

# Jurists

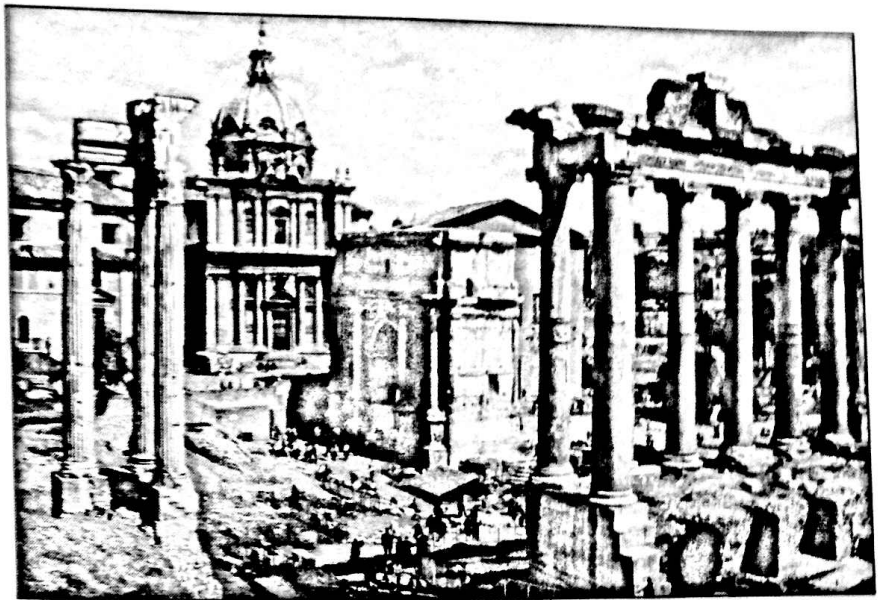
One reason that Roman law evolved and grew so sophisticated was that a legal profession developed. Among the most important members of this profession were legal scholars, known as jurists. The first jurists were wealthy, learned men who walked around the forum and answered questions on the law. The questions might come from the praetor, judges, parties to a case, or their advocates. These jurists did not ask for money. Nor did they appear in court as advocates. They answered questions as a public service and probably to advance their careers in politics. The law, then as now, was often a road to political office.

Their answers to questions were known as *responsa prudentium* (answers of the learned in the law). Over time, jurists began writing down their opinions and organizing them. They often wrote about hypothetical cases to explore how these cases should be decided. They tried to find just and practical principles to base their decisions on. From one principle, other principles of law could be deduced.

Throughout the Roman Republic, jurists wrote and advised on matters of law. When Augustus assumed power as the first emperor, he thought too many jurists were expressing legal opinions. He decided to officially approve only certain jurists. The power of jurists with the imperial stamp is not clear. But certainly if a judge asked one of these jurists for a legal opinion, the judge would have to follow it.

During the empire, many jurists with the imperial stamp became officials in the empire, some reaching high offices. Later in the empire, as the emperor grew more powerful, the power of jurists declined.

In A.D. 426, the Law of Citations went into effect. It ended the power of living jurists. The



The ruins of the Roman forum, where jurists offered their legal opinions free of charge.

law gave the writings of five jurists, long dead, the force of law. Only these jurists could be cited in cases. Two of them were Gaius and Papinian.

## Gaius (known to be alive A.D. 130–180)

Few things are known about Gaius. He was a jurist, but he did not receive the official stamp of the emperor. It is not known when he was born or died. He probably lived in Rome, but no one really knows. Even his full name remains unknown. About A.D. 160, he wrote an introductory textbook on law titled the *Institutes*. The most widely used text on Roman law, Gaius' *Institutes* was read by every Roman student of law. But by the Middle Ages, the text had disappeared. In 1816, a German scholar reading a medieval biblical text saw that the text had been written over another manuscript, a common practice in medieval times. Curious, the scholar scraped off the biblical text and discovered Gaius' *Institutes*. This is the only complete work of a Roman jurist that still exists. Only fragments remain of other jurists' writings.

Gaius' *Institutes* shows how much Roman law had changed since ancient times. The book is a comprehensive treatment of Roman law organized into clear categories: "The whole body of our law relates

either to persons, or to things, or to legal actions.” Under the law of persons, he discussed citizenship, slavery, foreigners, and the rights of women and the heads of families. His book shows that the power of the heads of families was declining and the rights of women were improving.

About legal obligations, he wrote: “Every obligation arises either from contract or wrongs.” Gone were the elaborate rituals that used to be necessary to make a contract. A contract was based on promises. If a dispute arose over a contract, the court had to look to the intention of the parties making the contract. But a contract could not be against public policy. For example, a contract to commit murder was not a legal contract.

Gaius stated that the most important wrongs were injury and fraud. The intention of the wrongdoer was important. The wrong was more serious if done intentionally instead of negligently.

Gaius wrote that Roman law sometimes held people responsible for the acts of others. For example, an innkeeper was responsible for his employees’ acts. And a homeowner was responsible for the harm caused if someone in his house threw an object out the window.

The law of property had also evolved. People could easily sell and will property to others. And a person who possessed property had a right to the property over all others except the owner.

## **Papinian (A.D. 140–212)**

Romans considered Papinian the wisest of all the jurists. The Law of Citations, which ruled that only five jurists could be cited in court, said that if the writings of the jurists disagreed on a point of law, then the majority ruled, but if a tie, the opinion of Papinian should be followed.

Papinian was born in the eastern part of the empire. As a jurist, he wrote many works, but only fragments survive. He received the imperial stamp as a jurist, and like other such jurists, he rose to hold many offices in the empire. In 193 when his friend Septimus Severus became emperor, Severus made Papinian the highest

appointed Roman official and his closest advisor. Papinian was widely praised for guiding the emperor on a just course during his reign.

But Severus had two sons, Antonius (nicknamed Caracalla) and Geta, who were bitter rivals. Severus wanted the two sons to rule as joint-emperors when he died. When Severus was dying in Britain with his sons at his side, he asked Papinian to look after the imperial family. Papinian could do nothing to control the sons. They raced each other back to Rome, trying to win supporters to their side. They lived apart in the emperor’s palace, avoiding any contact and plotting against each other. Finally, their mother asked them to meet. The meeting was described by the 18th-century historian Edward Gibbon in his classic work *The History of the Decline and Fall of the Roman Empire*.

In the midst of their conversation, some centurions [soldiers], who had contrived to conceal themselves, rushed with drawn swords upon the unfortunate Geta. His distracted mother strove to protect him in her arms; but, in the unavailing struggle, she was wounded in the hand, and covered with the blood of her younger son, while she saw the elder animating and assisting the fury of the assassins.

Thus Caracalla became the sole emperor. He asked Papinian to write a justification for his crime. Papinian refused, noting, “It is easier to commit murder than to justify it.” Furious, Caracalla had him murdered.

## **For Discussion**

1. What were jurists?
2. Why was Gaius important? What basic principles did Gaius explain about the Roman law of contracts and wrongs? Do you think these principles make sense today? Explain.
3. Why was Papinian important? What would you have done if Emperor Caracalla had asked you to justify the murder of his brother? Why?