



[Digest XLVIII.8.4 \(Ulpianus, On the office of the Proconsul VII\)](#)

Hadrian's ban on castration

Name of the author: compilers of the Digest - Ulpianus

Date: 530 CE to 533 CE

Language: Latin

Category: Roman

Literary genre: Legal text

Title of work: Digest

Reference: XLVIII.8.4

Commentary:

The text presented here is an excerpt from the work *On the office of the Proconsul* composed by the jurist Domitius Ulpianus. Ulpianus was born around 170 CE and came from Tyre in Syria. He might have started his career under Septimius Severus's reign with a post of assistant of Papinianus when the latter was secretary for petitions (*a libellis*) between 194 and 201 CE. He then pursued his career in the central government when, in 202 CE, he became secretary for petitions (*a libellis*), an office that he held up to 209 CE. After Severus's death, he joined Caracalla. During the five years that followed Caracalla's extension of Roman citizenship to all the inhabitants of the Empire, Ulpianus composed an impressive amount of legal works until 217 CE. The motivations for this five year-long writing program remain uncertain. Some scholars have insisted on the fact that he would have chosen to devote himself to scholarship when Caracalla's regime became tyrannical. Others consider that this legal enterprise fitted in very well with the effects of the *Constitutio Antoniniana*. The extension of Roman citizenship had to go along with a better and clearer exposition of Roman law (these two theories are exposed in Honoré, *Ulpian*, p. 26-29, we prefer the second one). We can ignore whether Ulpianus actually held office under Elagabalus, yet he is attested at the office of *praefectus annonae* in 222 CE, under Severus Alexander's reign. The same year he was nominated praetorian prefect, but he was killed by the praetorian guard in 223 CE (this presentation of Ulpian's life is based on Honoré, *Ulpian*, p. 1-46).

The text presented here is extracted from the work *On the Office of the Proconsul* which Ulpianus may have composed in 213 CE, that is at the beginning of the five year period of composition of his legal writings (according to Tony Honoré's dating; see Honoré, *Ulpian*, p. 153-156). This work is part of a group of works in which he deals with the offices of various magistrates, in this case that of provincial governors.

Ulpian is one of the jurists whose work was the most selected and commented on by the jurists in charge of the redaction of the 50 books of Justinian's *Digest*, between the 15th December 530 CE (the moment when they had been appointed to this task) and the 30th December 533 CE (when the *Digest* went into effect). The *Digest* was a collection of selections of the works written by 38 classical jurists. This implies that the redactors of the *Digest* selected, shortened, rephrased or even sometimes modified the original content of the jurisprudential works to create a new and coherent collection of jurisprudence (on the interpolations in the *Digest*, see recently Kaiser, "Justinian and the *Corpus Iuris Civilis*," p. 128-130). Finally, it is important to recall that the redactors of the *Digest* inserted the text presented here in Book 48 (the book dealing with public criminal law), more precisely under the title *lex Cornelia* on murderers and poisoners (for a general presentation of the *Digest*, see Kaiser, "Justinian and the *Corpus Iuris Civilis*," p. 124-125, 127-130).

The second paragraph of the text presented here interests us as it deals with a rescript of Hadrian in which he recalls that the practice of castration is prohibited. This law was inserted under the title *lex Cornelia* on murderers and poisoners of the *Digest* because people convicted of having practiced castration on somebody else or even on themselves were considered as criminals and were punished according to the penalties established in the *lex Cornelia*. Moreover, we can deduce from the content of the preamble that, in this part of the seventh book of his work *On the Office of the Proconsul*, Ulpian may have collected legal texts recalling the responsibility of the provincial governors to judge according to the statutes all the criminal cases implying the death of a man that were brought before them.

