The *Decreta* and *Imperiales Sententiae* of Julius Paulus: Law and Justice in the Judicial Decisions of Septimius Severus

Elsemieke Daalder

1 Introduction: The *Decreta* and *Imperiales Sententiae* of Paul

At the end of his description of the reign of Septimius Severus (193–211 CE), the Roman senator and historiographer Cassius Dio recounts the daily routine of the emperor and describes how he managed the affairs of state in peacetime. He mentions that Severus used to spend a considerable part of his day hearing cases and that he did so most excellently:

The following is the manner of life that Severus followed in time of peace. He was sure to be doing something before dawn, and afterwards he would take a walk, telling and hearing of the interests of the empire. Then he would hold court, unless there were some great festival. Moreover, he used to do this most excellently; for he allowed the litigants plenty of time and he gave us, his advisers, full liberty to speak. He used to hear cases until noon;¹

Dio, *Hist.* 76(77).17.1–2

Severus' conduct was nothing out of the ordinary: it has been accepted generally that the administration of justice was one of the most important tasks of Roman emperors.² The administration of justice created an important instance

1 (...) ἐχρήτο δὲ ὁ Σεουήρος καταστάσει τοῦ βίου εἰρήνης οὐσης τοιαύτῃ. ἔπραττε τι πάντως νυκτὸς ὑπὸ τὸν ὄρθρον, καὶ μετὰ τοῦτ' ἐβάδιζε καὶ λέγων καὶ ἀκούων τὰ τῇ ἀρχῇ πρόσφορα· εἴτ' ἐδίκαζε, χωρὶς εἰ μὴ τις ἐορτὴ μεγάλη εἴη. καὶ μέντοι καὶ ἄριστα αὐτὸ ἔπραττε· καὶ γὰρ τοῖς δικαζομένοις ὕδωρ ἱκανὸν ἐνέχει, καὶ ἡμῖν τοῖς συνδικάζουσιν αὐτῷ παρρησίαν πολλὴν ἐδίδου. ἔκρινε δὲ μέχρι μεσημβρίας, (...). All translations of Dio's *Historia Romana* are derived from the LCL translation by E. Cary & H.B. Foster (Cambridge (MA) 1914).

2 See for example F. Millar, *The Emperor in the Roman World* (London 1992), 528; R. Färber, *Römische Gerichtsorte. Räumliche Dynamiken von Jurisdiktion im Imperium Romanum* (Munich 2014), 67; K. Tuori, *The Emperor of Law. The Emergence of Roman Imperial Adjudication* (Oxford 2016), 159 and J.-P. Coriat, *L'empereur juge et son tribunal à la fin du principat*:

of close contact between the ruler and his subjects and offered the emperor ample opportunity to present himself as their benevolent and just ruler, who showed a keen interest in the (sometimes petty) problems and concerns of regular citizens.³ Accordingly, the way an emperor dealt with the administration of justice was a substantial aspect of his public image and the general perception of his reign.⁴ At the same time the administration of justice gave the emperor a stage to communicate his power and more in particular assert his position as the ultimate source of law and justice within the Roman legal system.⁵ He was the final and sole authority on questions of the content and meaning of the law and on how it should be applied in a specific case.

Most of our information on imperial court cases originates from literary descriptions similar to Dio's description and has a rather anecdotal character. However, in the case of Septimius Severus we have another source available. Scattered throughout the Digest are fragments from two remarkable works by the Roman lawyer Paul, which contain reports of judicial decisions taken by the emperor Septimius Severus.⁶ The works were originally entitled 'Three Books of Imperial Judgments' (*Decretorum Libri Tres*, hereafter referred to as 'the *Decreta*') and 'Six Books of Imperial Decisions made in Judicial Proceedings' (*Imperialium Sententiarum in Cognitionibus Prolatarum Libri Sex*, hereafter referred to as 'the *Imperiales Sententiae*').⁷ Only 38 fragments have been excerpted into

un essai de synthèse', in: R. Haensch (ed.), *Recht haben und Recht bekommen im Imperium Romanum* (Warsaw 2016), 41.

3 Millar 1992, op. cit. (n. 2), 229, Tuori 2016, op. cit. (n. 2), 246 and Coriat 2016, op. cit. (n. 2), 41. Also L. Bablitz, *Actors and Audience in the Roman Courtroom* (London 2007), 35.

4 Millar 1992, op. cit. (n. 2), 528–529; Färber 2014, op. cit. (n. 2), 67; Tuori 2016, op. cit. (n. 2), 127.

5 Tuori 2016, op. cit. (n. 2), 291 and Coriat 2016, op. cit. (n. 2), 41. Also B. Stolte, 'Jurisdiction and representation of power, or, the emperor on circuit', in: L. de Blois (ed.), *The Representation and Perception of Roman Imperial Power. Proceedings of the Third Workshop of the International Network Impact of Empire (Roman Empire, c. 200 B.C.–A.D. 476)*, Netherlands Institute in Rome, March 20–23, 2002 (Amsterdam 2003), 261–268: 263 and F. De Angelis, 'The emperor's justice and its spaces in Rome and Italy', in: idem, *Spaces of Justice in the Roman World* (Leiden, Boston 2010), 137.

6 See for this dating for example: O. Lenel, *Palingenesia iuris civilis* (Leipzig 1889), I.959; H. Fitting, *Alter und Folge der Schriften römischer Juristen von Hadrian bis Alexander* (Halle a. S. 1908, 2nd edition), 93; P. Krüger, *Geschichte der Quellen und Litteratur des römischen Rechts* (Munich 1912), 236; C. Sanfilippo, *Pauli Decretorum Libri Tres* (Milan 1938), 8.

7 Both works are listed in the *Index Florentinus*: XXV.10 and 15. For a long time the last published monograph on both works was Sanfilippo 1938, op. cit. (n. 6). See, however, recently E.S. Daalder, *De rechtspraakverzamelingen van Julius Paulus. Recht en rechtvaardigheid in de rechterlijke uitspraken van Septimius Severus* (The Hague 2018).

the Digest. Since at least some of the cases were treated in both works,⁸ there has been an extensive scholarly debate about their relationship.⁹ Some authors contend that Paul compiled and published two different collections of imperial *decreta* with two different titles, while others argue that the two works available to the compilers of the Digest were excerpts of one, otherwise unknown, Pauline original.¹⁰ Modern scholarship has generally accepted the second view.

