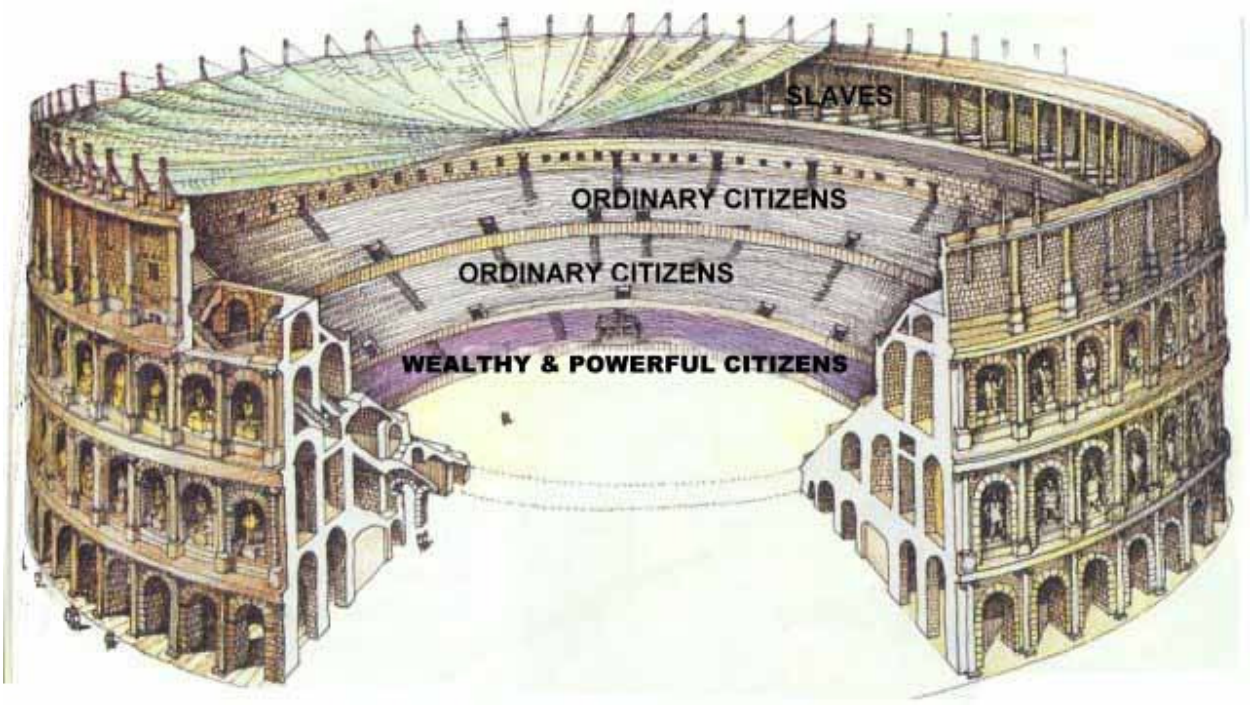
ANCIENT ROMAN LAW



As the empire developed, the emperor stood at the top of the administrative system. He served as military commander in chief, high priest, court of appeal, and source of law. All this power was intensely personal: Soldiers swore their oath to the emperor, not to a constitution or a flag. Personal ties of patronage, friendship, and marriage had always bound together Roman society, but during the empire the emperor became the universal patron.

Military loyalty, bureaucracy, and imperial succession were all viewed in personal terms. This concentration of power produced a court in which government officials and the imperial family competed with poets, astrologers, doctors, slaves, and actors for the emperor's attention and favor. The emperor's own slaves and freedmen dominated the clerical and financial posts and formed the core of imperial administration just as they did in the household administration of any Roman aristocrat. Deep ties of loyalty bound Roman freedmen and slaves to their patrons so that they faithfully served even the most monstrous emperors.

The emperors took over the Senate's political and legislative power, but they needed the help of senators who had experience in diplomacy, government, and military command. Since the emperor designated candidates for all government positions, senators had no other access to high office except through loyal service. A shrewd emperor could turn senatorial pride and loyalty to the advantage of the empire. By simply allowing senators to wear a broad purple stripe on their togas, for example, the emperor marked them as rulers of the Mediterranean and added to their prestige.

Only when emperors treated senators with contempt did the senators feel justified in conspiring against the emperor under the banner of freedom. Some ambitious senators dreamed of reaching supreme power and even of replacing the emperor. An occasional opportunity presented itself - Nero's death brought four senators to the imperial throne in the single year of AD 69.

However, most senators remained loyal to the emperor because the constant danger of displeasing suspicious emperors outweighed the remote chance of success. As the old noble families died out, the emperors found new blood among the local elite of Italy and the provinces. In the 2nd century AD more than half the senators were of provincial origin.

The emperor Augustus had first given the equestrian order increased responsibilities, and they continued to play an important role in the governance of the empire. Only a few of the equites actually worked for the emperor, some served as officers of Rome's auxiliary forces, and others as civil administrators.

Most members of this order remained in their home cities - there were 500 in the Spanish seaport of Cadiz alone - and formed the basis of a loyal elite that characterized the early empire. As the government expanded, the "equestrian career" began to resemble a modern civil service with ranks, promotions, and a salary scale. While retired centurions occasionally advanced into the equestrian order and equestrians into the Senate, social mobility remained limited.

The emperors tried to keep the equestrians loyal by permitting them signs of privilege similar to senators. Tens of thousands of equestrians across the empire marked their status by wearing togas with a narrow purple stripe and sitting in the front row at public games.

Senators and equestrians whom the emperor appointed as governors, generals, and prefects held substantial power in the provinces, although provincial administration was initially restricted to issues of taxation and law and order. The system grew increasingly complex, but it always remained rather small for such an expansive empire.

Twelfth-century China had an elite government official for every 15,000 subjects, as compared to Rome, which had one for every 400,000 people in the empire. Such figures are crude, but they show that Roman administration was less intrusive than its counterparts in China and many other modern states. The empire, with its limited administrative system, could not have functioned without local officials in the provinces or subject kings appointed by Rome, like Herod the Great in Judea.

Historians often focus on political leaders, but it is local grievances about high taxes, crime, or the price of bread that most often provoke people to revolt against a government. The Romans relied on civil laws to address a variety of these issues. Roman law in the republic was often based on custom. During the Roman Empire, however, the emperor became the final source of law.

People in the provinces were well aware that the emperor sat atop the chain of command as recorded in the New Testament to the Bible. In regard to taxation, for example, a passage in Luke 2:1 notes: "And it came to pass in those days, that a decree went out from Caesar Augustus, that the whole world should be enrolled to be taxed." However, popular anger over issues such as taxation was still directed toward the political officeholders who administered the laws.

Roman law was one of the most original products of the Roman mind. From the Law of the Twelve Tables, the first Roman code of law developed during the early republic, the Roman legal system was characterized by a formalism that lasted for more than 1,000 years. The basis for Roman law was the idea that the exact form, not the intention, of words or of actions produced legal consequences. To ignore intention may not seem fair from a modern perspective, but the Romans recognized that there are witnesses to actions and words, but not to intentions.

