



INTERNATIONAL SEMINAR

LAW, LAWYERS and POLITICS

Experiences
of the cohabitation
of law and politics
from Ancient Rome
to the present day,
Warsaw, SWPS University,
Friday, May 30th, 2025

Edited by:

Bronisław Sitek
Ewa Pietrzak
Łukasz Majewski



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History is the witness of the times,
the light of truth,
the life of memory,
and the teacher of life.

Cicero, *De Oratore* II, 36

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Introduction

The present volume is the result of the international academic initiative that took place during the Augsburg Seminar held at SWPS University in Warsaw between May 29 and 31, 2025. The event brought together scholars – professors, assistant professors, doctoral candidates, and advanced students – from five renowned European institutions: SWPS University (Warsaw), Adam Mickiewicz University (Poznań), the University of Augsburg, the University of Pisa and Aristotle University of Thessaloniki. Their shared objective was to re-examine ancient legal thought, particularly Roman law, in light of contemporary challenges, by placing historical legal sources into dialogue with modern questions of justice, authority, legitimacy and social structure.

This collaborative encounter unfolded under the academic guidance of distinguished scholars such as Prof. Bronisław Sitek (SWPS), Prof. Wojciech Dajczak (AMU), Prof. Christoph Becker (Augsburg), Prof. Federico Procchi and Prof. Michele Pedone (Pisa), as well as Prof. Costas Vlahos (Thessaloniki), whose supervision enabled early-career researchers and students to articulate sophisticated legal reflections rooted in classical tradition. The academic plurality of this seminar, further enriched by the active partici-

pation of doctoral researchers and students delivering lectures, offers a valuable model of cross-generational and interdisciplinary dialogue within the legal humanities.

It was the students and doctoral candidates who took centre stage at the event – they delivered the papers, led the discussions, and sparked the debates, while their academic supervisors served as discreet mentors. Such an inverted hierarchy is rare at legal conferences, and I wish to highlight it here for precisely that reason.

The common denominator of the papers was a renewed reading of the Roman legacy- from *ars boni et aequi* to the republican ideal of *humanitas* – in the light of contemporary tensions between law and power, lawyers and politicians. The topics addressed included, among others: the use of international law in nineteenth-century Spanish colonialism; the political instrumentalisation of statutes in late Republican Rome; the status of women in ancient legal narration; the role of the Senate as a quasi-legislator; the evolution of legal rhetoric; the phenomenon of corruption from *repetundae* to *Mani Pulite*; and the clash between democracy and technocracy during the eurozone crisis. This mosaic of themes demonstrates that Roman categories –though distant in time – remain a key to understanding present-day debates over justice and legitimacy.

The book is divided into five chapters, each dedicated to one of the academic centres that took part in the conference. Every chapter reflects the distinctive research profile of its home institution while contributing to the volume’s overarching theme: how the functions of law evolve when confronted with political power.

CHAPTER I – LAW AND THE PATHOLOGIES OF POWER:

REFLECTIONS ON ROME BY GENERATION Z

[Adam Mickiewicz University in Poznań]

1. **Wojciech Dajczak, “Law’s Empire or Political Thriller? Two Views on Ancient Rome.”** The introductory essay that juxtaposes the papers by Kuźma and Nowak, arguing that the pathologies

of legal instrumentalisation and gender discrimination are as dangerous today as they were in the late Republic.

2. **Ellen Kuźma, “Between Virtue and Vice: How Law and Politics Shaped the Lives of Women in Ancient Rome.”** A study of how Roman law constructed the binary figures of the *matrona* and the *meretrix* and how this narrative served to discipline women and secure political order.
3. **Szymon J. Nowak, “Law in Decay: Statutory Proliferation and Power Consolidation in Roman Political History.”** The article demonstrates that the overproduction of statutes – from the late Republic into the Principate- became a tool of oligarchic control that legalised abuses of power.

CHAPTER II – CICERO AND THE SENATE: THE LIMITS
OF JURISPRUDENCE AND LEGISLATION IN THE LATE REPUBLIC
[University of Augsburg]

1. **Christoph Becker, Introduction to Session II: “Cicero as a Jurist and the Roman Senate as a Lawmaker?”** The introductory essay that frames the section “Cicero as Jurist and the Roman Senate as Lawmaker” highlighting the role of early-career researchers in re-reading classical sources.
2. **Lea Pekez, “Was Marcus Tullius Cicero a Jurist?”** The article shows that, although Cicero never compiled a systematic treatise on law, his *Topica* shaped the argumentative schemes later used by Gaius and Justinian.
3. **Sahar Zobair, “The Roman Senate as the Creator of Law.”** The article investigates *senatus consulta* as de-facto legislative instruments and argues that senators acted as “practical jurists.”
4. **Raimund Anwald, “Interpretation of Law in Germany at the Time of National Socialism.”** The article explores how flexible public-interest clauses and the so-called *Kampfklausel* enabled the Nazi judiciary to legitimise antisemitic measures, revealing the internal subversion of the rule of law

CHAPTER III – RHETORIC, CORRUPTION, AND LAW:
FROM THE ORATOR CIVIS TO MANI PULITE
[University of Pisa]

1. **Federico Procchi – “Law, Lawyers, and Politics: The fundamental Role of Oratorical Skills.”** The article shows how rhetoric, from Cicero to modern parliamentary debate, shapes both the substance of legal norms and the mechanisms by which they are legitimised.
2. **Giorgia D’Ancicco & Chiara Donnini, “Corruption and Bribery: Between Politics, Law, and the Burden of Procedural Proof.”** The article compares Roman anti-corruption measures with Italy’s 1990^s *Mani Pulite* investigations, emphasising the perennial issues of evidence and victim status in corruption trials.
3. **Marco Manna, “Orator Civis: an Ars Shaped by Politics, or a Politics Moulded by the Rhetorical Technique?”** The article traces the reciprocal influence of legal rhetoric and politics from Cicero to the present, redefining the figure of the lawyer-citizen.
4. **Michele Pedone – “The Rule of Law and Politics. Final Remarks.”** The article presents drawing on passages from the *Digest* and modern constitutional jurisprudence, the author argues that casuistic interpretive flexibility is essential today if the rule of law is to withstand political pressure

CHAPTER IV – BETWEEN MORALITY AND TECHNOCRACY:
THE EVOLUTION OF LAW AND POLITICS FROM CICERO
TO THE EURO CRISIS
[Aristotle University of Thessaloniki]

1. **Constantinos Vlahos, “From Cicero’s Political Morality to Modern Constitutionalism and Technocracy.”** The introductory essay that connects the concepts of *iuris consensus* and *communis utilitas* with contemporary diagnoses of democratic crisis and technocratic governance.

2. **Vasileios Lambadarios, “Technocracy Versus Constitutionalism.”** The article analyses how expert-dominated management of Greece’s debt crisis eroded democratic legitimacy.
2. **Georgios Tzemintimpis, “From Cicero’s Political Morality to the Modern Concept of the Rule of Law.”** The article tracks the evolution of the rule-of-law ideal from Roman civic virtue to modern liberal constitutionalism.
4. **Maria (Marilena) Christidou, “Law Between Morality and Technocracy: Concluding Reflections from Cicero to the Eurozone Crisis.”** The article synthesises the panel’s findings and calls for a revival of judicial ethos as a shield against the technocratic reduction of law.

CHAPTER V – EMPIRE, COLONIALISM, AND THE IDEA OF LAW:
A GLOBAL PERSPECTIVE FROM WARSAW

[SWPS University of Social Sciences and Humanities (Warsaw)]

1. **Łukasz Majewski, “Seventeenth-Century Polish Political and Legal Thought in the Works of Andrzej Maksymilian Fredro.”** The article presents the ideas of Andrzej Maksymilian Fredro – active citizenship, rule of law, and the ruler’s responsibility toward the nation.
2. **Łukasz Kordelasiński, “Andrzej Fredro – Polish Political and Legal Thought in the 17th Century.”** The article reinterprets Fredro’s *Militarium* as a handbook of republican governance and early codification theory, anticipating Locke’s separation-of-powers doctrine.
3. **Emilia Jedynak & Gabriela Kosior, “International Law in the Colonial Era: Between Law, Expansionist Policy, and Morality. A Legal-Historical Analysis Based on Spanish Colonies in the 19th Century.”** The article exposes how liberal ideas of law allowed Spain to mask domination over Cuba, the Philippines, and Morocco; law became an instrument, not a brake, on imperialism.

4. **Ewa Pietrzak, “Between Legal Norm and Empire: The Role of Law and Lawyers from the 17th-Century Polish Political and Legal Thought to Colonial Legal Systems of the 19th Century. Slave Labor and Reflections on the Contemporary Labor Law.”** The article highlights the contrast between oppressive systems like Roman slavery and today’s protections of dignity, equality, and social justice.

Taken together, these contributions offer a kaleidoscopic reflection on the ways Roman legal tradition continues to shape – and sometimes challenge – contemporary legal thinking. The seminar demonstrated not only the intellectual vitality of the Roman legal heritage, but also its pedagogical relevance: bridging generations of scholars and students in a shared endeavor to think critically about the foundations and future of legal systems.

This publication would not have been possible without the generous support of the **Ministry of Science and Higher Education**, headed by **Minister Karolina Ziolo-Pużuk**, to whom we offer our sincere thanks for financing both the conference and this volume. We are equally grateful to the authorities of all the partner universities – especially the leadership of **SWPS University**. Special thanks go to **Dr Ewa Pietrzak** and **Dr Łukasz Majewski** for their invaluable help in organising the conference.

Our deepest appreciation is reserved for the members of the **SWPS University Student Research Group for Comparative Legal Studies**, led by its chair, **Emilia Jedynak**.

TO THE READER

In presenting this book, we invite you to reflect on how – to borrow Cicero’s phrase – *salus populi* can remain the *suprema lex* in an age marked both by regulatory inflation and by ever-rising societal expectations of the law. The voices of students and doctoral candidates remind us that the true strength of the legal tradition lies in the ability of each generation to pose courageous questions and break with established patterns. We hope that reading this volume will spur further research and dialogue and, above all, demonstrate that the university remains a space where young voices can chart new directions in thinking about the law.

Bronisław Sitek
SWPS University



Chapter I

Law and the
Pathologies
of Power:
Reflections
on Rome by
Generation Z

Wojciech Dajczak*

Law's Empire or Political Thriller?

Two Views on Ancient Rome

.....

There are a few things in common between the authors of the two texts presented below. First, they have focused on ancient Rome as part of a historically broad discussion of the coexistence of law and politics. Secondly, they have chosen the topics of their contributions entirely independently. Thirdly, they look at the interaction between law and politics from the perspective of those born in the early 21st century. These similarities at the starting point brought functional analogies. Both authors focused on issues that can be labelled as pathologies. Ellen Kuźma points out in her paper that the ancient narrative of the law can be described as ‘the male-authored narrative’.¹ The text – methodologically allied to

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¹ E. Kuźma, *Between Virtue and Vice: How Law and Politics Shaped the Lives of Women in Ancient Rome*, below.

the so-called feminist legal thought² – shows the strong tension between the law reflecting a “male narrative” and the economic power and political influence of women in ancient Rome. We can read such a narrative by Kuźma as an expression of the limitations of realism, or the manifestations of discrimination in ancient Roman law. Szymon Nowak took as the leitmotif of his chapter the famous words of Tacitus “The more corrupt the republic, the more numerous the laws”.³ Using examples of selected *leges* from the time of the Roman republic and referring to the practice of rescripts and decrees during the Roman imperial period, Nowak leads to the conclusion that these legal tools served to usurp competence and arbitrariness in the interests of social elites. Looking at Roman law in this way as an arena of political corruption and instrumentalisation of the law, Nowak concludes: “In acknowledging the mirror that antiquity holds up to our present moment, we empower ourselves to resist complacency, to champion the independence of the legal profession”.

Kuźma and Nowak’s contributions may lead to the simple observation that in ancient Rome we find what we today recognise as fundamental threats to the rule of law, i.e. the political instrumentalisation of law and legally legitimised discrimination. It is striking how this imagery presented by Generation Z authors is different from what, in the relationship of Roman law to the contemporary political environment, attracted the attention of authors born in the first half of the 20th century. For example, Henryk Kupiszewski recalled studying Roman law in the academic year 1946/47 as “an entry into the vast world of legal thought that showed the possibilities of building a better tomorrow in the afterburn of

² Cf. C. Dalton, *Where We Stand: Observations on the Situation of Feminist Legal Thought*, [in:] *Feminist Legal Theory. Foundations and Outlooks*, F. E. Olsen (ed.), New York University Press, Vol. 1, New York 1995, p. 5.

³ Sz. Nowak, *Law in Decay: Statutory Proliferation and Power Consolidation in Roman Political History*, below.

the Second World War”.⁴ Marek Kuryłowicz’s book *Symbol prawa ludzkiego* (Symbol of Human Law), was inspired by narratives by Louis Aragon and Mieczysław Jastrun based on the juxtaposition of 20th century political totalitarian systems and Roman law, and the understanding of the latter as a symbol of human law.⁵ Indeed, each generation has its own questions. Hence, the choices of what is crucial in the relationship between Roman law and the political environment say something about the *Zeitgeist*. I think Kuźma’s and Nowak’s contributions reflect this well. Recent decades have been a time of significant changes in legal culture, which have increasingly demonstrated the problem of the instrumentalisation of the law.⁶ From both Kuźma’s and Nowak’s texts come warnings against this process. The difference with the authors from the first half of the 20th century is that they symbolically pointed to Roman law as a remedy for what is dangerous in the political reality. Kuźma and Nowak show in Roman law what is also threatening in the here and now. This provokes the question of how it came to be that in such a political reality of ancient Rome, the law emerged, which was one of the key factors for the emergence and success of the civil law tradition.⁷ In this context, it is worth recalling that the development of ancient Roman law was, of course, a reflection of the socio-economic context, but for the most part was not part of the political process. A unique factor in the development of ancient Roman law was the opinions of jurists. Today, we would call them soft law, because they were issued by jurists under their own name

⁴ H. Kupiszewski, *Prawo rzymskie a współczesność*, 2nd ed., Od Nowa, Kraków 2013, p. 17.

⁵ M. Kuryłowicz, *Symbol prawa ludzkiego. Szkice o prawie rzymskim w utworach Louisa Aragona i Mieczysława Jastruna*, Wydawnictwo Uniwersytetu Lublin 2008.

⁶ Cf.: M. W. Hesselink, *The New European Private Law. Essays on the Future of Private Law in Europe*, Kluwer Law International, The Hague 2002, p. 65.

⁷ H.P. Glenn, *Legal Traditions of the World*, 5th ed., Oxford University Press, Oxford 2014, p. 139.

as private individuals.⁸ At the end of the Roman republic and in the first three centuries AD, a judge may or may not have adopted an opinion as the basis for a decision. It depended on whether the jurist's opinion was persuasive to the judge. In this way, we can distinguish in ancient Rome between Law's Empire, built by jurists, and the political thriller described here by Nowak. The practical aspect of this division is that jurists were primarily dealing with private law, i.e. that which, for the most part, developed outside the domain of political action. An interesting example of seeing this aspect of the separation of private and public law is the 17th century opinion of Bernard Sutholt. This professor at the University of Leiden described public law as an appendix to politics or politics itself, because it is based on arbitrary.⁹ We can characterise the development of public law in modern times as a curbing of this arbitrariness to protect the freedom of citizens.¹⁰ Nowak's text reminds us, however, that when the development and application of law is part of the political process, the pathologies of these situations, already known in antiquity, return. Protection against this will not be provided merely by pathetically mentioning Roman law, nor by considering it an anachronism in times of anti-discrimination.

As we turn to the chapters by Kuźma and Nowak, I suggest several points to bear in mind in this course. Firstly, the opinions of Roman jurists regarding the legal position of women today may be reasonably surprising, but at the time, they were expressions of

⁸ Cf. T. Giaro, *Dal soft law moderno al soft law antico*, [in:] *Soft law e hard law nelle società postmoderne*, A. Somma (ed.), Giappichelli Editore, Torino 2000, p. 89.

⁹ B. Sutholt, *Disertationes undeviginti. Universum Ius Institutionum*, Marburg 1646, p. 35–36.

¹⁰ Cf. W. Leisner, „Privatisierung“ des öffentlichen Rechts. Von der „Hoheitsgewalt“ zum gleichgeordneten Privatrecht, Duncker & Humblodt, Berlin 2007, p. 18.

realism.¹¹ Secondly, Roman jurists believed in the existence of legal truth. In seeking it, they were guided by fundamental values, but recognised that legal interpretation could not be an instrument for annulling the law.¹² Thirdly, the persistence of the opinions of Roman jurists both in antiquity and in continental Europe from the late Middle Ages onwards cannot be explained as the result of political decisions. What was decisive here was the acceptance of the practice and the political tolerance of the soft law produced by the jurists. I am persuaded that these are the reasons why it is worth remembering even today that ancient Roman law was primarily case law. Even today, we can see it as a legal laboratory in which a balance between conflicting fundamental values was sought. When reading Kuźma's and Nowak's chapters, it is worth remembering that the Roman political thriller they depict remained within the confines of this legal laboratory.

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¹¹ W. Dajczak, *Zapisy na rzecz żony w prawie rzymskim*, Wydawnictwo Uniwersytetu Mikołaja Kopernika, Toruń 1995, p. 168–171.

¹² W. Dajczak, *La libertà di applicazione della clausola generale della buona fede: osservazioni sulla prospettiva del diritto romano*, [in:] *Il ruolo della buona fede oggettiva nell'esperienza giuridica storica e contemporanea*, L. Garofalo (ed.), CEDAM, Vol. 1, Padova 2003, p. 413–414.

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Ellen Kuźma*

Between Virtue and Vice: How Law and Politics Shaped the Lives of Women in Ancient Rome

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1. Introduction: The Problem of the Male-Authored Narrative

Any attempt to reconstruct the lived realities of women in ancient Rome is immediately confronted by a fundamental challenge: the fragmentary and overwhelmingly male-dominated nature of our sources. As the Polish historian and professor of humanities Juliusz Jundziłł aptly states: “in antiquity, we are dealing with the puzzling silence of women. The sources concerning them are

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authored by men, they speak for women.”¹ The voices of Roman women themselves are almost entirely lost to us. What remains is a narrative constructed by men, mainly of the elite—historians, jurists, and poets—which often presents a prescriptive or aspirational vision of womanhood rather than a descriptive reality.² We cannot, therefore, claim with certainty how Roman women truly lived and functioned. However, this very narrative, as a historical artifact, is a rich field for investigation. Just as today’s normative reality differs from factual reality,³ analyzing the construction of ancient norms reveals a great deal about the society that produced them, offering profound insights into the motivations, anxieties, and intentions of those who wielded power.⁴

This paper argues that the Roman normative system constructed and perpetuated a rigid dichotomy of the virtuous *matrona* versus the immoral *meretrix*. As Anise K. Strong, an Associate Professor of Classics at Western Michigan University, explores in her monograph *Prostitutes and Matrons in the Roman World*, these categories were more than mere descriptions of sexual behavior; they were powerful symbolic labels.

- The *matrona* was the ideal of Roman womanhood: loyal, chaste, hardworking, and devoted to a single man and her family (*univira, lanifica, domiseda*).⁵

¹ J. Jundziłł, *Strach i uwielbienie – mężczyźni a kobiety w okresie rozkwitu cesarstwa rzymskiego*, [in:] *Partnerka, matka, opiekunka – status kobiety w starożytności i średniowieczu*, J. Jundziłł (ed.), Bydgoszcz 1999, p. 95–96.

² A. K. Strong, *Prostitutes and Matrons in the Roman World*, Cambridge University Press 2016, p. 3.

³ S. Fischler, *Social Stereotypes and Historical Analysis: The Case of Imperial Women at Rome*, [in:] L.J. Archer, S. Fischler, M. Wyke (eds), *Women in Ancient Societies*, Palgrave Macmillan, London 1994, p. 117.

⁴ A. Erskine, *Hellenistic Monarchy and Roman Political Invective*, [in:] *Classical Quarterly* n.s. 41, no. 1, 1991, p. 111–120.

⁵ D. Baharal, *Public Image and Women at Court in the Era of the Adoptive Emperors (A.D. 98–100), the Case of Faustina the Younger*, [in:] C. Deroux

- The *meretrix*, conversely, symbolized greed, selfishness, and promiscuity, a woman focused on her own self-interest.

A.K. Strong argues that when an elite woman acted in a way that was perceived as politically transgressive or overly independent, she risked being symbolically re-categorized as a *meretrix*, regardless of her actual sexual conduct. This binary was not a neutral descriptor but a political tool used to manage profound societal anxieties concerning female agency, sexuality, and public presence.⁶ This tension became particularly acute during the transition from the Republic to the Principate.⁷ Through a casuistic analysis of key female figures—Lucretia, Cleopatra, Messalina, Clodia Metelli, Volumnia Cytheris, Acte, and the unique case of Allia Potestas—this paper will demonstrate how their portrayals were strategically deployed to reinforce patriarchal order, legitimize political change, and vilify political opponents.

2. The Legal Framework: A Contradictory Existence

Before delving into case studies, it is essential to understand the paradoxical legal framework governing women's lives. The Roman legal system, as meticulously documented by scholars such as Jane F. Gardner (*Women in Roman Law & Society*), subjected women to lifelong male authority through a series of interlocking legal institutions. From birth, a woman was under the *patria potestas* of her father. Upon marriage, she could pass into the *manus* of her husband, a status legally equivalent to being his daughter (*loco filiae*). Even if legally independent (*sui iuris*), she required a male

(ed.), *Studies in Latin Literature and Roman History*, Collection Latomus, 2000, p. 330–331.

⁶ *Ibidem*.

⁷ S. Witzke, *Censure of Powerful Women: Roman Monarchy and Gender Anxiety*, [in:] *Open Access Dissertations and Theses*, 2007, p. 6–7.

guardian (*tutor*) for most of her life.⁸ The legal rationale for this perpetual guardianship (*tutela mulierum perpetua*), as famously articulated by the jurist Gaius in his *Institutes*, was the purported inherent “fickleness of their minds” (*levitas animi*).⁹ This principle, deeply embedded in Roman private law, effectively rendered women legally akin to minors, irrespective of their age or social standing. The institution, which Gardner shows was already eroding in the late Republic, effectively rendered women “perpetually underage.” Although the *tutela* was gradually weakened—notably by Augustus’ *ius liberorum*, which freed women who had borne a certain number of children from guardianship—it remained a symbol of their subordinate legal status.¹⁰

Despite these severe restrictions, women, especially in the late Republic, possessed considerable economic autonomy.¹¹ They could own property, inherit fortunes, and manage their assets.¹² Jane F. Gardner provides the example of Terentia, the wife of Cicero. She was a woman of great wealth, possessing large estates and tenements, and she played a crucial role in financing her husband’s political career and managing their shared financial interests during his exile.¹³ This economic power, standing in

⁸ W. Kozubski, *Opieka nad kobietami w prawie rzymskim*, [in:] *Rozprawy Polskiej Akademji Umiejętności*, Wydział Historyczno-Filozoficzny, Serja II, Tom XXXIX, 1925, p. 4–11.

⁹ E. Ejankowska, *Kilka uwag na temat G. 1,190*, [in:] *Zeszyty Prawnicze*, 19 (1), 2019, p. 61–71.

¹⁰ J.F. Gardner, *Women in Roman Law & Society*, Indiana University Press 1987, p. 5–18.

¹¹ E. Ejankowska, *Dążenia emancypacyjne kobiet rzymskich na tle przemian politycznych i ekonomiczno-społecznych późnej republiki i pryncypatu*, [in:] *Studia Prawnoustrojowe* 2007, nr 7, p. 137–155.

¹² E. Cantarella, *Women and Patriarchy in Roman Law*, [in:], *The Oxford Handbook of Roman Law and Society*, P.J. du Plessis, C. Ando, K. Tuori (eds), Oxford University Press 2016, p. 422–423.

¹³ J.F. Gardner, *op.cit.*, p. 163–180. For more on the figure of Terentia

stark contrast to their legal subordination, granted elite women a degree of influence that the patriarchal system struggled to contain, creating a fundamental tension that underpins the case studies that follow.

3. A Casuistic Analysis: Women on the Spectrum of Virtue and Vice

The moral archetypes of Roman womanhood were not abstract concepts; they were embodied by real and semi-legendary figures whose stories became powerful *exempla*. An *exemplum* in Roman culture was a narrative anecdote, often about a famous historical figure, used as a rhetorical tool to provide a model for moral conduct (either to be emulated or avoided).¹⁴ These stories were the building blocks of Roman identity and were instrumental in shaping and reinforcing social norms long before laws were codified.

3.1. The Ideal and Its Weaponization: Lucretia

The story of Lucretia, as narrated by Livy in his monumental work *Ab Urbe Condita* (written during the reign of Augustus), is the foundational myth of the Roman Republic and the ultimate exemplum of the virtuous *matrona*.¹⁵ Her story begins with a display of male rivalry, a drunken contest among Roman officers, including her husband Collatinus, to determine whose wife was the most

see also: K. Wiśniewska, *Kobiety w świecie Cyncerona*, Towarzystwo Naukowe w Toruniu, 2014, p. 121–150.

¹⁴ R. Langlands, *Sexual Morality in Ancient Rome*, Cambridge University Press 2006, p. 27–28.

¹⁵ Livy, *History of Rome*, 1.57.1.–1.59.9, <https://topostext.org/work/142#1.57.1> [date of access: 18.06.2025].

virtuous.¹⁶ Lucretia wins, found spinning wool late at night, the embodiment of domestic duty.¹⁷ Her perfection, however, inflames the lust of Sextus Tarquinius, the son of the king. His subsequent rape of Lucretia is not merely an act of lust but a calculated act of power and humiliation, an assault on Collatinus' honor and property. By violating Lucretia, Tarquinius symbolically asserts dominance over her husband, whose wife—and by extension, his household and social standing—was proven superior.¹⁸

For Romans, chastity (*pudicitia*) was not just a private virtue but a cornerstone of familial and state stability. The violation of a woman's body was a violation of the sanctity of the home (*domus*), which in turn symbolized the health of the state (*res publica*). Lucretia's response—a confession followed by suicide—transforms her private shame into a political catalyst. Holding the bloody dagger, Lucius Junius Brutus swears an oath to overthrow the monarchy. Her agency is expressed through a self-destruction that restores male honor and enables men to reclaim the state.¹⁹ Written at a time when Augustus was trying to restore traditional Roman values (*mos maiorum*), Livy's narrative served as a powerful piece of moral propaganda, cementing the ideal of the woman whose ultimate value lay in her service to the patriarchal order.²⁰

¹⁶ S.R. Joshel, *The Body Female and the Body Politic: Livy's Lucretia and Verginia*, [in:] *Pornography and Representation in Greece and Rome*, A. Richlin (ed.), Oxford University Press, p. 180.

¹⁷ E. Glendinning, *Reinventing Lucretia: Rape, Suicide and Redemption from Classical Antiquity to the Medieval Era*, [in:] *International Journal of the Classical Tradition*, vol. 20, no. 1/2, p. 63–65.

¹⁸ H. Flower, *Ancestor Masks and Aristocratic Power in Roman Culture*, Clarendon Press, Oxford, 1996, p. 123.

¹⁹ S.B. Pomeroy, *Goddesses, Whores, Wives and Slaves. Women in Classical Antiquity*, The Bodley Head London, 2015, p. 149–157; E. Southon, *Kobiety imperium rzymskiego. 21 zapomnianych historii.*, HISTORY, Kraków 2024, p. 64–67.

²⁰ S.R. Joshel, *op.cit.*, p. 165–166.

3.2. The External Threat Personified: Cleopatra VII, the *Meretrix Regina*

If Lucretia was the ideal, Cleopatra VII of Egypt was her antithesis, strategically crafted by Octavian's propaganda into the *meretrix regina* or prostitute-queen. She was the first woman to be labeled with this ultimate paradoxical juxtaposition. As Anise K. Strong states, she is arguably the original target and source for this particular form of invective.²¹ Intellectual accomplishment was a potential symptom of dangerous female agency. Cleopatra, as the powerful, independent Hellenistic queen of a wealthy foreign kingdom, she was everything a Roman *matrona* was not.²²

Augustan poets like Horace in his Odes (e.g., Ode 1.37, the "Cleopatra Ode")²³ and Propertius²⁴ portrayed her not as a formidable political rival but as a *fatale monstrum*—a fatal monster—a decadent Eastern sorceress who used her sexuality to corrupt a noble Roman, Mark Antony. She is slotted into a greedy girl stereotype, a trope known since the myth of Tarpeia,²⁵ even though she was the richest woman in the Mediterranean. Propertius accuses her of having sexual intercourse with her slaves, reducing her (like Clodia, of which I'm going to talk later on), to the status of a cheap *scortum* for slaves—an answer to power was humiliation.

But why were they so scared of her? It's important to note here that she was especially dangerous as the mother of Julius Caesar's only surviving child, Caesarian.²⁶ Cleopatra was then the *dux femina*

²¹ A.K. Strong, *op.cit.*, p. 106–107.

²² S.B. Pomeroy, *op.cit.*, p. 168–175.

²³ Horace, *Odes*, 1.37, [https://en.wikisource.org/wiki/Translation:Odes_\(Horace\)/Book_I/37](https://en.wikisource.org/wiki/Translation:Odes_(Horace)/Book_I/37) [date of access: 18.06.2025].

²⁴ Propertius, *Elegies*, 3.11, <https://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A2008.01.0494%3Abook%3D3%3Apoem%3D11> [date of access: 18.06.2025].

²⁵ E. Southon, *op.cit.*, p. 30–37.

²⁶ C. Dio, *Roman History*, 43.27, https://penelope.uchicago.edu/thayer/e/roman/texts/cassius_dio/43*.html [date of access: 18.06.2025].

who threatened to subject Rome to foreign, effeminate rule. To simultaneously smear her as villainous and diminish her apparent power, Octavian and his poet-clients shaped Cleopatra as a *meretrix*—a designated female victim for any man able to conquer her.

By framing an internal Roman civil war as a defensive campaign against a foreign seductress, Octavian achieved a twofold objective: he legitimized his own violent seizure of power while simultaneously delegitimizing his Roman rival, Antony, through association. By reducing Cleopatra's social status, he both achieved symbolic power over her and shamed her lover, Marcus Antonius (who had abandoned a faithful, virtuous *matrona* for a debauched *meretrix*).²⁷ Symbolically, he elevated Rome above Alexandria and Egypt.

Cleopatra's condemnation was a masterstroke of political communication, using gendered and xenophobic invective to transform a Roman power struggle for supreme authority (*imperium*) into a defense of Roman morality and identity (*mos maiorum*).²⁸

3.3. The Internal Threat at the Palace: Messalina

While Cleopatra was the external threat, Empress Valeria Messalina, wife of Claudius, was portrayed by historians like Tacitus (*Annals*, Book 11)²⁹ and Suetonius³⁰ as the ultimate internal corruption. Her portrayal is the pinnacle of the „wicked woman” trope. She is accused of insatiable lust and, most famously, of competing

²⁷ Plutarch, *The Life of Antony*, 54.3–5, <https://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A2008.01.0007%3Achapter%3D54%3A-section%3D3> [date of access: 18.06.2025].

²⁸ S. Witke, *op.cit.*, p. 48–49 and sources cited there.

²⁹ Tacitus, *Annals*, 11, <https://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A1999.02.0078%3Abook%3D11> [date of access: 18.06.2025].

