ROMAN PRIVATE LAW AND THE *LEGES REGIAE*

By ALAN WATSON

According to tradition Rome was founded by Romulus in 753 B.C. and was ruled by seven kings until the expulsion of Tarquin the Proud in 509.[1] Later writers, particularly Dionysius of Halicarnassus and Plutarch, attribute a considerable volume of legislation to these kings, especially to Romulus, Numa Pompilius and Servius Tullius.

The story of this legislation is doubted by modern scholars [2] in two ways. First it is maintained that at such an early time law would not be created by legislation. Secondly it is claimed that law such as is described for the period could not then have existed, but is either an invention of the history writers or is the law of a later period which has been pushed back in time.[3] The doubts are so profound that it has been said we know as good as nothing about law before the *decemviri*.[4]

In this article I should like to argue that the rules for private law recorded by the tradition actually do give us, in general, the substance of Roman law as it was in the regal period. Secondly I wish to suggest that the idea of legislation in the time of the kings is perfectly plausible, though legislation then cannot strictly be proved. Rejection of this second proposition by scholars need not, of course, involve rejection of the first.

I

To test the strength of the ancient tradition and the objections to it we will look for a pattern in the reported provisions. The pattern, if one is found, can then be examined to see if it bears the signs of historical invention or if it relates to a later period of Roman development or to a foreign state. A large proportion of the rules concern sacral law, but two branches of private law are prominent in the sources, the law of patron and client and the power of the head of a family, and we will consider these in turn.

Romulus separated the more powerful from the lower classes and legislated on the duties of each. The patricians were to be priests and magistrates and decide legal cases. The plebeians were to cultivate the fields, rear animals and engage in commerce. The plebeians were entrusted to the care of the patricians, and each plebeian was permitted to choose a patron for himself.[5] The law of patronage was then established. The patricians were to interpret the law for their clients, to bring law suits for them if they suffered injury, and to assist them if they sued. The clients were to assist their patrons in marrying off their daughters if the parents lacked funds (i.e. help in providing a dowry), to ransom their patrons or their patron's children from the enemy if they were captured, and to pay the damages awarded against their patrons in private suits and fines imposed in public actions. It was unlawful both for patron and client to bring an action against the other, to bear witness against the other or cast a vote against the other. If anyone was convicted of such a crime he was liable under the law of treason established by Romulus, and anyone could kill such a condemned person as one dedicated to the god of the underworld.

These provisions give a picture of a relationship of lord and dependant much more extreme than any known at Rome for a later period. What, however, is remarkable is their similarity with the feudal law of medieval England, and especially with the extraordinary burdens known as ' aids '. Thus, under this heading Pollock and Maitland declare: [6]

> ' The duties implied in the relation between man and lord are but slowly developed and made legal duties. There long remains a fringe of vague obligations. The man

[1] The precision of the dating need not concern us.

[2] Cf. e.g. Wenger, *Die Quellen des römischen Rechts* (1953), 353 ff.; Gioffredi, *Diritto e processo nelle antiche forme giuridiche romane* (1955), 33 f.; Guarino, *L'ordinamento giuridico romano*, 3rd ed. (1959), 82 ff.; Gaudemet, *Institutions de l'Antiquité*, (1967), 381 f.; Kaser, *Das römische Privatrecht* i, 2nd ed., (1971), 30; and the authors cited.

[3] It is at times conceded that some of the provisions (especially those of sacral law) may go back to the regal period.

[4] Wieacker, ' Die XII Tafeln in ihrem Jahrhundert ', *Entretiens sur l'Antiquité classique XIII, Les Origines de la république romaine* (Fondation Hardt, 1967), 293 ff. at p. 300.

[5] Dionysius of Halicarnassus 2, 9, 1–2.

