

Det Kgl. Danske Videnskabernes Selskab.

Historisk-filologiske Meddelelser **XVI**, 3.

ON THE ANTIQUARIAN-
HISTORIOGRAPHICAL ACTIVITIES
OF THE ROMAN PONTIFICAL
COLLEGE

1. PAX DEUM. JUS SACRUM. 2. LIBRI SACERDOTUM. 3. THE
SO-CALLED COMMENTARII REGUM. 4. JUS PAPIRIANUM.
LEGES REGIAE. 5. PUBLICATION. 6. ANNALES PONTIFICUM
[MAXIMORUM]. ANNALES MAXIMI. 7. CONCLUSION.

BY

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KØBENHAVN

HØVEDKOMMISSIONÆR: ANDR. FRED. HØST & SØN, KGL. HOF-BOGHANDEL
BIANCO LUNOS BOGTRYKKERI

1929

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Filosofiske Meddelelser,
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1. Pax deum. Jus sacrum.

Just as the Roman state was founded by the grace of the gods, so also did its further existence depend on their benevolence. By *sacrificia*, prayers and purification (*lustratio*)¹, by *votum* "pro rei publicae salute"², by gifts and festivals pleasing to the gods³, the state must endea-

¹ Val. Max. IV 1, 10: *solemne precationis carmen ex publicis tabulis, quo dii immortales, ut populi Romani res meliores amplioresque facerent, rogabantur.* — L. DEUBNER, *Archiv für Religionswiss.* XVI (1913) p. 127 sqq.

² TH. MOMMSEN, *Röm. Staatsrecht* I 2 594 sqq. W. WARDE FOWLER, *The Religious Experience of the Roman People*, London 1911 p. 203 sqq.

³ The ancient Roman festival procession of the *Salii*, the priests of Mars, in the first month of the Roman year, with a ritual arms-dance and religious songs (Dion. II 70. Liv I 20, 4), intended to protect the *numen* of the new crops against all manner of demons. Cf. FOWLER 110. GEIGER, *Pauly-Wissowa-Kroll R. E.* I A (1920) 1874 sqq. — R. CIRILLI, *Les prêtres danseurs de Rome*, Paris 1913.

The Lupercalian festival combined with purification, expiatory sacrifice and fecundity-worship. Plut. Rom. 21. CAES. 61. — L. DEUBNER, *Archiv für Religionswiss.* XIII (1910) p. 481 sqq. cf. R. LEFÉBURE, *Revue de l'histoire des religions* LIX (1909) p. 73 sqq. SAMTER, *Geburt, Hochzeit und Tod* (1911) p. 184 sqq.

The spring festival of the Arval-Brethren combined with an invocation of *Lases (Lares)* and Mars, as well as sacrifice. VARRO, *de ling. lat.* V 85. Fragments of *acta fratrum Arvalium*. C. I. L. VI 2023 sqq. 32338 sqq. — *Carmen Arvale*. C. I. L. VI 2104. — GEORG WISSOWA, *Religion und Kultus der Römer* 2 (1912) p. 561 sqq. cf. 143.

See, moreover, W. WARDE FOWLER, *The Roman Festivals*, London 1899 p. 33 sqq. 310 sqq., L. DEUBNER, *N. Jahrb. f. klass. Altert.* XXVII (1911)

your to secure *pax et venia deum*¹. Particularly on special occasions, at times when the fortunes of the state were undergoing a crisis, before great and perilous undertakings, such as the departure of the army for a campaign, during a war before the decisive battle, when plague or crop-failure scourged the land, the state would have to propitiate the gods by new *vota* concerning sacrifices, gifts² and games (*ludi*)³. And if the gods, manifested their wrath at not receiving their due by strange natural signs, omens (*prodigia*)⁴, the state would have to take the necessary measures (*prodigium procurare*)⁵ to avert their anger and restore *pax deum*, by

p. 321 sqq. WISSOWA, *Religion und Kultus der Römer* 2 409 sqq. 555 sqq. See also H. M. R. LEOPOLD, *De ontwikkeling van het heidendom*. Rotterdam 1918 p. 6 sqq. SAM WIDE in GERCKE u. NORDEN, *Einleitung in die Allertumswissenschaft* II 3 290 sqq.

¹ Cic. *pro C. Rabirio, perduellionis reo* V 17. Liv. XXXIX 10, 5 cf. VI 41: *nunc nos, tanquam jam nihil pace deorum opus sit, omnes caerimonias polluimus*. (Appius Claudius' speech). Gell. XIII 23, 13. VERGIL. *Aen.* IV 56. X 31. *Tab. Iguv.* VI A. 30. BUECHELER, *Umbrica* (1883) p. 59. Cf. moreover WISSOWA 380 sqq. W. WARDE FOWLER, *The Religious Experience of the Roman People* 169 sqq. — BRISSONIUS, *De formulis* I 138.

² *Votum* concerning *templum*: Liv. II 20, 12. Formula in Liv. X 19, 17. — *Evocatio*, before the besieged city, of the enemy gods to leave their temples, and instead they are promised temple and cult at Rome. Liv. V 21. Plin. *nat. hist.* XXVIII 4, 18. Formula in MACROB. *Sat.* III 9, 7 sq. (SERV. *Aen.* II 244). Cf. C. THULIN, *Italische sakrale Poesi und Prosa*. Berlin 1906 p. 59 sqq. — *Devotio*, by which the Roman magistrate *cum imperio* during battle promises to devote his life to the subterranean gods (DI MANES and TELLUS) on condition that they annihilate the hostile army. Formula in MACROB. III 9, 7 sqq. Liv. I 32, 7. 10. VIII 6, 9 sqq. 9, 1 sqq. 10, 11 sqq. Cf. X 28 (the sacrificial death of the Decii). KORNEMANN, *Der Priestercodez in der Regia* 1912 p. 23 sqq. Concerning the magical significance of the ritual of devotion see L. DEUBNER, *Arch. für Religionswiss.* VIII (1905) Beihefte 66 sqq.

³ Liv. XXXVI 2, 3. Cf. Liv. XXII 10 (*ver sacrum*).

⁴ Liv. XXI 62. FOWLER, *Religious Experience* 316 sqq.

⁵ F. LUTERBACHER, *Der Prodigien Glaube und Prodigienstil der Römer* (Neue Bearbeit.) 1904.

expiatory sacrifice (*piaculum*) or by sacrifice combined with extraordinary purification (*lustratio urbis*).

The active desire of the Romans to maintain the proper relations with the divine powers (*religio*)¹ is, however, most clearly exhibited in the famous divination peculiar to the Roman religion. No important act, public or private, could be accomplished save in agreement with the divine will (*auspicato*). Before all more important acts of state — the magistrates' installation in office, the inauguration of priests, the meetings of the *comitia*, the departure of the army, the ceremonious opening of temples etc.² — the disposition of the gods had to be learnt from observation and interpretation of birds' omens and other signs (*auspicia*, *auguria*³)⁴. At the conclusions of *foedus* with foreign

¹ Concerning the original meaning of the word *religio* as expressing "the feeling of dependence upon divine power and providence" (WISSOWA 380), "the natural feeling of a man in presence of the supernatural" (FOWLER 459 sqq. cf. Cic. *de inv.* II 161: *religio est quae superioris cuiusdam naturae quam divinam vocant, curam caerimoniamque affert*. Cic. *de harusp. resp.* 19), see FOWLER, *The Latin History of the Word "Religio"*, *Transactions of the Congress for the History of Religions*, Oxford 1908, II 169 sqq.

BRÉAL, *Revue archéol.* 1910 II 175 takes the word "religio" itself to be derived from *relegere* (as opposed to *neglegere*). Its original signification is then "scrupule pieux", "conscience". Thus also WALDE, *Etym. Wörterb. d. lat. Sprache* 2 233. Cf. NIGIDIUS-FIGULUS in *Gell.* IV 9. 1: *religentem esse oportet, religiosus ne fuas* (ed. HOSIUS). Cic. *de nat. deor.* II 72. On the other hand, especially M. KOBBERT, *R. E.* I A p. 572: *religio* from *religare*, "to bind" cf. LACT. *inst. div.* IV 28, 2 sqq. SERV. *Aen.* VIII 349: *religio id est melus ab eo quod mentem religet, dicta religio*.

Regarding an undoubted connection with the idea of *labu* see FOWLER, *Religious Experience* 32 sqq. Cf. W. OTTO, *Arch. f. Religionswiss.* XII 544. XIV 406 sqq. M. KOBBERT, *De verborum "religio" atque "religiosus" usu apud Romanos*. Diss. Regimonti 1910 p. 31 sqq. *R. E.* I A. 565 sqq.

² Cic. *de div.* I 28. Liv. I 36, 6. VI 41, 4.

³ Fest. v. *quinque genera*.

⁴ In Liv. I 18 the description of Numa's *inauguratio* gives us an aetiologial picture of the procedure at the ancient Roman inauguration. Formula in Liv. I 18, 9. Cf. VARRO *de ling. lat.* VII 8.

peoples¹, when claims were put forward to recover compensation or atonement for breach of treaty (*rerum repetitio, clarigatio*)² or when war was formally declared³, the gods were called upon as witnesses and their protection invoked⁴.

The Roman gods, however, being made in the image of the juridically disposed Romans themselves, insisted no less than these upon the observance of the principle of *do* (or rather *dabo*) *ut des* in the matter of strict fulfilment of all contracted obligations (*religiones*). If the sacred acts were performed in a manner which deviated in the very least from the inherited form sanctioned by the gods and from the often magically accentuated formulae, they were invalid and had no effect; moreover, they would be a sacrilege (*piaculum*). It was a matter of particular importance that the right gods were invoked in the right way. Only the priests, however, were duly versed in the entire minutely ordained apparatus of prayers and formulae (*solemne precatiois carmen, solemnia verba*)⁵ which surrounded every act of worship, and in the whole ritual system which served to maintain *pax deum*. The magistrates were the people's representatives before the gods. It was the magistrate (*cum imperio*) who bound the people legally by *votum*, fulfilled *votum* by *dedicatio*, expressed *devotio*, performed

¹ In the description of the single combat between the Horatii and the Curiatii (the Romans and the Albanians) in Liv. I 24, 4 sqq. we find the rite with *carmina* paradigmatically illustrated in the *foedus* concluded before the fight. Cf. Polyb. III 25, 6. FEST. v. *lapidem silicem*.

² In Liv. I 32 the ritual with *carmina* is described in the aetiological narrative of Ancus Marcius. Cf. Liv. I 38 (*deditio Collatiae*). VARRO V 86. DION. I 72, 6 sq. SERV. Aen. IX 52. X. 14. CINCIVS in Gell. XVI 4, 1. Examples: Liv. IV 30, 14. 58, 1. X 12, 2.

³ Liv. I 32, 6 sqq. Gell. XVI 4, 1.

⁴ Cic. *de leg.* II 7, 16: *diis immortalibus interpositis tum iudicibus tum testibus*.

⁵ E. APPEL, *De deorum precatationibus, Religionsgesch. Vers.* 7, 2. (Gies-sen 1909).

the sacred acts and ordered the celebration of festivals required by *lustratio urbis* as atonement for *prodigia*. And it was the chief of the army who was deputed by the people by the *lex curiata* to take the auspices, and who then conducted the war *suis auspiciis*¹. Finally it was the magistrate who on behalf of the people decided matters concerning alliance and war. But only *pontifices* possessed knowledge of *ceremonia et sacra* according to *patrius ritus*². Above all, it was *pontifex* who at *vota* had *verbis certis* to formulate and utter (*precire*) the prayer (*carmen*) that was often rhythmically composed and strictly conventional of form³. Only *augures* knew the art of observing and interpreting the divine omens (*disciplina*⁴ *auguralis*). And only *fetiales* were qualified authorities on the particular sacred law (*jus fetiale*) which applied to international relations⁵.

In all matters directly concerning the obligations of the state to the gods, all that conduced to the maintenance of *pax deum*, the priests were the sole experts, from whom therefore the magistrates had to obtain instructions before the execution of sacred rites, and of whose opinion and pronouncements (*decreta, responsa*)⁶ they had to avail them-

¹ *Auspicium* = *imperium* (Liv. XXVIII 9, 10). — BOUCHÉ-LECLERCQ, *Hist. de la divination* IV 209 sqq.

² Cic. *de harusp. resp.* 14: *pontifices, quorum auctoritati fidei prudentiae majores nostri sacra religionesque et privatas et publicas commendarunt; de nat. deor.* I 122: *sacris pontifices praesunt.*

³ Cf. E. NORDEN, *Die antike Kunstprosa*, Leipzig. 1915 I p. 156 sqq.