³⁰ Suetonius, *The Life of Claudius*, https://penelope.uchicago.edu/Thayer/E/Roman/Texts/Suetonius/12Caesars/Claudius*.html [date of access: 18.06.2025].

with a prostitute in a brothel for an entire night (according to Juvenal). She was not doing that out of financial necessity (which was sometimes excused by the poets of that time), but out of her longing for immoral behaviour and desire to flaunt her disloyalty to her husband.³¹

The historical veracity of the claims against her is highly debatable. What is certain, as argued by scholars like Serena Witzke, is that this hyper-sexualized caricature served a political purpose: to critique the reign of her husband, Claudius, portraying him as a weak, cuckolded fool, oblivious to the chaos in his own home and thus unfit to rule. The extreme aspect of her corruption was necessary to demonstrate the depths of perversion of imperial power.³² Her alleged public marriage to her lover, Gaius Silius, was depicted as the ultimate act of treason. Her spectacular downfall was thus presented as a necessary cleansing of the state, reinforcing the idea that uncontrolled female power and sexuality inevitably lead to political ruin.

However, in all our surviving sources, the image of Messalina is an oxymoron; more stylised rhetoric than any attempt at realistic character portrait. In this case, as with Cleopatra, we see a familiar pattern: a fear of female political influence—indeed, of the very idea of a woman wielding real political power—and the male-dominated narrative responds to this threat in two main ways. Messalina, the canny politician, is transformed in the discourse into Messalina, the nymphomaniac—a figure simultaneously more titillating and less intimidating. She becomes far less threatening than the figure of the controlling empress: she is made accessible to any man as a *meretrix*. If part of the discourse about Messalina is to emasculate her husband Claudius, it also serves to disempow-

³¹ S.R. Joshel, *Desire, Empire and Tacitus's Messalina*, [in:] *Signs*, 21 (1), 1995, p. 60.

³² As S. Witzke states on reading the ancient literary sources: “The reader must discern if the author meant to slander the woman herself, her husband, or the regime [...]” (S. Witzke, *op.cit.*, p. 9).

er Messalina herself. By making her a nymphomaniac, she loses control over her own body, the Empire, and—maybe even more importantly—the narrative.

3.4. Blurring the Lines: Clodia Metelli and the Weaponization of Slander

The forensic strategy employed by Cicero in his oration *Pro Caelio* provides a quintessential example of how the *meretrix* label could be weaponized as a tool of character assassination against an elite woman who defied social conventions.³³ It is perhaps the most vivid representation of the trope linking public political and economic action with personal sexual misconduct. This case, like the others, underscores the paramount importance of *reputatio* (reputation) in Roman society—a fragile asset that, once lost, was nearly impossible to recover. Clodia was an influential, wealthy, and sexually independent widow. Although she could have remarried after her husband's death, she never chose to—possibly preferring the independence which widowhood potentially offered a Roman woman.³⁴ When she accused Cicero's client (and her former lover, at that time politician and lawyer), Cicero retaliated by destroying her reputation. To do so, he directly accused her of sexual profligacy, incest, and even murder. She was portrayed by him as a “fallen woman”, painted masterfully as a „*quadrantaria Clytemnestra*” (a quarter-penny Clytemnestra)³⁵ and a *meretrix*, using her luxurious lifestyle as „proof” of depravity.³⁶ By casting

³³ M.T. Cicero, *Pro Caelio*, <https://www.attalus.org/cicero/caelius.html>, [date of access: 18.06.2025].

³⁴ A.K. Strong, *op.cit.*, p. 101–105.

³⁵ Quintilian, *Institutio Oratoria*, 8.4–6, https://penelope.uchicago.edu/Thayer/E/Roman/Texts/Quintilian/Institutio_Oratoria/8B*.html#6 [date of access: 18.06.2025].

³⁶ E. Cantarella, *op.cit.*, p. 424.

her as a sexually voracious predator, Cicero delegitimized her as a credible witness. On the other hand, she is the only woman whom Cicero refers to as *nobilis* and the only woman in all Latin literature described as *illa consularis*, a woman of consular descent.³⁷ These epithets are highly public labels—whether or good or bad, Clodia was a well-known woman.³⁸

However, once again, in the *Pro Caelio*, Cicero specifically savages her not as a political figure, but as a nymphomaniacal man-eater and, indeed, a *meretrix*. Disloyalty (evidently a central issue in the discourse) to a husband—or even to a single lover—is seen as a symptom of possible disloyalty to the Roman state and justice system itself. Clodia conducts her own affairs and parties, acting as an independent woman without a strong family connection, which is seen as unacceptable and transgressive.³⁹ Cicero plays with the moral associations of the labels stated above, denying the possibility of any middle ground for a Roman woman: she must be either a wife or a prostitute.⁴⁰

³⁷ T. Hillard, *On the Stage, Behind the Curtain: Images of Politically Active Women in the Late Roman Republic*, [in:] *Stereotypes of Women in Power: Historical Perspectives and Revisionist Views*, B. Garlick, S. Dixon, P. Allen (eds), New York, 1992, p. 51.

³⁸ A. Leen, *Clodia Oppugnatrix: The Domus Motif in Cicero's 'Pro Caelio'*, [in:] *The Classical Journal*, vol. 96, no. 2, 2000, p. 141–162.

³⁹ M.T. Cicero, *op.cit.*: “If some unmarried woman exposed her home to the desire of all and openly lived as a harlot, if she were to make it part of her routine to attend parties of unknown men, if she could behave in such a way in the city, in the gardens, in a crowd at Baiae; if she should carry herself not only by her manner but also with glam and a posse, not only by the passionate glow in her eyes nor the freedom of her speech but also by her complexion, by her kisses, by her actions, by her navigation, by her meetings such that she would be perceived not only as a whore but indeed as a violent and impudent whore”.

⁴⁰ A.K. Strong, *op.cit.*, p. 105.

Her case proves that the line between a respected *matrona* and a reviled *meretrix* was not a matter of fact, but of public perception, which could be manipulated for political gain.

3.5. Beyond the Elite: Influence from the Margins (Volumnia Cytheris and Acte)

The lives of freedwomen further complicate the *matrona/meretrix* binary. Volumnia Cytheris was a famous *mima* (actress), a profession branded with *infamia* (public disgrace).⁴¹ Yet, as the mistress of Mark Antony, she achieved immense wealth and public visibility. Her presence at Antony's side caused a major scandal, which opponents like Cicero eagerly exploited as evidence of his moral unfitness. For Cicero, concubines were socially acceptable, if risqué, but they must have been aware of the "scale of power".⁴² Meanwhile, Cytheris was one of the first Roman courtesans to be treated with a high degree of respect. Antonius was carrying her around in his litter, "like a second wife"—you can imagine the shock, as it forced public recognition of a relationship between the most powerful man in Rome and a notorious meretrix. Her presence there crossed both social and religious boundaries. There is a theory that Antonius may have displayed Cytheris deliberately to annoy men like Cicero and to demonstrate his own disregard for contemporary mores.⁴³

It has its political results—Cicero jokingly refers to Antonius as *noster Cytherius*, suggesting that he had taken his female lov-

⁴¹ Her appearance is noted in Cicero's letters: M.T. Cicero, *Epistulae ad Familiares* 9.26., <https://topostext.org/work/136> [date of access: 18.06.2025].

⁴² A.K. Strong, *op.cit.*, p. 73.

⁴³ *Ibidem.*

er's name, which shows his submission.⁴⁴ Later, it was going to help with constructing the narrative in which Antonius serves as the opposite of Octavian, as the enemy of all Roman values.⁴⁵ As mentioned before, history repeats itself with his relationship to Cleopatra.

In contrast stands Claudia Acte, a freedwoman and mistress of the young Nero.⁴⁶ Tacitus portrays her with surprising sympathy. While the noblewomen in Nero's life were locked in deadly political struggles,⁴⁷ Acte is depicted as a source of quiet loyalty and stability. She and her traits served as a contrast to Agrippina, the controlling, aggressive figure of Nero's mother.⁴⁸ What's crucial to notice here is Acte's lowly social status made her unthreatening, which explains the mentioned sympathy to her character.⁴⁹ Crucially, she remained loyal to him even after his death, giving him a proper burial.⁵⁰ What is symbolically shown in the normative narrative around all of the women surrounding Nero? Acte was focused on Nero's own interests, just as a proper Roman matrona should be, whereas Agrippina and Poppea were both greedy and personally ambitious—for themselves, not for him.⁵¹

⁴⁴ M.T. Cicero, *Epistulae ad Atticus*, 15.22, <https://topostext.org/work/785#Att.15.22> [date of access: 18.06.2025].

⁴⁵ M.T. Cicero, *Philippics*, 2.58–61, <https://www.thelatinlibrary.com/cicero/phil2.shtml> [date of access: 18.06.2025].

⁴⁶ A.K. Strong, *op.cit.*, p. 80.

⁴⁷ S. Witzke, *op.cit.*, p. 13.

⁴⁸ C. Dio, *op.cit.*, Epitome of Book LXI, https://penelope.uchicago.edu/Thayer/e/roman/texts/cassius_dio/61*.html [date of access: 18.06.2025].

⁴⁹ Tacitus, *Annals*, 13.12: “[...] while even the emperor's older friends were not against the girl gratifying his desires without harming anyone”, <https://topostext.org/work/200#13.12> [date of access: 18.06.2025].

⁵⁰ Suetonius, *The Life of Nero*, 50, https://lexundria.com/suet_nero/50/r [date of access: 18.06.2025].

⁵¹ *Ibidem*, 14.2.

3.6. A Voice from the Tomb: The Paradox of Allia Potestas

A final, crucial case study comes not from elite literature but from a funerary inscription, the Epitaph of Allia Potestas. It is interesting particularly because it unites the opposed stereotypes of prostitute and wife in a single character. The surprising contents of the epitaph suggest that it might be an ironic parody on standard funeral inscriptions.

This source, dated between the late first century and the early fourth century CE, is a laudatory epitaph erected by her patron, Aulis Allius. The text praises her with the traditional virtues of a perfect *matrona*: she was hardworking (*laboriosa*), frugal (*frugi*), a good housekeeper (*domiseda*), and elegant. On the other hand, she is described as having ruled (*rexit*) over her two young lovers, with whom she lived simultaneously. Slived in a polyamorous relationship that defied the Augustan monogamous ideal. Allia Potestas is a paradox: she embodies matronly virtues while living the life of a concubina to two men. As the inscription states, she committed no crime whatsoever, because she was married to neither of them. In this case, it seems that she doesn't fit any of the binary labels mentioned before. The text plays with the idea of the space between respectability and notoriety; the fantasy of a perfect Roman woman challenges accepted notions of female virtue and vice.

Crucially, Allia “commits no crime,” and yet, despite her basic unorthodoxy, fundamental social structures and hierarchies are still maintained.⁵²

⁵² A.K. Strong, *op.cit.*, p. 54–57 and sources cited there.

4. Conclusion

The casuistic analysis of these women reveals the profound complexity behind the simplistic labels of *matrona* and *meretrix*. These were not merely objective moral descriptors, but flexible, powerful political and social tools. Lucretia's virtue was instrumentalized for the founding of the Republic. Cleopatra's foreign power was sexualized to justify a civil war. Messalina's alleged vices were exaggerated to critique an emperor. Clodia's independence was slandered to win a court case. The contrasting fates of the freed-women Cytheris and Acte, and especially the paradoxical epitaph of Allia Potestas, demonstrate that lived reality was far more nuanced than the elite, male-authored narratives suggest.

These narratives do not offer a transparent window into how women lived, but rather show how the Roman male elite, faced with the undeniable reality of female economic power and political proximity, attempted to police the boundaries of acceptable female behavior. Consequently, the Roman patriarchal order emerges not as a static, monolithic structure, but as a dynamic and adaptive system engaged in constant negotiation. It was a system compelled to relentlessly create, refine, and weaponize a normative and moral framework to contain and neutralize the ever-present potential of female agency, which it perceived as a fundamental threat to its own stability and continuity.⁵³

⁵³ B.W. Winter, *Roman Wives, Roman Widows. The Appearance of New Omen and the Pauline Communities.*, William B. Eerdmans Publishing Company, 2003, p. 39–41.

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ABSTRACT

Roman legal and political structures shaped women's lives by creating a binary opposition between the virtuous *matrona* and the immoral *meretrix*. This dichotomy governed the paradoxical public visibility of Roman women: it was praised only when it reflected virtue and loyalty to their family and the state. Female independence and autonomy were condemned as traits of a *meretrix*. The paper argues that these classifications stemmed from deep-seated anxieties surrounding female agency, sexuality, and public presence. Analyzing legal and literary texts by authors like Livy and Tacitus, the study explores these restrictive gender norms. The analysis of figures like Lucretia, Messalina, and Cleopatra illuminates the complex interaction between law, politics, and gender norms from the late Republic to the early Empire.

Szymon J. Nowak*

Law in Decay: Statutory Proliferation and Power Consolidation in Roman Political History

Introduction

What is the relationship between law and politics? How does politics influence law? These questions were among the main topics on the agenda of the Augsburg seminar, which took place on May 30, 2025 in Warsaw. Examples taken as far back as ancient Rome are able to illustrate a certain relationship that ran through the following centuries. This article is a revised version of the paper I presented at the student seminar, entitled “*Corruptissima Res Publica, Plurimae Leges*: Law in the Service of Corrupt Power in Ancient Rome”.

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The interplay of law and politics reveals how statutes—ostensibly the bedrock of justice—can be insidiously tainted by those in power. Ancient Rome starkly illustrates this dynamic: ambitious magistrates and legislators, driven by factional rivalry and personal gain, corrupted the legal order through patronage, bribery, and ever-expanding legislation that served their ends rather than the common good. This article offers a concise, fact-based introduction to that historical nexus and an invitation to deeper reflection on the perennial tension between legal integrity and political expediency, tracing the mechanisms by which Rome’s legal system was compromised to illuminate vulnerabilities that endure to this day.

Tacitus opens his *Annals* with a piercing aphorism: “*Corruptissima res publica, plurimae leges*”—“The more corrupt the republic, the more numerous the laws.”¹ Behind this neat maxim lies a profound diagnosis: as Roman politics spun into factionalism and personal ambition, each crisis was met not with restraint but with fresh legislation—statutes that promised cure but often became instruments of further abuse².

“The more corrupt the republic, the more numerous the laws” – this aphorism might equally describe the careers of Cicero and Calpurnius Piso, men who confronted legal corruption head-on. Marcus Tullius Cicero³ built his reputation by prosecuting Gaius Verres for extortion in Sicily (70 BCE),⁴ delivering a landmark

¹ Tacitus, *Annales*, III.27, <https://www.thelatinlibrary.com/tacitus/tac.ann3.shtml> [date of access: 23.06.2025].

² Cf. B.W. Frier, *Leges (Laws)*, [in:] *The Tacitus Encyclopedia*, V. E. Pagán (ed.), Wiley-Blackwell; Gainesville 2023, p. 624–625.

³ Marcus Tullius Cicero (106–43 BCE; consul 63 BCE) was Rome’s foremost orator, statesman, and philosopher. His speeches and writings not only defined Latin prose but also cemented the ideals of Roman law and republican government.

⁴ T. Wiedemann, *Cicero and the End of the Roman Republic*, Bristol Classical Press, London 2001, p. 36–37.

speech (*In Verrem*) that exposed gubernatorial malfeasance and forced Verres into exile.⁵ Similarly, Lucius Calpurnius Piso “*Augur*”⁶ denounced judicial bribery in the Senate and even sued Urgulania—Livia’s confidante—when she flouted the courts, only to see imperial favoritism override legal process.⁷

These episodes illustrate Tacitus’ insight: when elite misconduct surges, lawmakers respond not by reforming institutions but by layering on fresh statutes—*lex Julia de Ambitu* (18 BCE) to curb vote-buying, *Lex Cornelia* to prosecute extortion, and the sweeping addenda of later emperors—each law offering new technicalities for the corrupt to exploit. Cicero’s and Piso’s stand against corruption underscores the paradox that legal proliferation often reflects, rather than restrains, the moral decline of those in power.

Laws meant to curb the oligarchy instead provided new loopholes for rent-seeking; anti-bribery enactments produced ever more elaborate procedures that bribers simply learned to exploit; grain-dole statutes engineered mass dependency on demagogues; and sweeping edicts of emperors from Sulla to Diocletian swelled into an unmanageable mass—too vast to enforce, too detailed to interpret, and so fertile a ground for bureaucratic corruption. In every age, more laws signified not better governance, but deeper rot in the moral fabric of the ruling class.

⁵ J. Brandon, *Cicero, Marcus Tullius* [in:] *The Tacitus Encyclopedia*, V. E. Pagán (ed.), Wiley-Blackwell; Gainesville 2023, p. 246–248.

⁶ Lucius Calpurnius Piso (d. AD 24), known as “*Augur*” to distinguish him from his contemporary namesake, was consul in 1 BC and the son of Gnaeus Calpurnius Piso, consul in 23 BC. He was also the brother of the Piso implicated in the poisoning Germanicus affair.

⁷ L. Caldwell, *Calpurnius Piso, Lucius (“Augur”)*, [in:] *The Tacitus Encyclopedia*, V. E. Pagán (ed.), Wiley-Blackwell; Gainesville 2023, p. 211–212.

Statutes of Inequality: Legislative Instruments in the Service of Republican Elites

In 367 BCE, the Roman Republic enacted the *Lex Licinia Sextia*,⁸ a trio of plebiscites introduced by the tribunes Gaius Licinius Stolo and Lucius Sextius Lateranus.⁹ Of these measures, the most celebrated sought to curb oligarchic land accumulation by limiting each individual's hold on *ager publicus* (state land) to five hundred jugera.¹⁰ Yet the very families whose fortunes depended on expansive estates—the patrician elite—subverted the law at every turn. Through evasive legal sophistry, the aristocracy reinterpreted the statute's language, while enforcement mechanisms lay moribund in magistrates' hands.¹¹ Consequently, the *Lex Licinia Sextia* failed to deliver its promise of equitable land distribution, and successive legislative tweaks merely compounded social stratification.

The passage of the Rogations was the climax of a decade-long standoff. Patrician obstructionism and the plebeians' use of veto led to years in which no magistrates were installed, suspending Rome's executive and judicial functions.¹² The chronicler Diodorus

⁸ Livy, *Ab Urbe Condita* VI. 32–34, 36, 38, <https://www.thelatinlibrary.com/livy/liv.6.shtml> [date of access: 23.06.2025].

⁹ Gaius Licinius Calvus Stolo (tribune 376–367 BCE, consul 361 BCE), Lucius Sextius Sextinus Lateranus (tribune 375–376 BCE, consul (first plebeian) 366 BCE).

¹⁰ A. Lintott, *Political History, 146–95 BC*, [in:] *The Cambridge Ancient History. Volume 9: The Last Age of the Roman Republic, 146–43 BC*, J.A. Crook, A. Lintott, E. Rawson (ed.), 2nd ed. Cambridge University Press; Cambridge 1994, p. 54.

¹¹ Ch. Smith, *The magistrates of the early Roman republic* [in:] *Consuls and res publica*, H. Beck (ed.), Cambridge University Press, Cambridge 2011, p. 19–40.

¹² T.J. Cornell, *The Recovery of Rome*, [in:] *The Cambridge Ancient History. Volume 7, Part 2: The Rise of Rome to 220 BC*, F.W. Walbank, A.E. Astin, M.W. Frederiksen, R.M. Ogilvie, A. Drummond (ed.), 2nd ed. Cambridge University Press; Cambridge 1990, p. 334–337.

Siculus reduces the interregnum to a single year,¹³ but the disruption was severe enough that only a compromise engineered by the aging Camillus permitted the laws' enactment.¹⁴

The *Lex Licinia Sextia* did far more than regulate land. It restored the annual dual consulship—now open to plebeians for the first time—creating a magistracy at the apex of political life. It also established the praetorship (initially patrician), two curule aedileships, and enlarged the *duumviri sacris faciundis* to a *decemviri*¹⁵ with equal patrician and plebeian membership. Ostensibly, these reforms broadened political participation, but in practice, they reconfigured the ruling elite rather than democratize it.

Despite the formal guarantee that one consul would be plebeian each year, patrician magistrates ignored this provision in multiple years between 355 and 343 BCE—a 'patrician reaction' that underscored the law's impotence without enforcement¹⁶. Moreover, the emergent plebeian nobility—wealthy tribunes turned magistrates—soon allied with patrician peers to constitute a joint *nobilitas*. The plebeian tribunes who had championed debt relief and land reform transformed into landed oligarchs themselves, exemplified by Stolo's own prosecution for exceeding the *ager-publicus* limit he legislated.

A subsequent surge of plebiscites under Tribune Lucius Genucius ostensibly guaranteed alternating consulships and curtailed usury and repeated office-holding. This *Lex Genucia* (from 342 BCE) appears to have been enforced with more rigor: for two

¹³ Diodorus Siculus, *Library* XV.75; English Translation by C. H. Oldfather. Vol. 4–8., Harvard University Press; London 1989 <https://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A1999.01.0084%3ABook%3D15%3Achapter%3D75%3Asection%3D1> [date of access: 23.06.2025].

¹⁴ Livy, *Ab Urbe Condita* VI. 35–42, <https://www.thelatinlibrary.com/livy/liv.6.shtml> [date of access: 23.06.2025]

¹⁵ *Duumviri* – two priests, *decemviri* – four priests; established in the 4th century BCE to oversee and consult the Sibylline Books, later expanded and replaced by the fifteen-member *quindecimviri sacris faciundis*.

¹⁶ T.J. Cornell, *op.cit.*, p. 336–337.

decades the ten-year rule on re-election held, and plebeian consuls appeared reliably every year.¹⁷ Yet, like its predecessor, it addressed symptoms rather than remedying the patrician-plebeian fusion at the summit of power.

Within two generations of the Rogations, Rome's political landscape was dominated by a small, hereditary elite—now incorporating both patrician and plebeian lineages. Magisterial posts became the province of a closed circle; iteration (multiple consulships) soared, and competitive office-holding dwindled.¹⁸ The assemblies, once the vehicle for plebeian redress, were subsumed into the oligarchical framework, their resolutions equated with patrician-sanctioned *leges*.¹⁹ Far from dismantling aristocratic privilege, the *Lex Licinia Sextia* and its successors merely rebranded and redistributed it.

Pursuant to the *Lex Frumentaria* enacted under Gaius Gracchus in the late second century BCE, the Roman state undertook a systematic distribution of subsidized grain to its citizenry with the avowed purpose of alleviating rural impoverishment and stabilizing urban food supplies.²⁰ In practice, however, the regime of public dole rapidly evolved into an instrument of factional patronage, fostering a durable clientelistic bond between the recipients and those magistrates who controlled the grain dole.

To begin with, the Gracchan legislation initially targeted indigent smallholders—those “*adsidui*”²¹ whose diminishing land-holdings threatened Rome's manpower base—the scale of distribution

¹⁷ *Ibidem*, p. 337–338.

¹⁸ Ch. Smith, *op.cit.*, p. 19–40.

¹⁹ Cf. Lintott A., *Electoral Bribery in the Roman Republic*, “The Journal of Roman Studies” 1990, Vol. 80, pp. 1–16.

²⁰ C. Nicolet, *Economy and Society, 133–43 B.C.* [in:] *The Cambridge Ancient History. Volume 7, Part 2: The Rise of Rome to 220 BC*, F.W. Walbank, A.E. Astin, M.W. Frederiksen, R.M. Ogilvie, A. Drummond (ed.), 2nd ed. Cambridge University Press; Cambridge 1990, p. 606–608.

²¹ In the Roman Republic, *adsidui* were propertied citizens eligible for legionary service, as opposed to *proletarii*, who lacked sufficient wealth.

soon surpassed any reasonable demographic shortfall. Between 57 and 46 BCE, under successive continuations of the frumentary scheme, the number of beneficiaries soared to approximately 320,000, nearly half of Rome's free male citizens, eclipsing natural-rise or war-related demographic shifts and creating an enduring fiscal liability.²²

Secondly, by vesting the corn-supply contracts and logistical appointments in tribunes and quaestors reliant upon popular support, the grain laws converted a social welfare measure into a potent electoral lever. Incumbent *populares* could promise—and deliver—measured increases in monthly allocations or extensions of eligibility, thereby cementing mass dependency and skewing electoral contests toward those who could underwrite the greatest dole.

Finally, the financial burden engendered by the frumentary distributions proved destabilizing to the *aerarium*. As Rome's military engagements in Gaul and the East expanded, the grain fund consumed an ever-larger share of public revenues. Attempts to impose means-tests or to curtail the monthly ration met with vociferous popular resistance, leaving successive senates unable—or unwilling—to recalibrate the grant without risking civil unrest.²³

In sum, the *Lex Frumentaria*, though enacted to mitigate genuine hardship, became a double-edged sword: it entrenched clientelism, distorted political incentives, and strained the Republic's finances to breaking point, thereby contributing materially to the constitutional and social turbulence of the late Republic.

²² N. Purcell, *The City of Rome and the Plebs Urbana in the late Roman Republic*, [in:] *The Cambridge Ancient History. Volume 9: The Last Age of the Roman Republic, 146–43 BC*, J.A. Crook, A. Lintott, E. Rawson (ed.), 2nd ed. Cambridge University Press; Cambridge 1994, p. 648.

²³ *Ibidem*.

Under Lucius Cornelius Sulla's extraordinary dictatorship (82–81 BCE),²⁴ an ambitious legislative programme—including the so-called *Lex Cornelia* statutes—systematically consolidated senatorial dominance while simultaneously producing a bewildering proliferation of legal norms. Although nominally designed to “restore the Republic,” these reforms chiefly served to purge Sulla's opponents and embed oligarchic prerogatives in statute.

Sulla reconstituted the permanent criminal courts (*quaestiones perpetuae*) by statute—among them the *Lex Cornelia de repetundis* (extortion), *de sicariis et veneficiis* (assassination and poisoning), and *de ambitu* (electoral bribery).²⁵ By controlling the composition of juries (restricted to senators) and expanding their number of praetors and quaestors, he ensured that magistrates and provincial governors would henceforth be tried by peers beholden to the senatorial order.²⁶ This legal architecture effectively immunized Sulla's faction from prosecution while exposing his enemies to relentless litigation.

His *Lex Cornelia* framework extended imperium and promagisterial provinces only to men of unquestioned loyalty, excluding newly enfranchised equestrians and “*novi homines*”²⁷ on constitutional grounds. By raising the age and property qualifications for office and mandating the quaestorship as a prerequisite for higher magistracies, he constricted the political career-ladder to an inner

²⁴ Cf. R. Seager, *Sulla* [in:] *The Cambridge Ancient History. Volume 9: The Last Age of the Roman Republic, 146–43 BC*, J.A. Crook, A. Lintott, E. Rawson, (ed.), 2nd ed. Cambridge University Press; Cambridge 1994, p. 197–207.

²⁵ T. Nótári, *Elections, Campaign and Bribery in Ancient Rome*, “Przegląd Prawa Konstytucyjnego” 2013, No. 3 (15), p. 141–145.

²⁶ D. Cloud, *The Constitution and Public Criminal Law*, [in:] *The Cambridge Ancient History. Volume 9: The Last Age of the Roman Republic, 146–43 BC*, J.A. Crook, A. Lintott, E. Rawson (ed.), 2nd ed. Cambridge University Press; Cambridge 1994, p. 491–498, 505–530.

²⁷ *Ibidem*, p. 517.

circle of aristocratic families.²⁸ Laws against *usucapio* (acquisition by possession), on which property disputes often turned, and revisions to the *lex Julia de vi* (public violence), further codified elite preferences and curtailed popular litigiousness.

Moreover, the sheer volume and technical complexity of Sulla's statutes spawned procedural confusion. Overlapping criminal jurisdictions—where the same offence might fall under multiple *quaestiones*—allowed prosecutors to forum-shop, while mid-term modifications of praetorian edicts (later restrained by the *Lex Cornelia de edictis*) created uncertainty about which rules applied. As a consequence, ordinary citizens and lower magistrates found themselves adrift in a morass of legal minutiae, reinforcing their dependence on senatorial patrons for interpretation and protection.²⁹

In sum, Sulla's *Lex Cornelia* reforms operated less as disinterested constitutional repair than as a legal straitjacket: they eliminated political rivals under the guise of criminal justice, codified aristocratic privilege, and overwhelmed the system with arcane laws—thereby cementing oligarchic rule and inaugurating an era of jurisprudential complexity that plagued the late Republic.³⁰

Codifying Decline: Imperial Legislation as a Tool of Control and Corruption

The *Lex Iulia de Ambitu* of 18 BCE—one in a package of social and moral legislation introduced under Augustus—sought to eradicate

²⁸ E. Badian, *From the Gracchi to Sulla*, „Historia: Zeitschrift für Alte Geschichte“ 1962, No. 11(2), p. 232–233

²⁹ Cf. A. Kaeveney, *Sulla. The Last Republican*, Routledge, London 2005, p. 151–155.

³⁰ Cf. C. Rosillo-López, *Can a Dictator reform an Electoral System? A Reassessment of Sulla's Power over Institutions*, [in:] *Sulla. Politics and Reception*, Eckert A., Thein A. (ed.), De Gruyter, Berlin 2019, p. 67–70.

the endemic corruption of republican elections by criminalizing ambitus (vote-buying) and regulating candidacies. In theory, it imposed hefty fines, temporary disqualification from office, and even exile for any magistrate or aspirant found guilty of bribing the electorate or unduly influencing voting centuries.³¹

Yet the law quickly revealed the Empire's persistent enforcement deficit. First, judicial proceedings under the *Lex Iulia* were delegated to senatorial panels—composed largely of aristocrats whose own careers often depended on patronage networks—so convictions were rare and penalties routinely commuted. Furthermore, the stipulation that all candidacies require a deposit (to discourage frivolous or corrupt contenders) was undermined by frequent exemptions granted by the princeps, who retained tribunician power to waive qualifications for chosen clients.³²

Moreover, as the Empire's provincial administrations expanded, the challenges of monitoring electoral conduct beyond Rome's pomerium overwhelmed even dedicated quaestiones. Ambitious senators simply shifted their vote-buying tactics to informal patron-client gatherings, lavish entertainments, and promises of future office rather than direct coin payments.³³ In consequence, the *Lex Iulia* multiplied the corpus of anti-corruption statutes but failed to erect any credible deterrent—thereby exposing the gulf between Augustus's legislative ambition and the regime's institutional capacity.

³¹ J.A. Crook, *Political History, 30 B.C. to A.D. 14* [in:], *The Cambridge Ancient History. Volume 10: The Augustan Empire, 43 BC–AD 69*, A. K. Bowman, E. Champlin, A. Lintott (ed.), 2nd ed. Cambridge University Press, Cambridge 1996, p. 91–94.

³² J.A. Crook, *Augustus: Power, Authority, Achievement* [in:] *The Cambridge Ancient History. Volume 10: The Augustan Empire, 43 BC–AD 69*, A.K. Bowman, E. Champlin, A. Lintott (ed.), 2nd ed. Cambridge University Press, Cambridge 1996, p. 113–117.

³³ J. Harries, *Law and Crime in the Roman World*, Cambridge 2007, p. 60–61.

Ultimately, the proliferation of ambitus laws served less to curb electoral malpractice than to furnish the princeps with discretionary leverage: by granting or withholding enforcement, he could reward loyalty among the senatorial order,³⁴ reinforcing the very system of personalized obligation that the Lex Iulia purported to abolish.³⁵

By the early imperial era, Rome's legal landscape was characterized less by coherent responses to genuine social needs than by the capricious enactments of self-serving magistrates and emperors.³⁶ As Tacitus observed, "where the power grows, law declines," so that an ever-denser thicket of statutes often signalled not reform but the decay of principled governance.

Legislation increasingly became a tool of patronage. Emperors and senators alike promulgated laws to reward favoured clients, to grant exemptions from burdensome responsibilities, or to judicially ensnare rivals. Licences to establish collegia or to assay exotic grain could be granted by Lex for political advantage; conversely, ad hoc statutes debarred inconvenient individuals from office on spurious grounds. Each new Lex reflected not enduring public interest but the immediate designs of powerful patrons.³⁷

Alongside this, the imperial administrative machine itself generated constant legal accretions. A steady stream of *rescripta* and *decreta*—responses to citizen petitions or judgments in specific

³⁴ Cf. M. Reinhold, *Usurpation of Status and Status Symbols in the Roman Empire*, "Historia: Zeitschrift für Alte Geschichte" 1971, No. 20 (2–3), p. 280–289.

