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Éditorial

Jean-François Gerkens

Dans l'éditorial de la *RIDA* 64, nous déplorions la disparition de Joseph Mélèze-Modrzejewski, membre de notre comité de rédaction. Avec le décès de Hans Ankum, c'est un nouveau membre de notre comité de rédaction qui est venu à manquer. Il y était entré pour le numéro 36 (1989), il y a donc environ 30 ans, en même temps que Giovanni Pugliese.

Hans Ankum a fait l'objet d'une commémoration lors de l'assemblée générale de la SIHDA d'Édimbourg, ainsi que lors d'une rencontre du « Forum romanum », société savante qu'il avait fondée au sein de son Université d'Amsterdam. Lors de cette réunion du 18 octobre 2019, Eric Pool a évoqué « le maître et ami Hans Ankum », Laurens Winkel « le romaniste », Edgar du Perron le « professeur de l'Université d'Amsterdam » et l'auteur de ces mots, « Hans Ankum et la SIHDA ». La *RIDA* commémorera Hans Ankum dans son prochain numéro.

Au demeurant, le présent numéro commémore, comme annoncé, Joseph Mélèze-Modrzejewski sous la plume de Jakub Urbanik. Il rend également hommage à Berthold Kupisch à l'initiative de Jeroen Chorus.

Enfin, le premier article du présent numéro constitue l'élaboration du texte de la conférence introductive à la session internationale de la SIHDA de Bologne. Pascal Pichonnaz l'avait prononcée le 12 septembre 2017,en ouverture de la session internationale dont la chronique est parue dans le numéro précédent de la *RIDA*. Le présent numéro contient quant à lui, la chronique de la SIHDA de Cracovie de 2018.

Au titre des nouveautés éditoriales, la rédaction de la *RIDA* a décidé de publier — dans le futur et en plus de la revue — des monographies sous forme de « Hors-série la *RIDA* ». Nous espérons que l'initiative trouvera également son lectorat.

Excellente lecture à toutes et tous !

Chaudfontaine, le 11 novembre 2019.
Jean-François Gerkens

A few remarks on the interpretation of D. 47.10.15.29 in the context of the edict *ne quid infamandi causa fiat*

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The edict *ne quid infamandi causa fiat* is generally regarded as a third praetorian regulation,[1] after *edictum de convicio*,[2] and *edictum de adtemptata pudicitia*,[3] concerning particular matters that were later considered as circumstances of *iniuria*.[4] This assumption is grounded on — among other things — a conviction

1. See J. Plescia, «The development of iniuria», *Labeo* 23 (1977), p. 283. On the probable date of the introduction of this edict, see, for example, D. Daube, «"*Ne quid infamandi causa fiat*": The Roman Law of Defamation», in G. Moschetti (ed.), *Atti del Congresso Internazionale di Diritto Romano e di Storia del Diritto*, Milano, 1951, vol. 3, p. 415; A.D. Manfredini, *La diffamazione verbale nel diritto romano,* 1. *Età repubblicana*, Milano, 1978, p. 54; A.D. Manfredini, «*Quod edictum autem praetorum de aestimandis iniuriis*», in F. Milazzo (ed.), *Illecito e pena privata in età repubblicana. Atti del Convegno Internazionale di Diritto Romano, Copanello, 4–7 giugno 1990*, Napoli, 1992, p. 91. However, an isolated interpretation of the edict *ne quid infamandi causa fiat* as the first edict in Roman law referring to personal injury is worth noting — see A. D'Ors, J. Santa Cruz Teijeiro, «A proposito de los edictos especiales "*de iniuriis*"», *AHDE* 49 (1979), p. 654–655.

2. It is generally accepted that *edictum de convicio* was the first of the so-called special edicts in the area of injury — with absolute certainty see M.J. Bravo Bosch, «Sobre el origen histórico de la cláusula edictal *qui adversus bonos mores convicium*», *RIDA* 53 (2006), p. 148; M. Marrone, «Considerazioni in tema di "*iniuria*"», in A. Guarino (ed.), *Synteleia V. Arangio-Ruiz*, Napoli, 1964, vol. 1, p. 480. Similarly, although with less certainty, see U. von Lübtow, «Zum römischen Injurienrecht», *Labeo* 15 (1969), p. 156–157; M. Hagemann, Iniuria: *von den XII-Tafeln bis zur Justinianischen Kodifikation*, Köln, 1998, p. 59–61. On the date of the edict, see J.M. Bravo Bosch, «Sobre el origen», cit. n. 2, p. 148–149.

3. On the controversies concerning the date of introduction of this edict, see D. de Lapuerta Montoya, *Estudio sobre el* "edictum de adtemptata pudicitia", Valencia, 1999, p. 52. It is worth underlining here that the designation of the edict as *edictum de adtemptata pudicitia* is also debatable — see e. g. A. Guarino, «Le matrone e i pappagalli», in A. Guarino, *Inezie di giureconsulti*, Napoli, 1978, p. 171; D. de Lapuerta Montoya, *Estudio*, cit. n. 3, p. 78.

4. It is generally accepted that this was a result of introducing a classical conception of *iniuria-contumelia*. What is especially significant here is that, in spite of this absorption of the above cases into the tort of *iniuria* in its new form as a result of the extensive interpretation of the Roman jurists, previous designations of particular types of conduct were still in use, although

that Roman law evolved from detail to generality.[5] Both earlier edicts dealt with behaviour that, although it may be somewhat difficult to interpret in modern times, was without a doubt strictly determined — *adversus bonos mores convicium facere*,[6] *adversus bonos mores appellare* and *adsectari* and *comitem abducere*.[7] What distinguishes the edict *ne quid infamandi* from the previous ones at the substantive level is the absence of any mention of the illicit conduct and the replacement of the previous — and essential — *adversus/contra bonos mores* clause[8] with the criterion of *infamandi causa*.

Ulpian quotes the content of the edict in D. 47.10.15.25:

> *Ait praetor: «Ne quid infamandi causa fiat. Si quis adversus ea fecerit, prout quaeque res erit, animadvertam.»*[9]

According to the above text, the only criterion to be met if certain behaviour is to fall under the edict is that the behaviour is undertaken *infamandi causa*. On this basis, two essential questions arise. The first focuses on the problem of understanding *infamia*, which is to be suffered by the victim, and the second concerns the issue of the sufficiency of *animus infamandi* for establishing liability on the basis of the edict.

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their meanings changed over time. See e. g. PS 5.4.21; PS 5.4.14. For the conception of *iniuria-contumelia* see especially *Collatio* 2.5.1; Ulpianus, D. 47.10.1 pr.; Ulpianus, D. 47.10.1.1; Ulpianus, D. 47.10.1.2. See also A. D'Ors, J. Santa Cruz Teijeiro, «A proposito», cit. n. 1, p. 654; R. Wittmann, «Die Entwicklungslinien der klassischen Injurienklage», *ZSS* 91 (1974), p. 290–299; M.J. Bravo Bosch, *La injuria verbal colectiva*, Madrid, 2007, p. 105–112.

5. See A. D'Ors, J. Santa Cruz Teijeiro, «A proposito», cit. n. 1, p. 655.

6. See especially D. 47.10.15.4. See also L.G. Hendrickson, «Convicium», *Classical Philology* 21/2 (1926), *passim*; F. Raber, *Grundlagen Klassischer Injurienanspruche*, Wien/Köln/Graz, 1969, p. 23–39; R. Wittmann, «Die Entwicklungslinien», cit. n. 4, p. 307–314; A.D. Manfredini, *La diffamazione*, cit. n. 1, p. 57–90; M. Hagemann, *Iniuria*, cit. n. 2, p. 68–71; M.J. Bravo Bosch, *La injuria*, cit. n. 4, *passim*; M.J. Bravo Bosch, «Sobre el origen», cit. n. 2, *passim*.

7. In relation to *appellare* see especially Ulpianus, D. 47.10.15.20; for *adsectari*, see especially Ulpianus, D. 47.10.15.22; for *comitem abducere*, see especially Ulpianus, D. 47.10.15.16. Moreover, on the interpretation of these actions, see especially F. Raber, *Grundlagen*, cit. n. 6, p. 39–55; F. Raber, «Frauentracht und "*iniuria*" durch "*appellare*": D. 47.10.15.15», in *Studi in onore di Edoardo Volterra*, Milano, 1971, vol. 3, *passim*; R. Wittmann, «Die Entwicklungslinien», cit. n. 4, p. 314–320; A. Guarino, «Le matrone», cit. n. 3, *passim*; M. Hagemann, *Iniuria*, cit. n. 2, p. 71–75; D. de Lapuerta Montoya, *Estudio*, cit. n. 3, *passim*, but esp. p. 81–87.

8. This criterion is essential for all the above-mentioned actions. See, for *convicium*, Ulpianus, D. 47.10.15.2; for *appellare* and *adsectari*, Ulpianus, D. 47.10.15.23. There was no need to add the criterion of *adversus bonos mores* in the case of *comitem abducere* as this was regarded as contrary to good morals *per se*. See also M. Hagemann, *Iniuria*, cit. n. 2, p. 75.

9. An emendation [*prout — erit*] <*in eum*> was suggested by G. Segrè, *Das römische recht an den deutschen universtäten*, in *Mélanges P.F. Girard. Études de droit romain dédiées à P.F. Girard à l'occasion du 60e anniversaire de sa naissance 26 octobre 1912*, Paris, 1912, vol. 2, p. 578, n. 1. See E. Levy, E. Rabel, *Index interpolationum quae in Iustiniani Digestis inesse dicuntur*, Weimar, 1929, p. 516.

