

ATHENS AND ROME: LIFE AND CULTURE IN CLASSICAL ANTIQUITY

Lecture 32 – Law and the Law-courts - Rome

CLCS4007

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- ▣ Lack of “Public Prosecutor”.

“When anyone summons another before the tribunal of a judge, the latter must, without hesitation, immediately appear. If, after having been summoned, he does not appear, or refuses to come before the tribunal of the judge, let the party who summoned him call upon any citizens who are present to bear witness. Then let him seize his reluctant adversary; so that he may be brought into court, as a captive, by apparent force.” – **XII Tables 1.1-2.** (c. 450 BC).

“A Julian Law protected the defendant from being prohibited from attending the trial.” – *Digest* 48.6.8.

- ▣ Later development of *editio actionis*.

The Law-Courts

The Law-Courts

- ▣ Trials usually held in public on raised platforms in the forum or in basilicas.



Basilica of Constantine (Maxentius)

“My speech [c. AD 100], which was in defence of one Attia Viriola... was disinherited by her 80 year old father eleven days after the lovesick old man married... Her suit to regain her patrimony was being tried before a quadruple panel: all 180 jurors from the four courts combined. There was a host of lawyers on each side, benches filled with supporters several rows deep around the entire court. Add to this the jurors packed together up on the tribunal and still more spectators, women as well as men, leaning from the balconies above in their eagerness to see the proceedings (easily done) and hear (almost impossible).” – **Pliny the Younger** *Letters* 6.33.

The Legal Profession?

Advocates

- ▣ Parties in a law-suit usually represented by one or more advocates – status and *auctoritas* added weight to the case they made.
- ▣ Appearing as an advocate a means of cementing political and social relationships.
- ▣ Law-speeches sometimes published.

The Practice of Law

- ▣ Rhetoric and oratory highly valued by Roman elite – suitable training for political life.
- ▣ Alternative (or supplementary) means of making ones name in the political sphere – e.g. Cicero.
- ▣ Younger men looking to make a name for themselves often gave ‘prosecution’ speeches – more respectable give speeches in defence.
- ▣ In 77 BC Caesar involved in prosecution of Gnaeus Cornelius Dolabella for extortion in Macedonia – latter defended by Quintus Hortensius.

“It was accordingly usual with our ancestors, when a lad was being prepared for public speaking, as soon as he was fully trained by home discipline, and his mind was stored with culture, to have him taken by his father, or his relatives to the orator who held the highest rank in the state. The boy used to accompany and attend him, and be present at all his speeches, alike in the law-court and the assembly, and thus he picked up the art of repartee, and became habituated to the strife of words, and indeed, I may almost say, learnt how to fight in battle. Thereby young men acquired from the first great experience and confidence, and a very large stock of discrimination, for they were studying in broad daylight, in the very thick of the conflict, where no one can say anything foolish or self-contradictory without its being refuted by the judge, or ridiculed by the opponent, or, last of all, repudiated by the very counsel with him. Thus from the beginning they were imbued with true and genuine eloquence, and, although they attached themselves to one pleader, still they became acquainted with all advocates of their own standing in a multitude of cases before the courts.” – Tacitus *A Dialogue on Oratory* 34.

Professionalism?

- In the Republic clients not required to pay a fee by law nor did the advocate have the right to demand one - *lex Cincia* (204 BC) technically banned such a practice.
 - Political element of law somewhat reduced in Imperial period – increasing professionalism.
- “The Saturnalia have made Sabellus rich: with reason Sabellus is puffed up ; and there is no man, he thinks and declares, among the lawyers more fortunate. This pride and conceit is inspired in Sabellus by half a peck of spelt and crushed beans and three half-pounds of frankincense and pepper...” - **Martial** *Epigrams* 4.46.

- ▣ Debate in Senate in AD 47 about enforcing the *lex Cincia*.

“The emperor [Claudius], who considered that these arguments, if less high-minded, were still not pointless, fixed ten thousand sesterces as the maximum fee to be accepted; those exceeding it to be liable on the count of extortion.” – **Tacitus** *Annals* 11.7.

- ▣ *Digest* (50.13.1.12) records that a maximum fee of 100 *aurei* (10,000 sesterces) could be charged.
- ▣ Lawyers later formed into *collegia*.

- Contrast between the advocate/orator and the *iuris consultus*.
- *Iuris consultus* – those with specialised knowledge of the law and how best to approach a case.

“And since you seem to me to embrace that knowledge of the law which you have, as if it were a darling daughter, I will not permit you to lie, under such a mistake as to think that whatever it may be, which you have so thoroughly learnt anything very preeminent. For your other virtues of continence, of gravity, of justice, of good faith, and all other good qualities, I have always considered you very worthy of the consulship and of all honour; but as for your having learnt civil law, I will not say you have wasted your pains, but I will say that there is no way made to lead to the consulship by that profession; for all arts which can conciliate for us the good-will of the Roman people ought to possess both an admirable dignity, and a very delightful utility.” – **Cicero *pro Murena* 10.23.**

Law and Judges

Passing Laws

“...if any one were to say that civil law was that which consists of laws, resolutions of the senate, precedents, the authority of lawyers, the edicts of magistrates, custom, and equity.” – **Cicero *Topica* 5.**

- ▣ In the Imperial period such laws also emanate from legal replies and official pronouncements of the emperors, e.g. edicts, letters, rescripts and subscripts.
- ▣ *Digest of Justinian* – compilation of writings by Roman jurists.

Criminal Law – Judges

- ▣ In the Roman Republic cases affecting criminal law were presented to the **praetor**.
- ▣ A new administration of criminal law was, however, introduced with the imperial government. The senate was made the instrument of imperial power for the condemnation of criminals charged with offences against the state.

“The praetor can delegate the entire administration of justice to another just as he can delegate in respect of certain persons or a particular case, especially when he has a good reason in that before becoming a magistrate, he had been advocate for one of the parties.” – *Digest* (Ulpian Opinions book 1).

Law, Politics and Social Status

Elites Controlling Elites

- ▣ *Quaestiones* – standing courts of investigation – established by senatorial elites (from 2nd C BC) to control behaviour.
 - Prosecution of corruption, embezzlement, extortion, bribery etc.
- ▣ Frequently exploited for political reasons – often by defeated candidates (use of *ambitus* ‘corruption’ laws).
 - Marius was prosecuted for electoral bribery after becoming a praetor (115 BC) – **Plutarch *Marius* 5.**

Law and Social Status

- ▣ Roman law often proscribed different punishments depending on status – “It is not the custom for all persons to be beaten with rods, but only freemen of the poorer classes; men of higher status are not subject to beating with rods, as is specifically laid down in imperial rescripts.” - *Digest* 48.19.28.1-2 (Callistratus).
- ▣ Social class of *humiliores* and *honestiores* – by second century AD the former are clarified as less legally privileged of the two.
 - An action for cheating (*dolus*) could not be brought by a social inferior against a superior – (*Digest* 4.3.1-2).

“You are acting admirably [Tiro]... and pray persevere in your love of justice to the provincials... I cannot refrain from bestowing praise on you under the guise of advice... maintain the distinctions of ranks and dignities; for if these are confounded, disordered, and intermingled, nothing can be more unequal than this very equality.” – **Pliny the Younger** *Letters* 9.5 (To Tiro).

Useful Reading

- ▣ Nicholas, B. (1962) *An Introduction to Roman Law*. Oxford: Clarendon Press.