

Imperial Letters in Latin: Pliny and Trajan, Egnatius Taurinus and Hadrian¹

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1. Introduction

No-one will deny the fundamental importance of the correspondence of Pliny, as *legatus* of Pontus and Bithynia, and Trajan for our understanding of the Empire as a system. The fact that at each stage the correspondence was initiated by Pliny; the distances travelled by messengers in either direction (as the crow flies, some 2000 km to Rome from the furthest point in Pontus, and 1,500 km from Bithynia);² the consequent delays, of something like two months in either direction; the seemingly minor and localised character of many of the questions raised by Pliny, and the Emperor's care and patience in answering them – all these can be seen as striking and revealing, and indeed surprising, as routine aspects of the government of an Empire of perhaps some 50 million people.

On the other hand this absorbing exchange of letters can be puzzling, because it seems isolated, not easy to fit into any wider context, since examples of Imperial letters in Latin are relatively rare. By contrast, the prestige of the Greek City in the Roman Empire and the flourishing of the epigraphic habit in at least some parts of the Greek world (primarily, however, the Greek peninsula and the western and southern areas of Asia Minor) have produced a large and ever-growing crop of letters addressed by Emperors to Greek cities and *koina*, and written in Greek. The collection of Greek constitutions published by J.H. Oliver in 1989 could now be greatly increased. Even if we think only of the reign of Hadrian, which will be the main focus of this paper, there is, for instance, the Emperor's remarkable letter to the city of Naryca in Locris;³ or his even more striking three letters found on an inscription from Alexandria Troas, amounting to 89 lines in all. Addressed to the Synod of the Artists of Dionysus, they are concerned with the finances and the calendar of competitive festivals in the Greek world.⁴ In the first of the three letters he also refers both to letters of his to the *koinon synedrion* of Asia and to the Ephesians, which will both have been in Greek, and to three letters to Roman provincial governors, which will have been in Latin (see Appendix below).

¹ I am very grateful to Simon Corcoran for advice, comments and bibliography. In view of the preliminary nature of the paper I have not sought to include more than the most essential references.

² For a recent study of space and time in the Empire see Scheidel 2014. Note also Millar 2000, repr. in Millar 2004.

³ See Knoepfler 2006; Jones 2006; *SEG* V.6, no. 565.

⁴ Petzl and Schwertheim 2006.

By comparison, inscribed texts of Imperial letters to Latin-speaking cities or *concordia* are relatively few, as are copies of Imperial letters to governors, inscribed by local bodies, which may result from the use of bronze tablets, subsequently melted down and re-used, or from lack of prestige, or other factors. It is surely significant, for instance, that the only example of a letter of Hadrian in Latin to a provincial governor which is preserved on an inscription is that addressed to Avidius Quietus as proconsul of Asia concerning the properties of Zeus at Aizani, inscribed by the city as part of an otherwise Greek dossier confirming the rights of the temple.⁵ From other reigns, of course, we do have some inscribed texts of Imperial letters in Latin, addressed, for instance, to the Fratres Arvales (for two examples from Hadrian's reign, see Appendix), to office-holders or to cities or, in one case, to a non-citizen community. But in volume they are few, as are letters in Latin preserved on papyrus.

The body of material which both offers a context and a comparison as regards the correspondence of Pliny and Trajan is thus, to a very large extent, those letters which are preserved in legal sources. It is this which is intended to provide the basis for an eventual corpus of Imperial letters in Latin, from inscriptions, papyri, literary sources and juristic texts, covering the period from Augustus to CE 284. A summary guide to what the section on the reign of Hadrian might look like, without the intended texts, translations and (some) notes, is given in the Appendix. In the main text of the paper, some suggestions about the scale and significance of the Imperial letters in Latin which are known from legal sources, and the problems which they present, are offered next, followed by a sketch of those juristic works which refer to, or quote verbatim, Latin letters from Emperors. Finally, we come to one revealing example from Hadrian's reign, which is also the closest parallel to Pliny's correspondence with Trajan from Pontus and Bithynia.

2. Imperial *Epistulae* in Latin from Legal Sources

The jurists of the Classical period of Roman law, roughly from the middle of the second century, with Gaius' *Institutes*, to the first third of the third century, quote a number of different types of pronouncement in Latin by Emperors as sources of law (as well as occasional examples of letters in Greek to Greek cities or *koina*). Some of these were verdicts (*sententiae* or *decreta*) which had been delivered orally in court, at the conclusion of cases judged by Emperors.⁶ Some were oral pronouncements made *de plano* ('on the level'), that is informally, when not sitting in judgement on a tribunal.⁷ Others also derived from an original practice of oral pronouncements, namely *edicta* (general rulings with no specific addressee). Here again, there are newly-published edicts of Hadrian in Greek, from Maroneia and from the province of Asia.⁸ Then there were

⁵ Laffi 1971. See Appendix.

⁶ See Sanfilippo 1938; Rizzi 2012. The detailed accounts, especially in the work of Paulus, of discussions and verdicts in the judicial proceedings conducted in person by Emperors are of exceptional interest.

⁷ See Nörr 1983.

⁸ Jones 2011 (Maroneia); Hauken and Malay 2009 (Asia). For the style of *edicta* see Benner 1975.

orations in the Senate. It is not always possible to tell whether these had actually been spoken, or had been put before the Senate as written texts. At all events, jurists might quote as the source of law either the resultant *senatus consultum*, or (increasingly) the *oratio* itself.⁹

Finally, there were two distinct forms of written pronouncement, both of which could be referred to as *rescripta*, or which the jurists quote by saying ‘rescripsit’ or ‘rescripserunt’. The significance of the fact that these were both characterised as responses perhaps does not need to be stressed again.¹⁰

The first form is that which might be referred to as a *subscriptio*, and derives this name from its having been literally ‘written under’ a petition (*libellus*) presented in person to the Emperor. Whether or not literal ‘writing under’ continued, the essential feature of this form of reply is that it was posted up wherever the Emperor was, was addressed directly to interested parties, was normally quite brief, and did not require any formalities of address. As the well-known inscribed petitions from Thrace and Asia Minor about abuses by soldiers or officials show, the petitions themselves could be in Greek, and could go into considerable rhetorical detail, but the replies were brief and (almost always) in Latin.¹¹ A very revealing and detailed new example of this form of reply is the recently-published one from Asia, addressed to Hadrian in CE 129.¹² It was these ‘private rescripts’, which are preserved in thousands in the *Codex Justinianus*, the *Digest* and other juristic collections, which were the subject of the brilliant study by Tony Honoré, assembling them in chronological order, treating them as examples of literary expression in Latin, and attempting to define the periods of tenure of the successive holders of the office of a *libellis* (or later *magister libellorum*) who, he proposes, actually composed them. But the argument from the distinctive verbal styles of the successive holders, which does seem convincing in at least some cases, still leaves open a wider question. Was it the *a libellis* who determined not merely the style but the actual legal *content* of the responses?¹³