[6] *The History of English Law* i, 2nd ed. (reprinted 1968), 349 f.

should come to the aid of the lord in all his necessities; the man's purse as well as his body should be at his lord's disposal if the lord is in a strait. Gradually the occasions on which an aid of money may be demanded are determined. Glanvill [7] mentions the aid which helps a lord to pay the relief due to his overlord, the aid for knighting the lord's eldest son and marrying his eldest daughter; also he raises the question whether the lord may not demand an aid for the maintenance of a war in which he is concerned; such a demand, he thinks, can not be pressed. From the Normandy of Glanvill's time we hear of the aid for the lord's relief, for marrying his daughter and knighting his eldest son. The charter of 1215 mentioned as the three aids, which the king might take without the common counsel of the realm, that for redeeming his body, that for marrying his daughter and that for knighting his son; and such aids were to be reasonable. As is well known, the clause which dealt with this matter appeared in no later edition of the charter. During John's reign the prior of St. Swithin's took an aid from his freeholders, farmers and villeins for the payment of his debts; the bishop of Winchester took an aid for the expenses to which he had been put in the maintenance of the king's honour and the dignity of the church; the abbot of Peterborough took an aid to enable him to pay a fine to the king; the earl of Salisbury to enable him to stock his land.'

Elsewhere the same authors discuss the sanctity of homage : [8]

' That a lord should make an attack on his man, or a man on his lord, even under the forms of law, is scarcely to be tolerated. If the man will bring an appeal, a criminal charge, against his lord, he must first " waive the tenement ". When a king is going to declare war upon his barons he first defies them, for there should be no attack while there is affiance. Henry III in 1233 defied the Marshal, who then was no longer his man, but " outside his homage " ; before the battle of Lewes he defied the earls of Leicester and Gloucester, who thereupon renounced homage and fealty. We can hardly say that all this lies outside the sphere of law, for rebellions and wars are conducted on quasi-legal principles: that is a characteristic of the time.'

To plot against the life of one's lord was petty treason, and petty treason was only gradually marked off from high treason.[9]

These similarities between the purported *leges regiae* and English feudal law cannot be the result of borrowing, however indirect. The characteristics of English feudal law can owe nothing to Dionysius. Nor can we reasonably believe that Dionysius' imagination was so fertile that he could from nothing invent laws so perfect for a feudal society that at a much later date in a very different country very similar rules [10] did come to exist. For the same reason we can dismiss the possibility that Dionysius' source was a political pamphlet—which had no origin in an actual legal system—designed to glorify monarchy for the benefit of some such personage as Sulla, Julius Caesar or Augustus.[11]

Two possible approaches remain for those who think these rules of law could not exist in the Rome of the kings. The first is to claim that Dionysius (or his source) transferred them (with whatever motive) from some other state. But what state ? It seems impossible to find the model. Dionysius [12] tells us that under the laws of Romulus the position of the plebeians was better than that of the *thetes* and *penestae*. In fact the position of the plebs was very different from that of the *thetes* in Athens or of the *penestae* in Thessaly; and that Dionysius should refer to them suggests that in his experience there was no closer parallel to the position of the plebs. Also against this approach is the evidence for the sanctity of the bond between patron and client in later Roman law. The XII Tables [13] enacted, ' Patronus

[7] Glanvill's book seems to have been completed between November, 1187 and 6th July, 1189.

[8] *History* cit. i, 303.

[9] Cf. Pollock and Maitland, *History* ii, 503 f.

[10] The rules of English law which interest us derive from the relationship resulting from land tenure. But they are not rules which seem to be immediately consequent upon land-holding, and similar rules can readily be envisaged for a lord-dependant relationship which was not based on land-holding.

[11] For different and convincing arguments against the source being such a *Tendenzschrift*, see Balsdon, ' Dionysius on Romulus: a Political Pamphlet ? ' *JRS* lxi (1971), 18 ff.

[12] 2, 9, 2–3.