⁴ PLIN. *nat. hist.* XXVIII 4, 17. Cic. *de leg.* II 8, 20: *interpretes autem Jovis Optimi Maximi publici augures . . . disciplinam tenent. De div.* II 74. Suet. *de gramm.* I: *jus augurium*. Cic. *de nat. deor.* I 122: *auspiciis augures praesunt.*

⁵ Cic. *de off.* I 36. Liv. IX 9, 3.

⁶ Cic. *de leg.* II 8, 20 cf. II 12, 29: *respondendi juris et conficiendarum religionum facultas*. Cic. *de domo* 130 sqq. (*pontifices*). — Cic. *de nat. deor.* II 11; *de domo* 39 (*augures*). — Liv. XXXVI 3, 7. Plut. Numa 12. Cam. 18. VARRO *in Non.* p. 529 (*fetiales*).

selves in all doubtful questions of ritual (*vota* and their performance, *prodigia* and their *procuratio*, *piaculum*, *expiatio* for *sacrilegium*, *deditio* etc.)¹. As a consequence of this religious-technical privilege it was also the priests who guarded and handed down the theory of law in the civic life of the state.

Public worship not only endowed the sacred acts with a certain political significance, but *jus sacrum*² permeated the entire legal life of the Roman community and gave to the very act of state a distinctly sacred character. And particularly in the earliest period, when religious faith was still a reality, this sacred element was bound to have a decisive influence both socially and in formal law. This again led to the guardians of the sacred law, the lettered priests, becoming also the bearers of the real constitutional tradition.

True, the priests had no independent political authority. *Pontifices* had indeed to make *decreta* and *responsa*, when doubtful questions of worship arose, but their judgements

¹ Cic. *de leg.* II 19, 47 cf. Liv. I 20, 7. XXIV 44, 9 (*ex decreto pontificum*).

² In later Roman law a special legal system was formed by *jus sacrum*, synonymous with *jus divinum*, in contrast with *jus humanum*, corresponding to the difference between *fas* (i. e.: "what is bidden by the gods") and *jus*. SERV. GEORG. I 269: *fas et jura sinunt, id est divina humanaque jura permittunt: nam ad religionem fas, ad homines jura pertinent*. Cf. GAI II 2. And this system was strictly distinct from both *jus publicum* and *jus privatum*. QUINT. *Inst. orat.* II 4, 33: *genera sunt tria: sacri, publici, privati juris*. Cf. Cic. *de domo* 128: *nec de pontificio sed de jure publico disputo*. But in oldest Rome, where law and religion were closely connected, "sacred law" permeated the whole legal life. Cf. MUIRHEAD, *Introduction to Roman Law*, ed. GOUDY, p. 15. WARDE FOWLER 486 sqq. Cf. still ULPIAN, *Ulp. Dig.* I 1, 1.1 § 2. *publicum jus in sacris, in sacerdotibus, in magistratibus consistit*.

Also the word *jus* itself, the basic meaning of which is undoubtedly "that which binds" (*jus* derived from the same stem as *jungo*, WALDE, *Lat. etym. Wörterb.* 2 399), which is, moreover, probably connected with the idea of *tabu*, is no doubt originally a religious term. At the outset it was probably used to denote the legal rules in force in the various priesthoods (*Jus pontificium, jus augurium*. GELL. *praef.* XIII I 12, 17. IV 6, 10. etc.).

were in no sense legally binding. It was a function of the *augures* to declare whether the gods looked with favour upon a proposed public undertaking, and the *fetiales* had to supervise that treaties were concluded and war declared *dis arbitris foederis* and in conformity with *jus fetiale*. But they had nothing to do with the actual political actions or decisions. Even in the earliest times the constitutional position of the priests was undoubtedly only that of religious assistants and advisers to the magistrates and the senate. But they were in close contact with practical politics. And they were widely versed in the art of government. Far on the time they were still recruited from the old patrician families in which the tradition of a practical and theoretical insight into the life of the state and the art of government was handed down from generation to generation. Also, the supreme magistrates were undoubtedly often members of one — or more — of the higher priest-hoods¹. From their former government service the priests would therefore bring with them as an additional advantage their particular experience in the treatment of legal matters (Tib. Coruncanius, P. Mucius Scaevola). The priests therefore possessed the very best personal qualifications for handing down the science of theoretical and political law. And the colleges themselves, these strongholds of sacred law where election for life and cooptation of the members also served to secure continuity in the application of the law, had in the course of time been technically trained in transmitting the law.

Also, and not least, in the field of what was later termed *jus privatum*, sacred law undoubtedly exerted the greatest

¹ Cic. *de domo* 1. WISSOWA 480. Cf. J. N. MADVIG, *Verfassung und Verwaltung d. röm. Staates* II 602 sqq.

influence from the earliest times. In the law of obligations and of civil procedure¹ as in criminal law² we find a few remnants of the religious conception even in the historical period³. It is, however, especially in the family, where the numerous and varied religious acts which accompanied the greater or lesser events of daily life⁴ still testify to the sincere and heartfelt desire of the Romans to keep on good terms with the gods (*pax deum*)⁵, that we find definite and profound traces of the formerly predominating influence of the religious element. Not only the ancient patrician form of marriage-celebration, *confarreatio*, and the corresponding form of divorce, *diffareatio*, are of a distinctly religious nature⁶. Just as marriage itself in its essence is

¹ *Votum*. DE MARCHI, *Il culto privato di Roma antiqua* I (1896) 271 sqq. — *Jusjurandum*. C. BERTOLINI, *Il giuramento nel diritto privato Romano* 1886 p. 49 sqq. cf. STEINWENTER, *R. E.* X 1253 sqq. and the litt. quoted. — *Sponsio*. PERNICE, *Sitz.-Ber. Akad.* Berlin 1885 p. 1159 sq. HUELIN, *Studi in onore di Fadda* VI (1906) p. 104 sq. cf. MITTEIS, *Festschrift für Becker* 1907 p. 109 sqq. — *Dolis dictio*. BERGER, *Abh. Akad.* Krakau II Ser. XXXVIII, 53 (1910) p. 132 sqq.

² *Sacer esto* and *consecratio capitis et bonorum*. MOMMSEN, *Röm. Strafrecht* 1899 p. 900 sqq. cf. MITTEIS, *Röm. Privatrecht* I (1908) p. 24 sqq. — E. DURKHEIM, *Les formes élémentaires de la vie religieuse*. Paris 1912, p. 304 sq. — *Sacrilegium*. PFAFF, *R. E.* I A (1920) 1678 sqq. — *Sacramentum* and *legis actio sacramenti*. GIRARD, *Hist. de l'organisation judiciaire des Romains* I (1901), 40 sqq. v. MAYER, *Mélanges P. F. Girard* II (1912) p. 171 sqq. PIETRO BONFANTE, *Hist. du droit romain* (trad. française), Paris 1928 I 171 sq.

³ Concerning the bronze found in Trasacco in 1895 (BARNABEL, *Notizie degli scavi* 1895 p. 88 sqq. CAGNAT, *Cours d'épigraphie latine* 3 (1898) p. 339), a private *tessera hospitalis* with a wether's head and inscription: "T. MANLIUS, T. f. HOSPES, T. STAIODIUS N. f." which clearly proves the strong religious character of private hospitality see MAX IHM, *Rhein. Mus.* LI (1895) p. 473 sq. GIRARD, *Textes de droit romain* 4 888 sq.

⁴ Cf. DE MARCHI, *Il culto privato di Roma antica* I 129 sqq. 209 sqq.

⁵ *Gell.* XIII 23, 13: *Neria Martis, te obsecro, pacem da* (ed. HOSIUS).

⁶ DE MARCHI, *La religione nella vita privata* I 155 sqq. PICHON, *Hommes et choses de l'ancienne Rome* (1915). I. *Le mariage religieux* 1 sqq.

in the first place a *communicatio sacrorum*, so also does its civil-legal purpose, *liberorum* (ο: *legitimorum*) *procreatio*, bear witness to a strong religious element¹. *Sponsalia*, betrothal, is still considered partly sacred. We know the religious influence to have survived in the important acts of private law, *adrogatio* and *testamentum*, which wrought changes in the *sacra* of the family, and in the performance of which the assistance and control of priests were therefore necessary². Also the material law of inheritance was — as a simple consequence hereof — undoubtedly from its origin under a strong religious influence³.

Similarly, the old patrician rules of law which in ancient Rome formed the basis of the entire *jus civile* were kept by the priests as a secret to strengthen their power⁴. Only the pontifical college knew the formulae (*certa verba sollemnia*) which had to be used to make a valid contract if *pax deum* were to be maintained. And only pontifices knew which days were *dies fasti*, i. e. it was *fas*, that is to say, the gods permitted⁵ men to perform public and civic acts, and which days belonged to the gods (*dies nefasti*)⁶, and what action, *legis actio*, should be brought.

¹ V. my paper "Sur les origines du mariage par usus", Paris 1926 p. 18 sqq.

² Cic. *de domo* 36: *ut ne quid aut de dignitate generum aut de sacrum religione minuat* cf. 34. *Gell.* V 19, 4 sqq. — CAREDDU, *Studi in onore di Fadda* I (1906) p. 395 sqq.

³ V. my paper: "La succession primitive devant l'histoire comparative", Paris 1928 p. 31 sqq.

⁴ Cic. *de orat.* I 41, 186: *quia veteres illi qui huic scientiae (sc. juris) praeferuerunt obtinendae atque augendae potentiae suae causa pervulgari artem suam noluerunt*.

⁵ The etymology of the word *fas* is uncertain. Surely not, as generally assumed, derived from *fari*, possibly from a primitive root **dhá* "sets" which is also found in Greek *τίθημι*. BRÉAL, *Nouv. rev. hist. de droit* VII 604 sqq. *Fas* = *ἑμῶς* ο: "what is settled by the gods".

⁶ VERRIUS FLACCUS in *Gell.* V 17, 2. Cf. LÍV. I 19, 7. MACROB. I 16, 2.

In every law-suit both the parties and the judge had therefore to seek the advice (*consulere, respondere*) of *pontifices*. But as *pontifices* were the sole experts on *jus sacrum* and therefore alone able to apply and uphold the secular *jus civile*¹ in conformity with the will of the gods, it followed as a consequence that even in this respect the priests became the real bearers of the development of law. By their interpretations, moreover, the priests in the earliest period would inevitably often influence the development of material law with their religious conception of the conditions of human life².

2. Libri sacerdotum.

Already at an early period³ the priests no doubt began to support tradition by committing to writing the sacred rules, *leges*⁴, above all the ritual and sacrificial precepts (*sacra*), and the prayers and litanies (*carmina*) particularly

¹ Liv. IX 46, 5. Val. Max. II 5, 2. Dig. I 2 1. 2 § 6.

² Fest. v. *ordo sacerdotum*. — TIXIER, *Influences des pontifes sur le développement de la procédure civile à Rome*, Orléans 1897. Cf. MITTEIS I 22 sqq.

³ Liv. I 20, 5: *Numa ei* (α: *pontifici maximo*) *sacra omnia exscripta exsignataque attribuit*. Cf. I 32, 2: *sacra publica* (α: rules of public worship) *ut ab Numa instituta erant ex commentariis regis*. Cic. *de leg.* II 12, 29.

The Latin alphabet is undoubtedly not derived from the Etruscan but directly from the Chalcidian, and must presumably have been evolved during the Greek colonisation of Cumae at the close of the 9. or the beginning of the 8. century. It probably came to Rome already at the end of the 8. century. The oldest inscriptions preserved in Rome and Latium, however, date back only to about the beginning of the 6. century. And even in that century it is certain that writing was but little used. Only for religious records a more general use may perhaps be fixed as early as about the middle of the 6. century. H. JENSEN, *Geschichte der Schrift*, Hannover 1925. LÉON HOMO, *L'Italie primitive et les débuts de l'impérialisme romain. L'évolution de l'humanité XVI*, Paris 1925 p. 14 sq.

⁴ Lat. *lex*, which is akin to old Norse *logh* (n. pl. of *lagh* from *leggja*, "to lay", "to set") and Engl. law, originally merely meant what had been "laid down" or "settled" in the right way, hence "sentence",

required for contracts with the gods (*votum, auspicio, etc.*). They would also write their own advisory opinions and statements (*decreta, responsa*) regarding new concrete cases. Moreover, since ancient times the records of the sacred acts performed and the formal opinions given were probably — for the purpose of stating grounds, explaining and illustrating — frequently supplemented by paradigmatical (fictitious) historical *exempla* in the form of a narrative¹. It was thus certainly from the pontifical writings that Livy borrowed his material for the legend of the Horatii with its paradigmatical scheme of the procedure in the duoviral perduellion-case² combined with *provocatio ad populum*.