By contrast, those *rescripta* which were in form *epistulae* were addressed to office-holders, to cities or other bodies, to colleges of priests, and sometimes to individuals who seem to have owed this more ceremonious form of address to their high status. The question of whether a ‘rescript’ is a private one, addressed to an interested party, or an *epistula* cannot always be decided. It *can* be decided if the addressee is identified as an office-holder, either in Rome, for instance a praetor, or the governor of a province. And even when no such identification is given, if the Emperor is replying to a consultation which concerns how to treat an interested party (referred to in the third person) in court, or how to deal with witnesses, then this will be an *epistula*. The possible indeterminacy is liable to arise because what the jurists quote is never the complete text, with its formula of address, but an extract, focusing on the issue which was at stake. From the

⁹ See esp. Talbert 1984, 431-459.

¹⁰ See the classic studies by Wilcken 1920 and Nörr 1981, and now the magisterial survey by Corcoran 2014.

¹¹ See Hauken 1998.

¹² Jones 2009.

¹³ Honoré 1994.

often quite brief resultant text it is thus not always clear whether the original had been a private rescript or an *epistula*.

As regards those Imperial replies quoted by jurists which clearly are *epistulae*, the numbers, while far fewer than those of private rescripts, are still quite considerable. Apart from isolated cases from the Augustan period or the first century, the earliest consistent, if still relatively small, group dates to the reign of Trajan (see Millar 2000), and is thus contemporary with Pliny. The main concentration, however, covers the reigns of Hadrian, Antoninus Pius, the Divi Fratres (Marcus Aurelius and Lucius Verus, CE 161-69), Marcus Aurelius and Commodus, and the Severans. Fewer belong to the rest of the third century, since this is after the main period of Classical jurisprudence. The overall total is not vast, but certainly very significant from a number of points of view. Between the reign of Trajan and that of Carus and Carinus in the 280s we have about 100 examples of Imperial *epistulae* which are either quoted verbatim in juristic writings, or where the content is attested clearly enough for the identification of the text as an *epistula* to be determined. This figure is of course provisional, and the eventual total will depend on subjective criteria as to which deserve inclusion. Whether we incline to see their real ‘authors’ as having been the Emperors themselves, or their advisers or the holders of the office of *ab epistulis*, this is a body of material which deserves attention. Firstly, these are examples of expression, or exposition, in correct Latin by educated writers, and, like the works of the Classical jurists themselves, would deserve a much more central place in the canon of Latin literature than they have actually received. Secondly, they add significantly to the known corpus of letters in Latin. If there are studies of the literary form of the Latin letter which give an appropriate place to Imperial letters, I have not encountered them.¹⁴ Thirdly, they illustrate the geographical breadth of the Emperor’s correspondence, from Cappadocia to Belgica or Baetica. Fourthly, and perhaps most important, they are written in a tone of self-conscious rationality, acknowledging the content of the existing law on the issue in question, but allowing for variations in the treatment of particular cases if this seems appropriate. Peremptory orders, not accompanied by any rational justification, play no part in these letters. Of course that does not prove that no such letters were written, but only that they would not deserve quotation in juristic writings. In that sense those that are quoted are themselves an element in the juristic literature of the period. They are analysed from the point of view of their contribution to the interpretation of the law in the excellent study by Arcaria 2000.

The profound connections between the opinions of jurists, whether in written form or expressed in person, and the legislative activities of Emperors are explored also in the fundamental work of Gualandi 1963. They are perhaps nowhere more explicit than in a rescript of the Divi Fratres quoted by Ulpian. In the course of it they refer to a previous private rescript of their own in reply to the petition (*libellus*) of a woman named Caesidia Longina. But the long and reflective rescript itself, though no addressee is named, is surely itself an *epistula* addressed to an office-holder. It is noteworthy that the Emperors refer first to the opinion of the major jurist of the first century CE, Proculus, and then to discussions with their *amicus*, Volusius Maecianus, one of a significant group who both

¹⁴ See for example Cugusi 1983, 265-270; Morello and Morrison 2007; Trapp 2003.

wrote scholarly works on Roman Law and held office in the Imperial service (Millar 2002). Then further learned *amici* are involved:

Dig. XXXVII.14.17 pr. (Ulpianus, libro undecimo ad legem Iuliam et Papiam)

Divi fratres in haec verba rescripserunt: ‘Comperimus a peritioribus dubitatum aliquando, an nepos contra tabulas aviti liberti bonorum possessionem petere possit, si eum libertum pater patris, cum annorum viginti quinque esset, capitis accusasset, et Proculum, sane non levem iuris auctorem, in hac opinione fuisse, ut nepoti in huiusmodi causa non putaret dandam bonorum possessionem. Cuius sententiam nos quoque secuti sumus, cum rescriberemus ad libellum Caesidiae Longinae: sed et Volusius Maecianus amicus noster, ut et iuris civilis praeter veterem et bene fundatam peritiam anxie diligens, religione rescripti nostri ductus sit coram ut nobis adfirmavit non arbitratum se aliter respondere debere. Sed cum et ipso Maeciano et aliis amicis nostris iuris peritis adhibitis plenius tractarem, magis visum est nepotem neque verbis neque sententia legis aut edicti praetoris ex persona vel nota patris sui excludi a bonis aviti liberti: plurium etiam iuris auctorum, sed et Salvi Iuliani amici nostri clarissimi viri hanc sententiam fuisse.’

Ulpian, in Book XI of his *Ad legem Iuliam et Papiam*.