As there are no grounds to assume that the infamy in the edict *ne quid infamandi causa fiat* referred to a legal infamy, this issue will not be analysed here. However, it has been argued that the *infamandi causa* criterion concerned a technical notion of infamy,[10] focusing mainly on the so-called praetorian infamy,[11] but also on the censorian one. Therefore it seems advisable to refer briefly to these two terms in the context of the edict.

When considering 'praetorian infamy', which is the infamy referred to in the edict *de postulando*,[12] it is essential to stress that only the third edict,[13] or the third part of the edict,[14] concerned this matter, and forbade one to act both in one's own name and in the name of others, with some exceptions, in the praetor's court.[15] The grounds for this lack of capability to act as *cognitor* or *procurator* in the praetor's court refer to external regulations, most of which do not even come from praetors (but are laws, plebiscites, decrees of the Senate, or imperial ordinances). However, praetor's edicts are also mentioned here, with special reference to a category of persons branded with infamy by this kind of regulation.[16] This reference, if accepted as genuine,[17] would concern the infamy resulting from being discharged from the army in consequence of the individual's disgraceful behaviour, performing on the stage as an actor or declaimer, acting as a procurer, being condemned for *calumnia* or *praevaricatio*, receiving a sentence on the basis of *actio famosa*, being

10. D. Daube, «Collatio 2. 6. 5.», in D. Cohen, D. Simon (eds), *Collected Studies in Roman Law*, Frankfurt am Main, 1991, vol. 1, p. 122; D. Daube, «Ne quid», cit. n. 1, p. 411–450. However, D. Daube admitted that it may subsequently have become possible for the edict to apply in a few cases that did not result in praetorian or censorian infamy. Critically on D. Daube's view, see e.g. M. Kaser, «*Infamia* und *ignominia* in den römischen Rechtsquellen», *ZSS* 73 (1956), p. 224 n. 1.

11. This expression is a consequence of not classifying as infamy the praetor's interdiction on performing the roles of *cognitor* and *procurator* in his court. See in this matter L. Pommeray, *Études sur l'infamie en droit romain*, Paris, 1937, p. 127–128.

12. See O. Lenel, *Das Edictum Perpetuum*, Leipzig, 1927, p. 75.

13. See O. Lenel, *Das Edictum*, cit. n. 12, p. 75. According to this reconstruction, three edicts were introduced in the matter (under the title *de postulando*): *Qui omnino ne postulent*; *Qui pro aliis ne postulent*; *Qui nisi pro certis personis ne postulent*. The notion of a so-called praetorian infamy is limited to the last edict. See F. Camacho de Los Ríos, *La infamia en el derecho romano*, Alicante, 1997, p. 54.

14. J. Depeiges, *De l'infamie: droit romain. Des effets civils des condamnations pénales: droit français*, Paris, 1888, p. 19–20.

15. When considering the second edict (or the second category of persons in the edict), it needs to be underlined that these persons were forbidden to act in the name of others in consequence of their prior condemnation for *crimina capitalia* or *calumnia*. The edict also concerned those whose bodies were used like that of a woman and those who hired themselves to fight with wild beasts. However, they were allowed to represent those who were subject to their *tutela* or *cura*. See Ulpianus, D. 3.1.1.6.

16. Ulpianus, D. 3.1.1.8.

17. See E. Levy, E. Rabel, *Index interpolationum*, cit. n. 9, p. 30.

responsible for violating *tempus lugendi* or entering two betrothals or two marriages at the same time.[18] Apart from the issue that there is a plausible[19] suggestion that fragments referring to branding someone with infamy by a praetor's edict have been interpolated,[20] which excludes the possibility of understanding this kind of '*infamia*' to be the root of the *infamandi causa* clause of our edict, it is also true that the range of this '*infamia*' does not seem suitable for the edict *ne quid infamandi causa fiat*. Even if we accepted the existence of a technical praetorian infamy as such, which seems dubious anyway, there would be no grounds to assume that the edict *ne quid infamandi causa fiat* only provided protection against defamation in reference to the aforementioned issues. There are no grounds to accept this kind of restriction, either in the tenor of the regulation cited by Ulpian, or in the jurist's commentary to this edict.

Moreover, the idea of connecting the protection against defamation with the results of a 'praetorian infamy', which would affect the right to represent others in front of the praetor,[21] also appears inconceivable, as there is no ground to assume that the edict *ne quid infamandi* was aimed at protecting an individual only against conduct whose goal was to exclude him from these particular activities. Accordingly, it is hardly convincing that the praetor had such a specific meaning of infamy in mind when introducing the edict *ne quid infamandi causa fiat*.

Since the interpretation of the *infamandi causa* expression based on the notion of praetorian infamy seems unsatisfactory, maybe a notion of *ignominia*[22] (which is also called 'censorian infamy'[23]) would be more adequate in this context.[24]

The major grounds for censorian intervention may be grouped into a few categories, although the list cannot be exhaustive, as no statutory regulations

18. Iulianus, D. 3.2.1.

19. What is most convincing is that the praetor's edict does not create new causes of infamy, but simply makes use of those already existing in order to provide dignity to his court — see Ulpianus, D. 3.1.1 pr. and L. Pommeray, *Études*, cit. n. 11, p. 127–128.

20. This view does not seem contestable and concerns all fragments containing the notion of infamy as decided on the basis of the praetor's edict. It especially refers to the expression *infamia notatur* from Iulianus, D. 3.2.1 and a fragment *hoc-postulent* from Ulpianus, D. 3.1.1.8. See in this matter O. Lenel, *Das Edictum*, cit. n. 12, p. 62–64. On numerous suggestions concerning the interpolations of these fragments, see E. Levy, E. Rabel, *Index interpolationum*, cit. n. 9, p. 29–31. On the fragment of *Gai Institutiones* 4.182, see P.E. Huschke, *Gaius, Beiträge zur Kritik und zum Verständnis seiner Institutionen*, Leipzig, 1855, p. 252.

21. See A.H.J. Greenidge, Infamia — *Its Place in Roman Public and Private Law*, Oxford, 1894, p. 9–11; J.G. Wolf, «Das Stigma "*ignominia*"», *ZSS* 126 (2009), p. 96–101. It seems plausible to assume that "the practical effects of 'praetorian infamy' on daily life were not very serious or incommoding". — see J.F. Gardner, *Being a Roman Citizen*, London, 2010, p. 146.

22. On the notion of *ignominia* see e.g. J.G. Wolf, «Das Stigma», cit. n. 21, p. 56–62.

23. Th. Mommsen, *Römisches Strafrecht*, Leipzig, 1899, p. 994, n. 1.

24. The issue of the relationship between praetorian *infamia* and censorian *ignominia*, because it is not strictly relevant to the problem of the *infamandi causa* criterion, will not be analysed here. On this matter see A.H.J. Greenidge, *Infamia*, cit. n. 21, p. 15 and 45.

determined the censors' duties in this area, and — in consequence — the duties were defined by their aim of protecting the traditional standards, *mores maiorum*.[25] Apart from various acts of military indiscipline and abuse of office, religious offences and negligence were also taken into account.[26] Moreover, censorian *notatio*, which was also a result of exercising a particular métier (as an actor, gladiator, or beast fighter),[27] could result from some shortcomings in an individual's private life,[28] including, for example, abuse or negligence in family relations or domestic life, as well as in the area of the management of one's personal estates, attempted suicide, infractions of *bona fides* (improbity, dishonesty, or unreliability), or extravagantly luxurious living.[29] The wide variety of misconduct, especially in the private sphere, could successfully fit the assumed range of the application of our edict. Moreover, a censor's intervention could be based on public opinion, mere *rumores*.[30]

But was it the aim of the *ne quid infamandi causa* edict to protect an individual against a censorian *ignominia* that he could unjustly incur in consequence of the defaming conduct?

If this was true, it would also have to be admitted that the main scope of the praetorian intervention was to eliminate conduct that, by bringing a certain suspicion on an individual, endangered his political and military position,[31] as the principal consequences of the censorian *notatio* were in practice[32] focused on these areas. A further result of *censoria notatio* — *ignominia* — which affected a person's good name and *dignitas*, although believed to have had a greater significance than the direct consequences of censorian intervention,[33] was not a separate measure,

25. See e.g. A.E. Astin, «Regimen morum», *JRS* 78 (1988), p. 19.

26. See A.E. Astin, «Regimen», cit. n. 25, p. 19.

27. A. Tarwacka, *Prawne aspekty urzędu cenzora w starozytnym Rzymie*, Warszawa, 2012, p. 239–241, with reference to Th. Mommsen, *Römisches Staatsrecht*, Graz, 1952, vol. 2.1, p. 377–382.

28. See F. Camacho de Los Ríos, *La infamia*, cit. n. 13, p. 60–61.

29. See examples given by A.H.J. Greenidge, *Infamia*, cit. n. 21, p. 62–74. See also F. Camacho de Los Ríos, *La infamia*, cit. n. 13, p. 60–61; A.E. Astin, «Regimen», cit. n. 25, p. 19–26.

30. See F. Camacho de Los Ríos, *La infamia*, cit. n. 13, p. 61.

31. M. Kaser, «Infamia», cit. n. 10, p. 226. Moreover, M. Kaser underlines the fact that branding with *nota censoria* was not followed by particular incapacities in the areas of the public or private rights of an individual. Also J. Depeiges, *De l'infamie*, cit. n. 14, p. 17, notes that branding with *nota censoria* implied nothing more than a moral fault. A Ciceronian delineation of censorian *ignominia* as almost nothing but a blush is frequently cited — see Cicero, *De Rep.* 4.6; A.E. Astin, «Regimen», cit. n. 25, p. 16; A. Tarwacka, *Prawne aspekty*, cit. n. 27, p. 248–249.