Roman civil law allowed great flexibility in adopting new ideas or extending legal principles in the complex environment of the empire. Without replacing older laws, the Romans developed alternative procedures that allowed greater fairness. For example, a Roman was entitled by law to make a will as he wished, but, if he did not leave his children at least 25 percent of his property, the magistrate would grant them an action to have the will declared invalid as an "irresponsible testament." Instead of simply changing the law to avoid confusion, the Romans preferred to humanize a rigid system by flexible adaptation.

Early Roman law derived from custom and statutes, but the emperor asserted his authority as the ultimate source of law. His edicts, judgments, administrative instructions, and responses to petitions were all collected with the comments of legal scholars. As one 3rd-century jurist said, "What pleases the emperor has the force of law." As the law and scholarly commentaries on it expanded, the need grew to codify and to regularize conflicting opinions. It was not until much later in the 6th century AD that the emperor Justinian I, who ruled over the Byzantine Empire in the east, began to publish a comprehensive code of laws, collectively known as the Corpus Juris Civilis, but more familiarly as the Justinian Code.

Republican Roman Government

The Romans never had a written constitution, but their form of their government, especially from the time of the passage of the *lex Hortensia* (287 B.C.), roughly parallels the modern American division of executive, legislative, and judicial branches, although the senate doesn't neatly fit any of these categories. What follows is a fairly traditional, Mommsenian reconstruction, though at this level of detail most of the facts (if not the significance of, e.g., the patrician/plebian distinction) are not too controversial. One should be aware, however, of the difficulties surrounding the understanding of forms of government (as well as most other issues) during the first two centuries of the Republic.

Executive Branch - Elected Magistrates

Collegiality: With the exception of the dictatorship, all offices were collegial, that is, held by at least two men. All members of a college were of equal rank and could veto acts of other members; higher magistrates could veto acts of lower magistrates. The name of each office listed below is followed (in parentheses) by the number of office-holders; note that in several cases the number changes over time (normally increasing).

Annual tenure: With the exception of the dictatorship (6 months) and the censorship (18 months), the term of office was limited to one year. The rules for holding office for multiple or successive terms were a matter of considerable contention over time.

CONSULS (2): chief civil and military magistrates; invested with *imperium* (consular *imperium* was considered *maius* ("greater") than that of praetors); convened senate and curiate and centuriate assemblies.

PRAETORS (2-8): had *imperium*; main functions (1) military commands (governors) (2) administered civil law at Rome.

AEDILES (2): plebian (plebian only) and curule (plebian or patrician); in charge of religious festivals, public games, temples, upkeep of city, regulation of marketplaces, grain supply.

QUAESTORS (2-40): financial officers and administrative assistants (civil and military); in charge of state treasury at Rome; in field, served as quartermasters and seconds- in-command.

TRIBUNES (2-10): charged with protection of lives and property of plebians; their persons were inviolable (sacrosanct); had power of *veto* (Lat. "I forbid") over elections, laws, decrees of the senate, and the acts of all other magistrates (except dictator); convened tribal assembly and elicited plebiscites, which after 287 B.C. (*lex Hortensia*) had force of law.

CENSORS (2): elected every 5 years to conduct census, enroll new citizens, review roll of senate; controlled public morals and supervised leasing of public contracts; in protocol ranked below praetors and above aediles, but in practice, the pinnacle of a senatorial career (ex- consuls only) -- enormous prestige and influence (*auctoritas*).

DICTATOR (1): in times of military emergency appointed by consuls; dictator appointed a Master of the Horse to lead cavalry; tenure limited to 6 months or duration of crisis, whichever was shorter; not subject to veto.

ROMAN SENATE

The story of the Roman Senate goes way back to a time before there was an accurate written history for Rome. The Senate was composed of leading citizens who were members of the original aristocratic families in the old Republic. The original purpose of this group was to advise the King. This worked well during the first two centuries of Rome's existence when Rome was little more than a city-state built on seven hills and ruled by a king. The Senate originally had one hundred members chosen from amongst

the Patrician class but the early kings soon increased its size to three hundred members. After the expulsion of the last Tarquin, Tarquinius Superbus, the Senate formed the main governing body of the Roman Republic. The two consuls, the chief ruling Magistrates of the Republic were chosen by the Senate, which served as the advisory body to the consuls.

Cornelius Sulla was the first to use an army to usurp the power of the Senate. He had many members of the Senate murdered who opposed his regime. He also increased the number of senators from 300 to 600. Many of these new senators appointed by Sulla were not Patricians, but instead members of the Equestrian Order who had supported Sulla's takeover of the government.

The Roman Republic was a form of government that worked well with a city-state or even a group of powerful city-states in control of a region. With the annexation of Spain, Macedonia, Greece, the East, and North Africa in the Second Century B. C., Rome had come to control a vast empire and the Republic with its two consuls, senate, and small group of magistrates was not an adequate government for an empire of the size Rome had acquired.

Many of the early senators were great orators and we have their words preserved for us today by contemporary historians. Cato the Censor, Cicero, and others sometimes swayed the opinion of the entire population of Rome with their fine oratory and persuasive arguments.

The early years of the First Century B. C. ushered in a long period of civil war that began with the struggle between Sulla and Marius and reached a climax with Octavian's defeat of Marcus Antonius at the Battle of Actium in 31 B. C. During that period, the Senate steadily lost power to the imperators, or generals of large Roman armies who controlled the government. In 27 B. C., the Senate voluntarily gave much of its power to Octavian, whom they had given the title of Augustus. While most of the early emperors tried to involve the Senate in the governing process and actively sought its counsel, most of the Senate's real power was gone by the reign of Tiberius. Domitian was hostile to most of the Senate and Septimius Severus openly thumbed his nose at this once powerful Roman governing body.

During the later Roman Empire, the Senate had become more of an elite club for members of old aristocratic and equestrian families. It had no real governing power and its approval of acts of the emperor his laws was purely ceremonial. By this time, there were over one thousand senators. The Roman Senate survived even after the fall of the Roman Empire in the West when Rome had sunk to the status of a medium sized Italian city. Boethius, the Sixth Century advisor and close friend to Theodoric the Ostrogoth declared that the thing that made him happiest in his life was when his two sons were made Roman Senators.

FUNCTIONS OF THE ROMAN SENATE

-originally an advisory board composed of the heads of patrician families, came to be an assembly of former magistrates (ex-consuls, -praetors, and -questors, though the last appear to have had relatively little influence); the most powerful organ of Republican government and the only body of state that could develop consistent long-term policy.

-enacted "decrees of the senate" (senatus consulta), which apparently had not formal authority, but often in practice decided matters.

-took cognizance of virtually all public matters, but most important areas of competence were in foreign policy (including the conduct of war) and financial administration.

LEGISLATIVE BRANCH - the three citizen assemblies (cf. Senate)

-all 3 assemblies included the entire electorate, but each had a different internal organization (and therefore differences in the weight of an individual citizen's vote).

-all 3 assemblies made up of voting units; the single vote of each voting unit determined by a majority of the voters in that unit; measures passed by a simple majority of the units.

-called *comitia*. specifically the *comitia curiata*, *comitia centuriata*, and *comitia plebis tributa* (also the *concilium plebis* or *comitia populi tributa*).

