

DOMINI NOSTRI IUSTINIANI PERPETUO AUGUSTI
INSTITUTIONUM SIVE ELEMENTORUM

compositorum per Tribonianum virum excelsum magistrum et ex quaestore sacri palatii iurisque doctissimum et Theophilum virum magnificum iuris peritum et antecessorem huius almae urbis et Dorotheum virum magnificum quaestorium iuris peritum et antecessorem Berytensium inclitae civitatis

LIBER PRIMUS

I

De iustitia et iure

Iustitia est constans et perpetua voluntas ius suum cuique tribuens.

1. Iuris prudentia est divinarum atque humanarum rerum notitia, iusti atque iniusti scientia.

2. His generaliter cognitis et incipientibus nobis exponere iura populi Romani ita maxime videntur posse tradi commodissime, si primo levi ac simplici, post deinde diligentissima atque exactissima interpretatione singula tradantur. alioquin si statim ab initio rudem adhuc et infirmum animum studiosi multitudine ac varietate rerum oneraverimus, duorum alterum aut desertorem studiorum efficiemus aut cum magno labore eius, saepe etiam cum diffidentia, quae plerumque iuvenes avertit, serius ad id perducamus, ad quod leniore via ductus sine magno labore et sine ulla diffidentia maturius, perducipotuisset.

3. Iuris praecepta sunt haec: honeste vivere, alterum non laedere, suum cuique tribuere.

4. Huius studii duae sunt positiones, publicum et privatum. publicum ius est, quod ad statum rei Romanae spectat, privatum, quod ad singulorum utilitatem pertinet. dicendum est igitur de iure privato, quod est tripertitum: collectum est enim ex naturalibus praeceptis aut gentium aut civilibus.

DELLE ISTITUZIONI O ELEMENTI
DEL SIGNOR NOSTRO GIUSTINIANO, AUGUSTO A VITA
composti per opera dell'eccelso Triboniano, maestro e già questore del palazzo imperiale, dottissimo in diritto, e del magnifico Teofilo, giurisperito e professore in questa alma città, e del magnifico Doroteo, già questore, giurisperito e professore nell'inclita città di Berito,

LIBRO PRIMO

I

Della giustizia e del diritto

[cfr. D. 1. 1. 10 pr. Ulpiano libro I *delle regole*] Giustizia è il fermo e stabile atteggiamento per cui a ciascuno si attribuisce il suo diritto.

1. [cfr. D. 1. 1. 10. 2 Ulpiano l. I *delle regole*] Giurisprudenza è la conoscenza delle cose divine ed umane, del giusto e dell'ingiusto.

2. Saputo in generale questo, e cominciando noi ad esporre gli ordinamenti del popolo romano, sembra che possano essere insegnati nel modo più comodo, soprattutto se le singole cose vengano comunicate con esposizione, dapprima agile e semplice, e solo dopo diligentissima ed esattissima. Altrimenti, se subito all'inizio sopraccarichiamo la mente ancora inesperta e debole dell'allievo con molte varie cose, delle due l'una: o lo induciamo ad abbandonar gli studi, oppure con gran fatica sua, e spesso anche con quella sfiducia che per lo più allontana i giovani, lo conduciamo più tardi al punto al quale, se guidato per una via più facile, senza sua gran fatica e sfiducia alcuna, sarebbe potuto esser condotto più presto.

3. [cfr. D. 1. 1. 10. 1 Ulpiano l. I *delle regole*] I precetti del diritto sono questi: vivere onestamente, non nuocere agli altri, dare a ciascuno il suo.

4. [cfr. D. 1. 1. 1. 2 Ulpiano l. I *institutionum*] Due sono i temi di questo studio: il pubblico e il privato. Diritto pubblico è quello che ha riguardo alla prosperità dello Stato romano; diritto privato quello che ha riguardo all'interesse dei singoli. Del diritto privato è da dire che si divide in tre parti: è composto infatti di precetti naturali, o delle genti, o civili.

II

De iure naturali et gentium et civili

Ius naturale est, quod natura omnia animalia docuit. nam ius istud non humani generis proprium est, sed omnium animalium, quae in caelo, quae in terra, quae in mari nascuntur. hinc descendit maris atque feminae coniugatio, quam nos matrimonium appellamus, hinc liberorum procreatio et educatio: videmus etenim cetera quoque animalia istius iuris peritia censerī.

1. Ius autem civile vel gentium ita dividitur: omnes populi, qui legibus et moribus reguntur, partim suo proprio, partim communi omnium hominum iure utuntur: nam quod quisque populus ipse sibi ius constituit, id ipsius proprium civitatis est vocaturque ius civile, quasi ius proprium ipsius civitatis: quod vero naturalis ratio inter omnes homines constituit, id apud omnes populos peraeque custoditur vocaturque ius gentium, quasi quo iure omnes gentes utuntur. et populus itaque Romanus partim suo proprio, partim communi omnium hominum iure utitur. quae singula qualia sunt, suis locis proponemus.

2. Sed ius quidem civile ex unaquaque civitate appellatur, veluti Atheniensium: nam si quis velit Solonis vel Draconis leges appellare ius civile Atheniensium, non erraverit. sic enim et ius, quo populus Romanus utitur, ius civile Romanorum appellamus: vel ius Quiritium, quo Quirites utuntur: Romani enim a Quirino Quirites appellantur. sed quotiens non addimus, cuius sit civitatis, nostrum ius significamus: sicuti cum poetam dicimus nec addimus nomen, subauditur apud Graecos egregius Homerus, apud nos Vergilius. ius autem gentium omni humano generi commune est. nam usu exigente et humanis necessitatibus gentes humanae quaedam sibi constituerunt: bella etenim orta sunt et captivitates secutae et servitutes, quae sunt iuri naturali contrariae. iure enim naturali ab initio omnes homines liberi nascebantur. ex hoc iure gentium et omnes paene contractus introducti sunt, ut emptio venditio, locatio conductio, societas, depositum, mutuum et alii innumerabiles.

II

Del diritto naturale e delle genti e civile

[cfr. D. 1. 1. 1. 3 Ulpiano I. I *institutionum*] Il diritto naturale è quello che la natura ha insegnato a tutti gli animali. Invero questo diritto non è caratteristico del genere umano, bensì di tutti gli animali che nascono in cielo, in terra, in mare. Ne discende l'unione del maschio e della femmina, che noi chiamiamo matrimonio, e la procreazione e l'allevamento dei figli: vediamo infatti che pure gli altri animali sono valutati in rapporto alla loro perizia in questo diritto.

1. [cfr. Gaio *inst.* I. 1] Il diritto civile e il diritto delle genti si distinguono così: tutti i popoli retti da leggi e costumi, impiegano, in parte un diritto loro proprio, in parte un diritto comune a tutti gli uomini; invero quel diritto che ogni popolo stabilisce per sé, è proprio del suo Stato, e si chiama diritto civile quasi diritto proprio della sua cittadinanza, mentre quello che un naturale impulso ha stabilito fra tutti gli uomini è osservato ugualmente da tutti i popoli e si chiama diritto delle genti, come a significare che di quel diritto tutte le genti si servono. Pertanto il popolo romano impiega, in parte un diritto proprio, in parte un diritto comune a tutti gli uomini. Quali rispettivamente siano esporremo a suo luogo [*infra* §§ 2, 3. 2 e 4, 5 pr., 8. 1, 9. 2, 13. 1, 15. 1 e 3, 20. 6; II. 1. 1, 4, 5, 11, 12, 17 ss., 20, 40 s.; 5. 6, 6 pr., 7. 4; III. 13 pr.].

2. Il diritto civile prende nome da ciascuno Stato, come: (diritto) ateniese; e se uno le leggi di Solone o Dracone voglia chiamarle diritto civile ateniese, non sbaglierà. Così, anche il diritto di cui si serve il popolo romano, lo chiamiamo diritto civile romano; oppure diritto quiritario, di cui si servono i Quiriti: i romani, infatti, prendono da Quirino il nome di Quiriti. Ma quando non aggiungiamo di che Stato sia, intendiamo il diritto nostro: come, quando diciamo il poeta senza aggiungere il nome, si sottintende presso i Greci l'esimio Omero, e presso di noi Virgilio. Il diritto delle genti è invece comune a tutto il genere umano. Infatti, richiedendolo la pratica e per le umane necessità, i popoli si crearono alcune cose: sorsero così le guerre, col loro seguito di prigionie e servitù, che sono in contrasto col diritto naturale. Per diritto naturale, invero, tutti gli uomini inizialmente nascevano liberi. Dal diritto delle genti sono stati introdotti anche quasi tutti i contratti, come la compravendita, la locazione conduzione, la società, il deposito, il mutuo e innumerevoli altri.

3. Constat autem ius nostrum aut ex scripto aut ex non scripto, ut apud Graecos, τῶν νόμων οἱ μὲν ἔγγραφοι, οἱ δὲ ἀγγραφοί. scriptum ius est lex, plebi scita, senatus consulta, principum placita, magistratum edicta, responsa prudentium.

4. Lex est, quod populus Romanus senatore magistratu interrogante, veluti consule, constituebat. plebi scitum est, quod plebs plebeio magistratu interrogante, veluti tribuno, constituebat. plebs autem a populo eo differt, quo species a genere: nam appellatione populi universi cives significantur connumeratis etiam patriciis et senatoribus: plebis autem appellatione sine patriciis et senatoribus ceteri cives significantur. sed et plebi scita lege Hortensia lata non minus valere quam leges coeperunt.

5. Senatus consultum est, quod senatus iubet atque constituit. nam cum auctus est populus Romanus in eum modum, ut difficile sit in unum eum convocare legis sancienda causa, aequum visum est senatum vice populi consuli.

6. Sed et quod principi placuit, legis habet vigorem, cum lege regia, quae de imperio eius lata est, populus ei et in eum omne suum imperium et potestatem concessit. quodcumque igitur imperator per epistulam constituit vel cognoscens decrevit vel edicto praecepit, legem esse constat: haec sunt, quae constitutiones appellantur. plane ex his quaedam sunt personales, quae nec ad exemplum trahuntur, quoniam non hoc princeps vult: nam quod alicui ob merita indulset, vel si cui poenam irrogavit, vel si cui sine exemplo subvenit, personam non egreditur. aliae autem, cum generales sunt, omnes procul dubio tenent.

7. Praetorum quoque edicta non modicam iuris optinent auctoritatem. haec etiam ius honorarium solemus appellare, quod qui honores gerunt, id est magistratus, auctoritatem huic iuri dederunt. proponebant et aediles curules edictum de quibusdam casibus, quod edictum iuris honorarii portis est.

8. Responsa prudentium sunt sententiae et opiniones eorum, quibus permissum erat iura condere. nam antiquitus institutum erat, ut essent qui iura publice interpretarentur, quibus a Caesare ius respondendi datum est, qui iuris consulti appellabantur. quorum

3. [cfr. D. 1. 1. 6. 1 Ulpiano l. I *institutionum*] Il nostro diritto risulta da scritti o no, come presso i Greci: delle leggi, alcune sono scritte, altre non scritte. [cfr. Gaio *inst.* I. 2] Diritto scritto è la legge, sono i plebisciti, i senatoconsulti, gli ordini dei principi, gli editti dei magistrati, i responsi dei competenti.

