Timely conclusions vis-a-vis the course of Law and Legal Order in Ancient Rome

By Prokopios Pavlopoulos

Former President of the Hellenic Republic

Academic

Honorary Professor of the Law School of the National and Kapodistrian University of Athens

Introduction

A historical attestation that has been extensively endorsed and has come to be widely accepted in the field of Legal Science, is that the distant origin of the Law can be traced back to Roman Law, as the equivalent institutional basis of the Roman State, and more specifically of Res Publica; Law as the fundamental basis for the organization and functioning of the State as well as the fundamental basis for the adjustment of the socio-economical relations among individuals within,- be it private individuals or legal persons- in the field of Representative Democracy under the guarantee system of the principle of the Separation of Powers and the Rule of Law.

Ergo, it goes without saying that, modern Legal Science too, - at least in the Legal Orders that are organized and function under the institutional guarantees of the Representative Democracy- has significantly benefited from Legal Science that emerged as an 'inchoate', contemporaneous field alongside the Roman State, and was substantially influenced by the renowned "*Jurus Prudentes"* of that time.

A. At this point it is mandatory, that a historical as well as institutional counterpoint be made so that the scientific, legal research will be thorough and complete.

1. With regards to the City-States of Ancient Greece and their subsequent colonies that were established primarily in Southern Italy- Law functioned both as an organizational framework and as a mechanism so that the relationships among members of the social group could be best regulated. It goes without saying that, this legal system preceded the Legal Order that was later developed in Ancient Rome.

It is also worth mentioning that the history of Law, bears the indelible marks of renowned legislators, since the historical development of every City -State has been greatly intertwined with and profoundly shaped by their legislation.

Typical examples can be found as follows: In Athens, the legislation by Drakon, around 624 BC and the legislation by Solon, around 594 BC, which influenced the first, fundamental Law of Ancient Rome, known as the "Law of the Twelve Tables" and shall be further defined and explained. In Sparta, the legislation by Lycurgus, around 8th century BC, the legislation by Charon in Catania, around 7th century BC, the legislation by Zaleykos in E.L. around 662 BC and the legislation by Dimonakos around 550 BC.

Still, the Law in Ancient Greece, within the context of its aforementioned characteristics, served a role that was substantially different from that of Roman Law, when discussing its influence on the organization, function and progress of the Roman Republic and the Roman Empire. And that was

primarily, due to the fact that in the City-States of Ancient Greece, there was never a unification of the legislative framework, given that City-States themselves were never unified either. Hence, a Hellenic Republic, akin to the Roman Republic, never existed. Thus, when discussing the history of Law, we refer to the "*Ancient Greek Laws*" each of those preserving the characteristics, and ultimately the fate of the City-State in which they prevailed as opposed to the Roman Law; the "*fate"* of the Ancient Greek Laws, bears no resemblance to the impressive coherence of Legal Order in Ancient Rome, or to the sustained growth of the Roman Empire, throughout many centuries. Consequently, in Ancient Greece, Law provided neither the institutional nor the political means for establishing and maintaining a unified State with extensive territory and long duration. Another parameter that should be taken into consideration, is the political and state system that was implemented in many City-States of Ancient Greece; that, of direct Democracy. The way Law functioned in Ancient Greece, did not allow the creation of a Legal Science, akin to that which emerged and flourished, in Ancient Rome. It is worth noting that there were never great "*Juris Prudentes*" in Ancient Greece as there were in the Roman Republic. Irrefutably, distinguished philosophers, such as Plato, in the dialogue of the "*Laws*" and Aristotle in "*Politics*" and in "*Nicomachean Ethics*", explored the essence and the institutional mission of Law. Yet, it should be pinpointed that the said philosophers analysed Law from a philosophical perspective, and did not adopt a strictly, legal, theoretical approach, as the *"Juris Prudentes"* in Ancient Rome did. For this reason, there was a distinctive separation of the eminent "*Juris Prudentes*", who focused on the theoretical approach of Law, from Philosophers, like Cicero.

B. In contrast to Ancient Greece, Law in Ancient Rome, was strongly tied to the Legal protection of the State-i.e. "*Roman Republic*" and to be more specific, of "*Res Publica"*-and less to the regulation of the socio-economical relation among the members of the Roman society. To be more specific, Ancient Rome owes its connective joints of its entire state organization, to Law, starting with the fall of Regnum Romanum- around 510/509 BC-and the ascend to the throne of the 7th last King of the Romans, Lucius Tarquinius Superbus,- until the era of the emperor Gaius Octavius Augustus, and essentially from 27 BC onwards, when the Roman Empire flourished and prospered.

1. Based on Law, under the various regulatory forms it took throughout its Legal "*journey*," the Legal Order in Ancient Rome was established as a set of Legal rules whose practical application was guaranteed by a very powerful mechanism of strict sanctions—organized institutionally, yet lacking any democratic legitimacy. The newly established Roman Legal Science was what led Law and Legal Order of Ancient Rome to their apogee, not only in terms of their theoretical development but also in terms of their practical application; it was the work of the renowned "*Juris Prudentes*"" who moved beyond the field of a philosophical approach. They delved into the characteristics of Law as a Rule of the State, which aimed at framing with legal acuteness and precision, the organization of the State, as well as the socio-economical relations among individuals within the Roman Republic. In fact, it would not be a hyperbole to claim that sans the decisive contribution of Legal Science in Ancient Rome, the Roman Law and its Legal Order, would not have formed the "*model*" which later on, primarily through Byzantine-Roman Law, exerted

significant influence on Legal Science, especially in Western Continental Europe; influence that continued unabated when the Nation-State took shape in Continental Europe, under the institutional and political framework of Representative Democracy as a guarantor of Freedom and, consequently, a guarantor of Fundamental Human Rights.

2. Indeed, the theoretical development of Law and of the Legal Order by the representatives of the Legal Science in Rome, remains highly relevant even today. This is particularly true, as deep understanding of the evolution of legal history, especially in Continental Europe, cannot be achieved without touching upon the roots of this Law, namely the Laws and Legal Order of Ancient Rome. Undoubtedly, this Roman law of a regulatory "cut" lacked any traces of democratic legitimacy concerning its enactment and practical application. This distinguishes it significantly from the Rule of Law as a regulatory tool within the institutional and political realm of Representative Democracy. Yet, this enduring influence of the Law and of the Legal Order in Ancient Rome cannot, by any means, be underestimated- let alone nullified- when placed within the contemporary framework of Representative Democracy, especially when this influence is easily documented by the remnants of the Roman "*Res Publica*" and the Roman-origin of "Public Interest" within Representative Democracy. "*Public Interest*" should be seen as a "*Public Purpose*" that is substantially different from the Aristotelian-inspired "*common interest*", which is primarily concerned with the relationships among individuals, be it private individuals or legal persons. The analysis that follows

aims at highlighting the relevance and enduring influence of Law and Legal Order in Ancient Rome as well as the ancient Roman Legal Science.

I. The Law as an Institutional "Support" of the Legal Order within the Realm of the "Roman State" and, specifically, the "Res Publica".

Within the context of its historical "*evolvement*," which was almost parallel to the evolution of the Roman Empire, "*Res Publica*" served as the backbone of the entire organization of the "*Roman State*" (see, for example, Procopius Pavlopoulos, "Institutional 'Legacies" of Roman "*Res Publica* in Modern Representative Democracy", Gutenberg Publishing, Athens, 2023, especially p. 83 ff.). Over time, through the evolutionary consolidation of the Law and its regulatory "*validation*", it grew into the most "*emblematic*" institutional "*core*" of the State; a core, which, until the end of the Roman Empire, remained literally intact as its main features were not altered at least substantially, by the "*fluctuations*" of the political circumstances in Ancient Rome. That remained the case even when these fluctuations led the "*Dominion*" to incidents of great autocratic excess, which even touched upon the limits of political barbarity, on the part of the Emperor. Moreover, it was this "*core*" that ultimately left a well-defined, and indeed noteworthy, imprint on the structure of the "*State*", throughout its long history. It should be noted that the modern Nation and State as well as Representative Democracy as we know it today, inherited this structure – as shaped and influenced, of course, by the inevitable historical changes that occurred throughout the course of time. To put it simply, the "*State*", under the aforementioned institutional conditions, owes much to the "*Res Publica*" and its fundamental component—a

"*republican*" nature unaffected, as noted, by the periodic autocratic distortions of the Roman Empire. This Legal Order highly influenced the modern State, as a system of Legal rules where the Law holds a dominant position.