³⁵ A. Wallace-Hadrill, *Mutatas Formas: The Augustan Transformation of Roman Knowledge* [in:] K. Galinsky (ed.), *The Cambridge Companion to The Age of Augustus*, Cambridge University Press, Cambridge 2005, p. 69–71.

³⁶ Cf. D. Ibbetson, *Sources of Law from the Republic to the Dominate* [in:] *The Cambridge Companion to Roman Law*, D. Johnston (ed.), Cambridge University Press, Cambridge 2015, p. 25–44.

³⁷ Cf. B.W. Frier, *Early Classical Private Law* [in:] *The Cambridge Ancient History. Volume 10: The Augustan Empire, 43 BC–AD 69*, A.K. Bowman, E. Champlin, A. Lintott (ed.), 2nd ed. Cambridge University Press, 1996, p. 974–978.

disputes—were posted throughout the city. Though framed as clarifications of existing law, they often introduced novel exceptions and procedures tailored to the circumstances of influential petitioners. Juristic commentators were compelled to cite and incorporate these rulings, further bloating the body of operative norms.³⁸

Meanwhile, the formal mechanisms of republican lawmaking—comitial leges and *senatus consulta*—had long since fallen into abeyance. In their place grew an imperial legislative apparatus wholly under the princeps's control.³⁹ Yet rather than rationalizing the legal order, this shift magnified arbitrariness: edicts were issued at will; judicial commissions (*quaestiones*) were revived or suppressed according to the emperor's temper; and punitive statutes proliferated against vaguely defined offences like *maiestas* (treason) or *iniuria* (insult).

The net result was a legal system so overgrown with contradictory enactments and case-specific rulings that it ceased to function as a coherent framework for justice. Laws piled atop one another, not in service of the commonweal, but as instruments of factional competition—an unmistakable symptom of Rome's political degeneration.

In the third century CE and beyond, imperial rescripts and edicts ballooned into a vast, often unwieldy corpus. Tacitly championing absolutism, emperors—most notably Diocletian—issued thousands of written answers (*rescripta*) to legal petitions and formal edicts (*constitutiones*) to legitimate their rule.⁴⁰ Surviving clusters of rescripts from 238–46, 259–60, and especially 283–94

³⁸ *Ibidem*, p. 969–973

³⁹ F. Schulz, *History of Roman Legal Science*, Clarendon Press, Oxford 1946, p. 112–116.

⁴⁰ D. Ibbetson, *High Classical Law* [in:] *The Cambridge Ancient History. Volume 12: The Crisis of Empire, AD 193–337*, A. Bowman, A. Cameron, P. Garnsey (ed.), 2nd ed. Cambridge University Press, Cambridge 2005, p. 184–207.

attest to a chancery under relentless pressure to adjudicate individual cases. By Diocletian's reign, some 1,200 rescripts were codified into the *Codex Gregorianus* (Hadrian–291) and the *Codex Hermogenianus* (293–94), later incorporated wholesale into Justinian's Code.

Yet this legal profusion bred its own pathologies. First, the sheer volume of constitutions—divided into some fifteen books in the *Gregorianus* and over a hundred titles in the *Hermogenianus*—created overlapping and sometimes conflicting norms.⁴¹ Administrators and jurists struggled to locate the relevant statute or rescript, impeding uniform enforcement.

Second, the compilation process entailed multiple editorial layers: pre-Diocletianic anthologies, Duocletianic redactions, and Justinianic emendations. Each stage introduced stylistic alterations and, on occasion, substantive tweaks—thus distancing the texts from their original formulations and sapping their authority.⁴²

Third, the public posting of codified constitutions—while intended to reduce direct petitions to the emperor and streamline justice—diluted imperial responsiveness and fostered bureaucratic gatekeeping. Provincial governors and chancery officials acquired de facto power to interpret or withhold rescripts, opening avenues for favoritism and graft.⁴³

Ultimately, the late Empire's law-making glut—far from clarifying the legal order—overwhelmed Rome's administrative machinery, entrenched corruption among functionaries, and symbolized the very decay of principled governance it was meant to disguise.

⁴¹ S. Corcoran, *The Gregorianus and Hermogenianus assembled and shattered*, “*Mélanges de l'École française de Rome. Antiquité*” 2013, No. 2, p. 15–43.

⁴² Cf. T. Honoré, *Emperors and Lawyers*, 2nd ed., Clarendon Press, Oxford 1994, p. 139–185.

⁴³ J. Harries, *Law and Empire in Late Antiquity*, Cambridge 1999, p. 19–31, 36–46, 70–76, 96–98, 184–186.

Conclusion

Tacitus's famous maxim—"The more corrupt the republic, the more numerous the laws"—captures a recurring paradox in Roman history: as political elites spiraled into factionalism and personal ambition, each scandal or crisis provoked fresh legislation that promised reform but instead multiplied loopholes and opportunities for abuse. From Cicero's celebrated prosecution of Verres and Piso's failed suit against Livia's protégée, to the plebiscites limiting land, Gaius Gracchus's grain dole, Sulla's punitive "Cornelia" statutes, Augustus's *Lex Iulia de Ambitu*, and the inundation of imperial rescripts under Diocletian, every wave of anti-corruption law simply swelled the thicket of technicalities, entrenched patronage, and reinforced elite privilege—demonstrating that more laws often signal deeper moral decay rather than better governance.

Moreover, political expediency too often punishes the very rule of law it purports to uphold. When legislators and magistrates subordinate legal principle to short-term gain or partisan advantage, statutes cease to serve the common good and become mere instruments of political warfare. In such an environment, the vigilant jurist must act as the custodial conscience of the polity—following the example of early legal scholars who placed fidelity to *ius* above personal ambition or factional loyalty. Only when legal professionals refuse to countenance the instrumentalization of law can the integrity of the legal order be preserved against the corrosive tides of political self-interest.

Admittedly, this analysis presents a decidedly sombre view of the interplay between law and politics, yet it is precisely through the recognition of enduring patterns—from the courts of the late Republic to our own contemporary legislatures—that we derive normative insight. By tracing the recurrent cycle of legal overreach and institutional decay, we learn to scrutinize new statutes more critically and to demand accountability from those who draft, interpret, and enforce them. In acknowledging the mirror that

antiquity holds up to our present moment, we empower ourselves to resist complacency, to champion the independence of the legal profession, and to ensure that laws remain bulwarks of justice rather than tools of convenience.

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ABSTRACT

Tacitus' remark, "*Corruptissima republica, plurimae leges*" ("The more corrupt the republic, the more laws"), underscores how law in Rome's crises often served not justice, but power. Statutes like the *Lex Licinia Sextia* (367 BCE), meant to cap land ownership, were routinely subverted by elites, and reforms only deepened inequality. The *Lex Julia de Ambitu* (18 BCE), targeting electoral corruption, revealed the law's impotence amid systemic decay. Gracchan grain laws (2nd–1st c. BCE) shifted from relief measures to instruments of populist control and fiscal strain. Under Sulla, laws such as the *Lex Cornelia* institutionalized purges and aristocratic dominance, cloaking repression in legality. Later, emperors like Diocletian issued countless edicts to reinforce autocracy, overwhelming governance and fueling administrative abuse. Rather than expressing civic order, Rome's legal overproduction mirrored its political disintegration—fulfilling Tacitus' warning that excess law marks the fall of republics.

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Chapter II

Cicero and
the Senate:
The Limits of
Jurisprudence
and Legislation
in the Late
Republic

Christoph Becker*

Introduction to Session II: “Cicero as a Jurist and the Roman Senate as a Lawmaker?”

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The following two contributions reproduce the presentations of two second-year students from Augsburg. Both essays focus on Roman antiquity. Lea Pekez and Sahar Zobair participated in my Seminar on Legal History in the winter semester 2024/2025, researching the relationship between law and politics during the final decades of the Roman Republic and the early years of the imperial period. In close mutual connection, Lea’s paper asked whether Marcus Tullius Cicero could be considered a “jurist,” while Sahar’s task was to examine the Roman Senate as a lawmaker.

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Cicero seems to be the top subject of the Warsaw seminar, as the Thessaloniki group (Session IV) will also speak about him. When Constantinos Vlahos sent the subjects of the Greek session in March, I told him that the lecture by his student Georgios Tzemintimbis, “From Cicero’s Political Morality to the Modern Concept of the Rule of Law,” would perfectly complement the lecture of my student Lea Pekez, who asks: “Was Marcus Tullius Cicero a jurist?”. Costas replied the same day: “Cicero will indeed be one of this year’s protagonists.” Furthermore, Cicero, of course, played a role in Session I, when Ellen Kuźma presented “Between Virtue and Vice: How Law and Politics Shaped the Lives of Women in Ancient Rome,” and Szymon Nowak spoke on “CORRUPTISSIMA REPUBLICA, PLURIMAE LEGES: Law in the Service of Corrupt Power in Ancient Rome.” Moreover, this protagonist will play a third role in Session III, with Marco Manna speaking on the topic: “Orator Civis: A Profession Shaped by Politics, or a Politician Moulded by the Profession.”

Marcus Tullius Cicero was not a jurist in the sense of having studied law at an academy and having passed a final examination. Nobody had done so in ancient Rome before the Imperial era, when a more formalized training of the next generation of civil servants emerged. Originally, juridical knowledge was created and transmitted in private circles, maintained within wealthy families such as the one in which Cicero grew up.¹ This represented a rather informal approach to jurisprudence. It began at an early stage of education: Marcus Tullius Cicero wrote a dialogue with his younger brother Quintus, known as his famous treatise on law, *De Legibus*. In this work, Marcus asks Quintus whether he remembers how, as children, they had to learn the Twelve Tables by heart.²

¹ B. Wirth-Duncan, *Rechtsberatung in der römischen Antike*, Berlin 2020, pp. 61 sqq.

² M.T. Cicero, *De legibus*, 2.9.

Cicero's approach to law is a combination of philosophical works and practical experience. Cicero collected his practical experience as a court orator or process representative³ and as magistrate in the career path of public service (from *quaestor* via *aedil* and *praetor* to *consul*). The *cursus honorum* qualified him to enter the Senate, as it did for hundreds of other magistrates who had completed a step of the sequence, or, as in Cicero's case, the entire career path.

The statesman wrote many long and short treatises on law and politics. But it was not his aim to deliver a textbook nor a commentary on the edict of the *praetor* or a monograph on a juridical subject. He did not want to explain or further develop the legal system nor did he want to solve legal detail problems. Cicero rather used juridical arguments for his contemplations of political events, state philosophy, and political polemics. Nonetheless, his reasoning was juridically correct, convincing, and elegant. They found recognition (as pointed out by Constantinos Vlahos in his remark on Lea Pekez's lecture) in juridical publications such as Gaius' *Institutiones* (around AD 160). Gaius divided all things into those that can be touched and those that cannot be touched: "*res qui tangi possunt*"⁴ and "*res qui tangi non possunt*".⁵ With this, Gaius followed

³ About these functions in the Republican era of ancient Rome see J.-M. David, *Die Rolle des Verteidigers in Justiz, Gesellschaft und Politik. Der Gerichtspatronat in der späten römischen Republik*, [in:] *Große Prozesse der römischen Antike*, U. Manthe, J. v. Ungern-Sternberg (ed.), München 1997, pp. 28 sqq.; M. Fuhrmann, *Zur Prozeßtaktik Ciceros. Die Mordanklagen gegen Sextus Roscius von Ameria und Cluentius Habitus*, [in:] *Große Prozesse*, U. Manthe, J.v. Ungern-Starnberg (ed.), pp. 48 sqq.; U. Manthe, *Ein Sieg der Rhetorik über die Jurisprudenz. Der Erbschaftsstreit des Manius Curius – eine vertane Chance der Rechtspolitik*, [in:] *Große Prozesse*, U. Manthe, J.v. Ungern-Starnberg (ed.), pp. 74 sqq.; W. Schuller, *Der Mordprozeß gegen Titus Annius Milo im Jahre 52 v. Chr. Oder: Gewalt von oben*, [in:] *Große Prozesse*, U. Manthe, J.v. Ungern-Starnberg (ed.), pp. 115 sqq.; B. Wirth-Duncan, *Rechtsberatung in der römischen Antike*, pp. 31 sqq.

⁴ Gaius, *Institutiones*, 2.13.

⁵ Gaius, *Institutiones*, 2.14. About this distinction see C. Becker, *Die „res“ bei Gaius*, Köln, Berlin, Bonn, München 1999, pp. 40 sq.; P. Kreutz, *Das Objekt*

a basic classification of definitions to be used as argumentation models which Cicero had presented in his „*Topica*” and illustrated with several terms taken from civil law.⁶ Four centuries after Gaius, this distinction reappeared in the Institutes of Justinian.⁷ On this basis, it is fair to state that Cicero helped shape the very patterns of thought used by jurists—just as, in a broader sense, all philosophers of Greek and Roman antiquity did, by analyzing *topoi* or *loci* in juridical and non-juridical examples alike, transmitted through the philosophical education of youth.

If one takes into account that the Roman Senate produced decisions (*senatus consulta*) that were formally mere recommendations for active magistrates, but were effectively treated as substitutes for missing laws and commented on by legal scholars, and if one also considers that the Senate occasionally acted as a court, or that its members served as judges—in other words, that the Senate functioned as a site for trials or at least as a source of personnel for special court proceedings⁸ (as Federico Procchi

und seine Zuordnung, Baden-Baden 2017, pp. 250 sqq.; E. Rogalska, *Structures of European Civil Codes*, Berlin 2024, pp. 190 sqq.; S. Holzweber, *Die unkörperliche Sache. Paradigmenwechsel im Sachenrecht*, Wien 2025.

⁶ M.T. Cicero, *Topica*, 5.26–27: *Et primum de ipsa definitione dicatur. Definitio est oratio, quae id quod definitur explicat quid sit. Definitionum autem duo genera prima: unum earum rerum quae sunt, alterum earum quae intelleguntur. [27] esse ea dico quae cerni tangique possunt, ut fundum aedes, parietem stillicidium, mancipium pecudem, supellectilem penus et cetera; quo ex genere quaedam interdum vobis definienda sunt. Non esse rursus ea dico quae tangi demonstrare non possunt, cerni tamen animo atque intellegi possunt, ut si usus capionem, si tutelam, si gentem, si agnationem definias, quarum rerum nullum subest quasi corpus, est tamen quaedam conformatio insignita et impressa intellegentia, quam notionem voco. Ea saepe in argumentando definitione explicanda est.*

⁷ *Institutiones Iustiniani* 2.2.

⁸ Here, the recovery processes (*actiones de repetundis*) against provincial governors who had demanded excessive taxes from the subjects should be mentioned. Until the reforms of the Gracchi (*lex Acilia repetundarum*, 122 BC), the special courts were staffed by senators. See: W. Eder, *Strafsachen in Geschworenengerichten. Die Prozesse wegen Erpressung römischer Untertanen und*

noted during the discussion)—might this justify calling senators jurists? Probably not. Firstly, senators did not draft their *senatus consulta* as legislative texts. Secondly, Senate trials aimed to detect and prove political faults rather than resolve civil disputes or sentence ordinary criminal behavior. Thirdly, in the strict sense, no praetor or iudex in the forum was considered a "jurist" merely by carrying out his office, despite the fact that magistrates shaped law through their decisions, by drafting edicts, or by influencing the edicts of their successors, which were a central source of Roman law.⁹

Naming Marcus Tullius Cicero and all members of the Roman Senate as law-influencing non-jurists detracts nothing from their honor, reputation, or merits.

Verbündeter (Repetundenprozesse), [in:] *Große Prozesse der römischen Antike*, U. Manthe, J.v. Ungern-Starnberg (ed.), München 1997, pp. 13 sqq. It is also worth mentioning the debate about Catiline's high treason conspiracy in the Roman Senate. See: W. Dahlheim, *Die Not des Staates und das Recht des Bürgers: Die Verschwörung des Catilina (63/62 v. Chr.)*, [in:] *Macht und Recht. Große Prozesse in der Geschichte*, A. Demandt (ed.), München 1996, pp. 74 sqq.; J.v. Ungern-Sternberg, *Das Verfahren gegen die Catilinarier oder: Der vermiedene Prozeß*, [in:] *Große Prozesse*, U. Manthe, J.v. Ungern-Starnberg (ed.), München 1997, pp. 85 sqq. Additionally, one must consider the Senate's debate on how to deal with Caesar's murderers. See: K. Bringmann, *Der Prozeß gegen die Caesarmörder. Von der Amnestie zum politischen Schauprozeß*, [in:] *Große Prozesse. Recht und Gerechtigkeit in der Geschichte*, U. Schultz (ed.), München 1996, pp. 32 sqq.

⁹ On sources of Roman law see: Gaius, *Institutiones*, 1.2 sqq.; *Institutiones Iustiniani* 1.2.2 sqq.; *Digesta* 1.1.7, *Digesta* 1.2.

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Lea Pekez*

Was Marcus Tullius Cicero a Jurist?

1. Introduction

The Roman Republic was a complex political and legal environment, shaped by influential figures like Marcus Tullius Cicero. Known for his skills as an orator and statesman, Cicero's exact relationship to the law remains a subject of ongoing debate. This study addresses key aspects of Cicero's engagement with Roman law, considering the broader historical and political context to better understand his role and identity in the legal sphere.

2. A brief overview of Cicero's life

Marcus Tullius Cicero was born in 106 BC in Arpinum to a family of the equestrian order. After training in law and rhetoric, he rose to prominence in Rome as an advocate. His political career

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peaked with his consulship in 63 BC, during which he suppressed the Catilinarian Conspiracy¹—an act that brought him fame but also powerful enemies, leading to his exile.²

Upon returning to Rome, Cicero was politically sidelined and focused on writing, producing major works such as *De Oratore*, *De Re Publica*, and *De Legibus*.³ Following Caesar's assassination,⁴ Cicero opposed Mark Antony through his *Philippicae*, hoping to preserve the Republic.⁵ His trust in Octavian, however, proved.⁶ In 43 BC, Cicero was executed during the proscriptions of the Second Triumvirate, targeted by Mark Antony.⁷

3. Cicero's Early Trials and Political Career

Cicero began his career in Rome, where he received rhetorical and legal training from leading figures,⁸ including Q. Mucius Scaevola, author of the first comprehensive treatise on Roman civil law (*Libri XVIII iuris civilis*).⁹

In 80 BC, Cicero defended Sextus Roscius, accused of parricide, in a case that implicated Sulla's ally Chrysogonus. His bold yet careful defense exposed political corruption and led to an acquit-

¹ G. Schoeck, *Zeitgenosse Cicero: Ein Leben aus zeitgenössischen Quellen*, Artemis-Verlag, Zürich, München 1977, pp. 9 sq, 59.

² Cf. *ibidem*, pp. 72, 102.

³ O. Höffe, *Ciceros Staatsphilosophie: Ein kooperativer Kommentar zu „De re publica“ und „De legibus“*, De Gruyter, Berlin 2017, p. 54.

⁴ Cf. Schoeck, *op.cit.*, p. 201.

⁵ Cf. M. Fuhrmann, *Cicero und die römische Republik*, 2nd edition, Piper, München 1994, p. 250.

⁶ Cf. Schoeck, *op.cit.*, p. 206.

⁷ *Ibidem*, pp. 214 sq.

⁸ *Ibidem*, p. 10.

⁹ Cf. Höffe, *op.cit.*, p. 125.

tal, gaining him early fame in Rome's legal and political spheres.¹⁰ This was Cicero's first major legal case and made him one of the city's most prominent advocates.¹¹ Whether this marks him as a jurist or rather showcases his rhetorical and political talent will be explored later in this paper.

Between 79 and 77 BC, Cicero traveled to Greece to refine his skills.¹² He studied with renowned rhetoricians like Apollonius Molon in Rhodes, focusing on Stoic and Aristotelian logic as a basis for argumentation.¹³ Additionally, Cicero studied with Demetrius in Athens.¹⁴ Further studies took him to Asia Minor, where he deepened his skills with Hellenistic rhetoricians such as Xenocles, Dionysius, and Menippus.¹⁵

Upon returning to Rome, Cicero pursued a political career via the *cursus honorum*. In 76 BC, he served as quaestor in Sicily during a grain crisis. In 70 BC, Sicilian citizens asked him to lead the prosecution against their former governor, Gaius Verres.¹⁶ Accused of corruption and looting, Verres faced Cicero, who focused on evidence and witness testimony rather than grand speeches. The strategy led Verres to flee before the trial ended. Cicero's success cemented his reputation, and his speeches remain rhetorical classics.¹⁷

¹⁰ Cf. Schoeck, *op.cit.*, p. 11.

¹¹ *Ibidem*, p. 17.

¹² *Ibidem*, p. 17.

¹³ Cf. J. Powell, *Cicero the Advocate*, Oxford University Press, Oxford 2006, p. 45.

¹⁴ B. Wirth-Duncan, *Rechtsberatung in der römischen Antike*, LIT-Verlag, Augsburg 2020, p. 73.

¹⁵ Cf. Schoeck, *op.cit.*, p. 18.

¹⁶ *Ibidem*, pp. 20, 22.

¹⁷ Cf. Schoeck, *op.cit.*, pp. 22 sq.

Building on his success, Cicero advanced through public offices and was eventually elected praetor. He became known for his legal conduct and ran for the consulship in 65 BC and won the election.¹⁸

As consul, Cicero uncovered Catiline's plot to seize power after losing the election. He delayed the vote and exposed the conspiracy in the Senate.¹⁹ His Catilinarian Orations forced Catiline to flee and marked the height of Cicero's political career.²⁰

4. Jurists in Cicero's Time

During the middle and late Roman Republic, legal advising was a respected but unpaid activity typically performed by members of the aristocracy. Because legal advice was given without compensation, it was mainly practiced by members of the upper class who could afford such service.²¹ Many of them also held political office, and legal expertise was often used to strengthen one's political influence and public reputation. Legal advising was not considered a profession in the modern sense but rather an honorable civic duty, often pursued alongside a political or military career.²²

Cicero describes in his works the importance of legal advising as a means to increase honor and prestige. This is illustrated by a passage from *De Officiis*:

“Quae autem opera, non largitione beneficia dantur, haec tum in universam rem publicam tum in singulos cives conferuntur. Nam in iure cavere, consilio iuvare atque hoc scientiae genere prodesse quam plurimis vehementer et ad opes augendas pertinet et ad gratiam. Itaque cum multa praeclara maiorum, tum quod optime

¹⁸ *Ibidem*, pp. 41, 59.

¹⁹ *Ibidem*, pp. 61 sq.

²⁰ Cf. Fuhrmann, *op.cit.*, p. 100.

²¹ Cf. Wirth-Duncan, *op.cit.*, p. 31.

²² *Ibidem*, p. 32.

constitui iuris civilis summo semper in honore fuit cognitio atque interpretario; (...).“²³

This passage shows how legal precautionary activities (*in iure cavere*) and giving legal advice contributed to the increase of wealth (*opes augendas*) and favor (*gratiam*) among the people, which were regarded as essential foundations for political influence and social standing. In his work *De Oratore*, for example, Cicero explains that those who distinguished themselves through their legal knowledge and eloquence could gain great respect and influence in public life. Legal advising, both in judicial and extrajudicial matters, was considered one of the most honorable activities in Roman society. It was seen not only as a means to increase wealth but also as a way to secure the trust and favor of the people. Since political advancement largely depended on the vote of the people, public support was of inestimable value. The increase of prestige and influence through legal advising was therefore a central motivation for many young men aspiring to a political career.²⁴

For the Roman upper class, legal advising was not only a way to gain personal fame but also a social duty. Cicero emphasizes in *De Officiis* that there were no areas of life in which a Roman citizen was exempt from obligations:

“For no phase of life, whether public or private, whether in business or in the home, whether one is working on what concerns oneself alone or dealing with another, can be without its moral duty; on the discharge of such duties depends all that is morally right, and on their neglect all that is morally wrong in life.”²⁵

All citizens were expected to contribute to the welfare of the community. Offering legal assistance was considered one of the

²³ Cicero M.T., *De officiis – Vom pflichtgemäßen Handeln*, übersetzt und kommentiert von H. Gunermann (ed.), Reclam, Stuttgart 2007, 2.19 (65).

²⁴ Cf. Wirth-Duncan, *op.cit.*, pp. 33 sq.

²⁵ Cicero, M.T., *On Duties* (translated by W. Miller, Loeb Classical Library, Vol. 21, Book I, Section 4), Harvard University Press.

most important ways to serve the common good. Legal advising was thus not only voluntary service but also moral obligation—a kind of “public service” that benefited both the advisor and society as a whole.²⁶

Legal advising in the Roman Republic can be divided into two main areas: extrajudicial consultation and judicial representation. The *iuris consults* gave legal advice, drafted lawsuits, and prepared documents, drawing on deep knowledge of Roman law and custom. Judicial representation was the domain of the orator, who persuaded the court through rhetoric. Though one person could theoretically perform both roles, a clear distinction existed: legal consultation was seen as technical and academic, while oratory emphasized persuasion and performance.²⁷

Cicero valued eloquence above legal expertise and saw himself, as an orator, as superior to the *iuris consulti* (legal experts). This distinction raises the question of whether he can be considered a jurist in the traditional or modern sense—a question addressed later in this paper. The divide between orators and legal advisors reflected not only professional roles but also social differences: *iuris consulti* focused on legal analysis, while *oratores* prioritized persuasive speech, which was key to public influence.²⁸

Legal advising took place in private and public settings. *Iuris consulti* often worked from home to build social status, while orators showcased their skills in court to gain prestige and advance politically.²⁹

Training in both law and rhetoric was largely private and unregulated. *Iuris consulti* typically learned through study and experience. *Oratores* trained in rhetoric, often under Greek teachers,

²⁶ Cf. Wirth-Duncan, *op.cit.*, p. 35.

²⁷ Cf. Wirth-Duncan, *op.cit.*, p. 36.

²⁸ *Ibidem*, pp. 36 sq.

²⁹ *Ibidem*, pp. 53 sq.

and while legal knowledge was not essential for them, many—like Cicero—gained a solid foundation in both disciplines (see point D.).³⁰

5. Cicero's Philosophy on Law

Although Cicero was primarily known as an orator, works like *De Legibus* show that he also engaged deeply with the philosophical foundations of law and justice.³¹

In this work, Cicero presents a dialogue with Quintus and Atticus. Cicero focuses on the *ius civitatis*, which for him is an expression of a general, universal law (*ius universum*). He believes that the origins of law do not lie in individual statutes like the Twelve Tables or the edicts of the praetors, but in human nature and the nature of things. Thus, he describes the law as an “effect of nature, (...) the intellect and reason of the wise, the standard for what is right and wrong” (Leg. I, 19).³²

He refers to the Twelve Tables in *De Legibus* when outlining key constitutional laws—not as a utopian innovation, but as a revised version of traditional statutes. Using archaic language modeled on the Twelve Tables, Cicero likely aimed to restore their authority amid the Republic's crisis.³³

For Cicero, the Twelve Tables were not merely a legal document but a moral and philosophical foundation. Cicero's engagement with the Twelve Tables demonstrates his deep understanding of Roman law.

Cicero's writings reveal that his focus lies less on systematically analyzing the law and more on argumentation. Unlike Gaius, whose focus is on a clear structured presentation of the law, Cicero

³⁰ *Ibidem*, pp. 62 sq.

³¹ *Ibidem*, p. 37.

³² Cf. Höffe, *op.cit.*, p. 117.

³³ *Ibidem*, p. 121.

is concerned with how the orator persuades an audience. Legal reasoning serves rhetorical and political goals rather than legal clarification, often illustrated through case examples.

While Cicero addresses legal issues, his aim is not to present the law as a closed system. Instead, he views legal knowledge as a tool for persuasive argumentation. In *Topica*, he highlights—through Gaius Trebatius—that his focus is not legal theory, but guiding legal and political disputes into structured argument.

For Cicero and other Roman statesmen, law served primarily as a rhetorical tool. Legal knowledge was not an end in itself but supported political aims. In *De Oratore*, Cicero argues that the orator should use legal methods to enhance his speech, integrating law into the broader art of rhetoric and political practice.

In practice, law did not require exhaustive knowledge from multiple sources. While systematization made legal use easier, it was not its primary goal. Philosophy served as a foundation, but not as a source of legal content. In *Brutus*, Cicero emphasizes the ideal orator trained in philosophy over the perfect jurist or a systematic legal science.

For Cicero, the orator is capable of adapting legal doctrines to his own needs. Legal discourse is, for him, a practical tool for persuasion, not an end in itself. This view fundamentally differs from that of Roman jurists like Gaius and the later compilers of Justinian's *Corpus Iuris Civilis*. Gaius and the editorial team behind the *Corpus* could hardly use Cicero's writings as direct legal instruction, since their focus was on methodological structure and the practical applicability of the law. Nevertheless, it is reasonable to assume that Cicero's method—especially the *Topica*—played an important role for them, as it provided readers with a reliable approach to addressing legal and political questions.

In conclusion, Cicero's contributions to legal thought are less a systematic jurisprudence and more a pragmatic rhetoric aimed at persuading an audience, whether in legal or political contexts.³⁴

6. Conclusion: Was Cicero a Jurist?

The conclusion to the question of whether Cicero was a jurist can be formulated in a nuanced way based on the preceding analysis. Cicero was undoubtedly one of the most prominent figures of his time, known both as a lawyer and as a politician and orator.

Cicero's works, particularly *De Legibus*, demonstrate his profound understanding of Roman law and philosophy, especially concerning natural law and the foundations of legislation. He engaged with the Twelve Tables, viewing them as a moral and philosophical basis for Roman law. However, Cicero was not a jurist in the classical sense—someone who systematically analyzed or codified the practical application of the law. Instead, he was a thinker and rhetorician who used law as a tool for political and rhetorical persuasion, focusing more on argumentation than on technical legal practice.³⁵

In Cicero's era, the legal profession was not institutionalized as it is today. Legal advising was an honorary role primarily undertaken by the aristocratic elite, serving to gain and consolidate social prestige rather than constituting a paid or professionally organized occupation. This underscores that, although Cicero acted as a legal advisor and political figure, he lived in an era when the jurist did not hold a professional position in the modern sense.³⁶

³⁴ C. Becker, *Die "res" bei Gaius – Vorstufe einer Systembildung in der Kodifikation?: Zum Begriff des Gegenstandes im Zivilrecht*, Heymanns, Köln a.o. 1999, pp. 64 sq.

³⁵ *Ibidem*, pp. 64 sq.

³⁶ Cf. Wirth-Duncan, *op.cit.*, p. 124.

While Cicero had legal knowledge and engaged with legal and philosophical issues, he was not a jurist in the strict sense. Rather, he was a political thinker and rhetorician who used law to serve his political aims. Thus, he may be seen as a jurist in a broad sense, but not as a classical legal scholar who shaped or reformed the legal system.

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ABSTRACT

Marcus Tullius Cicero is one of the most prominent figures of the Roman Republic. As an orator, philosopher, and statesman, his legacy continues to influence rhetoric, law, and political thought. This paper explores Cicero's relationship with Roman law and discusses whether he qualifies as a "jurist" in the modern, narrower sense. Special focus is given to his legal and philosophical writings, his activity in court, and the role of law in his political strategy. The analysis also considers the historical context to better understand Cicero's approach to law. The goal is to offer a nuanced view of his legal identity without drawing simplified conclusions.

Sahar Zobair*

The Roman Senate as the Creator of Law

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1. Historical context of the Roman Senate

The Roman Senate ranks among the oldest and most influential institutions of ancient Rome. It existed as early as the Roman Kingdom and was known as the ‘Council of Elders,’ which initially consisted of leading members of the patrician nobility. However, during the course of the Republic, the Senate transformed into a body of former magistrates. Membership was contingent upon prior political office.¹ A seat in the Senate was held for life.² Originally, the Senate was exclusively for patricians, but over time, especially after the Conflict of the Orders, plebeians were also able to gain access to public office and thus to the Senate.³ The senators

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¹ W. Kunkel, M. Schermaier, *Römische Rechtsgeschichte*, 14th edition, Böhlau Verlag, Köln 2005, p. 25.