4. [cfr. Gaio *inst.* I. 3] Legge è ciò che statuiva il popolo romano su domanda di un magistrato senatore, ad esempio un console. Plebiscito è ciò che statuiva la plebe, su domanda di un magistrato plebeo, ad esempio un tribuno. La plebe si differenzia dal popolo come la specie dal genere: infatti col termine popolo si indicano tutti i cittadini, compresi anche i patrizi e i senatori; invece col termine plebe si indicano, senza i patrizi e i senatori, gli altri cittadini. Ma anche i plebisciti, dopo la emanazione della legge Ortensia, cominciarono a non valere meno delle leggi.

5. [cfr. Gaio *inst.* I. 4] Senatoconsulto è ciò che il senato prescrive e stabilisce. Quando infatti il popolo romano crebbe al punto da render difficile riunirlo per sancire una legge, sembrò opportuno che, in luogo del popolo, fosse consultato il senato.

6. [cfr. D. 1. 4. 1 Ulpiano l. I *institutionum*] Ma anche quel che il principe ha ordinato ha valore di legge, in quanto con la legge regia, emanata in rapporto al suo imperio, a lui e in favor suo cedette il popolo ogni proprio imperio e potestà. Qualunque cosa dunque l'imperatore abbia statuito con lettera o in sede di processo decretato oppure ordinato con un editto, consta essere legge: ed è ciò che chiamiamo costituzioni. Certo alcune di esse sono personali, e non vengono prese a modello, perché questo il principe non vuole: quanto infatti abbia concesso a taluno per i suoi meriti, o se ad alcuno abbia irrogato una pena, o abbia senza precedenti sovvenuto uno, non trascende quella persona. Le altre invece, essendo generali, senza dubbio vincolano tutti.

7. Pure gli editti dei pretori hanno un non piccolo peso giuridico. Siamo soliti chiamarli anche diritto onorario, perché a questo diritto conferirono autorità coloro che esercitano gli 'onori', cioè le magistrature. Anche gli edili curuli proponevano un editto per certi casi: editto che è parte del diritto onorario.

8. [cfr. Gaio *inst.* I. 7] I responsi dei competenti sono i pareri e le opinioni di coloro ai quali era consentito fare diritto. Anticamente, infatti, era previsto che ci fossero pubblici interpreti del diritto, ai quali dall'imperatore fu data la prerogativa di rispondere, e

omnium sententiae et opiniones eam auctoritatem tenent, ut iudici recedere a responso eorum non liceat, ut est constitutum.

9. Ex non scripto ius venit, quod usus comprobavit. nam diuturni mores consensu utentium comprobati legem imitantur.

10. Et non ineleganter in duas species ius civile distributum videtur. nam origo eius ab institutis duarum civitatum, Athenarum scilicet et Lacedaemonis, fluxisse videtur: in his enim civitatibus ita agi solitum erat, ut Lacedaemonii quidem magis ea, quae pro legibus observarent, memoriae mandarent, Athenienses vero ea, quae in legibus scripta reprehendissent, custodirent.

11. Sed naturalia quidem iura, quae apud omnes gentes peraeque servantur, divina quadam providentia constituta semper firma atque immutabilia permanent: ea vero, quae ipsa sibi quaeque civitas constituit, saepe mutari solent vel tacito consensu populi vel alia postea lege lata.

12. Omne autem ius, quo utimur, vel ad personas pertinet vel ad res vel ad actiones. ac prius de personis videamus. nam parum est ius nosse, si personae, quarum causa statutum est, ignorentur.

III

De iure personarum

Summa itaque divisio de iure personarum haec est quod omnes homines aut liberi sunt aut servi.

1. Et libertas quidem est, ex qua etiam liberi vocantur, naturalis facultas eius quod cuique facere libet, nisi si quid aut vi aut iure prohibetur.

2. Servitus autem est constitutio iuris gentium, qua quis dominio alieno contra naturam subicitur.

3. Servi autem ex eo appellati sunt, quod imperatores captivos vendere iubent ac per hoc servare nec occidere solent. qui etiam mancipia dicti sunt, quod ab hostibus manu capiuntur.

che si chiamavano giureconsulti. I pareri e le opinioni di tutti questi hanno un tal valore che il giudice, come è disposto, non può scostarsi dal loro responso.

9. Da un dato non scritto viene la norma confermata dall'uso. Invero i costumi durevoli, convalidati dal consenso degli utenti, imitano la legge.

10. Il diritto civile appare distribuito in due specie, non senza eleganza. Infatti la sua origine sembra derivata dagli istituti di due città, Atene e Sparta, in cui si era soliti agir così: gli Spartani preferivano affidar alla memoria ciò che osservavano come legge; gli Ateniesi, invece, rispettavano ciò che avevano trovato scritto nelle leggi.

11. Il diritto naturale, che si osserva ugualmente presso tutte le genti, stabilito da una provvidenza divina, resta sempre fermo ed immutabile; invece l'ordinamento che ciascuno Stato si dà suol cambiare spesso, o per tacito consenso del popolo, o per la successiva emanazione di un'altra legge.

12. [cfr. Gaio *inst.* I. 8] Tutto il diritto di cui ci serviamo attiene alle persone, o alle cose, o alle azioni. E prima guardiamo alle persone. È infatti conoscere troppo poco il diritto, se non si conoscono le persone, per le quali è stabilito.

III

Del diritto delle persone

[cfr. Gaio *inst.* I. 9] La partizione principale del diritto delle persone è questa: che tutti gli uomini sono o liberi o servi.

1. [cfr. D. 1. 5. 4 pr. Fiorentino l. IX *institutionum*] La libertà, per cui appunto son detti liberi, è la naturale facoltà di fare ognuno quel che gli piace, a meno che qualche cosa non sia proibito con la forza o dal diritto.

2. [cfr. D. 1. 5. 4. 1 Fiorentino l. IX *institutionum*] La servitù, invece, è un istituto di diritto delle genti per cui uno è assoggettato contro natura al dominio altrui.

3. [cfr. D. 1. 5. 4. 2 Fiorentino l. IX *institutionum*] I servi sono così chiamati perché gli imperatori ordinano la vendita dei prigionieri e, con ciò, sogliono *conservarli* e non ucciderli. [cfr. D. 1. 5. 4. 3 Fiorentino l. IX *institutionum*] Sono anche detti '*mancipia*' perché vengono dal nemico '*manu capti*' [con la mano presi].

γὰρ PLEBISCITU ἄρχοντος τουτέστι τοῦ τριβούνου (οὗτος δὲ ἐστὶν ὁ δῆμαρχος) ἐρωτῶντος ἐνομοθέτει τὸ πλῆθος. τὸ δὲ χυδαῖον πλῆθος τοῦ δήμου τούτῳ διενήνοχεν ὧς διενήνοχε γένος ἀπὸ εἴδους· τῇ γὰρ τοῦ δήμου προσηγορίᾳ πάντες σημαίνονται πολῖται, συναριθμουμένων πατρικίων καὶ συγκλητικῶν, τῇ δὲ τοῦ PLEBISCITU ὀνομασίᾳ δίχα πατρικίων τε καὶ συγκλητικῶν οἱ λοιποὶ πολῖται δηλοῦνται.

5. Ἐν τρίτῃ τάξει νομοθετεῖ παρὰ Ῥωμαίοις ἡ σύγκλητος. σύγκλητος δὲ ἐστὶ σύστημα ἐξ ἐπιλέκτων ἀνδρῶν καθαρῶν ἰδιώτου παντός. τὸ δὲ παρ' αὐτῶν νομοθετούμενον λέγεται ἰδιωτῶ ὀνόματι SENATUS CONSULTUM, τουτέστι τῆς συγκλήτου τὸ θέσπισμα. ἀλλ' ἔχει τις εἰπεῖν πῶς δυνάμενοι 5 συνιέναι καὶ LEGEM ποιεῖν εἰς διαφόρους διήρησαν τὸν νόμον ὀνομασίας; ἡ δὲ αἰτία ἐστὶν αὕτη. ἐν τῇ Ῥώμῃ, πολυανθρώπῳ οὔσῃ, οἷα φιλεῖ γίνεσθαι στάσις καὶ διχόνοιά τις ἀνεφύη μεταξὺ τῶν συγκλητικῶν καὶ τοῦ χυδαίου δήμου, τυχόν προτίμησιν βουλομένων ἔχειν τῶν συγκλητικῶν· τούτου χάριν ἀλλήλων ἐχωρίσθησαν καὶ ἰδίᾳ διῆγον καὶ ἰδίᾳ ἐπολιτεύοντο. καὶ ἐπειδὴ ἐν 10 πολιτείᾳ ὄντας δίχα πραγμάτων οὐκ ἐνῆν βιοῦν, διὰ τὸ τὰς ἐγειρομένας καταπαύειν φιλονεικίας τε καὶ δίκας ἐτίθεντο νόμοι ὑπὸ τῶν συγκλητικῶν, ἐνομοθέτει δὲ καὶ κεχωρισμένως ὁ χυδαῖος δῆμος, καὶ εἰκότως ἐδέχετο διάφορον τὰ παρ' αὐτῶν νομοθετούμενα προσηγορίαν. τὸ γὰρ ὑπὸ τῆς συγκλήτου τιθέμενον LEX οὐκ ἠδύνατο προσαγορευέσθαι, διὰ τὸ μὴ προσεῖναι 15 τὴν τοῦ χυδαίου δήμου προαίρεσιν, καὶ ἀναγκαίως ἐκ τῶν εὐρόντων ἐκλήθη SENATUS CONSULTUM, τουτέστι τῆς συγκλήτου τὸ δόγμα. SENATUS γὰρ ἐστὶν ἡ σύγκλητος, CONSULERE δὲ τὸ πρόνοιαν ποιεῖσθαι. ἐπειδὴ οὖν πρόνοιαν ἡ σύγκλητος ποιουμένη τῶν δίκαις ὑποπιπτόντων ἐτίθετο νόμον, δικαίως ἐκλήθη SENATUS CONSULTUM. καὶ παρὰ τοῖς ἰδιώταις δὲ δικῶν ἐτίκτοντο

Pb Lc Lb La Vb Ma Pc

14 PLEBISCITU (varie scr.) codd., *plebeio* Inst. 5,1 νομοθετοῦσι Ma 3 ἰδιωτικῶ Pc 4 δυνάμενοι συνιέναι Z, δυνάμενοι συνιέναι Pc Lc, δυνάμενοι τοῦ δήμου συνιέναι Ma La², δυνάμενοι συνιέναι τοῦ δήμου Pb 5 LEGEM] λέγεμ ἦτοι τὸν (ἦγουν Vb) νόμον Ma La² Vb, νόμον LEGEM Pb | διήρησαν La¹, διήρησε Vb et Viglius, διαιρεθείσας Lb, διηρέθησαν Z | τὸν νόμον Vb La² et Viglius, τῶν νόμων Z 8 ἔχειν βουλομένων Ma 9 ἐν] τοῦς ἐν Vb La 10 ἐνῆν] ἦν Ma 12 καὶ¹ om. Ma 13 διάφορον infra ante προσηγορίαν coll. Ma | τὰ παρ' αὐτῶν παρ' αὐτῶν τὰ Pc 14 τιθέμενον] νομοθετούμενον Ma 15 εὐρεθέντων Ma 17 ἡ σύγκλητος πρόνοιαν Ma 18 δίκαις] δικῶν καὶ Pc, δίκη Pb | νόμον Pb, νόμους Vb La² (exitus dub. La¹), νόμῳ Pc Lc, νόμοι Ma, νόμος Lb 19 ἐτίκτοντο προφάσεις Pc Ma, ἐτίκτετο πρόφασις Z

common people (*plebs*). For the plebeian magistrate, that is the tribune (δῆμαρχος), put the question and thereupon the common people passed the proposal into law. Now the common people differs from the people as genus differs from species,⁸ for the term people (*populus*) denotes the whole of the citizens including patricians and senators, while the term common people (*plebs*) denotes the rest of the citizens, excluding patricians and senators.

