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Ulpian

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ULPIAN

Tony Honoré

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Sed neque ex multitudine auctorum quod
melius et aequius est iudicatore, cum possit
unius forsitan et deterioris sententia et multos
et maiores in aliqua parte superare

Preface

This is the fourth book in a series of studies of Roman lawyers and Roman legal sources based on an analysis of style and working methods. In *Gaius* (1962) the key idea was first put forward that each writer makes his own dictionary and is the criterion of his own authenticity. My use of these principles to reconstruct the life and outlook of Gaius was widely thought to be speculative. By the time of *Tribonian* (1978) and *Emperors and Lawyers* (1981) more exact techniques of investigation had been worked out, and tried on material which was amenable to them. These techniques have also been used in the present study, which has affinities in particular with *Tribonian*.

Ulpian's writings, as presented mainly in Justinian's *Digest*, surpass in volume those of any other Roman jurist and, indeed, amount to 40 or 41 per cent of that work. Composing mainly under Caracalla (AD 211–17), he collected, condensed, and systematized the Roman legal tradition as it had been transmitted to him. In this he was a forerunner of Tribonian, who undertook a similar task on behalf of Justinian three centuries later. His *opus* foreshadows the later codification. Scholars like Ulpian and Tribonian tend to write in a consistent style and to follow a regular pattern of work. Given these habits and the bulk of their surviving work, certain methods of analysis prove profitable. I have made use of two.

The first is based on work method and particularly on the idea of a work stint. In investigating the methods of Justinian's compilers I adopted the idea, suggested by the number of books to be read and the approximate dates of excepting, that Tribonian's committees had a reading stint of a book (corresponding to what would now be called a chapter) per committee per day.¹ In regard to Ulpian I suggest in Chapter 6 a writing stint of a book a week.² Both suggestions are hypothetical, of course. But in each case we know that a great volume of work was accomplished in a short time and can even say roughly how much was done and how long was taken to do it. In the context of an administrative culture which was nothing if not methodical, my hypotheses are by no means far-fetched. Once adopted, they provide a framework of dates and motivations which, when they can be tested, fit the other historical data very well. It is true that

¹ Honoré (1978) 170–3 (originally *LQR* 88 (1972) 530).

² Below ch. 6 p. 160.

in neither case was the planned stint rigidly adhered to. But the divergences were minor.

The resistance to such suggestions is coloured by romanticism. The Roman jurists could not, it is supposed, have been so mechanical in their work, so indifferent to subject-matter. But Roman lawyers were expected to master the whole law, not to be specialists in this or that branch of legal learning. That they could turn their mind readily to the labour of the day made them no more mechanical than does the regular work pattern of a Max Kaser in our own age.

The other method consists, as before, of the analysis of the style of texts with a view to determining their authorship. Such studies presuppose, in the first place, proper concordances. Fortunately it has been possible in investigating texts attributed to Ulpian to use not merely *VIR* and Levy's *Ergänzungsindex* but the *Concordance to the Digest Jurists* (CDJ) prepared by Josef Menner and myself. Once the proportion of the total material which is, on the face of it, Ulpianic has been determined by line or word count, one can compare the occurrence of words or expressions in Ulpian with their occurrence in other jurists and in the non-Ulpianic legal material as a whole.

In doing this I have tried to avoid two snares. One is the Scylla of supposing that numerical data can supplant the more traditional forms of historical investigation or that they are a substitute for a trained sense of literary style. They cannot be. In the end the appeal is always to the verdict of a competent scholar who has read the texts and who is sensitive to nuances of thought and expression. Unhappily few scholars have so far read the texts author by author or period by period, and until they do only a handful will be in a position to form a judgement about the merits of these studies.

