THE SO-CALLED LETTER OF DOMITIAN AT THE END OF THE LEX IRNITANA*

By JEAN-LOUIS MOURGUES

(Plate II)

It is not the purpose of this paper to propose a new commentary on the legal provisions recorded in the Lex Irnitana,[1] or to attempt to re-interpret as a whole what is certainly one of the major epigraphic discoveries of this century. Much more modestly, it employs an analysis of the diplomatic form to understand the imperial document called until now the 'letter of Domitian', which stands at the end of this copy of the Flavian municipal law. The text of the 'letter', recently published in the *Journal* by Prof. Julián González, should read as follows:[2]

> Conubia comprehensa quaedam lege lat<a>[3] scio; et
> postea aliqua si quit sollicitudo vestra indi-
> cat parum considerate coisse, quibus in prae-
> teritum veniam do, in futurum exigo me-
> mineritis legis, cum iam omnes indulgen-
> tiae partes consumatae sint.
> Litterae datae IIII idus Apriles Circeis reci-
> tatae V idus Domitianas
> Anno M(ani) Acili Glabrionis et M(arci) Ulpi Traiani co(n)s(ulum).
>
> Faciendum curaverunt [—]. Caecilius Optatus
> IIvir et Caecilius Montanus legatus.

However slight it may seem, this modification in paragraph layout is important, for it enables us to see that on the bronze tablet the last two lines are not specifically related to the *litterae*. What is more, since the gap between the text of the 'letter' and these two lines is greater than between the 'letter' and the last rubric (LXXXXVII) of the municipal law, it is probable that these dispositions must be understood as applying to the law as a whole.[4] On the other hand, the interval between the last rubric of the law and the imperial pronouncement is smaller than that between rubric LXXXXVII and rubric LXXXXVI.[5]

*I owe thanks to the Editorial Committee, and in particular the Editor; many points were also suggested by A. M. Honoré, J. P. Coriat, W. Williams and A. N. Lintott. But above all, for constant support and friendly help I am indebted to Fergus Millar and Michael Crawford; certainly, if better, this paper ought to be dedicated to them.

[1] On the Lex Irnitana, see Julián González, 'The Lex Irnitana: a new copy of the Flavian Municipal Law', *JRS* 76 (1986), 147–243 and Pls V–XXII, with an edition of the Latin text, a commentary by himself, and a translation into English and two Appendixes by Prof. M. H. Crawford. Besides the papers of A. d'Ors and T. Giménez-Candela quoted at length in his paper (p. 147 n. 1), we must expect many more discussions (cf. D. Johnston, above pp. 62–77.

[2] Cf. González, 181 for the text and 237–8 for the commentary. He gives no explanation as to why he grouped the text of the 'letter' and of the 'Faciendum curaverunt' formula in a single paragraph. The fact that they are separated by quite a wide space on the bronze tablet can be confirmed from Pl. II (=González pl. XXII).

[3] González and Crawford have finally chosen to print *late*, but even if, as is probable, such was the spelling on the bronze tablet, it must be a mispelling, for *late* is incomprehensible: the expression *late scire* does not exist in Latin, neither is it possible to find any equivalent for *scire* with an adverb indicating extent. As kindly suggested by Dr Lintott, the expression *late comprehensum* would be a little easier, and would make good sense ('I know that some marriages are *extensively* covered by the law'). However, not only was I unable to find any other example of qualification of the very common expression *lege comprehensum* (cf. Sen., *Contr.* 10. 1. 9, Marcell., *Dig.* 18. 1. 60, Papin., *Coll. Mos.* 4. 8. 1, *CIL* V. 7637. 7 and VIII. 24616, etc.), but the grammatical construction is awkward: it is very difficult to explain why *late* would have been put so far away from the verb to be qualified. Therefore one is obliged to follow Millar and Honoré, and to consider *late* as a mispelling for *lata*: such an expression may be abundantly found in the *Digest* (1. 2. 2. 2, 1. 2. 2. 16, 1. 22. 3, 4. 5. 5. 1, 48. 8. 7. *pr.*, 49. 15. 2. 8, 50. 7. 18. *pr.*, etc.) and can be justified on palaeographical grounds, if one considers the problem of transcription from a text written in the bureaucratic cursive of the imperial chancery; cf. J. Mallon, *De l'écriture* (1982), 188 col. 10 for a presentation of the writing used by the only remaining exemplar of the original of an imperial rescript. Further, this restoration makes good sense, since the Lex Irnitana describes itself as a *lex rogata* in ch. XXXI, l. 43.

[4] Cf. González (1986), 238, who, certainly wrongly, relates this remark to his hypothesis that the law and the letter were granted during the same embassy. But see n. 34.

[5] This arrangement seems to indicate that the rubric LXXXXVII and the *litterae* of Domitian had been conceived as a unity in the inscription, separate from both

Beside these purely epigraphic considerations, nothing in this imperial document in fact proves that it is a letter; certainly we cannot infer it simply from the word *litterae*, which, like its Greek equivalent γράμματα, may denote almost any form of imperial pronouncement.[6] On the contrary, the formal and diplomatic characteristics of a letter are completely absent here: an imperial letter, as is well known,[7] is formally defined by the presence at the beginning of a greeting formula and at the end by the valedictory formula, 'Vale, Valete', or its various Greek equivalents.[8] It could be objected that the absence of any heading to this letter makes the problem of the *salutatio* irrelevant. However, the case is different with the end of the text: although, as confirmed by observation of Pl. II, there would have been sufficient space in the last line to add a simple 'Valete', no such formula was in fact inscribed. The document cannot therefore be a letter.

What is it then? One might assume that, if not an *epistula* engraved in its entirety, it might at least be an extract from an imperial letter. But this is clearly impossible: certainly there are many examples of such extracts both in the *Digest* and in the Greek inscriptions and papyri of the Eastern part of the Roman Empire; but these quotations from the imperial correspondence are always preceded by the Latin expression *pars epistulae* or its Greek equivalent κεφαλαῖον ἐπιστολῆς.[9] Nor can our document be an edict or a part of an edict, for the actual beneficiaries of this imperial measure are addressed in the second person plural.[10] There is only one possibility left: it is a *subscriptio*, a rescript addressed by the Emperor Domitian in response to the *libellus* of some provincial community.[11]

There is indeed one other epigraphic example of such an abbreviation of a subscript in the so-called *sacrae litterae* discovered in many exemplars in Asia Minor.

the *sanctio* rubric (LXXXXVI) and the 'Faciendum curaverunt' formula. Cf. below, p. 85.