5. In the third place, the Senate makes laws among the Romans. Now the Senate is a body of select men, with not a single plebeian in it. The law enacted by them is called by a special name *senatus consultum*; that is, the decree of the Senate. But it may be said: how is it that, when they could assemble and make a statute (*lex*, νόμος), they differentiated the law into various designations?⁹ The reason is this: Rome being a populous city, there arose in it, as usually happens, faction and discord between the senators and the common people, the senators, it may be being bent on having the supremacy; and, in consequence of this, they parted from each other, living separately and carrying on their governments separately. And since it was impossible for men in a political society to live without doing business, laws were enacted by the senators with a view to settling the disputes and the lawsuits that were occurring; and the common people also separately made laws, and naturally the laws made by them received a different designation. For a law made by the Senate could not be designated *lex*, lacking as it did the consent of the common people, and so it had to be called after its authors *senatus consultum*; for *senatus* is 'the Senate', and *consulere* is 'to provide for'. Accordingly, when the Senate made a law by way of providing for those who were subject to lawsuits,¹⁰ such a law was rightly called a *senatus consultum*. And among the plebeians also there arose

need to speak of a fourth law-maker. Fourth lawmaker among the Romans is the Emperor.

And what is the Emperor? The Emperor is the one who has the power to make the law, and the one who has the power to execute the law.

⁸ Murison comments: 'the wrong way about'

⁹ 'distributed the law under different designations' Murison

¹⁰ 'for the lawsuits that occurred' Murison: cf. critical apparatus

PLEBISCITU ἄρχοντος τουτέστι τοῦ τριβούνου (οὗτος δὲ ἐστὶν ὁ δήμαρχος) ἐρωτῶντος ἐνομοθέτει τὸ πλῆθος. τὸ δὲ χυδαῖον πλῆθος τοῦ δήμου ὅτε διενήνοχεν ᾧ διενήνοχε γένος ἀπὸ εἴδους· τῇ γὰρ τοῦ δήμου προσηγορία πάντες σημαίνονται πολῖται, συναριθμουμένων πατρικίων καὶ συγκλητικῶν, τῇ δὲ τοῦ PLEBISCITU ὀνομασίᾳ δίχα πατρικίων τε καὶ συγκλητικῶν οἱ τοῖ πολῖται δηλοῦνται.

5. Ἐν τρίτῃ τάξει νομοθετεῖ παρὰ Ῥωμαίους ἡ σύγκλητος. σύγκλητος ἐστὶ σύστημα ἐξ ἐπιλέκτων ἀνδρῶν καθαρεῦον ἰδιώτου παντός. τὸ δὲ αὐτῶν νομοθετούμενον λέγεται ἰδικῶ ὀνόματι SENATUS CONSULTUM, τούτεστι τῆς συγκλήτου τὸ θέσπισμα. ἀλλ' ἔχει τις εἰπεῖν πῶς δυνάμενοι γίνεσθαι καὶ LEGEM ποιεῖν εἰς διαφόρους διήρησαν τὸν νόμον ὀνομασίας; ἡ αἰτία ἐστὶν αὕτη. ἐν τῇ Ῥώμῃ, πολυανθρώπῳ οὔσῃ, οἷα φιλεῖ γίνεσθαι ἀσπασίς καὶ διχόνοιά τις ἀνεφύη μεταξύ τῶν συγκλητικῶν καὶ τοῦ χυδαίου δήμου, τυχὸν προτίμησιν βουλομένων ἔχειν τῶν συγκλητικῶν τούτου χάριν ἀλλήλων ἐχωρίσθησαν καὶ ἰδίᾳ διήγον καὶ ἰδίᾳ ἐπολιτεύοντο. καὶ ἐπειδὴ ἐν αὐταῖς ὄντας δίχα πραγμάτων οὐκ ἐνήν βιοῦν, διὰ τὸ τὰς ἐγειρομένας ἀπαύειν φιλονεικίας τε καὶ δίκας ἐτίθεντο νόμοι ὑπὸ τῶν συγκλητικῶν, νομοθέτει δὲ καὶ κεχωρισμένως ὁ χυδαῖος δῆμος, καὶ εἰκότως ἐδέχετο ἀφορὸν τὰ παρ' αὐτῶν νομοθετούμενα προσηγορίαν. τὸ γὰρ ὑπὸ τῆς συγκλήτου τιθέμενον LEX οὐκ ἠδύνατο προσαγορευέσθαι, διὰ τὸ μὴ προσεῖναι τοῦ χυδαίου δήμου προαίρεσιν, καὶ ἀναγκαιῶς ἐκ τῶν εὐρόντων ἐκλήθη SENATUS CONSULTUM, τούτεστι τῆς συγκλήτου τὸ δόγμα. SENATUS γὰρ ἐστὶν ἡ σύγκλητος, CONSULERE δὲ τὸ πρόνοιαν ποιεῖσθαι. ἐπειδὴ οὖν πρόνοιαν ἡ σύγκλητος ποιουμένη τῶν δίκαις ὑποπιπτόντων ἐτίθετο νόμον, δικαίως ἐκλήθη SENATUS CONSULTUM. καὶ παρὰ τοῖς ἰδιώταις δὲ δικῶν ἐτίκτοντο

The common people is the whole of the citizens remaining after the senators are excluded. And what is enacted by this body is called a plebiscite, that is a proposal considered and sanctioned by the common people.

Lc Lb La Vb Ma Pc
 PLEBISCITU (varie scr.) codd., plebeio Inst. 5, 1 νομοθετοῦσι Ma 3 ἰδιωτικῶ Pc
 δυνάμενοι συνίενοι Z, δυναμένου συνίενοι Pc Lc, δυναμένου τοῦ δήμου συνίενοι Ma La²,
 ἀμένου συνίενοι τοῦ δήμου Pb 5 LEGEM] λέγεμ ἦτοι τὸν (ἦγον Vb) νόμον Ma La²
 νόμον LEGEM Pb | διήρησαν La¹, διήρησε Vb et Viglius, διαμεθεύσας Lb, διηρέθησαν
 τὸν νόμον Vb La² et Viglius, τῶν νόμων Z 8 ἔχειν βουλομένων Ma 9 ἐν] τοῖς ἐν
 La 10 ἐνήν] ἦν Ma 12 καὶ¹ om. Ma 13 διάφορον infra ante προσηγορίαν coll.
 | τὰ παρ' αὐτῶν] παρ' αὐτῶν τὰ Pc 14 τιθέμενον] νομοθετούμενον Ma 15 εὐρεθέν-
 Ma 17 ἡ σύγκλητος πρόνοιαν Ma 18 δίκαις] δικῶν καὶ Pc, δίκη Pb | νόμον Pb,
 οὖς Vb La² (exitus dub. La¹), νόμῳ Pc Lc, νόμοι Ma, νόμος Lb 19 ἐτίκτοντο προσά-
 Pc Ma, ἐτίκτετο πρόφασις Z

common people (*plebs*). For the plebeian magistrate, that is the tribune (δήμαρχος), put the question and thereupon the common people passed the proposal into law. Now the common people differs from the people as genus differs from species,⁸ for the term people (*populus*) denotes the whole of the citizens including patricians and senators, while the term common people (*plebs*) denotes the rest of the citizens, excluding patricians and senators.

5. In the third place, the Senate makes laws among the Romans. Now the Senate is a body of select men, with not a single plebeian in it. The law enacted by them is called by a special name *senatus consultum*, that is, the decree of the Senate. But it may be said: how is it that, when they could assemble and make a statute (*lex, νόμος*), they differentiated the law into various designations?⁹ The reason is this: Rome being a populous city, there arose in it, as usually happens, faction and discord between the senators and the common people, the senators, it may be, being bent on having the supremacy; and, in consequence of this, they parted from each other, living separately and carrying on their governments separately. And since it was impossible for men in a political society to live without doing business, laws were enacted by the senators with a view to settling the disputes and the lawsuits that were occurring; and the common people also separately made laws, and naturally the laws made by them received a different designation. For a law made by the Senate could not be designated *lex*, lacking as it did the consent of the common people, and so it had to be called after its authors *senatus consultum*; for *senatus* is 'the Senate', and *consulere* is 'to provide for'. Accordingly, when the Senate made a law by way of providing for those who were subject to lawsuits,¹⁰ such a law was rightly called a *senatus consultum*. And among the plebeians also there arose

need to speak of a fourth law-maker. Fourth lawmaker among the Romans is the Emperor.

And what is the Emperor? The Emperor is he who is elected by the people to rule. And the law enacted by him is called a plebiscite.

⁸ Murison comments: 'the wrong way about'
⁹ 'distributed the law under different designations' Murison
¹⁰ 'for the lawsuits that occurred' Murison: cf. critical apparatus

20 προφάσεις, καὶ νόμος ἐτίθετο παρ' αὐτοῖς, ὅς οὐκ ἠδύνατο λέγεσθαι LEX, διὰ τὸ μὴ κατὰ γνώμην γεγράφθαι τῶν συγκλητικῶν· ἐκαλεῖτο οὖν PLEBISCITON, τουτέστι τοῦ πλήθους ἢ γνώσις καὶ νομοθεσία. ἐπειδὴ δὲ τὰς ἔχθρας ἀθανάτους μένειν αὐτοῖς οὐκ ἐνῆν, ORTENSIOS τις φιλόπολις ὧν συνεβούλευσεν αὐτοῖς ἀποτίθεσθαι μὲν τὴν πρὸς ἀλλήλους δυσμένειαν εἰς ὁμόνοιαν δὲ
25 τραπῆναι, τὰ διὰ τὴν ἔχθραν συμβαίνοντα δυσχερῆ διηγησάμενος· καὶ πείσας εἰς φιλίαν συνήλασεν. συνελθόντων οὖν κατὰ ταῦτό ὁ χυδαῖος ἐβούλετο δῆμος τὰ παρ' αὐτοῦ νομοθετηθέντα κρατεῖν καὶ κατὰ τῶν συγκλητικῶν, ἀπήτει δὲ καὶ ἡ σύγκλητος ὥστε τὰ SENATUS CONSULTA καὶ κατὰ τῶν ἰδιωτῶν ἰσχύειν. καὶ ἐκατέρων ἐναντιουμένων καὶ τῶν μὲν συγκλητικῶν ἀπαξι-
30 ούντων δέχεσθαι τὰ PLEBISCITA, τοῦ δὲ χυδαίου δήμου δυσανασχετοῦντος καὶ τοῖς SENATUS CONSULTOIS ὑποκύπτειν οὐ βουλομένου, ἔμελλεν ἀνανεοῦσθαι τὰ τῆς ἔχθρας, μέχρις οὗ ὁ αὐτὸς ORTENSIOS παύσας αὐτῶν τὴν διχόνοιαν ἔπεισε τὰς ἀλλήλων δέξασθαι νομοθεσίας καὶ ταύταις ὑπέκειν. καὶ οὕτω LEX μὲν οὐκ ἠδυνήθη κληθῆναι τὸ παρ' ἐκατέρου θεθέν, διὰ τὸ μὴ τὴν ἀρχὴν κατὰ συναίνεσιν τῶν δύο τίθεσθαι μερῶν, ἐπειδὴ δὲ τὴν αὐτὴν ἔκβασιν ἔσχε καὶ τοῦ αὐτοῦ ἔτυχεν ἀποτελέσματος, τὸ κρατεῖν κατὰ πάντων, LEGIS ORDINEM HABET, τουτέστι νόμου τάξιν ἔχει. τοῦ δὲ χρόνου προϊόντος καὶ τῶν Ῥωμαίων εἰς πολὺ πλῆθος ἀύξανομένων, ὡς δυσχερῆ τὴν εἰς ἓνα τόπον αὐτῶν γίνεσθαι σύνοδον τοῦ νομοθετεῖν ἕνεκα, δικαιοτάτον ἐνομίσθη
35 ἐν τάξει τοῦ παντός δήμου τὴν σύγκλητον μόνην νομοθετεῖν.