CURIATE ASSEMBLY: oldest (early Rome); units of organization: the 30 curiae (sing: curia) of the early city (10 for each of the early, "Romulan" tribes), based on clan and family associations; became obsolete as a legislative body but preserved functions of endowing senior magistrates with imperium and witnessing religious affairs. The head of each curia ages at least 50 and elected for life; assembly effectively controlled by patricians, partially through clientela)

CENTURIATE ASSEMBLY: most important; units of organization: 193 centuries, based on wealth and age; originally military units with membership based on capability to furnish armed men in groups of 100 (convened outside pomerium); elected censors and magistrates with imperium (consuls and praetors); proper body for declaring war; passed some laws (*leges*, sing. *lex*); served as highest court of appeal in cases involving capital punishment. 118 centuries controlled by top 3 of 9 "classes" (minimum property qualifications for third class in first cent. B.C.-HS 75,000); assembly controlled by landed aristocracy.

TRIBAL ASSEMBLY: originally for election of tribunes and deliberation of plebeians; units of organization: the urban and 31 rural tribes, based on place of residence until 241 B.C., thereafter local significance largely lost; elected lower magistrates (tribunes, aediles, quaestors); since simpler to convene and register 35 tribes than 193 centuries, more frequently used to pass legislation (plebiscites). Voting in favor of 31 less densely populated rural tribes; presence in Rome require to cast ballot: assembly controlled by landed aristocracy (villa owners). Eventually became chief law-making body. < criminal and civil -- BRANCH>Civil litigation: chief official-Praetor. The praetor did not try

cases but presided only in preliminary stages; determined nature of suit and issued a "formula" precisely defining the legal point(s) at issue, then assigned case to be tried before a delegated judge (iudex) or board of arbiters (3-5 *recuperatores* for minor cases, one of the four panels of "The one hundred men" (*centumviri*) for causes célèbres (inheritances and financial affairs of the rich)). Judge or arbiters heard case, rendered judgment, and imposed fine.

Criminal prosecution: originally major crimes against the state tried before centuriate assembly, but by late Republic (after Sulla) most cases prosecuted before one of the *quaestiones perpetuae* ("standing jury courts"), each with a specific jurisdiction, e.g., treason (*maiestas*), electoral corruption (*ambitus*), extortion in the provinces (*repetundae*), embezzlement of public funds, murder and poisoning, forgery, violence (*vis*), etc. Juries were large (c. 50-75 members), composed of senators and (after the turbinate of C. Gracchus in 122) knights, and were empanelled from an annual list of eligible jurors (briefly restricted to the senate again by Sulla).

OTHER

First plebeian consul in 366 B.C., first plebeian dictator 356, first plebeian censor 351, first plebeian praetor 336.

The many priestly colleges (*flamines, augures, pontifex maximus*, etc.) were also state offices, held mostly by patricians.

Imperium is the power of magistrates to command armies and (within limits) to coerce citizens.

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JUDEX. A Roman magistratus generally did not investigate the facts in dispute in such matters as were brought before him: he appointed a Judex for that purpose, and gave him instructions. [ACTIO, INTERDICTUM.] Accordingly, the whole of Civil procedure was expressed by the two phrases Jus and Judicium, of which the former comprehended all that took place before the magistratus (in jure), and the latter all that took place before the judex (in judicio). The meaning of the term Judices in a passage of Livy (Liv. iii.55) is uncertain. In the Theodosian Code the term Judex designates the governor of a province. From the earlier periods to the time of Constantine it designated a person, whose functions may be generally understood from what follow.

In many cases a single Judex was appointed: in others, several were appointed, and they seem to have been sometimes called Recuperatores as opposed to the single Judex (Gaius, iv.104-109). Under certain circumstances the Judex was called Arbiter: thus Judex and Arbiter are named together in the Twelve Tables (Dirksen, *Uebersicht,* &c. p725).

A Judex when appointed was bound to discharge the functions of the office, unless he had some valid excuse (excusatio). A person might also be disqualified from being a Judex. There were certain seasons of the year when legal business was done at Rome (cum res agebantur, Gaius, ii.279), and at these times the services of the judices were required. These legal terms were regulated according to the seasons, so that there p647were periods of vacation (Cic. *ad Att.* i.1; cum Romae a judiciis forum refrixerit): in the provinces, the terms depended on the Conventus. A Judex was liable to a fine if he was not in attendance when he was required. In any given case, the litigant parties agreed upon a judex or accepted him whom the magistrates proposed. A party had the power of rejecting a proposed judex, though there must have been some limit to this power (Cic. *pro Cluent.* 43). In cases where one of the litigant parties was a peregrinus, a peregrinus might be judex (Gaius, iv.105). The judex was sworn to discharge his duty faithfully (Cic. *de Invent.* i.39).

When Italy had received its organization from the Romans, the magistratus of the several cities had jurisdictio, and appointed a Judex as the praetor did at Rome *(Lex Rubria de Gallia Cisalpina).* In the provinces, the governors appointed a Judex or Recuperatores, as the case might be, at the Conventus which they held for the administration of Justice; and the Judex or Recuperatores were selected both from Roman citizens and natives.

When the Judex was appointed, the proceedings in jure or before the praetor were terminated, which was sometimes expressed by the term Litis Contestatio, the phrases Lis Contestata and Judicium acceptum or ordinatum, being equivalent in the classical jurists. [LITIS CONTESTATIO.] The parties appeared before the Judex on the third day (comperendinatio), unless the praetor had deferred the judicium for some sufficient reason. The Judex was generally aided by advisors (jurisconsulti) learned in the law, who were said "in consilio adesse" (Cic. *pro P. Quintio,* 2.6, *Top.* 17); but the Judex alone was empowered to give judgment. The matter was first briefly stated to the Judex (causae conjectio, collectio), and the oratores or patroni of each party supported his cause in a speech. The evidence seems to have been given at the same time that the speeches were made, and not to have been heard before the patroni made their address (Cic. *pro Rosc. Com.* 14, *pro P. Quintio,* 18). But it is probable that the practice in this respect might vary in different cases. Witnesses were produced on both sides and examined orally; the witnesses on one side were also cross-examined by the other (Cic. *pro Caecina,* 10, *pro Flacco,* 10). Written documents, such as instruments and books of account, were also given in evidence; and sometimes the deposition of an absent witness was read, when it was confirmed

by an oath (Cic. *pro Rosc. Com.* 15, Cic. *ad Att.* ii.12, xiv.15). There were no direct means of compelling a person to give evidence before the legislation of Justinian, unless they were slaves, who in some cases might be put to the torture. As to the application of the oath in judicio, see JUSJURANDUM.

After all the evidence was given and the patroni had finished, the judex gave sentence: if there were several judices, a majority decided. If the matter was one of difficulty, the hearing might be adjourned as often as was necessary (ampliatio); and if the judex could not come to a satisfactory conclusion, he might declare this upon oath and so release himself from the difficulty. This was done by the form of words "non liquere" (**N.L.**) (Gell. xiv.2). The sentence was pronounced orally, and was sometimes first written on a tablet. If the defendant did not make his appearance after being duly summoned, judgment might be given against him (judicium desertum, eremodicium), according to the proof which the plaintiff had made. If the plaintiff did not appear, the defendant could demand an acquittal (Dig. 40 tit.12 s27 § 1, 49 tit.1 s28, pr.).