A. The characteristics of the Law in the "Roman Republic".

Historically, Law in Ancient Rome facilitated a more effective organization and functioning of the State. This was achieved through a comprehensive set of legal rules, defined within the context of "*leges perfectae"* rather than *"leges imperfectae or leges minus quam perfectae*". Additionally, Law held the institutional power to enforce and apply these rules to its subjects, namely its citizens.

1. The Roman Public Law

In this respect, the State in Ancient Rome had the "*privilege*"—part of the "Imperium", as will be discussed later—of establishing Legal rules in general. To be more specific, the State was responsible for creating the Legal rules for its own organization and functioning, and thus for establishing the principles of *"Jus Publicum*", or Public Law.

a) It should be added that, in Ancient Rome, a big part of the Public Law was formed, not only through *"democratic procedures"*- which were, needless to say, within the context of the procedures prescribed "*constitutionally*" by the regulatory institutional framework of the "Roman State"- but in many cases through *"exceptional procedures",* which largely evolved in times of arbitrary

governance, and such cases were neither rare nor isolated, as the historical record of the Roman Empire clearly demonstrates.

b) Irrespectively of the method of their enactment, the State in Ancient Rome had the power—backed by the relevant "legitimacy"—to impose these rules of "*Jus Publicum"* on the members of society, aiming at their unconditional application. Their subsequent application meant that all members of society- especially *"Cives Romani"*- had the obligation to accept the content of the rules and abide by what the rules dictated, without questioning them. There were very few procedural opportunities to exercise even a basic *"right of appeal"*—primarily to the Emperor—and these were rarely successful. Moreover, this way of State force of the "*Jus Publicum*" in Ancient Rome, led to the emergence of organized State coercion, which became an integral part of the *Imperium* of the highest authorities, i.e. of the Emperors, within the "Roman State".

2. The Roman Public Law and its connection with the "Public Interest"

What needs to be emphasized is the practical application of the Roman Public Law, when analyzing the correlation between the regulatory activation of the Law and the resulting consequences of the *"Public Interest",* as it functioned institutionally within the *"Res Publica".*

a) The emergence of *"Res Publica",* as an institutional core, could be viewed as the institutional reflection of the strong correlation between Law and the State, within the organization of the Roman Empire. On the one hand, *"Res Publica"* defined the regulatory content and the ultimate goal of the Law, as well as its overall purpose, a purpose that legalizes

the organization and function of the State. On the other hand, it also defined the inescapable need for the citizens to abide by the decisions of its bodies.

a1) *"Res Publica"*, which has its origins in Rome, was inextricably tied to the fundamental principle that the State- in the grosso modo sense that we perceive it today- had a legal basis when the organization and the function it served, worked towards *"Public Interest"*. This far exceeded, what was understood in Ancient Greek Legal Thought—and specifically in the Aristotelian thought—as *"common interest" (κοινῇ ξυμφέρου).* This term referred to, the "sum" and the "common denominator" of the individual interests of the members of the respective social group. In their daily lives, these members, had significant autonomy, regarding the choice of actions that determined their behavior, while, their dependence on the State was incomparably of a lower degree than that of the *"Cives Romani"* (Roman citizens).

a2) This conclusion stems from the fact that, in essence, this *"Public Interest"*, under the spirit of the Roman Law, denotes the *"interest"* of the State as a normatively organized entity that *"transcends"* institutionally, the social group it governs. This unique hierarchy further implies that while the social group is the foundation of the State's legitimacy, it is the normatively organized State, through Law, that determines the goals—as well as the means to achieve them in a sovereign manner. These goals must be pursued so that, not only the State "*survives*" and evolves, but also so that the smooth formation of social and economic relations among

its members is guaranteed. In other words, as per the tenets of Roman Law, *"Res Publica"*, inter alia, defined the boundaries of the "*public sphere*", boundaries which were entirely distinct from those of the "*private sphere*", thereby emerging as a "*forerunner*" of the modern distinction between "*Political Society*" and "Civil Society". It is also of some interest to note that this modern distinction was inspired by a "*descendant*" of the Romans, Antonio Gramsci, and today, it has become integral when analysing Political Science.

b) Taking the aforementioned features into account, it is safe to conclude that *"Res Publica"* provided the foundation for Public Interest to be developed as a critical parameter that had the dynamic to "*legalize*" modern state activity.

b1) This "legitimization" is contingent upon the fact that the alignment of the State activity with the mandates of Public Interest, constitutes an indispensable part of the normative "*core*" of the Rule of Law and the Principle of Legality. This means that any deviation from serving Public Interest, inevitably leads to the illegality of specific actions by State bodies, especially by those of the Executive Power. To be more specific, "*Res Publica*" is partly responsible for shaping the modern concept of "*Public Interest*" as an institutional "*benchmark*". It goes without saying that, the Legality of every State Action—especially administrative actions—is assessed based on this benchmark. Ergo, the competent State bodies, primarily the judiciary, decide whether, and to what extent, these actions constitute an "*abuse of power*".

b2) How and why the modern notion of the "*Public Interest*" derives from the broader institution of "*Res Publica*" can be deduced, mainly, from the fact that the latter was shaped, within the context of Roman Law progressively—at the level of political organization, which further differentiates it, as mentioned above, from the Greek *"general interest*". The "*general interest"* in Ancient Greece was never directly associated with the "Demos"—of the also Roman-origin institution, called *"Res Populi"*. This is particularly evident in Cicero's classic political and Legal analysis (see, for example, De Re Publica, I, XXV, 19).

γ1) *Πρώτον, συμβάλλει ευθέως, δια της δημοκρατικής οδού, στον προσδιορισμό του αντίστοιχου δημόσιου σκοπού. Εξού και είναι οιονεί «ιδιοκτήτης» του, γεγονός που δικαιολογεί την προσφυγή στον όρο «res», ο οποίος παραπέμπει στο εμπράγματο δικαίωμα της κυριότητας.*

c1) Each citizen directly contributes, through democratic means, to determining the corresponding public purpose. Hence, they are quasi-"owners" of it, which justifies the use of the term "*res*", that refers to the real right of ownership.

c2) Second, citizens are, of course, bearers of the rights that arise from the fulfilment of the public purpose. However, they are also obliged, inherently, to recognize and fully respect the rights of all other citizens who equally contributed to defining this same public purpose. This is how the Roman Law obligation of solidarity among citizens is explained,

and is described vividly by Titus Livius in the form of "*Caritas Rei Publicae*" in his work "*Ab Urbe Condita*".

d) It should be noted that, only through the appropriate institutional infrastructure, can such an amalgamation of pursuing public purpose, under conditions of combining rights and obligations, be realized. For it may be endorsed that only this infrastructure is capable of ensuring, with the necessary institutional guarantees of coercion, the achievement of the suitable normative results of this amalgamation. Consequently, this institutional foundation must be based on legal rules of a normative nature, that is, legal rules with general and impersonal regulatory content.

d1) And it is precisely these legal rules upon which, the concept and essence of "*Juris Consensus*"—fundamental for the existence of "Res Publica"—are founded. "*Juris Consensus*" somehow refers to both the consent to, and acceptance of, the said legal rules. This arises from the fact that it also implies the importance of "Civil Society" in consolidating the applicable Law for the pursuit of the Public Interest. What is more, this is true regardless of which State Body enacts this Law and determines, therefore, the benefit ("*utilitas*") that constitutes the core of "*Res Publica*". Therefore, in the final analysis, according to Cicero, "*People*" are essentially organized as a society which shares a common understanding of a sufficiently tangible image of the normative framework and not an abstract conception of it.

d2) The Rule of Law itself was built centuries later, upon these initial and basic foundations of "Res Publica" of the Roman Law. Today, this Rule of Law, constitutes the most crucial component of modern Representative Democracy, a true pillar not only of Democracy but also of the entire Western Civilization. This is mainly due to the fact that the Rule of Law, at least according to its basic elements, represents the State entity that is legitimized, both institutionally and politically, so that it may exist and operate only under conditions that serve Public Interest. This implies that, on the one hand, the State is organized and operates solely based on legal rules, which define the coordinates of Public Interest, and on the other hand, that there are institutionalized sanctions—especially those imposed by the Judicial Authorities—in case of violation of the Principle of Legality by any State organs.

d3) Within this framework, Public Interest '*functions*' as a fundamental element of the Principle of Legality concerning the actions of State bodies, particularly those of the Executive Branch. And this takes place to such an extent, that, in the substantive and especially procedural Law of modern States whose organization and function are based on the principles of Representative Democracy, any violation of the normative parameters of the Public Interest—be it in the form of their direct infringement or in the form of serving another Public Interest different from that required by the applicable Legal rules—by State bodies, results in the nullity of their actions or even the activation of the mechanism of the State's civil liability.

