

Chapter 1

The Historical and Constitutional Context of Roman Law: A Brief Overview

1.1 Divisions of Roman Constitutional and Legal History

The history of Roman law in antiquity spans a period of more than eleven centuries. Initially the law of a small rural community, then that of a powerful city-state, Roman law became in the course of time the law of a multinational empire that embraced a large part of the civilized world. During its long history Roman law progressed through a remarkable process of evolution. It advanced through different stages of development and underwent important transformations, both in substance and in scope, adapting to the changes in society, especially those derived from Rome's expansion in the ancient world. During this long process the interaction between custom, enacted law and case law led to the formation of a highly sophisticated system, gradually developed from layers of different elements. But the great bulk of Roman law, especially Roman private law, was not a result of legislation but of jurisprudence. This unenacted law was not a confusing mass of shifting customs, but a steady tradition developed and transmitted by specialists, initially members of the Roman priestly class and later secular jurists. In the final phases of this process when law-making was increasingly centralized, jurisprudence together with statutory law was compiled and 'codified'. The codification of the law both completed the development of Roman law and evolved as the means by which Roman law was subsequently transmitted to the modern world.

Roman history is traditionally divided into three major periods that correspond to Rome's three successive systems of political organization: (1) the Monarchy, from the founding of Rome in the eighth century BC to 509 BC; (2) the Republic, from 509 BC to 27 BC; and (3) the Empire, from 27 BC to AD 565. The republican era is subdivided into two phases: the early Republic, from 509 BC to 287 BC, and the late Republic, from 287 BC to 27 BC. The imperial era is likewise subdivided into two parts: the early Empire or Principate, from 27 BC to AD 284, and the late Empire or Dominate, from AD 284 to AD 565. According to some Romanist scholars, Roman

legal history follows these divisions as the various legal institutions adapted to the type of government in power.

Roman legal history may also be divided into periods by reference to the modes of law-making and the character and orientation of the legal institutions that prevailed in different epochs. In this respect, the following phases are distinguished: (1) the archaic period, from the formation of the city-state of Rome to the middle of the third century BC; (2) the pre-classical period, from the middle of the third century BC to the early first century AD; (3) the classical period, from the early first century AD to the middle of the third century AD; and (4) the post-classical period, from the middle of the third century AD to the sixth century AD. The archaic period covers the Monarchy and the early Republic; the pre-classical period largely coincides with the later part of the Republic; the classical period covers most of the first part of the imperial era, known as the Principate; and the post-classical period embraces the final years of the Principate and the late Empire or Dominate, including the age of Justinian (AD 527–565).¹

Although the above divisions facilitate the study of Roman law, one must recall that Roman law evolved gradually and therefore no distinct lines separate the different stages of its development. The sources of law were, in varying degrees of strength from period to period, all present and in force at the same time, and in diverse ways qualified the influence of each other.

During the early archaic period, Roman society was governed by a body of customary norms with a largely religious character. Their formulation and articulation was mainly determined by the priestly college of the pontiffs. Only the pontiffs were acquainted with the technical forms employed in the typical transactions of private law and were entitled to offer authoritative advice on questions of law. Resembling the law of other primitive societies, the Roman law of the archaic period was characterized by its extremely formalistic nature. A legal transaction or procedure could not produce its desired effects unless it was performed in accordance with strictly prescribed rituals. A momentous event of this period was the codification of the customary norms that governed the life of the Roman citizens by the Law of the Twelve Tables, enacted around 450 BC. This law embodied the first written record of the rules and procedures for the attainment of justice and it entailed a new source of law, in addition to the unwritten customary law. In the years after the enactment of the Law of the Twelve Tables, legal development was based largely on the interpretation of its text, a task carried out by the pontiffs and, in later times, by secular jurists. Moreover, later in this period the office of praetor was introduced (367 BC)—a new magistracy entrusted with the administration of the private law. In the course of time the praetor's edict became one of the strongest formative forces in the development of Roman law, furnishing the basis for a distinct source of law known as *ius praetorium* or *ius honorarium*.

¹ Some modern Romanist scholars consider Justinian's age to constitute a distinct phase in the history of Roman law in its own right.