The sentence was either of Absolutio or Condemnatio. That part of the formula which was called the Condemnatio [ACTIO, p12b], empowered the Judex to condemn or acquit (condemnare, absolvere, Gaius, iv.43). The defendant might satisfy the plaintiff after the judicium had been constituted by the litis contestatio (post acceptum judicium, Gaius, iii.180, iv.114), and before judgment was given; but in this case it was a disputed question between the two schools whether the judex should acquit, or whether he should condemn on the ground that at the time when the judicium was constituted, the defendant was liable to be condemned and it was the business of the judex merely to follow his instructions. The dispute accordingly involved one of those principles on which the schools were theoretically divided,— the following out of a legal principle to all its logical consequences; but, like many other questions between the schools, this question was practically of no importance, as the plaintiff would not be allowed to have satisfaction twice.

While the Legis actiones were in force, the judgment was for the restitution of a thing, if a given thing (corpus) was the object of the action; but under the process of the formula, the Judex gave judgment, pursuant to the formula, in a sum of money, even when a piece of property was the object of dispute. The sum of money was either fixed or not fixed in the formula. If the claim was for a certain sum of money, the amount was inserted in the condemnatio, and the judex was bound to give that or nothing to the plaintiff. If the claim was for damages or satisfaction, the amount of which was not ascertained, the condemnatio was either limited to a sum named in the formula, and which the judex could not exceed except at his own peril (litem suam faciendo); or, if the action was for the recovery of property from the possessor, or if it was an actio ad exhibendum, the condemnatio empowered the judex to condemn the defendant in the value of the thing. Generally, the term in the formula which expressed the value which was the object of the demand was, "quanti res est." Res may mean either a thing in the limited sense of the word, or generally the claim or demand, and the fixing this at a money value, was equivalent to litis aestimatio. The judex was always bound to condemn in some definite sum, even though the formula did not contain a definite sum: the reason of which is obvious, for, unless the condemnatio was definite, there would be no judgment (Gaius, iv.48-52).

The following is the distinction between an Arbitrium and Judicium, according to Cicero *(pro Rosc. Com. 4)*:— In a judicium the demand was of a certain sum or definite amount (pecuniae certae); in an arbitrium, the amount was not determined (incerta). In a judicium the plaintiff obtained all that he claimed or nothing, as the words of the formula show: "Si paret H.S. ICCC dari oportere (cf. Gaius, iv.50). The corresponding words in the formula arbitraria were: "Quantum aequius melius id dari;" and their p648equivalents were, "Ex fide bona, Ut inter bonos

bene agier" *(Top. 17)*. In a dispute about dos, which Cicero calls "arbitrium rei uxoriae," the words, "Quod aequius, melius," were added (cf. Gaius, iv.47, 62). If the matter was brought before a judex, properly so called, the judicium was constituted with a poena, that is, per sponsionem; there was no poena, when an arbiter was demanded, and the proceeding was by the formula arbitraria. The proceeding by the sponsio then was the strict one (angustissima formula sponsionis, Cic. *pro Rosc. Com.* 14): that of the arbitrium was ex fide bona, and the arbiter, though he was bound by the instructions of the formula, was allowed a greater latitude by its terms. The engagement between the parties who accepted an arbiter, by which they bound themselves to abide by his arbitrium, was Compromissum *(pro Rosc. Com. 4.4)*; but this term was also employed, as it appears, to express the engagement by which parties agreed to settle their differences by arbitration, without the intervention of the praetor. Cicero appears to allude to this arbitration *(Pro P. Quintio, 5*; cf. Senec. *de Benef. iii.7)*.

In the division of judicial functions between the Magistratus and Judex consisted what is called the Ordo Judiciorum Privatorum, which existed in the early periods of Rome, and continued till the time of Constantine. At the same time with the Ordo Judiciorum Privatorum existed the proceeding extra ordinem or extraordinaria cognitio, in which the magistratus made a decision by a decretum, without letting the matter come to a judex. Finally, under the later empire the extraordinaria cognitio supplanted the old mode of proceeding.

According to Cicero *(pro Caecina, 2)* all Judicia had for their object, either the settlement of disputes between individuals (controversiae), or the punishment of crimes (maleficia). This passage refers to a division of Judicia, which appears in the Jurists, into Publica and Privata. The term Privata Judicia occurs in Cicero *(Top. 17)*, where it refers to the class of Judicia which he indicates in the *Caecina* by the term Controversiae. The term Publica Judicia might not then be in use, but the term Publica Causa is used by Cicero *(pro Rosc. Amer. c21)* with reference to a Judicium, which by the Jurists would be called Publicum. In the Digest (48 tit.1 s1) it is stated that all Judicia are not Publica in which a crimen was the matter in question, but only those in which the offence was prosecuted under some lex, such as the Julia Majestatis, Cornelia de Sicariis, and others there enumerated. The Judicia Popularia or Populares Actiones as they are called (Dig.47 tit.23 s1) are defined to be those by which "suum jus populus tuetur;" and they agreed with the Publica Judicia in this, that any person might be the prosecutor, who was not under some legal disqualification. The Judicia Populi (Cic. *Brut.* 27) were those in which the populus acted as judices; and accordingly Cicero enumerates the Populi Judicia among others when he says *(pro Domo, c13)* that "nihil de capite civis, aut de bonis, sine judicio senatus aut populi aut eorum qui de quaque re constituti judices sint, detrahi posse." As the Judicia Publica are defined by the jurists to be those in which crimina were tried by a special lex, it appears that the Judicia Populi, strictly so called, must have fallen into disuse or have gradually become unnecessary after the Judicia Publica were regulated by special leges; and thus the Judicia Publica of the later republican period represent the Judicia Populi of the earlier times. The Judicia Populi were originally held in the Comitia Curiata and subsequently in the Centuriata and Tributa. A lex of P. Valerius Publicola (Liv. ii.8; Cic. *Rep.* ii.31) gave an appeal (provocatio) to the populus from the magistratus; and a law of C. Sempronius Gracchus (Cic. *pro Rabir.* 4) declared to the same effect: "Ne de capite civium Romanorum injussu populi judicaretur."

