PRIVATE LAW IN THE RESCRIPTS OF CARUS, CARINUS AND NUMERIANUS

by

ALAN WATSON (Edinburgh)

"With the political disorders, which after the death of the Emperor Alexander Severus (235) led the Roman Empire to the edge of the abyss and choked all true creative intellectual life, died likewise classical jurisprudence. When Diocletian (284–305) restores order a half-century later, he certainly succeeds in preserving the legal classicism in its vital elements; but he can no longer renew its productive force". This statement of Kaser¹ on the end of classical law and the law of Diocletian represents clearly the view of most modern scholars². But it raises an immediate question. If classical jurisprudence and all creative intellectual life came to such an abrupt end with the death of Alexander Severus³, how was Diocletian able to preserve legal classicism? Where did he, after 50 years of chaos, find properly trained lawyers who could issue classicising rescripts in his name? The problem is not much diminished when one observes that, so far as our sources go, the years 293 and 294 were the most productive for his rescripts, since quite a number date from earlier years—48 are expressly attributed to 286 and 95 to 290⁴. Not enough time elapses for the education of professors of law to train Diocletian's jurists.

This paper is an attempt to establish the quality of legal expertise which existed on the eve of Diocletian's accession, in the reign(s) of Carus, Carinus and Numerianus. All the surviving rescripts of these Emperors which deal with private law will be examined to establish the law in them, their sophistication (or lack of it) and the precision of their legal terminology. The rescripts will also be related to those of earlier Emperors and of Diocletian.

Introduction

In 282 A.D. in the seventh year of the reign of the Emperor Probus, the army in Raetia proclaimed as Emperor the praetorian prefect M. Aurelius Carus who was an Illyrian by birth. When the news reached Sirmium where Probus then was he was murdered by soldiers. Carus, on receiving this information (in October?), sent a dispatch to the Senate informing of his elevation by the troops and nominated his elder son, M. Aurelius Carinus, and soon after the younger, M. Aurelius Numerianus, as co-rulers with the rank

¹. Das Römische Privatrecht II (Munich 1960), p. 3.
³. This article was ready for publication before the appearance of the splendid study by Wieacker, Le droit romain de la mort d'Alexandre Sévère à l'avènement de Diocletien (235–284 après J.-C.), RHD 49 (1971), pp. 201ff. The major conclusions of both studies accord, and I have thought it best to leave the present article unmodified.
of Caesares. Not much later both Carinus and Numerianus were created Augusti, and then Carus, leaving Carinus in charge of the West, set out with Numerianus for Mesopotamia where he met with considerable success in battle before he was killed (around the 29th August 284) by a stroke of lightning or his soldiers. Numerianus was killed by his father-in-law, Arrius Aper, on the return journey. On the discovery of the murder, the officers elected Diocletian Emperor on 17th November, 284. Carinus moved East with his army and lost his life by treachery in a battle—which he seemed to be winning—in the valley of the Margus in the summer of 285.

From this short span of troubled time we have 26 surviving rescripts, 8 of which cannot be precisely dated but of the others the earliest is from 13th January, 283, and the latest 8th December 284. This number compares favourably with the surviving 4 issued under the sole name of Gallienus (260-268), the one or two of Claudius Gothicus (268-270), the 5 or 6 of Aurelian (270-275) and the 4 of Probus (276-282). 16 of the rescripts of Carus and his sons involve matters of private law.

The rescripts present nothing startling at first sight. Mostly they are quite short, as was usual, the shortest of all having only 7 words, but one, C. 5, 52, 2, is quite long. The sole reference to juristic opinion is in C. 6, 42, 16: Cum virum prudentissimum Papinianum respondisse non ignoramus. Again there is nothing surprising in this; in the rescripts from the death of Alexander Severus to this time there are very few references to the jurists; two others to Papinian, one to Modestinus, and two or three general citations. Similarly, references to and reliance on other sources of law are about what we might expect; C. 8, 14(15), 4 tells us that a rule was notum and constitutum; C. 10, 11, 4 refers to the diversity of statutes; C. 6, 49, 3 refers to the senatusconsultum Trebellianum; and C. 5, 71, 7 to an unnamed senatusconsultum.

The Individual Rescripts

The law of persons is more prominent in the rescripts than any other major division of the law. Though there are no rescripts which tell us anything about the form of marriage or divorce, two concern aspects of dowry.

1. C. 3, 32, 9:

   Doce ancillam, de qua supplicas, dotalem fuisse in notione praesidis: quo patefacto indubium non erit vindicari ab uxore tua nequivisse.

5. 25 according to Krueger, Corpus Juris Civilis II, p. 494, who seemingly passes over C. 4, 20, 4.

6. For the purpose of this article no distinction need be or will be drawn between the three Emperors.

7. C. 7, 64, 5.


9. C. 1, 23, 2 of 270 A.D. is wrongly ascribed to Alexander, and may be of either Claudius or Aurelian.

10. C. 6, 37, 12 [Gordian, 240 A.D.]; 7, 32, 3 [Decius, 250 A.D.].

11. C. 3, 42, 5 [Gordian, 239 A.D.]. In this case Modestinus had given a responsum to the soldier who later wrote to the Emperor.

12. C. 6, 20, 4 [Gordian, 239 A.D.]; 7, 4, 10 (9) [Valerianus and Gallienus, 260] and (?) 8, 10, 4 [Philippus A. and Philippus C., 245].

13. In the period from 235 to the accession of Carus there are in the Codex 12 references to a named or unnamed senatusconsultum: 2, 11 (12), 15; 2, 22 (23), 1 (2); 4, 13, 1; 4, 28, 6; 4, 29, 7; 4, 29, 8; 4, 29, 9; 4, 29, 10; 4, 29, 12; 6, 49, 2; 9, 9, 16; 10, 46 (45), 1.

14. To avoid any possible misunderstanding it is emphasised that we are concerned with the rescripts only, not with the state of law in general in 283-4.