6. Εἰρήκαμεν τρεῖς νομοθέτας· δῆμον, χυδαῖον δῆμον, σύγκλητον. εἰπόντες τὸν ὅρον ἐκάστου καὶ πῶς ὠνόμασται τὸ παρ' αὐτῶν νομοθετούμενον, εἴπωμεν καὶ περὶ τετάρτου νομοθέτου. τετάρτος νομοθέτης ἐστὶ παρὰ Ῥωμαίοις ὁ βασιλεύς. καὶ τί ἐστὶ βασιλεύς; βασιλεύς ἐστὶν ὁ τὸ κράτος τοῦ
5 ἄρχειν παρὰ τοῦ δήμου λαβών. τὸ δὲ παρ' αὐτοῦ νομοθετούμενον ὀνόματι γενικῶ κέκληται CONSTITUTION, τουτέστιν ἡ διάταξις ἢ διατύπωσις. τέμνεται

Pb Lc Lb La Vb Ma Pc

21 γεγράφθαι] γενέσθαι Ma | τῶν] καὶ τῶν La 22 τουτέστι Ma Vb La, om. Z 23 ὀρθή-
σιός Pc, ὀρθίσιός Z hic et mox (32) 25 διηγησάμενος om. Ma¹ 26 ταῦτόν Pc 29 ἐκα-
τέρων δὲ ἐναντιουμένων La | καί²] ὡς Pc 31 οὐ] μὴ Ma 34 ἐκατέρων La 35 ἐπειδὴ
δὲ] ἐπεὶ δὲ καὶ τὸ νομοθετηθὲν ἐκ τοῦ ἰδιώτου δήμου πλεσβίικτον Ma 36 κρατεῖν] κρατεῖν
φημί Ma Pb 37 LEGIS ... HABET in lac. ins. Ma^{occ} | ἐπέχει Ma 38 ἀύξανομένων Pc,
-μένου Ma, ἀύξομένων Z | δυσχερῆ τὴν Pc Ma Pb, δυσχρήστην Lc, δυσχερές εἶναι τὸ (τὸ
om. Lb) Z 6,2 εἰπόντες οὖν Ma | αὐτῶν] αὐτοῦ Vb La 3 καί] τοίνυν καὶ Ma | τοῦ
τετάρτου Ma | παρὰ Ῥωμαίοις ἐστὶ Ma 6 λέγεται γενικῶ Vb La | ἢ om. Vb La

occasions for lawsuits and law was enacted by them, but such law
not be called *lex* because it had not been made with the consent of the
senators; and so it was called *plebiscitum*, that is, the view of the
enactment of the common people. But as it was impossible for the
parties should remain at enmity for ever, a certain Hortensius, a
patriotic feeling, counselled them to cease their ill-will and to
reconciled, setting forth the evils arising from their enmity, and
persuasion he induced them to make up the quarrel. Upon their
the common people wanted the laws that had been made by the
binding on the senators as well, while the Senate on its part desired
that the *senatusconsulta* should be binding also on the plebeian
parties rejected each other's demands, however, the senators decided
to accept the *plebiscita* and the common people being annoyed by
refusal and declining to submit to the *senatusconsulta*; and so the
enmity was like to be renewed, till the said Hortensius allayed the
discord and persuaded them to accept each other's enactments and
submit to them. Even in these circumstances the term *lex* could not
applied to such law as was made by the one body or by the other, but
because it was not originally made with the consent of the two bodies,
but, as it had the same effect and result – namely: was binding on the
legis ordinem habet, that is, it ranks as statute. As time went on,
however, and the Romans grew to a great multitude, so that it became
difficult for them to assemble in one place to make laws, it was considered
the most fitting arrangement that, instead of the whole people, the
Senate alone should make laws.

6. We have mentioned three law-making bodies: the people, the
common people, and the Senate; and we have set forth the definition of each
and how the laws made by them are designated. Let us now proceed
to speak of a fourth law-maker. Fourth lawmaker among the
Romans is the Emperor.

And what is the Emperor? The Emperor is he that has received
from the people the power to rule. And the law enacted by him is

¹¹ 'decision' Murison

... και νόμος ἐτίθετο παρ' αὐτοῖς, ὅς οὐκ ἠδύνατο λέγεσθαι *LEX*,
 ... κατὰ γνώμην γεγράφθαι τῶν συγκλητικῶν· ἐκαλεῖτο οὖν *PLEBISCI-*
 ... τοῦ πλήθους ἢ γνώσις καὶ νομοθεσία. ἐπειδὴ δὲ τὰς ἔχθρας
 ... μένειν αὐτοῖς οὐκ ἐνῆν, *ORTENSIOS* τις φιλόπολις ὧν συνεβούλευ-
 ... ἀποτίθεσθαι μὲν τὴν πρὸς ἀλλήλους δυσμένειαν εἰς ὁμόνοιαν δὲ
 ... ταῖα διὰ τὴν ἔχθραν συμβαίνοντα δυσχερῆ διηγησάμενος· καὶ πεί-
 ... φίλιαν συνήλασεν. συνελθόντων οὖν κατὰ ταῦτό ὁ χυδαῖος ἐβούλετο
 ... παρ' αὐτοῦ νομοθετηθέντα κρατεῖν καὶ κατὰ τῶν συγκλητικῶν,
 ... καὶ ἡ σύγκλητος ὥστε τὰ *SENATUS CONSULTA* καὶ κατὰ τῶν ἰδιω-
 ... χύειν. καὶ ἑκατέρων ἐναντιουμένων καὶ τῶν μὲν συγκλητικῶν ἀπαξι-
 ... δέχεσθαι τὰ *PLEBISCITA*, τοῦ δὲ χυδαίου δήμου δυσανασχετοῦντος
 ... *SENATUS CONSULTOIS* ὑποκίπτειν οὐ βουλομένου, ἔμελλεν ἀνανεοῦ-
 ... τῆς ἔχθρας, μέχρις οὗ ὁ αὐτὸς *ORTENSIOS* παύσας αὐτῶν τὴν διχό-
 ... ἔπεισε τὰς ἀλλήλων δέξασθαι νομοθεσίας καὶ ταύταις ὑπέικειν. καὶ
 ... *LEX* μὲν οὐκ ἠδυνήθη κληθῆναι τὸ παρ' ἑκατέρου τεθέν, διὰ τὸ μὴ τὴν
 ... κατὰ συναίνεσιν τῶν δύο τίθεσθαι μερῶν, ἐπειδὴ δὲ τὴν αὐτὴν
 ... ἔσχε καὶ τοῦ αὐτοῦ ἔτυχεν ἀποτελέσματος, τὸ κρατεῖν κατὰ πάντων,
 ... *ORDINEM HABET*, τουτέστι νόμου τάξιν ἔχει. τοῦ δὲ χρόνου προϊόντος
 ... Ῥωμαίων εἰς πολὺ πλῆθος ἀύξανομένων, ὡς δυσχερῆ τὴν εἰς ἕνα
 ... αὐτῶν γίνεσθαι σύνοδον τοῦ νομοθετεῖν ἕνεκα, δικαιοτάτον ἐνομίσθη
 ... τοῦ παντὸς δήμου τὴν σύγκλητον μόνην νομοθετεῖν.

6. Εἰρήξαμεν τρεῖς νομοθέτας· δῆμον, χυδαῖον δῆμον, σύγκλητον.
 ... τὸν ὄρον ἐκάστου καὶ πῶς ὠνόμασται τὸ παρ' αὐτῶν νομοθετούμε-
 ... ἔπωμεν καὶ περὶ τετάρτου νομοθέτου. τέταρτος νομοθέτης ἐστὶ παρὰ
 ... οἱ βασιλεῦς. καὶ τί ἐστὶ βασιλεῦς; βασιλεῦς ἐστὶν ὁ τὸ κράτος τοῦ
 ... παρὰ τοῦ δήμου λαβῶν. τὸ δὲ παρ' αὐτοῦ νομοθετούμενον ὀνόματι
 ... κέκληται *CONSTITUTION*, τουτέστιν ἡ διάταξις ἢ διατύπωσις. τέμνεται

Lb La Vb Ma Pc

... γένεσθαι Ma | τῶν] καὶ τῶν La 22 τουτέστι Ma Vb La, om. Z 23 ὀρθή-
 ... ὀρθίσιος Z hic et mox (32) 25 διηγησάμενος om. Ma¹ 26 ταῦτόν Pc 29 ἑκα-
 ... ἐναντιουμένων La | καί] ὡς Pc 31 οὐ] μὴ Ma 34 ἑκατέρων La 35 ἐπειδὴ
 ... καὶ τὸ νομοθετηθὲν ἐκ τοῦ ἰδιώτου δήμου πλεσβίαιον Ma 36 κρατεῖν] κρατεῖν
 ... Ma Pb 37 *LEGIS ... HABET* in lac. ins. Ma^{occ} | ἐπέχει Ma 38 ἀύξανομένων Pc,
 ... Ma, ἀύχομένων Z | δυσχερῆ τὴν Pc Ma Pb, δυσχρήστην Lc, δυσχερῆς εἶναι τὸ (τὸ
 ... Z 6,2 εἰπόντες οὖν Ma | αὐτῶν] αὐτοῦ Vb La 3 καί] τοίνυν καὶ Ma | τοῦ
 ... Ma | παρὰ Ῥωμαίοις ἐστὶ Ma 6 λέγεται γενικῶ Vb La | ἢ om. Vb La

occasions for lawsuits and law was enacted by them, but such law could
 not be called *lex* because it had not been made with the consent of the
 senators; and so it was called *plebiscitum*, that is, the view¹¹ and
 enactment of the common people. But as it was impossible that the
 parties should remain at enmity for ever, a certain Hortensius, a man of
 patriotic feeling, counselled them to cease their ill-will and to become
 reconciled, setting forth the evils arising from their enmity, and by his
 persuasion he induced them to make up the quarrel. Upon their reunion,
 the common people wanted the laws that had been made by them to be
 binding on the senators as well, while the Senate on its part demanded
 that the *senatusconsulta* should be binding also on the plebeians. Both
 parties rejected each other's demands, however, the senators disdaining
 to accept the *plebiscita* and the common people being annoyed at the
 refusal and declining to submit to the *senatusconsulta*; and so their
 enmity was like to be renewed, till the said Hortensius allayed their
 discord and persuaded them to accept each other's enactments and to
 submit to them. Even in these circumstances the term *lex* could not be
 applied to such law as was made by the one body or by the other,
 because it was not originally made with the consent of the two parties;
 but, as it had the same effect and result – namely: was binding on all –,
legis ordinem habet, that is, it ranks as statute. As time went on,
 however, and the Romans grew to a great multitude, so that it became
 difficult for them to assemble in one place to make laws, it was deemed
 the most fitting arrangement that, instead of the whole people, the
 Senate alone should make laws.

