, Straumann's model focuses largely on constitutionalism as a specifically republican virtue, one whose transgression endangers the republic as a governmental form or one whose later adherents understand it to call back to a lost republican past. My interest, following other Severan historians like Adam Kemezis, is in the somewhat distinct "constitutional" values of the Principate; of good rule arising from internal rather than external restraint, and of laws not as things possessing an *imperia*[] . . . *potentiora quam hominum*, as Livy describes them in the Republican period,[27] but as a set of rules and practices engaged in by a *princeps* worthy of the name. In its invocation of higher norms that do less to actually constrain actors than to guide evaluation of what they do, the preferences expressed in these cases can be understood as a form of imperial constitutionalism; by imagining how law functioned to express shared political values immediately prior to the Third Century Crisis, I demonstrate that constitutionalism should not be understood merely as a necessary condition of the Roman republic, but as an expression of more transtemporal desiderata within Roman political culture. Furthermore this dissertation, by exploring the distinctive mechanics of instantiating good governance and its accompanying constitutional values in *legal* work, shows how law and the processes surrounding its promulgation, interpretation, and application played a unique and surprisingly understudied role in maintaining and refining the 'unwritten constitution' of the Principate. I focus on the Severans, because of their tumultuous politics and extraordinary legal

[27] Livy 2.1.1.

productivity, but political contestation in legal forms is not merely a Severan phenomenon; it is a Roman (or perhaps a human) one.

I should note, also, that these methodological commitments are essentially emic ones; I explore concepts such as exemplarity and constitutionalism that are not transcultural or general to the human experience, but specific to Roman conceptions of empire, morality, and governance. I apply this same emic framework to law, and for the purposes of this dissertation define it straightforwardly (as much as is possible) as the set of political, intellectual, and social processes encapsulated by the Roman term *ius* and its variants. The phenomena I discuss throughout this dissertation are the ones analyzed by *iuris consulti*—those trained in *ius*—or alternately that Cassius Dio describes with terms like δίκη or δικάζειν.[28] A modern legal scholar would likely consider this definition both over- and underinclusive; for example, when Philostratus describes embassies asking the emperor for special exemptions from broadly applicable imperial policy, we might think of that as a form of diplomacy or executive work rather than law *per se*. Similarly, this dissertation excludes a host of ordering processes based on other forms of decentralized authority that a contemporary legal historian would likely consider functionally equivalent to law.[29] While I use contemporary terminology for clarity's sake—for example, in distinguishing between adjudication and legislation—my interest is not in determining whether or not certain kinds of legal goods we are aware of today were present in the Roman world,[30] but with understanding how

[28] For a discussion of the meanings of δικάζειν within Dio's *Roman History*, see *infra* Ch. III, notes 107-109.

[29] For example, Robert Ellickson published an article in the *Stanford Law Review* concerning the formally nonlegal dispute resolution procedures of ranchhands in Shasta County. See Ellickson 1986.

[30] As for example, Lanni 2006, which takes as its project an analysis of procedural norms in Athenian courts and concludes that their "emphasis on finding a just outcome to a particular case effectively precluded a court system capable of announcing stable rules or clear moral judgments." *Ibid.* 177.

the state used the institutions then existing to present its rulers as acting in or out of accordance with emic norms. I discuss potential consequences of this usage and their ethical valence where appropriate, but this dissertation should be understood as almost entirely descriptive; whether the vision of Roman law presented here is desirable or good is up to the reader to decide.

By contextualizing Roman law within this broader political and messaging framework, this dissertation also stands within what might be called a realist turn in Roman legal scholarship. Roman law has historically been an unusually practical field of scholarly study; some of the earliest modern scholarship on Roman law was produced in what is now Germany, in the context of a long history of Germanic rulers using Roman law as a model for their own codes or individual decisions.[31] This influence could be seen not only in the adoption of roughly "*Romanistische*" methods for determining legal truth,[32] but also in widespread interest in Roman law as itself a source to be consulted in developing new German legal codes. Anton Thibault, the author of *On the Necessity of a Universal Civil Law for Germany* (*Über die Notwendigkeit eines allgemeinen bürgerlichen Rechts für Deutschland*) taught Roman law at the University of Heidelberg and, while arguing that codifiers should look to a natural law theory for the foundation of the German Code, did so largely on the grounds that Roman law, in the fragmentary form in which it was passed down, would take enormous study before becoming usable.[33] Karl von Savigny replied to this argument in his own *On the Calling of our Time for Legislation and Legal Science* (*Vom Beruf unserer Zeit für Gesetzgebung und Rechtswissenschaft*), claiming that even that sort of natural-law

[31] See Gale 1982: 124-27 (discussing premodern German usages of Roman law), Wieacker 1967: 169-75.
[32] For example, Christian Wolff, who wrote in the early eighteenth century, attempted to systematize a conception of natural law (*Vernunftrecht*) according to what he understood to be Roman principles; see Koschaker 1966: 250, Wieacker 1967: 318.
[33] Gale 1982: 129.

project would require a detailed understanding of Roman law so that codifiers would have a firm intellectual foundation in determining how a functional legal system might look.[34] This early debate over the value of Roman law for German codification helped to posit Roman legal history, from almost the beginnings of its establishment as a field, as something *useful* and (implicitly) as something the quality of which could be determined by said usefulness.

As the study of Roman law developed, particularly in Germany, this linkage between Roman and contemporary legal study only deepened. Romanists like Savigny became increasingly involved in German unification and thus increasingly concerned with the need for a functional—and thus for Savigny, inevitably historically informed—*Recht*,[35] and Theodor Mommsen, whose *Römisches Staatrecht* and *Römisches Strafrecht* remains signal works in the history of Roman legal scholarship, himself advocated German unification.[36] This interplay affected the development of Roman legal scholarship; early work on Roman law, even more than in other philological fields of the time, primarily concerned itself with determining what, exactly, Roman law *was*; as the nascent German state began to develop itself, these essentially positivist inquiries about legal history had a practical value over and above more abstract questions about the functioning of law within the Roman world.[37]

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[34] As Berkowitz notes, the relationship between Roman law and an ideal German legal system was not, for Savigny, as simple as one of model and imitation; Savigny did not advocate adopting Roman law *per se*, but instead believed it necessary that contemporary legal scholars properly understand Roman methods of divining law from a sort of popular *Volksgeist*, so that they could imitate those methods and govern what would be Germany and its own *Volk*. See Berkowitz 2005: 124.

[35] *Ibid.* 119-20.

[36] See Berger 1997: 26, 28-29 (describing Mommsen's "insiste[nce] on the creation of a powerful state with strong authority," and quoting Mommsen's personal correspondence as wishing for a "Prussian-led and liberal unified Germany.")

[37] See Wieacker 1967: 430-58 (discussing the relationship between the Pandectist movement and legal positivism).

In recent years, however, the study of Roman law has moved in a comparatively anti-positivist direction. Rather than simply reconstructing the formal provisions of Roman codes from our fragmentary sources, recent scholarship has attempted to place law within broader social contexts. Recent work has engaged with Roman legal procedure to determine a sort of phenomenology of legal interactions between the empire and its subjects;[38] examined documentary evidence—particularly from Egypt given our surviving sources—to reconstruct a provincial account of Roman law's impact on broader social history of the empire;[39] used legal texts (both juristic and documentary) to explore Roman economic life;[40] discussed the impact of Roman law

[38] See, among others, Hauken 1998 (collecting epigraphic evidence of imperial petitions), Peachin 1996 (establishing the procedural context for imperial substitutions in adjudication throughout the Principate), Tuori 2016b (providing a diachronic account of the emperor's increasing centrality to adjudication, and the corresponding centrality of that adjudicative role to imperial representation, throughout the imperial period), Wankerl 2009 (collecting evidence of imperial opinions given in response to appeals, in order to determine key linguistic and sociocultural features of this particular genre of state speech).

[39] See, for example, Bryen 2010, 2013 (analyzing the rhetoric of petitions from Roman Egypt and isolating the key role of violence in casting petitioners both as victims of extragovernmental domination in need of state assistance and, implicitly, as potential venues for Roman authorities to assert supremacy), 2012 (engaging in a similar analysis focused primarily on the rhetoric of institutionalism and depersonalization), Dolganov (forthcoming) (discussing Roman jurisprudence as an "intellectual framework" in litigation between noncitizens proceeding under Egyptian law during the second century C.E.), Kelly 2011 (positing juridical activity as key to Roman control of Egypt, and discussing the conflict between the chaotic nature of conflict resolution as preserved in our documentary sources and the final, comparatively clear outcomes seemingly promised by Roman *Staatsrecht*), Modrzejewski 1990 (discussing the interplay between Egyptian and Roman legal models over the course of the Principate). For an examination of the empire outside of Egypt, see particularly Connolly 2010 (using evidence from imperial petitions answered by texts included within the *Codex Hermogenianus* to sketch a history of late antique interactions with law).

[40] See, for example, Kehoe 1997 (sketching juristic conceptions of rural production and management), 2007 (discussing the legal mediation of agricultural production in the Roman provinces), Lerouxel 2015 (suggesting beneficial economic effects of the development of a title registry and protection mechanism developed in late first century C.E. Egypt), Rathbone 1991 (discussing the legal and economic management of the Egyptian estate described in the Heroninos Archive), Ratzan 2015 (analyzing repossession clauses in wet-nursing and apprenticeship contracts).

on public space and architecture;[41] and—perhaps closest to this dissertation's work—examined how law guided individual conceptions of or responses to the political structures of the Principate.[42]

This dissertation stands proudly within that tradition; my concern is less with the first-order rules preserved in Roman legal sources and more with how second-order rules, or core assumptions underlying those sources' analysis (such as the primacy of imperial communications in interpretive disputes, or the desirability of procedural safeguards restricting the use of force) were employed as tools of imperial messaging in the Severan period. However, my work fills a notable lacuna in scholarship on Roman law and politics thus far; work on this sort of legal discourse has focused primarily on reception, or how other actors reacted to law in forming their own self-conception or establishing their own position within Roman legal orders. I hope to bring this work back to the metropole, so to speak; while I discuss reception of legal changes as potential evidence for their broader function, my primary focus is on their promulgation and the goals of that promulgation, which necessarily centers my analysis somewhat closer to the imperial court than much of the work cited above. Similarly, my particular concern is with how Roman law was employed in the service of a particularly unstable form of dynastic politics. A notable feature of the Severan period is that, bluntly, its emperors died young; while legal sources clearly helped generate or reinforce

[41] The signal work on this topic is the essays collected at de Angelis 2010; see particularly Bablitz 2010 (discussing the spatial features of the Roman centumviral court), Maiuro 2010 (claiming extensive juridical usage of the *Forum Iulium*). See also Bablitz 2007 (discussing Roman judicial spaces more broadly, and how their architectural features facilitated or structured legal and forensic work occurring therein).

[42] This work is associated perhaps most closely with Clifford Ando; see Ando 2011 (discussing legal language and its particular conventions as organizing principles in Roman political and scientific thought), 2013 (discussing the role of law in supporting a broad ideology of provincial and elite *consensus* organized around a central *princeps*). See also Buraselis 2007 (discussing the messaging implications of the *constitutio Antoniniana*), Tuori 2012 (discussing the interplay between imperial adjudication and Hellenistic models of tyrannic adjudication or lawgiving).

subject collaboration with Roman power in a structural sense, that collaboration would do little good to an emperor or his advisors if they were slaughtered in a coup. I believe many of the idiosyncrasies of Severan legal culture arise not only from the sort of large-scale state positioning described by Ando *et alia*, but also from the more pressing, personal concerns of individual administrations whose members (including but by no means limited to the emperors at their head) were as vulnerable as they were powerful.[43] This dissertation follows in a vigorous tradition of restoring the "Roman" to "Roman law," but might be better described as restoring *Stadt* to *Staatsrecht*; the unique pressures of court life in Severan Rome impacted the legal material that court produced, and this dissertation links several different strains of legal political history in mapping that intersection.

II. NOTES ON SOURCES

Understanding the intersection between Roman law and Severan politics requires a wide variety of sources, with a similarly wide variety of medium and genre. This dissertation considers Severan portraiture, numismatics, and monumental architecture in addition to documentary, epigraphic, literary and legal texts, and this is not the place to discuss every sort of methodological difficulty posed by all of these different stores of information. However, I rely most frequently on two different sorts of textual work, each with its own complex relationship to the lived reality of the Severan period; before making specific claims based on these sources, I briefly discuss how

[43] This paradoxical juxtaposition is quite common in autocracies; the autocrat, free from legal restraint, also cannot credibly threaten punishment of anyone who is able to succeed in deposing or assassinating her. Giorgio Agamben refers to this phenomenon as the "state of exception," and discusses the extreme contingency of absolute power that results from the autocrat's occupying such an unusual position. See Agamben 1998, 2005.

scholars have approached them in the past, and my own methodological commitments in reading them as historical documents. Specifically, I here discuss the historical value and evidentiary problems of the three main historians of the Severan period—Cassius Dio, Herodian, and the *HA*—as well as the legal texts contained within the *Corpus Iuris Civilis*.

A. Literary Sources

1. Cassius Dio

The Severan dynasty is commemorated by three major historical sources, but each has serious flaws. The most comprehensive—albeit problematic—account is that of Cassius Dio, who claimed to have held office under almost every Severan *princeps*.[44] Dio, who held his first consulship under Septimius Severus[45] and his last under Severus Alexander,[46] speaks from what appears to be real knowledge about Severan political history. Scholarship on Cassius Dio has transformed in the last decade, much like scholarship on the third century in general; historians have largely abandoned

[44] Dio Cass. 76.16.4 (*consul suffectus* under Septimius Severus), 77.8.4. (accompanying Caracalla in Nicomedia), 80.1.2 (holding a variety of positions under Severus Alexander). Notably, Dio was perfectly willing to speak harshly about those he had served. For example, Dio attacks Caracalla quite strongly throughout his account (see, for example, 77.11), despite serving in his retinue. This tendency is particularly marked in Dio's treatment of Macrinus, whose appointment policies Dio singles out for special disdain (78.13.1) despite being himself appointed as governor of Pergamum and Smyrna during Macrinus' tenure. *Ibid.* 79.7.4; Barnes 1984: 244, Millar 1964: 160-61 & 164. That said, Dio attacks Elagabalus' staffing policies with particular vitriol, alleging that he filled his personal retinue with men chosen for their physical, rather than intellectual or moral, qualities. Dio Cass. 79.15.2-3. Given this bitterness, and given that Elagabalus appears to have excluded established figures such as Dio from his *consilium*, it seems probable that Dio and other figures of his rank likely played only a small role in Elagabalic administration. For a brief discussion of the lack of attested names in the court of Elagabalus, see Coriat 1997: 216, Crook 1955: 208.
[45] Dio Cass. 76.16.4.
[46] *Ibid.* 80.5.1-3.

Millar's rather scornful methodological position—that Dio was so charmless and lacking in style that his account could be read as a more-or-less unmarked account of facts, similar to a documentary archive—for a more complex account that considers Dio's unusual career as affecting his descriptions of those figures with whom he interacted,[47] as well as his self-conscious positioning within a Greek historiographic tradition.[48] These methodological commitments make literary study of Cassius Dio possible; Dio's history is inflected by a deeply normative vision of empire in decline, and recent work has analyzed the devices Dio employs to make that decline literal and palpable for his readers.[49] This literary renaissance, however, complicates historians' attempts to treat Dio as a chronicle; his idiosyncratic interests and genre (combining the annalistic history of earlier authors with a first-person account, heavily inflected by autopsy, of Commodus and his successors) make him a challenging and potentially unreliable source. While Dio is, by far, our most detailed source for Severan politics, I cite him with other historians telling a concordant account when possible.

Another concern in using Dio as a source for Severan history is the extreme variation in Dio's knowledge of different figures of the period. Dio ceased writing his *History* early in the reign of Severus Alexander and is silent on approximately the last ten years of the Severan period. Furthermore, Dio did not hold office or reside in Rome under Elagabalus,[50] and his account

[47] See, for example, Davenport 2012a, Molin 2016.
[48] The signal text on Dio as a distinctly Hellenic figure in Severan historiography is Kemezis 2014: 90-149.
[49] See, for example, Gleason 2011 (discussing the recurring theme of mistaken identity and other forms of personal doubling with the contemporary portions of Dio's history). I engage in a similar project, tracking Dio's concern with arbitrariness and irrational decisionmaking, at Herz (forthcoming).
[50] Millar 1964: 168-70. Dio states that he was in Bithynia at the time, 79.18.3, and gives no official reason for his presence there. By contrast, Dio states that he held official positions from early in the reign of Severus Alexander; 79.21.1.2, 21.5. Barnes and Syme both suggest that Dio may simply be erasing his record under Elagabalus from memory, Barnes 1984: 244, Syme 1971: 144.

conflicts with the other available textual and prosopographic evidence in several key respects.[51] Finally, I should note that large portions of Dio—including much of Book 80, which depicts Elagabalus and Severus Alexander—survive only in epitome.[52] While the epitome appears to be almost slavishly reliable,[53] it is nevertheless another barrier between readers and the third century.

2. *Herodian*

Another major contemporary source from the Severan period is Herodian, whose history extends from the death of Marcus Aurelius to the ascension of Gordian.[54] Herodian was probably alive for the events of his history,[55] but unlike Dio Herodian was probably not a member of the senate, and it is not at all clear if Herodian was even in Rome for the events he describes.[56] Herodian's history is generally somewhat cursory and and is largely understood to be inferior to that of his contemporary Dio,[57] but Bowersock argued that Herodian was somewhat more reliable in the

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This seems plausible, but by no means certain—while Dio could certainly have had good reason to hide a career under Elagabalus at this time the *History* was composed and published, the same would theoretically have been true for posts under Macrinus. It is unclear why Dio would misrepresent one aspect of his career and not the other, particularly given that both would have been publicly known regardless.

[51] Bowersock 1975: 231-36.

[52] Millar 1964: 2.

[53] *Ibid.* 195-203.

[54] See Appelbaum 2007: 199 ("The conventional reliance on Dio and Herodian is understandable, since they are the only sources contemporary, or close to contemporary, with the period under discussion that have survived more or less intact.").

[55] Herodian states that his history only describes events ἃς αὐτὸς ὄιδα; 2.15.7.

[56] Herodian makes a cryptic reference to some sort of imperial or public service at 1.2.5, but the referent is unknown.

[57] See Alföldy 1971: 229 ("mehr eine Art historischen Romans als ein Geschichtswerk"), Syme 1972b: 275. Most notably for the present purpose, Frank Kolb argued that Herodian was frequently based on Dio, and therefore redundant; Kolb 1972: 161.

limited context of the late Severans.[58] In particular, Herodian's account of the deposal of Elagabalus and installation of Severus Alexander is notably more detailed than its Dionian counterpart, and those details that are present in Dio and absent from Herodian are largely fantastical.[59]

This does not, in itself, suffice to make Herodian a terribly useful source. I use Herodian fairly frequently throughout the dissertation to corroborate claims found in Dio or the *HA*, but material found only in Herodian is rarely reliable and I treat it as such. That said, neither Dio nor the *HA* provide very much information regarding Severus Alexander; I thus cite Herodian for Alexandrian court politics and—in particular—for the relationship between the young Alexander and his advisors or regents. Please rest assured, however, that I do so unhappily; claims about Alexander on solely Herodianic evidence should be taken with some skepticism.

3. *The* Historia Augusta

The last major source for Severan court history—and by far the most controversial—is the Severan *vitae*, preserved within the series of biographies collected in the *Historia Augusta*. The *HA*, written

[58] Bowersock 1975. Bowersock focuses on differences between Dio and Herodian in the context of Elagabalus, and argues that where the texts do differ, Herodian's narrative is both more plausible and more in keeping with the third major historiographic source from this period, the *vita Elagabali*. *Ibid.* 231. Bowersock's argument is largely predicated on the superlative reliability of the *vita Elagabali*, a topic which I will next discuss. That said, Bowersock is convincing that Herodian's and Dio's portrayals of Elagabalus are so distinct as prove the two authors' independence, *contra* Kolb.

[59] For example, Dio describes Elagabalus attempting to flee Rome stuffed into a chest: when he was discovered, soldiers killed both Elagabalus and his mother Julia Soaemias, who was somehow clinging to the body. Dio Cass. 79.20.2.

at some point in the late fourth or early fifth centuries[60] most likely by one author impersonating six,[61] is a volatile mixture of playful invention,[62] scabrous farrago,[63] and occasional history. In

[60] Syme 1968a: 215 argues that the text references the failed usurpation of Eugenius, meaning that it could not have been composed before 394; Mark Thomson responded by placing a firm *terminus post quem* at 395. Thomson 2012: 49, 53. There are possible references to later events (pushing the text's composition into the later fifth century) as well, and Andre Chastagnol read civil war narratives throughout the *HA* to refer to the failed rebellion of Gildo in 398. Chastagnol 1970: 182. Tony Honoré read the text as an essentially contemporaneous response to the politics of the late fourth century, with dedicatory and allusive strategies shifting over the course of the 390s as the different *vitae* were composed. Honoré 1987: 159-65. Alan Cameron has taken a more explicitly philological approach to the problem, noting the *HA*'s extensive engagement with Juvenal and suggesting that, given the relative obscurity of Juvenal within Roman literary circles prior to the late fourth century, the *HA* likely reflects an author familiar with trends of "the court of Honorius rather than of Constantine." Cameron 1964: 376.

[61] The text is broken up into thirty biographies, or 'lives,' each of which is attributed to one of six authors: Aelius Spartianus, Iulius Capitolinus, Vulcacius Gallicanus, Aelius Lampridius, Trebellius Pollio, and Flavius Vopiscus. However, none of these authors wrote any other surviving text, or for that matter are attested in any other historical source, raising the possibility that these authors may simply be a literary device concealing a true monograph. Hermann Dessau was the first scholar (to my knowledge) to closely analyze the language of the different *vitae*, and to claim that they shared sufficiently idiosyncratic vocabulary and style to mark them as the work of the same author; Dessau 1889. Later scholars have made similar arguments; see, among others, Adams 1972, Syme 1971: v, White 1967: 115-28. Lately, however, the "subjective analyses" that make up this style of work have been challenged by quantitative modeling. Gurney & Gurney 1998: 106. The first scholar to subject the *HA* to automated scrutiny was Ian Marriott, who analyzed sentence length and syntax instead of word choice, but arrived at very much the same result. Marriott 1979: 68, 74. Later scholarship has offered harsh methodological critique of Marriott's reasoning. For example, David Sansone has claimed that similarities in sentence length may result from editorial, rather than authorial, practice; Nevertheless, Sansone emphasized his continued sympathy to Marriott's and Dessau's central claim even as he disagreed with Marriott's method of proof. Sansone 1990: 174. Later automated studies have given results contradicting Dessau and Mariott's core conclusion, such as Emily Tse's analysis of the frequency of Latin particles in the different *vitae*, which suggests that the text is, in fact, the product of multiple authors. Tse et al. 1998: 145-46. While most scholars still argue for unitary authorship, largely on the basis of traditional philological methods (Thomson 2012: 36), the question will likely remain unsettled. This is an alarming fact both for scholars of the late fourth century, when the *HA* is now largely considered to have been written (Gurney & Gurney 1998: 107), and for literary analysts of the *HA* as a text unto itself. However, this particular problem is thankfully ancillary for Severan history, as the *HA* is here most useful for its preservation of other contemporary historians.

[62] On the text's elaborate use of wordplay and pun, see Hock 1982, Mader 2005.

[63] This formulation is owed to Syme, who referred to some particular claims within the *vita Elagabali* as "a farrago of cheap pornography;" Syme 1971: 2.

particular, the *HA* varies wildly—if predictably—in quality. The first major lives up to Caracalla are generally confirmed by epigraphic evidence and fairly reliable;[64] the lives up to Severus Alexander are (with occasional exceptions) fairly sober and accurate; and later lives become increasingly playful, self-referential, and nonhistorical. Scholars have noted this variation for well over a century,[65] and largely ascribed it to differences in sourcing.[66]

Syme developed the concept of "Ignotus, the good biographer" who provided the main source for the early *vitae*;[67] however, the *vita Macrini* departs so radically from its predecessors[68] as to suggest an entirely different factual apparatus and thus a new primary source going forward. Furthermore, the *vitae Macrini et Severi Alexandri* both show idiosyncratic tendencies that are largely absent from the *Elagabali* standing between the two.[69] This odd arrangement again suggests idiosyncrasies in sourcing, and in particular a substantial role for Marius Maximus in the *vita Elagabali*—the text cites Marius Maximus frequently enough to indicate that he was an important resource for its composition,[70] and since Maximus died during the reign of Severus Alexander, the clear differences between Elagabalus' and Severus Alexander's biographies are best explained by assuming that Maximus played a major part in the former.[71]

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[64] Barnes 1978: 38-48.

[65] See Mommsen 1909: 324, referring to the lives of non-imperial figures or pretenders (*Nebenviten*) as "*nicht etwa eine getrübte Quelle, sondern eine Kloake*."

[66] But see Thomson 2012: 93-94, arguing that this collection was part of an earlier publication group; such a grouping could also explain stylistic differences.

[67] This phrase comes from Syme 1971: 30-53, but Syme first argued for the existence of *Ignotus* at Syme 1968a: 92.

[68] SHA *Macr.* 6.2; Syme 1971: 46-47.

[69] Barnes 1972: 55-58. On the *vita Severi Alexandri*, see Bertrand-Dagenbach 1990, particularly 139-63.

[70] See, for example, SHA *Elag.* 11.6.

[71] To my knowledge, this hypothesis was first put forward by Müller 1870: 111, and taken up by Lécrivain 1904: 208, 235. In modern scholarship, Ronald Syme tentatively argued for Maximus as the source of a large part of the *vita Elagabali* in 1968, before making a stronger (and broader)

Given the clear flaws in both Dio's and Herodian's account of the late Severan period in particular, however, even the secondhand narrative of the *Historia Augusta* may well be preferable, and it is for this reason that my late Severan account depends markedly more on the *vita Elagabali* than on Dio or Herodian. In particular, the *vita*'s first account of Elagabalus' downfall and death[72] is exceptionally detailed and, apart from some inconsistencies with the available material record,[73] generally plausible. That said, it includes several of the odd, playful—and almost certainly fictional—details that distinguish the *HA* from other, more traditional works of Roman historiography. To give one example: the *vita Elagabali* claims that, immediately prior to the coup that put Severus Alexander on the throne and that installed Ulpian in his position of extraordinary power,[74] Elagabalus put out an order for a Sabinus to be killed, but that he was accidentally spared.[75] The *vita* seems to attribute this "accident" to Sabinus' friendship with Ulpian, referring to him as *consularem virum . . . ad quem libros Ulpianus scripsit*;[76] of course, Ulpian's *libri ad Sabinum* refer to a rather different figure.[77] Nevertheless, this incident speaks both to Ulpian's

claim that he was the primary source for the entire *vita* in 1971. see Syme 1968b: 500 n.2, 1971: 121. See also Barnes 1978: 107, Birley 1997: 2678-757, 2006: 19-29.

[72] Contained in SHA *Elag.* 13-17.7.

[73] For one example (which may simply arise from confusion over names), compare SHA *Elag.* 5.1 (claiming that the Senate addressed Severus Alexander as Caesar immediately after Macrinus' death) with the fact that no coins or inscriptions refer to Alexander as Caesar until far later. See Bertrand-Dagenbach 1990: 13, Dušanic 1964: 490, Loriot 1981.

[74] Dio Cass. 80.1.1; Cleve 1988: 118-19, Honoré 1994: 34-35.

[75] SHA *Elag.* 16.2-4.

[76] *Ibid.* 16.2.

[77] Dessau was the first to note this mistake, which could arise either from simple ignorance or—more likely—the playfulness that marks the *HA* more generally. Dessau 1892: 578. Syme read this incident as completely unintentional, stating that "the scholiastic habit of annotation and the parade of knowledge gets [the *vita*] into trouble;" Syme 1971: 119-20. Such a reading strikes me as implausible; to imagine that a well-educated figure enmeshed in fourth-century aristocratic circles would be sufficiently versed in law to be aware of the Ulpian commentaries *ad Sabinum*, without knowing of the variety of other juristic texts bearing the same 'dedication,' stretches credulity, particularly if the conjecture is made in the service of reading an intentional pun out of (of all texts)

popular understanding as a major political figure in the late Severan period, and to the likely sourcing of the *vita*—Sabinus survived into the administration of Severus Alexander,[78] in which Marius Maximus played a large role.[79] One worry this aside raises, however, is that it clearly shows the hand of the *HA*'s true author. The best argument for the *vita*'s reliability presumes a sort of benign plagiarism, and that the text we have is essentially a word-for-word copy of reliable contemporary history (whether that of Ignotus, or more likely of Marius Maximus).[80] This anecdote (and others like it) aren't plagiarism. It is simply inconceivable that a *proconsul*, *praefectus urbi*, and *consul ordinarius* would have made such a mistake, and nothing in the *HA*'s other references to Marius Maximus or his later reception suggests the sense of humor an intentional error of this sort would imply. This evidence suggests that at least some material in the *vita Elagabali* is original to the author(s) of the *HA*, whose originality is very much something to dread.

4. *Fact and Fiction in the Historiographers: Comparing Accounts to the Primary Evidence*

As I have shown, the three primary historiographic texts describing the Severans have major strengths and weaknesses—Dio is the most reliable historian of the Severan period generally, but was absent from Rome for the reign of Elagabalus, while Herodian's text fills in gaps but is

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the *HA*. Honoré's reading of this aside as "mischievously pretending" seems preferable. Honoré 1994: 34.

[78] SHA *Elag.* 16.3.

[79] Serving as *consul ordinarius* in 223. See *CIL* 6.1450; Leunissen 1989: 382, Mennen 2011: 109-10.

[80] Syme 1971: 134.

generally more cursory and worse informed. The *HA* is an outlier in nearly all respects. The *vita Elagabali* is so much more detailed—and so much less pockmarked with fake documents, self-conscious historical parody, and obvious lies—than its immediate neighbors in the *HA*'s chronology as to suggest a basis in the reliable Marius Maximus. However, the best-case scenario for the *HA* remains a bleak one: a fourth-century text, almost entirely plagiarizing a lost contemporary biography. Further complicating the issue is the difference between the image of Severan politics that survives in the historians and that of the available material evidence. For example, the historians' claim that Elagabalus attempted to place Elagabal at the head of the Roman pantheon,[81] which formed the basis both for Elagabalus' condemnation in these texts[82] and in the Senate,[83] is largely contradicted by available material. The arval *Acta* show that festivals to celebrate Jupiter continued uninterrupted during Elagabalus' reign,[84] and Clare Rowan's analysis of Elagabalic coinage includes many images of the traditional Roman pantheon, including Jupiter, Mars, Roma, and the personified Victory.[85] In this case, at least, the historiographic narrative is best understood as not so much a reflection of Elagabalus' true rulership and presentational strategy, but instead as reflecting what Michael Sommer has referred to as "nur ein *Bild* des Kaisers,"[86] and as fulfilling (especially for Dio and Marius Maximus) the narrative needs of Severus Alexander.

[81] Dio Cass. 79.11.1; for a useful synthesis of historiographical treatments of Elagabalus' religious policy, see Sommer 2004: 104-07.
[82] Hdn. 5.6.6-9, SHA *Elag.* 6.7.
[83] Dio Cass. 79.21.2; Rowan 2013: 217-18.
[84] Optendrenk 1969: 98-100.
[85] Rowan 2013: 166 fig. 56 & 207.
[86] Sommer 2004: 96.

B. Legal Sources

The discussion above should not be taken to posit Severan historiography as uniquely unreliable or methodologically nettlesome; my other primary body of evidence, the *Corpus Iuris Civilis*, should make that clear. The *Corpus Iuris Civilis* dates from the early sixth century C.E., when Justinian ordered lawyers in his court to synthesize excerpts from legal texts in circulation at that time into a single coherent body of law.[87] The *Corpus Iuris Civilis* consists of four discrete texts; two, the *Novellae* and *Institutiones*, are entirely Justinianic in origin and thus of no great importance for the present project. However, the *Corpus Iuris Civilis* also contains the *Digesta* (*Digest*), a collection of excerpts from juristic treatises of the Classical period, and the *Codex*, a collection of imperial legal communications from the Classical and post-Classical periods. Both of these texts contain substantial material from the Severan period and are, in fact, easily our most comprehensive sources for understanding Roman law of the early third century. As such, I rely on them heavily; however, the *Corpus Iuris Civilis* has its own complex methodological concerns. Specifically, although the *Corpus* excerpts legal texts of the Severan period, it is by no means clear whether any given text available in the *Corpus* is identical to that put forth by jurists or imperial authorities in its original time. The *Corpus Iuris Civilis* was compiled approximately three centuries after the Severans, and Severan texts within the *Corpus* could have been altered from their original content in two very different ways. I address each in turn.

First, a scholar of Roman law relying on the *Corpus Iuris Civilis* (and particularly the *Digest*) must contend with the fact that many excerpts preserved therein were intentionally altered

[87] On which see, among others, Honoré 1978, Osler 1985, Pugsley 1991.

during the compilation of the text, a process commonly known as interpolation.[88] Our evidence for interpolation is substantial, even if its scope is nearly unknowable; as David Johnston puts it, "there are some cases (not of course as many as one would like) where the text in the *Digest* plainly cannot have flowed from a classical pen."[89] Scholars disagree on the extent of interpolation or—perhaps more importantly—the proper concern which should be given to *Interpolationkritik*[90] before making positive claims about legal sources in the time of their promulgation based on the Justinianic text. Max Kaser has argued for an essentially conservative approach that downplays interpolation, to which I am broadly sympathetic;[91] however, I believe that the manner in which I approach these texts is robust against even more aggressive views of the phenomenon. Specifically, this dissertation largely employs legal sources to make *comparative*, not *absolute* claims; my interest is in how Severan legal language and content differs from that of other periods as preserved in our surviving texts. It seems clear that, even if the Justinianic compilers were exceedingly aggressive in molding Classical law to meet their needs, they would have treated that law as a synchronic whole; Justinian instructed the compilers to think of the texts they excerpted as essentially the product of Justinian and of their own redaction, rather than of specific pre-Justinianic authors or imperial courts.[92] The *Corpus Iuris Civilis* is not intended to put forward a historical narrative, which means that one would expect these sorts of alterations to affect different authors and authorities similarly. For example, in Chapter III of this dissertation I note that Severus Alexander is vastly more likely to cite prior imperial precedent than other emperors whose

[88] Interpolation was first discussed by Otto Gradenwitz: Gradenwitz 1887.
[89] Johnston 1989: 150.
[90] Or, to borrow Lenel's less favorable phrase, *Interpolationenjagd* (interpolation-hunting). Lenel 1925.
[91] See Kaser 1962.
[92] See, for example, C. *Tanta* 10: *quidquid ibi scriptum est, hoc nostrum appareat et ex nostra voluntate compositum.*

rescripts are preserved in the *Codex*: while it is conceivable that compilers could have removed this citational material from documents throughout the text, it seems implausible that they would have removed them from Severus Alexander at a drastically lower rate than from other authors.

The other primary methodological problem in studying the *Corpus Iuris Civilis* is perhaps most closely associated with Franz Wieacker, who noted that, in cases where legal texts are preserved in two different "editions" over long periods of time, those editions often differ.[93] In keeping with Wieacker's text on the subject (*Textstufen klassischer Juristen*), I call this the "transmission" critique. Even leaving aside any intentional alterations that occurred over the course of the compilation process, the transmission critique suggests that the texts to which the compilers had access were themselves altered copies. Furthermore, unlike interpolation this process would not be expected to affect every authority equally; older texts would have longer transmissions with more opportunities for alteration. For my analysis of the *Digest*—which is almost entirely composed of excerpts from documents written before or during the Severan period—I can safely shrug off the transmission critique; since the vast majority of this transmission process was post-Classical, it would have affected Severan and pre-Severan texts roughly equally. That said, the Severans are some of our earliest authorities cited in the *Codex*; there is simply a greater time period in which alteration could have occurred for them than for later figures within the text. My suspicion is that this transmission process should actually have smoothed out the idiosyncratic features of Severan legal writing, rather than accentuated them; it seems unlikely that transmitters would add material to these older legal documents that was unlike more contemporary examples, as opposed to removing this idiosyncratic material to create a more intelligible text. Therefore, what idiosyncrasies are visible in Severan legal writing should be understood as having

[93] See Wieacker 1960.

survived transmission, not as having been created by it. That said, I am less confident in this claim than in my earlier arguments about interpolation; I am as confident in my conclusions as is possible given the troublesome nature of our sources, but no more so.

A final, but critical, methodological clarification is in order. Throughout this dissertation, I will consider legal changes or innovations that transformed the Roman world and those within it; however, my primary focus will be on how these legal pronouncements functioned in the context of imperial messaging. This may seem cynical, or willfully besides the point; Caracalla's universal citizenship decree, for example, did vastly more than just reinforce a particular image the emperor or his court wished to convey. I do not intend to argue otherwise, but simply to position myself within histories of communication, rather than broader traditions of law and society. A law can be life-changing, ideologically charged, neither, or both; my focusing on the second attribute is not intended to denigrate the first.

Instead, I consider the utility of Roman legal advancements as intimately linked with their communicative value. A tool may attract a user because it helps them achieve some purpose, while serving purposes of its own in its interaction with or influence upon that user. To explain how I understand this messaging function of laws to interact with their 'use-value,' it may be helpful to consider the problem through the lens of another subfield and its own questions of utility and ideology: specifically, through numismatics. Coins were obviously useful in the Roman world, and just as obviously contained politically charged images. For example, consider the coin of Septimius Severus at Figure Int.1, with an obverse portrait of Julia Domna, and a reverse image of Julia sacrificing accompanied by the phrase *mater castrorum*:

Figure Int.1. Julia Domna as *mater castrorum*. Mattingly-Syndenham, *RIC Sept. Sev.* 563B.[94]

[94] Image courtesy of OCRE. Julie Langford has discussed this particular ideological claim in some detail; Langford 2013: 23-48.

This coin was legal tender within Severan Rome, and it also made a specific claim about the relationship of the *domus Augusta* to the military. It seems obvious that the first point is important for historians who wish to understand that period, but what about the second?

While some historians (most notably Crawford and Jones) have claimed that the messaging content of Roman coins was essentially irrelevant to broader perceptions of the state,[95] a larger group views coins as serving simultaneous economic and communicative functions.[96] I argue that Roman historians can productively examine legal sources using a similar framework, considering their value as tools for individuals seeking to improve their standing in legally-mediated state interactions simulatenously with a broader set of messages about state and sovereign that these laws or legal pronouncements might seek to convey.

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[95] Jones 1956 memorably compares the images on coins to the images on postage stamps; bureaucratically chosen and essentially ignored (but see Butcher 2005, who argues by analogy with the then-recent issue of British postage stamps bearing the image of a Dalek that even if an image is not closely interacted with by all those who come into contact with it, it can still tell historians something about the sorts of symbols that made up the world within which it was produced). Crawford 1983 takes the obverse image on a coin as critical for establishing its legal status, but views the reverse as a rarely-noticed afterthought: "The rulers of the Roman Empire were on the whole intelligent men and I find it hard to believe that with so much else on their hands they, or indeed their senior advisers, devoted day-to-day attention to the devising and designing of types of which almost no-one took any notice." *Ibid.* 59.

[96] Cheung 1998 usefully runs down the dominant—and to my mind, convincing—arguments for understanding coins as ideologically charged, including contemporary literary accounts (listed at 53) suggesting audience engagement with reverse images. See also Levick 1982 (arguing that, whatever the money-handling public thought of the images contained on their coins at any given moment, coins were primarily a venue for figures within the imperial bureaucracy to flatter an emperor by presenting lionizing images), Rowan 2016 (discussing provincial coinage as a genre of 'entangled object' that was expected to convey a variety of different messages depending on the different social contexts in which it might find itself embedded during particular interactions), Wallace-Hadrill 1986: 69-70 (comparing the 'heads' side of a coin, or its legally mandated value as a medium of exchange, to the 'tails' side of the coin as a "value-laden" store of ideologically changed images and arguing that the two were mutually reinforcing).

That said, a law is not a coin, and there are some very important differences between the sorts of communicative work each can perform. Firstly, the audience for legal messaging cannot be segmented as neatly as the audience for numismatics. As Metcalf, Hekster, and Marzano (among others) have noted, the sorts of images found on coins can vary sharply by material and value; this likely represents an imperial authority that "target[ed] different groups in different ways."[97] It is almost certain that a similar sort of 'audience segmentation' took place in the legal sphere; for example, the law forbidding Septimius Severus from putting senators to death without trial would be especially salient to senatorial audiences, while his relaxation of restrictions on military marriage would mean more to those individuals whose rights were affected. But not every legal change discussed in this dissertation is quite as specific, and there are vastly more populations that might be singled out in legal communication than types of metal that could ever be made into coinage. Understanding to whom a legal pronoucement was intended to speak is in some ways easier than with numismatics—since there are more words to work with—but also vastly more complicated, and doing so requires close engagement with the more straightforward 'legal' functions of the sorts of documents I deal with here.

Another difference, which to my mind makes legal speech a particularly rich venue for imperial communication, is the unique way in which the traditional 'use' of legal rules requires repetition or recapitulation of the messages they contain. Scholars discussing the messaging

[97] Hekster 2003; see also Marzano 2009 (discussing the relationship between denomination and intended audience in the specific context of Trajanic numismatics), Metcalf 1993 (discussing the distinct value an abstract representation of *liberalitas* might have for elite audiences, and suggesting the greater incidence of such types on precious-metal coins reflected audience differentiation).

features of coins sometimes analogize them to monuments,[98] and much like monuments, the audience for a coin is a passive one. Enjoying the shade of an archway, or exchanging money, makes one into an attentive audience for messaging, but the comfort of the arch or the value of the coin are not dependent on that messaging.[99] Not so with law. Imperial legal communications (whether responsive to a petition or self-instigated) are important specifically because of the claims they make about the world, and the value they provide to other individuals who benefit from those claims being seen as true. These opinions were preserved not only for legal study, but for use in court—for example, imperial responses to petitions are cited as supportive authority in court documents long after their initial promulgation.[100] To engage with imperial communication in that way is not just to be exposed to the desired message, but to actively duplicate and endorse it. The audience for these sorts of claims (about an emperor's munificence towards other groups, his connections with other figures within the Roman political system, or his positioning within broader dynastic continuities) would have heard them not only from a central promulgating authority, but also from litigants or advocates with incentives to repeat those claims in order to win their own cases. This is by no means the only thing that law can do; laws matter, as a cursory read of the newspaper can attest. But legal pronouncements, because of the specific way their utility relates

[98] See, for example, Cheung 1998: 61 (describing imperial coinage as "monuments in miniature"), Meadows & Williams 2001: 43 (describing coinage of the later Republican period as "small-scale but widely circulating monuments to the
moneyer himself and to the family from which he sprang").

[99] Cf. Wallace-Hadrill 1986: 70 ("The economic function of a coin lies in its potential for exchange, not in its design; but only through a design does a piece of metal become a coin, and the design in its nature draws on values outside the economic sphere."). Importantly, the value of the coin derives not from its *design*, but from *the fact of its being designed*; it does not matter whether the coin says Julia Domna is the mother of the camps or the Mother of Dragons, let alone whether either is the case, so long as it says something that reflects the involvement of an official mint.

[100] For this use of rescripts as precedent, see Katzoff 1972: 273-78.

to their claims about the world, were a rich and still underexamined component of Roman imperial messaging, over and above their importance to everyday social life.

* * * * *

Having discussed my methodology and evidence, it now seems appropriate to explain, at long last, what exactly this dissertation *does*. The dissertation includes four chapters, in addition to this introduction and a brief conclusion. Chapters I though III proceed in a diachronic fashion through the courts of the Severans, while Chapter IV asks how legal scholarship, or juristic writing, reacted to the imperial maneuvers and legal changes described in the chapters above.

Chapter I, which addresses legal policy under Septimius Severus (who reigned from 193-211 C.E.), introduces the core question with which Septimius and his descendants would struggle: in the early third century, when imperial power was increasingly visibly a matter of military control and not much else, why should anyone view the emperor as a legitimate sovereign entitled to obedience? I argue that law was a major component of Septimius' answer. Septimius Severus' reign is marked by major changes in the legal structures mediating relationships between the emperor and a variety of different subject populations, including the army, the senate, and the population as a whole. I argue that these changes helped imbue Septimius Severus' public image with a certain kind of performative legalism, and in particular that they helped make Septimius' lawmaking activity into a variant on Roman spectacle, best understood through the theoretical frameworks traditionally applied to more obviously startling or extraordinary events and specifically communicating the emperor's adherence to and subsumption within transdynastic institutional frameworks.

Chapter II considers Caracalla (211-217), who is recorded in a variety of different sources as singularly unconcerned with law and with administration more broadly; however, Caracalla promulgated the *constitutio Antoniniana* (*CA*) in 212 C.E., a law extending citizenship to all free inhabitants of the Roman empire that is arguably the single best known piece of Roman law today. In this chapter, I argue that the *CA* should be understood not only as a legal document intended to clarify individual obligations or otherwise simplify Roman social or economic life, but instead as a piece of imperial messaging designed to communicate Caracalla's extraordinary personal relationship with the divine and power over the lives of his subjects.

Chapter III discusses the regimes of the last two Severan emperors, Elagabalus (218-222) and Severus Alexander (222-235). The two emperors are preserved in ancient historiographic accounts as a diametrically opposed pair, with Elagabalus' sexually and religiously transgressive rule followed by a return to relative normalcy under his meek, well-brought-up cousin. An examination of contemporary sources from both emperors' reigns reveals a more complex reality. I argue that much of Elagabalus' religious self-representation can be understood less as an attempt to performatively break with earlier communicative practices and more as a failed attempt to adapt Caracallan forms of imperial representation to his own biography and particular religious positioning. This referentiality to Caracallan communications is, unfortunately, nearly all we can see about Elagabalus' administrative practices, given the erasure of Elagabalic materials from later records; while what evidence we have suggests an otherwise conventional administrative style (and in particular a competence in adjudication which belies some of the more overtly hostile historiographic accounts), we simply lack the material to make detailed or confident claims in that arena. The same is not true for Severus Alexander, who promulgated a large number of communications preserved in the *Codex*. I argue that features of imperial legal communications

under Severus Alexander—in particular his relabeling of Elagabalic laws as his own and his pronounced habit of citing earlier imperial authority—accord with similar tendencies in imperial representation in other media of the period, and that these features may link Alexander's legal regime with a more general communicative program representing Severus Alexander as a return to normatively desirable Severan/Antonine continuity after Elagabalus' aberration.

My final chapter addresses the Severan jurists, who combined work in the imperial bureaucracy with scholarly pursuits to a greater extent than their forebears, and considers how this might have affected juristic writing. I note two idiosyncrasies in Severan juristic writing: first, I identify a tendency among the Severan jurists to argue on rule-consequentialist grounds (i.e. to justify interpretations of rules based on the beneficial effect of those interpretations' promulgation) more often than those writing in earlier periods, and second I note that Severan jurists are more likely than their predecessors to cite imperial authority without naming the exact figure cited, instead claiming authority on the basis of *rescripta Principalia vel sim*. This citational practice could respond to the increasing political instability of the period in two distinct ways: by allowing jurists to cite imperial precedent without having to worry about associating themselves with disgraced authorities, and by allowing legal rules to persist in a reasonably stable form as emperors fell out of favor and their acts were erased.

Notes on Abbreviation, Texts, and Translations

While this dissertation adopts OUP abbreviation, I have deviated from OUP style in certain cases for clarity's sake. First, one unfortunate consequence of Severan rulers' affinity for dynastic or familial themes in presentation is that they sometimes have extremely similar names; for example,

the second and third Severan emperor both are referred to as *Marcus Aurelius Antoninus*. For the purposes of this paper, I refer to the first Severan emperor as Septimius Severus, the second as Caracalla, the third as Elagabalus, and the fourth as Severus Alexander. To avoid ungainliness, I occasionally refer to 'Septimius' and 'Alexander;' I similarly employ 'Septimian' and 'Alexandrian.' For the latter, it is clear in context whether I refer to the individual or the city (it is almost never the city). In keeping with these naming practices, I abbreviate the Severan *vitae* of the *HA* as *Sev.*, *Car.*, *Elag.*, and *Sev. Alex.* respectively. I also break from OUP style in my citation of legal sources. *Digest* citations include the author and work; *Codex* citations include the year of promulgation when necessary for a diachronic claim, and the name of the promulgating authority whenever it is not clear from context.

I use three ancient sources with a problematic manuscript tradition; my text of Cassius Dio follows Boissevain 1955, my text of the *Digest* follows Watson et al. 1985, and my text of the *Codex Iustinianus* follows Frier et al. 2016. All translations are my own unless otherwise specified.

CHAPTER I

LAW AND INSTITUTIONALISM UNDER SEPTIMIUS SEVERUS

INTRODUCTION

We have already seen how Septimius Severus liked to play judge, and in the major legal developments that marked Septimius' reign we can see a similar sort of performativity. Septimius consolidated adjudicative power under his prefects[1] while preserving the fiction of senatorial trials when it suited him[2] and using public lawmaking as a means to impress nonelite audiences. While Septimius' innovations in religion, architecture, and military policy have been widely discussed, this aspect of his reign has been remarkably shortchanged in scholarship on Severan political history.[3] Septimius, faced with internal and external threats to his reign and political actors who

[1] See, *inter alia*, Dig. 1.12.1pr. (Ulpian, de Officio Praefecti Urbi); see also *infra* text accompanying notes 30-55.

[2] Dio Cass. 75.2.1-2, Hdn. 2.14.3, SHA *Sev.* 7.5.

[3] The majority of the literature on this topic is cited in my introduction, but in terms of Septimius Severus specifically, Susann Lusnia has recently published a survey of Septimius' architectural program within the city of Rome, which was remarkably ambitious given how little time he spent in the city; Lusnia 2014. Clare Rowan emphasizes the importance of religious and military themes in Septimian numismatics; Rowan 2013: 32-109, esp. 33-47. Achim Lichtenberger has discussed similar religious themes, but with a less specifically numismatic set of sources; Lichtenberger 2011. Julie Langford has focused on Julia Domna, Septimius' wife, as a site of connection between Septimius and various Roman power centers. Langford 2013: 38-48. See also Bahalal 1996, esp. 18 (discussing the interplay between theories of dynastic continuity, senatorial support or collaboration, and military loyalty in supporting claims to imperial power), 33 (discussing Septimius' specific efforts to portray himself as an Antonine dynast). Olivier Hekster's recent work on dynasticism and familial themes in imperial representation approaches its themes "horizontally," considering their appearance in sculpture, numismatics, public architecture and epigraphic communication. Hekster 2015: 143-57, 209-21. Clifford Ando's work on imperial communication emphasizes the interplay between centrifugal state messaging and provincial reception, adoption, and recapitulation of that messaging; for a discussion of this phenomenon in the specific context of Septimius Severus and the Secular Games, see Ando 2013: 105-06. For more detail on the *ludi saeculares* and their communicative implications, see Rantala 2017.

were becoming dangerously accustomed to rebellion, was forced to develop entirely new ways to justify his tenure on the Roman throne, and recent monographs have considered Septimius' architectural and religious legacies through this lens. By contrast, Septimius' legal policies have been considered as part of the history of law, and not of the history of imperial self-representation and –legitimation. Combining these approaches can not only help historians of the Severan period understand the legal developments that mark the era, but also show legal historians more broadly how law could function as a locus of government messaging, for an emperor in dire need of a new message.

This messaging function is most clearly understood by going outside of the traditional theoretical frameworks of ancient Mediterranean history, and looking at a broader theoretical literature relating to law and its ability to legitimate power. For example, Septimius' show of imposing legal rationality and predictability on forms of imperial authority that had historically been viewed as more arbitrary—such as, to preview coming attractions, violence towards the Senate, quasi-sacralized public appearances, and generosity towards favored communities within the Roman military—exemplify the phenomenon of "rule by law" discussed in Brian Tamanaha's treatment of legalist discourse in autocracies.[4] I argue that Septimius' preference for highly visible instances of adjudicative or legislative behavior can be understood as part of a broader presentational strategy emphasizing legality and de-emphasizing the emperor's absolute power; I refer to this strategy as "performative legalism."[5] Of course, performing legalism can also have more benign effects, in helping people feel like stakeholders, or legal subjects who are being treated by a given legal regime as worthy of respect; Tom Tyler discusses the importance of

[4] See Tamanaha 2010: 92-93 (discussing such a notion of the rule as existing in normative discussions of legality within the modern Chinese state).
[5] For a more involved definition of this phenomenon, see *infra* notes 119-127.

legalism in improving people's subjective feelings towards a sovereign, and Septimius' particular innovations can be understood through that lens as a self-representational strategy.[6] These models are particularly well-suited to understanding imperial self-representation during the early Severan period. Septimius Severus used public lawmaking to mediate relationships between private citizens and the state and to expand the space in which he could demonstrate solicitude for his subjects and patience for their concerns, while still leaving untouched his practical power to kill and dispossess at any time and for any reason. While the theorists I employ to help frame Septimius' political strategy focus on contemporary regimes, modern legal theory has emphasized how the performative aspects of legal procedure—and specifically its interposing of some kind of superficially predictable system upon sovereign intrusion into subject lives—can radically influence how a sovereign is perceived. I argue that Septimius' legal innovations could serve a similar purpose to that of his communications in more obviously ideologically charged media.

This chapter proceeds in four parts, as well as an introduction and conclusion. Part I discusses how Septimius Severus used law to mediate his interactions with the Roman senate, which had generated the conspiracy that killed the last long-serving emperor (Commodus) and which lost a great deal of power over the course of Septimius' reign, while gaining in exchange a formal legal promise, frequently violated, to never put one of its members to death without trial. Part II discusses one of the farthest-reaching, and most widely discussed, legal changes to occur under Septimius; the extension of *ius conubii* to members of the military. While it was common for emperors to solicit soldiers' favor with a variety of tools from messaging to simple bribes, Septimius was unusual in framing his gifts to the military as new legally enforceable rights, and I argue that this framing was integral to his broader political project. Part III discusses Septimius'

[6] Tyler 1990: 125-34; see *infra* text accompanying notes 138-140.

use of legalistic methods in his engagements with the public, as preserved in both historical and documentary evidence. Part IV places these legally mediated communications into a more detailed theoretical frame, showing how this kind of legalism could help respond to the unique legitimacy crises of the late second century, and how they could meet the contradictory communicative needs of Roman audiences hungry for both imperial continuity and an imagined return to republican political discourse.

I. I SHALT NOT KILL: SEPTIMIUS AND THE SENATE

When Septimius Severus entered Rome in 193, he was neither the first emperor to face a wary senate nor the first to try and win them over.[7] However, Septimius broke with tradition by putting his blandishments in legal form. Like many emperors who attained the throne in periods of contested succession, Septimius relied on military strength;[8] his initial claim to power rested on the support of the Pannonian legions, while the emperor he replaced, Didius Julianus, had been the choice of the Praetorian Guard. Of course, whatever the reality of an incoming emperor's power base might be, he served at the head of a symbolic order that emphasized popular will and senatorial collaboration.[9] That tension between military force and civilian rule is a constant theme

[7] For the date of Septimius' accession to the throne and immediately subsequent entry into Rome, see Dio Cass. 74.17.3, SHA *Did. Iul.* 9.3; Birley 1989: 163. For Septimius' early interactions with the Senate, which was at the time divided into multiple factions supporting different imperial candidates, see Alföldy 1968: 115-16.

[8] Compare, for example, Otho's reliance on the urban Praetorians at the moment of his accession with Vespasian's later support by the eastern legionaries. See Suet. *Otho* 6.2, Tac. *Hist.* 2.74.

[9] For the concept of imperial messaging as maintaining a symbolic order, see Ando 2012: 193-94 (referring to the "social drama" of governance and, in particular, of adjudication), Noreña 2011: 300-02.

in historiography of the period,[10] and a great deal of Severan propaganda can be understood as an attempt to resolve that tension, or at least to mask it. The appointment of Didius Julianus, described with horror by the extant historians, gives the rough contours of the problem Septimius faced upon his arrival:

> Then a horrifying thing happened, and one unworthy of Rome; just as in a market or an auction-house, both Rome and all her empire were publicly sold. Furthermore, the ones selling it were those who had killed their own emperor, and those trying to purchase were Sulpicianus and Julianus, competing with each other, one within the camp and the other without.[11]

The accounts are not unanimous on the details, but are remarkably consistent overall. The accounts differ somewhat in emphasis and chronology; for example, the *HA* attributes Julianus' victory to his offer to protect the soldiers, rather than his proposed donative, while Herodian portrays Julianus as the soldiers' choice from before the negotiations even started.[12] But all three accounts suggest that, while contested successions were always sites of tension and likely violence, Julianus owed his selection solely to financial considerations; furthermore, both Dio and Herodian emphasize the unprecedented nature of the auction.[13] By the late second century, the Principate was so entrenched that it is difficult to isolate any explicit arguments for it in Roman political discourse; no Roman alive had a grandfather who had seen the republic. But the process by which Didius Julianus was selected could not even pretend to reflect the popular will that Ulpian would later invoke to justify

[10] See Kemezis 2014: 143-44 (discussing Dio's attitude towards the eastern army, in particular, during the time of his composition).

[11] Dio Cass. 74.11.2-5: ὅτε δὴ καὶ πρᾶγμα αἴσχιστόν τε καὶ ἀνάξιον τῆς Ῥώμης ἐγένετο: ὥσπερ γὰρ ἐν ἀγορᾷ καὶ ἐν πωλητηρίῳ τινὶ καὶ αὐτὴ καὶ ἡ ἀρχὴ αὐτῆς πᾶσα ἀπεκηρύχθη. καὶ αὐτὰς ἐπίπρασκον μὲν οἱ τὸν αὐτοκράτορά σφων ἀπεκτονότες, ὠνητίων δὲ ὅ τε Σουλπικιανὸς καὶ ὁ Ἰουλιανὸς ὑπερβάλλοντες ἀλλήλους, ὁ μὲν ἔνδοθεν ὁ δὲ ἔξωθεν.

[12] See SHA *Did. Iul.* 2.6-7, Hdn. 2.6.8-11.

[13] Dio Cass. 74.11.2-3, Hdn. 2.6.12: γὰρ βίᾳ καὶ παρὰ γνώμην
τοῦ δήμου μετά τε αἰσχρᾶς καὶ ἀπρεποῦς διαβολῆς ὠνησάμενος τὴν ἀρχήν.

an emperor's power;[14] nor could one reasonably argue that such a process would favor candidates with those personal qualities that the Antonines had presented as legitimating in their own official media.[15] In some ways this worked to Septimius' advantage; when he entered Rome, supported by the full force of his legions against Julianus' mutinous Guard, he would have been an uncommonly welcome usurper.[16] On the other hand, the events of 193 had exposed what Agamben might call the bare life at the heart of *imperium*—that it arose from a sovereign's ability to control the mechanisms by which individuals could be killed, and that it was subject to the approval of those who controlled those mechanisms more directly.[17] Septimius Severus became emperor by marshaling and directing violence against enemies of his candidacy; however, actually being emperor—and doing so in any capacity other than as the army's unofficial representative—required hiding that causal chain. Septimius called on theories of rulership that went beyond monopolies of force, all in the service of maintaining that same monopoly of force. This contradictory messaging requirement—to demonstrate oneself as a military warlord ruling on the basis of something other than military warlordism—animated Septimius' earliest behavior as conquering emperor, and in particular his initial legal reforms.

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[14] *Dig.* 1.4.1pr. (Ulpian, Institutiones): *Quod Principi placuit, legis habet vigorem: utpote cum lege regia, quae de imperio eius lata est, populus ei et in eum omne suum imperium et potestatem conferat*.

[15] See generally Noreña 2011: 37-100.

[16] Dio Cass. 75.1.2. Dio, of course, is a dangerous source to cite for the opinions of non-senatorial audiences. See Kemezis 2014: 279-80; see also Millar 1964: 93-94 (describing Dio's particular attention to imperial usurpation of historical senatorial privileges, an in account which is otherwise strikingly narrative). That said, Dio describes the urban *plebs* as approving of Septimius' entry to the city, but not as calling for him in the first instance; they actually supported Pescennius Niger. Dio Cass. 74.13.5. This account seems plausible, since it benefits neither senate nor sovereign; no one would benefit from promulgating this kind of lie.

[17] See Agamben 1998: 120 (describing how, "once modern politics enters into an intimate symbiosis with bare life, it loses the intelligibility that still seems to us to characterize the juridico-political foundation of classical politics.").

A. Septimius' Initial Entry into Rome; The Law Against Killing Senators

Septimius' entrance to the city of Rome, as preserved in Dio and the *vita Severi*, reflects this tension. In Dio's account, Septimius pointedly entered the city as a civilian, while accompanied by the soldiers on whom his claim rested: "Then he put on civilian garb and walked into the city: and with him was his entire army, infantry and cavalry, equipped for war (ὡπλισμένοι)."[18] The *Historia Augusta*, on the other hand, shows him entering the city in full regalia: "Then he, armed and accompanied by armed soldiers, entered Rome and approached the Capitol."[19] Whichever account seems more plausible on this specific detail,[20] the interchangeability of the two shows how flimsy the distinction truly was—by entering the city surrounded by armed guards, Septimius advertised his military support, and the centrality of that support to his claim to power.[21] That said,

[18] Dio Cass. 75.1.3: ἐντεῦθεν δὲ τήν τε πολιτικὴν ἀλλαξάμενος καὶ βαδίσας: καὶ αὐτῷ καὶ ὁ στρατὸς πᾶς, καὶ οἱ πεζοὶ καὶ οἱ ἱππεῖς, ὡπλισμένοι.

[19] SHA *Sev.* 7.1 : *Ingressus deinde Romam armatus cum armatis militibus Capitolium ascendit.*

[20] I find Dio more reliable here, since his account is something of a *lectio difficilior*: while an emperor removing his armor before entering the city of Rome is expected, the scene of an unarmed sovereign *accompanied by his full infantry and cavalry* is sufficiently unusual, and sufficiently more unusual than the *vita*'s account of Septimius simply entering in military fashion, to make it comparatively less likely that Dio invented the scenario out of whole cloth (particularly since he claims to have witnessed it personally at 75.1.4). That said, the difference is essentially cosmetic, for reasons I explain immediately below.

[21] Septimius was obviously not the first emperor to take the throne due to military support, but likely the first to advertise that fact so heavily at the moment of ascension. Compare Suet. *Vesp*. 8.2 (describing Vespasian as entering Rome and distancing himself from the soldiers who had supported him: *Quare Vitellianorum quidem et exauctoravit plurimos et coercuit, participibus autem victoriae adeo nihil extra ordinem indulsit, ut etiam legitima praemia sero persolverit*), with Dio Cass. 65.10.1 (describing Vespasian as καὶ τοῖς στρατιώταις καὶ τῷ δήμῳ παρέσχηκε δωρεάς immediately upon his entry into Rome). Augustus' victory at Actium, of course, was followed by an extraordinarily aggressive and comprehensive messaging program aimed at developing a coherent basis for imperial power that did not rely openly on the deployment of force. See, among countless others, Ando 2013: 57 (describing Augustus' reception in the provinces as "one who stopped war and arranged peace" (citing *OGIS* 458), Noreña 2011: 8-12 (describing this major

Septimius' first actions in the city complicate this picture. On his first day of rule, Septimius addressed the senate, where his behavior was noticeably more deferential.

Septimius is recorded in all three major historical accounts of his ascension as promising some measure of physical safety to senators, and specifically a guarantee against execution without trial.[22] Swearing not to kill senators without trial was no great novelty; several emperors are attested in Dio as making similar promises,[23] and Anthony Birley has tentatively dated the practice back to Vespasian.[24] That said, both Dio and the *vita* present him as innovating on the by-then traditional formula in a major way: instead of simply forswearing extrajudicial killing, Septimius insisted on the passage of a law which forbade him from engaging in such a practice.[25] This law is, to my knowledge, unique; the other emperors whom Dio records as taking this pledge simply swore an oath. Leaving aside the practical impact of this legislation,[26] its communicative impact is sufficiently marked to merit some closer analysis.

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revolution in the Roman symbology of power as polycentric, depersonalized, and largely spontaneous), Wallace-Hadrill 1997: 11-12 (focusing on the moralizing authority Augustus sought for the Principate as an institution), Zanker 1988 (discussing the communicative aspects of Augustan sculpture). Septimius, by contrast, was quite comfortable advertising himself as a military figure; see Mattingly-Syndenham, *RIC Sept. Sev.* 211, 118 (showing an image of Victory standing astride the globe); Langford 2013: 64-66.

[22] See Dio Cass. 75.2.1, Hdn. 2.14.3, SHA *Sev.* 7.4-5; see also Alföldy 1968: 131.

[23] Dio Cass. 68.2.3 (claiming of Nerva that ὥμοσε δὲ καὶ ἐν τῷ συνεδρίῳ μηδένα τῶν βουλευτῶν φονεύσειν), 68.5.2 (Trajan), 69.2.4 (Hadrian), 71.28.2 (Marcus), 74.5.2 (Pertinax), 79.12.2 (Macrinus).

[24] Birley 1962: 199. Our earliest unambiguous reference to the oath (unfortunately also in Dio alone) is the Nerva quote provided above.

[25] Dio Cass. 75.2.1 (καὶ τό γε μεῖζον, ψηφίσματι κοινῷ αὐτὸ κυρωθῆναι προσετετάχει, πολέμιον καὶ τὸν αὐτοκράτορα καὶ τὸν ὑπηρετήσοντα αὐτῷ ἔς τι τοιοῦτον, αὐτούς τε καὶ τοὺς παῖδας αὐτῶν), SHA *Sev.* 7.5 (*fieri etiam senatusconsultum coegit, ne liceret imperatori inconsulto senatu occidere senatorem*). Herodian at 2.14.3 simply refers to Septimius as promising μήτε δὲ ἄκριτόν τινα φονευθήσεσθαι ἢ δημευθήσεσθαι, μήτε συκοφαντοῦντος ἀνέξεσθαι.

[26] Which was not substantial, as Dio (72.2.2: πρῶτος μέντοι αὐτὸς τὸν νόμον τουτονὶ παρέβη καὶ οὐκ ἐφύλαξε) and the *vita* (8.3: *alia die ad senatum venit et amicos Iuliani incusatos proscriptioni ac neci dedit*) immediately note. This disjunct between theory and practice has led scholars to treat the law against extrajudicial killing as effectively meaningless. See, for example, Birley 1962: 199

In considering this *senatusconsultum*, one should begin with the obvious. Given power relations as they were actually structured in late second-century Rome, this law was as symbolic in function as it was binding in form. Septimius could not bind himself sufficiently to credibly commit to following the will of the senate,[27] and it seems highly unlikely that he would have wished to do so. But in causing such a law to be passed, Septimius pointedly used legal tools to give a formal gloss to what was otherwise standard messaging. It is hardly new to point out that Septimius was extravagant in his early overtures towards the Senate,[28] but this particular novelty has gone largely unmentioned, and it is a major innovation. Here, Septimius inverted the relationship between emperor and senate; although he controlled the senate almost entirely, he used that control to generate the passage of a law which purported to control him.[29] The parallels

("To Severus [the law forbidding him from executing Senators without trial] clearly meant nothing . . . ."). That said, the actual extent of Septimius' purges is somewhat besides my point. It is clear that, for Septimius Severus, the law against extrajudicial killing of senators meant nothing more than an oath would, and that neither seriously bound his action. That makes the idiosyncratic form of this promise more salient, not less; if this novel way of promising not to harm senators was not intended to reflect any difference in the substance or effect of the promise, that makes it likely that the form itself was valuable for Septimius' particular communicative project.

[27] See Agamben 2005: 35 (describing how a sovereign who may dissolve the existing order at will cannot be understood as fully existing within that order or as being bound by it). While Agamben gives a useful outline of the unique position of the sovereign with regard to political commitment, this particular problem is explored in more depth in game-theory literature, which discusses how individuals who hold too much power may find themselves unable to convincingly bind their future actions and thus to make credible commitments which might alter the behavior of other actors. The classic example, cited in Fudenberg & Tirole 1991: 74-77, involves Odysseus tying himself to the mast as a way to demonstrate to his men that he can be trusted to hear the song of the Sirens without abandoning them.

[28] For an excellent recent treatment of Septimius Severus' complicated relationship with the Senate, see Langford 2013, esp. 93-104 (describing Septimius' early solicitousness towards the Senate, and how that relationship was damaged by the wars with Albinus and Niger with their subsequent purges). Birley emphasizes those purges and claims that Septimius viewed the Senate largely—and particularly in the post-Albinus period—as "a source of possible danger." Birley 1989: 238.

[29] The closest parallel, and one from over a century prior, might be the *lex de imperio Vespasiani*, preserved at *CIL* 6.930, which purports to give the new emperor Vespasian's powers a foundation in positive law. On the *lex*, see Brunt 1977, especially 107-16; on its functioning as a response to

between this law and Septimius' own entrance to the city are obvious (at least if we value Dio over the *Historia Augusta*)—in both cases, Septimius performatively observed traditional checks on monarchic power (removing military attire before entering Rome, respecting senatorial autonomy) in contexts engineered to display his total control (the civilian emperor was accompanied by his full cavalry, and arranged for the senate to pass the law which forbade him from harming them). The difference is solely one of medium.

Whether passing laws or marching on parade, Septimius' actions in these first moments of rule were essentially communicative. Septimius Severus' entry into the city, recorded in all three major historians of the period, was intended to broadcast his relationship to the military, the senate, and the city, rather than to simply move the emperor from outside to inside the gates. This new law served the same messaging function, but did so through an act that might seem, at first and only at first, to have weightier practical implications.

This incident, far from simply being one more instance of imperial/senatorial boilerplate, tells us a great deal about Septimius' relationship with law, and in particular his comfort with using legal institutions to meet his communicative and ideological needs. Septimius not only used legal forms to engage in this sort of ostentatious deference; he also presided over fairly substantial changes in Roman procedure, and in particular over an expansion of the jurisdiction of the *praefectus urbi*—likely at the expense of pre-imperial courts.

Augustus' idiosyncratic establishment of imperial power within existing Roman institutional frameworks, see Hurlet 1993.

B. Septimius' Re-Organization of Legal Jurisdiction

By the time Septimius Severus took the throne, imperial supervision of Roman law was neither secret nor shocking. Hadrian's establishment of the *edictum perpetuum* formally stripped the praetor of his traditional power to alter law through the annual promulgation of the praetorian Edict;[30] however, even the *edictum perpetuum* concentrated decisionmaking authority in the person of the praetor, a senatorial position dating back to the early republic.[31] Hadrian's reforms elevated the emperor as the primary source of law, while preserving forms of adjudication and litigation with visibly republican roots, specifically the original and now permanent Edict with its accompanying court structures.[32] Septimius' reforms, by contrast, placed the Emperor and imperial positions like the city prefecture at the center of adjudication within the city of Rome, centering legal culture around the person and institutions of the *princeps*.