B. The structure of the Law within the context of the Roman Law

Although the "Law of the Twelve Tables"—the "*archetypal source*" of ancient Roman legislation—is said to have likely borrowed elements from Ancient Greek Laws as far as the regulation of certain social and economic relations is concerned, an issue which will be clarified later, the concept of Law as a "Rule of Law", especially in the sense it has acquired in modern European Legal culture, is uniquely rooted in Rome. This is because Law, notwithstanding its origin—i.e. whether it was the product of the will of representative bodies or of various forms of unilateral State organs—was the means, through which its regulatory power and the compulsory enforcement of its provisions upon members of the respective social group, the institutional foundation of the Roman, and later the Byzantine Empire, was established as a "State entity" in the form we recognize today. Moreover, Law, through its aforementioned origins in Byzantine-Roman Law and its subsequent influence primarily on the legal systems of Continental Europe, has left an indelible mark on the vast majority of legal systems in States that have, nowadays, adopted, the institutional-political "*amalgam*" of Representative Democracy as their model of State organization.

1. The period of the quasi-"sacrosanctitas" of the Law within the framework of Roman Law.

Law, with its characteristics rooted in ancient Rome, played a critical role in establishing the regulatory framework for social and economic relations

in Ancient Rome. This framework facilitated optimal social co-existence and subsequently it ensured, social cohesion, which was of profound significance to the "*productive*" course of cultural creation in general. Most importantly, it facilitated the organization and function of the State, under robust institutional terms; this lies in the heart of the Legal Order, which is organized and functions within the constitutional framework of Representative Democracy.

a) The development of Law in Ancient Rome, as a means of regulating social and economic relations, was not a "linear" process, particularly regarding the awareness and understanding of its content by the members of the social group it governed. That was mainly due to the fact that, up until the end of the 4th century BC, the organization and function of state institutions of the "*Roman Republic*", had not yet acquired, at least ostensibly, democratic characteristics vis- a- vis the form of its Legal Order- the knowledge of the current Law («*Jus*»), the Knowledge of the prevailing Law ("*Jus*") and the procedural rules for its application in practice *("Legis Actiones*") were restricted exclusively to a very narrow circle of individuals—public officials in contemporary terms—thereby cloaking it in a form of quasi-institutional "sacrosanctitas".

b) It should be clarified that the lack of knowledge regarding the applicable Law, also extended to the designated days for administering justice by those judicial bodies with jurisdiction in specific cases ("*Dies Fasti*"). As per historical accounts, substantive knowledge of the prevailing Roman

Law was held exclusively by the "*Pontifices*" and their auxiliary staff. This demonstrates that the organization of the Roman State was deeply rooted in religion. In this way, the said bodies not only had a tremendous- catalytic one might say- advantage over the *"Cives Romani"*, but also, as might be expected, over the Plebeians. Overall, they held a clearly dominant position within the broader State hierarchy.

2. The *"Revelations"* of the Law in Ancient Rome

However, at the end of the 4th century BC—most likely in 304 BC—a secretary of the Consul and Censor Appius Claudius Caecus, named Gnaeus Flavius, "*leaked*" a significant portion of the prevailing Legal rules in Ancient Rome. In fact, he revealed the majority of the then-current Roman Law.

a) Eventually, Roman Law started being more popular among the social circles, it addressed. As a consequence, these citizens could now have relatively free access to the substantive and procedural rules that safeguarded their rights or Legal interests, even if those were only in an embryonic form. In spite of the fact that Gnaeus Flavius acted in a manner somewhat similar to the mythical Prometheus "*Bearer of Fire*", he did not suffer the "*terrible*" fate described by Aeschylus for the semi god in "*Prometheus Bound*". On the contrary, Gnaeus Flavius subsequently became a member of the Senate and one of the Aediles Curules. He was greatly rewarded, and was ultimately appointed to a high office, being responsible for

the construction and maintenance of public works and buildings in Ancient Rome.

b) With regards to the regulation of the relations within social groups, Law in Ancient Rome facilitated the development of Legal rules that, according to their specific content, evolved into actual "*branches*" of what is now defined as Private Law. These branches pertained to stricto sensu social relations, such as those governed by Laws concerning family relationships. Mention should also be made of the branches related to, lato sensu, economic relations, such as those governed by Laws concerning property and obligations. This Legal framework, among other things, bequeathed to us a significant legal "heritage" in Civil Law regarding the concept and classifications of property, as well as the distinction between real and personal rights. It is by no means coincidental that even today, the academic study of Private Law—at least within the Legal systems of Continental European countries—cannot be considered complete without reference to the "*sources*" of Roman Law and its subsequent development based on the Byzantine-Roman Law.

c) As far as the regulation of the organization and function of the State is concerned, Law in Ancient Rome led to the "peripheries" of the evolution, under its current version, of the Public Law, as it has already been mentioned briefly. It also involved the corresponding "*peripheries*" of the distinction between Public and Private Law,

especially when considering the advisory "*legacies*" of the most important Legal scholars of Ancient Rome. The classical definition of this distinction remains relevant (Ulpian, with elements of this definition appearing in Justinian's Institutes, 1.1.4; in the Digest, 1.1.1.2; and in the Basilica, 2.1.11): *"Jus Publicum est quod ad statum Rei Romanae spectat, Privatum quod ad singulorum utilitatem pertinet"* ("*Public Law is that which concerns the State of the Roman State; Private Law is that which regulates the benefit of individual persons*").

3. The normative form of the Law in Roman Law

This form of Law and its relationship, in regards to its origin and its application, with the State, made a decisive contribution both to its normative "*refinement*" and to the subsequent development of the former, in Ancient Rome. Specifically, after the Law of the Twelve Tables, Roman Law evolved into its comprehensive form—according to today's legal standards—relying on the following structure:

a) "*Praescriptio*" preceded, which included the basic clarifications regarding the reason for its enactment and the name of the proposing magistrate, i.e., the *"Nomen Gentilicium".* This "*Praescriptio*" can be regarded as the earliest precursor to the explanatory report that now must accompany every legislative text before its final enactment, and which simultaneously serves as an officially recognized "*guide*" for the practical application of its provisions.

b) Next was the *"Rogatio",* which incorporated the entire set of regulatory provisions of the Law, i.e., the legal rules established by it. In turn, *Rogatio"* corresponds to the modern "*corpus*" of any legislative text, which includes the stricto sensu legal rules established on a case-by-case basis.

c) The regulatory framework of the Law was completed by the "*Sanctio*", the sanction. This specified the penalties that would be imposed on those, who would trespass the provisions of the Law. It was precisely this "*Sanctio*" that gave the Law its institutional status as a *"complete rule of Law",* or *"lex perfecta*", which is in contrast to the "*imperfect" Laws ("leges imperfectae")* and the "*less than perfect*" Laws ("*leges minus quam perfectae"),* where either the sanction was entirely absent or the sanction was established in a rather "*embryonic",* and thus ineffective, regulatory form.