The Deified Brothers sent a rescript in the following terms: ‘We have learned from the experts that it has on occasion been doubted whether a grandson can claim possession of the property against the terms of the will of a freedman of his grandfather, if that *libertus* had been the subject of a capital charge by the *pater patris*, when he was [no less than] 25 years old, and that Proculus, certainly no lightweight as legal authority, had been of this opinion, namely that he considered that in a case of this sort possession should not be granted to the grandson. His opinion we also followed, when we issued a rescript in response to the *libellus* of Caesidia Longina. Moreover, Volusius Maecianus, our *amicus*, an earnest student of the civil law, quite apart from his long-established and well-based expertise, was led by reverence for our rescript to affirm in our presence that he did not consider that he ought to give any different response. But when, after Maecianus and others of our *amici* who were experts in the law had been called together, we dealt with the question more fully, it seemed rather that the grandson was not excluded from the property of his grandfather’s freedman either by the wording [of the will] or by the terms of either the law or the Praetor’s Edict on the basis of the status of his father or his accusation, and also that this had been the opinion of several legal experts, but also of Salvius Iulianus, our *amicus, clarissimus vir*.

The limitation, which is a serious one, is that, almost without exception, what the jurists quote is just the Imperial *epistula*, or part of it, and not (as with Pliny and Trajan), the letter from a magistrate or governor which had occasioned it. However, in many instances at least, something of the issue presented to the Emperor is clear, and in a considerable number of cases the detailed terms of the query can be read between the lines of the Imperial reply. A couple of examples will illustrate this, firstly one from the reign of Antoninus Pius:

Dig. IV.1.7 pr. (Marcellus, libro tertio digestorum)

Divus Antoninus Marcio Avito praetori de succurrendo ei, qui absens rem amiserat, in hanc sententiam rescripsit: ‘Etsi nihil facile mutandum est ex sollemnibus, tamen ubi aequitas evidens poscit, subveniendum est. Itaque, si citatus non respondit et ob hoc more pronuntiatum est, confestim autem pro tribunali te sedente adiit, existimari potest non sua culpa, sed parum exaudita voce praeconis defuisse, ideoque restitui potest.’

Marcellus, in Book III of his *Digesta*.

Divus Antoninus replied to Marcius Avitus as praetor on the question of making allowance for a man who through absence had lost his case: 'Even if there should be no ready variation in established procedures, nonetheless, when equity patently demands it, concession is appropriate. So, if, when summoned, he failed to respond, and for that reason the customary pronouncement was made, but he immediately presented himself while you were in session on the tribunal, it can be concluded that it was not by his own fault that he had failed to appear, but because he had not heard the voice of the herald clearly enough, and so he can be restored.'

The reply clearly mirrors the terms of the praetor's consultation, based on his pity for the poor litigant in question. The pattern of the assertion of standing rules, mitigated according to particular circumstances, is a very common feature of Imperial responses.

Moving forward to the reign of the Divi Fratres, it will be worth noting Ulpian's report in Book III of his *de officio proconsulis* (*Dig.* L.2.3.2) of these Emperors' reply to Lollianus Avitus, described as governor (*praeses*) of Bithynia. Not all the names of the addressees identified in legal sources can be confirmed. But this one can: he is L. Hedi Rufus Lollianus Avitus, *legatus pro praetore* of Bithynia in 165 (*PIR*² H 40). His concerns in this instance were very close to those of Pliny in the same province half a century earlier, namely the qualifications for being a city-councillor (*decurio*).

In this instance the content of the Imperial reply is given, but there is no verbatim quotation. A vivid example of such a quotation is however provided by the *epistula* of the same two Emperors addressed to Voconius Saxa, a very fully attested senator of the Antonine period, Q. Voconius Saxa Fidus (*PIR*¹ V 612), whose current office is not indicated, possibly the proconsulate of Africa of 161/2; he has clearly been sitting in judgement in a criminal case.

Dig. XLVIII.18.1.27 (*Ulpianus, libro octavo de officio proconsulis*)

Et extat epistula divorum fratrum ad Voconium Saxam, qua continetur liberandum eum, qui in se fuerat confessus, cuius post damnationem de innocentia constitisset. Cuius verba haec sunt: 'Prudenter et egregia ratione humanitatis, Saxa carissime, Primitivum servum, qui homicidium in se confingere metu ad dominum revertendi suspectus esset, perseverantem falsa demonstratione damnasti quaesiturus de consciis, quos aequae habere se commentitus fuerat, ut ad certiore ipsius de se confessionem pervenires. Nec frustra fuit tam prudens consilium tuum, cum in tormentis constiterit neque illos ei conscios fuisse et ipsum de se temere commentum. Potes itaque decreti gratiam facere et eum per officium distrahi iubere, condicione addita, ne umquam in potestatem domini revertatur, quem pretio recepto certum habemus libenter tali servo cariturum.'

Ulpian, in Book VIII of his *de officio proconsulis*.

And there is extant a letter of the Deified Brothers to Voconius Saxa, in which it is laid down that someone is to be freed who had confessed his guilt, but whose innocence had been established after his condemnation. Its wording is: 'It was wisely and with praiseworthy consideration for humanity, dearest Saxa, that in the case of the slave Primitivus, who had been suspected of a false confession to homicide for fear of being restored to his master, and persisted in this false declaration, you condemned him, while intending to examine him under torture as regards the associates whom he had also falsely confessed to have had, in order to arrive at a more reliable confession as regards himself.

Nor was this so wise a decision of yours fruitless, since under torture it was established that they had not been his associates, and that he had rashly lied concerning himself. You may therefore dispense with the verdict, and order him to be sold off by your staff, with the added condition that he should never return to the ownership of his master, who, we may be sure, having received the price, will gladly be rid of such a slave’.

This letter, once again, reveals very clearly the terms in which Voconius Saxa’s consultation had been expressed, and similarly concerns a very minor episode in, as it seems, provincial jurisdiction, but which also brought forward an issue of principle: could a verdict, once delivered, be reversed? An exception is also made to the rule that a slave, if declared innocent after a previous condemnation, should be restored to his master. Instead, he is to be sold, with the price going to the master, but on condition that he never returns to him.

A further characteristic feature of the Imperial letter is the address to Voconius in the vocative singular, along with the word ‘dearest’ (*carissime*), attaching this term to the *cognomen*.¹⁵ The formal terms of address at the beginning of a letter are missing from the versions quoted by jurists, as are formulae of farewell, if there were any, at the end. But expressions of personal regard, such as this, very frequently survive in the body of the text, and are indicative of the apparently egalitarian terms which Emperors were supposed to use in writing to magistrates, governors or officials. It can be assumed, however, that office-holders will not have presumed to write ‘Traiane carissime’ or ‘mi Hadriane’.