The Charybdis of impressionism is equally dangerous, and has in the past been even more harmful to the study of Roman law. Impressionism, on which the study of interpolations was until recently based, entails that the author's impression prevails over the probabilities suggested by counting the texts in which a certain word occurs and seeing how these are distributed between different authors and different historical periods. As a counter to this danger, in chapter 2 of this book, on Ulpian's style, the technique has been adopted of taking the *Digest* as the pool of legal writing to be studied and then contrasting the words and expressions to be found in the 40 per cent attributed to Ulpian with those to be found in the 60 per cent attributed to other authors. Once this has been done, and once norms of Ulpianic style have been fixed, it becomes possible to revise some traditional attributions of texts. Thus, in chapter 4 it is argued that a number of works attributed in the *Digest* to Ulpian are spurious. The same

technique is in principle applicable to the determination of glosses and interpolations in Ulpian's texts, though this task is not within the scope of the present book.

The criteria by which expressions are listed as Ulpianic are explained in chapter 2. These criteria are not statistical in character, though some of them could be reformulated in terms of word frequencies. Hence, for example, hapax legomena, which may provide a clue to general features of a writer's style, are listed, in addition to expressions which occur with greater frequency. Experience shows that, with a little practice, Ulpian's style becomes reasonably easy to recognize. The reader who is prepared to take trouble will be able to progress beyond the limits of this book and to disentangle glosses and interpolations from genuine parts of the text.

The book itself, however, has quite limited, though ambitious, objectives. It seeks to give an account of Ulpian's career, to formulate criteria of his style, to distinguish genuine from spurious works, to establish which rescripts he composed on the emperor's behalf, and to fix the dates of his works and their rhythm of composition. It also deals with his use of sources. Obviously this is only a beginning. Ulpian's contributions to the development of the substantive law remain untouched. So does his place in the history of Latin scholarship, particularly in the eastern provinces. I prefer to offer explicit solutions to a limited range of conundrums rather than to attempt too much.

Whether these solutions are on the right lines remains to be decided by the tribunal of scholarly opinion. It now has enough examples on which to form a judgement. In reaching this judgement scholars may wish to put to themselves two questions. First, if the conclusions to which these relatively new methods lead are consistently in accordance with what we know from other historical sources, why is this the case? Secondly, if my colleagues are inclined to scepticism, ought they not to try the experiment of reading some part of the texts in the way I suggest?

I have to thank John Stannard and Jane Hornblower for their help with the laborious work of checking text references.

TONY HONORÉ

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CHAPTER I

Background and Career

I. THE SEVERAN AGE

Marcus Aurelius Antoninus (AD 161–80) departed from the recent practice that a Roman emperor should, during his lifetime, adopt an experienced and able man as his successor. Instead, he made his son Commodus, then a lazy and frivolous youngster of sixteen, joint ruler (177) and thereby ensured that Commodus would succeed him. The sole reign of Commodus (180–93) ended in misgovernment, discontent, and assassination. Of the various contenders who emerged in 193, the victor was Septimius Severus (193–211).¹ But it took him two civil wars and nearly four years (193–7) to make himself sole master of the Roman empire, and the effort left its mark both on him and on his subjects.

One of Severus' aims was to revive, or seem to revive, the policies of Marcus and the Antonine age, since Marcus was considered, then and later, a model ruler. So, in 195, when the issue of the civil war was still not finally resolved, Severus arranged to be adopted by Marcus. The adoption was retrospective and fictitious. Marcus had been dead fifteen years. Nevertheless, it was carried through in detail. Severus' elder son, Bassianus, later known as Caracalla,² was then aged seven. He was given the dynastic name Antoninus, then and later his official designation. Severus tried to steer a course between repeating Marcus' mistake over Commodus and disinheriting his own son. He gave Caracalla a good education, saw to it that he had ample military experience, made him consul three times during the next sixteen years, and introduced him to the complexities of civil business. Caracalla was able, though not in a literary or academic sense, quick-witted, though impatient, a good judge of character. He was a man of plebeian tastes, liked soldiering, was not averse to menial tasks. With the military he passed as one of them.

At times it was possible to think of him as a future emperor who would

¹ Hasebroek (1921) has a good account with chronology 190 f. See also Platnauer (1918, reprint 1965), Jardé (1925), Hammond (1940), Murphy (1945), Hannestad (1944), Barnes (1967), Alföldy (1968), Mihailov (1963), A. Birley (1971) with bibliography 361 f. and prosopography of family 293 f.