[13] VIII, 21.

si clienti fraudem fecerit, sacer esto ': so a patron who defrauded a client was still dedicated to the gods of the underworld and could be killed. Cato claimed that the old Romans thought it more holy (*sanctius*) to defend *pupilli* than not to defraud a client,[14] that one gave evidence against *cognati* (blood-relatives connected through males) on behalf of a client but that no one gave evidence against a client.[15] Massurius Sabinus wrote at the beginning of the Empire that earlier generations ranked duties, first to a pupil under one's guardianship, then to a guest, next to a client, then to a *cognatus*, finally to a relative through marriage.[16] From the comic writers of the Republic we see that it was a solemn duty to act in court for friends and dependants.[17]

The second approach for the sceptics is to claim that the rules attributed to Romulus did exist at Rome but only at a later date. Against that argument it should be emphasized that we do have evidence for later times including the early Republic,[18] that this evidence shows the importance of the patron-client relationship but in a much weaker form than that attributed to Romulus. The evidence, in fact, is consistent with the hypothesis of a gradual move away from an almost feudal relationship as Rome grew in size.

The implausibility of these last two approaches of the sceptics becomes more obvious when we look at the texts on the power of the *paterfamilias*.

According to the sources, Romulus compelled the Romans to bring up all their male children and the first-born daughter: no offspring younger than three could be killed unless it were born a monster or was badly injured at birth; in which case it could be exposed by the parents provided they showed it to five near neighbours who testified to the fact. For those who disobeyed the laws Romulus established penalties which included forfeiture of half their property.[19] Romulus introduced by statute marriage by *confarreatio* by which the wife came into the *manus* of her husband.[20] The wife's relatives, together with her husband, could sit in judgement on her if she was accused of adultery or wine drinking, and Romulus allowed them to put her to death.[21] Romulus gave the father complete power over a son for the whole of his life; he could imprison him, beat him, put him bound to field work, and kill him. The father could even sell the son, and would acquire through the son until the third sale, but after a third sale the son was free from his father.[22] Plutarch tells us that Romulus enacted a harsh law that a wife could not divorce her husband but a husband could divorce a wife for poisoning of offspring,[23] for substitution of keys,[24] for adultery; if he sent her away for a different reason, half of his property was to go to the wife, half was to be consecrated to Ceres. Anyone who sold his wife was to be dedicated to the gods of the underworld.[25] Numa is said to have enacted that if a father permitted his son to marry *cum manu* he no longer had the right to sell his son.[26] Servius Tullius enacted that if a son struck his father who called out, the son was to be dedicated to the parental gods. And a similar law where a daughter-in-law struck the *paterfamilias* is apparently ascribed to Romulus and Tatius.[27]

The similarities between these reported provisions and later *patria potestas* are obvious. In the Republic the father's power over his children existed for life and was all-embracing, and a wife *in manu* was very much subject to his control. But strangely, in the Republic the powers of the father were far more absolute. As early as the XII Tables there was no check on his power to expose infants. The father had power of life and death even over grown up children and although the rule relating to three sales remained there is no sign of Numa's

[14] ' quam clientem non fallere '. The negative formulation, which seems rather strange, is used so that Cato can speak in terms of defrauding a client, a direct reference to the provision of the XII Tables.

[15] Aulus Gellius, *NA* 5, 13, 4; cf. Watson, *The Law of Persons in the Later Roman Republic* (1967), 104.

[16] Aulus Gellius, *NA* 5, 13, 5; cf. Watson, *Persons* 104 f.

[17] e.g. Plautus, *Cas.* 563 ff.; Terence, *Eun.* 335 ff.

[18] Cf. above all, Wieacker, art. cit. (n. 4).

[19] Dionysius of Halicarnassus 2, 15, 2.

[20] Dionysius of Halicarnassus 2, 25, 1.

[21] Dionysius of Halicarnassus 2, 25, 6.

[22] Dionysius of Halicarnassus 2, 26, 4–6; 2, 27, 1–2.

[23] Abortion ?

[24] Attempted adultery ? Illicit drinking or tampering with the food store ? The exact function of this provision is not clear but need not detain us. Locks with keys were widely diffused over the eastern Mediterranean in the period contemporary with regal Rome, and among people in close contact with Italy, e.g. Greeks and Phoenicians. The so-called *balanos* lock was known in Egypt as early as the time of Rameses II (1292–1225): cf. Diels, *Antike Technik* 2nd ed. (1920), 52. In Cyprus, tombs of about 700 B.C. have false doors with imitation locks, all in stone.

