

On the Right of Majesty

Majesty is the **highest power** over citizens and subjects, and it is freed from the laws,¹ which the Greeks call ἄκραν ἐξουσίαν,² [or] sometimes κυρίαν ἀρχλῶ³ and κύριον ωολέτευμα,⁴ the Italians *Segnoria*,⁵ [and] the Hebrews **שַׁמְרָה שֶׁכֶּתֶר**, *Foundation of the Com-*

monwealth

Majesty should have been defined from the start, which none of the philoso-
|79A| phers or jurists did define, since it seems that there is yet nothing greater or more necessary for understanding the nature of the **Republic**. And since we defined **Republic** above as a proper (*rectam*) **guiding** of several families and things common among them with the highest and perpetual **power**, it should be explained why it comes from the appellation of ‘highest and perpetual **power**’. We said it must be perpetual because that a **highest power** over (*in*) citizens can come to be for one [person] or many; and yet it may not be allotted as perpetual, but [only] for a brief time: at the end of which, they relinquish (*abdicant*) the **highest power**. Therefore, they cannot be called the highest **princes**, but rather **guardians** of the **highest power** and **imperium** for so as long as the highest **prince** or **people** reclaims the entrusted (*depositum*) **imperium** of which they
|79B| themselves are the truest possessors and lords—not differently than those who gave their things for a loan or as a pledge:* or, [for as long as] they permitted their **jurisdiction** or **imperium** to be enjoyed by another (whether for a certain time or for a *precarium*⁷), they do not cease to be the arbiters and possessors of their **power** and **jurisdiction**.* Thus the Jurisconsult⁹ said that a prefect of Augustus is to return the entrusted **imperium** once his magistracy has come to an

**l. qui pignori, de usu-cap.; l. quod meo, de acquir. poss.*⁶

**l. more. de iurisdic., l. et quia eod.*⁸

1. Cf. Dig. 1.3.31. 2. Unlimited power? 3. TODO 4. TODO 5. *Signoira* may be translated as lordship or dominion. 6. Dig. 41.3.33.4(!); 41.2.18 7. Dig. 43.26.1 pr.: *Precarium* is what is granted to one for him who seeks it with prayers to use for as long as he who granted it allows it. 8. Dig. 2.1.5; 2.1.6. 9. This epithet usually refers to Ulpian in the same way Aristotle was known as ‘the Philosopher’.

* *l. 1, de offi. praefecti Augustalis*¹⁰

* *l. ult., qui satisdate; cor. ser., de pot. regia.* 9. 17.¹¹

* *l. Iudicium soluitur, de Iudic. l. solet de Iurisdic.*

* *Alexand. in l. ult. de iurisdic.; Pano. in cap. Pastoralis, de offi. ord.; Innocentius & Felin. in cap. cum ecclesiarum, eod.*¹²

* *Festus in verbo optima lege. Plutar. in quaestion. Rom.*¹⁴

* 9 lib. 7¹⁵

end.* Nor does it matter if a greater or lesser **power** be assigned: otherwise, if the highest **highest power**, granted as a **precarious bequest** of the **prince** were called **majesty**, he would be able to use that power by his own **right** (*suo iure*) against a **prince** to whom nothing would remain beyond the empty name **prince**: a servant, moreover, would command his lord. Nothing more absurd than that can be thought, for the person of the **prince** is always excepted in every concession of **imperium** to magistrates or private individuals:* however much **imperium** there be that is assigned to another, it is still less than what he has reserved to himself by his **right majesty**. Nor is it ever supposed that he has been despoiled of his **highest power**; rather, it is supposed that he can take cognizance* of those things which he assigned to the magistrates or superintendents, either by anticipation, **joint exercise**, or **summons**, and to take [back] by force* all **power granted** to the magistrates.

From these [reasons], it happens that none have the **rights of majesty**: not the **Dictator** of the Romans, not the Harmost of Spartans, not the Esymnete of the Salonikans, not the Archus of Maltese, not the Balia of the Florentines (when they enjoyed [*uterentur*] popular **power**), nor those who are called regents of a **kingdom** by men today, nor any other **magistrates** or **supervisors** who have **highest power** (though it be not allotted perpetually by concession of the **prince** or **people**). Nor, even, did those ancient dicators have the **highest right**—even if they were appointed (*dicebantur*) by the *noblest law*¹³—from whom one could not appeal,* and on whose creation all **magistrates** resign [their offices] until, **by the sacred measure proposed [one] June**, the Tribunes of the **people** (*plebs*) were made sacred **guardians** of popular liberty, who, on the creation of the **Dictator**, had the free **right** of intercession so that, if it were appealed from the **Dictator**, the Tribunes could convene the **people** (*plebs*), among whom there was contention about the appeal. For the **Dictator** Papirius condemned to death Fabium Maximus I, and Fabius Maximus II also condemned to death Minutius, [both] **masters** of the light cavalry (*minutium equitum*), because they had fought against the command of the **Dictators**. Even so, they were freed on appeal (*ex provocatione*) by judgment of the **people**. For, as Livy says:* ‘First, Fabius’ father said, I call upon the Tribunes, and I appeal to the **people**, who are more able than your **dictatorship**, to whom the **king** Tullus Hostilius yielded.’ It should be clear from these words that he was neither **prince** nor chief **magistrate** (as many have thought), but a **supervisor** whom they call our **commissioner**; nor that anything else was assigned to him beyond taking charge of