[6] On this point, see W. Williams, 'Epigraphic Texts of Imperial Subscripts: a Survey,' *ZPE* 66 (1986), 181–207, esp. 195, where he defends his opinion on the basis of the heading (*sacrae litterae*) of the Severan constitution of 204 (quoted and analysed below, n. 12) or the petition of the Skaptopareni in 238 (*Syll.*[3] 888. 1. 102) calling the imperial subscript θεία γράμματα. As regards edicts, cf. J. H. Oliver, *Aspects of the Civic and Cultural Policy in the East* (Hesperia Suppl. XIII, 1970), 35–7; and on the notion of *litterae* in this context, A. dell'Oro, *'Mandata' e 'litterae'* (1960), who declares, p. 79: '*Litterae* in senso generico è ogni documento scritto destinato dall'autore ad essere portato a ... conoscenza di altri'.

[7] Cf. U. Wilcken, 'Zu den Kaiserreskripten', *Hermes* 55 (1920), 1–42; L. Wenger, *Die Quellen des römischen Rechts* (1933), 428; S. Brassloff, *RE* VI (1900), 204 s.v. 'Epistula' and recently A. M. Honoré, *Emperors and Lawyers* (1981), 34–5.

[8] The change in practice is well known: during the first century A.D. a perpetuation of the republican formula Ἔρρωσθε (cf. R. K. Sherk, *Roman Documents from the Greek East* (1969), 35); and from the second century onwards the adoption, certainly under Hadrian, of a new standard translation, Εὐτυχεῖτε. See, still, L. Lafoscade, *De epistulis aliisque titulis imperatorum magistratuumque Romanorum quas ab aetate Augusti usque ad Constantinum graece scriptas lapides papyrive servaverunt* (1902); F. Martin, *La documentación griega de la cancilleria del emperador Adriano* (1982), does not seem to realise that there is a problem.

[9] For such extracts with the heading *pars epistulae*, see *CJ* 10. 5. 1 (Alexander), 8. 40. 13 (Gordian), 9. 41. 4 (Caracalla) and 10. 61. 1 (*pars edicti Antonini*). It is true that in the *Digest*—for example, Florentinus, *Dig.* 1. 24 (Trajan to Statilius Severus) and Callistratus, *Dig.* 21. 2 (Hadrian to the *concilium* of Baetica)—the quotations are less accurate. But one must not forget that such a work is only a compilation from the second- and third-century jurists, who could—but did not need to—adopt in their writings the formal system of abbreviations usual in their time. However, see Modestinus, *Dig.* 27. 1. 6. 2, who has adopted nearly the same heading (κεφαλαῖον ἐπιστολῆς) as the Cyrenaican inscription recently re-edited → J. Reynolds, *JRS* 68 (1978), 113–14, ll. 13, 25, 69. On the notion of *exemplum*, see B. Kübler, *'Pariculum, Exemplum'*, *Studi Riccobono* I (1936), 437–53, and N. Palazzolo, 'Le modalità di trasmissione dei provvedimenti imperiali nelle province (II–III sec. d.C.)', *Iura* 28 (1977), 40–94, esp. 68–72.

[10] On this point, cf. W. Williams, 'Formal and Historical Aspects of Two New Documents of Marcus Aurelius', *ZPE* 17 (1975), 37–56 criticizing on this basis the proposals of Oliver, op. cit. (n. 6), 35–7.

[11] On the *libellus* procedure, beside the items already quoted, → W. Williams, 'The *Libellus* Procedure and the Severan Papyri', *JRS* 64 (1974), 86–1 → 'Individuality in the Imperial Constitutions: Hadrian and the Antonines', *JRS* 66 (1976), 67–83, and 'The Publication of Imperial Subscripts', *ZPE* 40 (1980), 283–94 (in response to the paper → A. d'Ors and F. Martin, *'Propositio Libellorum'*, *AJPh* 100 (1979), 111–24). See also D. Nörr, 'Zur Reskriptenpraxis in der höhen Prinzipätszeit', *ZSS* 98 (1981), 1–46, and F. Millar, *The Emperor in the Roman World* (1977) (=*ERW*), esp. 240–52 and 537–49. Further, see now J. P. Coriat, *La législation des Sévères et les méthodes de création du droit imperial à la fin du principat.* I. *La technique législative des Sévères.* II. *La palingénésie de la législation des Sévères* (thèse d'Etat en droit, Paris, 1985), 379–405 (on the *libellus* procedure) and 417–551 (its objects and sense in Roman imperial law).

Because of the close similarity of diplomatic form in a document of more than a century later, it will be necessary to quote it in its entirety:[12]

Sacra[e Litt]erae.
Videris [nobi]s S(enatus) Co(nsultum)
ignora[re, qu]i, si cum
peritis [cont]u[l]eri[s],
scies s[enat]ori p(opuli) R(omani)
necess[e no]n esse
invito [hos]pitem
suscip[ere].
Dat(um) pri[d(ie) Kal(endas)] Iun(ias) [R]om(ae)
[Fab]io Ci[lone I]I et
[Ann]io [Libo]ne coss.

The differences between the form of this document and that of our Domitianic pronouncement are only minor: the term *litterae* is used in both cases, and for both the general tone is characteristic of a subscript.[13] But the two slight differences may be interesting to analyse: first, although in this Parian copy of a Severan constitution there is no precise indication of the emperors' names, a general title (*sacrae litterae*) has nevertheless been given to the document which is completely absent in the Irni inscription, where the attribution of the document to the imperial authority was too obvious to be indicated.[14] Secondly, it may be important to note that even at such an early date—the Irni document is only the second of this type preserved in the epigraphic record[15]—the dating formulae seem already well established and confirmed: even the dating is in fact far more precise in our inscription, for to the date of the granting of the imperial subscript at Circei on 10 April A.D. 91 is added that of its reception and public reading in the province on 11 October. Besides providing an important piece of information on the duration of travel in the Roman Empire,[16] these dating formulae inform us of a procedure until now poorly documented, the *recitatio* of an imperial pronouncement, though it must be admitted that the allusion is not easy to interpret.[17]

[12] The text quoted here is that of the Parian inscription, which has a second version in Greek (*Syll.*[3] 881 = *CIL* III. 14203. 8–9). Other copies in Latin: Mirtatz in Pentapoli (Th. Drew-Bear, *Chiron* 7 (1977), 355); Satala (*TAM* V. 1. 607); two from Ephesus (*I.Ephesos* II. 207–8); Pisidian Antioch (C. P. Jones, *Chiron* 14 (1984), 93–9); and one of unknown provenance (L. Robert, *BCH* 102 (1978), 435–7). Copies in Greek: together with their Latin original text, in Pisidian Antioch (Jones, loc. cit.), and another one of unknown provenance (Robert, loc. cit.), quite different in its formulation, and therefore important for its demonstration that there never existed any official translation of the subscripts, as wrongly believed by Martin, op. cit. (n. 8), 324–7. Since there are so many exemplars of the same text, the restorations on the Parian inscription must be considered as completely sure.