The legal history of the pre-classical period is marked by the emergence of the first secular jurists (*iurisconsulti* or *iurisprudentes*), who, like the pontiffs, were members of the Roman governing aristocracy. The main focus of their activities was presenting legal advice on difficult points of law to judicial magistrates, judges and parties at law, and the drafting of legal documents. Towards the end of this period the first systematic treatises on civil law emerged—a development reflecting the influence of Greek philosophy and science on Roman legal thinking. The legal history of this period is marked also by the development of the *ius honorarium*, or magisterial law, as a distinct source of law. As noted, early Roman law was rigid, narrow in scope and resistant to change. As a result of the changes generated by Rome's expansion, the Romans faced the problem of how to adjust their law to address the challenges created by the new social and economic conditions. In response to this problem the law-dispensing magistrates, and especially the praetors, were granted the power to mould the law in its application. Although the magistrates had no legislative authority, they extensively used their right to regulate legal process and thus in fact created a new body of law that was progressive, flexible and subject to continual change and development.

Roman law reached its full maturity in the classical period and this emanated mainly from the creative work of the jurists and their influence on the formulation and application of the law. From the early years of the Principate age the emperors customarily granted leading jurists the right to present opinions on questions of law (*ius respondendi*) and deliver them by the emperor's authority. In the later half of the second century it was recognized that when there was accord between the opinions of the jurists who had been granted this right, these opinions operated as authoritative sources of law. Besides dealing with questions pertaining to the practical application of the law, the jurists were also engaged in teaching law and writing legal treatises. The main fabric of Roman law, as we know it today, was established upon the writings of the leading jurists from this period. During the same period, the resolutions of the senate and the decrees of the emperors came to be regarded as authoritative sources of law. On the other hand, the role of the magisterial law (*ius honorarium*) gradually declined as praetorian initiatives became increasingly rare. The final codification of the praetorian edict in AD 130 terminated the development of the *ius honorarium* as a distinct source of law.

In the post-classical period the only effective source of law was imperial legislation, largely concerned with matters of public law and economic policy. Moreover, as jurisprudence had ceased to be a living source of law, earlier juristic works were regarded as a body of settled doctrine. At the same time, custom again played a part as a secondary source of law. During this period, as the body of imperial legislation grew, there emerged the need for the codification of the law. In addition, direction was required for the use of the classical juridical literature—a vast body of legal materials spanning hundreds of years of legal development. The process of codification commenced with the publication of two private collections of imperial law, which appeared at the end of the third century AD: the *Codex Gregorianus* (AD 291) and the *Codex Hermogenianus* (AD 295). These were followed by the *Codex Theodosianus*, an official codification of imperial laws

published in AD 438. The process of codification ceased in the middle of the sixth century AD with the great codification of the Roman law, both juristic law and imperial enactments, by Emperor Justinian.

1.2 The Archaic Period (Monarchy and Early Republic)

1.2.1 General Historical Background

Ancient legend and modern archaeology converge in the story of the Palatine Hill. On this hill, situated in the lower valley of the Tiber River on the central Italian plain of Latium, tradition asserts that Romulus founded the city of Rome on the 21st April of 753 BC. Archaeology confirms the settlement of a pastoral community on the Palatine Hill in the eighth century BC. At some time in the seventh century BC the Etruscans, a highly civilized people who occupied the neighbouring territory of Tuscany, crossed the Tiber River and conquered Latium. It would have been now that the villagers of the Palatine Hill joined up with other clans (*gentes*) in the area to form a larger political entity in the form of an autonomous city-state, according to the Etruscan system of political organization.²

The earliest Rome was an agricultural community: the mass of the population was composed of small freeholders and economic life was based on cattle-raising and the cultivation of the land. Political power was in the hands of a landowning aristocracy, the patricians, who dominated the most important political body, the senate, out of which the highest magistrates of the state were chosen. Social life revolved around the family (*familia*), the basic social unit, whose head (*paterfamilias*) had absolute authority over all persons and all property in his family group. A turning-point in the history of this period was the overthrow of the monarchy, Rome's earliest system of government, at the close of the sixth century BC and the establishment of an aristocratic republic. During the period from the sixth to the mid-third century BC Rome's social and political organization underwent a series of important changes derived from the so-called 'struggle of the orders': the internal political strife between the old aristocracy, the patricians, and the lower classes, the plebeians. By the middle of the third century BC a precarious equilibrium between the classes had been established and the Roman state came to be dominated by a new nobility composed of both patrician and wealthy plebeian families.