32. See M. Humm, «Il "*regimen morum*" dei censori e le identita dei cittadini», in A. Corbino, M. Humbert, G. Negri (eds), "Homo", "caput", "persona". *La costruzione giuridica dell'identita nell'esperienza romana*, Pavia, 2010, p. 284. Accordingly, the direct result constituted exclusion from the *tribus* (a transfer to an inferior *tribus* or exclusion from all of them). See F. Camacho de Los Ríos, *La infamia*, cit. n. 13, p. 62, 64. On the effects of *ignominia* in the private sphere see F. Camacho de Los Ríos, *La infamia*, cit. n. 13, p. 62–63.

33. M. Kaser, «Infamia», cit. n. 10, p. 226.

but was an element inherent in branding an individual a *nota*, and included first and foremost a decision made according to whether or not he belonged to a certain *tribus*. Therefore the approach based on the mere notion and grounds for *ignominia*, interpreted as such without reference to direct sanctions,[34] does not seem convincing. If the edict concerned behaviour that could lead to an individual being branded a *nota censoria*, it would mean that it provided protection not only against a deterioration of how the individual was perceived by society, but also against groundless changes in his membership of the Senate or *tribus*. It hardly seems convincing that this could be the grounds for introducing the edict *ne quid infamandi causa fiat*.

Moreover, a wide flexibility of the censorian *notatio*, which was an effect of a wide arbitrariness in the area of determining that an individual's behaviour violated the customs,[35] together with the censors' absence of liability for unjust *notatio*,[36] seem to exclude the possibility of praetorian intervention in the matter.

If both of the infamies outlined above seem inadequate for the interpretation of the *infamandi causa* clause, only an idea of non-technical infamy, unrelated to a particular legal conception, remains.[37] As such, the notion of *infamia* can be

34. It is, however, rightly argued by M. Humm, that it was not about punishing the citizens but about ascribing to them a particular place in Roman society (and controlling them). See M. Humm, «Il regimen», cit. n. 32, p. 314.

35. See also M. Kaser, «Infamia», cit. n. 10, p. 225; F. Camacho de Los Ríos, *La infamia*, cit. n. 13, p. 59. The only rule the censor had to follow was to act for the public welfare of Roman citizens. See M. Kaser, «Infamia», cit. n. 10, p. 225. It is also underlined by F. Camacho de Los Ríos that *nota*, because it was dependent on *censorum opinio*, could be changed by the sentence of a judge or by a subsequent censor. See F. Camacho de Los Ríos, *La infamia*, cit. n. 13, p. 61, 63. J. Depeiges, *De l'infamie*, cit. n. 14, p. 16. This complete arbitrariness of censors was also limited by requirement of the assent of both censors for *nota*, see J. Depeiges, *De l'infamie*, cit. n. 14, p. 16. The latter author points also a responsibility of censors towards the people who nominated them for this office. It is argued that, apart from the oath to act for the public welfare, it was the collegiality of the censors that ensured standards were preserved. What needs underlining here is that before *lex Clodia de censoria notione* it seems that a decision made by one censor was valid unless it was contested by his colleague's objection. Under *lex Clodia*, which was, however, only in force for a short time, a joint decision of co-censors was probably required. See A. Tarwacka, *Prawne aspekty*, cit. n. 27, p. 242–258. On this issue see also H. Siber, #Zur Kollegialität der römischen Zensoren", in *Festschrift Fritz Schulz*, Weimar, 1951, vol. 1, *passim*.

36. On the problem of the liability of censors and former censors see A. Tarwacka, *Prawne aspekty*, cit. n. 27, p. 92–100; 243–248. On the censor's *regimen morum*, see especially: L. Pommeray, *Études*, cit. n. 11, p. 23–39; E. Baltrusch, Regimen morum: *die Reglementierung des Privatlebens der Senatoren und Ritter in der römischen Republik und frühen Kaiserzeit*, München, 1989, p. 7–29; A.E. Astin, «Regimen», cit. n. 25, *passim*; E. Pólay, «Das "*regimen morum*" des Zensors und die sogennante Hausgerichtsbarkeit», in *Studi Volterra*, Milano, 1971, vol. 3, *passim*; E. Schmähling, *Die Sittenaufsicht der Censoren. Ein Beitrag zur Sittengeschichte der römischen Republik*, Stuttgart, 1938, *passim*; M. Humm, «Il regimen», cit. n. 32, *passim*.

37. An interesting interpretation, based on a conception that can be found between the technical and the non-technical perception of infamy in the context of our edict, is suggested by

found not only in literary sources and orations,[38] in which it can be interpreted as moral vileness and related to *probrum*[39] and *ignominia*,[40] but also in juristic ones, referring to the public perception of a person, her reputation in society.[41] Although it seems reasonable to assume that *infamia* was already recognized in both areas (the moral/social and the legal) in the times of the republic, the former seems more adequate in the context of our analysis.

It also seems advisable to refer to D. 47.10.15.26,[42] where Ulpian refers to Labeo's opinion on the superfluousness of the *ne quid infamandi* edict because of the existence of the *edictum generale de iniuriis*, or rather, as we should note, because of an extensive interpretation of the provisions of this edict by jurists, confirmed to the full extent in *Controversiae* 10.1.30.[43] The opinion attributed to Labeo proves an assumption mentioned at the beginning of this article, which is essential for a proper analysis of the *infamandi causa* criterion of our edict, namely the course of the evolutionary process of the edictal protection against defamation. It appears that an original protection under the so-called *edictum generale*, restricted only to corporeal attacks on one's integrity and dignity, evolved into the idea of protection even against allusive ways of defaming another person. In this process two intermediate steps, in the forms of the *edictum de adtemptata pudicitia* and the *edictum de convicio*, were taken, showing a tendency for praetorian protection to be spread to more and more actions, albeit actions that were still specifically determined, that were aimed at the dignity and reputation of an individual. The final step, extending protection to all forms of behaviour that can result in bringing

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R. Wittmann, who postulates a juristic-technical sense of the expression, leading to a conclusion that the *infamandi causa* expression was used by the praetor with the meaning of a veil that brings infamy on a person. See R. Wittmann, «Die Entwicklungslinien», cit. n. 4, p. 333. In fact this view boils down to accepting the understanding of the edict as providing protection against a threat to lower public opinion of an individual, which seems the essence of non-technical infamy (*infamia facti*).

38. See M. Kaser, «Infamia», cit. n. 10, p. 230, n. 56.

39. For juristic sources see Ulpianus, D. 50.16.42, and F. Camacho de Los Ríos, *La infamia*, cit. n. 13, p. 50–51.

40. However, the exact meaning of the word is difficult to apprehend and the recognized notion can, quite generally, only be deduced from the context.

41. See M. Kaser, «Infamia», cit. n. 10, p. 230–231, esp. n. 57. M. Kaser sees here a connection not only with *fama*, but also with *existimatio* and *dignitas*.

42. Ulpianus, D. 47.10.15.26. On the interpolation of this fragment, which, however does not influence the range of its use in this article, see G. Beseler, *Beiträge zur Kritik der römischen Rechtsquellen*, Tübingen, 1913, vol. 3, p. 63; G. Beseler, *Beiträge zur Kritik der römischen Rechtsquellen*, Tübingen, 1920, vol. 4, p. 231; S. Perozzi, *Istituzioni di diritto romano*, Roma, 1928, vol. 2, p. 338, n. 2. See E. Levy, E. Rabel, *Index interpolationum*, cit. n. 9, p. 516.

43. Seneca Maior, *Controversiae* 10.1.30. See an analysis of this fragment by D. Daube, «Ne quid», cit. n. 1, p. 434–437 as well as p. 443–449; A.D. Manfredini, *Contributi allo studio dell'*'iniuria' *in età repubblicana*, Milano, 1977, p. 189–191; R. Wittmann, «Die Entwicklungslinien», cit. n. 4, p. 322–323.

infamia on an individual, was accomplished by passing the *ne quid infamandi causa fiat* edict. Interpreting this expression in a technical or semi-/quasi-technical sense, as praetorian or censorian infamy, does not match the evolutionary path outlined above, and restricts the protection in an unfounded way. The catalogue of the possible applications of the edict provided by Ulpian is neither complete nor legally defining because of its exemplary and exemplifying character, which is a consequence of the explicatory nature of his commentary[44] on the general edictal formulation of *ne quid infamandi causa fiat*. Although, among these examples of possible applications, there are some that can be followed by praetorian or censorian infamy, it is *infamia facti* that is essential for the qualification of conduct that meets the *infamandi causa* criterion of the edict.[45] A social perception of an individual as an unrespectable person or as someone of bad reputation, which is probably present in cases of both praetorian and censorian infamy as a side-effect, and which constituted *infamia facti*,[46] appears to match up with both the course of the evolutionary process of the praetorian protection of an individual's honour and the 'common denominator' of the examples given by Ulpian to illustrate the general clause of *ne quid infamandi causa fiat*.

The second question that was previously mentioned as a relevant issue for examination in order to interpret the notion of the *ne quid infamandi* edict properly and — as a consequence — to determine the meaning of D. 47.10.15.29, concerns the problem of whether an *animus infamandi* is sufficient for establishing liability under the edict.[47] The tenor of the edict, as quoted by Ulpian, gives no grounds for an assumption that an actual diminution of one's reputation must have been achieved — the only criterion constitutes undertaking the (undetermined) activity *infamandi causa*. Therefore, an attempt to accomplish this aim should also qualify as a transgression. Considering the open catalogue of behaviour that could achieve the goal (i.e. to defame), it might be assumed that the only criterion for a certain action to qualify was a subjective one.[48] If this was the case, the existence of *animus infamandi* would constitute a tort by itself. Apart from the objective improbability of establishing liability based on nothing but mere intention, which would result in it being impossible to prove its existence in a particular case, it is also inconceivable

44. See, for instance, Ulpianus, D. 47.10.15.27.

45. A contraposition of praetorian infamy and *infamia facti* is manifested, for example, in Iulianus, D. 37.15.2 pr. See also F. Camacho de Los Ríos, *La infamia*, cit. n. 13, p. 45; M. Kaser, «Infamia», cit. n. 10, p. 232.