[25] Plutarch, *Romulus* 22, 3–4.

[26] Dionysius of Halicarnassus 2, 27, 4.

[27] Festus, s.v. *plorare*.

restriction where the *pater* permitted his son to marry.[28] By the later Republic there were no restrictions on the husband's right to divorce, and the sole penalties for unjustified divorce related to his right of retaining his wife's dowry.[29] By then, too, his right to kill a wife *in manu* for adultery was unfettered, and the wife's relatives had no say in the matter.[30]

This development—increase in extent and force of *patria potestas*—is the reverse of what would be expected by persons unskilled in comparative anthropology. Hence the provisions cannot be the invention of historians of a later age. Likewise, because of their relationship with the known rules of Republican Rome, they cannot have been transferred to the Rome of the kings from either a different state or a later time.

Moreover, the two areas of private law for which we have adequate sources apparently developed very differently in subsequent centuries. The bonds of *patronatus* loosened, *patria potestas* increased in strength. This divergence is further evidence that the rules attributed to the kings are not the work of a later political or moral theorist inventing patterns. The development which is apparent between the regal period and the time of Dionysius does not seem to accord with any ancient idea of progress.

Thus the general picture of the private substantive law in the time of the kings, as represented by later tradition, is worthy of belief even though there may be doubts on the accuracy of detail. The emphasis on sacral law (which will not be examined here) in the sources is also what one might expect from that early period.

We should note, however, that sacral law is prominent even in the substantive rules on *patronatus* and the family. Breaches of the rules of *patronatus* resulted in the wrongdoer becoming *sacer*. The same fate awaited a son or daughter-in-law who struck the *pater-familias*. Marriage by *confarreatio* was a religious ceremony and involved sacrifices and the presence of the *pontifex maximus* and *flamen dialis*. Half of the property of a husband who divorced (or sent away) his wife for a reason other than that permitted was dedicated to Ceres. There is little information in the sources on other aspects of what we would tend to consider private law. Numa ordered landowners to mark their boundaries with stones consecrated to Juppiter Terminus: if anyone took away or moved such a stone he was to be consecrated to the god.[31] The same monarch gave various rights to the Vestal Virgins, including that of making a will during the lifetime of their father, and of acting without a *tutor*.[32] He also fixed periods of mourning for children and (at least) husbands. A widow was not to remarry during this period: if she did, she had to sacrifice a pregnant cow.[33] A pregnant woman who died was not to be buried before the unborn child was cut from her.[34] If anyone negligently killed another he could offer the deceased's relatives a ram *pro capite occisi*. Tullius Hostilius enacted that the father of triplet sons should be given support until they reached puberty.[35] Servius Tullius passed almost fifty laws on contracts and delicts;[36] and declared that manumitted slaves should receive citizenship.[37] Many of these provisions obviously also concern sacral law, some of the others may equally have done so.[38] Hence when ancient writers talk of sacral law in the time of the kings they may be including those provisions which we might regard as predominantly concerning private law.

How was knowledge of the laws of the kings transmitted to later generations? Dionysius of Halicarnassus claims[39] that of the laws of Romulus most were unwritten but some were reduced to writing. Pomponius relates that both Romulus and subsequent kings were responsible for *leges curiatae*.[40] Dionysius says that king Ancus Marcius received from the pontiffs the commentaries on religious rites which were composed by Numa and he transcribed these sacred laws on tablets which were set up in the forum.[41] The tablets did

