

ROMAN LAW
INTRODUCTION, REPUBLICAN CONSTITUTIONAL OUTLINE

I. INTRODUCTION

1. If you don't know Latin, that's just fine, but we are going to ask you to learn about 100 Latin words because you should not translate technical legal terms from one language to another.
2. Please fill out the Sign-up sheets that are included in the syllabus and were sent to you by email. When you click on 'Submit', they will be sent to us by email. We need these before the class next week because we are going to make up the small groups on the basis of them.
3. Why study Roman law?
 - a. Diachronic reasons
 - b. Synchronic reasons
4. These reasons lead to the four parts of the course (roughly three weeks each)
 - a. External history – chronology, institutions, procedure, sources of law.
 - b. Internal history – a survey of Roman private law based on the institutional treatises of Gaius (c. 160 AD) and, to a lesser extent, that of Justinian (533 AD)
 - c. The XII Tables of c. 450 BC
 - d. Juristic method – selected topics in society and ideas as seen through the eyes the jurists from roughly 100 BC to roughly 240 AD
5. Mechanics
 - a. The Syllabus
 - b. The Readings
 - c. The Class Outlines
 - d. Requirements for Credit
 - i. Post a comment or a question about the assignment before each class.
 - ii. Write a five-page paper on one of the topics in the third or fourth parts of the course, drafts to be turned into us the day of the class and rewritten on the basis of the class and our comments
 - iii. Take-home exam (two questions, the first an 'issue-spotter' ['Gaius lent Julius his lawn-mower, which Julius left out in the rain', etc.], the second a general essay answering a broad question about the relationship between Roman law and Roman society)
6. Mechanics:
 - a. Prerecorded lectures, discussion both with the whole group and with smaller groups in class
 - b. The relationship between the prerecorded lectures and the classes
 - i. For Class 02 (Mon., 13 Sep.) 2 lectures (02 and 03), we'll do the part about the Principate in Lecture 02, the part about the Dominate in Class 04 (Mon., 20 Sep.); we'll also do the general survey about procedural systems in Lecture 03, but the

part that is specifically about the formulary system will probably be postponed to Class 03 (Wed., 15 Sep.).

- ii. For Class 03 (Wed., 15 Sep.) we'll conclude our discussion about the formulary system (Lecture 03) and begin our discussion of sources of law (Lecture 04); the part about imperial constitutions will be postponed to Class 04 (Mon., 20 Sep.).
- iii. For Class 04 (Mon., 20 Sep.) we'll deal with the constitutional history of the Dominate (Lecture 02) and imperial constitutions (Lecture 04).
- iv. For Class 05 (Wed., 22 Sep.) we'll deal with codification and discuss whether a general theory of legal development is possible (Lecture 05).
- v. For Class 06 (Mon., 27 Sep.) we'll deal with the Corpus Iuris Civilis and its subsequent history (Lecture 06).
- vi. After this the number of the class tracks the number of the lecture except that there are two lectures for Class 07 (Wed., 29 Sep.). We'll deal with Lecture 07 entirely in this class, but we will move into the shorter part of Lecture 08 (slave vs. free), postponing the longer part of Lecture 08 (in one's own power vs. in the power of another) to Class 08 (Mon., 4 Oct.).
- vii. The Lecture 11 on obligations for Class 11 (Wed., 13 Oct.) has a short section on delicts at the end, which may spill over into Class 12 (Mon., 18 Oct.), but we will also cover all of Lecture 12 in that class.

c. Assigned readings, class outlines, recorded lectures, PowerPoint slides

II. REPUBLICAN CONSTITUTIONAL OUTLINE

1. The necessary superficiality of trying to outline 13 centuries of Roman constitutional history in two lectures which together add up to 70 minutes, but it must be done because:
 - a. law, much less the relationship between law and society, cannot be understood outside of its constitutional setting
 - b. because Roman constitutional ideas have proved to have extraordinary staying power
2. Overall Chronology

ROMAN LEGAL CHRONOLOGY

Archaic 500 BC – 250 BC	451 – 450 BC – The Twelve Tables 367 – <i>ll. Licinia Sextiae</i> (institution of urban praetor) ¹ c. 242 – Institution of peregrine praetor
Pre-Classical 250 BC – 1 BC	c. 125 – <i>l. Aebutia</i> (formulary system of procedure) ² 82–79 – Sulla dictator 44 – Caesar Assassinated

¹ I.e., the statutes (laws) of Licinius and Sextius.