Unfortunately, Septimius Severus' procedural changes are not easy to isolate; relatively few rescripts attributed to Septimius alone survive in the *Codex Justinianus*.[33] Our best source, instead, is the *Digest*, which refers to Septimius as enormously expanding the role of the *praefectus*

[30] See Guarino 1980, Lenel 1956, Tuori 2006.
[31] Livy attributes the institution of the *praetor* to the consul Licinius Sextius, in 362 B.C.E., but some debate remains over whether or not the *praetor* was originally vested with adjudicative power. For example, T. Corey Brennan's work on the origins of the praetorship argues that the praetor's adjudicative and legislative power were later additions to what was an essentially military post; Brennan 2000: 61. For a useful overview of this debate surrounding the earliest powers of the praetor, see Bergk 2011: 61-67.
[32] The development of the Perpetual Edict is not at all attested in contemporary sources, and only briefly in later works of Roman history; see Aur. Vict. *Caes.* 19.2, Eutrop. 8.17. For more detailed discussion of the *edictum perpetuum*, see *infra* Ch. IV, notes 33-38.
[33] Specifically, his rescripts are preserved at *Cod. Iust.* 2.47.1, 4.14.1, and 7.62.1. None address this point.

urbi.[34] The most detailed treatment is contained at *Dig.* 1.12.1, an excerpt from Ulpian's treatise on the city prefect, which begins thus: "The prefecture of the city claims all crimes for itself, not just those which occurred within the city but also those which take place outside of the city but within Italy; so an epistle of the Divine Severus, sent to Fabius Cilo the City Prefect, declares."[35] The remainder of the excerpt (which is quite long) grants to the prefect jurisdiction over disputes between slaves and their masters; disputes between patrons and *liberti*; cases involving deportation or relegation; cases proceeding under the interdicts *quod vi aut clam* or *unde vi*; cases involving fraud claims against *curatores* or *tutores*; cases involving money-lending; supervision of the sales of meat; cases involving breach of the peace or unlawful assemblies; and grants all of this within a hundred miles from the city (*centesimum militarium*).[36] Later portions of the *Digest* addressing criminal law expand further on the urban prefecture, explaining that Septimius granted the Prefect the exclusive power to send criminals to the public mines.[37]

This grant cannot be dated with certainty; the document itself is not preserved, and Ulpian's reference includes no date of its own. That said, Ulpian refers in part of 1.12.1 to an *epistula Divi Severi, ad Fabium Cilonem praefectum urbi missa.*[38] At first, this formula would strongly suggest

[34] The city prefecture was revived by Augustus; see Tac. *Ann.* 6.10-11. For the later history of the urban prefecture, the standard reference remains Chastagnol 1960.
[35] *Dig.* 1.12.1pr. (Ulpian, de Officio Praefecti Urbi): *Omnia omnino crimina praefectura urbis sibi vindicavit, nec tantum ea, quae intra urbem admittuntur, verum ea quoque, quae extra urbem intra italiam, epistula Divi Severi ad Fabium Cilonem praefectum urbi missa declaratur.*
[36] *Dig.* 1.12.1 (Ulpian, de Officio Praefect Urbi). For *quod vi aut clam*, see Metzger 2013: 16; for *unde vi*, see Jolowicz & Nicholas 1972: 261. Ulpian also references the prefect's deportation powers in *de Officio Proconsulis*, excerpted at *Dig.* 48.22.6.1; *Deportandi autem in insulam ius praesidibus provinciae non est datum, licet praefecto urbi detur: hoc enim epistula divi severi ad fabium cilonem praefectum urbi expressum est*. Ulpian does not make clear whether these powers arise from one single epistle, or from multiple.
[37] *Dig.* 48.19.8.5 (Ulpian, de Officio Proconsulis): *Praefecto plane urbi specialiter competere ius in metallum damnandi ex epistula Divi Severi ad Fabium Cilonem exprimitur*.
[38] *Dig.* 1.12.1pr. (Ulp. De Officio Praefecti Urbi)

a date in the mid-190s. While Septimius reigned for 18 years, he appointed Caracalla as his Caesar in 195 and as co-Augustus in 198, while appointing his other son Geta as Caesar in 198 and as Augustus in 209;[39] the vast majority of surviving Septimian legal opinions are recorded as jointly issued between Septimius and his children.[40] That said, other attestations of Fabius Cilo, an important figure in Roman politics at the turn of the third century, suggest a later date.

1. *Dating the Expansion: The Prefecture of Cilo*

Lucius Fabius Cilo is mentioned in a variety of different contexts in both Dio and the *Historia Augusta*, due to his remarkably varied career; Cilo buried Commodus,[41] saved Macrinus' life during the reign of Septimius,[42] and was eventually stripped and marched naked through the streets on the orders of Caracalla.[43] This literary evidence matches the *epistula* in placing Cilo's prefecture during the reign of Septimius[44] and also suggests that Cilo held a position of some power during the tenure of Plautianus (i.e., during or before 205).[45] Cilo also left behind several honorary inscriptions which allow us to date his prefecture—and thus Septimius' altering of that prefecture's jurisdiction—somewhat more precisely.

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[39] see, for example, Mattingly-Syndenham, RIC *Car.* 13B, *CIL* 3.218.
[40] 15 rescripts survive issued under Septimius Severus' sole authority, as against 209 issued under the joint authority of Septimius and Caracalla, or under the joint authority of Septimius, Caracalla, and Geta. See Ando 2012: 195 tb. 1; Honoré 1994: app. 1.
[41] SHA *Comm.* 20.1.
[42] Dio Cass. 79.11.
[43] *Ibid.* 78.4, SHA *Car.* 4.5-6; see Dietz 1983: 397-401. Aurelius Victor briefly mentions Cilo as receiving a house from Septimius Severus; Aur. Vict. *Caes.* 20.6.
[44] See Dio Cass. 78.4; τὸν δὲ δὴ Κίλωνα τὸν τροφέα τὸν εὐεργέτην, τὸν ἐπὶ τοῦ πατρὸς [Septimius] αὐτοῦ πεπολιαρχηκότα.
[45] Plautianus served as praetorian prefect under Septimius Severus from 197 until his death in 205. See *CIL* 5.2821; Alföldy 1979, Birley 1989: 200-33, Daguet-Gagey 2006: 268-69.

In particular, three honorific inscriptions are preserved which give Cilo's *cursus honorum* at different points in his career;[46] the first lists him as having been consul, the second as having been consul and *praefectus urbi*, and the third as having been *praefectus* once, consul twice; it seems unlikely that any of these appointments would have been omitted, so we can safely assume that Cilo's prefecture fell at some point in between his two consulships. While Cilo's terms as consul can be dated fairly securely to 193 and 204,[47] he appears to have left Rome after his first consulship and not returned until 201.[48] Thus, while Septimius' *epistula* cannot be dated precisely, it must have been promulgated sometime between 201 and 203.

2. *The Meaning of Septimius' Expansion*

The effects of the epistle are, thankfully, easier to parse. Even without having access to the text of this order, other surviving treatments of the urban prefecture suggest that Septimius here radically altered the responsibilities of the *praefectus urbi*. The *Digest* is not a diachronic text, and its discussion of procedure at *Dig.* 1.10-1.22 consists almost entirely of Justinianic excerpts of Severan legal writing, with little mention of what came before.[49] However, other excerpts refer in passing to earlier systems; Ulpian discusses a resident of Gabinia, *a praefecto urbi relegatus*, who

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[46] *CIL* 6.1408-1410.

[47] SHA *Comm.* 20.1 describes Cilo as *consul designatus* at the time of Commodus' death; for Cilo's consulship in 204, see, for example, *Cod. Iust.* 2.12.3 (Sev./Car.).

[48] *CIL* 6.1608 likely places Cilo at the battle of Perinthus against Pescennius Niger, on which see Dio Cass. 75.6.3, SHA *Sev.* 8.13; Potter 2004: 104. Cilo's inscriptions then mention his tenure as governor of Pannonia Superior, during which he likely received a rescript preserved in the *Codex* at 2.50.1 (addressed to 'Chilo,' a common variant). Cilo's latest attestation before his return to Rome as *praefectus* is preserved at *CIL* 3.15199; see also *PIR*^{2} F 27, Pflaum 1978: 35.

[49] Unfortunately, the history of the praetorian prefecture at *Dig.* 1.11, which refers to the augmentation of the prefect's powers over time, was written by the late antique jurist Arcadius Charisius and does not refer to those emperors whose actions he describes by name.

wrote to Marcus and Verus requesting legal assistance.[50] Elsewhere, Ulpian quotes another rescript of the *Divi Fratres*:

> Since you say that it happened by mistake that you appealed from the judge whom you had accepted from the illustrious consuls under the terms of our rescript to Junius Rusticus, our friend the Prefect of the City, the consuls shall hear the appeal just as if it were made to them directly.[51]

According to these excerpted rescripts, the *epistula* should be understood less as expanding the jurisdiction of the *praefectus urbi*, and more as contracting that of other courts. The city prefect had gained nonexclusive jurisdiction over criminal cases by the Antonine period at the latest, but the *Divi Fratres*' discussion of appeal quoted above clearly conceives of two separate, parallel tracks. The *praefectus* had criminal jurisdiction within the city, but was unable to hear appeals from cases that had originated before judges assigned by the consuls. It is not obvious from these documents if the consular and prefectural courts had different powers of punishment or different procedural rights, but it seems clear that both courts had concurrent jurisdiction, and that this could be quite confusing for litigants. Septimius Severus did not grant this enormous jurisdiction to the city prefect, but he does appear to have made much of it exclusive. Ulpian quotes Septimius as beginning his *epistula* with an explicit grant of supervision of the city of Rome: "Since we have entrusted our city to your care (*cum urbem nostram fidei tuae commiserimus*) . . . ."[52] Ulpian's more specific elaborations of the prefect's jurisdiction also support this exclusivizing reading: while the fragments of Ulpian's text that survive use a variety of different language to indicate that certain

[50] *Dig*. 50.12.8 (Ulpian, de Officio Consulis).
[51] *Dig*. 49.1.1.3 (Ulpian, de Appellationibus): *cum per errorem factum dicas, uti a iudice, quem ex rescripto nostro ab amplissimis consulibus acceperas, ad iunium rusticum amicum nostrum praefectum urbi provocares, consules amplissimi perinde cognoscant, atque si ad ipsos facta esset provocatio*.
[52] *Dig.* 1.12.1.4 (Ulpian, de Officio Praefecti Urbi).

types of cases belong in the prefect's court,[53] the most common phrasing places the procedural verb in the gerundive, with the specified adjudicating body serving as a necessary condition for meeting the gerundive demand. Consider 1.12.1.14: "The Divine Severus stated in a rescript that those who are said to have met unlawfully in a group ought to be accused before the *praefectus urbi*."[54] This is not a simple affirmative duty to accuse, but one specifically qualified by the forum requirements in the *apud* clause; if these cases should be brought, they must be brought before the prefect—as opposed to before, when they could presumably be brought in multiple fora. By the Late Antique period, when Hermogenianus described the legal obligations of provincial governors as those "with which the *praefectus urbi* or the *praefectus praetorio* or likewise consuls and praetors and others at Rome are familiar" (*de quibus vel praefectus urbi vel praefectus praetorio itemque consules et praetores ceterique Romae cognoscunt*),[55] the praetorian and urban prefectures were the primary bodies whose legal functions a governor might expect to discharge; this transformation began under Septimius Severus, who granted the senate illusory legal protections while vastly weakening the adjudicative powers associated with their traditional, republican courts.

Of course, while Hermogenianus clearly places the *vel praefectus urbi vel praefectus praetorio* in a more emphatic position than the *consules et praetores ceterique*, the praetorian and urban prefectures appear on equal terms. The praetorian praefecture, an equestrian[56] position dating to the early Principate, had already come to hold immense influence before Septimius

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[53] For example, 1.4 states that events in the city *ad praefectum urbi videtur pertinere*; 1.6 that the prefect has the power to hear (*audire potest*) interdicts; and 1.9 states that the prefect is specifically obligated to supervise the affairs of bankers (*debebit curare*).

[54] *Dig.* 1.12.1.14 (Ulpian, de Officio Praefecti Urbi): *Divus Severus rescripsit eos etiam, qui illicitum collegium coisse dicuntur, apud praefectum urbi accusandos*.

[55] *Dig.* 1.18.10 (Hermogenianus, Iuris Epitome). For a brief discussion of Hermogenianus' career under Diocletian and Maximian, see Connolly 2010: 39.

[56] But see SHA *Alex. Sev.* 21.3-5 (claming that under Severus Alexander *praefecti praetorio* were granted senatorial rank); Mennen 2011.

Severus came to power: this power originally arose from the simple proximity of the prefect to the emperor (a fairly obvious corollary to his position at the head of the emperor's personal guard), but became increasingly formalized over the course of the Principate.[57] By Septimius' reign it is quite probable that the prefect already had some sort of formalized original jurisdiction: an inscription recorded at *CIL* 9.2438 records a petition for relief addressed to the praetorian prefects M. Bassaeus Rufus and M. Macrinius Vindex, who served under the *Divi Fratres*.[58] We know that this position had become enormously consequential by the end of the Severan period; Michael Peachin has argued persuasively that by the time of Dio's *Roman History* (i.e., the reign of Severus Alexander) the decisions of the praetorian prefect could not be appealed.[59] However, while the expansion of the *praefectus urbi*'s jurisdiction seems to have been a Septimian project, the praetorian prefect—despite the importance of figures like Plautianus within the Severan court[60]—may not, on the basis of available evidence, have seen a similar expansion of duties under Septimius. This may simply be an artifact of the sources included in the *Digest*; in later periods, cases that fell under the jurisdiction of the prefects would be divided by location,[61] and the grant of exclusive jurisdiction to the *praefectus urbi* recorded in the *Digest* might have been understood (or explicitly qualified in another text) as concomitant with a similar grant for cases occurring

[57] On the powers of the praetorian prefect under the Principate, see Eich 2005: 211-57.
[58] Cf. Dio Cass. 71.3.
[59] Peachin 1996: 165-66. The clear *terminus ante quem* for decisions of the praetorian prefect being final is Arcadius Charisius, who served as *magister libellorum* under Diocletian and who is preserved at *Dig.* 1.11.1.1 as claiming that "appealing the decisions [of the praetorian prefect] was forbidden by a publicly disseminated imperial opinion." (*publice sententia Principali lecta appellandi facultas interdicta est*). Peachin notes that in Dio's account of the reign of Augustus, when Maecenas tells the *princeps* what sort of appeals he is expected to hear (52.33.1), Maecenas does not mention appeals from the decisions of the praetorian prefect.
[60] For an account of Plautianus' career within Septimius' court, see sources cited *supra* note 45.
[61] The *praefectus urbi* handled all cases within *centensimum miliarium* of Rome; *Dig.* 1.12.4 (Ulpian, De Officio Praefecti Urbi).

outside of Rome. Regardless, juristic sources make clear that Septimius Severus oversaw a reduction in the cases assigned to republican adjudicative institutions, with more material being shunted to direct imperial appointees.

II. Sovereigns, Brides, and Severan Soldiers: Septimius' Legal Interactions with the Roman Army

Of course, the senate was not the only power center that Septimius had to neutralize. Dio quotes the emperor's last words to his sons and successors as advice to work together, to enrich the soldiers, and to deprioritize every other aspect of governance.[62] The story is apocryphal,[63] but they seem to have taken it to heart; while little is known about Geta's political strategies, Caracalla's embrace of the military is well-attested, lending at least some support to Dio's claim.[64] Similarly, Septimius is often described as extremely solicitous in his desire for military support.[65] But this solicitude is, again, far more legalist than commentators have previously considered. Discussions of military law acknowledge Septimius' role in transforming soldiers' legal status,[66] but rarely put it into dialogue with other ideologically loaded early Severan innovations; similarly, general Severan histories treat these changes as essentially interchangeable with the donatives and financial incentives that nearly all emperors (Septimius included) employed to keep the army

[62] Dio Cass. 77.15.2: "ὁμονοεῖτε, τοὺς στρατιώτας πλουτίζετε, τῶν ἄλλων πάντων καταφρονεῖτε."
[63] Although Dio notes—as he rarely does for reported direct speech—that he is conveying the exact language he believes Septimius to have used. *Ibid.*: ἐρῶ γὰρ αὐτὰ τὰ λεχθέντα, μηδὲν ὅ τι καλλωπίσασ᾽.
[64] See Birley 1989: 270, who argues that Geta may have attempted to win over the Senate in his struggle against Caracalla primarily off of the evidence of Herodian 4.3.2; for a far more in-depth discussion of Caracalla's destruction of Geta's official records and images, see Krüpe 2011: 195-244. The sources for Caracalla's self-identification as a soldier, both primary and secondary, are too voluminous to count, but for an attempt, see those sources cited *infra* Ch. II, notes 43-44.
[65] See, for example, Ando 2013: 182-84, Handy 2009: 232-34, Langford 2013: 14-15.
[66] Phang 2001, Smith 1972.

content.[67] In some ways, this framework is correct—they do seem somewhat interchangeable, even if the effects of a legal change differ in meaningful ways from a one-time grant of money—but Septimius' engagements with the law of the Roman army demonstrate, once again, his unusual comfort with manipulating legal institutions in order to satisfy his specific political needs.

In 197, Septimius finally defeated the last of the pretenders from 193, his Caesar Clodius Albinus.[68] The occasion was momentous—Albinus was the last obstacle to Septimius' preferred plans of succession, and the final domestic threat he faced. Herodian records Septimius as celebrating in a fashion remarkably similar to his first march on the city of Rome: "Then Severus, having entered the Temple of Jupiter and made offerings at the other shrines, entered the Palace and made great gifts to the people for his victory."[69] Once again, a victorious procession with religious implications, pointedly not a triumph; once again outward jubilation at a moment when terror would be equally probable; and once again imperial beneficence in an attempt to calm a potentially restive audience. Here, however, Septimius' audience was not senatorial, but military:

> He gave large sums of money to the soldiers, but also granted them many favors they had not before held; for he was the first to increase their base pay, and he permitted them to wear gold rings on their fingers and to marry (συνοικεῖν) their wives, all of which was previously believed to run counter to military discipline and a good state of preparedness for war.[70]

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[67] See, for example, Birley 1989: 285 ("Improvement in pay and conditions for serving soldiers—about which authorities ancient and modern have complained—is something for which one may cheerfully give Septimius credit. The pay was increased, perhaps mainly to take account of inflation. And soldiers were allowed to marry.").

[68] Dio Cass. 76.6-7.

[69] Hdn. 3.8.4: ὁ δ' οὖν Σεβῆρος ἐς τὸ τοῦ Διὸς τέμενος ἀνελθὼν καὶ τὰς λοιπὰς τελέσας ἱερουργίας ἐπανῆλθεν ἐς τὰ βασίλεια, καὶ τῷ δήμῳ προύθηκεν ἐπὶ ταῖς νίκαις μεγίστας νομάς.

[70] *Ibid.* 3.8.4-5: τοῖς τε στρατιώταις ἐπέδωκε χρήματα πλεῖστα, ἄλλα τε πολλὰ συνεχώρησεν ἃ μὴ πρότερον εἶχον· καὶ γὰρ τὸ σιτηρέσιον πρῶτος ηὔξησεν αὐτοῖς, καὶ δακτυλίοις χρυσοῖς χρήσασθαι ἐπέτρεψε γυναιξί τε συνοικεῖν, ἅπερ ἅπαντα σωφροσύνης στρατιωτικῆς καὶ τοῦ πρὸς τὸν πόλεμον ἑτοίμου τε καὶ εὐσταλοῦς ἀλλότρια ἐνομίζετο.

One line in particular— ἐπέτρεψε γυναιξί . . . συνοικεῖν —has given rise to a persistent debate in Roman military historiography. It is uncontested that soldiers gained marriage rights at some point during the Severan era, but the nature of those rights, the class of soldiers to whom they were granted, and the date of that granting all remain the subject of vigorous debate.[71] The other historians are of no use for parsing this line, but both the legal and the documentary sources provide a fair amount of information about the marriage of soldiers, and suggest that while soldiers were forbidden from entering into *iusta matrimonia*[72] prior to 193, they gained full marriage rights fairly soon after.

A. Evidence for the Banning and Later Permission of Military Marriage

Our clearest evidence of the ban is documentary; several instances survive of soldiers in the Roman army, stationed in Egypt, acknowledging paternity of the children borne to them during military service. These soldiers would not have needed to make these declarations if they were capable of entering into *iustum matrimonium*; children born of those unions would be presumptively

[71] Most scholars, though by no means all, agree that the action Herodian refers to was, in fact, a grant of marriage rights. For example, Campbell 1978 argues that "The word πρῶτος implies that Septimius made a decisive change, and so the phrase γυναιξί συνοικεῖν should refer to a grant of the right of legal marriage." *Ibid.* 160. Campbell is joined by, among others, Jung 1982: 338, MacMullen 1963: 126, Phang 2001: 112, and Smith 1972: 63-82. By contrast, Peter Garnsey argues strongly against taking this passage to refer to a formal grant of marriage rights; Garnsey 1970a: 50 ("Not all ambiguities in the texts can be resolved, and so a final judgment cannot be reached. But it seems legitimate to argue that there is no firm evidence in the legal sources to support the notion of a grant of the *ius conubii* to soldiers by Septimius Severus.").

[72] *i.e.*, legally recognized or legally consequential marriage; soldiers could and did participate in romantic heterosexual relationships, which often took a marital form. For the significance of *iustum matrimonium* and its absence for soldiers, see Treggiari 1991: 46-47, 64. For discussion of soldiers' informal marriages as evidenced in *diplomata*, see Phang 2001: 59.

legitimate.[73] In one such declaration, preserved in fragments on two tablets, [74] the father concedes that he was unable to marry the child's mother *propter districtionem militiae*;[75] in context, this can only refer to a restriction on marriage (and thus on the siring of legitimate children).

Clearer evidence of the ban comes from what is known as the Cattaoui Papyrus.[76] The Cattaoui Papyrus is a collection of summarized cases that were heard in the mid-first century C.E. by various prefects of Egypt; it describes seven cases, at least six of which concern the validity of military marriage.[77] Notably, none of these cases simply inquired into the validity of any particular marriage; in fact, the six legible case summaries addressed very different legal questions. The six legible cases summarized in the Papyrus concern, in order: an action on *depositum*,[78] an action on money-loan or *mutuum*,[79] a request for an ἐπικρίσις of children,[80] a request for exemption from the *vicesima hereditatum* or inheritance tax, and an attempt to register a child as a citizen of Alexandria.[81] The one thread tying together these disparate legal issues—and that likely caused

[73] See Treggiari 1991: 49-50.
[74] *BGU* VII.1690 = Schulz 1942: no. 14 = *FIRA* III.5 = Montevecchi 1948: no. 6 = *CPL* 160, for which see Sanders 1928: 329; *P.Mich.* VII.436 = Schulz 1942: no. 15 = Montevecchi 1948: no. 7 = *CPL* 161, first published in Sanders 1937: 233.
[75] This is *bricolage*, but well-supported: *P. Mich.* VII.436 provides …*er distrinctionem militiae*, while *BGU* VII.1690 gives *propter districtionem mil*[]. See Phang 2001: 42.
[76] While the papyrus is itself lost, it was first published at Botti 1894: 529. The edition here used was first published (along with a portion of *BGU* 114, with which it is contiguous) in Grenfell et al. 1906: 55-105, and has been republished frequently; this analysis uses the reproduction of the papyrus contained in Phang 2001: 395-401.
[77] The first case is too damaged to interpret with certainty; Grenfell et al. 1906: 68. For a discussion of the value of these sorts of collections of judgments for later practitioners, see Connolly 2010: 41, Katzoff 1972, Robinson 2001: 61-62.
[78] a type of loan in which the lender maintained ownership of the object itself, which had to be returned to her in roughly the same form: *Dig.* 13.6.1.1 (Ulpian, ad Edictum).
[79] A loan in which ownership transferred to the borrower, who then took on an obligation to return some equivalent amount of goods: *Dig.* 12.1.2pr. (Paul, ad Edictum).
[80] An ἐπικρίσις was a procedure by which individuals presented proof of their membership in a particular citizen class. See Nelson 1979: 3-9.
[81] On the requirements of Alexandrian citizenship, see Delia 1991:53-56.

each of these disparate cases to be collected into one papyrus—is that, in each case, the result of the petition hinged upon whether a marriage that the petitioner entered into while serving in the army had legal force.

As it turns out they did not; in each case, the prefect refused to recognize the marriage in question. In Case 2, the Prefect held that the goods deposited were intended to take the place of a dowry, and refused to grant an action specifically on the grounds that soldier marriage was forbidden.[82] The disposition of Case 3 is fragmentary, but advocates in that case claimed that the money given was a concealed dowry and that the ban on soldiers marrying forbade an action to collect.[83] In resolving Cases 4 through 6, which concerned the legitimacy of children, the prefect simply stated that a man could not be the legal father of children born during his service.[84] Finally, in Case 7 the Ἴδιος λόγος Julianus simply stated that τὸ ἀναγνωσθὲν δάνειον ἐκβάλλω εκ παρανόμου γάμου γενόμενον, with no information calling the marriage into question other than the fact of the husband's military service.[85] These cases all come from the first half of the first century C.E.; no documentary sources refer to a ban on soldiers marrying after the reign of Septimius Severus.[86]

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[82] *BGU* 144 I 11-12: Οὐ γὰρ ἔξεστιν στρατιώτην γαμεῖν. This verdict ends with the laconic statement κριτὴν δίδωμ[ι], δόξω πεπεῖσθαι νόμιμον εἶναι τὸν γάμον. *Ibid.* 12-13. Some of the earliest readers of the papyrus interpreted this as a simple indicative statement, showing the Prefect as making an exception to the established rule described above: "I will give a judge, and I agree the marriage is valid." Meyer 1897: 54. However, the context indicates—as Phang has argued—a conditional sentence, and specifically a contrafactual one: "If I were to give a judge, I would be agreeing that this marriage was real." See Phang 2001: 30.

[83] *BGU* 114 I 25.

[84] *P. Catt.* III 13-14, 20-22, IV 24-26.

[85] *P. Catt.* V 22-23.

[86] One literary source, however, does appear to claim that soldiers were unable to marry even after this period: Tertullian, a Christian author who cannot be firmly dated but who likely wrote in the first decade of the third century, claims in passing that *perierunt caelibum familiae*, *res spadonum*, *fortunae militum aut peregrinantium sine uxoribus*. Tert. *de exhort. cast.* 12.1; see also Garnsey 1970a: 48-49 n. 10. However, this is a thin reed. Tertullian's text is an apologetic, not a treatise on

The legal sources further support this contention. While explicit discussion of soldiers' matriomonial rights seems to have been beneath lawyers'—or compilers'—notice, several cases in the *Corpus Iuris Civilis* touch on military marriage. These cases are much like those excerpted in the Cattaoui Papyrus; instead of simple advisory judgements regarding the validity of a marriage in the abstract sense, they present concrete, consequential questions—is this will valid? Does this dowry give rise to legal obligations when this marriage dissolves?—based on the legal validity of the marriages into which these soldiers entered. Unlike the cases in the Cattaoui Papyrus, however, the post-Severan legal sources treat the marriages they discuss as uncontroversially valid.

There are several examples within the *Corpus*; to avoid duplication, I here mention three juristic opinions and two rescripts. First, *Dig.* 29.1.15.5, from Ulpian's commentary on the Praetorian Edict, refers to a soldier's ability to write a military will on behalf of a son-in-power: "[The soldier] can make a will for his son, just as much as for himself, under military law: and for the son alone, even if he has not made one for himself, since the will will be valid so long as the father has passed away either in military service or within the timespan of his service."[87] Similarly, *Dig.* 24.1.32.8 excerpts Ulpian's commentary *ad Sabinum*, concerning a specific circumstance in which a soldier may make a valid gift to his wife:

> If a soldier makes a gift to his wife out of the goods in his *peculium castrense* and is then condemned, the gift shall stand, since he is allowed to make a testament of those things as long as it is the case that he made the testament as he was being

military administration; there is no reason to think his claim was intended as precise or necessarily accurate, rather than as one part of a broader argument about the acceptance of Christianity within the empire.

[87] *Item tam sibi quam filio iure militari testamentum facere potest: et soli filio, tametsi sibi non fecerit: quod testamentum valebit, si forte pater vel in militia vel intra annum militiae decessit.* As discussed above, the children of soldiers would only be within their father's power if they were the product of a legitimate marriage. See Jung 1982: 326. Ulpian appears to have produced most of his legal writing after 210; see Honoré 1994: 608.

> condemned: for one who is permitted to make a will can also give gifts on account of impending death.[88]

While the term *uxor* does not always refer to a soldier's partner in *iustum matrimonium*,[89] in this context it must; Ulpian is identifying a specific exception to the customary rule against husbands and wives exchanging gifts outside of dowry.[90] The clearest example of soldier marriages being recognized as legally binding, however, comes from Papinian's *Responsa*, excerpted at *Dig.* 23.2.35: "A soldier who is in his father's power does not enter into a *matrimonium* without his father's consent."[91] While Peter Garnsey claims that *matrimonium* is here used "nontechnically,"[92] and to refer to cohabiting unions between non-Romans without *conubium*, both Brian Campbell and Sara Phang are correct in noting that the substance of the rule here strongly suggests that *matrimonium* is meant in a legal sense. After all, the term *filius familias* is technical, and it would be absurd for Papinian to argue that soldiers were incapable of cohabiting without their father's consent. This subordination of sons' legal personhood into that of their fathers is a specific feature of the Roman law of persons, not of broader Mediterranean custom, and Gaius actually singles it out as such in his *Institutes*.[93] Therefore, by the time of the Severan jurists preserved in the *Digest*,

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[88] *Si miles uxori donaverit de castrensibus bonis et fuerit damnatus, quia permissum est ei de his testari (si modo impetravit ut testetur cum damnaretur), donatio valebit: nam et mortis causa donare poterit, cui testari permissum est.*

[89] For example, after approximately 140 C.E. the formula on military *diplomata*, or certificates given to veterans at the conclusion of their military service, granted *conubium cum uxoribus quas tunc habuissent*, or "marriage rights with the wives whom [the soldiers receiving the *diplomata* had at that time]." See Phang 2001: 76.

[90] See *Dig.* 24.1.1 (Ulpian, ad Sabinum): *Moribus apud nos receptum est, ne inter virum et uxorem donationes valerent*.

[91] *Filius familias miles matrimonium sine patris voluntate non contrahit.*

[92] Garnsey 1970a: 108.

[93] Gai. *Inst.* 1.55: *Fere enim nulli alii sunt homines qui talem in filios suos habent potestatem qualem nos habemus*.

soldiers appeared not only to have marriage rights, but to have those marriage rights universally understood and noncontroversial.

B. *Diplomata* and the Praetorian Exception

Pre-Severan documentary evidence suggests, broadly, that soldiers were unable to marry; post-Severan legal material suggests that they were; and historical evidence suggests that Septimius Severus was the one who made the relevant change. However, another set of documents provides an added complication, one that fits with Septimius' tendency to use legal changes in support of his broader political and communicative needs. Specifically, *diplomata* suggest that the Praetorian Guard may well have been excluded from Septimius' granting of marriage rights. *Diplomata*, or bronze copies of the grant of citizenship to veterans, are one of our best sources for the legal rights of soldiers;[94] however, because these documents consist largely of a citizenship grant they are not generally attested after the early third century,[95] and legionaries do not appear to have received them as a matter of course.[96] That said, praetorian *diplomata* follow a radically different pattern. Even after 212, at which point citizenship grants were theoretically unnecessary,[97] praetorian *diplomata* granting *conubium* are frequently attested;[98] the grant of *conubium* seems to have been relevant for praetorian veterans far after it ceased to so be for other soldiers. Scholars have split on

[94] See, for example, Eck & Wolff 1986a, in particular the chapters by Behrends 1986, Dusanic 1986 (focusing on the pre-Severan period), and Eck & Wolff 1986b; Link 1989; Mann & Roxan 1988.
[95] For the latest known auxiliary diploma—dating from 203—see Eck & Wolff 1986b.
[96] Phang 2001: 68-75. For other types of grants (such as *conubium* with noncitizens) to legionaries, see *P. Mich.* 432, reconstructed by Wolff 1974.
[97] Phang 2001: 68, Sherwin-White 1973: 380-81.
[98] The latest praetorian *diploma* dates from 306; Phang 2001: 68.

the reason for these continued attestations; Marcel Durry claimed that these *diplomata* were evidence that praetorians remained forbidden from marriage during service after the proclamation, while Alan Sherwin-White claimed that praetorian veterans were disproportionately more likely to wish to marry peregrine women, and George Watson that they were simply a relic.[99] Sherwin-White and Watson's arguments both strike me as somewhat unconvincing for the same reason: the total lack of auxiliary *diplomata* after 203. While it is true that praetorians in the third century were recruited from the provinces, so were auxiliary troops; it is by no means obvious why only the former group would seek *conubium* with their peregrine spouses and thus require a *diploma*. Similarly, if the *diplomata* had become meaningless ritual, it is hard to understand why different sections of the Roman army would be so much slower to discard it. Occam's Razor supports Durry's claim; that *diplomata* granting marriage rights were given because soldiers did not gain those marriage rights until completion of service, and that they stopped being given once soldiers in a particular branch of the army were permitted to marry during service. Jost Henrich Jung dismisses this idea as absurd, but his reasoning is revealing; he claims that it is highly unlikely that any emperor would grant privileges to other groups of soldiery higher than those of the praetorians.[100] This is the key to the matter. Septimius Severus had, at best, an ambivalent relationship to the Praetorian Guard; even though personal loyalists were installed after his ascension, Septimius is described in the historians as treating the guard as potential traitors and as punishing them harshly for their betrayal of Pertinax.[101] Excluding the guard from a grant of

[99] Durry 1938: 294-95, Sherwin-White 1973: 388, Watson 1969: 139.
[100] Jung 1982: 339.
[101] See, for example, Dio Cass. 75.1.1-2.

marriage rights would certainly be marked, for the reason Jung describes. But that message accords with the highly public rebukes portrayed in Dio.[102]

Available evidence suggests that Septimius Severus made a major grant to the soldiers, from which the Praetorian Guard was pointedly excluded. Once again, this is hardly unusual; Septimius was not the first emperor to dispense favors to preferred parties. But, once again, Septimius was uncommonly comfortable framing this dispensation in legal terms. The message this particular dispensation sent—the soldiers are important, loyal, and deserving of rewards—has clear precedent in Roman imperial history, if some added urgency in this particular circumstance. But the *medium* was new, and responded to the particular political needs of the new Severan era. The first advantage of this sort of legalist favoritism might be its thrift, since granting soldiers marriage rights gave them something they very much wanted while costing nothing. But in this case, the grant of legal privileges was accompanied by not just a donative, but also an increase in pay; Septimius was not being cheap.[103] So why would he make this legal change? Critically, such a grant—as opposed to money—was something that he and he alone could give. Anyone can give soldiers money, but granting rights is inherently the act of a sovereign; it presumes the grantor's power over the arena in which the grant is made, and relies for its continued validity on other actors recognizing that power. It presumes the existence of a regularized, predictable system in which

[102] Dio records Septimius as publicly castigating the praetorians for plotting against Pertinax: πολλά τε καὶ πικρὰ ὑπὲρ τῆς ἐς τὸν αὐτοκράτορά σφων παρανομίας ὀνειδίσας αὐτοῖς. *Ibid.* 75.1.1.

[103] Hdn. 3.8.4, SHA *Sev.* 17.1. The Severan pay increase has become a subject of debate in scholarship on the Roman army, since neither source is clear on the amount of the raise. Alston 1994, by assuming that payments under Septimius (and under Caracalla, who raised them further) would consist of quarterly payments in *aurei*, estimates the size of the increase at either 50 or 100 percent. *Ibid.* 114-15. By comparison, Speidel 1992 uses a reference in the *vita Severi* to Septimius having given *militibus tantum stipendiorum quantum nemo Principum dedit* (12.2) to state more firmly that he doubled the soldiers' pay. *Ibid.* 98. Previously, MacMullen 1984 had presumed a raise of 25%, from 300 to 400 *denarii*; *ibid.* 571-72. Handy 2009 follows Speidel in presuming a doubling of the *stipendium* to 600 *denarii*. *Ibid.* 221-22.

those rights can be vindicated, enmeshing the rightholder within that system. By giving soldiers the right to form legally binding marriages, the emperor gave his soldiers something that was enormously valuable within the Roman legal system but that had no power outside of that system or in the event of that system's failure. Furthermore, the grant's arbitariness—as demonstrated by Septimius excluding a higher-ranking segment of the military because he considered it traitorous—makes it clearly an expression of imperial favor, τοὺς στρατιώτας πλουτίζ[ων] as per Septimius' deathbed advice.

* * * * *

Septimius Severus granted marriage rights to soldiers as part of a political project, not a legal or administrative one; the timing of the announcement should make that clear. However—much like with the grant of rights against summary execution to the senate I discussed above—the legalistic form of the pronouncement was an innovation, and one critical to that larger project. These grants served as a form of imperial communication, not just in their message but in their medium; they enacted stereotypically imperial virtues[104] but did so as only an emperor could. For example, anyone can promise not to arbitrarily kill another person; in fact, most people can quite credibly commit to not arbitrarily killing another person. Whoever is reading this should feel quite confident that I will not kill or otherwise injure them, and my ability to promise not to hurt others is in no way contingent on my gaining political or military power. I could not, on the other hand, secure the passage of a law preventing me from killing another person, or ratify such a law were it

[104] For the term "virtues" to describe personal qualities of the emperor conveyed through official messaging, see Noreña 2011: 99-100.

presented to me, since I do not have the power to perform either action under America's current legal and political system.[105] Promising not to kill other people is obviously an assertion of power, since it implies the feasibility of the action foresworn; when any emperor promised not to kill senators without a trial, that promise only had value inasmuch as its audience understood that he could easily do so if he wished. But making a law preventing extrajudicial killing asserts powers that were specific to the emperor in Roman law of this period, and not available to other powerful or murderous figures. Similarly, any pretender could promise riches to soldiers who supported him; doing so was simply a function of wealth. Only a legitimate emperor could permit legally valid soldier marriages, and that validity was contingent on the emperor's legal pronouncements remaining in force.

These grants were opportunities for Septimius Severus to present himself specifically as a sovereign. Rather than simply asserting his claim to the throne, Septimius engaged in behavior for which his *imperium* was a necessary condition; this sort of performance not only would have reinforced Septimius's image as emperor (as opposed to as a military leader who had taken Rome by force), but also drew the recipients of his legal favor into mutually beneficial relationships depending on his continued power and legitimacy. *Imperium* is, inevitably, constituted through a web of relationships of varying degrees of importance; an emperor is emperor because senators treated him as the emperor, because various different publics entered into relationships with the person of Septimius that were the sorts of relationships those publics had entered into with prior emperors, and (at this point primarily) because soldiers treated him as their leader. The emperor giving (and others receiving) gifts and favors was obviously an important part of those relationships, but emperors were not the only figures to engage in munificence. They were,

[105] For now.

however, uniquely empowered to make meaningful changes to others' legal status; by framing his particular acts of generosity as legal changes, Septimius drew powerful actors into a relationship that was, uniquely, that of the emperor and his subject.

III. Law and the Public

Thus far, I have shown how Septimius used legal forms to mediate customary interactions between an emperor and other players within the Roman political structure. But Septimius also appears to have made lawgiving an important part of his public persona. The *vita* describes Septimius as hearing trials almost immediately upon entering Rome in 193: "On another day, he came to the Senate and ordered that supporters of [Didius] Julianus be proscribed and killed. He also heard many cases, and punished harsly those judges who had been accused by provincials if their claims could be proved."[106] Dio similarly describes him as an unusually attentive adjudicator: "And he did this [adjudication] extremely well: for he gave litigants an appropriate amount of water [in the water-clock] and he allowed us, sitting with him in judgment, substantial liberty in speaking."[107]

Another suggestive piece of evidence for Severan lawgiving is an unusual corpus of legal correspondence from Alexandria, preserved on a single papyrus at *P. Col.* 123 (fig. 1.1).[108]

[106] SHA *Sev.* 8.4: *Alia die ad senatum venit et amicos Iuliani incusatos proscriptioni ac neci dedit. Causas plurimas audivit. accusatos a provincialibus iudices probatis rebus graviter punivit.*
[107] Dio Cass. 77.17.1: καὶ μέντοι καὶ ἄριστα αὐτὸ [adjudication] ἔπραττε: καὶ γὰρ τοῖς δικαζομένοις ὕδωρ ἱκανὸν ἐνέχει, καὶ ἡμῖν τοῖς συνδικάζουσιν αὐτῷ παρρησίαν πολλὴν ἐδίδου.
[108] This image is of a reproduction of this papyrus that is contained in Westermann & Schiller 1954, along with a brief provenance at 3-5. For a detailed bibliography of *P. Col.* 123 up to 1978, see Oliver & Clinton 1989: 451-52. For more contemporary discussion, see Katzoff 1981, Tuori 2012.

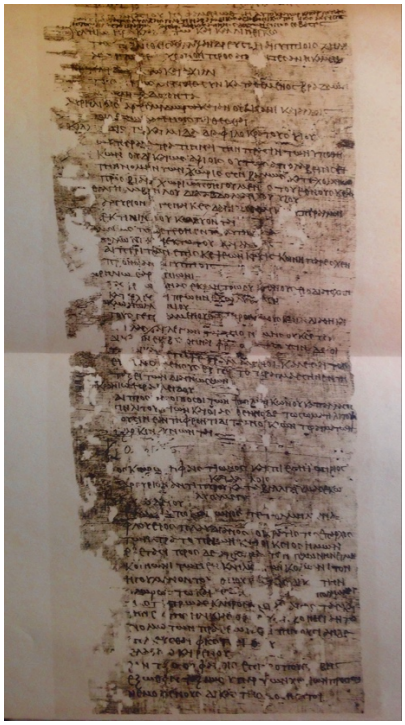

Fig. 1.1. *P. Col.* 123: Record of decisions handed down by Septimius Severus and Caracalla.

P. Col. 123 contains thirteen responses to legal questions, all published at Alexandria between March 14 and March 16 of 200 C.E. It is almost certain that these responses were given to Egyptian or Alexandrian petitioners; the first petition directly references Egypt, the seventh addresses an Aurelius Sarapion, and the tenth a Pieseis, son of Osiris.[109] Furthermore, if the other opinions in the document were responses to non-Egyptian litigants, it is difficult to imagine why they would have been published in Alexandria; they are too summary to be of any use to anyone other than the litigants in question.[110] However, the volume of material is remarkable; Septimius and Caracalla would have heard at least four cases a day, in addition to whatever other activities they

[109] *P. Col.* 123, 6-7, 41-42.

[110] For example, the third response, at lines 11-12, reads in its entirely τοῖς εγνωσμένοις πίθεσθαι. Kaius Tuori notes that these decisions are so specific, and so seemingly trivial, that they "could have been satisfactorially answered by a simple clerk." Tuori 2012: 115.

engaged in at Alexandria. This activity also brought the emperors into contact with what appear to be non-elite audiences. The petitions answer questions from a sick man in debt to the city, and a widowed mother whose children need guardians. We know relatively little about how emperors engaged, personally, with nonelite citizens; while the historians record Septimius as making policy decisions that could have benefited nonelites (most obviously his addition of oil to the *annona*, which would have burdened provincial audiences while improving the nutrition of poor Romans),[111] these legal proceedings seem to have been the primary context in which Septimius would have regularly interacted, one-on-one, with nonelite inhabitants of the empire.[112]

Our other clear evidence for lawmaking as a critical part of Septimius' public persona comes from Dio. Dio's discussion of Septimius' virtues in Book 77 contains a long description of Septimius' daily routine, partially excerpted above: notably, the only portion of this routine that could plausibly be described as "public-facing" was his adjudicative work.

> Severus arranged his life in such a way when there was peace. Every night he was doing something or other before dawn, and afterwards he would take a walk, hearing and discussing the business of the αρχή. Then he would hold court, unless there should be a major holiday. And he did this extremely well: for he gave litigants an appropriate amount of water [in the water-clock] and he allowed us, sitting with him in judgment, substantial liberty in speaking. He sat in judgment until mid-day, and after that he would ride horses, as much as he could; then he would take a bath after some kind of exercise. He then ate a substantial meal, either alone or with his children. Then he slept. After waking, he handled his remaining business and had a walking discussion, in both Greek and Latin. After this, around the evening, he would bathe again and have dinner with those close to him; for he

[111] SHA *Sev.* 18.3; see Garnsey 1988: 226.

[112] Assuming, of course, that they could reach him. Wynne Williams has argued convincingly that petitions had to be delivered to the emperor in person and without the intervention of an official postal service. Williams 1974b: 93-98. While this would obviously limit the availability of official redress, these cases certainly suggest that—at least while the emperor was travelling—individuals of fairly restricted means could access him. Tuori makes a similar argument, claiming that these public adjudicative appearances "fulfil[led] the obligation of approachability." Tuori 2012: 118.

> rarely had dinner-guests, and only on those days when he was compelled did he throw rich banquets.[113]

Septimius' engagements with the public thus appear quite limited; subjects would have seen the emperor primarily when he gave judgments, either in Rome or the rest of the empire. Furthermore, in Rome proper the courtroom in which Septimius engaged with his subject was decorated with a conscious eye towards the display of Severan legitimacy, employing one of Septimius' favorite messaging tropes, the imperial horoscope.

> He knew this [the time of his death] particularly due to the stars under which he had been born, for he had placed them on the ceilings of the rooms in the palace in which he would hold court so that they could be seen by all, with the exception of the portion showing the hour—as they say—of his seeing the light; for he carved this differently on each side.[114]

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[113] Dio Cass. 77.17.1-3: ἐχρῆτο δὲ ὁ Σεουῆρος καταστάσει τοῦ βίου εἰρήνης οὔσης τοιᾷδε. ἔπραττέ τι πάντως νυκτὸς ὑπὸ τὸν ὄρθρον, καὶ μετὰ τοῦτ᾽ ἐβάδιζε 1 καὶ λέγων καὶ ἀκούων τὰ τῇ ἀρχῇ πρόσφορα: εἶτ᾽ ἐδίκαζε, χωρὶς εἰ μή τις ἑορτὴ μεγάλη εἴη. καὶ μέντοι καὶ ἄριστα αὐτὸ ἔπραττε: καὶ γὰρ τοῖς δικαζομένοις ὕδωρ ἱκανὸν ἐνέχει, καὶ ἡμῖν τοῖς συνδικάζουσιν αὐτῷ παρρησίαν πολλὴν ἐδίδου. ἔκρινε δὲ μέχρι μεσημβρίας, καὶ μετὰ τοῦθ᾽ ἵππευεν ἐφ᾽ ὅσον ἂν ἐδυνήθη: εἶτ᾽ ἐλοῦτο, γυμνασάμενός τινα τρόπον. ἠρίστα δὲ ἢ καθ᾽ ἑαυτὸν ἢ μετὰ τῶν παίδων, οὐκ ἐνδεῶς. εἶτ᾽ ἐκάθευδεν ὡς πλήθει: ἔπειτ᾽ ἐξαρθεὶς τά τε λοιπὰ προσδιώκει καὶ λόγοις καὶ Ἑλληνικοῖς καὶ Λατίνοις συνεγίνετο ἐν περιπάτῳ. εἶθ᾽ οὕτω πρὸς ἑσπέραν ἐλοῦτο αὖθις, καὶ ἐδείπνει μετὰ τῶν ἀμφ᾽ αὐτόν: ἥκιστά τε γὰρ ἄλλον τινὰ συνέστιον ἐποιεῖτο, καὶ ἐν μόναις ταῖς πάνυ ἀναγκαίαις ἡμέραις τὰ πολυτελῆ δεῖπνα συνεκρότει. Notably, Dio describes Marcus Aurelius engaging in extremely similar behavior on 71.6.1. However, given Dio's claim of autopsy in the Septimius narrative (ἡμῖν τοῖς συνδικάζουσιν) it seems likely that the Marcus narrative is based on Septimius. As I argue in other work, Dio describes Marcus' attention as springing from a subjective commitment to fairness; Marcus acts "so as to ensure strict justice by all possible means," (ὥστε πανταχόθεν τὸ δίκαιον ἀκριβοῦν) and the absence of a similar clause in the Septimian narrative can be read as subtly implying that Septimius' motives may be somewhat less pure. Herz (forthcoming).

[114] Dio Cass. 77.11.1: ᾔδει δὲ τοῦτο μάλιστα μὲν ἐκ τῶν ἀστέρων ὑφ᾽ ὧν ἐγεγέννητο καὶ γὰρ ἐς τὰς ὀροφὰς αὐτοὺς τῶν οἴκων τῶν ἐν τῷ παλατίῳ, ἐν οἷς ἐδίκαζεν, ἐνέγραψεν, ὥστε πᾶσι, πλὴν τοῦ μορίου τοῦ τὴν ὥραν, ὥς φασιν, ἐπισκοπήσαντος ὅτε ἐς τὸ φῶς ἐξῄει, ὁρᾶσθαι: τοῦτο γὰρ οὐ τὸ αὐτὸ ἑκατέρωθι ἐνετύπωσεν.

We can see from this anecdote that Septimius considered those portions of his palace that were used for adjudication as highly visible public spaces; he decorated them with his imperial horoscope and specifically did so in order that everyone see: ὥς φασιν . . . ὁρᾶσθαι.[115]

The fact that an emperor would hear cases, and would do so in public, should come as no surprise.[116] But documentary evidence like *P. Col.* 123 helps gloss exactly what the *vita* meant when it described Septimius Severus as *iudicii singularis*;[117] public adjudication, which the *vita* describes Septimius as performing almost immediately after his ascension and which Dio describes him as performing in a uniquely attentive and uniquely spectacular form, offered a space in which Septimius Severus could enact traditional imperial behaviors while also demonstrating his wisdom, tolerance, and equanimity.

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Of course, imperial lawmaking was not itself unprecedented or unique. Imperial control of juridical institutions had grown steadily throughout the Principate; Septimius inherited a suite of powers

[115] For the importance of omens in general, and astrology or horoscope in specific, to Septimius Severus' claim to the throne, see *ibid.* 75.3. Dio himself states that he had previously published a (now lost) catalogue of the omens predicting Septimius' rise, and that Septimius had praised him for it; *ibid.* 73.23.1-2. Zvi Rubin discusses the technical implications of publishing an Imperial horoscope, and Frederick Cramer provides a broader discussion of horoscopes in late second-century Roman elite culture. Cramer 1954: 81-143, Rubin 1980: 27-33. Francesco de Angelis argues that this connection between astrology and law specifically reflects a parallel conception of the two as ordered, fixed universes free from inappropriate personal influence or manipulation: "[the emperor's] activity was specifically inscribed within a larger order of the universe." De Angelis 2010: 153.

[116] In addition to Tuori 2012's discussion of this phenomenon, cited above, the most thorough treatment of imperial adjudication (and many other things besides) remains Millar 1977: 507-49.

[117] SHA *Sev.* 18.4.

dating to Hadrian, if not to Augustus.[118] However, Septimius deployed those powers in unprecedented ways. Previous emperors had sworn not to kill senators without trial; Septimius secured the passage of a law forbidding him from doing so. Previous senators gave money to soldiers; Septimius gave them legally vindicable rights. Previous emperors heard cases in a variety of settings; Septimius heard them in a room specially decorated with a symbol of his imperial destiny. These were innovations, even if deployed to call attention to Septimius' essential conjunction with pre-existing models of legitimate rulership. The next section of this chapter will address what sort of work we should understand this ostentatious legalism to have performed, or been intended to perform; I argue that its role can best be understood both through theories of performance and spectacle, and through comparison with more contemporary work arguing that ostentatious legal mediation can increase individual legal subjects' support for or acceptance of a given political regime.

IV. Law and the Imperial Imagination

Septimius Severus was not the first emperor to ostentatiously protect the procedural rights of senators; he was not the first emperor to give the soldiers what they wanted; and he was certainly not the first emperor to hear legal cases. But in each case, Septimius innovated on earlier models of imperial behavior by consciously putting conventional messages into legal forms. This section considers why that might be, both in the temporally specific context of Severan politics and, more broadly, in light of recent theoretical developments in the sociology of law.

[118] For a discussion of the steady increase in imperial involvement with lawmaking throughout the Principate, see Tuori 2016b.

A. Performative Legalism

First of all, Septimius' legalism can be understood as a particularly potent form of imperial advertising, tailored to the communicative needs of the late second and early third centuries. Specifically, the chaos of 193-95 had laid bare the tenuous ideological basis of any given emperor's claim to *imperium*; Didius Julianus had not attained power due to any imperial virtue beyond generosity towards the Praetorian Guard, and Septimius himself had beaten back Niger and Albinus through military superiority, not the love of the Roman people or any particular competence to rule. Much has been made of imperial communications of the early Severan period, and in particular of their tendency to emphasize Septimius' personal qualities in response to this apparent institutional legitimacy deficit.[119] If the fact of a person's position in the institutionalized role of 'emperor' is meaningless—since he only holds that position because of the favor of the soldiers—that person might nevertheless be worthy of respect and obedience because of his own inherent and abnormal fitness to rule, what Weber termed *charismatische Herrschaft*.[120]

Septimius' legalism can be thought of as a response to this tension, or a means to highlight the emperor's legitimating personal qualities and elide the, at times, discomfitingly absolute nature of his powers.[121] On one hand, legal changes were one more medium among many through which

[119] For recent examples, see Ando 2012: 24-28, Kemezis 2014: 45-74, Langford 2013: 15-20, Lusnia 2014: 209, Noreña 2011: 229-31.

[120] Weber 1964: 179 defines charisma in terms of an individual's unusual and nearly magical properties: "Charisma soll eine als außeralltäglich (ursprünglich, sowohl bei Propheten wie bei therapeutischen wie bei Rechts-Weisen wie bei Jagdführern wie bei Kriegshelden: als magisch bedingt) geltende Qualität einer Persönlichkeit heißen, um derentwillen sie als mit übernatürlichen oder übermenschlichen oder mindestens spezifisch außeralltäglichen . . . ."

[121] An excellent example of this tension between Septimius' supreme position within the Roman legal hierarchy and the political utility in submerging him within a broader and more broadly

Septimius Severus could demonstrate *aequitas* and *liberalitas*; on the other, this material allowed Septimius Severus to demonstrate his personal qualities in the context of rulership, to be a good emperor and not just a good man serving as emperor. As Agamben has noted, the idea of the arbitrary monarch rests on an unsolved collective action problem; sovereignty is a shared fiction. Septimius could do anything he wanted, but only because enough other people understood him to be able to do so that they would go along. When that collective belief dissipated, an emperor would be no more secure or capable of protecting himself than would any civilian (as Commodus, Pertinax, Didius Julianus, Clodius Albinus, and Pescennius Niger could all attest). Septimius took power at a time when that belief was idiosyncratically weak, and this legalist program was a way to strengthen it. By doing things that only an emperor could do, Septimius could identify himself with the abstract concept of *imperium*, more concretely than by inventing an imperial lineage for himself[122] and more subtly than by erecting a monumental arch.[123]

Septimius Severus thus constituted himself as a sovereign through a regime of performative legalism. That concept, however, requires more rigor and theoretical grounding than I have given it thus far. In particular, the idea of performative legalism I here put forward to explain Septimius' behavior is indebted both to theories of performance and performativity, and to broader jurisprudential concepts of the rule of law and its impact on popular views of government. When

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legitimated order can be found at *Iust. Inst.* 2.17, which notes that "Severus and Caracalla would frequently claim in rescripts that 'although we are not bound by the laws, we nevertheless live according to the laws.'" (*Divi quoque Severus et Antoninus saepissime rescripserunt: "licet enim," inquiunt, "legibus soluti sumus, attamen legibus vivimus."*).

[122] On which see Dio Cass. 76.7.4-8.3, Mattingly-Syndenham, *RIC Sept. Sev.* 4.1 185, 187; Langford 2013: 18, 144 n.76 and sources cited therein.

[123] Brilliant 1967: 29 (describing the Arch of Septimius Severus, constructed in 203 C.E. in the Roman Forum to commemorate Septimius' victory over the Parthians, as motivated by "the desire to establish the legitimacy of the Severan dynasty through the public manifestation of the *Victoria Parthica*."), Lusnia 2014: 57-60 (discussing Septimius' self-representation as *Restitutor Urbis* and attempt to craft an image of dynastic continuity through his building program).

I refer to the performativity inherent in Septimius' legal program, I do not use performativity in any sort of Austinian sense, not because Septimian legalism was not performative in that sense but because the fact of its being so is not terribly notable. J.J. Austin's work on theoretical linguistics has isolated a category of what he refers to as "performative utterance;" a class of speech-acts which, rather than stating a falsifiable claim about the world or a person's beliefs about some object or event ('My name is Zachary,' 'I believe that the earth is flat,' or 'Radio City Music Hall is full of terrible secrets'), are themselves acts which serve to alter the world (Austin's examples of this phenomenon are the words 'I do' in a marriage ceremony, the utterance 'I name this ship the *Queen Elizabeth*,' 'I give and bequeath this watch to my brother' in a legally valid will, or simply 'I bet you sixpence it will rain tomorrow' in a system in which this utterance creates a binding obligation).[124]

Almost any statement about the world made by a sovereign, and in particular any act of legal decision or change, will thus be performative according to Austin's definition. A legal decision is a communicative action that, by expressing the will of the sovereign in a world where the sovereign's will must be obeyed, functions to transform that world. Instead, we can think of these legal decisions not just as examples of a process by which speech is made equivalent to action—and thus performances by Austin's standard—but as the result of conscious choices to employ this process in instances when other processes would have achieved similar practical ends, and to employ it publicly. It is those choices, and the juridical spectacle they created, that I mean by 'performance;' We might imagine this spectacle in Butlerian terms, as an attempt to iteratively

[124] Austin 1975: 4-7.

construct an "identity [that] is performatively constituted by the very 'expressions' that are said to be its results."[125]

Septimius Severus "did" sovereignty (here thought of as acts for which the holding of imperial power was a necessary condition) and thus identified himself as strongly as possible with the category of "sovereign." His monumental architecture program inscribed his sovereignty onto the fabric of Rome; his adoption of Antonine nomenclature inscribed sovereignty into his blood; his legal program inscribed sovereignty into his politics and into his public actions, while communicating that that sovereignty was impersonal, institutional, and thus legitimate. This process was very much a spectacle, but not a spectacle as traditionally understood in Roman politics[126]—these legal decisions did not publicize the overwhelming force of Septimius and the state. Instead, this was a spectacle of something rather like what Clifford Ando has called "governmentality;" of the emperor's enmeshment in a web of depersonalized institutions that constituted 'good government' and which operated for the benefit of, and on the person of, the individual within the Roman state.[127]

However, the phenomenon I describe differs from Ando's in two important respects, largely as a result of its different political goals. Firstly, Septimius Severus' habit of legal pronouncements did not merely foreground the state, but the sovereign; these performances centered the person of the emperor (as the person who is the subject of the law against senatoricide, or as the subject of the horoscope that decorates his courtroom), rather than the more diffuse "Roman state" that might be seen in the sort of projects Ando describes. Secondly, these

[125] Butler 2010: 33.
[126] For a classic article on more traditional spectacle demonstrating the Roman state's capacity for imaginative and extreme violence, see Coleman 1990.
[127] See Ando 2012: 177-78.

performances seem to occlude the emperor's power at the same time that they make it most visible. When Septimius secured the passage of a law forbidding him from killing senators without trial, he both advertised his position at the head of Rome's institutional order and maintained the conceit that he might be bound by that order. Granting marriage rights to soldiers made Septimius Severus a personal benefactor, but the mechanisms through which this grant could be made effective (by enforcing wills or dowry agreements, for example) were institutional, depersonalized courts. For these reasons, I believe a new concept is needed, which is why I refer to this set of practices as "legalism." Not law, since the emperor could ignore or revoke the changes he had made, but something legal in its form, if not its effect. By communicating this message of legalism through highly visible public acts, Septimius Severus thus engaged in the practice I refer to as performative legalism; he made laws as a sovereign does, while bestowing favors on his subjects as a benevolent ruler might.[128]

The acts that constitute this phenomenon, or the performances required to engage in performative legalism, are themselves odd beasts and require explanation as well. I have referred to them above as "spectacles," but while they might be phenomenologically similar to what we commonly imagine as spectacle (temporary, localized events communicating some sort of shared value in a variety of different media with a pronounced visual component), these instances of public lawmaking communicate a vastly different message. Bluntly, our discussions of spectacle tend towards the spectacular; there is a vast literature on spectacle in the Roman empire, and on its role in preserving public support for imperial rule, but this literature emphasizes extraordinary

[128] For legal practices as part of imperial benevolence, see Tuori 2012.

or unusual events (a beast hunt, a triumph).[129] By contrast, these instances of public lawmaking, as well as the various sorts of everyday events that might be impacted by the emperor's legal munificence (such as, for example, the birth of a soldier's legitimate child), draw their communicative value precisely from their ordinariness; they inserted Septimius Severus into individual understandings of something closer to everyday life, of the broader network of formal and informal institutions governing existence within the empire's bounds.[130] This sort of 'quotidian spectacle' can be understood as expressing some idea of normalcy or continuity, one which might be a valuable communicand for a state and sovereign constituted under such unusual circumstances as those leading to the ascension of Septimius. By expressing his rule as coterminous with or supportive of longstanding institutions (such as the practice of imperial adjudication) that were already broadly accepted, this spectacle could imbue a lawmaker with some of the legitimacy already attached to the law itself.

In order to understand how exactly this sort of legalist program might be seen as legitimating its head, it may be useful to look at a different strand of political philosophy, one more rooted in the specific medium of legal speech. The idea that legal outcomes should be governed

[129] Much of this literature focuses on gladiatorial spectacle: see Beacham 1999, Coleman 1990, Dodge 2011, Hopkins & Beard 2005. For a discussion of the triumph as a more unusual spectacle with a clearer focus on military excellence, see Beard 2009.

[130] By contrast, much of the existing work on the spectacular components of Roman legal practice again emphasizes the extraordinary and unusual. See Aubert 2010: 277-309 (siting martyrologies within juridically created institutional settings); Bablitz 2007 (discussing the theatrical elements of law in the Republican context); Coleman 1990 (whose work on gladiatorial or other sorts of highly publicized and stage-managed executions begins with a class of individuals who have been marked as spectacular subjects through a judicial process); Shaw 2003 (discussing the impact of criminal law and its punishments on early Christian self-conceptions). Roman courts could certainly serve as venues for shocking violence and unexpected or memorable performance; what I discuss here is a somewhat different use of the same sort of stage set.

by general and impersonal rules substantially predates this period: Aristotle argues in the *Rhetoric* that one advantage of rule by law over rule by men was that

> the legislator's judgment does not regard the specific circumstance, but rather the general or future circumstance, whereas the assemblyman or juryman judge matters that are present and clearly defined: for them, friendship and hatred and private interest are often involved, with the result that they can no longer properly consider the truth, but instead private pleasure and pain cast shadows on their judgment.[131]

This idea has survived into modern jurisprudence as the concept of a "rule of law;" articulated by Lon Fuller and Joseph Raz as consisting of prospectivity, clarity, stability, generality, and a certain kind of procedural constancy.[132] We can see Septimius' behavior as a public commitment to something very much like this principle; the law forbidding Septimius Severus from putting senators to death without trial is general (it does not single out any senator by name), public, prospective, and easy enough both to understand and follow (while we do not have the text of the rule itself, Dio seems to have grasped its meaning).

This commitment to the rule of law, however, failed in its enactment. Septimius Severus broke the rules against killing senators without facing consequence,[133] his grant of marriage rights was at least theoretically revocable at any time, and whatever benignity held in Septimius' Alexandrian pronouncements was understood to apply only as long as the sovereign was not personally threatened, desperate, or enraged. In such a circumstance, a very different, and far more dangerous, paradigm of sovereign/subject interaction might hold.[134] Theorists like Raz and Fuller

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[131] Aristotle, *Rhet.* 1354b: ἡ μὲν τοῦ νομοθέτου κρίσις οὐ κατὰ μέρος, ἀλλὰ περὶ μελλόντων τε καὶ καθόλου ἐστίν, ὁ δ' ἐκκλησιαστὴς καὶ δικαστὴς ἤδη περὶ παρόντων καὶ ἀφωρισμένων κρίνουσιν: πρὸς οὓς καὶ τὸ φιλεῖν ἤδη καὶ τὸ μισεῖν καὶ τὸ ἴδιον συμφέρον συνήρτηται πολλάκις, ὥστε μηκέτι δύνασθαι θεωρεῖν ἱκανῶς τὸ ἀληθές, ἀλλ' ἐπισκοτεῖν τῇ κρίσει τὸ ἴδιον ἡδὺ ἢ λυπηρόν.
[132] Fuller 1969: 46-91, Raz 1979: 214-16.
[133] Dio Cass. 75.2.2.
[134] In fact, Caracalla would be much less humane in his later treatment of Alexandria; both Dio and the *vita* record Caracalla as killing residents of the city *en masse*, due to their perceived antipathy towards him. See *ibid.* 78.22-23, SHA *Car.* 6.2-3.

imagine the rule of law as a substantive good that consists of lawmakers meaningfully subordinating their future actions to some sort of reasoned and depersonalized process; the system they describe is not the one Septimius Severus put in place. Instead, Septimius' program might more closely approximate what Brian Tamanaha has called "rule by law;" a theory of law that merely requires governmental action, however arbitrary it might be, to be mediated through formally legalizing institutions.[135] In essence, Septimius maintained absolute power, while mediating that power through the apparently depersonalizing and institutionalizing structures of law.[136]

So, in the absence of the actual self-binding commitments that the rule of law might entail, what sort of legitimizing work could such a program achieve? These structures could still serve important communicative functions, not only by suggesting imperial virtues, but also by showing their "audience" Septimius Severus exercising those virtues in a specifically imperial context. It is difficult to make strong claims as to the effectiveness of this sort of communication, given that the major histories of the Severan period were written under his putative grandson;[137] nevertheless,

[135] Tamanaha 2004: 92-93; see also Raz 1979: 212-13 ("If government is, by definition, government authorized by law the rule of law seems to amount to an empty tautology, not a political ideal.").

[136] For a similar argument in the context of law's constraint on provincial governors, see Bryen 2012: 776 ("This vision of the law was founded on the idea that there existed a disembodied world of rules that transcended even the emperor himself, and that these rules could be accessed by the skillful manipulation of authoritative legal texts in the context of courtroom encounters structured by proper procedure.").

[137] Adam Kemezis, by contrast, has argued that Dio's treatment of Severus Alexander is too "lukewarm," and his treatment of the Severan rulers with which Alexander sought to connect himself too hostile, to believe that the text could have been plausibly circulated prior to Dio's death. Kemezis 2014: 291-92. While I am sympathetic to the claim—particularly as regards Dio's condemnation of Caracalla—other aspects of Dio's Severan history suggest at least some conscious engagement with imperial propaganda. In particular, the astonishing viciousness of Dio's treatment of Elagabalus echoes themes in Severus Alexander's own treatment of his cousin (on which see Rowan 2013: 219-33), and Dio's discussion of his personal interactions with Alexander at 80.5, while hardly panegyric, are extremely complimentary and careful to distinguish

more contemporary work in the sociology of law suggests that these kinds of performances can enormously impact whether or not individuals see legal regimes as legitimate and deserving of obedience.

Tom Tyler's 1984 study of individual Chicagoans' attitudes towards law and the state[138] showed a marked connection between people's views of the procedural fairness of their interactions with the law and their own respect for that law and likelihood to follow it, regardless of their attitudes towards the substantive merits of those laws themselves. Obviously, 1984 Chicago is not Severan Rome; even by the standards of ancient history, that comparative analysis would be somewhat extreme. However, Tyler's findings point to broader claims about the legitimacy of governments and specifically suggest that members of a state feel a strong, subjective desire to *be heard* by that state, to be allowed to present their specific arguments to an arbiter who will hear those arguments and who holds open the possibility of being persuaded by them.[139] Individuals in states that they perceive as meeting those desires will be more likely to abide by adverse legal decisions and obey state authority.[140] These desires, however they might have existed in the Roman state, offer a new stimulus for Septimius' legally mediated interactions with his public. Hearing citizen arguments served a core state function in a highly visible fashion; making legal adjudication core to his public persona allowed Septimius Severus to combine sovereignty with approachability and a certain form of fairness.

Alexander's own benignity from the savageness of the soldiers Dio was ruling at the time. If Kemezis is correct that these documents were kept secret, it seems probable that Dio, at the very least, took steps in his writing to ensure that he would remain relatively safe if those secrets were divulged.

[138] Published in Tyler 1990: 8-15.

[139] *Ibid.* 81-83.

[140] *Ibid.* 178.

B. Severan Legality as Antonine Nostalgia

Of course, this legalism was hardly Septimius' only communicative project; the final major work of this chapter will be placing Septimian legalism into dialogue with other forms of messaging, showing how this performance of legal boundedness fit with the emperor's broader goals. This connection not only clarifies how legal discourse fit into Septimian politics, but also makes something of a methodological intervention; law was a form of Severan propaganda, and students of Severan propaganda can better understand it by using the tools of legal history.

The performative legalism I have described linked Septimius with earlier periods of good governance, most specifically with the late Antonines who were the focus of such intense admiration in other spheres. While earlier Roman historians (and presumably, the elite Roman audiences they spoke for and to) had cited the rule of law as a key component of the republican past,[141] by the Severan period nostalgia (at least in extant sources) was more keenly focused on periods of perceived good rulership. For example, Dio famously portrayed the death of Marcus and ascension of Commodus as a transition "from a kingdom of gold to one of iron and rust" (ἀπὸ χρυσῆς τε βασιλείας ἐς σιδηρᾶν καὶ κατιωμένην).[142] In many ways, this claim is unremarkable; Dio's use of the language of metals to describe different epochs dates back to Hesiod,[143] and earlier historians were quite fond of citing changes of political power as moments of irreversible decline.[144] However, earlier historians like Tacitus and Sallust posited this decline as beginning in

[141] Livy's history transitions directly from the expulsion of the Tarquins to *liberi iam hinc populi Romani res pace belloque gestas, annuos magistratus, imperiaque legum potentiora quam hominum*. Livy 2.1; Wirszubski 1950: 30-36.
[142] Dio Cass. 72.36.4.
[143] Hes. *Op.* 109-44.
[144] See, for example, Tac. *Hist*. 1.1 (describing how historical writing and thinking were harmed by the collapse of the republic).

a mythical, half-remembered past of true democracy.[145] Dio instead describes as χρυσῆς an era of competent or ethical imperial governance, personified by the Antonine era.[146]

This shift from republican to Antonine nostalgia is not merely Dionian; it is also visible in Septimius' own nonlegal ideological work, and contextualizes the legal changes I have described above. As Susann Lusnia's recent monograph on Severan-era urban architecture shows, Septimius Severus' building program was presented as part of a broader scheme of *restoration*, with particular emphasis on the renovation and repair of already-existing imperial religious structures.[147] Original monumental architecture of the period betrays a similar theme. The Arch of Septimius Severus in the Roman Forum was dedicated *ob rem publicam restitutam*, referring to Septimius' seizure of the throne from his rivals;[148] similarly, the Arch of Severus in Leptis Magna appears designed to recall the same city's Arch of Marcus Aurelius, suggesting that provincial elite audiences also understood Septimius as connecting himself to the late Antonines.[149] These architectural throwbacks accompanied Septimius' most straightforward appeal to Antonine nostalgia; his self-adoption into the Antonine *gens*.[150] All told, Septimian communications in a variety of media emphasized the return of a specifically Antonine governance paradigm, with special emphasis on Marcus Aurelius.[151]

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[145] See Sall. *Cat.* 7-12; Kemezis 2014: 37.
[146] See *ibid.* 145 (arguing that Dio implicitly compares the shift from Antonine to Severan governance with the shift from republic to monarchy).
[147] Lusnia 2014: 91-92.
[148] *CIL* 6.1033; Brilliant 1967: 91-95.
[149] See Ward-Perkins 1948: 64; for a broader overview of the site and its monuments see Bianchi et al. 1966, especially 67-70, 101-04. See also Rowan 2013: 89 (connecting triumphal imagery circulating in the provinces to nearly identical triumphal images of Marcus and Verus).
[150] see *supra* note 122; see also Baharal 1996: 20-22 (arguing from numismatic and epigraphic evidence that Septimius Severus began to present himself as the adoptive heir to the Antonine dynasty well before the address to the Senate described in Dio); *CIL* 8.9317 (referring to Septimius, in the context of an African dedicatory inscription dating to 195, as *Divi Commodi Frat*[*er*]).
[151] For the tension inherent in Septimius' relationship with Commodus, see Kemezis 2014: 63-66.