Eight of the texts transmitted in the Digest are not very instructive, since they probably have been heavily edited by Justinian's compilers and do not mention the proceedings or the imperial judgment at all.¹¹ The other 30 texts, however, contain more or less elaborate descriptions of 29 different court cases.¹² Since Paul served as one of Severus' legal councilors during the imperial judicial hearings, he had first-hand knowledge of the proceedings in Severus' court, explaining the high level of detail of many of his descriptions.¹³ Not only does he state the real names of the litigants, the facts and the imperial judgment, but Paul also often elaborates on the proceedings and sometimes even mentions the deliberations between the emperor and his advisory council (*consilium*) afterwards. His reports therefore provide us with a unique insight in the imperial court proceedings and the judicial decision making-process.

- 8 Dig. 28.5.93(92) (*Paulus imperialium sententiarum in cognitionibus prolatarum ex libris sex primo seu decretorum libro secundo*) and Dig. 36.1.83(81) (*Paulus imperialium sententiarum in cognitionibus prolatarum ex libris vi libro primo seu decretorum libro ii*). One case has been incorporated in two different titles of the Digest, the *leges geminatae* Dig. 10.2.41 and Dig. 37.14.24. On these two texts, see M. Peachin, 'The case of the heiress Camilia Pia', *Harvard Studies in Classical Philology* 96 (1994), 301–341.
- 9 See for the most recent overview of this debate Daalder 2018, op. cit. (n. 7), 104–140.
- 10 The first theory goes back to Friedrich Bluhme, F. Bluhme, 'Die Ordnung der Fragmente in den Pandectentiteln. Ein Beitrag zur Entstehungsgeschichte der Pandecten', *Zeitschrift für Geschichtliche Rechtswissenschaft* 4 (1820), 313 n. 30. The second view was first put forward by Fritz Schulz, F. Schulz, *History of Roman Legal Science* (Oxford 1946), 154 and 340 with additions and amendments in F. Schulz, *Geschichte der römischen Rechtswissenschaft* (Weimar 1961), 181–183.
- 11 Dig. 4.4.38.1; 20.5.13; 22.1.16 *pr.*; 35.1.113; 46.1.68.2; 47.2.88(87); 50.2.9 *pr.* and 1.
- 12 Four of these texts only contain the imperial judgment: Dig. 16.2.24; 44.7.33; 46.1.68 *pr.*; 48.19.40. The others texts also give a description of the facts and/or court proceedings: Dig. 4.4.38 *pr.*; 10.2.41; 14.5.8; 22.1.16.1; 26.5.28; 26.7.53; 28.5.93(92); 29.2.97; 32.27 *pr.*; 32.27.1; 32.27.2; 32.97; 36.1.76(74) *pr.*; 36.1.76(74).1; 36.1.83(81); 37.14.24; 40.1.10; 40.5.38; 46.1.68.1; 48.18.20; 49.14.47 *pr.*; 49.14.47.1; 49.14.48 *pr.*; 49.14.48.1; 49.14.50; 50.16.240.
- 13 On Paul's career most recently C.A. Maschi, 'La conclusione della giurisprudenza classica all'età dei Severi. Iulius Paulus', *Aufstieg und Niedergang der römischen Welt* 11.15 (1976), 667–707; H.T. Klami, 'Iulius Paulus: comments on a Roman lawyer's career in the III century', in: V. Giuffrè (ed.), *Sodalitas. Scritti in onore di Antonio Guarino* IV (Naples 1984–1985), 1829–1841 and D. Liebs, *Hofjuristen der römischen Kaiser bis Justinian* (Munich 2010), 55 ff.

It has generally been contended that Paul published his collection of imperial judgments for the benefit of the legal practice. Modern scholars argue that since imperial judicial decisions had force of law (e.g. Dig. 1.4.1.1 and Gai. *Inst.* 1.5), either Paul or Severus himself wanted them to be published for the benefit of the general legal public so that litigants, lawyers and judges could cite and/or apply these imperial decisions in other procedures in the lower courts.¹⁴ In this paper I will argue that the motives behind the publication of Paul's collection were of a different kind. From his reports emerges a clear picture of Septimius Severus as a conscientious and benevolent judge, which fits strikingly well within the traditional image of the good 'emperor judge' that can be found in various literary sources, such as Tacitus, Pliny the Younger, Suetonius, Cassius Dio and Herodian.¹⁵ Paul's collection of imperial judgments should therefore not be perceived as a traditional legal publication, but as a unique piece of legal writing with a specific political purpose.

2 The Imperial Administration of Justice

The imperial competence to adjudicate cases goes back to the age of Augustus. Its origins are much disputed, but will not be dealt with in this paper since the jurisdictional powers of the emperor were already well established at the time of Severus' reign.¹⁶ From the second century onwards, the emperor had jurisdiction in both criminal and civil cases and could act as a judge of first instance or accept appeals against sentences of the lower courts. The procedural hearing at the imperial court took place in the form of a *cognitio extra ordinem* and was therefore not governed by the traditional Roman law of civil procedure, as codified in the *leges Iuliae iudicariae*. In principle, this meant that the emperor could shape the procedure at his court in any way he saw fit. However, it is probable that the proceedings at the imperial court ideally consisted of the same elements as the procedures in the lower imperial law courts, such as the *praefectus urbi*, the *praefectus annonae*, the *praetor fideicommissarius* and imperial law courts in the provinces.¹⁷ The main actors in the imperial

14 Maschi 1976, op. cit. (n. 13), 677–678; Peachin 1994, op. cit. (n. 8), 333 ff.; M. Rizzi, *Imperator cognoscens decrevit. Profili e contenuti dell'attività giudiziaria imperiale in età classica* (Milan 2012), 133.

15 On the literary '*topos*' of the good emperor judge, see Tuori 2016, op. cit. (n. 2), and see Benoist/ Gangloff in this volume.

16 The most recent contribution to the debate is Tuori 2016, op. cit. (n. 2).

17 Cf. M. Kaser & K. Hackl, *Das römische Zivilprozessrecht* (Munich 1996, 2nd ed.), 448.

courtroom were the emperor, who was usually seated on a tribunal, and the parties and their legal representation.¹⁸ In addition to this, literary sources often explicitly mention the presence of a *consilium*, an advisory board of jurists and notable citizens, assisting the emperor in performing his judicial duties.¹⁹ There exists a general consensus amongst scholars that there was no such thing as 'the' *consilium principis*, i.e. one imperial council with a fixed composition, advising the emperor in all matters of state. Emperors were generally assisted by different *consilia*, which were composed on an *ad hoc* basis depending on the question at hand.²⁰ However, it has been argued that the *consilium* advising the emperor in the performance of his *judicial* duties ('das Gerichtskonsilium') might have consisted of several regular members, who were probably all jurists.²¹ Especially for the reign of Septimius Severus, both legal and papyrological sources do indeed seem to point in this direction,²² suggesting that Paul might have been one of these regular members of the Severan judicial *consilium*.