[13] For the Severan rescript, see most recently Williams, art. cit. (n. 6), 197–8.

[14] For full discussion of this point, see below, p. 83.

[15] The new subscript must be inserted between the subscript of Octavian to the Samians (J. Reynolds, *Aphrodisias and Rome* (1978), no. 13), and the three subscripts collected on the bronze tablet from Vardacate (see n. 31 below).

[16] For discussions of the imperial communication system, see W. Riepl, *Das Nachrichtenwesen des Altertums mit besonderer Rücksicht auf die Römer* (1913), 193–2 → W. M. Ramsay, 'The Speed of the Roman Imperial Post', *JRS* 15 (1925), 60–74; M. Amit, 'Les moyens de communication et de défense de l'Empire romain', *PP* 20 (1965), 207–22. For a full discussion of the evidence and its implications, → F. Millar, 'Emperors, Frontiers, and Foreign Relations, 31 B.C. to A.D. 378', *Britannia* 13 (1982), 1–23, esp. 7–11, and *ERW*, 28–40. See now too H. Halfmann, *Itinera principum. Geschichte und Typologie der Kaiserreisen im Römischen Reich* (1986). For the speed of legislative communications, see M. Bacchi, 'La rapidità delle comunicazioni legislative sotto l'Impero', *Scritti* (1925), 149–54, and L. Aru, 'Osservazioni sulla rapidità delle comunicazioni legislative nell'Impero', *Studi economici e giuridichi della Facoltà Giuridica dell'Università di Cagliari* 17 (1929), 127–30.

[17] It is in itself surprising to see used in the dating formula of a Flavian subscript an expression well attested, in this context, only in the *Codex Iustinianus* (but see n. 9), in some constitutions of Justinian himself, 'recitatae in novo consistorio palatii' (*CJ* 1. 2. 22. 1, 1. 14. 12. 5, 2. 55. 4. 7, etc.), the only exception being *CJ* 6. 60. 2 (a letter of Constantine in A.D. 319 to the magistrates and the senate of Rome, read solemnly in the *curia*). Nevertheless, it is not unknown under the early Empire, where it seems to have all the functions of an oral publication: it is only after their *recitatio*, for example, that the clauses of a testament may be put into effect; and for the imperial legislation, as rightly pointed out by Coriat, op. cit. (n. 11), 726–48, together with the *propositio*, it has all the senses of a promulgation—only with its *recitatio* does the product of the imperial will acquire an official value. *Pace* González (1986), 238, this has nothing to do with the inscription *Syll.*[3] 883, where a quasi-private *epistula* of Caracalla

Since the Severan document has been widely and convincingly demonstrated to be an imperial subscript,[18] we must now ask whether, in view of its exact similarity of form, the same may be true of the pronouncement of Domitian at the end of the Lex Irnitana. The correct identification of the document may also permit us to recognize the true nature of its general tone, which, if it were really an *epistula*, González would indeed be right to consider as exhibiting a 'contorted style and curious usage'.[19] In fact, all the stylistic features of our document are characteristic of a subscript: lack of precision in the nature of the measure involved;[20] absence of an *expositio* explaining the reasons for the decision; and still more the very particular mixture of directness of tone and relative complexity of expression,[21] all characteristic of subscripts, which were primarily intended to be read in conjunction with petitions sent to the emperor, and whose variations in style have been recently—and exhaustively for the period 193–305—studied in a very suggestive book by Tony Honoré.[22]

It is of course true that there are relatively few surviving examples of such subscripts in response to *libelli* of provincial communities. But this is clearly the result of the distortion introduced in our impression of imperial constitutions by the nature of our main sources. The *Corpus Iuris Civilis*, for instance, being primarily concerned with private law, does not need to record this type of enactment;[23] further we must not forget that our earliest example of a subscript concerned with private law dates only from the reign of Hadrian, and that in the surviving epigraphic and papyrological record, subscripts in answer to petitions of provincial communities, associations or local magistrates acting on behalf of their corporations nearly outnumber subscripts

(with the unofficial, at these times, valedictory formula Ἔρρωσο, cf. n. 8) to the great notable Aurelius Iulianus is publicly read to honour him in the theatre.

There is a difference between publication by *recitatio* and that by *propositio*, which always took place at the imperial residence, while *recitatio* necessarily took place in the provinces of the addressees. From this point of view, its equivalent in the *Codex Iustinianus* is to be found in the expression *acceptum/accepta*, quite often used in the dating formulas: most of the time it is the only dating element (as in *CJ* 2. 12. 2, 2. 20. 1, 5. 75. 1, etc.), but in three cases—*CJ* 1. 15. 1 (Gratian, Valentinian, and Theodosius), 9. 17. 1 and 9. 47. 16 (both Constantine)—as in our inscription, jointly with the precise date of delivery of the answer. The delays themselves correspond reasonably well to the five months in our document: if only one month and a half was needed for the constitution of Gratian, Valentinian, and Theodosius (but the place of reception is not known), three months were necessary in 318–19 from Sirmium (at this time the imperial residence: see T. D. Barnes, *The New Empire of Diocletian and Constantine* (1982), 74) to Carthage for *CJ* 9. 17. 1, and six months between Trier and Hadrumetum in *CJ* 9. 47. 16.

One must note that, when mentioned, these towns where the constitutions were *acceptae* were all provincial capitals: Antioch (*CJ* 5. 35. 5 and 9. 18. 2), Carthage (*CJ* 9. 17. 1) and Hadrumetum (*CJ* 9. 47. 16 under Constantine: from the time of Diocletian capital of the *provincia Valeria Byzacena*). It must therefore be seriously doubted whether the *recitatio* was conducted only in the presence of the city magistrates who had sent the embassy; the evidence obliges us to believe rather that it took place in a provincial capital, that is, wherever the governor was and could preside at the reading. There is a second point to take into account: as the different inscriptions of the Severan period show (n. 12 above), the dating formula seems one of the most indispensable elements of a subscript (maybe as an authentication, cf. n. 32 below); and one cannot imagine local magistrates modifying the text which came into their hands to adapt it to the conditions of reading in their small *municipium*. It must therefore be assumed that the *recitatio* was a solemn form of reading under gubernatorial supervision. For some mentions of it, see the edict of L. Aemilius Rectus immediately preceding the letter of Claudius to the Alexandrians (*P. Lond.* 1912), where a public reading is indicated; possibly, as suggested by W. Williams, *ZPE* 17 (1975), 42 n. 11, *PUG* 10. 8; and the edict of Marcus Aurelius to the Achaeans (Oliver, op. cit. (n. 6), 5–6, ll. 37–8), where the date of public reading is assimilated to a true date of promulgation.