“legal sentence”. This corresponds in meaning to Greek *θέμιστες*. (pl. of *θέμις*, derived from the same stem as *τίθημι*, “places”, “sets”), whose original signification was probably “the law laid down” in general, partly the individual decision (judgement), partly the general legal rule formed from the individual decisions (law). (*Leges* = *θέμιστες*). In historical law *θέμιστες* opposed to *δίκη*, derived from **dik* (deik) “shows”, [Gr. *δείκνυμι*, Lat. *dic-o* (*ius-dico, iudex*) “show”, hence “settle”] expresses the same idea as *fas* in Roman law — which possibly also bears some etymological relation to *θέμιστες* (see above) — contrasted with *ius*. V. my paper, “*Le roi de l’Odyssée*” in *Mélanges Paul Fournier*, Paris 1929.

A curious absolute analogy is provided by Scandinavian law: the ancient Danish terms *logh* and *dom*, whose meaning in the period following the provincial statutes was differentiated in accordance with the more recent use of the words (legal norm or statute, legal decision or judgement), originally also both had the fundamental meaning of purely and simply what was “laid down” or “settled”. KARL V. AMIRA in PAUL, *Grundriss der germ. Philologie* 3 (1913) p. 10 sq. FALK und TORP, *Norwegisch-dänisches etymol. Wörterbuch* I (1910) p. 655. Also etymologically the analogy is an absolute one insofar as old Danish *dom* (A. S. *dóm* from *dón*, Engl. *do*, Germ. *thun*), in its linguistic sense corresponds to Gr. *θέμιστες*, and thus likewise originally merely signified what had been “settled” in the correct manner. Cf. P. J. JØRGENSEN, *Den danske Retshistorie* I (1926) p. 16 sq.

¹ A general assumption to that effect is found in Liv. IV 3, 9: *si non ad commentarios pontificum admittimur . . .* (C. CANULEIUS’S speech of defence *pro legibus suis*).

² Liv. I 26, 5 ff.: *lex horrendi carminis erat: duumviri perduellionem iudicent. Si a duumviris provocarit, provocatione certato . . .* Comp. w.

In Cicero and Livy, as well as in the later antiquarians and grammarians, we find mentioned in several places — and under varying names — these *libri or commentarii*¹ of the various priesthoods.

It may indeed possibly be these sacred ordinances (*leges*) recorded in the “holy books”² and commonly attri-
Cic. *de republ.* II 31, 54: *declarant libri pontificii*. Cf. also Liv. I 18, 6 sqq. I 24, 6 sqq. See above.

¹ Pontifices. *Libri pontificii*: Cic. *de re publ.* II 31, 54 (*provocatio a regibus*). VARRO, *de ling. lat.* V 98 (*sacrificia*). — *Libri pontificum*: VARRO in FESTUS *v. opima spolia, v. tesca*. MACROB. *Sat.* I 12, 21 (*indigitari*). Cic. *de orat.* I 43, 193. HORAT. *ep.* II 1, 26. *Libri pontificales*: SERV. in *Vergilii Aen.* XII 603. *Ecl.* V 66. *Georg.* I 21 (*indigitamenta = libri pont.*). I 272. SENECA. *ep.* 108. 31. LYDUS, *de mens.* IV 20 (*πρωτογενέλια βιβλία*). — FESTUS *v. molucrum (libri sacrorum)*. SERV. *Georg.* I 270 (*libri sacri*). Cf. DION. X 1, 4 (*ἱεραὶ βιβλίοι*). TAC. *Ann.* III 58 (*libri caeremoniarum*). *Gell.* XIII. 23, 1: *comprecationes . . . quae ritu Romano fiunt*. X 15, 1 (*libri de sacerdotibus publicis*).

VARRO V 23 (*ut pontifices dicunt*). MACROB. III 20, 2 (*docent pontifices*). COLUMELLA *de re rust.* II 21, 5 (*apud pontifices legimus*). Cic. *de nat. deor.* I 39, 84. — PLIN. *nat. hist.* XXVIII 4, 18: *evocatio (pontif. disciplina)*. — GELL. I 12, 27. X 15, 17. XI 3, 2. SERV. *Aen.* VII. 190. IX 408. GEORG. I 344.

Commentarii. Cic. *Brut.* XIV 55; *de domo* 136. Liv. IV 3, 9. VI 1, 2. Plin. *nat. hist.* XVIII 3, 14: *augurium canarium*. Quint. VIII 2, 12. (*c. pontificum*). FESTUS *v. neclere* and *v. Tauri (c. sacrorum)*, *v. recto fronte (c. sacrorum pontificalium)*. DION. III 36, 4 (*ἱεραὶ συγγραφαί*) cf. VIII 56.

A comparison of the surviving fragments has been attempted by P. PREIBISCH, *Fragmenta librorum pontificiorum*, Tilsit 1878. Cf. *Quaestiones de libris pontificiis*, Breslau 1874. See further M. KRETZER, *De Romanorum vocalibus pontificalibus*. Diss. Halis. Saxon. 1903. G. ROWALT, *Librorum pontificiorum Rom. de caeremoniis sacrificiorum reliquiae*. Diss. Halis. Saxon. 1906.

Augures. Libri augurales: Cic. *de re publ.* II 31, 54. *Comment. augurum*: SERV. *Aen.* I 398. Cic. *de divin.* II 18, 42 (*in nostris comment.*) See, moreover, the compilation of passages by P. REGELL, *De augurum publicorum libris*. Diss. Vratisl. 1878. *Fragmenta auguralia*. Progr. Hirschberg 1882. *Commentarii in auguralium fragmenta specimen*, ibd. 1893. *Beiträge zur antiken Auguralliteratur* ibd. 1904. E. DE RUGGIERO, *Diz. epigr.* II 537 sqq. BOUCHÉ-LECLERCQ, *Hist. de la divination* IV 182 sqq.

Concerning the identity of *libri* with *commentarii*, see REGELL 30 sqq. *Libri Saliorum*. VARRO *l. l.* VI 14.

² SERV. *Georg.* I 270. DION. X 1, 4.

buted to Numa¹ by the Roman tradition, which Cicero has in mind when in *de re publica* he makes Scipio speak of [Numa] Pompilius *qui animos propositis legibus his quas in monumentis habemus ardentis consuetudine et cupiditate bel-landi religionum caeremoniis mitigavit*². *Monumenta* is undoubtedly not used here to mean *annales pontificum*. It is at any rate unlikely that the pontifical tables in their older form (*annales pontificum*)³ should have included *leges Numae*⁴. *Monumenta* should probably here be taken to mean *libri (commentarii) pontificii*. It is evident that the use of *monumenta*⁵ for *libri pontificii* was not unknown, for in *Probus de notis*⁶ the pontifical records are actually termed *pontificum monumenta*⁷.

Moreover, it was undoubtedly in *libri* or *commentarii pontificii* that the rules of worship were recorded which in Livy and Plutarch are ascribed to the so-called *commentarii regum*.

¹ Cic. *de re publ.* V 2, 3 cf. Liv. I 19, 1. — Concerning the so-called *leges regiae* see below.

² Cic. *de re publ.* II 14, 26.

³ See below (*annales pontificum*).

⁴ *Annales maximi* would indeed be preferable: *monumenta = annalium monumenta* in Cic. *pro Rab.* V 15, i. e. = *annales maximi* (see below). Thus SCHUBERT, *Quos Cicero in libro I et II de re publica auctores secutus esse videatur* 8 (without further substantiation). See below (*annales maximi*).

⁵ From the actual term *monumenta* nothing can be deduced. *Monumenta*, from *moneo (moneat mentem)*, and the etymologically related *commentarii* from *commentus (comminiscor)*, merely means what is recorded to assist memory. Cf. Liv. VI 1, 2: *in commentariis pontificum aliisque publicis privatisque erant monumentis*.

⁶ *Probus de notis* § 1. GIRARD, *Textes de droit romain* 4 214.

⁷ Concerning the hypothesis advanced by O. HIRSCHFELD, *Sitzungsber. der Berl. Akad. der Wiss. Phil.-hist. Kl.* 1903 I p. 1 sqq., that *monumenta* in Cic. l. c. should mean *Manilii monumenta* in Pomp. I 2, 1. 2 § 39, i. e. an annotated first edition of "*leges Numae*", see below.

3. The so-called *commentarii regum*.

Livy twice mentions *commentarii Numae*. We are told that on studying (*volvens*) Numa's *commentarii* Tullus discovered in them *quaedam occulta sollemnia sacrificia Jove Elicio facta*, and subsequently withdrew into the solitude of his house to occupy himself with certain acts of sacrifice (*sacra*)¹. Of Ancus Marcius we are told the well-known story of the king who ordered Pontifex to have all Numa's rules of public worship (*omnia sacra publica*)² extracted out of the king's memorandum books (*commentarii regis*) and inscribed on a wooden tablet (*album*). Plutarch quotes from Numa's *ἐπομνήματα* (*commentarii*) the religious rule concerning *spolia opima*³. And in Cicero's *pro Rabirio* the prosecutor supports his case by referring generally to *annalium monumenta atque regum commentarii*⁴. [Livy relates that the first consuls were elected at *comitia centuriata* in conformity with *commentarii Servii Tullii*⁵.]

On the strength of the evidence before us there is no reason to doubt that towards the end of the republic a series of sacred precepts and rules (*leges*) together with

¹ Liv. I 31, 8.

² Liv. I 32, 2. Cf. DION. III 3, 6.

³ Plut. *Marcell.* 8.

⁴ Cic. *pro C. Rabirio, perduelliones reo* V 15.

⁵ Liv. I 60, 4. — The *descriptio quam fecit Servius Tullius* in FESTUS (quoting VARRO), which is frequently mentioned in this connection and contains technical expressions referring to the so-called Servian Centuriation (FESTUS *v. procum* cf. FESTUS *v. pro censu*) which in Cic. *orat.* 156 is said to have been derived from *tabulae censoriae* (i. e. the time after 443 B. C.), is of no immediate importance in deciding the question of the historical reality of the so-called *commentarii regum*, as this rule is nowhere said to have been taken from a *commentarius regis*. Its attribution to Servius Tullius is undoubtedly, like the attribution of the whole centuriation to Servius (cf. most recently ROSENBERG, *Zur röm. Centurienverfassung* 1911) due to the usual tendency of younger annalists to make regressive inferences of an aetiologising nature.

some magistrates' *schemata*, or rather formal records or minutes, were ascribed to compilations styled *commentarii Numae* (c. *Servii Tullii* etc.). But a priori it is not very likely, especially with regard to *jus sacrum*, that there should really — as Mommsen¹ assumes — have existed parallel with the sacerdotal *libri* or *commentarii* other special so-called regal *commentarii*, still less that they should originate from the monarchy². The actual term *commentarii*³, evidently taken from the well-known *commentarii magistratum*⁴ of the late republic, which were introduced from Greece, probably not until towards the close of the 3. century B. C., by itself affords decisive evidence of a later origin. In a Piso-fragment handed down to us by Pliny, mention is indeed made of the very *sacrificium Jovi Elicio*, which Livy ascribes to *commentarii Numae*, as being recorded in *Numae libri*⁵. The term itself, *commentarii*, undoubtedly originates from a later period. It is unquestionably also a fiction that the so-called *commentarii Numae* (c. *Servii Tullii* etc.) should really have contained special old Roman magistrates' instructions which as late as the time of Augustus were applied to the execution of certain religious and magisterial acts. There is no evidence showing these records to be special *commentarii regum* until the time of the post-Sullan annalists with their strong aetiologising tendency. Whilst rules concerning acts of state were commonly attributed to Servius Tullius, the founder of the Roman constitution, religious

¹ Cf. MOMMSEN, *Röm. Staatsrecht* I 3 5. II 3, 12. 42 sqq. III 245.

² KARLOWA, *Röm. Rechtsgeschichte* I 107 sq.

³ Comp. the Greek reproduction of the word in PLUTARCH, *Marcell.* 8: *ὑπομνήματα*.

⁴ ARTHUR ROSENBERG, *Einleitung und Quellenkunde zur röm. Geschichte*, Berlin 1921 p. 2 sqq.

⁵ PISO in Plin. *nat. hist.* XXVIII 4, 14.

precepts were usually referred to Numa, the institutor of the Roman religion and cult¹.

If now we examine the individual texts in question, it is quite evident that the sacred rules recorded in Livy² are of an identical nature with the texts which the contemporary antiquarian-historical literature mentions as taken from the pontifical *libri* or *commentarii*, according to the tradition attributed to Numa, and therefore occasionally styled *commentarii* (or as in Piso³ *libri*) *Numae*. The rule in Plutarch concerning *spolia opima*⁴, moreover, appears decisively to indicate that *commentarii Numae* in Livy and Pliny are in reality identical with *commentarii* (or *libri*) *pontificii*. According to Varro in Festus this rule of *spolia opima* was found in *libri pontificii*⁵. Also the expression *commentarii regum* in Cicero's *pro Rabirio*⁶, the only place in which this general term is used, must undoubtedly be understood as *libri pontificii*. In the murder-action against C. Rabirius where an attempt is made to copy the (fictitious) procedure of provocation in the legend of the Horatii, the prosecutor claims that the old legal forms should be adhered to. But in *de re publica*⁷ Cicero expressly mentions *pontificii libri* to substantiate his point that already at the time of the kings, i. e. of the Horatii-case *provocatio ad populum* was known.

