

## II Codice teodosiano: Lo sfondo istituzionale e culturale – Sources –

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### 1. Codex Theodosianus 1.1.5 (429): the original plan of the Theodosian Code

Impp. Theodosius et Valentinianus AA ad senatum.  
Ad similitudinem Gregoriani atque Hermogeniani codicis cunctas colligi constitutiones decernimus, quas Constantinus inclitus et post eum divi principes nosque tulimus, edictorum viribus aut sacra generalitate subnixas.

Ex his autem tribus codicibus et ... prudentium tractatibus et responsis ... noster erit alius, qui nullum errorem, nullas patietur ambages, qui nostro nomine nuncupatus sequenda omnibus vitandaque monstrabit.

Ad tanti consummationem operis et contexendos codices — quorum primus omni generalium constitutionum diversitate collecta nullaque extra se, quam iam proferri liceat, praetermissa inanem verborum copiam recusabit, alter omni iuris diversitate exclusa magistrarium vitae suscipiet — deligendi viri sunt singularis fidei, limatioris ingenii; qui, cum primum codicem nostrae scientiae et publicae auctoritati obtulerint, adgredientur alium, donec dignus editione fuerit, pertractandum. ...

Emp. Theodosius and Valentinian AA. to the Senate.  
We decree that, after the pattern of the Gregorian and Hermogenian Codes, a collection shall be made of all the constitutions that were issued by the renowned Constantine, by the sainted Emperors after him, and by Us and which rest upon the force of edicts or sacred imperial law of general force. ...

Moreover, from these three codes and from the treatises and responses of the jurists ... there shall be produced another code of Ours. This code shall permit no error, no ambiguities; it shall be called by Our name and shall show what must be followed and what must be avoided by all.

For the consummation of so great a work and for the composition of the codes – the first of which shall collect all the diversity of general constitutions, shall omit none outside itself which are now permitted to be cited in court, and shall reject only an empty copiousness of words, the other shall exclude every contradiction of the law and shall undertake the guidance of life – men must be chosen of singular trustworthiness, of the most brilliant genius. When they have presented the first code to Our Wisdom and to the public authority, they shall undertake the other, which must be worked over until it is worthy of publication. (...)  
(Transl. Pharr 1952)

### I. The Cultural Background

#### 2. Plato's *Nomoi*

##### 2a. Book 1. 630c-632d: the goal and program of the law code

ποῖ δὴ τελευτᾷ νῦν ἡμῖν οὗτος ὁ λόγος, καὶ τί [630c] φανερόν ποτε ποιῆσαι βουλευθεὶς λέγει ταῦτα; δῆλον ὅτι τόδε, ὡς ... πᾶς τε (sc. νομοθέτης) οὗ καὶ σμικρὸν ὄφελος, οὐκ ἄλλο ἢ πρὸς τὴν μεγίστην ἀρετὴν μάλιστα βλέπων ἀεὶ θήσει τοὺς νόμους: ἔστι δέ, ὡς φησὶν Θεόγνις, αὕτη πιστότης ἐν τοῖς δεινοῖς, ἣν τις δικαιοσύνην ἂν τελέαν ὀνομάσειεν. (...)

οὐχ ὡς πρὸς ἀρετῆς τι μόνιον ... ἐτίθει βλέπων, ἀλλὰ πρὸς πᾶσαν ἀρετὴν, καὶ κατ' εἶδη ζητεῖν αὐτῶν τοὺς νόμους οὐδ' ἄπερ οἱ τῶν νῦν εἶδη προτιθέμενοι ζητοῦσιν. οὗ γὰρ ἂν ἕκαστος ἐν χρεῖα γίγνηται, τοῦτο ζητεῖ νῦν παραθέμενος, ὁ μὲν τὰ περὶ τῶν κλήρων καὶ ἐπικλήρων, ὁ δὲ τῆς αἰκίας πέρι, ἄλλοι δὲ ἄλλ' ἅττα μυρία τοιαῦτα: ἡμεῖς δὲ φαμεν εἶναι τὸ περὶ (631) νόμους ζήτημα τῶν εὖ ζητούντων ὡσπερ νῦν ἡμεῖς ἠρξάμεθα. καὶ σοῦ τὴν μὲν ἐπιχείρησιν τῆς ἐξηγήσεως περὶ τοὺς νόμους παντάπασιν ἄγαμαι· τὸ γὰρ ἀπ' ἀρετῆς ἄρχεσθαι, λέγοντα ὡς ἐτίθει ταύτης ἕνεκα τοὺς νόμους, ὀρθόν· (...)

ATHENIAN. What, then, is the conclusion to which our present discourse is tending, and what point is it trying to make clear by these statements? Plainly it is this: ... every legislator who is worth his salt will most assuredly legislate always with a single eye to the highest virtue and to that alone; and this (to quote Theognis) consists in "loyalty in danger," and one might term it "complete righteousness." (...) (Sc. We should have said that) he made laws with an eye not to some one part of virtue, ... but to virtue as a whole, and that we ought to devise/examine(?) the laws themselves according to types, though not the types which the present devisers/examiners propound. For everyone now brings forward and devises/examines just the type of laws which he needs: one man deals with inheritances and heiresses, another with cases of insult, and so on in endless variety. But what we assert is that the devising/examination of laws, when rightly conducted, follows the procedure which we have now commenced. Indeed, I greatly admire the way you opened your exposition of the laws; for to make a start

Ἦ ξένε, ἐχρῆν εἰπεῖν, “οἱ Κρητῶν νόμοι οὐκ εἰσὶν μάτην διαφερόντως ἐν πᾶσιν εὐδόκιμοι τοῖς Ἑλλησιν· ἔχουσιν γὰρ ὀρθῶς, τοὺς αὐτοῖς χρωμένους εὐδαίμονας ἀποτελοῦντες. πάντα γὰρ τὰγαθὰ πορίζουσιν. διπλᾶ δὲ ἀγαθὰ ἐστίν, τὰ μὲν ἀνθρώπινα, τὰ δὲ θεῖα· ... ὁ δὲ πρῶτον αὐτῶν θεῶν ἡγεμονοῦν ἐστὶν ἀγαθῶν, ἡ φρόνησις, δεύτερον δὲ μετὰ νοῦ σώφρων ψυχῆς ἕξις, ἐκ δὲ τούτων μετ’ ἀνδρείας κραθέντων τρίτον ἂν εἴη δικαιοσύνη, τέταρτον δὲ (632d.) ἀνδρεία. ταῦτα δὲ πάντα ἐκείνων ἔμπροσθεν τέτακται φύσει, καὶ δὴ καὶ τῷ νομοθέτῃ τακτέον οὕτως.