These examples may serve to give some impression of the character of the *epistulae* of which Emperors must have despatched hundreds every year in response to consultations. But we still lack any cases which are precisely parallel to what we find in the correspondence of Pliny and Trajan, namely verbatim versions of the letters of both official and Emperor. For the one known case of that type we need to turn back to the reign of Hadrian, to read the letter sent to him by the proconsul of Baetica, and his quite brief reply. Before that, however, it is necessary to address a problem which so far has been left aside: though what channels have the Imperial *epistulae* which we can read in the legal sources been transmitted, and can we have reasonable grounds for believing them to be authentic?

3. Vehicles of Transmission

The juristic works from which we have examples either of the actual texts of Imperial letters or of indications of the occasions, addressees or contents of such letters, date to different periods, and are characterised by diverse literary forms.¹⁶ In crude summary, we have one original juristic work of the Antonine period which is preserved (more or less) in its entirety, the *Institutes* of Gaius; one sixth-century compilation of Imperial rescripts, most of which are private ones, but some are *epistulae*, the *Codex Justinianus*; and two collections which are built up in part from extracts from the Classical juristic

¹⁵ See Dickey 2002, esp. ch. 1, ‘Names’, which however does not deal specifically with forms of address in Imperial Latin letters.

¹⁶ The sketch which follows is offered as a brief guide, and makes no pretention to rival the major works by Schulz 1946, or Liebs 1987, 1989, 1997 and 2005.

writings of the later second and earlier third centuries, which themselves had quoted or referred to Imperial letters, but which also incorporate later material. These are the *Fragmenta Vaticana* and the *Mosaicarum et Romanarum Legum Collatio*, both, it seems clear, from the fourth century. Finally, there is the most important of all, the *Digest*, compiled in the 530s on the order of Justinian. It will be convenient to deal briefly first with Gaius' *Institutes* and the *Codex Justinianus*, and to treat second the three works built on extracts from earlier juristic writings:

a. Gaius, Institutes

The fewest problems, but also, as regards Imperial letters, relatively few examples, are offered by Gaius' *Institutes*, whose four books are contained (with some gaps) in a palimpsest *codex* preserved in Verona (*CLA IV*, no. 488), and dating to the fifth century, supplemented by some parchment sheets preserved in Florence (*CLA III*, no. 292), apparently of the fifth or sixth century. In addition, there are extracts on two papyri, dating to the second-third and to the fifth-sixth centuries respectively, which largely confirm the readings in the Verona *codex*.¹⁷ The textual tradition is therefore, by any reasonable standards, excellent, and the work can (and should) be read as a prime product of the thought, and the expression of the Latin language, in the Antonine period.

But there is a further aspect of the history of the *Institutes* which is extremely important for the wider textual history of the jurists whose works are excerpted in the *Digest* and elsewhere. For a number of passages from the *Institutes* (see Lenel, *Palingenesia* I, col. 242) are also quoted in the *Digest*. So here alone we have the chance to compare the *Digest's* version, as preserved in the Florentine *codex* (see below), and that of the primary text. There certainly are variations; but it is beyond question that the compilers of the *Digest* had before them a text of the *Institutes* which was substantially the same.

The implications are that we have broadly compatible texts preserved in two separate traditions, but both in *codices* of the Late Antique period (for the *Digest*, see below). But even if we have access to reasonably reliable texts of what, in many other works, Gaius or the other jurists wrote (for Gaius see Lenel I, cols. 181-266), we still do not know what the evidence was for the texts of the Imperial *epistulae* and private rescripts which they cited. This problem confronts us even more forcibly in the *Codex Justinianus*, which cites these imperial pronouncements directly, without reference to juristic writings.

b. The Codex Justinianus

No justice can be done here to the problems presented by this work. What we have is the second edition, published on Justinian's orders in CE 534. The text as printed derives primarily from a variety of manuscripts of the medieval period; but a partial text is preserved in a Verona *codex*, of 40 folios, from the sixth century (*CLA IV*, no. 513). Its contents, all of them citations of Imperial pronouncements, divide into several distinct

¹⁷ For these papyri, and for an excellent and comprehensive survey of the circulation on papyri or parchments of juristic texts, see Ammirati 2010.

periods: the Imperial period up to CE 284; the Tetrarchy; the Late Empire from CE 313 to 436, based on the *Codex Theodosianus* of CE 437; the Emperors from the latter part of the reign of Theodosius II to that of Justin (CE 518-27); and the legislation of the first part of Justinian's reign.

We are concerned here only with the first of these periods, some of which (at least) had been covered in the *Codex Gregorianus*, a collection of Imperial rescripts made in the Tetrarchic period, which the Justinianic compilers had been explicitly instructed to use.¹⁸ Whether the *entire* content of the *Codex Justinianus* for this first period is derived from the *Gregorianus* is an unanswerable question. At any rate the vast majority of the contents, going back to a single item from Hadrian's reign (*CJ* VI. 23.1 — which is probably, but not certainly, an extract from an *epistula* addressed to an office-holder giving jurisdiction, see Appendix), are certainly private rescripts rather than *epistulae*. A small proportion, however, clearly are *epistulae*. The compilers themselves never cite the *Gregorianus*, nor any juristic writings, nor attach any commentary of their own. What they put together was a work in twelve books, within which the rescripts relevant to particular topics were divided into chapters and presented in chronological order.

c. The Fragmenta Vaticana (FIRA² II, pp. 461-540)

As a literary work, the *FV* is known from a damaged fifth-century *codex* in the Vatican (*CLA* I, no. 45), first published by A. Mai in 1828.¹⁹ It has a mixed character, since it combines several different types of material: (1) Items of juristic writing for which no author is given; (2) Quotations from named juristic writers, with title and book number; (3) Quotations of Imperial *epistulae* or private rescripts, sometimes explicitly derived from the *Gregorianus*, but with no juristic author named. Many of these letters are formally dated. While the juriconsults quoted are those of the Classical period (Ulpian, Papinian and others) the majority of the Imperial *epistulae* or private rescripts derive from the Tetrarchic or Constantinian periods, while a few (perhaps added to an earlier version of the mid-fourth century) are attributed to Valentinian, Valens and Gratian. But there are also examples from the second century; for instance *FV* 203, referring to a letter of Marcus Aurelius to the consuls Pertinax [*PIR*² H 73] and 'Aelianus' (in fact Didius Iulianus, [*PIR*² D 77], both future Emperors, in office in CE 175); or similarly *FV* 223, referring to an *epistula* of Hadrian to Claudius Saturninus, *legatus* of Belgica [*PIR*² C 1012]. Both are quoted from Ulpian, *de officio praetoris tutelaris*; neither of these items appears in the selections from Ulpian in the *Digest*. The *Fragmenta Vaticana* thus represent a treasure-house of legal material, including Imperial *epistulae* and private rescripts, put together in the course of the fourth century, and stretching back to the second century.