46. See F. Camacho de Los Ríos, *La infamia*, cit. n. 13, p. 50–51. Cf J. Depeiges, *De l'infamie*, cit. n. 14, p. 22–24.

47. See also M. Fernández Prieto, *La difamación en el Derecho Romano*, Valencia, 2002, p. 271–274.

48. The edict *ne quid infamandi* is understood as a triumph of a subjective criterion by D. Daube, «Ne quid», cit. n. 1, p. 417, and J. Plescia, «The development», cit. n. 1, p. 283, who claim that any behaviour, when undertaken with an intention to defame, could establish liability under the edict.

to accept that the *animus infamandi* could be discerned in absolutely every kind of behaviour from which would follow liability under the edict. Without contesting the open catalogue of actions that could result in the praetor's *animadversio*, it is essential to point out that not every kind of behaviour, even if undertaken *infamandi causa*, could possibly cause a diminution of the respect felt for an individual, or threaten his or her reputation. Conduct that fell under the edict had to be, at least potentially, such that would achieve the goal of defaming a certain person. Therefore the mere existence of *animus infamandi*, even if combined with its external reflection in any form of behaviour, was not sufficient to constitute liability[49] unless there was a chance that by this kind of conduct the reputation of a particular person could be harmed. For this reason two prerequisites must have been fulfilled for a certain action to qualify under the edict: first, it must have included making allusions that someone had violated the standards fixed by law and the customary good morals in a particular society; and second, it must have concerned a respectable person, or at least one whose reputation could be diminished by an allusion of a particular sort, which lowered the public estimation of the victim of the *infamatio*.[50]

Accordingly, conduct of the character described above, together with an *animus infamandi* that could be interpreted from the circumstances of the case and from the form of behaviour itself, constituted an act of *infamandi causa* against which an individual was protected under the edict *ne quid infamandi causa fiat*. Referring once more to Labeo's commentary on the superfluousness of this edict and his opinion on the praetor's purpose in passing such a regulation, approved *au reste* by Ulpian, it seems that specific attention was drawn not only to those actions (of all kind) that were *prima facie* aimed at diminishing someone's reputation, but also to those that it could be controversial to define as injurious.

Also, when compared with the two specific edicts mentioned above (*edictum de adtemptata pudicitia* and *edictum de convicio*), the omission of the previously essential condition of contrariness to good morals in the *ne quid infamandi causa fiat* edict makes it possible also to qualify as illegal those acts that, if they had not been done *infamandi causa*, would have even been considered as decent and lawful. Therefore if the only criterion by which conduct would qualify as a basis for the praetor's *animadversio* is that the conduct was undertaken *infamandi causa*, assuming that it was likely to lower someone's standing in society, apparently lawful behaviour can also be seen to fall under the *ne quid infamandi* edict.

Having analysed the possible meaning of the *infamandi causa* criterion, as well as the assumed range of application of the edict *ne quid infamandi* on a more theoretical level, the conclusions expressed above should now be compared with

49. See also R. Wittmann, «Die Entwicklungslinien», cit. n. 4, p. 321–322.

50. This is a reason for excluding the possibility of establishing liability in the case of a 'defamation' of a *nocens*. See A.D. Manfredini, *La diffamazione*, cit. n. 1, p. 167 and 180.

the results of an examination of the cases to which, according to Ulpian, the edict was applicable.

In the fragments D. 47.10.15.27 and 29–33 Ulpian gives various examples of cases that — to his knowledge — fell under the edict *ne quid infamandi causa fiat*. It seems fairly certain[51] that they were chosen as very typical cases for the idea of the aforementioned praetorian regulation, which, being very generally expressed, could have been difficult to interpret in particular cases.

The first set of behaviour[52] that was considered by Ulpian to be useful for explaining the nature of actions against which the edict was directed consisted of two different groups: one concerned putting on mourning or dirty clothing and letting one's hair and beard grow; the second concerned the composition and publication of poetry, and the recitation of anything that could offend someone's modesty (reputation). The former group resembles the cases described in the aforementioned fragment of *Controversiae*. As such, it seems undisputable that they were about taking on a piteous look such as was customarily done not only if a close relative had died, but also if a close relative had been accused in a criminal trial. It also applied to close friends.[53] Being legal and socially acceptable, this kind of behaviour might become injurious when undertaken for the purpose of diminishing someone's reputation. This goal could be achieved by following that person in public, wearing mourning clothes, implying him to be a murderer of one's relative, as in the given fragment of *Controversiae*.[54] Also, putting on a sorrowful look, inducing people to take pity on someone as having been unjustly accused, might have suggested that someone else had perpetrated the crime; in particular, if this was done while following a certain person, it would suggest that the person being followed was the one who should be criminally charged. For as long as taking on such a look is used for its cardinal purpose (as a sign of mourning, or begging for mercy for the accused), it is legal and is even considered favourable in public opinion, but employing this means with an intention to harm

51. However, a different view is presented by D. Daube, «Ne quid», cit. n. 1, p. 419, who believes that the edict originally applied only to those cases presented by Ulpian and that an extension in this came only with time. This opinion seems barely convincing, both because of the tenor of D. 47.10.15.27, as well as D. 47.10.15.26, and in the context of the extensive interpretation of the so-called *edictum generale*, pictured in a given fragment of *Controversiae*. In such a situation it would be quite inconceivable to introduce an edict with such a restricted range of application. Apart from this view, the idea of A.D. Manfredini, «Quod edictum», cit. n. 1, p. 94, is worth noting, which suggests that the edict comprises both a general regulation and specific cases. Since it is not embedded in the sources, this idea scarcely seems convincing.

52. Ulpianus, D. 47.10.15.27.

53. See R. Wittmann, «Die Entwicklungslinien», cit. n. 4, p. 322–323. See also Venuleius, D. 47.10.39; Seneca Maior, *Controversiae* 10.1.4; 10.1.7. See also F. Raber, *Grundlagen*, cit. n. 6, p. 57, 59–60 in reference to an accused in *iudicium publicum*, as well as the accused's relatives and friends. See D. Daube, «Collatio», cit. n. 10, p. 119.

54. Seneca Maior, *Controversiae* 10.1.2.

somebody's reputation becomes illicit under the edict *ne quid infamandi causa fiat*, as the conduct described is certainly apt to achieve the goal of defamation. Once more the aforementioned fragment of *Controversiae* can produce an example of the social consequences of suspicion aroused as a result of the tacit following of a person by a man in mourning, which are manifested in the electoral defeat of the former.

The second type of conduct consists of the composing and publication of poetry as well as the recitation (singing) of anything that could offend the reputation (modesty) of a person.[55] The first case concerns the writing of a *carmen* when the author has the intention to harm somebody's reputation, by having the purpose that this *carmen*, and consequently its defamatory content, should become publicly known, which is the only way in which it could affect the person's standing in society. The second example refers to those who make *carmina* of that sort public, regardless of how they achieve this aim (whether orally or in writing).[56] When considering the last type of conduct mentioned in this fragment, although the interpretation is very controversial, it appears that most probably this was about the public singing or recitation of a song or a poem that was composed *ad hoc*, or at least not in writing, which could be found to be injurious to the reputation of a person mentioned (even if only by allusion) in its words or the reputation of a person in front of whom this composition was publicly performed, suggesting that the allusions contained in it to referred to that individual.

Another fragment traditionally accepted as an example of the application of the edict, given by Ulpian in D. 47.10.15.30,[57] concerns an offer to sell a judgment, groundlessly suggesting a judge to be corruptible, which could cause a grave diminution of his reputation. It seems that although this conduct could be undertaken only for gain, the effect of damaging the judge's honour was inherently one of its consequences. Nevertheless, this case is a very peculiar one, quite different from the (other) examples of application of the *ne quid infamandi causa fiat* edict given by Ulpian. First of all, from the given situation we can assume neither that the offender acted *infamandi causa*, which could be only a side-effect of his deed, nor

55. On the interpretation of these acts, see D. Daube, «Ne quid», cit. n. 1, p. 421–422; A.D. Manfredini, *La diffamazione*, cit. n. 1, p. 196–204; F. Raber, *Grundlagen*, cit. n. 6, p. 60–62. See also R.E. Romero, «Consideraciones en torno a la difamación escrita en Derecho Romano», *Revista de Derecho de Universidad Nacional de Educatión a Distancia* 4 (2009), p. 177–218.

56. What seems essential here, apart from the *animus infamandi* ascribable to the doer, is that defamatory content is accessible to a random recipient.

57. Ulpianus, D. 47.10.15.30. On the interpolation of this fragment see G. Beseler, *Beiträge zur Kritik der römischen Rechtsquellen*, Tübingen, 1910, vol. 1, p. 117. See also E. Levy, E. Rabel, *Index interpolationum*, cit. n. 9, p. 517. On this fragment and critically on this view see D. Daube, «Ne quid», cit. n. 1, p. 421–422; A.D. Manfredini, *La diffamazione*, cit. n. 1, p. 172–200; A.D. Manfredini, «Quod edictum», cit. n. 1, p. 93–94; R. Wittmann, «Die Entwicklungslinien», cit. n. 4, p. 324.

that any spreading of the information about the venality of the judge in public took place. Two essential points of *infamatio* are therefore missing here. Secondly, and consequently, it appears possible that this example did not refer to the edict *ne quid infamandi* in particular but to the evolved form of the tort of *iniuria*, as no mention is made of the *infamandi causa* criterion and no references to *infamia* are present, while there is a direct reference to *iniuria*. Additional information about castigation only further complicates the interpretation of this fragment,[58] and, together with a claim that one should admit its wide interpretation, induces us to set this issue aside as exceeding the scope of this article.