μετὰ δὲ ταῦτα τὰς ἄλλας προστάξεις τοῖς πολίταις εἰς ταῦτα βλεπούσας αὐτοῖς εἶναι διακελευστέον, τούτων δὲ τὰ μὲν ἀνθρώπινα εἰς τὰ θεῖα, τὰ δὲ θεῖα εἰς τὸν ἡγεμόνα νοῦν σύμπαντα βλέπειν· περὶ τε γάμους ἀλλήλοις ἐπικοινωνομένους, μετὰ τε ταῦτα ἐν ταῖς τῶν παιδῶν γεννήσεσιν καὶ τροφαῖς ὅσοι (631e) τε ἄρρενες καὶ ὅσοι θήλειαι, νέων τε ὄντων καὶ ἐπὶ τὸ πρεσβύτερον ἰόντων μέχρι γήρωσ, τιμῶντα ὀρθῶς ἐπιμελεῖσθαι δεῖ καὶ ἀτιμάζοντα .... (632β) μετὰ δὲ ταῦτα ἀνάγκη τὸν νομοθέτην τὰς κτήσεις τῶν πολιτῶν καὶ τὰ ἀναλώματα φυλάττειν ὄντιν’ ἂν γίνηται τρόπον, καὶ τὰς πρὸς ἀλλήλους πᾶσιν τούτοις κοινωνίας καὶ διαλύσεις ἐκοῦσιν τε καὶ ἄκουσιν καθ’ ὅποιον ἂν ἕκαστον πράττωσιν τῶν τοιούτων πρὸς ἀλλήλους ἐπισκοπεῖν, τό τε δίκαιον καὶ μὴ ἐν οἷς ἔστιν τε καὶ ἐν οἷς ἐλλείπει, καὶ τοῖς μὲν εὐπειθέσιν τῶν νόμων τιμὰς ἀπονέμειν, τοῖς δὲ δυσπειθέσι δίκας τακτὰς ἐπιτιθέναι.

μέχριπερ ἂν πρὸς τέλος ἀπάσης πολιτείας ἐπεξεληθῶν, ἴδη τῶν τελευτησάντων τίνα δεῖ τρόπον ἕκαστοι γίνεσθαι τὰς ταφὰς καὶ τιμὰς ἄστινας αὐτοῖς ἀπονέμειν δεῖ· κατιδὼν δὲ ὁ θεὸς τοὺς νόμους ἄσασιν τούτοις φύλακας ἐπιστήσει, .... ὅπως πάντα ταῦτα συνδήσας ὁ νοῦς ἐπόμενα σωφροσύνη καὶ δικαιοσύνη ἀποφῆνη, ἀλλὰ μὴ πλούτῳ μηδὲ φιλοτιμίᾳ.”

## 2b. Book 4.715b-c: the rule of law

(sc. φαμέν) οὐτ’ ὀρθοὺς νόμους ὅσοι μὴ συμπάσης τῆς πόλεως ἕνεκα τοῦ κοινοῦ ἐτέθησαν, καὶ τὰ τούτων δίκαια ἅ φασι εἶναι, μάτην εἰρησθαι. λέγεται δὲ τοῦδ’ ἕνεκα ταῦθ’ ἡμῖν, ὡς ἡμεῖς τῆ σῆ πόλει ἀρχὰς οὐθ’ ὅτι πλούσιός ἐστίν τις δώσομεν, οὐθ’ ὅτι τῶν (715c) τοιούτων ἄλλο οὐδὲν κεκτημένος, ἰσχὺν ἢ μέγεθος ἢ τι γένος· ὅς δ’ ἂν τοῖς τεθεισὶ νόμοις εὐπειθέστατός τε ἦ καὶ νικᾷ ταύτην τὴν νίκην ἐν τῇ πόλει, τούτῳ φαμέν καὶ τὴν τῶν θεῶν ὑπηρεσίαν δοτέον εἶναι τὴν μεγίστην τῷ πρώτῳ ... τοὺς δ’ ἄρχοντας λεγομένους νῦν ὑπηρέτας τοῖς νόμοις ἐκάλεσα (715d) οὐτι καινοτομίας ὀνομάτων ἕνεκα, ἀλλ’ ἡγοῦμαι παντὸς μάλλον εἶναι παρὰ τοῦτο

with virtue and say that that was the aim of the law-giver is the right way. (...)

ATH. "O Stranger" (thus you ought to have said), "it is not for nothing that the laws of the Cretans are held in superlatively high repute among, all the Hellenes. For they are true laws inasmuch as they effect the well-being of those who use them by supplying all things that are good. Now goods are of two kinds, human and divine; .... and wisdom, in turn, has first place among the goods that are divine, and rational temperance of soul comes second; from these two, when united with courage, there issues justice, as the third; and the fourth is courage. Now all these are by nature ranked before the human goods, and verily the lawgiver also must so rank them.

Next, it must be proclaimed to the citizens that all the other instructions they receive have these in view; and that, of these goods themselves, the human look up to the divine, and the divine to reason as their chief.

And in regard to their marriage connections, and to their subsequent breeding and rearing of children, male and female, both during youth and in later life up to old age, the lawgiver must supervise the citizens, duly apportioning honour and dishonour. (...)

It is necessary, in the next place, for the lawgiver to keep a watch on the methods employed by the citizens in gaining and spending money, and to supervise the associations they form with one another, and the dissolutions thereof, whether they be voluntary or under compulsion; he must observe the manner in which they conduct each of these mutual transactions, and note where justice obtains and where it is lacking. To those that are obedient he must assign honours by law, but on the disobedient he must impose duly appointed penalties.

Then finally, when he arrives at the completion of the whole constitution, he has to consider in what manner in each case the burial of the dead should be carried out, and what honours should be assigned to them; This being settled, the framer of the laws will hand over all his statutes to the charge of Wardens... to the end that Reason, having bound all into one single system, may declare them to be ancillary neither to wealth nor ambition, but to temperance and justice."

We deny that laws are true laws unless they are enacted in the interest of the common wealth of the whole State. But where the laws are enacted in the interest of a faction, we call these people "members of a faction" rather than "citizens"; and the "justice" they ascribe to such laws is, we say, an empty name. Our reason for saying this is that in your State we shall assign office to a man, not because he is wealthy, nor because he possesses any other quality of the kind, such as strength or size or birth; but the ministration of the laws must be assigned, as we assert, to that man who is most obedient to the laws and wins the victory for obedience in the State ... And those who are termed "magistrates" I have now called "servants" of the laws,

σωτηρίαν τε πόλει καὶ τῷ ἀντιτίον. ἐν ἧ μὲν γὰρ ἂν ἀρχόμενος ἦ καὶ ἄκυρος νόμος, φθορὰν ὄρω τῆ τοιαύτη ἐτοιμῆ οὖσαν· ἐν ἧ δὲ ἂν δεσπότης τῶν ἀρχόντων, οἱ δὲ ἄρχοντες δοῦλοι τοῦ νόμου, σωτηρίαν καὶ πάντα ὅσα θεοὶ πόλεσι βλάσκειν ἔδοσαν ἀγαθὰ γινόμενα καθορῶ.

not for the sake of coining a new phrase, but in the belief that salvation, or ruin, for a State hangs upon nothing so much as this. For wherever in a State the law is subservient and impotent, over that State I see ruin impending; but wherever the law is lord over the magistrates, and the magistrates are servants to the law, there I find salvation and all the blessings that the gods bestow on States.