[18] Cf., on the basis of its diplomatic form, Williams, art. cit. (n. 6), 197–8; on the basis of its style, Honoré, op. cit. (n. 7), 102; and, from the vagueness itself of the term *litterae*, Coriat, op. cit. (n. 11), 94–5.

[19] González (1986), 237.

[20] For such vagueness as characteristic of subscripts, cf., beside Williams, art. cit. (n. 6), 197–8, Honoré, op. cit. (n. 7), 50–1, and in the *Apokrimata* dossier the famous *P. Col.* VI. 123. III, perhaps the shortest imperial pronouncement, with its 'Obey what has been judged'.

[21] Cf. Honoré, 58–9: a subscript is the most direct type of written answer which may be conceived from an emperor, and does not usually explain the legal notions involved, as in *CJ* 4. 6. 1, 2. 23. 1, etc. One of the basic characteristics is the absence of any introduction to the operative part: cf. Williams, 197–8, 'even the most curt of Trajan's replies to Pliny differs ... by including some account of the problem raised by Pliny ... Such silence is entirely characteristic of subscripts'.

[22] Honoré, op. cit. (n. 7), to be read in conjunction w➡ F. Millar, 'A New Approach to the Roman Jurists', *JRS* 76 (1986), 272–80. On all these points, cf. also Williams, art. cit. (n. 6), 197.

[23] For his moderate and sensible conclusions in this field, Honoré, 1–23, besides his major book on Tribonian, the director of Justinian's legal commission which compiled the *Corpus Iuris Civilis*, *Tribonian* (1978). See now also Coriat, op. cit. (n. 11), 756–82.

in answer to individuals.[24] On the other hand, we should not consider an answer in the form of a subscript to have been a gratuitous insult inflicted on a community—as might be supposed if the community had approached the emperor via an *epistula*; on the contrary, petitioning the emperor through a *libellus* seems to have been normal procedure,[25] to which, most of the time, the emperors and their staff had a free choice in the form of their reply. It is possible that they preferred to employ a subscript rather than a more honorific *epistula* when they issued a refusal.[26] However, it does not follow that we should deduce from the scarcity of such subscripts that all imperial answers to provincial communities took the form of an *epistula*, any more than that they all recorded decisions favourable to the petitioners.[27]

But who were the petitioners in the case of our text, and what was the status of their provincial community? Some have supposed that there existed preparatory committees for the interpretation and implementation of the Flavian municipal law. These, however, are clearly not the addressees here: on the contrary, the recipients of this rescript, who are an organized group, are clearly the persons to whom its provisions will apply.[28] In fact both the general context of this document and the fact that it follows a copy of the Flavian municipal law oblige us to identify the addressees as a provincial community, and surely one which had benefited during the Flavian period from promotion to the status of a Latin *municipium*. Can we make our identification still more precise, and identify the *municipium* to which the imperial subscript was addressed? One is naturally inclined to attribute the assumed *libellus*, which is as necessary to the comprehension of this imperial pronouncement as it is

[24] As no such list of these documents is available, it is worth giving one here: (1) the subscript to the Samians from 38 B.C. (J. Reynolds, *Aphrodisias and Rome* (1978), no. 13); (2) possibly another to the same from 19 B.C. (*RDGE* 62); (3) the three subscripts from the second half of the first century collected on the bronze tablet from Vardacate (*AE* 1949. 24); (4) the subscript of Trajan to the Smyrnaeans (see our n. 15); (5) certainly the rescript of Trajan or Hadrian to the *ordo* of Italica (*CIL* II. 5368); (6) a subscript from the reign of Commodus (*AE* 1894. 61 and 1903. 202); (7) the *sacrae litterae* of A.D. 204, certainly addressed to a magistrate (see our n. 12); (8) the document of Julia Domna addressed to the Ephesians (*I. Ephesos* 212. 9–14) which with Nörr, art. cit. (n. 11), 24 n. 66 we must consider as a subscript; (9) and the subscript from A.D. 244–7 addressed to the villagers of Aragua (*OGIS* 519). But this list of subscripts addressed to villages or cities of the Roman Empire must be supplemented by a list of subscripts addressed to the communities of a non-civic nature: (1) *P. Berol.* inv. 16456 (temple of Soxis); (2) *ILS* 7784. 1–17 (school of the Epicureans in Athens); (3) *AE* 1958. 9+*SEG* 15. 108 (identity of the community unknown); (4) *CIL* VIII. 10570 (the *coloni* from the *saltus Burunitanus*); (5) *IGUR* I. 35 (two subscripts to the Peanists); (6) *P. Lond.* inv. 2565. 105–6 (on the exemption of peasants from the urban liturgies); (7) *P. Oxy.* LI. 3611 (to the *hieroneikai* from Antinoopolis); and *IGLS* 4028 (temple of Baetocaece). As observed by Coriat, op. cit. (n. 11), 389–97, the problem is not only the nature of the addressees, but also the point of law (private or public) involved, and, more precisely, the nature of the whole procedure, contentious or honorific, the latter developing before the other: the first preserved subscript in private law dates only from A.D. 121 (*P. Tebt.* II. 286). It may be owed to the fact that, as assumed by Honoré, op. cit. (n 7), 4–11, the developments of the *libellus* procedure in this field are caused primarily by the crisis of the practice of the *responsum prudentium*.

[25] Besides the evidence already presented, see Pliny, *Ep.* 10. 47. 1–2 (the colony of Apamea) and 10. 83 (the request of the Nicaeans); and in addition *CJ.* 8. 37. 1 (Severus and Caracalla), with its curious introductory sentence 'licet epistulae, quam libello inseruisti', discussed by Nörr, art. cit. (n. 11), 17. As demonstrated by Coriat, op. cit. (n. 11), 390–6, since nearly all their subjects addressed them by way of a petition, the emperors usually had full liberty of choice in the form of their answer. It is well known, however, that such a universal use of the petition altered its form under the Roman Empire—on this point, see still F. Ziemann, *De epistularum Graecarum formulis solemnibus quaestiones selectae* (1910), 261–6. For a vigorous enforcement of these informal rules of protocol, see the inscription from the *saltus Burunitanus* (*CIL* VIII. 10570. iii. 15–19), where the soldiers are sent by the procurators to mistreat the *coloni* 'only for the reason that we intended to beseech Your Majesty by way of an epistle'.

[26] It may be significant that many subscripts addressed to civic communities (see n. 23), when their content can be discovered, report refusals by the imperial power, and as such, were very often inscribed by the opposite party (see the subscript to the Smyrnaeans from 38 B.C., that of Trajan to the same, and the *sacrae litterae* of A.D. 204, quoted n. 24). Though not a general rule, the more honorific form of the *epistula* was more appropriate to a formal display of imperial benevolence.