Rome's social and political development during the early republican age was directly related to her steady expansion throughout Italy. In 493 BC, Rome

² In early times, the clan (*gens*) was the most important element in society as it performed most of the political, religious and economic functions that were only later gradually assumed by the state. A clan was composed of households (*familiae*) that traced their lineage back to a common male ancestor (real or legendary). Although in time the central state organization supplanted the earlier clan system, the latter continued to play an important role in social and religious life for a considerable time to come.

concluded a treaty with a league of Latin cities whereby each party undertook to aid the other in the event of war. Thereafter, the Romans concentrated on quelling the power of opposing tribes to the north while gradually dominating the Latin cities. During the fourth and early third centuries, the Romans fought a series of wars against the Samnites (a tribe from the Apennine area); the Latins who rose in revolt; the Celts and the Etruscans; and finally the Greek city-states of southern Italy. By the time these wars were over in 272 BC the Romans had gained control over most of the Italian peninsula. This did not entail the formation of a single state; rather, the various Italian communities were more or less allowed to govern themselves but they were made subordinate to Rome in different ways.

1.2.2 *The Constitutional Framework*

According to Roman tradition, a succession of seven kings had governed Rome in the first two and a half centuries after the city's establishment.³ Although knowledge of the political history of the regal period is scarce, its institutions must almost certainly have included a council of elders, or senate, in which the heads of the noble patrician families had a seat, and a popular assembly, where the voice of the people could make itself heard from time to time. The king (*rex*) wielded much of the same power over his subjects as that of a Roman head of family over his household, including the right to inflict capital punishment. He was also responsible for foreign relations and for war, public order, justice and the maintenance of Roman state religion. In carrying out his various duties the king would usually seek the advice of the senate, which was taken to represent the collective opinion of the patrician class. One of the matters that came before the senate was the choice of a king, for the Roman monarchy seems to have been elective rather than hereditary.⁴ The royal power appears to have significantly expanded in the late seventh century BC with the introduction, under Etruscan influence, of the principle of *imperium* or supreme command.

The kingship came to an end in 509 BC when King Tarquinius Superbus was overthrown and replaced by two annually elected magistrates. Apparently, the fall of the Monarchy was devised by the patricians who, chafing under high-handed foreign monarchs who did not respect their prestige (*dignitas*) or their advice, led a movement that wrested control of the state from the king. The uprising was probably inspired by similar movements in neighbouring cities and precipitated by the general weakening of the Etruscan power in Italy.

³ The first four of these kings (Romulus, Numa Pompilius, Tullius Hostilius and Ancus Marcius) are believed to have Latin or Sabine origins, whilst the last three (Tarquinius Priscus, Servius Tullius and Tarquinius Superbus) were Etruscans.

⁴ The senate was also entrusted with the task of governing the state during the period between the death of a king and the election of another (*interregnum*) through a succession of senators acting as temporary kings (*interreges*).

Roman writers describe the end of the monarchy as one of the fundamental events of Roman history. However, the constitutional change from monarchy to republic was gradual and the political machinery of the Roman state underwent a long and complicated process of development and adjustment. Of particular importance was the gradual shift of power from the exclusive control of the patrician class towards the plebeians. This was reflected in the creation of political institutions specifically designed to safeguard plebeian interests and the opening up of offices that had traditionally been the preserve of the patricians. However, the plebeians' success in the so-called 'conflict of the orders' did not entail the eradication of socio-economic inequalities and the fundamentally aristocratic character of the Roman state did not change. What changed was the composition of the aristocracy in power: the old patrician aristocracy was replaced by a new and exclusive patricio-plebeian nobility (*nobilitas*) based on wealth and office-holding.⁵