## 2c. Book 4.709e-711a: monarchy and the law in the *Nomoi*

“Φέρε δὴ, νομοθέτα,” πρὸς αὐτὸν φῶμεν, “τί σοι καὶ πῶς πόλιν ἔχουσαν δῶμεν, ὃ λαβὼν ἔξεις ὅσ’ ἐκ τῶν λοιπῶν αὐτὸς τὴν πόλιν ἰκανῶς διοικήσῃ;” .... Τόδε· “Τυραννομένην μοι δότε τὴν πόλιν,” φήσει· “τύραννος δ’ ἔστω νέος καὶ μνήμων καὶ εὐμαθὴς καὶ ἀνδρείος καὶ μεγαλοπρεπὴς φύσει· ὃ δὲ καὶ ἐν τοῖς πρόσθεν ἐλέγομεν δεῖν ἔπεσθαι σύμπασιν τοῖς τῆς ἀρετῆς μέρεσι, καὶ νῦν τῆ (710a) τυραννομένη ψυχῇ τοῦτο συνεπέσθω, ἐὰν μέλλη τῶν ἄλλων ὑπαρχόντων ὄφελος εἶναι τι.”

ATH. "Come now, O lawgiver," let us say to him, "what are we to give you, and what condition of State, to enable you, when you receive it, thenceforward to manage the State by yourself satisfactorily?" ... This is what he will say: "Give me the State under a monarchy; and let the monarch be young, and possessed by nature of a good memory, quick intelligence, courage and nobility of manner; and let that quality, which we formerly mentioned as the necessary accompaniment of all the parts of virtue, attend now also on our monarch's soul, if the rest of his qualities are to be of any value."

ΚΛ. Σωφροσύνην μοι δοκεῖ φράζειν, ὃ Μέγιλλε, δεῖν εἶναι τὴν συνεπομένην ὁ ξένος. ἦ γάρ; ΑΘ. Τὴν δημόδη γε, ὃ Κλεινία .... Ταύτην τοῖνον ἡμῖν ὁ τύραννος τὴν φύσιν ἐχέτω πρὸς ἐκείναις ταῖς φύσεσιν, εἰ μέλλει πόλις ὡς δυνατόν ἐστι τάχιστα καὶ ἄριστα σχῆσαι πολιτείαν ἢν λαβοῦσα εὐδαιμονέστατα διάξει. .... Εὐτυχίς, πρόσθε, μὴ κατ’ ἄλλο, ἀλλὰ τὸ γενέσθαι τε ἐπ’ αὐτοῦ νομοθέτην ἄξιον ἐπαίνου, καὶ τινα τύχην εἰς (710d) ταῦτόν ἀγαγεῖν αὐτῷ· γενομένου γὰρ τούτου, πάντα σχεδὸν ἀπειργασταὶ τῷ θεῷ, ἅπερ ὅταν βουλευθῆ διαφερόντως εὖ πράξαι τινα πόλιν. δεῦτερον δέ, ἐάν ποτέ τις δύο ἄρχοντες γίνωνται τοιοῦτοι, τρίτον δ’ αὖ καὶ κατὰ λόγον ὡσαύτως χαλεπώτερον ὅσῳ πλείους, ὅσῳ δ’ ἐναντίον, ἐναντίως.

CLINIAS: Temperance, as I think, Megillus, is what the Stranger indicates as the necessary accompaniment. Is it not? ATH. Yes, Clinias; .... Let our monarch, then, possess this natural quality in addition to the other qualities mentioned, if the State is to acquire in the quickest and best way possible the constitution it needs for the happiest kind of life. .... Add also "fortunate," -- not in other respects, but only in this, that in his time there should arise a praiseworthy lawgiver, and that, by a piece of good fortune, the two of them should meet; for if this were so, then God would have done nearly everything that he does when he desires that a State should be eminently prosperous. The second best condition is that there should arise two such rulers; then comes the third best, with three rulers; and so on, the difficulty increasing in proportion as the number becomes greater, and vice versa.

ΚΛ. Ἐκ τυραννίδος ἀρίστην φῆς γενέσθαι πόλιν ἂν, ὡς φαίνη, μετὰ νομοθέτου γε ἄκρου καὶ τυράννου κοσμίου, καὶ φαίνη, μετὰ νομοθέτου γε ἄκρου καὶ τυράννου κοσμίου, καὶ ῥᾶστί τε καὶ τάχιστ’ ἂν μεταβαλεῖν εἰς τοῦτο ἐκ τοῦ τοιοῦτου, δεῦτερον δὲ ἐξ ὀλιγαρχίας...

CLIN. You mean, apparently, that the best State would arise from a monarchy, when it has a first-rate lawgiver and a virtuous monarch, and these are the conditions under which the change into such a State could be effected most easily and quickly. And, next to this, from an oligarchy-or what is it you mean?

ΑΘ. Οὐδαμῶς, ἀλλ’ ἐκ τυραννίδος μὲν πρῶτον, δεῦτερον δὲ ἐκ βασιλικῆς πολιτείας, τρίτον δὲ ἐκ τινος δημοκρατίας. τὸ δὲ τέταρτον, ὀλιγαρχία, τὴν τοῦ τοιοῦτου γένεσιν χαλεπώτατα δύναται ἂν προσδέξασθαι· πλείστοι γὰρ ἐν αὐτῇ δυνάσται γίνονται. λέγομεν δὲ ταῦτα γίνεσθαι τότε, ὅταν ἀληθῆς μὲν νομοθέτης γένηται φύσει, κοινὴ δὲ αὐτῷ τις συμβῆ ῥώμη πρὸς τοὺς ἐν τῇ πόλει μέγιστον δυναμένους (711a) οὗ δ’ ἂν τοῦτο ἀριθμῷ μὲν βραχύτατον, ἰσχυρότατον δέ, καθάπερ ἐν τυραννίδι, γένηται, ταύτη καὶ τότε τάχος καὶ ῥαστώνη τῆς μεταβολῆς γίνεσθαι φιλεῖ.

ATH. Not at all: the easiest step is from a monarchy, the next easiest from a constitutional monarchy, the third from some form of democracy. An oligarchy, which comes fourth in order, would admit of the growth of the best State only with the greatest difficulty, since it has the largest number of rulers. What I say is that the change takes place when nature supplies a true lawgiver, and when it happens that his policy is shared by the most powerful persons in the State; and wherever the State authorities are at once strongest and fewest in number, then and there the changes are usually carried out with speed and facility.

### 3. Alternatives to the Roman autocracy in early sixth-century political theory

#### 3a. Zosimus 1.5.2-4 criticizes the Roman monarchy

ἕως μὲν ὅτε τὰ τῆς ἀριστοκρατίας ἐφυλάττετο, προστιθέντες ἔτους ἐκάστου τῇ ἀρχῇ διετέλουν, τῶν ὑπάτων ὑπερβαλέσθαι ταῖς ἀρεταῖς ἀλλήλους φιλονεικούντων. τῶν δὲ ἐμφυλίων πολέμων ... διαφθειράντων αὐτοῖς τὸ πολίτευμα, τῆς ἀριστοκρατίας ἀφέμενοι. αὐτοῖς τὸ πολίτευμα, τῆς ἀριστοκρατίας ἀφέμενοι μόναρχον Ὀκταβιανὸν εἶλοντο, καὶ τῇ τούτου γνώμῃ τὴν πᾶσαν διοίκησιν ἐπιτρέψαντες ἔλαθον ἑαυτοὺς κύβον ἀναρρίψαντες ἐπὶ ταῖς πάντων ἀνθρώπων ἐλπίσιν καὶ ἐνὸς ἀνδρὸς ὀρμῇ τε καὶ ἐξουσίᾳ τοσαύτης ἀρχῆς καταπιστεύσαντες κίνδυνον.