[27] Cf. *ERW*, 426: 'Though it is clear that emperors assented to requests whenever they could, the reason for this rarity of negative replies is not so much the universality of their benevolence as the fact that in the case of refusal the city had no motive for going to the expense of inscription', and 431–2.

[28] Cf. ll. 2 ('sollicitudo vestra') and 4–5 ('me/mineritis legis'). Further proof may be found in the fact that quite often, when the petition is presented by an intermediary, there is an attraction in the imperial pronouncement, which thus becomes an answer to the intermediary, from the second person plural to the second singular: see the petition of the Skaptopareni presented 'per Pyrrum militem conpossessorem' (*Syll.*[3] 888). Prof. P. Le Roux informs me that he is preparing an article on these preparatory committees for *ZPE*.

totally absent in the present inscription, to the Irnitani themselves. Yet this cannot be right, for it would then be impossible to explain the absence both of the heading with the imperial titulature and the name of the petitioners, as well as of the *libellus* which the Irnitani would have sent to the emperor.[29] There is no example of such an absence of the address when the addressee is the same party as that which has ordered the inscription bearing the imperial decision to be put up. On the contrary, an omission of this kind is found only when the present user of the imperial pronouncement is different from the person for whom it was originally enacted. Besides the *sacrae litterae* already quoted—where the utility of such a pronouncement, explicitly exempting senators and their property from the obligations of *hospitium*, is the reason for the multiplication of its epigraphic copies[30]—we have numerous examples of such an omission in the papyrological evidence, either in petitions addressed to the Roman authorities or in judicial proceedings, as well as in the contemporary imperial rescript from Vardacate.[31] It would then be quite normal, for the important point was the possible extension of this imperial decision to other parties, rather than its limitation to the defence of a particular privilege. Elimination of the address and the petition—which proves that they were not essential to establish the validity of the document[32]—both saved space and was appropriate to the re-utilization of an imperial act.

So, if our interpretation of the diplomatic form is correct, the subscript was written in response to an unknown petition by an unknown community, and integrated into the inscription put up in Irni at an undetermined date, after 11 October A.D. 91, but certainly during the reign of Domitian.[33] The problem of the attribution of the municipal law is therefore separate from the particular circumstances of the imperial pronouncement.[34] We can only say that at an unknown date between A.D. 91 and A.D. 97 it was felt necessary to engrave both the imperial subscript and the Flavian municipal law; the fact that the editor of the Lex Irnitana confirms that there are no palaeographical differences between the text of the subscript and that of the law suggests that we should not attempt too great a precision in dating the inscription as a whole.[35]

[29] To our knowledge, no subscript quoted and used by the addressee shows a similar absence either of the imperial heading or of the *libellus* which had been sent to the emperor.

[30] See Williams, art. cit. (n. 6), 197; Jones (n. 12), 99; Drew-Bear (n. 12), 363.

[31] This is a very important parallel, for, as convincingly demonstrated by W. V. Harris, 'The Imperial Rescript from Vardacate', *Athenaeum* 59 (1981), 338–52, this document dates approximately from the same period, indeed the same decade as our document, if we agree with his identification of the author of the rescript as Nerva: addressed to Clodius Secundus (certainly a Roman official and friend of the emperor), who was not their original addressee, for his personal use, the rescript quotes the three imperial subscripts collected in this letter, omitting in the same way as in our document the name of the addressee. For other examples of such omissions, see *P. Oxy.* IX. 1202. 5–12 and XLIII. 3105. 1–10, *SB* 5294. 12–15, W. *Chr.* 41. iii. 20, *P. Flor.* 382. 27–35, *P. Ryl.* 117. 27, *P. Mich.* XIV. 675. 14.

[32] This may be an important point to add to the discussion on the hypothetical existence of a special file for subscripts. See Wilcken, art. cit. (n. 7), Martin and d'Ors (n. 11), Williams (n. 6), Nörr (n. 11), and Williams, ibid., 198–204: the problem is that the entire discussion has been conducted on the basis of the difficult Skaptopara inscription. For a thorough and sensible conclusion, see F. Millar, 'L'empereur romain comme décideur' (to be published in *Typologie des Etats antiques*, ed. Cl. Nicolet): 'Malheureusement, nous n'avons aucune raison de croire que de telles archives provinciales aient jamais existé, pas même seulement des archives centrales, sises à Rome ou destinées à accompagner l'empereur dans ses voyages ... L'énigme de la répartition et de la connaissance des souscriptions reste à résoudre'.

[33] The dating does not depend only upon palaeographical arguments: the subscript (with its mention of 'idus Domitianae') is undoubtedly a pronouncement of Domitian, even if it was not sent to the city of Irni. Further, it must not be forgotten that after his murder Domitian underwent *damnatio memoriae*; if a copy of this law had been engraved after his reign, his name would certainly not have appeared. As he is the living emperor in all the oath formulas, which could in fact be very easily adapted or modified, the main part of the law—up to and including the *sanctio*—must have been engraved under his reign. For the contemporaneity of the engraving of the 'Addendum', see n. 35.

[34] This is another argument to add to those presented by Prof. Millar (to whom I am grateful for having provided me with a draft of his paper) at the Lex Irnitana Colloquium, held in London on 10 Nov. 1986, to support a separation, in Spain, of the processes of the application of the municipal law from the sending of petitions with embassies: it appears that, at least in Spain (but even elsewhere it is poorly attested), the emperor had not presided personally at the giving of the law to each town, that very likely being the governor's task.

[35] For these palaeographical remarks, cf. González (1986), 238: the point is relevant, even if palaeographical differences in Latin epigraphy within a short period of time are not very easily perceived.

Why and by whom was the text of the subscript added to this copy of the Flavian municipal law? In the case of the Parian inscription and the other copies of the imperial pronouncement of 204, the case was clear: every man from a senatorial family had an interest, in order to protect his property from the possible exactions of *hospitium*, in putting up an inscription recording the explicit prohibition of such excesses. But in the small community of Irni, who had an interest in obliging the people to respect the law in the case of marriages? The problem is complicated by the fact that, as is quite frequent in the case of subscripts, we do not know the precise dispositions which the emperor Domitian intended to see enforced. We do not even know whether the law whose dispositions the petitioners were supposed to remember is the Flavian municipal law, or Roman law in general.[36] If the former, then we might suppose that the dispositions in question were to be found in the lost part of the text, although such a supposition is not absolutely necessary.[37] It seems impossible, however, to restore them with enough precision to see exactly which people had an interest in their enforcement. Nevertheless, we can envisage the situation that they were intended to regulate: promotion to the status of Latin *municipium* will have created new conditions applying to the law of marriage, prohibitions which had not been enforced until the sending of a *libellus* to the emperor which may perhaps have been dictated by a legal ambiguity raised during a present or an earlier trial, possibly conducted by the governor himself.[38] The response is clear: there will be no *indulgentia* for the future, no derogation from the strict dispositions of the law,[39] which must be rigidly enforced. The answer is a harsh one, typical perhaps of an emperor as impatient and irritable as Domitian.[40]

So differing hypotheses are available to explain the presence, at the end of this copy of the Flavian municipal law, of an imperial subscript, depending on whether one emphasizes the official character of its inclusion in the inscription or the general context of the semi-public diffusion of imperial enactments.[41] It is perhaps better to leave the question open than to insist on a premature solution. In the first case, assuming that the subscript was added by the magistrates of the small city of Irni, one must suppose that the addition came about either because some persons, necessarily

[36] For this common meaning of the word *lex*, close to the English use of the word 'law', see *Thesaurus Linguae Latinae*, s.v. 'Lex', coll. 1238–56.