² *RE* 2.2434 Aurelius no. 46; Dio 77–8.1–10 (hostile); Herodian 4.7.4–7; Th. Schulz (1909). As a judge see Nörr (1972) 25; Kunkel (1953) 255. On young emperors see Hartke (1951).

enjoy success and justify the usurped name Antoninus. At others he was clearly unhinged. Then his violent temper and bitter feuding with Geta,³ his younger brother, left no room for illusion. Geta, a year younger, was palpably incompetent. While Caracalla was promoted Augustus in 198, the younger son was kept in the subordinate position of Caesar for more than ten years thereafter. Ultimately Severus, whether in the indulgence of old age, in disillusion with Caracalla, or simply for administrative reasons, made Geta too an Augustus during the campaign in Britain of 209. Even more than the similar act of Marcus in 177, this was to court disaster. Once again, dynastic motives clashed with the demands of good government and prevailed.

Septimius was more than an ambitious ruler. He was deeply concerned for the security and welfare of the empire, and spared no effort in its service. Not specially gifted as a general, he repeatedly won victories in both civil and external wars. He was lucky and self-confident, and had an acute sense of political realities. He saw a great deal to do, and was impatient to do it. He moved fast. In 197, when the civil war was over, he invaded Parthia and pushed the frontier of the empire eastwards. At the end of his reign, in 209–11, he was trying to push the British frontier northwards, perhaps to occupy the whole island. Events by and large justified his boldness.

Nevertheless he had debts to pay. It was the troops of Pannonia that had brought him to power, and his campaigns depended on a loyal army. Hence the balance between civil and military power was not the same as it had been under Marcus. It swung the way of the soldiers. They obtained concessions: higher pay,⁴ permission to live with their wives,⁵ other privileges. The events of 193–7 taught them again the lesson of AD 68, that the sword makes and unmakes rulers. Severus, who had helped teach the lesson, tried to obliterate it. In 193 he tricked the praetorians, who had killed Pertinax, and disarmed them.⁶ But this *tour de force* was an expedient, not a long-term solution to the problem of military indiscipline.

Severus was also well equipped to manage civil and legal affairs. Though not as well educated, says Dio, as he would have liked to be, he had a critical and inquiring mind, and was trained in what was called 'philosophy'. He was a man of many ideas and few words.⁷ His interests were wide and practical. Whether he had received a legal education is obscure, but he was

³ RE 2.4.1565 Septimius no. 32 (Fluss); Dio 76.7.1, 77.1–2; Herodian 3.10.3–4, 4.3.2–4.4.3; Alföldy (1972) 19.

⁴ Herodian 3.8.4–5 also mentions the right to wear gold rings (the mark of equestrian rank, in practice confined to centurions etc.). See also Domaszewski (1900) 218; Sander (1958) 102; Whittaker (1969) 308–9.

⁵ Herodian 3.8.5. Whether soldiers' marriages were previously void in certain cases is debatable: Volterra (1951) 645¹; Kaser (1971) 1.317.

⁶ Herodian 3.13.2–12.

⁷ Dio 76.16.1–2; Eutropius 8.19.1 cf. HA Severus 18.5–6. He composed an autobiography—Dio 75.7.3; Herodian 2.9.4; Victor 20.22.

certainly assiduous as a judge⁸ and appointed lawyers to important posts. He was keen to improve the working of the legal system. The permanent criminal commissions (*quaestiones perpetuae*), which from the republic had exercised criminal jurisdiction in Rome, now ceased their cumbrous operation.^{8a} The urban prefect was given unlimited jurisdiction at first instance over crimes committed in the city or within a hundred miles of it. The praetorian prefect⁹ had similar jurisdiction in Italy beyond the hundred-mile limit.¹⁰ In addition, the praetorian prefect had an unlimited appellate jurisdiction in civil and criminal cases.¹¹ In this he acted, theoretically, as the emperor's delegate.¹²

Delegation was inevitable, especially with an emperor as ambitious as Severus. The office of praetorian prefect, generally held by two prefects at a time, had grown by a process of piecemeal delegation into the most important, next to that of the emperor himself, in the whole range of appointments. Mainly a military post,¹³ its duties spread from the command of the praetorian guard, stationed in Rome, to the superintendence of the armies in the provinces. Its civil business, especially legal appeals, now increased to the point at which one of the two prefects was sometimes a lawyer. It was thus that Papinian, Macrinus, and Ulpian, men of legal rather than military careers, came to hold this, the highest equestrian office.