In Livy's notice on the first consular elections, *com-*

¹ See above.

² Liv. I 32, 2: *sacra publica* cf. I 31, 8: *occulta sollemnia sacrificia facta*.

³ Piso l. c.

⁴ PLUT. *Marcell.* 8 cf. Festus *v. opima spolia*.

⁵ VARRO in Festus *v. opima spolia: testimonio esse libros pontificum. Comm. Numae* in Liv. I 31, 8. I 32, 2 = *libri Numae* in Piso in Plin. l. c. = *commentarii (libri) pontificii* (Festus l. c.).

⁶ Cic. *pro Rab.* V 15.

⁷ Cic. *de re publ.* II 31, 54.

mentarii Servii Tullii cannot surely have any connection with the pontifical *libri* or *commentarii*. The attribution of the election-rules to the records of Servius Tullius is presumably pure invention¹. To explain the term a general reference to the aetiological historiography of the post-Sullan annalists must suffice here.

From *libri* or *commentarii pontificii* were finally, no doubt, taken those *leges Numae* which in later antiquarian literature appear as *leges regiae*², and which, according to Sextus Pomponius, were said to have been codified in the so-called *Jus Papirianum* already during the monarchy or shortly after the expulsion of the kings.

4. Jus Papirianum. Leges Regiae.

As will be remembered, it was formerly the general assumption, mainly on the basis of the fragment of Sextus Pomponius' *Enchiridion*³ included in the Digests' *De origine juris*, that the *leges regiae* of which the later tradition speaks were a series of statutes regularly carried (*latae*) by Romulus and his successors and voted by the people in *comitia curiata*. These *leges curiatae* were then later — at the end of the monarchy or the beginning of the republic⁴ — said to have been compiled by one Papirius in a statute-book which was styled *Jus (civile) Papirianum* after its compiler⁵. Towards the end of the republic this Papirian compilation was supposed to have been commented by one Granius

¹ Cf. MOMMSEN, *Röm. Staatsrecht* III 245, who places the census-formula at the year 269 B. C.

² See above concerning the meaning of *leges (in monumentis)* in Cic. *de re publ.* II 14, 26.

³ Pomp. I 2 l. 2. § 2 *Dig. de orig. juris* etc.

⁴ Pomp. l. c. § 36 cf. Dionys. III 36, 4.

⁵ Thus BERNHÖFT, *Staat und Recht der röm. Königszeit* 1882 p. 11 sqq. 116 sqq. Cf. MOMMSEN II 41 sqq. KARLOWA 106 sq.

Flaccus whose commentary was still known in the classical period¹.

Since the beginning of the 16. century when the French humanists laid the foundations of historical Romanism the Pomponian fragment has been the object of learned interpretations, first by BUDÉ and ALCIAT, later by CUJAS. Some of the French Romanists such as HOTMAN² and CUJAS³ had indeed no absolute faith in Pomponius as a legal historian. But no one questioned the genuineness of the narrative of *Jus Papirianum*. What was keenly debated in the 16. century in France, and later in 18. century Germany (Hoffmann-Heineccius) was whether Papirius' name was Sextus⁴ Publius⁵ or Cajus⁶, and whether the compilation had

¹ Paul. L 16 I. 144. *Dig. de verb. signif.* — BRUNS, *Fontes juris Romani* I 7 3.

Since the 16. century and into our own period it was, moreover, widely held, that the "laws of Romulus" had been authentically handed down through the inscription on a copper-tablet, the so-called *tabula Marliani* (MARLIANI, *Topographia antiquae Romae* 1534 V. 9 cf. PUGNA, *Inst.* I 72), found at the Capitol at the beginning of the 16. century. Already FRANÇOIS BAUDOIN had, indeed, in his *Leges Romuli* considered it improbable that the tablet itself originated from the earliest Rome (*Libri duo in leges Romuli et leges XII Tabularum*, Paris 1550). And later ANTOINE LE CONTE referring to the spurious character of the linguistic form had declared the inscription a falsification. (In the appendix to *Brevis collectio veter. legis XII Tabul.*, Aurel. 1572). So also the philologist JUSTUS LIPSIUS in *Leges Regiae* 1577 and d'ARNAUD, *Variar. conjectur. libri* II, Leovard. 1744 I 3. Cf. my paper "Notes sur Cujas", in "Studi in onore di P. Bonfante", Pavia 1929 III p. 133. But Baudouin had assumed that the contents were genuine and based his commentary on the text. And the later romanists' attempts at restitution were built on Baudouin's recension of the text. Cf. DIRKSEN, *Versuche zur Kritik und Auslegung der Quellen des röm. Rechts*, Leipz. 1823. Abhandl. 6 p. 251 sqq.

² HOTTOMANN, *Antitribonien*, 1567 XII 96.

³ *Multa ab eo detruncata sunt. Comm. ad tit. de orig. juris*, Paris 1585, ad. § 34.

⁴ Pomp. I. c. § 2.

⁵ Pomp. I. c. § 36.

⁶ Dion. III 36, 4.

been published under the first or the second Tarquinius¹. A critical treatment of the individual *leges* had indeed been attempted — besides by SCALIGER in the notes to his edition of Festus 1565² — by LE CONTE, the philologists JUSTUS LIPSIUS and FULVIUS URSINUS as well as by GRAVINA. But these essentially exegetical investigations were in the main directed only towards the fragments which had been handed down in their actual wording, particularly in Festus and Pliny. And the sober historical conception at the root of their treatment of the texts had not penetrated into later researches in Roman law. The usual procedure adopted was the unfortunate method introduced by the French civilist LOUIS LE CARON (Charondas)³ in his restitution of the “ancient Roman statutes”⁴. This consisted in indiscriminately collecting and compiling as *leges regiae* any record of the Roman kings’ civil or constitutional institutions found in the classical writers, particularly Dionysios and Plutarch. Besides the faith in the so-called *tabula Marliana*⁵ it was, moreover, extremely damaging to a critical treatment of the legal material, that as a rule the double assumption had been made, that the *sententiae* occurring in the second and third books of Cicero’s *de legibus* contained genuine fragments of the XII tables, and that all the “laws” given by the Roman kings were included in the decemviral legislation. In the laws set up by Cicero

¹ The same question has also been keenly debated in our own period. Most recently by OTTO HIRSCHFELD, *Sitzungsberichte der Berliner Akademie. Phil. hist. Kl.* 1903 I p. 5 sqq. See below.

² Festus, ed. LINDSAY 1913 praef. XXIV.

³ TARDIF, *Hist. des sources du droit français, origines romaines*, Paris 1890 p. 461.

⁴ *Veteres Romanorum leges a Lud. Charondas restitutae*, Paris 1567 p. 1 sqq.

⁵ See above.

it was therefore assumed that *leges regiae* were indirectly handed down¹.

There is no reason to doubt that during the early empire there existed a work commonly called *Jus Papirianum* containing certain so-called *leges regiae* which the Romans themselves carried back to the monarchy². Nor is it improbable that such a compilation was known already in the latest period of the republic and has been commented by that Granius Flaccus who according to Censorinus³ dedicated an exegetical work, *de indigitamentis*⁴, to Caesar, the dictator. But it is quite improbable that this so-called *Jus Papirianum* should originate from the monarchy — or the period immediately following the expulsion of the kings — and that it should have contained real laws.

As his whole legal historical survey shows, POMPONIUS is an extremely uncritical compiler whose testimony cannot a priori be credited with any historical value whatsoever. Cicero, who was certainly accurately acquainted with the earlier Roman legal literature and with the archives of his period, though he refers in several places to *leges Numae*⁵, does not once mention the Papirian compilation of laws⁶.

¹ This theory had particularly been drawn up and elaborated and pursued by PIGHIUS, cf. DIRKSEN, *Versuche* 256 cf. 244. — A restitution of the *Jus Papirianum* in the alleged wording of the texts had been attempted by TERRASSON, *Hist. de la jurisprudence romaine*, Paris 1750 § 14 p. 22 sqq.

² Cf. SERV. in *Aen.* XII 836 (*lex Papiria*). *Fontes* I 3.

³ CENSORIN. *de die natali* III 2.

⁴ FUNAIOLI, *Pauly-Wissowa-Kroll*, *R. E.* VII 1819 sq.

⁵ Cf. especially Cic. *de re publ.* II 14, 26. See above.

⁶ This silence is assumed by OTTO HIRSCHFELD (*Die monumenta des Manilius und das Jus Papirianum*, *Berl. Sitzungsber. Phil.-hist. Kl.* 1903 I 9 sqq.) to be the more significant because Cicero in the year 46 in his letter to Papirius Paetus (ad. fam. IX 21) in which he endeavours to

Nor does Cicero's contemporary, Varro, who according to the fragments preserved in Festus also appears to have claimed the support of [Numae] *Pompilii regis leges*¹ in sacred matters, in any place speak of a *Jus Papirianum*.

It is not until DIONYSIOS that we find a reference to one Papirius who edited a collection of old laws². But Dionysios' narrative differs on essential points from the Pomponian version. We are told that Ancus Marcius with the aid of *pontiffs* had inscribed Numa's *sacrorum commentarii* upon wooden tablets which were set forth in the Forum. In the course of time they had been devoured by age. After the expulsion of the kings they had therefore once more been published by Pontifex Maximus Cajus Papirius³. These are not a collection of *leges curiatae ad populum latae*, but only an edition of Numa's sacred records (*ἱερῶν συγγραφαί*). And the term *Jus Papirianum* does not occur.

As for LIVY, who seems to build on the same tradition as Dionysios in his narrative of Ancus Marcius, who "ordered Pontifex to copy Numa's *sacra publica*"⁴ from the

prove the patriciate of the Papirian family, makes no reference to one C. Papirius, pontifex maximus. Cf. on the other hand KALB, *Jahresbericht über die Fortschr. d. klass. Altertumswiss.* CXXXIV 14 sqq.: in the time after *lex Ogulnia* (300 B. C.) one Papirius, who was plebeian and therefore not mentioned by Cicero, made extracts of *leges regiae* out of the pontifical records and published them in book-form. Later M'. MANILIUS [cos. 149] had a new edition made of this work (see below). This again is opposed by KIPP, *Quellen des röm. Rechts* 3 27 5: Cicero would certainly also in his letter have spoken of a plebeian who as Pontifex Maximus had published the ancient sacred rules. See, however, PLIN. *n. h.* XXXII 2, 20.

¹ Festus *v. opima spolia*. BRUNS, *Fontes* II 19.

² Dion. III 36, 4.

³ Evidently identical with the Manius Papirius later by Dionysios (V 1, 4) denoted by *πρῶτος ἱερῶν βασιλεύς* (*rex sacrorum*). Cf. Pomp. l. c. § 36: *in primis peritus Publius Papirius*, the first legal scholar. *Fontes* I 3.

⁴ α: rules of public worship.

commentarii regis upon wooden tablets and thereupon have them publicly posted up”¹, and who later recounts that after the Gallic conflagration *tribuni militum* ordered an energetic search to be made for those *foedera* and *leges* which were not immediately found (*quae non comparerent*), he merely makes a general observation — in an inserted clause — that the only existing *leges* besides the XII tables were *quaedam* (certain) *regiae leges*². And *regiae leges* undoubtedly here mean Numa’s rules of public worship (*sacra publica*) mentioned earlier in the account of Ancus Marcius’ first acts of government³ and extracted from the king’s memorandum books (*commentarii regis*) and published upon wooden tablets⁴. [The passage immediately following, which says that “whilst some of the treaties and laws (*foedera et leges*) were made accessible even to the common people (*alia ex eis edita etiam in vulgus*), such as dealt with sacred rites (*quae ad sacra pertinebant*) were kept private (*suppressa*) by the pontiffs, chiefly that they might hold the minds of the populace in subjection through religious fear”, is certainly the tendencious invention of a later annalist].

Jus Papirianum is undoubtedly spurious, just as Papirius himself is evidently a fictitious person⁵. *Jus Papirianum* is probably a private sacerdotal compilation from a far later

¹ Liv. I 32, 2. See above.

² Liv. VI 1, 10.

³ Liv. I 32, 2.