The global aim of the rescript of Hadrian quoted in paragraph 2 is to prevent people from making *spadones*. The term *spado* is quite generic and could be used to refer to various situations. Ulpian himself defines the term in this way: "The terminology of eunuchs (*spadones*) is general; are included under that name not only those who are impotent by nature (*qui natura spadones sunt*), as well as those whose genitals have been squeezed or crushed



(*item thlibiae thlasiae*), but also the eunuchs of all kinds (*quod alius genus spadonum est*)" (*Digest* L.16.128 (Ulpianus, *Lex Iulia et Papia* I)). Thus, *spadones* could refer to pathologically impotent men or men who had endured any kind of castration (on the term *spado*, see Cordier, "L'étrange sexualité," p. 70-72). In the context of the rescript of Hadrian quoted here, the term *spadones* seems to refer to castrated men in general.

First, it is important to note that Hadrian's rescript against castration fits into a long tradition of imperial regulations going back to Domitian. Actually to react against the increase of the practice of castration and to limit the flourishing trade of eunuchs at the end of the first century CE, Domitian may have been the first emperor who tried to regulate the situation by prohibiting all kinds of castration of males within the boundaries of the Empire. Suetonius thus writes that: "He (i.e. Domitian) prohibited the castration of males, and he lowered the price of eunuchs who remained in the hands of slave-dealers" (Suetonius, *Domitian* VII.1: ... *castrati mares vetuit; spadonum, qui residui apud mangones erant, pretia moderatus est*; this prohibition is confirmed in other narratives: Martial, *Epigrams* VI.2; Statius, *Silvae* IV.3.13; Philostratus, *The Life of Apollonius of Tyana* VI.42; Cassius Dio, *Roman History* LXVII.2.3; Ammianus Marcellinus, *Res Gestae* XVIII.4.5). As the eunuchs were categorised along with 'luxury items' and since, during the whole imperial period, the rich Roman aristocrats were able to spend unreasonable amounts of money for having eunuchs in their entourage, this law of Domitian should be understood as a censorial law whose aim was to incite senators to limit their sumptuary expenses and thus to protect the goods of the aristocratic families (see Cordier, "L'étrange sexualité," p. 67-68). However, Domitian's legislation was not enough and, under Nerva, another measure restated the prohibition and specified the material penalties that should be imposed on castrators. Two sources deal with this issue. First, Cassius Dio who reports Nerva's approach: "Among his various laws were those prohibiting the castration of any man (???? ?? ?? ?????????????? ?????)" (Cassius Dio, *Roman History* LVIII.2.4). Second, in a passage of the *Digest* appearing under the same title than the text presented here, which is a quotation of a section of Venuleius Saturninus's *Duties of the Proconsul* I, it is stated: "It is provided by a *senatus consultum* given in the consulship of Neratius Priscus and Annius Verus that whoever hands his slave over for castration (*qui servum castrandum tradiderit*) is fined half his property" (*Digest* XLVIII.8.6; we follow here the translation proposed by Alan Watson in Mommsen, Krueger and Watson, *The Digest of Justinian*).

Thus, Hadrian's ban on castration should be understood in the continuity of these previous laws enacted under Domitian and Nerva. However, as we do not have the exact and original content of these previous laws, it is impossible to say with certainty whether Hadrian's rescript reiterated the content of the previous laws or if it added new elements. All that we can say is that this Hadrianic ban on castration envisages all the situations in which castration could be practiced. This general scope of the rescript is well resumed in the sentence: "For no one should castrate another man whether of free condition or a slave, willing or unwilling, nor should anyone offer himself voluntarily to castration." Hadrian not only enumerates all the situations in which castration could be practiced in order to produce a general ban of the practice, but he also recalls important rules concerning the judgement of these cases. First, people accused of castration will be tried *in absentia* if they do not go to court. Second, the governor of the province has to give a hearing to every person – we can imagine whatever his social status – who would lodge a complaint for having been subjected to castration. To the difference of the previous laws, the Hadrianic statement makes it clear that anybody guilty of having practiced castration on somebody else or on himself, must be punished under the *Lex Cornelia de sicariis et veneficis*. In the same title of the *Digest*, has been preserved a passage taken from the *Institutes* of Marcianus in which it is said that the inclusion of legislation of castration under the *lex Cornelia* had been made possible thanks to a *senatus consultum*, however the absence of reference to any emperor prevents to date this element precisely (*Digest* XLVIII.8.3.4 (Marcianus, *Institutes* XIV)). The following sentence explicitly states however that castration was considered as a murder, and so as a crime, and that it implied exile and confiscation of goods for the *honestiores* and death for the *humiliores* (*Digest* XLVIII.8.3.5).