Another aspect of the administration of justice was the rescript system.¹⁴ The emperor provided a free legal advice service, for which the office *a libellis* was responsible. From the Severan age far more rescripts survive than from previous reigns, and there is little doubt that the number of rescripts really increased. In this domain, too, the emperor took his duties seriously.

It was the impulse provided by government that made the age a great one for law and lawyers. The Severan jurists, Papinian, Paul, Tryphoninus, Messius, Menander, Ulpian, Modestinus, all knights, had a sense of common purpose. They were to see that justice was freely available and that the law prevailed.¹⁵ This common aim gave direction to their professional activities. Whether they were advising the emperor as members of his council, composing rescripts for him in the office *a libellis*, or writing treatises for the use of governors, judges, officials and private citizens, they worked to the same end. It is a mistake to think of advice

⁸ Dio 76.17.1-2; HA Severus 8.4.

^{8a} Garnsey (1967).

⁹ Howe (1942) 42; Strachan-Davidson (1912) I. 158.

¹⁰ *Collatio* 14.3.2 (Ulp. 9 *off. proc.*, referring to the *lex Fabia*), Passerini (1939) 236.

¹¹ Mommsen (1887) II 1113 f.; RE 22.2391 (Ensslin); Kaser (1966) 365; Howe (1942) 29 f.

¹² Howe (1942) 40.

¹³ Howe (1942) 7 f.; Palanque (1933); Passerini (1939); Durry (1938).

¹⁴ Honoré (1981) Ch. 2.

¹⁵ Howe (1942) 43; Schiller (1953) 60.

given to the emperor as 'bureaucratic', private writing or practice as 'free'. Both rested on professional discipline, and history records nothing to suggest that lawyers were under pressure to give opinions in a sense convenient to the government.

Severus was the only emperor to come from Africa. That does not make him an 'African emperor',¹⁶ but it explains the relatively cosmopolitan outlook of his régime. He came from an area where Punic was spoken,¹⁷ and Punic is the language that Ulpian mentions, after Latin and Greek, as an example of one that the parties to certain legal transactions may choose.¹⁸ The age was aware of cultures other than Latin and Greek. Severus' second wife, Julia Domna, came from a part of Syria where, though Punic had not been spoken for two centuries or more, the vernacular was Aramaic. Ulpian mentions this language ('Assyrian') also as one of the languages that is permissible for certain legal purposes.¹⁹

It was an unexpected act on Caracalla's part to make all the free inhabitants of the empire, with obscure but unimportant exceptions, Roman citizens, but it was not contrary to the spirit of the dynasty and the age. By the *constitutio Antoniniana*²⁰ the different provinces, east, west, and south, were put on a level. Other distinctions too were blunted. With their new privileges,²¹ soldiers had a status closer to that of civilians. Women were more prominent than before, both as property owners and in politics. In the imperial circle the Syrian princesses Julia Domna, her sister Maesa, and Maesa's two daughters Soaemias and Mamaea had influence behind the scenes. But they also figured prominently, with official titles, on coins,²² and, on one famous occasion, in the senate.²³ Rank and class still depend on wealth,²⁴ but other boundaries, social and conceptual, are blurred.

The levelling that occurred was the product of strains and tensions. The wars of Marcus brought to a close the easy-going days when the resources of government were ample to meet civil and military requirements. Even without civil war, the end of the second century would not have been comfortable. Civil war set the emperor and the senate at variance. At the behest of Didius Julianus, the senate in 193 declared Severus a public

¹⁶ Subtitle of Birley (1971).

¹⁷ Birley (1971) 43, 106, 124 (Septimius and Domna will have had three languages in common: Greek, Latin, and Aramaic) cf. Millar (1968).