Septimius' performative legalism fits within this same paradigm. The institutional changes that consolidated imperial control of law began under Hadrian, after all; imperial lawmaking would have been closely connected with Hadrian and his successors.[152] In fact, evidence from the jurists is consistent with imperial legislation becoming markedly more frequent under the Antonine emperors; the *Digest* contains vastly more references to lawmaking by Antoninus Pius and Marcus Aurelius (either under sole authority or acting with Verus), than by Hadrian.[153] Understanding adjudication as a legibly Antonine practice can help explain its importance in Septimius' own self-presentation. Part of what made Commodus such a shocking break from earlier imperial practice appears to have been his perceived lawlessness; Dio recounts with horror an episode where Commodus killed an ostrich in order to demonstrate to assembled senators his arbitrary power over their lives.[154]

Law thus allowed Septimius Severus to "do" sovereignty in a way that more traditional ideological communications could not. Lawmaking and adjudication are iterative, constant processes that draw third parties into relationships dependent on the sovereign's continued legitimacy; while the Arch of Septimius Severus might provide shade or aesthetic pleasure, that pleasure can survive even if the emperor who provided it is deposed or killed. The same is true of traditional acts of imperial generosity like donatives; while soldiers who chose the wrong side might be punished, I know of no example of the money that was given to them being specifically refunded after the fact. Legal benefits, however—in the form of unilateral grants or simply favorable interpretations of existing laws—are more contingent, and by necessity their holders depend on the continued sovereignty of their grantor. To give one example—albeit one where

[152] Tuori 2016b: 234-39.
[153] For a table of juristic references to imperial lawmaking, see Appendix III.
[154] Dio Cass. 73.21.1-2.

Septimius' behavior is not necessarily unusual—cities that were granted favorable legal status by an imperial contender could easily lose that status once that contender was defeated.[155] Legal benefits can be so easily taken away that those who receive them become, by definition, invested in the continued legitimacy of those who granted them (and thus in the validity of the benefit itself).

This made lawmaking an especially potent form of messaging for Septimius Severus. In its communicative capacity, lawmaking could link Septimius with the last emperors who were widely respected by elite audiences (and, equally importantly, the last emperors to die of natural causes). As a practical matter, lawmaking would have made Septimius Severus less dispensable, or more obviously central to the functioning of the Roman state. These two phenomena, combined, show why an emperor who was by all accounts idiosyncratically concerned with self-presentation might also be concerned with law;[156] at a time when the meaning of Roman imperial power was undergoing unprecedented contestation, and when the ideological structures that had maintained the Principate through wars, plagues, and assassinations seemed unprecedentedly weak, law offered Septimius a way to break the cycle, and to make himself into something resembling a normal emperor in highly abnormal times.

[155] Examples of this phenomenon are too numerous to list, but see *ibid.* 75.14.3 (describing Septimius retaliating against the citizens of Byzantium for its support of Pescennius Niger by subordinating the city to Perinthus).
[156] For Septimius' aggressive use of propaganda see Rubin 1980: 38-40.

Conclusion

In this chapter, I have argued that certain innovations in imperial representation under Septimius Severus can be understood as deploying a certain sort of legalism to create a certain sort of spectacle, and that this new strain in imperial messaging responded to the ideological pressures associated with the beginning of the third century C.E. The ascension of a new emperor was a monumental event, but Septimius Severus cast that ascension as a return to processes and institutions that predated and would outlast his own tenure on the throne. He did so using the tools of spectacle, repeating the extraordinary accomplishments and breathtaking monuments of those emperors whose heir he purported to be. But an emperor is not just a general or a benefactor. He is also a judge.

Severan lawmaking functioned similarly to these well-discussed communicative projects, but it did so subtly, and using tools scholars are not quite as inclined to politicize. Septimius began his reign with a normal pronouncement in an abnormal language, augmenting the standard oath not to kill senators without trial with the procurement of a senatorial decree forbidding him from doing so. The effect was identical (and identically negligible), but in choosing to mediate his stagecraft through senatorial law, and not merely through his personal virtue, Septimius flattered the senate while focusing on institutions that might command more loyalty than he did at that moment. Septimius' attitudes towards law for the military, and for the public more broadly, followed a similar logic. In addition to the standard forms of generosity, Septimius bestowed upon his soldiers a new legal privilege; the right to form legally binding marriages. This right, which could easily be unwound should the emperor fall, made his soldiers dependent not on his munificence (which any rich man or pretender could provide), but on his sovereignty, on those

things an emperor does that only an emperor could do. This use of law to accomplish political or messaging goals also animated Septimius' relationship with his public; Septimius heard cases in a monumental room designed to reflect other aspects of his communicative program, linking legal activity with more traditional genres of imperial performance. All of these procedures made legal culture under Septimius Severus into an imperially mediated spectacle of normalcy; the emperor hears cases and makes law, every day, inserting himself into the daily life of his subjects and being useful. Every time a soldier made a will, he solidified his dependence on Severan generosity.

While the effect of these legal changes obviously cannot be determined, they appear to have been designed to express a similar message—that Septimius Severus was restoring imperial institutions after a period of violent misrule, and that loyalty to those institutions, as well as to the emperor himself, made revolt undesirable—as other pieces of Septimius' communications program. That said: why have such a program? Septimius Severus was obviously aware of the actual source of his power; while his admonition that his sons ignore all aspects of imperial politics other than the soldiers may well be apocryphal, his reliance on military force and concern with maintaining the support of the military are certainly not.[157] That said, the Principate began at Actium. Military force had always underlaid imperial power; Augustus began the tradition of obscuring that force in public messaging, and Septimius' repeated attempts to justify his rule through something other than the army can be understood as an attempt to restore that tradition. While much has been made of Septimius' self-presentation as an extraordinary individual, his propaganda balanced that individual focus with an image of continuity and a certain kind of normalcy; law, a field where the emperor could dispense enormous benefits in a nominally

[157] Dauguet-Gagey 2000: 281-85, Handy 2009: 246-47, Kemezis 2014: 61-62.

impersonal fashion, allowed him to bridge that gap, advertising his personal qualities and his depersonalized official capacities as worthy of loyalty and respect.

The recipient of Septimius' famous advice—his son and successor Caracalla—pursued a different strategy. Caracalla presented himself as unprecedented, extraordinary, and militaristic; he is also the author (or promulgator) of what might be the most famous Roman law in history. That is likely not a coincidence; my next chapter will discuss how Caracalla's own communicative strategy expressed itself in both the rhetoric of his legal correspondence and in the substance of his legal decrees.

CHAPTER II

LAW AND TRANSCENDENCE UNDER CARACALLA

INTRODUCTION

Marcus Aurelius Antoninus, popularly known as Caracalla, seems at first glance like a paradigmatic example of the late Principate's ability to deliver vital public goods under the nominal supervision of an unfit leader. Historical accounts of Caracalla's personality and habits are damning; Dio, Herodian, and the *vita* all describe the man killing his brother Geta in their mother's arms and slaughtering Alexandrians *en masse* in retaliation for perceived slights.[1] The historians also describe Caracalla as an almost singularly inattentive ruler, who drank with soldiers instead of performing official business and who had prominent jurists of the era killed, before eventually being stabbed to death ἀποπατῶν by an agent of his frightened *praefectus praetorio* Opellius Macrinus.[2] Nevertheless, there is no evidence that this turbulence obstructed governmental business, and Caracalla's reign saw a massively influential legal innovation; in 212 C.E. the *CA* granted citizenship to all free inhabitants of the empire.

This private unsuitability and public magnanimity have proven challenging to reconcile. Severan historians largely ascribed sinister motives to the *CA*, reading it as an attempt to finance more imperial extravagance; by contrast, contemporary work has treated the *CA* as "a revolutionary decision, which removed at a stroke the legal difference between the rulers and the ruled,"[3] and which itself reflected tectonic shifts in Rome's attitude towards personhood and

[1] Dio Cass. 78.2, 22, Hdn. 4.4, 4.9, SHA *Car.* 2.4, 6.2-3.
[2] Dio Cass. 79.5.4.
[3] Beard 2015: 527.

empire.[4] Historians of Severan politics, however, are just as likely to treat the *CA* as a sort of aberration or detour from broader questions of Severan self-representation and political strategies.[5]

The goal of this chapter is to square that circle. Much like that of other members of the Severan dynasty, Caracalla's public image was mediated through a variety of communicative channels, including those commonly associated with depersonalized or bureaucratic governance. I have already discussed how the legal pronouncements of Septimius, Caracalla's father, affirmed his position within Roman legal institutions; the legal correspondence of Caracalla uses similar means to accomplish what appear to be very different ends. Caracallan legal writing emphasizes the extraordinary and spectacular, and how Caracalla's unusual personal qualities and religious experiences motivated his decisionmaking; these themes accord with other forms of Caracallan state communication. I argue that, by understanding Caracallan legal communication as an expression of the emperor's personal capabilities and near-divinity, we can reconcile these massive legal changes with the historiographic narrative of an emperor unconcerned with quotidian administrative matters. Ramsay MacMullen's model of "hortatory law," or legislation that communicates the necessary effects of certain virtuous acts on the "single, indivisible whole" that such law imagines its empire to be, helps explain this discrepancy; the *CA* wrote the portent and purposivity of Caracallan imperial representation onto the empire as a single civic community.[6] By uniting the empire in a shared project of transformation—one linked to Caracalla's own traumatic experience and reliance on divine favor—the *CA* gave legal form to a particular brand

[4] See, for example, Buraselis 2007: 47 (referring to the *CA* as *aequitas spectanda*), Jacques 1990: 279-80 ("La Constitution antoninenne . . . n'est que la manifestation la plus spectaculaire d'une nouvelle attitude impériale. Sans les faire disparaître complètement, les empereurs africains et syriens réduisirent de nombreuses inégalités institutionnelles . . . ."). For a more extensive engagement with contemporary and earlier scholarship on the *CA*, see *infra* notes 66-73, 85-92.
[5] See Rowan 2013: 127; *supra* Introduction, note 12.
[6] MacMullen 1979: 30.

of Severan megalomania, and treating the *CA* as a messaging project, rather than examining it primarily through the lens of its effects, reveals its place in the broader political and communicative strategies of Caracalla's court.

This chapter proceeds in three parts, in addition to an introduction and conclusion. Part I discusses our evidence—historical, epigraphic, and otherwise—for lawmaking under Caracalla, and its connections to idiosyncrasies found in other Caracallan communications. Part II uses this material to develop a new interpretation of Caracalla's most famous piece of legislation, the *CA*. I argue that the *CA* fits within a broader pattern of state representation of Caracalla as an exceptional figure, capable of accomplishments beyond the scope of normal human power. The actual legal consequences of the *CA* support or concretize this representation, but need not be understood as the primary goal of the legislation; instead, the *CA* tells the story of a godlike emperor who can change lives at a whim, with the actual change serving more as evidence of the story's veracity than as a *desideratum* in its own right. Part III discusses the methodological implications of this reading of the *CA*, both for legal history—which frequently understands laws primarily as tools to alter the world—and for the history of Severan communications, which were elsewhere largely deployed to put forward an image of continuity or quotidianity. By depicting himself as breaking from the Roman past in favor of a novel and extraordinary future, Caracalla also broke with the persistent nostalgia of his father's reign, while nevertheless using a similar set of tools in order to accomplish this new set of messaging ends.

I. LET'S KILL ALL THE LAWYERS: CARACALLA AND ADMINISTRATIVE IDIOSYNCRASY

The vision of Caracallan administration that survives in literary and epigraphic sources depicts an emperor personally uninterested in legal proceedings, formalities, or expertise. Nevertheless, these sources suggest not only that lawmaking and administration continued under Caracalla, but also that these activities continued to serve as a venue for imperial self-fashioning, in this case for developing and promulgating an image of the emperor as an extraordinary figure whose disinterest in mundane administrative details sprung from his appetite for and exposure to unusual, emotionally charged events.

A. Literary Evidence

History has been kinder to Caracalla than historians ever were. Both Dio and Herodian condemn Caracalla in the strongest terms for offenses ranging from fratricide to genocide to incest; the *vita Caracallae* repeats these claims and Aurelius Victor's brief account adds an accusation of psychosis (brought about, of course, by divine punishment for his other offenses).[7] These claims, regardless of their merit,[8] make the historians unreliable sources for more mundane details of Caracalla's reign; all of these accounts tend towards the fantastical.

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[7] See, in addition to citations *supra* note 1, Hdn. 9.2.3 (describing the Alexandrians nicknaming Julia Domna "Jocasta" after the mythological incestuous mother), SHA *Sev.* 21.7, *Car.* 10.1-4 (describing Caracalla marrying Julia Domna), Aur. Vict. *Caes.* 21.3.

[8] Which, as one might imagine, varies; while Caracalla's official communications reference his killing of his brother, no evidence corroborates Herodian's claim that Caracalla had an affair with Julia Domna (or, for that matter, the *vita*'s claim that he married her). The fact that these sources consistently refer to Julia as Caracalla's *noverca* rather than as his biological mother (as would be indicated by coinage as well as by simple dating) further undercuts their claim to special knowledge, while also suggesting how they could have become confused; Julia and Caracalla

1. *Caracalla and the Lawyers: The Nicomedia and Papinian Narratives*

That said, what evidence there is—largely from Dio—suggests that Caracalla failed to share his father's (and his successors') interest in lawmaking or administration. Dio's hostility to Caracalla is tempered by autopsy; Caracalla spent the winter of 214-15 at Nicomedia, where Dio served as part of the emperor's *consilium* and records their personal interactions. Specifically, Dio claims that Caracalla ignored legal and administrative business in favor of carousing with soldiers:

> But Caracalla would say that he was going to hear cases or do public business immediately after dawn, but would delay us up to midday and often until the evening; not allowing us into his antechamber but making us wait outside, for after a long time he would often decide not to even greet us. As this was happening he would busy himself in other ways, as I said; and he would drive chariots and slaughter wild animals and fight and drink even to the point of intoxication, and he put together huge wine-bowls and passed around serving cups for the soldiers guarding him inside to consume along with all their other food, while we stood and watched; and after this he sometimes even heard cases.[9]

Dio also records the emperor appointing his mother to hear petitions on his behalf—a superficially implausible claim, but one complicated by epigraphic evidence, as I will discuss below—and

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appear together frequently on coins. Robert Penella argues that this accusation of incest can be understood as part of a broader trend of "Neronization," in which bad acts associated with Nero (here incest and antimaternal violence) are imputed to his spiritual successor. Penella 1980: 382-84; for a broader discussion of the development of this incest narrative, see Levick 2007: 98-99.

[9] Dio Cass. 78.17.3-4 (ἐκεῖνος [Caracalla] δὲ ἐπήγγελλε μὲν ὡς καὶ μετὰ τὴν ἕω αὐτίκα δικάσων ἢ καὶ ἄλλο τι δημόσιον πράξων, παρέτεινε δὲ ἡμᾶς καὶ ὑπὲρ τὴν μεσημβρίαν καὶ πολλάκις καὶ μέχρι τῆς ἑσπέρας, μηδὲ ἐς τὰ πρόθυρα ἐσδεχόμενος ἀλλ᾽ ἔξω που ἑστῶτας: ὀψὲ γάρ ποτε ἔδοξεν αὐτῷ μηκέτι μηδ᾽ ἀσπάζεσθαι ἡμᾶς ὡς πλήθει. ἐν δὲ τούτῳ τά τε ἄλλα ἐφιλοπραγμόνει ὥσπερ εἶπον, καὶ ἅρματα ἤλαυνε θηρία τε ἔσφαζε καὶ ἐμονομάχει καὶ ἔπινε καὶ ἐκραιπάλα, καὶ τοῖς στρατιώταις τοῖς τὴν ἔνδον αὐτοῦ φρουρὰν ἔχουσι καὶ κρατῆρας πρὸς τῇ ἄλλῃ τροφῇ ἐκεράννυε καὶ κύλικας καὶ παρόντων ἡμῶν καὶ ὁρώντων διέπεμπε, καὶ μετὰ τοῦτο ἔστιν ὅτε καὶ ἐδίκαζε.). See also Davenport 2012a: 82.

briefly mentions him interrupting the trial of a man named Alexander because the accuser's references to "murderous Alexander, hateful to the gods" (ὁ μιαιφόνος Ἀλέξανδρος, ὁ θεοῖς ἐχθρὸς Ἀλέξανδρος) sounded like slanders of Alexander the Great.[10] Historians also make much of Caracalla's abuse and eventual murder of his childhood tutor, the jurist Papinian. Two separate *vitae* describe Caracalla as authorizing the killing; the *vita Caracallae* mentions—possibly borrowing from Dio—that Caracalla rebuked the soldiers who killed Papinian for using an axe instead of a sword.[11] Dio includes one final detail, however; he claims that Caracalla authorized the soldiers to kill Papinian on the grounds that "I rule for you, not for myself; therefore I obey you as accusers and judges (ὡς κατηγόροις καὶ ὡς δικασταῖς)."[12] Papinian was, at this time, well known as a legal expert; he had served as a secretary *a libellis* and *praefectus praetorio* in his career and published extensively on legal topics.[13] Assuming that Dio's account is based in any sort of reality,[14] Caracalla claimed to elevate his soldiers to δίκασται at the specific expense of a prominent jurist and member of the imperial legal bureaucracy. The choice of language here would

[10] Dio Cass. 78.8.3. For Caracalla's appointment of Julia Domna, see *ibid.* 78.18.2. This rather extraordinary claim has recently been studied in some detail by Kaius Tuori, who suggests that it is unlikely Caracalla formally appointed his mother *iudex vice Caesaris*, but that she may well have taken an active role in hearing petitioners and advising her son. Tuori 2016a: 196-97. Evidence of this dynamic between Caracalla and his mother can be found in an inscription at Ephesus recording Julia Domna's response to a petition from the Ephesians, apparently asking her support in a request to the emperor himself. *Ibid*. 191, Oliver 1989: 512-15, Robert 1967: 61-62.

[11] SHA *Sev.* 21.8 (*Papinianum, iuris asylum et doctrinae legalis thesaurum, quod parricidium excusare noluisset, occidit . . . .*), *Car.* 4.1 (*dein in conspectu eius Papinianus securi percussus a militibus et occisus est. quo facto percussori dixit, 'Gladio te exsequi oportuit meum iussum.'*); compare Dio Cass. 78.4.2: καὶ τῷ γε τὸν Παπινιανὸν φονεύσαντι ἐπετίμησεν ὅτι ἀξίνῃ αὐτὸν καὶ οὐ ξίφει διεχρήσατο.

[12] *Ibid.* 78.4.1.

[13] For Papinian's tenure *a libellis*, see *Dig.* 20.5.12pr (Tryphoninus, Disputationes) (referring to an imperial rescript *agente Papiniano*). For Papinian as praetorian prefect, see *CIL* 6.228.

[14] A not entirely uncontroversial assumption; Caillan Davenport has read Dio's account of Caracalla as largely that of an embittered outsider. Davenport, however, takes Dio's account of Caracalla's treatment of Papinian as largely plausible. Davenport 2012a: 805.

be a remarkable coincidence if the slight were unintentional.[15] By contrast, there is almost no material in the historians painting Caracalla as a particularly attentive administrator or judge: the closest one can find is a laconic passage in Herodian claiming that Caracalla "was skilled in perceiving a case and quick to give replies to what had been said."[16]

2. *Caracallan Adjudication in Philostratus*

In addition to historians' discussion of Caracalla's behavior in adjudicative settings, Philostratus' *Lives of the Sophists* also mentions Caracalla in passing; Philostratus may well be passing on gossip, but given that his text makes no broader point about Caracalla's personality or historical import, it is also free from some of the bias concerns inherent in Dio and the other accounts mentioned above. *The Lives of the Sophists* is a piece of intellectual prosopography, specifically tracking the various individuals within the Greek intellectual movement known as the Second Sophistic;[17] emperors appear in *The Lives of the Sophists* primarily as audience members, targets for rhetoricians' displays of forensic brilliance who might dispense or revoke favors based on what they heard. Philostratus describes two sophists' interactions with Caracalla in some detail; the resultant image supports Dio's portrayal of Caracalla as favoring entertainment over substance in

[15] This is further supported by where Dio places this incident in his narrative. Dio's discussion of Caracalla's neglect of legal duties is largely confined to the Nicomedia narrative in 78.17-18, but this incident occurs far earlier at 78.4.
[16] Hdn. 4.7.2: . . . νοῆσαι τὸ κρινόμενον εὐφυὴς ἦν, εὐθίκτως τε πρὸς τὰ λεχθέντα ἀποκρίνασθαι.
[17] The Second Sophistic is not easy to define, but the term is frequently used to refer to the growth of highly aestheticized rhetorical performances as a valued art form within the Greek east in the second and early third centuries, and the increasing importance of these rhetoricians within the imperial court. For more specialized scholarly discussions of the phenomenon, see, among others, Anderson 2005, Whitmarsh 2005.

administrative matters, and as comfortable radically altering the norms of imperial adjudication to suit his own preferences.

The first of these is Philiscus of Thessaly, whom Philostratus describes as having travelled to Rome in order to protest a liturgy imposed upon him by the city of Herodia.[18] Upon arriving in Rome, Philostratus describes Philiscus as insinuating himself into the retinue of Julia Domna, the emperor's mother and a renowned intellectual.[19] Caracalla took umbrage at what he perceived as Philiscus' attempt to undercut the emperor's personal authority over his case; "he became angry, and was enraged that Philiscus was circumventing him (ὡς περιδραμόντι)."[20] He responded in two ways: after first modifying the rules of the embassy to require that Philiscus present his case in person, Caracalla then expressed his personal distaste for Philiscus' bearing and style by decreeing not only that Philiscus should not be granted an exemption from public service, but by revoking the general exemption that was apparently in place for Athenian instructors in rhetoric.[21]

A more positive example of the same behavior is the remarkable success of the orator Heliodorus. Heliodorus travelled to Caracalla's court to present a case with a colleague, but the emperor decided to cancel many of the suits before him at that time; since Heliodorus' compatriot

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[18] Philostr. *V S* II.30 [621-23].

[19] For more discussion of Julia Domna's intellectual circle, see Levick 2007: 113-23.

[20] Philostr. *V S* II.30 [622]. περιδραμόντι has many possible meanings, but the two that seem most salient here are "to be in fashion or popular," cf. Dion. Hal. *de Din.* 2, and "to deceive or work around," cf. Ar. *Hipp.* 56 (a somewhat archaizing meaning, but not unusually so in the context of the Second Sophistic). In this context, both senses are plausible—and we should not expect Philostratus to be entirely above pun—but taking περιτρέχω with the full sense of indirection implied by περι corresponds better to Philostratus' earlier discussion of Philiscus' cultivation of Julia Domna, and how that might have incited Caracalla's suspicion or regard for his personal authority.

[21] *Ibid.* II.30 [623]: οὔτε σὺ' εἶπεν 'ἀτελὴς οὔτε ἄλλος οὐδεὶς τῶν παιδευόντων· οὐ γὰρ ἄν ποτε διὰ μικρὰ καὶ δύστηνα λογάρια τὰς πόλεις ἀφελοίμην τῶν λειτουργησόντων. Millar 1977: 439 describes this incident in some detail, largely as an example of the embassy process. See also Flaciere 1949: 473 (publishing the only other surviving epigraphic evidence of Philiscus of Thessaly).

was too sick to speak, Heliodorus asked that his suit be heard once the other man had recovered.[22] Instead, however, Heliodorus was forced to plead his case alone, and in doing so he appears to have impressed Caracalla greatly; the emperor is reported as calling him "a phenomenon the likes of which I have not known, unique to my time," granting Heliodorus equestrian rank, and soon after appointing him *advocatus fisci*.[23] While this account is not first-hand, and while the usual caveats surrounding reported imperial speech apply, this scene is in keeping with the Philiscus narrative above and with Dio's own depiction of Caracalla's administrative style. In each instance, Caracalla is portrayed as making decisions himself, and as making those decisions with less regard for any sort of legal order than with his own personal tastes and preferences. Furthermore, the exclamation Philostratus records is so unusual that it may well reflect reality; if so, it suggests that Caracalla was particularly impressed by Heliodorus' novelty, and that he was anxious that it be understood as reflecting something unusual or extraordinary about Caracalla's own time. That novelty seems to have been something the emperor viewed as normatively desirable, given the rewards that Heliodorus attained.

[22] Philostr. *V S* II.32 [625-27]. Philostratus does not give a reason why Caracalla refused to hear cases that day, but that refusal is not presented as evidence of idiosyncratic behavior; that was not Philostratus' focus. However, Philostratus' account (coming as it does from a man who had spent time in Caracalla's court; see Millar 1977: 439) does provide further support for Dio's Nicomedia narrative described above. After all, if the emperor were refusing to hear cases as Dio claims, the suits would need to be disposed of one way or another, and possibly rather quickly.

[23] Philostr. *V S* II.32 [626]: οἷον οὔπω ἔγνωκα, τῶν ἐμαυτοῦ καιρῶν εὕρημα . . . . Kendra Eshleman views this behavior as self-evidently inappropriate; Eshleman 2008: 405 ("In the *Lives*, infringing upon the autonomy of the sophistic community is rather the act of a bad emperor like Caracalla, who not only elevated the obscure Arabian orator Heliodorus to equestrian rank and named him *advocatus fisci*, but also forced reluctant listeners to applaud his declamation."). See also Scott 2015: 168 ("[T]his anecdote strengthens the notion that Caracalla was capricious and distrustful of precedents when making appointments.").

B. Epigraphic Evidence

Of course, textual accounts are not the end of history, but this aspect of Caracalla's individual behavior in court is not the sort of claim to be easily confirmed or disputed by other types of evidence. We have relatively extensive epigraphic records of Caracalla responding to petitions, but these documents would not necessarily inform us of Caracalla's individual attitude towards administration. These records do tell us something, however, about how spectators with a slightly less privileged view than Cassius Dio might have understood Caracallan legal decisionmaking, and about how administrativity and responsiveness worked as component pieces of Caracalla's broader public image.

1. *Case Study: The Dmeir Inscription*

In addition to these accounts of Caracalla in court, several of his judgments survive in epigraphic form; these similarly emphasize Caracallan exceptionality or novelty, and show that these tropes were not merely important to the emperor personally but actually informed his representation in public-facing media. The most instructive of these judgments, found in the Syrian city of Dmeir, records the idiosyncratic proceedings of an embassy from the citizens of the small village of Gohaira.[24] According to the document, the villagers were concerned with an Avidius Hadrianus usurping priestly duties and privileges;[25] this proceeding, while addressing a problem that could

[24] *SEG* 12.759, first published in Roussel & de Visscher 1942: 173-94; see also Arangio-Ruiz 1948: 46-57, Kunkel 1953: 81-91, Wankerl 2009: 203-26, Wenger 1951: 469-504.
[25] See lines 41-44; Lewis's restoration of the privileges in question as ἀτελεία, ἀλιτουργία, and permission to wear a crown in the προεδρία strikes me as persuasive. Lewis 1968: 255-58.

appear frequently in an emperor's regular administrative work, is both well preserved and quite idiosyncratic in its particulars. Firstly, both the Gohairians and Avidius were very well represented; Egnatius Lollianus and Iulianus Aristaenetus are listed as the parties' advocates.[26] Secondly, the actual proceeding seems oddly bombastic and abstract, before terminating abruptly; while the end of the inscription is damaged, only 22-24 lines of text could have separated the last surviving material—Lollianus' claim that the case implicates questions of piety, and thus bears a special connection to Caracalla—from Caracalla's resolution of the case (presumably in favor of the village, given the monumental inscription).[27]

The Dmeir inscription provides an example of formally rule-bound adjudication serving as an opportunity for aesthetic display and for the satisfaction of specific entertainment needs rather than traditional, legally mediated dispute resolution. As Wynne Williams has noted, the embassy provides few of the facts which might be salient for determining the legal rights of the Gohairians on one hand, or of Hadrianus on the other; the case moves immediately from an oddly constructed debate about jurisdiction to a highly rhetorical discussion of Caracalla's own religiosity and relationship to the divine.[28] While some of the relevant material could be provided in the part of the inscription that has now been lost, fitting all of it into this small space would only be possible if the orators were to have changed their styles dramatically.[29] However, while this document is

[26] Williams identifies Egnatius Lollianus with L. Egnatius Victor Lollianus, on whom see Leunissen 1989: 163, *PIR*^{2} E 36, Williams 1974a: 664. Iulianus Aristaenetus is less straightforward, but Kunkel has persuasively argued that "Iulianus" is a stonemason's erroneous representation of "Sallius," and C. Sallius Aristaenetus is attested as an Italian *curator viae* later in his career. *CIL* 6.1511 (=*ILS* 2934); Kunkel 1953: 84-85.
[27] Wankerl 2009: 226; see also Arangio-Ruiz 1947: 47, Williams 1974a: 667.
[28] Williams 1974a: 666-67.
[29] I should note that this argument presumes victory for the Gohairians; our surviving record does not include a final decision as to jurisdiction, outside of a somewhat cryptic rhetorical question by Caracalla on lines 33-34 that could be seen as dismissing the question but that Lollianus responds to with further jurisdictional arguments. Caracalla could have simply refused to hear the case

an outlier from widely understood models of imperial adjudication, it is remarkably concordant with the decisionmaking processes discussed above in Philostratus. While it is no particular shock that those embassies which interested Philostratus would involve heightened rhetorical display,[30] both the Heliodorus and Philiscus narratives described above show Caracalla's treatment of ambassadors hinging less upon their presentation of facts satisfying abstract or depersonalized decision criteria than they do upon the emperor's own aesthetic or personal response. In Philiscus' case, Caracalla is depicted as manipulating the structure of the hearing in order to punish Philiscus for perceived disrespect; Heliodorus, on the other hand, received legal benefits due to his ability to entertain and impress.

Wynne Williams is correct to argue that the Dmeir inscription is "more valuable as evidence for the character of Caracalla and the history of his court than for the juristic problems of the rules of appeal;"[31] nevertheless, the tropes developed in this hearing were not merely personal idiosyncrasies, but core components in public representations of the emperor and of imperial practice. In this representational context, the unusual processes of the Dmeir inscription are more easily intelligible; the hearing was transformed into a venue for oratorical display, which appears to have ended not when the rhetoricians involved had completed their arguments but when the display ceased to meet specific entertainment needs. In other words, the trial was complete when it became boring. The Dmeir inscription records an administrative process that had become a substrate through which drama, spectacle, and exceptionality could be produced. Whether this

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without needing more specific information, but it is by no means clear why the Gohairians would inscribe a record of Caracalla refusing to consider their petition on jurisdictional grounds. Instead, Caracalla would have needed to accept jurisdiction and also reach a decision on the merits in approximately one-and-a-half columns of text.

[30] After its introductory address, *The Lives of the Sophists* begins by discussing the necessary components of Τὴν ἀρχαίαν σοφιστικὴν ῥητορικὴν; Philostr. *V S* 1pr. [480].

[31] Williams 1974a: 667.

behavior reflects Caracalla's own disinterest or a more considered attempt to communicate a specific idea of how imperial intervention into nonelite lives might be perceived, the monumental inscription suggests that the Gohairians were grateful, if not necessarily entertained.

2. *Case Study: The Julia Domna Inscription*

Another unusual inscription from the reign of Caracalla records Julia Domna acknowledging a request made to her by the city of Ephesus and promising to intercede with her son on behalf of its residents, who gratefully inscribed her letter.[32] The content of the letter is not particularly remarkable, and the process it imagines (with family members or other associates of the emperor begging favors on behalf of third parties) even less so. However, the inscription is remarkable as a public-facing claim that Julia Domna played a role in imperial administration. While historians record gossip about female members of the imperial household participating in government, that gossip is almost uniformly negative; like freedmen, women were seen as potentially corrosive elements within the imperial *familia*, and powerful women are symbolically linked with dysfunction, decadence, and weak-mindedness within the imperial biographies.[33] Public representation of imperial women generally avoided this particular taboo.[34] While images of

[32] *SEG* 51.1579.

[33] Cf., as one example among many, Tac. *Ann.* 12.7; *versa ex eo* [the marriage of Claudius and Agrippina] *civitas et cuncta feminae oboediebant*. For scholarship discussing this historiographic phenomenon see Langford 2013: 87-93, Mallan 2013: 234-60, Paterson 2007: 121-56; Späth 2000: 262-81.

[34] The closest parallel, to my knowledge, is a petition of Hadrian's wife Plotina to her husband on behalf of Popillus Theotimus, asking that he be permitted to lead the Epicurean school. The petition was publicly subscribed along with her husband's (rather formal) response, and is preserved at *ILS* 7783. This letter, however, is formally quite dissimilar; the empress is shown making a request, not responding to one as she is in the Ephesus inscription. See McDermott 1977: 200-01, van Bremen 2005: 499-532.

imperial women might be widely circulated and serve important roles within broader programs of representation, women were limited to very specific roles within imperial propaganda; keepers of dynastic continuity, representatives of typically female virtues, guardians of the royal home.[35] Julia Domna's representational program extended beyond that prescribed role, with extensive coin types assimilating her to a variety of deities including Ceres and Cybele, and with a series of unprecedented titles including *Mater Augusti/orum*, *Mater Senatus*, and *Mater Patriae*.[36] The Ephesian inscription can be most clearly understood as part of this broader image of Julia Domna as an important figure in her own right.[37]

That said, the question remains of what this image was intended to convey. While Dio imagines Caracalla relying on his mother because of his own disinterest in administration and her excessive desire for power,[38] we can also see Domna's emphatic position as reflecting a specific and intentionally public-facing view of imperial power, one casting the emperor's ability to grant favor as arising not from his position within Roman institutional frameworks but from his extraordinary personal qualities. After all, the individual best suited to handle affairs in the emperor's absence is here depicted not as someone with knowledge of the policy rationales behind particular gifts, the administrative sequelae of giving such gifts, or the history of these sorts of embassies in earlier periods;[39] instead, if the emperor is unavailable the best judge comes from his immediate family. Legitimate power comes not from knowledge or experience, but proximity and

[35] See Corbier 1995, Keltanen 2002, Langford 2013: 13-14, Temporini 2002: 16-19, Wood 1999: 315-20 (focusing specifically on imperial women of the Julio-Claudian period).
[36] Baharal 1992, Lusnia 1995. The title *Mater Patriae* was first offered to Augustus' widow Livia, but Tiberius refused to allow the name to be awarded on the grounds that *moderandos feminarum honores*: Tac. *Ann.* 1.14.
[37] See Temporini 2002: 265-79.
[38] Dio Cass. 78.1.2.
[39] On these deputies and their role within Roman imperial administration more generally, see Peachin 1996: 154-87; for more specific discussion of Julia Domna, see *ibid.* 160-61.

blood. These inscriptions suggested that Caracallan administration was publicly represented as a highly personalized drama,[40] one centering not around abstract rules but instead around the experiences and desires of the emperor and those close to him.[41]

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The administrative regime depicted in these sources is a hyperpersonalized one; if we imagine the rule of law as essentially depersonalized or focusing on procedures developed *ex ante*, these inscriptions combine with the historiographical evidence to suggest lawmaking centered almost entirely on the pleasures and displeasures of an extraordinary person and his associates. While Septimius Severus is depicted as linking his personal power and legitimacy to wide-ranging, forward-facing rules, these cases foreground imperial whim, and link power to the individual emperor's individual decisions.

While the arguments above center on the structure and content of legal communications as methods of imperial representation, these cases are also highly idiosyncratic in their language and style. Both Wynne Williams and David Potter have noted that Caracallan legal communications frequently employ bombastic or elevated prose, as well as language centering the emperor's unusual personal qualities, religious devotion, and universal sovereignty.[42] While each author

[40] For a greater exploration of the dramatic components of adjudication—albeit one largely focused on the city of Rome itself—see Bablitz 2007.
[41] For the linkage between Caracalla and his mother as a medium for emphasizing Caracalla's familial claim to legitimate power, see Langford 2013: 104-07.
[42] Potter 2004: 142 (arguing that Caracalla's rescripts "bear the mark of a personality that was both forceful and given to self-congratulation"), Williams 1979: 88 (referring to Caracallan legal opinions recorded on inscriptions as possessing "striking common features of style and attitude: a fondness for stressing the universal scope of decisions; the assertion of the novelty and spontaneity

takes these documents as simple evidence of personal idiosyncrasy, these could just as easily represent an attempt to center imperial legitimacy in an individual or familial awesome presence, placing an extraordinary empire under the helm of an extraordinary man and his extraordinary family. This tension—with state communications focusing on the emperor's personal qualities and family relationships, rather than his connection to or enmeshment within state institutions—is also visible elsewhere.

C. Other Evidence of Imperial Representation Under Caracalla

This representational tendency accords with contemporary imperial depictions in more traditionally communicative media. It is almost a cliché to note that Caracallan statuary emphasizes the emperor in his military aspect; after all, the nickname 'Caracalla' comes from the emperor's habit of wearing a military cloak in public.[43] By aligning the emperor with the military, rather than with other legitimating institutions with the Roman state, these statues emphasize his strength and individual achievements as soldier and general as key to his normative claims to state support. Caracalla is also frequently depicted in the guise of the mythical hero Hercules; surviving cameos and other representations of Caracalla wearing the lionskin linked the emperor with an individual whose power arose from his divine lineage and extraordinary personal qualities.[44] However, both of these representational techniques can be seen as continuations of Septimian precedents. By contrast, representations of Caracalla were far more likely than those produced

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of the emperor's acts of generosity; [and] a tendency to give rambling and verbose explanations, the meaning of which is sometimes obscure").

[43] Leander Touati 1991: 117, Mennen 2006: 257-60.

[44] See, for examples, Marsden 2002: 419-22, Megow 1987: A 152-53 (243-44).

under his father to emphasize imperial connections with the divine. Erika Manders has noted both that Caracallan numismatics are especially likely to include religious themes and images,[45] and Clare Rowan that Caracalla himself was idiosyncratically inclined to perform public religious rituals, particularly at sanctuaries outside Rome.[46] Rowan argues that these rituals were a form of "medical tourism,"[47] and that Caracalla—who appears to have been both unusually sickly and unusually concerned with health—engaged in these rituals sincerely, with the aim of achieving divine protection. That said, the representational components of these performances should not be understated. Caracallan religiosity could also express the emperor's personal divinity or proximity to divinity; Dio records the emperor as claiming to be "the most pious of all men (εὐσεβέστατος πάντων ἀνθρώπων)."[48] Similarly, these public (or publicized) rituals would have further connected Caracalla with extraordinary events, transitory and unlikely to be repeated. Not only pious but εὐσεβέστατος, Caracalla here appeared as a man whose power arose specifically from his unique personality, and from his position outside of normal legal and political life.

Caracalla's administrative behavior accords with this representational tendency. While the disdain for law and legal decisionmaking that is depicted in Dio might arise partly from the emperor's idiosyncratic tastes and interests, these behaviors were a highly visible aspect of Caracalla's reign; after all, both the Dmeir and Ephesus inscriptions were intended for public consumption. By centering these processes around the person of the emperor rather than any sort of predictable rule or procedure, Caracallan adjudication emphasized his own extraordinary personal and familial qualities, his association with events unlikely to be repeated, and the court's

[45] Manders 2012: 324-28.
[46] Rowan 2013: 119-25.
[47] *Ibid.* 162.
[48] Dio Cass. 78.16.1.

role as a dispenser of unusual favors.[49] Again, we might contrast this with the decisions preserved at *P. Col.* 123, in which Septimius Severus (accompanied by his son, but nevertheless serving as primary decisionmaker) offered brief statements largely affirming existing rules.[50]

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This representational program might seem to make Caracalla an odd fit for a dissertation about law. The processes depicted here, both in literary and epigraphic sources, are almost paradigmatically lawless; they focus on novelty rather than continuity or predictability, and on the imperial dispensation of favors rather than adjudication within an existing and largely outcome-determinative depersonalized framework. However, Caracalla also presided over enormously consequential events in Roman legal history; Caracalla's 212 C.E.[51] decree expanding the boundaries of Roman citizenship forever changed Roman law, onomastics, and conceptions of Roman national/imperial identity. That said, no one is quite sure why this happened; it is difficult to make the *CA* into an instrumentally rational component of any particular administrative or communicative program. In my next section, I argue that the *CA* is best understood as a legal embodiment of Caracalla's representational linkages with piety, novelty, and exceptionality; whether these tropes arose from Caracalla's idiosyncratic self-conception or from a more strategic attempt to respond to perceived legitimacy deficits, viewing the *CA* as extending them into the

[49] For this conception of the emperor, particularly in the Severan period, as a personalized font of justice see Coriat 1997: 224-25, Tuori 2016b: 189-90.
[50] See *supra* Ch. I, notes 108-110.
[51] I follow the scholarly consensus in dating the *CA* to 212, but historians are not unanimous and in particular Fergus Millar has contended that the *CA* is more properly dated to 214; Millar 1962. For more discussion on the dating of the *constitutio*, see Herrmann 1972: 519-30.

legal sphere makes its sharp break with past practices into a core messaging component, rather than an enigma to be explained or justified.

II. Universal Citizenship, Imperial Greatness: The *Constitutio Antoniniana* and Laws as Extraordinary Things

Caracalla's impact on law vastly outweighs his interest in the subject. Our surviving renderings of Caracallan adjudication suggest an emperor who viewed legal decisionmaking as a stage for entertainment and for performing highly personalized types of social drama; for excitement, pleasure, and epic history. However, the *CA* itself was a "momentous measure"[52] with enormous influence on both contemporary and modern understandings of what, and for whom, the law had come to be.[53]

Modern historians have largely seen these two claims as contradictory, but in this section I argue that the *CA* is best understood as one part of the broader communicative and representational strategy present in other aspects of Caracalla's rule. Caracallan communications emphasize divine figures, unusual events, and other phenomena that could elevate the emperor and his projects above quotidian concerns; the wide-ranging, extremely visible—even if superficial—

[52] De Blois 2014: 1014.

[53] A series of excellent essays discussing the law's immediate impact and later reception can be found at Ando 2016a; see in particular Bryen 2016a: 29-43 (describing the *CA* at 41 as subjectively "meaningful as a further guarantee of protections of the citizen body against abuses of the state and its agents"), Moatti 2016: 63-98 (discussing the role of the *CA* in further extending state power). See also Sessa 2014: 200-205 (viewing the *CA* as part of the longer historical development and recognition of cosmopolitan forms of self-conception). For a contrary view, at least as regards the *CA*'s third-century impact, see Hagedorn 1979: 47-59, MacMullen 1984: 167 ("[T]he advantages bestowed by citizenship are not likely to have been much on the mind of the ordinary man in the provinces."). While I will return to this point later, for now it suffices to note that the frequency of *Aurelii* in funerary and other nonofficial sources after 212 suggests some level of subjective attachment to the *tria nomina*.

changes brought about by the *CA* would support this transformational conception of Caracalla and his reign. By radically redrawing the boundaries of the Roman administrative project, Caracalla could project an image of world-historical importance, all arising from his superhuman powers and superhuman piety. After briefly explaining our surviving sources for the *CA* and its effects, I discuss recent scholarship on the most vexing question the *CA* presents: why would a rational emperor make such an enormous change? The radical transformation worked by the *CA* was a communicative feature, rather than an administrative bug, and it shows how the imperial state could use legal change as a medium through which to express themes of discontinuity and innovation, rather than the institutionalism and Antonine dynastic themes already seen in Septimian lawmaking.

A. Sources

Only four surviving sources from the early third century explicitly mention the *CA*—while other evidence exists for a vast expansion of Roman citizenship at around this time (specifically, the sudden sharp increase in usage of the *tria nomina* in documentary sources),[54] only Dio mentions it explicitly among the major historians; only two juristic citations refer to the new fact of universal citizenship; and the text of the *constitutio* itself survives on one papyrus, at *P. Giss.* 40.[55]

Dio references the *CA* at 78.9.5 in the context of a longer discussion of Caracalla's greed, claiming that the measure, while nominally taken to honor provincials, was actually intended to subject them to further taxation. Given the near-uniform hostility of Dio's account of Caracalla,

[54] *See infra* notes 67-68; Sherwin-White 1973: 386-87.
[55] The *CA* is also amply attested in late antique literature and historiography, on which see Marotta 2009: 120-23, Modrzejewski 1990: 478-90.

this is particularly strong evidence for Caracalla creating the *CA*; Dio would have no reason to include flattering information unless it were true.[56] Two references to the grant also survive in the *Digest*. Ulpian's commentary on the Praetorian Edict states that *in orbe romano qui sunt ex constitutione imperatoris Antonini cives romani effecti sunt*,[57] and Modestinus refers to Rome as *communis nostra patria* in a text on manumission;[58] given the subject matter of Modestinus' text, it seems likely that the *nostra* should be understood as including *liberti*. That said, our best evidence for the *CA* comes from *P. Giss.* 40, a collection of decrees from 212 to 215 including a damaged version of the *constitutio* itself.[59] Below is Oliver's translation of the decree preserved at *P. Giss* 40:

> [Imperator Caesar] Marcus Aurelius Augustus Antoninus [Pius] says: ---- rather ---- the causes and considerations ------ to [the] immortal gods I may give thanks that [when] the so frightful [ambush occurred] they preserved me. Therefore, thinking that I should be able [on a grand scale and with piety] to make the return which would correspond to their majesty, [if] I were to lead [to the sanctuaries] of our

[56] Of course, one could respond that universal citizenship would not necessarily be a positive within Dio's moral universe, which focuses on the welfare and privileges of a fairly narrow band of elites. See Kemezis 2014: 134-35 (referring to Dio's conception of normatively desirable administration as "creating the conditions under which the 'best people,' as defined through discourses of class and status, have scope in public life to exercise their virtues and are discouraged from indulging their vices."). However, Dio's statement here makes clear that he is not criticizing the grant of citizenship itself, but its avaricious intention and dishonest presentation; if merely Ῥωμαίους πάντας τοὺς ἐν τῇ ἀρχῇ αὐτοῦ . . .ἀπέδειξεν' were an insult, it is difficult to see why Dio would draw such a sharp distinction between λόγῳ μὲν τιμῶν and ἔργῳ δὲ ὅπως πλείω αὐτῷ καὶ ἐκ τοῦ τοιούτου προσίῃ.

[57] *Dig.* 1.5.17 (Ulpian, ad Edictum). *Antonini* in *Ad Edictum* refers to Caracalla, and not to Pius or Elagabalus; cf. *Nov.* 78.5, in which Justinian wrongly attributes the *CA* to Pius. On this error, see de Giovanni 2006: 488.

[58] Preserved at *Dig.* 50.1.33 (Modestinus, de Manumissionibus).

[59] First published at Kornemann 1910. The literature surrounding the *CA* and its textual controversies is enormous; here I refer primarily to Heichelheim 1941, Sasse 1958, Oliver 1989: 495-505. Of these, Oliver is the most recent and contains an extensive bibliography on *P. Giss.* 40, at 495-97. Cf. Sherwin-White 1973: 286 (arguing that *P. Giss.* 40 contains not the *CA* itself but an addendum thereto); but see Oliver 1989; 500-01 (rejecting these claims on the grounds that other subsequently discovered grants of citizenship (such as the *tabula Banasitana* from Roman Morocco) follow a similar formula. For more on the *tabula Banasitana*, including images and an extensive bibliography, see Euzennat et al. 1982: 76-91.

> gods [all those presently my people and others too] as often as they enter the ranks of my people, I grant to all those [who throughout] the world [are under my rule] Roman citizenship without the [extras], with [the claim of communities] (on the services of their members) remaining unimpaired. For the [whole population?] ought [-----] already to have been included also in the victory. [---my] edict would expand the majesty of the Roman [People . . .[60]

B. The Impact of the *Constitutio Antoniniana*

Clearly, something happened here. But what, exactly? *P. Giss.* 40 raises a number of technical questions about the scope of the *CA*'s citizenship grant, both in terms of legal categories and raw numbers. As a categorical matter, damage to the papyrus hides a key limiting condition at line 9; while Meyer's original reconstruction of the text read it as excluding *dedicitii*,[61] which was taken variously as cutting out inhabitants of the empire who had been forcibly resettled from outside its borders[62] or limiting the grant to members of existing civic organizations,[63] later emendations—working by analogy with the citizenship formula contained within the *tabula Banasitana* and its explicit preservation of pre-existing local structures and provincial/metropolitan relations[64]—have taken line 9 as simply "without *addicitia*" and thus as protecting earlier legal relationships that might otherwise be threatened by the grant.[65]

Similarly, the raw numerical impact of the *CA* has been difficult to capture. Given the "commonplace of Roman history" that Rome was unusually willing to bestow citizenship rights

[60] Oliver 1989: 500. For the Greek text of *P. Giss.* 40 as reconstructed by Oliver, see Appendix I.
[61] Meyer 1920: 1-2 (referring to the *CA* as containing "der Erteilung des Bürgerrechts an die *peregrini* mit Ausnahme der *dedicitii*" and reconstructing the limiting clause on line 9 as χωρ[ὶς] τῶν [δε]δειτιχίων).
[62] Bickerman 1926: 22-23 (following Mommsen 1881: 247 n. 87).
[63] See, for example, Schönbauer 1963: 75-81.
[64] First published in full at Euzennat & Seston 1971: 468-90.
[65] See, for example, Oliver 1989: 504.

on subject peoples throughout its period of expansion,[66] a number of scholars (most notably Adrian Sherwin-White) have claimed that the *CA* was more lagging indicator than progressive revolution: that citizenship rights by the early third century were already sufficiently broadly distributed that the *CA* would have simply made formal a conception of citizenship that was already present in Roman imperial life.[67] Recent onomastic work, however, suggests otherwise—the explosive growth of the *nomen Aurelius*, taken by those who had received their citizenship (and thus access to the *tria nomina*) from Caracalla's grant, suggests that large numbers were, in fact, enfranchised by the law.[68] Another strand of recent scholarship, particularly including the work of Clifford Ando, has traced the increased legal standardization of the third century to the sudden expansion of citizenship (and accompanying Roman jurisdiction) throughout the empire.[69] Most recently, Myles Lavan has employed a Monte Carlo simulation to estimate citizenship rates within the empire immediately prior to the *CA* (and thus, building on modern interpretations of the grant as universal, the proportion of imperial inhabitants whom it would affect), finding with 95% confidence that somewhere between 66% and 85% of inhabitants would have only gained citizenship with Caracalla's edict.[70]

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[66] Lavan 2016: 3.

[67] Sherwin-White 1973: 279 ("There can be no doubt that every province of the empire was scattered with multitudes of men, organized into every possible type of community, who possessed the citizenship, while some provinces such as Baetica, Narbonensis, or Africa were now very solidly Latin or Roman.").

[68] Some of the earliest onomastic work related to the *CA* focused on army rosters, and the increase in *Aurelii* beginning in approximately 214 C.E. See Gilliam 1965: 83. More recent work has focused on a broader variety of sources; see Kracker & Scholz 2012: 67-77 (employing a pan-Mediterranean body of inscriptions), Rizakis 2011: 253-62 (noting regional variations in naming practices throughout the Mediterranean, with particular attention to the varied adoption rates of the *praenomen* Marcus).

[69] Ando 2012: 93-99; de Giovanni 2006: 487-505.

[70] Lavan 2016: 27 (explaining Monte Carlo modelling), 27-28 & fig. 3 (discussing his confidence interval and his results within that probability band).

A related question in scholarship on the *CA* concerns its actual impact on those people to whom it did grant citizenship. Adrian Sherwin-White described the *CA* as "a completion or assimilation or unification . . . of the personal status of the individual members of the empire, *but only in the narrowest sense*."[71] Ramsay MacMullen makes a stronger version of the same argument, claiming that the *CA* was a largely ceremonial change.[72] These arguments rest on two different historical phenomena; the relative silence of contemporary sources for the *constitutio* itself, and the concurrent (or almost immediately subsequent) development of finely tuned gradations of citizenship as evidenced in juristic texts and trial records, reproducing citizen/noncitizen distinctions in a cosmetically altered form.[73]

It is beyond dispute that citizenship became less visible as a token of imperial esteem after 212; it would be shocking were that not the case, at least within those communities affected by the grant. After all, the value of a token depends on its scarcity; if we understand grants of citizenship prior to the *CA* as meaningful—at least partially—based on their placing the recipient into a specific legal category to which friends, neighbors and other status competitors might not belong, then universal citizenship would strip the category of this particular relational significance. However, the most pessimistic accounts of this change are nevertheless overdrawn. First, the legal consequences of citizenship remained enormous; the *ius civile*'s reach was vastly expanded by the

[71] Sherwin-White 1973: 280 (emphasis added).
[72] MacMullen 1984: 167 n. 16 ("Despite the emphasis laid on the Constitutio Antoniniana in modern accounts, the *argumentum e silentio* certainly suggests that it was of no great importance or interest.").
[73] For the relatively sparse contemporary records of the *CA*, see *supra* Section II.A. For the increasing salience of distinctions between citizens, see Garnsey 1970b (still the authoritative text on increasing legal differentiation between *honestiores* and *humiliores* in the early third century), Hagedorn 1979 (arguing more directly for the preservation, immediately following the CA, of a class of "Ältburger" who had received citizenship prior to the grant, and whose status could have been meaningfully distinct from that of the unwashed masses of *Aurelii*).

CA, and a large proportion of the empire would have gained access to radically different methods of dispute resolution and contract enforcement.[74] That's not nothing. Secondly—and more importantly in the context of a dissertation on imperial representation and perception—this change appears to have been freighted with subjective meaning for those it affected. Recent work on citizenship has increasingly understood the status not merely as granting legal privileges that can be easily tracked or indexed, but also as impacting individuals' own felt relationship to their state, or their sense of belonging in a political or social community;[75] even in the modern world, individual reactions to citizenship are rarely as straightforward as simple relief at an irrevocable guarantee against deportation, anticipation of simplified federal taxes, or excitement at the prospect of voting. Citizenship is instead understood as an important component of personal identity, one formed in relationship with a broader civic community and with that community's own representations of itself.

Kostas Buraselis has argued for this meaning of the *CA* in recent work, focusing in particular on the concept of universal citizenship in later writings on Rome's relationship with its provinces.[76] For example, Herodian describes Roman embassies garnering provincial support for a revolt against Maximinus Thrax in 238 by claiming that such an action would benefit τῇ κοινῇ πατρίδι, and Augustine later praised Rome's universal citizenship grant in *de civitate Dei*:

> . . . is it not true that the Romans and other peoples would be in the same condition? Especially if that which was later done, most kindly and humanely, were done at that time, specifically that all those who were under Roman *imperium* accepted

[74] See De Giovanni 2006: 496-504 (focusing on the effects of this greater standardization on juristic texts, and in particular on the greater emphasis on now-universally-applicable public laws in the juristic writings of Aelius Marcianus).
[75] See Lister 2004 (discussing the concept of "de facto citizenship" as a way to refer to individuals' subjective experiences of belong in a state). For a useful summary of theoretical work on community membership as a felt component of citizenship, see Demaine & Entwhistle1996: 6-30.
[76] Buraselis 2007: 155-57, Buraselis 2001: 192.

> partnership in the state and were Roman citizens, so that what had before belonged to a few might belong to all . . . .[77]

Further, if somewhat more circumstantial, evidence of this desire for membership in a communal project can be found in the Christian apologist Tertullian's letter to the proconsul Scapula. Tertullian, writing around the time of the *CA*,[78] explicitly positions the Christians on whose behalf he writes as members of a broader community of Roman subjects who participate, as much as is possible, in the larger project of imperial support:

> A Christian is an enemy of no one, least of all the emperor, whom he knows to have been installed in that role by the Christian God; it is necessary that the Christian care for him and revere him and honor him and wish him good health, together with the entire Roman Empire, for so long as the world shall stand; for so long shall the Empire stand. Therefore we cherish the Emperor as well, as much both as is permitted for us and is beneficial for him, as a man second only to God; for whatever follows from God is lesser than God alone.[79]

Tertullian should not necessarily be taken at face value in this text—he is writing an explicit apologetic, defending Christians against persistent claims of divided loyalties, barbarism or other forms of social othering.[80] It should perhaps not be surprising that he would cast Christian religious activity as supportive of broader Roman projects. Nevertheless Tertullian's argument is remarkable for defining normative acceptability in political terms, arguing that Christians deserve

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[77] Hdn. 7.7.5, August. *de Civ. D.* 5.17: *nonne Romanis et ceteris gentibus una esset eademque condicio? praesertim si mox fieret, quod postea gratissime atque humanissime factum est, ut omnes ad Romanum imperium pertinentes societatem acciperent ciuitatis et Romani ciues essent, ac sic esset omnium, quod erat ante paucorum . . . .*

[78] The exact dating of *ad Scapulam* is open to question, but the letter clearly dates to Caracalla's period of sole rule, i.e. between 211 and 217. See Tert. *Ad Scap.* 4.5: *Ipse etiam Severus, pater Antonini, Christianorum memor fuit*.

[79] *Ibid.* 2.6-8: *Christianus nullius est hostis, nedum imperatoris, quem sciens a Deo suo constitui, necesse est ut et ipsum diligat et reuereatur et honoret et saluum uelit, cum toto Romano imperio, quousque saeculum stabit: tamdiu enim stabit. Colimus ergo et imperatorem sic quomodo et nobis licet et ipsi expedit, ut hominem a Deo secundum; et quicquid est a Deo consecutum est, solo tamen Deo minorem*.

[80] See Barnes 1985: 102-14 (discussing Tertullian in the context of apologetics as a genre).

toleration specifically because they identify as Roman and are invested in Rome's continued success. For an audience anxious to portray themselves as "Roman," the grant of universal citizenship could be highly meaningful; Augustine suggests that this meaning persisted, and Herodian's discussion of the fall of Maximinus Thrax shows that Roman political elites could deploy this language of universal membership in a political community in order to achieve their own ends. Not only did provincial audiences understand citizenship as a subjective *desideratum*, but fairly soon after the *CA* elite audiences were aware of this understanding and could successfully cast their engagements with the provinces as participation in a communal project.

The onomastic evidence briefly described above also suggests that the *CA* radically altered individuals' subjective relationships to their state. Consider the Dura army rosters, which have been used as evidence for a rapid expansion in the proportion of citizens soon after 212; notably, the rosters do not show all new recruits employing the *tria nomina*, but simply a large majority. This document suggests that individuals were still free to employ older, patronymic names, and that some did; the rosters for the year 216 contain 5 patronymic names on a roster of 96 total (of which 83 include *Aurelius*).[81] Most individuals, however, adopted the nomenclature of citizenship almost as soon as it became available. If that were a choice, it would be a significant one. Names matter. If newly minted citizens began *en masse* to refer to themselves in language that reflected their newfound civic status, that suggests that that status was important enough to justify changing one's public presence, adopting the naming customs of an "external" power and employing the *tria nomina* in the place of traditional or indigenous naming conventions.

[81] Gilliam 1965: 83.

C. The Purpose of the *Constitutio Antoniniana*

The intense debates over the technical scope and likely results of the *CA* are matched by equally furious disagreement over the law's purpose. Our earliest accounts of the *CA* suggest that its primary motivation was expanding the tax base, but contemporary scholarship has largely rejected Dio's reading of the citizenship grant.[82] The reasons for rejecting Dio's theory are fairly clear; third-century Rome had the legal and infrastructural power to tax non-citizens, and increasing that rate of taxation would be a vastly more straightforward way to address a revenue shortfall than would universalizing Roman citizenship. Consider this excerpt from a (fairly damaged) *subscriptio* of Septimius and Caracalla, dating from 209 C.E. and preserved at lines 3-5 of *P. Oxy.* XLVII 3362:

> Those sheltering individuals subject to tax who have fled their own home (τοὺς τὴν ἰδίαν πατρίδ[α καταλιπόντας) will submit to a fine, while those sheltered . . . shall hand over[?] the remainder to the the homeland, to which any loss the taxpayer . . . .[83]

To raise an obvious point, it seems inconceivable that individuals requiring shelter in an attempt to avoid taxation (τὴν ἰδίαν πατρίδα καταλιπόντας) would all have been citizens, and Dio himself is explicit that noncitizens were simply taxed at a lower rate.[84] Even if we take the grant of universal citizenship as having greater symbolic than practical impact, it is hard to imagine that vastly increasing the citizen ranks of the empire, at a stroke, would be less disruptive than altering tax rates (especially since that alteration in tax rates would have occurred regardless).

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[82] One notable exception being Millar 1962: 131.

[83] Originally published in Thomas 1975: 202-03: [. . . . . ὑ]ποφόρους σκεπάζοντας τοὺς τὴν ἰδίαν πατρίδ[α καταλιπόντας/ . . . . . ἐ]πιτείμου ὀνόματι ὑπομενοῦσιν, οἱ δὲ αὐτοὺς ὑπ[οδεχόμενοι?/ . . . . .] αι τὸ λοιπὸν τῇ πατρίδι ἧς τῇ ζεμίᾳ ὁ ὑπόφορ[ος . . .

[84] Dio Cass. 78.9.1: διὰ τὸ τοὺς ξένους τὰ πολλὰ αὐτῶν μὴ συντελεῖν. Oliver 1978: 382 refers to Dio's claim about the intent behind the *CA* as a "hateful misrepresentation."

Other scholars have argued that the *CA* was part of a political program aimed at gaining the emperor military support.[85] This reading makes intuitive sense; Caracalla's father engaged in a similar project with his grant of military marriage rights,[86] and Caracalla himself was closely linked with the military in his official iconography.[87] It is unclear, however, just how to fit the *CA* into a program of military solicitation. From roughly the reign of Claudius until 212, military service was the dominant method by which nonelite inhabitants of the provinces could gain Roman citizenship, either directly or through producing children with a soldier who had received the grant.[88] While a large proportion of the army in the third century would have been composed of noncitizens for exactly this reason, making them citizens would not resolve any particularly pressing concern. The *CA* would have likely been well received in the provinces, for the reasons described above; however, one would not expect soldiers to receive the news any more enthusiastically than other noncitizen audiences, and quite possibly somewhat less.

More recent scholarship has taken a less transactional approach to the *CA*'s messaging, fitting it into broader patterns of state representation under Caracalla; I argue that this branch is best supported by the available historical evidence, albeit with some major caveats. Kostas Buraselis has argued that the *CA* effectuated a theme of equality in imperial rhetoric—or at least the erasure of formal status hierarchy—that dated back to Septimius Severus.[89] Lukas de Blois has emphasized the religious components of Caracallan self-presentation and suggested that the *CA*'s prefatory text, which casts the decree as a project of religious devotion and renewal, should be

[85] See, for example, Handy 2009: 216-17 (arguing that the *CA* reflected Caracalla's concern for soldiers' rights).
[86] See *supra* Ch. I, notes 70-102.
[87] See Mennen 2006: 257-60.
[88] See Webster 1998: 142-45. On the transmission of Roman citizenship to soldiers' legitimate children, see Phang 2001: 57-58, Treggiari 1991: 12-13.
[89] Buraselis 2007: 47-66.

taken literally.[90] Looking past the *CA* itself to its broader communicative context—and in particular to coin types from the early 210s—Carlos Noreña has argued that the *CA* should be read as an expression of Caracallan *indulgentia*.[91] Other scholars, primarily but not entirely working outside of the ancient context, have read the *CA* through the lens of modern commitments to broad conceptions of citizenship and to what we might call "human rights."[92]

What these theories all have in common is that they treat the *CA* as a political action and as a site for symbolic representation of Caracalla.[93] The *CA* would have been highly salient, given its onomastic effects; it seems obvious that an enormous proportion of nonelite Romans would have been familiar with the edict, at least in its vague outlines.[94] This fact made it a potent channel for imperial communication, over and above whatever it actually *did*. Ramsay MacMullen has argued that imperial edicts in the third century and Late Antique period frequently functioned as a form of "exhortation," or normative visions of how the empire *ought* to look; while the specific rhetorical tropes MacMullen describes in these sorts of laws (such as moral chiding or a "pulpit

[90] De Blois 2014: 1015 ("It is not absurd to think that in the text contained in *P. Giss.* 40. I, 1-11 Caracalla was fairly honest about his motives."); see also Corbo 2013.
[91] Noreña 2011: 260-63.
[92] For an example of this sort of reading in classical scholarship, see Simelon 2002: 810 ("À sa façon, et malgré ses crimes, Caracalla était un homme d'ouverture et de progrès."). For a brief discussion of later readings of "universal citizenship," see Ando 2016b: 8-20.
[93] See, for example, Amelotti 2008: 193 (discussing the *CA* and other "atti normativi" as arising from a desire to project popular consensus).
[94] The method by which these people might have learned about the *CA* is rather less obvious. Some would likely have been able to read public postings like those preserved at *P. Giss.* 40 directly, but far more—particularly among the provincial communities most affected by the law—would not. The signal text on literacy within the Roman empire remains Harris 1989, which estimates that much of the empire would have had a literate population of fewer than five percent; *ibid.* 272. That said, Alan Bowman has argued that a far greater number would have had access to the secondary benefits of literacy, by relying on social networks or market actors (i.e., professional readers) to interpret publicly posted documents. Bowman 1992: 119-31. At least in the context of something as momentous as the *CA*, Bowman's social literacy model seems more on point; unless all the *Aurelii* in Dura could read, they must have learned about the law somehow.

tone") are not so obvious in the *CA*, the communicative aims and normatively charged vision of a united community focused on shared political projects are easy enough to see.[95] Analyzing the *CA* as a communicative project also makes it possible to reconcile Caracalla's frequently attested disinterest in legal affairs with the enormous legal change he oversaw. If the primary goal in putting forward the *CA* was rhetorical or communicative, we can understand why it might have happened under this particular emperor, and also why it might have happened without any obvious practical need for the legal changes that resulted.

Analyzing the *CA* as a genre of imperial communication raises the question, however: what was it trying to communicate about Caracalla or about Rome? The scholars discussed above make subtly different arguments, reading the *CA* as expressing various religious, antihierarchical, or self-aggrandizing themes. None of these arguments are mutually exclusive, of course, and imagining the *CA* as simply expressing one aspect of Caracallan rulership would be reductive; nevertheless, I argue that examining the text in light of other accounts of Caracallan lawmaking and administrative behavior suggests a dominant theme in the *CA*'s communicative program that has not yet been explored by contemporary scholars. Specifically, a close examination of text and context suggests that the *CA*'s extraordinary break from existing practices—its extreme novelty—could have itself fit with other representations of Caracalla's reign, and with our evidence of his own self-conception.

Returning to the text itself, the *Constitutio Antoniniana* has an explicit (if unfortunately ill-preserved) statement of purpose:

> . . . to the immortal gods I may give thanks that [when] the so frightful [ambush occurred] they preserved me (με συν[ετ]ήρησαν); therefore, thinking that I should

[95] MacMullen 1976: 28-31.

> be able [on a grand scale and with piety] to make the return which would correspond to their majesty (τῇ μεγαλειότητι αὐτῶν ἱκανὸν), [if] I were to lead [to the sanctuaries] of our gods [all those presently my people and others too] as often as they enter the ranks of my people . . . .[96]

A statement of purpose can be read on multiple levels. We might take it literally, as a true profession of intent; we might read it cynically, as a public justification masking a more sinister or cold-blooded purpose; or we might land somewhere in between. Just because a claim is not literally true does not mean that it is intended to deceive; particularly in the context of public beneficence, acts could be justified in language that would have been widely understood as metonymic, hiding justifications that were popularly understood and accepted but were for whatever reason unspeakable. While it is certainly true that we should not take these claims literally, neither should we assume that they were *intended* to be taken literally, rather than as boilerplate surrounding a transaction that was nevertheless popular or meaningful.

In this case, the cynical and credulous readings can be boiled down fairly straightforwardly: to quote Lukas de Blois, "Taxes or Religion?"[97] Either Caracalla was simply extorting the populace under a new guise, or he truly wanted to lead his people to the temples together. Neither theory is enormously compelling in its extreme forms; I have already discussed some of the flaws with the tax theory, and while Caracalla was certainly religious, other official media from this period reflect greater concern with the emperor's personal relationship with the gods than with broader religious practice throughout the empire. An emperor who declared himself to be the most religious of all men while visiting shrines throughout Greece could well sincerely desire a religious awakening, but the *CA* would be an extremely indirect method of causing that awakening.

[96] Oliver 1989: 500. See also MacMullen 1976: 29-30 (discussing prefatory material as crucial to third-century and late antique law's role as a vehicle for moral education or exhortation).
[97] De Blois 2014.

Other arguments about the euergetic pose of the *CA* run into similar sorts of problems. For example, Buraselis' argument that the *CA* was intended to express equalizing commitments in Severan rhetoric and lawmaking goes, to my mind, rather far beyond the text; while the effect of the *CA* would certainly be to achieve that goal, it is striking how little that rhetoric of equality or equalization appears in the statement of purpose itself, versus claims about the majesty of the gods, their kind behavior towards the emperor, and said emperor's gratitude for said behavior. Obviously, imperial communications were always highly coded, and as Carlos Noreña's study of imperial self-presentation in numismatics and inscriptions makes clear, *pietas* was an imperial virtue.[98] But so was *aequitas*. Imperial self-representation already provided a rich vocabulary with which a law could describe itself as expressing an imperial commitment to fairness; leaving aside the prevalence of *aequitas*-types on Imperial coinage,[99] other legal communications from the Severan period explicitly base their opinions on fairness concerns, both in the sense of promoting the welfare of those without power and in the sense of promoting outcomes which correspond to morally salient personal qualities.[100] While more cynical readings of the *CA* sidestep this particular problem, reading the *constitutio Antoniniana* as a coded communication of antihierarchical or equality commitments risks taking the text seriously but not literally; if the law were intended to communicate that message, it could have done so using much more explicit tools and still fit within Caracallan legal communications as a genre. It is unclear why such a claim would be kept secret.