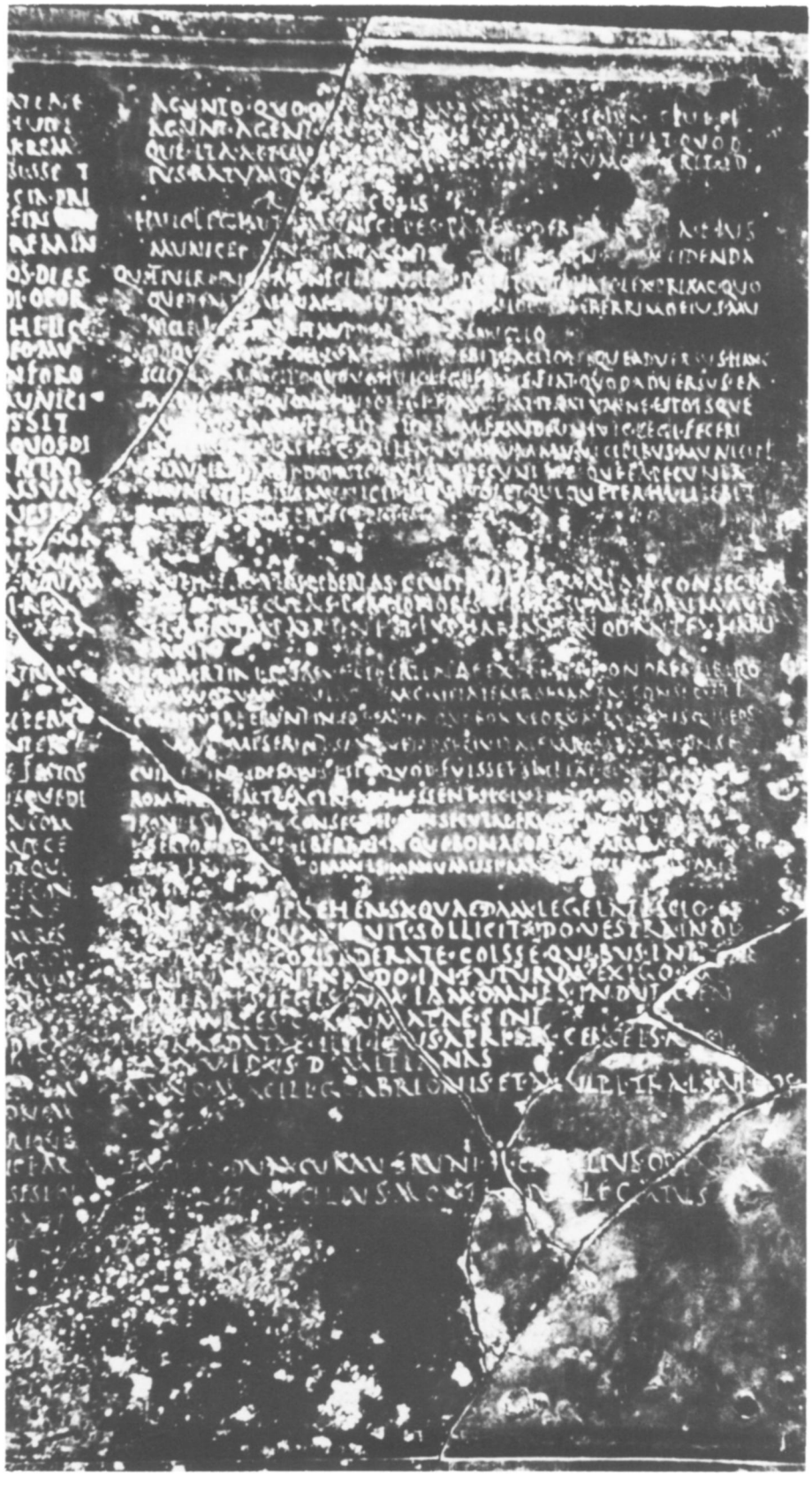
[37] For another possibility, saving another unattested hypothesis, see below n. 48.

[38] In fact, there are two possible contexts for the sending of the *libellus* which dictated this imperial subscript: (*a*) an embassy, anxious ('sollicitudo vestra': there may be here some scornful irony of Domitian) to see the status of its citizens clearly established without any possible contest, asked some *indulgentia* of the emperor, that is (cf. n. 39 below) some derogation from the strict dispositions of the law. This *libellus* should then be understood in the context of 'petition-and-response' between city and emperor so well studied in *ERW*, esp. 375–85; (*b*) during a trial possibly conducted by the governor himself, a legal ambiguity was raised, and it was necessary to resort to the 'free legal advice' of the emperor—see on this point Honoré, op. cit. (n. 7), esp. 24–33, and on the formal means of attracting the attention of the imperial power, Coriat (n. 11), 346–403.

[39] On this notion of *indulgentia*, see J. Gaudemet, *Indulgentia principis* (Ist.d.st.d.dir.Univ. Trieste, Publ. no. 3, 1962), mostly interested in its developments during the later empire, and W. Waldstein, *Untersuchungen zum römischen Begnadigungsrecht. Abolitio—Indulgentia—Venia* (1964), esp. 108–44. Very recently, H. Cotton, 'The Concept of *Indulgentia* under Trajan', *Chiron* 14 (1984), 245–66, more interested in the unity of the concept than in its particular legal applications: in fact, in a monarchical structure directed by imperial patronage, the functioning of many normal legal mechanisms would naturally be described as a result of the imperial will. In our passage, the solemn *venia* granted by the emperor Domitian may mean little more than a respect for the almost universal principle of non-retrospective application of a law.

[40] For an example of this impatience and irritability, in particular towards the noisy reactions of the Roman people in the amphitheatre, see Suet., *Dom.* 10. 1. The harsh order σιωπήσετε was known as the 'word of Domitian': Dio 79. 6. 1. But, without showing any 'indulgence' for Domitian, one must remember that listening to wordy petitions on obscure points of law certainly did not predispose emperors to refuse a favour with courtesy (cf. Williams, art. cit. (n. 6), 197–8 and *ERW*, *passim*).