(3.) Εἴτε γὰρ ὀρθῶς καὶ δικαίως ἔλοιτο μεταχειρίσασθαι τὴν ἀρχήν, οὐκ ἂν ἀρκέσαι πᾶσιν κατὰ τὸ δέον προσενεχθῆναι, τοῖς πορρωτάτω που διακειμένοις ἐπακουρήσαι μὴ δυνάμενος ἐξ ἐτοίμου, ἀλλ' οὔτε ἄρχοντας τοσοῦτους εὐρεῖν οἱ σφῆλαι τὴν ἐπ' αὐτοῖς [οὐκ] αἰσχυνηθήσονται ψῆφον.... εἴτε διαφθείρων τῆς βασιλείας τοὺς ὄρους εἰς τυραννίδα ἐξενεχθείη, συνταράττων μὲν τὰς ἀρχάς, περιορῶν δὲ τὰ πλημμελήματα, χρημάτων δὲ τὸ δίκαιον ἀλλαττόμενος, οἰκέτας δὲ τοὺς ἀρχομένους ἡγούμενος, ὅποιοι τῶν αὐτοκρατόρων οἱ πλείους, μᾶλλον δὲ πάντες σχεδὸν πλὴν ὀλίγων γεγόνασι τότε δὴ πᾶσα ἀνάγκη κοινὸν εἶναι δυστύχημα τὴν τοῦ κρατούντος ἄλογον ἐξουσίαν.

As long as the aristocracy was in control, they continued to expand their empire each year because of the consuls' anxiety to outdo each other's exploits. But the civil wars ...destroyed the government, and abolishing the aristocracy, they chose Octavianus as sole ruler. They committed the whole government to his decision, unaware that they were throwing dice for the hopes of all men by entrusting the burden of such a great empire to one man's whim and power.

(3) For even if he chose to manage the empire with probity and justice, he still ... could not himself immediately attend to his more remote subjects or find subordinates who would be ashamed to betray his trust ....

Or he abandoned the limitations of imperial rule and became a tyrant, throwing the offices (archai) into confusion, overlooking crimes, selling justice and regarding subjects as slaves. Of this kind are most, indeed almost all emperors with only few exceptions. Inevitably, unrestrained (alogos) power of a ruler is a calamity for the state.

(tr. Ridley, with alterations)

#### 3b. Johannes Lydos, De magistratibus 1.3

τὸ ρήγιον ὄνομα· ὅθεν οὐκέτι μετὰ τὴν ἐκβολὴν τῶν ρηγῶν παρὰ Ῥωμαίοις καίτοι βασιλευμένοις ἐχρημάτισεν. ἕτερον γὰρ τὸ τῆς ἐννόμου βασιλείας καὶ ἕτερον τὸ τυραννίδος καὶ ἄλλο τὸ τῆς αὐτοκρατορίας ἀξίωμα· καὶ ὅπως, διὰ βραχέων ἐρῶ. βασιλεύς ἐστιν ὁ τῶν ἑαυτοῦ ὑπηκόων πρῶτος ψῆφω ἐπιλεγόμενος ἐπὶ βᾶθραν τινὰ ὡσπερ καὶ κρηπίδα, τύχης κρείττονος ὑπὲρ τοὺς ἄλλους λαχόν· ..... ἴδιον δὲ βασιλέως ἐστὶ τὸ μηδένα καθ' ἅπαξ τῶν τοῦ πολιτεύματος νόμων σαλεύειν ἀλλ' ἐγκρατῶς τὴν ὄψιν τῆς ἑαυτοῦ πολιτείας βασιλείᾳ διατηρεῖν· καὶ μηδὲν μὲν κατ' αὐθεντίαν ἔξω τῶν νόμων πράττειν, τὸ δὲ τοῖς ἀρίστοις τοῦ πολιτεύματος συναρέσκον ψήφοις οἰκείαις ἐπισφραγίζειν. ... ἀλλ' οὐχ οὕτως ὁ τύραννος τοὺς ὑπ' αὐτῷ πεσόντας διαθήσεται, πράξει δὲ κατ' ἐξουσίαν ἀλόγως εἴ τι καὶ βούλεται, μηδὲ νόμους τιμᾶν ἀξίων, μηδὲ γράφειν μετὰ βουλής ἀνεχόμενος, ταῖς δὲ οἰκείαις ὁρμαῖς ἐξαγόμενος. ἐστὶ γὰρ βασιλέως μὲν τρόπος ὁ νόμος, τυράννου δὲ νόμος ὁ τρόπος.

After the expulsion of the reges, the title was no longer used by the Romans, even when they were being governed by emperors. For the dignity of lawful kingship (*ennomos basileia*) is one thing, that of tyranny is another, and that of emperorship is still another; and as to how, I shall explain briefly. A king is one who, by having been chosen as first by the vote of his own subjects for a base, as it were, or foundation, is allotted a station in life superior to that of the rest. .... It is characteristic of a king to jar absolutely none of the state's laws but to preserve steadfastly the form of his own state by his kingship, and to do nothing outside the laws by absolute authority but to ratify by his personal decrees whatever the best men of his state conjointly resolve, .... But the tyrant will not treat thus those who have fallen under his sway but will do by his power rashly whatever at all he precisely wishes, not deigning to respect laws, nor tolerating to enact them in consultation with a council, but being led on by his own impulses. For, while the law is a king's way, a tyrant's disposition is law. (Transl. Bandy)