6. We have mentioned three law-making bodies: the people, the
 common people, and the Senate; and we have set forth the definition of
 each and how the laws made by them are designated. Let us now pro-
 ceed to speak of a fourth law-maker. Fourth lawmaker among the
 Romans is the Emperor.

And what is the Emperor? The Emperor is he that has received
 from the people the power to rule. And the law enacted by him is called

¹¹ 'decision' Murison

20 δὲ εἰς τρία· εἰς ἐπιστολὴν εἰς EDICTON εἰς DECRETON. καὶ τί ἐστὶν ἐπιστολή;
ἀντιγραφὴ βασιλέως πρὸς ἄρχοντος ἀναφορὰν περὶ τινος ἀμφιβόλου πράγ-
ματος γινομένη. οἷον συνέβη κατὰ τινὰ ἐπαρχίαν τελευτήσαντος τινος δύο
10 περὶ τῆς ἐκείνου κληρονομίας ἀμφισβητεῖν, ἀδελφὸν καὶ θεῖον. τούτων
ἐκάτερος ἠξίου μόνος τὸν κλῆρον λαμβάνειν, ὁ μὲν ὡς ἀδελφός, ὁ δὲ ὡς
θεῖος. νόμου μὴ κειμένου ταύτην τέμνοντος τὴν ἀμφιβολίαν ἀναφορὰ
γέγονε πρὸς βασιλέα παρὰ τοῦ τῆς ἐπαρχίας ἄρχοντος. ἀναγνούς τὸ ἀνενε-
χθὲν ὁ βασιλεὺς ἀντέγραψε τὸν ἀδελφὸν τοῦ τελευτήσαντος προτιμηθῆναι.
15 νομοθετεῖ καὶ ἐν DECRETO ὁ βασιλεὺς. καὶ τί ἐστὶν DECRETON; ἀπόφασις
βασιλέως μεταξὺ δύο μερῶν παρ' αὐτῷ δικαζομένων ἐκφερομένη. οἷον ἐπὶ
τοῦ αὐτοῦ θέματος· δύο τινὲς ἐφιλονεῖκουσιν περὶ κληρονομίας
τελευτήσαντος τινος, ἀδελφός φημι καὶ θεῖος τοῦ κατοικομένου, περὶ τοῦ
τίνα δεῖ εἰς τὴν κλῆσιν προτιμηθῆναι τοῦ κλήρου. ὁ βασιλεὺς ἀμφοτέρων
20 ἀκροασάμενος ἀπεφῆνατο τὸν ἀδελφὸν προτιμηθῆναι. καὶ τοῦτο νόμος ἐστὶ
βασιλικός, λέγεται δὲ DECRETON παρὰ τὸ DECERNERE, ὃ ἐστὶ θεωρῆσαι.
σκοπήσας γὰρ τῇ ἰδίᾳ διανοίᾳ τὸ νομιζόμενον αὐτῷ δίκαιον ἀποφαίνεται.
λέγεται δὲ ὁμόνυμος DECRETON καὶ ἡ τοῦ ἄρχοντος ἀπόφασις, ἀλλὰ τούτῳ
διενηνόχασιν, ὅτι τὸ μὲν τοῦ βασιλέως DECRETON καὶ αὐτὴν καὶ ἄλλην
25 τοιοῦτότροπον ὀτεδήποτε ἀναφουομένην ὑπόθεσιν ἐκτέμνει, τὸ δὲ τοῦ
ἄρχοντος αὐτήν, ἔσθ' ὅτε δὲ οὐδὲ αὐτήν, εἴγε ἔκκλητος παρακολουθήσει.
νομοθετεῖ δὲ βασιλεὺς καὶ ἐν EDICTO. καὶ τί ἐστὶν EDICTON; πᾶν ὅπερ ἐξ
οικείας φύσεως κινήσει ὀρίσει βασιλεὺς πρὸς τὴν τῶν ὑπηκόων εὐταξίαν καὶ
λυσιτέλειαν. λέγεται δὲ EDICTON παρὰ τὸ EDICERE, ὃ ἐστὶ προλέγειν καὶ
30 προαναστέλλειν τὰ ἔσθ' ὅτε τοῖς ὑπηκόοις συμβησόμενα λυπηρά. πολλάκις
γὰρ καθ' ἑαυτὸν ἐλογίσαστο βασιλεὺς ἄτοπον εἶναι τὸ παρὰ τῶν ὑποτελῶν
αὐτοῦ γινόμενον. οἷον δανείσας τις ἑκατὸν νομίσματα λόγῳ τόκων ἐπηρώ-

Pb Lc Lb La Vb Ma Pc

8 βασιλική Vb La | ἀμφιβολίας πραγμάτων Vb La¹ 9 τινος] τινος καὶ μὴ ὄντος τινός
κληρονόμου τῶν ἀνιόντων ἢ κατιόντων Ma 10 θεῖον] θεῖον τοῦ ἀποικομένου Ma | τού-
των] τούτων γὰρ Ma 11 ἠξίου μόνος Ma Vb La, ἠξίου Pb, ἠξιωμένος Z 12 νόμου]
νόμου οὖν Ma La²?, νόμου δὲ Pb 15 καὶ¹] δὲ καὶ Ma | ὁ Z, om. Pc Pb Lb 16 οἷον] ὡς
Ma 19 κλῆσιν] κληρονομίαν Vb La¹ | τοῦ κλήρου] τῆς κληρονομίας Ma | ὁ] καὶ ὁ Ma
22 ἰδίᾳ Pc, οικείᾳ Z | ἀπεφῆνατο Vb La 25 τοιοῦτῳ τρόπῳ Pc | ὀτεδήποτε om. Pc |
τέμνει Vb La¹ 27 δὲ καὶ ἐν ἐδίκτῳ ὁ βασιλεὺς Ma 28 ὁ βασιλεὺς Ma Vb Lc 29 EDICE-
RE Pb, EDICERE (varie scr.) Z, προεδίκερε Vb, προδίκαιρε La¹ 31 ὁ βασιλεὺς Ma Vb Pb
32 τόκου Ma

by a general name a *constitutio*, that is, a law or ordinance. I shall
distinguish three kinds of constitutions: *epistula*, *edictum*, *decretum*.

And what is an *epistula* (letter)? It is a written reply (rescript) of the
Emperor in answer to a reference from a magistrate on some legal
matter. For instance, it happened in some province that, on the death of
a man, two persons disputed his inheritance, a brother and a paternal
uncle. Each of them claimed to be the sole person entitled to the
inheritance, the one as brother, the other as paternal uncle. There was
no law to decide this doubtful point, the Governor of the province
referred it to the Emperor. And the Emperor, having considered the
case referred, wrote in reply that the brother was preferred.

By a *decretum* (decree, judgment) also the Emperor decides cases.
And what is a *decretum*? A decision of the Emperor pronounced in
between two parties in litigation before him. Take, for example, the case
just cited: two persons, a brother and a paternal uncle of a man who
died, went to law about the inheritance of the deceased, the question being
which of them was entitled to be preferred for entry on the inheritance.
The Emperor, having heard both parties, decided that the brother should
be preferred. This, too, is an imperial law, and it is called *decretum*.
decernere, which means 'to consider';¹² for the Emperor considers the
case on his own mind and then declares what appears to him to be the
just decision. A decision of a magistrate also is called by the same name *decretum*.
There is this difference between them: the decree of the Emperor decides
not only the particular case but also other similar cases arising in the
future, while the decree of the magistrate decides the particular case
alone, and sometimes not even that, when it goes to appeal.

By *edictum* (edict, proclamation) also the Emperor makes laws. And
what is an *edictum*? Every ordinance that an Emperor issues by his
proclamation establishes with a view to the orderly conduct and the
convenience of his subjects. It is called *edictum* from *edico*, which
means to proclaim and to forestall evils that are from time to time
to fall upon his subjects. For an Emperor often concludes from his
mind that practices obtaining among his subjects are unreasonable.

¹² 'judge' Murison

τρία: εἰς ἐπιστολὴν εἰς EDICTON εἰς DECRETON. καὶ τί ἐστὶν ἐπιστολή;
 βασιλέως πρὸς ἄρχοντος ἀναφορὰν περὶ τινος ἀμφιβόλου πράγ-
 γινομένη. οἷον συνέβη κατὰ τινα ἐπαρχίαν τελευτήσαντος τινος δύο
 τῆς ἐξείνου κληρονομίας ἀμφισβητεῖν, ἀδελφὸν καὶ θεῖον. τούτων
 ἕξαι μόνος τὸν κλῆρον λαμβάνειν, ὁ μὲν ὡς ἀδελφός, ὁ δὲ ὡς
 νόμου μὴ κειμένου ταύτην τέμνοντος τὴν ἀμφιβολίαν ἀναφορὰ
 εἰς πρὸς βασιλέα παρὰ τοῦ τῆς ἐπαρχίας ἄρχοντος. ἀναγνούς τὸ ἀνενε-
 ὁ βασιλεὺς ἀντέγραψε τὸν ἀδελφὸν τοῦ τελευτήσαντος προτιμηθῆναι.
 θετεῖ καὶ ἐν DECRETO ὁ βασιλεὺς. καὶ τί ἐστὶ DECRETON; ἀπόφασις
 εἰς μεταξὺ δύο μερῶν παρ' αὐτῶ δικαζομένων ἐκφερομένη. οἷον ἐπὶ
 αὐτοῦ θέματος δύο τινὲς ἐφιλονεῖουν περὶ κληρονομίας
 τήσαντος τινος, ἀδελφός φημι καὶ θεῖος τοῦ κατοικομένου, περὶ τοῦ
 δεῖ εἰς τὴν κλῆσιν προτιμηθῆναι τοῦ κλήρου. ὁ βασιλεὺς ἀμφοτέρων
 ἀσάμενος ἀπεφάνητο τὸν ἀδελφὸν προτιμηθῆναι. καὶ τοῦτο νόμος ἐστὶ
 αἰκός, λέγεται δὲ DECRETON παρὰ τὸ DECERNERE, ὃ ἐστὶ θεωρῆσαι.
 ἡσας γὰρ τῇ ἰδίᾳ διανοίᾳ τὸ νομιζόμενον αὐτῶ δίκαιον ἀποφαίνεται.
 εἰ δὲ ὁμονύμως DECRETON καὶ ἡ τοῦ ἄρχοντος ἀπόφασις, ἀλλὰ τούτῳ
 γνόχασιν, ὅτι τὸ μὲν τοῦ βασιλέως DECRETON καὶ αὐτὴν καὶ ἄλλην
 ὑπόθεσιν ἀναφρομένην ὑπόθεσιν ἐκτέμνει, τὸ δὲ τοῦ
 ἄρχοντος αὐτὴν, ἔσθ' ὅτε δὲ οὐδὲ αὐτὴν, εἴγε ἐκκλητος παρακολουθήσει.
 θετεῖ δὲ βασιλεὺς καὶ ἐν EDICTO. καὶ τί ἐστὶν EDICTON; πᾶν ὅπερ ἐξ
 ἰσίας φύσεως κινηθεὶς ὁρίσει βασιλεὺς πρὸς τὴν τῶν ὑπηκόων εὐταξίαν καὶ
 τέλειαν. λέγεται δὲ EDICTON παρὰ τὸ EDICERE, ὃ ἐστὶ προλέγειν καὶ
 ἀναστέλλειν τὰ ἔσθ' ὅτε τοῖς ὑπηκόοις συμβησόμενα λυπηρά. πολλάκις
 καθ' ἑαυτὸν ἐλογίσαστο βασιλεὺς ἄτοπον εἶναι τὸ παρὰ τῶν ὑποτελῶν
 γινόμενον. οἷον δανείσας τις ἑκατὸν νομίσματα λόγῳ τόκων ἐπηρώ-