² W. Waldstein, J.M. Rainer, *Römische Rechtsgeschichte*, 12th edition, C.H. Beck, München 2024, p. 40.

³ W. Kunkel, M. Schermaier, *op.cit.*, p. 26.

were divided into ranks corresponding to their respective offices, with former consuls occupying the highest rank.⁴ The Senate exerted considerable influence on Roman politics, particularly in the areas of foreign policy, warfare, and finance.⁵ The patricians enjoyed special privileges, such as the right to confirm decisions made by the popular assemblies and thus retained considerable influence.⁶ Although the Senate gradually lost its dominant position in Roman politics over time, it retained symbolic significance even during the imperial period.⁷

2. Legal function and role of the Roman Senate

The Senate had considerable influence on the political and legal processes of the Roman state by preparing laws, recommending magistrates, and approving political measures. One of its most important tasks was to discuss laws and plebiscites in advance, often making recommendations before final decisions were made in the popular assemblies.⁸ The Senate also had the authority to declare plebiscites invalid if they were not conducted properly,⁹ but it could only intervene in cases of formal defects and could not replace popular laws. Although the Senate lacked direct legislative power, it was able to issue directives to magistrates, particularly in administrative matters such as the issuance of edicts.¹⁰ It held special significance as an advisory body to magistrates, who con-

⁴ *Ibidem.*

⁵ W. Waldstein, J.M. Rainer, *op.cit.*, p. 194.

⁶ W. Kunkel, M. Schermaier, *op.cit.*, p. 26.

⁷ *Ibidem.*

⁸ H. Siber, *Römisches Recht in Grundzügen für die Vorlesung*, Volume I, 2nd edition, Wissenschaftliche Buchgesellschaft, Darmstadt 1968, pp. 27 sq.

⁹ *Ibidem.*

¹⁰ J.D. Harke, *Römisches Recht*, 3rd edition, C.H. Beck, München 2024, p. 6.

sulted it on critical issues—especially in foreign policy. The Senate’s recommendations carried significant weight in international matters such as the appointment of envoys, treaty negotiations, and declarations of war or peace. Despite its lack of formal legislative or executive power, the Senate exercised substantial control through its advisory role, its influence over finances, and its ability to steer decisions by cooperating with other magistrates.¹¹

In Roman legal history, senatorial decrees, known as *senatus-consulta*, played a significant role in shaping the development of law and reflected the Senate’s authority across various spheres of public life.

One notable example is the *Senatusconsultum Velleianum*¹², which addressed the legal conduct of women. Women were prohibited from acting as guarantors or assuming liability for another person’s debts through the practice of intercession. Its principal function was to prevent the exposure of the *res familiaris*, the family estate or domestic wealth, to external financial risks. This protective measurement was grounded in the belief that women were particularly susceptible to persuasion and emotional influence and therefore more likely to assume liabilities that could endanger household assets (*periculum rei familiaris*). This concern with preserving the integrity of family property and defining women’s legal capacity found further expression in later measures.

A further development in Roman law concerning the role of women came with the *Senatusconsultum Tertullianum*¹³, which responded to long-standing inequalities in inheritance rights. Under the earlier framework of the Twelve Tables, inheritance favored male descendants, and mothers were not granted reciprocal rights to inherit from their children. Although Emperor Claudius intro-

¹¹ H. Siber, *op.cit.*, pp. 27 sq.

¹² *Digesta* 16.1; H. Vogt, *Studien zum Senatus Consultum Velleianum*, Ludwig Röhrscheid Verlag, Bonn 1952, pp. 4 sqq.

¹³ *Institutiones* 3.3.

duced limited reforms, it was this senatorial decree that enacted broader changes. Mothers were now legally included in the line of succession and could inherit from their children, a recognition that had previously been denied. The decree abolished the existing requirement that women must have borne three or four children to qualify for inheritance rights, thus removing a significant barrier to equal treatment. It further established that mothers would take precedence over all other legal heirs, and could receive their children's entire estates, except when siblings of the deceased had a legal claim.

The Senate continued to strengthen the position of women through the *Senatusconsultum Orfitianum*¹⁴, which ensured that children, including those born outside of marriage, could inherit from their deceased mothers. In this context, the rights of children were prioritized within the legal order of succession. This marked a significant shift from earlier practices, where inheritance was tightly bound to paternal lines, and underscored a growing recognition of the maternal relationship in legal terms. Taken together, these decrees reflect a meaningful evolution in Roman inheritance law, one that gradually acknowledged the legal personhood and familial importance of women not only as dependents but also as rightful heirs and benefactors.

The scope of these senatorial decisions reveals the broad reach of the Senate in Roman political, legal, and social affairs. Far from being a passive or merely advisory body, the Senate held a central position in legislative activity and demonstrated its capacity to address complex societal issues through lawmaking. Its role in shaping norms around gender, family, and property law illustrates the extent of its influence and highlights its significance as a legislative authority within the Roman state.

¹⁴ *Institutiones* 3.4.

3. Assessment of the power of the Senate

In Roman law, the Senate from its origins was never responsible for legislation in a strict sense¹⁵, which was instead the responsibility of the people and the popular assemblies. While the Senate used to play a central role in the governance of the state, decisive functions such as the conduct of foreign policy, military operations and the administration of armaments expenditure increasingly fell into the hands of the emperor. This change led to the Senate having to relinquish its former position of power.

Nevertheless, in the Republican era Senate resolutions could at least prepare, confirm, or declare popular laws invalid; they could not enact new laws or replace existing ones. They were merely advisory in nature. The Senate could not directly instruct magistrates to take administrative measures or issue edicts, its role as a legislative body was considerably limited.¹⁶ *Senatus consulta* thus primarily reflected the tradition and prestige of the Senate, but not a source of directly binding legal provisions for the people.¹⁷ However the Roman Senate had considerable influence over the magistrates, as it could restrict their powers by proroguing their *imperium*, which later passed entirely into its hands.¹⁸ This abuse of power enabled the Senate to control popular legislation and to appropriate the magistrates' right of intercession in order to enforce its will. As a result, Senate resolutions gradually acquired legal force without specific constitutional basis.¹⁹ Particularly problematic was the role of the tribunes of the people, who were originally intended as a counterweight to the Senate but were

¹⁵ H. Siber, *op.cit.*, p. 10.

¹⁶ W. Waldstein, J.M. Rainer, *op.cit.*, p. 194.

¹⁷ *Ibidem*.

¹⁸ W. Waldstein, J.M. Rainer, *op.cit.*, p. 103.

¹⁹ H. Siber, *op.cit.*, p. 47.

later exploited by the latter for its own purposes, a dynamic that ultimately fostered political instability.²⁰

4. Conclusion: Senators as de facto jurists shaped by experience

The Roman Senate developed from an originally advisory body into a central institution of state governance, which shaped both political and legal decisions. Senators, who sat in the Senate for life, thus had a long-term influence on Rome's foreign and domestic policy. Their extensive political experience and their central role in diplomatic and international law decisions made them important players in legal policy. The Senate was not only a political centre, but also a legal one, as its members were closely involved in legal decisions in the political process. It can thus be said that senators functioned as de facto jurists, informed by extensive political and administrative experience who had a decisive influence on legal policy and whose responsibilities spanned both political tasks and the shaping of the legal system.

5. Later influence of the Roman senators on the development of German law

The ancient Senate had a considerable influence on Roman law, both through its judicial and legislative functions. The Senate was thus a decisive player in the development and consolidation of Roman law. Its decisions and recommendations had a lasting influence on the interpretation, application and modification of legal norms in Roman society. Roman law introduced not only substantive legal norms, but also the methodology and principles of jurisprudence.

²⁰ W. Kunkel, M. Schermaier, *op.cit.*, pp. 30 sq.

It influenced German jurisprudence, which, during the Early and High Middle Ages, had not yet developed a systematic and independent legal science comparable to that of ancient Rome. Since the Late Middle Ages the introduction of Roman law led to the emergence of an organised, scientific jurisprudence in Germany which was strongly oriented towards ancient Roman traditions.²¹ The reception of Roman private law was particularly instrumental, as it played a central role in the development of German law. The influence of Roman law on German civil law, especially with regard to property and debt relationships, is still noticeable today. The principles of Roman law, such as the distinction between private law, criminal law and public law, found their way into the modern German legal system and European legal development.²²

Overall, it can be said that the reception of Roman law had a decisive influence on German law and continues to form an important basis for jurisprudence and legal practice.

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²¹ R. Sohm, *Institutionen. Geschichte und System des römischen Privatrechts*, 17th edition, Duncker & Humblot Berlin 1949, pp. 1 sq.

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ABSTRACT

The Roman Senate remains one of history's most influential institutions, shaping governance models and legal traditions that still resonate today. Although its political power diminished long ago, its legacy endures in modern advisory bodies, legislative frameworks, and fundamental legal principles. A key question in understanding the Senate's role is whether its members were more than just politicians—could they also be considered as jurists? While they lacked formal judicial authority, their involvement in legal decision-making, legislative processes, and their influence on jurisprudence suggests a deeper connection to the law. This paper examines their role through their legislative power, judicial advisory functions, and notable legal precedents, such as the *Senatusconsultum Velleianum*, to explore whether Roman senators truly operated as legal experts.

Raimund Anwald*

Supplement: Interpretation of Law in Germany at the Time of National Socialism

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In addition to the study of antiquity in the winter semester 2024/2025, the Augsburg Seminar on Legal History—under the general topic “Law, Lawyers, and Politics: Experiences of the Cohabitation of Law and Politics from Ancient Rome to the Present Day”—also focused on National Socialism.

Although this was not part of the event in Warszawa, a remark on the Augsburg session from summer semester 2025 is provided below:

1. Introduction

Laws are the basis of a functioning society. Cicero already makes it clear in his quote “salus populi suprema lex esto”¹, that the good of the people should be the supreme law. But law was instru-

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¹ M.T. Cicero, *De legibus – Über die Gesetze*, aus dem Lateinischen übersetzt, R. Nickel (ed.), 3rd edition, München a.o., Artemis & Winkler 2004, p. 154.

mentalized in the past to enforce totalitarian power, for example during the time of Italian fascism under Benito Mussolini. He was considered a role model for Adolf Hitler.² So the national socialists used legal norms to reinforce their ideology. The aim was to create a racially pure national community with Hitler as their leader. Groups of people, such as Jews, people with disabilities, Sinti and Roma or the “Antisocials” should be destroyed.³

2. Judicial independence?

To use legal norms in the sense of the national socialist ideology, it was necessary to influence the judges through Hitlers’ National Socialist German Workers Party (German: Nationalsozialistische Deutsche Arbeiterpartei or NSDAP).⁴ The Weimar Constitution⁵ expressly enshrined the personal and objective independence of judges,⁶ but judges were influenced by state measures, thus undermining their independence.⁷

² J. Hampel, *Der Nationalsozialismus*, Volume II, Bayerische Landeszentrale für politische Bildungsarbeit, München 1989, p. 35.

³ J. Hampel, *Der Nationalsozialismus*, Volume I, Bayerische Landeszentrale für politische Bildungsarbeit, München 1988, p. 89.

⁴ F. Börner, *Die Bedeutung der Generalklauseln für die Umgestaltung der Rechtsordnung in der nationalsozialistischen Zeit*, Verlag Peter Lang, Göttingen 1984, p. 28.

⁵ Reichs-Gesetzblatt (RGBl.) 1919 p. 1383.

⁶ Art. 102 and Art. 104 Weimar Constitution.

⁷ H. Holste, *Die Zerstörung des Rechtsstaates durch den Nationalsozialismus*, „Juristische Arbeitsblätter“ 2009, p. 363.

3. Personal independence of judges

In spring 1933 the so called “Gesetz zur Wiederherstellung des Berufsbeamtentums”⁸ (law on the restoration of the civil services) made it possible for all Jewish and politically unpopular judges and public prosecutors to be dismissed. This largely led to the judiciary adapting itself to the wishes of the Nazi regime.⁹ Further laws were passed in 1937¹⁰ and 1942¹¹, whereby any judge could be removed from office by Hitler if he violated his duties. These measures had an intimidating effect on potential critics of the National Socialist justice system.¹²

4. Objective independence of judges

The ministry of Justice influenced the interpretation and application of laws through decrees. “Unsatisfactory judgements” were analysed by the ministry and discussed with the Attorney Generals and the presidents of the Higher Regional Courts.¹³ From 1942 onwards, there was explicit control of jurisdiction by so called “Richterbriefe” (Judge’s letters), in which certain judgments were commented on both positively and negatively. According to the Minister of Justice, this was intended to contribute to a uniform orientation of jurisdiction in the National Socialist sense.¹⁴ The “Führerprinzip” also made it possible to intervene directly in the

⁸ RGBl. 1933 I p. 175.

⁹ H. Holste, *op.cit.*, p. 363.

¹⁰ RGBl. 1937 I p. 41.

¹¹ RGBl. 1942 I p. 247.

¹² H. Holste, *op.cit.*, p. 363.

¹³ G. Fieberg (ed.), *Im Namen des Deutschen Volkes. Justiz und Nationalsozialismus*, 4th edition, Berlin 1996, p. 305.

¹⁴ *Ibidem*, p. 299.

administration of justice. Hitler had the option of having convicts murdered retrospectively if the sentences seemed too lenient to him.¹⁵

5. Methods of applying the law

The Nazi regime was unable to establish a complete new National Socialist legal system. Comprehensive new legal regulations were only introduced in certain areas of law (mainly criminal law, business law and tax law).¹⁶ Jurisdiction therefore had to develop and apply methods to reinterpret the existing norms so that they could be brought into line with National Socialist ideology.¹⁷ Two key elements were the interpretation of law and the so called “Kampfklausel”.¹⁸

6. “Unlimited interpretation”

The National Socialist world view was enforced in particular through the use of general clauses.¹⁹ Originally, general clauses were intended to enable jurisdiction suitable solutions for individual cases. But already after the First World War general clauses were deliberately used to develop the law. The jurisdiction acted as a substitute legislator. The NS regime linked on this to infect

¹⁵ H. Holste, *op.cit.*, p. 363.

¹⁶ B. Rüthers, *Die Ideologie des Nationalsozialismus in der Entwicklung des deutschen Rechts von 1933 bis 1945*, [in:] *Recht und Rechtslehre im Nationalsozialismus*, F.J. Sacker (ed.), Nomos Verlag, Baden-Baden 1992, p. 19.

¹⁷ B. Rüthers, *Die unbegrenzte Auslegung*, 9th edition, Mohr Siebeck, Tübingen 2022, p. 5.

¹⁸ B. Rüthers, [in:] *Recht und Rechtslehre im Nationalsozialismus*, F.J. Sacker (ed.), pp. 22 sqq.

¹⁹ *Ibidem*, p. 23.

the existing law with National Socialist worldview.²⁰ Judges and administrative officials now had the opportunity to adapt the law ideologically at any time.²¹ General clauses contain undefined legal terms such as “Treu und Glauben” (good faith) or “gute Sitten” (public policy). They could be found in the German Civil Code in §§ 138, 157, 226, 242 or 826.²²

7. “Kampfklausel”

As the Nazi state could not create a completely new legal system within a short period of time, the laws of the Weimar period had to be used. The German Civil Code (BGB) even dates back to the German Empire from 1896. However, the view prevailed that certain legal norms, e.g. those of labor law, seizure law or tenant protection, were no longer applicable to certain groups of people, especially Jews.²³ The so called “Kampfklausel” (fight clause) was developed by the courts for this purpose. This was an instrument for negating all norms that contradicted the ideology of National Socialism. This introduced new values into the existing legal system and overrode existing laws.²⁴

The implementation of the clause is shown below using the judgement of the Berlin Regional Court of 7th November 1938 as an example.

²⁰ B. Mertens, *Rechtsetzung im Nationalsozialismus*, Mohr Siebeck, Tübingen 2009, p. 99.

²¹ S.K. Paas, *Zivilrecht im Nationalsozialismus*, „Juristische Schulung“ 2025, p. 485.

²² M. Stolleis, *Gemeinwohlformeln im nationalsozialistischen Recht*, J. Schweitzer, Berlin 1974, pp. 100 sqq.

²³ B. Rüthers, *op.cit.*, p. 167.

²⁴ B. Rüthers, [in:] *Recht und Rechtslehre im Nationalsozialismus*, F.J. Säcker (ed.), pp. 23 sq.

8. The judgement of the Berlin Regional Court of 7th November 1938

The “Mieterschutzgesetz” (Tenant Protection Law)²⁵ of 1923 from the Weimar Republic only allowed the landlord to terminate the lease if there was a special reason for termination. These reasons were listed conclusively in §§ 2–4 MSchG. For example, the tenant could only be given notice of termination in the event of considerable culpable harassment of the landlord or a resident.²⁶

In its judgement, the Berlin Regional Court did not even apply the law to Jews. The court justified the discrimination with the help of the “Kampfklausel”: *“The cancellation of tenancy agreements with Jews is therefore made more difficult by the MietSchG and in certain cases impossible. However, this is contrary to the ideological demand, that all communal relationships with Jews must be ended as quickly as possible. The application of the MietSchG to Jewish tenants should therefore be rejected.”*²⁷ The Jewish tenant who had been given notice was thus left without rights.

This example shows how it was possible to act without and against the law in order to push through the ideology.

On 30th April 1939, the legislator explicitly regulated the exclusion of Jewish people from tenant protection.²⁸

²⁵ MSchG, RGL. 1923 I p. 353.

²⁶ § 2 MSchG.

²⁷ Landgericht Berlin, 7th November 1938, „Juristische Wochenschrift“ 1938, 3242.

²⁸ RGL. 1939 I p. 864.

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ABSTRACT

Even the Nazi state was unable to establish a complete National Socialist legal system within a short period of time in 1933. This meant that the existing laws had to be filled with National Socialist ideas. A key element of this was the interpretation of the law on the basis of undefined general clauses and the so called “Kampfklausel” (literally: “fight clause”). Although the constitution provided for the independence of judges, the state exerted massive influence on them.

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Chapter III

Rhetoric,
Corruption,
and Law:
From the
Orator Civis
to Mani Pulite

Federico Procchi*

Law, Lawyers, and Politics: The Fundamental Role of Oratorical Skills

According to a well-established tradition, the fifth century BC in Sicily saw the emergence of argumentative strategies based on technically flawless demonstrations of a given fact's plausibility, alongside those aimed at gaining consensus by psychologically swaying listeners' minds.¹

The real emergence of Western “rhetoric” as an art and technique of persuasive speech, however, is closely linked to the development of the city-states of the ancient Greek world (πόλεις). It was instrumental in establishing democratic order within them, serving as a tool for guiding the vote of deliberative assemblies. In this way, the authoritarian exercise of power typical of absolute regimes was replaced by a dialectical debate characterized by freedom of expression.

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¹ B. Mortara Garavelli, *Manuale di retorica*, Bompiani, Firenze-Milano 2018, p. 23 f.

Consequently, in this context, oratorical techniques emerged and developed as a tool for political disputes, wherein various arguments contended to win the favor of political assemblies, whether for election to public office or to advance or impede regulatory choices.

Indeed, in both scenarios, the ability to defend one's arguments and demolish those of opponents was crucial for anyone aiming to secure the majority's favorable vote in the deliberative assembly.

These simple and concise observations are sufficient to conclude that rhetoric, in its "deliberative" sense, plays a fundamental political role in both the selection of future officeholders and the determination of legal rules that will govern citizens' lives.

But it soon became clear that the rules of rhetoric could also play a decisive role in contexts other than strictly political ones. At the end of the fifth century BC, a new type of literary text appeared in Athens: «lawcourt speeches, which purported to present a record of what was said by one (or occasionally both) of the parties performing at a trial» in order to convince «the elders of the community sitting as judges who seem to be responsible for arguing out a solution for which they need to secure popular consent».²

However, the argumentative technique employed by those seeking the approval (and thus the vote) of at least the majority of an audience (whether a political assembly or a trial jury) must account for a fundamental difference: electoral and regulatory choices necessitate a prediction of the future, whereas trials demand a judgment on facts that have already occurred. This distinction also has repercussions for *confirmatio*, which in the former case relies solely on prognostic reasoning, while in the latter, it is based on logical and factual procedural evidence.

Above all, thanks to the teachings of Isocrates, training in eloquence and oratorical persuasion had to be combined with the

² S.C. Todd, *Law and Oratory at Athens*, [in] *The Cambridge Companion to Ancient Greek Law*, M. Gagarin, D. Cohen (eds.), Cambridge University Press, Cambridge-New York 2005, p. 97 f.

instruction in a broader and more virtuous civic life: the theoretical and practical pursuit of formal perfection and demonstrative effectiveness was inextricably linked to the moral and philosophical requirements governing the citizen's social conduct.

Considering everything we have just briefly outlined, methods of argumentation and expression became increasingly specialized according to the type of speech to be delivered. These methods were then systematically taught, following a common basic structure that was codified in manuals published in Rome from the 1st century BC onwards.³

Based on this experience, we observe that the teaching of rhetoric typically lasted at least three years. Each year was dedicated, in a pre-established order, to a specific area: the first to reading, the second to writing, and the third to speech. This 'study plan' could be beneficially supplemented with a fourth year, primarily devoted to the study of law and philosophy.⁴

Students were trained by teachers in what became the three canonical genres of ancient eloquence: deliberative (designed to influence the vote of a political assembly), epideictic (aimed at praising or blaming a specific subject), and judicial (used in courts to accuse or defend parties during trials). They were taught to structure their speeches according to a precise pattern (*exordium*, *narratio*, *argumentatio*, and *peroratio*), effectively applying the results of different stages of study (*inventio*, *dispositio*, *elocutio*, *memoria*, and *actio/pronuntiatio*).⁵

³ R. Martini, *Antica retorica giudiziaria. (Gli 'status causae')*, "Studi Senesi" 2004, n. 116, p. 32 f., also on line, *Diritto@Storia* 2004, n. 3, <https://dirittorestoria.it/3/TradizioneRomana/Martini-Antica-Retorica-Giudiziaria.htm> [date of access: 3.07.2025].

⁴ J. Harries, *Legal Education and Training of Lawyers*, [in] *The Oxford Handbook of Roman Law and Society*, P.J. Du Plessis, C. Ando, K. Tuori (eds.), Oxford University Press, Oxford 2016, p. 151 f.

⁵ M.H. Frost, *Introduction to Classical Legal Rhetoric: A Lost Heritage*, Ashgate, Aldershot-Burlington 2005, p. 1 f.

Thus, a veritable “code of conduct” emerged for the training of young orators. This included an unparalleled wealth of practical suggestions for the orderly and exhaustive study of the various aspects of the “controversies” to be debated in adversarial proceedings, as well as lines of argumentation to best illustrate to the judging panels the weaknesses of opposing arguments and the validity of their own.⁶

The rationality of the method is the foundation of what the Greeks did not hesitate to consider a τέχνη⁷ and what the Romans called, precisely, *ars*.⁸

In late Republican Rome, rhetorical precepts found significant application in the 1st century BC, particularly within the accusatory proceedings characteristic of the permanent court system (*quaestiones perpetuae*). In these courts, juries typically consisted of 50 to 75 members, selected by the parties from a pre-established list (*album iudicum*), depending on the case.

The composition of this list of eligible candidates was a consistent source of bitter political struggles between senators and knights. These struggles, in turn, influenced the permanent courts’ interpretative choices, especially concerning the definition of crimes (*definitio*), which varied considerably over time under the influence of lawyers’ (*oratores*) arguments.

Within the complex procedural system of the permanent courts, the inherently political nature of the jury encouraged speakers

⁶ F. Procchi, *L’argomentazione ed il metodo nella difesa oggi: prolegomeni ad una nuova retorica giudiziaria*, [in:] *Il fascino della comunicazione tra antico e presente. Atti della tavola rotonda di Urbino 7 e 8 aprile 2022*, M. Frunzio (ed.), Edizioni Intra, Pesaro 2022, p. 29 f.

⁷ C. Venturini, *L’argomentazione giuridica: dalla retorica classica alla moderna argomentazione*, [in:] *Scritti di diritto penale romano*, F. Procchi, C. Terreni (eds.), vol. 2, CEDAM, Padova 2015, p. 881 f.

⁸ P. Cerami, *Le radici storiche: ‘ars rhetorica’ ed esperienza forense ciceroniana*, [in] *Profili processualistici dell’esperienza giuridica europea. Dall’esperienza romana all’esperienza moderna*, P. Cerami, G. Di Chiara, M. Miceli (eds.), Giapichelli Editore, Torino 2003, p. 289 f.

to employ arguments that extended beyond mere legal interpretations. This often led to the use of actual “emotional appeals” (*motio adfectuum*).

The first charge that led to the establishment of a permanent court of accusatory jurisdiction in 123 BC was bribery. The methods of extortion used by Roman magistrates and promagistrates who were the subject of these charges are known to us thanks to a law that has come down to us in epigraphic form. The offense in question was called *crimen repetundarum*: literally, “the crime of demanding money back”.

Over time, however, it became increasingly difficult to prove in court that the giving of money and other valuable assets had not been spontaneous. Consequently, lawyers often found it easy to demonstrate that the defendants had merely accepted spontaneous gifts and should therefore not be punished or required to return anything.

The practice of oratory thus ultimately influenced the application of the law. This continued until, in 59 BC, Julius Caesar introduced a profound reform of the *crimen repetundarum*, which broadened its scope to include various cases of corruption where the prosecution merely had to prove the unlawful acceptance of goods or money by the defendants.⁹

The following contributions will therefore illustrate, first, the fundamental technical role of the lawyer, straddling politics and jurisprudence. They will then focus on certain crimes prevalent among political classes throughout history and conclude with an examination of recent Italian legislative reforms.

⁹ F. Procchi, *Alle origini della “processualizzazione” del delitto di corruzione: gli impervi sentieri del ‘crimen repetundarum’*, [in:] *Il reato lungo gli impervi sentieri del processo*, G.A. De Francesco, E. Marzaduri (eds.), Giappichelli Editore, Torino 2016, p. 63 f.

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ABSTRACT

This working group aims to address the general theme of the conference from a specific perspective: to explore certain aspects of the interaction between law, lawyers, and politics in light of the rules of classical rhetoric. In a sort of “circular path”, rhetorical techniques influence not only the passing of laws and the election of magistrates, but also the votes of juries who must apply these rules. This influence can sometimes extend to shaping the direction of legislative reforms. Understanding the actual role played by oratorical skills is essential for observing the complex dynamics that govern the interaction among the individual factors under consideration.

Chiara Donnini*, Giorgia D'Ancicco**

Corruption and Bribery: Between Politics, Law, and the Burden of Procedural Proof

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1. Introduction

Bribery and corruption are phenomena as old as organised societies. Since time immemorial, the power exercised by those who govern has implied the risk of abuse and exploitation for personal gain. We begin by looking at how these unlawful behaviors were already part of the Roman legal system and then have traversed the centuries up to contemporary judicial chronicles. Understanding the historical evolution of these crimes does not merely mean

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looking to the past but also reflecting on the tools that modern law has deployed to combat them and on how much remains to be done. In this work, we will attempt to recount how corruption and bribery have transformed over time, adapting to social, political, and economic changes, while remaining a constant threat to legality and to citizens' trust in institutions.

The phenomenon of bribery and corruption has been a constant in the history of public institutions, displaying different features over time in relation to social, political, and economic changes. Since Roman times, the law has grappled with how to prevent and punish abuses of power by public officials, seeking to balance the protection of collective interests with the need to ensure the efficiency of the administration¹.

A diachronic study of these crimes makes it possible to understand not only their normative evolution but also the systemic tensions between political power and legality, up to the most recent reforms, (such as Law 190/2012 and Law 114/2024), which have profoundly impacted the structure of Italian criminal law concerning crimes against public administration².

2. The Legal Framework in Republican and Imperial Rome

In Roman law, the fight against corruption and abuses related to public offices did not develop through a comprehensive system but through successive legislative interventions, mainly aimed

¹ C. Venturini, "*Damnatio iudicum. Cinque studi di diritto criminale romano*", Pacini Editore, Pisa 2016, pp. 11 ff.

² N. Amore, "*L'eredità di Mani Pulite nel contrasto alla corruzione sistemica. Una breve ricognizione politico-criminale della legislazione anticorruzione degli ultimi trent'anni*", *Criminalia. Annuari di scienze penalistiche*, 2019, n. 14, pp. 508 ff.

at protecting provincial populations from abuses by their magistrates³.

The first significant legislative intervention was the *lex Calpurnia de repetundis* of 149 BC, which established a permanent court (*quaestio perpetua*) to judge magistrates accused of bribery against provincial populations⁴. However, its primary aim was restitution rather than punishment.

Subsequently, the *lex Sempronia de repetundis*, promulgated in 123 BC by G. Gracchus, introduced a more detailed and precise legal framework defining unlawful conducts through five participles: *ablatum, captum, coactum, conciliatum, and aversum*⁵. This technical choice allowed for the coverage of a broad range of fraudulent behaviours, from direct theft to coercion, inducement, and embezzlement of funds.

The punitive scope expanded further with the *lex Cornelia de Repetundis* (82 BC), promoted by Lucius Cornelius Sulla, which also made judicial corruption punishable, while retaining the definitional structure of the Sempronian law⁶. This structural rigidity, however, encouraged the emergence of evasive practices such as simulated donations or forced sales, which made proving the offense difficult⁷.

The most comprehensive reform came with the *Lex Iulia de repetundis* of 59 BC, promoted by Julius Caesar. This legislative intervention rationalized the legal framework, broadened the range of punishable subjects, introduced a clearer definition of

³ C. Venturini, “*Damnatio iudicum*”, *op.cit.*, pp. 17 ff.

⁴ *Ibidem*, pp. 24–26.

⁵ *Ibidem*, pp. 28–30.

⁶ *Ibidem*, pp. 32–35.

⁷ F. Procchi, “*Alle origini della “processualizzazione” del diritto di corruzione: gli impervi sentieri del crimen repetundarum*”, [in:] *Il reato lungo gli impervi sentieri del processo*, G.A De Francesco, E. Marzaduri (eds.), Giappichelli Editore, Torino 2016., pp. 70 ff.

the incriminated conduct, and allowed for a more flexible application of the rule expressly including corruption as a criminal offense⁸.

3. Tangentopoli and the Challenges of Definition

In the context of contemporary Italian law, the issue of corruption and bribery gained crucial importance starting in the 1990s with the emergence of the phenomenon known as *Tangentopoli* (i.e. 'BribeLand'). The arrest of politician Mario Chiesa in 1992, caught red-handed while accepting a bribe, triggered a nationwide investigation that exposed a widespread system of corruption based on systematic practices of illegal redistribution of public resources⁹.

Tangentopoli highlighted the operational difficulties in distinguishing between the crimes of corruption and bribery. Traditionally, corruption is understood as a bilateral offense based on an unlawful agreement between a public official and a private individual. Bribery, on the other hand, is typically a unilateral offence, characterised by the abuse of public office through coercion of the private party into making an undue payment¹⁰.

During the *Mani Pulite* (i.e. 'clean hands') investigations, which eventually led to the judicial trials related to the *Tangentopoli* affair, this distinction often proved inadequate. The corrupt practices discovered frequently fell into a 'grey area' where it was difficult to determine whether the illicit payment resulted from a mutual agreement (corruption) or from the intimidatory abuse of public authority (extortion)¹¹.

⁸ C. Venturini, "Damnatio iudicum", *op.cit.*, pp. 41–43.

⁹ N. Amore, "L'eredità di Mani Pulite", *op.cit.*, pp. 510 ff.

¹⁰ I. Merenda, "Qualche riflessione a venticinque anni da Tangentopoli: uno sguardo all'evoluzione dei delitti di corruzione in Italia", *Revista de Instituto de Ciências Penais*, 2020, n. 5, pp. 153 ff.