### 3c. Dialogus de scientia politica, book 5

M: Τὴν βασιλείαν, ὦ Θεμάσιε, περὶ μὲν τὰ πολιτικὰ καταγίνεσθαι πράγματα, σκοπὸν δὲ ἔχειν τὴν κατὰ δικαιοσύνην αὐτῶν εὐεξίαν, τέλος δὲ αὐτὴν τὴν ἐνέργειαν, οἷς ἀναγκαίως καὶ τὸ χρήσιμον ἐπεσθαι, τὴν τῶ(ν) ἀν(θρώπων) σωτηρίαν, οὐκ ἔστιν, οἶμαι, ὅστις ἐνδοιάσειεν. – Θ: Παντελῶς μὲν οὐδὲ οὐδεὶς τῶν γε ποσῶς γοῦν παιδείας ἐπαϊόντων. – M: Οὐκοῦν ἐπὶ τούτοις τῶν μὲν νόμων, ὦ Θεμάσιε, πρῶτος θετέος αὐτῇ ὑπ’ αὐτῆς τῆ βασιλείᾳ τῆς ἐννόμου χάριν ἀναρρήσεως, ὡς ἂν ὁ ὅμοιος αὐτῇ καὶ ἐπώνυμος ἀνὴρ συγγίνεσθαι μέλλων δικαίως, ὡς προερρήθη, παρὰ θε(ο)ῦ τε διδομένην καὶ τῶν πολιτῶν δέξοιτο προσφερομένην. δευτερός περὶ τῆς τῶν ἀρίστων(ν) συγκλήτου βουλῆς, τροφῆς τε αὐτῶν ἕνεκα καὶ παιδείας, τιμῆς τε καὶ τάξεως, ἐτι δὲ καὶ ταξιαρχίας ἢ ἐρρήθη γιγνομένης. τρίτος περὶ τῆς τῶν ἀρχιερέων ἐπιλογῆς τιμῆ τε τῆ πρὸς τὸ θεῖον μάλιστα καὶ φόβῳ ταῖς τε τῶν πόλεων ἐνόρκους μαρτυρίας γιγνομένης. τέταρτος περὶ τῶν μεγίστων ἀρχῶν καὶ τῆς τῶν ὁμοίων ἀρχόντων ἐκ τῶν ἀρίστων ἐπιλογῆς. πέμπτος περὶ τῶν πολιτικῶν νόμων καὶ τῆς ἐπ’ αὐτοῖς πάμπα(ν) ἀσαλεύτου φυλακῆς. οἶεσθαι γὰρ βασιλεὺς ἀγαθὸς φοβερωτέραν οἱ αὐτῷ ἢ τοῖς ἀρχομένοις εἶναι τὴν ἐπὶ\*\*\*

ἢ γὰρ τοι βασιλικὴ προμήθεια μόνας τὰς συνεκτικὰς ἀρχὰς τε καὶ πρώτας αἰτίας τῶν πολιτικῶν πραγμάτων .... εὐ τιθεῖσα καὶ κοσμοῦσα διατελείτω αἰεὶ, ἐξ ὧν ἡ τῆς πολιτείας εὐεξία τε καὶ εὐστάθεια φύεσθαι τε καὶ τρέφεσθαι καὶ οἷον ἕκ τινῶν πολιτικῶν ριζῶν βλαστάνουσα ἀνθῆν καὶ τῶν ἐπιστήμης πηγῶν ἐπιρρεομένη ἀκμάζειν δυνατὴ ἂν εἴη, ὡς ἂν μὴ τοὺς ἐπὶ μείζοσι τῆς πρωτοργου προνοίας καιροῦς τὰ ἦσσω ἐφ’ ἑαυτὰ ἀνθέλκοντα ἐπισπῶη. ...

τρισσὸν γὰρ ἂν οὕτως, οἶμαι, τὸ ὄνησιμον τῷ τε δικαίῳ συγκείμενον τῇ πολιτεία περιγίγνοιτο, τῆς βασιλείας ἐξ ἑαυτῆς πηγαζούσης οἷον τὸ πολιτικὸν φῶς καὶ ἐπὶ τὰς μὲν <με>τ’ αὐτὴν πρώτας ἐνείσης πολιτικὰς ἀρχὰς, δι’ αὐτῶν δὲ ἐπιστημονικῆ μεθόδῳ τὰ δευτέρα καὶ τρίτα τὰ τε ἄλλα πάντα πρυτανευούσης, τῶν δὲ ἀρίστων δικαίως τε τῆς πολιτείας μετεχόντων καὶ τὰ ἕκαστα, εἰ καὶ ἄλλων ἄλλα, ἐναρμονίως ταττόντων, τῶν τε ἄλλων ἀπάντων τῆς πολιτείας ταγμάτων εὐ μάλᾳ ταττομένων, οἷα καὶ πλησιαιτέραν καὶ σφίσι παροῦσαν καὶ ἐκάστῳ κατάλληλον ἐχόντων τὴν τῶν κρειτόνων ἐποπτεῖαν.

5.135: ... οὐκέτι φερόμενον δι’ αὐτοῦ δηλαδὴ εἰς τὰς πόρρω καὶ ὑπαλλήλους ἀρχὰς, ἀλλ’ ἐξ ἑαυτοῦ μὲ ὡς ἕκ τινος πηγῆς ἐπιστημονικῶς ἐνιέντα ἐπὶ τὰς ἄλλας ἀρχὰς τε καὶ τάξεις τὰς πολιτικὰς προνοίας, διὰ δὲ τῶν ἀρίστων καὶ τῶ(ν) μετ’ αὐτοὺς προσφόρων ἀρχῶν τε καὶ ταγμάτων πρὸς ἕκαστα ἐπιπορευομένας ἰθύνοντα. οὕτω γὰρ οὐδ’ ἂν ἡ βασιλικὴ πρόνοια τῆς τῶν ἀρχικωτάτων εὐθημοσύνης ἀπέσοιτο, καὶ τῶν πολιτῶν ἕκαστος ἐναρμονίως,

(5.16) Menas: Imperial rule, Thomas, is concerned with affairs of state. It has, as its goal, the well-being of the state in accordance with justice. Its completion consists in putting this into practice with the benefit which necessarily follows from this: the salvation of men. There is no one, I think, who could doubt this. – Thomas: Absolutely no one, at any rate, who had any understanding of culture. – Menas: (5.17) To this end, therefore, Thomas, the imperial power will, first, legislate for itself concerning its legitimate proclamation so that the man who is equal to it and who takes its name and is about to unite himself with it may, as we said earlier, justly receive it when it is given by God and offered by the citizens. (5.18) A second law will deal with the senate of the optimates, with their upbringing and education, their honours and ranks, and also, in the way we've said, the political order. (5.19) The third law will govern the selection of high priests - to take place with the greatest respect and fear of the divine, but also with the sworn testimonies of the cities. (5.20) A fourth will deal with the highest offices and the selection of their respective holders from the optimates. (5.21) A fifth will concern the laws of the state and the unshakeable protection afforded them. A good emperor will regard <the violation of the laws; suppl. Bell 2009> as more dreadful for him than for his subjects ...

(5.58) Imperial foresight should continuously and effectively arrange and co-ordinate only the structures of government and the general principles of public policy. .... (5.59) From this, the well-being and tranquillity of the state can be born, nurtured and, as if sprouting from political roots, flower and come to full bloom watered from the springs of knowledge. In this way, lesser affairs will not attract to themselves time better given to greater matters of primary care .....

(5.60) In this way, I think, a triple benefit, one closely allied to justice, would accrue to the state: from the imperial office itself would pour, as it were, political illumination on the first state offices beneath it, and through their holding sway, by scientific method, over the second, third and all the other tiers <of offices>.

(5.61) The optimates would also take part justly in government and harmoniously regulate everything of all kinds, while all the other classes of the state would be well organised and aware of the closer, and present oversight of superiors appropriate to each of them.

(5.135) But (the emperor) will no longer be personally involved, of course, with the remoter and subordinate magistracies. Rather, political foresight will flow from him, as from some fountain – and scientifically – to the other magistracies and classes, through the optimates and the other appropriate offices and ranks beneath them, guiding them each to their destination. (5.136) In this way, imperial providence would not be lacking in the good management of the most important affairs; each citizen would run his own affairs harmoniously... (Transl. Bell)

## **II. The institutional and political background**

### **4. The rule of law and antimonarchical discourses in the context of the CTh**

#### **4a. CTh 10.26.1 (426, West)**

Imp. Theodosius et Valentinianus aa. Basso praefecto praetorio....

quotiens de causa ad domum regiam pertinente aliquid quaestionis emergit, non aliter quam ex legum ordine, quibus similiter omne hominum genus tenetur, vel excipiant vel inferant actionem.