By the middle of the third century BC, the Roman constitution comprised three major components: the magistrates (*magistratus*), the senate (*senatus*), and the assemblies of the people (*comitia*).⁶

1.2.2.1 The Magistrates

The magistrates represented the executive. Their functions were carefully prescribed, and their powers limited by two important constitutional principles: annuality and collegiality. Annuality meant that a magistrate held office for a year only; collegiality denoted that there were at least two magistrates of equal

⁵ The term *res publica* (from which the word republic is derived) is usually translated as 'state' or 'commonwealth'. It should be noted that at no time was Rome a democracy in the Greek sense, i.e. a state ruled by the people. Its society was always rigidly divided by legal status and by class. Free persons were classified, for example, by reference to whether they were so by birth or by release from slavery, were independent or subject to the authority of a father or guardian, or were Roman citizens or persons holding 'imperfect citizenship' (e.g. the members of some Latin communities).

⁶ The most noteworthy feature of the republican constitution at the height of its development (3rd century BC) was the balance of powers it presented. The Greek historian Polybius (*Historiae* VI. 11), drawing upon the work of Aristotle, described the Roman constitution as a mixed constitution: partly monarchic, partly oligarchic or aristocratic, and partly democratic. This, he argued, was why the Roman constitution was stable and didn't have to change on a cyclic pattern the way Aristotle had predicted constitutions should. As Polybius saw it, the monarchic element in the Roman constitution was represented by the magistrates; the oligarchic or aristocratic element was represented by the senate; and the democratic element was represented by the Roman people and their assemblies. There was an elaborate system of checks and balances between each of the three components and in the stability that this system produced Polybius saw one of the principal factors in Rome's rise to world empire. However, this approach to the Roman constitution can be misleading, for Polybius' frame of reference was mainly Greek, not Roman. Thus, at no time was Rome a democracy in the Greek sense of rule of the *demos* or 'people'. The Roman republic began, and finished, as a state largely dominated by the upper classes in society, i.e. the senators and the equestrians.

power in the same office. Furthermore, after leaving office, a magistrate could be held liable for any offences he committed while in office.

The magistrates were elected by the assemblies of the people, which also invested them with *potestas* or executive power and, in the case of higher magistrates, *imperium* or supreme command. In exercise of his *potestas* a magistrate could issue executive orders (*edicta*) and employ any coercive measures deemed necessary for the enforcement of his orders (*coercitio minor*). From the *imperium* a magistrate derived the power to assume command of an army, convene and preside over the assemblies of the people (*ius agendi cum populo*) and summon and preside over the senate (*ius agendi cum senatu*). Moreover, only a magistrate with *imperium* had the full power of *iurisdictio*, i.e. the power of prescribing the legal principles for determining legal disputes,⁷ and could impose severe penalties for violations of their orders, including capital punishments (*coercitio maior*).⁸

The highest executive office of the state was held by two annually elected magistrates, the consuls (*consules*). Their functions were very broad and included the administration of the state, leadership of the army and holding supreme command in war. Moreover, they convened the senate and the assemblies of the people, presided over them as chairmen and introduced matters for senate discussion and legislative proposals for assembly voting. Before the introduction of the praetorship in 367 BC, they also governed the administration of justice in relation to both civil and criminal matters.

In 367 BC the *Leges Liciniae Sextiae* introduced the office of praetor—an office of particular importance for the development of Roman law. The praetor's function was the administration of civil law, which had hitherto belonged to the consuls. From c. 242 BC a second praetor was appointed to exercise civil jurisdiction in disputes between foreigners (*peregrini*) and between foreigners and Roman citizens. The new praetor (*praetor peregrinus*) was distinguished from the original official whose jurisdiction was normally restricted to disputes between Roman citizens (*iurisdictio urbana*) and was thus termed *praetor urbanus* or *praetor urbis*. In the course of time a number of additional praetors were appointed for various purposes, for example, to act as provincial governors or as chairmen of the newly established standing criminal tribunals (*quaestiones perpetuae*).