A few other examples given by Ulpian in D. 47.10.15.31–33 concern situations in which the discrediting of a person in public took the form of suggesting him to be an unreliable debtor.[59] These are actions consisting in advertising someone's property for sale[60] as if authorized to do so by his inability or unwillingness to pay his debt,[61] declaring that one is selling an item which one suggests has been taken from an individual under a pledge,[62] which results in exactly the same impression as the former action, and baselessly (publicly) addressing a person as if he is one's debtor.[63] All of these actions would be completely permissible if the conditions under which they were considered lawful existed. In the given cases, the only purpose of the self-proclaimed creditor (or the true creditor who has groundlessly exercised a particular legal right when the prerequisites required by law have not been met) is to defame the alleged (or allegedly untrustworthy) debtor. What seems essential in these cases is the making use of legally permissible means in order to achieve the goal of diminishing someone's reputation.

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58. Maybe by this means the information about the case and, in consequence, suspicion about the judge could be spread in the community.

59. On a significance of such an opinion about a person, see F. Raber, *Grundlagen*, cit. n. 6, p. 150, n. 1. Similar situations are reported in Gaius, D. 47.10.19 (with an emendation suggested by E. Levy, *Sponsio, fideipromissio, fideiussio*, Berlin, 1907, p. 42, n. 2). See E. Levy, E. Rabel, *Index interpolationum*, cit. n. 9, p. 519, and Modestinus, D. 47.10.20.

60. An emendation of F. von Kniep, who postulated the replacement of *occupaverit* with *proscripserit*, is followed here. F. von Kniep, *Gaius: Gai Institutionum commentarius*, Jena, 1917, vol. 3.2, p. 621, 685. See also *Gai Institutiones* 3.220 and *Institutiones Iustiniani* 4.4.1.

61. Ulpianus, D. 47.10.15.31. See also D. Daube, «Ne quid», cit. n. 1, p. 425–426; F. Raber, *Grundlagen*, cit. n. 6, p. 66, 67, 70; R. Wittmann, «Die Entwicklungslinien», cit. n. 4, p. 335; M. Hagemann, *Iniuria*, cit. n. 2, p. 77.

62. Ulpianus, D. 47.10.15.32. On the interpolations of this fragment see A. Pernice, *Marcus Antistius Labeo*, Halle, 1873, vol. 1, p. 427, n. 10; A. Manigk, *Pfandrechtliche Untersuchungen.* I. Heft, *Zur Geschichte der römischen Hypothek,* 1. Teil, *Die pfandrechtliche Terminologie und Literatur der Römer*, Breslau, 1904, p. 26 n. 1. See E. Levy, E. Rabel, *Index interpolationum*, cit. n. 9, p. 517. On this interpretation see D. Daube, «Ne quid», cit. n. 1, p. 426–427; F. Raber, *Grundlagen*, cit. n. 6, p. 67; R. Wittmann, «Die Entwicklungslinien», cit. n. 4, p. 329; E. Pólay, Iniuria *Types in Roman Law*, Budapest, 1986, p. 148.

63. Ulpianus, D. 47.10.15.33.

The analysis of Ulpian's examples of the possible application of the edict results in the conclusion that the edict, while certainly relating to all types of behaviour that can result in defamation, focuses on those that are legally indifferent or legal or even authorized in certain circumstances, and are used *infamandi causa*. It is equally likely that the selection of examples could have been motivated by the need to underline that apparently lawful conduct, when used to attack someone's reputation, will also fall under the edict, which could have been in dispute given the general expression in the edictal clause. It seems that it is exactly on conduct that comes in the guise of following commonly accepted practice or even exercising one's rights but is in fact aimed at blackening the good name of an individual that Ulpian focuses his examples.

If the above assumptions are correct, it should also be possible to ascribe the same type of conduct to the *libellus* example from D. 47.10.15.29:

> *Si quis libello dato vel principi vel ali cui famam alienam insectatus fuerit, iniuriarum erit agendum: Papinianus ait.*[64]

The above text tells us very little about the nature of this defamatory *libellus*. The only clue is the addressee — princeps or somebody else. As far as the first subject may be indicative, *ali* cannot suggest any kind of *libellus*. In particular, it does not indicate that it concerns every letter or other piece of writing that is sent or given to another privately. Otherwise, if we accepted this kind of interpretation, we would have to admit that every letter to a friend that includes stinging words, malicious gossip or defamatory statements about someone else is to qualify as a *libellus*. This understanding is neither convincing nor verified by the sources. First of all, if the edict was about every private letter, there should be no need to add — nor place in the foreground — the princeps. Secondly, in a private letter, as in a private conversation, there is no possibility of defaming somebody, unless the slanderous content of that conversation is made commonly known. And this is not so in our case, as the further spreading of the defamatory statements is not mentioned. Also, the fact that the addressees are mentioned indicates that — unlike the postclassical *libelli famosi*[65] — it was not about directing defamatory statements to an undetermined group of persons (unless, of course, the *libellus* had the character of an open letter, which possibility seems — on the basis of D. 47.10.15.29 — completely groundless and unconvincing). The ideas present in the classical and postclassical legal rules against written defamation have therefore nothing to do with Ulpian's example. This is not only precluded by the lack of any mention of the influence on public opinion about a given person, but also

64. An emendation [*erit agendum*] <*tenebitur*> was suggested by G. Beseler, «Romanistische Studien», *TvR* 10 (1930), p. 189.

65. On the matter of *libelli famosi* see e.g. B. Santalucia, «Costantino e i "libelli famosi"», *Index* 26 (1998), p. 185–198; G. Schmidt, Libelli famosi: *zur Bedeutung der Schmähschriften, Scheltbriefe, Schandgemälde und Pasquille in der deutschen Rechtsgeschichte*, Köln, 1985, p. 7–75.

by the general absence of the word *libellus* in the meaning of *libellus famosus*[66] in sources concerning the classical period. Moreover, since in D. 47.10.15.27 Ulpian adduces defamatory *carmen conscribere* or *proponere*, as well as *cantare aliquod quod pudorem alicuius laedat*, it would seem inaccurate to discuss another form of ordinary *iniuria verbis* again. Therefore we can state with strong conviction that the *libellus* from D. 47.10.15.29 cannot be understood as a substitute for the later *libellus famosus* (which is understood as any kind of defamatory writing) and does not have the nature of a private letter.

While excluding the above meanings of *libellus* on the grounds that they are inadequate in the given context, two other meanings seem to be worth considering.[67] The first of them is a written accusation.[68] Things that speak in favour of this understanding of *libellus* in our fragment are the addressees — *princeps* and, we must presume, 'other' officials. As this *libellus* was given in order to diminish the reputation of the accused person (and not because of a person's sense of duty or for the sake of public order), we have grounds to assume that it consisted of untrue statements. Following this interpretation, we would have to accept that the *libellus* from D. 47.10.15.29 is a form of *falsa delatio nominis*. In that case, however, it would be necessary to presume that as a result of this kind of accusation criminal proceedings were initiated, or the content of this *delatio* was made commonly known in another way. Only under this condition would a defamatory effect on the reputation of the accused be possible. Delation itself, especially if it was false, and provided that the information about the alleged crime was held only by officials, who after receiving it, checked and verified the *delatio* before undertaking legal steps, cannot be described as useful for diminishing someone's public reputation. For this reason, it would not be possible to link this case with *edictum ne quid infamandi causa fiat*. As we have no traces of further legal proceedings in the matter or of any other form of spreading the defamatory content of the denunciation in the above text, it is legitimate to allege that our *libellus* cannot be identified with a common delation.

There is one more understanding of *libellus*, and this, in the given context, seems most suitable. It has the meaning of a petition "(…) from private individuals

66. Understood as a defamatory writing, *libellus* seems to appear in the time of Suetonius — see D. Daube, «Collatio», cit. n. 10, p. 114; A.D. Manfredini, *La diffamazione*, cit. n. 1, p. 201. See also A. Angius, «Graffiti e pamphlet. Lessico e sociologia di un fenomeno politico», *BIDR* 109 (2017), p. 264–270. R. Wittmann argues that this meaning of *libellus* is first seen in the imperial period — see R. Wittmann, «Die Entwicklungslinien», cit. n. 4, p. 329.

67. It seems aimless to analyse the meanings of other types of *libellus* (e.g. *appellatorius*, *contestatorius*, *contradictionis*, *conventionis*, *inscriptionis*), as there are no grounds to assume that the given text could refer to any of them.

68. A written formal accusation of a crime, *libellus inscriptionis*, does not seem to concern our case, as the *libellus* from D. 47.10.15.29 is directed to the *princeps* or 'somebody else', and not brought by the accuser and registered in the official records.

to the emperor himself, or to authorities".[69] Although this interpretation is presented by E. Pólay,[70] F. Raber,[71] and R. Wittmann,[72] it has not been sufficiently argued so far.

First of all, it perfectly explains the selection of the addressees of the *libellus* in D. 47.10.15.29. Moreover, following this interpretation, it is understandable that Ulpian provides us with no more clues about the nature of the *libellus*, as these would be superfluous.

Secondly, it was every private individual's[73] right to direct[74] a petition to the princeps.[75] This kind of letter usually concerned administrative and legal matters,

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69. G. Schiemann, s.v. *libellus*, in H. Cancik, H. Schneider (Antiquity), M. Landfester (Classical Tradition) (eds), *Der Neue Pauly*, Brill Online, 2015 (http://brillonline.nl/entries/der-neue-pauly/*libellus*-e703560, consulté le 15 décembre 2017). See also A. von Premerstein, *s.v. libellus*, in A.F. Pauly, G. Wissowa, W. Kroll, K. Mittelhaus, K. Ziegler, H. Gärtner (eds), *Paulys Realencyclopädie der classischen Altertumswissenschaft*, Stuttgart, 1927, vol. 13.1, col. 34–42.