[41] For the official character of the *recitatio*, see n. 17. On this semi-public diffusion, see, beside the reflections of Prof. Millar quoted n. 34 and Reynolds, op. cit. (n. 15), 97, Honoré (n. 7), 1–23, and Coriat (n. 11), 756–82—'la diffusion des constitutions impériales par le biais des jurisconsultes'. For a concrete example, cf. W. L. Westermann, A. A. Schiller, *Apokrimata. Decisions of Septimius Severus on Legal Matters* (1954), 99–101, where all the constitutions preserved in *P. Col.* VI. 123 are assumed to have been collected to serve as a memorandum either for a lawyer or a judge, or (opinion then abandoned) for a notary.



THE LEX IRNITANA, TABLET X, COLUMN C

in the acquaintance of the magistrates, had an interest in it; or alternatively because (whether after consultation of a *iuris peritus* or not) the results of legal ambiguity made it necessary.[42] In the latter case, emphasizing the official character which was certainly attached to the notion of *recitatio*, we might suppose that, even if actually inscribed under the responsibility of the magistrates of Irni, the addition was made under pressure from the governor; the subscript might have been requested in the course of a trial conducted by himself, or (possibly) by one of his predecessors.[43]

But there is a third possibility: this paper has focused on the subscript of the Emperor Domitian, since this is the first imperial document to be found in such a context. But one must not forget that the rubric LXXXXVII just preceding on the bronze tablet presents a comparable riddle: there is no parallel for the positioning of a rubric outside the space delimited by the *sanctio*; and there are further difficulties in this particular case.[44] We should therefore look for an explanation for both additions together. We have already noted that for the engraver of the tablet, rubric LXXXXVII and the subscript were a single document, in relation both to the *sanctio* and to the engraving formula. Moreover, since the subscript of Domitian is very vague on the legal points it wants to see enforced, readers of the document were in the same situation as we are: it would be absurd to suppose that they had to go back to the lost beginning of the law, and to a rubric which was not indicated, to discover the points of law which they were ordered to observe without further possibility of equivocation; it is more sensible, therefore, to identify the precise dispositions with those recorded in rubric LXXXXVII. If we admit that it is this rubric that the subscript was intended to clarify, we can understand why it has been positioned outside the law: not only were its dispositions enhanced, but it was also possible to avoid inserting the subscript at a point inside the law, which would have destroyed the latter's diplomatic unity.

Such a connection makes sense if one considers the subject of the rubric, the case of freedwomen receiving citizenship as a result of offices held by their husbands; a promotion by way of a municipal law was normally prohibited to freedmen. Intermarriages, perhaps more than the possible promotion of the sons of freedmen to the municipal magistracies,[45] must have been one of the most important ways for

[42] It is possible that this legal ambiguity arose from some difficulties created by the imposition of a general Roman mould with its formalist categories on a situation regulated by peregrine law. For a mention of these *iuris periti*, certainly regional practicians, see the Severan constitution of A.D. 204 quoted above, and for a provincial example, R. Katzoff, '*Responsa prudentium* in Roman Egypt', *Studi in onore di A. Biscardi* II (1982), 524–35.

However, there is a difficulty in this strictly 'municipal' hypothesis: as has been noted (n. 26 above), the reasons for the engraving at public expense of an imperial refusal are always obvious, most of the time because the community which had the inscription put up benefited from it—quite the opposite of what is suggested here.

[43] There is a problem with this hypothesis: *pace* Martin, op. cit. (n. 8), 282–6, we have simply no evidence. Furthermore, the correspondence between Pliny and Trajan (esp. *Ep.* 10. 58. 3) seems to demonstrate that subscripts granted in the province under his predecessors were not available to the present governor. We could, of course, theoretically suppose that he knew this subscript because he had presided at its reading, but that would be yet another unattested hypothesis.

[44] For it must be noted that rubric LXXXXVII, from the point of view of the themes treated, and rubrics XXII and XXIII, can neither have been conceived, nor originally composed, separately from each other; their common object is to allow the preservation of patronage relations despite the attribution of Roman citizenship, and all the possibilities are explored: those who acquire citizenship when their freedmen do too (rubric XXII), those who acquire citizenship when their freedmen do not (rubric XXIII), and those who do not acquire citizenship when their freedmen do (our rubric LXXXXVII). Such a unity of object is proof that rubric LXXXXVII has been displaced, and such a displacement may be the reason why, contrary to the use current at the time of this inscription (cf. the exemplars of the Flavian municipal law from Malaca and Salpensa—*Lois des Romains* IV. 4 and 5), no numeration has been given to the rubrics, to avoid any confusion with the corresponding paragraphs in the laws of other *municipia*. Prof. Crawford assures me that the positioning of a rubric outside the space delimited by the *sanctio* is attested in no other law.

[45] For the exclusion of freedmen from municipal magistracies see S. Treggiari, *Freedmen in Late Roman Republic* (1969), 63–4, and A. M. Duff, *Freedmen in the Early Roman Empire* (1928), 137. On the limits of accession of the sons of freedmen to municipal magistracies, see G. Boulvert, *Domestique et fonctionnaire sous le Haut-Empire Romain: la condition de l'affranchi et de l'esclave du prince* (1974), 323–5.

freedmen families to improve their status inside Roman society.[46] Such considerations enable us to recover the meaning of Domitian's laconic 'parum considerate coisse'. Two legal situations might be meant: first, as the vague term *coisse* may indicate, that, if the marriage contracted under peregrine law was not valid in Roman law, petitioners could obtain *venia* for the past situation—a *venia* which would correspond to the almost universal principle of non-retrospective application of a law;[47] freedwomen who now married in the same way would not get Roman citizenship. But a second possibility, suggested by a sense of *considerate* well attested in Latin, 'with too little consideration to your status', allows us to explain the situation as follows: if, for marriages formed in the past, Domitian chose not to impose on the new magistrates the shame of having a wife under the *tutela* of a *patronus*, and thus a diminished capacity under the legacy laws, there would be now no further exception to the general rules, and no possibility for freedwomen to evade their status, which was no longer to be fixed by peregrine use, but by Roman law.[48] Whatever the precise meaning of the decision of Domitian may have been, its object is clear, to guarantee the patronage obligations in spite of the transformations introduced by the municipal law. Such a decision fits well into the series of conservative measures adopted by Roman emperors in the course of the first century A.D.[49]

The connection suggested between the subscript and the rubric further enables us to discover the authorities by which the imperial pronouncement was integrated into the inscription of the Flavian municipal law. Although, as far as concerns the engraving of the subscript, one might have supposed that such an operation would have taken place only in Irni, the same reasoning does not hold good for the positioning of the rubric outside the law: a provincial community had no latitude for such an alteration, any more than it did for removing or suppressing any of the rubrics. We must then assume that the text transmitted to them, probably from the office of the governor,[50] already bore this characteristic, and therefore that it could be

[46] One should not forget that Domitian had experienced in his own chancery the pressure of freedmen for intermarriages, with the scandalous wedding of the father of Claudius Etruscus with a senatorial woman, probably Tettia Etrusca—cf. J. K. Evans, 'The Role of *Suffragium* in Imperial Political Decision-Making: a Flavian Example', *Historia* 27 (1978), 102–28. But, if one excepts the prohibition of any *nuptiae* with a member of the *ordo senatorius*, the marriage laws of Augustus seem to have favoured unions between freeborn and freedmen. Among such marriages, those between citizens and freedwomen seem to have been the most frequent—see Duff, 60–3 discussing *Dig.* 23. 2. 44, *CJ* 5. 4. 28. *pr.*, and Dio 54. 16.