[98] Noreña 2011: 71-77.
[99] On which see *ibid.* 60-71.
[100] For example, *P. Mich.* IX 529 includes an edict of Septimius and Caracalla, published in 200 C.E., protecting victims of improper taxation; Lewis 1975. An epistle of the two emperors from 202 C.E. grants immunity from taxation to the Smyrnean Claudius Rufinus, on the grounds that subjecting him to taxation would be οὐ . . . ἄξιον. See Oliver 1989: 485-86; on Claudius Rufinus, see Philost. *V S* 2.25.1 [110]; *PIR*^{2} C 998.

What the text emphasizes, instead, is the person of Caracalla. Unusually, that class of persons affected by the *CA* is mentioned only obliquely within the surviving portions of the preface; instead the text describes the gods protecting Caracalla, and Caracalla being able to return their generosity on equal terms. Imperial subjects appear—if at all—at the end of the preface, as passively led by Caracalla. There is no indication that the grant responds to any particular action or trait on the part of the new citizens, but they are merely third-party beneficiaries in a scene of divine gift exchange. The sentence that connects this transaction to citizens is heavily damaged, but the verb συνεισενέγκοιμι again focuses the reader squarely on Caracalla, and casts citizenship as a sort of civic pageant notable primarily for its religious connotations (τῶν θεῶν). While one could argue that this language minimizes distinctions among subjects in favor of a totalizing dichotomy between subject and sovereign, that intra-subaltern equality is a faint undertone in a text that primarily elevates the sovereign and describes, in extremely literal terms, his benevolent dominion over peons on parade.

That parade—or at the very least, that act of imperial leadership in a divine space—suggests another important aspect of the *CA*'s communicative regime, one which brings it into harmony with Caracallan-era state communication. The events described in this prefatory paragraph are, to speak technically, weird. The gods intervene directly in human affairs, protecting the emperor from a terrifying event (most likely an assassination attempt by his brother, Geta).[101]

[101] Geta was killed in late 211, at which point Dio records Caracalla as falsely claiming that he had killed his brother in self-defense. Dio Cass. 78.3.1. While there is no reason to believe that Caracalla actually ran sobbing to the legionary camp or exclaimed χαίρετε, ὦ ἄνδρες συστρατιῶται: καὶ γὰρ ἤδη ἔξεστί μοι εὐεργετεῖν ὑμᾶς, contemporary scholarhip on Geta and Caracalla suggests that the two could not have governed together for any length of time, and that a violent dissolution of their corulership would have been inevitable. For the conflict between Caracalla and Geta, see Kemmers 2011: 270-90; for the aftermath of Geta's death, in particular his condemnation and erasure from official documents, see de Jong 2006: 246-52, Krüpe 2011: 195-244.

The emperor, while not yet divine himself, matches this divine action by leading his people. This narrative prefaces a state action unlike any which had happened before, and which no emperor following Caracalla could repeat; classifications that had undergirded Roman social, legal, and economic life for half a millennium were radically redrawn if not entirely erased. As discussed above, onomastic evidence suggests that the *CA* would have been understood as an extraordinary event, if not necessarily the exact kind of extraordinary event depicted in its preface.

This narrative of exceptionality, once isolated within the *CA*, matches the tendency in Caracallan media described above to aggressively separate the emperor and his projects from day-to-day concerns and to portray him as an emissary of or privileged vector to transcendence. This novelty is an underappreciated running theme in Caracallan communication; the emperor is consistently described as *different*, as providing experiences that no one else has, will, or can. Philostratus described Caracalla exclaiming that he had seen what no one had ever seen before, and treating that fact as unambiguously worthy of celebration. Caracalla's legal communications show the emperor as similarly anxious to craft exceptional moments, whether by speaking grandly about his edicts' ability to reshape the world, by transforming a dispute over priestly duties into an oratorical display, or by centering legal power in his own flesh and blood.

This claim—that the exceptionality of the *CA* is not a drawback to an otherwise instrumentally rational piece of legislation, but instead a necessary component to an act expressing the emperor's grandeur, power, and quasi-divinity—by no means conflicts with arguments like those of de Blois or MacMullen. Texts are polysemic, after all, and one can express religious devotion or political communitarianism while simultaneously highlighting other aspects of the desired imperial persona. That said, imagining the *CA* as intentionally surprising, or as designed to show the emperor's freedom from normal constraints on sovereign action, has major

implications not only for our view of Caracallan representation, but also for our understanding of the history of law more broadly. In the next section of this chapter, I explore these implications more fully, discussing how we can understand laws to function in the absence of basic assumptions of rationality, as well as how this sort of legislation fits into broader Severan legal narratives.

III. But What Does It All Mean?

Imagining the *CA* as deliberately extreme certainly helps us understand the text of the law itself, and answers questions about its passage and its role in Roman political imagination. But the subject of this dissertation is Severan political history, and its particular expression in law. Legislation like the *CA* challenges basic assumptions not only about how historians can interpret state action, but also how the lawmaking powers allocated to the emperor within the Roman political system could be used to accomplish a variety of communicative goals.

A. Storytelling and Legal History

From Dio to today, historians want the *CA* to do something. We read a variety of different intentions into a text which is superficially quite forthright about its intentions; even Lukas de Blois, who is explicit in his willingness to take the *CA* at its word, takes the law as having useful political consequences in "closing the dangerous conflict" that had sprung up around Caracalla and Geta.[102] No one *quite* takes Caracalla's claims about the purpose of the *CA* seriously, and before concluding this chapter it seems worthwhile to think about why.

[102] de Blois 2014: 1018.

When ancient historians talk about law, they often treat it either as a branch of intellectual history of or the history of institutions. To give just one example, Dennis Kehoe has fruitfully analyzed government action, including legal change, as a form of economic policymaking.[103] These approaches are effective in applying law to their preferred questions. Roman law developed as a heavily articulated and debated branch of normative philosophy; historians studying the growth of particular philosophic approaches can apply those methods fruitfully to the juristic schools. Similarly, scholars who seek to understand how individuals engaged in daily life need to understand the institutional constraints upon those individuals' behavior, and many of those constraints are legal in form.[104] But each of these analytic frames carry with them certain second-order assumptions about the object in question, ascribing basic features to it in order to make it amenable to the type of study proposed. For example, treating Roman law as a form of philosophy requires, at least within juristic texts, some kind of intellectual coherence within authors and schools; otherwise there is no object of study. Similarly, treating law as a set of institutions guiding behavior necessarily foregrounds the effect of law on behavior, when that may be epiphenomenal to aspects of legislation that are themselves worthy of discussion.

These frameworks share a presumption of rationality. For law to be cognizable as a philosophic discipline, it must be organized in such a way that the tools of philosophic analysis can find some purchase: for example, we would have to presume that terms like *culpa* have a fixed meaning within any given author's corpus in order to determine the meaning of that term as it appears in any given claim, and similarly that an author can be taken to represent a unitary point

[103] See Kehoe 2007: 41-43 (explaining the methodology and theoretical framework behind his analysis of legal change), 131-61.

[104] This way of thinking about individual social and economic choices in the context of institutional constraint has been dubbed "new institutional economics" or NIE; see North 1990: 107-17 for a discussion of how this institutional focus can alter the boundaries of historical analysis.

of view and that she is unlikely to issue mutually contradictory claims. Treating legal corpora as exercises in applied ethics requires—and thus presumes—the existence of a certain kind of epistemic rationality.[105] By contrast, treating laws as constraints on behavior makes it difficult to imagine rationales for those laws without a presumption of *instrumental* rationality. Constraints need not be rational to constrain; one could plausibly write about the effects of weather patterns on human settlement without implying those weather patterns existed in order to affect human settlement in that way. That said, ancient historians have far more evidence for the effects of state action than we usually do for the reasons behind any given action. Legislative history is rarely available to us, and historiographical discussion of the motivations behind any particular action are rarely based on firsthand knowledge. Intent and effect blur; we assume that laws are designed to alter the world, and that we can thus see the desires of their designers in the altered world they create.

The *CA* complicates this analysis; it is difficult to make the changes the *CA* wrought into ones we might expect the Roman state to actively desire. While other state actors began to speak in the language of universal citizenship soon after the *CA*, the granting of that status does not obviously serve transactional political goals (such as Septimius Severus' extension of marriage rights, discussed in Chapter I) or broader administrative ones (as might, for example, preferential legal treatment of a given class of transaction at a moment when those transactions were of value to the state).[106] Instead, laws like the *CA* are more clearly understood through their representational

[105] Ronald Dworkin has referred to this attribute as "integrity," claiming that "the adjudicative principle of integrity instructs judges [and, presumably, others attempting to determine the proper interpretation of sources within a given legal system] to identify legal rights and duties, so far as possible, on the assumption that they were all created by a single author—the community personified—expressing a coherent conception of justice and fairness." Dworkin 1986: 225.
[106] See, for example, Sirks 2014: 139-40 (discussing the implications of innovations in agency theory for maritime trade).

qualities; they create a narrative of imperial exceptionality and human/divine interaction, with actual legal effects supporting the narrative by providing evidence of its veracity. The *CA* encourages its viewer to imagine a kind of emperor who might receive personal protection from the gods, and whose welfare is so important that only the enfranchisement of millions could constitute a fitting return for that protection; the actual enfranchisement functions mainly to demonstrate to the viewer that she does, in fact, live in such a reality.

This narrative effect cannot be understood within the hermeneutic frameworks we tend to apply to law—it does not respond to the world as it existed,[107] and the manner in which it supports its claims is not easily reducible to a logical argument. However, these sorts of moves are common in more traditionally representative media. A sculptural or numismatic image is not assumed to depict the world as it exists; instead, by linking the world of the image and its viewer to the world that the promulgator wishes to be perceived as existing, it makes that world seem closer to the real. For example, we understand that an image of an emperor on horseback need not correspond to reality. However, it might cause a viewer to more easily access the idea of the emperor as a cavalryman, creating a more fertile conceptual ground within said viewer for that idea and for ideas (like imperial military success or virility) that themselves might be put forward more explicitly in other contexts. Sculpture need not be logical. Understanding the *CA* for its narrative qualities, or for the story it tells about Caracalla, Geta, and the gods is difficult to do with the tools of traditional legal analysis, but it can tell us far more about why such a consequential law might be passed than could a strict analysis of its legal effects.[108]

[107] I presume for the purposes of this work that Caracalla was not, in fact, the beneficiary of divine protection, and later events support my presumption. See Dio Cass. 79.5.

[108] This style of analysis is common in discussion of contemporary legislation that is intended primarily as a venue for state messaging, and is commonly referred to as focusing on "the

It is difficult to tell how sincerely this narrative was put forth. Historians describe Caracalla as a megalomaniac, and Wynne Williams has argued that he took a particularly strong hand in the drafting of imperial legislation.[109] It is possible that Caracalla sincerely believed that he was a beneficiary of divine protection, or that the imperial chancery put forward this narrative to serve some other end. Either way, however, a narrative was put forth, and one which differed sharply from that visible in Severan-era lawmaking before or since.

B. Caracallan Exceptionalism, Severan Lawmaking

I have already discussed Severan lawmaking as a form of spectacle.[110] However, Septimius Severus' acts of public lawmaking largely used law to send a message of continuity, legislating the norms and behaviors of an earlier period. While this process was an innovative one within the history of imperial communication, the message sent was pointedly quotidian; Septimius Severus, for all of his extraordinary personal qualities, was portrayed at the head of an institutional framework promising continuity and security. Caracalla followed his father in using the medium of lawmaking to communicate a preferred narrative about his place within the Roman state; however, that preferred narrative was wildly different. Caracalla's legal practices tell a pointedly antiquotidian story about that man and his empire. Our legal opinions from the Caracallan period, to quote Wynne Williams, bear "the clear mark of his own personality,"[111] and the hearings producing those opinions were recast as high drama in which questions of identity, loyalty, and

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expressive value" of law. For an example of this sort of reasoning in the context of American constitutional law, see Anderson & Pildes 2000: 1531-64.

[109] Williams 1979.

[110] See *supra* Ch. I, notes 129-130.

[111] Williams 1979: 89.

rhetorical aesthetics loomed larger than law. These crafted moments and the written records they produced depict imperial governance as personalized, unpredictable, and most of all *exciting*: Caracalla's reign is portrayed in legal documents as a series of extraordinary events.

This representational tendency makes sense of the behavior condemned by Dio (scorning regular administrative business, devolving legal powers traditionally given to experts to his mother) while still according with other imperial depictions in coins and inscriptions, as well as the enormously consequential legal developments associated with Caracalla's reign. The motivation for such a communications style, however, is less clear from the available historical evidence. On one hand, this fondness for novelty could simply be personal and idiosyncratic; that said, it may have reflected Caracalla's unique position within Severan politics.

Caracalla was the first emperor since Commodus to take the throne peacefully. As the biological son of Septimius Severus, he held imperial honors years before his father's death and came to share them with his brother as soon as Septimius died. As a result, Caracalla would have been, in some ways, an easier figure to accept; a subset of legitimacy questions that were enormously vexing to Caracalla's father and successors—why does our having collaborated with the Antonine emperors, or the early Severans, mean we should collaborate with you?—were simply not present.[112] This difference could explain at least some of the idiosyncrasies in Caracallan messaging—rather than perform continuity, Caracallan lawmaking tells a story of wondrous discontinuity, of events never before experienced and never to repeat. A cynic might say that this rhetoric was designed to transcend divisions among Roman elites that had exacerbated the conflict between Caracalla and Geta, and that a savvy emperor might reasonably see as a source

[112] For example, Sillar 2001 records far less violence towards the Senate under Caracalla than under his predecessor, largely due to the absence of perceived threats.

of potential rivals in coming years. Alternately, one could argue that Caracalla either sincerely viewed himself as a conduit to the extraordinary or sincerely enjoyed presenting himself as such. Finally, the idealist would argue that Caracalla, son of the first African emperor, simply wished to govern a pan-Mediterranean political community and used his lawmaking powers in order to tell a story about that new reality.

No matter why Caracallan lawmaking looked the way it did, however, it has implications for what legal historians might understand law to do. Lawyers are boring people. Certain constitutive generic features of legal reasoning—in particular, its abstraction and depersonalization—make law seem perfectly suited to communicate normalcy, or to make a performance of doing ordinary things.[113] Septimius Severus utilized legalism in just this way during his own reign, and we will see that Severus Alexander acted similarly. Both of those emperors were the beneficiaries of military coups—in one case a protracted civil war—who found in lawmaking an opportunity to portray themselves as standardized, institutionally enmeshed links to a normatively charged past. Caracalla, on the other hand, used similar tactics to communicate a vastly different message in a vastly different circumstance. By making law into a part of a narrative of imperial greatness, Caracallan legal writing reinvents law as the inevitable aftereffect of a vastly more consequential narrative of the emperor's own piety, salvation, and pleasure; to the extent that narrative leads to some sort of regularized or universalized action, that universality merely shows the chasm between sovereign and subject, and the comparative meaninglessness of distinctions, like that between citizen and noncitizen, that might be drawn within that subject population. This is a type of legally mediated self-representation unlike any other in the Severan dynasty, but the

[113] I thank Ari Bryen for this turn of phrase.

presence and salience of legal mediation in Caracallan messaging is of a piece with that of other Severan rulers.

Conclusion

For an emperor so concerned with the sacred and unusual, Caracalla's death was remarkably banal: he was stabbed while relieving himself during a journey to Carrhae, in a conspiracy organized by his praetorian prefect and immediate successor, Opellius Macrinus.[114] Macrinus was the first equestrian to take the throne, as well as the first trained jurist; however, he ruled for less than a year before being deposed in favor of the child emperor Elagabalus and undergoing *damnatio memoriae*. As a result, it is difficult to undertake a programmatic analysis of Macrinus' self-representation, particularly in the sphere of law.[115] By contrast, Elagabalus and Severus Alexander—the final two Severan emperors—have left a more extensive record of their attempts at self-representation, lawmaking, and self-representation through lawmaking. My next chapter will examine the very different representational strategies of the last Severans, with Elagabalic media trying and failing to mimic Caracallan religious tropes and with judicial opinions of Severus

[114] Dio Cass. 79.5, Hdn. 4.13.4-5, SHA *Car.* 7.1. The three texts are surprisingly concordant on the circumstances of Caracalla's death—all three mention Caracalla's call of nature, although they disagree somewhat on the specifics. This strange detail may be so well-preserved because it was crucial to the success of the assassination; Herodian states that Caracalla's retinue had left him behind τιμὴν καὶ αἰδῶ τῷ γινομένῳ νέμοντες. This particular claim is disputed, however, with the *HA* stating that Caracalla's personal guard were present and complicit. This detail may simply survive for purposes of narrative irony. For further information on the death of Caracalla see Hekster & Kaizer 2012.

[115] For more specific discussion of Macrinus, see Baharal 1996: 48-67 (arguing that, had Macrinus survived for a longer period of time, he would have further developed a nascent representational program, surviving in sculpture and numismatics, emphasizing continuity with Antonine rulers).

Alexander casting the emperor as a return to exemplary Severan/Antonine governance after the aberrant rule of his cousin.

CHAPTER III

LAW AND ANCESTRY UNDER THE LATE SEVERANS

INTRODUCTION

The last two Severan emperors, the focus of this chapter, suffer from a persistent schematism in both primary and secondary literature, the fantastic excesses of the former giving way to the cowed sobriety of the latter. As I show in this chapter, the truth is somewhat more complex, and arises largely out of each emperor's distinct messaging and communications strategies. Elagabalus' failed attempt to adapt Caracallan religious imagery to his own cultic practices gave way to Severus Alexander, who combined a traditionalizing religious style with an equally innovative messaging program, making thorough and remarkably understudied use of legal correspondence as a communicative tool. The tactics of these two emperors, taken as a whole, show the centrality of law to the Severan ideological program and its ability to mask—at least temporarily—the contingency of late Severan claims to the throne.

To begin at the beginning; the Emperor Marcus Aurelius Antoninus, more commonly known by the name Elagabalus,[1] plays a role in modern imagination out of all proportion to his role in Roman history.[2] Elagabalus, who became emperor in 218 C.E. after the battle of Antioch[3]

[1] This name for the emperor, common in contemporary scholarship, is derived from the god who was his primary object of worship, an Emesene deity embodied in a baetyl discovered in the area, known as Elagabal. Frey 1989: 45-50, Turcan 1985: 29-31. I will be referring to the emperor as Elagabalus, and the god he worshipped as Elagabal. See Icks 2012: 82-83 (discussing the shifting names given to this emperor and their implications).

[2] See *ibid.* 180-213. To my knowledge, Elagabalus is the only emperor to have been referenced in both operetta, Gilbert & Sullivan 1879 (1986), and in contemporary comics, as the subject of a comic strip by Neil Gaiman in McCloud 2004: 133-55.

[3] Dio Cass. 79.39.1.

and was the victim of a coup in favor of Severus Alexander in the spring of 222,[4] presided over no major events in Roman history; the historical accounts of his rule recount no wars or major domestic disturbances to speak of, other than the chaos caused by his own idiosyncratic behavior. However, that same behavior has led to Elagabalus' lasting, queer fame; demonized by contemporary historians[5] and later Christian authors,[6] Elagabalus was later resurrected by the Romantics, idolized by early gay and lesbian activists, and commemorated as one of the Empire's most fascinating failures.[7]

[4] The actual date of Elagabalus' deposal and death is a matter of some dispute, unlike that of his accession. Dio, the *vita Severi Alexandri*, the Chronography of 354, and Eutropius all give different figures for the length of Elagabalus' reign (although Eutropius' figures are identical to those found in Aurelius Victor). Butler 1904: 105-08 attempts to reconcile these disparate figures by claiming that Dio was reckoning not from the battle of Antioch itself (as he claims he is doing), but instead from Elagabalus' later proclamation to the senate, and thus suggests a death date of March 6, 222. I would argue that a close examination of rescripts from March of 222 instead suggests a slightly later transition; *see infra* note 141.

[5] Dio Cass. 79.11-12, Hdn. 5.8.1.

[6] See, for example, Orosius, *Historiae Adversus Paganos* 7.18.4-5: *Anno ab urbe condita DCCCCLXX Marcus Aurelius Antoninus uicensimus ab Augusto imperium adeptus tenuit annis quattuor. Hic sacerdos Heliogabali templi nullam sui nisi stuprorum flagitiorum totiusque obscenitatis infamem satis memoriam reliquit. tumultu autem militari exorto, Romae cum matre interfectus est*.

[7] For example, in one of the first modern treatments of Elagabalus, John Stuart Hay attempted to rescue the emperor from a repressive and puritanical historical tradition by understanding him as benignly "psycho-sexually abnormal, and . . . possessed of a genius for the aesthetic and religious that his historians wished to decry." Hay 1911 (2014): Loc. 2643. While Hay's work is quite valuable to twentieth-century queer historians as a primary source, its scholarly accuracy is, to say the least, questionable. More recently, Leonardo de Arrizabalaga y Prado views Elagabalus as a harmless naïf victimized by an aggressive propaganda campaign, a theory which leads him to cast aside all historiographic sources as fatally flawed. De Arrizabalaga y Prado 2010: 55-56. Other recent work in this vein has used the schematic nature of surviving historiography not so much to develop a "true" narrative of Elagabalus' life that would stand in opposition to the history, but instead to study these hostile accounts as reflecting a historical phenomenon in their own right. For examples, see Bittarello 2011: 108-10, Mader 2005: 168-69, Osgood 2016: 177-90, Sommer 2004: 95-110.

This chapter has nothing whatsoever to do with that. While Elagabalus is a fascinating figure for scholars of the sexual, religious, and ideological politics of Severan Rome,[8] his most obvious scholarly value for historians of propaganda is in his total and utter failure to present a successful legitimating ideology for his rule, and in his markedly negative reception under the far more successful Severus Alexander. After Elagabalus' failure, communications under Severus Alexander followed a radically different presentational strategy. While scholars have noted Alexander's carefully articulated ideology of rule as expressed through monuments, coinage, and appointments,[9] his contributions to Severan legal history are equally striking, and heretofore unexamined.

[8] The literature on Severan Rome is, of course, extensive, and much of it makes important use of Elagabalus. Martin Frey's monograph focuses specifically on Elagabalus' religious politics, whereas Robert Turcan's treatment of the same subject has a slightly wider range. Frey 1989, Turcan 1985; see also Optendrenk 1969, which focuses particularly on the *vita Elagabali*. Clare Rowan's recent work on Severan religiosity contains several excellent treatments of Elagabalic religious imagery, particularly in the numismatic context; Rowan 2013: 164-89 & 203-18, Rowan 2006. Lucinda Dirven argues that many of the features of Elagabalic religious dress that seem more unusual may actually be evidence of a nascent Roman/Emesene presentational syncretism. Dirven 2007: 30-31, cf. Alföldi 1970: 270 (arguing that Elagabalic costuming may be less religious than military). Inge Mennen's prosopographical treatment of third-century Rome discusses the class politics of the period, with Elagabalus and Severus Alexander serving as a short-lived respite from the equestrian rulers who preceded and followed them. Mennen 2011: 23. Barbara Levick's work on Severan women discusses Elagabalus' portrayal in the historical sources as dominated by women—even as turning to them as sources of authority, see SHA *Elag.* 12.3—and how it reflects broader anxieties of the time; Levick 2007: 150.

[9] Discussion of Severus Alexander has greatly accelerated in the last decade. The lack of good sourcing on Severus Alexander's reign has generally hindered scholarship on the emperor; Davenport 2011: 281-82. Our main historiographic sources for the Severan dynasty are Dio, Herodian, and the *Historia Augusta*, none of which contain any volume of reliable information on Severus Alexander. Dio, writing during Alexander's reign, is exceptionally brief on the topic, since he left Rome soon after the emperor's ascension. Dio Cass. 80.1-2; Millar 1964: 170-71. Herodian is a useful source for the end of Severus Alexander's life but covers the first decade after his ascension in the space of a chapter. Hdn. 6.1; Sidebottom 1998: 2790-91. The *Historia Augusta*'s discussion of Severus Alexander is intensely schematic and, while useful for historians of later political philosophy, is more relevant to conceptions of the "good ruler" than to a historical inquiry into the man himself. Bertrand-Dagenbach 1990: 139-63, Birley 2003: 135, 143-45. Recent scholarship has thus focused more heavily on material culture and prosopography, particularly

One critical difference between the legal programs of the two emperors is that the evidence for that of the first was largely destroyed. It is difficult to reconstruct the particulars of any sort of Elagabalic approach to legal issues; because Elagabalus was erased from official histories by his successor,[10] the vast majority of material produced in his name does not survive. That said, of all of the *principes damnati* of the Severan period,[11] Elagabalus is the one whose legal contributions are easiest to perceive. Similarly—and perhaps more importantly for present purposes—the process by which Elagabalus' legal contributions were erased from the record is clearer than that for any other Severan. In fact, the way in which Severus Alexander treated his predecessor's precedent was quite novel, and can tell us a great deal about the role of law in Severus Alexander's own self-presentation. While no rescripts survive under Elagabalus' name, six[12] can be attributed to him with some confidence based on their dates of signature; these rescripts were not destroyed, but instead simply reassigned. This treatment of Elagabalic precedent strikingly parallels

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given a well preserved list of Alexandrian ordinal consuls. On the inscriptional evidence for Severus Alexander's appointment practices, see Jardé 1925: 123-5, Nicols 1988, Pflaum 1950: 36-49. Syme first used this material to develop a coherent theory of Alexandrian appointments, claiming that Severus Alexander was consciously appointing former consuls under Septimius Severus in an attempt to link the two reigns. Syme 1971: 158-59, cf. Davenport 2011 (arguing that this appointment practice was an expected consequence of observing the typical duration between consulships). For a discussion of Alexander's religious behavior, and specifically his invocation of traditional religious figures associated with retributive justice in order to distinguish himself from Elagabalus, see Rowan 2013: 219-45, especially 225-27.

[10] Dio Cass. 79.21.1. The study of *damnatio memoriae* as a particular, loosely linked series of practices began with Friedrich Vittinghoff; see Vittinghoff 1936: 64-74. See also Flower 2006: 234-75 (discussing the practice under the Antonines), Krüpe 2011: 195-242 (discussing the *damnatio memoriae* of Geta), Sautel 1956 (discussing specifically the negation of a prior emperor's actions as head of state). For the erasure of Elagabalic images, see Rowan 2013: 217-18, Varner 2004: 189, 192-94.

[11] If we define this period broadly, as extending from the death of Commodus in 193 to the death of Severus Alexander in 235, the list includes: Didius Iulianus (Dio Cass. 73.14.2; Birley 1989: 102, Icks & Shiraev 2014: 94-95, Varner 2004: 159); Pescennius Niger (McCann 1968: 202 pl. 105, Fittschen & Zanker 91 no. 6, Varner 2004: 159-60), Geta (Krüpe 2011: 215-25), Macrinus (Dio Cass. 79.2.5-6; Sijpesteijn 1974, Varner 2004: 186-87), and Elagabalus.

[12] *Cod. Iust.* 2.18.8, 4.44.1, 8.44.6, 9.1.3pr. and 9.1.3.1; *Cod. Greg.* 13.14.1.

Alexander's refashioning of Elagabalic images and structures, which has been understood in other contexts as a deliberate attempt to portray Alexander as presiding over a return to Severan and Antonine values.[13]

Severus Alexander did not just use Elagabalus' laws as a site of imperial communication, however. Alexander's own rescripts betray idiosyncratic citation patterns that mesh remarkably well with a broader ideology of restoration visible in Alexandrian state messaging. While Alexander was hardly the first emperor to use the act of lawgiving as a method of self-legitimation, he appears unique in using the basic framework of the imperial rescript system to set himself in opposition to Elagabalus. Furthermore, Alexandrian legal communication sets the emperor in dialogue and intellectual continuity with a desired subset of imperial predecessors, largely figures with whom he claimed a familial relationship. A quantitative examination of the rescripts of Severus Alexander shows that they are far more likely than those of other rulers before or since to justify their reasoning by referencing the constitutions of prior emperors; in addition, these rescripts only reference constitutions by emperors to whom Alexander claimed to be related (including Commodus, who is cited nowhere else in the *Codex*). Once again, these documents fit with what we know of Alexandrian messaging more broadly, and suggest a depth and sophistication to Alexander's understanding of law as an ideological tool (or that of his courtiers, Ulpian in particular) that has not yet been remarked upon.

I also consider how such a system of transmission might impact the rationality or predictability of Severan law. While the disadvantages of a legal system in which binding precedent can be created by well-parented psychopaths are relatively clear, the rescripts of Elagabalus and other deposed emperors—to use one example, those of Commodus—raise entirely

[13] Rowan 2013: 235-36. For a broader discussion of this phenomenon, see Varner 2004: 9.

different problems. These opinions appear to have been invalidated or purged soon after their promulgators died—the lack of any opinions attributed solely to Commodus in the Alexandrian rescripts suggests that Commodus' legal correspondence was destroyed in the short time between his death and his reintroduction into the imperial pantheon under Septimius Severus. Furthermore, whatever precedential force these decisions held[14] was nullified not because the emperors with which they were associated were incompetent—Dio specifically distinguishes Elagabalus' performance in court from his usual inappropriate demeanor,[15] and both Elagabalus and Commodus used trained legal professionals to generate their legal opinions in any event[16]—but because they were immoral. Elagabalus was murdered by soldiers, [17] and Commodus by his prefect

[14] It is difficult to piece together the exact role that prior statements of law had in legal argumentation during this time; we see nothing approaching the citation style of common law countries, which rely on precedent in establishing an articulated system of principles to be applied to the instant facts. For a discussion of the different concepts of precedent that inhere in different legal systems, see Damaška 1986: 33-36. In the case of Roman law more specifically, Ranon Katzoff's exploration of precedent in Egyptian legal argumentation found that earlier cases were cited in argument, and were collected for use in argument, Katzoff 1972: 282-89. More recently, Ari Bryen's consideration of precedent in the legal complaint preserved in *P. Oxy.* II. 37 suggests that litigants could use something like precedent in an attempt to impose rationality on an otherwise biased and arbitrary system; however, rather than being developed through individual legal opinions, the legal principles animating these arguments sprang from the prefect's edict. Bryen claims that this reflected a deliberate attempt on the part of provincial administration to constrain the growth of binding precedent. Bryen 2016b, Katzoff 1980 (discussing the importance of these edicts in Egyptian law).

[15] Dio Cass. 79.13.3.

[16] The exact contours of this process are still unknown, as I will discuss in another chapter; briefly, Tony Honoré has argued for a fairly independent secretarial office, with opinions reflecting almost entirely the style and reasoning of a secretary *a libellis* who frequently outlasted the Emperors under whom he served. Honoré 1994: 56-70. Bruce Frier has questioned this analysis, largely based on his skepticism of the entire enterprise of judging style from such a restricted universe of texts and analyzed features. Frier 1984 (reviewing Honoré 1982). See also Liebs 1983: 485-509 (specifically discussing the role of jurists in the office of the *a libellis* under the Severans).

[17] Dio Cass. 79.20, Hdn. 5.8.8.

and *cubicularius*,[18] for reasons that are not entirely known;[19] nevertheless both successions were marked by strong moral condemnation of the deceased ruler, and it was these condemnations that motivated their erasure from Roman legal history rather than any deficiency in stewardship that might render their rulings inherently suspect.[20] Put bluntly, expunging rescripts of *principes damnati* could easily remove good law and clarifying precedent from the universe of available legal opinions, and I explore the jurisprudential ramifications of this practice.

This chapter proceeds in three parts, in addition to an introduction and conclusion. Part I considers the self-legitimating strategies employed by Elagabalus, which were primarily religious but also seemed to have involved less neglect of traditional administrative practices than would be suggested by historiographic sources. Part II discusses Severus Alexander's own self-representational strategies. While Severus Alexander in particular is difficult to isolate in the extant historiography, a huge amount of communication attributed directly to Severus Alexander survives within the *Codex Justinianus*: his rescripts make up approximately seven percent of the corpus,[21] and I analyze these rescripts as a form of legally binding propaganda. Part III discusses the theoretical implications of this messaging behavior for Severan law and politics more generally.

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[18] Dio Cass. 78.22.1, Hdn. 1.17.11.

[19] Dio's statement that Alexander ὑπό τε τῆς μητρὸς καὶ τῆς τήθης ὑπό τε τῶν στρατιωτῶν ἰσχυρῶς ἐφυλάσσετο suggests bribery in the case of Elagabalus; Herodian posits Julia Maesa's role as more defensive, but also identifies her with the soldiers' sudden shift in favor to Severus Alexander. Dio Cass. 79.19.2, Hdn. 5.8.3-4. Given Commodus' habit of putting those around him to death, Herodian's claim that Commodus' killers acted primarily out of self-preservation seems reasonable; see Hdn. 1.14.7 (referring to Commodus' ἀκρίτους φόνους).

[20] Of course this framing, which separates the moral continence or wisdom of the lawgiver from the validity of the given law, is dangerously anachronistic. At base, all law is an expression of authority, and that authority inevitably vests in the lawgiver or chief interpreter. Ronald Dworkin's concept of the judge as "Hercules" assumes extraordinary personal qualities in any individual trusted to unilaterally alter others' legal rights and obligations—nevertheless, his unique skills are pointedly scientific and analytic, rather than moral. Dworkin 1975: 1094-96.

[21] Honoré 1994: index.

I. ZEALOT, SYBARITE, SON: ELAGABALIC PRESENTATION AND POLITICS

Unfortunately, as is common with victims of *damnatio memoriae*,[22] much of the reign of Elagabalus is difficult to decipher. However, what we can see indicates an emperor whose self-presentation combined some shocking elements with a focus on familial continuity and an otherwise conventional administrative style. Elagabalus attained the throne in battle, when his forces defeated Macrinus at Antioch on June 8, 211;[23] the historians describe Elagabalus at this time as a mere pawn of outside forces, with Herodian and the *vita* attributing his ascension to his grandmother Julia Maesa[24] while Dio attributes it to the local aristocrat Eutychianus.[25] All historians describe Elagabalus' false paternity—specifically his claim to be the illegitimate son of Caracalla—as critical to the success of the revolt against Macrinus, and Elagabalus continued to link himself to Caracalla during his reign. The most obvious continuity between Elagabalus and Caracalla is in the former's choice of imperial name: Elagabalus took Caracalla's initial *nomina* of "Marcus Aurelius Antoninus." The two emperors were of course not indistinguishable,[26] but the effect of such a name would be to link Elagabalus to his predecessor and putative father far

[22] For an example of the erasure of Elagabalus' name from documents, see *P. Oxy.* 49.3475.
[23] Dio Cass. 79.39.1.
[24] SHA *Macr.* 9, Hdn. 5.3.10. On the role of Maesa in Elagabalus' seizure and exercise of power, see Levick 2007: 147-48.
[25] Dio Cass. 79.31-33. Dio specifically disclaims any role for the women of Elagabalus' family in the initial revolt: Elagabalus was brought into the camp μήτε τῆς μητρὸς αὐτοῦ μήτε τῆς τήθης ἐπισταμένης. See Kettenhofen 1979: 29-31 for the suggestion that Eutychianus may have in fact been P. Valerius Comazon, who is attested as having held office under both Elagabalus and Severus Alexander and whom I discuss below.
[26] But see Rowan 2013: 142, discussing a temple to Serapis attested only through a fragmentary inscription. The inscription refers to the temple being founded by a Marcus Aurelius Antoninus, but later names are lost—the temple can only be attributed to Caracalla through knowledge of Caracalla's specific religious behavior and a possible historical reference. See SHA *Car*. 9.10-11.

more closely than one would assume based on the more outré historical accounts. This link is also visible in Elagabalic coinage, particularly from the eastern empire; beyond the obvious similarity in names, the images of Elagabalus are so similar to those of the young Caracalla as to render identification nearly impossible.[27]

Given this informational lacuna, one might be tempted to base our understanding of Elagabalus largely on the historical sources, many of which describe the emperor's reign in painstaking detail. Given the intensely schematic nature of all three of the historical accounts (Elagabalus is not just eastern, he is a hypersexualized young catamite; Elagabalus does not just follow an eastern religion, he is a fanatic who practices human sacrifice),[28] some recent scholarship has pushed back strongly against the historians.[29] But for this project, which is concerned primarily

[27] See Harl 1981: 167 (discussing the difficulty of distinguishing between the two emperors in the specific context of Magnesian coinage). Johnston 1982 disputes this identification strongly, and somewhat strangely: Johnston's primary evidence against the "conventional viewpoint" of assimilation is to rely on the historians entirely and claim that Elagabalus was too vain to engage in this sort of imitation (*ibid.* 100-03), but at the same time Johnston acknowledges that Elagabalic coinage employs the same symbols and motifs as that of Caracalla (104: "Unfortunately there are few details of dress and presentation that are peculiar to one rather than the other."), and eventually relies on a series of nonrepresentational cues in order to distinguish between coins from the two emperors.

[28] See Bittarello 2011: 111. Dio is perhaps most blunt about his orientalization of Elagabalus, referring to him as Sardanapalus, the legendary Assyrian king. Dio Cass. 79.1.1: ὁ δὲ δὴ Ἀουῖτος εἴτε Ψευδαντωνῖνος εἴτε καὶ Ἀσσύριος ἢ καὶ Σαρδανάπαλλος Τιβερῖνός τε . . . . for more on the origin of Sardanapalus, see Hdt. 2.150, Polyb. 8.12.3. Herodian is less specific but repeatedly emphasizes Elagabalus' Phoenician customs and roots; see, for example, Hdn. 5.5.9. On human sacrifice, see SHA *Elag.* 8.1. Notably, while the *HA* condemns Elagabalus in some of the strongest possible terms, and refers to the Syrian origins of his religious practices (*e.g.*, *ibid.* 1.6), the text does not draw the same causal link between eastern origin and moral incontinence as do Dio and Herodian. This may be further evidence for Marius Maximus as the principal source—the *vita* is quite complimentary towards Severus Alexander while acknowledging similar origins (*ibid.* 13.2-5). If the principal source of the *vita* were in fact written by a member of Alexander's court, it is by no means impossible to see how such an author might wish to avoid linking Elagabalus' failures to his heritage quite so strongly. That said, it must be conceded that these same pressures could also have affected Dio, depending on the time of writing.

[29] By far the most aggressive rejection of the historians is that of de Arrizabalaga y Prado 2010, who attempts to reconstruct the life of Elagabalus without any recourse to the historians at all; *ibid.*

with the transition from Elagabalus to Severus Alexander and with the two emperors' contrasting approaches to the Severan legitimacy problem, historiographic evidence is enormously helpful. Firstly, if we understand Alexandrian treatments of Elagabalus to respond to contemporary attitudes, then historians of that period are most informative on what those attitudes *were*; whether or not Roman elites' loathing of Elagabalus was based on reality, it was a real phenomenon and one which likely informed Alexandrian messaging. Secondly, precisely because the historians are so singleminded and schematic on the subject of Elagabalus, details which go against the narrative grain stand out as unusually trustworthy; flattering or simply neutral comments are far more reliable in historians who are otherwise telling a fabulous tale of corruption and perversity.[30]

Those tossed-off asides, combined with material evidence of the transition between Elagabalus and Severus Alexander, tell two very different stories of how to make an emperor. Both Elagabalic and Alexandrian communications strategies, such as they survive, seek to project an image of imperial suitability and Antonine/Severan continuity. While Elagabalus' attempted religious narrative is often referred to as a failed experiment,[31] it is worth understanding the experiment's purpose: when Elagabalic messaging stresss the emperor's continuity with prior rulers, it particularly emphasizes his similarity to Caracalla, an emperor who loudly proclaimed

22-23. By contrast, Icks 2012 takes the historians with a grain of salt, but primarily tracks the reception of Elagabalus in western Romantic, queer, and other self-consciously libertine subcultures, without concerning itself overmuch with the reality of Elagabalus' lifetime. *Ibid.* 5. Other works by Bittarello, Sommer, and Mader have focused primarily on the image of Elagabalus preserved in these texts as historically relevant in its own right, not as a reflection of the emperor himself but instead of the particular discourse that surrounded him in later years (and particularly of the role Elagabalus played in Alexandrian conception and representation). Mader, in particular, focuses on the late *vita* as an example of the *Historia Augusta*'s more puckish tendencies, writ large. Bittarello 2011, Mader 2005: 135, Sommer 2004: 98-100.

[30] Icks 2012: 99.

[31] See Rowan 2013: 218.

his own religious devotion.[32] While Elagabalus does not appear to have been particularly idiosyncratic in his administrative style, Elagabalic messaging focuses on religiosity with a local twist, linking two emperor's expressions piety to their own gods.

Elagabalus' false paternity, and accompanying presentational regime, echoes the posthumous adoption into the Antonines of Elagabalus' first-cousin-twice-removed-by-marriage, Septimius Severus; in each case an aspirant to the throne created, by rumor or brute force, a paternal link which could provide them with legitimacy in the lineage-obsessed climate of late second and early third century Rome.[33] Of course, Septimius Severus augmented his argument from bloodline with a broader campaign of self-legitimization, as we have already seen. Elagabalus, by contrast, appears in a similarly aggressive ideological program, but one largely centered around specifically Emesene religious iconography and the emperor's role within the cult of Elagabal. This unusual self-presentation both obscured certain meaningful administrative continuities and provided a target for later ostentatious revisionism under Alexander.

A. Elagabalic Architecture

Historiographers decried Elagabalus as a depraved cultist, and some of the events they describe are clear exaggerations—that said, it is undeniable that Elagabalus' public works tell a story of extraordinary devotion to the god Elagabal, and that this idiosyncrasy motivated his poor reception among Roman elites and his later erasure from official history. Unfortunately, our best surviving

[32] Dio Cass. 78.16.1; Rowan 2013: 112, 162-63.
[33] See Borg 2013: 159-60 (discussing the reuse of tombs within extended families as a way to demonstrate socially desirable familial continuities). For a discussion of the political salience of parenthood through the imperial period, see Uzzi 2007, who argues that paternity was especially important to elite conceptions of Roman familial continuity.

record of Elagabalic iconography, his coins, only survive in a nonrandom sample: Clare Rowan has noted that the ratio of coins to dies for images of Elagabal or other Emesene iconography is far lower than that of other, more traditional coin types.[34] That said, Elagabalus is recorded in official inscriptions with the unusual title of *Sacerdos amplissimus Dei Invicti Solis Elagabali*,[35] and the senate did formally banish the god Elagabal from the city at the same time they subjected Elagabalus to *damnatio memoriae*; we can thus assume that the intense religious devotion noted by contemporary historians is no mere fiction.[36] This theme of religious self-presentation is further borne out by Elagabalic forays into monumental architecture. In contrast with the traditional architectural displays of the other Severan emperors,[37] which created an image of continuity and papered over the novelty of the Severan line, Elagabalus not only brought the baetyl believed to represent the god Elagabal to Rome, but constructed temples to his new deity in highly visible spaces.[38]

Two separate temples to Elagabal are attested. Literary sources mention an *Elagabalium* on the Palatine hill,[39] which has been identified with the archaeological remains now found on the

[34] Rowan 2013: 177, 258-59. Specifically, Rowan finds 37 different dies represented in a sample of only sixty coins showing Elagabal in his traditional stone form, with only 1.62 coins surviving on average from any different die. Given that over 8,500 coins survive from the reign of Elagabalus, this paucity almost certainly reflects some form of selective destruction. For the purging of imagery of the god Elagabal after Elagabalus' death, see Dio Cass. 79.21.2; for a similar episode involving the coinage of Pescennius Niger, see Buttrey 1992.

[35] For inscriptions using this formula, see for example *CIL* 3S.84.

[36] See Optendrenk 1969: 107 (discussing the *Reprovinzialisierung* of Elagabal).

[37] On the building programs of the early Severans, see DeLaine 1997: 197-98, Lusnia 2014: 42-57.

[38] Rowan 2013: 190-201 provides a useful summary of the literary evidence for Elagabalus' building program.

[39] Aur. Vict. *Caes.* 23, Jer. *Ab Abr.* 296g (Helm), SHA *Elag.* 3.4-5. Herodian also mentions two separate temples to Elagabal, one ἐν τῳ προαστείῳ, 5.6.6, and one in an unspecified location, 5.5.8. Given the other literary, archaeological, and numismatic evidence for an *Elagabalium* on the Palatine hill, the most logical assumption is that the latter reference is to the Palatine complex.

Vigna Barberini.[40] This temple, represented on medallions minted by Elagabalus,[41] would have been the most visible representation of Elagabal's power within the city of Rome. Furthermore, Herodian's explicit reference to a suburban temple has led modern Roman archaeologists to locate a second monumental temple in the Sessorian Palace.[42] A procession between these two temples, likely occurring in the summer of 221,[43] is also attested in Herodian.[44] In sum, we see a program

[40] This site is currently being excavated by l'Ecole Francaise de Rome, with findings published yearly. See Villedieu 2015 for recent findings (published online), see Villedieu 2007 for the most recent comprehensive report. The history of the site and its identification with the *Elagabalium* is complex, but Villedieu has argued that the structure currently identified as the *Elagabalium* began construction under Septimius Severus, before a hasty renovation by Elagabalus; such a history would explain how Jerome could describe the *Elagabalium* as completed by 220, despite Elagabalus not even arriving in Rome until 219 (Hdn. 5.5.7-8). Villedieu 2007: 314-32, 372-377; but cf. Broise & Thébert 1999: 736-45, who agree that the site was constructed in two discrete stages, but posit the first phase as occurring under Elagabalus and the second under Severus Alexander. For the pre-Severan history of the Vigna Barberini, see Villedieu 2007: 250-63. If we agree that the temple was originally constructed under Septimius Severus, however, we must then determine what, exactly, the preliminary structure was intended to *be*. The literary sources do not refer to any temple, planned or completed, that fits the profile of the Vigna Barberini, but Philip Hill theorizes that Elagabalus converted a temple to Jupiter; Hill 1960: 119-20. This could explain why Dio does not explicitly mention the Palatine *Elagabalium*; his statement that Elagabalus put the god "before Jupiter himself" can be seen as referencing this rededication. Dio Cass. 79.11.1. For later interpretations following Hill's theory, see Castagnoli 1979: 331-347, Richardson 1992: 142, Turcan 1985: 121-4.

[41] Mattingly-Syndenham, *RIC Elag*. 339. Another Elagabalic medallion, now owned by a private collector, also depicts this temple; an image is provided by the Classical Numismatic Group at http://www.cngcoins.com/Coin.aspx?CoinID=155774. For a discussion of the *Elagabalium*'s architectural similarity to the structure on the Vigna Barberini, see Rowan 2013: 193-96, Villedieu 2007: 376.

[42] Paterna 1996: 818-19 (discussing the attestations of this site in the Severan historians). While the identification is uncertain, Paterna convincingly argues that parallels between this space and the Vigna Barberini make it the best possible location for the temple described by Herodian. *Ibid.* 846. By contrast, Palmer has placed this second temple on the Juniculum Hill, based on the large number of inscriptions on that site referencing Elagabalic religious beliefs and practices. Palmer 1981: 377-80. Petra Matern adopts Palmer's reasoning at Matern 2002: 33-34. That said, I find Rowan's response to Palmer's identification extremely convincing; the inscriptions honoring Elagabal from this site largely predate Elagabalus himself. Rowan 2013: 202-03. Earlier, Theo Optendrenk had argued that the site was home to a temporary *Elagabalium*; Optendrenk 1969: 87.

[43] Frey 1989:71, Turcan 1985: 138.

[44] Hdn. 5.6.6-7.

of architecture and spectacle resembling that of the other Severans in scope and scale, while differing enormously in subject.[45] While the historians' account of some of Elagabalus' excesses is not entirely to be believed, Elagabalus seems to have been at least willing, if not eager, to present himself as a servant of the Emesene Elagabal.

This aspect of Elagabalic representation rests uneasily with other, more traditional moves like the feigned family relationship between Elagabalus and Caracalla. This relationship was reinforced through naming conventions and official *imagines* but is perhaps most prominent in the continuation of what are now called the Baths of Caracalla, which Elagabalus not only improved but also decorated with an enormous self-portrait in heroic style.[46] The *vita* and Cassius Dio also refer to Elagabalus reconstructing the Colosseum after it was damaged by a fire under Macrinus,[47] but it is difficult to read this project as marked. If these accounts are accurate, the amphitheater would have been essentially unusable until repaired, making that work a practical rather than communicative necessity. Elagabalus' construction at the site of the Baths of Caracalla was, by contrast, both more visible and less necessary; Elagabalic portraiture would ensure that visitors link the emperor to the site. Ironically, by associating Elagabalus so strongly with Caracalla's monumental bath complex, this representational program could have been pushing back against the negative implications of more religious Elagabalic architecture—Varner suggests that the

[45] For a discussion of the role of such monumental building projects in managing public perception of the emperor, see Mayer 2010: 111-34.
[46] SHA *Elag.* 17.8. The author of the *vita* takes pains to note that the Baths were actually completed under Caracalla, and Elagabalus was merely attaching himself to the project; *ibid.* 17.9. This claim is disputed, however. Eric Varner argues that Elagabalus did in fact play a role in the Baths' construction, while Lawrence Richardson leaves the Baths' dedication ambiguous in his topographic dictionary. Herbert Bloch uses brick-stamp evidence to confirm the *vita*'s account with evidence of Elagabalic construction outside of the central structure. Bloch 1947: 299-303, Richardson 1992: 386-89, Varner 2004: 190. For the portrait itself, see Fittschen and Zanker 119.
[47] SHA *Elag.* 17.8; this fire is also attested in Dio Cass. 79.25.

statue was posed in order to emphasize Elagabalus' athleticism and respond to his perceived effeminacy,[48] and furthermore associating Elagabalus with a monumental bath complex could buttress his credentials as a member of a Roman, Antonine elite, rather than a Syrian interloper. This architectural program, rather than merely establishing Elagabalus as an unprecedented figure, is better understood as part and parcel of a complex—if ultimately unsuccessful—attempt to establish the young emperor within some sort of Severan contuinity.

B. Links to Caracalla?

Both Rowan and Bittarello view Elagabalic religious construction and representation as a miscalculated response to Elagabalus' legitimacy deficit; Rowan posits Elagabalus as trying to build a model of *imperium* centered upon the approval of the god Elagabal,[49] while Bittarello sees an emperor attempting to portray himself as "superhuman"[50] and thus worthy of the throne due to his personal qualities. Both versions of this argument are obviously plausible, although perhaps ascribing remarkable foresight to a teenage boy with sincerely fanatical religious beliefs and his somewhat provincial family. I would argue, instead, that these religious demonstrations reflect not a fully-formed ideology of power, but instead an innovative form of juxtaposition with Caracalla, Elagabalus' imagined father and predecessor. Caracalla stands somewhat alone among the four Severans in his public representation, and in the lack of regularity or institutional mediation as components of that representation; while Caracalla was ultimately responsible for one of the most

[48] Varner 2004: 190.
[49] Rowan 2013: 218.
[50] Bittarello 2011: 109.

consequential legal developments of the Severan era,[51] Dio contrasts Caracalla's idiosyncratic interest in military and religious affairs with a corresponding boredom with lawgiving or administration.[52]

Instead, Caracalla seems to have been particularly aggressive in presenting himself as militarily capable[53] and as divinely sanctioned. Coinage from Caracalla's reign is remarkably dense with religious imagery, and became more so after the end of his co-rule with Septimius Severus.[54] This progression suggests that the increasing invocation of religious themes was not only a conscious choice, but an idiosyncratic one; Caracalla religiosity arose not just from a Severan political apparatus writ large, but came from—and was linked to—the man himself. This aspect of Caracalla's self-presentation is largely elided by the historians, but would have presumably been well-known in the Emesa of 218, where Elagabalus (or more likely, his family and eventual advisors) plotted the coup that placed him on the throne. The connection between Elagabalus and Caracalla was largely developed during a military coup, and given Elagabalus' youth (he was fourteen when he took power), this connection was almost certainly developed by older, more politically minded relatives; given the importance of the military to seizing and maintaining power in Severan Rome, this element of Elagabalus' presentation is explained, even by those who emphasize Elagabalus' idiosyncrasy, as a concession to the power politics of the early third century.[55] The emperor's frequent invocations of Emesene religious imagery and gods,

[51] I refer of course to the *CA*, which granted citizenship to nearly all free residents of the Roman empire and on which see *supra* Ch. II, notes 52-101.
[52] See *supra* Ch. II, notes 9-15; Dio Cass. 78.4.1.2, 78.17.3-4, SHA *Car.* 4.1.
[53] Dio Cass. 78.3.1-2, Hdn. 4.7.3-7, SHA *Car.* 6.1-5.
[54] A hoard analysis by Rowan shows that Caracallan coinage became noticeably more religious after 211, when Septimius Severus died and, presumably, when Caracalla—and briefly Geta—gained control of the imperial mints. The proportion of divine images on Caracallan reverses nearly doubles after 211, going from 30% to 59%. Rowan 2013: 111-12, figs. 37-38.
[55] De Arrizabalaga y Prado 2010: 228-29.

on the other hand, are taken as either reflecting a sincere religious mania[56] or as failed attempts at a novel theory of imperial legitimacy focused on the specific relationship between emperor and Elagabal.[57] According to these understandings of Elagabalus' imperial behavior and presentation, Elagabalus essentially pursued two strategies—one bog standard, one utterly bizarre.

Upon closer inspection, however, Elagabalus' reliance on Emesene religious imagery and practices may simply reflect an attempt to imitate his Severan predecessor. Caracallan representation not only made heavy use of religious imagery and iconography, but focused on specific deities with whom Caracalla was portrayed as having a personal connection, most notably the Ptolemaic deity Serapis.[58] Serapis was by no means unheard of in Roman iconography at this time, but only rarely features on pre-Caracallan coinage.[59] If this representational program constituted the "traditions" with which Elagabalus might have sought to align himself, then the unusual religious content of Elagabalic communications seems less like an aberration, and more in keeping with the aggressive presentation of dynastic continuity that marks Severan imperial representation more broadly. Septimian and Caracallan imperial messaging relied on family connections both real and imagined. Caracalla, however, also emphasized piety and religious protection instead of administrative work; Elagabalic state communications may have simply employed a more assertive version of the same strategy and thus tried to highlight Elagabalus' similarities with his imagined father. Like Caracalla, Elagabalus' religious display centers on a

[56] *Ibid.* 245-46, Frey 1989: 70-71.
[57] Rowan 2013: 218.
[58] See Dio Cass. 77.23.2-3, in which Caracalla links Sarapis with the murder of Geta; Lichtenberger 2011: 120-21, Manders 2012: 235-40.
[59] Serapis is attested on the coins of Domitian, Hadrian, and Commodus prior to Caracalla. See, for example, Mattingly-Syndenham *RIC Dom.* 812, *Had.* 318, 877, *Comm.* 246; Manders 2012: 235.

god with whom he was idiosyncratically connected.[60] That said, Elagabalus' presentational strategy seems to have failed; while Elagabalus' death cannot be simply ascribed to revulsion at the introduction of Elagabal into Rome, the senate condemned Elagabal and Elagabalus simultaneously, suggesting that the god had in fact become distasteful.[61] Ironically, however, Elagabalus' flashier practices may have masked a relatively conventional administration, with few serious failures of governance or administrative idiosyncrasies.

C. Elagabalic Self-Presentation and Administrative Practices

The major historical writings on Elagabalus, while generally hostile, are oddly silent—or begrudgingly positive—on the functioning of the state. The historians make three main claims about Elagabalic governance: that the emperor performed arcane religious rites, that he engaged in inappropriate sexual and gender performance, and that he violated established norms regarding appointments. The first claim is strongly attested in the historiographic sources[62] and borne out by available material evidence; we have already seen how Elagabalus presented himself with Emesene religious imagery and dedicated an enormous *Elagabalium* in the highly visible public space of the Palatine hill.[63] The same cannot be said, however, about Elagabalus' sexual perversions. Notably, no historical account describes Elagabalus as *secretly* effeminate, or as any sort of hypocrite; in fact all describe him as flaunting his gender inversion. Dio describes the emperor frequenting public shops (καπηλεῖα) in a woman's hairstyle (περιθεταῖς κόμαις

[60] Turcan 1985: 129-35.
[61] Dio Cass. 79.21.2.
[62] *Ibid.* 79.11-12, Hdn. 5.6.6-7, SHA *Elag.* 6-7.
[63] See, for example, Mattingly-Syndenham, *RIC Elag.* 196A (depicting Elagabal, represented by the Emesene baetyl and topped by an eagle, being pulled by a *quadriga*).

χρώμενος),[64] Herodian depicts him wearing women's cosmetics in public,[65]and the *vita* depicts Elagabalus commissioning histories of his own depravity.[66] This figure is, to say the least, difficult to square with surviving depictions of the emperor: we should not expect officially sanctioned images to reflect reality at all times, but it is reasonable to think that they would depict an emperor *as he wished to be seen*.

In Elagabalus' case, both numismatic and sculptural evidence suggest that Elagabalus wished to be viewed as masculine. For example, the bust of Elagabalus currently housed at the Capitoline Museum[67] depicts an emperor with emphatically masculine features, including prominent sideburns and a strong, protruding brow. While the bust clearly shows Elagabalus' youth, later depictions show the emperor with a full beard.[68] This representational shift coincides with the appearance of a variety of other motifs in Elagbalic coinage, most notably the inclusion of explicit sacrificial imagery[69] and the appearance of an unusual appendage attached to the emperor's head that is conventionally referred to as the "horn of Elagabalus."[70] Most importantly for our purposes, however, these images cannot plausibly be referred to as effeminate. Dio's Elagabalus is obsessed with depilation, and prides himself on publicly presenting as a hairless youth:[71] it is hard to imagine that official images would diverge so sharply from an emperor's conscious self-presentation as an androgyne. This point is particularly strong in light of

[64] Dio Cass. 79.13.2.
[65] Hdn. 5.6.10.
[66] SHA *Elag.* 8.5.
[67] Musei Capitolini MC 470; for a discussion of this identification, including references, see Wood 1987: 115-18.
[68] See, for example, Mattingly-Syndenham, *RIC Elag*. 88. David Potter has suggested that this change was intended to assimilate Elagabalus' image further to that of Caracalla; Potter 2004: 155.
[69] Dirven 2007: 23-25.
[70] Krengel 1997, Rowan 2013: 208-09.
[71] Dio Cass. 79.14.4.

Elagabalus' clear control over the religious imagery used on his coins; the emperor was willing and able to use unconventional tropes, but did not violate conventions of gender presentation.[72] The feminized obscenities attributed to Elagabalus recall a stereptypically orientalized ruler—decadent, unmanly, and justifying his sexual idiosyncrasies as religious rites. [73] Such schematism alone does not make these claims false, and stereotypes can occasionally be true. But given the radical disjunction between historiographic claims about Elagabalus' behavior and surviving official representations, these claims more likely reflected historians' relationship with Severus Alexander than their memories of his departed cousin.

The historians agree, however, on the final claim—that Elagabalus violated established meritocratic appointment norms. Dio mentions in passing that some men received imperial honors and appointments in exchange for sexual favors (ὅτι ἐμοίχευον αὐτόν),[74] but Herodian makes an identical claim in far more detail, specifically alleging that Elagabalus appointed actors and other unworthies to positions as high as the praetorian prefecture.[75] The *vita* piles on:

> He sold honors, appointments, and powers, both personally and through his slaves and lovers. He admitted men to the senate without consideration of age, class, or family for the sake of money, and also sold military and tribunal positions, legateships, and positions of leadership, ever procuratorships and positions in the palace.[76]

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[72] Of course, one objection is obvious; if particularly offensive images of Elagabalus were removed from the record under Severus Alexander, we cannot be sure that the relatively conventional images of Elagabalus that survive represent his true numismatic program. My response to this critique would be to note the numerous examples of Emesene religious iconography that survived the Alexandrian purge. Given that images of Elagabal were specifically condemned after Elagabalus' death, it seems unimaginable that the traditional image we see put forward in imperial coinage and statuary is entirely an accident of preservation.

[73] For a lengthier description of these features of Elagabalus' portrayal, see Bittarello 2011: 95-105.

[74] Dio Cass. 79.15.3.

[75] Hdn. 5.7.6.

[76] SHA *Elag.* 6.1-2 : *Vendidit et honores et dignitates et potestates tam per se quam per omnes servos ac libidinum ministros. In senatum legit sine discrimine aetatis, census, generis pecuniae*

This is not a salacious detail. While claims that Elagabalus violated traditional appointment procedures might outrage a senatorial audience, they are not particularly titillating; in fact, each of these texts hurries from the mundane deficiencies of Elagabalic staffing procedures to the sexual outrages they find far more interesting.[77] That said, it is remarkable that three disparate texts converge on such a boring detail; everyone seems to agree that Elagabalus gave out posts in the imperial service for the wrong reasons.[78] Unfortunately, it is difficult to determine the truth of these claims—while specific allegations in the historians can occasionally be falsified,[79] and others are too absurd to require such falsification,[80] Severan prosopographers have noticed some marked discontinuities in Elagabalus' appointments.

It may be useful now to clarify exactly what kind of discontinuities would follow from the sorts of appointments of which Elagabalus is accused. On one hand, if Elagabalus were in fact appointing wildly unqualified people to high positions, and if those people were then dismissed upon his death,[81] we would expect see what I refer to as *positive discontinuities*—individuals who are only attested as holding office under Elagabalus, with no notable positions before or since. On

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merito, militaribus etiam praeposituris et tribunatibus et legationibus et ducatibus venditis, etiam procurationibus et Palatinis officiis.

[77] For example, in the *vita* Elagabalus transitions almost seamlessly from appointing underage senators to fellating his favorite Hierocles. *Ibid.* 6.5.

[78] Of course, these are hardly the only instances in which an emperor is accused of corruption in staffing; cf., for example, Suet. *Claud.* 28 (referring to Claudius arranging for his freedman Polybius to be honored *quaestoriis praetoriisque ornamentis*). However, this allegation is by no means universal. For example, this claim does not appear in even hostile historiographic accounts of Caracalla, except for Dio briefly mentioning Caracalla's appointment of a Macedonian to high office as an example of his Alexandrophilia; Dio Cass. 78.8.2.

[79] For example, the *vita*'s assertion that Elagabalus made appointment decisions *sine discrimine aetatis, census, generis* at SHA *Elag.* 6.2 is not borne out by any of the available prosopography. Mennen 2011: 179.

[80] Unfortunately for historians with a taste for camp, no evidence has been found to corroborate the *vita*'s claim that Elagabalus chose his officials based on their endowment. SHA *Elag.* 12.2.

[81] Or worse: Dio Cass. 79.21.1-2 describes Elagabalus' courtiers being slaughtered *en masse*.

the other, Elagabalus ignoring traditional appointment criteria should mean that relatively few qualified candidates held office in this period, leading to *negative discontinuities*; qualified figures who held a variety of posts under Caracalla and Severus Alexander would be denied offices under Elagabalus, leading to curious lacunae in their careers. Ultimately, the evidence for both phenomena is mixed; it is clear that Elagabalus' appointment policies differed from those of other Severan emperors, but not in as extreme a fashion as the historians claim.

Positive discontinuities will inevitably be somewhat hidden, since only limited documentation of Elagabalic appointments survives. However, what appointments we do have suggest at least some level of idiosyncrasy. For example, we have evidence of Elagabalus appointing four *consules ordinarii* during his reign, not counting himself or Severus Alexander: Quintus Tineius Sacerdos, Publius Valerius Comazon, Gaius Vettius Gratus Sabinianus, and Marcus Flavius Vitellius Seleucus. While Sacerdos was an established figure—having served his first consulship in 192 and held the proconsulate of Asia during the reign of Septimius Severus[82]—and Sabinianus was a member of a consular family who had held traditional offices,[83] Seleucus is not known to have held any other position in the imperial service[84] and Comazon rose to the consulship only two years after commanding *legio III Gallica* in Syria.[85] A similar phenomenon holds in Elagabalus' other major senatorial appointments: While Marius Maximus served as city prefect early in Elagabalus' reign,[86] a 'Leo' is also attested as *praefectus urbi* about whom nothing else is known.[87]

[82] Furthermore, Leunissen hypothesizes that Sacerdos would have likely served as *praefectus urbi* in 218, thus continuing a trend of appointing *praefecti* to the consulate. Leunissen 1989: 310.
[83] Mennen 2011: 129-30.
[84] Leunissen 1989: 107 n.26, 368.
[85] See Dio Cass. 79.3.5.
[86] *CIL* 6.1450; Leunissen 1989: 382.
[87] Dio Cass. 79.14.2.

Equestrian appointments show similar variation. Elagabalus' predecessor and successor both appointed distinguished praetorian prefects with long careers,[88] but Elagabalus appointed four prefects—Comazon, Iulius Flavianus, Antochianus, and a man whose name is unknown—of whom only Comazon is widely attested elsewhere.[89]

1. *Case Study: …atus*

The most mysterious of these prefects is a man who served as Elagabalus' official *a studiis*, suffect consul, and praetorian prefect, honored in two near-duplicate inscriptions on the Esquline hill.[90] Salway has reconstructed the inscription memorializing this man's career as follows:

[[[----------]. . . . . ATO]]
[-------A S]TVDIS LEG LEG
[. . . . . *c*OS C]OMITI AMICO
[*fidis*SIMOP]RAEF ANN
[[[*pontifi*CI MINO]RI PRAEF PRAET]]
[[[*i*MP. CAES. M. A]VRELLI]]
[[[*an*TONINI PI]I FELICIS AVG]
[[[*pontificis*] MAXIMI]]
[[[SACERDOTIS] AMPLISSIMI]]
[[[L. IVL. AVR. *He*]RMOGENES]]
[*o*B INSIGNEM] EIVS ERGA SE
[*benevo*LEN]TIAM QVA
[SIBI *par*]AVIT IN
[DVLGENTIA]M SACRAM
[*alloqu*II DIVINI HONORE]

[88] See de Blois 2001: 139-40, Honoré 1994: 37.
[89] See Chastagnol 1992: 64-65.
[90] For the most thorough treatments of this figure, see Pflaum 1960: II.756-62, Salway 1997: 127-53. It should be noted that the unusual character of this inscription has led to some unusual identifications. Most specifically, Cebeillac-Gervasoni 1979 identifies this figure, commonly referred to as '…atus,' with T. Messius Extricatus, a consul under Caracalla attested in an inscription discovered in Portus. However, Salway fairly convincingly argues that identifying Extricatus with the subject of this inscription would require the dedicator to have provided his offices outside of chronological or honorific order. Salway 1997: 137-40.

[*obtento obla*TIS COMMENTARIIS][91]

This inscription honors a man with an extraordinary succession of imperial posts, best explained by his serving under two extraordinary emperors. At first, …atus seems to support the historians' contentions regarding Elagabalic promotion policies. If the *damnatio* of Elagabalus extended to his more idiosyncratic appointments, that could produce an illusion of continuity, since those individuals who might be evidence of such practices could have been scratched out. In the end, however, Salway reads …atus as an example of Elagabalus' traditionalism. Reading the list of offices above as chronological, Salway posits …atus' extraordinary rise (from *a studiis* to legate to consul) to Macrinus' desperate need for military personnel, and later equestrian positions (the two prefectures) to Elagabalus' discomfort with such a violation of traditional appointment protocols and his subsequent demotion of …atus.[92] This explanation seems particularly compelling in light of Elagabalus' early interactions with the senate, recorded in both Dio and Herodian, in which he presented himself as a champion of traditional governance (and presumably appointment) norms.[93] Effectively, …atus held positions well above his official rank under Macrinus, and Elagabalus then put him in his rightful place.

[91] *Ibid.* 126; *CIL* VI.31776 a-b. All bracketed material presented in roman capitals is based on a duplicate inscription, *CIL* VI.31875. Italicized material is Salway's reconstruction.
[92] Salway 1997: 144-45.
[93] Dio Cass. 79.1.2, Hdn. 6.1.3.

2. *Case Study: Comazon*

The other well-attested meteoric rise under Elagabalus is that of P. Valerius Comazon, another figure who held both consular and equestrian titles.[94] Here, we see a roughly similar phenomenon: the greatest irregularities can be clearly attributed to Macrinus, although Elagabalus did appoint Comazon to the praetorian prefecture early in his reign.[95] Unlike …atus, however, Comazon survived the transition of 222, and continued to hold offices into the reign of Severus Alexander.[96] …atus and Comazon both seem at first blush to constitute just the sort of wild appointments of which Elagabalus is accused, but instead suggest continuities with Macrinus and Alexander. While other unusual appointments persist in the record, many of them are only identified in the historical sources, making them dubious pieces of evidence in support of those historians' accuracy. Instead, these unusual careers may be more usefully understood through a different theory of Elagabalic appointments, one which can explain both the historiographical condemnation described above and its lack of attestation in other sources. Macrinus' unusual appointments are well attested in other contexts, and were widely condemned by his contemporaries as part and parcel of the broader contempt for institutions that could lead an equestrian to take the throne in the first place.[97] Elagabalus inherited an administration that was widely perceived as untrustworthy and full of *arrivistes*; he is recorded as writing a letter to the senate confirming that he was aware of this perception and claiming a desire to restore traditional order.[98]

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[94] Chastagnol 1992: 64.
[95] Salway 1997: 143-44.
[96] Dio Cass. 79.21.2; Chastagnol 1992: 64.
[97] Dio Cass. 78.14; Davenport 2012b: 184-203.
[98] Dio Cass. 79.1.2-3.

On the other hand, Elagabalus likely could not have afforded a wholesale purge. As an heir of local nobility with only tenuous connections to Rome,[99] Elagabalus would have struggled to fill the ranks of his administration quickly; as a boy with no military experience who was actively bribing the military to maintain their support, he may well have feared the effect of such rapid personnel turnover upon morale; and as the beneficiary of a coup, he would likely have needed to bribe officers as the battles against Macrinus unfolded. For all of these reasons, many of the inappropriate officers who would have been so offensive to the senate not only survived, but thrived under Elagabalus; elite outrage at this fact could easily have produced the popular image of Elagabalus himself promoting unworthies. This image would have been further reinforced by more radical Elagabalic breaks from Roman religious and architectural traditions. While Severus Alexander had his own highly idiosyncratic administrative practices—retaining high-ranking figures like Comazon, and appointing a Tyrian equestrian as his effective regent—they were accompanied by an ostentatiously reactionary style that seems to have rendered them more broadly acceptable.