¹⁸ See Justinian's addresses to the Senate, of February 528, and to Menas, Praetorian Prefect, in April 529 in P. Krueger, *Corpus Iuris Civilis* II: *Codex Iustinianus*, pp. 1-3, and note especially Corcoran 2013.

¹⁹ I have not seen the study of it by di Filippi 1998.

d. *The Mosaicarum et Romanarum Legum Collatio* (FIRA² II, pp. 541-589)

The work labelled by moderns as *Mosaicarum et Romanarum Legum Collatio* (though the manuscripts suggest rather the title, *Lex Dei quam praecepit Dominus ad Moysen*) is very similar to *FV* as a fourth-century compilation, but dissimilar in that, alone of the collections discussed here, its manuscript basis is not Late Antique, but solely medieval, of the ninth-eleventh centuries.²⁰ Arranged under headings, its successive sections first quote in Latin a law of Moses, and then provide a selection of extracts of Roman law on a comparable topic, mainly drawn from the Classical jurists. A Jewish origin for this compilation has often been suggested, but there is no good reason to think that it was not the work of a Christian familiar both with the Old Testament and Roman jurisprudence. Apart from the standard juristic authors, Papinian, Paul, Ulpian and Modestinus, it draws on the *Sententiae Pauli* of the third-fourth centuries, and the two Tetrarchic *Codices*, the *Hermogenianus* (all of whose material comes from Diocletian's reign) and the *Gregorianus* (see above). The latest item of legislation quoted in the *Collatio* is a constitution of Valentinian II, Theodosius I and Arcadius, posted in Rome in 390 (V.3.1-2). This too may well be a subsequent addition to a text put together earlier in the fourth century. None of the other material in the *Collatio* postdates the Tetrarchic period, and the main text could have been compiled early in the fourth century. It is noteworthy, in the context of this paper, for its verbatim quotations of both private rescripts and Imperial *epistulae*, including the correspondence between the proconsul of Baetica and Hadrian to which we will turn shortly.

e. *The Digest*

It needs to be stressed that both the *FV* and the *Collatio*, drawing on both juristic writings and Imperial letters and private rescripts, may have been compiled as much as two centuries earlier than Justinian's *Digest*, which for ever after would define what 'Roman Law' is. Justinian's plan was that a team of jurists would compile from the works of the Classical jurists a single volume of fifty books, within which there would remain, so far as possible, no redundancy or contradiction. There had been almost 2,000 books, of more than 3,000,000 lines in all, so the Emperor said after the completion of the task, from which extracts had been made, and arranged in these fifty books.²¹ The compilers did indeed achieve an immense task, but not exactly with the character which the Emperor had intended. What they produced was in essence a source-book of extracts from Classical juristic writings, grouped under headings. Contradictions could not by definition be excluded, since the authors of the works excerpted had been independent private scholars with their own opinions. Nor did the compilers provide their own summary definitions of what the correct law was, within each section. The extracts were left to speak for themselves.

All the material was attributed to named jurists, with the title of the work from which the excerpt was drawn, and the book-number. It was assumed throughout the whole

²⁰ For all aspects of this work see Frakes 2011.

²¹ See Justinian's constitution *Tanta/Δέδοκεν*, para. 1 (*Corpus Iuris Civilis* I, *Digesta*, p.14). For a brilliant study of how the compilers of the *Digest* worked, see Honoré 1978.

process that all these volumes were at the compilers' disposition, though whether in some public library or archive, or in private possession, is not made clear.

As regards the text of the *Digest* itself, there are as few problems as there possibly could be, for it depends on the famous *codex* of 905 folios from Florence, dating to the sixth century, or at the latest the early seventh, which indeed the great E.A. Lowe in *CLA* III, no. 295, took to be contemporary with the original compilation. Even if that was perhaps too optimistic, the text of the *Digest* is, by any reasonable evidence, secure. Note the facsimile edition by Corbino and Santalucia 1988.

Its relevance to the topic of this paper is precisely that, while there is no direct quotation of Imperial pronouncements, the jurists whose works were excerpted for inclusion in the *Digest* had themselves very frequently quoted, among other types of Imperial ruling (see above), both *epistulae* and private rescripts. As regards *epistulae*, this pattern of second-order citation by the authors whose works are excerpted in the *Digest* represents our main evidence for their texts.

But is this secure evidence for the wording of the original texts? The jurists of the Classical period had treated Imperial pronouncements as sources of law, and had either quoted them verbatim or indicated their contents. But we are left with the same problem as before. Where did the jurists of the later second and earlier third centuries find the texts of Imperial *epistulae*, going back to the reign of Trajan? The problem should be less when a jurist is citing pronouncements of a contemporary Emperor (for instance Ulpian quoting Caracalla — 'Imperator noster'). But we still do not know how, where or by whom the relevant texts were preserved.²²

This sketch of the channels of transmission of our texts thus leaves open a major problem, and no answer to it can yet be offered. But one valid approach is the one adumbrated here, namely collecting the texts known from juristic sources and combining them with those preserved on contemporary documents or literary works. Do they seem to 'belong' in their supposed second-third-century contexts, or might they, or some of them, not be genuine? One relevant procedure is to check the names of the governors or magistrates involved, to see if they correspond with those of known individuals of the period, as attested in contemporary evidence. Allowing for the vagaries of transmission, and the abbreviation of long names, the results (see above and the Appendix) are encouraging. If the project to collect all the *epistulae*, from all sources, up to 284 and print them in sequence, can be carried out, the answer may become clearer. For the moment, however, it may be sufficient to examine one striking example from the reign of Hadrian.