Emperors Theodosius and Valentinian Augustuses to Bassus, Praetorian Prefect. ...

As often as any question may arise with respect to any case pertaining to the property of the royal household, they (sc. the *Conductores hominesve augustissimae domus nostrae*) shall bring and defend their actions in no other manner than in accordance with the regular procedure of the laws to which every class of men alike is subject.... (Transl. Pharr 1952)

#### **4b. CTh 10.26.2 (426, West)**

Idem AA. ad senatum urbis Romae.

Post alia. conductores domus nostrae ab omni militiae privilegio submovemus. Vivant aequa sorte cum ceteris, nec umquam, si ratio poscat, examinis severitatem iudiciariam, ... in omnibus causis legibus serviant, quibus tenentur et principes.

The same Augustuses to the Senate of Rome.

(After other matters.) We deprive *conductores domus nostrae* of every privilege of imperial service. They shall live subject to the same conditions as all other men, and if reason should demand the severity of a judicial examination, ... they shall be obedient to the laws by which even the Emperors are held. (Transl. Pharr 1952)

#### **4c. CTh 11.30.68 (429, West)**

Imp. Theodosius et Valentinianus AA. Celeri suo salutem.

In privatae rei causis ... negotia de ceteris titulis ex appellatione a rationalis iudicio proconsulem oportet cognoscere. Salva enim nostrae reverentia maiestatis ius nobis cum privatis non dedignamur esse commune.

Emp. Theodosius and Valentinianus Aug. greet their friend Celer.

In cases of the privy purse the proconsul must hear appeals from the court of the rationalis. For We do not disdain that the same law should be shared by Us and private persons, and the reverence due to Our majesty remains unimpaired. (adapted from Pharr 1952)

#### **4d. CJ 1.14.4 (429, West)**

Imp. Theodosius et Valentinianus AA. ad Volusianum pp.

Digna vox maiestate regnantis legibus alligatum se principem profiteri: adeo de auctoritate iuris nostra pendet auctoritas. Et re vera maius imperio est submittere legibus principatum. Et oraculo praesentis edicti quod nobis licere non patimur indicamus..

The same Augusti to Volusianus, Praetorian Prefect. It is a statement worthy of the majesty of a ruler to proclaim himself bound by the laws: so much does Our authority depend on the authority of the law. And in truth, to subject the sovereign power to the laws is something greater than imperial rule. And by the oracular pronouncement of the present edict, We show what We do not allow Ourselves. (Transl. J.N. Dillon forthcoming)

For subordination of the emperor to the law see also CTh 13.1.21 (418, East), CJ 11.71.5 (426, West), CJ 1.14.10 (468, East)

#### 4e. Priscus of Panium ed. Bockley, Frg. 11.2, ll. 435-510: Law in the Ideal Roman State

τῶν νόμων οὐ κατὰ πάντων κειμένων, ἀλλὰ εἰ μὲν ὁ παραβαίνων τὸν θεσμόν τῶν πλουτούντων εἴη, ἐπὶ τῆς ἀδικίας αὐτὸν μὴ διδόναι δίκας· εἰ δὲ πένης εἴη, οὐκ ἐπιστάμενος χρῆσθαι πράγμασιν ὑπομένει τὴν ἀπὸ τοῦ νόμου ζῆμιαν, εἴπερ μὴ πρὸ τῆς κρίσεως ἀπολείπει τὸν βίον, μακροῦ ἐπὶ ταῖς δίκαις παρατεινομένου χρόνου καὶ πλείστων ἐκδαπανωμένων χρημάτων· ὅπερ τῶν πάντων ἀνιαρότατον εἴη, ἐπὶ μισθῷ τῶν ἀπὸ τοῦ νόμου τυγχάνειν. οὐδὲ γὰρ τῷ ἀδικουμένῳ τις δικαστήριον παραδώσει, εἰ μὴ τι ἀργύριον τῷ τε δικαστῇ καὶ τοῖς ἐκείνῳ διακονοῦ μὴ τι ἀργύριον τῷ τε δικαστῇ καὶ τοῖς ἐκείνῳ διακονουμένοις κατάθοιτο. Τοιαῦτα καὶ πλείστα ἕτερα προτιθέντος, ὑπολαβὼν ἔφασκον πρῶος αὐτὸν καὶ τὰ ἐξ ἐμοῦ ἀκούειν. ... τὸν δὲ ἐπὶ ταῖς δίκαις μακρότερον, ἂν οὕτω τύχοι, χρόνον τῆς τοῦ δικαίου προνοίας γίνεσθαι χάριν, ὥστε μὴ σχεδιάζοντας τοὺς δικαστὰς τῆς ἀκριβείας διαμαρτεῖν λογιζομένους ἄμεινον εἶναι ὄνῃ πέρας ἐπιτεθῆναι δικῆ ἢ ἐσπουδακότας μὴ μόνον ἄνθρωπον ἀδικεῖν, ἀλλὰ εἰς <τὸν> τοῦ δικαίου εὐρετὴν θεὸν πλημμελεῖν. κείσθαι δὲ τοὺς νόμους κατὰ πάντων, ὥστε αὐτοῖς καὶ βασιλέα πείθεσθαι, καὶ οὐχ, ὃ τῇ αὐτοῦ ἔνεστι κατηγορία, ὅτι γε δὴ οἱ εὐποροὶ τοὺς πένητας ἀκινδύνως βιάζοντο, εἰ μὴ γε διαλαθῶν τις φύγοι τὴν δίκην. ὅπερ οὐκ ἐπὶ τῶν πλουσίων, ἀλλὰ καὶ πενήτων εὖροι τις ἄν- πλημμελοῦντες γὰρ οὐδὲ αὐτοὶ ἀπορία ἐλέγχων δοῖεν δίκας, καὶ τοῦτο παρὰ πᾶσι καὶ οὐ παρὰ Ῥωμαίοις μόνον συμβαῖνόν ἐστιν. ... καὶ ὃς δακρύσας ἔφη ὅς οἱ μὲν νόμοι καλοὶ καὶ ἡ πολιτεία Ῥωμαίων ἀγαθή, οἱ δὲ ἄρχοντες οὐχ ὅμοια τοῖς πάλοι φρονούντες αὐτὴν διαλυμαίνονται

(The defector): The laws are not applied to all. If the wrongdoer is rich, the result is that he does not pay the penalty for his crime, whereas if he is poor and does not know how to handle the matter, he suffers the prescribed punishment – if he does not die before judgement is given (since lawsuits are much protracted and much money is spent on them). And this may be the most painful thing, to have to pay for justice. For no one will grant a hearing to a wronged man unless he hands over money for the judge and his assessors.