70. E. Pólay, *Iniuria*, cit. n. 62, p. 148.

71. F. Raber, *Grundlagen*, cit. n. 6, p. 63.

72. R. Wittmann, «Die Entwicklungslinien», cit. n. 4, p. 328. See also D. Daube, who finally sees in this *libellus* a kind of accusation — see D. Daube, «Collatio», cit. n. 10, p. 109, 114; D. Daube, «Ne quid», cit. n. 1, p. 423.

73. See, on petitioners of a humble status, works such as W. Williams, «The Libellus Procedure and the Severan Papyri», *JRS* 64 (1974), p. 86–87; W. Turpin, «Imperial Subscriptions and the Administration of Justice», *JRS* 81 (1991), p. 101; T. Honoré, *Emperors and Lawyers*, Oxford, 1994², p. 34. Groups of individuals could also submit *libelli* to the emperor — see W. Williams, «The Libellus Procedure», cit. n. 73, p. 87.

74. It is universally accepted that a *libellus* must have been delivered by the petitioner himself, by his close relative, or by an agent. What is worth underlining is that there was no possibility of sending a *libellus* — it must have been submitted in person. See e.g. A. von Premerstein, *s.v. libellus*, cit. n. 69, col. 38; D. Nörr, «Zur Reskriptenpraxis in der hohen Prinzipatzeit», *ZSS* 98 (1981), p. 11; T. Honoré, *Emperors*, cit. n. 73, p. 35. It was also presumed that this *libellus* was to be handed to an official in the *scrinium a libellis*, but that it was the emperor who read it (or to whom it was read) in the first place. See T. Honoré, *Emperors*, cit. n. 73, p. 43. Exceptionally, permission was given to submit a petition through a governor — see W. Williams, «The Libellus Procedure», cit. n. 73, p. 103; D. Nörr, «Zur Reskriptenpraxis», cit. n. 74, p. 11–12; T. Honoré, *Emperors*, cit. n. 73, p. 36. After dealing with a *libellus* in Rome, a subscript was returned to the governor for the purpose of its publication in a similar way to the practice established in Rome. See U. Wilcken, «Zu den Kaiserreskripten», *Hermes. Zeitschrift für klassische Philologie* 55 (1920), p. 23. Cf. F. Millar, *The Emperor in the Roman World (31 BC–337 AD)*, New York, 1992, p. 543. On the language of subscriptions, see A. Plisecka, «Ἀποκρίματα und die Kaiserkonstitutionen», *TvR* 85 (2017), p. 175–176.

75. When considering the 'others' in D. 47.10.15.29, it should be underlined that a similar procedure involving the publication of written answers can be encountered in reference to subscripts of the Prefect of Egypt and the legate of Palestine — see examples given by W. Williams, «The Libellus Procedure», cit. n. 73, p. 92 with n. 52; p. 100 with n. 107–109, with additional reference to the places where the subscript was displayed. Mentions on copies made e.g. *ex libello proposito cum aliis* (*CIL* XVI,13) seem to be a sufficient, although not a direct, proof for such an interpretation. See also J.D. Thomas, «Subscriptiones to petitions to officials in Roman

but there were also different kinds of other pleas from the citizens.[76] What is essential in Ulpian's examples of the application in the *edictum ne quid infamandi causa fiat* context is that directing a petition to the princeps or to the other authorities was, as such, legitimate and authorized, but when undertaken in order to defame, it became illegal.

Thirdly, *libelli* were investigated in a *scrinium a libellis*,[77] where answers in the form of short notes made under the text of petition were prepared.[78] Although it seems that a functionary responsible for dealing with petitions must have been present from when there was first a principate,[79] this department of the imperial chancellery, or at least an official dealing with petitions, is not known about until Tiberius' time.[80] However, we cannot speak before the times of Claudius of a fully

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Egypt», in E. Van't Dack (ed.), *Egypt and the hellenistic world: Proceedings of the International Colloquium, Leuven, 24.–26. May 1982*, Lovanii, 1983, p. 369–382.

76. On the matter of the content and function of petitions see especially H. Dessau, «Zur Inschrift von Skaptopara», *Hermes. Zeitschrift für klassische Philologie* 62/2 (1927), p. 212; T. Honoré, *Emperors*, cit. n. 73, p. 34–42; W. Turpin, «Imperial Subscriptions», cit. n. 73, p. 101–102, 114–118. On the primary aim of the publication of subscribed *libelli* — 'the convenience of the imperial secretariat' — see W. Williams, «The Libellus Procedure», cit. n. 73, p. 101. For older views on the matter see W.L. Westermann, A.A. Schiller, *Apokrimata: Decisions of Septimius Severus on legal matters*, New York, 1954, p. 39–46; A.A. Schiller, *Roman Law. Mechanisms of Development*, The Hague/Paris/New York, 1978, p. 40, n. 2–4.

77. On the office *a libellis*, see H. Thédenat, *s.v. libellis (a)*, in C. Daremberg, E. Saglio (eds), *Le Dictionnaire des Antiquités Grecques et Romaines*, Paris, 1904, vol. 3.2, p. 1174–1175; A. von Premerstein, *s.v. a libellis*, cit. n. 69, col. 15–26; J.N. Madvig, *Die Verfassung und Verwaltung des Römichen Staates*, Leipzig, 1881, vol. 1, p. 558; O. Hirschfeld, *Die Kaiserlichen Vervaltungsbeamten bis auf Diokletian*, Berlin, 1905, p. 326–329; E. Cuq, *Le Conseil des Empereurs d'Auguste à Diocétien*, Paris, 1884, p. 363–371. This office is attested to be operating up to the time of Justinian — see D. Liebs, «Reichskummerkasten: Die Arbeit der kaiserlichen Libellkanzlei», in A. Kolb (ed.), *Herrschaftsstrukturen und Herrschaftspraxis. Konzepte, Prinzipien und Strategien der Administration im römischen Kaiserreich*, Berlin, 2006, p. 137.

78. On the procedure for preparing the answer, see T. Honoré, *Emperors*, cit. n. 73, p. 43–44; L. Solidoro, «I "rescripta" e i loro autori», *Labeo* 29 (1983), p. 333–339.

79. A. von Premerstein, *s.v. a libellis*, cit. n. 69, col. 16; F. De Martino, *Storia della costituzione romana*, Napoli, 1962, vol. 6, p. 590.

80. See L. Homo, *Les institutions politiques romaines*, Paris, 1950, p. 373; F. De Martino, *Storia della costituzione*, cit. n. 79, p. 590. It is known that in the time of Tiberius his freedman was an *acceptor subscr(iptionibus)*, see A. von Premerstein, *s.v. a libellis*, cit. n. 69, col. 16; D. Liebs, «Reichskummerkasten», cit. n. 77, p. 138. A reform, consisting in the replacement of freedmen with *equites* in the office *a libellis* is ascribed to Hadrian — see e.g. E. Cuq, *Le Conseil des Empereurs*, cit. n. 77, p. 364; A. D'Ors, F. Martin, «Propositio libellorum», *The American Journal of Philology* 100/1 (1979), p. 113; D. Liebs, «Reichskummerkasten», cit. n. 77, p. 140. On freedmen being *a libellis* up to Hadrian, see D. Liebs, «Reichskummerkasten», cit. n. 77, p. 138–140. See also F. de Marini Avonzo, «I rescritti nel processo del iv e v secolo», *AARC* 11 (1996), p. 31 as well as 37–39. On subsequent secretaries being jurists, see D. Liebs, «Reichskummerkasten», cit. n. 77, p. 141; D. Liebs, «Juristen als sekretäre der römischen Kaisers», *ZSS* 100 (1983), p. 496–498. See also A.M. (T.) Honoré, «The Severan Lawyers: a preliminary survey», *SDHI* 28 (1962), esp. p. 186–202; T. Honoré, «'Imperial' Rescripts

organized office *a libellis*.[81] It is to this emperor that the reorganization — or even the establishment — of the *scrinium a libellis* is attributed. Administered first by a *procurator a libellis*, and from the third century AD by a *magister a libellis*,[82] the office had numerous auxiliary personnel — so-called *libellenses*[83] — who were mostly freedmen.[84] After the matter of the *libellus* had been investigated, a note was made under the text of petition[85] with the names of the emperor and the addressee, the insertion *recognovi* made by the chancellery,[86] and *scripsi* or *rescripsi* appended by the emperor,[87] and with the date and place at which the decision was delivered.[88] Up to this moment no defamation is possible, as a similar situation occurs as in the *delatio* context — even if the content of the petition included some libellous statements, no-one except the officials would come to know them. Accordingly, a defamatory petition itself could not be understood as being useful for the purpose of attacking someone's good name, had it not been for the very special procedure for its publication. Unlike the practice of *scrinium ab epistulis*,[89] where the emper-

A.D. 193–305: Authorship and Authenticity», *JRS* 69 (1979), p. 51–64; A. Watson, «Review of T. Honoré, Emperors and Lawyers», *TvR* 50 (1982), p. 413–414.

81. A. von Premerstein, *s.v. a libellis*, cit. n. 69, col. 16; G. Mancuso, *Profilo pubblicistico del diritto romano*, Catania, 2003, vol. 2, p. 69; D. Liebs, «Reichskummerkasten», cit. n. 77, p. 138.

82. See A. von Premerstein, *s.v. a libellis*, cit. n. 69, col. 22. On *magister libellorum*, see e.g. A. von Premerstein, *s.v. a libellis*, cit. n. 69, col. 20–25; G. Mancuso, *Profilo pubblicistico*, cit. n. 81, p. 69; D. Liebs, «Reichskummerkasten», cit. n. 77, p. 141. For further changes see D. Liebs, «Reichskummerkasten», cit. n. 77, p. 142.