4. Egnatius Taurinus, Hadrian and Involuntary Homicide

Of all the *epistulae* of this period which were addressed by Emperors to governors, magistrates or other officials in reply to queries, there survives in legal sources only one

²² We remain with no consistent evidence as to what Imperial archives there were, how they were arranged, or whether they were available for consultation. Nor indeed do we know whether it was from such (hypothetical) Imperial archives that the jurists derived their texts of the Emperors' *epistulae*. For an invaluable and very full discussion see Varvaro 2007.

which offers a precise parallel to the correspondence between Pliny and Bithynia and Trajan in Rome, in that the consultation is quoted verbatim, followed by a fairly brief note of approval from the Emperor. This is the exchange between a proconsul of Baetica, whose name seems to have been Egnatius Taurinus, and Hadrian. Egnatius' proconsulship can not be dated, so we can not tell whether the Emperor had been in Rome (some 1600 km distant) at the time, or on one of his numerous and extended journeys round the Empire (involving distances of up to 3,500 km from Baetica). How great was the time and distance required for this exchange is thus uncertain, but it might have been very considerable. This consultation, in which the proconsul asks for approval of the relatively lenient sentence which he had imposed in a homicide case, on the grounds that the death had not been caused intentionally, was recorded by Ulpian in Book VII of his *de officio proconsulis*. As was noted above, we can not determine where he will have found the texts, which will have been composed some eight-nine decades earlier.

In the *Digest* (XLVIII.8.4.1) this exchange is noted only in summary form:

Cum quidam per lasciviam causam mortis praeberet, conprobatum est factum Ignatii Taurini proconsulis Baeticae a divo Hadriano, quod eum in quinquennium relegasset.

When someone had caused death as a result of recklessness, the action of Ignatius Taurinus, proconsul of Baetica, was approved by the Deified Hadrian, that is that he had banished him for a quinquennium.

It seems clear that the editors will have found the text of the two letters cited in full by Ulpian, but chose in this instance to provide merely a brief summary. For the author, or compiler, of the *Collatio*, which had been put together some two centuries earlier (see above), had found them in the same work, the seventh book of Ulpian's *de officio proconsulis*, and had chosen to reproduce them in full, preceded by the same wording as found in the *Digest*, except that the proconsul appears as 'Taurinus Egnatius'.

In the *Collatio* (I.xi.2-3) the wording of the *consultatio* and *rescriptum* is given as follows:

2. *Verba consultationis et rescripti ita se habent*: 'Inter Claudium, optime imperator, et Euaristum cognovi, quod Claudius Lupi filius in convivio, dum sago iactatur, culpa Mari Euaristi ita male acceptus fuerit, ut post diem quintum moreretur. Atque adparebat, nullam inimicitiam cum Euaristo ei fuisse. Tamen cupiditatis culpa coercendum [or 'culpam coercendam'] credidi, ut ceteri eiusdem aetatis iuvenes emendarentur. Ideoque Mario Euaristo urbe Italia provincia Baetica in quinquennium interdixi, et decrevi ut impendi causa duo milia patri eius persolveret Euaristus, quod manifesta eius fuerat paupertas'. 3. *Verba rescripti*: 'Poenam Mari Euaristi recte, Taurine, moderatus es ad modum culpa; refert enim et in maioribus delictis, consulto aliquid admittatur an casu'.

The terms of the *consultatio* and the *rescriptum* are as follows:

I have given judgement, Optime Imperator, in the case between Claudius and Euaristus, on the issue that Claudius the son of Lupus at a dinner, while he was being thrown in a cloak, was by the fault of Marius Euaristus caught so ineptly that after the fifth day he died. Moreover, it appeared that there was no hostility between Euaristus and him. However, I took the view that the fault of recklessness needed to be repressed, so that the other young men of the same age should be corrected. Therefore I have banished Marius

Euaristus from the City(Rome), Baetica and Italy for five years, and have decreed that by way of compensation Euaristus should pay two thousand to his (Claudius') father (Lupus), since his poverty was obvious.

The wording of the rescript

You have rightly, Taurinus, modified the punishment of Marius Euaristus to fit the level of his guilt; for it is relevant even in more serious crimes whether something is perpetrated deliberately or accidentally.

As with Pliny's letters to Trajan in Book X, and with all other *epistulae* quoted in juristic works, whatever formulae of opening address or farewell there may have originally have been have been cut out, leaving just the substance of the issue, namely the proconsul's explanation of the circumstances, his report of the relatively mild verdict passed by him, and Hadrian's brief note of approval, stating the issue of principle involved. He does not, in the text as preserved, comment on the instruction to make a compensatory payment to the victim's father. As is very common (see above), the Emperor inserts an address in the text, in the form of the proconsul's name, in this case also (see above) his *cognomen*, in the vocative. This personal note is characteristic of Imperial *epistulae*, even if he does not add, as quite frequently, 'carissime'. Both of the works quoting this exchange may have been inaccurate in reproducing the proconsul's name, which will surely have been 'Egnatius Taurinus' (so *PIR*² E 34). The *Digest*'s 'Ignatius' for 'Egnatius' might simply be a copyist's error. But the *Collatio*, produced in a period where the rules of nomenclature were fluid, reverses *nomen* and *cognomen*.²³ At any rate it is once again by the *cognomen*, 'Taurine', that the Emperor addresses him.²⁴ The nature of the issue at stake is closely comparable to what is repeatedly found in the correspondence of Pliny and Trajan: a minor incident of provincial life, which however might give rise to a general question of principle which required Imperial approval.

5. Conclusion

This paper is intended as a foretaste (and an invitation for suggestions and criticisms) of a project to compile a corpus of Imperial letters in Latin from the reign of Augustus to the establishment of the Tetrarchy.

This might produce a corpus of some 150-200 items, other than the 52 addressed by Trajan to Pliny, of which some 100 are either complete texts or embody quotations claiming to reproduce at least part of what the Emperor had written (or which had been written in his name). From one point of view, this is of course a minute proportion of all

²³ For the evolution of Roman nomenclature up to the Late Empire see Salway 1994.