The kings presided in the Judicia Populi, and the consuls succeeded to their authority. But after the passing of the Lex Valeria de Provocatione (B.C. 508) persons were appointed to preside at such trials as affected a citizen's caput, and they were accordingly called Quaesitores or Quaestores Parricidii or Rerum Capitalium. In some cases (Liv. iv.51) a plebiscitum was passed, by which a magistrate was appointed to preside at the judicial investigation. In the course of time,

as cases were of more frequent occurrence, these Quaestiones were made Perpetuae, that is, particular magistrates were appointed for the purpose. In the year 149 B.C. the tribune L. Calpurnius Piso Frugi carried a Lex de Pecuniis Repetundis, by which a Praetor presided at all such trials during his year of office, from which time the Quaestio Repetundarum became Perpetua. L. Sulla gave to one praetor the Quaestiones de Majestate, and to others those of Peculatus and Ambitus; and he also added four other Quaestiones Perpetuae. Thus he carried out the principle of the Lex Calpurnia, by establishing permanent courts for the trial of various specified offences, and the praetors determined among themselves in which of these new courts they should severally preside. The ordinary functions of the praetor urbanus and peregrinus were not interfered with by these new arrangements. The Quaestiones of Sulla were, De Repetundis, Majestatis, De Sicariis et Veneficis, De Parricidio, De Falsis or Testamentaria, and De Vi Publica. But in special cases the senate still sometimes by a decretum appointed the consuls as quaesitores, of which an example occurs in Cicero *(Brut. 22).*

Any person, not legally disqualified, might be an accuser (accusator) in a Judicium Publicum. On such an occasion a praetor generally presided as quaesitor, assisted by a judex quaestionis and a body of judices called his consilium. The judex quaestionis was a kind of assistant to the presiding magistratus, according to some opinions; but others consider him to be a quaesitor, who was sometimes specially appointed to preside on the occasion of a quaestio (Walter, *Geschichte des Röm. Rechts,* p861). The judices were generally chosen by lot out of those who were qualified to act. Both the accusator and the reus had the privilege of rejecting or challenging (rejicere) such judices as they did not like (Cic. *ad Att.* i.16). The judices appointed according to the provisions of the Lex Licinia de Ambitu, B.C. 55, were called edititii, and these were judices named by the accuser, whom the accused (reus) could not challenge (Cic. *pro Cn. Plancio,* 15, 17, ed. Wunder, *Prolegom.* p. lxxvi). The judices were called editi, when they could be challenged by the reus. In many cases a lex was passed for the purpose of regulating the mode of procedure. In the matter p649of Clodius and the Bona Dea, the senate attempted to carry a lex by which the praetor who was to preside at the trial should be empowered to select the judices, the effect of which would have been to prevent their being challenged by Clodius. After a violent struggle, a lex for the regulation of the trial was proposed by the tribune Fufius and carried: it only differed from the lex recommended by the senate in the mode of determining who should be the judices (judicum genus): a difference however which was not unimportant, as it secured the acquittal of Clodius. The judices voted by ballot, a majority determined the acquittal or condemnation of the accused. If the votes were equal, there was an acquittal (Plut. *Marius,* 5). Each judex was provided with three tablets (tabulae), on one of which was marked **A**, Absolvo; on a second **C**, Condemno; and on a third, **N.L.**, Non liquet. The judices voted by placing one of these tablets in the urn (urna, Juv. *Sat.* v.4), which was then examined for the purpose of ascertaining the votes. It was the duty of the magistratus to pronounce the sentence of the judices; in the case of condemnation, to adjuge the legal penalty; of acquittal, to declare him acquitted; and of doubt, to declare that the matter must be further investigated (amplius cognoscendum).

Mention is often made of the Judicia Populi in the Latin writers. A Judicium was commenced by the accuser, who must be a magistratus, declaring in a contio, that he would on a certain day accuse a certain person, whom he named, of some offence, which he also specified. This was expressed by the phrase "diem dicere" (Virginius Caesoni capitis diem dicit, Liv. iii.11). If the offender held any high office, it was necessary to wait till his time of service had expired, before proceedings could be thus commenced against him. The accused was required to give security for his appearance on the day of trial; the security was called vades in a causa capitalis, and praedes when the penalty for the alleged offence was pecuniary. If such security was not given, the accused was kept in confinement (Liv. iii.13). If nothing prevented the inquiry from taking place at the time fixed for it, the trial proceeded, and the accuser had to prove his case by evidence. The

investigation of the facts was called Anquisitio with reference to the proposed penalty: accordingly, the phrases pecunia, capite or capitis anquirere, are used (Liv. xxvi.3). When the investigation was concluded, the magistratus promulgated a rogatio, which comprehended the charge and the punishment or fine. It was a rule of law that a fine should not be imposed together with another punishment in the same rogatio (Cic. *pro Dom.* c17). The rogatio was made public during three nundinae, like any other lex; and proposed at the comitia for adoption or rejection. The form of the rogatio, the effect of which was to drive Cicero into banishment, is given in the Oration *Pro Domo,* c18. The accused sometimes withdrew into exile before the votes were taken; or he might make his defence, of which we have an instance in the oration of Cicero for Rabirius. Though these were called Judicia Populi, and properly so in the early ages of the state, the leges passed in such judicia in the latter period of the republic were often Plebiscita.

The offences which were the chief subject of Judicia Populi and Publica were Majestas, Adulteria and Stupra, Parricidium, Falsum, Vis Publica and Privata, Peculatus, Repetundae, Ambitus, which are treated under their several heads.

With the passing of special enactments for the punishment of particular offences, was introduced the practice of forming a body of Judices for the trial of such offences as the enactments were directed against. Thus it is said that the Lex Calpurnia De Pecuniis Repetundis established the Album Judicum Selectorum, or the body out of which the Judices were to be chosen. It is not known what was the number of the body so constituted, but it has been conjectured that the number was 350, and that ten were chosen from each tribe, and thus the origin of the phrase Decuriae Judicum is explained. It is easy to conceive that the Judicia Populi, properly so called, would be less frequent as special leges were framed for particular offences, the circumstances of which could be better investigated by a smaller body of Judices than by the assembled people. It is affirmed that up to the passing of the Calpurnia Lex, the Judices were chosen from the senators only, but after this time they were not taken from that body exclusively; and further, that not only the Judices in the Quaestiones de Repetundis, but also the Judices in private matters were from the date of this lex taken from the Album Judicum which was annually made (Goettling, *Geschichte der Röm. Staatsverfassung,* p425); for which there appears to be no evidence. Some modern writers affirm that by the Lex Calpurnia the Judices were chosen by the Praetor annually out of the body of senators, and arranged according to their tribes; and that the necessary number for each trial was chosen out of this body by lot.

As many of those who were tried in the quaestiones perpetuae belonged to the class of the Optimates, it often happened that the Judices acquitted those members of their own body, who would have been convicted by impartial judices. Accordingly a struggle arose between the popular party and the Optimates, whom the popular party wished to exclude from the office of Judex. The laws which relate to the constitution of the body of Judices are called Judiciariae, whether these laws related only to this matter, or made rules about it and other things also. The first lex which excluded the Senators from the Album judicum selectorum was a Lex Sempronia of C. Gracchus, B.C. 123, in accordance with which the judices were taken only from the Equites. This arrangement lasted above forty years, and gave satisfaction to the popular party; but it did not work well in all respects, because the magistrates in the provinces favoured the rapacity of the Publicani, in order to keep on good terms with the Equites, to which class the Publicani belonged (Cic. *Verr.* iii.41). A Lex Servilia Caepionis B.C. 106 is said to have repealed the Sempronia Lex; but this Lex Servilia was itself repealed by a Lex Servilia Glauciae repetundarum, probably in B.C. 104. This Lex is said to have given the Judicia to the Equites, and consequently it either repealed the Lex of B.C. 106 indirectly, or it may merely have confirmed the Lex Sempronia; for the real nature of the Lex of B.C. 106 is hardly ascertainanble. There is a passage in Tacitus

(*Ann.* xii.60) in which he speaks of the *Serviliae* leges restoring the Judicia to the senate. The Lex Servilia of B.C. 104 excluded from the function of p650Judices every person who had been tribunus plebis, quaestor, triumvir capitalis, tribunus militum in one of the first four legions, triumvir agris dandis assignandis, who was or had been in the senate, who was infamis, every person who was under thirty or above sixty years of age, every person who did not live in Rome or in the immediate neighbourhood, every father, brother, or son of a person who was or had been in the senate, and every person who was beyond seas. The Praetor who presided in this Quaestio, was to choose 450 judices, from whom the Judices for the particular case were to be taken by lot (Fragmenta Legis Serviliae Repetundarum, &c. C. A. C. Klenze, Berlin, 1825, 4to.).