² I.e., the statute of Aebutius.

	27 BC – 14 AD – Augustus <i>princeps</i>
	c. 138 – Consolidation of the edict under Hadrian
Classical	161 – <i>Institutes</i> of Gaius
1 AD – 250 AD	212 – <i>Constitutio Antoniniana</i> (opens citizenship to all free men in the Empire)
	284–305 – Reign of Diocletian
Post-Classical	312 – Conversion of Constantine
250 AD – 500 AD	438 – Theodosian Code
	476 – End of Western Empire
	527–565 – Reign of Justinian

3. What happened according to Tacitus, *Annals* 1.1 (written c. 120 AD)

1. ROME at the beginning was ruled by kings. Freedom and the consulship were established by Lucius Brutus. Dictatorships were held for a temporary crisis. The power of the decemvirs did not last beyond two years, nor was the consular jurisdiction of the military tribunes of long duration. The despoticisms of Cinna and Sulla were brief; the rule of Pompeius and of Crassus soon yielded before Caesar; the arms of Lepidus and Antonius before Augustus; who, when the world was wearied by civil strife, subjected it to empire under the title of “Prince.” But the successes and reverses of the old Roman people have been recorded by famous historians; and fine intellects were not wanting to describe the times of Augustus, till growing sycophancy scared them away. The histories of Tiberius, Caius, Claudius, and Nero, while they were in power, were falsified through terror, and after their death were written under the irritation of a recent hatred. Hence my purpose is to relate a few facts about Augustus – more particularly his last acts, then the reign of Tiberius, and all which follows, without either bitterness or partiality, from any motives to which I am far removed.

Note

A brief chronology may help to clarify the sweep of this famous opening passage: 753 BC – legendary foundation date of Rome; 509 BC traditional date of the expulsion of the Kings by Lucius Junius Brutus; 451–449 BC – constitution suspended in favor of two groups of ten who prepared the Twelve Tables; 444–367 B.C – at irregular intervals tribal commanders given consular power; 87–84 BC – Lucius Cornelius Cinna consul four times; 82–79 BC – Sulla dictator; 60/59–53 BC – “First Triumvirate”: Pompey, Crassus, Julius Caesar; 49–44 BC – Caesar dictator; 43–32 BC – “Second Triumvirate”: Antony, Octavian (later Augustus), Lepidus.

4. Periodization of the Roman Republic:

- a. 753 BC to 510 BC, from the traditional date of the founding of the city by Romulus to the traditional date of the expulsion of the last king, Tarquin the Proud.
- b. 509 BC to 275 BC, the date of the defeat of Tarentum, a Greek colony in the south of Italy:
 - i. consolidation of Roman power over all of modern Italy
 - ii. mysterious struggle between the patricians and plebians

In this period:

- i. Brutus, consul and dictators
 - ii. the *decemviri XII tables*
 - iii. the grant of consular powers to the military tribunes. Happened with great frequency between the years 444 and 367.
- c. 275 BC to 146 BC, the date of the destruction of Carthage, the period of the Punic and Macedonian wars and the establishment of Roman influence over the whole of the Mediterranean.
- d. 146 BC to 79 BC, the dictatorship of Sulla.
- e. 79 BC to 27 BC, the year in which Octavius styled Augustus consolidated his power. In this period:
- i. The First Triumvirate of Pompey, Crassus, and Caesar from 60–53.
 - ii. The dictatorship of Caesar from 49–44.
 - iii. The Second Triumvirate of Antony, Lepidus and Octavian and the final consolidation of Octavian's power.

The Territorial Expansion of Rome (downloaded from legacy.lib.utexas.edu/maps/historical/shepherd_1911/shepherd-c-034-035.jpg)

Territorial Expansion of Rome.



