

Pomponius, liber singularis enchiridii D.1.2.2pr.-12:

Necessarium itaque nobis videtur ipsius iuris originem atque processum demonstrare. (1) Et quidem initio civitatis nostrae populus sine lege certa, sine iure certo primum agere instituit omniaque manu a regibus gubernabantur. (2) Postea aucta ad aliquem modum civitate ipsum romulum traditur populum in triginta partes divisisse, quas partes curias appellavit propterea quod tunc reipublicae curam per sententias partium earum expediebat. et ita leges quasdam et ipse curiatis ad populum tulit: tulerunt et sequentes reges. quae omnes conscriptae exstant in libro sexti papirii, qui fuit illis temporibus, quibus superbus demarati corinthii filius, ex principalibus viris. is liber, ut diximus, appellatur ius civile papirianum, non quia papirius de suo quicquam ibi adiecit, sed quod leges sine ordine latas in unum composuit. (3) Exactis deinde regibus lege tribunicia omnes leges hae exoleverunt iterumque coepit populus romanus incerto magis iure et consuetudine aliqua uti quam per latam legem, idque prope viginti annis passus est. (4) Postea ne diutius hoc fieret, placuit publica auctoritate decem constitui viros, per quos peterentur leges a graecis civitatibus et civitas fundaretur legibus: quas in tabulas eboreas perscriptas pro rostris composuerunt, ut possint leges apertius percipi: datumque est eis ius eo anno in civitate summum, uti leges et corrigerent, si opus esset, et interpretarentur neque provocatio ab eis sicut a reliquis magistratibus fieret. qui ipsi animadverterunt aliquid deesse istis primis legibus ideoque sequenti anno alias duas ad easdem tabulas adiecerunt: et ita ex accedenti appellatae sunt leges duodecim tabularum. quarum ferendarum auctorem fuisse decemviris hermodorum quendam ephesium exulantem in italia quidam rettulerunt. (5) His legibus latis coepit (ut naturaliter evenire solet, ut interpretatio desideraret prudentium auctoritatem) necessariam esse disputationem fori. haec disputatio et hoc ius, quod sine scripto venit compositum a prudentibus, propria parte aliqua non appellatur, ut ceterae partes iuris suis nominibus designantur, datis propriis nominibus ceteris partibus, sed communi nomine appellatur ius civile. (6) Deinde ex his legibus eodem tempore fere actiones compositae sunt, quibus inter se homines disceptarent: quas actiones ne populus prout vellet institueret certas solemnesque esse voluerunt: et appellatur haec pars iuris legis actiones, id est legitimae actiones. et ita eodem paene tempore tria haec iura nata sunt: lege duodecim tabularum ex his fluere coepit ius civile, ex isdem legis actiones compositae sunt. omnium tamen harum et interpretandi scientia et actiones apud collegium pontificum erant, ex quibus constituebatur, quis quoquo anno praeesset privatis. et fere populus annis prope

It, therefore, seems necessary to explain the origin of the law itself, as well as its subsequent development. (1) In fact, at the beginning of our State the people undertook to act at first without any certain statutes or positive law, and all government was conducted by the authority of the Kings. (2) Afterwards, the State being, to some extent enlarged, it is said that Romulus himself divided the people into thirty parts which he called *curiae*; because he then exercised care over the Republic in accordance with the decisions of the said parts. Thus he proposed to the people certain laws relating to their assemblies, and subsequent kings also made similar proposals, all of which having been committed to writing, are to be found in the book of Sextus Papirius, who lived in the time of Superbus, the son of Demaratus of Corinth, and who was one of the principal men. This book, as We have stated, is called the Papirian Civil Law, not because Papirius added anything of his own to it, but because he compiled in a single treatise laws which had been passed without observing any order. (3) The kings having afterwards been expelled by a Tribunitian enactment, all these laws became obsolete, and the Roman people again began to be governed by uncertain laws and customs, rather than by statutes regularly passed, and this state of affairs thus endured for almost twenty years. (4) Afterwards, in order that this condition might not be continued, it was decided that ten men should be appointed by public authority, through whose agency laws should be applied for to the States of Greece, and that the Commonwealth should be founded upon statutory enactments. Those thus obtained were inscribed upon ivory tablets, and placed before the *Rostra*, so that the laws might be the more clearly understood; and supreme authority in the State was conferred upon said officials for that year, so that they might amend the laws, if it was necessary, and interpret them; and that there should be no appeal from their decisions, as there was from those of other magistrates. They, themselves, observed that something was lacking in these original laws, and therefore during the following year they added two other tablets to them, and for this reason they were called the Laws of the Twelve Tables; and some writers have asserted that a certain Hermodorus, an Ephesian exile in Italy, was responsible for the enactment of the said laws. (5) These statutes having been passed, it follows as a natural consequence that discussion in the forum became requisite; as a proper interpretation demands the authority of persons learned in the law. This discussion and this law composed by jurists and which was unwritten, was not designated by any particular name, as were the other parts of the law by their specific appellations, but they are called by the common designation the Civil Law. (6) Afterwards, at about the same time, certain actions based upon these laws were established, by means of which men might argue their cases; and in order to prevent the people from bringing these actions in any way they might desire, the magistrate required that this should be done in a certain and solemn manner; and this part of the law is called that of statutory actions, that is to say, legal actions. And thus about the same time these three divisions of the law originated; that is, the Laws of the Twelve Tables, and from these arose the Civil Law, and from this source likewise were derived the legal actions. But the knowledge of interpreting all these, and the actions themselves, were assigned to the College of Pontiffs; and it was established which one of them should have jurisdiction over private actions