4. The enduring institutional "*prestige*" of the Law of ancient Roman origin

Within this framework, it can be inferred that, Law in Ancient Rome is close to the Law in the modern Rule of Law State and close to the modern Principle of Legality, too, within the field of Representative Democracy.

a) To be more specific, the regulatory "core" of the State's Law and the Principle of Legality lies not only in the enactment of legal rules as means of mandating human behavior but also in the anticipation and implementation of sanction mechanisms. These mechanisms are

deemed necessary, in order to address any possible violations by those to whom the Law applies. This also implies that as sanctioning mechanisms weaken, so do the Rule of Law and the Principle of Legality. This phenomenon is far from hypothetical in our time, considering, for instance, the rapid normative weakening of International Law due to the lack of effective sanctioning mechanisms when enforced. This lacking of sanctioning mechanisms, render the rules of International Law, at least in many cases, "*leges minus quam perfectae*" or, simply put, "*leges imperfectae*".

b) Another similar example of the diminution of the normative power of Legal rules in our time is related to the expansion of the so-called "*soft Law*" in the contemporary Legal reality. While it does present certain, serious, advantages related to the acceptance of its provisions by its subjects, the inevitably limited scope of its mandatory application and enforcement in practice still undermines, in many cases, the overall normative effectiveness of specific regulatory aspects of the Rule of Law and the Principle of Legality within the corresponding Legal systems. This occurs due to the reduction of the drawbacks associated with coercion and the compulsory enforcement of classical Legal rules**.**

5. The Science of Law "in the service" of Roman Law

In Ancient Rome, the Science of Law had its origins in the processing and popularization of Legal principles, aiming not only at their theoretical analysis but—primarily—at their practical application in trials, conducted

before the various "jurisdictional" bodies of the time. Historically, Tiberius Coruncanius is considered a pioneer in this regard. As the first Plebeian "Pontifex Maximus," around 280 BC, he began to formulate and publicly provide "opinions" in response to questions about the prevailing Law and its procedural rules.

a) Later, legal scholars of Ancient Rome, known as "*Juris prudentes*" emerged and continued to develop this tradition to a significant Legal manner. Their Legal activity or "*Jurisprudentia*""—which refers to the knowledge of current Legal rules within the boundaries of authenticity—expanded into four distinct, yet complementary areas:

a1) "*Respondere*", that is, in the drafting of opinions on the current in concreto Law and its practical application.

a2) "*Cavere*", that is, in providing guidance primarily for the drafting of legal transactions, so that the parties involved could protect their legal interests under conditions of basic legal certainty.

a3) "Agere", that is, in advising on the legal actions that a plaintiff could and should take, before the "*jurisdictional*" bodies to defend their legal interests.

a4) "*Scribere*", or the writing of Legal studies, involved a thorough and pedantic examination and analysis of the current Legal rules within a

theoretical framework. This activity of the *"Juris prudentes"* was largely responsible for the "*flourishing*" of Legal Science in Ancient Rome. It is notable that their surviving works—especially those of Gaius, Ulpian, Papinian, and Paulus—remain valuable sources for historical scientific research on the origins of Legal Science and the "*roots*" of many Legal concepts across the entire field of jurisprudence, especially within Private Law.

b) Due to these developments, the evolution of Legal Science in Ancient Rome led to the emergence of the first "Legal Schools",primarily after the 1st century AD. Two of these schools have become "*renowned*" in the field of Legal History research. These are:

b1) The "*School of Proculians*," which was named after the successor of its founder, Antistius Labeo, Proculus and,

b2) The *"School of Sabinians"* or "Cassi*a*ns" which was named after Massurius Sabinus and Cassius Longinus, who were the successors of its founder, Ateius Capito.

c) As previously mentioned, Legal Science in Ancient Rome began to decline during the time of Diocletian (284 AD), making the 3rd century AD a transitional period for this field of study. This period coincided

with the gradual shift of the "*center of gravity*" of the Roman Empire from the West to the East.

c1) This "*transition*" was, in a sense, officially marked by the relocation of the capital of the Roman Empire from Rome to Byzantium. From then on, Legal Science that had previously been based in Rome "*moved*", so to speak, to the Eastern part of the Roman Empire and underwent significant transformations compared to its original characteristics, encountering the rising of the "*Hellenistic Spirit*".

c2) Given the historical circumstances, Legal Science related to Roman Law was experiencing a period of steady decline in the West, while new Legal Schools emerged in the East. By the 3rd century, the Law School of Beirut had already been established, and "*structures*" of Legal Schools had begun to flourish steadily in Constantinople, Alexandria, Antioch, and Athens. The Law Schools of Beirut and Constantinople paved the way for new "*forms*" of legal thought, such as those represented by figures like Eudocianus, Cyril, Leontius, and Patricius.

C. The "Prehistory" of the Twelve Tables

For almost four centuries, starting from the mid-5th century BC, the Roman Law was governed by the *"Law of the Twelve Tables"* (*Lex Duodecim Tabularum*). Before the Twelve Tables, it seems that a form of archaic Roman

Law known as *"Jus Quiritium"* was in force, applied to the "*Quirites*", that is, primarily to the *"Cives Romani"* (Roman citizens).

1. The "birth" of the Twelve Tables Law

This Law — especially during the time of the Monarchy — was primarily a set of unwritten customs and laws, as it was largely based on the *"Mores Majorum"* (customs of the ancestors) and on "*Consuetudo*" (customary Law). The *"Jus Papirianum",* a collection of Legal rules is also mentioned, and was named after its compiler, Papirianus, who was the first "*Pontifex Maximus*" after the overthrow of the Monarchy. He compiled and systematized the *"Leges Regiae",* which are known as Laws passed during the Monarchy. Still, they were not passed Laws but rather a set of archaic rules of *"Sacred Law"*, which were applied by the "*Pontifices*". Later on, the *"Twelve Tables Law"* was enacted under the following circumstances:

a) According to Pomponius, the said regime, which was *"sine lege certa, sine jure certo",* made the Plebeians feel insecure and marginalized, as the Law was almost exclusively administered in favor of the Patricians.

b) At the initiative of the Tribune Terentilius Harsa, the Plebeians reacted strongly and demanded a written codification of the Law. At first, the Patricians refused, but, after ten years, they finally relented, and agreed to form a legislative committee. According to a historical tradition, a three-member delegation was sent to Athens in 455 B.C.

in order to study Solon's legislation, as his legislative influence, was widely acknowledged by the Romans themselves. For example, Cicero (in *"De Legibus"* 2.23.58) and Gaius (in *"De Legem XII Tabularum"* D.10.1.13, 42.22.7) argued that specific provisions of the *"Twelve Tables Law"* were modeled after Solon's legislation.

2. Ancient Greek "traces" in the regulatory framework of the Twelve Tables Law

The following "testimonies" from Gaius and Ulpian are particularly indicative of the influence of Ancient Greek Laws and of Solon's legislation, on the Twelve Tables: see, for example, Lydia Paparriga-Artemiadi, "*Elements of Greek Influence in the Latin Texts of the Corpus Juris Civilis. Excerpts from Ancient Greek Literature*" Academy of Athens Press, Athens, 2006, especially pp. 79 ff.):

a) According to Gaius, the provisions of the Twelve Tables Law in partnership agreements, in specific — within the framework of an incipient right to associate at that time — are valid only when they do not contradict the existing Laws (Twelve Tables Law, VIII. 27): *His (sodalibus) poteStatem facit lex (XII tab.), pactionem quam velint sibi ferre, dum ne quid ex publica lege corrumpant; sed haec lex videtur ex lege Solonis translate est*»), and are directly derived from Solon's legislation (D.47.22.4: «*Gaius libro quarto ad legem duodecim, sodales sunt, qui eiusdem collegii sunt: quam Graeci ἑταιρειαν vocant· his autem poteStatem facit lex pactionem quam velint sibi ferre, dum ne quid ex publica lege corrumpant· sed haec lex videtur ex lege Solonis tralata esse· nam illuc ita est: Ἐάν δὲ δῆμος ἢ φράτορες ἢ ἱερῶν ὀργίων ἢ ναῦται ἢ σύσσιτοι ἢ ὁμόταφοι ἢ θιασῶται ἢ ἐπὶ λείαν οἰχόμενοι ἢ εἰς ἐμπορίαν, ὅτι ἂν τούτων διαθῶνται πρὸς ἀλλήλους, κύριον εἶναι, ἐὰν μὴ ἀπαγορεύσῃ δημόσια γράμματα.*»)

