A STUDY OF NERATIUS AND
A REFLECTION ON METHOD

by

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The publication of an interesting study of Neratius by Reinhold Greiner in the Freiburg series in which Christoph Krampe's study1 of Proculus earlier appeared provides an occasion for reflection about the current methods of Roman legal science. My reflections can most aptly be illustrated by reference to such studies of individual jurists and works as these, though, if they are justified, their implications extend further.

G.'s work is subtitled Drei Textgeschichten. He has dealt with the Membrana, the Regulae and the Responsa of Neratius. The first is the most substantial study, since we have 411 lines from the Membrana (as printed in Lenel) against only 33 from the Regulae and 51 from the Responsa2.

G. shows that the Membrana is a miscellany of notices which Neratius put together from his experience in giving responsa, teaching, attending the emperor and discussing legal problems with colleagues3. They are arranged in no particular order4. The title refers to the character of the contents (sketches, notices) rather than to the material on which they were written5.

In the next section6, G. argues that 11 texts7 contain postclassical (sci. pre-Justinianic) reasons for the decision or statement of the law given by the jurist. Some of these I discuss in detail later8. He asserts in each case that the passage in question cannot be authentic Neratius, that there is no reason for the compilers to have stated the law as it there appears, and that therefore the passage is likely to have been added in the post-classical period. The common feature of these post-classical justifications is that the arguments are “unjuristisch, gefühlbetont und moralisierend”9. The similarity of these passages points

2. One could add some passages from Paul ad Neratium, from which Lenel gives a somewhat arbitrary selection at Pal. Ner. 113, 131, 137, 152, 161, 162, 167, 168, 174, 183 (37 lines). From considerations of style one can probably (below n. 30ff.) add D. 7.4.26 (si fuerit, restituetur), 7.5.4 (exigenda erit), 32.35 (structure), 46.2.32 (structure), 47.19.6 (all Paul 1 Ner.: in ea causa esse cf. 25.1.15 Ner. 2 membr.), 3.5.18pr. (natura debitor fuit cf. 12.6.41, id praestare cogit tur cf. n. 64 below), 32.26 (both Paul 2 Ner; praestare cogit tur cf. 3.5.18pr), 33.1.16(structure, liber erit, debetitum, praestare compellitur), 35.1.98 (quia clause, condicio expleta), 41.3.47 (adprehendere, quia clause, usucapiam), 45.1.140pr (propius est), 46.1.67 up to aequius est (all Paul 3 Ner: structure, quia clause), another 43 lines.
4. Greiner 27.
5. Greiner 9–11.
7. One could add D. 22.6.2 (Greiner 47, 67) thus making the total 12.
to a common post-classical editor who provided the Membrana with an apparatus of notes, probably on the occasion of a new edition of the work. The period cannot be determined, but could be as late as the fifth century[^10].

In the next sections[^11] G. gives a careful and balanced account of the (Justinianic) interpolations and alleged interpolations in the Membrana. He concludes that the work was published book by book, was not used in practice or teaching but was rather of scholarly interest[^12]. The compilers made few changes in the text, which, apart from the postclassical apparatus of annotations, remained relatively unchanged from the time of Neratius onwards[^13].

In his treatment of the Regulae G., critically examining the work of Grosso[^14], finds post-classical elements in four of the seven texts[^15]. The changes (extension of the scope of regulae, glosses) were probably made on the occasion of a post-classical publication[^16]. This can be dated between 224 and 390 A.D., in view of D. 26.1.18[^17] which says that tutores dari is a munus masculorum. In 390 Theodosius I regulated the admission of women to guardianship[^18], in 224 a rescript of Alexander says that tutelam administrare is a virile munus[^18a], and 26.1.18 seems to be copying the latter text. Indeed it is not just a case of post-classical alteration. The Regulae as a whole are a post-classical set of excerpts from genuine works of Neratius. Though they comprise 15 books, they are not cited by later jurists, even when, as in D. 41.1.13[^19] they deal with such a controversial topic as the acquisition of possession through a procurator. Their arrangement conforms to that of Gaius' Institutes, which was hardly adopted in any classical or post-classical work with the exception of Ulpian's post-classical liber singularis regularum. The division into 15 books might reflect that fact that the post-classical editor made selections from 15 books of Neratius. The post-classical alterations were made by the same editor who first prepared this work for publication[^20].

The few fragments from the Responsa, G. notes, do not present a unified form, and in particular, do not separate the facts from the question and the reply[^21]. Ferrini's argument that Paul's libri ad Neratium was a commentary on the Responsa is rejected[^22] and differences in formulation between the Responsa (generally in the accusative and infinitive form), and the fragments in Paul are demonstrated. From an argument based on an analysis of the Raft Case[^23] G. concludes that the Responsa constitute a post-classical collection of excerpts from citations of Neratius, culled from classical jurists such as Ulpian[^24].

[^10]: Greiner 69.
[^12]: Greiner 114.
[^13]: Ibid.
[^14]: Atti Torino 67 (1932) 155f.
[^15]: Greiner 117–128.
[^16]: Greiner 128.
[^17]: Ner. 3 reg.
[^18]: CTh. 3.17.4, CJ 5.35.2.
[^18a]: CJ 5.35.1 (22 Sept. 224).
[^19]: Ner. 6 reg.
[^20]: Greiner 133–136.
[^21]: Greiner 137–139.
[^22]: Greiner 139–150.
[^23]: Greiner 152–155, below n. 154f.
[^24]: Greiner 159–165.