During the hearing, the emperor was required to give the litigants or their lawyers the opportunity to assert their claims and defenses, plead their case and present legal and factual evidence to substantiate their argument.²³ In addition, he interrogated the parties or even entered into debate with them if he wished to do so.²⁴ After both parties had sufficiently explained their point

- 18 Emperor on a tribunal: Bablitz 2007, op. cit. (n. 3), 37. For the presence of lawyers during the proceedings at the imperial court, see for example Dig. 28.4.3 and SEG 17.759 (= Dmeir-inscription).
- 19 See for example Dio, *Hist.* 60.4.3 (Claudius), Suet., *Nero* 15 (Nero), Dio, *Hist.* 68.2.3 (Nerva) and Dio, *Hist.* 69.7.1–2 (Hadrian). The *Historia Augusta* also mentions the presence of jurists in the *consilia* of Hadrian (*Hist. Aug., Hadr.* 18.1) and Marcus Aurelius (*Hist. Aug., Aur.* 11.10).
- 20 This theory goes back to J.A. Crook, *Consilium principis. Imperial Councils and Counsellors from Augustus to Diocletian* (Cambridge 1955).
- 21 W. Kunkel, 'Nachträge zum RAC, s.v. *Consilium, Consistorium*', *Jahrbuch für Antike und Christentum* 11/12 (1968/1969), 230–248.
- 22 In Dig. 27.1.30 *pr.* Papinian mentions that Septimius Severus and Caracalla provided that the jurists (*iuris periti*), who were '*in consilium principum adsumpti*', should be excused from a tutelage, since they had to be available to the emperor at all times. This suggests that these jurists were not called upon by the emperor on an *ad hoc* basis, but held some kind of permanent position within the imperial council. The Greek equivalent of the expression '*in consilium principum adsumpti*', 'οἱ εἰς τὸ συμβούλειον κεκλημένοι', is also used in P. Oxy. 42, 3019, a report on a court case heard by Severus in the presence of a *consilium* in Egypt on 9 March 200 CE.
- 23 E.g. legal documents such as wills and deeds (Dig. 36.1.76(74) *pr.*; Dig. 46.1.68.1), witness reports (Dig. 22.5.3.3) and copies of imperial enactments (Dig. 36.1.76(74).1).
- 24 Dig. 28.4.3 (Marcus Aurelius debates about a legal matter with the lawyers of both sides);

of view, the emperor withdrew with his *consilium* to deliberate on the case.²⁵ During these deliberations, a conscientious emperor asked the opinion of the members of his *consilium* and listened to what they had to say.²⁶ Their role was, however, in the end purely advisory; the emperor could either side with (one of) their view(s) or choose to take a different view and decide the case according to his own conviction.²⁷

The imperial judgment, which was called a *decretum*, could take different forms. When no previous applicable law existed, the emperor had the power to establish a new legal rule to decide the case. Since he was conceived of as the chief source of law, all his acts—including his judicial decisions—had force of law. In a famous text on the sovereign power of the emperor the Roman jurist Ulpian writes:

A decision given by the emperor has the force of a statute. This is because the populace commits to him and into him its own entire authority and power, doing this by the *lex regia* which is passed with regard to his authority. 1. Therefore, whatever the emperor has determined by a letter or a subscript or has decreed on judicial investigation or has pronounced in an interlocutory matter or has prescribed by an edict is undoubtedly a law. These are what we commonly call *constitutiones* (enactments).²⁸

Dig. 1.4.1 *pr.* and 1: *pr*

When the dispute was governed by existing rules of law, i.e. the *ius civile*, *ius honorarium* or imperial laws, the emperor could choose either to apply these

Dig. 32.97 (Septimius Severus asks one of the parties a (rhetorical?) question); *SEG* 17.759 (Caracalla replies to a plea of inadmissibility of one of the lawyers).

25 That the deliberations between the emperor and his advisers took place behind closed doors becomes clear from Dig. 28.4.3 and Suet., *Nero* 15. Also see Färber 2014, op. cit. (n. 2), 84.

26 E.g. Plin. *Epist.* 4.22.3 (Trajan) and Dio, *Hist.* 76(77).17.1–2 (Septimius Severus). Also see Millar 1992, op. cit. (n. 2), 238.

27 Millar 1992, op. cit. (n. 2), 238.

28 Ulpianus libro primo institutionum. *Pr. Quod principi placuit, legis habet vigorem: utpote cum lege regia, quae de imperio eius lata est, populus ei et in eum omne suum imperium et potestatem conferat.* 1. *Quodcumque igitur imperator per epistulam et subscriptionem statuit vel cognoscens decrevit vel de plano interlocutus est vel edicto praecepit, legem esse constat. Haec sunt quas vulgo constitutiones appellamus.* Cf. Gai. *Inst.* 1.5 and Fronto, *Ad M. Caes.* 1.6.2–3. The basis of all translations of texts from the Digest is the translation by Watson c.s. (A. Watson, *The Digest of Justinian* (Philadelphia 1998)). I have, however, amended his translations at some points in accordance with my own interpretation of the Latin texts.

rules or set aside the law and decide the case on the basis of general legal concepts, such as equity (*aequitas*). This was the emperor's prerogative: as the pinnacle of the Roman legal system he could decide on the equity of the law and, if such an occasion arose, consider it inapplicable in an individual case. In the Roman legal tradition, this principle is expressed by the well-known maxim '*princeps legibus solutus est*', which can be found in the works of Ulpian and Paul:

The emperor is not bound by statutes. And though the empress is bound by them, nevertheless, emperors give the empress the same privileges as they have themselves.²⁹

Dig. 1.3.31

For the emperor to vindicate legacies or *fideicommissa* under an imperfect will is shameless. For it is proper that so great a majesty should observe the laws from which he is deemed to be himself exempt.³⁰

Dig. 32.23

Paul's addition to the maxim is instructive. He argues that although the law did not bind the emperor, it befitted him to live in accordance with it. In other words, even though there were no legal restrictions to the power of the emperor, moral values and traditions dictated at least some restraint in using them.³¹ There are many examples in literary and legal texts of emperors who adhered to this principle. To name just a few: Pliny praises Trajan for his *reverentia legum* ('respect for the law');³² Antoninus Pius answered to a petition that he might be the master of the world (*tou kosmou kurios*), but still abided by the *lex Rhodia de iactu* when it came to disputes concerning the sea;³³ and the *Institutes* of Justinian state that Septimius Severus and Caracalla themselves explicitly mentioned in some of their rescripts that they would live in accor-

29 Ulpianus libro XIII ad legem Iuliam et Papiam. *Princeps legibus solutus est: Augusta autem licet legibus soluta non est, principes tamen eadem illi privilegia tribuunt, quae ipsi habent.*

30 Paulus libro quinto sententiarum. *Ex imperfecto testamento legata vel fideicommissa imperatorem vindicare invecundum est: decet enim tantae maiestati eas servare leges, quibus ipse solutus esse videtur.*

31 Tuori 2016, op. cit. (n. 2), 236. Also see Krüger 1912, op. cit. (n. 6), 101 and M. Peachin, 'Rome the superpower: 96–235 CE', in: D.S. Potter (ed.), *A Companion to the Roman Empire* (Malden (MA) 2006), 147.