b) Furthermore, according to Gaius, a series of provisions regarding boundary regulations in the regulatory framework of the Twelve Tables Law (Twelve Tables Law, VII, 2) have their roots in Solon's legislation. (D.10.1.13: «*Gaius libro quarto ad legem duodecim tabularum, sciendum est in actione finium regundorum illud observandum esse, quod ad exemplum quodammodo eius legis scriptum est, quam Athenis Solonem dicitur tulisse: nam illic ita est: Ἐὰν τὰς αἱμασιὰν παρ' ἀλλοτρίῳ χωρίῳ ὀρύττῃ, τὸν ὅρον μὴ παραβαίνειν· ἐὰν τειχίου, πόδα ἀπολείπειν· ἐὰν δὲ οἴκημα, δύο πόδας· ἐὰν δὲ τάφου ἢ βόθρου ὀρύττῃ, ὅσον τὸ βάθος ᾖ, τοσοῦτον ἀπολείπειν· ἐὰν δὲ φρέαρ, ὀργυιάν, ἐλαίαν δὲ καὶ συκῆν ἐννέα πόδας ἐπὶ τοῦ ἀλλοτρίου φυτεύειν, τὰ δὲ ἄλλα δένδρα πέντε πόδας.*»)

c) Additionally, according to Ulpian, the distinction between theft as "*manifest*" — "*caught in the act*" — and non-manifest in the Twelve Tables Law (I.1.10) originates from similar references in Ancient Greek Laws. D.47.2.3:«*Ulpianus libro quadrangesimo primo ad Sabinum, fur est manifestus, quem Graeci ἐπ' αὐτοφώρῳ appellant, hoc est eum, qui deprehenditur cum furto. Et parvi refert, a quo deprehendatur, utrum ab eo cuius res fuit au ab alio. Sed ultrum ita demum fur sit manifestus, si in faciendo furto deprehendatur, an vero et si alicubi fuerit deprehensus? Et magis est, ut et Iulianus scripsit, etsi non ibi deprehendatur, ubi furtum fecit, adtyamen esse furem manifestum, si cum re furtiva fuerit adprehensus, priusquam eo loci rem pertulerit, quo destinaverat.*») The aforementioned is also

confirmed by the following passage from the "Basilika" (B.60.12.2): «*Καὶ μανίφεκτος μὲν κλοπὴ ἐστιν ἥν οἱ Ἕλληνες καλοῦσιν ἐπ' αὐτοφώρῳ, τουτέστιν ὅτε ὁ κλέπτης καταλαμβάνεται μετὰ τοῦ κλαπέντος πράγματος. Καὶ οὐ διαφερόμεθα, τὶς ἐστιν ὁ ἐπέχων αὐτόν, πότερου παρ' ἐκείνου κρατεῖται τοῦ κυρίου τοῦ πράγματος ὄντος ἢ παρ' ἑτέρου τινός*».

3. The completion of the process of drafting the Twelve Tables Law

Finally, around 450 B.C., the legislative body appointed earlier in 451 B.C., with the consent of both Patricians and Plebeians — the "*Decemviri Legibus Scribendis*" — completed the codification of the Laws of the Roman State and recorded them on twelve tablets. This resulted in the "*Twelve Tables Law*", or "*Lex Duodecim Tabularum*" which was ratified by the Popular Assembly "*Comitia Curiata*" constituting the first enacted Law — "*Lex Rogata*" — in Ancient Rome. According to Livy, the "*Twelve Tables Law*" was the "*Fundamental Law*" of "*Res Publica*", serving as the source for the entire body of Public, Private, and Criminal Law, both substantive and procedural.

a) The provisions of the "*Twelve Tables Law*" were inscribed on twelve bronze tablets — which have not survived — and were displayed in the center of Ancient Rome, in the "*Forum*", near the "*Rostra*" (Speaker's Platform), to ensure public access and to make their regulatory content a "*common possession*". As it can be conferred, this arrangement, greatly served the security of the Law, particularly through recourse to the relevant "*jurisdictional*" fora of the time. It represents the first organized and "*formal*" public display of legislative

regulations in antiquity, serving, in a way, as a precursor to the modern compulsory publication of regulatory provisions in democratically organized States. Moreover, it provides "*proof*" that even in the Roman State of that era, there were some rudimentary traces of democratic organization through the indirect and a posteriori, popular legitimization of the prevailing Legal norms.

b) It is worth mentioning that publication today constitutes a prerequisite for the very existence of regulatory Legal norms in democratically organized States. Should legal norms not be published as required by Law, they are not just invalid but entirely non-existent. This means that their legal force cannot commence against everyone and, consequently, they cannot produce any legal effects in any way. Notwithstanding self-evident, it is important to emphasize that the process of publishing the prevailing and applied regulatory legal norms is a practical application of the principle of Popular Sovereignty within the framework of Representative Democracy. This is because citizens have a constitutionally guaranteed right to have at least full knowledge, of the general and impersonal legal rules established by the bodies elected when exercising their constitutionally guaranteed, political rights, in accordance with the principles of Popular Sovereignty.

4. Concluding Remarks

To make a synopsis of the above, it should be noted- as an additional indication of how important the "*Law of the Twelve Tables*" was for the citizens of Ancient Rome- that, according to Cicero, in older times, it was obligatory that students of various, renowned schools "memorize" its provisions. At this point, it should also be mentioned that Law was related to a "custom" of Ancient Sparta which included the compulsory memorization of the legislation of Lycurgus by young men during their military training, as these provisions established, inter alia, the institutional identity of the Spartan society. This observation tends to be of even greater importance, as it underscores several similarities between the military aspect of social organization in Ancient Sparta with that of Ancient Rome. This military character had a profound impact on the subsequent structure and development of the "*mighty*" Roman Empire.

II. The evolutionary trajectory of the ancient Roman Legal order parallel to the rise and eventual decline of the Roman Empire.

It has already been proven that the "*Law of the Twelve Tables*" was the greatest statutory Law, upon which Legal Order of Ancient Rome first laid its foundation. It was a statutory Law that played a crucial role in solidifying *"Res Publica"* as the institutional core of the Roman Empire, upon which the Legal relations of the *"Cives Romani"* were regulated, especially during the brewing and development of the "*Roman State*". As one might expect — particularly considering the rapid political and institutional strengthening

and expansion of the Roman Empire — the regulatory framework of the "*Law of the Twelve Tables*" required significant and transformative changes, as well as additions, to accommodate the evolving structure of its Legal Order. These changes and additions had to be aligned with each other — given that, by nature, Legal norms are established and applied as a "*superstructure*" of the socio-economic "*base*" from which they "*emerge*" and with which they maintain a continuous, bidirectional, almost dialectical relationship and influence — with the long-term transformations of the Roman *"Res Publica"*, at first, *"for better"* and eventually *"for worse"*, when it comes to the trajectory of the Roman Empire until its ultimate fall. In spite of the "*hazards*" inevitably associated with any "*categorization*" of the institutional interventions that occurred within the framework of the changes and additions to the "*Law of the Twelve Tables*", distinguishing these interventions into three, broad categories is not far from historical reality: Firstly, legislation was enacted by the highest authorities of the Roman Empire, specifically by the Senate and the Emperor. Second, legal rules were *"shaped"* during the period of the *"flourishing"* of the *"Jus Praetorium"* or *"Jus Honorarium",* with the most important institutional "vehicle" for its advancement being the *"Per Formulam"* procedure. And last but definitely not least, a legal "*amalgam*" in the form of predominantly general principles, which "*originated*" from the distinctly original, Law-producing" mechanism of the "Cognitio Extra Ordinem", for the Legal standards of the time, " (see, for example, Alexandros Lizeropoulos (lectures), "Roman Law Proposals," A.N. Sakkoula Publishing, Athens, 1943, especially pp. 84 ff.).

A. The "Senatus Consulta" of the Senate and the "Constitutiones" of the Emperors.

Legal Order in Ancient Rome was significantly enriched by regulatory measures from two main sources: on one hand, the broad legislative interventions of the Senate through the *"Senatus Consulta"* — that is, the *"Senatorial Resolutions".* On the other hand, there were lega rules established from time to time by the Emperors through the *"Constitutiones Principum"* — that is, through the "*Imperial Decrees*".