centum hac consuetudine usus est. (7) Postea cum appius claudius proposuisset et ad formam redigisset has actiones, gnaeus flavius scriba eius libertini filius subreptum librum populo tradidit, et adeo gratum fuit id munus populo, ut tribunus plebis fieret et senator et aedilis curulis. hic liber, qui actiones continet, appellatur ius civile flavianum, sicut ille ius civile papirianum: nam nec gnaeus flavius de suo quicquam adiecit libro. augescente civitate quia deerant quaedam genera agendi, non post multum temporis spatium sextus aelius alias actiones composuit et librum populo dedit, qui appellatur ius aelianum. (8) Deinde cum esset in civitate lex duodecim tabularum et ius civile, essent et legis actiones, evenit, ut plebs in discordiam cum patribus perveniret et secederet sibi iura constitueret, quae iura plebi scita vocantur. mox cum revocata est plebs, quia multae discordiae nascebantur de his plebis scitis, pro legibus placuit et ea observari lege hortensia: et ita factum est, ut inter plebis scita et legem species constituendi interesset, potestas autem eadem esset. (9) Deinde quia difficile plebs convenire coepit, populus certe multo difficilior in tanta turba hominum, necessitas ipsa curam rei publicae ad senatum deduxit: ita coepit senatus se interponere et quicquid constituisset observabatur, idque ius appellabatur senatus consultum. (10) Eodem tempore et magistratus iura reddebant et ut scirent cives, quod ius de quaque re quisque dicturus esset seque praemuniret ^ praemunirent^, edicta proponebant. quae edicta praetorum ius honorarium constituerunt: honorarium dicitur, quod ab honore praetoris venerat. (11) Novissime sicut ad pauciores iuris constituendi vias transisse ipsis rebus dictantibus videbatur per partes, evenit, ut necesse esset rei publicae per unum consuli (nam senatus non perinde omnes provincias probe gerere poterant): igitur constituto principe datum est ei ius, ut quod constituisset, ratum esset. (12) Ita in civitate nostra aut iure, id est lege, constituitur, aut est proprium ius civile, quod sine scripto in sola prudentium interpretatione consistit, aut sunt legis actiones, quae formam agendi continent, aut plebi scitum, quod sine auctoritate patrum est constitutum, aut est magistratum edictum, unde ius honorarium nascitur, aut senatus consultum, quod solum senatu constituyente inducitur sine lege, aut est principalis constitutio, id est ut quod ipse princeps constituit pro lege servetur.

during each year. The people made use of this custom for almost a century. (7) Afterwards, Appius Claudius arranged these actions and reduced them to a certain form, and Gnaeus Flavius, his secretary, the son of a freedman, gave the book to the people after it had been surreptitiously obtained; and so acceptable was that gift that he was made Tribune of the people, Senator, and Curule Aedile. This work which contains the method of bringing actions is called the Flavian Civil Law; just as the former one is called the Papirian Civil Law; for Gnaeus Flavius did not add anything of his own to the book. As the commonwealth became enlarged, for the reason that certain methods of procedure were lacking, Sextus Aelius not long afterwards framed other forms of action, and gave the book to the people which is called the Aelian Law. (8) Then, there being in use in the State the Law of the Twelve Tables, the Civil Law, and that of Statutory Actions, the result was that the *plebs* disagreed with the fathers, and seceded, and enacted laws for itself, which laws are called Plebiscites. Afterwards, when the *plebs* was recalled because much discord arose on account of these plebiscites, it was established by the *Lex Hortensia* that they should be observed as laws, and in consequence of this the distinction between the plebiscites and the other laws existed in the manner of their establishment, but their force and effect were the same. (9) Then, because it was difficult for the *plebs* any longer to assemble, and much more so for the entire body of the people to be collected in such a crowd of persons; necessity caused the government of the commonwealth to be committed to the Senate. Thus the Senate began to take an active part in legislation, and whatever it decreed was observed, and this law was called a *Senatus-Consultum*. (10) At the same time there was also magistrates who dispensed justice, and in order that the citizens might know what law was to be applied in any matter and defend themselves accordingly, they proposed edicts, which Edicts of the Praetors constituted the honorary law. It is styled honorary, because it originated from the office of the Praetor. (11) Finally as it became necessary for the commonwealth that the public welfare should be attended to by one person, for the mode of enacting laws seemed to have progressed little by little as occasion demanded; and since the Senate could not properly direct the affairs of all the provinces, a supreme ruler was selected, and he was given authority, so that whatever he decided should be considered valid. (12) Thus, in Our commonwealth everything depends either upon statute, that is upon legal enactment; or there exists a peculiar Civil Law which is founded without writing upon the sole interpretation of jurists; or there are the statutory actions which contain the method of procedure; or there is a plebiscite passed without the authority of the fathers; or there is the edict of the magistrate, whence is derived the honorary law; or there is the *Senatus-Consultum*, which is based upon the action of the Senate alone, without any statute; or there is the Imperial Constitution, that is, that whatever the Emperor himself formulates shall be observed as the law.