¹¹ *Ibidem*, p. 154.

In this context, case law developed the concept of ‘*ambience bribery*’, which describes situations where a climate of widespread illegality induces the private party to perceive an obligation to pay bribes that, although not explicitly imposed, is nonetheless experienced as binding and coercive¹².

From a procedural standpoint, classifying the conduct as bribery rather than corruption had significant evidentiary consequences. In corruption the private individual is a co-offender and can exercise the right to remain silent. Conversely, in bribery private individuals are considered victims and are thus compelled to testify, thereby facilitating judicial fact-finding¹³.

4. Reforms in Contemporary Criminal Law

The difficulty in distinguishing between extortion and corruption led to the enactment of Law 190/2012 (the Severino Law), which profoundly modified the regulation of crimes against public administration¹⁴.

One of the main innovations was the splitting of the original offense of bribery into two distinct categories:

- Bribery by coercion (art. 317 of the Criminal Code), in which the public official exercises explicit threats;
- Undue inducement to give or promise benefits (art. 319-quarter of the Criminal Code), which tackles cases where the public official, without using actual threats, exploits their position to induce the private party to make a payment¹⁵.

¹² F. Procchi, “*Alle origini della “processualizzazione” del diritto di corruzione*”, *op.cit.*, pp. 73 ff.

¹³ *Ibidem*, pp. 75 ff.

¹⁴ N. Amore, “*L’eredità di Mani Pulite*”, *op.cit.*, p. 511.

¹⁵ I. Merenda, “*Qualche riflessione a venticinque anni da Tangentopoli*”, *op.cit.*, p. 155

Despite its clarifying intent, the reform generated new interpretive uncertainties, particularly concerning the boundary between coercion and inducement. Case law sought to identify the dividing line in the parameter of intolerable subjugation typical of bribery, as opposed to the moral pressure characteristic of inducement¹⁶. Nonetheless, borderline situations continue to generate uncertainty and interpretative fragmentation.

5. The Nordio Reform and the Repeal of Abuse of Office

A particularly significant intervention was Law 114/2024 (the Nordio Reform), which abolished the offence of abuse of office (art. 323 of the Criminal Code)¹⁷.

This provision, long criticized for its limited applicability and for fostering the so-called ‘fear of signing’ by public officers, was deemed more harmful than beneficial to administrative efficiency.

However, the repeal sparked widespread concern both doctrinally and judicially. Several courts, including that of Florence,

¹⁶ F. Procchi, “*Alle origini della “processualizzazione” del diritto di corruzione*”, *op.cit.*, p. 78.

¹⁷ The incriminating provision stipulated that: “Unless the act constitutes a more serious offense, any public official or person in charge of a public service who, in the performance of their duties or service, in violation of specific rules of conduct expressly provided for by law, by acts having the force of law, or by the administration to which they belong, and which are not characterized by any margin of discretion, intentionally procures for themselves or others an unjust financial advantage or causes unjust harm to others shall be punished with imprisonment from one to four years”. [“Salvo che il fatto non costituisca un più grave reato, il pubblico ufficiale o l’incaricato di pubblico servizio che, nello svolgimento delle funzioni o del servizio, in violazione di specifiche regole di condotta espressamente previste dalla legge o da atti aventi forza di legge ovvero dall’amministrazione di appartenenza e non connotate da margini di discrezionalità, intenzionalmente procura a sé o ad altri un ingiusto vantaggio patrimoniale ovvero arreca ad altri un danno ingiusto è punito con la reclusione da uno a quattro anni”].

raised questions of constitutional legitimacy, arguing that the elimination of the offense conflicts with obligations arising from the Merida Convention and with the principles of good governance and impartiality of public administration enshrined in Article 97 of the Italian Constitution¹⁸.

6. Conclusions

The historical and legal evolution of corruption and bribery crimes shows how criminal law is constantly called upon to adapt in the face of changing unlawful dynamics. Recent reforms, while moving towards greater definitional clarity, have not fully resolved the interpretive ambiguities that, since Roman times, have characterized these phenomena. The challenge remains open, for the need for administrative efficiency, legal certainty, and the protection of the integrity of public administration requires a difficult balance.

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¹⁸ Altalex, *Abrogazione abuso ufficio: dubbi legittimità costituzionale*; <https://www.altalex.com/documents/2024/11/29/abrogazione-abuso-ufficio-dubbi-legittimita-costituzionale> [date of access: 08.07.2025], 2019.

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Venturini C., “*Damnatio iudicium. Cinque studi di diritto criminale romano*”, Pacini Editore, Pisa 2016.

ABSTRACT

Bribery and corruption, known in Roman law as *repetundae*, originated as legal tools to combat abuses of power by magistrates and their collaborators. Starting from the second half of the second century BC, there was a normative evolution aimed first at criminalizing extortive conducts (bribery) and later corruptive conducts. This expansion was carried out with the aim of simplifying evidentiary requirements, allowing for the punishment of any form of *pecuniam accipere*, regardless of how this was achieved. This paper seeks to trace the origins of this crime and its repression, linking it to the *Tangentopoli* scandal that emerged in the 1990s in Italy. In that context, bribery played a very important role from a procedural standpoint, as it allowed private individuals to be considered victims rather than co-conspirators, thereby compelling them to testify. Finally, the paper examines the impact of *Tangentopoli* on the Italian contemporary legal system, focusing in particular on two recent reforms: the extension of the offense of trafficking in illicit influences and the abolition of abuse of office.

Marco Manna*

Orator Civis: an Ars Shaped by Politics or a Politics Moulded by the Rhetorical Technique?

1. Introduction

“No matter what anybody tells you words and ideas can change the world.”¹ In addressing law, lawyers and politics we must talk about the strength of ideas and the power of words.

This paper will briefly look at the genesis of the legal profession, to be found in classical rhetoric, with the aim of understanding if advocacy is still able to shape the management of the *res publica* today.

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¹ Quote from the movie *Dead Poets Society*, directed by Peter Weir and played by Robin Williams, USA, 1989.

2. The historical context: rise of the *rhētoriké téchnē* and further development

We may move the first steps from the *Magna Graecia* of the 5th century BC: here, in a purely political framework, the *rhētoriké téchnē* was born and was called *ars rhetorica* by the Latins: a set of rules, or at least ‘guidelines’, in order to build a persuasive speech. The people of Syracuse, after overthrowing the tyrants who took from them massive lands, initiated many legal proceedings to claim back their properties.² Their arguments were built around a structured method: rhetoric, which thus arose concerning political matters discussed before a deliberative body.

The Athenians did not hesitate to adopt it. As we know, Athens was ruled by popular assemblies; what better tool to influence their decisions than rhetoric?

Also, these assemblies were made mostly of common people, who lacked legal knowledge. So, in order to convince such a common and diverse audience, the rhetors were in need of political arguments, instead of purely technical ones. It is clear that rhetoric originated in political bodies, not in judicial courts.³

From the very beginning, the orator has a strong political nature. This becomes even more evident with the next step, i.e. moving to Rome.

The courts became both the battlefield of opposite political factions and an occasion to gain visibility for the future chance to enter the political career (*cursus honorum*). To speak in a legal

² B. Mortara Garavelli, *Manuale di Retorica*, Bompiani, Milano 2014, p. 17; R. Barthes, *La retorica antica. Alle origini del linguaggio letterario e delle tecniche di comunicazione*⁹, it. trans. P. Fabbri, Bompiani, Milano 2000, p. 13.

³ C. Venturini, *L'argomentazione giuridica: dalla retorica classica alla moderna argomentazione*, [in:] *L'argomentazione e il metodo nella difesa*, A. Mariani Marini, F. Procchi (eds.), Pisa University Press, Pisa 2004, p. 16 [= in: *Scritti di Diritto Penale Romano*, F. Procchi, C. Terreni (eds.), CEDAM, Padova 2015, II, p. 886].

proceeding before the popular assemblies (*iudicia populi*) and in a legislative proceeding was, in practical terms, exactly the same thing: same *topoi*, same arguments, same objectives. The orator spoke about law, but talked about politics.

Here the *ars oratoria*, born under the stars of politics, fully enters the judicial environment. This is very much evident in relation to the first *questiones perpetuae*, whose juries were made up of private citizens chosen by the parties via a combined process of cross-choices and rejections (*electiones* and *reiectiones*), within a list of names (*album iudicum*) belonging to different political classes.⁴

3. *Orator civis*

These are the reasons behind the roman model of the orator and his education. Already Isocrates wished for a strong moral education of the orator, where ‘moral’ implies ‘civic.’⁵ The idea was taken up by Quintilian in his *Institutio Oratoria*, published in the 1st century AD, which represents in many ways the ‘recap’ of the previous doctrines. Even the Iberian *Magister* identifies the model of the orator in the *vir bonus dicendi peritus*, whose education cannot be limited to the technical profile (*dicendi peritus*). He is expected to embody a high moral standard (*vir bonus*), a standard derived from his membership of the human race and culminating in his role as a citizen. In fact, the Roman orator, *patronus causarum*, operates within a political dimension and aspires to the administration of the *res publica*. Hence, his way of being a *vir bonus dicendi peritus* is synthesised in his role as a *civis*. It is in the political dimension that the legal professional requires ethical responsibility.⁶

⁴ C. Venturini, *L'argomentazione*, op.cit., p. 886.

⁵ *Ibidem*.

⁶ The model of the *vir bonus dicendi peritus* lays on a strict bound between professional (*orator*), citizen (*civis*) and human being, intended as a wise

A parallel is often drawn between the orator and the military commander. Both work for the *salus rei publicae* against internal and external enemies. They possess comparable means: both Cicero and Quintilian maintain that to equip a man lacking in moral integrity with the art of oratory is equivalent to giving a weapon to *furentes*⁷ or to a *latro*.⁸ For this reason, the state can only be preserved by men equally trained in both eloquence and righteousness.

man (*sapiens*). His duty is to lead the society; so, his education embraces not only oratory, but also history, philosophy, ethics and law (see: Quint., *Instit. Orat.*, XII, 4, 1–2; XII, 2, 6, XII, 11, 9). As said by J. Fernández López, *Quintilian as Rhetoric and Teacher*, [in:] W.J. Dominik, J. Hall (eds.), *A Companion of Roman Rhetoric*, Blackwell, Oxford 2007, XXIII, p. 321, the rhetoric taught in Rome was a compromise of two different conceptions: «the best possible rhetoric that could be practiced from a technical point of view [...]; and an idealized form of rhetoric designed to assume its deserved hegemony over the educational curriculum and to give rise to a new kind of orator, *Romanus sapiens* who is suited to political leadership because of his moral superiority and unparalleled persuasive ability». See also: Quint., *Instit. Orat.*, I, pr., 18; A. Bellodi Ansaloni, *L'arte dell'avvocato, actor veritatis: studi di retorica e deontologia forense*, Bononia University Press, Bologna 2016, pp. 72 ff. The orator's political function is well showed in J.A. Crook, *Legal advocacy in the roman world*, Duckworth, London 1995, p. 6, where the Author says the in Rome «forensic oratory, at the top level of society, was absolutely related to politics»; *ibidem*, p. 34: «At Rome, again, perhaps more than at Athens, forensic advocacy regularly possessed a political dimension».

⁷ Cic., *De orat.*, 3.14.55: *Est enim eloquentia una quaedam de summis virtutibus; quamquam sunt omnes virtutes aequales et pares, sed tamen est species alia magis alia formosa et inlustris; sicut haec vis, quae scientiam complexa rerum sensa mentis et consilia sic verbis explicat, ut eos, qui audiant, quocumque incubuerit, possit impellere; quae quo maior est vis, expertibus si dicendi copiam tradiderimus, non eos quidem oratores effecerimus, sed furentibus quaedam arma dederimus.*

⁸ Quint., *Instit. Orat.*, XII, 1, 1: [...] *si vis illa dicendi malitiam instruxerit, nihil sit publicis privatisque rebus perniciosius eloquentia, nosque ipsi, qui pro virili parte conferre aliquid ad facultatem dicendi conati sumus, pessime mereamur de rebus humani si latroni comparamus haec arma, non militi.*

4. *Interpretatio* and 'living law'. A case study: the trial of Verres

This is the theoretical and programmatic profile, but what are its consequences in the daily life of the *forum*? In this direction, the concept that we would today call 'living law' becomes relevant. Within the political *humus* of trials, which serve as clashes between factions, the *orator civis* carries out an *interpretatio* of the law, either expanding or restricting the purpose of its application.⁹ This is particularly evident in criminal matters and, more specifically, in *de repetundis* cases.

One of the clearest examples is the trial of Verres. Cicero – acting as the accuser – was able to charge the promagistrate with acts of extortion committed not by himself, but by his associates or members of his entourage. The issue, however, is twofold and far from negligible: on the one hand, these individuals were not personally liable under the *repetundae* law; on the other hand, the extension of criminal responsibility to the promagistrate for such acts was not explicitly provided for by the law.¹⁰ In brief, the Arpinate based his argument on the indirect abuse of power (*imperium*) by Verres, which created a climate of intimidation and corruption that benefited his *comites*. In this way – with a rhetorical device justified by the demands of substantive justice – the orator extends the incriminating scope of the law, framing it as a form of *culpa in vigilando* on Verres' part.¹¹

It follows that the Roman orator, characterized as a *vir bonus dicendi peritus* and operating within the context of judicial proceedings as a battleground for political factions, had both the power and the duty to participate in the creation of law. He was able to

⁹ C. Venturini, *L'argomentazione*, *op.cit.*, pp. 890 f.

¹⁰ C. Venturini, *Damnatio iudicum. Cinque studi di diritto criminale romano*², Pacini Editore, Pisa 2016, p. 62.

¹¹ C. Venturini, *Damnatio iudicum*, *op.cit.*, p. 65. Cfr. Cic., *Verr.*, 2.2.28; 2.2.56 f.

do so by contributing to its jurisprudential interpretation, in the service of protecting the *res publica*.

5. Conclusions: a civic role for the modern lawyer

It is possible to draw connections by looking at the modern lawyer in light of the Roman socio-legal experience.

On the one hand, the lawyer performs a ‘socio-political’ function by safeguarding the right to defense, as enshrined in Art. 24 of the Italian Constitution.¹² They must place their technical expertise at the service of the citizen and, for this to be fully realized, it looks like it is essential that they should embody a high ethical and professional standard. To this end, rules of good conduct are established – and often codified – which pertain to professional legal ethics.¹³

On the other hand, even today the lawyer plays a role in the creation of law. Increasingly, in the gaps left by the legislator, the activity of *interpretatio* by the courts emerges an activity that cannot be separated from that of legal professionals. The ‘living law’, understood as the jurisprudential creation of legal norms, is

¹² Art. 24 Cost. It. [translation by the Italian Senate]: «1. Anyone may bring cases before a court of law in order to protect their rights under civil and administrative law. 2. Defense is an inviolable right at every stage and instance of legal proceedings. 3. The poor are entitled by law to proper means for action or defense in all courts. 4. The law shall determine the conditions and forms regulating damages in case of judicial errors». The capital importance of the right of defence goes back up in time to Ancient Rome, as stated in Ulp. 6 ad ed. D. 3.1.1.4: «*Ait praetor: "si non habebunt advocatum, ego dabo"*». As easily understandable, this has a link to the matter of the public defender, that the Italian Constitution contemplates in clause 3 of Article 24. On this point, it's useful to remember Cic., *Pro Mur.*, 4.10: «*Nemini umquam infimo maiores nostri patronum deesse voluerunt*».

¹³ See, one for all, R. Danovi, *Corso di Ordinamento Forense e Deontologia*⁶, Giuffr  Editore, Milano 2000, pp. 1 ff.

nothing other than the result of the dialectic between the parties in the trial and between them and the judge.¹⁴

To conclude, it is undeniable that—now as in the past—the legal profession can exert significant influence on the interpretation of laws and, consequently, indirectly on legislative policy. From a different perspective, however, courtrooms remain a privileged arena for political confrontation, especially on the most sensitive issues. And it is here that lawyers become the bearers, each according to their own sensibilities, of impulses and values of society.¹⁵

In this context, professional ethics represent an inviolable boundary aiming to ensure that modern *orator* remains, above all, a *civis*. The words and ideas of lawyers can change the world. For this reason, the lawyer must keep balance between upholding political pluralism and responding to the demands of substantive justice.

In doing so, lawyers move between legal and political arguments, provided that they must not fraudulently exploit their oratorical skill, but must honestly fulfil their essential *munus publicum*.

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¹⁴ U. Vincenti, *Dalla legge al caso: la tecnica della decisione nei sistemi legali*, [in:] *Le strategie della difesa. Argomentazione, comunicazione, tecniche processuali (Seminari dell'Avvocatura, Roma, ottobre-dicembre 2000)*, A. Mariani Marini (ed.), Il Sole 24 Ore, Milano 2002, p. 175 [= U. Vincenti, *L'universo dei giuristi, legislatori, giudici. Contro la mitologia giuridica*, CEDAM, Padova 2003, p. 103].

¹⁵ C. Venturini, *L'argomentazione*, op.cit., p. 909.

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ABSTRACT

Legal professionalism develops from the teachings of classical rhetoric. The *bene dicendi scientia* originated in the Greek *pòlis*, where trials were held before the citizen assembly, as a budding offshoot of deliberative rhetoric. When the art of oratory came to Rome, this legacy manifested itself in a framework that was, again, political: the *cursus honorum*. Particularly in the late Republic, defending legal cases became the springboard for positions of power. However, the mixture of political and legal necessities gave birth to the peculiar figure of the *orator*: he wields rhetoric in defense of *bonae causae*, those that guarantee the *salus rei publicae*. From all this arises a question of fundamental importance, which I propose to investigate also in relation to the contemporary world: the coexistence of the principles proper to a liberal intellectual profession with the *munus publicum* of defensive activity.

Michele Pedone*

Rule of Law and Politics. Final Remarks**

.....

The aim of this session was to elucidate the intricate connections between law and rhetoric, stemming from the inherently logical and linguistic nature of legal phenomena. The presentations demonstrated a crucial characteristic of this relationship: its bidirectionality.

Indeed, the papers in this session evinced that the sphere within which rhetoric operates is, unequivocally, influenced by law, which delineates its parameters and establishes its regulatory framework. Concurrently, examples drawn from the evolution of the crime of *repetundae* in ancient Rome clearly illustrate how rhetorical and/or forensic arguments determined the expansive or restrictive evolution of a legal provision's practical application.

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This occurred both to broaden its scope and to compensate for its deficiencies and rigidities.

To further substantiate this concept, attention will briefly turn to the *lex Iulia repetundarum*, or at least to what is preserved concerning it in *Dig.* 48.11. Specifically, selected passages from this title—which we are currently translating into Italian¹—will be presented to highlight an aspect pertinent to the description of the proscribed conduct.

The structure of *Dig.* 48.11 indicates that the incriminating provision, in its introductory clauses, provided only a generic and summary outline of the prohibited conduct. The latter, according to the initial fragments of this title of the Digest, is generically described with the verb ‘take’ (*capere*) or its derived form ‘receive’ (*accipere*), connected with judicial misbehaviour or with any other violation of a public officer’s duty:

Dig. 48.11.1 pr. (Marcian. 14 inst.) *Lex Iulia repetundarum pertinet ad eas pecunias, quas quis in magistratu potestate curatione legatione vel quo alio officio munere ministeriove publico cepit, vel cum ex cohorte cuius eorum est.*²

Dig. 48.11.2 (Mac. 1 publ.) *Lege Iulia repetundarum tenetur, qui, cum aliquam potestatem haberet, pecuniam ob iudicandum vel non iudicandum decernendumve acceperit:*

Dig. 48.11.3 (Ven. 3 publ. iudic.) *vel quo magis aut minus quid ex officio suo faceret.*³

¹ The publication of vol. 7.2 of the Italian translation of books 49–50 of the Digest (*Iustiniani Augusti Digesta seu Pandectae. Testo e traduzione*, directed by S. Schipani) is expected in 2026.

² Marcian, *Institutes*, book 14: The *lex Julia* on extortion applies to those monies taken by anyone holding a magistracy, a position of power or administration, a legateship, or any other office, duty, or public employment, or while he is on the staff of any of these. (All translations of the Digest into English in this essay are taken from A. Watson, *The Digest of Justinian*, 4, Philadelphia, PA 1998 [revised edition]).

³ Macer, *Criminal Proceedings*, book 1: Under the *lex Julia* on extortion anyone is liable who, while holding any [position of] power, accepts

Dig. 48.11.9 (Pap. 15 resp.) *Qui munus publice mandatum accepta pecunia ruperunt, crimine repetundarum postulantur.*⁴

The initial clauses of this law were subsequently augmented by a multitude of detailed case types. These were enumerated with the clear aim of extending or clarifying the application of the repressive sanction even in uncertain cases or in any case not immediately or mechanically referable to the incriminating provision.⁵ Furthermore, a fragment from the jurist Paul confirms that, beyond the main incriminating norm, further specific correctives were needed. These aimed to prevent some general mechanisms of *ius civile* (namely, *usucapio*) from being used to consolidate and legitimise illicit gains obtained through acts of extortion or bribery. This situation is the result of casuistic development of forensic and jurisprudential origin, much of which likely converged within the more than one hundred chapters of Caesar's law.⁶

money in return for giving or not giving a judgment or passing sentence, Venuleius Saturninus, *Criminal Proceedings*, book 3: or for doing more or less than his duty.

⁴ Papinian, *Replies*, book 15: Those who, after *accepting* money, have violated a duty publicly enjoined on them are accused on a charge of extortion.

Dig. 48.11.7.1 (Mac. 1 *publ.*) makes clear that the public officers identified by the *lex Iulia* could under no circumstances enjoy even the smallest profit while fulfilling their duties.

⁵ Here are some examples of clauses of this sort: i) Dig. 48.11.5 (Mac. 1 *publ.*), which punishes the conduct even when it is perpetrated by individuals beyond those identified in the *lex Iulia*, encompassing members of their entourage (also to tackle the practice of proxies); ii) Dig. 48.11.6 (Ven. 3 *publ iudic.*) explicitly prohibits public officials from receiving money so as to abuse their power in the collection of evidence, the recruitment or discharge of a soldier, the expression of an opinion in the Senate or any other public council, the filing or omission of a public accusation, or the acceptance of gifts exceeding a strict threshold (one hundred *aurei*); iii) Dig. 48.11.7 pr. and 2 (Mac. 1 *publ.*) enumerates a long series of specific cases included in the prohibition.

⁶ Cic. *fam.* 8.8.3: *...postquam discessit et pro absoluto Servilius haberi coeptus legisque unum et centesimum caput legit...*

The regulation of *crimen repetundarum* provides a clear example of how Roman law, understood as a synthesis of legislation, judicial practice, and legal science, undertook measures aimed at limiting the exercise of political power. The crime was intended to punish a instrumental and abusive use of public functions, which, in the case at hand, pursued a private financial interest instead of the public interest for which it was intended.

In addition to this criminal offense, while carrying out the Italian translation of the Digest, our research group encountered a couple of fragments of Roman legal science that shed light in a different way on the relationship between law and public power. These are a passage taken from Paul's commentary on the praetor's edict and a text extracted from Marcian's work on the action on mortgage. The text is reported below, followed by the English translation proposed by Alan Watson:

Dig. 42.4.6.1 (Paul. 57 ad ed.) Cum dicitur: "et eius, cuius bona possessa sunt a creditoribus, veneant, praeterquam pupilli et eius, qui rei publicae causa sine dolo malo afuit", intellegimus eius, qui dolo malo afuerit, posse venire.

[Paul, *Edict*, book 57: When the edict says, "when a person's goods be taken into possession by his creditors, they may be sold, unless the person be a pupillus or one who is genuinely away on public service," we are to understand that the goods of one deliberately absent may be sold.]

Dig. 42.5.35 (Marcian. l. s. ad form. hypoth.) Eum, qui in possessionem missus sit eius, qui rei publicae causa afuit, si apparuerit eum dolo malo rei publicae causa abesse, iure in possessione esse placet, donec solidum solvatur: eum autem, qui rerum eius, qui sine dolo malo rei publicae causa afuit, in possessionem missus sit, pignus non contrahere et ideo discedere oportere de possessione.

[Marcian, *Action on Mortgage*, sole book: A person granted missio in possessionem of the estate of one away on state business has

lawful possession until his claim is met, if it be established that the absence is deliberate; but one given *missio in possessionem* of the estate of a person who is not deliberately away on state business, does not acquire a pledge and consequently should go out of possession.]

The interest of these two fragments lies in the fact that, by focusing on matters of private law (namely, the seizure of assets of a defaulting and absent debtor who holds a public office), they imply a principle of enormous conceptual relevance, namely that the fulfilment of a public duty does not in itself exclude the liability of a public officer.

The theme directly addressed by these two fragments is that of *absentia rei publicae causa* (absence for reasons of public service). Contrary to ordinary forms of absence, which typically protected the absent party's counterpart by imposing a series of unfavorable legal consequences on the absent party, *absentia rei publicae causa* granted the absent party preferential treatment, allowing them to maintain their rights intact for the entire duration of their absence for public interest.

The peculiarity of the two passages quoted here is that, when discussing the situation of the *absens rei publicae causa*, the fact that the individual is absent in the fulfillment of their duties is not decisive per se. On the contrary, they emphasise that, regardless of whether the debtor may have been absent for reasons of public interest, it must be assessed whether such absence was fraudulent or not. Therefore, actually performing a public function does not in itself exclude the unlawfulness of conduct by someone who fraudulently exploits their service activity to indirectly gain an undue personal advantage. In modern terms, borrowed from contemporary administrative law, the discretion of a public official in carrying out their office finds a limit in the need to balance it with the legitimate interest of the private citizen, their creditor, in the fulfillment of their credit. Ultimately: the political decision

on how to implement one's public assignment could by no means bypass the insurmountable limit of the obligation of fair dealing, imposed on the official by the legal system itself.⁷

Conclusion

I hope these brief observations, combined with the insights from the other presentations in this session, may be of some interest. In my opinion, they confirm how Roman law still offers ample useful material to scholars who, nowadays, wish to approach with historical and intellectual depth the complex relationship between the rule of law and politics, and between legal professionals (jurists, and specifically also lawyers and judges) and political professionals (public officials included).

⁷ The obligation for every public official to refrain from malicious intent when absenting themselves to perform their public function, in order not to legitimise the *missio in possessionem* by their creditor, is not the result of Paul's or Marcian's mere juristic interpretation. Instead, it is already attested in Augustan municipal legislation, as evidenced by the Tabula Heracleensis (CIL I.206 = CIL I².593, ll. 115–117: *quoui^sve bona ex edicto eius qu<ei> i(ure) d(icundo) praefuit praefuerit praeterquam sei quoui^s quom pupillus esset reive publicae caussa abesset neque d(olo) m(alo) fecit fecerit quo magis r(ei) p(ublicae) c(aussa) a(besset) possessa proscriptave sunt erunt*); the same principle is reaffirmed in a later imperial constitution by Gordian (Cod. Just. 2.50.4: *Ignorare non debes eorum, qui rei publicae causa sine dolo malo absunt* etc., dating to AD 239).

ABSTRACT

These final remarks focus on some fragments of Justinian's Digest on Caesar's law concerning two subjects: i) bribery and extortion by magistrates; ii) some possible legal consequences of absence of public officers for duty. The aim of this short essay is to highlight some relevant features of the complex relationship between the rule of law and politics, on the one hand, and between case law (both in a forensic and in a legal science perspective) and legislation, on the other hand.

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Chapter IV

Between
Morality and
Technocracy:
The Evolution
of Law and
Politics from
Cicero to the
Euro Crisis

Constantinos Vlahos*

From Cicero's Political Morality to Modern Constitutionalism and Technocracy

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The following is the introduction to the AUTH Faculty of Law panel at the seminar. The author identifies the two main components of Cicero's political theory regarding the Roman Republic: the "iuris consensus" and the "communis utilitas". He notes that the crisis and fall of Rome's republican constitution should be understood as the gradual fading of these two elements, which led to the «de-publicization» of the Respublica and paved the way for the Principate. This process remains a key tool for understanding the crises of modern democracies.

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It seems that Ciceron is the guest of honor at our seminar this year. This comes as no surprise. Although Cicero is a guest star in Warsaw, he was one of the protagonists of the difficult final decades of the Roman Republic. To the eyes of a modern legal historian, our times present a series of striking similarities to the times when Polybius' Roman mixed constitution¹ started being progressively denatured by the abuses of individual politicians. This dramatic trajectory culminated in the downfall of the republican constitution.²

However, at the panegyric session of the Roman Senate in January 27 BC, Augustus proudly restored the *Res Publica* to the *patres* and the roman people, after Rome had been purified of all internal and external threats.³ After a long period of military and political activity, he resigned all his powers based on the deviation of constitutional principles. All these exceptions, as well as those concerning the political careers of Augustus's predecessors, had constantly been justified by the argument of a state of emergency and the *salus patriae*, the rescue of Rome. In February of 2 AD, on

¹ Polybius, *Histories* 6.11 ss.

² See A.W. Lintott, *The Constitution of the Roman Republic*. Clarendon Press ; Oxford University Press, Oxford – New York 1999. M. Humbert, *Institutions Politiques et Sociales de l'Antiquité*⁷, Dalloz, Paris 1999, pp. 325–365. C. Vlahos, *Από την patria iuris στον pater patriae. Η σταδιακή ιδιωτικοποίηση της Republica (From patria iuris to pater patriae. The progressive privatization of Respublica, in Greek)*, University Studio Press, Thessaloniki 2022.

³ Dio Cassius, *Roman History* 53.4.1–3, citing Augustus' speech to the Senate: "You see for yourselves, of course, that it is in my power to rule over you for life; for every factious element has either been put down through the application of justice or brought to its sense by receiving mercy (...) there is money and there are allies; and, most important of all, you and the people are so disposed toward me that you would distinctly wish to have me at your head. 3 However, I shall lead you no longer, and no one will be able to say that it was to win absolute power that I did whatever has hitherto been done. Nay, I give up my office completely, and restore to you absolutely everything, – the army, the laws, and the provinces, – not only those which you committed to me, but also those which I myself later acquired for you".

the day of his ceremonial acceptance of the title *pater patriae*, Augustus presented Rome and its citizens as a single, unified family, bound together under the love and care of the *pater patriae*.⁴ These two highly symbolic political events highlight the rise of the imperial constitution.

About half a century earlier (in 56 B.C.), during a political trial against Publius Sestius, Cicero, acting as the defense attorney, reminded the judges of the origins of the law:

For which one of us, judges, ignores the natural course of human history – how there was once a time, before either natural or civil law had been invented, when men wandered, scattered and dispersed over the country, and had no other possessions than just so much as they had been able either to seize by strength and violence, or keep at the cost of slaughter and wounds? Then, those who were initially recognized for their merit and wisdom gathered together and brought others from a state of savagery to one of justice and humanity, having perceived the essential capacities of human nature. Then things serving for common use, which we call public (*res publicae*), then associations of men, which were afterwards called states (*civitates*), then continuous series of dwelling-places which we call cities, they enclosed with walls, after divine and human law had been introduced. [92] Now, between this refined and humane life, and that life of savagery, nothing marks the difference so clearly as law and violence. Whichever of the two we are unwilling to use, we

⁴ Suetonius, *Augustus* 58.2: “He (i.e., Valerius Messala), speaking for the whole body, said: “Good fortune and divine favour attend thee and thy house, Caesar Augustus; for thus we feel that we are praying for lasting prosperity for our country (*res publica* in the latin text) and happiness for our city. The senate in accord with the people of Rome hails thee Father of thy Country.” Then Augustus with tears in his eyes replied as follows (and I have given his exact words, as I did those of Messala): „Having attained my highest hopes, Fathers of the Senate, what more have I to ask of the immortal gods than that I may retain this same unanimous approval of yours to the very end of my life.”

must use the other. If we would have violence abolished, law must prevail, that is the administration of justice, on which law wholly depends; if we dislike the administration of justice, or if there is none, force must rule.⁵

So, the invention of Law goes back as early as man's transition from the state of savagery to the state of civilization. In fact, Law is the source itself of this transition, that marks the end of physical violence and the creation of men's societal and political life.