c Lb La Vb Ma Pc

ἀμφιβολίας πραγμάτων Vb La¹ 9 τινος] τινος καὶ μὴ ὄντος τινος
 νόμου τῶν ἀνόντων ἢ κατιόντων Ma 10 θεῖον] θεῖον τοῦ ἀποικομένου Ma | τοῦ-
 τούτων γὰρ Ma 11 ἕξαι μόνος Ma Vb La, ἕξαι Pb, ἕξαιμένος Z 12 νόμου]
 οὐ οὖν Ma La²?, νόμου δὲ Pb 15 καὶ] δὲ καὶ Ma | ὁ Z, om. Pc Pb Lb 16 οἷον] ὡς
 19 κλῆσιν] κληρονομίαν Vb La¹ | τοῦ κλήρου] τῆς κληρονομίας Ma | ὅ] καὶ ὁ Ma
 δία Pc, οἰκεία Z | ἀπεφάνητο Vb La 25 τοιούτῳ τρόπῳ Pc | ὅτεδήποτε om. Pc |
 εἰ Vb La¹ 27 δὲ καὶ ἐν ἐδικτῷ ὁ βασιλεὺς Ma 28 ὁ βασιλεὺς Ma Vb Lc 29 EDICE-
 Pb, EDICERE (varic scr.) Z, πραεδικερε Vb, προδίκαιρε La¹ 31 ὁ βασιλεὺς Ma Vb Pb
 τόκου Ma

by a general name a *constitutio*, that is, a law or ordinance. We distinguish three kinds of constitutions: *epistula*, *edictum*, *decretum*.

And what is an *epistula* (letter)? It is a written reply (rescript) of the Emperor in answer to a reference from a magistrate on some doubtful matter. For instance, it happened in some province that, on the death of a man, two persons disputed his inheritance, a brother and a paternal uncle. Each of them claimed to be the sole person entitled to take the inheritance, the one as brother, the other as paternal uncle. There being no law to decide this doubtful point, the Governor of the province referred it to the Emperor. And the Emperor, having considered the case referred, wrote in reply that the brother was preferred.

By a *decretum* (decree, judgment) also the Emperor makes law. And what is a *decretum*? A decision of the Emperor pronounced between two parties in litigation before him. Take, for example, the case just cited: two persons, a brother and a paternal uncle of a man that had died, went to law about the inheritance of the deceased, the point being which of them was entitled to be preferred for entry on the inheritance. The Emperor, having heard both parties, decided that the brother was to be preferred. This, too, is an imperial law, and it is called *decretum* from *decernere*, which means 'to consider';¹² for the Emperor considers in his own mind and then declares what appears to him to be just. The decision of a magistrate also is called by the same name *decretum*, but there is this difference between them: the decree of the Emperor decides not only the particular case but also other similar cases at any time arising, while the decree of the magistrate decides the particular case alone, and sometimes not even that, when it goes to appeal.

By *edictum* (edict, proclamation) also the Emperor makes law. And what is an *edictum*? Every ordinance that an Emperor of his own motion establishes with a view to the orderly conduct and the practical convenience of his subjects. It is called *edictum* from *edicere*, which means to proclaim and to forestall evils that are from time to time likely to fall upon his subjects. For an Emperor often concludes in his own mind that practices obtaining among his subjects are unreasonable. For

¹² 'judge' Murison

35 τησε δίδοσθαι αὐτῷ καθ' ἕκαστον ἔτος πενήκοντα νομίματα. ἄτοπον
 τοῦτο καθ' ἑαυτὸν ἐνθυμηθεὶς ὁ βασιλεὺς καὶ κινήθεισ κατὰ τῶν τὰ τοιαῦτα
 πλημμελούντων τίθησι διάταξιν, ὥστε καθ' ἕκαστον ἔτος ἕνεκα νομισμάτων
 40 ρ' δεδανεισμένων ἐξ λόγου χάριν ὑπὲρ τόκου δίδοσθαι νομίματα. τὰ δὲ
 παρὰ τοῦ βασιλέως νομοθετούμενα ἰσοδυναμεῖν τῷ LEX τῶν ὠμολογημένων
 ἐστίν. ἀλλ' ἔχει τις εἰπεῖν· διὰ τί τῶν νομοθετησάντων τὰ SENATUSCONSULTA
 πολλῶν ὄντων ἢ γνώμη κατὰ τῶν ἰδιωτῶν οὐκ ἐκράτει, καὶ πάλιν τοῦ
 45 χυδαίου πλήθους ὄντος ἀμέτρου οὐκ ἴσχυον αἱ νομοθεσίαι κατὰ τῶν
 συγκλητικῶν, εἰ μὴ ORTENSIOS τὰ παρ' ἑκατέρου καθ' ἑκατέρου κρατεῖν
 ἔπεισε, βασιλεὺς δὲ εἰς ὧν ἄνθρωπος νομοθετεῖ καὶ οὐδεὶς τοῖς τούτου
 δόγμασιν ἐναντιοῦται; ἀλλ' ἐροῦμεν ὡς εἴ τις βουλευθείη τὴν αἰτίαν γνῶναι
 τὸν ὄρον ὀφείλει λαβεῖν κατὰ διάνοιαν τὸν τοῦ βασιλέως, ὅτι βασιλεὺς ἐστίν
 50 ὁ τὸ κράτος τοῦ ἄρχειν παρὰ τοῦ δήμου λαβών. δῆμος δὲ ἐν αὐτῷ τὴν
 σύγκλητον ἔχει καὶ τοὺς ἰδιώτας. οὔτε οὖν τὸ χυδαῖον πλήθος ταῖς τούτου
 διατάξεσιν ἠναντιοῦτο, οὔτε ἡ σύγκλητος ταύτας ἀπεδοκίμαζεν. τοῦτο γὰρ
 πράττοντες ταῖς ἑαυτῶν ἐμάχοντο ψήφοις. ὁ γὰρ δῆμος τοῦτον ἐχειρο-
 τόνησε, νόμου REGIU τοῦτο κυρώσαντος, ὃς περὶ βασιλείας τεθεῖς πᾶσαν
 55 βασιλεῖ δέδωκε κατὰ τοῦ δήμου τὴν ἐξουσίαν. τὰ μὲν οὖν ὑπ' αὐτοῦ τεθέντα
 κοινῶ ὀνόματι κέκληνται CONSTITUTIONES. τούτων δὲ αἱ μὲν εἰσὶ PERSON-
 ALIAI καὶ οὐδὲ εἰς παράδειγμα ἔλκεσθαι δύνανται, διὰ τὸ μὴ τοῦτο
 βασιλέα βεβουλησθαι. ἐὰν γὰρ τι δι' εὐεργεσίαν τὴν ἑαυτοῦ πολιτείαν
 εὐεργετήσαντι φιλοτιμήσῃται, ὁποῖον τὸ ἐξεῖναι αὐτῷ φόρους δημοσίους μὴ
 60 καταβάλλειν· ἐὰν οὖν συμβῆ μετὰ ταῦτα ἕτερον ὅμοια ἢ καὶ ἴσως μείζονα
 ὠφελῆσαι τὴν πολιτείαν, ὁ τοιοῦτος οὐ δυνήσεται ἐξ ἐκείνου τοῦ νόμου
 περιποιεῖν ἑαυτῷ παραπλήσια, διὰ τὸ προσώπῳ περικεικλεισθαι τὸν νόμον· ἢ

Pb Lc Lb La Vb Ma Pc

33 κατ' ἔτος αὐτῷ Ma | νομίματα ν' Ma | ἄτοπον] ἄτοπον οὖν (οὖν om. Vb¹) εἶναι Vb
 La 34 ὁ βασιλεὺς Ma Vb La, om. Z | τὰ om. Ma 35 πλημμελούντων] πλημμάτων aut
 sim. Ma 37 ante ἰσοδυναμεῖν del. τῷ τῆς συγκλήτου θεσπίσματι Pc | τῷ LEX] τὸ λέξ τῷ
 νόμῳ Pc 40 πλήθους] δήμου Ma 41 ORTENSIOS] ὀρτίκιος τις Ma La² | τὰ ... ἑκατέ-
 ρου²] κατὰ ἀμφοτέρων τὰ παρ' ἑκατέρων Ma 42 ἄνθρωπος ὢν Ma 45 ὁ δῆμος Vb La |
 αὐτῷ] ἑαυτῷ Ma 46 ὥστε οὖν οὔτε Ma 47 ἠναντιοῦντο Ma 51 κέκληται Pb Lb
 52 ἔλκεσθαι δύνανται] ἔλκονται Ma La² 53 τὸν βασιλέα Vb La | τι δι' εὐεργεσίαν] τινα
 Ma 54 εὐεργετήσαντι] ὠφελῆσαντι Vb La¹ | φιλοτιμήσῃται τι Vb La | ὁποῖον] ὁποῖον
 ἐστὶ Vb La | τὸ] τῷ Ma 55 ἐὰν οὖν] καὶ Vb La 56 τὴν ἑαυτοῦ πολιτείαν Ma |
 δυνήσεται Ma 57 τὰ παραπλήσια Vb La | ἢ...59 πράξας Pc Lc Lb, εἰ δὲ ... πέπραχεν Z

instance, a man on lending 100 *solidi* stipulates that there shall be given to him yearly by way of interest 50 *solidi*. The Emperor considering on his own mind that this is unreasonable, and moved to displease the people doing such strange things, enacts a constitution that for every 100 *solidi* there shall be given yearly by way of interest, 50 *solidi*. Now, the laws made by the Emperor, it is acknowledged, have the same force with a *lex* (statute). But it may be said: how is it that, when the laws that passed the *senatusconsulta* were numerous, their decrees did not bind the plebeians, and again when the common people were numerous, their enactments did not bind the senators, had not the Emperor persuaded both parties to submit to each other's enactments? The Emperor, though but a single individual, makes law and no man can resist his ordinances? Our answer is that whoever wishes to know the force of the laws must grasp the definition of the Emperor: the Emperor is not a man who has received from the people the power to rule. The people is not the Senate and the plebeians; and so neither did the common people resist his constitutions nor did the Senate reject them. In fact, if they had, they would be acting in opposition to their own votes. For the Emperor, who elected him and formally ratified his election by an imperial law (*regia*), which was passed on the subject of his *imperium* and conferred upon the Emperor absolute power over the people.

