

JANA MALANÍKOVÁ
(MASARYK UNIVERSITY BRNO)

SELECTED EXAMPLES OF LAWS (*LEGES*) APPROVED BY *COMITIA* PRESERVED IN THE BOOK VII OF LIVY'S HISTORY

The historian dealing with the law of ancient Roman Republic can obtain stimulating data from the literary works of ancient authors. Unfortunately, the information on ancient roman legislative activities is not very detailed and the references to the law provided are mostly fragmentary.

*In my article I do not deal with all legislative activity preserved in the book VII of *Ab urbe condita* by Livy, but I focus rather on the selected examples of laws (*leges*).¹*

Key words: *Ab urbe condita*; the period from 366 to 342 BCE; law; declaration of war; mutiny; indebtedness of Romans; *leges Liciniae Sextiae*

Livy's *Ab urbe condita* is one of the most important sources of information describing the early Roman era. The first ten books of this vast historiographical work dealing with the earliest history of the Rome were published in 20 CE – several centuries after the events described. Therefore Livy relied not only on his own knowledge but also and mainly on older sources available at his time. The main topic of the text is the history of Rome, shown via descriptions of important events and actions of noteworthy people. Both

¹ In this paper, the reader is introduced to laws, which were approved by *comitia*. All *plebiscita* are omitted, as they did not bind the whole Roman state in the period of our interest (4th century BCE). Just to mention a few of them: *Plebiscitum Poetelium de ambitu*, *Plebiscitum de populo non sevocando*, *Plebiscitum Duillium Menenium de unciario fenore* or *Plebiscitum de fenore semunciario*. This concerns also the laws whose existence or validity is doubted or denied by the authors listed in the used literature section (*Lex de tribunis militum senis a populo creandis*, *Lex de triumpho C. Marci Rutili*, *Lex de pace cum Caeritibus facienda*, etc.).

are selected in the way which provides the Romans with good as well as bad examples.

In the event descriptions more or less detailed information on law matters can be found. The extent of these ranges from short notes up to whole articles. Sometimes even details such as the proposer's identity or the way in which the law was passed are given. On the other hand, there are cases in which the information is unclear or even misleading and sometimes it cannot be determined whether such a law really existed or not.

In accordance with the name of the paper, the main source is the seventh book of *Ab urbe condita* which covers the history of Rome between 366 and 342 BCE. The focus is mainly on military campaigns against Rome's neighbours and internal strives linked with the struggle between social classes and plebeians' efforts to become equal with patricians. Neither the indebtedness, the serious issue of Roman society typical of the fourth century BCE, is omitted. As the book contains various forms of information, it is an excellent study material on Roman lawmaking. This paper examines selected excerpts.

One of the most interesting parts, which is cited perhaps in all books on ancient Roman law, is Livy's perception of what makes a law.

In secundo interregno orta contentio est, quod duo patricii consules creabantur intercedentibusque tribunis interrex Fabius aiebat in duodecim tabulis legem esse, ut, quodcumque postremum populus iussisset, id ius ratumque esset; iussum populi et suffragia esse. (Liv. 7,17,12)

It is very likely that this definition was not formed by Livy himself but that he took it from another source. One of the potential sources might be the *Twelve Tables*.² Unfortunately, the exact origin of the definition is not known and other sources citing the same definition are not available. Neither are the original *Twelve Tables*.³

Another definition of law (*lex*) has been preserved in much younger ancient sources – it is primarily Aulus Gellius' *Noctes Atticae*⁴ and Gaius' *Institutiones*⁵. In these two works coming from the late imperial period, there is no treatise explaining what the law actually is. These, too, rather explain the way in which an applicable law was created, as it was done by Livy in his *History*.

² De Martino (1972: pp. 460f.).

³ It is possible that the definition was not invented at the time referred to in the seventh book, but in a later period. Crawford II (1996: p. 721).

⁴ Gell. 10, 20, 2.

⁵ *Inst.* 1, 3–5.

Despite the fact that Livy did not always pursued the ‘constitutional niceties’,⁶ one can consider the excerpt 7,17,12 a valid definition of law at the time.