¹⁸ *D.* 32.11 pr. (Ulp. 2 *fid.*), 45.1.1.6 (48 *Sab.*).

¹⁹ *D.* 45.1.1.6 (48 *Sab.*).

²⁰ Literature in Gianelli-Mazzarino (1956) II 397; *RE* 2.2446; Millar (1962); Gilliam (1965); Seston (1966); Herrmann (1972).

²¹ Above, nn. 4-5.

²² *RE* 11.916, 926, 948; Mattingley v² (1975) 156-70, 430-6, 531, 536-42, 576-8; vi¹ (1962) 119-20, 128-9, 132-3, 135-6, 144, 147-52, 156, 160-1, 165-7, 168-9, 174, 179-81, 184-8, 190, 192-4, 196-7, 203-4, 209, 221; Robertson (1977) 98-102, 127-33, 163-8.

²³ Dio 79.17.2.

²⁴ Garnsey (1970) 221 f.

enemy. It then changed sides.²⁵ When in 196–7 Severus quarrelled with Clodius Albinus, a strong minority of senators sided with Albinus, a relatively mild man, who prided himself on his clemency.²⁶ Severus had had a fright, and having crushed Albinus, had some of the dissentients executed on his own authority. This was to violate the model of a good ruler, and mistrust festered.²⁷

For this reason, and because he had great ambitions, Severus came to rely to an increasing extent on his own family and associates. Inevitably he delegated much. He trusted a friend of his youth, Fulvius Plautianus, to whom he was bound by emotional ties, and treated him almost as a partner.²⁸ A man of great ability and, like Severus, from Africa, in the end Plautianus became sole praetorian prefect and accumulated enormous power. Had it not been for Severus' two sons, the situation would have been manageable. Severus would have made his friend a Caesar or junior Augustus, and the latter would have proved himself a good emperor. But Caracalla had been made Antoninus in 195 and Augustus in 198, so that this course was ruled out. The clash was resolved in another way. In 205 Caracalla and his mother, by an ingenious plot, had Plautianus killed.²⁹ The strains were temporarily reduced, but once again effective rule had been sacrificed to dynastic interests. The remaining thirty years of the Severan age were spent, in a context of dynastic ambition, wrestling with the resulting problems. Severus tried to improve his sons' ways by moving them from Rome to the Italian countryside (205–7)³⁰ and, later, taking them to Britain on his last military expedition (208–11).³¹ When he died Julia Domna sought to keep the peace between them.³² She was unsuccessful but, after Geta's murder at the end of 211,³³ still tried to make up for his murderer's unbalance. Maesa tried to restrain Elagabal (218–22)³⁴ with no more success. So intractable were the problems of an empire conducted by, or in the name of, young men spoiled by premature adulation and power that some, among both governors and governed, were disillusioned with the tradition which saw in public service the true end of human endeavour.

²⁵ Dio 73.16–7.

²⁶ Herodian 3.5.2; Dio 75.7–8.

²⁷ Dio 75.8.4; Herodian 3.8.1–3.

²⁸ *RE* 7.1.270 Fulvius no. 101 (Stein); *PIR*² F 554; Howe (1942) 69 no. 17; Birley (1971) 294–6; Grosso (1968a) 7. Their quarrels and reconciliations and Severus' remorse after Plautianus' death point to the truth of Herodian 3.10.6, cf. Dio 76.5.1–2.

²⁹ Dio 76.2.3–4; Herodian 3.11.1–3, 3.12.12 gives an official version; Hohl (1956) 33; Birley (1971) 231–5.

³⁰ Herodian 3.13.1.

³¹ Herodian 3.14–5; Dio 76.11.

³² Herodian 4.3.8–9.

³³ Dio 77.18.2–3.

³⁴ Herodian 5.5.5–6, 5.7.1–3. On Elagabal see Hay (1911), Pflaum (1978).