⁷ The jurisdiction of the higher magistrates embraced the resolution of disputes between citizens (*iurisdictio inter cives*) and the confirmation of personal legal acts, such as adoptions, emancipations and such like (*iurisdictio voluntaria*). The lower magistrates (*magistratus minores*) who lacked *imperium* had only limited jurisdiction.

⁸ As magistrates remained in office for a limited time only, it would have been difficult for them to carry out their duties efficiently without the help of advisers and experienced technical staff. Thus, when discharging his judicial functions, a magistrate was usually assisted by a council of experts (*consilium*). The daily routine and most of the clerical work was carried out by salaried civil servants (*apparitores*) or slaves (*servi publici, ministeria*). Moreover, a magistrate could perform some of his duties through delegates acting in his name, but could not appoint another person in his place.

From 443 BC two censors were elected for the purpose of taking the census, a function that hitherto had pertained to the consuls. Censors were elected every 5 years, but held office for 18 months, which was an exception to the annuality principle. On the occasion of the taking of the census, these officials were entitled to inquire into the private and public life of citizens and to stigmatize those whose behaviour violated generally accepted moral norms.⁹ They could also promulgate general measures for repressing modes of behaviour or living (e.g. excessive luxury) they considered to be contrary to the public interest or the moral traditions of the community.

From 367 BC, two *aediles curules* were elected each year to oversee law and order and to attend to the care and upkeep of the city. Their functions included the supervision of public works, streets and buildings in Rome, the maintenance of essential food supplies and the organization of certain public games. They also controlled public markets, laid down rules governing the sale of goods therein and exercised jurisdiction with respect to market disputes and matters of public order.¹⁰

From the middle of the fifth century BC, quaestors were elected annually to supervise the state treasury (*aerarium*). These officials were also entrusted with the collection of public revenues derived from taxation and other sources and the financing of public works and military operations.¹¹

At the beginning of the fifth century BC, the plebeians decided to elect their own officials, called tribunes (*tribuni plebis*),¹² to safeguard their interests.¹³ The tribunes had the right of affording aid (*ius auxilii*) to members of the plebeian class who were the victims of oppression at the hands of patrician magistrates. In time, the tribunes were endowed with a general power of veto (*intercessio*), which they might exercise against practically any act of a state organ and so bring about a deadlock in the machinery of government.¹⁴ When the political differences between the patrician and the plebeian classes disappeared the tribunes were regarded as magistrates for all the Roman people and by the third century BC they had become the chief proponents of legislation.

⁹ The censor's disapproval was expressed in the form of a note added next to the culprit's name in the register (*nota censoria*). Conduct likely to incur the censors' disapprobation included, for example, maltreating one's family members or clients, neglecting one's religious duties, acting against good faith in private transactions or being engaged in a disreputable trade.

¹⁰ The edicts of the aediles concerning market transactions played an important part in the development of the Roman law of sale.

¹¹ In discharging these duties the quaestors acted under the authority of the senate, which exercised general control over the administration of public finances.

¹² *Tribunus* was originally a military title probably used to describe the commander of the armed forces of a tribe (*tribus*).

¹³ The original number of the tribunes is believed to have been two (as in the case of the consuls), but that number was subsequently increased to five and, around the middle of the fifth century BC, to ten.

¹⁴ As the tribunes were regarded as being inviolable and sacrosanct (*sacrosancti*), any person who impeded or assaulted a tribune in the execution of his duties could be declared an outlaw and put to death without trial.

1.2.2.2 The Senate

The senate (*senatus*), the great council of the state, was the most important stabilizing factor in the republican system of government. This was largely due to its prestige and influence in society and the permanence of its constitution. Its resolutions, referred to as *senatus consulta*, although not legally binding, carried special weight in the eyes of the magistrates and the assemblies of the people. In particular, it was the constitutional practice for magistrates to seek the advice and cooperation of the senate on the formulation and implementation of laws and other important matters of the state. In addition, resolutions passed by the assemblies of the people could not acquire the full force of laws without their ratification by the senate (*patrum auctoritas*).¹⁵ The senate had control of public finances, which placed the magistrates, whose activities entailed expenses for the state, in a position of dependence. It also exercised control over foreign policy: it received envoys of other states, conducted negotiations with foreign powers, appointed ambassadors (*legati*) out of its own ranks, concluded treaties and alliances and intervened in disputes between cities in alliance with Rome.¹⁶ Finally, it fell upon the senate to ensure that acts of state organs were carried out in accordance with the prescribed religious forms. In times of crisis the senate could declare a state of emergency, passing a special resolution (*senatus consultum ultimum*) by virtue of which the consuls were authorized to apply any extraordinary measures deemed necessary to avert the danger.