While he was putting these and many other complaints, I said gently in reply that he should also hear my point of view. ... The excessive time taken over the cases, if that happens, is the result of a concern for justice, lest the judges deal with them carelessly and err in their decisions. For they think it is better to conclude a case late than by hurrying to wrong a man and offend against God, the founder of justice. The laws apply to all, and even the Emperor obeys them. It is not a fact – as was part of his charge – "that the rich do violence to the poor with impunity, unless one escapes justice through escaping detection; and this is a recourse for the poor as well as for the rich. These offenders would go unpunished because of lack of evidence, something which happens not only amongst the Romans but amongst all peoples. ... My acquaintance wept and said that the laws were fair and the Roman polity was good, but that the authorities were ruining it by not taking the same thought for it as those of old. (Transl. Blockley 1983)

#### 4f. Excerpta de virtutibus 69 = John of Antioch Frg. 217 Mariev / 285 Roberto / 191 FHG

Ὅτι Θεοδόσιος ὁ νέος διὰ τὴν ἄγαν τῆς ἡλικίας νεότητα οὐδὲ πρὸς τὸ φρονεῖν, οὐδὲ πρὸς τὸ πολεμεῖν ἱκανὸς ἦν· ἀλλὰ μόνον ὑπογραφὰς τοῖς βουλομένοις παρεῖχε, μάλιστα δὲ τοῖς περὶ τὴν βασιλείαν εὐνούχοις. Ἐξ ὧν ἅπαντες, ὡς εἰπεῖν, τὰς οὐσίας ἠρπάζοντο. Οἱ μὲν γὰρ ἔτι ζῶντες ἐκληρονομοῦντο, οἱ δὲ τὰς γαμετὰς ἑτέροις παρέπεμπον, καὶ τέκνων ἐστηροῦντο βιαίως, ἀντιλέγειν τοῖς τοῦ βασιλέως διατάγμασιν οὐ δυνάμενοι. Ἐν τούτοις μὲν οὖν τὰ Ῥωμαίων ὑπῆρχεν.

Because of his extreme youth Theodosius the Younger was not fit to make decisions or to wage war: rather he simply gave subscriptions to those who requested them, but especially to the imperial eunuchs. Because of this everybody, one might say, was stripped of property: some were succeeded by their heirs while still living, others passed their wives on to other people and were forcibly deprived of their children, because they were unable to contradict the imperial orders. Such were the conditions in the Roman empire. (Transl. Mariev 2008 with alterations)

Vgl. Exc. De insidiis 83 = Priscus Frg. 15.5 Blockley = John of Antioch Frg. 217 Mariev / 198 FHG: „In the reign of the younger Theodosius, Chrysaphius controlled everything, seizing everyone's possessions and being hated by everyone.“ (Transl. Mariev 2008). The same about Pulcheria in Philostorg. 12.7 Bidez.

Theodosius underwriting everything including the sale of his wife: Theod. Lector, h.e. ed Hansen, §352 und Theoph. a.m. 5941 u.ö.

#### 4g. Zosimos 5.1.1-3 und 5.24.1

Τῆς δὲ τῶν ὄλων ἀρχῆς εἰς Ἀρκάδιον καὶ Ὀνώριον περιστάσης ἄχρι μὲν ὀνόματος ἐδόκου ἔχειν τὸ κράτος, ἡ δὲ πᾶσα τῆς ἀρχῆς δύναμις ἦν κατὰ μὲν τὴν ἑῴαν παρὰ Ῥουφίνῳ, κατὰ δὲ τὴν ἐσπέραν ἐν τῇ

The Empire had been committed to Arcadius and Honorius, but they had authority in name only: the supreme power was held by Rufinus in the East and by Stilicho in the West. These latter decided all cases

Στελίχωνος γνώμη· δίκαια τε πᾶσαι παρ' αὐτοῖς κατ' ἐξουσίαν ἐκρίνοντο, καὶ ἀπῆει κεκρατηκῶς ὁ χρημάτων τὴν ψῆφον ὠνούμενος ἢ ἄλλως οἰκειότητι τὴν τοῦ δικάζοντος ἐπισπώμενος εὖνοιαν. (2) Κτήματα δὲ ὅσα τοὺς κυρίους ἐν τοῖς ἀπάντων ἐποίει στόμασιν εὐδαιμόνας ὀνομάζεσθαι, μετῆει πρὸς τούτους, τῶν μὲν δωρεαῖς θεραπευόντων καὶ τούτῳ τὸ συκοφαντεῖσθαι διαφευγόντων, ἐτέρων δὲ τὰ οἰκεῖα προῖε μένων ὑπὲρ τοῦ τυχεῖν ἀρχῆς. ... (3) ἤσθάνοντο δὲ τῶν γινομένων οἱ βασιλεῖς οὐδενός, ἀλλὰ ἔγραφον μόνον ὅσα Ῥουφίνος ἐπέταττε καὶ Στελίχων.

Τὸ δὲ τῶν συκοφαντῶν ὡς οὕτω πρότερον ἐπιπολάσαν καὶ τοὺς περὶ τὴν αὐλήν εὐνούχους αἰετὴν περιέπον, εἴ ποὺ τις τῶν πλουσίων ἀπέθανεν, ὡς οὐκ ὄντων παίδων ἢ συγγενῶν ἐμήνουν τὰς οὐσίας, καὶ τοῦ βασιλέως ἐφέρετο γράμματα τοῦδε τὴν οὐσίαν τῷδε παραδοθῆναι κελεύοντα, καὶ παρεδίδοντο τοῖς ἡτηκόσιν οἱ κληροῖ παίδων ἐστώτων καὶ τοὺς πατέρας μετὰ οἰμωγῆς ἀνακαλουμένων.

Cf. Similar charges in Excerpta de virtutibus 67 = John of Antioch Frg. 213 Mariev

#### 4h. Exc. de Sent. 79 = Eunap Frg. 72.1 Blockley

Ὅτι ἐπὶ Πουλχερίας τῆς βασιλίσσης ἐξέκειτο δημοσία πιπρασκόμενα τὰ ἔθνη τοῖς βουλομένοις ὠνεῖσθαι τὰς ἀρχάς· πᾶσι δὲ ἐπιπράσκοντο μεγάλα τε καὶ μικρὰ φανερώς ἐπὶ τῶν δημοσίων τραπεζῶν, ὥσπερ ἄλλο τι τῶν ἐπ' ἀγορᾶς ὀνίων. ὁ βουλούμενος Ἑλλησποντον ἀδικεῖν εἶχεν Ἑλλησποντον πριάμενος, καὶ ἄλλος Μακεδονίαν ἢ Θράκην, καὶ ὅπως ἕκαστος ἐνόσει πρὸς τὸ ἀδικόν ἢ ἐχθροὺς ἔχων. ἐξῆν δὲ καὶ καθ' ἕκαστον ἔθνος τὴν μοχθηρίαν ὠνεῖσθαι τὴν ἑαυτοῦ πρὸς τὸ βλάπτειν τοὺς ὑπηκόους καὶ πολλὰ συλλαμβάνειν ἔθνη· τοῦτο γὰρ ὁ βικάριος ἐδύνατο καὶ ἡ ἀνθύπατος ἀρχή. καὶ δεός ἦν οὐδὲν τῶν ἀθλίων γραμμῶν τοῖς νόμοις ἐντεθηκότων ὡς δεῖ τὸν ἐπὶ κρήμασι δικάζοντα κολάζεσθαι· ἀλλ' οἱ μὲν νόμοι κατὰ τὸν Σκύθην Ἀνάχαρσιν οὐκ ἀραχνίων ἦσαν ἀσθενέστεροι καὶ λεπτότεροι μόνον, ἀλλὰ καὶ κονιορτοῦ παντὸς πρὸς τὸ ρεῖν εὐκόλως καὶ διανεμοῦσθαι παραφορώτεροι.

