

IN RE IULIUS AGRIPPA'S ESTATE
Q. Cervidius Scaevola, Iulia Domna and the estate
of Iulius Agrippa
By
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Introduction

In the third book of his *Responsa*, Quintus Cervidius Scaevola¹ deals with an important subject of the law of property. Someone had made his last will and testament bequeathing his estate to his heir at law, subject to the condition that the heir was not allowed to alienate a part of it, *i.e.* some real estate in the neighbourhood of Rome. The testator's granddaughter, in whose hands the estate of her grandfather had devolved, made a last will bequeathing her entire estate, including her grandfather's real estate near Rome, to an *extraneus*, an heir outside the family of the testator. The question now was, whether this bequest was contrary to the condition as laid down in her grandfather's testament.² I would not have raised these intricacies of what has been called 'the Roman law of trusts', were it not for the fact that Scaevola's *responsum* is reported twice in Justinian's Digests. The case is also, almost verbatim, reported in a fragment taken from Scaevola's *Digesta*.³ This time, however, the lawyer reports the names of the persons involved, instead of using aliases, as in the report of the case in his *Responsa*. Due to this fortunate coincidence, we know that the original testator's name was not a fictitious Lucius Titius, but the *primipilaris* Iulius Agrippa and that the question put to Scaevola originated in a dispute between Agrippa's granddaughter's testamentary heir on the one hand and Iulia Domna on the other. I will go into the relations between the persons involved later, but let me first introduce some problems of modern legal history concerning this case.

¹ On Scaevola generally see P. Jors in Pauly-Wissowa, *Realencyklopadie der classischen Altertumswissenschaft* (= *RE*), s.v. 'Cervidius' (1), P. Kruger, *Geschichte der Quellen und Literatur des römischen Rechts* (Munich/Leipzig 1912), 215 ff., F. Schulz, *History of Roman Legal Science* (Oxford 1963), 233 ff., W. Kunkel, *Herkunft und soziale Stellung der römischen Juristen* (Graz/Wien/Köln 1967, 2nd ed.), 217 ff.

² *Dig.* 32 93 pr.

³ *Dig.* 32 38 4

Quellenforschung

Romanistic scholarship has been dominated by the discipline of 'Quellenforschung' since the nineteenth century. Our text offers a good example of the kind of research involved. For how is the double tradition of the text to be explained?

There are more than ten *leges geminatae* taken from Scaevola's *Digesta* and his *Responsa* in Justinian's Digests.⁴ There is an easy explanation for this phenomenon by applying Fr. Bluhme's 'Massentheorie',⁵ one of the truly outstanding achievements of nineteenth century German scholarship, to the question at hand. Justinian's minister Tribonianus, the genius behind the codification, divided the Roman legal literature to be excerpted and adapted for insertion into the Digests in three main categories, 'Massen', and attributed the task to three different committees. We know that Scaevola's *Digesta* were read and excerpted by one committee, whereas his *Responsa* were read and worked upon by another, a fourth committee, added at a fairly late date in the process. That some haste was involved can be shown by a look at the third title of the fifteenth book. It is a relatively short title, consisting of a mere twenty one sections. Section 20 has been taken from Scaevola's *Responsa*, containing a report of a case also reported in his *Digesta*, which is to be found in the last section (21).

The fact that so many reiterations occur in Scaevola's *Responsa* and his *Digesta*, naturally leads to the question on the precise nature of the relation between these two books, both attributed to that great Roman lawyer. As can be expected, disagreement reigns supreme.

It was once believed that Scaevola's *Digesta* contained a commentary on his *Responsa*.⁶ H. Fitting, however, held that Scaevola wrote his *Responsa* after he had written his *Digesta*,⁷ using some of the cases already reported in the *Digesta*. Otto Lenel, the compiler of the *Palingenesia Iuris Civilis*,

⁴ What is and what is not a *lex geminata* is not merely a matter of mechanics, but of opinion. I counted thirteen, R. Samter, 'Das Verhältnis zwischen Scaevolae Digesten und Responsen', *Zeitschrift der Savigny-Stiftung* 27 (1906), 152, fifteen and F. Schulz, 'Ueberlieferungsgeschichte der Responsa des Cervidius Scaevola', in *Symbolae Friburgenses in honorem Ottonis Lenel* (Leipzig 1931), 228 ff, eighteen.