At the beginning of the republican period the senate was composed of 300 members, chosen exclusively from the patrician class.¹⁷ Leading plebeians began to be admitted to the senate after the passing of the *leges Liciniae Sextiae* in 367 BC. From that time the senators were drawn from among those who had occupied the highest offices of the state (notably, former consuls and praetors)¹⁸ and held their office for life. Although there is no evidence that during the Republic admission to the senate depended upon the possession of certain amount of property, there is no doubt that the senatorial class (*ordo senatorius*) as a whole represented the wealthiest element of society.

¹⁵ The *lex Publilia Philonis* of 339 BC provided that the approval of the senate had to be given in advance (i.e. before a proposal was put to the vote of the people). Under the *lex Maenia* (early third century BC) candidates for the highest offices of the state had to be approved by the senate before they were formally elected by the assembly.

¹⁶ With the senate appears to have rested the ultimate responsibility of declaring war and concluding peace, although in principle this power belonged to the people.

¹⁷ The senators were selected first by the consuls and, from 443 BC, by the censors (*censores*). The latter were entrusted with the task of drawing up the senators' list (*album senatorium*), filling up vacancies caused by the death or the expulsion of senators.

¹⁸ According to the *lex Ovinia de senatus lectione*, enacted in the late fourth century BC.

1.2.2.3 The Assemblies of the People

Legislative power vested in the assemblies of the people, whose principal functions were the enactment of statutes and the election of magistrates. All male Roman citizens with the right to vote (*ius suffragii*) had a seat in these assemblies. The assemblies met when convened by the appropriate magistrate, who would place a proposal before them. This proposal could then be approved or rejected and this was done on a block vote system, not by the method of one man, one vote. The voting took place either by *curia*, a unit going back to very early times, or by *centuria* (century) or by *tribus* (tribe) or, in later times, by geographical unit.

Depending on whether voting was done by *curia*, *centuria* or *tribus*, there were three types of assembly: the *comitia curiata*, the *comitia centuriata* and the *comitia tributa*. Alongside these assemblies was the *concilium plebis*, which was reserved for the plebeians.

The earliest popular assembly in Rome was the curiate assembly (*comitia curiata*), based on the division of the Roman people into 30 *curiae*, or brotherhoods of men.¹⁹ The principal function of this assembly during the Republic was to vote on the *lex de imperio*, the special law whereby the *imperium* was vested to the higher magistrates. Furthermore, twice a year it was convened to witness and confirm certain ceremonial acts of private law, such as the making of wills and *adrogatio* (the adoption of a person not subject to paternal control).²⁰

The *comitia centuriata*, the greatest of all Roman assemblies, consisted of the citizens organized on a timocratic basis into classes and centuries (*centuriae*).²¹ Of the political functions of this assembly the most important was the election of the higher magistrates of the state (the consuls, praetors and censors). Within its province fell also the enactment of legislation.²² Originally, it seems, legislative measures were regularly brought before it, but eventually this assembly, presumably because of its cumbersome nature, was seldom convened for legislative purposes—after the enactment of the *lex Hortensia* (287 BC), practically all legislative measures were brought before the *concilium plebis*. The *comitia centuriata* operated also as a court of justice hearing appeals against sentences involving death and other severe punishments imposed by magistrates.

¹⁹ The *curiae* originated from the prehistoric organization of the Italian tribes into groups of clans, probably bound together by blood ties and united for common defence. Besides kinship, territorial proximity between different clans must also have played a part in the formation of these groups.

²⁰ When it was summoned to perform these functions the curiate assembly was referred to as *comitia calata*.