Thus, even if it is impossible to say that the inclusion of legislation concerning castration under the *lex Cornelia* occurred under the reign of Hadrian, another constitution of this same emperor demonstrates that the prohibition of every practice of castration – which mainly concerned slaves – was a subject of priority for him. In *Digest* XLVIII.8.5 an excerpt from Paul's *On the Office of the Proconsul* II has been preserved, that quotes another edict of Hadrian sent to the proconsul Ninnius Hasta dealing with a specific case of castration: "Under the constitution of the deified Hadrian to Ninnius Hasta, those who squeeze the testicles (*qui thlibias faciunt*) of others are in the same position as those who castrate them (*castrant*) [with a knife]" (note that some scholars consider that Ninnius Hasta was proconsul of Africa in 128-129 CE, whereas others consider that he may have been proconsul of Asia, perhaps in 127-128 CE; see *PIR*² N 101; Syme "Les proconsuls d'Afrique," p. 344-345). All these instances show that the Hadrianic period must have been a time of intensification of legal production in order to forbid all castration practices. According to Raanan Abusch, this intensification should be understood within the context of the broader evolution of the Roman slave law (see Abusch, "Negotiating Difference," in particular p. 74-76).



The interpretation of the last sentence of the text, in which it is stated that doctors who would “perform the excision (*exciderit*)” shall be punished by death as anyone who would voluntarily offer himself for excision (*excidendum*), is certainly the one which has been the most debated. For some scholars, this last sentence would show that Hadrian not only restated prohibition of castration, but also included it in a general banning of circumcision (Rabello, “Il problema,” p. 201-204; Méléze-Modrzejewski, “*Filios suos tantum*,” p. 120-121; Méléze-Modrzejewski, *Un peuple de philosophes*, p. 378-380). For these scholars this text would thus confirm the testimony of the *Historia Augusta*, when, in the *Life of Hadrian*, it is written that the Jews revolted in 132 CE because they had been “forbidden to mutilate their genitals” (on the debate related to the existence of the Hadrianic ban of circumcision see [Historia Augusta, Life of Hadrian XIV.2](#)). However, as the verb *excidere* means “to take off by cutting” and as it could refer both to cut the testicles or the foreskin, some scholars have argued that this sentence may refer to castration only (Schäfer, *Der Bar Kokhba-Aufstand*, p. 39-40; Abusch, “Negotiating Difference,” p. 77-79). In fact, the main argument used by the supporter of the first reading is that the last sentence would repeat elements that had been already stated previously. This argument is partially debatable. First, the question of the penalty that should be taken against doctors is not mentioned before. The second point, that people who would practice voluntarily circumcision on themselves must be punished, was only implied by the previous *sinentem* (meaning “allowing [castration] to be done”). However, the penalty was not specified whereas it is the case in the last sentence. Third, it is important to keep in mind that we may have here an abridged version of the rescript of Hadrian due to the successive compilations of the jurists. The way in which the original text was abridged may have created some slight inconsistencies. Believing that the last references to excision refer to castration, Raʿanan Abusch has also recalled that it is hard to explain why the style of Hadrian’s rescript would have been so sibylline and would have implied circumcision under the vague term of excision. In fact, the verb *circumcidere* existed and was already in use for a long time (Abusch, “Negotiating Difference,” p. 77). If Hadrian had been the first to edict a ban on circumcision, why not formulate it in a clear and explicit way? All these factors show that the reading according to which the rescript of Hadrian presented here deals only with castration is quite convincing. Putting this into perspective, this text and *Digest XLVIII.8.5* quoting the response of Hadrian to the proconsul Ninnius Hasta regarding what the latter should decide for the men who did not cut but squeeze the testicles of other men, Raʿanan Abusch suggests that the proconsul Ninnius Hasta might have asked some clarification to Hadrian to know if the squeezing of testicles was also included in his previous banning of castration. Raʿanan Abusch thus writes: “It was crystal clear to him (i.e. Ninnius Hasta) at least that the direct object of *excidere* was *testiculos*, since the technical terminology used in the rescript naturally evoked for him the Greek medical language of castration, in which the crushing of testicles (*thlibia*) was regularly juxtaposed with excision” (Abusch, “Negotiating Difference,” p. 78).