The cited part of Livy’s *History* partially describes the practical procedure, while it stresses out the role of the people and considers their votes as a basic and integral part of the lawmaking process.⁷

In different parts of book VII we can find information on the other parts of this process – a law proposal, its publication and approval by the senate. The people were an important part of the process but not the only one. It was allowed to vote only regarding those proposals which were presented by the magistrates and only at a regular Roman assembly meeting certain conditions.⁸

From the excerpt itself one could conclude that all such votes formed the law, but that is not true. After exploring sources and literature dealing with the topic of the law in the Roman Republic I adhere to Jochen Bleicken’s theory. In his *Lex Publica* he states that the resolution of people is *lex publica* only if there are no elections or court judgments.⁹

The stimuli for new laws in early Roman republic came from actual situation occurring in Rome, for which the law was meant. Therefore, we can assume that the stress on validity and relevance of the most recent solution means that a new law which foxed an issue dealt before by another law, cancelled and substituted this law. This new solution, according to the proposer, was more appropriate to current situation and provided a more suitable solution.

Here again I agree with J. Bleicken that Romans in the period of early Roman republic did not understand the term law as an abstract term, but rather as a particular solution to a given situation (*situationsgebundener Beschluss*). The Livy’s definition of law fits well into this frame as it describes the law making process as a practical solution.

⁶ Oakley (1998: p. 435).

⁷ The last passing resolution of people.

⁸ De Martino (1972: pp. 466–472).

⁹ Bleicken (1975: p. 59). In the second chapter „Der Begriff der lex“ are futher details about this contentions: „Wenn man später unter *lex publica* niemals Wählern und Gerichte verstanden hat, tat man dies wohl auch in dieser Zeit nicht wegen der in sich einheitlichen Materie von Wahl und Gericht, denen die Gesetzesmaterie gegenüberstand, sondern vor allem wegen des sehr andersartigen Entscheidungsmodus, bei diesem Versammlungen. Denn in den Gesetzescomitien wurde, im Unterschied zu den Wahlen und Gerichten des Volkes, über einen Vorschlag durch Bejahung oder Verneinung entschieden ...“ Bleicken (1975: p. 60).

In the next part, three areas of law application are presented showing the laws which can be considered “*situationsgebundene Beschlüsse*”, as mentioned above.

Foreign affairs

The years 366–342 BCE are part of a period which can be characterized by expansive politics aimed against the neighbours of Rome on the Apennine peninsula. This resulted in the total conquest in 265 BCE. In the book VII, the wars with the Gauls, Hernicans, Latins, Volscians and Etruscans are described. Some of these descriptions start with the ritual declarations of war – by the order of the Senate the fetials were sent to the enemy requiring *clarigatio*, a compensation for the harm caused to Rome by the enemy. If none was given in due time, magistrates proposed the declaration of war and this was voted on by the people. If it passed, the just war, *bellum iustum*,¹⁰ was declared using the *lex de bello indicendo*.

There are five cases of creating the war declarations by voting on magistrates’ proposals in the book VII.¹¹ The war declaration on Hernicans in 362 BCE is described in greatest detail. It mentions the unsuccessful negotiation of fetials, the Senate’s proposal of the war declaration, the people’s vote and the result – war declaration on Hernicans.

Similarly, the declaration of the first Samnite war in 343 BCE is described in much detail. However, its likelihood is contested, as the historians are divided as to whether this war really happened or not.¹² The descriptions of other war declarations are not that detailed.

Livy does not describe the whole process of war declaration in every single case. Very often Livy states that the war was declared at the behest of the people. However, the reader should be aware of the context, mutual links and the knowledge on how formalized the Roman activities¹³ were and fill in the missing parts by himself. Therefore, a new law, a new “*situationsgebundener Beschluss*”, can be hidden behind even a shortest note.

¹⁰ Skřejpek (1999: pp. 78–79).

¹¹ *Lex de bello Hernicis indicendo* from the year 362 BCE (Liv. 7,5,7); *Lex de bello Tiburtibus indicendo* from the year 361 BCE (Liv. 7,9,1–2); *Lex de bello Tarquinien-sibus indicendo* from the year 358 BCE (Liv. 7,12,6); *Lex de bello Caeritibus indi-cendo* from the year 353 BCE (Liv. 7,19,9–10); *Lex de bello Samnitibus indicendo* from the year 343 BCE (Liv. 7,32,1–2).