[47] For this very vague sense of *coisse*, to designate any form of union, see for example Quint., *Inst.* 5. 11. 32, Gaius, *Inst.* 3. 59, and Paul., *Dig.* 23. 1. 2. 2. It is possible that the form of marriage recognized by Spanish peregrine law, under which the commoners in a *municipium* were perhaps living (see *ERW*, 485 and Appendix 4, 'Freeborn *cives Latini* in the Roman Empire?', 630–5), was in fact assimilated to concubinage, not proper *conubium*. Further, one should not dismiss the possibility, as in modern societies, of fake marriages undertaken only for the acquisition of Roman citizenship and possibly followed by a quick divorce. Such an evasion could explain the irate tone of Domitian. On the notion of *venia*, see n. 37.

[48] For this sense of *considerate*, see Cic., *Scaur.* 37, *Planc.* 72, *Phil.* 4. 6. For the diminished capacity of freedwomen under legacy laws, see now G. Fabre, *Libertus. Recherches sur les rapports patron-affranchi à la fin de la République Romaine* (1981), 304. The reason why this hypothesis is the most probable lies in the difference of the clauses preserving patronage obligations in rubrics XXIII and LXXXXVII: the clause 'idem ius eademque condicio esto, quae esset, si civitate mutati mutatae non essent' of rubric XXIII becomes in rubric LXXXXVII 'idem ius ... esto, quod esset, si a civibus Romanis manumissi manumissae essent'. The explanation for this Domitianic pronouncement must be found here, and in the differences in patronage obligations between Roman and peregrine law. Either the provincials have petitioned the emperor to remain in the old regime of obligations, and all that they have obtained was a temporary exemption (but then, why would others have reused this subscript?), or more probably the provincials have found the regime granted by Roman law more advantageous (in particular perhaps the independence conferred on a freedwoman by the *ius liberorum*) and have petitioned the emperor for a modification of the clause, which would have been originally similar to that of rubric XXIII. Having obtained it, they had, as did everyone reusing this text, to engrave this rubric with the subscript of Domitian specifying its conditions of use. From this point of view, the solemn refusal of any further *indulgentia* should be interpreted as a 'clause of protection', aimed at the preservation of all the other points of the law, as, for example, in the letter of Marcus Aurelius and Lucius Verus to Coiedius Maximus from the Tabula Banasitana (*ILM* 94, l. 5), or in the Edict of Caracalla from Banasa (*ILM* 100, ll. 16–18).

[49] See for this point of view Fabre, op. cit. (n. 48), 313–14 and Duff (n. 45), 188–90.

[50] For some thorough remarks on the transcription of a municipal law from a papyrus roll, see Mallon, op. cit. (n. 3), 53 on the presentation of the Osuna bronze tablet. For the necessity of seeing in the office of the governor the real dispatcher of the various municipal laws, see our n. 34. For the role of the governor in dealing with the imperial subscript, see our n. 17.

found, if not perhaps in all the copies of the Flavian municipal law,[51] at least in a number of them; that is to say, the separation of the rubric on freedmen and the recording with it of a subscript of the emperor Domitian were characteristics of one of the versions of the Flavian municipal law.[52]

Finally, these attempts to restore the true meaning of the imperial pronouncement should not diminish the primary significance of this document. Previously it had been widely and generally assumed that it was only with the passage of time that imperial legislation had gained a validity recognized as equivalent to that of other sources of law.[53] Such may have been the general tendencies of the different schools of jurists in Rome, preoccupied with a philosophical and relatively formal definition of Roman law. In the provinces, however, one may suspect that such a limitation was never found; rather, imperial pronouncements were always regarded as the overriding source of law. Thus in the case of our inscription, an imperial subscript, perhaps the least formal type of imperial pronouncement, may have been re-used, out of context, to decide a point in a general municipal law. There was no need to give a title to the imperial text, since, in its subjective and personal form, only an imperial pronouncement could introduce such an authoritative supplement to the impersonal and objective text of the law. We can thus see, in the mental and institutional processes leading to such a supplement, a new light on the history of Roman law.

École Normale Supérieure, Paris,
University College, Oxford

[51] Also relevant is the so-called Fragmentum Italicense (Girard, p. 124 = *FIRA* no. 35 = *Lois des Romains* IV. 7 = J. González, 'Italica, *municipium iuris Latini*', *Mel. Casa Velazquez* 20 (1984), 17–32); one does not see why this city, a colony at the time of the engraving at the beginning of the third century, would then have inscribed its old municipal law. It bears fragments of two columns, one of which seems to be a piece of our rubric LXXXX, while the other bears what is also the last line of our *sanctio* rubric LXXXXVI, 'cuiq(ue) per h(anc) l(egem) actio petitio pe[rsecutio esto]', alas a very common formula in the municipal laws, with a wide blank space after it. It might therefore be possible that in this example from Cortegana there was no 'Addendum' (displaced rubric and subscript) after the *sanctio* rubric. However, such a remark does not prove anything, as we are not even sure that this fragment is the lower right corner of the tablet.

[52] For this notion of different versions of the same law, supervised by Roman authority, and the use of one version instead of another according to local needs, see A. Lintott, 'Notes on the Roman Law inscribed at Delphi and Cnidos', *ZPE* 20 (1976), 65–82, more precisely 79–81.

[53] There is room for surprise at such an opinion, when both Gaius, *Inst.* 1. 3–5 and Ulpian, *Dig.* 1. 4. 1 explicitly say the contrary, declaring that the legislative activity of Roman emperors has *always* been considered as a source of law. For this wide-spread opinion, see for example P. F. Girard, *Manuel élémentaire de Droit Romain* (1911), 60; H. F. Jolowicz, *Historical Introduction to the Study of Roman Law* (1932), 371; J. Gaudemet, *Institutions de l'antiquité* (1972), 349; and recently E. Green, in *The Roman World* (1987), 447.