On the map above the colors indicate the various periods in which Rome acquired territory:

dark orange: at the beginning of the first Punic war (264 BC)

dark gray: acquired as a result of the first Punic war (238 BC)

light gray: acquired up to the end of the second Punic war (201 BC)

yellow: acquired up to 133 BC

green: acquired up to the death of Caesar (44 BC)

light orange: acquired up to the death of Augustus (14 AD)

pink: acquired up to the death of Marcus Aurelius (180 AD), most of which was acquired prior to 100 AD

5. Republican Institutions:

- a. Magistracies (not much chronology here; to get a sense of the chronology, at least as seen by the later lawyers, see Pomponius [a jurist of the mid-2d century AD] as extracted in the Digest [book 1, title 2, law (or chapter) 2, paragraphs 13 through 33, abbreviated D.1.2.2.13–33], in the *Materials*, p. 13–33). Their power in law was great – their power in fact declined markedly in the later Republic. Two notions sum up the whole problem – *imperium*, the undefined general power to rule – and collegiality – the right of any one of the same rank and of the consuls for anyone to stop what another was going to do. Further the power of the magistrates with *imperium* was limited by the *provocatio*, the right of someone who was subject to serious sanctions to appeal to the people in the form of one of the general assemblies, and the fact that the tribunes of the people has the right to veto the actions of the higher magistrates.

consuls (have *imperium*) two elected annually seem to have inherited royal power – commanders in chief in the field and chief magistrates at home – had little judicial function after 367 BC

praetors (have *imperium*) – urban (*urbanus*) 367 BC – peregrine (*peregrinus*) 242 BC. In the next 50 years four more added to govern the provinces. In Sulla's time the number was expanded to eight, but the provincial jurisdiction was removed, and they became judges of criminal courts. Provincial governors were appointed from ex-consuls and praetor and were called 'proconsul' or 'propraetor'

dictator (has *imperium*)

censors two every five years

quaestors (financial auditors) and *aediles* (police and maintenance functions) curule aediles and the market

tribunes of the *plebs* ten of them

- b. 'Legislative' bodies:

comitia curiata organized on the basis of an old geographical division the *curia*. Has a decidedly religious flavor, is associated with the *pontifex maximus*, and has virtually no legislative power. Witnesses formal wills and adrogations (a form of adoption). Became a body of 30 representatives.