32 Plin., *Paneg.* 77.3–4. Also Plin., *Paneg.* 65.1.

33 Dig. 14.2.9.

dance with the laws, even though they were not bound by them.³⁴ The way an emperor dealt with these two aspects of his position, i.e. his unrestricted legal power on the one side and the generally accepted principles of good governance on the other, was an important factor in the way his reign was perceived by his subjects and more in particular, the Roman elite. Striking the right balance between imperial power and the law was especially important in the process of imperial adjudication.

3 The Publication of the *Decreta* and the *Imperiales Sententiae*

Even though the Roman jurists considered the imperial judicial decisions to be a source of law, they never showed great interest in them. They rarely cite imperial *decreta* in their works,³⁵ let alone composed and published collections of imperial judicial decisions.³⁶ In slightly generalizing terms, one can argue that the compilation and publication of collections of imperial legislation was not part of the traditional genre of legal writing during the first two centuries CE. This poses the question as to why Paul decided to compile and publish a collection of judicial decisions of Septimius Severus. As mentioned in the introduction of this paper, modern scholars have generally argued that Paul's collection should be perceived as an effort to make the Severan judgments in general and their legal content in particular accessible to the legal public. Several aspects of this theory are problematic. First of all, even though the Roman jurists mention imperial judicial decisions as one of the sources of Roman law, their legal force remained to be called into question until the age of Justinian.³⁷ This becomes clear from a *constitutio* of Justinian, confirming the legal status of imperial judgments once and for all:

34 Inst. 2.17.8.

35 Coriat's monograph on Severan legislative techniques illustrates this point. He counts only 58 citations of imperial judgments in the works of contemporary jurists (193–235 CE) included in the Digest, see J.-P. Coriat, *Le prince législateur. La technique législative des Sévères et les méthodes de création du droit impérial à la fin du Principat* (Rome 1997), 138. His research shows that the same jurists cited imperial rescripts much more often: 270 times.

36 W.J. Zwalve, 'Decreta Frontiana. Some observations on D. 29,2,99 and the 'law reports' of Titius Aristo', *Tijdschrift voor Rechtsgeschiedenis* 83 (2015), 365–391.

37 Cf. F. von Schwind, *Zur Frage der Publikation im römischen Recht. Mit Ausblicken in das altgriechische und ptolemäische Rechtsgebiet* (Munich 1940), 139 ff. and M. Kaser, 'Zur Problematik der römischen Rechtsquellenlehre', in: idem, *Römische Rechtsquellen und angewandte Juristenmethode* (Vienna 1986), 18.

Emperor Justinian to Demosthenes, Praetorian Prefect. If the imperial majesty has judicially examined a cause and has given a decision in the presence of the parties, then all judges within our empire must take notice that this is the law not only in that particular case but also in all similar causes. 1. (...) 2. Since we have also found it doubted in the ancient laws whether, when the emperor has interpreted a statute, this interpretation should have the force of law, we have both laughed at this foolish subtlety and have deemed it proper to correct it. 3. We therefore decide that every interpretation of laws by the emperor, whether made on petitions, in judicial tribunals, or in any other manner shall be considered valid and unquestioned. For if at the present time it is conceded only to the emperor to make laws, it should be befitting only the imperial power to interpret them.³⁸

Cod. 1.14.12 *pr.*–3

The problematic legal status of the imperial judicial decisions is also reflected in the works of the second- and third-century Roman jurists, who (as mentioned above) rarely mention imperial judgments as a source for a specific legal rule. When referring to imperial law they usually cite another type of imperial legislation, i.e. the *rescripta* of the emperor.³⁹ In a legal context, an imperial rescript was the answer of the emperor to a petition on a question of law posed by a civilian, official or judge.⁴⁰ These legal opinions of the emperor

38 Imperator Justinianus A. Demostheni pp. *Si imperialis maiestas causam cognitionaliter examinerit et partibus cominus constitutis sententiam dixerit, omnes omnino iudices, qui sub nostro imperio sunt, sciant hoc esse legem non solum illi causae, pro qua producta est, sed omnibus similibus.* 1. (...) 2. *Cum igitur et hoc in veteribus legibus invenimus dubitatum, si imperialis sensus legem interpretatus est, an oporteat huiusmodi regiam interpretationem obtinere, eorum quidem vanam scrupulositatem tam risimus quam corrigendam esse censuimus.* 3. *Definimus autem omnem imperatoris legum interpretationem sive in precibus sive in iudiciis sive alio quocumque modo factam ratam et indubitata haberi. Si enim in praesenti leges condere soli imperatori concessum est, et leges interpretari solum dignum imperio esse oportet.* English translation: F.H. Blume (edited by T.G. Kearly), 2nd edition available at <http://www.uwyo.edu/lawlib/blume-justinian/>. Cf. Cod. 1.14.3 (426 CE), on which N. van der Wal, 'Edictum und lex edictalis. Form und Inhalt der Kaisergesetze im spätrömischen Reich', *Revue Internationale des Droits de l'Antiquité* 28 (1981), 292–294.

39 Besides *decreta* and *rescripta* Gaius and Ulpian mention a third type of imperial legislative act, the so-called *edicta* (cf. Gai. *Inst.* 1.5 and Dig. 1.4.1.1), which were imperial ordinances of a more general character. They often dealt with matters of public or criminal law, whereas their impact on private law has been limited, see Millar 1992, op. cit. (n. 2), 253 and Coriat 1997, op. cit. (n. 35), 113 ff.