83. A. von Premerstein, *s.v. a libellis*, cit. n. 69, col. 25–26. On the role of a secretary's assistants in preparing the draft of a rescript, see e.g. F. Millar, «Emperors at Work», *JRS* 57.1/2 (1967), p. 17; A. Watson, «Review of T. Honoré», cit. n. 80, p. 413.

84. See A. von Premerstein, *s.v. a libellis*, cit. n. 69, col. 20; G. Mancuso, *Profilo pubblicistico*, cit. n. 81, p. 69.

85. See W. Williams, «The Libellus Procedure», cit. n. 73, p. 87; T. Honoré, *Emperors*, cit. n. 73, p. 45.

86. U. Wilcken, «Zu den Kaiserreskripten», cit. n. 74, p. 40; W. Williams, «The Libellus Procedure», cit. n. 73, p. 87; D. Nörr, «Zur Reskriptenpraxis», cit. n. 74, p. 12; T. Honoré, *Emperors*, cit. n. 73, p. 43.

87. U. Wilcken, «Zu den Kaiserreskripten», cit. n. 74, p. 40; D. Nörr, «Zur Reskriptenpraxis», cit. n. 74, p. 12; T. Honoré, *Emperors*, cit. n. 73, p. 43. Although the above order of *recognovi* and *rescripsi* is correct in terms of chronology, it does not correspond with the composition of the rescript, because the emperor's *rescripsi*/*scripsi*/*subscripsi* was made under the *recognovi* of a secretary of the *a libelli* office. See W. Williams, «The Libellus Procedure», cit. n. 73, p. 87; T. Honoré, *Emperors*, cit. n. 73, p. 45.

88. T. Honoré, *Emperors*, cit. n. 73, p. 45.

89. On this office see e.g. J.N. Madvig, *Die Verfassung*, cit. n. 77, p. 558–560; G. Bloch, *s.v. epistulis (ab)*, in C. Daremberg, E. Saglio (éds), *Le Dictionnaire des Antiquités Grecques et Romaines*, Paris, 1892, vol. 2.1, p. 712–725; M. Roztowzew, *s.v. ab epistulis*, in A.F. Pauly, G. Wissowa, W. Kroll, K. Mittelhaus, K. Ziegler, H. Gärtner (eds), *Paulys Realencyclopädie der classischen Altertumswissenschaft*, Stuttgart, 1907, vol. 6.1, col. 210–215; C. Gizewski, *s.v. epistulis (ab)*, in H. Cancik, H. Schneider (Antike), M. Landfester (Rezeptions- und

or's replies were in the form of a letter addressed and delivered to the petitioner,[90] here, at least[91] from Hadrian's times,[92] a petition with a written answer on it was made publicly known (*propositio*)[93] by being posted[94] outside the residence of the

Wissenschaftsgeschichte) (eds), *Der Neue Pauly*, Brill Online, 2015 (http://referenceworks.brillonline.com/entries/der-neue-pauly/epistulis-ab-e333480, consulté le 15 décembre 2017); G.B. Townend, «The Post of *ab Epistulis* in the Second Century», *Historia: Zeitschrift für Alte Geschichte* 10.3 (1961), p. 375–381. On the fusion of the offices *ab epistulis* and *a libellis* under Diocletian, see e.g. D.V. Simon, *Konstaninisches Kaiserrecht. Studien anhand der Reskriptenpraxis und des Schenkungsrechts*, Frankfurt am Main, 1977, p. 20–24.

90. What is worth noting, in the case of papyri inscriptions that lack an indicative heading as a result of the omission of greetings and a farewell formula, is that it is the method of publication that seems decisive for classifying a text as an epistle or a subscript. See W. Williams, «The Libellus Procedure», cit. n. 73, p. 88. Accordingly, every time a display was made in a public place, there can be no doubt that it must have been a *libellus*. On the notion of *apokrimata* see N. Lewis, «The Imperial Apokrima», *RIDA* 25 (1978), p. 262–273, esp. p. 268–273 (*apokrimata* as replies to an individual plea). See also A. Plisecka, «Ἀποκρίματα», cit. n. 74, p. 180–186. On postclassical *rescriptum precem emissum* as a descendant of classical subscription, see L. Maggio, «Note critiche sui rescritti postclassici. 1. Il c.d. processo *per rescriptum*», *SDHI* 61 (1995), p. 287. On possibilities of usage of subscriptions in legal procedure and their normative efficacy, see esp. F. de Marini Avonzo, «I rescritti», cit. n. 80, p. 31–39; L. Maggio, «Note critiche», cit. n. 90, p. 288–302 (with further literature).

91. W. Williams suggests that it is possible that this practice of publishing the subscript originates from the time of Augustus, although he accepts that direct evidence comes from as late as 139 A.D. See W. Williams, «The Libellus Procedure», cit. n. 73, p. 98.

92. This is the traditional view presented by U. Wilcken, «Zu den Kaiserreskripten», cit. n. 74, p. 12, 20, and followed e.g. by A. von Premerstein, *s.v. a libellis*, cit. n. 69, col. 18; A. D'Ors, J. Santa Cruz Teijeiro, «A proposito», cit. n. 1, p. 113; T. Honoré, *Emperors*, cit. n. 73, p. 45. U. Wilcken argued that originally the written answer to a *libellus* was handed to the petitioner, while its copy remained in the archive. See U. Wilcken, «Zu den Kaiserreskripten», cit. n. 74, p. 12, 19–20. This interpretation is based mostly on a fragment of Plinius, *Epistulae* X, 107, which is sometimes found insufficient for U. Wilcken's conclusion — see W. Williams, «The Libellus Procedure», cit. n. 73, p. 98. On the text of Plinius, see e.g. A.N. Sherwin-White, «The Tabula of Banasa and the *Constitutio Antoniniana*», *JRS* 63 (1973), p. 89; W. Williams, «Formal and Historical Aspects of Two New Documents of Marcus Aurelius», *Zeitschrift für Papyrologie und Epigraphik* 17 (1975), p. 60–62.

93. On examples of such a publication see e.g. W. Williams, «The Libellus Procedure», cit. n. 73, p. 87–88. When considering Severus' replies given in Egypt it is stressed that there is no evidence that subscripts remained in the Prefect's archive when the court no longer resided in Alexandria. See W. Williams, «The Libellus Procedure», cit. n. 73, p. 91–92.

94. This interpretation of *propositio* was argued by U. Wilcken (U. Wilcken, «Zu den Kaiserreskripten», cit. n. 74, p. 19–20; U. Wilcken, «Zur *propositio libellorum*», *Archiv für Papyrusforschung und verwandte Gebiete* 9/1–2 [1930], p. 19–21), and followed by the majority of scholars, see e.g. A. von Premerstein, *s.v. libellus*, cit. n. 69, col. 42, and W. Williams, «The Publication of Imperial Subscripts», *Zeitschrift für Papyrologie und Epigraphik* 40 (1980), *passim*. See also W.L. Westermann, A.A. Schiller, *Apokrimata*, cit. n. 76, p. 488, 500–501; A.A. Schiller, «The Diplomatics of the *Tabula Banasitana*», in H. Hübner *et al.* (eds), *Festschrift für Erwin Seidl zum 70. Geburtstag*, Köln, 1975, p. 148–149, 153–154. For more examples of the acceptance of U. Wicken's view by scholars, see e.g. W.L. Westermann, A.A. Schiller, *Apokrimata*, cit. n. 76, esp. p. 40–46; A.A. Schiller, *Roman Law*, cit. n. 76,

emperor,[95] without giving the petitioner a copy of the rescript.[96] Private individu-

p. 488, n. 3. The main evidence for the interpretation that a *propositio* took place through such a public display of *libelli*, which seems convincing, is the heading of the Skaptopara inscription (*CIL* III, 12336). See W. Williams, «The Libellus Procedure», cit. n. 73, p. 99. On the public display of a copy of a *libellus* while its original had been filed in the imperial archive before the publication took place, see M. Varvaro, «Note sugli archivi imperiali nell'età del principato», *Annali dell'Università di Palermo* 51 (2006), p. 388 and 418. Posting up took place by a number of subscripts being fastened together, taking the form of a *liber libellorum rescriptorum et propositorum* — see T. Honoré, *Emperors*, cit. n. 73, p. 46. See also W. Williams, «The Libellus Procedure», cit. n. 73, p. 100. For a different interpretation of the expression *ex libro libellorum rescriptorum (…) et propositorum*, see e.g. H. Dessau, «Zur Inschrift», cit. n. 76, p. 207, who claims that it was a roll of subscripts remaining in the archive; D. Nörr, «Zur Reskriptenpraxis», cit. n. 74, p. 27–32. On this possibility see also T. Honoré, *Emperors*, cit. n. 73, p. 47. On imperial archives, see M. Varvaro, «Note sugli archivi», cit. n. 94, p. 383–431. See also A. D'Ors , F. Martin, «Propositio», cit. n. 80, p. 117–119 as well as 123, who believe that it was not about posting up the *liber libellorum* (…), but making it accessible in the *tabularium* of Trajan's baths, where it was kept. The interpretation of *proponere* presented by these authors is, as they stress, much wider, as it concerns the possibility of making use of the *libelli* (*liber*) by the public. They do not accept that there was a previous (or any at all) display in public. With a correct criticism of this view see W. Williams, «The Publication», cit. n. 94, p. 283–294, esp. p. 292–294; J.-P. Coriat, *Le prince législateur. La technique législative des Sévères et les méthodes de création du droit impérial à la fin du principat*, Rome, 1997, p. 610.