⁴ Cf. also the preceding passage in Liv. VI 1, 9: *nulla de re prius quam de religionibus* . . . — We cannot, indeed, accept the current view, concluding from the well-known passage in Liv. VI 1, 2 that the *regiae leges* mentioned in VI 1, 10 perished in the fire. It is only said that the major part (*pleraeque*) of the existing written records (*litterae*) in *commentarii pontificum* and other public and private documents (*monumenta*) were destroyed in the fire.

⁵ The fact that Papirius is equipped with the most varied *praenomina* (see above) should be ample proof of his mystical character.

period¹ and the unblushing editor used the old family name Papirius thereby to lend his collection of laws an air of dignity and age in order that it might gain more respect². And the *leges* which this "Papirian" compilation contained were undoubtedly not "regal" laws but old ritual precepts and rules of sacred law, *leges* in the usual fundamental meaning of the term.

The existence of a collection of *leges curiatae* from the monarchy or from the time before the XII tables would, to begin with, be a pure denial of the constant Roman tradition³ of the legal state before the decemviral legislation. It is also at variance with Pomponius' own previous ac-

¹ The problem of whom the editor was has (see above) been taken up in recent years by LAMBERT and HIRSCHFELD. Whilst LAMBERT, *Nouv. rev. hist. de droit* XXVI 165 (cf. LENEL, *Zeitschr. der Sav.-Stift.* XXV 498 sqq.) presumes that Granius Flaccus, the commentator of the work, is also its editor, HIRSCHFELD l. c. p. 10 is inclined to believe it is Valerius Antias.

² This view is supported by GIRARD, *Textes de droit romain* 4. P. KRÜGER, *Geschichte der Quellen und Literatur des röm. Rechts* 1912 p. 4 sqq. E. PAIS, *Storia crit.* I 2 p. 685 sqq. See also ZOCCO-ROSA, *L'ius Papirianum da Glück ad Hirschfeld*, Torino 1905.

The German Romanist, EDUARD DIRKSEN († 1868), has the merit of being the first who clearly and resolutely separated the question of the genuineness of *Jus Papirianum* from that of the genuineness of the individual so-called *leges regiae*. DIRKSEN, *Versuche* 232 sqq.

Tabula Marliani is undoubtedly, not only in form but in contents, spurious. This is clearly seen by a comparison of the text of the inscription with Dionysios' and Plutarch's general historical account of the state of law under Romulus. Not only everything that these historians relate about legal rules and institutions at the time of Romulus is included in the inscription as laws given by Romulus, but also what Dionysios evidently only states as a conclusion drawn by himself (the wife's right to inherit her husband) from a positive rule of law (the community of property between husband and wife. Dion. II 35) is given in the inscription as a special "law". *Tabula Marliani* is nothing more than a poor juridical extract of the classical historians furnished with a certain amount of ornamentation.

³ Cic. *de re publ.* V 2, 3 cf. II 14, 26. Dion. X 1. X 57. Tac. *Ann.* III 26.

count¹. The political reason for the Terentile rogation was undoubtedly the prevailing legal uncertainty due to the fact that no written laws existed². Now, the following argument seems to be decisive: The people in *comitia curiata* unquestionably only voted on *leges speciales* (testament, abrogation). But the certainly authentic texts all have general contents. Among these we find, moreover, a series of purely ritual or sacred precepts³. But laws on such matters have certainly never been subjected to a popular vote. And what does not apply to a special group cannot be a peculiar characteristic of the whole⁴.

The general sacred-legal character of the Papirian codification is also indicated by the later tradition. According to Servius' commentary on the Aeneid the (later) title of the compilation was "*de ritu sacrorum*"⁵. In his definition of *paelex*⁶ Julius Paulus, moreover, refers to Granius Flaccus' commentary, *liber de jure Papiriano*⁷. And the grammarian Macrobius quotes *Jus Papirianum* to substantiate a ritual rule⁸.

¹ Pomp. l. c. § 1. The observation inserted by Pomponius (l. c. § 3) that *leges regiae* had fallen into disuse after the expulsion of the kings and that the Romans recommenced *incerto magis jure et consuetudine aliqua uti*, which necessitated the decemviral legislation, is evidently simply invented to establish harmony between the notice about *leges regiae conscriptae in libro Sexti Papirii* and the constant tradition (§ 4) of the motive of the decemviral legislation.

² Dionysios' account that Servius Tullius had given about 50 laws (*νόμοι*) concerning contracts and delicts (Dion. IV 13, 1 cf. IV 36. 43, 1, V 2. (IV 25) *Fontes* I 14) cannot, already for this reason, be regarded as in any way reliable.

³ FESTUS, v. *paelices*, *opima spolia*, *occisum* etc.

⁴ See my "*Introduktion til Romerretsstudier* I (1920) 30 sq.

⁵ SERV. *Aen.* XII 836.

⁶ See my paper "*Mariage par usus*" 32.

⁷ PAUL. L 16 l. 144. *Dig. de verb. signif.*

⁸ MACROB. *Sat.* III 11, 5. BRUNS, *Fontes* I 3.

If Granius Flaccus, the exegetist of *De indigitamentis*, be the

There can be no doubt that the individual so-called *leges Numaë*, which in later literature appear as *leges regiae*, were taken from *libri* (or *commentarii*) *pontificii*. This also seems to be definitely indicated by the *lex Numaë de spoliis opimis* referred to in Festus and Plutarch¹. Concerning this rule, which Servius attributes to *leges Numaë*², Varro expressly says in Festus that it was included in *libri pontificii: testimonio esse libros pontificum*³.

5. Publication.

There can be no doubt that up to a very late period the "holy Books" of the priests were not universally accessible but were continually kept secret by the patrician commentator, and particularly if he be the editor, this argues to the same end.

The most recent literature: GIOV. OBERZINER, *Appunti sull' iure Papiriano*, I (1927) 15 sqq.

The hypothesis advanced by HIRSCHFELD, *Berl. Sitzb.* 1903 I p. 3 sqq. (cf. MITTEIS, *Zeitschr. der Sav. Stift.* XXIV 419 sqq.), on the basis of Cic. *de rep.* II 14, 26: *idemque Pompilius . . . propositis legibus his, quas in monumentis habemus* etc. (see above), that the work spoken of by Pomponius in Dig. I 2 1. 2 § 39, *monumenta* by M'. MANILIUS (consul 149), should have been a commented first edition of "Numa's laws" (*leges regiae*) is rightly rejected by G. BAVIERA, *Arch. giur.* LXXI (1903) p. 255 sqq., *Scritti giuridici* I (Palermo 1909) 37 sqq. See now HIRSCHFELD, *Kleine Schriften* 1913 p. 239. *Monumenta* in Cic. l. c. probably means *libri pontificii*. — Cf. further the above mentioned hypothesis advanced by KALB. Already shortly after *lex Ogulnia* one Papirius had *leges regiae* edited as a book on the basis of the pontifical writings. See also PAIS, *Ricerche sulla storia e sul diritto pubblico di Roma* I 243 sqq. and LAMBERT, *Hist. trad. des XII tables. Mélanges Appleton* 521.

¹ Cf. above, FESTUS *v. opima spolia*. Plut. *Marcell.* 8.

² SERV. *Aen.* VI 860.

³ VARRO in FESTUS l. c. — *Commentarii Numaë (regis)* containing *sacra publica* in Liv. I 32, 2 (cf. I 31, 8) = *Pompilii sacrorum commentarii* (ἱεροῶν συγγραφαί) in Dion. III 36, 4 (cf. *commentarii sacrorum* in FESTUS *v. nectere*) = *libri Numaë* in PISO in Plin. *nat. hist.* XXVIII 4, 14 (see above) = *commentarii (libri) pontificii* (FESTUS, *v. opima spolia*, cf. Liv. VI 1, 2: *litterae . . . in commentariis pontificum*).

priests “*ut religione obstructos haberent multitudinis animos*”, as Livy says of the pontifical *libri*¹. No decisive change was wrought in this state of affairs by the codification in the XII tables of certain parts of the hitherto unwritten common law. Certain more important provisions of the ancient, religiously influenced *jus civile* were indeed now made public. And this publication was certainly not without political significance. Within the legal domains in question the administration of the law had to a certain extent been placed under popular control by the rules having been fixed in writing and published. But it was still the secret of the patrician priests how the individual citizen might formally claim his right.

A fundamental — though strictly limited — change in the priestly monopoly of expert knowledge of *jus civile*, which was without doubt still closely connected with *jus sacrum*, probably took place at the beginning of the 3. century, after the Plebeians had been admitted to the pontifical and augural colleges, and the basis of the sacerdotal privileges, the patrician class-interest, had thus in reality been removed. Shortly after the *lex Ogulnia* (300 b. C.) the formal petitions, *legis actiones*, appear indeed to have been published in book-form in the so-called *Jus (civile) Flavianum*², possibly with the collaboration of the newly democratised pontifical college — and this may have given

¹ Liv. VI 1, 10 cf. Liv. IV 3, 9: *si non ad commentarios pontificum admittimur*. Cic. *de domo* 138. — FESTUS, *v. arcani*. Plut. *quaest. Rom.* 99. Cic. *de domo* 39 (*libri augurales*). — See moreover Liv. IX 46. Val. Max. II 5, 2 cf. Pomp. Dig. I 2 I. 2 § 6 (*Jus civile*).

² Liv. I. c. Val. Max. I. c. Cf. Pomp. Dig. I 2 I. 2 § 7. See moreover Cic. *ad Att.* VI 1, 8; *de orat.* I 41, 186; *pro Murena* XI 25. DANNEBERG. *R. E.* X 1215 sqq. and the literature quoted. LENEL, *Holtzendorffs Encyclop.* 17 330. Cf. moreover K. J. BELOCH, *Hermes* LVII 119 sqq., opposed by M. P. NILSSON, *Strena philol.* Upsal (1922) p. 131 sqq.

rise to the creation soon afterwards of the beginnings of a civil jurisprudence independent of the sacerdotal colleges (Ti. Coruncanianus)¹. Probably we may assume the calendar, *fasti*, also to have been published almost at the same time, very likely a few years later², *circa forum in albo*³.

The tradition of the proper *jus sacrum* which still dominated public law and the institutions of the law of the family was, however, still handed down within the patrician-plebeian sacerdotal colleges by a *successio prudentium*.

Separate extracts of the sacred records kept in the pontifical archives were on the other hand certainly published at an early time by priestly editors. Certain general rules (*leges*), concerning public worship (*sacra publica*) and therefore of especial importance to the people, may thus, for example, have been published for practical reasons as a kind of short priestly ordinances. It is not unlikely that it is such an old religious publication which forms the historical nucleus of the story, which Livy and Dionysios⁴ trace back to the monarchy, of Ancus Marcus who as Pontifex Maximus⁵ ordered Numa's *sacra publica* to be extracted from *commentarii regii*⁶, inscribed on wooden tablets (*in album relata*) and publicly posted up. By these *sacra publica* are probably meant those sacred rules (*leges*) which later, in the account of the destruction during the

¹ Ti. Coruncanianus, the first plebeian pontifex maximus (consul 280) "qui primus profiteri coepit". Pomp. Dig. I 2 1, 2 § 35.

² Liv. I. c.

³ GIRARD, *Hist. de l'organisation judiciaire des Romains* I 223.

⁴ Liv. I 32, 1. Dion. III 36, 4 (τὰς περὶ τῶν ἱερῶν συγγραφάς, ἕς Πομπύλιος . . .).

⁵ Cf. Dion. III 36, 4: ὁ Μάρκιος συγκαλέσας τοὺς ἱεροφάντας καὶ . . . (*Marcus convocatis pontificibus*) . . .

⁶ *Commentarii regii* = *comm. pontificum* (Liv. VI 1, 10). See above.

Gallic conflagration, are referred to as (*quaedam*) *regiae leges* of which we are told that *alia ex eis edita etiam in vulgus*, i. e. they were republished¹. Certain records of acts of worship (*sacrificia, vota, piacula* to atone for *prodigia*, festivals on the occasion of imminent danger etc.) performed *pontificum decreto* may similarly have been regarded by *pontifices* as being so generally important that they might be published². We do not, however, know with any degree of certainty in what manner and to what extent such publications may have taken place. But an idea which immediately presents itself to the mind is that in the earlier period it was done — with an indication of the external (historical or fictitiously historical) occasion — on the tablets, *annales pontificum*, which Pontifex Maximus himself caused to be annually exhibited in public³.

The origin of Roman annalistics is undoubtedly to be found in the pontifical college. Quintilian says: *nihil in poetis supra Livium Andronicum, nihil in historiis supra pontificum annales haberemus*⁴. But this historiographical activity of the pontifical college did not arise out of a self-evident historiographic function of the college, it is due to pontifical care in regulating the festival calendar, i. e. determining which days belonged to the gods (*dies nefasti*) and which were left to mortal men (*dies fasti*), in connection

¹ The account in which we are told that the *sacra publica*, once published (by Ancus Marcius, Liv. I 32, 2), were later (after the fire of Rome) suppressed by pontifices for selfish reasons (*quae ad sacra pertinebant . . . suppressa*, Liv. VI 1, 10) is evidently a later tendentious invention.