²⁴ Note for comparison 'Saxa carissime' to Voconius Saxa (above), and the inscribed letter of Marcus Aurelius to Domitius Marsianus (*AE* 1962, no. 183), ending 'Vale mi Marsiane karissime mihi'; and that of the two Philippi to Aurelius Aemilianus in 249 (*AE* 2003, no. 2040): 'Aemiliane karissime'. Equally, Trajan addresses Pliny as 'Secunde': *Epp.* X, 16 ('mi Secunde carissime'); 18 ('Secunde carissime'), and see 20; 44; 50; 53; 55; 60; 62; 80; 82; 89; 91; 9; 99; 101; 118; 121. On the other hand Hadrian, writing to Rammius Martialis, Prefect of Egypt, in 119 (see Appendix) had evidently written in the Latin original 'mi Rammie', using the *nomen*.

the letters originally written, over a period of some three centuries. An impression of the scale and nature of the material is provided by the Appendix providing a summary list of the known *epistulae* from Hadrian's reign. Given the complex nature of our sources, and their very strong bias towards legal rulings, neither this list nor any eventual complete list for the whole period can claim to offer a balanced picture of the contents or style of Imperial *epistulae* (for a start, there are no surviving texts of letters about strategic issues or the movements of legions). Nonetheless, I believe that there is value in creating a corpus of all the known letters, from very different sources, and offering a text and translation of each, with essential notes, so that they can be read in sequence. Such a collection could also to broaden the material for the study of epistolography in Latin, provide a sense of the character of these letters as a branch of educated self-expression in Latin, and display, as emphasised earlier, the strikingly thoughtful and contemplative style of those *epistulae* which dealt with issues in Roman Law and its interpretation. Moreover, there there is another dimension to be considered. These Imperial letters of course lead on to those of the Tetrarchic period, studied by Corcoran 2000. But they are also the forebears of the vast number of Imperial letters from the Late Empire. As I have emphasised before (Millar 2006, esp. pp. 7-13), virtually the entire body of the 'legislation' of the period from CE 313 onwards, as collected in the *Codex Theodosianus*, is expressed in the form of letters to office-holders, very often in response to consultations by them. So these too should have a place in the history of Latin letter-writing. Most of these texts also, it is true, are extracts from longer originals. But there are examples which are preserved complete, for instance the magnificent, and highly rhetorical, *Novellae* of Theodosius II and Valentinian III, which are translated in Pharr 1952, pp. 487-55, and which would even more fully deserve study as letters. But whether the construction of a compendium of known Imperial letters in Latin from the first three centuries, with texts and translations, would be a feasible or worthwhile enterprise remains to be seen.

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Appendix: A Provisional List of Hadrian's Letters in Latin

Those letters which are either explicitly dated, or can be assigned approximate dates from other evidence, are given first in chronological order, followed by the rest, in the alphabetical order of the sources from which they come. Where, as in the *Digest* entries, the author, title and book-number are given, these details are included. Those entries which include either a complete text of the *epistula* or a verbatim quotation are starred. Those not starred refer to *epistulae* as to which there are indications of their contents or

addressees; the nature of the contents is very briefly indicated in each case. Where the addressee can be certainly, or very probably, identified, the *Prosopographia* reference is given in brackets.

*CFA, no. 68 (pp. 203-9), ll.32-35. To the Fratres Arvales, nominating a new member. 26.2.118.

**Collatio* XIII.iii.1-2 (Ulpian, *lib. VIII de officio proconsulis*) and *Digest* XLVII.21.2 (Callistratus, *lib. III de cognitionibus*), with some variations in wording. To Terentius Gentianus [*PIR*² T 71], no office stated, on penalties for moving boundary-stones. 16.8.119.

*Mitteis and Wilcken, *Chrestomathie*, no. 373. Greek translation of letter to Q. Rammius Martialis, *Praefectus Aegypti* [*PIR*² R 20], on soldiers' wills. 119.

*CFA, no. 69 (pp. 210-14), ll. 25-27. To the the Fratres Arvales, nominating a new member. 7.2.120.

(Justin, *Apol.* I.68; Eusebius, *HE* IV.8.9. Greek translation of (genuine?) letter to Minicius Fundanus [*PIR*² M 612], proconsul of Asia, on Christians. 122/23).

Dig. XLVIII.12 1 (Venuleius Saturninus, *lib. II de iudiciis publicis*). To (M'. Acilius) Glabrio, *consul* [*PIR*² A 68], on protection from accusation of those on public business.

*Laffi 1971, Letter B. To Avidius Quietus [*PIR*² A 1409], proconsul of Asia, on properties of Zeus of Aezani. 125/6?

Syll. II³, no. 837; *FIRA*² I, no. 80; L. Robert, *Hellenica* VI (1948), 80-84 (Stratonicea/Hadrianopolis). References to letters to Stertinius Quartus [*PIR*² S 910], proconsul of Asia, and to a *procurator*, Pompeius Severus, replying to requests. 126/7.

Petzl and Schwertheim 2006 (Alexandria Troas). Hadrian's first letter to the Artists of Dionysus refers (ll.32-3) to his letters to the proconsul (of Achaea) telling him to check the accounts of the Corinthians; to (Publicius) Marcellus, *legatus* of Syria (ll. 43-4), on prize-money at Apamea; and to Petronius Mamertinus, Prefect of Egypt (ll. 48-7), on the tax-exemption of victors at the Hadrianeia in Ephesos. 133/4.

Dig. XLVIII.16.14 (Ulpian, *lib. VII de officio proconsulis*). To Salvius Carus [*PIR*² S 131], proconsul of Crete (and Cyrene), on obligations of *tutor*. c.134.

CJ IV.18.3. Reference by Justinian to a *Divi Hadriani epistula* on *mandatores* and *fideiussores*. No addressee given.

**CJ* VI.23.1. To Catonius Verus. No office stated. (*Epistula* or private rescript?). On status of *testes*.

CJ X.40.2. Reference by Severus Alexander to *epistula* of Hadrian on *domicilium* of students.

**Collatio* I.vi.1-4 (Ulpianus, *lib. VII de officio proconsulis*), with *Dig.* XLVIII.8.1.3 (Marcianus, *lib. XIV institutionum*); with some variations in wording. To judge (provincial governor?) on homicide case.

**Collatio* I.xi.1-4, with *Dig.* XLVIII.8.4.1 both from Ulpianus, *lib. VII de officio proconsulis*). Egnatius Taurinus, proconsul of Baetica, to Hadrian, and his reply. On involuntary homicide (see above).

**Collatio* XI.vii.1-2, with *Dig.* XLVII.14.1 *pr.* (both from Ulpianus, *lib. VIII de officio proconsulis*). To *concilium* of Baetica on cattle-rustlers (*abigei*).