To conclude, we have seen that the arguments used to present this text as a proof of the fact that Hadrian was the first emperor to establish a ban on circumcision via its incorporation into the legal framework that already prohibited all kinds of castrations, seem quite weak. We would rather interpret this rescript of Hadrian as being a ban on castration whose aim was to prohibit all kinds of castration practices: castrations practiced on free or unfree men, but also on unwilling or willing persons. Nothing thus proves that the verb *excidere* used in the last sentence actually refers to the cutting of the foreskin. Finally, it is interesting to note that this legislation of Hadrian on castration must have served as the legal framework in which Antoninus Pius could have later developed his own legislation on circumcision (see [Digest XLVIII.8.11 \(Modestinus, Legal Rules VI\)](#)). This rescript of Antoninus Pius is the first Roman legal source proposing a legal definition of circumcision and prohibiting its practice by Jews on non-Jews. It is thus interesting to see that Antoninus Pius applied the same sentencing regime as the one applied for castration to the circumcision of non-Jews by Jews. This decision raises of course the question of what the relationship between castration and circumcision were in the Roman mentality. Pierre Cordier has rightly shown that, at least until the Antonine period, Romans did not perceive circumcision as a genital mutilation (see Cordier, “Les Romains”). The main problem for the Roman legislator was that circumcision, as castration, was perceived as a mark of deviance and of social subversion. Circumcision and castration were a threat to the Roman *mores*. Like some castrated slaves who could continue to have endless sexual intercourses without risking conception or who would accept to be the sexual instrument of every *dominus* or *domina*, the circumcised was perceived by the Romans as a man able of incredible sexual prowess with its priapic sex (see Cordier, “Les Romains”; Cordier, “L’étrange sexualité,” p. 74; [Martial, Epigrams VII.30, 55, 82](#)). Thus, the repression of castration, like that of circumcision, can be understood as phenomenon that may have been motivated by the will of some emperors to assert their moral role and mission. To do so, the banning of castration fitted in with a political ideal that consisted in reasserting the importance of the preservation of the Roman civic ideal. According to Pierre Cordier, the aim of the interdiction of castration, as that of circumcision, may thus have been to defend and to promote the “traditional Roman norms” as “fundamental to social order” (Cordier, “L’étrange sexualité,” p. 74).



Keywords in the original language:

- [capitale](#)
- [castro](#)
- [crimen](#)
- [edictus](#)
- [excido](#)
- [fiscus](#)
- [Hadrianus](#)
- [iniuria](#)
- [lex Cornelia de sicariis](#)
- [liber](#)
- [medicus](#)
- [praeses provinciae](#)
- [servus](#)
- [spado](#)
- [ultimum supplicium](#)
- [virilitas](#)

Thematic keywords in English:

- [castration](#)
- [circumcision](#)
- [confiscation](#)
- [death penalty](#)
- [eunuch](#)
- [excision](#)
- [Hadrian](#)
- [lex Cornelia de sicariis](#)
- [master](#)
- [slave](#)
- [virility](#)

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