The laws made by the Emperor are designated by a common name, *constitutiones*. Now, of these, some are personal, and cannot be applied to others. Now, of these, some are personal, and cannot be applied to others. For precedents, this not having been the Emperor's intention. For example, if he conferred a favour on a man that has done his State a service, or an exemption from payment of public taxes – and it turns out that the man afterwards does the State a like service, or even perhaps a greater service, the latter will not be able under that law to claim for himself a similar favour, because the law has been restricted to a particular person.

δοσθαι αὐτῷ καθ' ἕκαστον ἔτος πενήκοντα νομίματα. ἄτοπον
 καθ' ἑαυτὸν ἐνθυμηθεὶς ὁ βασιλεὺς καὶ κινήσει κατὰ τῶν τῶν τοιαῦτα
 οὐκ ἔχοντων τίθησι διάταξιν, ὥστε καθ' ἕκαστον ἔτος ἕνεκα νομισμάτων
 κειμένων ἐξ λόγου χάριν ὑπὲρ τόκου δίδοσθαι νομίματα. τὰ δὲ
 ὁ βασιλεὺς νομοθετούμενα ἰσοδυναμεῖν τῷ LEX τῶν ὠμολογημένων
 ἀλλ' ἔχει τις εἰπεῖν διὰ τί τῶν νομοθετησάντων τὰ SENATUSCONSULTA
 ὄντων ἢ γνώμη κατὰ τῶν ἰδιωτῶν οὐκ ἐκράτει, καὶ πάλιν τοῦ
 πλῆθους ὄντος ἀμέτρου οὐκ ἴσχυον αἱ νομοθεσίαι κατὰ τῶν
 κτῶν, εἰ μὴ ORTENSIOS τὰ παρ' ἑκατέρου καθ' ἑκατέρου κρατεῖν
 βασιλεὺς δὲ εἰς ὧν ἄνθρωπος νομοθετεῖ καὶ οὐδεὶς τοῖς τούτου
 ἐναντιοῦται; ἀλλ' ἐροῦμεν ὡς εἴ τις βουλευθεῖη τὴν αἰτίαν γνῶναι
 ὁφείλει λαβεῖν κατὰ διάνοιαν τὸν τοῦ βασιλέως, ὅτι βασιλεὺς ἐστὶν
 ἀνάγκη τοῦ ἄρχειν παρὰ τοῦ δήμου λαβόν. δῆμος δὲ ἐν αὐτῷ τὴν
 ἐξουσίαν ἔχει καὶ τοὺς ἰδιώτας. οὔτε οὖν τὸ χυδαῖον πλῆθος ταῖς τούτου
 ἐναντιοῦτο, οὔτε ἡ σύγκλητος ταύτας ἀπεδοκίμαζεν. τοῦτο γὰρ
 οἱ ταῖς ἑαυτῶν ἐμάχοντο ψήφοις. ὁ γὰρ δῆμος τοῦτον ἐχειρο-
 νόμου REGIU τοῦτο κυρῶσαντος, ὃς περὶ βασιλείας τεθεῖς πᾶσαν
 δέδωκε κατὰ τοῦ δήμου τὴν ἐξουσίαν. τὰ μὲν οὖν ὑπ' αὐτοῦ τεθέντα
 ὀνόματι κέκληνται CONSTITUTIONES. τούτων δὲ αἱ μὲν εἰσὶ PERSO-
 ναὶ οὐδὲ εἰς παράδειγμα ἔλκεσθαι δύνανται, διὰ τὸ μὴ τοῦτο
 ἐπιβουλευθῆσαι. ἐὰν γὰρ τι δι' εὐεργεσίαν τὴν ἑαυτοῦ πολιτείαν
 ἔσταντι φιλοτιμήσῃται, ὅποιον τὸ ἐξεῖναι αὐτῷ φόρους δημοσίους μὴ
 ἔλλειν· ἐὰν οὖν συμβῇ μετὰ ταῦτα ἕτερον ὅμοια ἢ καὶ ἴσως μείζονα
 τὴν πολιτείαν, ὁ τοιοῦτος οὐ δυνήσεται ἐξ ἐκείνου τοῦ νόμου
 εἶναι ἑαυτῷ παραπλήσια, διὰ τὸ προσώπῳ περιεκλειεῖσθαι τὸν νόμον· ἢ

b La Vb Ma Pc
 ἔτος αὐτῷ Ma | νομίματα v Ma | ἄτοπον] ἄτοπον οὖν (οὖν om. Vb¹) εἶναι Vb
 ὁ βασιλεὺς Ma Vb La, om. Z | τὰ om. Ma 35 πλημμελούντων] πλημμάτων aut
 37 ante ἰσοδυναμεῖν del. τῷ τῆς συγκλήτου θεσίματι Pc | τῷ LEX] τὸ λέξ τῷ
 40 πλῆθους] δήμου Ma 41 ORTENSIOS] ὀρτίκιος τις Ma La² | τὰ ... ἑκατέ-
 τα ἀμφοτέρων τὰ παρ' ἑκατέρου Ma 42 ἄνθρωπος ὧν Ma 45 ὁ δῆμος Vb La |
 τῷ Ma 46 ὥστε οὖν οὔτε Ma 47 ἠναντιοῦντο Ma 51 κέκληται Pb Lb
 εἶναι δύνανται] ἔλκονται Ma La² 53 τὸν βασιλέα Vb La | τι δι' εὐεργεσίαν] τινα
 εὐεργετήσαντι] ὠρελήσαντι Vb La¹ | φιλοτιμήσῃται τι Vb La | ὅποιον] ὅποιον
 La | τὸ] τῷ Ma 55 ἐὰν οὖν] καὶ Vb La 56 τὴν ἑαυτοῦ πολιτείαν Ma |
 ται Ma 57 τὰ παραπλήσια Vb La | ἢ...59 πράξας Pc Lc Lb, εἰ δὲ ... πέπραχε Z

instance, a man on lending 100 *solidi* stipulates that there shall be given
 to him yearly by way of interest 50 *solidi*. The Emperor considering in
 his own mind that this is unreasonable, and moved to displeasure with
 people doing such strange things, enacts a constitution that for a loan of
 100 *solidi* there shall be given yearly by way of interest, say, 6 *solidi*.
 Now, the laws made by the Emperor, it is acknowledged, have equal
 force with a *lex* (statute). But it may be said: how is it that, when those
 that passed the *senatusconsulta* were numerous, their decrees did not
 bind the plebeians, and again when the common people were countless
 their enactments did not bind the senators, had not Hortensius
 persuaded both parties to submit to each other's enactments, yet the
 Emperor, though but a single individual, makes law and no man opposes
 his ordinances? Our answer is that whoever wishes to know the reason
 must grasp the definition of the Emperor: the Emperor is he that has
 received from the people the power to rule. The people includes the
 Senate and the plebeians; and so neither did the common people oppose
 his constitutions nor did the Senate reject them. In fact, if they did so,
 they would be acting in opposition to their own votes. For the people
 elected him and formally ratified his election by an imperial statute (*lex
 regia*), which was passed on the subject of his *imperium* and which has
 conferred upon the Emperor absolute power over the people.

The laws made by the Emperor are designated by a common name
constitutiones. Now, of these, some are personal, and cannot be taken as
 precedents, this not having been the Emperor's intention. For, if he has
 conferred a favour on a man that has done his State a service – say,
 exemption from payment of public taxes – and it turns out that another
 man afterwards does the State a like service, or even perhaps a greater
 service, the latter will not be able under that law to claim for himself a
 similar favour, because the law has been restricted to a particular person.

out of hatred (for the Emperor hates no man under his sway but if any
 one be found he will be numbered with the dead).
 then that the circumstances have been empowered to make
 17 (the emperor's) law is not a law of the emperor but of the people
 18 (the emperor's) law is not a law of the emperor but of the people
 19 (the emperor's) law is not a law of the emperor but of the people
 20 (the emperor's) law is not a law of the emperor but of the people
 21 (the emperor's) law is not a law of the emperor but of the people
 22 (the emperor's) law is not a law of the emperor but of the people
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 36 (the emperor's) law is not a law of the emperor but of the people
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 49 (the emperor's) law is not a law of the emperor but of the people
 50 (the emperor's) law is not a law of the emperor but of the people
 51 (the emperor's) law is not a law of the emperor but of the people
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καὶ τιμωρίαν ἐσθ' ὅτε τινὲ τῶν ἐπταικίτων τοῦ δέοντος ἐπήγαγε μείζονα, ἢ
καὶ ἡμαρτηρότι πολλάκις συνέγνω τινί, οὐ πρὸς μίμησιν τοῦτο πράξας,
60 ἀμέλει τοι οὐδεὶς τῶν μετὰ ταῦτα πεπλημμεληκότων τεύξεται τῆς ὁμοίας
φιλανθρωπίας ἢ περαιτέρω τιμωρηθήσεται τοῦ προσήκοντος. μέχρι γὰρ τῶν
τετυχηκότων στήσεται ταῦτα. αἱ μὲν οὖν PERSONALIAI οὐχ ὑπερβαίνουσι
τοὺς ἐφ' ὧν ἐτέθησαν, αἱ δὲ γενικαὶ καὶ κατὰ πάντων ἐκτείνονται προσώπων
τε καὶ πραγμάτων.