In his famous treatise "On the Republic", Cicero will define this term by the words put in the mouth of Scipio Africanus:

"Est igitur, inquit Africanus, res publica res populi", "the public thing, Africanus said, is the *thing* of the people", then, "However, a people is not any collection of human beings brought together in any sort of way, but an assemblage of people in large numbers associated in a consensual agreement with respect to justice (*"iuris consensus"*) and a partnership for the common good (*"communio utilitatis"*). The first cause of such an association is not so much the weakness of the individual but rather a specific social spirit which nature has implanted in man."⁶

Man's political nature operates through his actions. This is where law and ethics meet in Greek and Roman antiquity. Greek moral philosophy, which analyses human action and teaches men how to become virtuous in practice, is closely linked to political philosophy. A citizen's political activity, through which the *"iuris consensus"* and the *"communio utilitatis"* are implemented, requires active participation in political life and a conscious contribution to the common goals of political society.

⁵ Cicero, *Pro Sestio* 42.91–92.

⁶ Cicero, *De re publica* 1.39.

The concepts of “*iuris consensus*” and “*communio utilitatis*” have survived to the present day as the backbone of modern democracies. I believe that the history of constitutional crises, from ancient times to the present day, can be understood by examining the history of the crises of these two elements.

George Tzemintimpis and Vassilis Lambadarios have chosen this angle of view for our panel. George elaborates on Cicero's concern about the rule of law and the virtuous citizen, who alone can preserve the *Respublica* when it is under threat. Vassilis discusses modern democracies under threat and questions the use of technocracy to save modern states from perceived dangers, as well as the cost of this approach to the centuries-old idea of constitutionalism.

Then, Marilena Christidou will share some concluding thoughts with us.

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Vasileios Lampadarios*

Technocracy Versus Constitutionalism

1. Introduction

Over the last few decades, there has been considerable debate about technocratic governance,¹ raising questions that challenge the main principles of constitutionalism.² Technocracy can be defined as the ideology which suggests that the political decisions should be made by experts—technical scientists. Constitutionalism is the supreme law of the state, upholding that policies are implemented within a legal framework. The core principles of constitutionalism prioritize the protection of human rights, the limited government and the separation of powers. The purpose of this paper is to explore the antinomies between technocracy and

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¹ N. Scicluna, S. Auer, *From the rule of law to the rule of rules: technocracy and the crisis of EU governance*, “West European Politics” 2019, p. 1420.

² *Ibidem*, pp. 1422–1423.

constitutionalism, whilst it also examines whether these two can coexist in modern democracies.

2. Definitions and Historical Origins

The word “technocracy” derives from the Greek word *tehni* (τέχνη), which means a skill to do / create something, and the word *kratos* (κράτος) which means governance—power—authority. The concept of technocracy lacks a universally accepted definition, even though it has been extensively examined from a theoretical perspective by a lot of scholars. The meaning of the word, according to each of its two Greek compounds is *the rule of the experts* or *the dominance of expertise*.

Technocracy is considered to be a theoretical, economic and political model, which was developed at the end of 19th century. The American economist Thorstein Veblen, in 1899, referred to the inability of politicians to provide effective solutions, to serious problems, pointing out the need for a transition of society to a new management model. Hence, in his books *The theory of the Leisure Class & The Engineers and the Price System*, he promoted the main ideas of technocracy, according to which, policy formulation and implementation should be made by technical experts and scientists so as to achieve a more efficient and productive management of society.³

Nevertheless, the term was mainly clarified in the second decade of the 20th century, due to the Movement of Technocracy. In 1918, a research institution was founded by Scott Howard in the United States, consisting of technicians and scientists who worked on issues related to energy reserves. By 1930, the main principles of the movement had spread across the country, whilst the members

³ H. Scott, *Introduction to Technocracy*, Continental Headquarters – Technocracy Inc. (John Day Company, New York) 1933, pp. 61.

of the so-called *Technical Alliance* focused on criticizing politicians, condemning their administration for insufficiency.⁴ This situation culminated in the Great Depression in 1929, which was also attributed to the incompetence of politicians. In 1932, the Committee of Technocracy was founded at Columbia University under Howard Scott's and Walter Rautenstrauch's leadership.

The main principles of the technocratic ideology emphasize the predominance of scientific knowledge in nature: nature is strictly regarded as a system of energy resources that should be exploited in a rational way, in order to minimize human effort and maximize the standard of living. Technocracy therefore promotes the absolute predominance of scientific knowledge which humans hold so as to harness natural resources. For the advocates of the movement, evolution is unrelated to social phenomena and social reality, whereas it is regarded as a purely technical issue associated with calculations and quantities.⁵

Even though the Movement of Technocracy did not manage to fulfill its purposes and eventually collapsed, these ideas not only survived but also were integrated into politics. Technocrats are not elected members of a parliament and are not formally affiliated with the political party they collaborate with. However, their involvement in politics is non-negotiable. They are selected and appointed for their scientific and educational qualifications, while they may also be chosen because of their professional background.⁶

Having defined technocracy, let us now pass to the other key-notion of this paper, constitutionalism. Constitutionalism is regarded to be one of the greatest achievements of legal science. It emerged as a theoretical concept which was notably infused by the princi-

⁴ Ibidem.

⁵ Ibidem.

⁶ M. Kakepaki, F. Kountouri, N. Souliotis, N. Klironomos, G. Karoulas, *Parliamentary Elites in Transition, The Rise Of Technocrats In Greek Ministerial Elites*, 2023, pp. 205–207.

ples of Enlightenment. The concept of a superior legal order which establishes the foundations of a state's political organization, has its roots both in Roman and Greek Antiquity.⁷ Undoubtedly, Roman Law played a crucial role in affecting the political theory of constitutionalism.⁸ According to modern scholars of legal and political science, early notions of the constitutionalist principles can also be found in Ancient Greece.

The first traces of modern constitutionalism are found in England, a country that, due to its long parliamentary tradition, has profoundly influenced many modern democracies. British constitutionalism laid the theoretical foundations which made its principles prevail in the European and American context. The Magna Carta (1215), the Habeas Corpus Act (1679) and the Bill of Rights (1689) played a crucial role in shaping the European political and legal thought, supporting the rise of the modern constitutional democracies.⁹ The American Revolution resulted in the first written constitution which established the doctrine of a limited government, an idea stemming from natural law. The French Revolution was significantly influenced by the American Constitution, as reflected in the Declarations of the Rights of the Man and of the Citizen and the French Constitutions.¹⁰

3. Mandate or Expertise?

The connection between science and politics has evolved over time, as gradually both fields have influenced each other in several ways. However, it should be clarified that we refer to two different

⁷ P. Patterson, *The Evolution of Constitutionalism*, "Law Review Journal of the State Bar Association" 1948, p. 428.

⁸ Ibidem, pp. 429–430.

⁹ H.D. Hazeltine, *The Influence of Magna Carta on American Constitutional Development*, "Columbia Law Review" 1917, pp. 1–3 & p. 33.

¹⁰ P. Patterson, *op.cit.*, p. 446.

fields, which appear to be conflated rather than complementary to each other. As stated above, technocracy emerged as a substantive theory focused on the application of expertise.

According to the doctrine of limited governance, political power is restricted by the constitution, whilst politicians are held accountable for their actions towards the people. The principle of the electoral mandate ensures that politicians act on behalf of the electoral body by following democratic procedures determined in the state constitutions.¹¹

In contrast, technocrats are selected based on their scientific acumen and professional experience, leading to their appointment in positions of political authority. Technocracy is informally legitimized by technical competence rather than the consent of the governed. Technocrats do not derive their authority from the electorate as elected leaders do, a situation which can lead to a democratic deficit. The absence of transparency and accountability jeopardizes the fundamental principles of constitutional democracy, which demands that elected officials should be answerable to the public.¹²

4. The management of the Great Recession of 2008 by technocrats

The socialist government of George Papandreou's failed to deal effectively with the budgetary impasse that manifested itself in Greece in 2008. The profound vulnerabilities of the Greek economy were exposed by the financial crisis that emerged globally.¹³ The ineffective tax collection system, the significant amount of public

¹¹ Ibidem, pp. 428–429.

¹² Ibidem, pp. 432.

¹³ G. P. Kouretas & P. Vlamis, *The Greek Crisis: Causes and Implications*, *Panoeconomicus*, 2010, No. 4, <https://doi.org/10.2298/PAN1004391K>, p. 398.

debt, structural inefficiencies in the public sector, and ongoing budget deficits were some of the causes of this predicament. As noted earlier the aforementioned factors significantly influenced the country's capacity to respond to the global economic crisis.

Greece was forced to receive a financial aid program from the European institutions. In this context, a financial experts' committee, the Troika, was established, composed of the European Commission, the European Central Bank and the International Monetary Fund. The Troika was assigned to lead the country towards structural reforms which aimed at debt consolidation. The first Memorandum of Understanding was signed in 2010. As part of the deal, was the concession of considerable control over national fiscal and economic policy from the Greek Parliament to the Troika. The Troika strictly monitored political decisions and measures, which resulted in the restriction of national sovereignty: economic governance was totally determined by technocrats of these institutions whose directions the Greek Parliament had to abide.¹⁴

In 2011, an intense crisis of political representation manifested due to the economic situation, the social riots and the austerity measures that were implemented by the Troika for the economic restructuring of the Greek economy.¹⁵ The Greek elected government collapsed, under the escalating economic turmoil and the intense political instability. In this period, Loukas Papademos, former President of the Bank of Greece and former Vice President of the European Central Bank, was appointed as a prime minister of

¹⁴ Ch. Lyrantzis, *Greek Politics in the Era of Economic Crisis: Reassessing Causes and Effects*, Hellenic Observatory Papers on Greece and Southeast Europe (GreeSE Paper No. 45), 2011, <https://eprints.lse.ac.uk/33826/> [accessed: 11.07.2025], pp. 17–18.

¹⁵ G. Karyotis & W. Rüdig, *The Three Waves of Anti-Austerity Protest in Greece, 2010–2015*, *Political Studies*, 2017, 65(1_suppl), pp. 73–92, <https://doi.org/10.1177/1478929916685728>.

Greece.¹⁶ Papademos was chosen through a cross-party agreement between the largest political parties of the Greek Parliament, the socialist party, the center-right party and a party of a far right political aspirations. The assumption of the prime ministry by Papademos, was introduced as a necessary solution to proceed with the implementation of the structural changes that were imposed on the country. The appointment of a technocrat as a Prime Minister, especially when the country's sovereignty was under question, raises serious concerns about the functioning of the democratic institutions on national and supernational level.

5. Conclusion

The examination of the Greek crisis reveals the fact that during periods of extreme political-economic pressure, law is used as a means, under the guise of necessity, to implement questionable reforms, often to the detriment of democratic principles. The way in which the economic crisis was attempted to be addressed highlights the antinomies between constitutionalism and technocratic governance. The Greek crisis was managed by technocrats who did not come from the will of the majority and had no political accountability. In this way, political power shifted from the body politic to supernational mechanisms and individuals, under the pretext of finding and implementing rational solutions. The result was the undermining of democratic legitimacy. We can distinguish a critical conflict between the need for effective management and democratic legitimacy, as the delegation of executive power to unelected experts limits the direct participation of the people in the decision-making process. The consolidation of the technocratic

¹⁶ A. Treib, *European Elites and the Narrative of the Greek Crisis: A Discursive Institutional Analysis*, *European Journal of Political Research*, 59(3), 2020, p. 447, <https://doi.org/10.1111/1475-6765.12371>.

ideology reflects a transition from democratic governance to the formalisation and mathematization of politics. The emergence of neutrality as an absolute necessity leads to the complete amoralization of the democratic dialogue.

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ABSTRACT

Politics and science are dialectically connected. Nevertheless, it seems that this relation is being reshaped constantly over the last decades. The rise of technocratic governances entails that the political decision-making process is based on the scientific acumen of technocrats. This situation erodes democratic values, whilst can lead to a democratic deficit. This pattern emerged in Greece during the Great Recession of 2008, when technocratic organizations were addressed to guide the country in order to overcome the fiscal impasse. The purpose of this essay is to examine the relationship between technocracy and constitutionalism, highlighting the way in which technocracy undermines the core principles of democratic constitutionalism.

Tzemintimpis Georgios*

From Cicero's Political Morality to the Modern Concept of the Rule of Law

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Politics has always profoundly shaped societies, and despite historical change, the connection between law and politics has remained strong, with lawyers playing a central role since the Roman Republic. Marcus Tullius Cicero was such a Roman lawyer, jurist, statesman, politician, orator, and philosopher. His work is immense, and his influence on moral and political philosophy is very important. Cicero despised tyranny and believed that natural law and a good balance between state factors could promote justice and freedom for all citizens.¹ Nineteen centuries after him, modern jurists formed their own ideas of the “rule of law”, a crucial principle of public law, that influences politics and the way the people’s decisions come across. Today, the rule of law is essential for any constitutional state that respects human rights.

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¹ Cicero, *De Republica* 1.69.

Despite our immense chronological distance from the 1st century BCE, Cicero's writings are still a great source of inspiration that can help us better understand our modern Republics and reflect critically on how we can protect our democratic institutions.

The Roman orator was born almost twenty years after the assassination of progressivist Gaius Gracchus, and almost twenty-five years before the infamous Sulla became dictator of Rome. It was a difficult time for Roman politics; Rome struggled to keep up with the needs of its expanding Republic, and political institutions, like the *comitia* and the Senate, were unable to express social needs and retain order. Yet, Romans were still ardent supporters of their liberty (*libertas*), which can be understood as a condition of freedom from the possibility of interference, through sharing of power in a common fatherland. Liberty was, thus, a crucial political idea.² Cicero tried to evaluate the means of protecting this political liberty, through the law. On the one hand, he attempted to be a legalist during his daily political life;³ on the other hand, he was keen on supporting “natural law”, *iusnaturalism*, which, he believed, could keep the State balanced and free.⁴

Moreover, Cicero, following Polybius, viewed the Roman state as a balanced system of consuls, Senate, and assemblies—a ‘mixed constitution’ that preserved liberty until the Republic’s 1st-century crisis⁵. Cicero also did, in fact, believe that Rome had kept this “mixed system” until his age⁶, when the 1st century BCE Republican crisis changed everything to the worse, as proven by Sulla’s

² V. Arena, *Libertas and the Practice of Politics in the Late Republic*, Cambridge University Press, Cambridge, 2013, pp. 14–15.

³ H. Taylor, *Cicero: A sketch of his life and works*, A.C. McClurg and CO, Chicago, 1916.

⁴ Cicero, *De Legibus* 3.33.

⁵ S.E. Smethurst, *Politics and Morality in Cicero*, Classical Association of Canada, Phoenix, 1955, Vol. 9, No. 3, pp. 111–121, as drawn from: <http://www.jstor.com/stable/1086327> [date of access: 25/6/2025].

⁶ Cicero, *De Republica* 1.45–46.

dictatorship at first, and later on by political events, leading to his own decapitation by Mark Antony's troops at Tusculum.

Other than *De Republica*, Cicero's books like *De Legibus* and *De Officiis* are also influenced by his unique viewpoint. On the one hand, Cicero's legalism was heavily influenced by the adherence to legality Romans expressed in all aspects of state life; as the Roman historian Livy notably wrote: "I will successfully showcase the deeds of the now and onwards free Roman people, both in peace and in war, their annual magistrates, as well as the *rule of law* (*imperia legum*), more powerful than [the rule] of men."⁷ As we can understand from Livy's quote, as well as from other Roman historical sources, the Romans hated the "rule of one man", that is, kingship. Cicero, also one of them, was eager on keeping alive what we could nowadays call "the Constitutional principles" of the Republic, considering it immoral to simply disregard them. He firmly believed that laws express civic virtue. In *De Officiis*, he claimed even great men must obey the law, like Socrates.⁸ For him, politics must reflect the *mos civilis*—the ethical customs of Roman citizens—and laws must bind society through justice.⁹ Cicero emphasized legalism and morality, treating the law as the cohesive force of the State, and believed politics should submit to fair, citizen-focused laws, with guarantees of individual and social liberty, focusing on the common good, and solving differences through a common ground and not through arms, what we could maybe recognize today as an aspect of "the rule of law."¹⁰

On the other hand, iusnaturalist Cicero was also keen on a certain interesting ideal: the orator-philosopher. He believed that

⁷ Titus Livius, *Ab Urbe Condita* 2.1.

⁸ Cicero, *De Officiis* 1.148.

⁹ See also, Cicero, *De Legibus* 2.11.

¹⁰ J. Zajadło, *Servi legum sumus, or We Are Slaves of the Law*, 2024, abstract, available at: <https://ejournals.eu/en/journal/przegląd-konstytucyjny/article/servi-legum-sumus-or-we-are-slaves-of-the-law> [date of access:: 25/6/2025].

every statesman, including politicians, but also judges, should cultivate themselves to become “perfect statesmen”, being both orators and philosophers.¹¹ Cicero illustrated his idealist view of the political world in many of his texts, especially dialogues on rhetoric. However, through excerpts from two of his chosen texts, his *Letter to Atticus 2.1* and his *For Roscius the Actor* speech, we can get a better glimpse of these political moral values. One of Cicero’s most important letters, *Ad Atticum 2.1*, was written to Atticus regarding the relatively calm, but always ready to erupt political situation back in Rome; Caesar was still not as big as he would soon get, and Pompey had returned to Rome after glorious victories in the East, threatening to start quarrels due to his elevated status. Cicero comments:

“I did not take such precautions and make such provisions in order to desert my brilliant political path, but rather to encourage Pompey to better himself and abandon his pursuit of shallow popularity. Let me assure you that, despite the fact that many have turned him against me in the past, he now speaks of my achievements with greater admiration than of his own. He claims that he acted rightly—while I preserved the Respublica.

What then? If I can even improve Caesar—whose political winds now blow strongly in his favor—am I truly doing harm to the Respublica? Don’t you think I’m doing a great service by ensuring that those in power don’t have the will to cause harm?

[8] Our friend Cato [...] is sometimes damaging to the Respublica because he speaks as if he were in Plato’s ideal Republic, not in the dregs of Romulus. Now that the consul has been thrown into prison and riots are breaking out repeatedly, not one of those [...] who once came to the defense of the Respublica has moved—not a single

¹¹ Cicero, *De Oratore* 1.28–29.

breath has stirred from them [...] “What should we do if we cannot manage otherwise? Should we serve freedmen and even slaves?”¹²

One could not add much to Cicero's descriptiveness. Though deeply political, Cicero sought equilibrium between power centers to preserve liberty. He believed the law must constrain ambition and restore civic morality, a principle abandoned by men like Caesar and Cato. If not, the price is becoming a “slave”, metaphorically or even literally speaking, to free people—something awful for any Roman who cared about liberty and couldn't stand losing it, while others still had it. In conclusion, synthesizing Cicero's work, we can see that, despite his strong political convictions, he was not blind to the Republic's demise in the hands of just a few men, and was firmly convinced that the Law should be set above politics, as the framework in which everybody acts. Political institutions could be saved by securing the equilibrium between all state pillars through the Law, but also by reintroducing political morality in daily life, thanks to the humanist education of politicians, adherent to characteristics like humanism and “decorum,”¹³ principles neglected in his time, especially by ambitious men, like Caesar and Cato.

This very “corruption” was also evident in Roman courts. Sulla's dictatorship (82–80 BCE) had brought significant changes to Roman courts, as the juries were due to come from the senatorial rank only. The politicization of courts after this dictatorship challenged justice. In *Pro Roscio Comoedo* of 77 BCE, Cicero defended fairness over political bias, urging judges to go beyond rigid formalism and uphold integrity. The actor Roscius, a non-native Roman citizen, is called to court in order to respond to the lawsuit of Fannius, who

¹² Cicero, *Letter to Atticus* 2.1, in *The correspondence of M. Tullius Cicero*, ed. L. C. Purser, trans. Hodges and Figgis: Dublin, 1904. Modifications on the initial translation by the paper's author, under the kind supervision of PhD student Marilena Christidou.

¹³ Cicero, *Orator* 69.

claimed he had a partnership with Roscius many years ago, but did not receive the amount of the profits due to him. Cicero tries to convince the judge to decide in spite of the political affirmations of his client, Roscius, who not only was in favor of Sulla back in the day, but was also not a native Roman, naturalized by Sulla, and, also an actor, a profession not well-esteemed.¹⁴

Cicero, thus, declares that: “[...] the judge is someone we would wish to think as well of us as to judge in our favor, and this advocacy is of such exceptional dignity that we ought to revere it as though it were a single, supreme judge—enclosing and encompassing within this formula all legitimate judgments, honorary arbitrations, and domestic duties alike. We shall therefore proceed in that spirit.”¹⁵ As we can see, Cicero is trying to convince the judge that respect between all members of the trial and consensus between the members of the judicial counsel are essential to, what we could call today, a fair trial.

Further later, he evokes the moral integrity of this case’s praetor, who was, nevertheless, proved to be a moral failure later in his political life: “You, Gaius Piso, adorned with such integrity, courage, dignity, and authority (influence), would not dare to demand money from your adversaries.”¹⁶ What the praetor would demand to be brought in court were the so-called *litterae*, books used by Roman citizens to write down their expenses *ad probationem*, in order to prove, if needed, that a transaction took place. The praetor would grant the plaintiff, Fannius in our case, an *actio*

¹⁴ M.T. Cicero, *Difesa dell’ Attore Roscio / Contro Vatinius*, A cura di Annalaura Burlando, 2nd edition, Garzanti Editions, Milan, 2020, pages XVI onwards.

¹⁵ Cicero, *Pro Roscio Comoedo* 15, in *Pro Roscio Comoedo*, ed. N.H. Watts, trans. Cambridge (MA): Harvard University Press, 1953. Modifications on the initial translation by the paper’s author, under the kind supervision of PhD student Marilena Christidou.

¹⁶ Cicero, *Pro Roscio Comoedo* 7.3, in *Pro Roscio Comoedo*, *op.cit.* Modifications on the initial translation by the paper’s author, under the kind supervision of PhD student Marilena Christidou.

certae creditae pecuniae to claim a specific sum of money, like the one kept by Roscius, despite their partnership. The strict form of the *litterae*, not mentioning the exact cause of a legal transaction, meant that the judge would not take the parties' will (*voluntas*) into account, focusing only on the written entries.¹⁷ However, Cicero tries to convince the jury that this strictness is not necessarily sound, as unfair claims can spring from unchecked entries. It's as if he is saying that no sound judge would make "naturally" unfair claims, especially from potential political adversaries, such as Roscius. This, of course, is a principle also necessary for modern judicial procedure, as expressed in many modern Constitutions, inherent to keeping alit the fire of the rule of law. In short, a sense of "political morality" also extended to courts, that, despite their jurisdictional duties, were too often victims of political crises. Cicero tried to uphold basic moral values, iusnaturalist regarding the praetor, legalist regarding the bar, to make sure that a fair trial took place for his client.

In sum, we can find fractions of what we conceive today as the "rule of law" in Cicero's work. Balancing antagonizing state factors and setting the Law above politics, especially in courts, are proper values of our Republics, even today. It is still interesting that, despite the long journey of states from the 1st century BCE to the 19th century CE, when the idea of the "rule of law" was first scientifically expressed, we can still trace some of its roots all the way back to ancient Rome. When Robert von Mohl, a German jurist, developed his theory of the "Rechtsstaat" in his book "German Policy Science according to the Principles of the Constitutional State,"¹⁸ he must have not had Cicero's time in mind. However, the opposite of "rule

¹⁷ A. Dimopoulou, *Ρωμαϊκό δίκαιο – Αναδρομή στις πηγές του σύγχρονου δικαίου* (Roman law – Retrospection of the roots of modern law, in Greek), 2nd ed., Eurasia Editions, Athens 2022, pp. 353–354.

¹⁸ C.E. Mecke, *The "Rule of Law" and the "Rechtsstaat": A Historical and Theoretical Approach from a German Perspective*, Brunswick European Law School, Studia Iuridica LXXIX, 2019, p. 33.

of law”, stated by Von Mohl himself, is the “Police State”, the state which interferes with a citizen’s personal sphere of liberty *contra* and/or *ultra legem*, without providing them any form of guarantee as far as their rights are concerned. The “Police State”, victim in the hands of a few people, is the exact opposite of the “substantial rule of law,”¹⁹ where each citizen’s rights are protected, despite their political affiliations. State institutions are also balanced, through a written Constitution, respecting private liberty. Thus, *libertas* is a moral value that we still respect today, even though its meaning has changed, thanks to the work of Enlightenment philosophers. Modern liberal constitutionalism can still trace its roots all the way back to Cicero, as the Founding Fathers of the USA and the French revolutionaries were his admirers. The defining characteristics of Roman liberty are still around in politics! It seems, therefore, that some values, especially regarding the political phenomenon, have not changed much, despite our long human history and their recently established legal normativity.

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ABSTRACT

This paper examines Cicero's view of the relationship between civil morality (*mos civilis*) in ancient Rome and upholding the rule of law in various Roman institutions. The famous jurist and politician emphasized

the need to keep the rule of law alive, as a principle that conserves the State, through every citizen's individual effort to attain moral virtue; he believed in securing respect of law in the function of both political institutions and legal procedure, ranging from decisions of the Senate to judicial bodies such as the arbitria. This paper utilizes excerpts from Cicero's mature *Epistula ad Atticum* 2.1, as well as his *Pro Roscio Comedo* speech, to showcase how Cicero's ideas, such as *humanitas* and *decorum*, have influenced the way we view "moral" politics today, and have historically contributed to the formation of the modern theory of the liberal rule of law.

Maria (Marilena) Christidou*

Law Between Morality and Technocracy: Concluding Reflections from Cicero to the Eurozone Crisis

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The evolving and, at times, conflicting relationship between law, legal professionals and political authority has long been a subject of philosophical and institutional discussion. In examining the evolution of this relationship from Cicero's legal philosophy to the technocratic crises of contemporary Europe, a dichotomy emerges between law as a moral and civic force and law as a functional instrument of governance.

Cicero regarded political tyranny as the gravest distortion of the natural order, arguing that only through the consonance of moral law and constitutional balance could the *Respublica* uphold justice and safeguard liberty. In this particular philosophical standpoint,

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the law is not regarded as a means of coercion; rather, it is conceived as the tangible manifestation of a superior, rational order (*ratio summa insita in natura*) that governs both rulers and ruled alike.¹ This conception is anchored in values such as humanity (*humanitas*) and virtue (*virtus*), with the objective being the preservation of dignity (*decorum*) and liberty (*libertas*). He emphasised that even the most powerful figures must obey the law, articulating this principle in the well-known dictum: “*Salus populi suprema lex esto*” (*Let the welfare of the people be the supreme law*).² In this vision, jurists were expected not only to interpret the law but also to serve as guardians of moral and civic order.³

As Giorgos Tzemintimpis’ analysis demonstrates, this notion provides a framework for comprehending the enduring role of the legal professional as a figure of ethical and political agency. In the context of ancient Rome, jurists were not mere technicians of statute, but guardians of justice—expected to uphold the *Respublica* by embodying its highest ideals as orator-philosophers. Their role was to defend the republic against the decay of moral authority.⁴ The Roman mixed constitution (*Respublica mixta*), with its balance of powers between the magistrates, the Senate, and the citizenry, embodied an effort to institutionalise such a role.⁵

In contemporary democratic states, these classical ideals are confronted by the practical exigencies of economic management and crisis governance. Vassilis Lambadarios’s contribution underscores the manner in which, during the Eurozone debt crisis, particularly in Greece, the principle of constitutional democracy was increasingly subordinated to the imperatives of supranational technocracy. The formation of political decisions was driven

¹ Cicero, *De Legibus*, 1.18–19.

² Cicero, *De Legibus*, 3.8.

³ E.M. Atkins (ed. and trans.), *Cicero: On Duties (De Officiis)*, Cambridge University Press, Cambridge 2013, p.xii

⁴ Cicero, *De Oratore*, 1.215–216.

⁵ Cicero, *De Re Publica*, 1.69.

to a lesser extent by democratic deliberation than by directives emanating from institutions such as the European Commission, the European Central Bank, and the International Monetary Fund (the Troika).⁶

This dynamic redefined the role of law. Legal frameworks that were previously designed to ensure participation and accountability have now been repurposed as instruments of compliance with fiscal discipline.⁷ The prevailing consensus among the public and the authority of parliament were superseded by technical mandates, thereby engendering a novel form of legal legitimacy that was uncoupled from civic legitimacy.⁸ While the ensuing governance may have formally adhered to the letter of the law, it fell short of the standards demanded by deliberative constitutionalism.

Consequently, the identity of the legal profession has been rendered unstable. Historically regarded as a moral vocation, the field of legal work is now increasingly shaped by managerial and technocratic priorities. This transformation unveils a fundamental paradox of our era: the law, the very institution designed to safeguard against arbitrary authority, is itself susceptible to depoliticisation and ethical dislocation.

From the juxtaposition of classical and contemporary models, several conclusions emerge. Firstly, it is imperative to acknowledge the inherent interconnectedness between law and its political and ethical contexts. When legal decisions become excessively

⁶ N. Scicluna, S. Auer, *From Flexibility to Fiscal Discipline: The Eurozone Crisis, Technocratic Decision-Making, and the End of the Deliberative Ideal*, "Journal of Common Market Studies" 2019, Vol. 57, No. 6, p.1349

⁷ G. Agamben *State of Exception*, University of Chicago Press, Chicago 2005, p. 28.

⁸ I. Καμτσίδου, *Μια κατάσταση εξαίρεσης καθόλου εξαιρετική: Η κρίση του δημόσιου χρέους και το λυκόφως του Συντάγματος*, «Δικαιώματα του Ανθρώπου», (I. Kamtsidou, *A State of Exception That Is Not Exceptional at All: The Public Debt Crisis and the Twilight of the Constitution*, "Human Rights Review", in Greek), No.73, 2017, p. 603.

dependent on technical expertise and disengaged from democratic deliberation, there is a risk that the foundations of constitutional legitimacy may be eroded. Secondly, it is imperative to reimagine the role of legal professionals. Rather than perceiving them as neutral mediators, it is crucial to acknowledge their role as civic actors who bear the responsibility of safeguarding the normative integrity of the constitutional order. Cicero's conceptualisation of the orator as a person of virtue, deeply versed in law and philosophy, retains its pertinence in this context.⁹

The Greek case demonstrates how democratic systems can be placed into a prolonged state of exception under the guise of necessity.¹⁰ Law, if deprived of its moral compass, ceases to function as a framework for liberty and instead becomes a mechanism of enforcement. In order to maintain its emancipatory capacity, the law must be understood as a site of contestation, argument and collective reasoning.

In conclusion, the vitality of the law is not confined to institutional mechanisms, but is also sustained by the ethical commitment of those who interpret and enact it. The contemporary relevance of Cicero's teachings, particularly in the context of democratic uncertainty, underscores the notion that constitutionalism is not inherently self-sustaining. The prevailing circumstances necessitate a legal profession that is both proactive and ethically committed, demonstrating the capacity to counteract the tendency towards technocratic reductionism and to revitalise the participatory principles that are intrinsic to democratic life.

⁹ Cicero, *De Oratore*, 1.49.

¹⁰ C. Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty*, University of Chicago Press, Chicago 2005, p. 5.

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ABSTRACT

This article presents the concluding reflections arising from the studies of G. Tzemintimpis and V. Lambadarios, as delivered during Session IV of the seminar. The study explores the relationship between law and political authority by juxtaposing Cicero's classical conception of law as a moral force with the contemporary experience of technocratic governance, especially in the context of the Greek debt crisis. Drawing from these presentations, the argument is made that the legal profession must reclaim its civic role and thus become a safeguard in the preservation of constitutional democracies. By means of historical-philosophical reflection and institutional critique, the emphasis is placed on the enduring need for legal actors to uphold not only the rule of law but also its ethical foundations.