[28] See Tab. IV, 1–2.
[29] Cf. Watson, *Persons* 48 ff. and the texts cited.
[30] Aulus Gellius, *NA* 10, 23, 4–5.
[31] Dionysius of Halicarnassus 2, 74, 2.
[32] Plutarch, *Numa* 10, 3.
[33] Plutarch, *Numa* 12, 2.
[34] *D.* 11, 8, 2 (Marcellus *28 dig.*).
[35] Dionysius of Halicarnassus 3, 22, 10.
[36] Dionysius of Halicarnassus 4, 13, 1. The number seems highly unlikely, and we have no further information on these laws.
[37] Dionysius of Halicarnassus 4, 22.
[38] Thus the obligation to cut out the *fetus* from the dead pregnant woman may have involved *fas* rather than *ius*: cf. Fraenkel, *Hermes* lx (1925), 426. The information on the XII Tables' provision on accidental killing suggests that the ram was a substitute for the killer (Cicero, *top.* 17, 64; *pro Tullio* 21, 51; *de orat.* 3, 39, 158), and perhaps originally he was religiously killed.
[39] 2, 24, 1; cf. 2, 27, 3.
[40] *D.* 1, 2, 2, 2 (*sing. enchirid.*).
[41] 3, 36, 4. This is reported also by Livy, 1, 32, 2. Cicero relates that sacral laws of Numa were still extant: *de re pub.* 2, 14, 26; 5, 2, 3.

not survive, but after the expulsion of the kings they were again copied for the public's use by Gaius Papirius, the *pontifex maximus*.[42] Elsewhere Dionysius names him as Manius Papirius.[43] For Pomponius all the laws of the kings were extant in the book of Sextus Papirius, which was called the *ius civile Papirianum* not because Papirius added anything of his own but because he collected together the laws which had been passed in no arranged sequence. This Papirius whom Pomponius calls also Publius Papirius [44] is said to have lived at the time of Tarquin the Proud. About two centuries after Pomponius, Macrobius writes as if the *ius Papirianum* was still in existence.[45] The source of knowledge of the *ius Papirianum* would seem to be the book of Granius Flaccus [46] who was probably a contemporary of Julius Caesar,[47] though the book itself must be later than October, 46 B.C.[48] Schulz very reasonably points out that Granius Flaccus cannot have invented the rules he reported—the pontifical college, says Schulz, would have denounced such an imposture—but must have made use of existing pontifical records.[49] A further, though negative, argument for holding that the tradition of the regal laws was preserved in the pontifical records is the insignificance of references to the laws in Livy which means, of course, that the tradition was not preserved in the *annales maximi*.

These accounts of the *ius Papirianum* are not unequivocal. The confusion over Papirius' praenomen is, of itself, of little significance since it not infrequently happens that a praenomen is misreported.[50] Nor does it seem particularly significant that Pomponius makes Papirius a contemporary of Tarquinius Superbus while Dionysius records him as *pontifex maximus* in the early Republic.[51] But whereas Pomponius says the *ius Papirianum* contained all the laws of Romulus and his successors, Dionysius relates that the *ius Papirianum* recorded only the sacral laws of Numa. Any resolution of this conflict will be arbitrary, but it may be observed that Dionysius himself shows a greater knowledge of all the laws of the kings than does any other writer in antiquity,[52] and no collective source of this information other than the *ius Papirianum* is known to us.[53,54] Also, as has been already mentioned, many of the laws on private law might be considered sacral laws.

[42] 3, 36, 4.

[43] If we can assume that the early *pontifex maximus* is the same person as the first *rex sacrorum* of the Republic: 5, 1, 4.

[44] *D.* 1, 2, 2, 2, cf. 36.

[45] *Sat.* 3, 11, 5: 'Ego [Praetextatus] autem quod mihi magistra lectione compertum est publicabo. In Papiriano enim iure evidenter relatum est arae vicem praestare posse mensam dicatam.'

[46] *D.* 50, 16, 144 (Paul *10 ad legem Iuliam et Papiam*) . . . 'Granius Flaccus in libro de iure Papiriano scribit. . . .'

[47] At least a Granius Flaccus wrote a book *de indigitamentis* which was dedicated to Caesar: Censorinus, *de die natali* 3, 2. *Pace* e.g. Steinwenter, *RE* x, 1285, the identification of this Granius Flaccus with that mentioned in *D.* 50, 16, 144 does not rest solely upon the name being the same. There is also the similarity of interest. An antiquarian who published the laws of the kings which were above all sacred laws is also likely to have been interested in *indigitamenta*, that is, the list of Roman gods and their titles, and the proper mode of addressing each god.