² See below: *annales*.

³ As to the hypothesis advanced by KALB and PAIS, that *leges regiae* were edited at the beginning of the 2. century as a book based on the pontifical writings, on the initiative of one Papius, see above.

⁴ Quint. X 2, 7.

with a practical need for the publication of certain special religious records.

We finally turn to the so-called *annales maximi*. Their contents, too, undoubtedly embraced material of a sacred-legal and religious-historical nature. But what is the relation of this great late-republican publication to the older pontifical edition, the pontifical chronicle, *annales pontificum*? In order to elucidate the whole literary activity of the pontifical college we must therefore try to make up our minds about the extremely difficult and still very obscure problems of the sources, which looms before us.

Nihil in historiis supra pontificum annales haberemus.

Quint. X 2, 7.

6. *Annales pontificum* [maximorum]. *Annales maximi*.

I. We must undoubtedly maintain — with Mommsen and Enmann¹ — that the origin of the Roman city-chronicle is to be traced back to the pontifical college, to the tablet which since ancient times was yearly posted up by Pontifex Maximus on the Forum at Regia. This *tabula dealbata*², besides the calendar (*fasti*)³ and the list of eponyms (*fasti consulares*)⁴ undoubtedly connected with it, contained a short account of the most important events

¹ TH. MOMMSEN, *Röm. Geschichte* I § 464 sqq. *Röm. Chronologie* 2 137. 209 sqq. A. ENMANN, *Die älteste Redaction der Pontificalannalen*, *Rhein. Mus. N. F.* 57 (1902) p. 517 sqq. Cf. ERNST KORNEMANN, *Der Priestercodex in der Regia und die Entstehung der altröm. Pseudogeschichte* 1 sqq.

² Cf. SERV. in *Aen.* I 373: *tabulam dealbatam quotannis pontifex maximus habuit.*

³ *fasti* ∅: *dies fasti* = *dies quibus fas est* sc. *legere agere*. GAI. IV 29. Cf. WISSOWA 435.

⁴ As an illustration of the relation between calendar and list of eponyms, see the *Fasti Venusini* of the early empire. *Corp. Inscr. Lat.* 12 66 cf. 220. ROSENBERG, *Einleitung und Quellenkunde zur röm. Geschichte* 120.

of the past year. These annual tablets with their calendar and chronicle then gradually passed into the college archives. Nothing certain, however, is known about the form of the later chronographical activity of the pontifical college. All we know is that at the time of the Gracchi, under the pontificate of P. Mucius Scaevola, all the pontifical tablets then in existence were collected and published in the so-called *annales maximi*¹.

This late republican edition of the pontifical records is still commonly² considered the first and only official edition of the pontifical annals. This view, however, is rejected by A. Enmann. In agreement with the general observations on certain constant fundamental features in the conventional Roman account of the city's origin and the history of the kings already made by Mommsen³, he endeavours to prove the necessity of assuming the existence of an earlier edition of the pontifical annals⁴ previous to the oldest private historical writings. This pre-Fabian pontifical chronicle is then fixed at the time of the first Punic war and attributed to Ti. Coruncanus, *primus ex plebe pontifex maximus creatus*.

Ernst Kornemann is probably right in accepting in its essentials Enmann's hypothesis as to this problem of the antiquarian-historiographical activities of the pontifical col-

¹ SERV. l. c.: *cujus (o: pontificis maximi) diligentiae . . . in octoginta libros veteres retulerunt. Cic. de oratore II 52: ab initio rerum Romanarum usque ad P. Mucium pontificem maximum. SERVIVS' authority is usually taken to be Verrius Flaccus. O. SEECK, Die Kalendertafel der Pontifices (1885) p. 86.*

² SOLTAU, SEECK, CICHORIUS (*R. E.* I 2248 sqq.), E. PAIS etc.

³ Cf. MOMMSEN, *Gesam. Schriften* IV 26. See also K. J. NEUMANN, *Festschrift zur 46 Phil.-Versammlung zu Strassburg* 1901 p. 325.

⁴ ENMANN, 521 sqq., cf. ED. MEYER, *Apophoreton* 1903 p. 158, KORNE-MANN 9 sqq. 20 sqq. E. PAIS, *Storia critica di Roma durante i primi cinque secoli*, Roma (1913) I 1 p. 53 sqq. See also ROSENBERG 120 sq. 124.

lege, which is of such great importance to the entire study of the Roman sources in general, and those of legal history in particular.

Simple practical considerations, together with the nascent interest in national history, and presumably also the memory of the destructions of the Gallic fire, must certainly, already at a fairly early period, have rendered necessary an editorial treatment of the highly perishable and not easily accessible wooden tablets in order to make the historical material more easily available and at the same time preserve it from destruction. But also the evident uniformity of the older Roman tradition of the prehistoric city and the history of the seven kings would — as Mommsen pointed out — seem to suggest that the incipient private historiography (Fabius, Cincius, Ennius, Cato) had as a primary common source an already existing edition of the primitive pontifical chronicle.

Next, Kornemann carried Enmann's researches a step further¹ and attempted to prove that in the earliest Roman literature there are traces of the pre-Fabian edition postulated by Enmann. In the oft interpreted text in Piso²-Dionysios: *ὁ παρὰ τοῖς ἀρχιερεῦσι κείμενος πίναξ*³, as well as in the famous Cato-fragment in Gellius, which already Hübner⁴ compared with the Dionysios-text: *non lubet scribere quod in tabula apud pontificem maximum est*⁵, *ὁ πίναξ* and *tabula* must, according to Kornemann who is probably

¹ KORNEMANN, *Klio* XI 245 sqq. Cf. *Der Priestercodez in der Regia* 11 sqq.

² O. LEUZE, *Die röm. Jahrählung* 1908 p. 200 sqq. KORNEMANN, *Klio* XI 246 f. Cf. HOLZAPFEL, *Klio* XII 101. KORNEMANN, *Der Priestercodez* 11 f.

³ E. HÜBNER, *Jahrb. für Philol.* LXXIX 413 sq.

⁴ Dion. I 74, 3.

⁵ Cato *ex Originum quarto* in Gell. *Noctes atticae* II 28, 6. Fragm. 77 in PETER, *Hist. Rom. rel* I 2 73.

right, denote an older, official edition of the pontifical annals.

The prevalent view, that *annales maximi* were the first and only redaction of the pontifical annals, formerly led to $\delta \pi \acute{\iota} \nu \alpha \xi$ in Dionysios being sometimes interpreted as *annales maximi*¹, sometimes — by more recent students² — as the calendar-tablet (*tabula dealbata*) which was annually set forth by Pontifex at Regia. And Hirschfeld and Holzapel are indeed of opinion that $\delta \pi \acute{\iota} \nu \alpha \xi$ must mean the so-called Capitoline *fasti*³ inscribed on the walls of Regia.

$\delta \pi \acute{\iota} \nu \alpha \xi$ cannot, however, mean *annales maximi* for the simple reason that Piso's annals, as shown by Soltau, were certainly written before the publication of *annales maximi*⁴. On the other hand, $\delta \pi \acute{\iota} \nu \alpha \xi$ which is said to have been in the custody of ($\kappa \epsilon \lambda \mu \epsilon \nu \omicron \varsigma$) *pontifices maximi*, i. e. inside Regia, can certainly neither have meant the calendar-tablet annually posted up on the Forum at Regia nor the *fasti Capitolini* inscribed on the outer walls of Regia⁵. The latter interpretation is also impossible if we assume that Piso is Dionysios' source, because the composition of these magistrate's lists undoubtedly only dates from the Augustinian period⁶. There is no other possible interpretation of $\delta \pi \acute{\iota} \nu \alpha \xi$ than an older redaction of the pontifical annals⁷.

¹ References here and in the following in LEUZE 197 sqq.

² Thus SEECK supported by MOMMSEN. Cf. also CICHORIUS, *Pauly-Wissowa R. E.* I 2248 sq. and probably ENMANN, l. c.

³ LEUZE himself has advanced the hypothesis that $\delta \pi \acute{\iota} \nu \alpha \xi$ was the first officially edited complete list of magistrates, the "pure list of eponyms". LEUZE l. c.

⁴ SOLTAU, *Livius' Geschichtswerk* 30.

⁵ Cf. HENZEN und DETLEFSEN in *C. I. L.* I 1 422 (1 2 5).

⁶ SCHÖN, *R. E.* VI 2031 sqq. — With regard to LEUZE'S own hypothesis, see KORNEMANN'S general criticism of his theory of the "pure list of eponyms". *Der Priestercodez* 13.

⁷ This interpretation of $\delta \pi \acute{\iota} \nu \alpha \xi$ as a codification, is in no way as

With particular regard to the expression *tabula apud pontificem maximum* in the Cato fragment, of which $\delta \text{ παρὰ τοῖς ἀρχιερεῦσιν κείμενος πῖναξ}$ is simply a translation, the actual meaning of CATO'S remark, his general disinclination to state (*non lubet scribere*) all the immaterial things¹, *quod in tabula apud pont. max. est*, seems to point to a historiographical work of a certain unfruitful category and not merely to an annual calendar-tablet set forth by Pontifex².

It is undoubtedly also an older codification of the pontifical tablets which occurs in Servius' *annalium confectio* in the Aeneid scholium³ under the name of *annui commentarii* and in the corresponding survey in Cicero's *de oratore*⁴ as *tabula domi* [*proposita*]. The *annales* whose

alleged by CICHORIUS l. c. 225, incompatible with Dion. I 73, 1 where *παλαιοὶ λόγοι ἐν ἱεραῖς δέλτοις* is spoken of, because $\delta \text{ πῖναξ}$ in Dion. I 74, 3 must indeed be understood as a *codex* consisting of separate *ἱεραὶ δέλτοι* (*tabulae*) containing *παλαιοὶ λόγοι*. Against this HIRSCHFELD, *Hermes* IX 107 (*ἱεραὶ δέλτοι = annales maximi*).

¹ GELL. l. c. = *quotiens annona cara, quotiens lunae aut solis lumine caligo aut quid obstiterit*. Cf. K. J. NEUMANN, *Hermes* XXXI 529.

² KORNEMANN, *Klio* XI 249 proves that *tabula* in Cato may be synonymous with *codex* (*caudex*) by quoting the Cato-fragment in Fronto *ep. ad. Ant. imp.* I 2 p. 99 N. Cf. moreover Cic. *pro Roscio com.* 7.

Concerning analogies from Greek civilisation see the researches of A. WILHELM and K. DZIATZKO, mentioned by KORNEMANN l. c. 249 sqq., and also GARDTHAUSEN, *Griech. Palaeographie* I 2 (1911) p. 35 sqq. 123 sqq.

³ SERV. in *Aen.* I 373: *ita autem annales conficiebantur: tabulam dealbatam quotannis pontifex maximus habuit, in qua praescriptis consulum nominibus et aliorum magistratum digna memoratu notare consueverat domi militiaeque terra marique gesta per singulos dies, cuius diligentiae annuos commentarios in octoginta libros veteres retulerunt eosque a pontificibus maximis, a quibus fiebant, annales maximos appellarunt.*

⁴ Cic. *de oratore* II 12, 52: *ab initio rerum Romanorum usque ad P. Mucium pontificem maximum res omnes singulorum annorum mandabat litteris pontifex maximus referebatque (M. S. efferebat) in album et proponebat tabulam domi, potestas ut esset populo cognoscendi; ii qui (iique) etiam nunc annales maximi nominantur.*

confectio Servius describes from his source, probably Verrius Flaccus, can certainly not¹ be those pontifical annual tablets *tabulae dealbatae*, which he mentions immediately before in a general introductory notice² and which are nowhere called *annales*. By *annui commentarii*, as the *annales* are termed immediately afterwards, and which, we are told, were later edited through the care of Pontifex Maximus in the 80 books called *annales maximi*, cannot, if only for terminological reasons, be meant the certainly few and extremely scant historical notes in the old calendar-tablets accumulated in the archives of the pontifical college, but the term must be understood to denote the annalistic records continued by *pontifices* in an historical compilation already then commenced. Moreover, in the expression *domi militiaeque terra marique*, the words *terra marique* seem to indicate a period when the Romans had begun to wage overseas wars³, unless we understand the passage, as it is possible, as a mere established formula borrowed from the language of a later period.