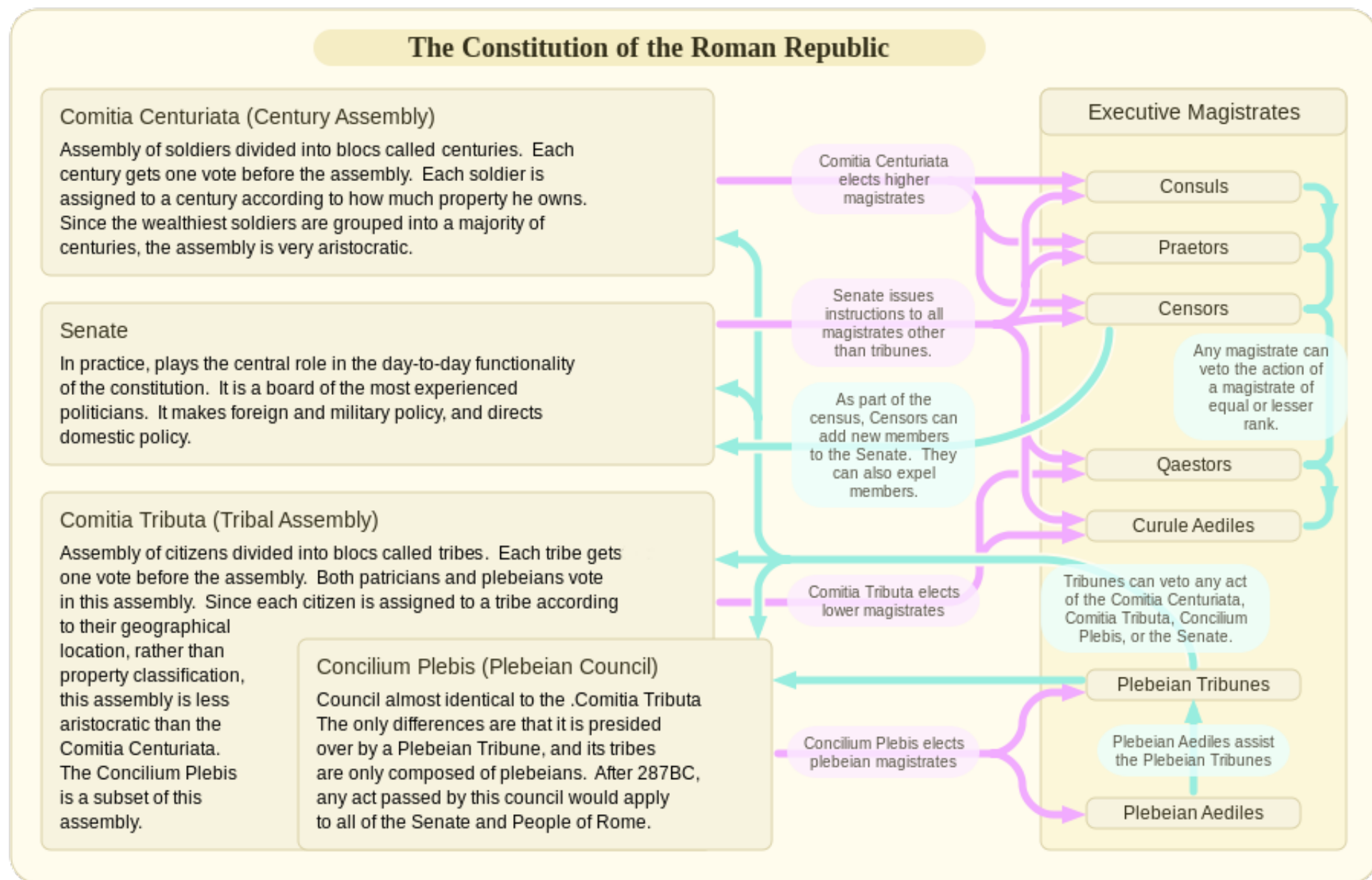
comitia centuriata an organization with a decidedly military flavor. Summoned by consuls, probably decided questions of peace and war. *Provocatio* lay to it. Elected the major magistrates.

comitia tributa another organization along geographical lines. Not only citizenship but also land holding was originally required and the landholders always dominated. Could be summoned by many magistrates.

concilium plebis the *plebs* organized by tribes summoned by the tribune of the people. By the *l. Hortensia* (286 BC) it clearly became able to pass binding plebiscites without the concurrence of the senate.

senate In a way hardest to understand of all. In Republic never officially had power to pass legislation but a *senatus consultum*, 'advice of the senate'.

- c. All of this can be summed up in the following graphic (The Constitutional Structure of the Roman Republic: A graphical representation of the checks and balances of the Constitution of the Roman Republic. (Wikipedia Commons: Anihl – based on a work by User:RomanHistorian at Wikipedia)



6. Perhaps the most surprising thing about the Republican constitution is not that it ultimately fell apart but that it lasted as long as it did considering the dramatic changes that occurred over those 500 years.
7. Reasons for the decline of the Republican Constitution:
 - a. the problems of administering an empire
 - b. the power of the armies
 - c. the struggle between *optimates* and *populares* leads to chaos Sulla, Caesar, the triumvirates
8. In 27 BC Augustus, in his own words, “transferred the state from my power to the choice of the senate and the Roman people.” He received the title *princeps senatus*. Was this all a sham? We’ll take a look at the documents in the next lecture. But before we do that, we’ll need to take a closer look at the chronology of the principate also in the next lecture.
9. <https://www.bostonglobe.com/2020/07/31/opinion/dangerous-pursuit-safety/> is an op ed by Jay Samons, a Classics professor at BU, arguing on the basis of what happened to the Roman Republic that what we were doing about the Coronavirus (July 2020) was a mistake. You may or may not agree with the policy-implications of what he is saying (I don’t), but what we might talk about is the use of historical argument in the way in which he is using it.