In this age of strain and frustration the minds of many turned inwards. There were powerful Christians. The ex-slave Callistus took the see of Rome (c. 217–23),³⁵ against the challenge of his opponent and critic Hippolytus. Julia Mamaea,³⁶ the mother of Alexander Severus, was inquiring enough to arrange a meeting with the Christian intellectual Origen (c.185–254). Other religions, hovering on or near the borders of monotheism, attracted devotees. The cult of Elagabal, the god of Emesa, whence Julia Domna and her family came, was one. The last Antoninus, nicknamed from the god to whom he was so devoted, saw the deity as a jealous sun-god. His demands, hardly less exclusive than those of Jahweh or Christ, led his emperor-priest into a troublesome challenge to the traditional Roman state religion.³⁷ Elagabal wanted to invert the relations of politics and religion. Far from being the handmaid of state policy, as hitherto, religion was to become the prime concern of the emperor and people. Elagabal's reign warns us that, in sacred affairs also, the easy-going days are over. It foreshadows the Christian revolution that is to come a century later.

Ulpian³⁸ was not one to take refuge in introspection or religion. A great lawyer and briefly, like Plautianus, sole praetorian prefect, his immense energy and deep concern for the welfare of the state leaves its mark on every page of his writing. His vision has survived in the mythology of the reign of Alexander (222–35). In this idealized picture,³⁹ a pliable young ruler defers to the wisdom of his seniors, especially his chief minister. He inaugurates a golden age of just but firm rule according to law. The reality was different.

II. ULPIAN: SOURCES

The main source of information about Ulpian is naturally his own writings. These tell us, either directly or by inference, a good deal. They were composed mainly under the sole rule of Antoninus Caracalla (211–17), as the frequent references to joint constitutions of him (*imperator noster*, *imperator Antoninus*) and his dead father (*divus pater*, *divus Severus*) make clear.⁴⁰

³⁵ Gianelli–Mazzarino (1956) II 291 f.

³⁶ Eusebius *Hist. eccl.* 6. 21.

³⁷ Herodian 5.5.3–10, 5.6.3–10.

³⁸ Bibliography *RE* 5.1435, 1506 (Jörs); Berger (1953) 750; *NDI* (1957) 19.1106 (Orestano); Santalucia (1971) 196¹; Crifò (1976) 708. The most important items are Pernice (1885, reprint 1962); *RE* 5 (1905) 1435 (Jörs); *PIR*² D 169; Kunkel (1967) 245; Pflaum (1960) no. 294; *RE* 9A 1 (1961) 567 (Mayer-Maly); Modrzejewski–Zawadzki (1967); Frezza (1968); Syme (1970); Orestano (1973); Nörr (1973); Crifò (1976); Honoré (1962, 1981).

³⁹ *HA* Severus Alexander, especially 3–12, 15–24, 39–51.

⁴⁰ Ch. 6 p. 132 f.

Apart from this, two rescripts of Alexander Severus ⁴¹ inform us of the prefectures which Ulpian held in AD 222 under that emperor. A papyrus from Egypt ⁴² makes it plain that he was killed some time before May/June 224. Of the historians Dio, ⁴³ as summarized by Xiphilinus, mentions his prominent role early in the reign of Alexander, about which Herodian ⁴⁴ is silent. Aurelius Victor (c. 360) ⁴⁵ mentions him briefly, as do the epitomes of Festus (363–70) ⁴⁶ and Eutropius (364–78). ⁴⁷ There is an important passage in Zosimus (c. 500) ⁴⁸ and briefer ones in Zonaras (1118–43) ⁴⁹ and Syncellus. ⁵⁰ The ‘mythistorical’ *Historia Augusta* gives him a prominent role. He is mentioned in the life of Pescennius Niger, ⁵¹ in that of Elagabal, ⁵² and most notably in Severus Alexander, ⁵³ where he guides the young emperor’s footsteps along the paths of justice and good government.