95. See W. Williams, «The Libellus Procedure», cit. n. 73, p. 87; A. Plisecka, «Ἀποκρίματα», cit. n. 74, p. 171. In Rome it was the portico of Trajan's baths (see the inscription of Scaptopara) and in Alexandria the *stoa* or the gatehouse of the gymnasium, where the posting up took place. See W. Williams, «The Libellus Procedure», cit. n. 73, p. 87, n. 17, p. 98. On *propositio* outside Rome, see also M. Varvaro, «Note sugli archivi», cit. n. 94, p. 416–419. For a different, although utterly unconvincing, interpretation of *propositio* outside Rome, see A. D'Ors, F. Martin, «Propositio», cit. n. 80, p. 120–123. See, with criticism of their understanding in this matter, W. Williams, «The Publication», cit. n. 94, p. 287–289. According to D. Liebs, «Reichskummerkasten», cit. n. 77, p. 144, in the second century in Rome the publication took place in the portico/porch/vestibule of the temple of Apollo on the Palatine, and from third century (also?) in a *porticus thermarum Traianarum*. On places of posting see also W. Williams, «Two Imperial Pronouncements Reclassified», *Zeitschrift für Papyrologie und Epigraphik* 22 (1976), p. 237. On the presumed time of the exposure to the public view, see e.g. W. Williams, «The Libellus Procedure», cit. n. 73, p. 99–100.

96. See e.g. G. Schiemann, *s.v. libellus*, cit. n. 69; W. Williams, «The Libellus Procedure», cit. n. 73, p. 100. However, according to some authors, the possibility cannot be excluded that the petitioners received a single copy of a written answer, although this does not exclude the possibility there was a public display of the rescript — see T. Honoré, *Emperors*, cit. n. 73, p. 46–48. On the written answer given to a petitioner, apart from the public display, see also D. Liebs, «Reichskummerkasten», cit. n. 77, p. 144. On whether an original or a confirmed copy of the rescript was received by a party, with possible aberrations, see e.g. F. Schwind, *Zur Frage der Publikation im Römischen Recht mit Ausblicken in das altgriechische und ptolemäische Rechtsgebiet*, München, 1940, p. 168–170. On the continuing practice of returning a subscribed *libellus* to a petitioner in Hadrian's times, see particularly A. D'Ors, F. Martin, «Propositio», cit. n. 80, p. 114, who claim that Hadrian's reform did not affect this issue. Accordingly, a subscribed original was returned to the petitioner, and a copy was kept in the archive. See A. D'Ors, F. Martin, «Propositio», cit. n. 80, p. 119, 123.

als[97] could make copies of these documents,[98] which could be subsequently attested.[99] What is essential in this procedure is that not only the emperor's answer,[100] but also the content of the petition,[101] after it had been recognized in the *scrinium a libellis*, could be read and possibly also heard by an indeterminate group of people.[102] If the *libellus* contained defamatory suggestions, it was only at the moment of publication that it became dangerous for someone's reputation. Paradoxically, the act of publishing, i.e. the final step of the procedure of the *scrinium a libellis*, enabled the realization of the act of defamation. Moreover, it co-created it, as before that moment — or, in other words, without the legal activity of the officials, we cannot qualify the petitioner's allegations as a libel creating liability under the *edictum ne quid infamandi causa fiat*. A private individual's right to petition is in this case intentionally abused, and authorized legal procedures come to be used *infamandi causa*.

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97. What needs underlining here is that it was possible that copies were not only made by petitioners, which practice, according to W. Williams' interpretation, can be attested by reference to professional copyists — see W. Williams, «The Libellus Procedure», cit. n. 73, p. 91–93. See also A. Plisecka, «Ἀποκρίματα», cit. n. 74, p. 183.

98. For such a practice in reference to provincial governors' subscripts displayed in public, see W. Williams, «The Libellus Procedure», cit. n. 73, p. 100. On this matter see also J.D. Thomas, «Subscriptiones to petitions», cit. n. 75, p. 369–382.

99. A. von Premerstein, *s.v. libellus*, cit. n. 69, col. 42, claims that a copy was confirmed by witnesses. See also W. Williams, «The Libellus Procedure», cit. n. 73, p. 100–101 as well as 103.

100. D. Nörr suggests this practice could be possibly accepted for an earlier period, but that at an undetermined time, probably, at the latest, in the second half of the second century (during the reign of Antoninus Pius or Marcus Aurelius), it was widely modified. The change meant that the original of the *libellus* and *subscriptio* were filed in the archive, while the copy of the content of the rescript alone, with the name of the addressee attached, was published or promulgated in some other way. Moreover, the author suggests that publication of *libelli* probably did not exist in the form of a public display at all, and that copies were taken from the archive, where *libelli* together with *subscriptiones* were kept. A petitioner received a copy. See D. Nörr, «Zur Reskriptenpraxis», cit. n. 74, p. 20–32, 45–46. See also L. Maggio, «Note critiche», cit. n. 90, p. 287, n. 9. On the idea that an original *libellus* and *subscriptio* were kept in the archive while the text of rescript alone was published by being posted up, see also J.-P. Coriat *Le prince*, cit. n. 94, p. 610. D. Liebs, «Reichskummerkasten», cit. n. 77, p. 144 also claims that publication of a short answer to a *libellus* was introduced, perhaps in the second half of the second century, pointing to a case of Justin (*Apolog.* 2,14,1), who expected the content of his *libellus* to be posted up together with the emperor's answer, as a possible occasion for introducing a change. Publication referred to a copy of a rescript. From the time of Diocletian a petitioner received an original of the rescript with the emperor's subscription — see D. Liebs, «Reichskummerkasten», cit. n. 77, p. 146.

101. See U. Wilcken, «Zu den Kaiserreskripten», cit. n. 74, p. 36–37; U. Wilcken, «Zur propositio», cit. n. 94, p. 19–20; A. von Premerstein, *s.v. libellus*, cit. n. 69, col. 42; W. Williams, «The Libellus Procedure», cit. n. 73, p. 98, 100, 103.

102. The places of publication allowed access to the content of *libelli* to a very large and indeterminate group of people. See also W. Williams, «The Libellus Procedure», cit. n. 73, p. 98.

This interpretation of the meaning of *libellus* seems the most suitable both because of the strong grounds for it in the reading of D. 47.10.15.29, and because of the perfect correlation with the other examples provided by Ulpian, which create a coherent idea of the area of the application of the edict. Moreover, one more premise can be of use in supporting this interpretation — the view that a *libellus* directed to the *princeps* or other officials could have constituted *infamatio* was attributed by Ulpian to Papinian. From this assertion we can conclude that the matter was not established before Papinian, either because it was controversial, or because it was not analysed at all. Without a doubt, the problem of whether it was possible for a defamatory petition to qualify under the edict *ne quid infamandi causa fiat* is much younger than the edict itself, and could not have been a subject of discussion at the time of the introduction of the edict. Therefore it appears striking that this case was used as a classic example of the aforementioned edict. What must have been decisive in this matter is, on the one hand, that the case fits perfectly — at least with the classical understanding of the idea of the edict; on the other, that something must have drawn Papinian's (and Ulpian's) attention to this case. The first condition we have already dealt with above, as abusing a legally authorized right to act by undertaking behaviour *infamandi causa* is indisputably of the very essence of the idea of our edict. It also corresponds with examples of the application of the edict such as dressing in mourning clothes and following someone for the purpose of evoking public suspicion that he is a murderer, or acting like the creditor of an unreliable debtor, using the legal means appropriate to the alleged (which is quite different from the actual) situation. When considering the second presumption, i.e. that there must have been something in this case that was significant — probably to both jurists — we can notice that the 'common denominator' here is the fact of holding the office of *magister a libellis*,[103] which was the case for Papinian, as for Ulpian.[104] Encountered in the everyday practice of the *scrinium a libellis*, the case of a defamatory *libellus* addressed to the *princeps* must have been discerned by Papinian. What is important to underline is that nothing in Papinian's view — as adduced by Ulpian — proves that the jurist specifically meant the *ne quid infamandi causa fiat edict*. Equally likely, he was speaking about *actio iniuriarum* as such, without making any reference to the specific regulation. In his time, the general concept of *iniuria* as a delict against a well-known personality was

103. On the identification of secretaries, see T. Honoré, *Emperors*, cit. n. 73, p. 66–70.

104. L. Homo, *Les institutions*, p. 375; G. Mancuso, «Profilo pubblicistico», cit. n. 81, p. 69; F. De Martino, *Storia della costituzione*, cit. n. 79, p. 590; D. Liebs, «Reichskummerkasten», cit. n. 77, p. 141; D. Liebs, «Juristen als sekretäre», cit. n. 80, p. 496. For Ulpian see also T. Honoré, *Ulpian*, Oxford, 1982, p. 191–203; on Papinian — Tryphoninus, D. 20.5.12 pr. («*Rescriptum est ab imperatore libellos agente Papiniano creditorem a debitore pignus emere posse, quia in dominio manet debitoris*»); T. Honoré, «'Imperial' Rescripts», cit. n. 80, p. 57–58. See also A.M. (T.) Honoré, «The Severan Lawyers», cit. n. 80, p. 186–190. For both Ulpian and Papinian, see also M. Varvaro, «Note sugli archivi», cit. n. 94, p. 397; A. Plisecka, «Ἀποκρίματα», cit. n. 74, p. 175–176.

already established, and there was no practical need to analyse which edict could be of use in that case. Nevertheless, it is also possible that Papinian formulated his opinion in just the same context as Ulpian. Aside from the uncertain context of Papinian's statement, we can ascertain that Ulpian, by associating the *libellus* case with *edictum ne quid infamandi causa fiat*, created a classic example of its possible application, which perfectly suited the explanation of the idea of the edict in his time.

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Sommaire

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