

[1.7]

SIX BOOKS ON THE REPUBLIC

1

1c20296 2014-11-13
(None)

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 **תַּרְמוֹר שָׁכַט**, *Foundation of the Commonwealth* that is, **fuller authority**. For **majesty**, says Festus, is named from ‘magnitude’.

Majesty should have been defined from the start, which none of the philosophers 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 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

Foundation of the Commonwealth

**l. qui pignori, de usucap.; 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. *Signora* 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 |