My earlier account of Ulpian, ⁵⁴ published in 1962, though admittedly only part of a ‘preliminary survey’, left a good deal to be desired. I proposed a threefold division of the jurist’s career. First, there was a period during which he was secretary *a libellis* to Severus and Caracalla, which I thought might run from 200 to 212. At this time he was composing rescripts on points of law on the emperor’s behalf. This could be inferred from a comparison of the style of the rescripts with that of Ulpian’s other writings. Secondly, under the sole rule of Caracalla (211–17) and then Macrinus (217–8), Ulpian devoted himself to writing legal treatises. This period of literary activity stretched into the early part of Elagabal (218–22), say into 219 or 220. Thirdly, there was the period of Ulpian’s prefectures, which might have begun under Elagabal and continued, under Alexander, until 228, when he was murdered.

The present account retains the three periods but alters their limits. All three turn out to be shorter than I formerly thought. A thorough comparison of Ulpian’s private writings with the rescripts of the early third century shows that the period proposed for his tenure of the office *a libellis* was too long. Instead of a period running from 200 to 212 the present work

⁴¹ *CJ* 8.37.4 (31 March 222), 4.65.4.1 (1 Dec. 222).

⁴² P. Oxy. 2565, Barns–Parsons–Rea–Turner (1966) 102.

⁴³ Dio 80.2.2–4, 80.3.2.

⁴⁴ Herodian 6.1.4 says in general terms that legal and civil business was entrusted under Alexander to men of eloquence and legal experience.

⁴⁵ *De Caesaribus* 24.

⁴⁶ *Breviarium rerum gestarum populi Romani* 22.

⁴⁷ *Breviarium ab urbe condita* 8.23.

⁴⁸ *Historia Nova* 1.11.2. Also Lydus (490–c. 560) *de mag.* 1.48.

⁴⁹ *Annales* 12.15.

⁵⁰ *Chronographia* 1.673.

⁵¹ *HA Niger* 7.2.

⁵² *HA Ant. Heliogabalus* 16.1.

⁵³ *HA Sev. Alexander* 15.6, 26.5, 27.2, 31.1, 34.6, 51.4, 67.2, 68.1.

⁵⁴ Honoré (1962) 207–12.

proposes a stretch from March 202 to May, or possibly a little later, 209. The argument for these limits is set out in chapter 9. The middle period of writing is now reduced to the years 213 to 217 and nothing is assigned to the reign of Elagabal. The reasons for this somewhat compressed chronological scheme are explained in chapters 5 to 7. The third phase of Ulpian's career is even more drastically reduced. P. Oxy. 2565 showed that Ulpian's death must be placed not in 228 but substantially before the middle of 224.⁵⁵ His praetorian prefecture lasted only about a year. The effect of closer investigation has therefore been to retain the broad picture of three periods but to open up gaps between the first and second (209–12) and the second and third (218–22). I have also become convinced that it is impossible to rely on the *Historia Augusta* to fill in the gaps.

How to use this work undoubtedly presents a problem. It can neither be trusted nor wholly discounted. The best approach is probably to fix the course of events in the first instance without regard to what it says. Whether *HA* can add to the picture so obtained depends on assumptions about its sources and aims. Following Straub,⁵⁶ I have assumed that, at least in certain instances, the author had access to legal sources or to reliable information about the law and lawyers. In dealing with such matters his method is often the deliberate distortion of the truth rather than pure invention. At times it would seem that the distortions have a serious purpose. This may be connected with the date of composition, which many would place in the last decade of the fourth century. This was a time when, at least in the quaestor's office, interest in the classical jurists revived. The only citation of a classical jurist to survive in the imperial constitutions between 327 and 426 comes in 396.⁵⁷

III. ULPIAN: NAME AND ORIGIN

Ulpian's fellow lawyers usually call him Ulpianus, or, in Greek, Οὐλιπιανός⁵⁸. But a few texts,⁵⁹ including two rescripts of Alexander, speak of Domitius Ulpianus. So does a text of Ulpian's contemporary, Paul, in which he reproduces a letter from a friend or client which refers to an opinion of Ulpian. Lactantius simply calls him Domitius.⁶⁰ The gentile

⁵⁵ Barns–Parsons–Rea–Turner (1966) 102–4.

⁵⁶ Straub (1972), (1978); cf. Dirksen (1842), Dessav (1889), and recently Syme (1968), (1972a); Chastagnol (1964), (1967), (1970).