10. Dig. 1.17.1. 11. Dig. 2.8.16. 12. TODO 13. TODO 14. TODO 15. TODO

war-making (*curationem belli gerendi*), curbing sedition, **fixing the Republic** (*Reipublicae constituendae*), creating **magistrates**, or **helming the tiller** (*clavi figendi*). **Majesty**, on the other hand, is not delimited by a greater **power**, any other **laws**, or time. But not even the *decemvirs* had a **right of majesty** for the promulgation of **laws** (*legum ferendarum*), even though they had the **highest power**, freed also from the **laws**, and even though all **magistrates** resign [their office] at the creation of the *decemvirs*, since their *imperium* takes its limit from the **laws** of the Twelve Tables, which were promulgated for the **people**—a thing common to all **commissions**. For Cincinnatus made **dictator** for the sake of waging war abdicated his **dictatorship** immediately once he had broken the enemy's

[80b] forces and finished the war in less than fifteen days. Servilius Priscus [did the same] by the eighth day; Mamercus on the very same day he was named **dictator**. And he was named **dictator** by neither Senate nor **people**, nor likewise by the **magistrates**, or by proposal for the **people**, or by any **laws**, which were always necessary for the creation of **magistrates**, but by an interim **king**, who had but recently arisen from patrician blood: for it was not enough to be a noble senator to name him **dictator**.^{*} But if someone objects that Sulla was named a **dictator** for eighty years by the *lex Valeria*, I shall repeat that argument of Cicero's:^{*} it was neither **dictatorship** nor a **law**, but the most cruel **tyranny**, which he nevertheless renounced in the fourth year after he was made **dictator**—sc., when he had extinguished the flames of the civil wars with the blood of the cit-

[80c] izens (having preserved the intercession of the Tribunes of the **people** (*plebs*)). And although Caesar had invaded the perpetual **dictatorship** forty years later with the **liberty** of the **people** (*plebs*), he nonetheless left the Tribunes of the **people** (*plebs*) the power to veto (*intercessio*).¹⁸ However, **before this**, during the solitary **consulship** of Pompey, when the name of **dictatorship** had been removed from the **republic**, and, against the **law** of Pompey, Caesar had undertaken to be made **dictator** by the *lex Servia*¹⁹ he was slain in the middle of the Senate by a conspriacy of senators (*principes*). But let us grant that the highest **power**, and one freed from the **laws**, outside of (*extra*) a power to veto or appeal is given by the **people** to one person or many: should we say that he [or they] have a **right of majesty**? For he has **majesty** who, after God immortal, sees no one greater than himself. Still, I firmly believe (*statuo*) that there is no

^{*}Novus qui primus honorem in republica adeptus erat: nobilis noui hominis filius: patricius qui a patribus et conscriptis a Romulo stirpem ducebat.¹⁶

^{*}In lib. 1 de legibus.¹⁷

16. TODO 17. TODO 18. An *intercessio* was a veto by a magistrate against some official act; the plebeian tribunes had such a veto in order to protect the 'interests of the *plebs* against abuses by magistrates', though it could be (and was) used for less lofty purposes. Normally, this veto was unavailable against a **dictator**. See [berger1953]. 19. TODO: *actio Serviana*? Servian constitution?

majesty in them, but that they are bound to yield (*deponere*) the *imperium* to the *people* from whom they have the precarious *power* when the fixed time has run its course. Nor is the *people* thought to have deprived itself of its *power*, even if it allots the highest *imperium*—and one freed from the *laws*—to one or several persons; and even one not precarious for a fixed time. In either way, he who had that highest *imperium* is bound to render an account for the things he has done to the *prince* or the *people*. But the *prince* or the *people* in whom lives (*inest*) *majesty* is not compelled to render to anyone an account of his [or its] deeds beyond God immortal. What, therefore, if that highest *imperium* be *granted* to one or many people for ten years, as once there was one *archon* among the Athenians, whom they even called *Judge*? He was *in charge* of the *republic* with the highest *power*. Yet, *majesty* of the *republic* was not within his control (*penes eum*), since rather it was within the control of the *supervisor* or *procurator* of the *people*, and he was bound to render an account of the deeds of his rule (*imperii gesti*). | 80D |