D. Elagabalic Lawgiving

So what remains? Historiographical accounts of Elagabalus' perversity and incompetence are clearly exaggerated, but the historians' depiction of Elagabalic religious practice accords with numismatic and architectural evidence, and that of Elagabalic appointments appears to be an exceptionally harsh interpretation of a real phenomenon. How, then, can we understand the

[99] Millar 1993: 300-09 offers an excellent sketch of Elagabalus' family and the history of their connections to the Imperial service.

evidence of the historiographers in the context of other Elagabalic representations? Obviously, these sources are hardly Elagabalic propaganda; on the other hand, they do reflect—in a distorted fashion—the image that Elagabalus appears to have sought to project. In particular, one strange detail, preserved in Dio, suggests the sort of administrative self-legitimation we have already seen from Septimius Severus, and that Severus Alexander would deploy most aggressively. Dio describes Elagabalus as only ever appearing to embody Roman ideals when giving legal opinions: "Indeed, when hearing cases, Elagabalus seemed something like a man . . . ." (Ὅτι ἐν τῷ δικάζειν τινὰ ἀνήρ πως εἶναι ἐδόκει . . . .)[100]

This statement is only a brief aside in the *Roman History*, but it can support a certain weight. While Dio is obviously a problematic source for Elagabalus generally, the same hatred that makes many of Dio's claims so difficult to believe makes this statement uniquely plausible. To be blunt, Dio loathed Elagabalus—this material is a brief, grudging aside in an exhaustive list of the Emperor's sexual and religious vices.[101] In a work that is generally schematic, with long descriptions of the virtues of good emperors and the vices of bad, material that cuts against the grain is especially reliable. Dio would have no reason to invent this detail, and it should probably be taken as something Dio understood—or conceded—to be true.

That said, Dio's statement is cryptic: what does it mean to ἀνήρ . . . εἶναι ἐδόκει in the act of δικάζειν? To begin with ἐδόκει, it is clear from context that Dio does not simply refer to Elagabalus' gender presentation; Elagabalus presented himself on coins in a consistently masculine, or at least male fashion,[102] and for the reasons described above it seems implausible

[100] Dio Cass. 79.14.3.
[101] *Ibid.* 79.11-16.
[102] Note, for example, Mattingly-Syndenham, *RIC Elag.* 57c-d, with an obverse portrait of a laureate Elagabalus wearing a togate drape and cuirass, and a reverse image of Elagabalus on horseback brandishing a spear.

that Elagabalus could have been a full-time transvestite. Furthermore, because this aside is explicitly contrasted with other behavior, we can see that the antonym of ἀνήρ . . . εἶναι ἐδόκει is τῷ ἔργῳ καὶ τῷ σχήματι τῆς φωνῆς ὡραΐζετο.[103] ὡραΐζετο is difficult to define precisely; this is its only preserved use in Dio. However, its most common pejorative sense—and it is clearly pejorative here—is one of affectation or theatricality.[104] Dio segues from this statement into a description of Elagabalus dancing in public, and frames this story as an example of the behavior he just described.[105] While Dio goes immediately from the dancing narrative to a discussion of Elagabalus' feminine traits, he explicitly cuts off the discussion of "adornment" before doing so.[106] Thus, we can read Dio's statement as contrasting Elagabalus' mannerisms and pretension with the more sober attitude of Elagabalus δικάζων.

Of course, δικάζειν presents its own problems; Dio uses the term in two slightly different senses throughout his work, but in both cases it denotes some form of adjudicative activity and is intimately connected to Dio's conception of the good emperor. Dio uses δικάζειν fairly extensively throughout his history, in both a specific and general sense; the most common usage refers to a legal resolution of a dispute between two specified parties,[107] but Dio also uses δικάζειν to refer more generally to hearing cases, or simply conducting adjudicative business in a less transitive sense.[108] This usage almost certainly belongs to the second category, given that Dio is describing Elagabalus' behavior over a long period of time; no particular incident is described, and the tense

[103] Dio Cass. 79.14.3. The full sentence reads: Ὅτι ἐν τῷ δικάζειν τινὰ ἀνήρ πως εἶναι ἐδόκει, ἐν δὲ δὴ τοῖς ἄλλοις τῷ ἔργῳ καὶ τῷ σχήματι τῆς φωνῆς ὡραΐζετο.
[104] Compare Lucian, *Amores* 38; for older uses with a similar force, see Men. fr. 855.
[105] Dio Cass. 79.13.3: τά τε γὰρ ἄλλα καὶ ὠρχεῖτο . . . .
[106] *ibid.* 79.13.4: καὶ τέλος, ἵν' ἤδη ἐπὶ τὸν ἐξ ἀρχῆς λόγον ἐπανέλθω...
[107] For example, see *ibid.* 37.27.2 (where δικάζων is used to refer to supervising a trial in the senate), 52.7.2 (where δικάζοντες refers to deciding upon a verdict), and 60.28.6 (where δικάσει refers to deciding against a specific party).
[108] This usage is less common, but well-attested; see Dio Cass. 58.21.2, 60.33.5, 8.

of ἔδοκει suggests continuous action. Nevertheless, Dio almost never uses δικάζειν in the context of non-adjudicative legal behavior, such as the making of new positive law;[109] in Dio, δικάζειν refers to adjudication, and not to lawmaking more broadly.

In Elagabalus' case, the distinction seems important. While Dio does occasionally criticize Elagabalus' governance (albeit nowhere near as strongly as his religious or sexual practices),[110] this is his only mention of the emperor's judicial conduct. And for Dio, an emperor's adjudicative work was generally an important component of a good reign. When Dio describes emperors' judicial behavior, their attitude in court reflects their general fitness to rule in nearly every case; Vespasian,[111] Trajan,[112] Marcus Aurelius,[113] and Septimius Severus[114] are all described as good rulers who are attentive in court. By contrast, the only emperor whose behavior in this arena is singled out for criticism is Caracalla,[115] whose laziness and unwillingness to hold court is portrayed as of a piece with his more general disdain for, or incompetence at, administration.[116] So—in the midst of a general condemnation of Elagabalus' character, religion, and sexual continence—Dio spends half a sentence admitting that he was a careful adjudicator. But what does this mean for Elagabalic legalism more generally?

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[109] One near-exception is at 69.3.6, where δικάσασθαι is used to refer to an individual's pleading with Hadrian for favorable tax treatment.
[110] See, for example, *ibid.* 79.21.1, which refers to a subordinate of Elagabalus as collecting excessive taxation.
[111] *Ibid.* 65.10.6.
[112] *Ibid.* 68.10.2.
[113] *Ibid.* 71.6.1.
[114] *Ibid.* 77.7.3. In Severus' case, Dio explicitly contrasts ἐδίκαζεν with dereliction of duty; ὁ Σευῆρος οὐδὲν τῶν ἀναγκαίων τὸ παράπαν ἐξέλιπεν, ἀλλὰ καὶ ἐδίκαζεν καὶ πάντα τὰ τῇ ἀρχῇ προσήκοντα διῴκει.
[115] This material is discussed in more detail above, but see *ibid.* 77.17.1-4.
[116] Dio's account of the reign of Caracalla accuses him of excessive taxation, senseless killing, and waste. Davenport 2012a: 796-97, Millar 1964: 150-60.

Available sources suggest that the answer is "not terribly much." While Septimius Severus (and Severus Alexander, as we will later see) both used their legal powers as an opportunity for a certain kind of self-conscious display,[117] there is simply not enough evidence to cast Elagabalus' legal behavior in that same light. For one thing, the Elagabalic materials that survive do not mention his work in law courts at all. For another, more traditional elements of Elagabalic representation seem to hinge on Elagabalus' connection with his predecessor Caracalla. Caracallan representation is itself highly unusual,[118] but used religious and military imagery to make his point. Dio is quite explicit in portraying Caracalla's distaste for law,[119] while Herodian condemns both Caracalla and Geta's legal behavior.[120] That said, lawgiving and military leadership were contrasting, if not exclusive, avenues of imperial self-legitimation in the Severan era; given Elagabalus' lack of military accomplishments,[121] it is certainly conceivable that he could have portrayed himself as promoting order at home, rather than abroad. However, that would suggest a remarkable level of sophistication in Elagabalic messaging, as well as a desire to sharply differentiate from Caracalla, that are both otherwise unattested.[122]

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[117] Millar 1977: 513-14.

[118] An astonishing percentage of Caracalla's surviving coinage touches on religious themes, supporting Dio's claim that Caracalla presented himself as εὐσεβέστατος πάντων ἀνθρώπων. Dio Cass. 78.16.1; Manders 2012: 252, Rowan 2013: 112 fig. 38.

[119] Dio Cass. 78.17.1: ἐδίκαζε μὲν οὖν ἤ τι ἢ οὐδέν, τὸ δὲ δὴ πλεῖστον τοῖς τε ἄλλοις καὶ τῇ φιλοπραγμοσύνῃ ἐσχόλαζε.

[120] Hdn. 4.4.1.

[121] Icks 2012: 25 notes the impact of this tendency on imperial finances, specifically in the context of Elagabalic taxation.

[122] For example, only six coin types of Elagabalus reference *Pax*: Mattingly-Syndenham, *RIC Elag.* 21, 29, 125, 366-68. I should note that de Arrizabalaga y Prado has theorized a far higher level of intentionality in Elagabalic governance and self-presentation; he, for example, casts the *consilium Elagabali* as critical to the decision to foreground the emperor's relationship to Elagabalus. De Arrizabalaga y Prado 2011: 261. For a contrasting view of Elagabalic administrative practice, see Crook 1955: 86 ("[I]n the serious business of running the Empire it [the administrations of Macrinus and Elagabalus] is a mere lacuna.").

In the end, however, it is almost certain that this legal aspect of Elagabalus' administrative style was at least somewhat publicized, for the simple reason of its source. Dio was well outside of Rome for the events he describes,[123] and would not have passed on a vague rumor that went so contrary to his main point—similarly, it is unlikely that positive information about Elagabalus would have been particularly easy to come by after Dio returned to serve Severus Alexander.[124] This material is something of a known unknown—we know that the image of Elagabalus as more sober in the courtroom than outside of it was sufficiently widespread to catch Dio's attention, and we can suspect that it even reflected reality, but it is not at all clear how it was transmitted.

That said, we do know something about why it vanished so quickly. Elagabalus' fall from grace and erasure from the historical record were thorough and swift. In 221 Elagabalus was forced to adopt his cousin, fellow Emesene Iulius Bassianus Alexianus, as Caesar.[125] Historical sources describe the man who would become Alexander as almost immediately winning the favor of the soldiers by his demeanor and personal qualities;[126] furthermore, the boys' shared family began bribing the soldiers to turn on Elagabalus.[127] Either way, in March 222 Elagabalus was killed along with his mother in a military coup, and Severus Alexander was installed as Augustus.[128] At this point, evidence overwhelmingly suggests a conscious effort to write Elagabalus out of history—

[123] Dio Cass. 79.7.4; Bowersock 1975: 231.
[124] See Icks 2012: 79.
[125] See *CIL* 6.2999, Dio Cass. 79.17.2, Hdn. 5.7.1. The *vita Elagabali* preserves the acclamation of Severus Alexander as Caesar, but claims (contrary to the material evidence) that this acclamation occurred immediately after the death of Macrinus; SHA *Elag.* 5.1. See also Dušanić 1964.
[126] Hdn. 5.8.1-2.
[127] *ibid.* 5.8.3 states this explicitly, but all historical accounts describe the soldiers' immediate preference for Alexander, which given the politics of the time strongly suggests bribery. Dio Cass. 79.19.1, SHA *Elag.* 14.2; Icks 2012: 39-40.
[128] Dio Cass. 80.1.1; for a discussion of the exact date of Severus Alexander's ascension, see Butler 1908: 105-08.

the historians describe a vote by the senate to purge Elagabalus' official actions,[129] Elagabalus' name was removed from a large variety of inscriptions in a fashion consistent with earlier examples of *damnatio memoriae*, and we have already seen how die rations suggest that a large amount of Elagabalic coinage was melted down.

Most important for our purposes, however, are Elagabalus' treatment in two fields that may at first seem unrelated; that of portraiture and that of law. As we will see, Alexander's communicative program was particularly sensitive to the expressive effect of law and legal precedent from both Alexander and his cousin; seeing how Elagabalus was treated in these two fields shows a surprisingly coherent messaging campaign, one which combined the imagistic medium of portraiture—which is already generally understood as ideologically charged[130]—with the textual, nominally practical field of legal correspondence.

II. Erasure and Continuity in the Politics of Severus Alexander

If state communication under Elagabalus sought to portray the emperor as matching his father's piety and unique relationship to the divine, Alexandrian messaging focuses, by contrast, on broader administrative and religious continuities between Alexander and his Severan and late Antonine forebears, using Elagabalus as a sort of *bête noire.* The latter strategy appears to have been far more successful: Alexandrian messaging not only used traditional religious imagery and architecture to place the emperor within a narrative of legitimated Severan/Antonine rulership, but

[129] See Dio Cass. 79.21 (referring to the Senate voting to expel Elagabal from Rome), Hdn. 6.1.2-3 (referring to the demotion of Elagabalus' appointments).
[130] The signal work on ideological messaging in imperial portraiture remains Zanker 1988. For recent work on the diffusion of imperial imagery through portraiture, see Noreña 2011: 201-10.

also made the administration of state business itself a source of ideologically charged messaging. While surviving evidence of Elagabalic communications suggest greater religious than legal continuity with his predecessors, Alexander's treatment of Elagabalic legal materials—as well as his use of rescripts to juxtapose himself with other figures within the Severan and late Antonine lines—suggest that Alexander also employed legal work as a medium for self-representation and -legitimation.

A. Elagabalic Images

Elagabalus is the first Emperor since Domitian whose statuary was recarved soon after his death, as opposed to simply being destroyed.[131] Four statues of Elagabalus survive as recarved images of Severus Alexander. Figure 1 depicts the head of a monumental statue, currently in Naples at the Museo Archeologico Nazionale;[132] Figure 2 depicts a similar portrait in the Museo delle Terme;[133] and Figure 3 depicts a recarved head currently on display at the Nelson-Atkins Museum of Art in Kansas City.[134] A similar partially recarved head can also be found in the Braccio Nuovo at the Vatican Museum, having been discovered near the Centrale Montemartini.[135]

[131] Varner 2004: 190.
[132] Museo Nazionale Archeologico, #5993, also at Fittschen and Zanker 119.
[133] Palazzo Massimo alle Terme, inv. # 329.
[134] Nelson-Atkins Museum of Art, 45-66.
[135] Braccio Nuovo 3.24, inv. #2457 (Centrale Montemartini 2.81).

Figure 3.1. Head of Severus Alexander. Museo Nazionale Archeologico #5993, image from Fittschen & Zanker 1970: 250.

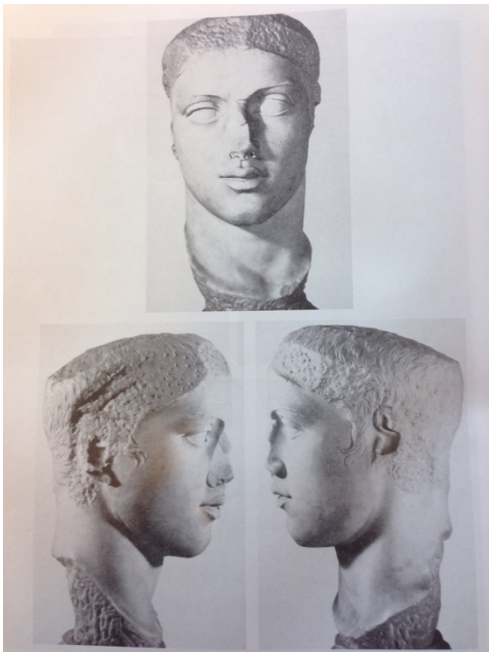

Figure 3.2. Head of Severus Alexander. Palazza Massimo Alle Terme, #329. Image from Varner 2004: fig. 194a-c.

Figure 3.3. Head of Severus Alexander. Nelson-Atkins #45-66; image available at http://search.nelsonatkins.org/collections/objectview.cfm?Start=1&ret=1&objectid=22120.

Each of these pieces shows clear evidence of reuse and recarving.[136] Eric Varner suggests that the statues were recarved due to "physiognomic similarities" between Elagabalus and Severus Alexander,[137] but this explanation seems too pat, particularly as regards the Naples statue (the face of which was removed and replaced entirely). It is not immediately clear what would make this statue especially well-suited to recarving, given that none of Elagabalus' facial structures were in fact reused, and the novelty of the technique—the old face was removed and an entirely new one attached—suggests a deliberate choice.

While some of these statues were recarved early in Severus' reign, and others left to stand until at least 225,[138] this refashioning is itself highly unusual at this point in Roman history. Rather

[136] Varner 2004: 190-92.
[137] *Ibid.* 190.
[138] Representations of Severus Alexander underwent a major shift in 225. Fittschen and Zanker 118-20. Based on this change, we can determine that the Naples and Kansas City portraits were

than attempting to erase the Elagabalic period, this self-conscious process, in which defaced statues were left to stand before a new face was grafted on, called attention to itself, making the act of *damnatio memoriae* into a conscious condemnation.

B. Elagabalic Laws

A similar phenomenon is visible in Alexandrian treatments of Elagabalic legal correspondence. While the vast majority of Elagabalus' legal opinions are lost, four rescripts are preserved that have been attributed to Severus Alexander but are better understood as products of Elagabalus. It should not surprise us that no legal opinions survive in Elagabalus' name; the legal consequences of an emperor's *damnatio memoriae* are nothing new.[139] But this renaming is—to my knowledge—unheard of. The four opinions are reproduced below.

> Whoever hurries to accuse of a public crime, shall not be granted an audience for that purpose, unless they have made a written claim beforehand and offered a bond for the bringing of the case.
>
> But if they were not present after the giving of bond, they should be told by an edict that they must come to try their case, and if they have still not been present, not only should they be punished extra ordinem, but furthermore they will be forced to pay any expenses which are associated with this matter and the expenses of coming to court.
>
> If your father has sold his home under compulsion by force, it will not be considered valid since it was not done in good faith: for a purchase in bad faith is void.

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fully recarved after 225, and the Montemartini before. Varner 2004: 190-92. Varner also hypothesizes that, given the prominent place of the Naples statue (which was originally found in the Baths of Caracalla), and the fact that the original carving of Elagabalus was not reshaped, but instead entirely removed and replaced with a portrait of Severus Alexander, the statue was originally left to stand defaced. *Ibid.* 190-91.

[139] For example, the *Historia Augusta* refers to a similar phenomenon after the assassination of Commodus and installation of Pertinax (SHA *Did. Iul.* 4.8) and—more cryptically—to Septimius trying and failing to annul the decrees of Didius Julianus; *Sev.* 17.5 (*Iuliani decreta iussit aboleri; quod non obtinuit*).

> Therefore, if approached the governor of the province will interpose his authority on your behalf, especially if you state that you are prepared to repay to the buyer that which was given on pretext of price.
>
> It is clear that, even if a seller specifically did not offer the right of eviction, an action on purchase lies once the good is evicted. [140]

These rescripts are almost certainly Elagabalic in origin, given their dates; explaining why requires a brief detour.

1. *Evidence for Relabelling: The Ascensions of Severus Alexander and Ulpian*

While we do not know with certainty the date of Elagabalus' death,[141] it is difficult to argue that Alexander was issuing rescripts under his sole authority in February of 222. 8.44.6 is more problematic, simply because the *vita* describes Severus Alexander ruling as *Augustus* by March 8;

[140] *Cod. Iust.* 9.1.3pr & 9.1.3.1 (Feb. 3, 222) (*Qui crimen publicum instituere properant, non aliter ad hoc admittantur, nisi prius inscriptionum pagina processerit et fideiussor de exercenda lite adhibitus fuerit. / Sin vero post satisdationem praesentes non fuerint, edicto admonendi sunt, ut veniant ad causam agendam, et si non adfuerint, non solum extra ordinem puniendi sunt, sed etiam sumptus, quos in eam rem et circa ipsum iter ad litem vocati fecerunt, dependere cogentur*.), 4.44.1 (Feb. 19, 222): *Si pater tuus per vim coactus domum vendidit, ratum non habebitur, quod non bona fide gestum est: mala fide enim emptio irrita est. aditus itaque nomine tuo praeses provinciae auctoritatem suam interponet, maxime cum paratum te proponas id quod pretii nomine illatum est emptori refundere.*), 8.14.6 (Mar. 8, 222): *Non dubitatur, etsi specialiter venditor evictionem non promiserit, re evicta ex empto competere actionem*; Coriat 1997: 105-06. Claude van Sickle first noticed that rescripts were attributed to Severus Alexander that were properly products of Elagabalus' reign in 1928; van Sickle 1928: 276.

[141] Our sources are not particularly clear on this point, and they enter into some conflict. Dio claims that Elagabalus reigned for three years, nine months, and four days from the battle of Antioch; given that Dio elsewhere dates the Battle of Antioch to June 8, 218, this would indicate a death date of March 11 222. Dio Cass. 78.39.1, 79.3.3. By contrast, the *vita Alexandri Severi* refers to Alexander addressing the senate as emperor *pridie Nonas Martias*; SHA *Alex. Sev.* 6.2. The Chronography of 354 lists Elagabalus' reign as—most likely—three years, eight months, and twenty-eight days from his proclamation, which occurred on May 16, 218. However, if we assume that the Chronography actually dates its reign from June 8 218 and the Battle of Antioch, it produces a date of transition that can be reconciled with that of the *vita*. See Butler 1908: 106-08.

however, that may be best understood as an argument against the *vita*'s dating. It is difficult to imagine that Severus Alexander would have been responding to rescripts two days after the murder of Elagabalus; far more likely that Dio's reckoning of Elagabalus' regnal dates is correct and Elagabalus was killed on March 11. It is simply more plausible that Elagabalus was handling legal correspondence three days before his assassination[142] than that the court of Severus Alexander could have returned to normalcy two days after. Our clearest *terminus ante quem* for the transition is March 31, 222, the date of the rescript preserved at *Cod. Iust.* 8.37.4:

> According to an opinion of Domitius Ulpianus, who is a praefectus annonae, a legal expert and my friend, a woman who has bargained to leave, upon her death, half of her dowry to a certain person is understood to have bargained that that portion of dowry be returned to her upon her death.[143]

This rescript can be confidently attributed to Severus Alexander, largely because of its preface; to state the obvious, this is a lot of ink to spend on a citation to Ulpian. The emperor here justifies his judgment by emphasizing its accordance with the opinion of his subordinate; given that imperial opinions required no justification to hold the force of law, it is difficult to understand why an emperor would use a contemporaneous jurist as supportive authority. Indeed, this kind of citation is extremely rare in the *Codex*, and after this rescript, the next emperors to be recorded citing Ulpian are Diocletian and Maximian in 290.[144] This citation can only be understood if we view it as *bestowing*, rather than borrowing, authority.

We know that Ulpian's rise under Severus Alexander was meteoric; both Eutropius and Festus refer to Ulpian serving as Alexander's secretary *a libellis*,[145] likely during his time as

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[142] Which the histories report as quite sudden: Dio Cass. 79.20, Hdn. 5.8.7-8.
[143] *Secundum responsum Domitii Ulpiani, praefecti annonae iuris consulti amici mei, ea quae stipulata est, cum moreretur, partem dimidiam dotis cui velit relinquere reddi sibi, cum moreretur eam partem dotis stipulata videtur.*
[144] *Cod. Iust.* 9.41.11.1.
[145] Eutrop. 8.23, Fest. 22.

Caesar, and he had been installed as *praefectus annonae* by the end of March 222.[146] By December of that same year Severus Alexander could refer litigants *ad Domitium Ulpianum, praefectum praetorio et parentem meum*.[147] Given Alexander's obvious solicitude for the jurist, it seems safe to assume that this rather extraordinary citation can be attributed to Alexander's court and not to that of Elagabalus, and we can state with confidence that Elagabalus had been disposed of by the end of March,[148] and that the rescripts collected at *Cod. Iust.* 9.1.3pr & 9.1.3.1, 4.44.1, and 8.14.6 were then relabeled.[149] A similar phenomenon may hold for two rescripts from late 218 which are attributed solely to 'Antoninus':

> Against those who have done business on your behalf, you may properly seek a judgment negotiorum gestorum: it shall not hinder the case if you brought it too late on account of military service, since this type of action may not be dismissed under the rules of temporal limitation.
>
> If you were under your father's power when you received an inheritance from Bassa Cassia, and you invested it on your father's orders, you gained it for him under the law of patriae potestas, and therefore that part which he legally sold you may not ask to be returned to you in exchange for the price.[150]

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[146] Syme 1972a: 408.

[147] *Cod. Iust.* 4.65.4.1. The exact nature of this appointment is a bit more confused—Aurelius Victor states that Elagabalus had appointed Ulpian to the praetorian prefecture and that Alexander merely kept him there (*Caes.* 24), but this is difficult to reconcile with his supervision of the *annona* in March. It is possible that the sources on which Victor relied were confusing Ulpian with Ulpius Iulianus, who served as Macrinus' praetorian prefect (and was, ironically, killed by his own men at the ascension of Elagabalus). Dio Cass. 79.34. Zosimus attributes this appointment to Alexander's mother overruling his own prior appointments of a Chrestus and a Flavianus (1.10), while Dio refers to Ulpian as appointed to the prefecture immediately upon Alexander's ascension, and as killing Chrestus and Flavianus in the course of correcting Elagabalus' excesses. 80.2.2, 80.1.1. See also Honoré 1994: 34-39.

[148] Honoré's palingenesia of rescripts follows Dio's dating; Honoré 1994.

[149] Van Sickle assumes that these documents were actually drafted by Severus Alexander, given that all of them date to the period of Elagabalus' and Severus Alexander's co-rule; van Sickle 1928: 276-77. However, such a reading cannot explain the treatment of the rescripts of 218, which survive but appear to have been presented as judgments of Caracalla; I discuss these immediately below.

[150] *Cod. Iust.* 2.18.8 (Jul. 27, 218): *Adversus eos, qui negotia tua gesserunt, negotiorum gestorum iudicio civiliter consiste: nec tibi oberit, si propter occupationes militares eam litem tardius fuisses exsecutus, cum hoc genus actionis longi temporis praescriptione excludi non possit*.), *Cod. Greg.*

On one hand, these rescripts were also issued by Elagabalus according to their date, and rescripts from Caracalla's period of sole rule bear the appellation *Antoninus*.[151] If these rescripts were re-attributed, this is the form they would take. On the other hand, Elagabalus also used the name *Antoninus*—it is entirely conceivable that it was simply assumed these rescripts had been issued by Alexander's putative father. *Antonini* could get confused, as the following Alexandrian rescript shows: "The divine Marcus and Antoninus—my father—ruled that the goods of those lost in desertion should be confiscated."[152] This error could also explain the differential treatment of the rescripts of Elagbalus and of Macrinus, none of whose legal correspondence survives.[153] Nevertheless, the rescripts of 222 were clearly relabeled.

2. *Technical Implications of Relabelling: Ulpian and the Archives*

So what can we learn from this relabeling? Before discussing the broader ramifications of Alexander's idiosyncratic practices, it may be useful to consider their technical implications. At first glance, this material appears to have been chosen selectively: only three rescripts survive from Elagabalus' portion of 222 as against 52 from Alexander's. If we assume that later compilers would

(Visi) 13.14.1 (Dec. 30, 218): *Si in potestate patris fuisti, cum hereditas Bassae Cassiae tibi obvenit, eamque patris iussu crevisti, iure patriae potestatis ei eam quaesisti. ideoque quod ab eo iure alienatum est, nulla ratione oblato pretio restitui tibi desideras*; see Mommsen & Krüger 1890: 233.

[151] Cf., e.g., *Cod. Iust.* 4.26.4.

[152] *Cod. Iust.* 12.35.4: *Si in potestate patris fuisti, cum hereditas Bassae Cassiae tibi obvenit, eamque patris iussu crevisti, iure patriae potestatis ei eam quaesisti. ideoque quod ab eo iure alienatum est, nulla ratione oblato pretio restitui tibi desideras.* For reference, Severus Alexander's only other citation to 'pater meus' refers to a 'divi Antonini' acting alone (*Cod. Iust.* 6.54.6), and he once refers to Septimius Severus as 'avus meus' (*Cod. Iust.* 6.50). In this case, Antoninus is almost certainly referring to Pius.

[153] For Macrinus' own legal training, see Hdn. 4.12.1.

not have known to discriminate against these rescripts (which seems likely, given that any such discrimination would probably lead to a total exclusion), the most logical explanation is that a lower proportion of Elagabalic rescripts from 222 survive than do those of Severus Alexander, and that this differential can only be explained by a conscious selection at the time of relabeling. However, a closer examination suggests that the bias creating this discrepancy is actually quite different, and far harder to explain. For one thing, the rescripts of Severus Alexander are by no means uniformly preserved within the *Codex*: as Figure 3.4 shows, Alexander's rescripts largely date to early in his reign.

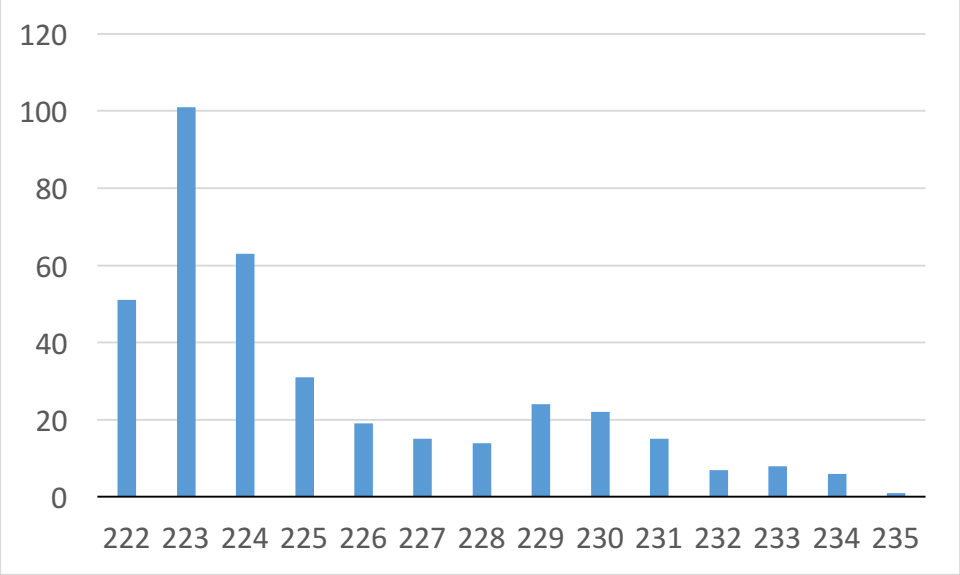

Figure 3.4. Rescripts of Severus Alexander, by year.

It is clear that the period from 222 to 224 was vastly more productive than the later years of Alexander's reign, particularly given that Alexander was not issuing rescripts for all of 222. The distinction becomes even sharper when we break rescripts down by month; this period of increased activity has fairly clear lines of demarcation that do not map neatly onto other events in the 220s.

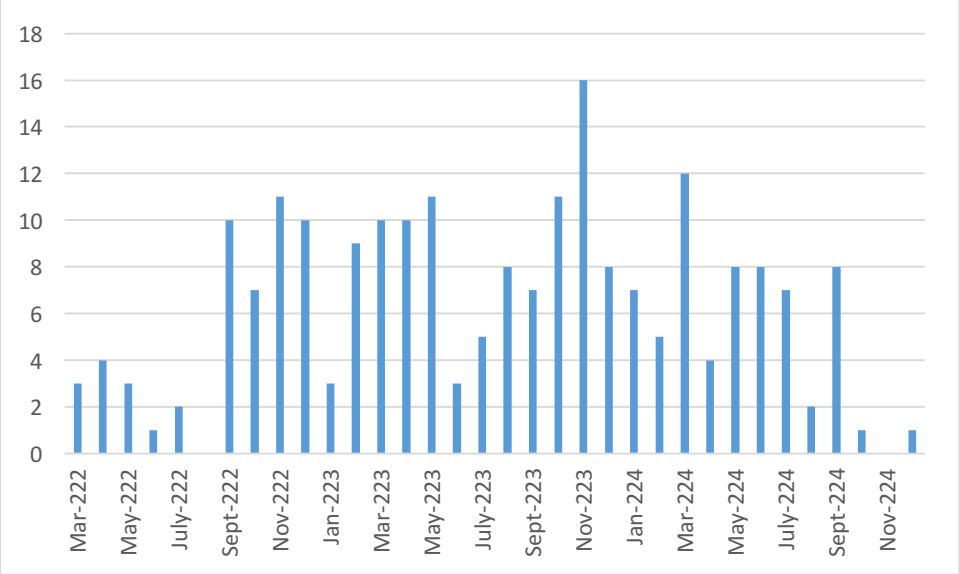

Figure 3.5. Rescripts of Severus Alexander, 222-24, by month.

As we can see, Alexandrian rescripts are not all that common on the ground until September of 222, at which point frequency rises significantly until the fall of 224. Tony Honoré has used the uptick in rescripts in 222 to place Ulpian's seizure of control of the praetorian prefecture in autumn of that year,[154] and this is certainly appealing. However, this theory cannot explain the decline of these rescripts, unless we alter our understanding of the date of Ulpian's death.

The historians record Ulpian as being slaughtered in a military coup that was attributed, at the time, to Epagathus,[155] but are silent as to the date of that event; most scholars now assume Ulpian was killed in 223.[156] Epagathus is recorded in Dio as being sent to Egypt due to his role in

[154] Honoré 1994: 39.
[155] Dio Cass. 80.2.4.
[156] Ulpian's death had been traditionally assumed to fall towards the end of the 220s. However, the publication of *P.Oxy* 2565 largely obliterated that dating; the document shows that Epagathus was already in Egypt, and not Rome, by the middle of 224. Since then scholars have generally,

Ulpian's assassination,[157] and is attested there in, at the latest, June of 224.[158] For reference, eight rescripts survive from June of 224. So, unless Dio is misremembering history and blaming Epagathus for something that actually occurred after his banishment from the capital, some major change in the administration of legal business occurred between 222 and 224 that is unrelated to Ulpian. Surprisingly, the change in emperors does not appear to have been related to this dramatic shift. Elagabalic legal correspondence survives at approximately the same rate as does Severus Alexander's from that same stretch of time, which suggests—tentatively—that this reappropriation of Elagabalus' rescripts may have simply been a wholesale renaming. The real shift was in late 222, when something caused Severus Alexander either to produce rescripts at a vastly higher rate, or to produce rescripts that were vastly more likely to survive, before abruptly returning to normalcy in late 224. The former seems more likely; since there is no major shift in form or content of rescripts during this period, it is hard to imagine why contemporaneous legal audiences or later compilers would have preferentially selected rescripts between September 222 and September 224.

It is tempting to follow Honoré's lead and link this sudden uptick in production to the influence of Ulpian, but that requires either rejecting Dio and placing Ulpian's death in late 224 or hypothesizing that Ulpian was replaced with someone of similar "immense energy and deep concern for the welfare of the state"[159] who then himself left office after less than a year. In the end, it is impossible to say with current evidence why so many of Severus Alexander's surviving rescripts date from this two-year period, but the most tempting answer may simply be to walk

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though not unanimously, placed Ulpian's death in 223. The date originates with Modrzejewski & Zawadzki 1967, followed by Faro 2002: 272. Richard Bauman is the most notable holdout, continuing to argue for a death date of 228 based on Dio's reference to being brought before Ulpian during his Pannonian command. Dio Cass. 80.4.2; Bauman 1995: 387-94.

[157] Dio Cass. 80.2.4.

[158] *P. Oxy* 2565, side a, lines 1, 6; Syme 1972a.

[159] Honoré 1994: 6.

away from Dio entirely. We know that Dio was in Pannonia for much of Ulpian's tenure, and was not present in Rome (where, presumably, he would have heard the gossip about Ulpian and Epagathus relayed above) until later.[160] Given that Dio describes a period of long unrest among the praetorians prior to Ulpian's death, this could be a fairly simple error of memory—Epagathus, a troublemaking praetorian, was in fact sent off to Egypt before Ulpian was killed by other troublemaking praetorians, a killing which hindered the vigorous production of rescripts that had marked his tenure. Bauman's reference to Pannonia is more difficult to dismiss, but given the chronological confusion of this portion of Dio's account more generally[161] I am strongly tempted to focus instead on the one empirical source we have; the enormous disruption in rescript production that seems to have occurred in the fall of 224. While speculative, this theory exchanges fidelity to Dio for what seems like a far more reliable source.

Another major implication of this corpus of rescripts is the importance of years in imperial legal recordkeeping. All surviving rescripts of Elagabalus date from 218 or 222. When these rescripts were renamed, someone assimilated the rescripts of 218 to the historically acceptable emperor who ruled before Elagabalus, i.e. Caracalla, and those of 222 to Severus Alexander for similar reasons. This point seems obvious, but it actually suggests a fair amount about the storage and treatment of imperial legal correspondence in the third century, a topic about which little is otherwise known.

These rescripts were not re-dated; opinions whose dates flatly contradicted their stated authorship could survive, but the ones that do survive all come from the right *year*. This suggests—strongly, but given the sample size not definitively—that imperial rescripts were stored

[160] Dio Cass. 80.4.2-5.1.
[161] Cleve 1988: 122-24.

annalistically. If the rescripts were stored chronologically without clear breaks by year, then a rescript from December of 218 would be no more plausibly attributed to Caracalla than one from early 219; instead, the year seems to have been far more salient than the month and day. Similarly, if rescripts were simply categorized by emperor then we would expect no difference at all between rescripts from different portions of Elagabalus' reign, except perhaps for some arbitrary date at which they became attributable to Alexander instead of Caracalla. The relabeling procedures described above suggest, instead, that rescripts were organized around their year of issuance.

3. *Erasure and Assimilation*

Having addressed these technical points, it is time to consider the broader implications of this relabeling for our understanding of Severan legal politics. The transition from Elagabalus to Severus Alexander was both ideologically and personally fraught; Alexander and his court had seen his cousin, a man with a very similar claim on the Roman throne, rejected by the praetorians and dragged through the streets. It seems clear from the hatred of Elagabalus evidenced by historians working under Severus Alexander that the two were not close—nevertheless, Elagabalus' ideological failures would have served as a valuable negative example for those working out the specifics of Alexander's messaging, and as a useful ideological foil in the final version of that message. We have seen how Severus Alexander's statuary program pointedly reappropriated Elagabalic materials; these rescripts show a similar sort of spoliation, but in the different medium of law. Reappropriation is not itself extraordinary in the context of a *damnatio memoriae*, but Alexandrian rescripts called attention to that reappropriation in a novel fashion, and appear to have deliberately extended Alexander's idiosyncratic messaging program into the legal

sphere. Normally, the *rescissio actorum* is total:[162] rescripts do not survive from other *principes damnati*. Severus Alexander presided over a very unusual treatment of both Elagabalic images and Elagabalic law.

C. The Power of Precedent: Intellectual and Dynastic Continuity in the Rescripts of Severus Alexander

On its own, this relabeling would show an ideological dimension to the production and maintenance of Alexandrian rescripts that has not yet been considered as a feature of the emperor's reign. However, these rescripts were not merely ideologically charged in their headings and dates; the arguments that they employed were themselves idiosyncratic, and can only be explained as a conscious and expressive choice. Consider *Cod. Iust.* 8.37.4, cited above, which justifies its reading of the law of stipulation by emphasizing its alignment with the views of Ulpian. Since the rescript is self-validating, this alignment does less to support the authority of the rescript than to make descriptive claims about Ulpian's intellectual and personal relationship with the young emperor, in that case for the jurist's benefit. A similar citational practice is visible throughout Alexandrian legal correspondence, but in the service of very different messaging needs. A useful example of this broader trend can be found at *Cod. Iust.* 6.54.6:

> The form of the judgment is fixed, under the action *fideicommissi servandi*, that a person to whom security is not given for a legacy or trust may come into possession of those things which are part of the inheritance itself (or are absent from it due to fraud), or else into the heir's own goods if security is not given after six months from when it is first sought, according to a constitution of the Divine Antoninus, my father.[163]

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[162] Sautel 1956: 467-68 ("La *rescission actorum* reálise une destruction totale de l'activité du tyran."), Vittinghoff 1936: 96.

[163] *Certa est forma iurisdictionis, qua fideicommissi servandi causa in possessionem rerum, quae in causa hereditaria sunt aut dolo malo esse desierint, is, cui legati vel fideicommissi nomine satis*

Here, the citation is more obviously on point: the opinions of *Divus Antoninus*, *pater meus* carry a weight that those of Ulpian do not. But even so, the invocation of prior imperial opinion is as logically unnecessary as it is generically idiosyncratic. I write as a citizen of a country governed by common-law principles; as Mirjan Damaška put it, binding judicial precedent is the "principal fauna" of the unruly ecosystem that is the common law.[164] When American courts emphasize the accordance of any particular opinion with prior cases, it serves as a normal—and in fact necessary—component of legal argumentation.[165] By contrast, rescripts are binding by definition; since the will of the sovereign has the force of law, a rescript is valid as long as it reflects the will of its proponent. Accordingly, a rescript can often be a simple, summary statement of the law as the sovereign understands it: "The governor of the province will not neglect to subject those who have taken out boundary stones to the extraordinary punishment."[166] Arguments from prior imperial precedent, such as the citation to Caracalla above, are quite unusual in the *Codex Justinianus*; however, they are far more frequent in Alexandrian rescripts than in those of any emperor before or since.

To define terms, the particular device I call an "argument from precedent" entails rhetorically invoking a prior emperor's legal decisions in order to lend support to one's own legal decisionmaking. Often, as in 6.54.6, the exact mechanism by which the prior invocation supports

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non datur, mittitur vel in proprias res heredis, si fideicommisso satis non fit post sex menses, quam peti coeperit, secundum Divi Antonini patris mei constitutionem.

[164] Damaška 1986: 43.

[165] See, for example, Ariz. State Leg. v. Ariz. Ind. Redistricting Comm'n, No. 13-1314, 135 S. Ct. 2652, 2668 (2015) ("In sum, our precedent teaches that redistricting is a legislative function, to be performed in accordance with the State's prescriptions for lawmaking, which may include the referendum and the Governor's veto.").

[166] *Cod. Iust.* 9.2.1: *Eos qui terminos effoderunt extraordinaria animadversione coerceri debere praeses provinciae non ignorabit.*

the statement is not explicit—the precedent may form part of an argument from authority (Emperor X interpreted the law in such a way, and because Emperor X was a good emperor his view of the law is correct and should be followed), or an argument from agreement or continuity (Emperor X interpreted the law in such a way, and regardless of whether or not that interpretation would be the best interpretation at the first instance, it is desirable that interpretations remain consistent over time). These "arguments from precedent" share, essentially, three claims, two of which are descriptive and one normative:

1) A prior emperor decided a similar question;
2) That emperor decided it in a certain way;
3) It is a normative good that the same question now be decided in the same way.

By my count, there are 57 such arguments from precedent in the *Codex Justinianus*;[167] again, this is a far rarer sort of argument than one might expect from reading Anglo-American caselaw. That said, it is rarer in some emperors' rescripts than in others'. In particular, far more of these arguments are attributed to Severus Alexander than to anyone else, as Figure 3.6 demonstrates.

[167] I arrived at this list by searching for forms of *divus*, *secundum*, and *constitutio* in the *Codex*: as it happened, all such arguments that listed an emperor specifically referred either to the emperor or his memory as *divus*. I then sorted cases where an emperor's prior opinion was cited as supportive authority from cases where it was distinguished away or simply disagreed with (see *Cod. Iust.* 5.4.25.3), and from cases where the emperor's prior actions themselves gave rise to the dispute requiring intervention (such as *Cod. Iust.* 9.51.6). The full list is provided at Appendix II.

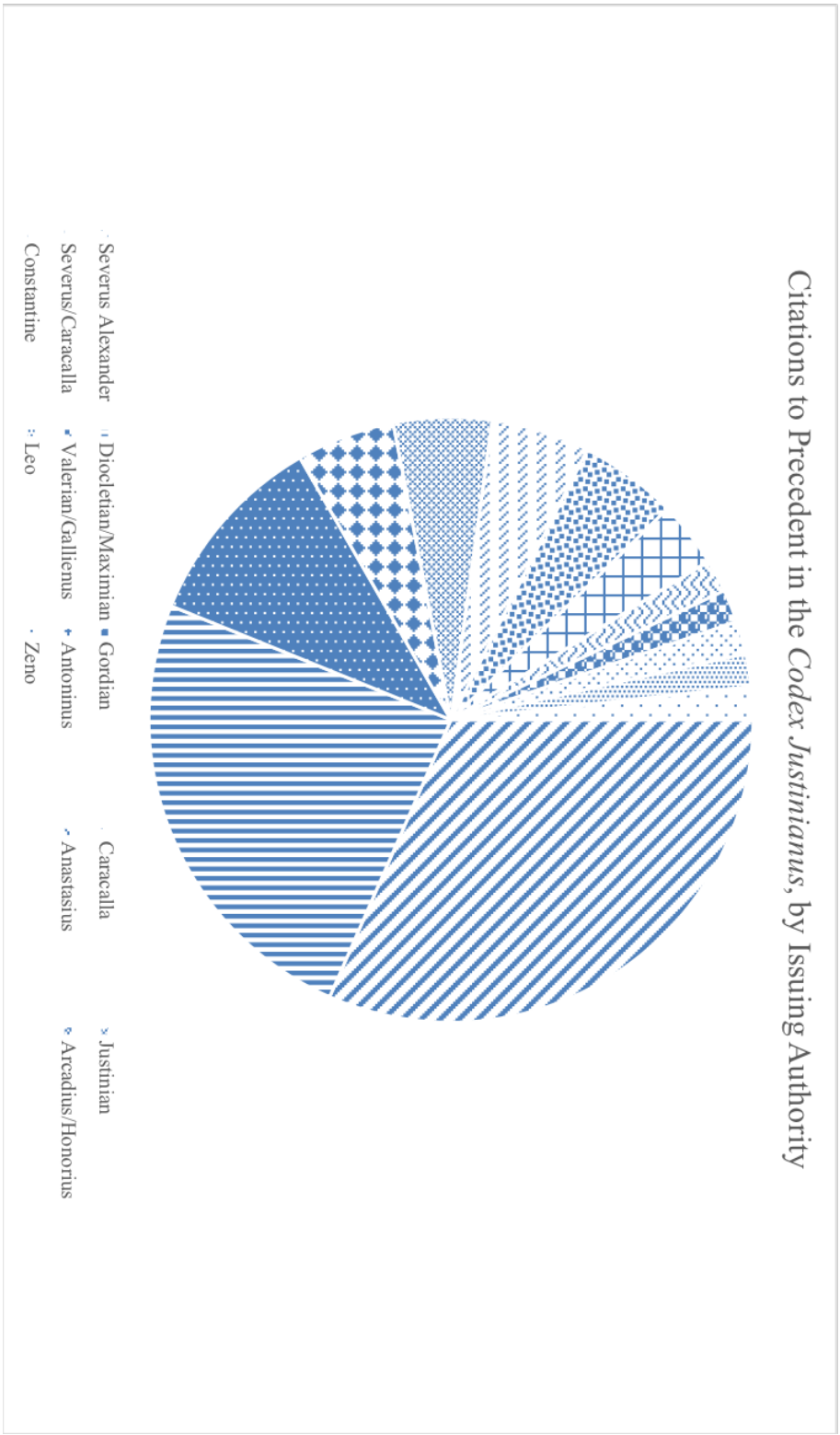

Figure 3.6. Invocations of precedent in the *Codex Iustinianus*.

Severus Alexander is responsible for a third of these invocations of precedent, despite not being particularly well represented in the *Codex Justinianus* as a whole—only 530 rescripts are attributed to Severus Alexander, or 7% of the total corpus. By contrast, Diocletian and Maximian (the next most frequent invokers of precedent) form nearly 30% of the *Codex*. Overall, Alexandrian rescripts are approximately four times more likely than average to invoke the opinions of prior emperors; furthermore, they do so in ways that reinforce the same historical narrative visible in other aspects of Alexandrian representation and communication.

1. *Familial Citation*

Severus Alexander's invocations of precedent are not only unusual for their frequency. Alexander cited a particular subset of emperors, and did so with language that highlighted his specific connection to those emperors. Of Alexander's eighteen invocations of precedent, a full sixteen refer to emperors with whom Severus Alexander specifically claimed a familial relationship, or refer to that relationship itself; these rescripts cite *divi parentes* 6 times,[168] Pius once,[169] Marcus Aurelius 5 times,[170] Commodus twice,[171] Septimius Severus once,[172] and Caracalla 3 times.[173] Alexander claimed to be the son of Caracalla, and thus the grandson of Septimius Severus, who

[168] *Cod. Iust.* 4.1.2, 6.21.6pr, 7.8.6, 9.9.6.1, 9.22.2, 10.60.1.
[169] *Cod. Iust.* 4.65.4. In addition, as discussed above, Alexander cites what appears to be a joint rescript of Pius and Marcus Aurelius and refers to Pius as *Antoninus, pater meus* at 12.35.4. While the precedent is best attributed to Pius, I would argue that the document instead invokes Caracalla.
[170] *Cod. Iust.* 4.57.2, 5.62.5, 6.54.7, 7.11.3, 12.35.4.
[171] *Cod. Iust.* 4.57.2, 6.54.7.
[172] *Cod. Iust.* 6.50.5.
[173] *Cod. Iust.* 2.1.8, 4.65.4pr, 12.35.4. The remaining citations are to Hadrian (6.50.4) and to *Divi Principes* (9.23.3).

presented himself as the son of Marcus Aurelius and the brother of Commodus;[174] this web of citation matches the family that had already been invented for Severus Alexander. Furthermore, the rescripts underline the relationships between Alexander and the authority he cites; In addition to citing *Antoninus, pater meus*, Alexander refers to Septimius Severus as *avus*.[175]

This habit of citing to family members is surprisingly consistent across rescripts of Severan monarchs. Caracalla invoked prior precedent three times, each to Septimius Severus and and each time referring to his Severus as his father.[176] Another three rescripts invoking precedent survive from Severus' period of joint tenure with Caracalla: one cites "*divus pater meus*" (presumably Marcus Aurelius),[177] one cites Marcus by name,[178] and the only rescript of either Severus or Caracalla to cite a non-relative describes the emperors' judgment as following that of Pertinax, whom Septimius Severus publicly deified and whose name he added to his own.[179]

One important innovation in the rescripts of Severus Alexander, however—besides simply citing to precedent so much more frequently—is adding Commodus into his intellectual, legal, and familial history. Commodus was a locus of controversy for Septimius Severus; after initially aligning himself with Commodus' killer Pertinax, Severus eventually deified Commodus, using the opportunity to pointedly identify himself with the Antonine dynasty into which he had adopted

[174] See Dio Cass. 76.7.4: μάλιστα δ' ἡμᾶς ἐξέπληξεν ὅτι τοῦ τε Μάρκου υἱὸν καὶ τοῦ Κομμόδου ἀδελφὸν ἑαυτὸν ἔλεγε, τῷ τε Κομμόδῳ, ὃν πρώην ὕβριζεν, ἡρωικὰς.
[175] *Cod. Iust.* 6.50.5.
[176] *Cod. Iust.* 5.16.3pr: *ex mea et Divi Severi patris mei constitutione firmata est*), 9.2.1 (*sicut iam pridem mihi et Divo Severo patri meo placuit*, 11.35.1: *tam mihi quam Divo Severo patri meo placuit*.
[177] *Cod. Iust.* 7.12.1pr.
[178] *Cod. Iust.* 6.26.2.
[179] For the deification of Pertinax, see Dio Cass. 75.4.1-5.5; Arce 2010: 309-15.

himself, and against the senate that had condemned his adopted brother.[180] That said, under Severus Alexander this loyalty extended into the legal sphere:

> If Chreste sold a slave who was her natural son, on the condition that the buyer would free him, even if he is not manumitted he is a free man according to a constitution of the Divine Marcus and Commodus to Aufidius Victorinus.
>
> You should know that the Divine Marcus and the Divine Commodus have ruled that security for a trust or legacy can be remitted; however, for man to whom a usufruct is given, the security required to ensure that he should employ his usufruct with the judgment of a good man cannot be remitted by a will.[181]

These are the only two citations to rescripts of Commodus in the *Codex Justinianus*; no other Severan cited his opinions as authoritative, and nor did any emperor since. It is suggestive that both of these citations are to rescripts issued by Commodus and Marcus acting jointly; while the sample size is too small to speak with confidence, it may be that rescripts issued by Commodus acting under his own authority had already been removed from official archives by the time of Commodus' deification, meaning that rescripts from Commodus' co-regency would be the only ones available to those writing rescripts in this period.[182] Regardless, these citations show a very similar tendency to that already discussed in the context of Elagabalic rescripts. The messaging goals that informed imperial approaches to 'ideological' media (such as the conspicuous reappropriation of Elagabalic materials, or the pointed restoration of Commodus) also explain the idiosyncrasies present in the Alexandrian rescripts.

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[180] For Severus' condemnation of the senate in the context of Commodus, see Dio Cass. 76.8; Birley 1989: 198-99.

[181] *Cod. Iust.* 4.57.2: *Si ea lege Chreste servum, sed naturalem filium venumdedit, ut emptor eum manumitteret, quamvis non est manumissus, ex constitutione Divorum Marci et Commodi ad Aufidium Victorinum liber est*, 6.54.7: *Scire debetis fideicommissi quidem et legati satisdationem remitti posse Divum Marcum et Divum Commodum constituisse: ut autem boni viri arbitratu is, cui usus fructus relictus est, utatur fruatur, minime satisdationem remitti testamento posse.*

[182] Further evidence of this theory is that rescripts from Commodus' period of sole rule appear in juristic literature from this period; for example, *Dig.* 35.3.6 (Callistratus, de Cognitionibus), 40.10.3 (Marcianus, Institutiones), 49.14.31 (Marcianus, Institutiones).

2. *The Purpose of Precedent*

So what can this approach to legitimation and messaging tell us that we do not already know? Alexander's use of law and administration as sites of imperial messaging certainly forms a marked contrast with the very public failures of his predecessor. We have already seen how Elagabalic messaging used public religious devotion in an attempt to mimic Caracalla's self-legitimizing tactics. When Severus Alexander took the throne, roughly the same tools were deployed to opposite effect; Alexandrian communications, in contrast with those of Elagabalus, minimize personal idiosyncrasy and cast the young emperor as a traditionalist, drawing legitimacy from his position within an unbroken Severan/Antonine line. Under Elagabalus, the imperial ideological apparatus appears to have focused on traditional tools of imperial propaganda like monumental architecture, public performances and claims of divine favor; while these certainly do not drop off under Severus Alexander, we can also see the return of a particularly Septimian communication technique; specifically, the use of lawgiving as a political tool. Unlike Septimius, however, Severus Alexander did not just put forward laws that suited his specific needs, but used those laws as a new locus of ideological communication, putting forward the same themes that animated Alexandrian coinage, statuary, and other traditional messaging devices. This communication entailed reappropriating Elagabalic legal opinions in the same way as Elagabalic statuary and buildings, and using citation to situate Alexander within an official, legitimating narrative of continuous and harmonious dynastic rule. The rescript system had always, inevitably, combined legal interpretation with moral philosophy and a certain kind of imperial history, putting

forward the emperor as the ultimate source of justice and fairness;[183] it is only under Alexander, however, that we can see these messaging desiderata expressed in specific legal opinions, and those opinions thus integrated into a broader narrative of tradition and continuity.

* * * * *

Of course, to attribute this innovative strategy to Alexander himself would be overconfident to say the least. In the best of circumstances, the messaging apparatus that buttressed an emperor's claims to rule was too large and diffuse to allow for specific micromanagement; Severus Alexander in particular, who gained the throne at thirteen and whose early reign appears to have been entrusted to subordinates,[184] would likely not have engaged in such a conscious strategy. But someone did. The relabeling of Elagabalic rescripts is difficult to place in a specific time; while it most likely occurred under Severus Alexander, it is not inconceivable that these rescripts were employed under Elagabalus' name at first. By contrast, Alexander's unusual employment of imperial precedent is somewhat easier to date: no rescript citing to prior emperors can be dated to after 225, with the vast majority falling within the period of increased rescript frequency between 222 and 224.[185] Assuming Tony Honoré's theory that rescripts were composed by secretaries *a libellis* with individual styles, this tendency cannot be attributed to any one secretary; Honoré suggests a change in secretary in October of 223.[186] The obvious temptation is to attribute this phenomenon to

[183] Millar 1977: 465-77, Noreña 2011: 64-66, Tuori 2016b: 215.
[184] See Dio Cass. 80.1.1.
[185] The dated rescripts employing precedent are: *Cod. Iust.* 2.1.8 (Oct. 1, 225), 4.1.2 (Apr. 8, 223), 4.57.2 (Dec. 5, 222), 4.65.4pr (Dec. 1, 222) 6.21.6 (Apr. 20, 225), 6.50.4 (Dec. 28, 222), 6.50.5 (Oct. 18, 223), 6.54.6 (Jan. 8, 225), 6.54.7 (Feb. 20, 225), 9.9.6.1 (Aug. 12, 223), 9.22.2 (May 5, 223), 9.23.3 (Mar. 16, 223).
[186] Honoré 1994: 98.

Ulpian—however, the evidence is nowhere near strong enough to make such a claim with confidence. What matters is that, at least early in Severus Alexander's reign, the imperial legal service composed and distributed rescripts with unprecedented sensitivity to larger ideological goals. While emperors before and after Alexander adopted the pose of the lawgiver in public or quasi-public hearings,[187] the rhetoric and reasoning of Alexander's legal correspondence were themselves political tools, whose meaning and impact have been heretofore ignored.

III. The Law and the Emperor

Elagabalus and Severus Alexander faced, in many ways, a similar problem. Both emperors had violently seized the throne from a hated predecessor, and both tried to compensate for their youth and lack of personal achievement with a highly curated presentation intended to recall the last legitimate emperor, Caracalla. In Elagabalus' case, that presentation took the form of ostentatious religiosity, and backfired severely; no Syrian meteorite deity could match a hostile senate or Praetorian Guard. Severus Alexander's public image, by contrast, merged the religious devotion of his Severan forebears—stripped of his cousin's Emesene idiosyncrasies—with a much more standard message of dynastic continuity and tradition. The novelty lay less in the message than the medium; in addition to the standard messaging tools of the Principate, Alexander's reign saw rescripts develop into their own form of ideologically charged imperial speech.

These rescripts thus exploited a process of legal centralization that placed the emperor in the center of Roman legal culture, while yet simultaneously above and outside it. The emperor who makes the law is also, in essence, deprived of its protection: since the emperor's primacy

[187] Millar 1977: 228-40.

within the legal system was predicated on his survival, killing an emperor might not lead to retribution if such an act were considered acceptable under the rules as reconstituted once order was restored and a new leader chosen. While Martialis (the soldier who killed Caracalla) faced the expected penalty for regicide,[188] Pertinax spared the killers of Commodus.[189] As explained by a social theorist of a different period, coming at the king is not forbidden—missing is.[190] It is this particular quirk of Roman law, or of law more generally in the monarchic context, that made Alexander's performance both so plausible and so urgent; Alexander's court had sufficient control to make the very act of legal argument into imperial propaganda, but not so much control that they would not need to.

This state of affairs was not new. While the Emperor was understood to both supersede and generate *ius* as far back as the time of Augustus,[191] Hadrian's consolidation of the laws under firm Imperial control[192] placed this pre-existing instability—plenty of emperors before Hadrian had died violently, after all—at the epicenter of Roman politics, and led to the development of the institutions that became loci of imperial messaging in this period. Giorgio Agamben's work on the rule of law in autocratic states refers to their leaders as existing in a "state of exception:" the autocrat can create law at will, and is in no way bound by it, but also does not benefit from its protection. Because the ruler in such a system is the source of all law, her death or displacement disrupts the very systems that might punish her attacker.[193] This forces the autocrat to rely on a variety of other strategies to protect her person, to a far greater extent than the average citizen who

[188] Dio Cass. 78.5.
[189] The three were not punished until the end of Julianus' tenure: *ibid*. 73.16.5.
[190] The Wire, "Lessons" (2002).
[191] Tuori 2016b: 81-93.
[192] For a useful summation of our sources discussing the formation of Hadrian's Edict, see Tuori 2006: 220-24.
[193] Agamben 2008: 4-6.

can rely on strong disincentives to violence in order to protect herself.[194] Both Elagabalus and Severus Alexander relied primarily, like nearly all emperors before them, on the control and deployment of violence—both paid the Praetorian Guard handsomely, and the coup that brought down Elagabalus was likely a result of Julia Maesa's bribing the guard to turn on the young emperor. But both emperors also oversaw aggressive ideological campaigns to win over other major power centers in Roman life and present themselves as legitimate rulers. Elagabalus' strategy, focused on adapting the religious presentation of Caracalla to his Emesene practice, alienated and disturbed his audience; Alexander found greater success by presenting his reign as a return to traditional morality.

That said, for all his public idiosyncracies we have no evidence of Elagabalic law serving as a part of this broader communications strategy. By contrast, Severus Alexander not only used the *act* of lawgiving to legitimate his rule, but also employed legal documents themselves as communicative devices, similar to a public monument or triumphal display. Alexander's citations to precedent aggressively situated him within continuities of imperial power and Severan lineage. Perhaps most significantly, under Alexander the precedents of Elagabalus were treated in much the same way as his temples and statues; with a combination of selective destruction and strategic, highly public reappropriation.

This process not only complicates our understanding of the emperor's role as lawgiver in the Severan era, but also raises more normative questions about the effect of such behavior on the idea of the rule of law. Generally speaking, we imagine the greatest threat to law in a state of exception as arising from the autocrat's potency, specifically her monopoly on legal production—an incompetent ruler will provide arbitrary or incompetent rulings, and nothing much can be done

[194] See Bryen 2013: 133-40.

about it. However, the *rescissio actorum* generally, and Alexander's manipulation of Elagabalic law specifically, show how an autocrat's impotence can also retard the development of the law.[195] The total erasure of rescripts from 221, as opposed to the at least partial preservation of those from the beginning of 222, suggests that a huge number of legal precedents that were just as competently drafted as any other and that came from what would have at the time been legitimate imperial authority were excised from the corpus of available legal guidance. Presumably, at least some of these rescripts would have dealt with issues of first impression, or addressed problematic or confusing situations within Roman legal life; their removal from circulation would not be without cost. The rule of recognition[196] separating legitimate from illegitimate promulgations of rules was neither rational nor predictable, relying on an emperor's ability to safely negotiate the fraught political environment of the late Principate and, frankly, to stay alive. Such a system included no consideration of the possible effect of excluding an emperor's opinion; if the circumstances of a power transfer required an emperor be condemned, then his rescripts went away. For those who relied on imperial pronouncements to govern their everyday lives and clarify their legal obligations, this behavior could have been catastrophic.

CONCLUSION

The rescript system was one of the most involved and individualized routes of communication between the emperor and his subjects, both highly practical and ruthlessly ideological. By the

[195] See Sautel 1956: 474-75.
[196] I here adopt H.L.A. Hart's definition of the 'rule of recognition' as a heuristic by which legal subjects can determine whether any given rule is in force within the society to which that subject belongs, and relatedly whether deviation from that rule will result in some type of formal or informal sanction. Hart 1994: 94-95.

Severan period, Roman legal production was one of many avenues for emperors to govern their subjects' lives; like every other tool of governance, however, these legal opinions were subordinated to, and contingent upon, imperial ideological needs. Severus Alexander simply made innovative use of a communicative medium that was already integral to the political equilibrium of Severan Rome. My next and final chapter will shift focus to another center of legal culture in this period—specifically, to juristic writing—and show how jurists responded to the political maneuvering that marked Severan Rome.

CHAPTER IV

JURISTIC RESPONSES TO SEVERAN POLITICS

INTRODUCTION

From emperors, to jurists. This chapter breaks from the focus of the earlier portions of the dissertation—specifically, from imperial legal practice as a tool for self-representation—but not from its basic question: how did the specific political environment of Severan Rome impact lawmaking of the early third century? More specifically, until now I have largely focused on imperial communications clarifying or altering legal rules within the Roman system. These communications were binding, based largely on the position from which they were given; while I argue these statements did a great deal more than simply alter law, their force remained clear. However, these were not the only sorts of legally inflected interactions produced or valued within the legal system of the early third century. From almost the very beginnings of Rome's political and literary culture,[1] high-status individuals had claimed to interpret or explain legal principles in a manner totally unconnected with any work they might perform on behalf of the state; this genre—popularly termed juristic work, at least in its written form—also reached its apex during the Severan period. The sixth-century compilation of juristic writing known as the *Digest*, which comprises, by far, our greatest record of juristic production, takes the vast majority of its excerpts from Severan juristic writing;[2] of the five most prominent jurists cited in late antiquity, three wrote

[1] See Schiavone 2012: 53-73.
[2] Based on Lenel 1960.

primarily under Severan rule and one immediately after;[3] and Severan emperors were unusually likely to hire jurists for major roles within the imperial bureaucracy. For example, Papinian is extensively referred to in both literary and epigraphic sources as *praefectus praetorio* under Septimius Severus, Paul served in multiple imperial *consilia* and may have held a prefecture, and Ulpian was *praefectus annonae* and *praefectus praetorio* under Severus Alexander while also being referred to in contemporary historiography as a sort of regent to the young emperor.[4] This extraordinary florescence of juristic work under the Severans offers another window through which to view the increasing polyvalence of legal talk in the early third century; these authors—occupying a position somewhere between the bureaucrat and the scholar—not only debated the correct interpretation of pre-existing legal rules, but also the functioning of law in an increasingly bureaucratized state and the proper place of that state in a discipline that had started as something closer to a theology than a handbook for governance.[5]

These concerns are, obviously, somewhat distinct from those of the Severan monarchs whom I have discussed until now. But the environment in which these jurists wrote was dominated

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[3] Based on the Law of Citations (at *Cod. Theod.* 1.2.4); for more on the Law and its preference for Severan and post-Severan jurists, see *infra* note 155.

[4] See *Cod. Iust.* 8.37.4 (Sev. Alex.), 4.65.4 (Sev. Alex.), Dio Cass. 80.1.1 (Ἀλέξανδρος δὲ μετ᾽ ἐκεῖνον εὐθὺς αὐταρχήσας Δομιτίῳ τινὶ Οὐλπιανῷ τήν τε τῶν δορυφόρων προστασίαν καὶ τὰ λοιπὰ τῆς ἀρχῆς ἐπέτρεψε πράγματα). Herodian gives a somewhat similar account, describing Alexander's regents at 6.1.2 as being a council of sixteen senators (τῆς συγκλήτου βουλῆς . . . ἑκκαίδεκα ἐπελέξαντο), but also referring αt 6.1.6 to Alexander's mother protecting him from bad influences by putting him in constant contact with jurists and lawyers (δικάζειν οὖν αὐτὸν ἔπειθε συνεχέστατα καὶ ἐπὶ πλεῖστον τῆς ἡμέρας, ὡς ἂν ἀσχολούμενος περὶ τὰ κρείττονα καὶ τῇ βασιλείᾳ ἀναγκαῖα μὴ ἔχοι καιρὸν ἐς τὸ ἐπιτηδεύειν τι τῶν ἁμαρτημάτων).

[5] There is, of course, a broad literature on the diachronic development of Roman legal culture and its reaction to the Principate; the standard reference on this interplay remains Bauman 1989, but for a sample of other recent work on the topic see Schiavone 2012 367-89, Tuori 2016b. See also Guarino 1990: 29-33, Riccobono 1953: 174-88 (including a discussion of earlier scholarship on the problem from the nineteenth century onward), Wieacker 1988: II.28-31, and for a discussion of the development of juristic literature and practice in the late Republican period see Frier 1985: 139-97.

by similar political considerations, and juristic writers who failed to pay the proper deference to imperial prerogatives paid a price.[6] Our understanding of Roman law is shaped by the Severan jurists, and their understanding of their own literary or administrative project was shaped by the political moment in which they wrote.

In particular, analyzing juristic writing through this political lens reveals two highly unusual features of Severan legal thought, both of which reflect broader tendencies in elite conceptions of law in the third century. The first is the appearance of what we might call "juristic policymaking"—of legal argumentation that presumes universal promulgation and reaction to particular rules, and then evaluates those rules according to their desirable or undesirable effects. This sort of lawmaking is a commonplace in contemporary American legal practice, both in actual legal decisions[7] and in scholarship (arguably a closer parallel with juristic work).[8] While this material is rare within the *Digest*, even its occasional appearance is remarkable in private legal work, and I argue that it reflects broader changes in the relationship between the juristic class and imperial administration in the Severan period. The second phenomenon I discuss is the tendency among later jurists (most especially Macer and Marcianus) to de-emphasize imperial personality

[6] For two of the more prominent Severan jurists, a high price indeed. Papinian was killed on the orders of Caracalla—on which see Dio Cass. 78.4.1-3, SHA *Car.* 8.1-8—and Ulpian fell victim to a military uprising, described by Dio at 80.2.2.

[7] One frequently cited example of this phenomenon is Judge Sneed's opinion in *Union Oil Co. v. Oppen*, 501 F. 2d 558, 569-71 (9th Cir. 1978), which looked to policy analyses such as Calabresi 1970 and Coase 1960 to determine how tort law could most efficiently distribute the costs of the devastating Santa Barbara oil spill of 1969. For a strong critique of Sneed's economic reasoning in *Oppen*, see Posner 1971: 298-301.

[8] The paragon of this sort of academic work is Calabresi 1970, and this sort of reasoning has become most dominant in discussions of private law; see, for example, Warren 1987: 777 ("I see bankruptcy as an attempt to reckon with a debtor's multiple defaults and to distribute the consequences among a number of different actors."). However, public law scholars also engage in this sort of effects-based reasoning; see Sunstein 2014: 584 (claming, as a justification for consumer disclosure requirements, that such requirements have "protected consumers against serious economic harm, saving many millions of dollars.").

in their own work, and specifically to cite *rescripta Principalia* or other anonymized forms of power rather than named sovereigns. This practice not only challenges our understandings of the root of imperial *auctoritas*, but also suggests how the idiosyncratic goals or customs of juristic culture could interact with the political instability of the third century to produce a new, institutionalized vision of law—one which could provide legal certainty[9] in the absence of the imperial continuity or stability that had marked the Antonine period. Together, these features of Severan juristic writing suggest the emergence of a subtly different legal order, and show how that order arose not necessarily from disinterested or altruistic changes in the organization of legal knowledge, but from a variety of different actors seeking to preserve or enlarge their position and prestige.

This chapter proceeds in three parts, in addition to an introduction and conclusion. Part I discusses the basic outlines of juristic practice before and during the Severan period, with a particular focus on the increasing employment of juristic writers in high posts within the Severan bureaucracy. Part II links these employment practices to the sorts of policy considerations visible in Severan juristic writing, arguing that these arguments employ a sort of rule-consequentialist[10] reasoning that borrows its analytic frameworks from administrative, rather than scholarly, practice. Part III looks from the arguments of Severan juristic texts to the language of those texts itself, arguing that the way in which these texts address or engage with imperial power suggests a change

[9] For a discussion of Roman legal responses to uncertainty—and in particular of how 'factual doubt' and legal uncertainty coexisted as obstacles to adjudicative clarity—see Giaro 2011: 219-22.

[10] I roughly follow Hooker in defining rule-consequentialism as holding "that the code whose collective internalization has the best consequences is the ideal code;" see Hooker 2000: 2, *infra* notes 95-96.

in how imperial legislation was understood to function, and in the particular networks of obedience and sovereignty from which that legislation derived its normative force.