In Cicero, where *tabula domi* [*proposita*] corresponds absolutely to Cato's *tabula apud pontificem maximum*, *annales maximi* quite obviously also means the later edition. Undoubtedly, the *annalium confectio* described, refers in this place, too, not to the old calendar-tablets but to a later official redaction of the pontifical chronicle. It is said of *annalium confectio* that Pontifex Maximus recorded (*mandabat litteris*) the most important events of the year and then transcribed (*efferebat*) his account on a wooden tablet (*album*) which was finally

¹ Cf., however, KORNEMANN, *Klio* XI 253 sq.

² SERV. I. c.: *tabulam dealbatam quotannis pont. max. habuit*.

³ Cf. NIESE, *Röm. Geschichte* 4 12.

included in the codex (*proponebat tabulam domi*)¹ set up at Regia and consisting of separate tablets (*alba*).

By the very predicate *annales maximi*, the great annals, as opposed to an older and smaller codification merely called *annales*, they seem, moreover, to present themselves as the later edition².

We do not know when and by whom the earliest official redaction of the chronicles as recorded on the calendar-tablets, that of the *tabula domi* [*proposita*] (*tabula apud pontificem maximum* in Cato, *ὁ πῖναξ* in Piso-Dionysios) was made.

The famous passage in Cic. *de legibus* about the earlier Roman private annalistic literature seems, however, to indicate³ that it is at any rate older than the earliest private annals (Fabius Pictor). For it reads: *nam post annalis pontificum maximorum, quibus nihil potest esse jejunius (MSS iucundius), si ad Fabium aut ad eum qui tibi semper in ore est, Catonem, aut ad Pisonem aut ad Fannium aut ad Vennonium venias*. And the passage: *post annalis pontificum maximorum si aut ad Fabium venias*⁴ seems to prove very clearly that *annales pontificum maximorum* can here neither mean *annales maximi*, which were later than Fabius and could not have been termed *ieiunius* by Cicero⁵, nor the old annual calendar-tablet, *tabula deal-*

¹ *Tabula* is here as in Cato synonymous with *codex*. *Pars pro toto*. Cf. Cic. *pro Roscio com.* 7.

² Concerning the Romans' own etymology (SERV. l. c. cf. FESTUS *v. maximi annales*. MACROB., *Sat.* III 217) see SEECK, *Die Kalendartafel* 86.

³ See my paper: *Annalium confectio* in Nord. Tidsskrift f. Filologi 4. Rk. VI p. 89 sqq. — KORNEMANN l. c. 255. *Der Priestercodex* 16.

⁴ Cic. *de leg.* I 2, 6. Cf. Quintilian X 2, 7: *nihil in historiis supra pontificum annales haberemus*. Cf. HÜBNER, *Jahrb. f. Phil.* LXXIX 412.

⁵ On the other hand, we are probably not meant to put too literal a

bata, which is nowhere called *annalis* and which Cicero does not once mention, but must be the *tabula domi* [*proposita*], of which he speaks in his *annalium confectio* in *de oratore*.

We must therefore now place the oldest edition of the pontifical chronicle, *annales*, at the latest at the end of the 3. century B. C.¹

Hence we may probably assume that a redaction of the pontifical tablets was made in the pontifical college in the period preceding the first private annalists, more exactly before Fabius, that the name of this pre-Fabian pontifical chronicle was purely and simply *annales*², and that these *annales* in their outward form appeared as a collection of tablets, a *codex*, i. e. a wooden codex (*caudex*), consisting of single tablets (*δέλτοι*, *tabulae*³) posted up in the interior of Regia (*domi*, *apud pontificem maximum*, *ὁ παρὰ τοῖς ἀρχιερεῦσιν κείμενος πίναξ*) but accessible to the public⁴.

construction on the word *jejunius* as used by Cicero (i. e. at the time of the younger annalists).

¹ A more exact date may perhaps be determined. Whilst MOMMSEN, *Röm. Geschichte* I § 464 sqq. (cf. ED. MEYER, *Geschichte des Altertums* III 289. *Apophoreton* 1903 p. 158. ROSENBERG 114, 120) places an older pontifical redaction of the city chronicle at the end of the 4. century, the time of the great Samnite wars, and SOLTAU, *Die Anfänge der röm. Geschichtsschreibung* 1909 p. 9. 217, takes his "pontifical year-book" back to the beginning of the 3. century, ENMANN places the earliest redaction of the pontifical annals at the middle of the 3. century, the time of the first war with Carthage. SEECK, *Die Pontifikaltafel* 74 sqq. assumes a number of redactions of the pontifical annals beginning immediately after the Gallic catastrophe and closing with Scaevolus' *annales maximi*. In recent years KORNEMANN, *Der Priestercodex* 20 sqq. has made a very thorough effort to prove that the "pontifical table at Regia" dates from the first half of the 3. cent.

² It is undoubtedly from this source that Ennius has drawn the term *annales* for his epic. LEO, *Gesch. der röm. Lit.* I 163.

³ Dion. I 73, 1. Greek analogies in WILHELM, *Beiträge zur griech. Inschriftskunde* 239 sqq.

⁴ Cic. *de oratore* II 12, 52: *potestas ut esset populo cognoscendi.*]

From what time this very earliest official Roman chronicle, *annales*, can be assumed to build on contemporary records, or at any rate on authentic copies, we are unable to say with any certainty. On the other hand, however, a *terminus post quem* may be fixed.¹ There is no great intrinsic likelihood that any original annual tablets were preserved from the time before the Gallic catastrophe. *Tabulae dealbatae*, the wooden tablets covered with plaster, hardly survived the fire of Rome (387/6 B. C.)². This hypothesis, moreover, is strengthened by inner reasons. If there had really existed contemporary tablets from the earliest period at the time of the redaction of the *tabula domi* [*proposita*] [*πίναξ*], Roman chronology would certainly not have been so uncertain as it is. Especially the chronology of the monarchy reveals evident traces of being based on elaborate calculations and not on contemporary records.³ This also tallies with the oft quoted remark in *de re publica*⁴ where Cicero speaks of a solar eclipse which was said to have occurred *anno quinquagesimo fere post Romam conditam*⁵, and which Ennius had tried to explain scientifically in his *annales*⁶. Cicero adds that in this respect the Romans had developed so much skill and dexterity that from this eclipse mentioned in Ennius and recorded in *annales maximi* they had been able to calculate the date of all previous

¹ Cf. my article p. 90 sq.

² Liv. VI 1, 2 speaks explicitly of *commentarii pontificii*. — *The fire of Rome 387/6*. Polyb. I 6 Diodor. XIV 110. NIESE, *Röm. Geschichte* 4 49. A. B. DRACHMANN, *Diodors romerske Aarbøger til Aar 302 før Kristi Fødsel*, Copenhagen 1912, p. 16 sq.

³ The most recent researches in Rom. chronology: LEUZE, *Die röm. Jahrzahlung* 1909, NIESE, *Röm. Geschichte* 88 sqq. ENMANN 520 sqq. DRACHMANN 13 sqq.

⁴ Cic. *de re publ.* I 16, 25 cf. LEUZE 300.

⁵ Cf. BOLL, *R. E.* (Art. *Finsternisse*) VI 2355 sqq. LEUZE 300 sqq. 376 sqq.

⁶ *Annal.* IV frg. IV (163). ed. Vahlen.

eclipses. But if all previous eclipses had to be fixed by calculation, it seems clear that they were not on record. The solar eclipse about 404 B. C. is the earliest recorded. Again, it seems to follow that no contemporary records were preserved from the time before the end of the 5. or the beginning of the 4. century B. C.¹ The oldest annual tablets undoubtedly perished in the fire of Rome². Later, probably immediately after the reconquest of the city, an attempt was made to reconstruct them from the recollections of the surviving generations. [It is not very likely that private copies from the time before the Gallic fire should have been in existence and have survived.] The tablets which in the first half of the 3. century — possibly already during the great Samnite wars — were edited and published in the codex (*tabula*, πίναξ) which Cato and Piso knew, and which was the main source of the earliest private annals, can therefore in any case only have been certainly authentic since the end of the 5. century.

Later, on the occasion of the first official pontifical redaction, *annales*, thanks to the inspiration of inherent patrician feeling and a very natural national pride, the probably extremely scant material contained in the old partly reconstructed annual tablets was arbitrarily supplemented by all manner of legends from the monarchy³, paradigmatical and aetiological in nature, often unmistakably modelled on contemporary Greek historians⁴. And at the same

¹ Thus also HOMO, *L'Italie primitive* 15.

² SEECK 74. Cf. THOURET, *Jahrb. für class. Phil. Suppl.* XI 95. On the other hand: HOLZAPFEL, *Röm. Chron.* 163.

³ Cic. *de oratore* II 12, 52: *ab initio rerum Romanarum*. Cf. Dion. I 74, 3 comp. with I 73, 1: *παλαιοὶ λόγοι*. — Concerning the earliest official version of the Romulus-legend, in the pontifical chronicle, see ROSENBERG, *R. E. Art. Romulus* 1087.

⁴ Cf. PAIS, *Storia critica di Roma durante i primi cinque secoli* I 231 sqq.

time the list of eponyms — possibly with an additional list of the kings — is traced back to the founding of the republic and falsified by fictitious genealogies to the glory of the most renowned plebeian families¹. Even the list of eponyms from the first third of the 4. century are presumably to a large extent interpolations².

II. In the following two centuries *usque ad P. Mucium Scaevolam pontificem maximum* (131/30 B. C.) the annals edited in the codex set up at Regia were continued year by year and constantly expanded to be concluded at the time of the Gracchi and republished in the extensive work of 80 books which, according to Cicero and Servius, was called *annales maximi*.

It is commonly, and probably correctly, assumed that it was P. Mucius Scaevola himself who caused this great pontifical work to be compiled and published. Two generations earlier, however, at the beginning of the century, extracts had already been made of the old pontifical annales, and their chronographical and historiographical contents had been published in the early annalistic literature (Fabius, Cincius). We therefore inevitably ask ourselves: for what purpose did Scaevola have this new publication made?

The idea that immediately presents itself to the mind

G. SIGWART, *Klio* XXI 16 sqq. cf. W. SCHUR, *ibid.* XX 137 sqq. HOMO 18 sqq. SOLTAU, *Anfänge* 73 sqq. *Klio* X 129 sqq. Cf. KORNEMANN, *Der Priestercodex* 20 sqq.

¹ One Junius Brutus of the plebeian Junian family is thus made the first consul of Rome side by side with the M. Horatius mentioned in the Capitoline inscription (The legend of the expulsion of the kings is evolved). And one Ancus Marcius of the plebeian Marcii is later elected Rome's fourth king. MOMMSEN, *Röm. Forsch.* I 69 sq. K. J. NEUMANN, *L. Junius Brutus, d. erste Consul*, Strassburger Festschrift 1901, p. 309 sqq. ROSENBERG 115. 120. 124.

² ROSENBERG 115 sq. 120 sq. — Concerning *fasti consulares* see, moreover, SCHÖN, *R. E.* VI 2023 sqq. and the literature quoted. BOUCHÉ-LECLERCQ, *Daremberg et Saglio* II 1005 sqq. — G. COSTA, *I fasti consolari Romani*, Milano 1910 I 1—2.

is that the work: the *annales maximi* included all the historical and antiquarian material compiled from the pontifical archives, not only the pontifical chronicle and other possible historical records but also the entire pontifical *jus sacrum*. Only in that case are we able to explain the extensive character of the work. And then we understand better the increased historiographical activity of the following period, and particularly the antiquarian science springing up in the last century of the republic. It was the opening of the pontifical archives to the public — to which political reasons undoubtedly contributed in the first line¹ — which provided the impulse for this revival of the antiquarian-historical interest.

Annales maximi were not a single author's literary treatment of the available pontifical records, nor were they an anonymous edition in the same sense as the earlier edition of the pontifical tablets, *annales*. *Annales maximi* were a publication of archives, a compilation of material *ad usum publicum*. And as such they must certainly have been the subject of keen study not only by antiquarians and grammarians during the latter phase of the republic and the principate, but also by historians, first of all by contemporary chroniclers, and then by post-Sullan annalists. And lastly they were taken up with all the elaborations and further ornamentation of the intervening period by Livy and Dionysius.

The *annales maximi* are practically never quoted by the historians, in the preserved fragments of the works from the contemporary or immediately following period

¹ It is well known that P. Mucius Scaevola was a supporter of the Gracchan movement and, in addition, a man who took a considerable interest in literature.

not once, nor later by Livy, and but in one single passage in Dionysius¹. The reason for this is not — as it is generally alleged — that they were neither used directly nor indirectly. *Annales maximi* were a compilation of material, and that was sufficient reason for the Roman historians — following the Greek example — expressly to abstain from quoting them.