⁵⁷ *CTh.* 4.4.3.3 (21 March 396 *auctor prudentissimus iuris consultorum Scaevola*, cf. 1.2.10 (20 March 396 *definitione iuris consultorum*)).

⁵⁸ *D.* 26.6.2 (Mod. 1 *excus.*: Οὐλιπιανὸς ὁ κράτιστος) 27.1.2.9 (2 *excus.*), 27.1.4 (2 *excus.*: Οὐλιπιανὸς ὁ κράτιστος), 27.1.8.9 (3 *excus.*), 27.1.10.8 (3 *excus.*), 27.1.13.2 (4 *excus.*: Δομίτιος Οὐλιπιανός); *Dio* 80.1.1, 2.2, 2.3; *Syncellus Chron.* 1.673; *Zonaras* xii 15.

⁵⁹ *CJ* 8.37.4 (31 March 222), 4.65.4.1 (1 Dec. 222); *D.* 19.1.43 (Paul 5 *qu.*), 27.1.13.2 (Mod. 4 *excus.*: Δομίτιος Οὐλιπιανός); *HA* Alexander 68.1; *Dio* 80.1.1 (Δομίτιος τινὶ Οὐλιπιανῷ).

⁶⁰ *Div. inst.* 5.11.19.

name Domitius is thus firmly established. There are no other Domitii Ulpiani, unless we can make something of an inscription on a water pipe found some seven miles from Centumcellae (Civitavecchia).⁶¹ Here, near Santa Marinella, on the coast north-west of Rome, a pipe belonging to a large building was found with the following inscription:

CNDOMITIAN . NIULPIANI

Bormann⁶² and others have taken this to refer to the jurist, and Kunkel follows suit.⁶³ If the inscription is read continuously, the reading 'Domitiani' is not possible, in view of the double N, and hence it becomes plausible to read it as:

CN DOMITI ANNI ULPIANI

though the dot between the two Ns, which may not really exist, is awkward. If this reconstruction is correct, the owner of the large country house on the coast near Rome was Gnaeus Domitius Annius Ulpianus. Is he the same as the jurist Ulpian? There are two points of connection. First, no other Domitius Ulpianus is known. Secondly, the villa clearly belonged to a wealthy man. Though this would not in itself serve to identify the owner as our Ulpian, a statue of Meleager has been found in the area of the villa. Meleager,⁶⁴ poet and Cynic philosopher of the first century BC, came from Gadara but lived in Tyre. Ulpian, we shall see, was also connected with Tyre. The statue therefore seems appropriate to the residence of a wealthy scholar from Tyre. There is a good case for concluding that the house was owned by a Domitius Ulpianus from Tyre. He might be the jurist or some other member of a family of scholars.

Pride in Tyrian achievement was certainly a feature of the jurist's personality. In his first book *de censibus*, written in the reign of Caracalla, and datable, if the arguments adduced in chapter 7 are right, to 213 or 214⁶⁵ Ulpian describes Tyre as his town of origin, splendid, famed for its various quarters, possessing an ancient history, strong in arms, and faithful to its treaty with the Romans.⁶⁶

est in Syria Phoenice splendidissima Tyrionum colonia, unde mihi origo est, nobilis regionibus, serie saeculorum antiquissima, armipotens, foederis quod cum Romanis percussit tenacissima

⁶¹ *CIL* xi. 3587; Kunkel (1967) 252; Crifò (1976) 738.

⁶² Above, n. 61; *RE* 5.1346 (A. Stein); *PIR* 2¹ 19, 25; 3² 39; Passerini (1939) 324.

⁶³ Kunkel (1967) 252.

⁶⁴ *RE* 15.1.481 Meleagros no. 7 (Geffiken); K. Radinger (1895); A. Wifstrand (1926).

⁶⁵ Below, pp. 164–7.

⁶⁶ *D.* 50.15.1 pr. (Ulp. 1 *cens.*). On Tyre see Krall (1888), Fleming (1915), on municipal administration Liebenam (1900), Vittinghoff (1951), Nörr (1969).