I. The Rise (and Fall) of the Roman Jurists

Juristic writing feels like a commonplace. Given the enormous importance of the *Digest* for our understanding of Roman law—and given the continuing importance of scholarly treatises and other sorts of non-governmental intellectual production in approaching contemporary legal questions—law seems like a perfectly reasonable subject about which to write, and juristic practice a perfectly reasonable part of broader traditions of Roman technical literature that encompassed such diverse fields as farming, medicine, and architecture. That said, close examination of juristic practice reveals a stranger and more contingent literary culture, one which repeatedly adapted to changing theories of governmental authority throughout its long history.

A. Juristry Before Hadrian

While we do not have access to the earliest juristic writing, some form of the practice may have ancient, near-mythical roots. Dionysius of Halicarnassus refers to Romulus setting forth the basic duties owed by πατρίκιοι to πελάται; one of these was explaining the laws in force.[11] While Dionysius wrote far later, his evidence suggests that legal knowledge—by which I mean, in a broad sense, some understanding of what rules might be applied in adjudicating individual cases, and

[11] Dion. Hal. 2.10: τοὺς μὲν πατρικίουςἔδει τοῖς ἑαυτῶν πελάταις ἐξηγεῖσθαι τὰ δίκαια, ὧν οὐκ εἶχον ἐκεῖνοιτὴν ἐπιστήμην. On the patron-client relationship in the early republican period, see Wallace-Hadrill 1989: 63-87.

some ability to predict the results of those adjudications—was understood as a specialized aristocratic reserve that was expected to be transmitted to lay audiences on an *ad hoc* basis. Some people knew the law, and were expected—by *noblesse oblige* if nothing else—to share it with those less fortunate. Livy describes this monopoly as a problem, mitigated by the eventual publication of existing law in the form of the Twelve Tables.[12] But even then, those laws were sufficiently general that inequalities of knowledge would have remained. For example, the provision now referred to as *XII Tab.* 6.1, "Whenever one creates a *nexum* or *manicipium*, such as his tongue announces, so shall be the law," is impossible to parse without a detailed understanding of the relationship described as *nexum* and of the rights and obligations it conferred; it seems unlikely these would have been entirely common knowledge, and if they were clearly enumerated in the Tables themselves then that enumeration does not survive (and, one should note, neither do any similar clauses defining similarly unclear legal terminology).[13] These sorts of ritualistic, yet somewhat vague prescriptions required specialist intervention, and Dionysius suggests that that intervention was taken on a private, individuated basis. We do not know how much of this work was done in writing, but the social relationships embodied in the work of the later jurists appear to be quite old.

That said, by the late Republican period we have a much clearer sense of how legal expertise was transmitted, and it appears to have taken the rough form in which it would persist up to the third century C.E. This is the first period in which we know of working jurists;

[12] Livy 3.31.7-32.8.

[13] Available as reconstructed at Crawford 1996: 580 ("cum faciet nexum mancipiumque, uti lingua nuncupassit, ita ius esto."). *Nexum*, an ambiguous legal relationship in early Roman law that appeared to function as a form of debt bondage, is attested in Livy at 8.28 but its precise meaning remains unclear. See Bernard 2016: 322 ("[S]erious—probably intractable—difficulties impede any modern attempt to define an institution that was obscure already to those republican jurists and antiquarians who wrote about it."); see also MacCormack 1967.

specifically, both later juristic and contemporary forensic sources[14] refer to Q. Mucius Scaevola and Ser. Sulpicius Rufus as active during the late Republic. We know more about Scaevola, whose responses to legal questions survive—albeit in likely altered form—in the *Digest* itself;[15] he is described as being the first jurist to systematize Roman legal thought into discrete topics, as well as being the first to extend analogical reasoning to similar legal questions, greatly increasing the breadth of a given interpretation and providing greater clarity and certainty as a result.[16] Servius is also described as active in this period, a skilled advocate[17] who studied law after being told by Scaevola, in response to his questions on basic points of law, that "it was shameful for a nobleman, a patrician, and an advocate no less to be unaware of the law which they contest."[18] While Scaevola, in particular, is the subject of an enormous scholarly literature focusing on his contributions to Roman legal science,[19] my interest here is less in his content than his genre or means of production; it is clear from the *Digest* evidence that Scaevola was already providing written answers to questions posed, and likely collecting those answers for distribution. Furthermore, this aspect of Scaevola's work is not described as an innovation. Instead, Scaevola's practice of giving *responsa* appears to simply echo earlier examples, like that of the second-century

[14] Especially Cicero's *Pro Caecina*, on which see Frier 1985. For juristic attestations of Scaevola and Sulpicius, see, for example, *Dig.* 1.2.2.43 (Pomponius, Enchridion), Gai. *Inst*. 3.183; Stein 1978, Tuori 2004b.
[15] Tuori considers the excerpt of Scaevola's *Sayings* preserved at *Dig.* 50.17.73 to be potentially "closest to the original;" *ibid.* 245 n.8.
[16] Frier 1985: 160-63, Wieacker 1988: I.630-33.
[17] To clarify, I follow Peachin 2016: 166 in using "advocate" to refer to individuals arguing legal disputes in a public setting on behalf of others, rather than merely advising parties as to their legal obligations.
[18] *Dig.* 1.2.2.43 (Pomponius, Enchiridion): . . . *turpe esse patricio et nobili et causas oranti ius in quo versaretur ignorare*. Servius' later achievements would include a consulship, and his daughter Sulpicia is herself well known as a literary figure. On Servius, see Harries 2006: 116-26, Wieacker 1988: I.604-07.
[19] For examples see Frier 1985: 155-71, Tuori 2004b, but note Giaro 1994: 123-28, who argues that the concept of Roman legal reasoning, as a discrete science, is an "anachronistischer Begriff."

B.C.E. writer M. Brutus, whose work does not survive but who is referred to in Cicero as responding to questions from a wide variety of people.[20] While Scaevola is described by Pomponius as the first to put forward an order of the civil law, his work responding to queries was done within an already established form.[21]

So far, I have discussed juristic work as primarily responsive—answering questions posed by others. However, jurists also served, as far back as the republican period, in an advisory or epigovernmental capacity. Classical Roman law up to Hadrian vested enormous power in the office of the praetor; the praetor's annual edict, setting forth the sorts of remedies he was willing to grant in specific circumstances, formed the basis of most Roman private law, and the praetor was also the first arbiter for most cases.[22] Performing these roles well (or at least in a fashion that conformed to expectations of predictability and competence) required a level of expertise in Roman jurisprudence that a *praetor*—being an elected politician—frequently did not hold, and Cicero's *Topica* refers to *iurisconsulti* serving as informal advisors to decisionmaking (*adhibentur in consilia*) in addition to their written guidance.[23] So, by the end of the Republican period, we can already see certain constitutive features of juristic work that would continue (in altered form) through the Principate; jurists were figures of high social standing, sharing their legal knowledge

[20] See Cic. *De or.* 2.142 (*video enim in Catonis et in Bruti libris nominatim fere referri, quid alicui de iure viro aut mulieri responderit*); Wieacker 1988: I.542.
[21] See *Dig.* 1.2.2.41 (Pomponius, Enchiridion).
[22] On the Edict, see Hausmaniger & Selb 1985: 115-18, Schulz 1951: 18, Selb 1986: 259-72, Wieacker 1988: I.462-70. The praetor's jurisdiction over cases brought under the formulary procedure was limited to questions of law: the praetor would determine what factual allegations (if any) would, upon being proven, justify a finding of liability, and then appoint a fact-finder to investigate those claims. Schulz 1951: 19-21.
[23] Cic. *Top.* 65.

with others in a non-commercialized and informal fashion.[24] This work could take different forms and bear different relationships to the state, but organized itself around the transmission of specific forms of knowledge, validated by their transmitter's generally recognized, socially and intellectually constituted *auctoritas*.

Such a system could not last, of course. This model of juristic interactions assumes a sort of diffusion of authority within a broad aristocratic sphere; while boundaries could blur between the work of a jurist, an advocate, or an elected official, each role had its own τέχνη and could grant its holder some measure of purchase in broader public life based upon its own, internally coherent decision criteria (specifically, jurists decided the legitimacy of other jurists, while audiences and voters determined the legitimacy of other types of Roman public actor).[25] The delicate balance of Roman aristocratic life was altered enormously by the rise of the Principate, but its forms and titles remained relatively settled; Augustus presented himself as restoring republican rule and preserved its offices as venues for aristocratic status competition.[26]

Augustus' treatment of jurists largely, but not entirely, accorded with this paradigm. While elected magistracies can fairly easily be reconceived as administrative posts executing direction from the *princeps*, the nature of juristic work indicated a different solution; broad legislation like the *lex Iulia de adulteriis*[27] required interpretation that an emperor could not necessarily provide.

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[24] This sort of informal exchange of goods and services was a defining element of Roman aristocratic interaction; for a discussion of this phenomenon specific to the late Republican period, see Verboven 2002.

[25] For particularly vivid examples of this sort of legitimacy evaluation in real time, see Bablitz 2007: 133-36 (discussing audience reaction to judicial forensics under the Principate).

[26] Our best textual source for this phenomenon, ironically, is Cassius Dio, whose account of Augustus survives in full and includes a long *discursus* on his preservation of magistracies. Dio Cass. 53; see also Swan 2004.

[27] Which vastly expanded the range of behaviors which might subject wives or husbands to liability for infidelity; see *Dig.* 48.5; Csillag 1976, Daube 1972.

Because success within the field necessitated expertise and not simply electoral validation, juristic work required a somewhat higher level of autonomy;[28] nevertheless, Augustus' project (as described by historiographers like Dio and Tacitus) required assimilating republican centers of authority (including juristic prestige) into a new monarchic superstructure. The Hadrianic jurist Pomponius offers an account of how this problem was resolved:

> Massurius Sabinus was in the equestrian order, and was the first person to respond publicly (*publice respondere*). For once this privilege (*beneficium*) began to be given, it had been granted to him by Tiberius Caesar. 49. Just to clarify, before the time of Augustus the right to respond publicly was not given by *Principes*, but instead those who had faith in their own studies would respond to those seeking counsel. Furthermore they did not necessarily give sealed opinions, but often wrote the judges themselves, or alternately those who had consulted them would give witness in court. The Divine Augustus was the first to rule that individuals could respond to queries under his authority, in order that the law might be held in greater esteem (*ut maior iuris auctoritas haberetur*). And from that time this privilege began to be sought out. Thus our great emperor Hadrian, when men of praetorian rank were seeking permission to respond on his behalf, issued a rescript that this privilege was customarily not asked for, but taken upon oneself; and that therefore he would be delighted if anyone who had faith in their abilities would prepare himself for responding to the people. 50. Returning to the matter at hand, Tiberius Caesar authorized Sabinus to respond to the people. Sabinus was admitted to the equestrian rank as a mature man of nearly fifty years.[29]

This cryptic—to say the least—passage has given rise to a great deal of scholarly debate.[30] What seems clear, however, is that either Augustus or Tiberius imposed some sort of control on juristic production by granting certain individuals the right to answer legal questions (*ius respondendi*) on

[28] see Frier 1985: 286-87, although Frier's claim that jurists operated essentially independently of imperial power seems overdrawn given how closely jurists and emperors collaborated by the later Principate (see, for example, Crook 1955: 59 on the introduction of jurists into the *consilium*).
[29] *Dig.* 1.2.2.48-50 (Pomponius, Enchiridion).
[30] See, for an introduction, Bauman 1989: 10-13, Guarino 1949: 401-19, Kunkel 1948: 423-57, Robinson 1997: 11-13, Tuori 2004a: 295-337, Wieacker 1969: 331-49. On the public components of the *ius respondendi*, see Wieacker 1988: II.34. For textual problems with the passage preserved in the *Digest*, see for an introduction Tuori 2004a: 298 and sources cited within at n.9. Schulz has identified what he believes to be four different authors glossing and emending the text up to the Late Antique period; Schulz 1953: 115-16.

behalf of the emperor. Pomponius claims that Augustus was motivated by a desire to legitimize juristic practice, but the parallel with republican magistracies—in which Augustus preserved a form of elite status competition while taking for himself the power normally awarded on the basis of that competition[31]—is too strong to dismiss. The *ius respondendi* could refocus competition within the juristic community around the emperor, while preserving its nominal independence and cultivation of needed expertise. While we know very little about the *ius respondendi* in practice,[32] it seems not to have enormously altered earlier juristic modes of production; figures like Labeo and Nerva continued to answer questions and provide advice, drawing both on their own recognized legal knowledge and (possibly, but not definitely) the *imprimatur* of the state.

B. Hadrian's Revolution

The pre-Antonine *princeps* Hadrian massively changed the organization of Roman legal authority, and in doing so altered jurists' position vis-à-vis the state. Our most straightforward evidence for Hadrian's work is in the Late Antique historian Eutropius; Eutropius writes that after the fall of Pertinax "Salvius [*sic*] Iulianus took control of the empire, noble and most learned in law, the

[31] Cf. Dio Cass. 53.17.3 (αἱ μὲν γὰρ ἀρχαὶ αἱ ἐκ τῶν νόμων ὡς πλήθει γενόμεναι καὶ νῦν πλὴν τῆς τῶν τιμητῶν καθίστανται, διάγεται δὲ καὶ διοικεῖται πάντα ἁπλῶς ὅπως ἂν ὁ ἀεὶ κρατῶν ἐθελήσῃ); see also *Dig.* 48.14.1pr. (Modestinus, de Poenis): *ad curam Principis magistratuum creation pertinent, non ad populi favorem*.

[32] For example, no jurists are definitively known to have been granted the *ius*; that said, given how much of our juristic material dates to the period after the practice's likely dissolution under Hadrian, this may not reflect a lack of use as much as a lack of knowledge. The jurists Labeo, Nerva, and Iavolenus Priscus are referred to as *publice respondentes* in scattered sources, but in contexts that leave unclear whether *publice* denotes some sort of legal privilege or simply location. See Gell. 13.10, Plin. *epis.* 6.15.3, *Dig.* 3.1.1.3 (Ulpian, ad Edictum); Tuori 2004a: 303 & n.27.

grandson of that Salvius Iulianus who composed the Perpetual Edict under the Divine Hadrian."[33] Aurelius Victor's *de Caesaribus* also confuses Pertinax' successor Didius Julianus with his grandfather, but repeats that he was the first to organize and codify the praetorian edict.[34] Later legal sources make the same claim, most notably a Justinianic rescript referring to "Salvius Iulianus, a man of the highest *auctoritas* and composer of the praetorian edict."[35] Julianus is also recorded in contemporary sources such as *CIL* 8.24094 (=*ILS* 8973), an honorary inscription referring to Salvius Julianus as extraordinarily learned and as performing special services to Hadrian.[36]

It seems clear, based on later historiography if nothing else, that Hadrian's codification of the *edictum perpetuum* was viewed as a highly consequential event—that said, why would Hadrian do such a thing? One could argue that the *edictum perpetuum* was a clear improvement on the older system from a risk-aversion perspective; individuals could contract with greater confidence that their rights would remain the same from year to year.[37] But the *edictum perpetuum* also marks a change—even if symbolic—in the functioning of the Roman legal system, and particularly in the mechanisms by which it could adapt to changing circumstances. The annual renewal of the edict created a moment in which an elected official could—obviously with imperial permission

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[33] Eutr. 8.17: . . . *Salvius Iulianus rem publicam invasit, vir nobilis et iure peritissimus, nepos Salvii Iuliani, qui sub Divo Hadriano perpetuum conposuit edictum.* Eutropius here refers to Didius Iulianus' seizure of the throne, not Salvius'.

[34] Aur. Vict. *Caes*. 19.2: *primus edictum, quod varie inconditeque a praetoribus promebatur, in ordinem composuerit.*

[35] *Cod. Iust.* 4.5.10.1: . . . *Salvium lulianum summae auctoritatis hominem et praetorii edicti ordinatorem.*

[36] For a more detailed discussion of the sources identifying Hadrian and Salvius Julianus with the *edictum perpetuum*, see Jolowicz & Nicholas 1972: 356-57, Robinson 1997: 12, Tuori 2006: 220-24.

[37] Cf. Coriat 1985: 333-42 (discussing similar advantages to increasing reliance on imperial rescripts), Yiftach-Firanko 2009: 545 (discussing the benefits of "legal certainty" in helping individuals understand and predict their legal obligations).

and possible supervision—change the sorts of remedies available under the formulary procedure. Without this safety valve, legal adaptation would come to center itself in more visibly imperial fora: not only in the emperor's courts (whether supervised by the emperor himself[38] or one of his prefects) but also in his bureaucratic apparatus.

With fewer opportunities for legal alteration in a "legislative" sense, adapting the law to new problems or social practices thus required, even more than before, recourse to juristic commentary and guidance on existing sources.[39] While we do not know this with certainty, evidence suggests that Hadrian also radically altered the means by which that guidance was given. Evidence from the *Digest* suggests that rescripts became a far more important feature of Roman legal culture under Hadrian; of the 967 juristic opinions preserved therein that cite to the lawmaking activity of a named emperor, pre-Hadrianic authorities are cited only 68 times, as Figure 4.1 shows.[40] Furthermore, the increase in authorities is not gradual; Hadrian is cited approximately four times as frequently as Trajan. What evidence we have suggests that, in the pre-Hadrianic period, these sorts of interpretive questions were primarily directed to jurists, speaking

[38] Notably, our evidence for imperial adjudication vastly increases under Hadrian; see, for example, *Dig.* 48.9.5 (Marcianus, Institutes) (*Divus Hadrianus fertur, cum in venatione filium suum quidam necaverat, qui novercam adulterabat, in insulam eum deportasse*), Dio Cass. 69.7.1-2 (claming that Hadrian ἔπραττε δὲ καὶ διὰ τοῦ βουλευτηρίου πάντα τὰ μεγάλα καὶ ἀναγκαιότατα, καὶ ἐδίκαζε μετὰ τῶν πρώτων τοτὲ μὲν ἐν τῷ παλατίῳ τοτὲ δὲ ἐν τῇ ἀγορᾷ τῷ τε Πανθείῳ καὶ ἄλλοθι πολλαχόθι, ἀπὸ βήματος, ὥστε δημοσιεύεσθαι τὰ γιγνόμενα), SHA *Hadr.* 18.1, 22.11 (*Cum iudicaret, in consilio habuit non amicos suos aut comites solum sed iuris consultos et praecipue Iuventium Celsum, Salvum Iulianum, Neratium Priscum aliosque, quos tamen senatus omnia probasset. . . . causas Romae atque in provinciis frequenter audivit, adhibitis in consilio suo consulibus atque praetoribus et optimis senatoribus.*), *P. Teb. II* 286 (recording a hearing at which a rescript of Hadrian's was introduced by the petitioner). This material has been usefully collected by Kaius Tuori, who marshals it to show that "petitioning and the seeking of imperial rescripts becomes a central cultural and legal phenomenon in the narratives of the reigns of Hadrian and his successors." Tuori 2016b: 197, 207-11.

[39] Zetzel 2018: 124-25.

[40] See Appendix III.

either with or without the authority to represent the state. After Hadrian, the state became increasingly involved as a direct party to this kind of work.

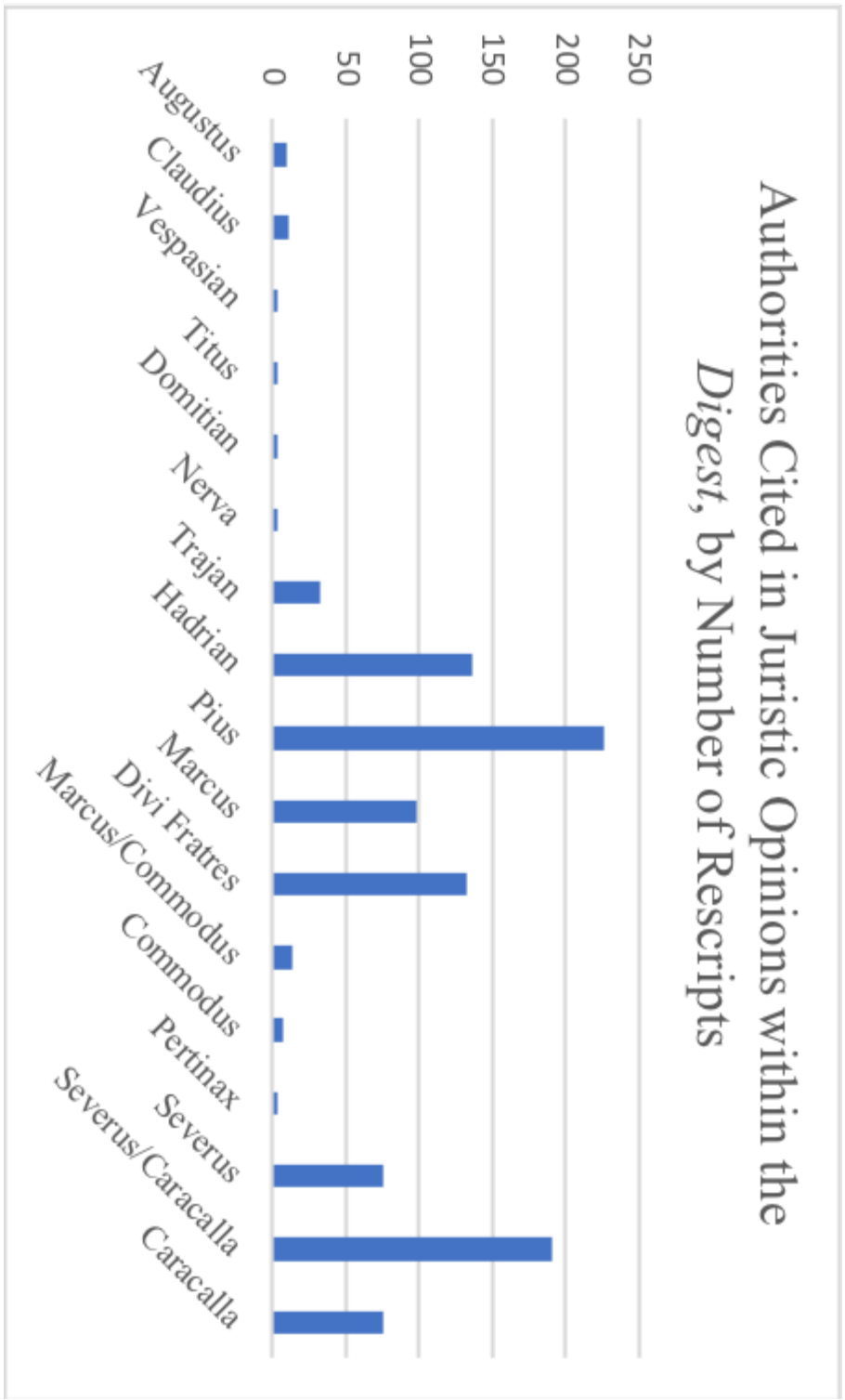

Figure 4.1. Emperors cited in the *Digest*.

This change in practice would seem to put the custom of private legal interpretation as an aristocratic, nongovernmental practice into some jeopardy. After all, it is not clear how authoritative or reliable juristic opinions might be in such an environment, or why one would seek out an expert's prediction of what a sovereign might do, as opposed to simply asking the sovereign himself. While jurists continued to reply to questioners in the post-Hadrianic period, these replies did not carry nearly the same weight as imperial communication could. However, we know that juristic practice continued throughout this period, with all five of the jurists mentioned in the Law of Citations working after Hadrian. This fact raises the question; if private legal writing was no longer uniquely critical to understanding or improving upon Roman legal rules, what was the value of private legal writing, or of this sort of legal expertise more generally?

One obvious answer was educating another generation of legal experts; Ulpian is preserved in the *Digest* at 47.2.52.20 quoting a response he wrote to *Herennio Modestino studioso meo de Dalmatia consulenti*.[41] But jurists in the post-Hadrianic period also played a major role in the production of imperial legal correspondence. Hadrian himself is referred to as holding court "with the best men (μετὰ τῶν πρώτων)," [42] and Marcus Aurelius is explicitly referred to in the *vita Marci* as consulting with jurists in resolving legal questions.[43] As John Crook has noted, several jurists of the post-Hadrianic period are attested as members of the imperial *consilium*, advising the emperor in a quasi-formal capacity.[44] It is also quite likely that jurists were directly involved in

[41] Ulpian, ad Edictum. Modestinus (another jurist preserved in the Law of Citations) is cited by Gordian III in 239 C.E. at *Cod. Iust.* 3.42.5, and is referred to in the *vita Maximini* as the legal tutor of Maximinus Thrax (27.5). For more on Modestinus' own legal writing, see Masiello 1983.
[42] Dio Cass. 69.7.1.
[43] SHA *Marc.* 11.10.
[44] Crook 1955: 56-91. What evidence we have for the functioning of the *consilium* suggests a low level of formal role segregation, and that individuals within the *consilium* could offer frank advice

the drafting of imperial legal guidance; Tony Honoré has argued on the basis of stylistic similarity that prominent jurists likely served as secretaries *a libellis*, or bureaucrats in charge of drafting imperial responses to petitions.[45] Jurists also continued writing under their own names after Hadrian; Gaius wrote his *Institutes*, a general guide to Roman legal doctrine likely intended for education, in the late second century,[46] and the *Digest* consists mostly of excerpts from juristic writing of the early third. But Hadrian's centralization of interpretive authority in the imperial court changed the power of jurists, and the means for determining their quality. Rather than individual competence being determined primarily through internal evaluation by other members of a community of experts, or through a formal grant of imperial recognition, jurists in this period seem to have gained prominence through work for the state.[47]

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that the emperor was free to accept or ignore as he saw fit. A given emperor's willingness to hear advice from experts seems to have been viewed as a sign of intellectual openness or competence, at least by Cassius Dio; compare Dio Cass. 77.1 (describing Septimius listening closely to his advisors), with 78.18.3 (describing Caracalla ignoring legal advisors in favor of socializing with his soldiers). Notably, Dio makes no mention of whether Severus actually followed the advice he received.

[45] Honoré 1994. Specifically, Honoré claims that imperial rescripts employ stylistic features similar to those of preserved juristic writing, and that these stylistic features change sharply at discrete points in time, suggesting that jurists would be employed as secretaries for specific periods. *Ibid.* 56 ("The emperor did not compose his own rescripts. But neither are they the product of an office or chancellery style, which changes only gradually. What they reveal is a personal style that changes when the person responsible for composing them changes.").

[46] The most extensive treatment of Gaius' Institutes is Nelson 1981, who—in the context of a largely technical work discussing Gaius' sources, technical connections to other jurists, and largely nonexistent literary connections to other figures within second-century literary circles—praises his "leicht verstandlichen" legal prose. *Ibid.* 396; see also Kunkel 2001: 186-213.

[47] Of course, this is something of an ouroboros; while we do not know exactly how individuals were selected to serve as *a libellis* or members of the *consilium*, it is unlikely there were open calls. These sorts of employment decisions were probably mediated by reputation both within and without existing juristic circles, and it is likely that mentoring relationships of the sort between Ulpian and Modestinus described above would have continued to play a role.

C. Bureaucrats, Jurists, and Politicians in the Severan Period

This trend continued into the Severan period, with a slight alteration; beginning under Septimius Severus, jurists came to serve in prominent administrative positions with duties going beyond the legal work of the *a libellis*. While some jurists had held nonlegal roles before—for example, the jurist Q. Cervidius Scaevola had managed the Roman *vigiles*[48]—under the Severans jurists held higher offices and did so more frequently. For example, while Tryphoninus refers to the jurist Papinian serving as a secretary *a libellis*,[49] Papinian also worked with praetorian prefects[50] and came to hold the post himself by 205 C.E.[51] While this role would have involved a great deal of adjudicative work,[52] it encompassed a much broader portfolio of administrative and staffing responsibilities; the praetorian prefecture was not exclusively, or even primarily, a legal post. In fact, Papinian appears to be the first jurist to have served as prefect.[53] While Papinian's own career ended rather abruptly after the prefecture,[54] another jurist, Ulpian, would go on to higher positions in the late Severan period.

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[48] *CIL* 14.4502.
[49] *Dig.* 20.5.12pr. (Disputationes) : *Rescriptum est ab imperatore libellos agente Papiniano . . .*
[50] *Dig.* 22.1.3.3 (Papinian, Quaestiones) : *praefectis praetorii suasi fructus, qui bona fide a Pollidio ex bonis defunctae percepti essent, restitui debere . . .*
[51] *CIL* 6.228 (= *ILS* 2187) refers to Maecius Laetus and Aemilianus Papinianus as *praefecti praetorio*, and dates to May 28, 205. In all likelihood, Papinian directly succeeded the prefect Plautianus, for whom see *PIR*^{2} F 554. We have little material on Papinian's administrative career between these positions; it is likely that he held other intermediate positions before the praetorian prefecture, but we do not know exactly which. For the most detailed attempt to reconstruct Papinian's *cursus* from the available evidence, see Magioncalda 2000; also *PIR*^{2} A 388.
[52] See Peachin 1996: 165-67.
[53] See Magioncalda 2000: 453.
[54] See *supra* Chap. II, notes 12-15.

As prefect, Papinian held his own *consilium* to advise him on legal affairs, and two other major jurists of the period served on that *consilium*. The *vita Nigri* singles out Ulpian and Paul as assistants to Papinian who later became praetorian prefects themselves.[55] The pretenders' *vitae* are hardly reliable sources,[56] but Paul refers in his own work to having assisted Papinian in this fashion at *Dig.* 12.1.40,[57] and later to having served in the *consilium* of Severus Alexander.[58] Ulpian's own career is amply attested and rather stunning. As already discussed, a rescript of Alexander's dated to March 31, 222 cites a response given by "my friend Domitius Ulpianus, the legally trained *praefectus annonae*,"[59] and another from December 1 of the same year refers to Ulpian as *praefectum praetorio et parentem meum*.[60] Ulpian's prefecture seems to have come with unusual responsibilities, partially due to the extreme youth of the emperor he served; Dio's account of Alexander's reign claims that, immediately upon taking the throne, he turned over to Ulpian not only the management of the Praetorian Guard but also "the remaining business of the empire."[61] Herodian's account refers to a regent council but claims that this council left public affairs in the hands of skilled lawyers (νόμων ἐμπείροις), presumably referring to Ulpian at least in part.[62]

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[55] 7.4 (referring to the *Pauli et Ulpiani praefecturae, qui Papiniano in consilio fuerunt ac postea, cum unus ad memoriam, alter ad libellos paruisset, statim praefecti facti sunt*). This is offered as evidence of emperors hewing to the principle that individuals should not hold a prefecture without having served as an assistant to one holding that office previously.

[56] See den Hengst 2010: 93-94, Syme 1971: 54-77.

[57] Quaestiones: *Lecta est in auditorio Aemilii Papiniani praefecti praetorio iuris consulti cautio huiusmodi* . . . The most plausible explanation for Paul's primary knowledge of the inner workings of Papinian's council would be his own presence therein.

[58] Liebs 1997: 150-51; see also *PIR*^{2} I 453.

[59] *Cod. Iust.* 8.37.4: *Secundum responsum Domitii Ulpiani praefecti annonae iuris consulti amici mei* . . .

[60] *Ibid.* 4.65.4. *Parens* here refers to Ulpian in a strictly honorific sense; for a similar use see Tac. *Ann.* 2.55 (referring to Piso as *parens legionum haberetur*).

[61] Dio Cass. 80.1.1: Ἀλέξανδρος δὲ μετ᾽ ἐκεῖνον εὐθὺς αὐταρχήσας Δομιτίῳ τινὶ Οὐλπιανῷ τήν τε τῶν δορυφόρων προστασίαν καὶ τὰ λοιπὰ τῆς ἀρχῆς ἐπέτρεψε πράγματα.

[62] Hdn. 6.1.4.

Ulpian held the prefecture, and its expanded portfolio of responsibilities, until his death early in Alexander's reign.[63]

Another prominent jurist of the Severan period attained an even more powerful position, albeit in a less orthodox manner. Opellius Macrinus was trained as a lawyer and advocate before he entered the imperial administration under the guidance of Plautianus.[64] Macrinus later served as praetorian prefect under Caracalla,[65] but is best known for his next role; that of emperor. Macrinus masterminded the assassination of Caracalla and ruled himself from 217 to 218 before being deposed by Elagabalus. Little is known about Macrinus' legal career, likely a result of his *damnatio memoriae*; however, he serves as a third example of a legally trained *praefectus praetorio* in the Severan period.

Like other post-Hadrianic jurists, these men combined private writing with roles within the imperial administration; however, under the Severans trained jurists could hold increasingly high posts, serving as praetorian prefect and, in one case, a sort of regent. We know that Severan jurists continued earlier traditions of apprenticeship and mentoring, but increasingly combined this sort of internal status competition with broader public-facing roles, including but by no means limited to the administration of justice. The most prominent Severan jurists engaged in legal writing or argumentation as only one part of a far broader role, encompassing both scholarly and administrative work.

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[63] For a more detailed discussion of the death of Ulpian, see *supra* Ch. III, notes 155-161. For more on Ulpian's career see *PIR*^{2} D 169.

[64] Dio Cass. 79.11.2 (κἀκ τούτου καὶ τῷ Πλαυτιανῷ διὰ φίλου τινὸς συνηγόρημα γνωρισθεὶς τὸ μὲν πρῶτον τῶν ἐκείνου χρημάτων ἐπετρόπευσεν . . .).

[65] Aur. Vict. *Caes*. 22.1, Eutr. 8.21.

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Nothing said, thus far, is new. The points made heretofore about juristic practice up to the third century are neither disputed nor novel. However, in order to understand exactly what is novel about Severan juristic work it is first necessary to denaturalize juristic practice; to understand, in as emic and as phenomenologically precise a fashion as possible, what it was that Roman jurists *did.* Contemporary discussion about jurists can resemble a sort of category dispute, with different readers of juristic texts assigning them to different contemporary comparanda and making—often unstated—assumptions about their thought processes or goals based on those comparanda. As examples of these assumptions within contemporary historical scholarship, Tony Honoré's magisterial work on Severan jurists treats the discipline as somewhat coterminous with modern lawyering,[66] and proceeds to analyze juristic work from that perspective, arguing for Ulpian (in particular) as not only expressing a coherent policy vision in his juristic writing but as intending that vision to be enacted.[67] Salvatore Riccobono has argued this point even more forcefully, reading jurists as explicitly debating policy from a perfectionist perspective; "La verità è che il monumento giuridico di Roma, fondato su vincoli profondamente morali . . . costituisce il pensiero direttivo, la disciplina della condotta umana."[68] On the other side, Alan Watson has argued for

[66] See Honoré 1994, entitled "Emperors and Lawyers," in which the author claims that imperial rescripts "were nearly all composed by lawyers." The figures he identifies as composing rescripts, such as Ulpian and Papinian, largely fall into the category I have described as "jurists." *Ibid.* vii, 190-91.

[67] Honoré 2002: 76 ("Ulpian is the first lawyer who can, given the scale of his work and its influence, properly count as the pioneer of the human rights movement."), 92 (claiming that Ulpian "wants to speak to them [Greeks] as participants in the cosmopolitan legal system.").

[68] Riccobono 1953: 2. Michael Peachin, carrying forward this implicit conflation of jurists and lawyers, refers to this perfectionist theory as an "urge to imagine that the brilliance exhibited by Rome's learned lawyers flatly ordered life in that world." Peachin 2017: 33.

treating juristic practice as comparatively "isolationist" and focused on "develop[ing] law according to cultural norms that [jurists] made for themselves" in the service of internal forms of status contestation.[69] "Structuring the materials won no applause. *Nor did simply coming up with a solution that overtly benefitted society.*"[70] My own understanding of this genre falls somewhere in the middle.

Juristic writing is more closely related in its generic practices to other forms of literature than to other forms of government; to the extent that different individuals held different visions of the law, these disputes took the form of written debates between separate jurists or separate schools, in a fashion more akin to literary disputations than their political or military equivalent.[71] However, the heuristics used to determine juristic success are unlike those used in other literary circles; Severan jurists not only held high positions within the imperial administration, but held positions that reflected something more than sheer scholarly talent. These sorts of appointments are not as straightforward an example of imperial patronage as, say, Augustus' sponsorship of Vergil. Literary production was only one part of these figures' varied careers, and one that was elevated or validated by those careers in a way that Cassius Dio's *Roman History*—to give another example of a literary work produced by a politician—does not appear to have been.[72] Severan jurists were their own beast, mixing public and private service to forge careers without obvious parallel, and imagining them as politicians or as philosophers of law *full stop* risks overlooking the

[69] Watson 2008: 207.
[70] *Ibid.* (emphasis added).
[71] See Riggsby 2010: 52-53.
[72] Jesper Madsen notes that Dio's political and literary career lie at a sort of cross purpose; Dio's "climb to the top was promoted by the same emperors whom Dio criticises heavily throughout the last part of the *Roman History*." Madsen 2016: 137.

experiences that informed Roman juristic writing, as well as that writing's response to the innovations in Severan legal culture that have already been discussed.

In sum, the sorts of contemporary parallels that are often applied to juristic work are not entirely apt. This may partly be an artifact of etymology; the term 'jurist' is a later invention,[73] and is used in contemporary scholarly languages to refer to subtly different classes of legal professionals. For those who desire a contemporary parallel to the Severan jurist, the best available may be the modern American legal academic; mixing service to the federal bureaucracy with more traditional scholarly writing,[74] and drawing prestige from governmental service, scholarly production, and the extent to which the latter is relied upon by the state.[75] However, I offer this comparison less as a definitive comparand for the unusual features of juristic production, and more as a guide for those who desire comparanda and—frankly—as a confession of my own subjectivity; these are the individuals who come to my mind when I imagine a jurist, and this may bias my own thinking in ways I do not perceive.

[73] For the semantic instability surrounding legal expertise or professional identity, see Peachin 2016: 166-67.

[74] For example, Barack Obama's first nominee to supervise the federal regulatory apparatus—specifically the Office of Internal and Regulatory Affairs (OIRA)—was Cass Sunstein, then Felix Frankfurter Professor of Law at Harvard Law School and now Robert Walmsley University Professor at the same institution. After Sunstein left OIRA in 2012 to return to teaching, he was replaced by Howard Shelanski, Professor of Law at Georgetown University and former Director of the Bureau of Economics at the Federal Trade Commission. Broder 2012, Shelanki 2018, Sunstein 2018.

[75] A particularly memorable example of this last phenomenon is the career of Akhil Reed Amar, Sterling Professor of Law at Yale Law School, whose faculty biography notes that "[h]is work has won awards from both the American Bar Association and the Federalist Society, and he has been favorably cited by Supreme Court justices across the spectrum in more than 30 cases—tops in his generation." Amar 2018. While Amar's biography perhaps reflects his own idiosyncratic self-definition, the wide knowledge within legal academic circles of the frequency with which different authors are cited by both judges and other scholars suggest that this connection between citation and prestige is a broader phenomenon. See Merritt & Putnam 1995: 871-72.

Regardless, the jurists held a privileged position from which to view the sorts of changes I have already described, and given the wide circulation of Severan juristic texts in the Late Antique period[76] their responses to this new political reality have informed our understanding not only of Roman law, but of Roman political order writ large. The remainder of this chapter discusses two major features of Severan juristic writing that can be understood as responses to the shifting imperial relationship with law that marked the early third century; specifically, I discuss Severan juristic writing's employment of rule-consequentialist, or "policy-based" argumentation, and its surprising tendency to cite imperial lawmaking in impersonal or institutionalized forms.

II. THE RIGHT, THE GOOD, AND THE LAW

A key question in the study of juristic law is one that might, at first glance, seem straightforward; what were jurists trying to do? What was the goal of juristic writing, particularly as other actors within Roman legal culture began to offer competing, authoritative interpretations of law? I argue that jurists of the Severan period talk about that goal somewhat differently than their predecessors, but before I show that distinction it seems important to discuss the kinds of evidence that might indicate how jurists thought, and wrote, about their work.

The most obvious place to start with such an inquiry is programmatic statements of the purpose of legal interpretation, and two such statements are preserved in book 1 of the *Digest*. The earlier of these two was put forward by Julianus, who claimed that proper adjudication should attempt to follow the intent of the original legislator; "whoever is holding court [and therefore looks to juristic opinions, whether written or verbal, for advice] should strive for similar sentiments

[76] On which see Harries 1998: 18-19, 33-34.

[to those of settled laws or *senatusconsulta*] and rule accordingly."[77] By contrast, Ulpian refers to juristic science as a moral project, one devoted to improving the lives of Roman legal subjects: "One could call us priests: for we cherish justice, and provide information about the good and the fair, separating the just from the unjust, the permitted from the illicit; hoping to make others good (*bonos*) not only from the fear of punishment, but also with encouragement towards rewards."[78] This argument posits juristic work as both motivated and broadly ordered by a sort of perfectionism; it claims that the jurist wishes to cultivate people's moral sense and drive them towards the good life, and therefore that a good juristic opinion will be one that furthers that project.[79] These ideas, which are given equal weight in the *Digest*, nevertheless represent radically different conceptions of who jurists are and what they do. Ulpian, writing in his private capacity, counts himself among the class of *sacerdotes* whose work aims at moral improvement; Julianus, by contrast, sees a correct legal decision—and therefore the one a skilled jurist should recommend—as reflecting the judgments of other, more institutionally empowered actors. If those actors aim at moral improvement or other grand designs, the jurist should advise outcomes that further those designs; however, that is by no means a necessity, and the aim of juristic interpretation is more straightforwardly textualist.

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[77] *Dig.* 1.3.12 (Digesta): . . . *is qui iurisdictioni praeest ad similia procedere atque ita ius dicere debet.*

[78] *Dig.* 1.1.1.1 (Institutiones): *[Q]uis nos sacerdotes appellet: iustitiam namque colimus et boni et aequi notitiam profitemur, aequum ab iniquo separantes, licitum ab illicito discernentes, bonos non solum metu poenarum, verum etiam praemiorum quoque exhortatione efficere cupientes*. Cf. Ulpian's earlier statement at *Dig.* 1.1.1pr., quoting Celsus as referring to *ius* as the *ars boni et aequi*.

[79] I here define perfectionism in a capacious sense, following Martha Nussbaum's gloss of the term as simply referring to political theories that "involv[e] a doctrine about the good life and the nature of value." Nussbaum 2011: 5. See also Bradford 2016: 124 ("Perfectionism, broadly speaking, is the view that the development of certain characteristically human capacities is good."), Hurka 1993.

No guidance is immediately apparent for distinguishing between these two theories of interpretation within the *Digest*, particularly since both statements are somewhat rhetorical. However, there is another source, largely underexamined, of juristic discourse about the proper function of interpretation: jurists' claims about the goodness or desirability of different readings of the law. One basic question in any competitive discipline—any area of production in which one person's work might be seen as superior to another's—is *what makes the work superior?* What are the heuristics by which a person evaluates a product? To argue by analogy—a favorite juristic pastime—we might evaluate other sorts of products by their perceived aesthetic qualities (this chair is a beautiful chair and thus superior to another craftsman's ugly chair), the accordance of their creation with certain deontic preferences for the way in which that process should occur (this milk is organic, and thus superior to another dairy farmer's conventionally produced milk), or their functionality. However, the descriptive claim of an object's functionality necessarily follows from a more normative inquiry into the appropriate function to which a given product ought be put. Returning to chairs: pronouncing one chair superior to another because it is more comfortable is necessarily subsequent to determining that comfortable sitting is a primary function of the chair. After all, while anyone who has engaged in air travel has had reason to sit on her luggage, we would not consider a suitcase's functionality in that role particularly relevant to its quality *tout court*. Being sat on is not the suitcase's job.[80] Therefore, if a person who had never seen a suitcase before were to investigate the proper function of a suitcase, she might learn that fact by looking at suitcase reviews; in seeing that suitcases were praised or faulted for protecting goods, and not for

[80] This functionalist account of quality, or goodness, can be seen as roughly analogous to Aristotle's discussion of functionality in *Nic.* 1.7. For an explicit example of this sort of functionalist reasoning within the *Digest*, see 21.1.14.1 (Ulpian, ad Edictum Curulum Aedilium): *Si mulier praegnas venierit, inter omnes convenit sanam eam esse: maximum enim ac praecipuum numus feminarum est accipere ac tueri conceptum.*

providing a comfortable seat for their user, she could see that the former is the most important purpose that luggage is understood to fulfill, since it is the one that is centered in evaluating individual examples of the form. In other words, we can establish what job or set of jobs a given item is intended to do by seeing what makes that item perceived as better or worse than other similar items.

In the case of juristic production, that former inquiry—what is legal interpretation good for?— remains a subject of debate today. The warring conceptions of jurists described above, of jurists-as-policymakers and of jurists-as-philosophers, are more properly understood as different conceptions of the role that members of the juristic community assigned to juristic work, and thus different evaluative heuristics that they employed in determining a given interpretation's quality. The reason for this is simple; juristic writing, at least as produced in the Severan period, was not "policy-making" work as we would understand it today because it did not effectuate policy. Around the time of Hadrian's consolidation, Julianus wrote that applying existing laws to unusual circumstances was a matter that required "either interpretation or a constitution of the supreme *Princeps*."[81] However, these *interpretationes*—presumably a reference to juristic writing explaining the application of a law—were only advisory; Pomponius' exhaustive list of the sources of Roman law includes imperial constitutions, which carry the force of statute, but not any form of juristic work.[82] So to call jurists policymakers is not to claim that they made policy *per se*, but instead that they made a normative claim (people should be legally bound in X way) intended to be evaluated *like* policy; to be admired or faulted based how a policy reflecting that interpretation might function.

[81] *Dig.* 1.3.11 (Digesta): *aut interpretatione aut constitutione optimi Principis certius statuendum est*.
[82] *Dig.* 1.2.2.12 (Enchiridion): *quod ipse Princeps constituit pro lege servetur*.

A. How Jurists Argue, Implicitly and Explicitly

Unfortunately, while the *Digest* frequently includes jurists evaluating the claims of earlier writers, they usually do so either in summary fashion (for example, when Ulpian follows a paraphrase of Celsus with the addendum that "this view must be granted")[83] or on the basis of simple definitional claims. For example, when Paul argues that praedial servitudes[84] cannot be gained through usucaption, he offers two claims in support of his position:

> Although servitudes on rustic estates attach to individuals, they are nevertheless incorporeal and thus cannot be usucapted; alternately, this is the case because they are the sort of servitude that do not result in fixed and continuous possession, for no one can go on the permitted path so continually or fixedly that their possession never seems to be interrupted.[85]

Paul here makes two arguments, and suggests that the truth of his primary claim (that servitudes should not be understood as capable of arising through usucaption) is contingent on their validity. These statements (in argument A that servitudes are *incorporales*, and in argument B that they are not in continuous use) are offered as truisms, and there is no reason to doubt them. But they are descriptive, and offered in support of an essentially normative claim (inasmuch as any legal argument is a normative argument about what obligations and rights ought to apply); they rest on an unstated normative principle. That principle can be thought of as a strong preference for

[83] *Dig.* 41.2.34.2 (Disputationes): . . . *quod et ipsum admittendum est.*

[84] A praedial servitude is a servitude placed upon land, or a legal obligation undertaken by the owner of a piece of real property that passes onto whoever has purchased that property; for example, if Aulus and Balbinus agree via contract that Aulus shall be permitted to draw water from Balbinus' well, then a praedial servitude has been placed on Balbinus' property, and if Balbinus sells his estate to Crassus, the servitude will remain and now grant Aulus rights against Crassus. See Schultz 1951: 392-96.

[85] *Dig.* 8.1.14pr. (Ad Sabinum): *Servitutes praediorum rusticorum etiamsi corporibus accedunt, incorporales tamen sunt et ideo usu non capiuntur: vel ideo, quia tales sunt servitutes, ut non habeant certam continuamque possessionem: nemo enim tam perpetuo, tam continenter ire potest, ut nullo momento possessio eius interpellari videatur*.

analogic reasoning, or a preference for treating equal people (or circumstances) equally.[86] Because usucaption generally requires the thing usucapted to have specific attributes, extending the category to servitudes—which lack those attributes—would require creating an exception to the general rule, and such exceptions are *per se* undesirable. No reason is given why exceptions are undesirable, although it could be seen as extending from the desire to hew towards lawmakers' stated sentiments articulated by Julianus at 1.3.12, or alternately as reflecting a preference for simplicity or *elegantia*.[87] This sort of argument from definitional similarity recurs frequently in the *Digest*, as do the more summary statements described above. As a result, while one could attempt to determine an actual *summum bonum* from these kinds of juristic argument, doing so would require a certain form of mind-reading, divining what individual writers' motivations might be for interpreting a rule in a certain way in the absence of a clear argument about what makes that interpretation normatively desirable.

One classic example of this sort of reading of juristic literature—and an example that makes it particularly alluring—comes from the *Digest*'s discussion of noxal surrender and delict. Here, Paul discusses the historical requirement that the owner of a slave or animal have knowledge (*scientia*) of the harm that slave or animal is likely to commit in order to be held fully liable for said harm. Paul's gloss of the term is idiosyncratic, to say the least: "it is better said that knowledge

[86] Cf. Arist. *Pol.* 1280a11: οἷον δοκεῖ ἴσον τὸ δίκαιον εἶναι, καὶ ἔστιν, ἀλλ᾽ οὐ πᾶσιν ἀλλὰ τοῖς ἴσοις. Once one has determined fairly—and therein lies the rub—that two circumstances might be truly equal, one should react to each circumstance in the same way. H.L.A. Hart expands on this, stating: "Indeed, it might be said that to apply a law justly to different cases is simply to take seriously the assertion that what is to be applied in different cases is the same general rule, without prejudice, interest, or caprice." Hart 1994: 159.

[87] Cf. *Dig.* 25.3.1.10 (Ulpian, ad Edictum): *Eleganter autem apud Iulianum libro nono decimo Digestorum quaeritur* . . . . See also Wieacker 1988: II.52.

should be taken (*accipiendam*) as belonging only to one who can prevent what occurred."[88] This claim takes the form of the sort of definitional arguments described above, but is almost impossible to justify on analogic grounds: the term *scientia* does not connote the power to prevent in common usage, and Paul points—at least in the excerpted material—to no other area of law where a similar understanding of the term holds.[89] However, it is abundantly clear how a different sort of legal reasoning—specifically the kind of perfectionist reasoning Ulpian offered at 1.1.1.1—might arrive at this sort of conclusion. If the goal of law is to make people better, then whether or not a person *knows* something bad will happen ought not be as legally salient as whether they could have prevented it and did not.[90] Scholars in the jurist-as-policymaker school—i.e. scholars who believe juristic opinions were intended to be evaluated on their fitness as hypothetical broader policies—take this as exemplary, assuming that other cases where juristic reasoning is left unstated reflect similarly perfectionist reasoning, or a similar drive to incentivize desirable, as opposed to

[88] *Dig.* 9.4.4pr. (Paul, ad Edictum): *Rectius itaque dicitur scientiam eius accipiendam, qui prohibere potest* . . . . While the Latin does not make explicit whether the ability to prevent should be taken as a sufficient condition for *scientia* (anyone who could have prevented an action, but did not, is taken to have had knowledge of it) or as a necessary condition (no one shall be taken to have had knowledge of an action unless they could also have prevented it), two factors militate in favor of the latter reading. First, Paul introduces the claim with two examples (of an individual whose slave ignores his attempts to prevent the harm, and of an individual who sees his slave committing a bad act from across a river) of people with knowledge but no power to prevent, as opposed to people with the power to prevent but without knowledge, who would be the class affected by an understanding of the passage that glossed *prohibere potest* as a sufficient condition. Secondly, in another passage on wrongs committed by many slaves Ulpian puts forward a strikingly similar standard and explicitly takes the power to prevent as a necessary condition. *Dig.* 47.6.1.1 (Ulpian, ad Edictum): *is autem accipitur scire, qui scit et potuit prohibere* . . . .

[89] Ulpian's claim, while in a different portion of the *Digest*, actually glosses the same rule; each jurist interprets a rule forbidding a master to benefit from noxal surrender in the case of delicts committed with his *scientia*.

[90] In fact, Guido Calabresi argued, in his 1970 book *The Costs of Accidents*, that modern American tort law should be understood to adopt a similar theory of liability—one based not on knowledge per se, but on "allocating costs to the cheapest (long-run) cost avoider"—on explicitly perfectionist grounds; Calabresi suggests this system in order to "make worthwhile changes likely." Calabresi 1970: 138.

undesirable behavior.[91] By contrast, Watson's argument for juristic isolationism relies on juristic references to earlier literary works[92] and more conventionally moralizing claims like that made at *Dig.* 16.1.2.3 in the context of an argument about the reach of the *senatusconsultum Velleianum*, which renders void agreements made by women; the reasoning here proceeds from an essentially deontic principle that 'people who deceive (*decipientibus*) are bad' and the accompanying principle that 'the law should not help bad people.'[93] One could argue, based on these passages, that the more summary arguments preserved in the *Digest* reflect strictly academic, rather than pragmatic, engagement.

B. Evidence for Diachronic Change: A Severan Notion of Goodness

This dispute about jurists' internal motivations is not one I hope to definitively answer in this work, or bluntly that I expect to see answered in my lifetime; it seems clear from the snippets of reasoning that do survive that jurists employed a variety of evaluative heuristics, and determining which one could best justify a given opinion is inevitably an exercise in anachronism. However, what evidence survives makes fairly clear that the language jurists used to justify their reasoning—when they felt justification was needed or appropriate—changed over the course of the Imperial period; specifically, 'policy-based' arguments become noticeably more frequent in Severan juristic

[91] To give one example, Aubert 2014: 109-21 connects a juristic (and particularly a Pauline) preference for sale over barter to a similar preference within imperial bureaucratic and legislative organs.

[92] For example, Watson 2008: 66 discusses juristic citation of Homer in a dispute between juristic schools recorded at *Dig.* 18.1.1.1 (Paul, ad Edictum). On these citations, see also Daube 1991: 341-43.

[93] (Ulpian, ad Edictum): *Sed ita demum eis subvenit, si non callide sint versatae: hoc enim Divus Pius et Severus rescripserunt. Nam deceptis, non decipientibus opitulatur . . . .*

writing. Take the following claim: "those promises which reflect shameful goals ought not to be enforced, such as if I agree not to bring a claim of *furtum* or *iniuria*, should you do such a thing: for it is best that one fear the punishment of *furtum* or *iniuria*."[94] This argument, from Paul, differs in two key respects from what has come before: first, it explicitly provides a reason why the law should be interpreted as Paul urges, and second that reason rests not on a desirable feature of the interpretation itself but instead on that interpretation's desirable consequences. The pact should not be enforced not because of its inherent unenforceability, or because of its dissimilarity to other sorts of contract, but because enforcing the contract would lead to a less desirable general state of affairs—factoring in not just the enforcement or nonenforcement of the contract in question, but also how other parties understand the contract's likelihood of being enforced and act in response to that understanding—than would dismissing it. This sort of reasoning is commonly referred to as "rule consequentialism," and requires that individuals evaluate actions according to whether general adherence to those rules that justify those actions would result in a better or worse world.[95]

This sort of reasoning relies on two assumptions that might seem unusual in juristic writing. The first is straightforwardly descriptive; rule-consequentialism, as opposed to act-consequentialism, requires an evaluator to consider not only the consequences of the act itself, but

[94] *Dig.* 2.14.27.4 (Paul, ad Edictum): *Pacta, quae turpem causam continent, non sunt observanda: veluti si paciscar ne furti agam vel iniuriarum, si feceris: expedit enim timere furti vel iniuriarum poenam*.

[95] Rule consequentialism, as a theory in contemporary ethical philosophy, includes vastly more detailed parameters than these, on which see Hooker 2000: 72-92. For my own use of the term here, the most important aspects of rule-consequentialist thought that link it to the sorts of evaluative heuristics visible in the third century are its generality (on which see *ibid.* 80-85) and its concern with promoting beneficial states of affairs, rather than concordance with discrete deontic principles that describe "good rules" or that favor acts that accord with (or disfavor acts that do not accord with) rules of behavior. *Ibid.* at 33 ("The kind of rule-consequentialism in which I am interested . . . . does not posit intrinsic moral value or disvalue for any kind of act.").

of a general rule endorsing or permitting that act.[96] In other words, the jurist evaluates not how an action might be evaluated within a given fact pattern, but how the response to that fact pattern, if widely known or relied upon, might alter the world. This might not seem unexpected in determining the propriety of laws; after all, law is a set of rules. However, jurists were not, at least nominally, determining the propriety of laws. Juristic practice, as we have seen, consisted of responses and guidance in individual situations, with no explicit precedential power. A jurist advising on, say, the creation of an annual edict would be well advised to consider rules, but abstract writing about the best outcome in given circumstances should free its author to consider those circumstances in far more detail than this analysis would seem to imply. The second assumption is similar to the one above describing the intended function of luggage; evaluating a rule according to its consequences implies that those consequences are critical to the rule's desirability, or that having consequences is the primary thing that a rule is supposed to *do*. To return to my earlier discussion of laws, rules, and behavior: this model of legal reasoning assumes, implicitly, that laws and their interpretations exist in order to alter behavior and, thus, the world. If rule consequentialism without the generalizing assumption is act-consequentialism, rule-consequentialism without the idea that consequences are what matter takes the form of something closer to a deontology. In other words, a deontic system might evaluate rules by appealing to abstract moral (rules should be different for people of different genders)[97] or interpretive (the law should follow the lawmaker's intention) criteria.

[96] See *ibid.* 93-99 (explaining how rule-consequentialism and act-consequentialism can be maintained as essentially distinct ways in which to choose courses of action).

[97] See *Dig.* 26.1.18 (Neratius, Regulae) : *Feminae tutores dari non possunt, quia id munus masculorum est . . . .*

Instead, a small subset of juristic opinions in the *Digest* assume that decisions should be guided by a principle preferring criteria that would, if promulgated as rules, improve the world. These are the decisions that one might call "policymaking," and about whose importance "political" and "literary" historians of the jurists disagree. To some extent, both are right; these arguments are not common in the text, but the bare fact of their existence is remarkable. While discussion of effects is hardly alien to legal argument, given the history of juristic practice—its priestly origins, its phenomenological similarity to traditional aristocratic literary circles, and its tenuous relationship to policy—claims about the effects of a potential general reaction to a given decision have no obvious place.

They do, however, have a time. Rule-consequentialist arguments in the *Digest* are overwhelmingly more likely to appear in jurists of the Severan period. One context in which this reasoning is particularly frequent is in the glossing of other actors' motivations, which we might expect given Julianus' argument above about the importance of determining lawmakers' intent; *Digest* titles frequently begin with a brief discussion of why the remedy being discussed exists in the first place, and these discussions often hinge on policy. For example, Ulpian begins the *Digest*'s discussion of limits on postulation by claiming that the praetor proposed them in order to free himself from timewasting litigation.[98] Here, the praetor's reasoning is quite straightforward; we might analogize restricting court appearance in order to prevent frivolous appearances to forbidding murder in order to prevent murders. But "murder should be illegal in order that it might occur more rarely" is a different sort of normative claim than "murder should be illegal because bad things should be illegal," and one which, as already noted, jurists rarely employ. Sometimes,

[98] *Dig.* 3.1.1pr. (Ad Edictum): *Hunc titulum praetor proposuit habendae rationis causa suaeque dignitatis tuendae et decoris sui causa, ne sine delectu passim apud se postuletur.*

however, the connection between a given action and its desired—and desirable—consequence is less clear, as for example in the case of *effodere vel deicere*. Here, while the praetor's explicit statement only lays out the penalties for throwing or pouring out products into public spaces,[99] Ulpian glosses it by explaining the desirable effects of those penalties being known and enforced: "it is in the public interest that it be possible to travel on the roads without fear or danger."[100] This sort of rule-consequentialist reasoning, deployed to explain the motivations behind an existing rule rather than to justify a new one, appears in the pre-Severan period as well; Paul describes the earlier jurist Sextus Caecilius as claiming that one purpose for the customary (*moribus apud nos acceptum*)[101] ban on exchanges of gifts between married couples was that without this ban "it would often come to pass that marriages would be broken if one who was able to give gifts did not, and as a result marriage would become a thing bought and sold."[102] Jurists offer similarly consequentialist explanations for imperial legislation; Ulpian explains a Hadrianic constitution protecting an individual from having to clarify his status as an *heres* by claiming that the emperor's action avoids people unnecessarily prejudicing themselves with hasty answers to complex questions.[103]

It makes sense that this sort of reasoning appears in explaining administrative and imperial, rather than juristic, interpretations of rules. If we understand the juristic project as one concerned primarily with Julianus' theory of interpretive fealty, it would leave little place for consequences,

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[99] *Dig.* 9.3.1pr (Ulpian, ad Edictum).
[100] *Ibid.* 9.3.1.1: *publice enim utile est sine metu et periculo per itinera commeari*.
[101] *Dig.* 24.1.1 (Ulpian, ad Sabinum).
[102] *Dig.* 24.1.2 (Paul, ad Sabinum): *Sextus Caecilius et illam causam adiciebat, quia saepe futurum esset, ut discuterentur matrimonia, si non donaret is qui posset, atque ea ratione eventurum, ut venalicia essent matrimonia.*
[103] *Dig.* 11.1.6 (Ad Edictum): *Interdum interrogatus quis, an heres sit, non cogitur respondere, ut puta si controversiam hereditatis ab alio patiatur: et ita Divus Hadrianus constituit, ne aut negando se heredem praeiudicet sibi aut dicendo heredem illigetur etiam ablata sibi hereditate*.

since those consequences should theoretically only be relevant inasmuch as they offer information about legislative intent.[104] However, individuals with formally legislative power (as opposed to merely interpretive) cannot be held to the same standard: a praetor's decisions about what sort of remedies ought be offered cannot be 'inaccurate' in the same way as can a jurist's *responsum* predicting what the praetor is likely to do. Instead, these sorts of decisions can only be evaluated by whether they make the world better or worse. As for what might constitute a better or worse world, while it is difficult to isolate specific "performance criteria," imperial propaganda throughout the Principate centers the emperor's ability to improve the lives of his subjects: for example, the *Panegyricus* credits Trajan with simplifying trade across the Mediterranean and specifically with improving access to imported goods.[105] The fact that jurists seem more comfortable discussing the policy implications of these actors' decisions than their own thus demonstrates the rift between juristic interpretation and other sorts of legal practice. Severan jurists are far more likely to offer this sort of gloss in the *Digest* than the pre-Severans; I have isolated 47 instances in which Severan jurists explain the reasoning behind a piece of law (whether a *lex*, a praetorian decision, a *senatusconsultum*, an imperial *constitutio*, or simply custom) and only 9 from the pre-Severans (including both excerpts from pre-Severan legal writing and Severan authors quoting these earlier jurists in their own work). However, this may partly reflect the structure of the *Digest* as a whole; since most titles begin with a lengthy explanation of a praetorian provision by either Ulpian or Paul, and since we might imagine that this sort of assertion of motive

[104] For a modern example of this variant of consequentialist interpretation, see the 2014 U.S. Supreme Court decision King v. Burwell, 576 U.S. ___ (slip op. at 15); "Here, the statutory scheme compels us to reject petitioners' interpretation because it would destabilize the individual insurance market in any State with a Federal Exchange, and likely create the very 'death spirals' *that Congress designed the* [Affordable Care] *Act to avoid*." (emphasis added).

[105] Plin. *Pan.* 29: *diversasque gentes ita commercio miscuit, ut, quod genitum esset usquam, id apud omnes natum esse videretur.*

would make the most sense in such an explanatory passage, one might simply read this disparity as reflecting such logic's increased prevalence in certain types of material, and then simply Ulpian's and Paul's tendency to provide that sort of material within the *Digest*.

That said, a similar disparity survives between instances of pre-Severan and Severan jurists explaining their own reasoning process on rule-consequentialist grounds; this material has less of a structural explanation, and suggests a real change in the way that jurists talked about their own interpretive process. For example, in the discussion of *effodere vel deicere* mentioned above, Ulpian interprets the praetor's claim to apply to both public and private places, so long as they experience frequent traffic.[106] He justifies this interpretation on policy grounds: "for those places through which people are accustomed to go should always have the same security [as public property]."[107] While this phenomenon is not common in the *Digest*, it is far more frequent among Severan than pre-Severan writers; the *Digest* contains 36 instances of Severan jurists justifying their own interpretations on policy grounds and only ten instances of pre-Severans doing the same.[108] Jurists of the pre-Severan period, as represented in both their own writing and later authors' quotations, are more likely to reason either from the principles of interpretive clarity or simplicity described above or from the accordance of a given interpretation with more abstract

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[106] *Dig.* 9.3.1.2 (Ad Edictum): *Parvi autem interesse debet, utrum publicus locus sit an vero privatus, dummodo per eum volgo iter fiat* . . . . It is clear that Ulpian here states his own opinion—and is not merely repeating a praetor's decision—from his use of *interesse debet* rather than a simple *interest*; Ulpian presents the importance of the public/private distinction not as a settled fact, but as a question that he answers.

[107] *Ibid.*: *semper enim ea loca, per quae volgo iter solet fieri, eandem securitatem debent habere.*

[108] To give only a few examples, we see this sort of argument in Paul at *Dig.* 2.11.5pr. (Ad Edictum) and 22.1.38.1 (Ad Plautium), with Ulpian engaging in similar reasoning at 14.1.1pr. (Ad Edictum) and 27.9.5.13 (Ad Edictum).

moral principles.[109] While this analysis is too qualitative to allow for statistical comparisons, I have provided in Appendix IV a database of all instances of rule-consequentialist reasoning I was able to isolate in the *Digest*. The fact that these sorts of arguments are nearly four times more likely to appear in Severan arguments than in pre-Severan material suggests a change in argument style, particularly given the pre-Severan material that survives in Severan quotation within the *Digest*; rule-consequentialist language, if not reasoning, appears to become more frequent in the third century.

So what does this mean? I should note, first of all, what this *does not* mean; this change in language does not necessarily indicate a shift in juristic logic or internal desiderata. After all, while the gloss on *scientia* described above at 9.4.1pr clearly arises from policy considerations, that is nowhere explicit in its language; in order to determine whether this shift in explicit reasoning reflects a shift in how jurists actually interpreted legal material, one would have to know whether the more summary or moralizing statements that are common in juristic writing actually hid a secret policy justification. That question cannot be answered with confidence on the basis of available evidence. However, these changes in juristic language have meaning in their own right. Evidence from the *Digest* suggests that in the Severan period, jurists began to talk about the function of interpretation in Roman legal culture in meaningfully different terms; they began to increasingly proclaim interpretation's role in helping the state further its policy goals, rather than simply bringing that state's own pronouncements into accord with sometimes-abstruse interpretive criteria. Reading the *Digest* as a chronicle of changing forms of legal argument, rather than a synchronic collection of writing in one specific literary or administrative genre, suggests a subtle

[109] See, for example, *Dig.* 3.2.4pr. (Ulpian, ad Edictum) (quoting Sabinus and Cassius), 3.5.38(39) (Gaius, de Verborum Obligationibus), 6.1.27.5 (Paul, ad Edictum) (quoting Proculus), 14.6.3.2 (Ulpian, ad Edictum) (quoting Julianus).

but important shift in how jurists talked about their work. While Franz Wieacker, to give on example, is absolutely correct in imagining juristic work as possessing a deeply internal, somewhat classicizing character,[110] Severan writers like Ulpian and Paul used it to do something distinctly new and distinctly imperial; to collaborate in generating the sorts of stable, predictable, and desirable outcomes that emperors and the state they ran were obligated to provide to their subjects.

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That this shift coincided with enormous changes in the role of jurists within the imperial bureaucracy, and in the importance of that bureaucracy to imperial self-representation, seems unlikely to be a coincidence. Jurists who increasingly worked as bureaucrats began to speak—and perhaps to think—like them as well. These men mixed writing in their private capacities with posts that required them to collaborate in crafting official legal communications. Whether serving privately as *consiliarii*, publicly as *praefecti*, or drafting imperial *responsa* as secretaries *a libellis*, jurists of the Severan period had developed fluency in a language different than that of their predecessors. This difference may not have been shattering in its consequences; it may not even have been noticeable to contemporaries. But it reflects a broader, vastly more consequential evolution in how scholarship and bureaucracy coexisted in the legal sphere.[111]

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[110] Wieacker 1988: II.90-97; for an example, see *Dig.* 10.1.13 (Gaius, ad Legem XII Tabularum) (*Sciendum est in actione finium regundorum illud observandum esse, quod ad exemplum quodammodo eius legis scriptum est, quam Athenis Solonem dicitur tulisse* . . . .).

[111] While this point cannot be fully explored in a dissertation about Severan law and politics, this evolution demonstrates remarkable parallels to changes in American legal scholarship in the twentieth century. As the American administrative state—and its requirements for legal expertise—grew over the course of the twentieth century (on which see Mashaw 2012, Parrillo 2013), promising legal academics came increasingly to serve in the federal bureaucracy before returning to scholarly careers. This process obviously gave alumni of the administrative state

These findings also complicate some of the more narrowly adversarial views of juristic/imperial competition within the Principate. Aldo Schiavone's recent work, as well as Kaius Tuori's 2016 text on imperial decisionmaking, posit the imperial court as a growing center of legal normativity with a distinct vision of how Roman law should work and from what authorities it should flow. Both authors see this history as one of imperial decisionmaking's inevitable march to supremacy; as Kaius Tuori notes, by the Severan period "[t]he emperor's role as the final arbiter meant that this process [imperial adjudication] took place in close collaboration with jurists, but nevertheless it is clear from the sources that the law was ultimately the law of the emperor."[112] It is indisputable that imperial control over legal decisionmaking vastly expanded under Hadrian and continued into the Severan period, but this change in language suggests a corresponding alteration in juristic reasoning, one flowing from increased collaboration and—to reproduce the language of conflict—a sort of truce. Juristic writing came to permit open discussion of the policy concerns that animated state legal decisionmaking, allowing the genre of writing to flourish at the partial expense of what had made it so distinctive in the first place.

As emperors came increasingly to use law to send messages about themselves and their distinctive sorts of personhood, jurists came to view law as quintessentially a state function, one

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special knowledge of its workings; for a famous example of scholarship informed by administrative experience see Kagan 2001, but more recently Pozen 2013. In addition, however, legal scholarship has increasingly come to deploy explicitly rule-consequentialist reasoning of the sort typical—and in fact legally mandated—of legal advisors in executive agencies governed by the Administrative Procedure Act. I am inclined to argue—and plan to develop this argument at greater length in a subsequent project—that the rise of this sort of reasoning, popularly known as "law and economics," is not dissimilar to the changes in the language of juristic argumentation that I have described in this section. In both cases, changing employment patterns led to an increasing use of reasoning traditionally associated with executive bureaucracies in private scholarship.