¹² Marek, Oliva, and Charvát (2008: p. 417); Cornell (1995: p. 347).

¹³ Mousorakis (2007: p. 21).

Wars and fighting are present everywhere in Livy's book VII. At the very end of the book VII, the unrest in 342 BCE and its peaceful solution by law-making is described (Liv. 7,38–7,42). This event was apparently important in Livy's eyes as he provides two versions of the story.¹⁴

The first one starts with mutiny in Capua garrison when the soldiers saw their poverty in contrast with the wealth and prosperity of Campania and started to loot. By force they dragged their leader Titus Quinctius from his estate and made him lead their march on Rome. In front of the city the insurgents met the regular army led by the dictator Marcus Valerius Corvus. Corvus persuaded the rioting soldiers to subdue to his authority and, after consulting the Senate, he made two proposals which were later voted on and ratified by the people in the Petelian grove at *Campus Martius*.

The second shorter version, which Livy found in sources accessible to him and decided to publish it, differs in many details, too; however it does not mention certain important facts (Liv. 7,42). It puts the start of the uprising into the city of Rome itself. This time the insurgents left the city led by Gaius Manlius and fortified at the fourth mile-post. Here they were met by the consul army. As in the first version, the rebellion was ended peacefully by consul negotiation and a proposal to restore the peace.

At the end of the first version, in the description of reconciliation, the account of creation of two laws appears. The first, *lex Valeria de militum secessione* contained general amnesty for all insurgents (Liv. 7,41,3). The other, *lex sacrata militaris*, amended the situation in the army. Livy even gives a detailed description of that law. He writes: *lex quoque sacrata militaris lata est, ne cuius militis scripti nomen nisi ipso volente deleteretur; additumque legi, ne quis, ubi ordinum ductor fuisset, postea tribunus militum esset* (Liv.7,41,4). The matters of the army were taken very seriously as those who would break this law were to be punished by sacration. Both laws correspond very well to the definition of law in the period of the early Roman Republic. They were the tool which allowed a peaceful settlement.

Internal affairs

The second great topic of the seventh book is the increasing debt of Roman population in the fourth century BCE. Romans have survived the Gaul invasion and the continuous warfare with the neighbours of Rome. However, men spent majority of the year in the army due to endless military

¹⁴ Oakley (1998: p. 342).

campaigns instead of farming, trading, or crafting. The debts were on rise also due to rising interest rates.

The problem of indebtedness of Roman middle and low classes in the years 366–342 BCE was addressed mainly by tribunes of the people. However, their propositions, *plebiscita*, even when approved, did not bind the whole *populus* at that time; therefore, I will not elaborate further on this particular topic.

Nevertheless, other magistrates were aware of the gravity of the situation and decided to act. Livy mentions two laws concerning financial affairs of the state.

In 352 BCE, the *lex de quinqueviris mensariis creandis*¹⁵ was proposed by consuls Publius Valerius Publicola and Gaius Marcius Rutilus and subsequently approved by the people. This law established a committee composed of plebeians and patricians called *quinqueviri mensarii*. The committee should have examined the existing debts and facilitate their clearance. However, it is disputable whether this law really existed.¹⁶ Unfortunately, the Livy's description does not shed light on the actual situation as it contains neither the word *lex* nor the phrase *populi iussum*.

The other law on this matter is the *lex Manlia de vicesima manumissionum*, which was proposed by the consul and passed by the people in 357 BCE. The consul Cn. Manlius Capitolinus had this law voted on in the military camp near Sutrium. He proposed that whenever a slave was set free, his master would pay 5 percent of the slave's value as a tax. The law itself was accepted without any problems but the way how it was accepted – Roman assembly was summoned by military leader in a military camp and outside the sphere *domi*¹⁷ – caused an uproar. In the end, this law was approved by the Senate's decision, despite disrupting the correct form of lawmaking.¹⁸

¹⁵ ... P. Valerio Publicolae datus e plebe collega C. Marcius Rutilus. Inclinatorum semel in concordiam animis novi consules fenebrem quoque rem, quae distineret una animos videbatur, levare adgressi solutionem alieni aeris in publicam curam verterunt quinqueviris creatis quos mensarios ab dispensatione pecuniae appellarunt. (Liv. 7,21,4–5).