⁵ Fr. Bluhme, 'Die Ordnung der Fragmente in den Pandektenbüchern', in *Zeitschrift für geschichtliche Rechtswissenschaft* 4 (1823), 257 ff.

⁶ For example by Fr. Bluhme 1823, op cit (n 5), 325 n 47.

⁷ *Über das Alter der Schriften römischer Juristen von Hadrian bis Alexander* (1) (Basel 1860), 26.

favoured the idea that the *Digesta* had been written before the end of the reign of Marcus Aurelius, whereas the *Responsa* were written under Septimius Severus.⁸ Theodor Mommsen first suggested that the *Digesta* were a posthumous compilation of several works of Scaevola, including his *Responsa*.⁹

In the early thirties of the twentieth century Fritz Schulz brought the dispute to a predictable conclusion. According to him¹⁰ the *Digesta*, as well as the *Responsa*, were not original works by Scaevola at all, but products of post-classical compilers, using an 'Archetype' by Scaevola himself. The theory is predictable in as far as it is a typical example of a particular kind of 'Quellenforschung' dominant at the time, tracing back, that is, a plurality of extant texts, or parts thereof, to a hypothetical single source. For, as Jaap Mansfeld observed,¹¹ "as all lagers are the offspring of the *Pilsener Urquell*, so a plurality of manuscripts may derive from a single lost ancestor, the so-called archetype". 'Textstufenforschung' of this kind has had a frustrating effect on the discipline of Roman legal history on the European continent. For as theories of this kind are in fact rarely very accurate and, moreover, tainted by value-judgments, they are equally very hard to disprove. Sometimes, however, they have been successfully falsified, as in the case of Gaius.

A similar problem as the one concerning the relation between Scaevola's *Responsa* and his *Digesta*, arose in the 'Gaius-Forschung'. It concerned the relation between the *Institutiones* and the *Res cottidianae* of that *magister iuris*. Of course, it has been held that both books attributed to Gaius are merely the sorry products of post-classical compilers, using an 'Archetype' by Gaius himself, a so-called 'Ur-Gaius'.¹² This method has been thoroughly discredited by the painstaking efforts of a qualified classical scholar, H.L.W. Nelson, in his study on 'Ueberlieferung, Aufbau und Stil von Gai Institutiones'. Nelson successfully proved that both books are by

⁸ O Lenel, *Palmingenesia Iuris Civilis* II (Leipzig 1889), 215 n 1 and 287-288 n 6

⁹ 'Die Bedeutung des Wortes *digesta*', *Juristische Schriften* II (Berlin 1905), 94 Mommsen's thesis was elaborated by R Samter in *Zeitschrift der Savigny-Stiftung* 27 (1906), 151 ff and was the prevailing doctrine up till Schulz's article in the *Symbolae Friburgenses* Comp L Wenger, *Die Quellen des romischen Rechts* (Vienna 1953), 511

¹⁰ Fr Schulz, 'Ueberlieferungsgeschichte der *Responsa* des Cervidius Scaevola', in *Symbolae Friburgenses in honorem Ottonis Lenel* (Leipzig 1931), 143 ff See also his *History of Roman Legal Science* (Oxford 1963), 232 ff

¹¹ *The Cambridge History of Hellenistic Philosophy* (Cambridge 1999), 14

¹² H J Wolff, 'Zur Geschichte des Gaiustextes', in *Studi Arangio-Ruiz* IV (Napels 1952), 171 ff On the related contributions of Fuhrmann, Wieacker and Flume see H L W Nelson, *Ueberlieferung, Aufbau und Stil von Gai Institutiones* (Leiden 1981), 326 ff

Gaius himself, leaving open the question why that writer copied himself as he did. Nelson, not being a lawyer, clearly does not know how often lawyers do. Roman lawyers were even more inclined to do so than modern lawyers are.