[112] Tuori 2016b: 273; see also Schiavone 2012: 311 (referring to a "precarious yet decisive equilibrium" leading to a "previously unseen collaboration between rulers and jurisprudence—allied but distinct—that would later characterize the very highest offices of the empire.").

discussed in the language of praetors and prefects, aimed at quantifying and maximizing imperial munificence. In making a better world, and not just a better code of law, jurists of the Severan period imitated imperial bureaucrats; in applying policy considerations to legal questions, they served the interests of their sometimes employers, elevating law as a tool by which the state could perform a sort of infrastructural, continual, and transactional benevolence.

Ironically, however, this benevolence—at least as imagined in Severan juristic practice—came from the state, as much if not more than from an extraordinary person. At the same time as emperors were putting themselves forward as uniquely qualified legal authorities on the basis of individual or dynastic charisma, Severan juristic writing curiously occluded those extraordinary people. In the remainder of this chapter, I discuss how jurists of the Severan period employed increasingly depersonalized forms of imperial citation, and thus centered the authority they claimed to parse in the abstract form of the *rescriptum Principale*, rather than in the contingent or destructible person of the individual emperor. Jurists came to speak the language of policy and institutions even while genuflecting before imperial wisdom, and this shift informs how legal culture transformed itself in the chaotic and adynastic post-Severan period.

III. The Jurists and the Emperor(s)

Juristic practice, as is hopefully clear by now, is remarkably obscure about its theory of authority; the word of the *iuris peritus* is entitled to some kind of deference on the basis of his education and stature, but lacks the formal or institutional empowerment of other figures within Roman legal

culture.[113] When jurists cite their predecessors, they appear to treat them as essentially persuasive authorities, as interpretations that carry some weight but that might be contested if clearly incorrect.[114] The same is not true of imperial interpretations of law. When the *Digest* cites a rescript, that is the final word in the matter; while a writer might state that a rescript was rightly given, or offer it in support of what he presents as his own claim, no one in the *Digest* is recorded as disagreeing with a rescript.[115] Juristic citations of imperial lawmaking, which are quite frequent in the *Digest*,[116] generally take two distinct forms; while each positions the jurist subtly differently in relation to the emperor he cites and the claim for which he cites him, in no case are those relationships ones of disagreement.

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[113] See Riggsby 2010: 47-54. On legal education within Roman juristic culture, see Guarino 1990: 448-50.

[114] Cf. *Dig.* 24.1.23 (Ulpian, ad Sabinum): *Papinianus recte putabat orationem Divi Severi ad rerum donationem pertinere.*

[115] That said, this lack of disagreement seems like an almost paradigmatic example of the sort of manufactured *consensus* aimed at by the process of codification; see *const. Deo Auctore* 4 (*Iubemus igitur uobis . . . libros ad ius Romanum pertinentes et legere et elimare, ut ex his omnis materia colligatur, nulla (secundum quod possibile est) neque similitudine neque discordia derelicta, sed ex his hoc colligi quod unum pro omnibus sufficiat.*).

[116] I have found 1,168 references to imperial lawmaking in the *Digest.* When I say "lawmaking," I refer both to interpretive *responsa* in which an emperor claims to offer general guidance (such as at *Dig.* 36.3.5.1 (Papinian, Quaestiones): *Imperator Marcus Antoninus Iulio Balbo rescripsit eum, a quo res fideicommissae petebantur, cum appellasset, cavere vel, si caveat adversarius, ad adversarium transferri possessionem debere*) and to cases where the emperor takes some sort of individuated action (like at *Dig.* 49.1.14pr. (Ulpian, ad Edictum): *Et Divus Pius, cum inter coniunctas personas diceretur per collusionem in necem legatariorum et libertatium actum, appellare eis permisit*). I do this because, even if the action in question is understood as a nonprecedential executive decision, given the generalized nature of the juristic texts excerpted by the *Digest*, they are nevertheless being included to support some kind of general claim about what is or is not permitted. In becoming a depersonalized, universal, and prospective piece of guidance for readers to follow, the argument for which the given imperial claim is cited takes on an essentially legal character. For example, Ulpian follows his citation of Pius by noting that *et hodie hoc iure utimur, ut possint appellare*. For generality and prospectivity as marking legal claims, see Fuller 1969: 38-39.

First, we see the most straightforward case: An imperial rescript is offered as sole authority in response to a query, either through direct quotation or (more commonly) through summary. For example, Ulpian claims that "the speech of the Divine Marcus contains the provision that it is permitted even for *extranei*, so long as they have the right to argue on behalf of another, to discover improper collusion."[117] This method of citation is arguably the most deferential to imperial authority, and relatedly the one in which the jurist's own thought is most thoroughly obscured. The jurist demonstrates no special competence in this excerpt, merely selecting an apt piece of imperial communication and glossing it. This summary can also appear in the form of indirect speech, with the speaker's identity postponed: "one who has been relegated may petition the emperor (*libellum dare Principi posse*), according to a rescript of the Divine Brothers (*Divi Fratres rescripserunt*).[118]

The claim here precedes the identification of the speaker. By providing an argument about law without making the identity of the figure who originated it immediately obvious, this style of citation superficially invests the words with a power outside of their imperial origin; however, the reader can note the syntax of the claim (specifically its subordination) and immediately understand that it is not original to the juristic work itself. Another type of common juristic citation of imperial decisionmaking removes this barrier entirely, presenting the opinion given as a matter of agreement between emperor and scholar. For example, Callistratus' passage "The duty of tutors ends once curators are selected, and as a result all the business which they have begun is entrusted to the curators" leaves the origin of the claim remarkably, pointedly obscure. The final sentence ("and the Divine Marcus and his son Commodus said this") is used after indirect quotations to

[117] *Dig.* 40.16.2.4 (De Officio Consulis): *Oratione Divi Marci cavetur, ut etiam extraneis, qui pro altero postulandi ius haberent, liceret detegere collusionem*.
[118] *Dig.* 48.22.7.18 (Ulpian, ad Edictum).

indicate the speaker, but also to provide a form of supportive citation; "and the Divine So-And-So wrote this opinion [the same as mine, which I provided immediately earlier] in a rescript."[119] The prior claim remains in a state of indeterminacy, with it being impossible to clarify—at least in the form preserved in the *Digest*—whether the prior statement of law springs from the emperor himself, or from the juristic mind with which that emperor happens to agree. In a few cases, the emperor is explicitly mentioned as one of multiple supporting authorities; a rescript of Hadrian's is juxtaposed with a similar *sententia* of Neratius as both supporting the claim that a defendant's goods may be sold in the case of an *actio in rem*,[120] and Papinian claims that, in circumstances where a slave who is currently in prison is manumitted, "both the logic of the law and the words of the rescript [of the *Divi Fratres*] oppose liberty."[121] These examples not only posit the jurist (either Neratius or the *ratio iuris* asserted by Papinian) as essentially similar in authority to the emperor quoted, but also suggest that these *et... rescripsit* clauses may not simply identify the authoritative speaker, but instead provide additional support for the earlier claim, which is itself presented as persuasive on its face.

In none of these examples, however, is the emperor ever wrong. Imperial rescripts function as a final word in that respect; the emperor's position as the head of the system prevents his

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[119] *Dig.* 26.7.33.1 (De Cognitionibus): *Officium tutorum curatoribus constitutis finem accipit ideoque omnia negotia, quae inita sunt, ad fidem curatorum pertinent: idque etiam Divus Marcus cum filio suo Commodo rescripsit.* Cf. 49.1.4.1 (Macer, de Appellationibus): *Sed ab eo, qui sententiam male interpretari dicitur, appellare licet, si tamen is interpretandi potestatem habuit, velut praeses provinciae aut procurator caesaris: ita tamen, ut in causis appellationis reddendis hoc solum quaeratur, an iure interpretatum sit: idque* etiam *Divus Antoninus rescripsit* (emphasis added).

[120] *Dig.* 42.4.7.16 (Ulpian, ad Edictum): *Item videamus, si quis adversus in rem actionem latitet, an bona eius possideri venumque dari possint. Exstat Neratii sententia existimantis bona esse vendenda: et hoc rescripto Hadriani continetur, quo iure utimur.*

[121] *Dig.* 48.19.33 (Quaestiones): *Si autem beneficium libertatis in vinculis eos inveniat, ratio iuris et verba constitutionis libertati refragantur.*

interpretation from ever being contradicted, at least openly.[122] Imperial claims are presented as an authoritative source of law; while certain individual communications might involve nothing more than a simple order to pay a tax,[123] general claims about legal functioning are treated as binding. However, there is little explicit guidance preserved in the *Digest* about *why* imperial pronouncements bind. On one hand, we might imagine that an imperial pronouncement represents a view of the law from an individual very much worth listening to; a god-to-be. Generally speaking, when individuals with such incredible gifts or divine favor—let alone who can kill others at will—speak about what they understand the law to require, it seems wise to listen. On the other hand, an emperor's view of the law might be seen as closer to that of a contemporary Justice of the Supreme Court; authoritative not because of the extraordinary legal mind presenting it, but because of the institutional position whence it comes. These two theories—not mutually exclusive, but clearly distinct—each find support within the text of the *Digest*. Ulpian famously claims that "what pleases the *Princeps* has the force of law, because the people commit their authority to him by the *lex regia* which is the source of his authority;" in doing so, he sites true authority in the *populus* and imagines the emperor as a sort of trustee to whom that authority is merely delegated.[124] By contrast, instances where the personal qualities of decisionmakers are highlighted, like Papinian's invocation of "our greatest and best emperors" (*optimi maximi Principes nostri*) suggest a radically

[122] See Ando 2015: 120, who argues that, in claiming that imperial decisions were "subject to the interpretive powers of the legal community," jurists had carved out a deceptively large space for juristic argumentation over ideal rules while still respecting imperial authority as final and absolute.

[123] See Tuori 2016b: 247 ("The emperor here is nothing but a bureaucrat, an unfriendly character familiar from your local tax office.").

[124] *Dig.* 1.4.1pr. (Ulpian, Institutiones): *Quod Principi placuit, legis habet vigorem: utpote cum lege regia, quae de imperio eius lata est, populus ei et in eum omne suum imperium et potestatem conferat*. On the semantic instability of the *populus* as a coherent holder, grantor, or source of power in the Principate, see Marotta 2015: 354-56.

different view of imperial power, one grounded in the extraordinary features of the emperor himself and suggesting that those features make him uniquely capable of providing justice.[125] One unusual reaction to this problem is preserved in an excerpt of Marcianus that cites to a set of rules promulgated by Pius "when he was governor of Asia" (*cum provinciae Asiae praeerat*).[126] Here, administrative actions of Antoninus Pius, undertaken *before he held any imperial position*, are treated as universally binding in the same way that an imperial *responsum* would be.[127] No argument is given for why Marcianus or his audience should follow what Pius *proposuit*; none is necessary. Pius' eventual accession validates his earlier ideas, suggesting a theory of power here that flows from a personal χάρις that the state recognizes, rather than an institutional prerogative that the state bestows.

However, this citational practice is unique within the *Digest*; 48.3.6.1 is the only preserved instance of an emperor's pre-regnal actions being treated as binding.[128] Apart from this one exception, the deference shown by jurists to imperial legal thought requires some sort of institutional support; an emperor is cited because he is the emperor. The remainder of this section concerns itself with a particularly unusual form of this argument, one that becomes more frequent

[125] See *Dig.* 34.9.16.1 (Papinian, Responsa).
[126] *Dig.* 48.3.6.1 (Marcianus, de Iudiciis Publicis).
[127] Notably, however, Marcianus later cites imperial rescripts—including those of Pius—to support the claim. *Ibid.*: *Sic et Divus Pius et alii Principes rescripserunt . . . .*
[128] While there are numerous examples within the *Digest* of references to an emperor simply writing or claiming something to be true without specifically noting that they did so in any formal capacity (e.g. *Dig.* 40.10.6 (Ulpian, ad Legem Iuliam et Papiam): *Libertinus si ius anulorum impetraverit, quamvis iura ingenuitatis salvo iure patroni nactus sit, tamen ingenuus intellegitur: et hoc Divus Hadrianus rescripsit*), the verb *rescribo* is only ever used of emperors and jurists in the *Digest*; particularly given the formal role of the *rescriptum* by the Severan period, the term should be understood not as simply "writing back" but as "composing a response," with the latter being an institutional prerogative of jurists to whom questions were addressed and—more frequently—emperors who dispensed these sorts of interpretations as part of their daily business. See Millar 1977: 242-52.

in later Severan jurists and one with remarkable implications for the history of Roman jurisprudential theory. Specifically, later juristic writing frequently cites imperial legal pronouncements without specifying who, exactly, pronounced the law. This extreme depersonalization is difficult to explain according to orthodox understandings of the use of juristic text; however, it suggests a subtle intellectual response not only to rapidly changing norms surrounding the validity of Commodan, Elagabalic, or Macrinian legal communications, but also to broader shifts in the nature of imperial legalism taking place throughout the Severan period.

Of the 1,168 references to imperial lawmaking in the *Digest*, 176 reference some sort of imperial decision without providing any information about who, exactly, made that decision.[129] These citations refer to principles of emperor-made law as settled through repetition—*saepissime rescriptum est*[130]—or simply through vague references to the act of imperial response. For example, *Dig.* 48.19.10.2 states that "it has been decided that, in cases of both common people and members of the decurion class, he who pays a greater penalty than is set out by the laws does not suffer *infamia*."[131] Such references to abstract forms of decisionmaking are quite common within this corpus; while jurists will occasionally explicitly site the responses given in an imperial

[129] This number does not include several citations—largely but not exclusively Pauline—which refer to an unnamed emperor, but do so in contexts which suggest that the identity of the ruler was known. See, for example, *Dig.* 16.2.24 (Paul, Decreta): *Iussit Imperator audiri adprobantem sibi a fisco deberi, quod ipse convenitur*.

[130] *Dig.* 12.3.4pr. (Ulpian, ad Edictum). By my count, some variant of this form—using either *saepe*, *multum*, *nonnullum*, or *plurifariam* to indicate the variety of imperial authorities supporting the claim—appears 23 times within the *Digest*; see App. III.

[131] Macer, de Publicis Iudicis: *In personis tam plebeiorum quam decurionum illud constitutum est, ut qui maiori poena adficitur, quam legibus statuta est, infamis non fiat*.

context,[132] more frequently they simply refer to these decision practices in the absence of any indication that the decisions were made by a person entitled to deference.[133]

At first glance, this might seem like a simple formal quirk; the distinction between "The Divine Hadrian wrote in a rescript that X" and "it was written in a rescript that X" is not immediately meaningful. However, two features of this style of argument suggest that it reflects some sort of broader shift. Firstly, depersonalized citations are markedly more frequent in later authors within the *Digest*. The most frequent employer of depersonalized citation is Ulpian, who does so in almost perfect proportion to his representation within the *Digest* as a whole (constituting roughly 40% of both depersonalized citations and 40% of total preserved juristic work), but the late Severan jurists Macer and Marcianus, both minor figures within the *Digest*, are responsible for a vastly disproportionate number of these sorts of citation, and Modestinus also seems to engage in it heavily.[134] By contrast, only six instances of this practice survive from the pre-Severan jurists: two from Gaius, two from Marcellus, and one each from Nerva and Scaevola.[135] This

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[132] E.g., *Dig.* 12.1.33 (Modestinus, Pandecta) (*Principalibus constitutionibus cavetur, ne hi qui provinciam regunt quive circa eos sunt negotientur mutuamve pecuniam dent faenusve exerceant*), 26.7.5.5 (Ulpian, ad Edictum) (*Si tutor pupillum suum puberem factum non admonuerit, ut sibi curatores peteret (sacris enim constitutionibus hoc facere iubetur qui tutelam administravit), an tutelae iudicio teneatur? Et magis puto sufficere tutelae iudicium, quasi conexum sit hoc tutelae officio, quamvis post pubertatem admittatur.*).

[133] E.g., *Dig.* 49.14.26 (Ulpian, ad Sabinum): *Cum quidam capitis reus emancipasset filium, ut hereditatem adiret, rescriptum est non videri in fraudem fisci factum, quod adquisitum non est.* For reference, while *rescribo* is nearly always used to refer to imperial decisionmaking when the *rescriptor* is named, this is not always the case; see *Dig.* 40.4.46 (Pomponius, ex Variis Lectionibus): *Aristo Neratio Appiano rescripsit, testamento liber esse iussus, cum annorum triginta esset, antequam ad eam aetatem perveniret si in metallum damnatus sit ac postea revocetur . . . .*

[134] This formulation is attested 9 times in Macer, out of 68 total citations of Macer in the *Digest*; 23 times in Marcianus, out of 287 total citations in the *Digest*; and 14 times in Modestinus, out of 349 total citations in the *Digest*.

[135] *Dig.* 12.2.31 (Gaius, ad Edictum Provinciale), 29.1.2 (Gaius, ad Edictum Provinciale), 29.1.25 (Marcellus, Responsa), 34.9.6 (Marcellus, Digesta), 41.3.40 (Nerva, Regula), 50.1.24 (Scaevola, Digesta).

weighting towards the Severans—and particularly towards the late Severans—is vastly more extreme than the *Digest*'s general third-century orientation, suggesting that the practice of depersonalized citation became more frequent in this period. Furthermore, the distinct fashion in which depersonalized citations are used and argued, as well as the unusual political circumstances of the time in which these figures wrote, suggest that what changed was something weightier than style.

To assert that a given legal claim "is contained in many rescripts" (*multis rescriptis continetur*)[136] as opposed to siting it within a named emperor's corpus of written communications changes not merely an argument's form, but also its epistemic praxis and theory of authority. Consider the examples from earlier; when a rescript is quoted or summarized as dispositive, or even adduced in support of a jurist's claim, the reader is directed to the official communication. The jurist who engaged in named citation situates himself directly within systems of imperial lawmaking, deriving legitimacy from those systems but also indicating for his reader how they might best be approached. When Modestinus states that he "discovers" (εὑρίσκω) a point of law in a rescript of Severus and Caracalla, he casts himself as only uncovering rules that have already been settled, and suggests that his reader can do the same work himself.[137] While we cannot say with certainty that rescripts were universally viewed as supreme,[138] it is notable that the jurists in the *Digest* never contradict imperial authority; it seems difficult to imagine that litigants would not prefer to cite the rescript, and employ the juristic citation as a tool to find it. The argument that

[136] E.g., *Dig.* 38.2.3pr. (Ulpian, ad Edictum).
[137] *Dig.* 27.1.4pr. (Excusationes).
[138] The clearest example, in practice, of imperial supremacy is at *Dig.* 26.5.12.1, in which Ulpian states that an opinion held by many jurists, including Celsus (*apud Celsum et apud alios plerosque relatum*) is incorrect because it was superseded by rescripts of Pius and the *Divi Fratres*.

results from such a claim is an argument about the applicability of any given piece of imperial decisionmaking, with the precedent cited being clearly binding but potentially distinguishable.

By contrast, citing *sacris constitutionibus*[139] engages only superficially with imperial power while building more directly upon the jurist's own erudition or command of law, and encourages an argument about the jurist's work product rather than the sources on which he relies. In its explicit language, saying that a particular opinion "has been written in a rescript" or "is contained in imperial communications" decouples the person or charisma of the lawmaker from the office in which he sits and the work in which he engages; it is the petition-and-response structure itself, as a decisional practice (an act of resolving, a *constitutio*) or a communicative one (the act of responding to subject's questions, of producing ideas which are then *rescripta*), which generates legal authority, and not the individuals enmeshed within that structure. Instead, the only individual whose personal qualities are implicated in these sorts of arguments is the jurist himself; as the individual responsible for synthesizing a unitary legal claim from unknown and uncounted imperial texts, the jurist not only advertises his own facility with casuistic reasoning, but also makes it effectively impossible to check his work against any more obviously authoritative source. Theoretically, an individual might know enough about rescripts as a whole to contest a given jurist's interpretation, perhaps adducing examples to support his claim and perhaps not. However, doing so would require such breadth of, and confidence in, legal knowledge that this debate could only occur between jurists, and would essentially pit each claimant's legal expertise and sophistication against the other. At this point, the debate in question is no longer about the applicability or even acceptability of a particular piece of imperial lawmaking, but instead about particular scholarly figures' ability to derive broad principles from an undifferentiated and de-

[139] *Dig.* 26.7.5.5 (Ulpian, ad Edictum).

emphasized mass of *rescripta*. In other words, these depersonalized citations can only be contested by talking about jurists, rather than about emperors.

Of course, there are other tools to do this same work. Jurists made claims on their own authority all the time, and could reason from imperial communications in ways that centered their own interpretive skill: "the Divine Marcus also followed our reasoning in a rescript."[140] So what is the advantage of these anonymous citations? This stylistic change seems too diachronic to reflect one author's preference or a quirk of style; what work did it do, beyond allow for self-importance in a genre already offering numerous opportunities for the same?

I suggest two possible reasons why these new forms of citation became noticeably more frequent in the Severan period. The first is fairly straightforward; citing unnamed imperial communications might be a rational response to the unusual politics of imperial precedentiality under the Severans, and in particular to the complicated position of Commodus within political and legal memory. As mentioned in earlier chapters, the validity of Commodan communications under the Severans was a matter of some dispute. Commodus was condemned by the Senate upon his death in 193, and his official acts were presumably expunged by Pertinax;[141] while he had been restored at least by 195 C.E.,[142] Commodus' decrees may have been temporarily stripped of legal force by Macrinus before his return to favor under Severus Alexander.[143] What is clearer is that

[140] *Dig.* 29.1.3 (Ulpian, ad Sabinum): *nam secundum nostram sententiam etiam Divus Marcus rescripsit.*
[141] *See* Dio Cass. 74.2, SHA *Comm.* 19.1 (quoting a senatorial decree upon Commodus' death as proclaiming: *Parricidae gladiatoris memoria aboleatur, parricidae gladiatoris statuae detrahantur!*).
[142] The date of *CIL* 8.3917, which refers to Septimius as *Divi Commodi fratri*. For this restoration, undertaken as part of Septimius Severus' self-adoption into the Antonine *gens*, see Dio. Cass. 78.6.3; Hekster 2002: 189-91.
[143] Evidence—albeit doubtful—for this *renovatio damnationis memoriae* can be found at SHA *Macr.* 13.1.

Commodus is a strikingly marginal figure in Severan juristic writing, only cited nineteen times in the *Digest*.[144] Of those, only seven refer to opinions issued during Commodus' twelve years of sole rule. By contrast, Commodus' predecessor Marcus is cited on his own authority 90 times, and a further 117 acting jointly with Lucius Verus; Commodus' successor, Septimius Severus, is cited 233 times in the *Digest*. Even if Commodan precedent was still formally valid—and presumably still available in some form, given its appearance in a relatively broad cross-section of authors—the Severan jurists appear to have avoided citing him, either due to "Commodus' bad reputation among the upper classes, to which lawyers belonged,"[145] or a concern that arguments based on Commodus' view of the law, and thus on his reputation, could become suddenly vulnerable.[146] That said, the man ruled for over a decade; blasting a Commodus-shaped hole in the development of Roman law would presumably have its own consequences. I suspect, although it cannot be proven, that the rise in anonymous citations among the Severan jurists responded to this problem; while the reasoning of Commodus was citeable when these authors wrote, these anonymous references to imperial communication would render the opinions less obviously invalid should the political circumstances change (and their authors less obviously wedded to a disfavored ancestor; given the death of Papinian, this may have been no small inducement). These citations allowed jurists to situate themselves within a system of authorities that was beginning to fall apart; practices

[144] Those nineteen citations are at *Dig.* 1.18.14 (Macer, de Iudiciis Publicis), 4.6.8 (Paul, Brevia), 11.4.1.2 (Ulpian, ad Edictum), 12.3.10 (Callistratus, Quaestiones), 22.3.26 (Papinian, Quaestiones), 23.1.16 (Ulpian, ad Leges Iuliam et Papiam), 25.3.6.1 (Modestinus, de Manumissionibus), 26.7.33.1 (Callistratus, de Cognitionibus), 27.1.6.8 (Modestinus, Excusationes), 27.1.15.2 (Modestinus, de Excusationibus), 27.1.26 (Paul, de Excusationibus), 29.5.2 (Callistratus, de Cognitionibus), 30.112pr. (Marcianus, Institutiones), 31.64 (Papinian, Quaestiones), 35.3.6 (Callistratus, de Cognitionibus), 39.4.16.6 (Marcianus, de Delatoribus), 40.8.3 (Marcianus, Institutiones), 48.5.33(32)pr. (Macer, de Iudicis Publicis), 48.5.39(38).8 (Papinian, Quaestiones), 48.10.7 (Marcianus, Institutiones), 49.14.31 (Marcianus, Institutiones).
[145] Hekster 2002: 75 n.195.
[146] On this phenomenon, see Sautel 1956.

of memorialization and reference that were developed in the relative stability of Antonine politics could not function in the Severan moment without this sort of adaptation. One fragment that seems to offer particular support of this reading is 49.14.18, an excerpt from Marcianus' *de Delatoribus* in which he cites in order *sacris constitutionibus*, the *Divi Fratres*, *constitutionibus Principum*, *rescripta* [*rescriptum est*], *sacris constitutionibus*, *Divi Severus et Antoninus*, two more rescripts explicitly identified with Severus and Caracalla [*idem*], a reported rescript of unknown origin [*ut et constitutum esse refertur*], and finally *quidam Principes*. Marcianus quite comfortably cites some emperors by name while referring immediately after to anonymous rescripts; this seems most logical as a response to certain authorities being safer to cite than others.

However, these citation practices may also be understood to serve a broader and more structural function; they did not only benefit jurists. The stability and predictability of Roman law were primary desiderata for other actors within the system, not only lower-scale adjudicators who could more easily apply settled rules but also litigants and local advocates, who could more easily master or function within a normative system whose rules were not altered at moments of succession.[147] This points towards the broader ramifications of citing imperial replies writ large, rather than the opinion of a given vulnerable man. *Rescripta Principalia* cannot be assassinated, and a system in which the phrase ceased to carry normative force would be very different from that in which the Severan jurists worked. Ironically, the (dubious) *vita Macrini* portrays the lawyer-emperor Macrinus proposing just such a system as an example of his jurisprudential idealism:

> He was no fool in matters of law, to such an extent that he resolved to invalidate all the rescripts of the old *Principes*, so that disputes would be resolved by law and not

[147] Ando 2013: 48.

> by rescripts; he said it was *nefas* that the whims of Commodus, and Caracalla, and other untrained men should appear as laws . . . .[148]

The *vita* follows this with an account of Macrinus' savagery towards household slaves, and suggests widespread revulsion towards the man led to his death, making its praise of his revolutionary tendencies dubious at best.[149] However, even if the account is positive, the *vita*'s insistence on comparing the abolishment of rescripts to other oddly archaic or antisocial practices suggests that such a scheme would seem startling and radical.[150]

If the power of the *rescriptum Principale* was as settled as this account suggests it to be, then juristic reliance on that power seems like something much more than a rhetorical trick. By centering jurisgenerative effect in a set of institutions and epistemic practices that were not vulnerable to the same sort of obliteration as were personal authorities, jurists could argue about rules in ways that transcended Severan intrigue, and create a language for legal contestation—a language of institutional, depersonalized authority—that remained functional at a time when the dynastic assumptions undergirding the Hadrianic settlement no longer held.[151]

I do not intend to confidently ascribe a specific motive to this shift; I doubt it is possible. However, I have just outlined two *foreseeable consequences* of this change in citational practice, both potentially desirable. Without speaking in the language of hidden motives or grand plans, it is clear that something happened in Severan juristic writing; jurists began to cite imperial authority

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[148] SHA *vita Macr.* 13.1: *Fuit in iure non incallidus, adeo ut statuisset omnia rescripta veterum Principum tollere, ut iure non rescriptis ageretur, nefas esse dicens leges videri Commodi et Caracalli et hominum imperitorum voluntates . . . .*

[149] *Ibid*. 13.2-14.1.

[150] I pointedly take no position on the date of the composition of the *HA*, on which see Thomson 2012: 37-53.

[151] See Meyer 2004: 250 ("The period of time between the third century A.D. and the age of Justinian sees the initial construction of precisely the kind of clear system of proof that the High Empire had avoided, rooted in a discussion of the essence, performance, and validity of formal and ceremonial legal acts that itself began in the high Empire.").

in ways that obscured, rather than highlighted, that authority's decisional power, and that rendered it nearly impossible to check their work for bad or outdated politics. Along with the increasing use of rule-consequentialist policy arguments in juristic work of the period, we can thus track the emergence of a semi-distinct 'Severan style'; one increasingly concerned with the functioning of the state as a whole, and increasingly flexible on its personal obesiance to a charismatic monarch.

Conclusion

Throughout the Severan period, actors with control over the development of the law used that control to do much more than establish rules. Severan monarchs used law to express ideas of transdynastic or dynastic continuity, as well as personal power and divine connection. But these changes were not only imposed from above. Juristic work under the Severans responded to this ideologically charged legal culture, not only by crafting an idea of juristic science that reflected its increasing entanglement with the imperial bureaucracy, but also by arguing in ways that privileged that bureaucracy above its vulnerable head. Juristic work adapted itself to the business of empire in its reasoning, and to the volatility of empire in its precedentiality. While this might at first seem to be little more than a footnote in the intellectual history of Roman law, later developments in the preservation and transmission of juristic writing suggest that these changes were enormously consequential.

Juristic writing seems to have flourished in the Severan period; Severan writers are vastly over-represented in surviving legal collections, and production of juristic work largely ceased after

the middle of the third century.[152] Late Antique legal history is, instead, marked by an increasing trend towards codification and transmission; particularly relevant rescripts were collected and passed down in *codices*, while juristic texts were used in legal education[153] and argumentation. Attempts were made throughout the Late Antique period to sort through this tangled mass of conflicting authorities, both through the establishment of complete, authoritative collections like the Theodosian Code[154] and through second-order rules surrounding which sorts of authorities could be cited and how.[155] Remarkably, the system envisioned by these measures resembles nothing so much as the system envisioned by the Severan jurists. Imperial authority is essentially denatured; while the rescripts collected in works like the *Codex Gregorianus* or *Hermogenianus* carry weight based on their inclusion, the actual personality of the promulgator becomes irrelevant, while the figures whose individual achievements and legal erudition are put forward as subjects of contestation are the jurists themselves. Juristic work of the Severan period remained useful as a guide to legal rules and structures for the centuries beyond, with the imperial authorities they followed absorbed into a network of *sacrae constitutiones* that, while presumably contingent upon a given ruler's post-mortem reputation, was nevertheless far less vulnerable to sudden shifts than might be the highly personalized citation forms that predominated among pre-Severan legal reasoning.

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[152] Lenel 1960 records only two jurists who can be securely dated to after this period (Hermogenianus and Arcadius Charisius). See also de Blois 2001: 147-49, Mennen 2011: 153-54.
[153] See Riggsby 2010: 63-64.
[154] Archi 1976, Honoré 1986.
[155] The most famous example of this latter phenomenon is the Law of Citations, issued by Valentinian III in 426 C.E. and recorded at *Cod. Theod.* 1.2.4. The Law of Citations held that, in cases of dispute between those jurists recognized as leading authorities—specifically Gaius, Modestinus, Papinian, Paul, and Ulpian—a majority would prevail, with Papinian breaking ties. On the Law of Citations, see Harries 1998: 33-34, Watson 1966: 402-06.

Particularly given the extraordinary volatility of the middle and later third century, the system developed by Marcianus and others seemed to *work*. This basic functionality may be a cause of the predominance of Severan writers in post-classical reception; it certainly allowed juristic transmission, if not new juristic writing, to achieve the high place it held in Late Antique legal argument. Severan legal scholarship did not simply reproduce the politics and intellectual framework of its forebears; it imagined a different way to conceive of law and empire. It is this imagined politics, not an abstract Roman Law writ large, that shaped that law's future and shapes our view of it today. We see Roman law through the eyes of the Severan jurists.

CONCLUSION

TOWARDS ROMAN RULES OF LAW

In this dissertation, I have shown how law become entwined in a broader conflict between charismatic and institutional forms of authority during the Severan period. Chapter I discussed the unusual legal program of Septimius Severus, and showed that Septimian legal reforms communicated an image of the emperor as firmly institutionally bound, acting in concert with a broader and more broadly legitimated bureaucratic order. Chapter II showed a radical break with this legal program, coinciding with a similarly radical break in imperial messaging generally; Caracalla used law as a way to enact an imperial representation centering charisma, divinity, and transcendence. Chapter III discussed the legal regime of Severus Alexander, which follows that of his imagined grandfather in subsuming the emperor within suprapersonal structures of authority. In Alexander's case, however, that structure took a more pointedly dynastic form; Alexandrian rescripts highlight the emperor's adherence to earlier Severan administrative practices, and thus suggest a more general dynastic and legitimated continuity. Chapter IV explored how other legal actors' responded to this shifting idea of imperial legalism, making more explicit arguments for juristic writing as a center of administrative normativity and treating imperial communications as existing within larger structures of authoritative legal speech, rather than altering the law from outside and above it. While these changes may seem academic, evidence from the post-Severan Roman world suggests that this changing idea of *ius* and the emperor altered more than juristic citation practice.

In 249 C.E., villagers near the Egyptian city of Arsinoe received a hearing before the prefect of Egypt, an Aurelius Appinus Sabinus, in which they claimed exemption from local

liturgies. This trial, recorded on what is now SB 5.7696,[1] constitutes an unusually well-preserved Egyptian hearing in the first instance, but includes a rather remarkable argument. On lines 82-86 of the papyrus, an advocate for the villagers named Seleukos cites "a law of the emperor Severus (Σεουήρου τοῦ αὐτοκράτορος νόμον)," which—as becomes apparent immediately after when the 'law' is further glossed—actually arises from a Severan adjudication: "and Severus said that what they asked was sensible (Σεουῆρος εἶπεν· εὔλογόν ἐστιν, ὃ ἀξιοῦσιν)." Sabinus then asks a representative for the Arsinoites to give him another law (ἀνάγνωθι καὶ σύ μου νόμον), reinforcing that the decision of Severus should be understood properly as νόμος, before Seleukos claims that, in addition to the word of Severus, all prefects (πάντες οἱ ἡγούμενοι) have ruled as they suggest.

We do not know whether these villagers won their case, but Seleukos' argument rests on some second-order assumptions about imperial speech that merit attention in their own right. SB 5.7696 is not the first record of imperial decisions being cited in Roman Egypt,[2] but it is the first to cite them as νόμος; earlier citations to imperial adjudication refer to the results of that adjudication as ἀποφάσεις or χάρεις. Ranon Katzoff takes this shift in language to indicate the "increase in respect" afforded to rescripts,[3] but it also indicates an increasing depersonalization or bureaucratization of the judgments that rescripts contain. ἀπόφασις denotes an action, something people do and something an emperor does in his capacity as a person; χάρις is as straightforward an invocation of the emperor's personal "charismatic" authority as one could wish. By contrast, νόμοι are products of a state, and the term refers to not an individual practice but instead to an abstract enforceable norm, one which might be generated by a speech-act (or a vote, or the signing

[1] = *P. Lond.* 2565. Originally published at Skeat and Wegener 1935; for more recent commentary see Crook 1995: 98-99, Katzoff 1972: 276-77, Lewis 1983: 49-50.
[2] See, for example, *P. Teb.* 286 and *BGU* 1.19, both second-century citations of Hadrianic rescripts.
[3] Katzoff 1972: 277.

of a written document) but which derives its constitutive features from the institutional context in which it is promulgated and within which other actors respond to it. Unlike in earlier examples of imperial citation, Seleukos cites Septimius Severus in concert with the opinions of prefects; while Severus is clearly supreme, the language used—that of law and the interpretation of law—decenters the imperial speech-act in favor of the institutional constraints that that action brings into being or alters. Imperial judgment is simply a feature of the law, rather than an expression of sovereign will.

At a glance, nothing about the world envisioned by SB 5.7696 is new. That predictability of rules might be a desideratum within Roman legal paradigms should not surprise anyone who has read thus far, and litigants had argued from precedent in order to situate their cases within that discourse of predictability for centuries in Roman Egypt.[4] But Seleukos, crucially, represents that discourse to include even the *princeps* himself, and the prefect Sabinus follows his lead. An imperial opinion is here represented not as an unusual event outside of a prevailing legal order—as munificence that might raise, at best, hopes of an encore—but as a supreme example (in all senses) of administrative decisionmaking, an interpretation of the world that is so fully enmeshed within the institutional framework that persisted into Seleukos' time (well over a decade after the death of Severus' last dynastic heir) as to bind officials in that time. This argument (and the regularity of practice suggested by Sabinus' casual adoption of its language) imagines that the emperor did not stand above or supersede the law, so much as express and refine it; the law was

[4] See, for example, *P. Mich.* 148, Verso ii.12-16: "Lykarion, advocate, added: 'You are sitting in judgment on a case of universal import which has previously been judged by both magistrates and prefects. Not only that, but also the most excellent prefect Valerius Proculus referred such an inquiry to the *archigeorgos* Vestinianus, who reviewed the decisions made by those who had judged the matter under investigation, and declared that property held in common is not sold to any others than the neighbors. We request, therefore, on reading the judgments, that we ourselves (be permitted to) buy the common property.'" Translation Youtie 1977: 136.

what mattered, and an emperor's speech could bind based on its role within that law even when he himself carried no personal χάρισμα that might enforce his will.

This version of imperial lawmaking persisted outside of Roman Egypt. As Serena Connolly has noted, the Late Antique period was marked by codification and collation of imperial rescripts as handbooks for lawyers; these claims within these handbooks, divorced from their political context, could carry weight as authoritative statements of law, rather than statements of a person with whom a decisionmaker might be anxious to align himself or whom that decisionmaker might fear to cross.[5] The νόμος that Seleukos invokes and that these handbooks envision is impersonal or suprapersonal; it accommodates imperial speech as easily as it does more quotidian precedents, assimilating them into a broader decisional framework aiming at clarity, prospectivity, and a certain kind of generality.

That framework happens to map well onto our prevailing normative theories of the rule of law. Returning to a discussion of the rule of law that I took up in Chapter I, Lon Fuller has argued that the "inner morality of law," or a distinctive sort of goodness whose presence is necessary for our understanding a particular set of rules to constitute "law," requires that those rules be public, prospective, understandable, coherent, stable, clear, and reasonably predictive of future state action.[6] It is not difficult to see how the rescript system envisioned by Hadrian would fail in

[5] See Connolly 2010: 141-42.

[6] Fuller 1969: 39. For an account of how these distinctive legal characteristics might generate outcomes that accord with contemporary notions of distributive justice even under a political regime otherwise opposed to that sort of justice, see Thompson 1975: 258-69 (discussing how the Whig regime's attachment to the rule of law as an abstract virtue curbed some of the normatively undesirable consequences of the Black Act and eventually led to greater rights for England's rural poor). This account has proven extremely controversial, and other scholars—most notably Morton Horwitz—have questioned the idea that the rule of law constitutes a good in itself (as Fuller claims) or necessarily improves outcomes (as Thompson claims). Horwitz 1977; see also Levinson and Balkin 2009 (describing the conflict between Horwitz and Thompson and its implications for contemporary legal thought).

practice to meet such a standard—if law is simply a matter of one man's pleasure, or can be altered at that man's pleasure, how predictable or coherent can it be?—but the sorts of legal rules invoked by these documents might be more pleasing to Fuller. Dead men can't change their minds, after all; if the opinions of emperors can be ossified into fixed and stable points of law, they can be known in advance and relied upon by whoever can access them. Without claiming that the Late Antique legal world was any sort of paradise, the *imago* of Classical law that it contained seems strikingly modern in its impersonality and fixity, let alone its implicit elevation of legal claims over personnel changes or personal feuds.

One can easily become Whiggish about this process—and many have. To repeat a point made at the beginning of this dissertation, I take no normative position on this development; even if we assume this order held, I leave its normative desirability—as an instrument towards some sort of broader progress or an ethically salient feature of governance in its own right—for others. Is it notable, however, how large "Rome's rule of law" has loomed over other accounts of legal history. When Edward Gibbon described the "majesty of the Roman laws,"[7] or when Alan Watson describes the authority of Roman law as a critical component in its later European reception,[8] this striking impersonality is what we should understand them to mean; Roman law as preserved in the *Corpus Iuris Civilis* follows certain organizing principles that we might now associate with a "modern" legal state.

My goal in this dissertation has been to put those principles in context. The institutionalization of imperial authority—what a Weberian might describe as the routinization of imperial charisma into a set of offices empowered over, and decontextualized commands applied

[7] Gibbon 1781 (1998): II.54.
[8] Watson 1983: 1125.

to, everyday life[9]—that appears in the Severan sources was not the result of any sort of inevitable or disinterested progression. Legal changes like the *CA* or the adoption of policy analysis in juristic writing were not inspired by model codes. The major legal developments of the Severan period are more properly situated within broader, transmedial shifts in imperial communication. A more bureaucratized model of imperial legalism, focusing on the emperor's role within an institutional framework that was designed to outlast him, fit the specific needs of a specific moment; it is no coincidence that those moments of dramatic discontinuity within Severan legal culture (most notably the *CA*) correspond with similar discontinuities in imperial representational strategy. Severan law sprang from a political environment totally unlike that of Hadrian, whose legal reforms presumed a level of imperial stability that could make a ruler's word into a stable world. The Severans held a throne of gold atop a base of blood and sawdust; holding power required demonstrating their allegiance to, or functionality within, a system greater than themselves. Severan legal developments should not be understood as somehow outside of this symbolic framework, even if they had effects far beyond propping up the Principate for another 42 years. Instead, law was only one of many tools the Severans used to tell stories about their family, their morals, and their state; it just happens to be the only one to govern wills in modern New Orleans.[10]

[9] Weber 1968: 59-60.

[10] See Louisiana State Constitution, Art. XII § 5(B) (instituting children of a decedent under 23 years of age as "forced heirs," a practice visible in no other state's inheritance law but present in Roman law in the form of the *querela de inofficio testamento*). On the *querela*, see *Dig.* 5.2.

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APPENDIX 1:

P. *GISS.* 40 I

The following reconstruction can be found at Oliver 1989: 497. For a discussion of the various controversies surrounding the reconstruction of the *CA* from *P. Giss*. 40 I with complete apparatus, see *ibid.* 496-99.

-- -- -- Μᾶ]ρκος Ἀ̣ὐρήλι[ος . . . . .] Ἀ̣ντωῖ̣νο̣[ς] Ε[ὐσεβὴ]ς [v] λέγει.
-- -- -- --]Η̣ μᾶλλο̣ν ΑΝ[-- -- -- -- -- τὰ]ς α̣ἰ̣τ̣ὶ̣ας κ[α]ὶ τ̣ο̣[ὺς] λ̣[ογι]σμοὺ̣ς
-- -- -- θ]εοῖ̣ς [τοῖ]ς ἀθ̣[αν]άτοις ε̣ὐχ̣αριστήσιαμι, ὅ̣τι τῆ̣[ς] τ̣οιαύτη[ς]
-- -- -- --]η̣ς με συν[ετ]ή̣ρησαν / Τοιγ̣αρ̣οῦν νομίζω[ν ο]ὕτω με
-- -- -- --]ω̣ς δύ[ν]α̣σθαι τ̣ῇ̣ μεγ̣α̣λ̣ειό̣τητι αὐτῶν τὸ ἱκ̣ανὸν ποι
-- -- -- ὁσ]άκις ἐ̣ὰν ὑ̣[π]ε̣ισέλ̣θ̣[ωσ]ιν εἰς τοὺς ἐ̣μοὺ̣ς ἀν[θ]ρώπους
-- -- -- τῶ̃]ν θεῶν συνε̣ι̣σενέγ[κοι]μι [vvv] δίδωμι τοῖ[ς σ]υναπα
-- -- -- τ]ὴν ο̣ἰκουμέ̣νην π[ολειτ]είαν Ῥωμαίων, μένοντος
-- -- -- -- --]άτω̣ν χωρ[ὶς] τῶν [. . .]ειτικίων [vvv] Ὀ[φ]είλει [γ]ὰρ τὸ
-- -- -- -- -- -- --]νε̣ιν πάντα Α[. . .]Α ἤδη κ[α]ὶ τῇ̣ νίκῃ ἐνπεριει
-- -- -- -- διάτ]α̣γμα ἐ̣[ξα]π̣λώ̣σει[ε τὴν] μεγαλειότητα [το]ῦ̃ Ῥωμα[ι]
-- -- -- -- -- -- --] π̣ε̣ρὶ τοὺς [. . . ο]υς γ̣εγε̣νῆ̣σθαι ᾗ̣περ δ[--]
-- -- -- -- -- -- --]ταλειφ[-- -- -- --]ων τῶ̃[ν ἑ]κάστης
(fragmentary)

APPENDIX 2:

CITATIONS TO PRIOR IMPERIAL PRECEDENT WITHIN THE *CODEX IUSTINIANUS*

This appendix lists the 57 instances within the *Codex Iustinianus* of an imperial rescript citing a previous imperial decision as supporting authority. For each instance, I have provided the location within the *Codex*, the issuing authority or authorities, and the authority cited. *Antoninus* could refer to multiple issuing authorities; I have provided more specific information, however, when the issuing authority can be identified on the basis of other information (such as a date).

Location	Issuing Authority	Authority Cited
1.17.2.18	Justinian	Hadrian
2.1.8	Severus Alexander	Caracalla
2.13.1.2	Diocletian/Maximian	Claudius
3.28.29pr.	Zeno	Leo
4.1.2	Severus Alexander	*Divi parentes*
4.57.2	Severus Alexander	Marcus and Commodus
4.65.4.pr	Severus Alexander	Pius and Antoninus
5.16.3.pr	Caracalla	Severus
5.16.10	Gordian	Severus
5.17.5.pr	Diocletian/Maximian	Marcus
5.62.5	Severus Alexander	Marcus
5.62.17	Valerian/Gallienus	Marcus
6.4.1.1	Severus/Caracalla	Pertinax
6.21.6pr.	Severus Alexander	*Divi parentes*
6.24.4	Gordian	Severus and Caracalla
6.26.2	Severus/Caracalla	Marcus
6.30.22pr.	Justinian	Gordian
6.45.2pr.	Gordian	Severus
6.49.4	Diocletian/Maximian	Caracalla
6.50.4	Severus Alexander	Hadrian
6.50.5	Severus Alexander	Severus
6.54.6	Severus Alexander	Caracalla
6.54.7	Severus Alexander	Marcus and Commodus
7.2.6	Gordian	Marcus
7.2.12.2	Diocletian/Maximian	Pius

7.4.2	Antoninus	Hadrian
7.8.6	Severus Alexander	*Divi parentes*
7.11.3	Severus Alexander	Marcus
7.12.1pr.	Severus/Caracalla	*Divus pater*
7.20.1	Diocletian/Maximian	Pius
7.37.3pr.	Justinian	Zeno
7.64.7	Diocletian/Maximian	*Divi Principes*
7.71.4pr.	Diocletian/Maximian	*Divi parentes*
8.10.5	Diocletian/Maximian	Hadrian
8.23.1.2	Gordian	*Divi Principes*
8.53.32	Anastasius	Leo
8.54.1.1	Valerian/Gallienus	*Divi Principes*
8.54.3.1	Diocletian/Maximian	*Divi Principes*
8.56.2.2	Gordian	Severus
9.9.6.1	Severus Alexander	*Divi parentes*
9.9.16.1	Valerian/Gallienus	*Divi Principes*
9.22.1	Caracalla	Severus
9.22.2	Severus Alexander	*Divi parentes*
9.23.3	Severus Alexander	*Divi Principes*
9.41.11pr.	Diocletian/Maximian	Marcus
10.32.61pr.	Leo	Julian
10.40.2pr.	Severus Alexander	Hadrian
10.40.7.pr	Diocletian/Maximian	Hadrian
10.48.15.pr	Arcadius/Honorius	*Divi Principes*
10.52.5	Diocletian/Maximian	*Divi parentes*
10.53.4	Diocletian/Maximian	Pius
10.60.1	Severus Alexander	*Divi parentes*
11.33.1	Antoninus	*Divi Principes*
11.33.2.2	Constantine	*rescripta Divorum*
11.35.1	Caracalla	Severus
12.35.4	Severus Alexander	Marcus and *Antoninus, pater meus*
12.62.4	Diocletian/Maximian	Aurelian

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APPENDIX III:

JURISTIC CITATION OF IMPERIAL LAWMAKING IN THE *DIGEST*

This appendix lists the 1,168 juristic references to imperial lawmaking preserved in the *Digest*. For each reference, I have included the excerpt's location within the *Digest*, the author and excerpted work, and the authority referred to. For instances where the authority is not specified, I provide the language of the citation instead. Some books of the *Digest* (specifically books 30-32) are not broken into separate titles; rather than listing locations in those books by [book].[title].[fragment].[section] as I do elsewhere, I list them as [book].[fragment].[section]*, with an asterisk to avoid confusion.

Location	Author	Text	Authority
1.2.2.32	Pomponius	Enchiridion	Augustus, Claudius, Titus, Nerva
1.2.2.49	Pomponius	Enchiridion	Augustus, Hadrian
1.3.38	Callistratus	Quaestiones	Severus
1.5.8	Papinian	Quaestiones	Pius
1.5.17	Ulpian	Ad Edictum	Caracalla
1.5.18	Ulpian	Ad Sabinum	Hadrian
1.6.1.2	Gaius	Institutiones	Pius
1.6.2	Ulpian	De Officio Proconsulis	Pius, Hadrian
1.7.8	Modestinus	Regulae	Claudius
1.7.32.1	Papinian	Quaestiones	Pius
1.7.39	Ulpian	De Officio Consulis	Marcus
1.8.4	Marcianus	Institutiones	Pius
1.8.6.1	Marcianus	Institutiones	Divi Fratres
1.8.7	Ulpian	Ad Edictum	Divi Fratres
1.9.3	Modestinus	Regulae	Severus/Caracalla
1.12.1pr.	Ulpian	De Officio Praefecti Urbi	Severus
1.12.1.8	Ulpian	De Officio Praefecti Urbi	Severus
1.12.1.14	Ulpian	De Officio Praefecti Urbi	Severus
1.12.2	Paul	De Officio Praefecti Urbi	Hadrian

1.15.1	Paul	De Officio Praefecti Vigilum	Augustus
1.15.3.2	Paul	De Officio Praefecti Vigilum	Caracalla
1.15.4	Ulpian	De Officio Praefecti Urbi	Severus/Caracalla
1.16.4pr	Ulpian	De Officio Proconsulis	Severus/Caracalla
1.16.4.5	Ulpian	De Officio Proconsulis	Caracalla
1.16.6.3	Ulpian	De Officio Proconsulis	Severus/Caracalla
1.16.10.1	Ulpian	De Officio Proconsulis	Hadrian
1.18.13.1	Ulpian	De Officio Proconsulis	Divi Fratres, Pius
1.18.14	Macer	De Iudiciis Publicis	Marcus/Commodus
1.19.3.1	Callistratus	De Cognitionibus	Pius
1.19.3.2	Callistratus	De Cognitionibus	Severus/Caracalla
1.20.2	Ulpian	Ad Sabinum	Marcus
1.21.4	Macer	De Officio Praesidis	Severus/Caracalla
1.22.2	Marcianus	De Iudiciis Publicis	*aliquo quoque decreto Principali refertur constitutum*
2.1.11pr	Gaius	Ad Edictum Provinciale	Pius
2.4.3	Callistratus	De Cognitionibus	Divi Fratres
2.4.10pr	Ulpian	Ad Edictum	Marcus
2.8.7pr.	Ulpian	Ad Edictum	Pius
2.12.1pr	Ulpian	De Omnibus Tribunalibus	Marcus
2.12.2	Ulpian	Ad Edictum	Marcus
2.12.7	Ulpian	De Officio Consulis	Marcus
2.12.9	Ulpian	De Officio Proconsulis	Trajan
2.14.8	Papinian	Responsa	Marcus
2.14.10pr.	Ulpian	Ad Edictum	Marcus, Pius
2.14.16pr.	Ulpian	Ad Edictum	Pius
2.14.37	Papirius Iustus	De Constitutionibus	Divi Fratres
2.14.46	Tryphoninus	Disputationes	Marcus
2.14.52.3	Ulpian	Opiniones	*rescriptum est*
2.14.60	Papirius Iustus	De Constitutionibus	Pius
2.15.3pr.	Scaevola	Digesta	Divi Fratres
2.15.7.2	Ulpian	Disputationes	*et dictum et rescriptum*
2.15.8pr	Ulpian	De Omnibus Tribunalibus	Marcus
2.15.8.12	Ulpian	De Omnibus Tribunalibus	Marcus
3.1.8	Papinian	Quaestiones	Hadrian, Pius
3.1.11	Tryphoninus	Disputationes	Severus

3.2.24	Ulpian	Ad Edictum	Severus
3.3.33.2	Ulpian	Ad Edictum	Caracalla
3.5.3.4	Ulpian	Ad Edictum	Pius
3.5.5.14(12)	Ulpian	Ad Edictum	Pius
3.5.33(34)	Paul	Quaestiones	Pius
3.5.37	Tryphoninus	Disputationes	*ut est constitutum a Divis Principibus*
3.5.43(44)	Ulpian	Disputationes	Severus
3.6.1.3	Ulpian	Ad Edictum	Caracalla
4.1.7pr.	Marcellus	Digesta	Pius
4.2.9.3	Ulpian	Ad Edictum	Caracalla
4.2.13	Callistratus	De Cognitionibus	Marcus
4.2.18	Julianus	Digesta	Pius
4.4.2	Ulpian	Ad Legem Iuliam et Papiam	Severus
4.4.3pr.	Ulpian	Ad Edictum	Severus/Caracalla
4.4.3.1	Ulpian	Ad Edictum	*ut est et constitutum*
4.4.3.4	Ulpian	Ad Edictum	Claudius
4.4.7.2	Ulpian	Ad Edictum	*ex constitutione Principum*
4.4.7.10	Ulpian	Ad Edictum	Pius, Caracalla
4.4.11pr	Ulpian	Ad Edictum	Severus
4.4.11.1	Ulpian	Ad Edictum	Marcus
4.4.11.2	Ulpian	Ad Edictum	Severus
4.4.18.1	Ulpian	Ad Edictum	Severus/Caracalla
4.4.18.2	Ulpian	Ad Edictum	Severus/Caracalla
4.4.18.3	Ulpian	Ad Edictum	Caracalla
4.4.22	Ulpian	Ad Edictum	Severus/Caracalla
4.4.38pr	Paul	Decreta	*Imperator*
4.4.45.1	Callistratus	Edictum Monitorium	Pius
4.6.8	Paul	Brevia	Marcus/Commodus
4.6.35.4	Paul	Ad Legem Iuliam et Papiam	Pius
4.8.27.2	Ulpian	Ad Edictum	Pius
4.8.32.14	Paul	Ad Edictum	Caracalla
5.1.2.3	Ulpian	Ad Edictum	Pius
5.1.2.4	Ulpian	Ad Edictum	Pius
5.1.36pr	Callistratus	De Cognitionibus	Divi Fratres
5.1.37	Callistratus	De Cognitionibus	Hadrian
5.1.47	Callistratus	Quaestiones	Hadrian
5.1.48	Paul	Responsa	Hadrian
5.1.50pr.	Ulpian	Fideicommissa	*multis constitutionibus cavetur*

5.1.51	Marcianus	Institutiones	Severus/Caracalla
5.1.67	Ulpian	Disputationes	*constitutio . . . praecipit*
5.2.7	Paul	De Septemviralibus Iudiciis	Pius
5.2.8.15	Ulpian	Ad Edictum	Pius
5.2.8.16	Ulpian	Ad Edictum	Hadrian, Pius
5.2.18	Paul	De Inofficioso Testamento	Divi Fratres
5.2.28	Paul	De Septemviralibus Iudiciis	Hadrian
5.2.30.1	Marcianus	Institutiones	Severus/Caracalla
5.3.5pr	Ulpian	Ad Edictum	Pius
5.3.5.1	Ulpian	Ad Edictum	Hadrian
5.3.7pr	Ulpian	Ad Edictum	Trajan
5.3.7.1	Ulpian	Ad Edictum	Pius
5.3.7.2	Ulpian	Ad Edictum	Pius
5.3.20.12	Ulpian	Ad Edictum	Severus
5.3.22	Paul	Ad Edictum	Hadrian
5.3.25.16	Ulpian	Ad Edictum	Marcus
5.3.40pr	Paul	Ad Edictum	Hadrian
5.3.43	Paul	Ad Plautium	Caracalla
6.2.11pr.	Ulpian	Ad Edictum	Severus
6.2.12pr.	Paul	Ad Edictum	Pius
7.5.12	Marcianus	Institutiones	Severus/Caracalla
7.8.22pr.	Pomponius	Ad Quintum Mucium	Hadrian
8.2.14	Papirius Iustus	De Constitutionibus	Divi Fratres
8.3.16	Callistratus	De Cognitionibus	Pius
8.3.17	Papirius Iustus	De Constitutionibus	Divi Fratres
8.3.35	Paul	Ad Plautium	*Caesarem . . . rescripsisse*
8.4.2	Ulpian	Ad Edictum	Caracalla
9.2.29.1	Ulpian	Ad Edictum	Severus
10.1.7	Modestinus	Pandectae	*idque ita rescriptum est*
10.2.2.1	Ulpian	Ad Edictum	Pius
10.2.18.3	Ulpian	Ad Edictum	Severus/Caracalla
10.2.20.1	Ulpian	Ad Edictum	Caracalla
10.2.25	Paul	Ad Edictum	*divisum per constitutiones . . . patrimonium*
11.1.6.1	Ulpian	Ad Edictum	Hadrian
11.2.2	Papinian	Quaestiones	*hoc rescriptis Principum continetur*
11.4.1.2	Ulpian	Ad Edictum	Marcus/Commodus

11.4.3	Ulpian	De Officio Proconsulis	Marcus, Pius
11.4.5	Tryphoninus	Disputationes	Pius
11.6.7.3	Ulpian	Ad Edictum	Severus
11.7.6.1	Ulpian	Ad Edictum	Divi Fratres
11.7.12pr	Ulpian	Ad Edictum	Severus/Caracalla
11.7.14.7	Ulpian	Ad Edictum	Caracalla
11.7.14.14	Ulpian	Ad Edictum	Marcus
11.7.37.1	Macer	Ad Legem Vicensimam Hereditatium	Hadrian
11.7.39	Marcianus	Institutiones	Divi Fratres
12.1.33	Modestinus	Pandectae	*Principalibus constitutionibus cavetur*
12.2.5.1	Ulpian	Ad Edictum	Pius
12.2.13.6	Ulpian	Ad Edictum	Severus/Caracalla
12.2.31	Gaius	Ad Edictum Provinciale	*permitti constitutionibus Principum*
12.3.4pr.	Ulpian	Ad Edictum	Divi Fratres, Severus/Caracalla, *hoc enim saepissime rescriptum est*
12.3.4.1	Ulpian	Ad Edictum	Severus/Caracalla
12.3.10	Callistratus	Quaestiones	Commodus
12.4.5.1	Ulpian	Disputationes	*constitutio succedit*
12.5.2.2	Ulpian	Ad Edictum	Caracalla
12.6.2.1	Ulpian	Ad Sabinum	Hadrian
12.6.3	Papinian	Quaestiones	Pius
12.6.4	Paul	Ad Sabinum	Hadrian
12.6.5	Ulpian	Ad Sabinum	*Arrio Titiano rescriptum est*
12.6.23.1	Ulpian	Ad Sabinum	Severus/Caracalla
12.6.26pr.	Ulpian	Ad Sabinum	Severus
12.6.39	Marcianus	Institutiones	Severus/Caracalla
13.6.3pr.	Ulpian	Ad Edictum	Pius
13.7.11.6	Ulpian	Ad Edictum	Caracalla
13.7.13.pr	Ulpian	Ad Edictum	*scripsit Julianus et est rescriptum*
13.7.17	Marcianus	Ad Formulam Hypothecariam	Severus/Caracalla
13.7.26pr.	Ulpian	Disputationes	Severus/Caracalla
13.7.36pr.	Ulpian	Ad Edictum	*ut est saepissime rescriptum*
14.2.9	Volusius Maecianus	Ex Lege Rodia	Pius, Augustus
14.5.8	Paul	Decreta	*Imperator*
14.6.3.1	Ulpian	Ad Edictum	*et est saepe constitutum*
14.6.9.4	Ulpian	Ad Edictum	Hadrian
14.6.15	Marcianus	Institutiones	Severus/Caracalla

15.1.52	Paul	Quaestiones	*merito . . . rescriptum est*
16.1.2pr	Ulpian	Ad Edictum	Augustus, Claudius
16.1.2.3	Ulpian	Ad Edictum	Pius, Severus
16.1.4pr.	Ulpian	Ad Edictum	Pius, Caracalla
16.2.11	Ulpian	Ad Edictum	Severus
16.2.24	Paul	Decreta	*iussit Imperator*
16.3.7.3	Ulpian	Ad Edictum	*hoc rescripto Principali significatur*
17.1.6.7	Ulpian	Ad Edictum	Divi Fratres
17.1.8.8	Ulpian	Ad Edictum	Divi Fratres
17.1.12.10	Ulpian	Ad Edictum	Severus
17.2.23.1	Ulpian	Ad Sabinum	Marcus
17.2.25	Paul	Ad Sabinum	*hoc . . . Imperator pronuntiavit*
17.2.52.5	Ulpian	Ad Edictum	Severus
17.2.52.10	Ulpian	Ad Edictum	Marcus
18.1.42	Marcianus	Institutiones	Divi Fratres
18.1.46	Marcianus	De Delatoribus	Severus/Caracalla
18.1.71	Papirius Iustus	De Constitutionibus	Divi Fratres
18.2.16	Ulpian	Ad Edictum	Severus
18.3.4pr	Ulpian	Ad Edictum	Severus/Caracalla
18.7.5	Papinian	Quaestiones	*Principum mandatis praeciperetur*
18.7.10	Scaevola	Digesta	Hadrian, Marcus
19.1.11.16	Ulpian	Ad Edictum	*multis constitutionibus effectum est*
19.1.13.26	Ulpian	Ad Edictum	*in fraudem constiutionum videri quo continebatur Arescusam*
19.1.43	Paul	Quaestiones	*pertinere ad rescriptum sacrarum constitutionum*
19.2.9.1	Ulpian	Ad Edictum	Severus/Caracalla
19.2.9.4	Ulpian	Ad Edictum	Severus/Caracalla
19.2.15.3	Ulpian	Ad Edictum	*ita ei rescriptum est*
19.2.15.5	Ulpian	Ad Edictum	Caracalla
19.2.15.6	Ulpian	Ad Edictum	Caracalla
19.2.19.9	Ulpian	Ad Edictum	Severus/Caracalla
19.2.49pr.	Modestinus	Excusationes	Severus
19.2.54pr	Paul	Responsa	*constitutiones, quibus cavetur*
20.1.16.9	Marcianus	Ad Formulam Hypothecariam	Severus/Caracalla
20.3.1.2	Marcianus	Ad Formulam Hypothecariam	Pius
20.5.12pr.	Tryphoninus	Disputationes	*rescriptum est ab Imperatore*
22.1.3pr.	Papinian	Quaestiones	Marcus

22.1.6.pr	Papinian	Quaestiones	Caracalla
22.1.6.1	Papinian	Quaestiones	Severus
22.1.16.1	Paul	Decreta	*Imperator decrevit*
22.1.17pr.	Paul	De Usuris	Marcus
22.1.17.1	Paul	De Usuris	Pius
22.1.17.2	Paul	De Usuris	Pius
22.1.17.3	Paul	De Usuris	Pius
22.1.32pr.	Marcianus	Regulae	Pius
22.3.13	Celsus	Digesta	Hadrian
22.3.26	Papinian	Quaestiones	Commodus
22.3.29pr.	Scaevola	Digesta	Divi Fratres
22.5.1.2	Arcadius Charisius	De Testibus	*ex constitutionibus Principum . . . coartatur*
22.5.3.1	Callistratus	De Cognitionibus	Hadrian
22.5.3.2	Callistratus	De Cognitionibus	Hadrian
22.5.3.3	Callistratus	De Cognitionibus	Hadrian
22.5.3.4	Callistratus	De Cognitionibus	Hadrian
22.5.3.6	Callistratus	De Cognitionibus	Divi Fratres, Hadrian
22.6.9.1	Paul	De Iuris et Facti Ignorantia	*licere . . . per constitutiones Principales*
22.6.9.5	Paul	De Iuris et Facti Ignorantia	Pius, Severus/Caracalla
23.1.16	Ulpian	Ad Legem Iuliam et Papiam	Marcus/Commodus
23.2.16pr.	Paul	Ad Edictum	Marcus
23.2.19	Marcianus	Institutiones	Severus/Caracalla
23.2.20	Paul	Ad Orationem Divi Antonini et Commodi	Severus/Caracalla
23.2.45pr.	Ulpian	Ad Legem Iuliam et Papiam	Severus/Caracalla
23.2.45.3	Ulpian	Ad Legem Iuliam et Papiam	*est enim patronus, secundum constitutiones*
23.2.57a	Marcianus	De Adulteriis (Papiniani)	Divi Fratres
23.2.58	Marcianus	Regulae	Pius
23.2.60pr.	Paul	Ad Orationem Divi Antonini et Commodi	*ex sacris constitutionibus periculum ad eum pertineat*
23.2.60.3	Paul	Ad Orationem Divi Antonini et Commodi	*tenetur ex sacris constitutionibus*
23.2.67.3	Tryphoninus	Disputationes	Marcus
23.3.9.3	Ulpian	Ad Sabinum	Marcus, Severus/Caracalla
23.3.33	Ulpian	Ad Sabinum	Pius

23.3.40	Ulpian	Ad Edictum	Severus
23.4.11	Ulpian	Ad Edictum	Severus
24.1.3pr.	Ulpian	Ad Sabinum	Caracalla
24.1.3.1	Ulpian	Ad Sabinum	Severus
24.1.7pr.	Ulpian	Ad Sabinum	Severus/Caracalla
24.1.7.2	Ulpian	Ad Sabinum	Hadrian
24.1.7.5	Ulpian	Ad Sabinum	Severus/Caracalla
24.1.7.6	Ulpian	Ad Sabinum	Severus/Caracalla
24.1.7.8	Ulpian	Ad Sabinum	Marcus
24.1.23	Ulpian	Ad Sabinum	Severus
24.1.32pr.	Ulpian	Ad Sabinum	Caracalla
24.1.32.1	Ulpian	Ad Sabinum	Caracalla
24.1.32.19	Ulpian	Ad Sabinum	Severus/Caracalla
24.1.41	Licinius Rufinus	Regulae	Caracalla
24.1.42	Gaius	Ad Edictum Provinciale	Pius
24.2.8	Papinian	De Adulteriis	Hadrian
24.2.11.2	Ulpian	Ad Legem Iuliam et Papiam	Severus/Caracalla
24.3.2.2	Ulpian	Ad Sabinum	Caracalla
25.3.1.15	Ulpian	Ad Edictum	Pius
25.3.5.5	Ulpian	De Officio Consulis	Pius
25.3.5.6	Ulpian	De Officio Consulis	Pius
25.3.5.7	Ulpian	De Officio Consulis	Pius
25.3.5.9	Ulpian	De Officio Consulis	Marcus
25.3.5.11	Ulpian	De Officio Consulis	*Trebatio Marino rescriptum est*
25.3.5.12	Ulpian	De Officio Consulis	*rescriptis continetur*
25.3.5.14	Ulpian	De Officio Consulis	Marcus
25.3.5.16	Ulpian	De Officio Consulis	*non esse cogendum . . . filium rescriptum est*
25.3.5.17	Ulpian	De Officio Consulis	*Item rescriptum est heredes . . . cogi non oportere*
25.3.6.1	Modestinus	De Manumissionibus	Commodus
25.3.9	Paul	De Iure Patronatus	*idque ius ita plurimis Principum constitutionibus manifestatur*
25.4.1pr.	Ulpian	Ad Edictum	Divi Fratres
26.1.3.1	Ulpian	Ad Sabinum	Caracalla
26.2.2	Ulpian	Ad Sabinum	Divi Fratres
26.2.19.1	Ulpian	Ad Edictum	Divi Fratres
26.3.1.1	Modestinus	Excusationes	άι διατάξεις συνεχώρησαν
26.4.1.3	Ulpian	Ad Sabinum	Pius
26.4.3.2	Ulpian	Ad Sabinum	Marcus

26.5.1.1	Ulpian	Ad Sabinum	Marcus
26.5.2	Ulpian	Ad Edictum	Pius
26.5.10	Marcianus	Regulae	Divi Fratres
26.5.12.1	Ulpian	De Officio Proconsulis	Pius, Divi Fratres
26.5.12.2	Ulpian	De Officio Proconsulis	Pius
26.5.13pr.	Papinian	Quaestiones	Hadrian
26.5.18	Ulpian	Ad Edictum	Severus
26.5.21.1	Modestinus	Excusationes	Severus
26.5.24	Paul	Responsa	Divi Fratres
26.5.28	Paul	Decreta	*Decrevit Imperator*
26.5.29	Paul	De Cognitionibus	Marcus
26.6.2.2	Modestinus	Excusationes	Severus
26.6.2.6	Modestinus	Excusationes	Severus/Caracalla
26.7.1.1	Ulpian	Ad Edictum	Marcus
26.7.2pr.	Ulpian	Ad Edictum	Pius, *et exinde multis rescriptis declaratum est*
26.7.3.4	Ulpian	Ad Edictum	Severus/Caracalla
26.7.5.5	Ulpian	Ad Edictum	*sacris enim constitutionibus . . . iubetur*
26.7.7.4	Ulpian	Ad Edictum	Severus
26.7.7.14	Ulpian	Ad Edictum	*ut multis rescriptis continetur*
26.7.9.6	Ulpian	Ad Edictum	Severus/Caracalla
26.7.11	Ulpian	Ad Edictum	Pius
26.7.12.1	Paul	Ad Edictum	Trajan, Hadrian
26.7.31	Modestinus	Excusationes	Severus/Caracalla
26.7.33.1	Callistratus	De Cognitionibus	Marcus/Commodus
26.7.33.2	Callistratus	De Cognitionibus	*Principalibus constitutionibus declaratur*
26.7.46.2	Paul	Responsa	*non videri contra constitutiones fecisse*
26.7.55.2	Tryphoninus	Disputationes	*constitutiones, quae iubent*
26.8.1pr.	Ulpian	Ad Sabinum	Pius
26.8.5pr.	Ulpian	Ad Sabinum	Pius
26.8.5.3	Ulpian	Ad Sabinum	Severus/Caracalla
26.10.1.4	Ulpian	Ad Edictum	Severus/Caracalla
26.10.1.7	Ulpian	Ad Edictum	Severus
26.10.3pr.	Ulpian	Ad Edictum	Severus, Pius
26.10.3.13	Ulpian	Ad Edictum	Severus/Caracalla
26.10.7.2	Ulpian	De Omnibus Tribunalibus	Severus/Caracalla
27.1.1.4	Modestinus	Excusationes	Marcus, Severus
27.1.2.4	Modestinus	Excusationes	Severus