40 On imperial rescripts in general, see U. Wilcken, 'Zu den Kaiserreskripten', *Hermes* 55 (1920), 1–42; D. Nörr, 'Zur Reskriptenpraxis in der hohen Prinzipatszeit', *Zeitschrift der*

were considered to be authoritative interpretations of the law, which in a sense competed with the traditional *responsa* of the Roman jurists. The similarities between *rescripta* and *responsa* also explain the preference of the Roman legal writers for this type of imperial legislation. Although both *decreta* and *rescripta* were decisions in individual cases, rescripts usually contained a specific answer to an abstract legal question. This meant that rescripts often contained a generally formulated legal rule, which made them easier to apply in similar types of case, whereas imperial judgments on the other hand were often closely connected with the facts of the specific case at hand and with the individual interests of the parties involved in the dispute. The importance of the imperial *rescripta* for legal practice in general and the development of the law in particular cannot be underestimated: fifth and sixth-century codifications of imperial law, such as the *Codex Theodosianus* and the *Codex Justinianus*, consist to a large extent of imperial *rescripta* exclusively.⁴¹ This raises the following question: if Paul intended to make the legislative acts of Septimius Severus known to legal practitioners, why did he decide to publish a work which only contained the judicial decisions of that emperor? Why did he not include other—probably much more relevant—types of imperial legislation, such as rescripts? For this kind of enterprise there even existed a precedent. During the reign of Marcus Aurelius (161–180 CE), another jurist named Papirius Justus had published a collection of imperial enactments, entitled ‘Twenty Books of Constitutions’ (*Constitutionum Libri XX*).⁴² Although the title of this work suggests it consisted of different types of imperial legislation (i.e. rescripts, judgments and edicts), the 43 surviving fragments in the Digest exclusively contain rescripts.⁴³

Secondly, if making Severus’ judicial decisions known to legal practitioners was the sole intention of Paul’s work, one would expect the collection to

Savigny-Stiftung für Rechtsgeschichte. *Romanistische Abteilung* 98 (1981), 1–46; T. Honoré, *Emperors and Lawyers* (Oxford 1994, 2nd edition) and A.J.B. Sirks, ‘Making a request to the emperor: rescripts in the Roman Empire’, in: L. de Blois (ed.), *Administration, Prosopography and Appointment Policies in the Roman Empire. Proceedings of the First Workshop of the International Network Impact of Empire (Roman Empire, 27 B.C.–A.D. 406)* (Amsterdam 2001), 121–135. Also Millar 1992, op. cit. (n. 2), 240 ff. and Tuori 2016, op. cit. (n. 2), 253–267.

41 L. Wenger, *Die Quellen des römischen Rechts* (Vienna 1953), 430.

42 On this work, see Schulz 1961, op. cit. (n. 10), 179–180. He argues that its author is identical with M. Aurelius Papirius Dionysius, who had a successful career in the imperial bureaucracy during the reigns of Marcus Aurelius and Commodus: *CIL* 10.662 (= *ILS* 1455) and *IG* 14.1072 (= *CIG* 5895).

43 Lenel 1889, op. cit. (n. 6), 1.947 ff. For this reason, Schulz 1961, op. cit. (n. 10), 179–180 even argues that the collection consisted exclusively of *rescripta*, even though the title of the work suggests otherwise.

consist mainly of decisions which either gave an authoritative interpretation of the law or even contained a new legal rule. Like rescripts, these types of decision actually could be applied in other cases and therefore would be useful to legal practitioners, such as lawyers and judges. This turns out not to be the case. A closer analysis of the cases included in the *Decreta* and the *Imperiales Sententiae* shows that Paul's collection also included decisions of a completely different nature. One can distinguish four basic types of judgment:

1. judgments in which the emperor applies existing law;⁴⁴
2. judgments in which the emperor elucidates an unclear point of law or even creates a new rule;⁴⁵
3. judgments in which the emperor construes specific legal documents, such as wills, codicils and contracts;⁴⁶
4. judgments in which the emperor leaves aside the rules of existing law and decides the case on the basis of general legal concepts, such as *aequitas* ('equity'), *humanitas* ('humanity') or *pietas* ('piety').⁴⁷ These decisions usually concern so-called 'hard cases', cases in which strict application of the law would lead to an undesirable or unjust outcome.

One can surely argue that the first two types of judgment (category 1 and 2) held a certain value for the general legal practice. Both types of decision usually had a general character and were therefore at least to some extent suitable for application to other disputes: the application of an existing law or legal rule in a certain case could be regarded as an authoritative interpretation of the scope of that law or rule, while it goes without saying that the decisions by which the emperor created a new rule of law were applicable in other cases. But they only make up about half of the collection. The decisions belonging to the other two categories, i.e. interpretations of legal documents (3) and decisions based on general legal concepts (4), are a different story. These types of judgment usually had a highly individual character and consequently, they were ill-suited for application in other cases. It is hard to see how decisions on the interpretation of specific legal texts or decisions tailored to the circumstances and interests of an individual litigant could be of any use in other disputes, since these judgments are completely subordinate to the characteristics of the specific document or the particular case at hand. On the other hand, they are

44 Dig. 10.2.41 = 37.14.24; 36.1.76(74) *pr.*; 40.1.10; 46.1.68.1; 48.18.20; 48.19.40; 49.14.47.1; 49.14.48 *pr.*; 49.14.48.1.

45 Dig. 14.5.8; 16.2.24; 22.1.16.1; 26.5.28; 26.7.53; 44.7.33; 46.1.68 *pr.*; 49.14.47 *pr.*

46 Dig. 32.27 *pr.*; 32.27.1; 32.27.2; 32.97; 36.1.76(74).1; 36.1.83(81); 50.16.240.

47 Dig. 4.4.38 *pr.*; 28.5.93(92); 29.2.97; 40.5.38; 49.14.50. Also Dig. 32.27.1 and Dig. 36.1.76(74).1.

a very effective means to represent the character of Severus as a judge and as a ruler. Three examples from the *Decreta* and the *Imperiales Sententiae* might serve to illustrate this point.

In Dig. 28.5.93(92) Paul describes the case of a woman named Pactumeia Magna.⁴⁸ She probably was the daughter of the distinguished *eques* Titus Pactumeius Magnus, who served as *praefectus Aegypti* from 176 until 179 CE.⁴⁹ Her freedman Pactumeius Androstenes had initially named her as his sole heir in his will. When the rumor spread that Commodus had murdered her and her family, Androstenes revoked his first will and named a certain Novius Rufus as his heir in a second will.⁵⁰ The freedman died soon afterwards. By a twist of fate, his inheritance ended up in the hands of the *fiscus*. Several years later, Pactumeia Magna resurfaced and, trying to recover what was once hers, she petitioned the emperor for the restitution of Androstenes' inheritance. Even though her claim had no foundation in law since the first will had been revoked lawfully,⁵¹ Severus still ruled in her favor. He ordered the *fiscus* to hand Androstenes' former properties over to her, but at the same time compelled her to pay out the legacies (*legata*) which had been included in the second will. The judgment of Dig. 28.5.93(92) is an example of tailor-made decision, which did not only benefit Pactumeia Magna, but also made sure that the *legatarii* of the second will were not left empty handed.