The attempts of the tribune M. Livius Drusus the younger had no result [LEGES LIVIAE]. A Lex Plautia B.C. 89 enacted, that the Judices should be chosen by the tribes, five by each tribe, without any distinction of class. The Optimates triumphed under L. Cornelius Sulla, who by a Lex Cornelia B.C. 80 enacted that the Judices should be taken exclusively from the Senators. But a Lex Aurelia (B.C. 70) enacted that the Judices should be chosen from the three classes — of Senators, Equites, and Tribuni Aerarii (Vell. ii.32). The Tribuni Aerarii were taken from the rest of the citizens, and were, or ought to have been, persons of some property. Thus the three decuriae of Judices were formed; and it was either in consequence of the Lex Aurelia or some other lex that, instead of one urn for all the tablets, the decuriae had severally their balloting urn, so that the votes of the three classes were known. Dion Cass. (xxxviii.8) ascribes this regulation to a Lex Fufia, and he says that the object was that the votes of the decuriae (ἔθνη, γένη) might be known, though those of individuals could not, owing to the voting being secret. It is not known if the Lex Aurelia determined the number of Judices in any given case. A Lex Pompeia passed in the second consulate of Pompey (B.C. 55), seems to have made some modifications in the Lex Aurelia, as to the qualification of the Judices; but the new provisions of this lex are only known from Asconius, who explains them in terms which are very far from being clear. The Lex Pompeia de Vi, and De Ambitu (B.C. 52) determined that eighty judices were to be selected by lot, out of whom the accuser and the accuser might reject thirty. In the case of Clodius (B.C. 61), in the matter of the Bona Dea, there were fifty-six judices. It is conjectured that the number fixed for a given case, by the Lex Aurelia, was seventy judices.

A Lex Judiciaria of Julius Caesar (Sueton. *Jul.* 41; Cic. *Philip.* i.8) took away the decuria of the Tribuni Aerarii, and thus reduced the judices to two classes (genera, the γένη of Dion Cass.). A Lex Judiciaria, passed after his death by M. Antonius, restored the decuria of the Tribuni Aerarii, but required no pecuniary qualification from them: the only qualification which this lex required was, that a person should have been a centurion or have served in the legions. It appears that the previous Lex Pompeia, Lex Aurelia, and a Lex of Caesar, had given to those who had been centurions (qui ordines duxerant) the privilege of being judices (judicatus), but still they required a pecuniary qualification (census). The Lex of Antonius, besides taking away the pecuniary qualification, opened the judicia to the soldiers (Cic. *Phil.* i.8, v.5; Sueton. *J. Caes.* c41). It seems probable that the expression ex centuriis, which is used by Asconius in speaking of the change introduced by this Lex Pompeia, had reference to the admission of the centurions into the third class of judices.

Augustus, who altered the whole constitution of the body of judices by his leges judiciorum publicorum et privatorum, added to the existing three Decuriae Judicum, a fourth Decuria, called that of the Ducenarii, who had a lower pecuniary qualification, and only decided in small matters (de levioribus summis, Sueton. *Aug.* 32). Caligula (Suet. *Cal.* 16) added a fifth Decuria, in order to diminish the labours of the judices. Augustus had already allowed each Decuria, in its turn, an exemption for one year, and had relieved them from sitting in the months of November and

December. The whole number of judices was raised by Augustus to near 4000 (Plin. *H.N.* xxxiii.7); and the judices in civil cases were taken out of this body. They were chosen by the Praetors out of the persons who had the property qualification, and the duty of serving as a judex thus became one of the burdens to which citizens were liable.

As to the whole number of judices, included at any given time in the Album Judicum, it seems almost impossible to state any thing with precision; but it is obvious from what has been said, that the number must have varied with the various changes already mentioned. After the time of Augustus the number was about four thousand, and from this period, at least, there is no doubt that the Album Judicum contained the whole number of persons who were qualified to act as judices, both in Judicia Privata and Judicia Publica. The fourth Decuria of Augustus was limited in its functions to the Judicia Privata in which the matter in dispute was of small value. It is often stated by modern writers, without any qualification, that the various changes in the judiciary body from the time of the Lex Calpurnia to the end of the republic had reference both to the Judicia Publica and Privata; though it is also stated that the objects of these various enactments were to elevate or depress one of the great parties in the state, by extending or limiting the body out of which the judices in any given case were to be chosen. But it is obvious that these reasons do not apply to the matter of Judicia Privata, in which a single judex generally acted, and which mostly concerned matters of property and contract. Accordingly, a recent writer (Walter, *Geschichte des Röm. Rechts,* p716) has observed with more caution than some of his predecessors, that "there is no doubt that from the time of Augustus the Album Judicum had reference to the judices in civil matters, but that as to earlier times a difficulty arises from the fact that while the Lex Sempronia was in force, by which the senators were excluded from the Album Judicum, a Consularis is mentioned as a judex (Cic. *de Off.* iii.19); and, on the other hand, an Eques is mentioned as a judex at a time when the Lex of Sulla was in force, and consequently senators only could be judices (Cic. *Pro Rosc. Com.* c14)." these instances certainly are inconsistent with the fact of the Judicia Privata being regulated by the various Leges Judiciariae; but they are of small weight, compared with the reasons derivable from the character of the two p651kinds of Judicia and the difference in the mode of procedure, which render it almost a matter of demonstration that the various changes in the judiciary body had reference to the Quaestiones and Judicia Publica. It is true that some of these leges may have contained provisions even as to Judicia Privata, for many of the Roman leges contained a great variety of legislative provisions, and it is also true that we are very imperfectly acquainted with the provisions of these Leges Judiciariae; but that the regulation of the Judicia Privata was included in their provisions, in the same form and to the same extent as that of the Judicia Publica, is an assertion totally unsupported by evidence, and one which leads to absurd conclusions. Two Leges Juliae together with a Lex Aebutia put an end to the Legis Actiones (Gaius, iv.30); and a Lex Julia Judiciaria limited the time of the Judicia Legitima (Gaius, iv.104); but it does not appear whether these leges were passed solely for these objects, or whether their provisions were part of some other leges.

Bethmann-Hollweg *(Handbuch der Civilprozesses, p13)* observes: "the establishment of a more limited body of judices out of the senatorial body (album judicum selectorum), A.V.C. 605, the transfer of this privilege to the equites, by C. Gracchus, the division of it between both classes after long struggles and changes, and even the giving of it to the third class, whereby three classes or decuriae of judices were established; all these changes, which were so important in a constitutional point of view, referred especially to the criminal proceedings which were politically so important."