Dig. I.5.18 (Ulpianus, *lib. XXVII ad Sabinum*). To Publicius Marcellus [*PIR*² P 1042], on status of newborn children of condemned women.

- Dig.* I.12.2 (Paulus, *lib. sing. de officio praefecti urbi*). *Epistula*, no addressee given, on cases concerning *argentarii*.
- Dig.* I.16.10.1 (Ulpianus, *lib. X de officio proconsulis*). To Calpurnius Rufus (*PIR*² C 311/313), proconsul of Achaea, on permission for *legatus* to leave province.
- **Dig.* XXII.5.3.1 (Callistratus, *lib. IV de cognitionibus*). To Vibius Varus [*PIR*¹ V 405], *legatus* of Cilicia, on examination of witnesses.
- **Dig.* XXII.5.3.2 (Callistratus, *lib. IV de cognitionibus*). To Valerius Verus, no office given, on examination of witnesses.
- **Dig.* XXII.5.3.3 (Callistratus, *lib. IV de cognitionibus*). To Iunius Rufus (*PIR*² I 809), proconsul of Macedonia, on examination of witnesses.
- **Dig.* XXII.5.3.4 (Callistratus, *lib. IV de cognitionibus*). To Gabinius (Gavius?) Maximus [? *PIR*² G 104], no office given, on examination of witnesses.
- **Dig.* XXVII.1.15.17 (Modestinus, *lib. VI excusationum*). To Vitrasius Pollio, *legatus* of Lugdunensis, on liability to act as *tutor*.
- Dig.* XXVIII.3.6.7 (Ulpianus, *lib. X ad Sabinum*). *Epistula* to ‘Pomponius’ (Pompeius) Falco [*PIR*² P 602], no office given, on property of deceased soldiers.
- **Dig.* XXIX.5.1.28 (Ulpianus, *lib. L ad edictum*). No addressee given. On obligation of slaves to protect *dominus*.
- Dig.* XXXVII.9.1.14 (Ulpianus, *lib. XLI ad edictum*). To Claudius Proculus [*PIR*² C 978-79], *praetor*, on status of newborn children.
- Dig.* XXXVII.9.8 (Paulus, *lib. I de adulteriis*). To Calpurnius Flaccus, no office given, on procedure in adultery case.
- **Dig.* XXXVII.10.3.5 (Ulpianus, *lib. XLI ad edictum*). No addressee given. On representation of *pupilli* in court.
- Dig.* XXXVIII.2.22 (Marcianus, *lib. I institutionum*). To Flavius Aper [*PIR*² F 208], no office given. Status of man freed by *filius familiae*.
- (*Dig.* XXXIX.4.4.1 (Paulus, *lib. LII ad edictum*). To governors (*praesides*). On protection of official property from *publicani*. *Epistulae?* *Mandata?*).
- Dig.* XL.12.43 (Pomponius, *lib. III senatus consultorum*). No addressee given. On inheritance by freedmen.
- **Dig.* XLII.1.33 (Callistratus, *lib. V cognitionum*). No addressee given. To office-holder exercising judgment. Passing on *libellus* claiming conspiracy in case.
- Dig.* XLVIII.3.6 *pr.* (Marcianus, *lib. II de iudiciis publicis*). To Iulius Secundus [*PIR*² I 558/561], no office given. On treatment of prisoners.
- Dig.* XLVIII.3.12 *pr.* (Callistratus, *lib. V de cognitionibus*). a) To Statilius Secundus, *legatus*, and b) to Salvius [*PIR*² S 123/136/152?], *legatus* of Aquitania. On military *custodiae*.
- Dig.* XLVIII.5.6.2 (Papinianus, *lib. I de adulteriis*). To Rosianus Geminus [*PIR*² P 938] on liability of *filius familiae* under adultery law.
- *(*Dig.* XLVIII.8.4.2 (Ulpianus, *lib. VII de officio proconsulis*). No addressee given. On penalties for castration. *Epistula?*).
- (*Dig.* XLVIII.8.5 (Paulus, *lib. De officio proconsulis*). *Constitutio divi Hadriani ad Ninium Hastam* [*PIR*² N 101]. On penalties for castration.
- *(*Dig.* XLVIII.15.6 *pr.* (Callistratus, *lib. VI de cognitionibus*). No addressee given. On *plagiarii*. *Epistula?*).

- **Dig.* XLVIII.18.1*pr.*-1 (Ulpianus, *lib. VIII de officio proconsulis*). *Epistula* to Sennius Sabinus, no office given. On torture of slave witnesses.
- Dig.* XLVIII.18.1.2 (Ulpianus, *lib. VIII de officio proconsulis*). To Claudius Quartinus [*PIR*² C 990], no office given. On torture of slave witnesses.
- **Dig.* XLVIII.18.1.22 (Ulpianus, *lib. VIII de officio proconsulis*). To Calpurnius Celerianus, no office given. On torture of named slave.
- **Dig.* XLVIII.20.6 (Ulpianus, *lib. X de officio proconsulis*). To ‘Aquilius’ Bradua [M. Atilius Appius Bradua, *PIR*² A 1298], no office given. On *pannicularia*.
- **Dig.* XLVIII.20.7.3 (Paulus, *lib. sing. de portionibus quae liberis damnatorum conceduntur*). No addressee given. Concession of property to children of named *damnatus*.
- **Dig.* XLIX.14.2.1 (Callistratus, *lib. I de iure fisci*). To Flavius Arrianus [*PIR*² F 219], no office given. On property of *fiscus*.
- Dig.* XLIX.14.3.9 (Callistratus, *lib. III de iure fisci*). To Flavius Proculus, no office given. Manumission and claims of *fiscus*.
- FV* 223 (Ulpianus, *de officio praetoris tutelaris*). To Claudius Saturninus [*PIR*² C 1012], *legatus* of Belgica. On exception to *excusatio* from *tutela*.
- FV* 235 (Ulpianus, *de officio praetoris tutelaris*). *Epistula* to Claudius Iulianus, *Praefectus Annonae*. On exemption of *urbici pistorum* from *tutela*.
- Gaius, *Inst.* III.121-2. *Epistula*. No addressee given. On *fideiussores*.
- ILS* 5947a. Reference to letter to proconsul of Macedonia, Q. Gellius Sentius Augurinus [*PIR*² G 135], on boundary-dispute between Lamia and Hypata.