I think I have a fairly good idea how collections like the *Responsa* and the *Digesta* were originally compiled. It is known from Aulus Gellius that *uris periti* like Scaevola, a near contemporary of Gellius, did not conceive their *responsa* in the secluded tranquility of a study,¹³ but that, in order to do so, they made their way *in medium hominum et in lucem fore*.¹⁴ The practice of *publice respondere* was very much an *ex tempore* exercise, which explains the concise form of these *responsa*, especially those of Scaevola.¹⁵ This public activity served a double purpose: questioners were given legal advice and the apprentices in the law were at the same time introduced into the issues at hand.¹⁶ Gellius mentions *stationes ius publice docentium aut respondentium*, being the fixed sites where *responsa* were given and students were instructed.¹⁷ Some fragments from a book by Scaevola entitled *Quaestiones publice tractatae* have been handed down to us in Justinian's Digests.

A responding *uris peritus* must have done so with a *notarius* at his side, who took notes of the proceedings: the question put to his employer and the *responsum* itself.¹⁸

¹³ It is useful to point out that different legal cultural backgrounds bring about very distinct perceptions of the concept of 'a lawyer' generally and of a Roman 'lawyer' in particular. An Anglo-American historian tends to imagine a powerful litigator, whereas a continental-European writer, especially when from Germany, envisages a legal scholar scribbling away at profound *responsa*. For the latter view see, for example, Fr. Schulz 1931, op cit (n 10), 151 "Auch muß ja (*sic*) das wirkliche Responsum in Briefform gefaßt worden sein". The *responsa signata* mentioned by Pomponius in *Dig* 1 2 2 49 are insufficient to support a general proposition like that

¹⁴ Gellius, *Noctes Atticae* 13 13 1

¹⁵ A small selection from Scaevola's *responsa* "Respondi posse" (*Dig* 20 5 11), "Respondi non competere" (*Dig* 15 1 58), "Respondit debere" (*Dig* 32 93 5), "Respondit dandam (*scilicet* actionem)" (*Dig* 36 318 2). To some scholars these lapidary statements are a clear indication of their classical Roman origin, to others (e.g. Fr. Schulz) a sure sign of post-classical decadence. The *responsa* of a lawyer like Scaevola show a striking resemblance to the concise statements on the law of medieval English judges as reported in the Yearbooks. Outside the sphere of academic scholarship, elaborate rationalization of judicial decisions is a fairly modern phenomenon. What counted to a Roman judge (mostly, if not always, a layman), or, for that matter, a medieval English barrister, was *auctoritas* rather than *ratio*.

¹⁶ On this Cicero, *Orator* 42 143 and Paulus on his teacher Scaevola in *Dig* 28 2 19 "Scaevola respondit non videri, et in disputando adiciebat ideo non valere quoniam etc."

¹⁷ Gellius, I c (n 14)

¹⁸ Santer's presumption (*Zeitschrift der Savigny-Stiftung* [1906], 174) that Scaevola's *responsa* were to be found in the imperial chancery is totally unfounded.

A striking phenomenon in comparing the *leges geminatae* from Scaevola's *Digesta* and *Responsa* is the fact that the *responsa* themselves are always identical, even when reasoned¹⁹ The wordings of the actual question put to the *uris peritus* vary slightly²⁰, whereas the *narratio*, the facts of the case giving rise to the question at hand, differ considerably²¹ One is inclined to conclude that the questions and *responsa* were reported almost *verbatim* by the lawyer's *notarius*, whereas the actual facts of the case were added at a later date and recorded from memory either by Scaevola himself, or by one of his pupils present when the *responsum* was clarified *in disputando*

It is known from the history of Roman literature that in the process of editing a definitive text various different versions were not infrequently prepared. These drafts of a definitive text were commonly known as 'Υπομνήματ'ικά.²² Lawyers must have used this method almost by definition, working as they did from a stock of notes from which books were compiled for different audiences. It is, therefore, quite possible that Scaevola's *Responsa* and *Digesta* did not have an archetype at all, but that we have two different drafts by the same author.

We know practically nothing about the methods used in publishing legal texts. They must have differed from the methods used in publishing a literary texts, if only because of the limited demand for this kind of literature. Even now - in spite, that is, of the invention of the printing press, the availability of word processors and a relatively larger audience than in antiquity - the cost of publishing legal literature is considerable and the products are, more often than not, beyond the means of a non-institutional buyer. With the only possible exception of Gaius, legal texts were not published with a view of any financial gain, nor for literary fame There was and is no literary merit in a legal text, nor should there be. Taking this into account, I think it is quite conceivable that the Roman lawyers looked after the publication of their books themselves and did so in a rather casual way.