Questions and Answers on Roman Law

What is Roman Law?

Roman Law was the law that was in effect throughout the age of antiquity in the City of Rome and later in the Roman Empire. When Roman rule over Europe came to an end, Roman Law was largely--though not completely--forgotten.

In Medieval times (from about the 11th century onward) there was a renewed interest in the law of the Romans. Initially, Roman Law was only studied by scholars and taught at the universities, Bologna being the first place where Roman Law was taught. Soon Roman Law came to be applied in legal practice--especially in the area of civil law. This process of (re-) adoption (reception) of Roman Law occurred at varied times and to various extents across all of Europe (England being the most important exception). Thus from about the 16th century onward, Roman Law was in force throughout most of Europe. However, in the process of adoption/reception many Roman rules were amalgamated with, or amended to suit, the legal norms of the various European nations. Thus, Roman rules, applied in Europe at this period, were by no means identical with Roman Law from antiquity. Nonetheless, because the law that had evolved was common to most European countries, it was called the *Ius Commune* (common law).

In the form of the Ius Commune, Roman Law was in force in many jurisdictions until national codes superseded these rules in the 18th and 19th centuries. In many regions of the German Reich, Roman Law remained the primary source of legal rules until the introduction of the German Civil Code in 1900. Even today a special branch of the Ius Commune, known as Roman-Dutch Law, is the basis of the legal system in the Republic of South Africa.

To what extent did Roman Law influence the English legal system?

England did not adopt Roman Law as the other countries in Europe had. In England, ancient Roman texts were never considered as rules having the force of law. Nonetheless, Roman Law was taught at the Universities of Oxford and Cambridge, just as it was taught at Bologna. Scholars, who had studied Roman Law on the Continent (the so-called Civilians), did have considerable influence on the development of certain areas of law. Some substantive rules, and more importantly concepts and ways of reasoning, developed by continental legal scientists, based on the Roman legal tradition, influenced the English legal system.

What does the term, Classical Roman Law, mean?

The Romans were the first people to make law into a science. During the first two centuries of the Common Era, Roman legal science was the most fertile. This age is called the classical period of Roman Law, because the law during this time period, as it was taught and practised, best exemplified the classic characteristics of the Roman legal tradition.

How do we know about Roman Law ?

A rich variety of written documents concerning Roman Law during antiquity has come down to us including: statutes, deeds and the writings of legal scholars. The most important text among all these is the Corpus Iuris Civilis. In addition to the Corpus Iuris, the Institutes of Gaius from the middle of the second century of the Common Era must be mentioned; these Institutes constitute a beginners' textbook on Roman Law.

What is the Corpus Iuris Civilis?

In the sixth century A.D., the Eastern Roman Emperor, Justinian (Iustinianus), ordered the compilation of several law codes. These codes were based on much older sources of law, mostly statutes and legal writings from the classical period. They were:
the Institutes (*Institutiones*)
a book largely copied from the Institutes of Gaius - written 300 years prior!-- and like it may be considered a beginners' textbook. The rules contained in the Institutes were given legal force in many countries; consequently the work may be regarded as both a textbook and a statute.
the Digest (*Digesta* or Pandectae)
a collection of fragments from scholarly writings. Like the rules contained in the Institutes, the legal opinions expressed in these fragments were often given legal force.
the Code (*Codex*)
a collection of imperial statutes.
Justinian had planned to add another collection to these three: a collection of new pieces of legislation which had come into force after the compilation of the Code (*novellae constitutiones*). This plan was never realized. There exists today only private collections of these novellae constitutiones. These form, together with the three codes, the Corpus Iuris Civilis.
The Corpus Iuris is by far the most important written source of Roman Law that has come down to us. The texts transmitted therein constituted the basis of the revival of Roman Law in the Middle Ages. As well, most of the insights gained by modern research on Roman legal history are owed to the analysis of texts from the Corpus Iuris.

What is the Gloss?

When the Medieval scholars started to study the old texts of the Corpus Iuris again, they first wrote explanations concerning the meaning of single words in the texts (glosses). Based on earlier works of this kind, at the beginning of the 13th century, Accursius of Bologna, wrote a collection of such glosses to the texts of the Digest and the Code. This seminal work destined previous piecemeal attempts to oblivion. It was simply called The Gloss (*glossa ordinaria*) and all further elaboration of the Ius Commune proceeded from Accursius' gloss.

Why is Roman Law still important today?

Today Roman Law has been replaced by modern codes. These codes, however, did not create new law from scratch. But rather, to a large extent, the rules of Roman Law which had been transmitted, were placed in a statutory framework which provided a modern, systematic order. This is particularly true in regard to the German Civil Code. So, in

order to fully understand the German Civil Code, it is necessary to know about the legal foundation upon which it rests. As this is true in regard to German law, it is eqully true in regard to most modern European legal systems.

Most important of all, Roman Law will have great significance in regard to the formation of uniform legal rules which further the process of political integration in Europe. Roman Law is the common foundation upon which the European legal order is built. Therefore, it can serve as a source of rules and legal norms which will easily blend with the national laws of the many and varied European states.

Where can I get more information about Roman Law?

On the Net

- In English
  - Parts of the Digest and the Institutes in English (from the Medieval Sourcebook , Paul Halsall, Fordham University)
  - Codes An introduction to the history of Justinian's codes by Peter Quinton (Director, Law Reform, Australian Capital Territory Government)
  - The Law of Actions Outline of a chapter of a companion to the Institutes. (Prof. Dr. Ernest Metzger, University of Aberdeen)
  - Roman Law Course Materials (University of Cape Town) Tests from a Roman Law course. Find out what you have learned so far!
- In French: Cours de Droit romain, principes et analyse critique de textes Droit romain, questions spéciales (Prof. Dr. R. Vigneron, Université de Liège). A complete introductory course on Roman Law on the net!

Books

There is a large body of literature on Roman Law. These suggestions are therefore by necessity somewhat arbitrary.

A translation of the Institutes:
J.A.C Thomas: The Institutes of Justinian, Text, Translation, Commentary, 1975.

A translation of the Digest:
A. Watson: The Digest of Justinian, text and translation, Philadelphia 1985.

A textbook for beginners:
J.A.C. Thomas: Textbook of Roman Law, 1976.

I am very grateful to Prof. Stephen Ross Levitt, Legal Studies, Nova Southeastern University <levitts@polaris.acast.nova.edu> who helped me translate this FAQ into English.

I plan to add more information to this page from time to time. So if you have any suggestions, corrections or further questions write to me.
Thomas Rüfner

IusRomanum

A forum for the discussion of Roman Law on the Internet

A new mailing list is available on the Internet. The list is called IusRomanum. It is run in the framework of the Roman Law branch of the Law-related Internet Project at the University of Saarbrücken.