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Chapter V

Empire,
Colonialism,
and the Idea
of Law:
A Global
Perspective
from Warsaw

Łukasz Majewski*

Seventeenth-Century Polish Political and Legal Thought in the Works of Andrzej Maksymilian Fredro

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Until recently, the works of 17th-century Polish political writers remained largely unknown outside scholarly circles and among those proficient in Latin. However, thanks to the valuable initiative of the Alexis de Tocqueville Center for Political and Legal Thought and the National Center for Culture, many of these works have been translated into Polish and published in bilingual editions. They serve as monuments of Old Polish political and legal thought, bringing readers closer to both the era in which they were created and to original Polish concepts. The conference in which I had the honor to participate provides a good opportunity to present this topic to a broader audience from engaged universities.

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First and foremost, Andrzej Maksymilian Fredro (1620–1679) deserves attention—a conservative, politically active during the election of Michał Korybut Wiśniowiecki, and remembered, among other things, as the co-author (together with Bishop of Kujawy Kazimierz Florian Czarторыski) of an original concept for determining the outcome of a royal election.¹ His views were shaped within a weakening yet still significant regional power, whose constitutional context was defined by institutions unique in Europe and, in a sense, endemic to the Polish–Lithuanian Commonwealth.² These institutions functioned despite significant foreign interference in the Commonwealth’s internal affairs. They reflected the spirit of noble democracy, whose distinctiveness from other systems (especially absolute monarchy) was a source of pride and satisfaction for its participants. Free elections, co-decision-making in state matters, and nobility’s privileges limiting the monarch’s freedom of action formed the unique system of the Commonwealth. The high status of the nobility in such a system, combined with the almost fictional necessity of paying taxes, made the Polish noble democracy appear attractive to the nobility of neighboring states.

Fredro’s works are inherently practical. He emphasizes that every citizen should be interested in the proper functioning and wealth of the state, as this directly affects their own situation. Citizens should also participate in governing the state by communicating their wishes and needs to the ruler through existing mechanisms based on numerous representatives in the lower

¹ The seriousness with which the possibility of a split during the royal election was considered is best evidenced by the highly original proposal put forward on June 18 by Bishop of Kujawy Czarторыski and Castellan of Lwów Fredro: two slips of paper bearing the names of the candidates were to be placed in a chalice used for Mass, and a three-year-old boy was to draw one of them. Thus, the outcome of the election would be decided by a lottery, by blind chance. Source: K. Piwarski, *Michał Korybut Wiśniowiecki (1669–1673)*, unpublished typescript in the author’s possession.

² Z. Rau [in:] A.M. Fredro, *Scriptorum Seu Togae et Belli Nototionum Fragmentam*, Warsaw 2014, p. 11.

house of parliament (which requires knowledge of rhetoric). The multiplicity of such representatives was intended to limit the possibility of corruption, and their freedom of speech allowed them to express what they believed to be true without restraint. Citizens should not fear the ruler, and the ruler should trust them, as proper relations between the ruler and the ruled are built on trust. The king should therefore be characterized by gentleness, authority, justice, and care for the citizens. He should be a role model and not adopt foreign customs. The unifying factor of the state was to be shared customs characteristic of Poland, while foreign influences—even in clothing—were viewed negatively.

Fredro emphasizes the importance of a well-functioning judiciary, public schools with well-paid teachers, an effective diplomatic service, the military, and agriculture—treated with special care as a strategic sector of the economy. A state official, referred to as a “helper,” should know the nature of the state’s system and people, be familiar with national and general history, be able and willing to speak persuasively, be loyal as an administrator, resistant to gifts and bribery, capable of keeping secrets, prioritize public good over private interest, have a clear conscience, and—most importantly—a modest character.³ Fredro also pointed out that Polish freedom is not chaos but an element of the Polish character.

In another work—*Militarium*, discussed in more detail by a conference speaker—the author attempts to formulate a new doctrine of military affairs and warfare.⁴ He emphasizes the importance of emotions and motivation among fighters, as well as the stability of the state and the rule of law, which even the ruler must obey. The author also values the Polish national character, marked by simplicity and trust (often exploited by enemies),

³ A.M. Fredro, *Scriptorum...*, p. 619.

⁴ A.M. Fredro, *Militarium, Seu Axiomatum Belli ad Harmoniam Togae Accommodatorum Libri Duo*, Warsaw 2015, p. 61.

combined with resilience and the ability to work hard.⁵ Foreign models, especially French ones, are contrasted with Polish morality. Fredro supports the concept of a just war—not waged for profit but to restore peace in a humane manner—criticizing the widespread looting and requisitioning of private property during 17th-century wars, which ruined many noble families. His inspiration for views on warfare and the conduct of soldiers during peacetime comes, of course, from ancient Rome. The author focuses on the qualities of a commander who sets an example for other soldiers. He advocates for the modernization and increased effectiveness of the army, recognizing the importance of technology in shaping soldiers' behavior on the battlefield.

Fredro was also the author of the extensive treatise *Vir Consilii* (The Prudent Man),⁶ a practical compendium of civic knowledge for participants in the political life of a democratic republic. The author attempts to show the path to forming a conscious citizen prepared to play a political role, while also weaving his own political ideas into the text. He draws inspiration from earlier authors—Greek (especially Aristotle) and Christian (from St. Thomas Aquinas through medieval writers to contemporary humanists).

Fredro reveals his political concepts by referring to the ruler's role: in addition to establishing and maintaining order based on law, the ruler should be able to foresee external threats and effectively counter them through decisive action⁷ (likely a consequence of the military conflicts that swept through the Commonwealth in the 17th century). The author envisions a fellow countryman governing the country together with other free people and with their active participation. He anticipates citizens' needs and strives to meet them. His relationship with the nation is likened to a mar-

⁵ *Ibidem*, p. 131.

⁶ A.M. Fredro, *Vir Consili monitis ethicorum necnon prudentiae civilis praeludente apparatus oratorii copia ad civiliter dicendum instructus*, vol. I, Warsaw 2022, p. 5.

⁷ M. Tracz-Tryniecki [in:] Fredro A.M., *Vir Consili...*, p. 82.

riage, in which the ruler corresponds to a husband guiding a noble wife.⁸ The king should also rule from a grand capital and respect freedom of speech despite potential critics.

In a manner characteristic of the era, Fredro presents the ideal behavior of a model citizen—the “*vir consilii*”—who should possess both public and private virtues. Public virtues concern the state and religion, while private ones relate to family, close ones, neighbors, teachers, oneself, and one’s property.⁹ Properly managed property could be used to support the homeland as expected. Such a citizen should also be prepared for military service and political duties, placing themselves on equal footing with other citizens, regardless of their level of education.

Fredro refers to the system of “golden liberty” as a “people’s republic” or a “monarcho-popular system.”¹⁰ He views the use of the *liberum veto* in parliament as a way to prevent unfavorable decisions by ensuring unanimity. However, recognizing the potential for abuse, he proposes certain limitations—such as prohibiting deputies who invoke this right from leaving the session, so they could still be persuaded to change their minds during further deliberations.

The works of Andrzej Maksymilian Fredro, recently published and referenced in this introduction, offer a unique opportunity to explore the political and legal concepts of the Polish “Sarmatism” era. Their assumptions differ significantly from how Sarmatism is often portrayed by authors who see it as the source of the First Republic’s downfall. One can only hope that the publication project will continue, contributing to a greater understanding of the era and potentially leading to a reassessment of it by historians and legal scholars.

⁸ Cf. *ibidem*, p. 83.

⁹ *Ibidem*, p. 87.

¹⁰ *Ibidem*, p. 94.

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Łukasz Kordelasiński*

Andrzej Fredro—Polish Political and Legal Thought in the 17th Century

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During the 17th century, Poland, in the form of Polish-Lithuanian Commonwealth, was a local powerhouse in the geopolitical theater, and as such, was also a pioneer in legal thought development, especially considering its unique political system. This epoch was also a time of military conflicts, uprisings and many different tragedies. Members of the Polish nobility, called “szlachta”, were trying to find solutions to problems haunting their beloved Commonwealth, with many different ideas, views and arguments. One of the most prominent members of szlachta, living in those times, Andrzej Maksymilian Fredro is an especially interesting scholar, as his solution for problems haunting the Commonwealth was law and legislature.¹

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¹ A. M. Fredro, *Kwestia wojskowa czyli o prawidłach wojny i pokoju dwie księgi wraz z pewnymi pomniejszych pismami tegoż autora*, Narodowe Centrum Kultury, Warszawa 2015, p. 94–96, 103–108.

In order to truly understand Fredro's ideas, we need to understand the historical background and context of times that he had written his works. As mentioned earlier, in the 17th century Poland wasn't an individual country. In 1569, the Kingdom of Poland and Grand Duchy of Lithuania drew up a legal act, uniting both states into one, called the Polish-Lithuanian Commonwealth². It was a culmination of over a 150 years period of close cooperation between both countries, which were however two different and fully sovereign states, united by so-called personal union, which meant that they were governed by the same ruler.³ But, after the 1569's Union of Lublin, both countries merged into one.

The Commonwealth had a unique political system, which was a mix of a republic, constitutional monarchy and oligarchy, called "the Golden Liberty."⁴ There was a king, who held some real but limited power, the equivalent of the House of Lords called the "Senat" and representatives of polish nobleman's caste, which will be characterized extensively. All three bodies made the "Sejm Walny", which decided on most important matters such as taxation, legal matters, war or peace etc. The king didn't have a strong standing, which was voiced in popular saying "Rex regnat et non gubernat" meaning "The king rules but does not govern."⁵ He was controlled by the Senat and the Sejm, which had a prerogative of vetoing the King on all matters by the "Liberum veto" mechanism.⁶ The members of Sejm were chosen by all Polish noblemen, in a representative democracy. There were small regional Sejm's,

² R. Butterwick, *The Polish-Lithuanian Commonwealth, 1733-1795*, 2021 Yale University Press, p. 14.

³ P. Jasienica, *Polska Jagiellonów*, Prószyński i Spółka 1997 pp. 30-32.

⁴ P. W. Schroeder, *The Transformation of European Politics 1763-1848*, 1996 Oxford University Press.

⁵ T. B. Harbottle, *Jan Zamoyski's speech in the Parliament 1605* 2009 Dictionary of Quotations (Classical), BiblioBazaar, LLC. p. 254.

⁶ J. Bardach, B. Lesnodorski, M. Pietrzak, *Historia państwa i prawa polskie-go*, Warszawa, Państwowe Wydawnictwo Naukowe, 1987, p.220-221.

called Sejmiki, where members of nobility chose their representatives, whom in turn chose their own representatives in “Sejm Wojewódzki” meaning voivodeship Sejm. Those delegates in turn attended Sejm Walny and voted on the most important matters.⁷ Being a delegate, no matter the tier, was a true honor and a great responsibility, which most noblemen treated with utmost dignity and seriousness.⁸

But to truly understand this system, which relied on noblemen, their wisdom, honour and intelligence, one needs to analyse the noble class itself. It evolved from the knights of the Middle Ages, whose position declined once armies began hiring regular soldiers instead of relying on highly skilled but few in number knights.⁹ This process swept all of Europe and affected Poland as well. There was a difference however, as Polish noblemen did not fully abandon their militaristic roots. Even during the decline of the Commonwealth in the second half of the 18th century, the szlachta, through the Pospolite Ruszenie (noble host, levée en masse), remained a relatively strong military force. Most members of the szlachta trained their sons to become future soldiers, famously forming the elite military unit known as the Winged Hussars.

Lastly, before analyzing the life and works of Andrzej Fredro, the 17th century itself ought to be studied. From the Commonwealth point of view, this epoch was incredibly challenging. During the 17th century, the Commonwealth suffered from a number of wars,

⁷ Sejm Rzeczypospolitej Polskiej, <https://www.dziejesejmu.pl/en/historia-sejmu-akt/the-king-as-the-sejming-estate,p158388775> [date of access: 09.07.2025].

⁸ J. Jędruch *Constitutions, elections, and legislatures of Poland, 1493–1977: a guide to their history*. EJJ Books 1998, pp. 125–132.

⁹ T. Jakubowski, *Claiming Inherited Noble Status*, White Eagle: Journal of the Polish Nobility Association Foundation. Baltimore, MD. 2002 p. 5 and R. H. Hutton and W. Bagehot, *The Races of the Old World*, National Review, London, England: Robson and Levey 1864.

invasions, social unrest, attempted coups and uprisings.¹⁰ Since the Union of Lublin, the Commonwealth has successfully defended its borders from frequent attacks of the Ottoman Empire, the Russians, the Tatars and the Swedish. The breaking point however, was the Chmielnicki Uprising (1648–1657), in which the Cossacks living in Polish Ukraine revolted against the Commonwealth, demanding similar rights and liberties that szlachta possessed. Even though the Commonwealth was victorious, it made the state weakened by long war and susceptible to other countries' military might. In 1654, the Muscovy attacked the Commonwealth and a year later Sweden, in height of their power, also declared war on the Commonwealth. After many years of conflict, the war ended, but Poland and Lithuania were devastated. During this conflict, Poland lost more assets and artworks than during World War II, the economy was in shambles, the population depleted and the whole state was in ruin. And exactly in those challenging times, Andrzej Fredro wrote his *magnum opus*: “Militarium”.

Andrzej Fredro was truly, a shining example of szlachta's virtue.¹¹ Born ca. 1620 in Land of Przemyśl, he was a member of the second most wealthy szlachta subcategory, during his youth he studied at the Jagiellonian University at Kraków (*studium generale* established at 1364 as first Polish University), traveled across Europe, most notably stayed for some time in Belgium and then started his political career. As a 26 year old, he became a “poseł” around 1646. He gained renown two years later, in the first stages of Chmielnicki Uprising, after witnessing a Cossack attack, during which they sought to impale him on a stake.¹² In October of 1648, he addressed the Election Sejm (which elected the next king of Poland, Jan Kazimierz) on the importance of financial and

¹⁰ F. Roşu, *Elective Monarchy in Transylvania and Poland-Lithuania, 1569–1587*. Oxford (GB): Oxford University Press 2007.

¹¹ *Ibidem*, p. 149–150.

¹² A. M. Fredro, *op.cit.*, p. 19–20.

military matters. He also personally attacked the Polish senate for being too cheap in regard to spending the Crown's money on developing and buying armies and their equipment.¹³ His critique gained him recognition, as it aligned with the prevailing opinion within the szlachta regarding the stance of the magnateria, the wealthiest subgroup of the szlachta. Instead of threatening the Senat representatives with a saber (as many different delegates actually did), he gave a passionate speech about patriotism and moral duty of szlachta to defend sovereignty and the borders of the Commonwealth, giving an official, noblesman oath that he will not spare his personal wealth in defence of the Union.¹⁴ But most importantly, he kept his promise, spending a small fortune from his personal assets, on fielding a whole cavalry banner aiding two official expeditions into Cossacks land. This way, he put a seal on his position as a young and passionate statesman, and started his political career with much needed recognition.¹⁵

After gaining recognizability, Fredro became active in political, social and military matters. He was sent as delegate many times, most notably for parley with the Principality of Transylvania's prince, George II Rakóczi, which was viewed as a great honour.¹⁶ He also became a Marshal of the Sejm and started writing his handbooks, first being "*Gestorum populi Poloni sub Henrico Vale-sio, Polonorum postea Galliae rege*" (History of the Polish nation, under the rule of Henry III Walezy the king of Poland and then the King of France).¹⁷ In 1654, he was granted the title of Castellan of Lviv, simultaneously making him a member of the Senat. Two years later, he was appointed as leader of the *levée en masse* during opening stages of the Swedish Deluge—that's when he met

¹³ *Ibidem*, p. 20–21.

¹⁴ *Ibidem*.

¹⁵ A. M. Fredro, *op.cit.*, , p. 21.

¹⁶ *Ibidem*.

¹⁷ *Ibidem*,, p. 21–22.

and became friends with Jerzy Lubomirski, a prominent member of the Magnateria and a strong authority figure to Fredro in the upcoming years.¹⁸

Due to political instability and chaos attributed to war time, the King of Poland, Jan Kazimierz tried to enforce his rule and strengthen it, at the expense of political freedoms granted by the Golden Liberty.¹⁹ Many of szlachta opposed this attempt to transfer the Commonwealth's political system into a merge of the Golden Liberty and absolutism, forming in the western Europe. Jerzy Lubomirski became a *de facto* leader of this opposition, challenging the king's authority and trying to keep the status quo.²⁰ After a lot of political intrigues, Sejms, discussions and all other non-violent ways, Lubomirski was left with only one option: *rokosz*, which was a type of uprising orchestrated by szlachta as a way to oppose the King's policies.²¹ Therefore, in 1665, the Lubomirski Rebellion started, and after a year of internecine fighting, the king was defeated and his plans shattered.²²

During those challenging times, Fredro kept being more active than ever, not only on political grounds but also as an author. He was a passionate supporter of Lubomirski, writing many political tracts supporting his views, being an active Senat delegate and gaining supporters for the cause.²³ In 1664, he wrote his most prominent creation: "Monita politico-moralia et icon ingeniorum" (Political and moral admonitions and images of intellect and character)²⁴. After four years, he drew up "Militarium..." which

¹⁸ *Ibidem*, p. 22.

¹⁹ *Ibidem*, p. 25–28.

²⁰ *Ibidem*, p. 31–38.

²¹ A. M. Fredro, *op.cit.*, p. 41–43.

²² *Ibidem*, p. 45–47.

²³ *Ibidem*, p. 32–41.

²⁴ *Ibidem*, p. 40–41.

will be most important for us.²⁵ In the latest stages of his life, he continued his political activity, being an important voice in most Sejm's and a major political player. At the end of his life, in 1676, he was appointed by Jan III Sobieski the Palatine of Podole, where he spent his final days. He died in 1679.²⁶

After understanding the political and historical context of Fredro's times, and analyzing his life and engagement in Commonwealth's political life, one is able to successfully study "Militarium...", which is viewed as Fredro's most important and innovative creation. Its full name is "Militarium, seu axiomatum belli ad harmonium togae accommodatorum" which means "Military matter, that is precepts of war and peace". It is written as a political tract, divided into two volumes, written in latin (frequently used by polish szlachta as an international language). The work is composed of brief (sometimes more extended) pieces of advice on various topics, such as city governance, which, when read together, resemble a lecture delivered by an expert in the field.²⁷ In "Militarium...", Fredro included some of his different works, which we will not be covered in this paper. The main purpose of this creation is to show young men how to conduct military campaigns, lead men into battle, be a good commander, prepare one's country for war, among other matters.²⁸

Of particular interest to jurists is Fredro's broad conception of preparing the state for war. He argues that if a ruler or governing body begins preparations only when they know a war is imminent, it is already far too late. In his opinion, the antic saying of "Si vis pacem, para bellum" is the perfect way of conducting country business.²⁹ He tries to persuade his reader that a good ruler should

²⁵ *Ibidem*, p. 56–57.

²⁶ *Ibidem*, p. 24–25.

²⁷ *Ibidem*, p. 57–59.

²⁸ *Ibidem*, p. 57.

²⁹ A. M. Fredro, *op.cit.*, p. 263, 259, 257, 255.

always be preparing for war, not only by training soldiers, spending money for arms and equipment or building forts, but by laws, traditions and social constructs made especially to strengthen the nation in every aspect of life. In “Militarium...”, Fredro gives his opinions on rightful and wise laws, scolds bad habits, bad laws and bad attitudes, and even proposes completely new legislation, tailored especially to strengthen the nation in every aspect possible.³⁰

Fredro possesses a great deal of respect towards law and legislation, linking the rule of law with cultivation of republican principles and ideas. He believes that by participating in expressing one's freedom, one is an active member and builder of national identity³¹. As an example, Fredro gives the history of the Roman Empire which when issued, the Edict of Caracalla tightened the bonds between Italy and its many provinces.³² Fredro also emphasises that the rule of law is necessary for a healthy republic, especially considering that the law is what regulates the direct coercion policies. He also reminds the reader that the governing bodies shall always rule within the boundaries of law and according to the peoples will, as this is their holy duty.³³ In his work, Fredro criticizes absolutism (especially in France), connecting it to the many mistakes of rulers, the oppression of citizens, famine and other tragedies that could be circumvented.³⁴ He also states that the citizens should have a legal gateway to express their discontent with rulers, similar to the Commonwealth's institution of “rokosz” or French Fronde.³⁵

Another remarkably important and visionary aspect is Fredro's notion of equality of rights—albeit limited to the szlachta

³⁰ *Ibidem*, p. 105–107, 695, 225.

³¹ *Ibidem*, p. 103.

³² *Ibidem*, p. 103, 185.

³³ *Ibidem*, p. 103–105.

³⁴ *Ibidem*, p. 103–104.

³⁵ *Ibidem*, p. 103, 733.

caste—in at least some areas.³⁶ He firmly believes that no matter the social status or one's wealth, the access to official trials should not be limited. Therefore, he proposes that the poor should be excused from all costs of proceeding, making the trial a viable way for all social castes to regain what's rightfully theirs.³⁷ Important note, this concept does not come from Enlightenment's idea of equality, but rather from economic and republican reasoning. Fredro believes that by accumulating wealth and status, one becomes tied with the land (and by extension, the State) and therefore is more interested in keeping the country safe and functioning. He also proposes high penalties for litigiousness and for representatives in such trials.³⁸

One of the most important ideas that Fredro expresses in "Militarium" is his understanding of Separation of Powers.³⁹ This fact is especially important, considering that Locke's concept of Separation of Powers was established in his work "Two Treatises of Government" which was published in 1690,⁴⁰ twenty two years after Fredro's conception was published. Fredro validates the need for division of powers by stating the obvious, that when power is split between few organs, it is far harder for one person to accumulate authority.⁴¹ He firmly believes that the rule of one person is a direct danger to rights and freedoms and should be avoided at all costs. He also cites Aristotle, by affirming that the features of good rulers should be the virtue, prudence and wisdom of many people instead of one person, even if this person is extraordinary.⁴² Fredro proposes that the division of power in Commonwealth's

³⁶ *Ibidem*, p. 104–105, 215.

³⁷ *Ibidem*, p. 215.

³⁸ *Ibidem*, p. 215–219.

³⁹ *Ibidem*, p. 97–99.

⁴⁰ J. Locke, *Two Treatises of Government*, Kurland 1986, p. 595.

⁴¹ A. M. Fredro, *op.cit.*, p. 97, 371.

⁴² *Ibidem*, p. 97, 715–717, 731–733.

conditions should be as follows: Sejm and Senat should propose and instigate decisions regarding the socio-political matters and control over executive power; the King's role should be uniting the nation and being the executive power, by performing legislature's decisions, leading the current politics and managing the state's administration.⁴³ Fredro's conception is incredibly similar to John Locke's ideas, and therefore resembling modern separation of powers.⁴⁴

For Fredro, there is another very important matter: the clash between the law and customs⁴⁵. He believes that legislation is unable to fully replace customs, therefore he proposes that some matters should be left for the nation to decide on them themselves, for example extravagance⁴⁶. Fredro states that the King should lead the nation by example, therefore it is in his hands to establish good customs and traditions among the peoples.⁴⁷ He also stresses that while some changes in laws are essential, the true shift in the Republic condition could only be achieved by changing the minds and habits of its inhabitants.⁴⁸ He also explains that the link between morality and the law is a relation that should not be forgotten, and by changing one of them, the other is also shifting.⁴⁹ This idea is a recurring solution to many problems that Fredro is trying to solve.

I also find interesting the broad understanding of law presented by Fredro.⁵⁰ In his work, he addresses the idea of patent law and

⁴³ *Ibidem*, p. 98, 732, 721.

⁴⁴ *Ibidem*, p. 97–99.

⁴⁵ *Ibidem*, p. 105, 695, 225.

⁴⁶ *Ibidem*, p. 225, 231–233.

⁴⁷ *Ibidem*, p. 229–231.

⁴⁸ *Ibidem*, p. 225, 105.

⁴⁹ *Ibidem*, p. 105, 695.

⁵⁰ *Ibidem*, p. 118–119, 112, 217, 201, 207, 211–213, 247, 311, 303.

its importance to keeping the nation productive and efficient.⁵¹ He is also in opposition to loans and credits, believing that this is a line of work for useless and lazy people.⁵² Fredro also proposes some legal solutions to combat inflation, such as disposal of weak types of coin, public notices indicating which coins were to be used, implementing criminal regulations fighting with forgery or taxation that can only be paid with acceptable coins.⁵³

Andrzej Fredro was a true Polish visionary. A shining example of szlachta's virtue, an experienced politician and leader, proposing ground breaking ideas years before their implementation. Many of his theories and advice could be incredibly helpful to the European legal tradition, if only he was heard and understood. Many of them are taken for granted in modern times. Unfortunately, his peers did not learn from his experiences, leading the Commonwealth to its fall. If his ideas were implemented in time, maybe the history of Polish Lithuanian Commonwealth would take a different turn, maybe it could adapt and overcome its troubles. Nonetheless, his works are an incredible testament to those troubling times, to the evolution of understanding the law, and should be studied more.

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⁵¹ *Ibidem*, p. 112, 207, 211, 249.

⁵² *Ibidem*, p. 112, 217.

⁵³ *Ibidem*, p. 233, 235, 237-243, 283-289.

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ABSTRACT

The objective of this study is to examine ideas, legal perspectives, and solutions presented by Andrzej Maksymilian Fredro—Polish nobleman, thinker and a true renaissance man—in his magnum opus, *Militarium*. This work intended to educate young szlachta members not only on the art of warfare but also on governance, lawmaking, and the customs and traditions that should either be preserved or abolished. This analysis will be preceded by an exploration of the historical context, which is particularly relevant for a comparative analysis of past political and legal structures. The final section of the paper will collide Fredro's proposed legal solutions with modern legal frameworks.

Gabriela Kosior*, Emilia Jedynak**

International Law in the Colonial Era: Between Law, Expansionist Policy, and Morality

A Legal-Historical Analysis Based
on Spanish Colonies in the 19th Century

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1. Introduction

The history of modern and contemporary international law is closely intertwined with the development of colonialism. Although, in theory, the law was meant to embody ideals of good and justice (*ius est ars boni et aequi*), in practice, the 18th and 19th

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centuries often saw it used to legitimize the expansion and domination of European powers over conquered territories. This era, marked by revolutions and ideological shifts, saw international law evolve—from the concept of natural law to a positive legal system subordinated to the interests of states.

Spain, one of the main colonial empires since the 15th century, experienced a decline in its position during the 19th century. Despite losing nearly all of Latin America, it attempted to maintain influence in the Caribbean, North Africa, and Southeast Asia.¹ These efforts reflected not only political ambitions but also served as a test for the emerging system of international law and colonial ideology. The history of Spanish colonies in the 19th century reveals the instrumental use of law—not as a set of just norms, but often as a means to suppress independence movements.² The fall of the Spanish Empire exposed a crisis in international law, whose proclaimed values stood in stark contradiction to actual practice. This paradox reveals a profound conflict between norms and their political and economic application, where law, politics, and morality often formed an oppressive structure of dependency. In the second half of the 19th century, Spain, deprived of almost all of its American possessions, sought to preserve its remaining colonies through the active use of international legal institutions and domestic colonial regulations. In this cohabitation of law with the politics of expansion, legal instrumentation served the political goals of the metropolis by legitimizing the processes of control and exploitation. The Spanish Crown sought to secure strategic archipelagos and coastal spheres of influence: Cuba, the Philippines, Puerto Rico and protectorates in Morocco. The shift from a policy of expansion to defensive consolidation required

¹ Chr. Schmidt-Nowara and J.M. Nieto-Phillips, eds. *Interpreting Spanish Colonialism:*

Empires, Nations, and Legends, University of New Mexico Press, 2005, p. 8.

² *Ibidem*, s. 10.

recourse to legal tools that gave formal shape to the geopolitical interests of the metropolis.

2. The First Half of the 19th Century (1800–1850)

The early 19th century was a period of intense political and ideological change that led to the disintegration of the Spanish Empire in Latin America. A pivotal moment was Napoleon's invasion of Spain in 1808 and the forced abdication of King Ferdinand VII, which created a power vacuum and subsequent chaos in the colonies. In cities such as Caracas, Bogotá, and Buenos Aires, local juntas were formed, initially in the name of the monarch, but they quickly transformed into independence movements.

The main force behind the revolution in Latin America were the *criollos*—descendants of Spaniards born in the colonies—who, despite their high social status, were politically marginalized by officials from the metropolis (*peninsulares*).³ This inequality and lack of political representation spurred the drive for independence. The revolutionary movements combined liberal, monarchist, and republican elements rooted in local conditions.⁴ The colonial system lost cohesion due to conflicting interests and the growing divide between central authority and local communities.⁵

In the Viceroyalty of the Río de la Plata—encompassing present-day Argentina, Uruguay, and Paraguay—the revolution began

³ E.L. Austin, *Exemplary Ambivalence in Late Nineteenth-Century Spanish America: Narrating Creole Subjectivity*. Maryland: Bucknell University Press, 2012, p. 22.

⁴ R. Earle, "A Grave for Europeans?: Disease, Death, and the Spanish-American Revolutions. In *The Wars of Independence in Spanish America*, ed. by Chr. Archer, Jaguar Books on Latin America 20. Wilmington", Great Britain: Scholarly Resources, 2000, p. 283–297.

⁵ T. Łepkowski *Dzieje Ameryki Łacińskiej od schyłku epoki kolonialnej do czasów współczesnych*, Warszawa: Książka i Wiedza 1997, Tom I, p. 140.

in 1810.⁶ The *Primera Junta* (First Junta) was established as the first local government, initially formally loyal to Spain. However, the movement quickly turned into a struggle for full independence, also affecting Bolivia and Paraguay.⁷ The *Junta Grande* and provincial assemblies formed the basis of the new administration, although conflict arose not only with Spain but also among local factions.

In Paraguay, the revolutionaries were defeated, and the country became self-governing.⁸ In 1813, it declared itself a republic, but its governance was dictatorial, plunging the nation into isolation.⁹ Uruguay, contested by Spain, Portugal, and emerging states, achieved independence only after the Treaty of Montevideo (1828), creating a buffer state between Argentina and Brazil.¹⁰ Peru and Upper Peru (Bolivia) remained under Spanish control for a long time. Upper Peru gained independence in 1825, a year after Peru. On his way to Peru, San Martín liberated Chile, gaining the status of a national hero.¹¹

In New Granada and Venezuela, the situation was highly dynamic. Venezuela declared its First Republic in 1811, which quickly collapsed under pressure from Spanish loyalist forces. A turning point came years later with the emergence of Simón Bolívar, known as “El Libertador.” Bolívar led numerous military campaigns not only in Venezuela but also in present-day Colombia and Ecuador. After his victories, he attempted to unite the liberated territories into one large state—Gran Colombia—but the project proved short-lived. In New Spain, the revolution began with the famous *Grito de*

⁶ J. Luengo and P. Dalmau, *Writing Spanish history in the global age: Connections and entanglements in the nineteenth century*, (Published online by Cambridge University Press), 2018, s. 429–430.

⁷ M. Z. Dankowski, N. Orłowska, *Dzieje i kultura Ameryka Łacińska*, Gdańsk, 2016, p. 104–105.

⁸ *Ibidem*, s. 106.

⁹ *Ibidem*, s. 107.

¹⁰ *Ibidem*, s. 108.

¹¹ *Ibidem*, s. 115.

