

**THE FRAGMENTS OF
THE PERPETUAL EDICT
OF SALVIUS JULIANUS**

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The Fragments of the Perpetual Edict of Salvius Julianus by Bryan Walker

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BRYAN WALKER

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OF SALVIUS JULIANUS**

Roman Law
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THE FRAGMENTS OF

THE PERPETUAL EDICT
OF
SALVIUS JULIANUS,

COLLECTED, ARRANGED, AND ANNOTATED

BY

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INTRODUCTION.

On Edicts in general.

BEFORE entering upon a discussion of the plan on which Salvius Julianus drew up his famous Edict in the reign of Hadrian, it is absolutely necessary to say a few words on the nature of Edicts in general.

An edict, then, is an order emanating from some officer of state in relation to the matters over which he has jurisdiction¹; and such edicts in early times were issued not only by civil magistrâtes, but by military commanders, priests, pontiffs and augurs. The phrase "edocere" is seldom, if ever, used in reference to the directions given by private persons, except in the bombastic phrases of the comedians and satirists; for even the written notices of ordinary citizens not holding office are designated *libelli*, and not *edicta*, almost invariably by prose writers, and very frequently by the comedians and satirists also, when the mention of such documents is merely collateral to the topic of their ridicule.

Sigonius asserts that the right of issuing edicts appertained only to those magistrâtes who were invested with *imperium*; and he further holds that *imperium* was a name applicable to an aggregate of three functions, inseparable according to the theory of Roman jurisprudence, viz. *jus edicendi*, *vocatio* and

¹ καὶ γὰρ διαγράμματα τῶν ἀρχόντων Ἕλληες μὲν διατάγματα, Ῥωμαῖοι δὲ ἔδικτα προσαγορεύουσι. Plutarch, *Marcell.*

prensio; the two latter phrases signifying, respectively, the right of the magistrate to summon any citizen before his tribunal, and his right to arrest for contempt of summons or injunction, or by way of execution of a sentence pronounced. But to the theory of Sigonius there is the obvious objection that curule aediles, tribunes and pontiffs could issue edicts, although none of them had the *vocatio* and *prensio*¹. It is more correct, therefore, to say that *imperium* has three meanings in Roman Jurisprudence; 1st the command in war, 2nd the power of life and death or minor punishment; 3rd the rights of *vocatio* and *prensio*, confining *prensio* to the forcible compelling of appearance on neglect of a *vocatio*. And not only did the *jus edicendi* attach to those who possessed any variety of *imperium*, but to state-officials generally, even when they were devoid of *imperium*: and so we conclude that the statement of Gaius, although so wide in its terms, is the closest admitted by the actual state of practice: "*jus edicendi habent magistratus populi Romani*."² Edicts, in fact, could be issued by all "*qui honores gerebant*," not merely by those "*qui imperio gaudebant*."

But although every magistrate could issue edicts, yet, as we have already said, his edicts were strictly confined to the matters over which he had jurisdiction. Consequently the edicts of the minor officials, however important in their day to persons obnoxious to their sanctions, are but of little interest to those who look back over a wide interval of time in order to detect in Roman practice, not the minutiae which changes of circumstances and ideas have rendered impossible to be imitated, but those broader principles which are valuable for ever, whether as models for adoption, when their application has been productive of good, or as beacons of warning, when their application has led to evil.

Many of the edicts of the higher officials, again, are of comparatively little importance to us moderns, because they

¹ See Aul. Gell. *Noct. Att.* XIII. 13; Livy II. 56; IV. 54.

² Gai. *Comm.* I. 6.

were but temporary orders issued on the spur of emergencies, and not based upon any permanent and pervading principle. Those edicts alone are of abiding value, which were published in the true legislative form, viz. by anticipation.

And so we arrive at the well-known distinction between the Roman edicts, that some were *repentina*, some *perpetua*. The *edicta repentina* were proclamations in times of tumults¹, notices of games, public funerals, holidays, intercessions of the gods, levies of troops or ships, summary orders for the banishment of individuals or classes², &c. &c. Another variety of *edicta repentina* consisted of *decrees*, i.e. orders by way of execution of the laws, as, for example, citations of absconding defendants, judgments upon default of appearance, postponements of the hearing, orders for sale of confiscated goods. So that *edicta repentina* are usually and appropriately classified into *edicta reipublicæ administrationis causa* and *edicta de negotiis forensibus*.

Edicta repentina of the former variety are akin to the *θέμιστες* of Homer, except that *θέμιστες* were purely arbitrary, whereas in a settled society *edicta* are arbitrary in form rather than in reality, being as a matter of fact issued almost entirely in accordance with precedent. In communities barely emerging from barbarism, judicial utterances are subject to no rule but the pleasure of the chieftain or magistrate who enuntiates them, and are binding through the religious sanction, the prince being regarded as the mouthpiece of God. All nations have, doubtless, in their infancy passed through a stage when *θέμιστες* or *edicta repentina* were the sole forms of legislation, or perhaps it would be more correct to say the sole form of government: nor was the primeval condition of Rome an exception, if we accept the description of Pomponius: "et quidem initio civitatis nostræ populus sine lege certa, sine

¹ For instance, that none but voters should enter the City at an election: Appian *de Bell. Civ.* 1. p. 164. See also Sueton. *Octav.* 53: *Calig.* 6, 18: *Tit.* 8.

² E. g. the well-known edict of Claudius that the Jews should leave Rome.

jure certo primum agere instituit, omniaque *manu* a regibus gubernabantur¹."

But this blind submission to authority is incompatible with advancing civilization; the divinity of an obviously fallible king or chieftain is by degrees scouted; the wise men of the tribe invade his functions, or at any rate compel his edicts to be consistent one with another; and so the way is paved for a new kind of edict, *edicta perpetua*.

The process is very gradual. *Edicta* long remain *repentina* in form: but an edict once issued begins to serve as a precedent in similar cases as they arise, and the king (or if the state has, according to the usual sequence of events, become changed into an oligarchy, the magistrate) is constrained by the sentiments of the aristocracy, or influential portion of the community, to abide by custom.

Next begins direct legislation: so that the ground covered by edictal regulations is continually circumscribed, at the same time that the *edicta* themselves tend to become stereotyped. *Edicta repentina* of an anomalous kind are still issued on the occasion of great emergencies, but edicts in general become so much a matter of course, that the citizens can tell beforehand the nature of that which will be published in any particular instance. And thus we arrive at the period when *edicta perpetua*, truly so-called, universal edicts, prospective and not retrospective, issued by those who are Judges in name, but Legislators in reality, become an important part in the juristic scheme of a nation. These edicts are not absolutely "perpetual" in a temporal sense; but are, at any rate, unchangeable without some formal notification, and apply to all persons in a certain class of cases.

¹ D. i. 2. 2. 1. Just as *manus* originally denoted the unrestrained power possessed by the head of a family over his children, wife, slaves and chattels (see Maine's *Ancient Law*), so here, undoubtedly, the word denotes the unbounded prerogative of the ancient Roman king, holding at his absolute disposal, as *pater patriae*, the lives, liberty and property of his subjects.