1. The "Senatus Consulta" as an institutional means of the broad legislative interventions of the Senate.

The senatorial *"Senatus Consulta"* were issued, extensively, primarily so as to regulate matters of the *"Jus Civile"*, that is, of the Roman Civil Law, with an emphasis on issues related to personal status and inheritance Law

a) First and foremost, according to the Legal Order in Ancient Rome, the Senate had primarily advisory power. Yet, because of the need, as mentioned above, to regulate and supplement the "*Law of the Twelve Tables*", the Senate acquired legislative powers, at first during the latter half of the so-called "*Democratic Period*" and later on, when the regime of the "*Principate*" was established.

b) In their original form, the "*Senatus Consulta*" were advisory opinions issued by the Senate in response to formal requests. Later, the practice evolved so that relevant magistrates in Ancient Rome would

submit proposals for Laws to the Senate, before these proposals were presented for final enactment in the appropriate Comitia. Ergo, based on this practice, the Senate began to take the initiative in exceptionally urgent cases by proposing that the relevant magistrates draft Laws. These drafts were then required to be submitted for final enactment in the appropriate Comitia.

c) Yet, it was during the Principate, that complete and full legislative authority was granted to the Senate for the issuing of "*Senatus Consulta*".

c1) It was then that the Emperors decided to strip the Comitia off of all legislative authority. However, the Emperors entrusted this authority to the Senate until the reactions against a complete consolidation of legislative power exclusively in their hands would subside. Augustus Octavian, in particular, maintained this "*reserved*" stance, within the framework of his well-known and "*prudent*" approach of not directly challenging the main collective organs of the Roman State.

c2) It can be easily deduced, that this legislative authority of the Senate was rather ostensible. And that was because, even though the Senate had the power to refuse the proposal of the Empire, who would stand in front of it and would address its members by means of the 'oratio' – i.e. giving a formal speech, the Senate would merely ratify his legislative choices, given that he had immense

authoritative power. With the definitive establishment of the Absolute Monarchy, the said legislative practice of the *"Senatus Consulta"* was abandoned. From then on, the Emperors exercised legislative authority themselves through the "*Constitutiones*", as will be explained further.

2. The "Constitutiones Principum": The Legislative Arsenal of the Emperors.

The contribution of the *"Constitutiones Principum"* was far more critical and substantial for the enrichment of Legal order in Ancient Rome. These "*Imperial Decrees"* became the primary—if not the sole- source of Law within the *"Roman State"* after the establishment of the Absolute Monarchy, as previously noted.

a) Through the "*Constitutiones Principum*" the Emperors enacted all kinds of legislative measures with their own initiative and without any restrictions regarding the content of their regulations. In other words, these were ultimately provisions with regulatory and normative content. Thus, the lato sensu Law was the creation of the Emperor alone, taking the institutional form of one of the most emblematic expressions of imperial "*Imperium*". Hence, in Roman history and Legal science, the well-known saying was formulated—*"quod principi placuit legis habet vigorem",* one that has since traversed the entire history of Law. The lato sensu Laws enacted through imperial *"Constitutiones Principum",* were called *"Leges*

Novae" and formed the "*Jus Novum*" or "*New Law*", in contrast to the earlier "*Jus Vetus"* or *"Old Law".*

b) In the history of the Roman Law, four types of "*Constitutiones Principum*" were recorded, according to the categorization of the Legal science of the time, which established various forms of Legal rules:

b1) First of all, the "*Edicta"* were established. These were legislative initiatives and interventions of the Emperor that were publicized and resembled the *stricto sensu* legislative regulation.

b2) Secondly, the "*Decreta*" were established. These were, essentially, judicial decisions, endowed with the authority of *res judicata*, from which the specific Legal rule in question could be derived. The *Decreta* were the institutional "*epitome*" of the jurisdiction, exercised by the Emperor, given that during the period of the Absolute Monarchy, he wielded the highest judicial authority.

b3) Thirdly, there were the "*Rescripta*". Through these, the Emperor would give legislative answers to questions and requests made by citizens, as well as answers to questions of inferior administrative authorities, since the latter could address the Emperor asking for instructions, vis-a-vis the resolution of disputes brought by citizens. It is evident that most of these "*Rescripta"* can be classified under the *lato sensu* judicial powers of the Emperor, given that, as noted, they were primarily aimed at resolving disputes in practice.

b4) Lastly, there were the "*Mandata*". These were a set of directives that the Emperor had the authority to issue to senior public officials of the Roman State in the exercise of their administrative duties. As these directives often included clearly primary normative regulations regarding the exercise of these administrative powers, *Mandata* could, under certain conditions, be included within the broader scope of legislative work carried out by the Emperor.

B. The "Jus Praetorium" or "Jus Honorarium": The Pivotal Contribution of the Praetors in the "Renewal" of Roman Law.

After centuries of practical application, it could be maintained that the "*Law of the Twelve Tables"* became rather obsolete and rigid. This led to a form of procedural ineffectiveness within the system of resolving disputes between private individuals through the procedural formulas of the *"Legis Actiones",* as highlighted by Gaius's example of the inability to regulate the consequences of *"cutting of vines"* through the regulation concerning *"cutting trees"*- and became the driving force for the judicial system of the Roman Republic to invent the "*Per Formulam*" procedure and, consequently, to develop the "*Jus Praetorium*" (also known as "*Jus Honorarium*").

1. The Historical Development and Institutional Character of the "Jus Praetorium" or "Jus Honorarium".

The "*Per Formulam*" procedure was in effect until 342 AD, when it was abolished by an edict of Constantine the Great. This procedure was solidified by the "*Lex Aebutia*" (149/126 BC), which permanently established the two stages of administering justice within the framework of the "*Jus Praetorium*".

a) The first stage ("*In Jure*") involved the procedural representation before the competent Praetor—usually the "*Praetor Peregrinus*". This Praetor would outline the general "*Formula*" for resolving a dispute and would appoint the appropriate judge. This judge, known as the "*Judex Datus*", was a private individual selected ad hoc, in contrast to the earlier "*Legis Actiones"* procedure where the judge was a higher State official listed in a special register ("*Album Judicum*").

b) Before this judge, the second—and final—stage of resolving the dispute ("*In Judicio*") took place. During this stage, within the regulatory limits set by the corresponding "*Formula*" the definitive decision would be issued.

2. The development of new rules of Roman Law through the "Jus Praetorium" or "Jus Honorarium".

It is worth noting that at the beginning of their term, each Praetor would publish their own "*Edictum Perpetuum*" (Permanent Edict), which was a characteristic feature of the specific "*Imperium*" they held, in order to make it generally known to the Roman citizens.

a) The ""*Edictum Perpetuum*"-outlined the general principles of the *"Per Formulam"* procedure that the presiding Praetor was to follow, throughout their term of office.

a1) The incoming Praetor could, through their own "*Edictum Perpetuum*, introduce any necessary changes, they deemed necessary, to the previous "*Per Formulam*" procedure. However, these changes were usually minor, as each Praetor generally respected, at least as a rule, the legislative legacy of their predecessors. In this way, a part of each Praetor's "*Edictum*" was passed unchanged to the next, and was referred to as "*Edictum Tralatitium"*. Meanwhile, any "*few*" legislative innovations introduced, were designated as "*Edicta Nova*" or "*Clausulae Novae*".

a2) At the initiative of Emperor Hadrian, and in order to firmly establish the "*Jus Praetorium*" or "Jus Honorarium", a final "*Edictum Perpetuum*" was issued, likely in 130 AD. Hadrian assigned its drafting to the renowned jurist of the time, Salvius Julianus, who not only "*codified*" the previous rules but also made some necessary amendments due to the passage of

time. This definitive "*Edictum Perpetuum*" could be altered in its regulatory content, only through the Emperor's "*Constitutiones*"—and specifically through the "*Edicta*" of the Emperor.

b) While the "*Praetor*" in the "*Per Formulam*" procedure did not possess full legislative power, most of the times, he was led to employ interpretative methods that provided significant support, supplementation, or even correction of the existing rules of "*Civil Law*" ("*Jus Civile*"), by determining the overall legal framework for resolving disputes.

b2) Hence the classic definition given by Papinian of the gradually developed "*Jus Praetorium*" (D.1,1,7,1): "*Jus Praetorium est quod Praetores introduxerunt, adiuvandi vel supplendi vel corrigendi Iuris Civilis gratia propter utilitatem publicam, quod et Honorarium dicitur ad honorem Praetoris nominatum".* ("*Praetorian Law is that which the Praetors introduced for the purpose of assisting, supplementing, or correcting Civil Law for the public good, and it is also called Honorarium in honor of the Praetors who shaped it*".)