Several passages in Cicero — which have been somewhat neglected in this connection — appear positively to show that *annales maximi* were a publication of archives, not only of the pontifical chronicle² and other historical records but also of the antiquarian material concerning rules of worship and sacred law collected in the archives and particularly included in the pontifical writings, *libri pontificii*. Besides the famous notice in *de re publica*³ on the solar eclipse about 404 B. C. where *annales maximi*, which are expressly quoted, are evidently the source from which also Ennius draws his account, we find two passages in which Cicero undoubtedly has had *annales maximi* in mind, both evidently showing — by a comparison of the texts — that *annales maximi* also contained antiquarian material from the pontifical writings.

In *pro Rabirio*, as we have already seen, the prosecutor makes a general reference to *annalium monumenta atque regum commentarii*. This general term, *regum commentarii*, which occurs in no other place, must undoubtedly be taken

¹ Dion. IV 15, 5: αἱ ἐνιαύσιοι ἀναγραφαί.

² *Annales maximi* are certainly the source of *fasti consulares* and *fasti triumphales*.

L. CANTARELLI, *Origine degli annal. max.*, *Rivista di filologia* (Turin.) XXVI 209 sqq. cf. E. BORMANN, *Verh. der 45. Phil. Vers.* 1899 p. 105 sqq., assumes that the source of *annales maximi* was not the pontifical tablets but the official records ("Die Amtsbücher") of the pontifical college.

³ See above. Cic. *de re publ.* I 16, 25.

to mean *libri pontificii*¹. In the C. Rabirius murder case, in which it is attempted to reproduce the procedure of provocation from the Horatii legend, the prosecutor claims that the old legal forms should be adhered to. But in *de re publica*² Cicero explicitly mentions *pontificii libri* as the authority from which he derives his statement, that already the monarchy (i. e. in the Horatii case) knew a *provocatio ad populum*. And *annalium monumenta* which is quoted in contradistinction to *memoria vestra ac patrum vestrorum* and before *regum commentarii* (= *libri pontificii*) undoubtedly does not — although it is philologically possible³ — mean the older, relatively late, literary *annales*⁴ nor yet the post-Sullan annalistic works, nor indeed the older redaction of the pontifical annals which are called *tabula domi* [*proposita*] in *de oratore*, and in *de legibus* simply *annalis*, but it must be taken to mean Scaevola's great publication of archive-material, the so-called *annales maximi*. Considering the whole context this is indeed the most probable solution. And this view is corroborated by a passage in *de re publica*⁵ in which Cicero makes Manilius and Scipio discuss the old legend *Numam Pythagorae discipulum fuisse*, and Manilius speaks of *annales publici* as the source from which to obtain sure information on this subject. *Annales publici*

¹ See above. Cic. *pro Rabirio* V 15.

² Cic. *de re publ.* II 31, 54, cf. Liv. I 26, 5: *duumviri perduellionem judicent: Si a duumviris provocarit, provocatione certato . . .*

³ Liv. VII 21 and Gell. II 16, 3 thus use the expression *omnium annalium monumenta* in the sense of "our old written memorials", to denote the private annalistic historiography as a whole. Cf. Liv. VI 1, 2.

⁴ Thus SCHWEGLER, *Röm. Gesch.* I 11 13. — The literary annals are simply called *annales* or *annales veteres (prisci, antiquae)* by VARRO, *de ling. lat.* V 74, V 101, and later by LIVY II 54. IV 7. IV 20. VII 9 cf. Gell. I 19, 1. VI 7, 1. II 11, 1, V 18, 8 (*libri annales*). Val. Max. IV 2, 1. Plin. *nat. hist.* XXXIV 1. MACROB. *Saturn.* II 9, 13. XXVII 8. The sources are compiled in SCHWEGLER l. c.

⁵ Cic. *de re publ.* II 15, 28.

cannot refer to private annalistic literature but must undoubtedly mean the so-called *annales maximi* published by Scaevola. And if this be correct, the text, whose contents refer to a subject which naturally belongs to the pontifical writings, provides further evidence¹ that *annales maximi* were more than a new edition of the pontifical chronicle, namely an extensive redaction of all the material in the pontifical archives.

The same thing is indicated by the only truly authentic fragment of *annales maximi*, the passage in Gellius² which reproduces a *historia narrata* of a *perfidia* committed by [h]aruspices ex Etruria acciti on account of a mystical omen *piaculis luendum*.

Hence we may perhaps regard the so-called *annales maximi* not as a mere later edition of the pontifical *annales* but as an extensive publication of all pontifical archive-material. Scaevola's so-called annals may then be considered as one of that series of antiquarian publications on rules of worship and sacred law which evidently dates from the middle of the 2. century and began with M'. Manilius'³ *monumenta* and the *libri juris pontificii* of a certain Fabius Pictor⁴.

¹ Cf. also the forceful expression: *qui diligentissime persecuti sunt*.

² Gell. IV 5, 6. The iambic senar which is a translation of HESIODOS, "Works and Days" 266 (cf. Gell. l. c.) is generally, and undoubtedly correctly, regarded as a later interpolation.

It is positively shown by the passage quoted from Gellius that Verrius Flaccus has used *annales maximi* in his *Res memoria dignae* (lib. I). When Val. Max. IV 1, 10 speaks of the *solemne precationis carmen ex publicis tabulis* used at the censorial *lustrum* (see above), *publicae tabulae* must mean either *annales pont. max.* or *annales maximi*, the latter being the more likely (*publicae tabulae* = *annales publici*. Cic. l. c.).

³ *Jurispr. antejust.* rel. (ed. SECKEL et KÜBLER) I 6 sq. See above.

⁴ MACROB., *Sat.* III 2, 11. Cf. Gell. I 12, 14. X 15, 1 sqq. — *Jurispr. antejust.* I 2 sqq. — G. SIGWART, *Klio* VI (1906) p. 367 sqq. SCHANZ-HOSIUS, *Gesch. der röm. Literatur* I 4 (1927) p. 174 (*Q. Fabius Maximus Servilianus*. Cos. 142).

7. Conclusion.

Up to the beginning of the 4. century B. C. there can be no doubt that there were no contemporary records in the *libri* or *commentarii* kept in the archives of the sacerdotal colleges. The unwieldy wooden tablets must have been destroyed in the Gallic conflagration. The priestly writings were certainly, however, as regards their main substance, the most reliable of the historical antiquarian records available before the beginnings of Roman history writing. Their specially religious nature, their essentially sacred purpose, undoubtedly here endowed the earliest verbal tradition with a considerably more rigid continuity. Moreover, what is handed down as a formula is easier for the memory to retain. The probable early practice of the art of writing by the priests in connection with their organisation in colleges and their election for life further contributed to fix the tradition. Because of the nature of the material they were, finally, less exposed to the temptation of making deliberate falsifications. The priestly records kept from ancient times in the archives of the priesthoods and thence unearthed by later compilers must undoubtedly have been particularly trustworthy.

It would therefore be of supreme importance if we could reconstruct the primary source, the sacerdotal *libri*, from the texts taken by later literature — word for word or in reproduction — directly or indirectly — out of the priestly writings. Not least in order to acquire a more profound and trustworthy knowledge of the early Roman family would it be of especially importance if we could reconstruct the pontifical writings.

Such a reconstruction, which would certainly in many

cases give rise to a new valuation of the credibility of the Roman tradition, would, however, have to be undertaken on the broadest basis possible. A comprehensive critical treatment of the entire ritual and antiquarian-historical material originating from the archives of the sacerdotal colleges and handed down to us through one or more intermediate stages would have to comprise not only those works which occur in the tradition under various names (*libri, commentarii, disciplina*) as texts taken directly *ex libri sacerdotum*; besides the sparse religious precepts extracted from the so-called *commentarii regum*, it would have to include in particular the texts handed down as *leges regiae*¹ as well as the XII tables². It would, moreover, have to deal not only with the fragments of the later antiquarian literature of which it could be proved, or would appear evident from the contents, that their source had been the pontifical annals or *annales maximi*³. By a methodical examination of the remnants of the entire literature of antiquarian history⁴

¹ Concerning the individual texts which have been juxtaposed, BRUNS, *Fontes* 7 I 3 sqq., GIRARD, *Textes* 4 3 sqq., RICCOBONO, *Fontes iuris anteiustiniani* I (1909) 5 sqq., see my treatment in "Introduktion til Romerretsstudiet" I 24 sqq., which will soon appear in an English translation.

² *Leges XII tab. X.* BRUNS, *Fontes* I 7 15 sqq. GIRARD 4, *Textes* 9 sqq. RICCOBONO, *Fontes* I 21 sqq.

³ See e. g. the texts quoted above p. 44 sq. in Cic. *de re publ.* II 15, 28. Gell. IV 5, 6. Val. Max. IV 1, 10.

⁴ A large portion of the sacred and antiquarian-historical material taken up by *libri pontificii* has undoubtedly passed, partly directly, partly — and I suppose especially, as I have already suggested — through the medium of *annales maximi*, either into the younger private annalists or into the scholarly literature beginning in the last period of the republic with VARRO [*Antiquitates rerum divinarum.* AUGUSTIN. *civ. dei* VI 3 sqq. Fragments in R. MERKEL, *Proleg. in Ovid. fasti* CVI sqq. Cf., moreover, SCHANZ-HOSIUS, *Gesch. d. röm. Lit.* I 564 sqq. and the literature cited], NIGIDIUS FIGULUS [*De diis.* MACROB. *Saturn.* III 4, 6. *De augurio*

and sacred law¹ handed down at second or third hand we should have to search out ancient Roman material on sacred rites and sacred law and then by a critical analysis compile and compare these texts in order to make it possible to penetrate right down to the fundamental primary source.

In consequence of the nature of the tradition such a reconstruction would certainly present very great difficulties. And we shall undoubtedly not be able to arrive at even a

privato. Gell. VII (VI) 6, 10. *De extis* Gell. XVI 6, 12. MACROB. VI 9, 5. *De somnis*. LAUR. LYDUS, *de ostent.* 45. Fragments in A. SWOBODA, Wien 1889. SCHANZ-HOSIUS I 552 sqq.] and Cicero and thence taken up — in a form certainly often perverted by subjective combinations — by the antiquarians and historians of the earliest empire, above all by VERRIUS FLACCUS (*De verborum significatu*. REITZENSTEIN, *Verrianae Forsch.* 1887 p. 45 sqq.). GELLIUS (*Noctes Atticae*. ed. HOSIUS I—II 1913), MACROBIUS (*Saturnalia* ed. EYSSENHARDT 1893), the Vergil paraphrases (Servius etc.), but also Livy, Dionysios and Plutarch. [MACROB. III 9, 6 says that he has found the *carmen evocationis* used at the siege of Carthage in book V of *Res reconditae* by one Sammonicus Serenus who in his turn had found it in *cujusdam Furii vetustissimo libro*. SCHANZ-HOSIUS I 234 sq.]

³ The material of pure sacred law collected in archives of the pontifical colleges, having been scientifically treated by the special (now lost) religio-juridical literature, especially *de jure pontificio*, which began at the time of the two Catos (Gell. I 12, 17. Cic. *de senect.* XI 38) with a certain (Q. ?) FABIVS PICTOR (see above. *Jurispr. antejust.* I 2 sqq.) and was continued by SERV. SULPICIVS RUFUS (*De dotibus*. Gell. IV 3, 2 IV 4. *Jurispr. antejust.* I 32 sqq. *De sacris detestandis*. Gell. VII 12, 1 sq. *Jurispr. antejust.* I 34 sqq.), C. TREBATIUS TESTA (*De religionibus*. Gell. VII 12, 5. MACROB. III 32, 4. *Jurispr. antejust.* I 43 sqq.), VERANIUS (*Quaest. pontificales*. MACROB. III 5, 6. *Jurispr. antejust.* I 51 sqq.), GRANIUS FLACCUS (*De indigitamentis*. Censorin. III 2. *Jurispr. antejust.* I 53 sqq.) but especially by LABEO (*De jure pontificio ad XII tabulas*. *Jurispr. antejust.* I 55 sqq.) and CAPITO (*De jure pontificio. De jure sacrificiorum*. *Jurispr. antejust.* I 64 sqq. KIPP, *Geschich. der Quellen des röm. Rechts* 4 (1919) p. 105, 117 sq.), later passed partly into VERRIUS FLACCUS, *De verborum significatu*, whence it was accepted by Gellius and the later antiquarians.

Concerning the importance of the holy fathers to the knowledge of Roman law see CARUSI, *Studi in onore di C. Fadda* 1906 II 69 sqq. BINDER, *Die Plebs* 400. COSTA, *Storia della Fonti* 220 sqq.

comparatively perfect solution. But in the field of Roman source research, the reconstruction of the *libri sacerdotum* is at the present moment one of the problems most urgently requiring a solution. The accomplishment of this task is of importance to religious history, but no less important for the advancement of research in early Roman legal history.