Paul also mentions a case concerning the will of a man named Pompeius Hermippus, an *eques* from Ephesus, Dig. 32.27.1.⁵² In his will Hermippus had

48 On this text, see Sanfilippo 1938, op. cit. (n. 6), 67–71 and Rizzi 2012, op. cit. (n. 14), 349–356. Also F. Schulz, 'Der Irrtum im Beweggrund bei der testamentarischen Verfügung', in: E. Genzmer et al. (ed.), *Gedächtnisschrift für Emil Seckel* (Berlin 1927), 96–100, H.J. Wieling, *Testamentsauslegung im römischen Recht* (Munich 1972), 189–190; C. Paulus, *Die Idee der postmortalen Persönlichkeit im römischen Testamentsrecht* (Berlin 1992), 178–181 and U. Babusiaux, *Wege zur Rechtsgeschichte: Römisches Erbrecht* (Cologne 2015), 318–320.

49 On Pactumeius Magnus, see *PIR*² P 39, A. Stein, *Die Präfecten von Ägypten in der römischen Kaiserzeit* (Bern 1950), 98 and M. Christol, 'Le préfet d'Egypte Titus Pactumeius Magnus et la diffusion de la cité romaine', *Revue Historique de Droit Français et Étranger* 71 (1993), 405–410.

50 The Novius Rufus from Dig. 28.5.93(92) is often identified as Lucius Novius Rufus, the governor of Hispania Tarraconensis from 192 until 197 and a supporter of Severus' rival to the throne Clodius Albinus. See for example Liebs 2010, op. cit. (n. 13), 53. On his life and career see *PIR*² N 188–189.

51 Gai. *Inst.* 2.144 and Dig. 38.2.1.2.

52 On Pompeius Hermippus and his son, see *PIR*² P 614–615 and Liebs 2010, op. cit. (n. 13), 53. See on this text in general Sanfilippo 1938, op. cit. (n. 6), 75–77 and Rizzi 2012, op. cit. (n. 14), 175–179; M. Meinhart, 'D. 38.17.1.6. Ein Zeugnis für 'humana interpretatio'', *Tijdschrift voor Rechtsgeschiedenis* 33 (1965), 256–257; F.B.J. Wubbe, 'Benigna interpretatio als Entscheidungskriterium', in: F.B.J. Wubbe & P. Pichonnaz (ed.), *Ius vigilantibus scriptum:*

appointed his son, also called Hermippus, as heir to three quarters of his estate and his daughter Titiana to a quarter. He also ordered that if the son died without children, an additional piece of land should also be transferred to his daughter Titiana. After that he had amended his will by means of a so-called *codicil* stating that his daughter should only be given certain pieces of land instead of the quarter of the inheritance he had devised for her originally. Hermippus died and soon after his son was tried for high treason and executed. His property was forfeited to the *fiscus*. At this point, Titiana claimed the other piece of land, arguing that the *codicil* made no mention of striking the arrangement with regard to the childless death of her brother. The *fiscus* however argued that the testator had also intended to deprive his daughter of her claim to that possession. It all came down to the interpretation of the wording of the *codicil*, which Paul unfortunately does not cite in his report. He does, however, mention that he himself was of the opinion that Hermippus also had intended to strike the childless death arrangement. In the end, Septimius Severus adopted a more 'humane' interpretation of the *codicil* (*humanius interpretari*) and decided in favor of Titiana.

The third case, Dig. 40.5.38, concerns the testamentary manumission of an *alumna*.⁵³ A certain testator had provided for the manumission of his *alumna* in his will and had also bequeathed some possessions to her. Unfortunately, he suffered an untimely death and was not able to complete his will, which meant that the inheritance was administered as if the testator had died without a will. The question was raised whether or not the girl had been manumitted lawfully. Since the will had not been completed, it was, according to the rules of Roman private law, null and void.⁵⁴ This meant that the manumission of the girl was also invalid.⁵⁵ The emperor, however, decided otherwise. He based his decision on *pietas*, arguing that dutiful sons of the testator (*pii filii*) were obliged to set

ausgewählte Schriften (Freiburg 2003), 432–435; E.J. Champlin, 'Miscellanea testamentaria', *Zeitschrift für Papyrologie und Epigraphik* 69 (1987), 200–202; A. Palma, *Humanior interpretatio. "Humanitas" nell' interpretazione e nella normazione da Adriano ai Severi* (Turin 1992), 93–95 and T. Kleiter, *Entscheidungskorrekturen mit unbestimmter Wertung durch die klassische römische Jurisprudenz* (Munich 2010), 71–73.

53 On this case, see Sanfilippo 1938, op. cit. (n. 6), 103–105 and Rizzi 2012, op. cit. (n. 14), 195–205. Also G. Negri, *La clausola codicillare nel testamento inofficioso* (Milan 1975), 34–39; D. Johnston, *The Roman Law of Trusts* (Oxford 1988), 130–131 and W. Litewski, 'Zwischenbescheide in römischen Prozess', *Revue Internationale des Droits de l'Antiquité* 44 (1997), 211–213.

54 Dig. 28.1.29 *pr.*

55 W.W. Buckland, *The Roman Law of Slavery* (Cambridge 1970 [reprint of the 1908 edition]), 470.

the girl free, since their father had loved her so dearly. And, he added in a second judgment, because she had been freed validly (*recte manumissa*), the girl should be able to claim the possessions that the testator had bequeathed to her as well. This decision is an obvious example of the application of the principle of *favor libertatis*, i.e. the tendency to render judgments in favor of manumission in doubtful or hard cases, in combination with the *voluntas testatoris*, the intention of the testator.

Because of their close connection with the specific circumstances of each case, all the decisions mentioned above are ill-suited for application by lower judges in other cases. Indeed, according to a text of Ulpian the Roman jurists themselves did not regard this type of imperial judicial decision as legally binding:

Plainly, some of these [i.e. imperial enactments] are purely *ad hominem* and are not followed as setting precedents. For only the specific individual is covered by an indulgence granted by the emperor to someone because of his virtues or by a penalty specially imposed or by a benefit granted in an unprecedented way.⁵⁶

Dig. 1.4.1.2

The fact that Paul included a fair number of these *personales constitutiones* in his collection cannot be reconciled easily with the assumption that he intended to publish his compilation of judgments of Septimius Severus for the benefit of general legal practice. Their inclusion in Paul's work suggests that the jurist had different motives for its publication.