C. "Cognitio Extra Ordinem": The "emergence" of general principles as a process of normative "revitalization" of Roman Law

A "*special adjudicative procedure"* along with the "*Per Formulam*" procedure gradually developed since the time of Augustus. This was the "*Cognitio Extra Ordinem",* used for the resolution of private disputes, to that extent

which a somewhat "*rigid*" distinction between private and public Law disputes, was feasible. The "*special adjudicative procedure*" replaced, almost entirely, the respective "*Per Formulam*" procedure after the end of the 3rd century AD.

1. The Normative Distinguishing Features of "Cognitio Extra Ordinem"

Through the "*Cognitio Extra Ordinem",* which operated "*extra ordinem judicorum*" (i.e. outside the ordinary judicial process), the "*Per Formulam*" procedure was effectively bypassed. The dispute was resolved by a competent judge—who was a state official, not a private individual—appointed by the "*Princeps*" (the Emperor). Before this stage, however, the Emperor, through the issuing of "*Rescripta*" (imperial responses)—which were based on the opinion of a special council, the "*Scrinium Libellorum*"—provided answers to submitted petitions ("*Libelli*") about disputed legal issues, that would ultimately determine the Legal rule that the competent judicial forum had to apply.

a) The procedural practice of "*Cognitio Extra Ordinem*" left a series of valuable general clauses in the History of Law, which were shaped through the successive "*Rescripta*" (imperial responses) of the Roman Emperors.

a1) Especially those Emperors who were deeply influenced by Stoic philosophy. The related "*Rescripta*" (imperial responses) of Emperors such as Trajan, Hadrian, Antoninus, Marcus Aurelius, and Septimius Severus—

whose "*Apokrimata*" (imperial decisions) constitute a valuable, historically organized collection—were particularly emblematic. Prominent jurists such as Ulpian, Papinian, and Paulus, among others, flourished during Severus' reign. The contributions of Diocletian also hold great significance.

a2) From a bibliographic perspective, well-documented information in the studies listed below, is of great importance and is noteworthy: Johannes Hasebroek («Untersuchungen zur Geschichte des Kaisers Septimius Severus», pub. Carl Winter's Universitätsbuchhandlung, Heidelberg, 1921), Johannes Merentitis, («Die neu gefundenen Reskripte des Septimius Severus», Athens, 1978), William Linn Westermann, («Apokrimata: Decisions of Septimius Severus on Legal Matters», text, translation and historical analysis, A. Arthur Schiller Legal Commentary, pub. Cisalpino-Goliardica, Milano, 1973) and Wilhelm Weber («Untersuchungen zur Geschichte des Kaisers Hadrianus», Druck und Verlag von B.G. Teubner, Leipzig, 1907).

b) As it can be easily inferred from a more scholastic, historical approach—which is certainly useful for documenting the institutional "legacies" bequeathed to us by the Roman Law—many a general clause that emerged during the "*Cognitio Extra Ordinem*" process forms the roots of several general principles recognized and applied by modern Law, particularly in Western-style democracies and within the framework of the European Legal Order.

b1) These are general principles, which are mainly shaped by the case Law of national courts within their respective national legal systems, and by European courts within the European Legal Order. It is of paramount importance to emphasize that this "*production*" of general principles is not being judicially diminished but, on the contrary, it tends to expand significantly—much like what happened within the framework of the "*Roman State*", as previously mentioned. This occurs because the legislative authority, by delegation of the Law, and the executive authority within national Legal systems become gradually incapable of addressing the regulatory needs of the current socio-economic reality within each State through the generated Laws and rules.

b2) A distinctive feature of this legal reality is that, in many cases, the judicially developed general principles that tend to fill in the gaps of the Constitution. This ultimately grants them regulatory power equal to that of constitutional rules, with the important caveat being that legal rules shaped through these principles cannot be legally applied "*contra constitutionem*" (*against the Constitution*) but only, to the greatest extent possible, "*praeter constitutionem"*(*alongside the Constitution*).

2. How certain "legacies" of "Cognitio Extra Ordinem" "survive" in modern Legal systems.

Examples from the Greek Legal system and the European Legal order could adequately showcase the process of producing and applying such general

principles. Naturally, in these cases, the creation of these general principles, primarily in application of the principle of Separation of Powers within the framework of Representative Democracy, falls within the judicial bodies. This is in stark contrast to the previously mentioned system of "Cognitio Extra Ordinem" in Roman Law.

a) Apropos of the Greek Legal system, this method of producing general principles has been notably and systematically demonstrated by the case Law of the Council of State. This approach follows, to some extent, the example set by the Conseil d'État in France, whose case Law has considerably influenced the development of the French Administrative Law, a large part of which, has a jurisprudential origin.

a1) According to the case Law of the Council of State—which is now also adopted by the case Law of the Supreme Court (Areios Pagos)—the Judicial Authority is authorized to derive legal rules in the form of general principles. However, this does not mean that such derivation implies that the judicial case Law acquires "*Law-making*" power, as this would be in stark contrast to the Constitution and, most importantly, to the principle of Separation of Powers. Specifically, the Judicial Authority—in this case, the Council of State—derives general principles as complete legal rules from the entire body of legal provisions, meaning that this normative framework contains general principles that the judicial body

"*discovers*" and "*recognizes*". In other words, Case Law does not create general principles ex nihilo but "discerns", on a case-by-case basis, their existence within the Greek Legal order and related legal systems (e.g., International Law and European Law).

a2) As previously outlined, the case Law judicial activity of the Council of State, regarding the existence of general principles-always "*pre-existing*", since the Judicial Authority does not create them ex nihilo but detects them within Legal order—is activated only when the applicable Legal rules exhibit gaps in regulatory coverage that cannot be filled even by the most extensive interpretation. In such cases, given that "*denial of justice*" is contrary to the Constitution, the very nature of the judicial function necessitates the derivation of new Legal rules for the final administration of justice. Generally—as previously mentioned—these general principles are "*discovered*" judicially when legislative gaps are observed and when they function, from a regulatory perspective, as supplementary to the Legal rules established by the Legislative Authority.

a3) This implies that, as a rule,—provided there is no contrary legislative authorization—general principles have a lower formal authority compared to existing legislative provisions but a higher authority if compared to regulatory administrative acts (see, e.g., Council of State rulings 1596/1987, 2786/1989, 17/1997). However, as previously mentioned, general principles are also derived judicially, when there are gaps in the constitutional

regulatory framework under similar conditions. These general principles have higher formal authority compared to existing legislative provisions—including ordinary Laws—but lower formal authority compared to the rules established by constitutional provisions. This is because, as previously explained, according to the normative "*mandates*" of the hierarchy of our Legal order, these general principles cannot be applied "*contra constitutionem*" (against the Constitution) but only at most "*praeter constitutionem*" (alongside the Constitution) (see, e.g., Council of State rulings 1741, 2288/2015, 1992/2016, 1738/2017).

a4) Mention should also be made of the fact that sometimes these general, constitutional, principles, become part of the Constitution itself, through constitutional amendments and other means. For example, the general principle regarding the right to a prior hearing, which was initially established judicially, was explicitly enshrined in our Constitution with the provisions of Article 20, paragraph 2, after 1975.

b) As previously explained, the general principles which emerged from the application of the "*Cognitio Extra Ordinem*" procedure, can additionally be considered—taking into account all the calculations of centuries of distance as well as the historical and Legal analogies—as a distant "precursor" to the general principles that, as briefly noted earlier, are now derived, together with the other Courts of the European Union, by the Court of Justice of the European