¹⁹ Comp the *responsa* in *Dig* 32 93 & 32 38 4, 34 3 31 2 & 34 3 28 4, 31 89 3 & 36 1 80, 35 2 25 1 & 33 1 21 1, 2 14 44 & 26 7 59

²⁰ Almost identical *quaestiones* are to be found in *Dig* 32 93 5 & 32 38 8, 34 3 31 4 & 34 3 28 6, 34 3 31 2 & 34 3 28 4, 31 89 3 & 36 1 80, 26 9 8 & 36 3 18 2 But see the variations in *Dig* 20 5 11 & 20 5 14, 15 1 54 & 15 1 58, 32 93 & 32 38 4, 35 2 25 1 & 33 1 21 1, 36 2 28 & 33 7 28 and 2 14 44 & 26 7 59

²¹ Cp 15 1 54 & 15 1 58, 15 3 20 & 15 3 21, 32 93 & 32 38 4, 34 3 31 4 & 34 3 28 6, 34 3 31 2 & 34 3 28 4, 35 2 25 1 & 33 1 21 1, 2 14 44 & 26 7 59 Almost identical *Dig* 20 5 11 & 20 5 14, 32 93 5 & 32 38 8, 31 89 3 & 36 1 80, 49 1 2 & 42 1 64 and 26 9 8 & 36 3 18 2

²² See *Der neue Pauly*, s v 'Abschrift' (T Dorandi)

They may not even have been published by themselves at all, but by their students, which would account for the fact that *responsa* are often reported in the third person singular.

Prosopography

Quintus Cervidius Scaevola was a contemporary of Septimius Severus and his wife Iulia Domna. It is even said that, at one time in his career, Severus had been a student of Scaevola.²³ Of course I know the source is suspect,²⁴ but there may be more to this story than is generally accepted.²⁵ There was, in antiquity, a primary source on the career of Septimius Severus. I do not refer to the obvious Marius Maximus, but to the autobiography of the emperor himself. It is referred to by Dio and Herodian and thrice mentioned in the *Historia Augusta*.²⁶ As the book was mainly concerned with the portents indicating a bright future for Severus, it must have contained some indisputable facts on the early career of the emperor as a private man, as the *Historia Augusta* does in fact indicate.²⁷ Now the early career of Severus is indeed unusual, because he is said to have skipped the almost mandatory post of *tribunus militum*.²⁸ There may have been many reasons why Severus chose to do so, whereas his brother Geta preferred the traditional pattern of advancement. Some of them are mentioned by Anthony Birley in his biography of Septimius Severus,²⁹ but why not a predilection with the law? It may come as a surprise to classical scholars but then and now some young men were and are genuinely captivated by the law. There was (and is) nothing mean or degrading in this, all the less so because the discipline of the law was, at least at that time, very much a gentleman's pastime.

²³ SHA, *Caracalla* 8 2 'Papinianum amicissimum fuisse imperatori Severo eumque cum Severo professum sub Scaevola et Severo in advocazione fisci successisse, ut aliqui loquuntur, ad finem etiam per secundam uxorem, memoriae traditur'

²⁴ Th Mommsen, 'Zu Papimians Biographie', *Juristische Schriften* II, 64 ff, was the first to draw attention to the fact that the phrase "eumque cum Severo professum sub Scaevola et Severo in advocazione fisci successisse" in the Vatican manuscript *Codex Palatinus* n° 899 is, in fact, a medieval gloss

²⁵ See Sir Ronald Syme's articles on the Roman lawyers of the third century 'Fiction about Roman Jurists', in A R Birley, ed, *Roman Papers* III (Oxford 1984), 1393 ff and 'Three Jurists', in E Badian, ed, *Roman Papers* II (Oxford 1979), 790 ff

²⁶ Cassius Dio, 75(76) 7 3, Herodian 2 9 4-7, SHA, *Septimius Severus* 3 2 and 18 6, SHA, *Clodius Albinus* 7 1 See further A R Birley, *Septimius Severus* (London 1999, 2nd ed), 203

²⁷ SHA, *Septimius Severus* 3 2

²⁸ SHA, *Septimius Severus* 2 3

²⁹ A R Birley 1999, op cit (n 26), p 39-40

It should be emphasized that the *dignitas* of an *eques*, to which class all the great Roman lawyers of this age belonged, did not allow for an occupation as a mere instructor: *dignitatem docere non habet*.³⁰ Hence the enormous social gap between a *ius peritus* like Salvius Julianus and his contemporary Gaius. The latter was a mere *praeceptor*, the former a *consiliarius* of Hadrian.