27.1.2.6	Modestinus	Excusationes	Severus
27.1.2.7	Modestinus	Excusationes	Ταῦτα δὲ καὶ ἐκ διατάξεων
27.1.2.8	Modestinus	Excusationes	Severus/Caracalla
27.1.2.9	Modestinus	Excusationes	Severus/Caracalla
27.1.4pr.	Modestinus	Excusationes	Severus/Caracalla
27.1.4.1	Modestinus	Excusationes	Severus/Caracalla
27.1.5	Ulpian	De Officio Praetoris Tutelaris	*non prodesse saepe rescriptum est*
27.1.6.2	Modestinus	Excusationes	Pius
27.1.6.6	Modestinus	Excusationes	Severus/Caracalla
27.1.6.7	Modestinus	Excusationes	Pius
27.1.6.8	Modestinus	Excusationes	Pius (quoted by Commodus)
27.1.6.9	Modestinus	Excusationes	Severus/Caracalla
27.1.6.10	Modestinus	Excusationes	Pius
27.1.6.11	Modestinus	Excusationes	Severus/Caracalla
27.1.6.17	Modestinus	Excusationes	Severus
27.1.6.18	Modestinus	Excusationes	Divi Fratres
27.1.6.19	Modestinus	Excusationes	Hadrian, Caracalla
27.1.7	Ulpian	Excusationes	Divi Fratres
27.1.8.10	Modestinus	Excusationes	Severus/Caracalla
27.1.8.12	Modestinus	Excusationes	ἐκ διατάξεων Βασιλικῶν
27.1.9	Ulpian	De Officio Praetoris Tutelaris	Severus/Caracalla
27.1.10.4	Modestinus	Excusationes	Severus/Caracalla
27.1.10.6	Modestinus	Excusationes	Severus
27.1.10.8	Modestinus	Excusationes	Severus/Caracalla
27.1.13pr.	Modestinus	Excusationes	Severus/Caracalla
27.1.13.2	Modestinus	Excusationes	Marcus
27.1.13.5	Modestinus	Excusationes	Severus/Caracalla
27.1.13.6	Modestinus	Excusationes	Severus/Caracalla
27.1.13.7	Modestinus	Excusationes	Severus/Caracalla
27.1.13.10	Modestinus	Excusationes	Severus/Caracalla
27.1.13.12	Modestinus	Excusationes	Severus/Caracalla
27.1.15pr.	Modestinus	Excusationes	Severus/Caracalla
27.1.15.2	Modestinus	Excusationes	Marcus/Commodus
27.1.15.5	Modestinus	Excusationes	λέγουσιν αἱ θεῖαι διατάξεις
27.1.15.16	Modestinus	Excusationes (quoting Ulpian)	*invenio rescriptum . . . oportere*
27.1.15.17	Modestinus	Excusationes	Hadrian
27.1.16	Modestinus	Responsa	Marcus

27.1.17pr.	Callistratus	De Cognitionibus	*idque Principalibus constitutiones cavetur*
27.1.17.1	Callistratus	De Cognitionibus	Pius
27.1.17.2	Callistratus	De Cognitionibus	*idque Principalibus constitutiones cavetur*
27.1.17.4	Callistratus	De Cognitionibus	Marcus
27.1.17.6	Callistratus	De Cognitionibus	Trajan
27.1.26	Paul	Excusationes	Marcus/Commodus
27.1.30pr.	Papinian	Responsa	Severus/Caracalla
27.1.44pr.	Tryphoninus	Disputationes	Marcus, Severus/Caracalla
27.1.44.2	Tryphoninus	Disputationes	*exemplo eo, quo placuit et rescriptum est*
27.1.46.2	Paul	De Cognitionibus	Severus/Caracalla
27.2.1.1	Ulpian	Ad Edictum	Severus
27.2.1.3	Ulpian	Ad Edictum	Severus
27.3.1.3	Ulpian	Ad Edictum	Severus
27.3.1.13	Ulpian	Ad Edictum	Pius, Severus/Caracalla
27.3.1.15	Ulpian	Ad Edictum	Caracalla
27.3.17	Ulpian	De Officio Consulis	Severus/Caracalla
27.5.1.2	Ulpian	Ad Edictum	Severus
27.7.8.1	Paul	Responsa	*sed constitutionibus subventum est ignorantiae heredum*
27.8.1.2	Ulpian	Ad Edictum	Marcus
27.8.1.8	Ulpian	Ad Edictum	Hadrian
27.8.1.9	Ulpian	Ad Edictum	Hadrian
27.8.6	Ulpian	Ad Edictum	Pius
27.8.9	Modestinus	Pandectae	Severus/Caracalla
27.9.1pr.	Ulpian	Ad Edictum	Severus
27.9.3pr.	Ulpian	Ad Edictum	Severus/Caracalla
27.9.13pr.	Paul	Ad Orationem Divi Severi	Severus/Caracalla
27.9.14	Paul	Responsa	*nihil contra orationem Divorum Principum fecisse videri*
27.10.1.1	Ulpian	Ad Sabinum	Pius
27.10.16pr.	Tryphoninus	Disputationes	Marcus
28.1.15	Ulpian	Ad Edictum	Pius
28.1.20.9	Ulpian	Ad Sabinum	Marcus
28.2.26	Pauli Sententiae		Augustus
28.3.3.2	Ulpian	Ad Sabinum	Marcus
28.3.6.6	Ulpian	Ad Sabinum	Hadrian
28.3.6.7	Ulpian	Ad Sabinum	Hadrian, *testamenta irrita constitutiones faciunt*
28.3.6.9	Ulpian	Ad Sabinum	Marcus

28.3.12pr.	Ulpian	Disputationes	Hadrian, Caracalla
28.4.3	Marcellus	Digesta	Pius
28.5.1pr.	Ulpian	Ad Sabinum	Trajan
28.5.1.5	Ulpian	Ad Sabinum	Pius
28.5.1.6	Ulpian	Ad Sabinum	Pius
28.5.9.2	Ulpian	Ad Sabinum	*quae sententia rescriptis adiuvatur generalibus*
28.5.30	Ulpian	Ad Edictum	Severus
28.5.42(41)	Pomponius	Ex Variis Lectionibus	Claudius
28.5.49(48).2	Marcianus	Institutiones	Severus/Caracalla
28.5.52(51)pr.	Marcianus	Regulae	Marcus
28.5.85(84).1	Paul	Quaestiones	Marcus
28.5.93(92).1	Paul	Decreta	Severus/Caracalla
28.6.2.4	Ulpian	Ad Sabinum	Caracalla
28.6.4pr.	Modestinus	De Heurematicis	Divi Fratres
28.6.4.1	Modestinus	De Heurematicis	Pius
28.6.4.2	Modestinus	De Heurematicis	Severus/Caracalla
28.6.10.6	Ulpian	Ad Sabinum	Pius
28.7.14	Marcianus	Institutiones	*contra edicta Imperatorum aut contra leges*
28.7.18pr.	Marcianus	Institutiones	Pius
29.1.1pr.	Ulpian	Ad Edictum	Titus, Domitian, Nerva, Trajan
29.1.2	Gaius	Ad Edictum Provinciale	*optime novit ex constitutionibus Principales*
29.1.3	Ulpian	Ad Sabinum	Marcus
29.1.9.1	Ulpian	Ad Sabinum	Pius
29.1.13.4	Ulpian	Ad Edictum	Severus/Caracalla
29.1.15.2	Ulpian	Ad Edictum	Pius
29.1.24	Florentinus	Institutiones	Trajan
29.1.25	Marcellus	Responsa	*constitutionibus Principum . . . confirmantur*
29.1.28	Ulpian	Ad Sabinum	Divi Fratres
29.1.30	Paul	Quaestiones	Pius
29.1.34pr.	Papinian	Quaestiones	Hadrian
29.1.41.1	Tryphoninus	Disputationes	Hadrian
29.1.44	Ulpian	Ad Edictum	*rescripta Principum ostendunt*
29.2.6.3	Ulpian	Ad Sabinum	Pius, Caracalla
29.2.12	Ulpian	Ad Edictum	*est in semenstribus rescriptum*
29.2.25.2	Ulpian	Ad Sabinum	*ut est saepe rescriptum*
29.2.25.3	Ulpian	Ad Sabinum	Pius
29.2.30pr.	Ulpian	Ad Sabinum	Pius

29.2.52pr.	Marcianus	Institutiones	Pius
29.2.61	Macer	De Officio Praesidis	Severus
29.2.86pr.	Papinian	Responsa	Pius
29.4.2pr.	Ulpian	Ad Sabinum	Hadrian
29.4.10.1	Ulpian	Ad Edictum	Pius
29.5.1.5	Ulpian	Ad Edictum	Pius
29.5.1.28	Ulpian	Ad Edictum	Hadrian
29.5.2	Callistratus	De Cognitionibus	Marcus/Commodus
29.5.10.1	Paul	Ad Senatusconsultum Silanianum	Trajan
29.5.15.1	Marcianus	De Delatoribus	Severus/Caracalla
29.6.1pr.	Ulpian	Ad Edictum	Hadrian
29.7.1	Ulpian	Disputationes	*saepissime rescriptum et constitutum est*
29.7.6pr.	Marcianus	Institutiones	Severus/Caracalla
30.34.3	Ulpian	Ad Sabinum	Pius
30.37pr.*	Ulpian	Ad Sabinum	Severus/Caracalla
30.41.3*	Ulpian	Ad Sabinum	*ex senatusconsulto et constitutionibus licet nobis*
30.41.5*	Ulpian	Ad Sabinum	Severus/Caracalla
30.41.7*	Ulpian	Ad Sabinum	Divi Fratres
30.49pr.*	Ulpian	Ad Sabinum	*ita Imperatorem decrevisse Marcellus scripsit*
30.73.1*	Gaius	De Legatis ad Edictum Praetoris	*rescripto Imperatoris nostri significatur*
30.74*	Ulpian	Disputationes	Severus/Caracalla
30.77*	Ulpian	Disputationes	Pius
30.112.4*	Marcianus	Institutiones	Severus/Caracalla
30.113.1*	Marcianus	Institutiones	Severus/Caracalla
30.114.11*	Marcianus	Institutiones	Severus/Caracalla
30.114.12*	Marcianus	Institutiones	Severus/Caracalla
30.114.14*	Marcianus	Institutiones	Severus/Caracalla
30.114.15*	Marcianus	Institutiones	Severus/Caracalla
31.8.5*	Paul	Ad Plautium	Hadrian
31.56*	Gaius	Ad Legem Iuliam et Papiam	Pius
31.57*	Iunius Mauricianus	Ad Legem Iuliam et Papiam	Hadrian, Pius
31.61.1*	Ulpian	Ad Legem Iuliam et Papiam	Severus
31.64*	Papinian	Quaestiones	Marcus/Commodus
31.66pr.*	Papinian	Quaestiones	*constitutio Principis, qua placuit*

31.67.9*	Papinian	Quaestiones	Severus
31.67.10*	Papinian	Quaestiones	Marcus
31.70pr.*	Papinian	Quaestiones	Caracalla
31.78.1*	Papinian	Responsa	Severus
31.87.3*	Paul	Responsa	Severus Alexander
31.87.4*	Paul	Responsa	Severus Alexander
32.1.4*	Ulpian	Fideicommissa	Severus/Caracalla
32.1.9*	Ulpian	Fideicommissa	Caracalla
32.8.2*	Paul	Fideicommissa	Pius
32.11.1*	Ulpian	Fideicommissa	Pius
32.11.2*	Ulpian	Fideicommissa	Pius
32.11.14*	Ulpian	Fideicommissa	*hoc quod dirui constitutiones iubent*
32.11.18*	Ulpian	Fideicommissa	Pius
32.11.19*	Ulpian	Fideicommissa	Caracalla
32.11.23*	Ulpian	Fideicommissa	Divi Fratres
32.11.24*	Ulpian	Fideicommissa	Marcus
32.11.25*	Ulpian	Fideicommissa	Marcus
32.27.2*	Paul	Decreta	*placuit Imperatori*
32.37.3*	Scaevola	Digesta	Pius
32.39pr.*	Scaevola	Digesta	Marcus
32.58*	Ulpian	Disputationes	*rescriptum est ad mulierem purpuras pertinere*
32.85*	Pomponius	Ad Quintum Mucium	*nuper constitutum est a Principe*
32.96*	Gaius	Fideicommissa	Pius
32.97*	Paul	Decreta	*Imperator . . . placuit*
33.1.23	Marcianus	Institutiones	Severus/Caracalla
33.1.24	Marcianus	Institutiones	Severus/Caracalla
33.2.23	Iunius Mauricianus	Ad Legem Iuliam et Papiam	Pius
33.5.1	Ulpian	Ad Sabinum	Pius
33.8.6.4	Ulpian	Ad Sabinum	Severus/Caracalla
33.8.8.7	Ulpian	Ad Sabinum	Severus/Caracalla
34.1.2pr.	Marcianus	Institutiones	Severus/Caracalla
34.1.3	Ulpian	De Officio Consulis	Pius, *ut rescripta subiecta ostendunt*
34.1.13.1	Scaevola	Responsa	Pius
34.1.14.1	Ulpian	Fideicommissa	Caracalla, Hadrian
34.3.9	Ulpian	Ad Sabinum	*ut est saepissime rescriptum*
34.3.25	Paul	Quaestiones	Pius
34.4.13	Marcianus	Institutiones	Severus/Caracalla
34.5.9(10).1	Tryphoninus	Disputationes	Hadrian

34.5.16(17)pr.	Marcianus	Regulae	Pius
34.6.2	Marcianus	Institutiones	Severus/Caracalla
34.9.1	Marcianus	Institutiones	Severus/Caracalla
34.9.2.1	Marcianus	Institutiones	Severus/Caracalla
34.9.3	Marcianus	Regulae	Pius
34.9.5.1	Paul	De Iure Fisci	Pius
34.9.5.9	Paul	De Iure Fisci	Severus/Caracalla
34.9.5.10	Paul	De Iure Fisci	Severus
34.9.5.15	Paul	De Iure Fisci	Pius
34.9.5.19	Paul	De Iure Fisci	Pius, Marcus
34.9.5.20	Paul	De Iure Fisci	Trajan
34.9.6	Marcellus	Digesta	*rescriptum est a Principe*
34.9.12	Papinian	Quaestiones	Marcus
34.9.16.1	Papinian	Responsa	Severus/Caracalla
34.9.16.2	Papinian	Responsa	Marcus
34.9.18pr.	Papinian	Responsa	Severus
35.1.7pr.	Ulpian	Ad Sabinum	Pius
35.1.33pr.	Marcianus	Institutiones	Severus/Caracalla
35.1.33.2	Marcianus	Institutiones	Severus/Caracalla
35.1.48	Marcellus	Digesta	Pius
35.1.50	Ulpian	De Officio Consulis	Caracalla
35.1.72.1	Papinian	Quaestiones	*Imperator permisit*
35.1.72.3	Papinian	Quaestiones	*idque . . . rescriptum est*
35.1.77pr.	Papinian	Responsa	Pius
35.1.90	Gaius	Fideicommissa	Pius
35.1.92	Ulpian	Fideicommissa	Severus
35.1.113	Paul	Imperiales Sententiae in Cognitionibus Prolatae	*rescriptum est fideicommissum deberi*
35.2.1.14	Paul	Ad Legem Falcidiam	Caracalla
35.2.11.2	Papinian	Quaestiones	Marcus
35.2.18pr.	Paul	Quaestiones	Pius
35.2.49pr.	Paul	Ad Plautium	Pius
35.2.59.1	Modestinus	Pandectae	Pius
35.2.89pr.	Marcianus	Institutiones	Severus/Caracalla
35.2.89.1	Marcianus	Institutiones	Severus/Caracalla
35.2.91	Marcianus	Institutiones	Pius
35.2.93	Papinian	Quaestiones	Hadrian
35.3.3.4	Ulpian	Ad Edictum	Divi Fratres
35.3.3.5	Ulpian	Ad Edictum	Pius

35.3.6	Callistratus	De Cognitionibus	Commodus
35.3.7	Paul	Ad Legem Iuliam et Papiam	Pius
36.1.1.13	Ulpian	Fideicommissa	Severus
36.1.1.17	Ulpian	Fideicommissa	Pius
36.1.3.4	Ulpian	Fideicommissa	Caracalla
36.1.11.2	Ulpian	Fideicommissa	Pius
36.1.12	Papinian	Quaestiones	Pius
36.1.15.2	Ulpian	Fideicommissa	Pius
36.1.15.4	Ulpian	Fideicommissa	Severus/Caracalla
36.1.17(16).17	Ulpian	Fideicommissa	Pius
36.1.18(17).8	Ulpian	Fideicommissa	Pius
36.1.19(18).1	Ulpian	Ad Sabinum	*ut est et rescriptum*
36.1.19(18).3	Ulpian	Ad Sabinum	Marcus
36.1.20(19)pr.	Paul	Ad Sabinum	*rescriptum est videri . . . dari*
36.1.23(22)pr.	Ulpian	Disputationes	Marcus
36.1.30(29)	Marcianus	Institutiones	Severus/Caracalla
36.1.31(30).5	Marcianus	Institutiones	Trajan, Hadrian, Caracalla
36.1.32(31).1	Marcianus	Institutiones	Pius
36.1.36(35)	Ulpian	De Officio Proconsulis	Pius
36.1.38(37).1	Ulpian	Ad Edictum	Severus
36.1.52(50)	Papinian	Quaestiones	Hadrian
36.1.56(54)	Papinian	Quaestiones	Marcus
36.1.57(55).1	Papinian	Quaestiones	Pius
36.1.60(58).3	Papinian	Responsa	Hadrian
36.1.65(63).5	Gaius	Fideicommissa	Pius
36.1.76(74)pr.	Paul	Decreta	*pronuntiavit Imperator*
36.1.76(74).1	Paul	Decreta	*Imperator noster . . . pronuntiavit*
36.1.76(74).1	Paul	Decreta	Hadrian
36.1.76(74).1	Paul	Decreta	Marcus
36.3.1.11	Ulpian	Ad Edictum	Pius
36.3.5.1	Papinian	Quaestiones	Marcus
36.3.5.3	Papinian	Quaestiones	Pius
36.3.14.1	Ulpian	Ad Edictum	Pius
36.4.1.3	Ulpian	Ad Edictum	Pius
36.4.3.1	Ulpian	Ad Edictum	Pius

36.4.3.3	Ulpian	Ad Edictum	Pius
36.4.5.16	Ulpian	Ad Edictum	Caracalla
37.5.5.6	Ulpian	Ad Edictum	Pius
37.5.7	Tryphoninus	Disputationes	Pius
37.5.23	Hermogenianus	Iuris Epitome	Pius
37.6.1.14	Ulpian	Ad Edictum	Divi Fratres
37.6.1.15	Ulpian	Ad Edictum	*multis constitutionibus continetur*
37.6.1.21	Ulpian	Ad Edictum	Pius
37.6.5pr.	Ulpian	Ad Edictum	Divi Fratres
37.7.1pr.	Ulpian	Ad Edictum	Pius
37.7.9	Tryphoninus	Disputationes	Marcus
37.8.3	Marcellus	Digesta	Pius
37.8.4	Modestinus	Pandectae	Marcus
37.8.7	Tryphoninus	Disputationes	Pius
37.9.1.14	Ulpian	Ad Edictum	Hadrian
37.9.8	Paul	De Adulteriis	Hadrian
37.10.1.5	Ulpian	Ad Edictum	Pius
37.10.3.1	Ulpian	Ad Edictum	Pius
37.10.3.2	Ulpian	Ad Edictum	*non ex Carboniano* [*edicto*]*, sed ex constitutionibus*
37.10.3.5	Ulpian	Ad Edictum	Hadrian
37.12.1.4	Ulpian	Ad Edictum	Pius
37.12.5	Papinian	Quaestiones	Trajan
37.13.1pr.	Ulpian	Ad Edictum	*constiutiones Principales separent*
37.14.3	Marcianus	Institutiones	Severus/Caracalla
37.14.4	Marcellus	Institutiones	Severus/Caracalla
37.14.5pr.	Marcellus	Institutiones	Claudius
37.14.5.1	Marcellus	Institutiones	*Imperatoris nostri rescripto cavetur*
37.14.7pr.	Modestinus	De Manumissionibus	Vespasian
37.14.7.1	Modestinus	De Manumissionibus	*mandatis Imperatorum cavetur*
37.14.8pr.	Modestinus	Regulae	Hadrian
37.14.17pr.	Ulpian	Ad Legem Iuliam et Papiam	Divi Fratres
37.14.23.1	Tryphoninus	Disputationes	Hadrian
37.15.4	Marcianus	De Iudiciis Publicis	Severus/Caracalla
38.1.7.4	Ulpian	Ad Sabinum	Hadrian, *rescriptum est a Divo Hadriano et deinceps*
38.1.13pr.	Ulpian	Ad Edictum	Marcus
38.1.13.1	Ulpian	Ad Edictum	Marcus
38.2.3pr.	Ulpian	Ad Edictum	*ut multis rescriptis continetur*

38.2.3.8	Ulpian	Ad Edictum	Hadrian
38.2.6.1	Ulpian	Ad Edictum	Pius
38.2.16.4	Ulpian	Ad Edictum	Divi Fratres, Caracalla
38.2.22	Marcianus	Institutiones	Hadrian
38.2.42.3	Papinian	Quaestiones	Marcus
38.5.13	Papinian	Quaestiones	Pius
38.16.1.1	Ulpian	Ad Sabinum	Divi Fratres, Caracalla
38.16.2.7	Ulpian	Ad Sabinum	Pius
38.16.3.3	Ulpian	Ad Sabinum	Marcus
38.16.3.12	Ulpian	Ad Sabinum	Pius
38.16.15	Papinian	Quaestiones	*natus potestatis ipsius fiat per suspensi iuris constitutionem*
38.17.1.3	Ulpian	Ad Sabinum	Severus/Caracalla
38.17.2.2	Ulpian	Ad Sabinum	Caracalla
38.17.2.9	Ulpian	Ad Sabinum	Pius
38.17.2.23	Ulpian	Ad Sabinum	*loquitur quidem de praetore constitutio*
38.17.2.29	Ulpian	Ad Sabinum	*verba rescripti deficiunt*
38.17.2.32	Ulpian	Ad Sabinum	*ut rescripto declaratur*
38.17.2.47	Ulpian	Ad Sabinum	Severus/Caracalla
38.17.9	Gaius	Ad Senatusconsultum Orphitianum	*Sacratissimi Principis nostri oratione cavetur*
39.4.4.1	Paul	Ad Edictum	Hadrian
39.4.6	Modestinus	De Poenis	Severus/Caracalla
39.4.7pr	Papirius Iustus	De Constitutionibus	Divi Fratres
39.4.7.1	Papirius Iustus	De Constitutionibus	Divi Fratres
39.4.16pr.	Marcianus	De Delatoribus	Severus/Caracalla
39.4.16.1	Marcianus	De Delatoribus	Severus/Caracalla
39.4.16.2	Marcianus	De Delatoribus	Severus/Caracalla
39.4.16.4	Marcianus	De Delatoribus	Pius, *ita Principalibus constitutionibus cavetur*
39.4.16.5	Marcianus	De Delatoribus	Hadrian
39.4.16.6	Marcianus	De Delatoribus	Marcus/Commodus
39.4.16.8	Marcianus	De Delatoribus	Divi Fratres
39.4.16.9	Marcianus	De Delatoribus	Pius
39.4.16.10	Marcianus	De Delatoribus	Divi Fratres
39.4.16.11	Marcianus	De Delatoribus	Caracalla
39.4.16.12	Marcianus	De Delatoribus	Severus/Caracalla
39.4.16.14	Marcianus	De Delatoribus	Severus/Caracalla
39.5.12	Ulpian	Disputationes	Pius
39.5.15	Marcianus	Institutiones	Severus/Caracalla

39.6.15	Julianus	Digesta (glossata a Paulo)	*hoc et constitutum est*
40.1.4pr.	Ulpian	Disputationes	Divi Fratres
40.1.5pr.	Marcianus	Institutiones	Divi Fratres
40.1.8.2	Marcianus	Institutiones	Pius
40.1.8.3	Marcianus	Institutiones	Hadrian
40.1.10	Paul	Imperiales Sententiae in Cognitionibus Prolatae	Marcus
40.1.20pr.	Papinian	Responsa	Marcus
40.1.24	Hermogenianus	Iuris Epitome	*saepe constitutum est*
40.2.9	Marcianus	Institutiones	Pius
40.2.20.1	Ulpian	De Officio Consulis	Marcus
40.2.21	Modestinus	Pandectae	Augustus
40.4.26	Marcianus	Regulae	Pius, Divi Fratres
40.4.47	Papinian	Quaestiones	*Princeps constituit*
40.4.50pr.	Papinian	Responsa	Marcus
40.4.52	Paul	Quaestiones	Severus/Caracalla
40.4.56	Paul	Fideicommissa	Marcus
40.5.2	Ulpian	Ad Edictum	Marcus
40.5.12pr.	Modestinus	De Manumissionibus	Caracalla
40.5.12.2	Modestinus	De Manumissionibus	Caracalla, Pertinax
40.5.21	Papinian	Quaestiones	*placuit Principi*
40.5.24.5	Ulpian	Fideicommissa	Caracalla
40.5.24.6	Ulpian	Fideicommissa	Pius
40.5.24.9	Ulpian	Fideicommissa	Severus/Caracalla
40.5.24.21	Ulpian	Fideicommissa	Pius, Hadrian, *et ita est saepissime constitutum*
40.5.26.1	Ulpian	Fideicommissa	Severus
40.5.26.2	Ulpian	Fideicommissa	Severus/Caracalla, Pius
40.5.26.3	Ulpian	Fideicommissa	Severus/Caracalla
40.5.26.4	Ulpian	Fideicommissa	Pius
40.5.26.7	Ulpian	Fideicommissa	Trajan
40.5.26.8	Ulpian	Fideicommissa	Severus/Caracalla
40.5.30pr.	Ulpian	Fideicommissa	Caracalla
40.5.30.3	Ulpian	Fideicommissa	Divi Fratres
40.5.30.5	Ulpian	Fideicommissa	Pius
40.5.30.6	Ulpian	Fideicommissa	Pius
40.5.30.7	Ulpian	Fideicommissa	Pius
40.5.30.13	Ulpian	Fideicommissa	Divi Fratres
40.5.30.15	Ulpian	Fideicommissa	Caracalla
40.5.30.16	Ulpian	Fideicommissa	Marcus

40.5.30.17	Ulpian	Fideicommissa	Severus/Caracalla
40.5.31.1	Paul	Fideicommissa	Divi Fratres
40.5.31.4	Paul	Fideicommissa	Caracalla
40.5.37	Ulpian	Fideicommissa	Marcus
40.5.46.3	Ulpian	Disputationes	Severus
40.5.51.9	Marcianus	Institutiones	Pius
40.5.51.11	Marcianus	Institutiones	Pius
40.5.53pr.	Marcianus	Regulae	*constitutum est*
40.7.20.4	Paul	Ad Plautium	Hadrian
40.7.21.1	Pomponius	Ex Plautio	Pius
40.7.29.1	Pomponius	Ad Quintum Mucium	Pius
40.7.34.1	Papinian	Quaestiones	Caracalla
40.8.1	Paul	Ad Plautium	Marcus
40.8.2	Modestinus	Regulae	Claudius
40.8.3	Callistratus	De Cognitionibus	Marcus/Commodus
40.8.6	Marcianus	Ad Formulam Hypothecariam	Marcus
40.8.7	Paul	De Libertatibus Dandis	Severus/Caracalla
40.8.8	Papinian	Responsa	Marcus
40.9.11.1	Marcianus	Institutiones	Divi Fratres, *Principalibus constitutionibus cavetur*
40.9.15pr.	Paul	Ad Legem Iuliam	Caracalla
40.9.17pr.	Paul	De Libertatibus	Marcus
40.9.30pr.	Ulpian	Ad Legem Aeliam Sentiam	Marcus
40.10.3	Marcianus	Institutiones	Commodus
40.10.6	Ulpian	Ad Legem Iuliam et Papiam	Hadrian
40.12.23.2	Paul	Ad Edictum	Hadrian
40.12.27pr.	Ulpian	De Officio Consulis	Divi Fratres
40.12.27.1	Ulpian	De Officio Consulis	Hadrian
40.12.34	Ulpian	Pandectae	Caracalla
40.12.43	Pomponius	Senatusconsulta	Hadrian
40.14.2pr.	Saturninus	De Officio Proconsulis	Hadrian
40.15.1.2	Marcianus	De Delatoribus	Hadrian
40.15.1.3	Marcianus	De Delatoribus	Marcus
40.15.4	Callistratus	De Iure Fisci	Nerva, Claudius
40.16.2pr.	Ulpian	De Officio Consulis	Marcus
40.16.2.4	Ulpian	De Officio Consulis	Marcus
40.16.3	Callistratus	De Cognitionibus	*idque Principalibus constitutiones cavetur*

41.1.16	Florentinus	Institutiones	Pius
41.3.18	Modestinus	Regulae	*idque constitutum est*
41.3.40	Neratius	Regulae	*constitutum est*
41.4.2.8	Paul	Ad Edictum	Trajan
42.1.15pr.	Ulpian	De Officio Consulis	Pius
42.1.15.1	Ulpian	De Officio Consulis	Severus/Caracalla
42.1.15.3	Ulpian	De Officio Consulis	Severus/Caracalla
42.1.15.4	Ulpian	De Officio Consulis	Caracalla
42.1.15.8	Ulpian	De Officio Consulis	Caracalla
42.1.15.9	Ulpian	De Officio Consulis	*sed contra rescriptum est*
42.1.20	Modestinus	Differentiae	Pius
42.1.31	Callistratus	De Cognitionibus	Pius
42.1.33	Callistratus	De Cognitionibus	Hadrian
42.1.35	Papirius Iustus	De Constitutionibus	Divi Fratres
42.1.38pr.	Paul	Ad Edictum	Pius
42.1.56	Ulpian	Ad Edictum	Marcus
42.1.59.1	Ulpian	De Omnibus Tribunalibus	*amplius est rescriptum*
42.1.63	Macer	De Appellationibus	*saepe constitutum est . . . ita rescriptum est . . . ex multis constitutionibus intellegenda sunt*
42.2.6.2	Ulpian	De Omnibus Tribunalibus	Marcus
42.4.7.16	Ulpian	Ad Edictum	Hadrian
42.4.7.19	Ulpian	Ad Edictum	Pius
42.5.24.1	Ulpian	Ad Edictum	Marcus
42.5.30	Papirius Iustus	De Constitutionibus	Divi Fratres
42.6.1.3	Ulpian	Ad Edictum	Severus/Caracalla
42.6.1.6	Ulpian	Ad Edictum	Pius
42.7.4	Papirius Iustus	De Constitutionibus	Divi Fratres
42.8.7	Paul	Ad Edictum	*rescriptum est secundum Proculi senentiam*
42.8.10.1	Ulpian	Ad Edictum	Severus/Caracalla
42.8.10.13	Ulpian	Ad Edictum	*ut est saepissime constitutum*
42.8.10.14	Ulpian	Ad Edictum	*et hoc certo certius est et saepissime constitutum*
43.4.3.1	Ulpian	Ad Edictum	Caracalla
43.4.3.3	Ulpian	Ad Edictum	Hadrian
43.16.1.2	Ulpian	Ad Edictum	*legibus Iuliis prospicitur et constitutionibus Principum*
43.24.15.6	Ulpian	Ad Edictum	Pius, *deinceps omnes Principes rescripserunt*
43.30.1.3	Ulpian	Ad Edictum	Marcus, Pius, Severus

43.30.3.5	Ulpian	Ad Edictum	Pius
44.1.11	Modestinus	Responsa	*Principalibus constitutionibus manifeste cavetur*
44.3.9	Marcianus	Regulae	Caracalla
44.4.4.14	Ulpian	Ad Edictum	*constitutionibus et sententiis auctorum cavetur constitutionibus, quibus ostenditur heredes poena non*
44.7.33	Paul	Decreta	*teneri, placuit*
46.1.26	Gaius	Ad Edictum Provinciale	Hadrian
46.1.27.1	Ulpian	Ad Edictum	Hadrian
46.1.49.1	Papinian	Quaestiones	Pius
46.3.5.2	Ulpian	Ad Sabinum	Severus/Caracalla
47.4.1.7	Ulpian	Ad Edictum	Marcus, Severus/Caracalla
47.9.4.1	Paul	Ad Edictum	Caracalla
47.9.7	Callistratus	Quaestiones	Hadrian
47.9.12	Ulpian	De Officio Proconsulis	Severus/Caracalla
47.10.7.6	Ulpian	Ad Edictum	Caracalla
47.10.13.7	Ulpian	Ad Edictum	*et est saepissime rescriptum*
47.10.15.13	Ulpian	Ad Edictum	*constiutiones eos tenent*
47.10.37pr.	Marcianus	Institutiones	*constiutionibus Principalibus cavetur*
47.10.40	Macer	De Iudiciis Publicis	Severus
47.11.4	Marcianus	Regulae	Severus/Caracalla
47.11.6.1	Ulpian	De Officio Proconsulis	Trajan
47.11.6.2	Ulpian	De Officio Proconsulis	Hadrian
47.11.8	Ulpian	De Officio Proconsulis	Divi Fratres
47.12.3.3	Ulpian	Ad Edictum	Caracalla
47.12.3.4	Ulpian	Ad Edictum	Severus, Marcus
47.12.3.5	Ulpian	Ad Edictum	Hadrian
47.12.3.7	Ulpian	Ad Edictum	Severus
47.14.1pr.	Ulpian	De Officio Proconsulis	Hadrian
47.14.3.3	Callistratus	De Cognitionibus	Trajan
47.15.6	Paul	De Iudiciis Publicis	Severus/Caracalla
47.18.1pr.	Ulpian	De Officio Proconsulis	Divi Fratres
47.18.1.2	Ulpian	De Officio Proconsulis	Marcus
47.19.1	Marcianus	Institutiones	Marcus
47.19.3	Marcianus	De Iudiciis Publicis	Severus/Caracalla
47.21.2	Callistratus	De Cognitionibus	Hadrian
47.21.3.1	Callistratus	De Cognitionibus	Nerva
47.22.1pr.	Marcianus	Institutiones	Severus, *mandatis Principalibus*
47.22.1.2	Marcianus	Institutiones	Divi Fratres

47.22.3pr.	Marcianus	De Iudiciis Publicis	*mandatis et constitutionibus et senatusconsultis*
48.1.5pr.	Ulpian	Disputationes	*constitutionibus enim observatur*
48.1.5.1	Ulpian	Disputationes	Severus/Caracalla
48.1.12.1	Marcianus	De Poenis	*rescriptum est*
48.2.2.1	Papinian	De Adulteriis	Vespasian
48.2.5	Ulpian	De Adulteriis	Marcus
48.2.7.2	Ulpian	De Officio Proconsulis	Pius
48.2.7.3	Ulpian	De Officio Proconsulis	Pius
48.2.7.4	Ulpian	De Officio Proconsulis	Pius
48.2.7.5	Ulpian	De Officio Proconsulis	Pius
48.2.12.1	Saturninus	De Iudiciis Publicis	Hadrian
48.2.13	Marcianus	De Iudiciis Publicis	Severus/Caracalla
48.2.19pr.	Callistratus	De Cognitionibus	Divi Fratres
48.2.19.1	Callistratus	De Cognitionibus	Hadrian
48.2.20	Modestinus	De Poenis	Severus/Caracalla
48.2.22	Papinian	Responsa	Severus/Caracalla
48.3.2.1	Papinian	De Adulteriis	Domitian
48.3.3	Ulpian	De Officio Proconsulis	Pius
48.3.6pr.	Marcianus	De Iudiciis Publicis	Hadrian
48.3.6.1	Marcianus	De Iudiciis Publicis	Pius, *et alii Principes rescripserunt*
48.3.7	Macer	De Officio Praesidis	*id quoque quibusdam rescriptis declaratur*
48.3.12pr.	Callistratus	De Cognitionibus	Hadrian
48.4.5.1	Marcianus	Regulae	Severus/Caracalla
48.4.5.2	Marcianus	Regulae	Severus/Caracalla
48.4.9	Hermogenianus	Iuris Epitome	Severus
48.5.1	Ulpian	De Adulteriis	Augustus
48.5.6.2	Papinian	De Adulteriis	Hadrian
48.5.14(13).3	Ulpian	De Adulteriis	Severus/Caracalla
48.5.14(13).8	Ulpian	De Adulteriis	Severus
48.5.20(19)pr.	Ulpian	Ad Legem Iuliam de Adulteriis	*constitutum est*
48.5.28(27).6	Ulpian	De Adulteriis	Hadrian
48.5.30(29).5	Ulpian	De Adulteriis	*quod significari videtur rescripto*
48.5.33(32)pr.	Macer	De Iudiciis Publicis	Marcus/Commodus
48.5.34(33)pr.	Marcianus	De Iudiciis Publicis	Pius
48.5.38(37)	Papinian	Quaestiones	Divi Fratres
48.5.39(38).4	Papinian	Quaestiones	Divi Fratres

48.5.39(38).5	Papinian	Quaestiones	Divi Fratres
48.5.39(38).6	Papinian	Quaestiones	Divi Fratres
48.5.39(38).8	Papinian	Quaestiones	Marcus/Commodus, Pius
48.5.39(38).10	Papinian	Quaestiones	Claudius
48.6.5.1	Marcianus	Institutiones	Pius
48.6.6	Ulpian	De Officio Proconsulis	Pius
48.7.1.2	Marcianus	Institutiones	Pius, *ex constitutionibus Principum*
48.7.7	Callistratus	De Cognitionibus	Marcus
48.8.1.3	Marcianus	Institutiones	Hadrian
48.8.1.4	Marcianus	Institutiones	Hadrian
48.8.1.5	Marcianus	Institutiones	Pius
48.8.4.1	Ulpian	De Officio Proconsulis	Hadrian
48.8.4.2	Ulpian	De Officio Proconsulis	Hadrian
48.8.5	Paul	De Officio Proconsulis	Hadrian
48.8.11pr.	Modestinus	Regulae	Pius
48.8.14	Callistratus	De Cognitionibus	Hadrian
48.9.5	Marcianus	Institutiones	Hadrian
48.9.9pr.	Modestinus	Pandectae	Hadrian
48.9.9.1	Modestinus	Pandectae	Divi Fratres
48.10.1.4	Marcianus	Institutiones	Severus
48.10.1.9	Marcianus	Institutiones	Severus/Caracalla
48.10.1.10	Marcianus	Institutiones	Severus/Caracalla
48.10.1.11	Marcianus	Institutiones	Severus/Caracalla
48.10.4	Ulpian	Disputationes	Marcus
48.10.7	Marcianus	Institutiones	Marcus/Commodus
48.10.11	Marcianus	De Iudiciis Publicis	Divi Fratres
48.10.14.2	Paul	Quaestiones	Claudius
48.10.15pr.	Callistratus	Quaestiones	Claudius
48.10.15.1	Callistratus	Quaestiones	*plane constitutionibus Principalibus cavetur*
48.10.15.3	Callistratus	Quaestiones	Pius
48.10.21	Paul	Ad Senatusconsultum Turpillianum	Hadrian
48.10.29	Modestinus	De Enucleatis Casibus	*sunt enim rescripta de ea re*
48.10.31	Callistratus	De Cognitionibus	Pius, Divi Fratres
48.10.32.1	Modestinus	De Poenis	Hadrian
48.12.3pr.	Papirius Iustus	De Constitutionibus	Divi Fratres
48.12.3.1	Papirius Iustus	De Constitutionibus	Divi Fratres
48.13.4.2	Marcianus	Institutiones	*sic constitutionibus cavetur*

48.13.5.3 (4.6)	Marcianus	Institutiones	*ut et mandatis Principalibus cavetur*
48.13.5.4 (3.7)	Marcianus	Institutiones	Trajan, Hadrian
48.13.6(5)	Marcianus	Regulae	Severus/Caracalla
48.13.8.1 (6.2)	Ulpian	De Officio Proconsulis	Pius
48.13.12(10).1	Marcianus	De Iudiciis Publicis	Severus/Caracalla
48.15.3pr.	Marcianus	De Iudiciis Publicis	Severus/Caracalla
48.15.3.1	Marcianus	De Iudiciis Publicis	Severus/Caracalla
48.15.6pr.	Callistratus	De Cognitionibus	Hadrian
48.15.6.1	Callistratus	De Cognitionibus	Hadrian
48.16.7pr.	Ulpian	Disputationes	Hadrian
48.16.10.2	Papinian	De Adulteriis	Trajan
48.16.14	Ulpian	De Officio Proconsulis	Hadrian
48.16.15.1	Macer	De Iudiciis Publicis	*hoc iure ex sacris constitutionibus utimur*
48.16.16	Paul	De Adulteriis	Domitian
48.16.18pr.	Papirius Iustus	De Constitutionibus	Divi Fratres
48.16.18.1	Papirius Iustus	De Constitutionibus	Divi Fratres
48.16.18.2	Papirius Iustus	De Constitutionibus	Divi Fratres
48.17.1pr.	Marcianus	De Iudiciis Publicis	Severus/Caracalla
48.17.3	Marcianus	De Iudiciis Publicis	*Divi Principes voluerunt*
48.17.5.1	Modestinus	Pandectae	Severus/Caracalla
48.17.5.2	Modestinus	Pandectae	Trajan
48.18.1pr.	Ulpian	De Officio Proconsulis	Augustus, Hadrian
48.18.1.2	Ulpian	De Officio Proconsulis	Hadrian
48.18.1.3	Ulpian	De Officio Proconsulis	Divi Fratres
48.18.1.4	Ulpian	De Officio Proconsulis	Divi Fratres
48.18.1.5	Ulpian	De Officio Proconsulis	Pius, Hadrian
48.18.1.6	Ulpian	De Officio Proconsulis	Divi Fratres
48.18.1.7	Ulpian	De Officio Proconsulis	*saepissime rescriptum est*
48.18.1.9	Ulpian	De Officio Proconsulis	*constitutum est*
48.18.1.10	Ulpian	De Officio Proconsulis	Severus/Caracalla
48.18.1.11	Ulpian	De Officio Proconsulis	Trajan
48.18.1.12	Ulpian	De Officio Proconsulis	Trajan
48.18.1.13	Ulpian	De Officio Proconsulis	Pius
48.18.1.14	Ulpian	De Officio Proconsulis	Divi Fratres
48.18.1.15	Ulpian	De Officio Proconsulis	Severus/Caracalla
48.18.1.16	Ulpian	De Officio Proconsulis	Severus

48.18.1.17	Ulpian	De Officio Proconsulis	Severus
48.18.1.18	Ulpian	De Officio Proconsulis	Severus/Caracalla
48.18.1.19	Ulpian	De Officio Proconsulis	Trajan
48.18.1.21	Ulpian	De Officio Proconsulis	Trajan
48.18.1.22	Ulpian	De Officio Proconsulis	Hadrian
48.18.1.23	Ulpian	De Officio Proconsulis	*constitutionibus declaratur*
48.18.1.26	Ulpian	De Officio Proconsulis	*quibusdam rescriptis continetur*
48.18.1.27	Ulpian	De Officio Proconsulis	Divi Fratres
48.18.3	Ulpian	Ad Edictum	Severus/Caracalla
48.18.4	Ulpian	Disputationes	*ut Papinianus respondit et est rescriptum*
48.18.8pr.	Paul	De Adulteriis	Augustus
48.18.9pr.	Marcianus	De Iudiciis Publicis	Pius, Severus, *et aliis rescriptis cavetur*
48.18.9.2	Marcianus	De Iudiciis Publicis	Pius
48.18.10pr.	Arcadius Charisius	De Testibus	Pius
48.18.10.2	Arcadius Charisius	De Testibus	*constitutum est*
48.18.12	Ulpian	Ad Edictum	Hadrian
48.18.15.1	Callistratus	De Cognitionibus	Pius
48.18.15.2	Callistratus	De Cognitionibus	Pius
48.18.16pr.	Modestinus	De Poenis	Divi Fratres
48.18.16.1	Modestinus	De Poenis	Pius
48.18.17pr.	Papinian	Responsa	Marcus, Caracalla
48.18.17.2	Papinian	Responsa	Hadrian
48.18.21	Paul	De Poenis Paganorum	Hadrian
48.19.5pr.	Ulpian	De Officio Proconsulis	Trajan
48.19.8.1	Ulpian	De Officio Proconsulis	Divi Fratres
48.19.8.5	Ulpian	De Officio Proconsulis	Severus
48.19.8.12	Ulpian	De Officio Proconsulis	Caracalla
48.19.9.16	Ulpian	De Officio Proconsulis	Pius
48.19.10.2	Macer	De Iudiciis Publicis	*constitutum est*
48.19.22	Modestinus	Differentiae	Pius
48.19.25pr.	Modestinus	Pandectae	*sic etiam constitutum est*
48.19.26	Callistratus	De Cognitionibus	Divi Fratres
48.19.27pr.	Callistratus	De Cognitionibus	Divi Fratres, *nonnulla exstant Principalia rescripta, quibus . . . concessa*
48.19.28.2	Callistratus	De Cognitionibus	*idque Principalibus rescriptis specialiter exprimitur*
48.19.28.6	Callistratus	De Cognitionibus	Hadrian
48.19.28.7	Callistratus	De Cognitionibus	Pius
48.19.28.13	Callistratus	De Cognitionibus	Hadrian
48.19.28.14	Callistratus	De Cognitionibus	Hadrian

48.19.30	Modestinus	De Poenis	Marcus
48.19.31.1	Modestinus	De Poenis	Severus/Caracalla
48.19.33	Papinian	Quaestiones	Divi Fratres
48.19.35	Callistratus	Quaestiones	*mandatis Principalibus . . . cavetur*
48.19.39	Tryphoninus	Disputationes	Severus/Caracalla
48.19.43pr.	Paul	Responsa	Caracalla
48.20.1.3	Callistratus	De Iure Fisci	Divi Fratres
48.20.2	Callistratus	De Cognitionibus	Hadrian
48.20.6	Ulpian	De Officio Proconsulis	Hadrian
48.20.7.3	Paul	De Portionibus Quae Liberis Damnatorum Conceduntur	Hadrian
48.20.7.4	Paul	De Portionibus Quae Liberis Damnatorum Conceduntur	Pius
48.21.1	Ulpian	Disputationes	*a Principibus decretum est*
48.21.2pr.	Macer	De Iudiciis Publicis	Severus/Caracalla
48.21.3.1	Marcianus	De Delatoribus	Pius
48.21.3.2	Marcianus	De Delatoribus	Pius
48.21.3.4	Marcianus	De Delatoribus	Caracalla
48.21.3.5	Marcianus	De Delatoribus	Hadrian
48.21.3.8	Marcianus	De Delatoribus	Pius
48.22.1	Pomponius	Ad Sabinum	Trajan
48.22.2	Marcianus	Institutiones	Pius
48.22.6.1	Ulpian	De Officio Proconsulis	Severus
48.22.6.2	Ulpian	De Officio Proconsulis	Divi Fratres
48.22.7.4	Ulpian	De Officio Proconsulis	*rescriptis quibusdam manifestatur*
48.22.7.10	Ulpian	De Officio Proconsulis	Divi Fratres, Severus/Caracalla
48.22.7.15	Ulpian	De Officio Proconsulis	*et ita multis constitutionibus continetur*
48.22.7.18	Ulpian	De Officio Proconsulis	Divi Fratres
48.22.16	Marcianus	Unknown	Caracalla
48.24.2	Marcianus	De Iudiciis Publicis	Severus/Caracalla
49.1.1.1	Ulpian	De Appellationibus	Pius
49.1.1.3	Ulpian	De Appellationibus	Divi Fratres, *et ita multis constitutionibus continetur*
49.1.4.1	Macer	De Appellationibus	Caracalla
49.1.4.4	Macer	De Appellationibus	*idque ita constitutum est*
49.1.5.1	Marcianus	De Appellationibus	Pius
49.1.5.2	Marcianus	De Appellationibus	Pius
49.1.5.3	Marcianus	De Appellationibus	*similiter rescriptum est*

49.1.7	Marcianus	De Appellationibus	Severus
49.1.8	Ulpian	De Appellationibus	Divi Fratres
49.1.9	Macer	De Appellationibus	*idque ita rescriptum est*
49.1.14pr.	Ulpian	Ad Edictum	Pius
49.1.14.1	Ulpian	Ad Edictum	Divi Fratres
49.1.21pr.	Papirius Iustus	De Constitutionibus	Divi Fratres
49.1.21.1	Papirius Iustus	De Constitutionibus	Divi Fratres
49.1.21.3	Papirius Iustus	De Constitutionibus	Divi Fratres
49.2.1.2	Ulpian	De Appellationibus	Hadrian
49.2.1.4	Ulpian	De Appellationibus	Marcus
49.4.1.1	Ulpian	De Appellationibus	Marcus
49.4.1.7	Ulpian	De Appellationibus	Marcus
49.5.4	Macer	De Appellationibus	*sacris constitutionibus vetatur*
49.5.5.3	Ulpian	De Appellationibus	Caracalla
49.5.7pr.	Paul	De Appellationibus	Hadrian
49.6.1.2	Marcianus	De Appellationibus	*constitutiones desiderant*
49.7.1.4	Ulpian	De Appellationibus	*cum hoc sit constitutum et sit iuris*
49.8.1.3	Macer	De Appellationibus	*constitutiones demonstrant*
49.9.1	Ulpian	De Appellationibus	Divi Fratres
49.11.1	Ulpian	De Appellationibus	Divi Fratres
49.13.1pr.	Macer	De Appellationibus	Severus Alexander
49.13.1.1	Macer	De Appellationibus	Severus/Caracalla
49.14.1.2	Callistratus	De Iure Fisci	Pius
49.14.1.3	Callistratus	De Iure Fisci	Titus
49.14.2pr.	Callistratus	De Iure Fisci	*haec ita observari plurifariam Principalibus constitutionibus praecipitur*
49.14.2.1	Callistratus	De Iure Fisci	Hadrian
49.14.2.2	Callistratus	De Iure Fisci	Divi Fratres
49.14.2.4	Callistratus	De Iure Fisci	Hadrian
49.14.2.5	Callistratus	De Iure Fisci	Pius
49.14.2.6	Callistratus	De Iure Fisci	Severus
49.14.2.7	Callistratus	De Iure Fisci	*complura sunt rescripta Principalia, quibus cavetur*
49.14.3.1	Callistratus	De Iure Fisci	Hadrian
49.14.3.4	Callistratus	De Iure Fisci	Pius
49.14.3.5	Callistratus	De Iure Fisci	Divi Fratres
49.14.3.6	Callistratus	De Iure Fisci	Hadrian, *idque Principalibus rescriptis exprimitur*
49.14.3.8	Callistratus	De Iure Fisci	*multa Principalia sunt rescripta, quibus cavetur*
49.14.3.9	Callistratus	De Iure Fisci	Hadrian
49.14.3.10	Callistratus	De Iure Fisci	Divi Fratres

49.14.6pr.	Ulpian	Ad Edictum	*varie rescriptum est*
49.14.7	Ulpian	Ad Edictum	Marcus
49.14.8	Modestinus	Regulae	*rescriptum est*
49.14.12	Callistratus	De Cognitionibus	Pius
49.14.13pr.	Paul	Ad Legem Iuliam et Papiam	Trajan
49.14.13.4	Paul	Ad Legem Iuliam et Papiam	Hadrian
49.14.13.5	Paul	Ad Legem Iuliam et Papiam	Hadrian
49.14.13.6	Paul	Ad Legem Iuliam et Papiam	Divi Fratres
49.14.13.7	Paul	Ad Legem Iuliam et Papiam	Caracalla
49.14.13.10	Paul	Ad Legem Iuliam et Papiam	Hadrian, Pius, Divi Fratres
49.14.15.2	Iunius Mauricianus	Ad Legem Iuliam et Papiam	Hadrian
49.14.16	Ulpian	Ad Legem Iuliam et Papiam	Trajan
49.14.18pr.	Marcianus	De Delatoribus	*et ita sacris constitutionibus cautum est*
49.14.18.2	Marcianus	De Delatoribus	Divi Fratres
49.14.18.3	Marcianus	De Delatoribus	*constitutionibus Principum prohibentur*
49.14.18.4	Marcianus	De Delatoribus	*rescriptum est*
49.14.18.5	Marcianus	De Delatoribus	*sacris constitutionibus . . . prohibentur*
49.14.18.8	Marcianus	De Delatoribus	Severus/Caracalla
49.14.18.9	Marcianus	De Delatoribus	*ut et constitutum esse refertur*
49.14.18.10	Marcianus	De Delatoribus	*quidam Principes . . . rescripserunt*
49.14.22pr.	Marcianus	De Delatoribus	Severus/Caracalla
49.14.22.1	Marcianus	De Delatoribus	Severus/Caracalla
49.14.22.2	Marcianus	De Delatoribus	Pius
49.14.22.3	Marcianus	De Delatoribus	Severus/Caracalla
49.14.23	Callistratus	De Iure Fisci	Divi Fratres
49.14.25	Ulpian	Ad Sabinum	Severus
49.14.26	Ulpian	Ad Sabinum	*rescriptum est*
49.14.27	Ulpian	Ad Edictum	Severus
49.14.28	Ulpian	Disputationes	*quod et constitutum est*
49.14.29pr.	Ulpian	Disputationes	*nam . . . id constitutum est*

49.14.29.2	Ulpian	Disputationes	Severus/Caracalla
49.14.30	Marcianus	Institutiones	Severus/Caracalla
49.14.31	Marcianus	Institutiones	Commodus
49.14.32	Marcianus	Institutiones	Divi Fratres
49.14.34	Macer	De Iudiciis Publicis	Severus/Caracalla
49.14.42pr.	Valens	Fideicommissa	Trajan
49.14.42.1	Valens	Fideicommissa	Trajan
49.14.43	Ulpian	Fideicommissa	Caracalla
49.14.46.5	Hermogenianus	Iuris Epitome	*saepe constitutum est*
49.14.47pr.	Paul	Decreta	*aequum putavit Imperator*
49.14.48pr.	Paul	Decreta	Severus/Caracalla
49.14.49	Paul	De Tacitis Fideicommissis	Trajan
49.15.9	Ulpian	Ad Legem Iuliam et Papiam	Severus/Caracalla
49.15.12.17	Tryphoninus	Disputationes	Severus/Caracalla
49.15.25	Marcianus	Institutiones	Severus/Caracalla
49.16.3pr.	Modestinus	De Poenis	Severus/Caracalla
49.16.4pr.	Arrius Menander	De Re Militari	Trajan
49.16.4.5	Arrius Menander	De Re Militari	Trajan
49.16.4.9	Arrius Menander	De Re Militari	Caracalla
49.16.4.12	Arrius Menander	De Re Militari	Trajan
49.16.5.6	Arrius Menander	De Re Militari	Hadrian
49.16.5.8	Arrius Menander	De Re Militari	Hadrian
49.16.6.7	Arrius Menander	De Re Militari	Hadrian
49.16.13.6	Macer	De Re Militari	Pius, Severus/Caracalla
49.17.4.2	Tertullian	De Castrensi Peculio	*constitutiones Principales de his loquantur*
49.17.13	Papinian	Quaestiones	Hadrian
49.17.16pr.	Papinian	Responsa	Hadrian
49.17.19.3	Tryphoninus	Disputationes	Hadrian
49.18.4pr.	Ulpian	De Officio Proconsulis	*rescriptum est*
49.18.4.1	Ulpian	De Officio Proconsulis	*rescriptum est*
49.18.5pr.	Paul	De Cognitionibus	Severus/Caracalla
50.1.2.5	Ulpian	Disputationes	*hoc enim et relatum et rescriptum est*
50.1.8	Marcianus	De Iudiciis Publicis	Divi Fratres
50.1.11pr.	Papinian	Quaestiones	Caracalla
50.1.17.9	Papinian	Responsa	Pius
50.1.18	Paul	Quaestiones	Severus
50.1.21.6	Paul	Responsa	Severus/Caracalla

50.1.24	Scaevola	Digesta	Divi Fratres, *constitutionibus Principum continetur*
50.1.37pr.	Callistratus	De Cognitionibus	Hadrian
50.1.37.2	Callistratus	De Cognitionibus	Divi Fratres
50.1.38pr.	Papirius Iustus	De Constitutionibus	Divi Fratres
50.1.38.1	Papirius Iustus	De Constitutionibus	Divi Fratres
50.1.38.2	Papirius Iustus	De Constitutionibus	Divi Fratres
50.1.38.3	Papirius Iustus	De Constitutionibus	Divi Fratres
50.1.38.4	Papirius Iustus	De Constitutionibus	Divi Fratres
50.1.38.5	Papirius Iustus	De Constitutionibus	Divi Fratres
50.1.38.6	Papirius Iustus	De Constitutionibus	Divi Fratres
50.2.2.8	Ulpian	Disputationes	*constitutionibus prohibentur*
50.2.3.1	Ulpian	De Officio Proconsulis	Caracalla
50.2.3.2	Ulpian	De Officio Proconsulis	Divi Fratres
50.2.3.3	Ulpian	De Officio Proconsulis	Severus/Caracalla
50.2.11	Callistratus	De Cognitionibus	Severus/Caracalla
50.2.13pr.	Papirius Iustus	De Constitutionibus	Divi Fratres
50.2.13.1	Papirius Iustus	De Constitutionibus	Divi Fratres
50.2.13.2	Papirius Iustus	De Constitutionibus	Divi Fratres
50.2.13.3	Papirius Iustus	De Constitutionibus	Divi Fratres
50.2.14	Paul	Quaestiones	Pius
50.4.6pr.	Ulpian	De Officio Proconsulis	Divi Fratres
50.4.6.1	Ulpian	De Officio Proconsulis	Divi Fratres
50.4.6.2	Ulpian	De Officio Proconsulis	Severus/Caracalla
50.4.7pr.	Marcianus	De Iudiciis Publicis	*Principalibus constitutionibus prohibetur*
50.4.7.1	Marcianus	De Iudiciis Publicis	Severus
50.4.11pr.	Modestinus	Pandectae	Pius
50.4.11.1	Modestinus	Pandectae	Marcus
50.4.11.2	Modestinus	Pandectae	Divi Fratres
50.4.11.3	Modestinus	Pandectae	Severus/Caracalla
50.4.11.4	Modestinus	Pandectae	Caracalla
50.4.14.4	Callistratus	De Cognitionibus	Severus
50.4.14.6	Callistratus	De Cognitionibus	Hadrian, *conplurimis constitutionibus cavetur*
50.4.18.23	Arcadius Charisius	De Muneribus Civilibus	*rescriptum est*
50.4.18.30	Arcadius Charisius	De Muneribus Civilibus	Vespasian, Hadrian
50.5.1.1	Ulpian	Opiniones	*exemplo decretorum Principalium*
50.6.3(2.1)	Ulpian	De Officio Proconsulis	*rescripto . . . declaratur*
50.6.6(5).1	Callistratus	De Cognitionibus	Pius
50.6.6(5).2	Callistratus	De Cognitionibus	Pertinax

50.6.6(5).4	Callistratus	De Cognitionibus	*idque Principalibus constitutionibus declaratur*
50.6.6(5).5	Callistratus	De Cognitionibus	Hadrian
50.6.6(5).6	Callistratus	De Cognitionibus	Divi Fratres
50.6.6(5).8	Callistratus	De Cognitionibus	Hadrian
50.6.6(5).9	Callistratus	De Cognitionibus	Pius
50.6.6(5).10	Callistratus	De Cognitionibus	Divi Fratres
50.6.6(5).12	Callistratus	De Cognitionibus	Pius, *plurifariam constitutum est*
50.6.6(5).12	Callistratus	De Cognitionibus	Pius
50.6.6(5).13	Callistratus	De Cognitionibus	Pertinax
50.7.5(4)pr.	Marcianus	Institutiones	Pius
50.7.5(4).1	Marcianus	Institutiones	Severus/Caracalla
50.7.5(4).3	Marcianus	Institutiones	Divi Fratres
50.7.5(4).5	Marcianus	Institutiones	Hadrian
50.7.5(4).6	Marcianus	Institutiones	Vespasian
50.7.7(6)	Ulpian	De Officio Proconsulis	Severus/Caracalla
50.7.9(8).1	Paul	Responsa	Severus/Caracalla
50.8.11(9)pr.	Papirius Iustus	De Constitutionibus	Divi Fratres
50.8.11(9).1	Papirius Iustus	De Constitutionibus	Divi Fratres
50.8.11(9).2	Papirius Iustus	De Constitutionibus	Divi Fratres
50.8.12pr.(9.3)	Papirius Iustus	De Constitutionibus	Divi Fratres
50.8.12.1(9.4)	Papirius Iustus	De Constitutionibus	Divi Fratres
50.8.12.2(9.5)	Papirius Iustus	De Constitutionibus	Divi Fratres
50.8.12.3(9.6)	Papirius Iustus	De Constitutionibus	Divi Fratres
50.8.12.4(9.7)	Papirius Iustus	De Constitutionibus	Divi Fratres
50.8.12.5(9.8)	Papirius Iustus	De Constitutionibus	Divi Fratres
50.8.12.6(9.9)	Papirius Iustus	De Constitutionibus	Divi Fratres
50.8.13(9.10)	Papirius Iustus	De Constitutionibus	Divi Fratres
50.9.5	Callistratus	De Cognitionibus	Hadrian
50.10.3.1	Macer	De Officio Praesidis	*constitutionibus declaratur*
50.10.5pr.	Ulpian	De Officio Curatoris Rei Publicae	Pius
50.10.6	Modestinus	Pandectae	Marcus
50.10.7pr.	Callistratus	De Cognitionibus	Pius

50.12.1pr.	Ulpian	De Officio Curatoris Rei Publicae	Severus/Caracalla
50.12.1.1	Ulpian	De Officio Curatoris Rei Publicae	*et ita multis constitutionibus et veteribus et novis continetur*
50.12.1.5	Ulpian	De Officio Curatoris Rei Publicae	Severus/Caracalla
50.12.1.6	Ulpian	De Officio Curatoris Rei Publicae	Caracalla
50.12.3pr.	Ulpian	Disputationes	*illud est constitutum*
50.12.6.1	Ulpian	De Officio Proconsulis	Caracalla
50.12.6.2	Ulpian	De Officio Proconsulis	Severus/Caracalla
50.12.6.3	Ulpian	De Officio Proconsulis	Severus/Caracalla
50.12.7	Paul	De Officio Proconsulis	Severus
50.12.8	Ulpian	De Officio Proconsulis	Divi Fratres
50.12.9	Modestinus	Differentiae	Severus/Caracalla, Pius
50.12.11	Modestinus	Pandectae	*Principalibus constitutionibus cavetur*
50.12.12pr.	Modestinus	Pandectae	Severus
50.12.12.1	Modestinus	Pandectae	Caracalla
50.12.13pr.	Papirius Iustus	De Constitutionibus	Divi Fratres
50.12.13.1	Papirius Iustus	De Constitutionibus	Divi Fratres
50.12.14	Pomponius	Epistulae et Variae Lectiones	Trajan, Pius
50.12.15	Ulpian	De Officio Curatoris Rei Publicae	Pius
50.13.1.9	Ulpian	De Omnibus Tribunalibus	Divi Fratres
50.13.1.10	Ulpian	De Omnibus Tribunalibus	Severus/Caracalla
50.13.1.12	Ulpian	De Omnibus Tribunalibus	Severus/Caracalla
50.13.1.13	Ulpian	De Omnibus Tribunalibus	Severus
50.13.4	Paul	Ad Plautium	Pius
50.15.3.1	Ulpian	De Censibus	Caracalla
50.15.4.10	Ulpian	De Censibus	*saepissime rescriptum est*
50.15.5.1	Papinian	Responsa	Pius
50.16.60pr.	Ulpian	Ad Edictum	*opinio nostra et constitutio . . . separat*
50.16.220.2	Callistratus	Quaestiones	Marcus
50.17.28	Ulpian	Ad Sabinum	Pius

50.17.101	Paul	De Cognitionibus	Severus/Caracalla

APPENDIX IV:

RULE-CONSEQUENTIALIST REASONING IN THE *DIGEST*

This appendix includes the 114 instances of rule-consequentialist language I was able to isolate in the *Digest*. I should note again that "language" and "reasoning" are not synonymous; I have limited this corpus to cases in which jurists explicitly reasoned (or glossed other actors' reasoning) from the principle that the desirability of a rule or interpretation of a rule can be determined by evaluating to the state of affairs that would result from its promulgation. While this concept is frequently indicated in legal Latin through forms of *utilis*, I have chosen not to include bare references to the *utilitas* of a given rule absent greater explanation of what makes that rule understood to be *utilis*; the semantic fields of different markers of goodness in the *Digest* are not sufficiently distinct to permit modern readers to be confident in the reasoning behind a claim of *utilitas* absent greater detail. When a jurist is recorded in the *Digest* through quotation in a later work, I have indicated the author of the work excerpted in the *Digest*, followed by the author that work quotes in parentheses.

Location	Author (Author Quoted)	Work
1.18.6.2	Ulpian	Opiniones
2.7.1pr.	Ulpian	Ad Edictum
2.11.5pr.	Paul	Ad Edictum
2.14.27.4	Paul	Ad Edictum
3.1.1pr.	Ulpian	Ad Edictum
3.2.11.1	Ulpian	Ad Edictum
4.4.24.1	Pauli Sententiae	
4.9.1pr.	Ulpian	Ad Edictum
5.3.25.19	Ulpian	Ad Edictum
9.3.1.1	Ulpian	Ad Edictum
9.3.1.2	Ulpian	Ad Edictum
9.4.13	Gaius	Ad Edictum Provinciale
9.4.26pr.	Paul	Ad Edictum
10.2.19	Gaius	Ad Edictum Provinciale

11.1.5	Gaius	Ad Edictum Provinciale
11.1.6pr.	Ulpian	Ad Edictum
11.1.6.1	Ulpian	Ad Edictum
11.6.1pr.	Ulpian	Ad Edictum
11.7.14.1	Ulpian	Ad Edictum
11.7.16	Ulpian	Ad Edictum
12.1.21	Julianus	Digesta
12.2.3pr.	Ulpian	Ad Edictum
13.4.1	Gaius	Ad Edictum Provinciale
14.1.1pr.	Ulpian	Ad Edictum
14.1.1.5	Ulpian (Julianus)	Ad Edictum
14.2.2.6	Paul	Ad Edictum
14.4.5.4	Ulpian	Ad Edictum
15.1.51	Scaevola	Quaestiones
16.2.8	Gaius	Ad Edictum Provinciale
21.1.1.2	Ulpian	Ad Edictum Aedilium Curulium
22.1.38.1	Paul	Ad Plautium
23.3.2	Paul	Ad Edictum
24.1.2	Paul (Sextus Caecilius)	Ad Sabinum
26.4.1pr.	Ulpian	Ad Sabinum
27.9.5.13	Ulpian	Ad Edictum
28.7.8pr.	Ulpian	Ad Edictum
29.1.1pr.	Ulpian (Trajan)	Ad Edictum
29.2.42pr.	Ulpian (Marcellus)	Disputationes
34.2.39pr.	Javolenus (Labeo)	Posteriores
35.1.64	Terentius Clemens	Ad Legem Iuliam et Papiam
36.1.1.3	Ulpian	Fideicommissa
36.1.67(65).2	Maecianus	Fideicommissa
37.3.1.1	Papinian	Quaestiones
37.4.20.1	Tryphoninus	Disputationes
37.5.5.6-7	Ulpian (Julianus)	Ad Edictum
37.6.3.2	Julianus	Digesta
37.10.1.5	Ulpian (Julianus)	Ad Edictum
37.10.3.13	Ulpian (Julianus)	Ad Edictum
37.11.2.1	Ulpian (Julianus)	Ad Edictum
37.12.2	Gaius	Ad Edictum Provinciale
37.13.1pr.	Ulpian	Ad Edictum
37.14.1	Ulpian	De Officio Proconsulis
38.1.2pr.	Ulpian	Ad Edictum
38.1.20	Paul	Ad Edictum
38.2.1pr.	Ulpian (Servius)	Ad Edictum
38.2.14.2	Ulpian	Ad Edictum
38.2.42pr.	Papinian	Quaestiones
38.9.1pr.	Ulpian	Ad Edictum
38.9.1.12	Ulpian	Ad Edictum
39.1.4	Paul	Ad Edictum
39.1.5.4	Ulpian	Ad Edictum
39.1.5.12	Ulpian	Ad Edictum
39.1.5.17	Ulpian	Ad Edictum

39.1.20.10	Ulpian	Ad Edictum
39.2.1	Ulpian	Ad Edictum
39.3.9.1	Paul	Ad Edictum
39.3.11.2	Paul (Proculus)	Ad Edictum
39.4.3pr.	Ulpian	Ad Edictum
39.4.9.3	Pauli Sententiae	
39.4.12pr.	Ulpian	Ad Edictum
39.4.16.4	Marcianus	De Delatoribus
40.5.24.21	Ulpian	Fideicommissa
40.5.25	Paul (Valens)	Fideicommissa
40.5.26pr.	Ulpian	Fideicommissa
40.5.26.4	Ulpian	Fideicommissa
41.1.41	Ulpian	Ad Edictum
41.3.1	Gaius	Ad Edictum Provinciale
42.1.50	Tryphoninus	Disputationes
42.8.10.24	Ulpian	Ad Edictum
43.3.1.2	Ulpian	Ad Edictum
43.8.2.37	Ulpian	Ad Edictum
43.8.7	Ulpian	Digesta
43.13.1.1	Ulpian	Ad Edictum
43.15.1.1	Ulpian	Ad Edictum
43.16.1.15	Ulpian	Ad Edictum
43.16.3pr.	Ulpian	Ad Edictum
43.19.3.12	Ulpian	Ad Edictum
43.19.3.16	Ulpian	Ad Edictum
43.23.1.2	Ulpian	Ad Edictum
43.24.4	Saturninus (Servius)	Interdicta
44.7.5pr.	Gaius	Aurea
46.2.19	Paul	Ad Edictum
46.7.5.7	Ulpian	Ad Edictum
47.6.1pr.	Ulpian	Ad Edictum
48.1.12.1	Modestinus	De Poenis
48.1.14	Papinian	Responsa
48.2.7pr.	Ulpian	De Officio Proconsulis
48.2.11.1	Macer	De Iudiciis Publicis
48.2.13	Marcianus	De Iudiciis Publicis
48.5.2.8	Ulpian	Disputationes
48.5.12(11).11	Papinian	De Adulteriis
48.5.23(22).4	Papinian	De Adulteriis
48.5.28(27).11	Ulpian	De Adulteriis
48.18.18.5	Pauli Sententiae	
48.19.16.10	Saturninus	De Poenis Paganorum
49.4.1pr.	Ulpian	De Appellationibus
49.14.18.3	Marcianus	De Delatoribus
49.15.19.5	Paul	Ad Sabinum
49.16.13pr.	Macer	De Re Militari
50.2.2.2	Ulpian (Papinian)	Disputationes
50.2.6pr.	Papinian	Responsa
50.6.6(5).3	Callistratus	De Cognitionibus

50.11.2	Callistratus	De Cognitionibus
50.13.1.4	Ulpian	De Omnibus Tribunalibus