Union, taking into account, the "*common constitutional traditions of the Member States*" (see, for example, the decisions in Johnston, 222/1984, 15.5.1986 and UNECTEF, 222/1986, 15.10.1987). Specifically:

b1) The content and normative hierarchy of the European Legal Order are not only composed of the written rules of primary and secondary European Law, but are also composed of certain unwritten Legal rules, which take the form of general principles that, under certain conditions, resemble the general principles of *"Cognitio Extra Ordinem*". The Court of Justice of the European Union, suitably and quasi-legislatively develops its jurisdictional function and continuously formulates general principles, that is, principles with which it "enriches" the European Legal Order in a normative manner. This is carried out, within the framework of an effort to achieve "*convergence*" and "*coexistence*" of the written Legal rules of the European Legal Order with the rules of the Legal Orders of the Member States- which is an effort of significant importance both from an institutional and political viewpoint. For the European Union progresses or should progress, towards its ultimate goal, which is integration, seeking at the same time the necessary harmonious "convergence" and "coexistence" of the Legal Orders of the Member States.

b2) In this way, the Court of Justice of the European Union is facilitated in its process towards normative completion. It should be

clarified that, in this regard, the Court of Justice of the European Union follows, and in many respects reproduces, the practice of many a court in the Member States—Greece being a notable example, particularly through the case Law of the Council of State as previously emphasized. These courts derive similar general principles for the corresponding National Legal Order, primarily based on the relevant constitutional provisions. These general principles, according to Legal logic, have constitutional status and validity under the conditions previously mentioned.

b3) Apropos of the "*sources*" from which the Court of Justice of the European Union derives these general principles, as well as the methods through which it derives them, it must be strongly emphasized that the European Legal Order does not exist or function in a detached manner, from the broader European "*legal environment*". This is because the European Legal Order coexists, necessarily and functionally from a normative perspective, with the individual National Legal Orders, with which it both manages to communicate and be in a continuous interaction. This institutional, jurisprudential "*osmosis*" is intensified by the fact that there is still no "*formal*" Constitution of the European Union, i.e. a normative basis which would determine with stability the hierarchy of the European Legal Order and, subsequently, its sufficient coherence. Within this framework, the case Law of the Court of Justice of the European Union derives the said general principles both from the

written rules of primary and secondary European Law, from the Legal rules of the individual National Legal Orders, as well as from the Legal rules of lato sensu International Law, to which the European Union has acceded.

b4) From this perspective, and to be more precise, from the perspective that "*inspires*" the Court of Justice of the European Union regarding the derivation of the said principles, these principles can be, broadly, distinguished into:

- "*Endogenous*" i.e., principles stemming from the body of rules of the entire European Law. The main area from which the Court of Justice of the European Union derives such "*endogenous*" principles is the rules of European Law that define the fundamental objectives of the European Union, with the ultimate goal being European integration. These general principles are either "*institutional*" in nature, as they pertain to the structure of the European Legal Order, with the most representative in this category being the general principle of Solidarity, which is crucial for achieving European Integration, or they are "*intrinsic* to the concept of the Common Market"—according to the case Law of the Court of Justice of the European Union—because they relate to facilitating the organization and functioning of the "economic core" of the European Union, with more characteristic

examples being the general principles of "proportionality" and "*community preference*."

- And “exogenous”, i.e., principles originating not from the European Legal Order but from the aforementioned sets of Legal rules. Even though they are part of Legal Orders that function normatively in parallel with the European Legal Order, they maintain an inseparable functional communication with it and, consequently, they are subject to a regime of analogous normative “*convergence*”" and “coexistence”. Such exogenous” general principles are derived by the Court of Justice of the European Union either from the common elements of the National Legal Orders of the Member States of the European Union—which constitute the so-called “*Jus Commune Europaeum*”"—as these emerge particularly through National Constitutions, or they are derived from lato sensu International Law. In this case, for the derivation of general principles, the Court of Justice of the European Union typically refers to the “general principles recognized by civilized nations”, as outlined in Article 38 of the Statute of the International Court of Justice. To be more specific, it refers to the “generally accepted rules of International Law”, which bind States that may have not acceded to International Conventions from which these rules of International Law are institutionally derived.

Concluding Remarks

From all the considerations outlined, one may reach the conclusion that, research within the framework of the History of Law does not in any way question the "*legacies*" that Roman Law and the structure of Legal Order in Ancient Rome, with the valuable "*assistance*" of Ancient Roman Legal science, have "*bequeathed*" to modern Representative Democracy and the Legally organized State under the Rule of Law. The "*paradox*", which has been "*gaining ground*" for some decades now, is that these said "legacies", which, based on the extent of their institutional extensions, continue to have impact, since the end of the 18th century on the consolidation of Representative Democracy as a guarantee of Freedom—and thus on Fundamental Human Rights. Not only have they ceased to retain their normative "*vitality*" and the corresponding "*prestige*" of their classical Legal role, but they are also "*declining*", and indeed happen to be at "*worrisome*" levels. Worse still, this "*decline*" is painfully intertwined with the corresponding "*decline*" of the institutional "*supports*" of Representative Democracy in our time, particularly the "*supports*" of the normative "*robustness*" of the Rule of Law and the Public Interest.

A. Irrefutably, the greatest danger to the "*diminishment*" of the said "*legacies*" of Roman Law and, consequently, to the erosion of the institutional and political "*supports*" of Representative Democracy and Fundamental Human Rights comes from the corresponding weakening of the Rule of Law, the Principle of Legality, and, ultimately, of Rule of Law in general, due to the economic globalization and the extensive use of Technology.

1. In other words, the economic globalization and the extensive use of Technology tend to lead to the deconstruction of those means of normative regulation of social life—not only at every state level, but also at European and international levels—that are protected by the presumption of democratic legitimacy, either directly or indirectly. Under these circumstances, the uncertainty is dramatically and multiplicatively heightened by the continuously widening global inequalities, that emerge as a destructive result of a blatant "*economic*" dominance over the "*institutional*". This is even more pronounced when these inequalities affect not only individual members of a specific social group but also States, thereby creating a Global Community with varying speeds, economically and otherwise.

2. The global community, which among other things, observes with fatalism and in a nonchalant manner, the collapse—both within each State and internationally—of the supports of the Welfare State and Social Justice, the true emblem of Western and European Democracy, as well as Western and European Culture. Such a global situation undermines, by its very nature, the conditions for peace and stability. These conditions are fundamentally necessary for a basic certainty regarding the future development and prospects of all human creation.

B. Furthermore, Public Interest, due to its institutional and political peculiarities, serves as a means to restrict the actions of State bodies

concerning the purposes they must serve while exercising their regulatory and established authorities—under the rule of Law and under the principle of Legality. It embodies an effective institutional guarantee of freedom and of rights within the framework of Representative Democracy.

1. The contemporary phenomenon of regulatory—and thus normative—deconstruction of the Rule of Law, primarily due to the negative impacts of Economic Globalization, inevitably leads to corrosive distortions of the previously outlined concept of the Public Interest. These distortions consist in the gradual "*incorporation*" of the concept of Public Interest into that of the so-called "*fiscal interest*"—literally, "*cash interest*"—that is, the interest related to the collection of state revenues to achieve various fiscal objectives. In other words, it pertains to an "*interest*" that consists of the benefit derived by the State through the collection of funds from all types of legislated resources. Consequently, this benefit is not institutionally capable of constituting, by itself, the core of genuine Public Interest.

2. Public Interest arising from this benefit is, first, highly general and, as a consequence, it is institutionally "*colorless*", as it indiscriminately covers all state activities. Thus, it cannot attain the required "*specificity"*, as previously analysed, which Public Interest inherently possesses, based on the Legal rules that institutionalize it. Moreover, it is only secondarily related to Public Interest, as defined ad hoc by specific regulatory provisions. In other words, it serves purely as an economic means of achieving a specific Public Interest. Consequently, it may be argued that it cannot be considered an autonomous and genuine Public Interest, as its institutional root

is not defined by a normative Legal rule but by the "*dynamics*" of economic reality. Under conditions of uncontrolled globalization, it could be argued that this holds true today. Additionally, it is worth mentioning that the benefit arising from this fiscal interest, due to its general nature also covers the area where the State acts as a fiscus, governed primarily by Private Law rules. In contrast, Public Interest, by definition, is associated with the State's actions as an imperium, i.e. actions governed, at least generally, by Public Law regulations.