It is said in a passage in the *Vita Getae* of the *Historia Augusta*, referring to the early career of that doomed child's father, that Severus was raised to the dignity of an *advocatus fisci* "ex *formulario forensi*".³¹ I will not go into the value of this text in as far as Severus's alleged tenure as an *advocatus fisci* is concerned, but I will emphasize the curious expression "ex *formulario forensi*". Now this certainly does not mean that the author wanted to convey the impression that up till then Severus had been 'a pettifogger in the law courts' (Magie's translation). On the contrary. *Formularius* was the oratorical term of abuse for someone not active as a forensic orator, but specializing in the law for its own sake, Cicero's *legulei*.³² Quintilian explicitly uses the expression for those who took refuge *ad haec deverticula desidiae* in order to escape from the toil and labour of an orator's practice.³³ This is the rather negative impression the author of the *Historia Augusta* wants to convey. He must have used a tradition, already current at the time, that Severus had indeed been trained as a *ius consultus* before he entered upon his political career.

If the passage in SHA, *Caracalla* 8.2³⁴ is considered as compounded by a medieval annotator from other sources, such as Aurelius Victor, Eutropius and a passage from the SHA (*Geta* 2.4), the question remains what is to be thought of the relative historical value of the latter text, for it must have been based on an ancient tradition. It has been suggested by Syme³⁵ that the source of SHA, *Geta* 2.4 may have been the elusive 'Kaisergeschichte' (KG), the hypothetical source of Aurelius Victor, Eutropius and the Eptome, since a reference to Severus's tenure as an *advocatus fisci* is mentioned in Eutropius³⁶ and Aurelius Victor³⁷, but not in the *Vita Septimii*

³⁰ Cicero, *Orator* 42 144

³¹ SHA, *Antoninus Geta* 2 4

³² Cicero, *De oratore* 1 55 236

³³ *Inst Or* 12 3 11

³⁴ *Supra* n 23, 24

³⁵ 'Three jurists', op cit (n 25), 791 and 'Fiction about Roman Jurists', op cit (n 25), 1393 ff

³⁶ 8 17 2

³⁷ 20 30

Severi, according to Syme in essence a reliable biography based on sound facts³⁸ It is in this biography, however, although indeed not mentioning Severus's apprenticeship with Scaevola, that one does find a passage stating that Severus went to Rome *studiorum causa*³⁹ Shortly before that passage, there is a reference to Severus's predilection with the law as a young man⁴⁰ Severus's devotion to the law and to the study of the law is beyond dispute, even to Syme⁴¹ So why not make the obvious inference that he did indeed spend some time as an apprentice in the law? It may be true that for a man like Severus, who had senators in his family, nothing speaks for the notion that he embarked on his career by becoming an *advocatus fisci*,⁴² but it is equally true that the study of the law for its own sake was held in high regard There is, moreover, no compelling connection between the study of the law and the tenure of the office of *advocatus fisci* Most *advocati fisci* were not even *iuris periti* at all, but mere orators, or - at best - experienced administrators There is one interesting curiosity in the interpolation into the *Vita Caracallae* that tends to be overlooked, due to the overemphasis on Severus's alleged tenure of the office of *advocatus fisci*: the fact that Severus's apprenticeship with Scaevola is to be found nowhere else, as Mommsen was already forced to acknowledge.⁴³ This is a piece of information a medieval annotator must either have invented, or have found in another source, not available to us now Mommsen's lamentation that one must learn to live with this, as the supposition that the medieval interpolator had access to a source unknown to us is even more improbable than the assumption that, for once, he had made a lucky guess, is very unsatisfactory

If he did so, as I think he did, he cannot have failed to notice Scaevola, the obvious κορυφαῖος τῶν νομικῶν⁴⁴ and probably the last of the great Roman lawyers acting as an independent legal counselor, a teacher and an imperial *consiliarius* in a private capacity