4 Septimius Severus: The Ideal Emperor Judge

To understand the intentions behind the publication of Paul's collection of judicial decisions, one has to pay attention to the context in which the work was created. Second- and third-century jurists like Paul, Ulpian and Papinian held a special position within the Roman legal system. On the one hand they were still a part of the normal legal practice: they gave *responsa* to clients and officials seeking legal advice, wrote extensive commentaries on Roman private law and taught students. On the other hand they also often held influential

⁵⁶ Ulpianus libro primo institutionum. *Plane ex his quaedam sunt personales nec ad exemplum trahuntur: nam quae princeps alicui ob merita indulsit vel si quam poenam irrogavit vel si cui sine exemplo subvenit, personam non egreditur.*

positions within the imperial bureaucracy and were a part of the advisory *consilia* of high officials such as the *praefectus praetorio* and of the emperor himself. Their activities within the imperial administration have demonstrably influenced the themes and contents of their works.⁵⁷ The *Decreta* and *Imperiales Sententiae* are an example of this influence. The detailed case reports of Paul did not just make the imperial judgments known to the general public, they offered readers an insight into the decision-making process at the top of the imperial bureaucracy with Septimius Severus at its center. From this point of view, the *Decreta* and the *Imperiales Sententiae* are not simply collections of random imperial judgments, but should be regarded chiefly as a portrait of the emperor Septimius Severus at work. The picture of Severus painted by Paul is a very favorable one and fits well within the traditional image of the good 'emperor judge'.

Paul's case reports present us with a wide variety of litigants. Men as well as women were given the opportunity to bring their case before the emperor and although most of the cases concern senators or *equites* (either from Rome or the provinces), some of them do deal with the claims and interests of less influential persons, such as minors, freedman and even slaves. This great diversity of litigants renders an image of Severus as an accessible judge to all of his subjects, whose attention was not limited to spectacular criminal cases and other sensational disputes of the elite.⁵⁸ According to Paul's descriptions, Severus' conduct was exemplary inside and outside the courtroom. During the court hearing he allowed litigants to present their case and to substantiate their claims with all sorts of evidence.⁵⁹ At times he intervened to question the parties himself.⁶⁰ The existence of the case reports of Paul attests to the fact that a *consilium* of both lawyers and notable citizens was present at the hearing and was involved in the decision making-process.⁶¹

The description of Severus' relationship with his *consilium* is an important feature of Paul's work. From literary sources it becomes clear that a good emperor should not just have a *consilium* present when he administered jus-

57 For example, Paul and Ulpian wrote several works on the legal position and competences of magistrates and imperial officials. On these works, see Schulz 1961, op. cit. (n. 10), 309 ff.

58 On the prerequisite of accessibility, see Plin., *Paneg.* 80.3 and Dio, *Hist.* 69.6.3. Also Stolte 2003, op. cit. (n. 5), 262 and Tuori 2016, op. cit. (n. 2), 136, 159, 164 and 231.

59 Dig. 10.2.41 (= 37.14.24); 14.5.8; 26.5.28; 26.7.53; 32.97; 36.1.76(74).1; 48.18.20; 49.14.47 *pr.*; 49.14.48 *pr.*; 49.14.48.1; 49.14.50. Cf. Dio, *Hist.* 76(77).17.1–2.

60 Dig. 32.97.

61 In his reports, Paul mentions the presence of Papinian, Tryphonin and Messius at the deliberations (cf. Dig. 29.2.97; 49.14.50). See for the presence of notable citizens Dio, *Hist.* 75(76).16.4; 76(77).17.1.

tice, but was also supposed to actively consult his advisors and let them speak freely. This expectation is voiced clearly in the speech of Maecenas, which is part of Cassius Dio's description of the reign of Augustus:

Grant to every one who wishes to offer you advice, on any matter whatever, the right to speak freely and without fear of the consequences; for if you are pleased with what he says you will be greatly benefited, and if you are not convinced it will do you no harm.⁶²

Dio, *Hist.* 52.33.6

Seven texts of the *Decreta* and the *Imperiales Sententiae* contain a description of the deliberations between Severus and his *consilium*.⁶³ Paul usually starts his narrative with the opinion or opinions of the jurists in the *consilium*, suggesting that Severus allowed his advisers to open the discussion by giving their opinion before he himself expressed his point of view.⁶⁴ The legal debate between the emperor and his advisers is often of a high quality: the emperor and his jurists do not shrink from raising and discussing highly technical legal matters. The fact that the emperor could participate in this type of debate shows his legal knowledge and expertise.⁶⁵

As has been mentioned above, the emperor and his *consilium* did not decide on the case by a majority vote. The emperor could follow the advice of his counselors or come up with a decision on his own. The case reports in the *Decreta* and the *Imperiales Sententiae* reflect this practice: some of Severus' decisions are consistent with the views of his *consilium*, while other judgments are based on Severus' own opinion.⁶⁶ When the emperor deviates from the opinions of his jurists—and more in general, from the existing rules of the *ius civile*—, he usually does so to protect one of the litigants against the unjust consequences of the strict application of the law, the *rigor iuris*. These litigants are often

62 τήν τε παρρησίαν παντὶ τῷ βουλευμένῳ καὶ ὅτι οὖν συμβουλευσαί σοι μετὰ ἀδείας νέμε· ἂν τε γὰρ ἄρεσθῆς τοῖς λεχθεῖσιν ὑπ' αὐτοῦ, πολλὰ ὠφελήσῃ, ἂν τε καὶ μὴ πεισθῆς, οὐδὲν βλαβήσῃ.

63 Dig. 4.4.38 *pr.*; 14.5.8; 29.2.97; 32.27.1; 36.1.76(74).1; 49.14.50; 50.16.240. On the debate in the Severan *consilium*, see Honoré 1994, *op. cit.* (n. 39), 20–25 and A. Lovato, 'Giulio Paolo e il *decretum principis*', in: *Studi in onore di Remo Martini* II (Milan 2008–2009), 495–508.

64 Dig. 4.4.38 *pr.*; 14.5.8; 29.2.97; 32.27.1; 49.14.50.

65 The *Historia Augusta* mentions that Severus studied law with the famous jurist Quintus Cervidius Scaevola (*Hist. Aug., Car.* 8.2), which, if true, would explain his considerable knowledge of the law.

66 Severus follows his advisers in Dig. 29.2.97, Dig. 49.14.50 (2nd decision), Dig. 50.16.240 and (according to Honoré 1994, *op. cit.* (n. 39), 23) Dig. 14.5.8. He decides the case on his own in Dig. 4.4.38 *pr.*, Dig. 32.27.1, Dig. 36.1.76(74).1 and Dig. 49.14.50 (1st decision).

socially disadvantaged or vulnerable persons who deserve the protection of the emperor, such as women, minors and slaves.⁶⁷ This interest in the concerns and (legal) problems of the less influential members of society can also be found in the legal pronouncements of emperors such as Hadrian, Antoninus Pius and Marcus Aurelius and thus strengthens the association between Severus and these 'good' emperors.⁶⁸ These decisions therefore depict Severus as a humane and benevolent ruler, protecting the interests of his subjects against the consequences of an unjust application of the law, and present him as the ultimate dispenser of justice in the Roman Empire. At the same time, Paul is careful not to create the image of an emperor who disregards the law all together. In a considerable number of decisions, Severus acts like a regular judge and adheres to the rules of existing law. Notable are the judgments in which Severus explicitly applies the rules of the *ius civile* in disputes concerning the imperial treasury (*fiscus*), often to the detriment of the latter.⁶⁹ The refusal to award a special legal position to the *fiscus* is—of course—characteristic of a good emperor judge.⁷⁰

From Paul's use of the word *imperator*, which Roman legal writers use to refer to a reigning emperor, one can deduce that his work was published while Severus was still alive.⁷¹ The portrait of the emperor as painted by Paul must have pleased Severus.⁷² After a time of relative peace and prosperity under the rule of the so-called 'adoptive emperors',⁷³ Severus had come to power in 193 CE by means of two bloody civil wars, in which many Roman lives were lost. Tales

67 See for example Dig. 4.4.38 *pr.* (female minor), Dig. 28.5.93(92) (woman), Dig. 32.27.1 (woman), Dig. 36.1.76(74).1 (female minor) and Dig. 40.5.38 (female slave/*alumna*).