Scope and participants

IusRomanum has been initiated with the purpose to create a forum for scholarly discussion of all aspects of Roman Law. Possible topics include the history of Roman Law from the Twelve Tables to Justinian's codes as well as its continued presence in the early Middle Ages, its renaissance in 12th century Bologna, the development of the Ius Commune and the importance of Roman Law for the understanding of modern legal systems and the formation of European Private Law. The use of modern electronic resources for research in related fields may be a subject as well. The list is open to everyone interested in the discussion of questions connected to Roman Law. Jurists and historians are invited to take part. The participation of persons from a large variety of professional backgrounds will add to the list's value.

Archive

All postings to the list will be archived. The archive will be accessible through the World Wide Web. Thus a database containing information on Roman Law will come into existence.

Technicalities

IusRomanum is run by the Majordomo list management program. To subscribe, send a message containing the following text in its body (NOT in the subject line): `subscribe IusRomanum <your mail address>` to `Majordomo@jurix.jura.uni-sb.de`.
Please note that you have to put your mail address in place where you would have to put your name with other list management programs. To remove yourself from the list send a message with the text `unsubscribe IusRomanum` to `Majordomo@jurix.jura.uni-sb.de`.
Postings to the list have to be directed to IusRomanum@jurix.jura.uni-sb.de

A notice of the opening of IusRomanum has been sent to CLASSICS, HISLAW-L and EURO-LEX. Please forward this information to everyone who may be interested and does not read the the lists mentioned. If you have any further questions, write e-mail to me (ruefner@jura.uni-tuebingen.de). If you experience technical difficulties in receiving mailo from the list, please contact owner-iusromanum@jurix.jura.uni-sb.de.

Back to Ancient History Sourcebook **|**

Ancient History Sourcebook: The Twelve Tables, c. 450 BCE

Cicero, *De Oratore*, I.44: Though all the world exclaim against me, I will say what I think: that single little book of the Twelve Tables, if anyone look to the fountains and sources of laws, seems to me, assuredly, to surpass the libraries of all the philosophers, both in weight of authority, and in plenitude of utility.

Table I.

1. If anyone summons a man before the magistrate, he must go. If the man summoned does not go, let the one summoning him call the bystanders to witness and then take him by force.

2. If he shirks or runs away, let the summoner lay hands on him.

3. If illness or old age is the hindrance, let the summoner provide a team. He need not provide a covered carriage with a pallet unless he chooses.

4. Let the protector of a landholder be a landholder; for one of the proletariat, let anyone that cares, be protector.

6-9. When the litigants settle their case by compromise, let the magistrate announce it. If they do not compromise, let them state each his own side of the case, in the *comitium* of the forum before noon. Afterwards let them talk it out together, while both are present. After noon, in case either party has failed to appear, let the magistrate pronounce judgment in favor of the one who is present. If both are present the trial may last until sunset but no later.

Table II.

2. He whose witness has failed to appear may summon him by loud calls before his house every third day.

Table III.

1. One who has confessed a debt, or against whom judgment has been pronounced, shall have thirty days to pay it in. After that forcible seizure of his person is allowed. The creditor shall bring him before the magistrate. Unless he pays the amount of the judgment or some one in the presence of the magistrate interferes in his behalf as protector the creditor so shall take him home and fasten him in stocks or fetters. He shall fasten him with not less than fifteen pounds of weight or, if he choose, with more. If the prisoner choose, he may furnish his own food. If he does not, the creditor must give him a pound of meal daily; if he choose he may give him more.

2. On the third market day let them divide his body among them. If they cut more or less than each one's share it shall be no crime.

3. Against a foreigner the right in property shall be valid forever.

Table IV.

1. A dreadfully deformed child shall be quickly killed.

2. If a father sell his son three times, the son shall be free from his father.

3. As a man has provided in his will in regard to his money and the care of his property, so let it be binding. If he has no heir and dies intestate, let the nearest agnate have the inheritance. If there is no agnate, let the members of his gens have the inheritance.

4. If one is mad but has no guardian, the power over him and his money shall belong to his agnates and the members of his *gens*.

5. A child born after ten months since the father's death will not be admitted into a legal inheritance.

Table V.

1. Females should remain in guardianship even when they have attained their majority.

Table VI.

1. When one makes a bond and a conveyance of property, as he has made formal declaration so let it be binding.

3. A beam that is built into a house or a vineyard trellis one may not take from its place.

5. *Usucapio* of movable things requires one year's possession for its completion; but *usucapio* of an estate and buildings two years.

6. Any woman who does not wish to be subjected in this manner to the hand of her husband should be absent three nights in succession every year, and so interrupt the *usucapio* of each year.

Table VII.

1. Let them keep the road in order. If they have not paved it, a man may drive his team where he likes.

9. Should a tree on a neighbor's farm be bend crooked by the wind and lean over your farm, you may take legal action for removal of that tree.

10. A man might gather up fruit that was falling down onto another man's farm.

Table VIII.

2. If one has maimed a limb and does not compromise with the injured person, let there be retaliation. If one has broken a bone of a freeman with his hand or with a cudgel, let him pay a penalty of three hundred coins If he has broken the bone of a slave, let him have one hundred and fifty coins. If one is guilty of insult, the penalty shall be twenty-five coins.

3. If one is slain while committing theft by night, he is rightly slain.

4. If a patron shall have devised any deceit against his client, let him be accursed.

5. If one shall permit himself to be summoned as a witness, or has been a weigher, if he does not give his testimony, let him be noted as dishonest and incapable of acting again as witness.

10. Any person who destroys by burning any building or heap of corn deposited alongside a house shall be bound, scourged, and put to death by burning at the stake provided that he has committed the said misdeed with malice aforethought; but if he shall have committed it by accident, that is, by negligence, it is ordained that he repair the damage or, if he be too poor to be competent for such punishment, he shall receive a lighter punishment.

12. If the theft has been done by night, if the owner kills the thief, the thief shall be held to be lawfully killed.

13. It is unlawful for a thief to be killed by day....unless he defends himself with a weapon; even though he has come with a weapon, unless he shall use the weapon and

fight back, you shall not kill him. And even if he resists, first call out so that someone may hear and come up.

23. A person who had been found guilty of giving false witness shall be hurled down from the Tarpeian Rock.

26. No person shall hold meetings by night in the city.

Table IX.

4. The penalty shall be capital for a judge or arbiter legally appointed who has been found guilty of receiving a bribe for giving a decision.

5. Treason: he who shall have roused up a public enemy or handed over a citizen to a public enemy must suffer capital punishment.

6. Putting to death of any man, whosoever he might be unconvicted is forbidden.

Table X.

1. None is to bury or burn a corpse in the city.

3. The women shall not tear their faces nor wail on account of the funeral.

5. If one obtains a crown himself, or if his chattel does so because of his honor and valor, if it is placed on his head, or the head of his parents, it shall be no crime.

Table XI.

1. Marriages should not take place between plebeians and patricians.

Table XII.

2. If a slave shall have committed theft or done damage with his master"s knowledge, the action for damages is in the slave's name.

5. Whatever the people had last ordained should be held as binding by law.

Source:

From: Oliver J. Thatcher, ed., *The Library of Original Sources* (Milwaukee: University Research Extension Co., 1901), Vol. III: *The Roman World*, pp. 9-11.

Scanned by: J. S. Arkenberg, Dept. of History, Cal. State Fullerton. Prof. Arkenberg has modernized the text.