I think it is worth mentioning that most, if not all, of the great lawyers of the Severan dynasty - men like Papinian, Ulpian and Paul - were acting imperial *procuratores* as well This means that expert legal advice was available *within* the imperial bureaucracy, making it unnecessary to take on legal experts from without as *consiliari* I think the demise of Roman legal

³⁸ *Emperors and Biography* (Oxford 1971), 41 ff

³⁹ SHA, *Septimius Severus* 1.5

⁴⁰ SHA, *Septimius Severus* 1.4

⁴¹ 'Fiction about Jurists', op cit (n 25), 1409

⁴² Syme, 'Three jurists', op cit (n 25), 791-792

⁴³ *Juristische Schriften* II, op cit (n 24), 65

scholarship after the age of the Antonines was mainly due to this: a genuine lawyer, like Aelius Marcianus,⁴⁵ must have preferred to work within the bureaucracy, preparing the imperial *rescripta*, rather than act as an independent counselor.⁴⁶ I am convinced that Ulpian and Paul in particular were aware of this. They must have realized that there was hardly a future for the legal profession as such outside the imperial bureaucracy. It explains their vast literary output: they purposely summarized the law for future generations and were extremely successful in this. The bulk of Justinian's Digests consists of extracts from the writings of Ulpian and Paul.

If Severus was also the ambitious young man for which history gives him credit,⁴⁷ only a man with Scaevola's high standing in Marcus's court⁴⁸ qualifies as his teacher. So there may well have been a connection between the jurist Quintus Cervidius Scaevola and Iulia Domna's husband. But is Scaevola's Iulia Domna really the same person as Severus's wife? I think there can be little doubt about this.

Iulia Domna's *patruus maior*, her great-great-uncle, was called Iulius Agrippa. This name suggests an oriental connection, more particularly a Syrian one. Syria was almost the only imperial province in the region and was administered by no lesser person than Marcus Vipsanius Agrippa in the years between 16 and 13 B.C. It was imperial policy to involve the local princes and princelings of the region in the administration and so some of them were granted Roman citizenship, adding the imperial *nomen gentile* to their name as well as the *cognomen* of the local Roman strong man. King Herod did so, but there must have been others as well. The son of king Iamblichus of Emesa, for example, was restored to power by Augustus in 20 B.C. and he must have been granted Roman citizenship at the time, because his son Sampsigeramus II styled himself a Iulius.⁴⁹ The empress Iulia Domna was a descendant of the royal house of Emesa and we know of at least one Iulius Agrippa who may

⁴⁴ *Dig* 27 1 13 2 (Modestinus)

⁴⁵ On him see W Kunkel, *Herkunft und soziale Stellung der römischen Juristen*, op cit (n 1), 258. On his occupation within the imperial chancery see P Krüger 1912, op cit (n 1), p 251 and D Liebs, 'Juristen als Sekretäre des römischen Kaisers', *Zeitschrift der Savigny-Stiftung* 100 (1983), 497-498. A M Honoré, *Emperors and Lawyers* (Oxford 1994, 2d ed), 94 believes he may have been a close collaborator of Ulpian, for example when the latter was *procurator a libellis*.

⁴⁶ This is, of course, the premise of Honoré's *Emperors and Lawyers*, op cit (n 45).

⁴⁷ *Dio* 77 16 1

⁴⁸ See SHA, *Marcus Antoninus* 11 10

⁴⁹ See on this family Richard D Sullivan, 'The Dynasty of Emesa', in *Aufstieg und Niedergang der römischen Welt* II, 8 (Berlin 1977), 198 ff and, on the son of king Iamblichus, esp p 211-212

have been related to the empress. She may, for example, well have been related to a Gaius Iulius Agrippa, who was a *quaestor pro praetore* in Asia in the first century. Iulius Agrippa was the son of Iulius Alexander, a descendant of the royal house of Commagene that had a tradition of marriages with the dynasts of both Judaea and Emesa.⁵⁰ Gaius Iulius Agrippa's father, Iulius Alexander, had been a senator and even a consul⁵¹, so he must have owned real estate in or in the neighbourhood of Rome.