#### 5. CJ 1.14.8 (446): the senate and legislation

Theodosius et Valentinianus AA ad senatum.

Si quid de cetero in publica vel in privata causa emergerit necessarium, quod formam generalem et antiquis legibus non insertam exposcat, id ab omnibus antea tam proceribus nostri palatii quam gloriosissimo coetu vestro, patres conscripti, tractari et, si universis tam iudicibus quam vobis placuerit, tunc allegata dictari et sic ea denuo collectis omnibus recenseri et, cum omnes consenserint, tunc demum in sacro nostri numinis consistorio recitari, ut universorum consensus nostrae serenitatis auctoritate firmetur. Scitote igitur, patres conscripti, non aliter in posterum legem a nostra clementia promulgandam, nisi supra dicta forma fuerit observata. bene enim cognoscimus, quod cum vestro

at will, and the successful party was he who purchased the decision with cash or otherwise gained the good will of the judge by friendship. Estates which had made their owners by common report acclaimed happy found their way into the hands of Rufinus and Stilicho. Some flattered them with gifts and thereby evaded denunciations; others gave up their possessions of their own free will and thereby attained a magistracy. ... The Emperors were aware of none of these happenings, but simply signed anything Rufinus and Stilicho instructed them to sign.

The tribe of sycophants rose to the top as never before. They were forever attending the court eunuchs. If a rich man died, they disclosed his net worth just as if he had no children or relatives. Rescripts kept issuing from the Emperor (Arcadius) ordering that the estate of such and such be made over to such and such, and inheritances fell to those who petitioned the Emperor even while children stood by and bewailed the loss of their parents. (Transl. Buchanan/Davis 1967)

During the time of the Empress Pulcheria the provinces were up for public sale to whoever wished to buy their governorships. Large and small, they were openly offered to all in the public marts like any other piece of merchandise. Whoever wished to plunder Hellespontus could buy that province, likewise Macedonia or Thrace, wherever he craved to commit his crimes or had enemies. Wrongdoers could buy the right to oppress the population either of an individual province or of a collection of provinces, the latter being the prerogative of the vicar or proconsul. Moreover, no one had any fear of the harsh statutes which laid down penalties for judges in suits involving property, for they had become obsolete; and the laws themselves were not only, as the Scythian Anacharsis says, lighter and weaker than spiders' webs, but readier than any dust to swirl away and scatter. (transl. Blockley)

Theodosius et Valentinianus AA. to the Senate.

We approve it as sensible that, if hereafter something pressing emerges in a public or private case that demands a general provision not contained in former laws, it should first be considered both by all the nobles of Our Palace and by your most glorious assembly, conscript fathers; and, if both all the judges and you approve, then the materials gathered will be read and thus reviewed anew in full assembly; and when all agree, then at last they will be read aloud in the sacred consistory of Our Godhead, so that the consensus of all may be confirmed by the authority of Our Serenity. 1. Let you therefore know, conscript fathers, that no law at all shall be promulgated by Our Clemency

consilio fuerit ordinatum, id ad beatitudinem nostri imperii et ad nostram gloriam redundare.

unless the aforementioned rule is followed. For We know well that what has been ordained with your council redounds to the blessedness of Our Empire and to Our glory. (Transl. J.N. Dillon)

## 6. Novella Theodosii 1 (438): the promulgation of the Theodosian Code

Imp. Theodosius et Valentinianus AA. Florentio praefecto Orientis. ...

1. ... Si copia immensa librorum, si actionum diversitas difficultasque causarum animis nostris occurrat, si denique moles constitutionum divalium, quae velut sub crassae demersa caliginis et obscuritatis vallo sui notitiam humanis ingeniis interclusit, verum egimus negotium temporis nostri, et discussis tenebris conpendio brevitatis lumen legibus dedimus. ... purgata interpretatione, retro principum scita vulgavimus, ne iurisperitorum ulterius severitate mentita dissimulata inscientia, velut ab ipsis adytis exspectarentur formidanda responsa, cum liquido pateat, quo pondere donatio deferatur, qua actione petatur hereditas, quibus verbis stipulatio colligatur, ut certum vel incertum debitum sit exigendum. Quae singula prudentium detecta vigiliis in apertum lucemque deducta sunt nominis nostri radiante splendore.

3. Quamobrem detersa nube voluminum, in quibus multorum nihil explicantium aetates adtritae sunt, compendiosam divalium constitutionum scientiam ex divi Constantini temporibus roboramus, nulli post Kal. Ian. concessa licentia ad forum et cotidianas advocatones ius principale deferre vel litis instrumenta componere, nisi ex his videlicet libris, qui in nostri nominis vocabulum transierunt et sacris habentur in scriniis. Quamquam nulli retro principum aeternitas sua detracta est, nullius latoris occidit nomen: immo lucis gratia mutuati claritudine consultorum augusta nobiscum societate iunguntur. Manet igitur manebitque perpetuo elimata gloria conditorum nec in nostrum titulum demigravit nisi lux sola brevitatis.

Emperors Theodosius and Valentinian Augustuses to Florentius, Praetorian Prefect of the Orient. ...

1. ... As there occurs to Our minds the boundless multitude of books, the diversity of actions and the difficulty of cases, and finally the mass of imperial constitutions which shut off from human ingenuity a knowledge of themselves by a wall, as though they were submerged in a thick cloud of obscurity, We have completed a true undertaking of Our time; We have dispelled the darkness and given the light of brevity to the laws by means of a compendium. .... The decrees of previous Emperors have been purged of interpretations and published by Us, in order that no further may the jurisconsults dissimulate their ignorance by a pretended severity, while their formidable responses are awaited as though they proceed from the very innermost shrines, since it is now clearly evident with what validity a gift, may be bestowed, by what action an inheritance may be claimed, and by what words a stipulation may be drawn up, in order that a definite or indefinite debt may be collected. Each of these matters has been revealed by the vigilance of Our jurists and brought forth into the open and into clear light by the radiant splendor of Our name. ...

3. Wherefore, We have cleared away the cloud of volume on which have been wasted away the lives of many persons who explain nothing; We confirm this compendious body of knowledge of the divine imperial constitutions from the times of the sainted Constantine, and after the kalends of next January, to no man is granted the right to cite an imperial law in court and in daily legal practice or to compose the instruments of litigation, except, of course, from these books that have come to be under Our name and are kept in the sacred imperial bureaus. However, their own immortality has not been taken away from any of the previous Emperors, the name of no lawgiver has perished; rather, their laws have been changed by the clarification of Our jurisconsults for the sake of lucidity, and they are joined with Us in an august fellowship. The consummate glory of the founders of the laws, therefore, remains and will forever remain, and to Our account has passed nothing except the light of brevity. ... (Transl. Pharr 1952)