[48] Argued from Cicero, *ad fam.* 9, 21 which was written in that month to Papirius Paetus. Cicero assures the recipient that there have been Papirii who were not plebeians and he discusses those known to him, and our Papirius is not mentioned: cf. e.g. Steinwenter, loc. cit.: Schulz, *Roman Legal Science* (1946), 89, n. 4. Contra, Paoli, 'Le *ius Papirianum* et la loi Papiria', *RHD*, xxiv–xxv (1946–47), 157 ff.; but see infra, n. 53.

[49] *Legal Science* 89.

[50] e.g. the tribune of the plebs who proposed the *lex Falcidia* is named as C. Falcidius in Jerome's continuation of Eusebius, *Chron.* 11, 139 (in Schöne's edition), Publius Falcidius in Dio 48, 33, 5. The C. Octavius of Cicero, *ad Quintum fratrem* 1, 1, 21, is probably Cn. Octavius, consul of 76, but may even be L. Octavius, consul of 75.

[51] And if we identify this Papirius with the Manius Papirius of Dionysius 5, 1, 4, he was the first *rex sacrorum* on the expulsion of the kings.

[52] It should be mentioned that Livy 6, 1, 10, relates that in 389 B.C., after the capture and burning of Rome by the Gauls, a decree was passed for the searching out of treaties and laws including the XII Tables and certain *leges regiae*. Some of these were then published but those concerned with the *sacra* were kept private by the pontiffs.

[53] Despite the contradiction the main tradition of the *ius Papirianum* is strong enough, I think, to exclude the identification proposed by Paoli, o.c. (n. 48), of the *ius Papirianum* with the *lex Papiria* which was the work of the tribune Q. Papirius: Cicero, *de domo* 127–129. See already against the identification, Di Paola, 'Dalla *lex Papiria* al *ius Papirianum*', *Studi Solazzi* (1948), 631 ff. (Paoli also argues that Cicero does not mention this Papirius in *ad fam.* 9, 21, because he was a plebeian.) Di Paola thinks that the *lex Papiria* is to be dated after 287 B.C. (640 ff.) and that the *lex* was the fulcrum around which in course of time were collected a group of rules, the *ius Papirianum*, largely attributed to the Roman kings (646 ff.). This view also, I suggest, is too much at variance with the tradition to be acceptable. Moreover, if the arguments in the first part of this article for the general accuracy of the substance of law in the regal period are correct, then the history of the *ius Papirianum* given by Di Paola can be excluded. Most recently, S. Tondo defends the tradition of the *ius Papirianum* in 'Introduzione alle *leges regiae*', *SDHI* xxxii (1971), 1 ff. This article, which is much more concerned with social law than private law, appeared too late for full consideration.

[54] Servius *in Verg. Aen.* 12, 836 concerns the *lex Papiria*, not the *ius Papirianum*.

II

It would be asking too much to demand proof that the *leges regiae* were actual legislation. But if it is correct to maintain that the substantive rules recorded do correspond to law in existence during the regal period, and if the tradition of the transmission seems to be reasonably trustworthy, then I submit that the fundamental question becomes whether the idea of legislation is so implausible that it can rightly be excluded. And I would suggest that the idea of legislation for that period is perfectly plausible.[55]