There were more prominent Iulii Agrippae in Syria at the time. Another is Lucius Iulius Agrippa, who (in or about 116) founded important public buildings in Apamea, less than sixty miles from Emesa.⁵² The editor of the inscription bearing his dedication, suggests that Lucius Iulius Agrippa was the scion of the tetrarchs of Marsya, today's Masyaf, less than thirty miles from Emesa. According to the inscription, his family enjoyed 'royal honours' (βασιλικὰ τετραί). It may well have been related to the royal house of Emesa, certainly so if one bears in mind the tradition of dynastic intermarriages prevalent in the region. Let me give an example of still another Iulius Agrippa from the region.

Drusilla, a sister to king Herod Agrippa II, has been married to the Emesan king Azizus.⁵³ She divorced him in order to marry Felix, brother to Claudius's favourite Pallas, who acted as an imperial *procurator* in Palestine at the time. Drusilla had a child with Felix. He was called Iulius Agrippa and died in the Vesuvius-catastrophe of 72.⁵⁴ True as it may be that one must look within his generation for a great-great-uncle of Iulia Domna, Drusilla's son does, of course, not qualify. His example, however, may suffice to demonstrate that the name Iulius Agrippa may very well have been the name of a relative of the empress. All the more so, because the good relations between the house of Judaea and that of Emesa were not disturbed by the unsavoury affair of Drusilla. The successor of that licentious woman's former husband Azizus, his brother Soaemius, *magnus rex* of Emesa,⁵⁵ was on

⁵⁰ R D Sullivan, 'Priesthoods of the Eastern Dynastic Aristocracy', in *Studien zur Religion und Kultur Kleinasiens Festschrift für Karl Dorner* (Leiden 1978), 914 ff, 919

⁵¹ Sullivan 1978, op cit (n 50), 935 ff

⁵² On him see J-P Rey-Coquais, 'Inscriptions grecques d'Apamée', in *Les Annales Archeologiques Arabes et Syriennes* 23 (1973), 39 ff

⁵³ Josephus, *Antiquitates Iudaicae* 20 7 1

⁵⁴ On this Iulius Agrippa see Josephus, *Antiquitates Iudaicae* 20 7 2

⁵⁵ ILS 8958

excellent terms with king Herod Agrippa II.⁵⁶ Like Herod, Soaemius styled himself ‘Philocaesar’ and ‘Philoromaeus’.⁵⁷ Their good relations even survived a serious incident involving a relative of Soaemius in the service of king Herod. He was only spared by Agrippa for the sake of his kinship with Soaemius.⁵⁸ It is not improbable, even likely, that the kings were related by marriage, as Herod and Soaemius’s brother had been before. Drusilla’s son may well have had a contemporary namesake among Soaemius’s off-spring, the ancestors of Iulia Domna.

Herod Agrippa and Soaemius were allies of the Roman army in the campaign against the princes of Commagene and in the siege of Jerusalem.⁵⁹ The Emesan king must have been accompanied by his relatives, who will have been given prominent places at the Roman general staff, for example in the rank of *primipilus*. *Primipili* have been known to command auxiliary troops and to serve on the general staff as strategic advisors.⁶⁰ *Primipilares*, former *primipili*, were *equites Romani* and proverbially rich.⁶¹ Many lived in or around Rome to be at the emperor’s beck and call.

One is inclined to associate *primipilares* with men risen from the rank and file and, therefore, with people of humble extraction. Some of them, however, could boast exalted origins, like Ovid’s friend Vestalis, *Alpinis regibus ortus*⁶² Many others were of equestrian origin and directly promoted to the rank of a *primipilus* (*ex equite Romano*).⁶³

Let us now turn to Iulia Domna herself. It is not seriously contended that the empress Iulia Domna’s *cognomen* is a mere contraction of the Latin word *domina*. Her name seems to be Arabic, as are those of the other Syrian princesses of the Severan dynasty.⁶⁴ As far as I know, there is in fact no other

⁵⁶ Not necessarily because his sister Iotape was married to Herod Agrippa’s uncle Aristoboulos. As everyone knows, the history of the house of Judaea stands out as a prominent warning against the use of family-relations in order to make a case for good political connections.