7. Εἰρήκαμεν τέσσαρας νομοθέτας· δῆμον, χυδαῖον δῆμον, σύγ-
κλητον, βασιλέα. ἐν πέμπτῃ τάξει νομοθετοῦσι παρὰ Ῥωμαίοις οἱ ἄρχοντες.
πολλοὶ δὲ οὗτοι καὶ διάφοροι, γενικῶ δὲ πάντες ὀνόματι κέκληνται
MAGISTRATUS POPULI ROMANI, τούτέστιν οἱ ἄρχοντες τοῦ δήμου τοῦ Ῥωμαί-
5 κοῦ. ἐνομοθετοῦν δὲ οὗτοι οὐκ ἐν ἐπιστολῇ οὐκ ἐν DECRETO, ἀλλ' ἐν
EDICTO. καὶ τί τὸ αἴτιον τοῦ τὸν βασιλέα μὲν καὶ ἐν δεκρέτῳ νομοθετεῖν καὶ
ἐν ἐδίκτῳ, τοὺς δὲ ἄρχοντας ἐν ἐδίκτῳ μόνῳ; ἐντεῦθεν ἡ αἰτία· οἱ πάλαι τὴν
Ῥωμαϊκὴν πολιτείαν καταστήσαντες καὶ ταύτην εὐνομεῖσθαι βουλευθέντες
ἀνεπίληπτον τὴν οἰκίαν γενέσθαι νομοθεσίαν ἐσπούδασαν, τούτου δὲ
10 ἐπετύγχανον βασιλεῖ καὶ ἐν δεκρέτῳ καὶ ἐν ἐδίκτῳ νομοθετεῖν ἐπιτρέψαντες,
ἄρχουσι δὲ οὐκέτι. ἤδεισαν γὰρ ὡς ὁ ἄρχων πολλαῖς ὑποψίαις ὑπόκειται, ὅτι
φιλία χαριζόμενος ἢ δῶρα λαβῶν ἢ πρὸς ἔχθραν κρίνων ἀπεφήνατο
τοιῶσδε. βασιλεὺς δὲ τούτων κρείττων· οὔτε γὰρ χρυσῶ δελεάζεται, ὅς οὐ
μόνον τῆς ἡμετέρας περιουσίας ἀλλὰ καὶ αὐτῶν τῶν σωμάτων ἐστὶ κύριος,
15 οὐδὲ διὰ φιλίαν ὑπερβαίνει τὸ νόμιμον, φιλῶν γὰρ βασιλεὺς ἐτέρως ὠφε-
λῆσαι δύναται, ἐξ ὧν μᾶλλον εὐδοκιμεῖ, οὐδὲ δι' ἔχθραν οὐ γὰρ μισεῖ τινα
βασιλεὺς τῶν ὄντων ὑπὸ τὴν αὐτοῦ πολιτείαν· εἰ δὲ τις εὐρεθῆ, τοῖς τελευ-
τῶσι συναριθμηθήσεται. τὸ δὲ ἐν ἐδίκτῳ μόνῳ νομοθετεῖν τοῖς ἄρχουσιν
ἐφεῖται, ἐπειδὴ πρὸ τῶν πραγμάτων τίθεται καὶ πάσης χειρόνος ὑποψίας

Pb Lc Lb La Vb Ma Pc

63 γενικαὶ καὶ γενικαὶ Lb 7, 2 ἄρχοντες] ἄρχοντες τοῦ δήμου τοῦ Ῥωμαϊκοῦ, οἵτινες καὶ
αὐτοὶ τῇ σέλλῃ τῇ ὑπατικῇ ἤγουν τῷ δίφῳ ἐκέχρητο Ma 4 ROMANORUM (varie scr.) Pc
Ma 6 ἐδίκτῳ μόνον Ma | τοῦ τὸν βασιλέα nos, τὸν βασιλέα Pc Ma, τοῦ βασιλέως Vb,
τοῦ βασιλέα Z 7 μόνον Ma 10 βασιλεῖ μὲν Vb La 11 ἤδησαν Ma | ὅτι] ὅτι τε Ma
12 φίλιος Vb | χαρισάμενος Ma | λαβῶν] λαμβάνων Vb La 15 οὔτε Vb La, hic et mox
(16) | διὰ φιλίαν] φιλία Ma | ἐτέρως Vb La 16 ἐξ ὧν] ὅθεν Vb La | δι' ἔχθραν τι
ποιεῖ Ma Vb La 18 συναριθμηθήσεται] -μεῖται Vb La 19 τίθεται] τίθονται τούτεστι πρὸ
τοῦ κινήθηαι τὰ πράγματα καὶ τὰς ὑποθέσεις Ma

Again, if the Emperor has some time or other inflicted upon an
an excessive punishment, or if he has, say, pardoned a wrongdoer,
inasmuch as he has not done this for a precedent, no one that here-
wards committed such offences will obtain like favour or
punished with undue severity. For these enactments will stand good
in respect of the particular persons to whose cases they have been
directed. The personal constitutions, then, do not apply to any but
in respect of whom they were enacted. The general constitutions, on
other hand, extend to all persons and things.

7. We have spoken of four law-makers: the people, the Senate, the
people, the Senate, and the Emperor. In the fifth place, law-making
among the Romans by the magistrates.¹³ These are many and various,
but they are all called by a general name *magistratus populi Romani*,
is, the magistrates of the Roman people. It was not by letter that the
decree that these made laws, but by edict. And what is the reason
while the Emperor made laws by decree as well as by edict, and the
magistrates did so by edict only? It came about in this way: The
founders of the Roman State, desirous as they were that it should be
governed, took care that their own legislation should not be open to
censure; and this object they sought to attain by authorizing the
Emperor to make laws both by decree and by edict, but authorizing the
magistrates as well. For they knew how the magistrate is open to
suspicion in many ways: suspicion that he is influenced in his decisions
by the gratification of friendship, or by the acceptance of gifts, or by
enmity to a litigant. An Emperor is above such suspicions, for he is
he open to a bribe (he that is master not only of all that we possess, but
of our very persons as well), nor does he transgress the law through
friendship (for when the Emperor has a friendship for a man, he is
other means of conferring benefits on him to his greater distinction,
out of hatred (for the Emperor hates no man under his sway, and
one be found he will be numbered with the dead). It is by edict, then,
then, that the magistrates have been empowered to make laws, and
edicts being published before the transactions they apply to, they are
freed from all sinister suspicion. Especially has the power to

¹³ Murison adds 'of the Roman people': cf. critical apparatus

μωρίαν ἐστὶν ὅτε τινὲς τῶν ἐπταικότες τοῦ δέοντος ἐπήγαγε μείζονα, ἢ ἡμαρτηκότες πολλάκις συνέγνω τινί, οὐ πρὸς μίμησιν τοῦτο πράξας, εἰ τοι οὐδεὶς τῶν μετὰ ταῦτα πεπλημμεληκότες τεύξεται τῆς ὁμοίας θρωπίας ἢ περαιτέρω τιμωρηθήσεται τοῦ προσήκοντος. μέχρι γὰρ τῶν ἐπταικότες στήσεται ταῦτα. αἱ μὲν οὖν PERSONALIAI οὐχ ὑπερβαίνουσι ἐφ' ὧν ἐτέθησαν, αἱ δὲ γενικαὶ καὶ κατὰ πάντων ἐκτείνονται προσώπων καὶ πραγμάτων.

7. Εἰρήκαμεν τέσσαρας νομοθέτας· δῆμον, χυδαῖον δῆμον, σύγρον, βασιλέα. ἐν πέμπτῃ τάξει νομοθετοῦσι παρὰ Ῥωμαίοις οἱ ἄρχοντες. οἱ δὲ οὗτοι καὶ διάφοροι, γενικῶ δὲ πάντες ὀνόματι κέκληνται STRATUS POPULI ROMANI, τουτέστιν οἱ ἄρχοντες τοῦ δήμου τοῦ Ῥωμαῖ- ἐνομοθέτου δὲ οὗτοι οὐκ ἐν ἐπιστολῇ οὐκ ἐν DECRETO, ἀλλ' ἐν ΕΔΙΚΤΩ. καὶ τί τὸ αἴτιον τοῦ τὸν βασιλέα μὲν καὶ ἐν δεκρέτῳ νομοθετεῖν καὶ ἐν ἐδίκτῳ, τοὺς δὲ ἄρχοντας ἐν ἐδίκτῳ μόνω; ἐντεῦθεν ἡ αἰτία· οἱ πάλα τὴν ἀσπίδα πολιτείαν καταστήσαντες καὶ ταύτην εὐνομεῖσθαι βουλευθέντες ἐπληκτον τὴν οἰκείαν γενέσθαι νομοθεσίαν ἐσπούδασαν, τούτου δὲ ἄρχοντος βασιλεῖ καὶ ἐν δεκρέτῳ καὶ ἐν ἐδίκτῳ νομοθετεῖν ἐπιτρέψαντες, οὐκ οὐδέτι. ἤδεισαν γὰρ ὡς ὁ ἄρχων πολλάκις ὑποψίας ὑπόκειται, ὅτι ἄρχοντος χαριζόμενος ἢ δῶρα λαβὼν ἢ πρὸς ἔχθραν κρίνων ἀπεφύνατο ἄρχοντος δε. βασιλεὺς δὲ τούτων κρείττων· οὔτε γὰρ χρυσῶ δελεάζεται, ὅς οὐκ ἄρχοντος τῆς ἡμετέρας παρουσίας ἀλλὰ καὶ αὐτῶν τῶν σωμάτων ἐστὶ κύριος, ἐν δὲ φιλίαν ὑπερβαίνει τὸ νόμιμον, φιλῶν γὰρ βασιλεὺς ἐτέρως ὠφε- αὐτῶν δύναται, ἐξ ὧν μᾶλλον εὐδοκίμει, οὐδὲ δι' ἔχθραν οὐ γὰρ μισεῖ τινα βασιλεὺς τῶν ὄντων ὑπὸ τὴν αὐτοῦ πολιτείαν· εἰ δὲ τις εὐρεθῆ, τοῖς τελευ- αὐτῶν συναριθμηθήσεται. τὸ δὲ ἐν ἐδίκτῳ μόνω νομοθετεῖν τοῖς ἄρχουσιν αὐτῶν ἵται, ἐπειδὴ πρὸ τῶν πραγμάτων τίθεται καὶ πάσης χείρονος ὑποψίας

Lc Lb La Vb Ma Pc

γενικαὶ καὶ] γενικαὶ Lb 7,2 ἄρχοντες] ἄρχοντες τοῦ δήμου τοῦ Ῥωμαῖκοῦ, οἵτινες καὶ οἱ τῆ σέλλῃ τῆ ὑπατικῆ ἡγουν τῷ δίφρῳ ἐκέρχοντο Ma 4 ROMANORUM (varie scr.) Pc 6 ἐδίκτῳ μόνον Ma | τοῦ τὸν βασιλέα nos, τὸν βασιλέα Pc Ma, τοῦ βασιλέως Vb, βασιλέα Z 7 μόνον Ma 10 βασιλεῖ μὲν Vb La 11 ἤδησαν Ma | ὅτι] ὅτι τε Ma φίλοις Vb | χαρισάμενος Ma | λαβῶν] λαμβάνων Vb La 15 οὔτε Vb La, hic et mox | διὰ φιλίαν] φιλία Ma | ἐτέρωθεν Vb La 16 ἐξ ὧν] ὅθεν Vb La | δι' ἔχθραν τι Ma Vb La 18 συναριθμηθήσεται] -μεῖται Vb La 19 τίθεται] τίθωνται τουτέστι πρὸ κινηθῆναι τὰ πράγματα καὶ τὰς ὑποθέσεις Ma

Again, if the Emperor has some time or other inflicted upon an offender an excessive punishment, or if he has, say, pardoned a wrongdoer, inasmuch as he has not done this for a precedent, no one that has afterwards committed such offences will obtain like favour or will be punished with undue severity. For these enactments will stand good only in respect of the particular persons to whose cases they have been directed. The personal constitutions, then, do not apply to any but those in respect of whom they were enacted. The general constitutions, on the other hand, extend to all persons and things.

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¹³ Murison adds 'of the Roman people': cf. critical apparatus