According to Pomponius [56] the legislation passed through the *comitia curiata*. This seems reasonable enough. It is generally accepted that the *comitia curiata* then existed,[57] and though in historic times it did not legislate [58] apart from the *lex curiata de imperio*, we can be sure from the example of the *comitia calata* that it once did. The *comitia calata* was in fact nothing other than the *comitia curiata* when summoned by the *pontifex maximus* and even in much later times its resolutions on wills and *adrogatio* were true legislation though of a rather debased kind.[59] The form of the proceedings is even eminently suitable for an early assembly. A *rogatio* was put to the people: *Velitis iubeatis uti L. Valerius L. Titio tam iure legeque filius siet, quam si ex eo patre matreque familias eius natus esset, utique ei vitae necisque in eum potestas siet, uti patri endo filio est. Haec ita, uti dixi, ita vos Quirites rogo.*[60] The people then signified their approval or disapproval. The possibility of such a mode of proceeding in gatherings of early society—proposal put orally by a leader, approval or disapproval made obvious by assembled people—is confirmed by evidence of not too dissimilar behaviour on the part of the archaic Greeks,[61] the Germans [62] and the Gauls.[63] Writing would not be required for any such legislation in the *comitia curiata* and was apparently never needed for legislation in the *comitia calata*. Hence on that ground we need not dispute Dionysius' statement that most of Romulus' laws were unwritten but some were put into writing.[64] The historicity of some kings, especially Romulus himself, is doubtful at best. But true legislation by an actual king could easily be fathered on a fictitious hero.[65]

University of Edinburgh

[55] Contrary to the dominant opinion, Wenger thinks legislation then not at all impossible: *Quellen* 353. I am not persuaded by Kaser's view, based above all on the *lex curiata de imperio*, *adrogatio* and *testamentum comitiis calatis*, that a *lex publica* originally was always based on a particular decision and did not contain a general rule; hence that the early *leges regiae* cannot be laws: *Das altrömische Ius* (1949), 64 ff. The idea that in the time of the kings or very early in Rome's history, *leges* were always casuistic, only becomes plausible if one can first assume that the *leges regiae* were not *leges*.

[56] *D.* 1, 2, 2, 2.

[57] Cf. e.g. Momigliano, *Oxford Classical Dictionary*, 2nd ed. (1970), s.v. *Comitia*; Palmer, *The Archaic Community of the Romans* (1970), 189 ff.

[58] According to Dionysius of Halicarnassus, by ancient statutes the people sanctioned and repealed laws by *curiae*, and Servius Tullius transferred this function (and others) to the centuries, i.e. the *comitia centuriata*: 4, 20, 2–3.

[59] We know most about *adrogatio* since the will *calatis comitiis* disappeared early. For *adrogatio* see, e.g., Watson, *Roman Private Law around 200 B.C.* (1971), 30 ff.

[60] Aulus Gellius, *NA* 5, 19, 9. For the more obscure procedure in the *comitia curiata* see Cicero, *de re pub.* 2, 13, 25; 2, 17, 21; 2, 18, 33.

[61] e.g. Homer, *Iliad* 1, 17 ff.

[62] Tacitus, *Germ.* 11; *Hist.* 5, 17; Ammianus Marcellinus 16, 12, 13.

[63] Caesar, *de bell. gall.* 7, 21. I should not be taken as suggesting that the archaic Greeks, Germans and Gauls legislated.

[64] 2, 24, 1; cf. 2, 27, 3. Gaudemet categorically denies the existence of written rules in the regal period, first because writing was then exceptional, and secondly because at the beginning of the Republic the plebeians demanded that the law be put into writing: *Institutions* 382. But one should not exaggerate the infrequency of writing in early Rome; the Latin inscription on the fibula from Praeneste is to be dated around 600 B.C.: cf. e.g. Ernout, *Recueil de Textes Latins archaïques* 2nd ed. (1966), p. 3: and the well-attested presence of Etruscans in Regal Rome in itself means that writing would there be well-known. Moreover the famous *Cippus Romanus* (reprinted in e.g. *FIRA* i, p. 30) may well date from the regal period. In general, the demand of the plebeians in the early Republic was that the law be made known to them, which does not necessarily imply that laws in writing did not exist in the hands of the pontiffs. The demand of the tribune, C. Terentilius Harsa, in 462 for law to be put into writing refers specifically to the *leges de imperio consulari*: Livy 3, 9, 5. According to Dionysius, at that time legal decisions generally conformed to the character of the consuls, but a very few of them were kept in sacred books and had the force of laws: 10, 1, 4.

[65] If the main propositions of this article, and especially of the first part, were found to be acceptable, it would be possible to take a further look at the nature of early Roman society.

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