⁵⁷ ILS 8957 and 8958

⁵⁸ Josephus, *Bellum Judaicum* 2 18 6

⁵⁹ Tacitus, *Historiae* 5 1, Josephus, *Bellum Judaicum* 7 7 1

⁶⁰ A von Domaszewski, ‘Die Rangordnung des römischen Heeres’, *Bonner Jahrbucher* 117 (1908) p 112 and 114-115, B Dobson, *Die Primipilares* (Köln/Bonn 1978), p 65

⁶¹ Dobson 1978, op cit (n 60), 115 ff

⁶² Ovidius, *ex Ponto* 4 7 6 Cf Dobson 1978, op cit (n 60), n° 10 (p 171) I owe the reference to Vestalis to prof A R Birley

⁶³ On the difficult question why these men preferred to be posted as centurions, rather than as *praefecti cohortis*, Dobson 1978, op cit (n 60), 46-47

⁶⁴ I Shahîd, *Rome and the Arabs* (Washington 1984), 41-42

woman but the empress known by that *cognomen* in the entire history of Roman nomenclature.⁶⁵ I think it is beyond any reasonable doubt that the Iulia Domna in Scaevola's *responsum* is indeed to be identified with the empress; her relation to a *primipilaris* named Iulius Agrippa even supports that supposition. The only obstacle seems to be that she is not mentioned as *Augusta*, but there are little references to *Augustae* in the writings of the Roman lawyers⁶⁶ and Iulia Domna may, moreover, not even have been empress as yet when her case was put before Scaevola. She was married to Severus at least six years before the latter's rise to power in 193⁶⁷ and consequently well acquainted with the lawyers prominent at the time.

There is at least one *responsum* in Scaevola's *Digesta* that may be attributed to the reign of Commodus. It concerns a question put to Scaevola by a certain Largius Eurippianus,⁶⁸ no doubt the same person as the *consularis* Larcus Eurippianus executed by Commodus after the elimination of Iulianus and Regillus.⁶⁹

This probably also explains why Scaevola was consulted and not her alleged kinsman Papinian, whose rise to juridical fame occurs in the reign of her husband. Papinian may, at that time, still have been a trainee of Scaevola. I am inclined to believe, but this is pure speculation, that Severus, already a prominent figure at the time, referred his wife to his former teacher. If he expected that famous lawyer to lend a ready ear to his wife, he must have been sourly disappointed for Scaevola decided that the bequest to an *extraneus* was not contrary to the condition as laid down in Iulius Agrippa's last will and testament, apparently because it did not create a valid *fideicommissum* of his real estate near Rome as there was no certainty of beneficiaries.⁷⁰

⁶⁵ There is a Syrian inscription from the 4th century A D , referred to by J -P Rey-Coquais, *Inscriptions Grecques et Latines de la Syrie*, n° 1506, naming an Agrippa, son of Marinus, married to a Domna

⁶⁶ I know of only one *Dig* 31 57 (Marcianus)

⁶⁷ Birley 1999, op cit (n 26), 76

⁶⁸ *Dig* 33,1,21,4

⁶⁹ SHA, *Commodus* 7 6

⁷⁰ Comp *Dig* 30,114,14 (Marcianus) See on the point of law D Johnston, *The Roman Law of Trusts* (Oxford 1988), 98 and *Zeitschrift der Savigny-Stiftung* 102 (1985), 227 ff I do, however, disagree with Johnston on the relation between the Marcianus-text of *Dig* 30 114 14 and the Scaevola-texts of *Dig* 32 93 pr and 32 38 4 His opinions on this matter may serve as a good example of what is meant with the 'frustrating effects' of a particular kind of 'Quellenforschung' on the discipline of Roman law According to Johnston, who relies too heavily on Schulz's opinions on the origins of Scaevola's *Responsa* and *Digesta*, certain passages from the text of Marcianus (a jurist active in the days of Elagabalus and Alexander Severus, see above, n 45) were copied by the 'post-classical' compilers of the *Responsa* and *Digesta* attributed to Scaevola, instead of the other, obvious, way around, from the writings of Scaevola,

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that is, into those of Marcianus. Marcianus may hardly be typified as a 'post-classical' author. As it seems to me, Johnston's theory would almost narrow down the advent of 'post-classical decadence' to the generation of Papinian, Ulpian and Paul.