²¹ This assembly originally consisted of the citizens in military array. As time went on, however, its military basis was deprived of all reality and the century became merely a voting group that might be of any size, the literal significance thereof, as a body of a hundred men, being entirely lost.

²² Legislative proposals were submitted to the assembly by the consuls or the praetors by whom it was convened. Depending on the magistrate by whom they had been proposed, laws (*leges*) were referred to as *leges consulares* or *leges praetoriae*.

The *comitia tributa* was the assembly of the citizens organized into groups according to their place of residence. This assembly possessed the important political function of electing the lower magistrates of the state, such as the aediles and the quaestors. Another task of this assembly was voting on laws proposed by higher magistrates, although generally these laws were less politically important than those enacted by the centuriate assembly. However, the relatively uncomplicated proceedings in the tribal assembly often inspired the senate, in emergencies or for expediency, to request magistrates to submit bills to this assembly rather than the *comitia centuriata*.

The *concilium plebis* was the assembly of the plebeians alone, and the voting unit therein was the tribe.²³ This assembly passed resolutions (*plebiscita*), which originally had no binding effect outside the plebeian class. After the plebeians' success in the struggle of the orders, the *plebiscita* were recognized (by the *lex Hortensia de plebiscitis* of 287 BC) as having the full force of laws binding on both patricians and plebeians alike. Besides its legislative functions, the *concilium plebis* acted as a court of justice to hear cases involving violations of the plebeians' rights.²⁴ From the time of the *lex Hortensia* onwards, this assembly, sitting under the presidency of a *tribunus plebis*, was by far the most active legislative organ of the state, and the great majority of the laws of which we have record were, strictly speaking, *plebiscita*.²⁵

1.3 The Pre-classical Period (Late Republic)

1.3.1 General Historical Background

The late republican period witnessed Rome's ascendancy as the dominant power in the Mediterranean world. By the middle of the third century BC the Romans had conquered most of the Italian peninsula and, by the end of the first century BC, they held sway over the entire Mediterranean basin.²⁶ It was during this period that the

²³ The assembly of the plebeians (*concilium plebis*) was created in 471 BC, following the recognition by the Roman senate of the plebeians' right to hold meetings to elect their leaders (the *tribuni plebis*) and discuss matters concerning their class.

²⁴ The jurisdiction of the plebeian assembly also captured appeals against decisions of the tribunes imposing fines and other minor penalties.

²⁵ Although the formal distinction between the *concilium plebis* and the *comitia tributa* was retained until the close of the Republic, the differences between the two bodies, regarding their composition and the laws they enacted, gradually faded away. This mainly emanated from the elimination of the political division between the patricians and the plebeians and the rapid increase of the plebeian population.

²⁶ The third century BC is marked by Rome's two great wars for control of the Western Mediterranean against Carthage, an old Phoenician colony in North Africa and a great maritime power. Despite the initial successes of her armies, Carthage was finally overwhelmed by the

Romans came into direct contact with the Greek world and were fully exposed to the influence of the Greek and Hellenistic culture. The massive influx of Greek ideas and practices had a profound impact on every aspect of Roman life, including education, religion, art and science. As the demand for instruction in Greek language, rhetoric and philosophy increased, schools began to be established under the patronage of prominent men.²⁷ Furthermore, Rome's expansion was accompanied by profound changes in economic life. In the course of the second century BC the city of Rome emerged as an important commercial centre and private businesses of all kinds were set up that provided services and manufactured goods.²⁸ Rome's increasingly sophisticated economic life required enterprising men to direct her trade, undertake the construction of public works, manage war contracts and collect taxes. This entailed the emergence of an important new class of merchants and entrepreneurs, which were known as the equestrian class (*ordo equester*).²⁹

However, Rome's dramatic expansion also brought about severe problems and upheavals in the Roman state. The central problem was to devise a suitable government for the territories conquered. The republican system of government, originally designed for a small city-state, was inadequate to meet the organizational and administrative requirements of the vast empire that evolved. This central issue was accompanied by acute economic, social and political problems at home, as Roman society was transformed from a relatively small, closely-knit and