Dolores in 1810—a call to arms by priest Miguel Hidalgo. Although he was executed, the fight continued under leaders such as José María Morelos and Vicente Guerrero. In 1821, Mexico declared independence through an agreement between revolutionaries and part of the royal army, known as the Plan of Iguala, aimed at ensuring peace and reconciling various political forces.¹²

By 1826, Spain had lost nearly all of its colonies on the American continent, retaining only Cuba and Puerto Rico. The loss of these territories was a severe political and economic blow—colonies had provided precious metals, agricultural products, and tax revenues. Despite efforts to regain control, including General Morillo’s expedition to Venezuela, growing nationalism and guerrilla resistance made imperial restoration impossible. The colonial system in the Americas collapsed both militarily and ideologically. After Napoleon’s defeat in 1815, European powers convened at the Congress of Vienna to establish a new order in Europe. The Congress’s primary goals were to restore monarchies, balance power, and prevent further revolutions. Although focused mainly on Europe, the colonial situation—especially in Latin America—was also significant. Spain sought support to reclaim control over the rebellious colonies, but unsuccessfully. Other powers, particularly Britain, were reluctant to restore the Spanish monopoly, seeing the new South American states as trade partners.¹³ The Congress of Vienna did not directly address colonies, but its conservative spirit—the defense of monarchy and the “old order”—influenced attitudes toward colonialism. Spain was left alone with the problem of and Lorenzo Arrazola addressed issues of sovereignty, legitimacy of power, and the limits of legal application in the colonies.

¹² G. L. Thompson, *The Wars of Independence in Spanish America*, Cambridge University Press, Cambridge 1999, s. 126.

¹³ G. L. Thompson, *The Wars of Independence in Spanish America*, (Cambridge: Cambridge University Press, 1999), p. 115.

Francisco Martínez Marina (1754–1833), known for his liberal approach and commitment to constitutional reform, emphasized in his writings the role of law in balancing government and society. Although he did not directly address colonialism as a system of oppression, his reflections on individual rights and the necessity of representation highlighted the risks of power abuse—including in the colonial context.¹⁴

Lorenzo Arrazola (1797–1873), a lawyer, minister of justice, and Prime Minister of Spain, stressed the importance of legal order as a tool for imperial stabilization. His views reflected a conservative vision of law subordinated to monarchy and the state, yet he also recognized the need to reform colonial institutions to better serve the administrative and economic goals of the metropolis.¹⁵

While Spanish legal elites had not yet formulated a coherent critique of colonialism, their analyses raised doubts about the durability of the imperial order and the effectiveness of existing legal frameworks. Constitutional discourse, although focused on the metropolis, also reflected colonial relationships. Law began to be seen not only as a tool of legitimization but also as a potential space for transformation.

One of the key issues in the development of international law in the 19th century was the prohibition of the slave trade.¹⁶ In 1815, during the Congress of Vienna, European powers—including Spain—formally condemned the practice.¹⁷ Although Spain gradually implemented bans and signed relevant treaties, it often violated its own agreements or deliberately delayed their imple-

¹⁴ B. Western, *Journal of the History of Ideas: Between Tradition and Revolution: The Curious Case of Francisco Martínez Marina, the Cádiz Constitution, and Spanish Liberalism*, 2015.

¹⁵ https://en.wikipedia.org/wiki/Lorenzo_Arrazola_y_García.

¹⁶ R. Lesaffer, “*Vienna and the Abolition of the Slave Trade*”, Oxford University, 2015.

¹⁷ The Congress of Vienna 1814–15: *Making Peace After Global War*, February 5–7, 2015. European Institute at Columbia University, NYC, p. 11–13.

mentation.¹⁸ Bilateral treaties also regulated the protection of foreign property, port access, and the fight against piracy and the slave trade. Powers, especially Britain, used these as pretexts for political and military intervention, invoking the “interests of the civilized world.” In reality, the slave trade persisted for many years—particularly in Cuba and other Spanish colonies.¹⁹

3. Changes in Spain's colonial policy

A look at the evolution of Spanish colonial policy in the second half of the 19th century requires an analysis of both general administrative and legal mechanisms and a detailed treatment of individual territories. In order to grasp the direction of changes in Spanish colonial policy in the second half of the 19th century, it is useful to look at how they were shaped in individual colonies. Territories such as Cuba, the Philippines, Puerto Rico and Morocco—although subject to a common imperial framework—differed in their social characteristics, degree of integration with the metropolis and conflict dynamics. An analysis of their situations allows us to grasp the broader picture of political, legal and ideological changes in the Spanish empire.

3.1. Cuba

Cuba in the second half of the 19th century was the most important of the remaining territories of the Spanish empire—not only for its economic importance, based on plantation agriculture and sugar

¹⁸ The Congress of Vienna 1814–15: Making Peace After Global War, *op.cit.*, p. 11–13.

¹⁹ A. Anghie, *Imperialism, Sovereignty and the Making of International Law*, Cambridge University, s. 101–113.

exports, but also as a symbol of resistance to the colonial order. Since the 1890^s, Cuba has taken over the role of the English and French sugar islands, becoming a world leader in sugar production. The new economic policy, promoted by Cuban Creole Francisco de Arango y Parreño, was to transform Cuba into a successor to Saint-Domingue, which involved the mass importation of black slaves into the growing sugar industry. Slaves provided the foundation for Cuba's rapid economic growth over the next 80 years, also influencing the demographic structure and providing the backdrop for later political movements.²⁰ This intensive economic development, based on a plantation model and subordinated to metropolitan interests, simultaneously exacerbated local social, racial and political inequalities. Increasing tensions between the Creole elite and the Spanish authorities, the marginalization of the Cuban people's political aspirations and the lack of reform led to the outbreak of armed resistance in the second half of the 19th century. The outbreak of the Ten Years' War in 1868 was directly linked to growing social discontent in the regions of eastern Cuba, Camagüey and Las Villas. It was there, among the local landed elite, that the decision to speak out against Spanish domination matured. On October 10 of the same year, Carlos Manuel de Céspedes—a lawyer and planter—announced the Declaration of Independence, which set out two main goals: Cuban independence and the abolition of slavery.²¹

Despite their enthusiasm and determination, the rebel forces faced a severe lack of military experience and armaments, making their struggle against Spain's military might extremely uneven. This fundamental asymmetry of forces influenced the nature of

²⁰ J.L. Romeu, *Political Intolerance and Cuba's Future: To Hell in a Hand Basket*, paper presented at the Annual Conference of ASCE, Syracuse University, NY/USA.

²¹ A. Dembiczy, *Cuban Revolutions of the 19th and 20th Century*, „Latin America” 2009, No. 2–3(64–65), p. 8.

the conflict—it took the form of a protracted guerrilla war in which both sides, both the Spanish colonial army and the Cuban rebels, employed diverse strategies of pressure in an attempt to break the opponent's resistance. Between 1868 and 1878, Cuba tested various forms of violence against the civilian population, including forced displacement, destruction of property and restriction of freedoms, often against the norms of international law at the time.²²

Internally, Spain's post-war administration attempted to introduce ostensible reforms, resulting in the signing of the Treaty of Zanjón (1878), which initiated a process of political liberalization: two parties—the Partido Liberal de Cuba and the Unión Constitucional—were formed, and censorship was partially abolished. Also significant was the gradual extinction of slavery, which ended formally in 1886. During this time, labor unions and workers' associations, such as the Gremio de Obreros, began to operate legally and took a leadership role in labor conflicts.²³

Nevertheless, real political autonomy and improvements in the living conditions of workers and peasants were limited. The colonial system, despite its liberal facade, was still based on a structure of social and racial inequality. Social movements, particularly those of a republican and abolitionist nature, such as the brief but important Guerra Chiquita uprising (1879–1880), pointed to the inadequacy of reform and the inability to reconcile the aspirations of the Cuban people with the logic of the Spanish empire.

The final and largest armed conflict turned out to be the Spanish-American War that erupted in 1898 as the culmination of long-standing tensions. From a moral and legal perspective, Cuba

²² C.A. Gallegos, *Desplazamiento forzoso de población por conflictos bélicos: La Guerra de los 10 Años en Cuba (1868–1878)*, „Historia Regional. Sección Historia” 2020, No. 43, pp. 1–16, https://ri.conicet.gov.ar/bitstream/handle/11336/218510/CONICET_Digital_Nro.c94f6504-9469-4018-a8f1-acc-1673c16f6_B.pdf?sequence=2&isAllowed=y [accessed: 16.07.2025].

²³ O. Casanovas, *Slavery, the Labor Movement and Spanish Colonialism in Cuba, 1850–1890*, „International Review of Social History” 1995, No. 40, p. 378.

became a symbol of colonialism's legitimacy crisis: although the law formally abolished slavery and allowed political activity, in practice the system of oppression persisted through surveillance, economic inequality and the brutality of the power apparatuses. The Spanish ruling elite continued to view Cubans as incapable of self-government, which fueled radicalization and prepared the ground for war. Additionally, the conflict was rooted in Spain's mismanagement of the island, its strategic importance to the U.S., and its brutal methods of suppressing Cuban uprisings. The immediate catalysts for the conflict were the humanitarian crisis in Cuba caused by, among other things, General Weyler's "reconcentration" policy, the publication of Minister Dupuy de Lôme's letter criticizing President McKinley, and, most importantly, the mysterious sinking of the US battleship USS Maine in Havana harbor.²⁴ These events, combined with U.S. economic interests, sympathy for Cuban independence aspirations, and a final U.S. ultimatum demanding Spanish withdrawal from Cuba, led to the inevitable clash.

3.2. Morocco, the philippines and portorico

Spain also maintained colonies in Morocco, the Philippines and Puerto Rico, managing them with varying degrees of involvement and facing different challenges. In Morocco, Spanish colonial interests, actively supported by organizations such as the Sociedad Geográfica de Madrid (SGM) since 1876, focused on increasing political and economic influence, especially from the late 19th century until the establishment of the protectorate.²⁵ The arguments for

²⁴ R.H. Titherington, *A History of the Spanish-American War of 1898*, New York 1900, pp. 41–42, 50, 467–470.

²⁵ J. Nogué, J.L. Villanova, *Spanish Colonialism in Morocco and the Sociedad Geográfica de Madrid, 1876–1956*, „Journal of Historical Geography” 2002, No. 28(1), p. 7.

expansion in Morocco were based on historical rights, geographic proximity and strategic and commercial advantages.²⁶

In the Philippines, which became part of the Spanish empire in 1565 and remained so for more than three hundred years, Spain used the islands mainly as a strategic trading post between Spain, Mexico and the Far East. In the second half of the 19th century, Spanish attempts to impose on the Philippines the administrative model developed in the Iberian Peninsula encountered numerous difficulties. The complexity of the territory, social and linguistic diversity meant that the metropolis was unable to effectively administer this remote and internally diverse area. Insufficient institutional resources and a limited administrative presence forced the colonial authorities to work with the local Filipino elite, which on the one hand was indispensable to the functioning of the power structures, and on the other was perceived as a threat to Spanish interests. As a result, an ambivalent strategy emerged: on the one hand, Filipinos were entrusted with administrative tasks, while on the other, they were consistently belittled, invoking the rhetoric of metropolitan superiority and marginalizing the position of local officials.²⁷ Spanish influence was most pronounced in these centers, diminishing inland. The Philippines remained a Spanish colony until the Spanish-American War in 1898.²⁸

Puerto Rico, another important Spanish colony in the Caribbean, also saw reformist currents and aspirations for social change in the second half of the 19th century. A key moment of this ideological transformation was the abolition of slavery on the island. This took place during the First Spanish Republic, and a prominent Spanish

²⁶ *Ibidem* p. 16.

²⁷ M.J. Solla Sastre, *The Diminished Administration about the Spanish Government in the Philippines during the Second Half of the 19th Century*, „Estudios Luso-Hispanos de Historia del Derecho” 2020, p. 577.

²⁸ K. Fitzpatrick, *Religion and Spanish Colonialism in the Philippines*, Faculty of the Archaeological Studies Program, University of Wisconsin-La Crosse, 2013, p. 3.

politician and thinker, Emilio Castelar, played a decisive role in this process. As Minister of State, Castelar was an ardent advocate of abolition, which was an important step toward modernizing social relations in the colony.²⁹ Despite these developments, towards the end of the century Puerto Rico, like Cuba and the Philippines, became an arena of conflict that led to Spain's loss of the island to the United States as a result of the Spanish-American War in 1898.

4. Spain's moral and legal colonial discourse in the second half of the sixteenth century

In the second half of the 19th century, the moral and legal discourse on Spanish colonialism evolved significantly, reflecting both internal political developments in the metropolis—such as the tumultuous period of the Sexenio Democrático (1868–1874) with its republican aspirations and the subsequent Restoration of the Bourbons—as well as global shifts in the balance of power and increasing pressure from international public opinion and the colonial peoples themselves.³⁰ During this period, the legitimacy of colonialism was increasingly confronted with questions about its compatibility not only with dynamically shaping, though still Eurocentric, international law, but also with universal morality and newly articulated humanitarian values, especially in the context of advancing emancipation and the seeds of the human rights debate.³¹ The original justifications for Spanish expansion,

²⁹ R. Mellado Pérez, *Emilio Castelar. Evocación al cumplirse un Centenario* (Cádiz, 1832 – San Pedro del Pinatar, 1899), Universidad de Alicante, Sede Universitaria de Orihuela 1999, p. 31.

³⁰ M. Suárez Cortina, *El liberalismo democrático en España. De la Restauración a la República*, „Historia y Política” 2007, No. 17, p. 147.

³¹ Stanford encyclopedia of philosophy – Colonialism [https://plato.stanford.edu/entries/colonialism/?f\[0\]=topic:1&countryid=391&f%5B0%5D=region%3A46](https://plato.stanford.edu/entries/colonialism/?f[0]=topic:1&countryid=391&f%5B0%5D=region%3A46) [accessed: 16.07.2025].

dating back to the 16th century and based on religious mission and interpretations of natural law, were losing strength in favor of a more secular “civilizing mission,” economic arguments and issues of national prestige, crucial to maintaining a shrinking empire encompassing Cuba, Puerto Rico, the Philippines and influence in North Africa.

International law of the 19th century, dominated by legal positivism, focused on states as the principal actors and recognized their sovereign will, expressed in treaties, as the primary source of norms. This system largely legitimized colonial practices, as was evident, for example, at the Congress of Berlin (1884–1885). Spain used instruments of international law, such as the protectorate treaties in Morocco, to formalize its claims, arguing that it needed to stabilize and maintain civilization. At the same time, the same international law became an arena in which norms contesting the status quo emerged, such as through the prohibition of the slave trade or early forms of humanitarian law

Within Spain itself, the discourse was not uniform. **Emilio Castelar y Ripoll**, a leading republican, was one of the most vocal critics of the oppressive aspects of colonialism, particularly slavery. In his speeches, including this one on June 21, 1870, he appealed to universal human rights, asserting that „the slave possesses a soul and reason, and thus the right to freedom.“ His actions contributed to the abolition of slavery in Puerto Rico in 1873. **Francisco Pi y Margall**, another influential Republican and Federalist, went further in his criticism, advocating the colonies’ right to self-determination. These liberal-democratic voices, while significant, were often in opposition to powerful interest groups and conservative elites, for whom maintaining the colonies was synonymous with national strength. The dominant current in Spanish politics was still based on arguments about historical rights, economic necessity and paternalistic duty to colonial peoples.

The discussion about the morality of colonialism was sharpening especially with regard to **Cuba**. Brutal suppression of uprisings,

as during the Ten Years' War (1868–1878), was met with condemnation. Legal reforms, such as the gradual abolition of slavery or attempts to modernize the administration, were often late and implemented incompletely, failing to change the oppressive nature of the system. Castelar called the war in Cuba “a bloody expiation for the national sin of slavery,” stressing that Spanish colonial law served a *de facto* purpose of maintaining dominion and exploitation. Growing European criticism, especially from liberal and socialist circles, also denounced the hypocrisy of the colonial powers. This multifaceted debate, taking place on legal, political and moral levels, demonstrated the deep legitimacy crisis of Spanish colonialism in the second half of the 19th century, foreshadowing its eventual collapse with the events of 1898.

5. Conclusions

An analysis of nineteenth-century Spanish colonial policy shows that international law—far from embodying universal ideals of justice—functioned chiefly as a tool for legitimising expansion and entrenching asymmetrical power relations. By deploying the language of treaties, conventions and legal doctrine, the Spanish Crown justified military interventions, the maintenance of slavery and restrictions on the sovereignty of colonial populations, presenting these measures as actions consistent with the “civilized order” of law.

The collapse of the empire in Latin America exposed a fundamental contradiction between the values proclaimed by law and their practical application. Mass independence movements, led by criollos with the support of Indigenous and mixed-heritage peoples, revealed that the normative system devised in the metropolis not only ignored colonial interests but actively suppressed aspirations to self-determination. The fact that successive Latin American states gained freedom outside the formal framework of

contemporary international law underscores that system's limited capacity to respond to real political and social processes.

At the same time, internal debates among Spanish jurists—such as Francisco Martínez Marina and Lorenzo Arrazola—signaled a growing awareness of a crisis of legitimacy. Although these reflections had not yet developed into an open critique of colonialism, they questioned the absolute validity of the empire's hierarchical structure and paved the way for later concepts of the right of peoples to self-determination and of human rights.

From today's perspective, the Spanish case study makes clear that the history of international law is inextricably intertwined with the history of imperialism. Confronting past practices with professed ideals helps explain why contemporary debates on decolonising law and reforming international institutions remain relevant. By restoring the voices of colonial subjects, this research contributes to the broader effort to reconstruct a more inclusive, critical legal historiography—one that does not overlook the experiences of societies subjected to imperial domination.

In the second half of the 19th century, the Spanish colonial empire experienced a phase of slow disintegration. Despite attempts at modernization and reform, Spain was unable to effectively govern its remaining territories—Cuba, Puerto Rico, the Philippines and Morocco—or accommodate the growing social and political aspirations of the colonial population. Although the tools of law—both international and local—were resorted to, their function was not to ensure justice, but to legitimize the interests of the metropolis and maintain colonial order.

The moral and legal discussion surrounding colonialism, both within Spain itself and internationally, exposed the hypocrisy of the colonial powers. Although figures such as Emilio Castelar and Francisco Pi y Margall called for emancipation and respect for human rights, the dominant state policy continued to be based on economic arguments, paternalism and the idea of historical

inheritance. Colonial law and morality, rather than protecting individuals, mostly served to legitimize domination.

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ABSTRACT

This article investigates how international law functioned within the nineteenth-century Spanish colonial project. Far from embodying a neutral standard of justice, legal norms were routinely mobilized to legitimize and sustain imperial domination across Latin America. By analyzing diplomatic correspondence, treaties, and contemporary juristic writings, the study shows that the rhetoric of legality masked coercive practices and entrenched asymmetrical power relations. The findings expose a stark gap between the universalist ideals proclaimed by international law and its instrumental application in colonial governance, ultimately advancing the interests of the Spanish Empire at the expense of its colonial subjects. The second part of the article analyzes the entanglement of international law, politics, and morality in Spanish colonial policy during the second half of the 19th century. Focusing on the colonies of Cuba, the Philippines, Puerto Rico, and Morocco, it explores how legal norms were used to legitimize imperial control amid growing resistance and global scrutiny. Despite formal legal reforms, Spain continued to apply colonial law as a tool of domination rather than emancipation. The work highlights how concepts like the “civilizing mission” and treaty law masked the systemic exploitation and repression of colonized populations. Through case studies and legal discourse, particularly the speeches of Emilio Castelar, the paper illustrates the limits of legal liberalism in the colonial context and exposes the moral contradictions of imperial rule. The study thus reflects on the broader theme of how law and politics coexisted in shaping, sustaining, and ultimately undermining colonial empires.

Ewa Pietrzak*

Between Legal Norm and Empire: The Role of Law and Lawyers from the 17th-Century Polish Political and Legal Thought to Colonial Legal Systems of the 19th Century.

Slave Labor and Reflections on the Contemporary Labor Law

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1. Introduction

The aim of this article is to examine the role of law and lawyers in the context of selected trends in the 17th-century Polish political and legal thought as well as legal practice in the 19th-century colonial legal systems on the example of Spanish colonies based on

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the articles prepared by Gabriela Kosior, Emilia Jedynak and Łukasz Kordelasiński. This analysis aims to show that law functioned not only as a set of norms regulating social life, but also as a tool of power, as well as political and economic expansion.

In addition, I will present—using the example of labor law—the role of law as a factor that has a real impact on the lives of individuals in ancient Rome and in the present day. Particular attention will be paid to how labor law affects relations between employers and employees and what functions it performs in the socio-economic system.

2. The role of law and lawyers in the 17th-century Polish political and legal thought as well as in the 19th-century colonial legal systems, as illustrated by the example of the Spanish colonies

A comparative analysis of the 17th-century Polish political and legal thought, presented in Łukasz Kordelasiński's article based on the example of Andrzej Maksymilian Fredro, as well as the 19th-century Spanish colonial law practices, described by Gabriela Kosior and Emilia Jedynak, reveals a fundamental tension between law as a tool of justice and law as a tool of domination and political manipulation. Fredro, as an outstanding representative of the noble intelligentsia of the Polish-Lithuanian Commonwealth, not only actively participated in public life, but also formulated a coherent and innovative concept of law as a moral institution based on virtue, reason, experience, and civic responsibility. His work *Militarium*, which is not only a treatise on war but also a collection of principles for the organization of the state and society, shows a unique sensitivity to the relationship between law, custom, education and public practice. Fredro saw law as a tool for strengthening republican identity and limiting the arbitrariness of power. His proposals, including the idea of free access to justice

for the poorer classes of the nobility and the concept of the separation of powers even before Locke and Montesquieu, show that law—properly constructed—can be a vehicle for emancipation, dignity, and political freedom.

A completely different picture emerges from an analysis of the 19th-century Spanish colonial law, which, despite its declarative references to legalism and international norms, was in practice a tool for the brutal subjugation of the colonial population and the defense of the interests of the metropolis. The law served to mask the realities of exploitation, segregation, and violence: slavery, although formally abolished, continued to function in practice and the norms of international treaty law were instrumentalized to justify interventions, port controls and repression of independence movements. The figure of the lawyer was of key importance in this process, both at the local level (e.g. Carlos Manuel de Céspedes in Cuba) and at the central level (e.g. Emilio Castelar, whose voice in favor of abolishing slavery in Puerto Rico was an expression of moral opposition to abuses). Colonial law, although it sometimes opened up space for reform (e.g. the gradual admission of political parties or the emergence of trade unions at the end of the century), remained deeply unjust and oppressive in its structure. It was used as a means of maintaining asymmetry of power and control, even when the rhetoric of a “civilizing mission” or progress was invoked.

Both Fredro’s case and colonial legal practice show that the law—as well as its interpreters and enforcers, i.e. lawyers—can serve both noble as well as deeply unethical purposes. Law is not a neutral tool; its social impact stems not only from its normative content, but above all from the context in which it is enacted and applied. A lawyer can be both a guarantor of justice and an architect of oppression. Fredro represents the former attitude—that of a lawyer-citizen for whom the law is a public service and a moral obligation towards the political community. On the other hand, many of the 19th-century colonial officials, despite their knowledge of legal theory and participation in the creation of codes,

legitimized structures of domination and subordination. History thus shows that the status of law as a tool for the public good depends not only on its content, but also on the intentions, ethos, and responsibility of those who create, interpret, and apply it.

3. Law as a tool of oppression, as illustrated by slavery in ancient Rome

One area in which these universal functions of law are particularly evident is labor law. Although it only developed as a separate field in the 19th century, the issue of labor and the relationship between workers and employers already existed in ancient times. In Roman law, which is the foundation of many modern legal systems,¹ labor was present, but it was of a completely different nature than today. Slave labor dominated, which from today's perspective did not meet any human rights standards.

In ancient Rome, slaves were treated not as persons but as objects of law—*res*, or things. They were completely subordinate to the will of their owner (*dominus*), who had complete power over them, both in terms of property and personal matters. Slaves had no legal personality, which meant that they could not be parties to any legal relationship, had no legal capacity, and their existence was completely dependent on their master's decisions. In practice, this meant that slaves had no rights—neither to remuneration, nor to rest, nor to health protection, nor even to life. Slave labor was compulsory, unpaid, and completely unprotected. It was performed exclusively for the owner, who could freely dispose of both the slave and the fruits of their labor. The slave had no right to object, could not negotiate working conditions, and had no legal

¹ B. Sitek, «*Roma communis nostra patria est*» (D. 50.1.33), czy może «*Europa communis nostra patria est*»? , *Studia Prawnoustrojowe* nr 12, 219–229, 2010, pp. 225, 226.

protection. What is more, the owner had the right to use corporal punishment and even to take the slave's life—without legal consequences. It was only in the late Roman Empire, under the influence of Stoic philosophy and developing Christian thought, that slaves began to be seen as human beings. The first restrictions on the power of slave owners appeared, such as the prohibition of killing slaves with impunity or the possibility of granting them freedom. However, these were marginal and symbolic changes that did not alter the essence of the system—the concept of one human being as the property of another continued to dominate.²

This model of work not only failed to implement the idea of social justice, but actually radically negated it. In this system, people were reduced to the role of production tools—deprived of dignity, freedom, and any protection. Although Roman law created many universal legal constructs that still form the foundations of modern legal systems (e.g., property, obligations, inheritance), it did not provide for any protective mechanisms in the context of work and the status of slaves. A slave was not recognized as a person in the legal sense and therefore could not be the beneficiary of any protective norms.

4. The role of law in shaping the rights of workers in contemporary labor legislation, as exemplified by European Union law

² J. F. Gardner, *Slavery and Roman law*, [in:] *The Cambridge World History of Slavery*, K Bradley, P Cartledge (eds), Volume 1, *The Ancient Mediterranean World*, Cambridge University Press; 2011, pp. 414–437; W. Dajczak, T. Giaro, F. Longchamps de Brier, *Prawo rzymskie. U podstaw prawa prywatnego*, Warszawa 2009, pp. 306–313; G. Nancka, *Slavery from a Perspective of Roman Private Law. Remarks Based on an Unpublished Paper of 1980 authored by Kazimierz Kolańczyk*, ACTA IURIDICA RESOVIENSIA, No 1(40), 2023, pp. 100–102.

Modern labor law developed as a result of the industrial revolution and the social changes associated with it. In response to exploitation, inhumane working conditions, and a lack of social security, regulations were created to protect employees. The first regulations concerning working hours, remuneration, health and safety at work, as well as the right to freedom of association and strike action, appeared. In this context, the role of lawyers took on a new dimension—they became not only interpreters of the law, but also its creators, participating in the legislative process and fighting for workers' rights.

Contemporary labor law, both at the national and EU level, is based on the principle of respect for the dignity of the workers and the protection of the weaker party in the employment relationship—the employee. In this sense, the law not only has a regulatory function, but also a protective and equalizing one, counteracting social and economic inequalities. Lawyers—as advisors, judges, legislators, or labor inspectors—have a duty to ensure that labor law not only reflects market realities but also implements constitutional values and international and EU human rights standards.

The European Union, in accordance with Article 153 of the Treaty on the Functioning of the EU,³ adopts directives that Member States are required to transpose into national law. The aim of these regulations is not only to harmonize labor standards, but also to promote social progress, decent working conditions, and social cohesion. At the European Union level, there are a number of legal acts that set minimum standards for the protection of workers. Examples of key EU legislation include:

³ Consolidated version of the Treaty on the Functioning of the European Union, OJ C 202, 7.6.2016, p. 47–390.

1. Directive 91/533/EEC on the obligation to inform employees of their employment conditions,⁴ which ensures transparency in employment relationships and protects against abuse;
2. Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation⁵—prohibits discrimination on the grounds of religion, belief, disability, age, or sexual orientation;
3. Directive 2003/88/EC on the organization of working time, which guarantees the right to paid annual leave,⁶ limits on weekly working time and the right to daily and weekly rest periods;
4. Directive 2008/104/EC on temporary agency work,⁷ which ensures equal treatment of temporary agency workers in terms of basic working and employment conditions;
5. Directive 2019/1152/EU on transparent and predictable working conditions in the European Union,⁸ which increases the transparency of employment conditions, limits the abuse of flexible forms of work and strengthens employee protection.

⁴ Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship, OJ L 288, 18.10.1991, p. 32–35.

⁵ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303, 2.12.2000, p. 16–22.

⁶ Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, OJ L 299, 18.11.2003, p. 9–19.

⁷ Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work, OJ L 327, 5.12.2008, p. 9–14.

⁸ Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union, OJ L 186, 11.7.2019, p. 105–121.

In this context, the role of lawyers is particularly important. They not only ensure the correct implementation and consistent application of EU directives at the national level but also play a crucial role in safeguarding the rights of both employees and employers. Lawyers represent parties in disputes arising from employment relationships, advise on compliance with evolving legal standards, and contribute to shaping national legislation in alignment with the principles and objectives of EU law. What is more, through their participation in public consultations, professional organizations, and academic discourse, lawyers influence the development of employment law in a manner that reflects the fundamental values of the European Union, such as equality, transparency, and social justice.⁹

5. Conclusion

Issues connected with the objectives of law and the role of lawyers in shaping it are universal and timeless. Law, as a system of norms regulating social life, is intended not only to organize relations between individuals, but also to protect values considered fundamental, such as justice, freedom, equality, and human dignity. Lawyers, as interpreters and co-creators of law, play a key role in its development, adapting it to changing social, economic, and cultural realities.

Throughout history, there has been a clear tension between two opposing models of how law functions and the role that lawyers play in society. Both models show how important it is to reflect on the ethical and social responsibility of lawyers and on whom and what the law should actually serve. On the one hand, there

⁹ K. Riesenhuber, *European Employment Law: A Systematic Exposition*, 2nd edn, Intersentia 2022, pp. 901–920; A. M. Świątkowski, *Prawo pracy Unii Europejskiej*, Warszawa 2016, C.H. Beck, pp. 210–235

is a model in which law is seen as a tool serving society—in this view, lawyers work to protect individuals, promote social justice and build a system based on humanistic values. Law then becomes a means of emancipation, equality, and protection for those in less privileged positions. Andrzej Maksymilian Fredro appears as one of those historical figures who sought to objectify the law, i.e. to make it independent of immediate political or economic interests. In his work and public activity, Fredro represented the view that the law should serve the common good and not be a tool in the hands of those in power. His thinking is part of a trend of reflection on the ethical dimension of law, in which a lawyer is not only an executor of norms, but also their co-creator and guardian of justice.

On the other hand, there is a model in which the law is used as an instrument of power—lawyers act as technocrats or executors of state policy, often subordinated to the interests of economic or ruling elites. In this approach, the law can serve to legitimize social inequalities, suppress opposition, and perpetuate unjust social structures. This was the case of law in the 19-th century Spanish colonies as well as Roman law connected with slaves.

Against this background, the question of contemporary labor law becomes particularly interesting. Its roots lie in both classical private law and the 19th-century social changes and colonial forms of exploitation. Until labor law developed as a separate field of law, the law definitely did not serve to protect employees. Slavery was a drastic example of this. In ancient Rome, a slave was treated as a thing—devoid of legal personality, without any rights, his labor was performed exclusively for the benefit of the owner, without remuneration, without the right to rest, health protection, or dignified treatment. Such a model of labor not only failed to realize the idea of social justice, but actually negated it. Moreover, Roman law—despite its significance in terms of legal constructs—did not provide for mechanisms to protect workers, as it did not recognize them as legal entities. From today's perspective, such a model of work is the antithesis of contemporary standards of human rights

and labor law. Contemporary legal systems are based on the recognition of human dignity, equality before the law, and the protection of the weaker party in an employment relationship. Work is no longer seen as coercion, but as an expression of individual freedom and self-fulfillment. Every person, regardless of social status, has the right to decent working conditions, remuneration, rest, health protection, and safety.

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The volume is an outstanding example of interdisciplinary and intergenerational dialogue within legal studies and the broader legal humanities. It brings together contributions from students, doctoral researchers, and early-career academics affiliated with five prominent European universities: Warsaw, Poznan, Augsburg, Pisa, and Thessaloniki. Their collective aim – to revisit Roman legal traditions through the lens of contemporary tensions between law and political power – was realized with intellectual rigor and methodological diversity.

One of the publication's most commendable features is the reversed hierarchy of the seminar it documents: young scholars led the sessions, presented original research, and moderated discussions, while senior academics offered guidance in the background. This model of academic cooperation fosters genuine intellectual development and promotes the agency of emerging voices in the legal academy.

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