68 E.g. on the treatment of slaves: Dig. 1.6.2 (Hadrian), Dig. 1.6.2/Gai. *Inst.* 1.53 (Antoninus Pius) and Dig. 28.4.3 (Marcus Aurelius). More in general Tuori 2016, *op. cit.* (n. 2), 211–212 (Hadrian and Antoninus Pius) and A.R. Birley, *Marcus Aurelius. A Biography* (New York 2000), 133–139 (Marcus Aurelius).

69 Dig. 40.1.10; 46.1.68.1; 49.14.47.1; 49.14.48.1.

70 Plin., *Paneg.* 80.1.

71 Th. Mommsen, 'Die Kaiserbezeichnung bei den römischen Juristen', in: idem, *Juristische Schriften* 11 (Berlin 1905), 156–157. Cf. p. 170, where Mommsen explicitly states that the *Decreta* were published before Severus' death.

72 On other forms of 'Herrscherlob' in the works of the Severan jurists, see U. Babusiaux, 'Lob des Tyrannen? Juristentaktik in der Severerzeit', in: N. Jansen & P. Oestmann (ed.), *Rechtsgeschichte heute. Religion und Politik in der Geschichte des Rechts. Schlaglichter einer Ringvorlesung* (Tübingen 2014), 1–26.

73 There is a long lasting and pervasive view that describes the reigns of the five adoptive emperors (Nerva, Trajan, Hadrian, Antoninus Pius and Marcus Aurelius) as one of the most prosperous periods in Roman history, e.g. C. Ando, *Imperial Rome AD 193 to 284: the Critical Century* (Edinburgh 2012), 5–6. See for examples from antiquity Aristid. *Or.* 35.36–37 and Dio, *Hist.* 71(72).36.4.

of his cold-hearted and sometimes even cruel conduct in these wars must have circulated throughout the Empire and caused at least part of the Senate to consider him unfit to rule, as Dio attests.⁷⁴ To legitimize his position and improve his public image, Severus stressed the continuity between his reign and that of his Antonine predecessors in his propaganda. From 195 CE onwards, he presented himself as the adoptive son of Marcus Aurelius⁷⁵ and claimed to be the same type of ruler, a *bonus princeps* who would rule in a similar fashion as his illustrious predecessors had done.⁷⁶ As mentioned above, the way an emperor performed his judicial tasks was an important aspect of the public perception of his *persona* and his reign: the *bonus princeps* was expected to be a committed and righteous judge. The image created by Paul in his reports of cases decided by Severus creates the impression of the latter as an accessible, dedicated, competent and benevolent judge. It was in complete accordance with Severus' own public imagery and will have been a welcome addition to it.

5 Conclusion

At the end of the second century CE the Roman emperor had developed into the apex of the Roman legal system and was perceived by his subjects as the chief source of law and justice. His legislative powers were unfettered: when dealing with legal matters, the emperor was not bound by the existing rules of the *ius civile*, *ius honorarium* or even the laws of his predecessors. It was, however, expected of a good emperor to exercise restraint in using them and abide by the existing laws as much as possible. This balance between power

74 Dio, *Hist.* 75(76).7.4, whose negative depiction of Severus is echoed by Herodian and the *Historia Augusta*. It must be stressed that Dio himself seems to (at least partially) reconsider his judgment of Severus' rule at the end of the description of his reign: Dio, *Hist.* 76(77).16.1–3. However, the narrative of Severus as a cruel and even barbarian ruler has resonated until well into the 20th century, see for example the descriptions of his conduct and reign by Gibbon (E. Gibbon (ed. J.B. Bury), *The History of the Decline and Fall of the Roman Empire* (New York 1906), part 1, 159 and 161) and Kornemann (E. Kornemann, *Römische Geschichte. 11: Die Kaiserzeit* (Stuttgart 1954), 304).

75 Dio, *Hist.* 75(76).7.4 and *Hist. Aug., Sept. Sev.* 10.6. See on Severus' dynastic claims most recently O.J. Hekster, *Emperors and Ancestors. Roman Rulers and the Constraints of Tradition* (Oxford 2015), 205 ff.

76 Cf. Dio, *Hist.* 74(75).2.1. Furthermore most recently A.E. Cooley, 'Septimius Severus: the Augustan Emperor', in: S. Swain, S. Harrison & J. Elsner (ed.), *Severan Culture* (Cambridge 2007), 385; S.S. Lusnia, *Creating Severan Rome. The Architecture and Self-image of L. Septimius Severus (A.D. 193–211)* (Brussels 2014), 49 and J. Rantala, *The Ludi Saeculares of Septimius Severus. The Ideologies of a New Roman Empire* (London 2017), 33.

and restraint is especially apparent when the emperor administered justice. A *bonus princeps* took his judicial duties seriously and always tried to reach the most righteous outcome of a conflict. In some cases this meant a strict application of the law, in other cases the emperor was inclined to bypass the law to come to a more equitable solution of the conflict. The primary purpose of Paul's collection of imperial judgments is to show how Septimius Severus dealt with the administration of justice and to represent him as a *bonus princeps* with a keen interest for the administration of the law. According to his descriptions Severus was an accessible, knowledgeable and conscientious judge, who was able to strike the right balance between power and restraint when judging a specific case. In some cases he abided by the existing laws, even when this meant that his own treasury would miss out on considerable income. In other cases, when the strict application of the law would have had undesirable and unjust consequences, he protected his subjects against the *rigor iuris* and created a tailor-made decision, doing justice to the circumstances and interests of the parties involved in the dispute. The elaborate case reports of Paul offer his readers a unique insight into the imperial judicial decision making-process. They create the impression that every decision is made on the basis of a thorough examination of the case by the emperor and the members of his *consilium*, thereby fashioning Severus as a symbol of law and justice for the empire and all of its inhabitants.