¹⁶ Hölkeskamp (2011: pp. 82–83) and Oakley (1998: p. 435).

¹⁷ Entire *populus* could not take part in this voting, only the soldiers in the military camp.

¹⁸ *Ab altero consule nihil memorabile gestum, nisi quod legem novo exemplo ad Sutrium in castris tributim de vicesima eorum qui manu mitterentur tulit. patres quia ea lege haud parvum vectigal inopi aulario additum esset auctores fuerunt;* (Liv. 7,16,7).

References to laws

The examples just mentioned illustrate the better cases of how Livy reports on laws and lawmaking process. In most of the cases; however, only short excerpts are available providing a limited amount of information.

Livy does not cover only the lawmaking process but also deals with actions actually aimed against existing laws. For example, the seventh book contains information about breaking the *lex Licinia Sextia de consule plebeio* during electoral fights in 353, 351, and 350 BCE. This law which was adopted in 366 BCE¹⁹ stated that one of the consuls must be a plebeian. In the elections mentioned, both elected consuls were patricians.²⁰

In this context, Livy mentions a law described in greater detail in the book VI. It was proposed by tribunes already in 377 BCE (Liv. 6,35,5) but it took 10 years until it was passed. However, the information provided by Livy on its ratification is unclear. He states that the dictator Marcus Furius and the Senate were overpowered and the bills proposed by tribunes were passed.²¹ As the name of the bill suggests, Livy considered it a *lex*, and not just a *plebiscitum*. However, if those bills were meant to be applied to the whole state as a *lex*, they could not have been voted at the plebeian assembly presided by the tribune of the people, but at another type of Roman assembly, to which a patrician would be allowed, as well. Can we thus assume that these tribunes' bills were passed on assembly called by the dictator himself and ex post ratified by the Senate? What really happened? How was this law passed?²²

In the book VII, there are notes on the breaking yet another law, the *lex Licinia Sextia de modo agrorum*. In 357 BCE, C. Licinius Stolo, one of the creators of *leges Liciniae Sextiae*, was accused of its breaking and subsequently fined, as the law forbade possession of more than 500 *iugera* of *ager publicus* by a single person.

¹⁹ This law belongs to the *leges Liciniae Sextiae*: *lex Licinia Sextia agraria*, *lex Licinia Sextia de aere alieno*, *lex Licinia Sextia de consule plebeio*, *lex Licinia Sextia de decemviris sacris faciundis*. Bartošek (1994: p. 165).

²⁰ ..., *ni secundum Liciniam legem haberentur*... (Liv. 7,21,1); ...; *sed ne Licinia lex comitiis consularibus observaretur*. (Liv. 7,22,10); ... *qui legis Liciniae spretae mercedem [consulatum]*, ... (Liv. 7,25,2).

²¹ *Vixdum perfunctum eum bello atrocior domi seditio excepit; et per ingentia certamina dictator senatusque victus, ut rogationes tribuniciae acciperentur*;... (Liv. 6,42,9).

²² There are different opinions among historians. For example, T. Cornell assumes that proposal was passed by *concilium plebis* and then passed by patrician. (Cornell, 1995: p. 334).

Conclusion

In the period of early Roman Republic, laws could become only of those bills which were proposed by magistrates, voted on by Roman *populus* in legitimately convened assemblies, and approved by the Senate. In the book VII of Livy's *History* we can find few suitable examples of such laws, which well illustrate the early development of lawmaking in Roman history.

Ab urbe condita is primarily not a legal source but rather a historiographical one. Therefore, it does not contain a complete list of all applicable laws in the Roman Kingdom and later in the Roman Republic but just a selection of few. However, it cannot be omitted either as it still remains one of the fundamental information sources when studying Roman law of early Roman era.

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Mgr. Jana Malániková
 Department of Classical Studies
 Faculty of Arts of Masaryk University
 A. Nováka 1, CZ-602 00 Brno, Czech Republic
 150366@mail.muni.cz