Romans and was reduced to the position of a client-state of Rome. In 188 BC, after a four-year war, the Romans broke the power of Antioch III, King of Syria and Asia Minor, and extended their control over the Eastern Mediterranean. In 148 BC, following a protracted struggle, Macedonia was defeated and turned into a Roman province. With the dissolution of the Achaean confederacy and the sacking of Corinth in 146 BC, the whole of Greece fell under Roman domination. The same year marks the end of the Third Carthaginian or Punic War (149–146 BC), which resulted in the complete destruction of Carthage and the annexation of her territory as part of the Roman province of Africa. In 88 BC Rome embarked on a series of wars in the East against King Mithridates of Pontus, who had declared himself liberator of the Greeks and launched a campaign aimed at expelling the Romans from Asia Minor and Greece. After Mithridates' defeat in 63 BC, Rome regained control of Greece and a continuous belt of Roman provinces was created along the coasts of the Black and Mediterranean Seas from Northern Asia Minor to Syria and Judaea. This phase of Roman expansion ceased with the conquest of Gaul by Julius Caesar (58–53 BC) and the annexation of Egypt by Octavian in 30 BC.

²⁷ Greek philosophical thinking, especially Stoic philosophy, attracted many followers among the members of Rome's upper classes. The success of Stoicism was to a large extent due to the fact that it reflected best the cosmopolitan ideals of the times. In particular, the Stoic ideal of a world state based on the brotherhood of men exercised a strong influence on Roman thought and furnished one of the foundations on which the political philosophy of the empire was built.

²⁸ The increase in economic activity during this period is manifested by the development and widespread use of currency and the establishment of financial institutions in Rome and other cities in Italy and overseas.

²⁹ An active and visible minority within the equestrian class acquired their wealth by entering into contracts with the Roman state for the collection of public revenues. These contractors, referred to as *publicani*, assumed the risk and expense for exploiting the state's assets and paid an annual fixed sum to the Roman state treasury. The wealth and influence of this class of businessmen grew rapidly as Rome's territory and revenues expanded.

homogenous grouping into a complex stratified society with diverse and often competing interests. At the same time, the influx of Greek models had an erosive effect on the long-established moral and ethical norms on which the unity of Roman society hinged. As the ideological underpinnings of the Roman state began to crumble with the weakening of the old value system, the governing senatorial nobility found it increasingly difficult to achieve satisfactory solutions to the problems generated by Rome's expansion. The oncoming crisis manifested itself in the intensification and widening of factional political strife within the ruling class. This, combined with growing social unrest, gave to ambitious political and military leaders an opportunity to attain power by gaining the support of discontented social groups demanding various kinds of reform. The problems and tensions in the Roman state found expression in a series of civil wars and rebellions, which became the norm by the first century BC. Out of this strife there emerged, in 31 BC, Octavian, who became the sole master of the Roman world. In the period that followed, the senate and the assemblies legitimised his *de facto* control of the state by bestowing upon him a range of powers that placed him in a unique position. Armed with these powers, Octavian, who assumed the honorary title Augustus Caesar, ushered in a new form of government known as the Principate.

1.3.2 The Constitutional Framework

During the period under examination the Romans tenaciously clung to the constitution and accompanying traditions they had established in the early republican age. The senate retained its central role in political life and, in the course of the second century BC, evolved from a mere advisory body to the magistrates into an executive body with a wide range of customary powers over foreign policy, public finance, legislation and the administration of justice. The magistrates and the people showed themselves ready to follow its lead and, although only the assemblies had the constitutional right to enact legislation, senatorial resolutions (*senatus consulta*) were regarded, for all practical purposes, as having the force of laws. Political contest took place mainly within the senate, where a number of rival groups of allied families were striving to increase their political influence.

However, by the close of the second century BC the unavoidable fact emerged that the Roman constitution, devised in the days when Rome was a small agricultural community, could not achieve the centralized and cohesive control required to govern a world empire. It became impossible for the entire citizen body to assemble to debate and vote on the passing of laws and the election of magistrates. The senate had by this time lost much of its former vigour and, with its authority and prestige undermined by the corroding influences of wealth and luxury, increasingly failed to fulfil the role assigned to it. This failure aggravated political instability and enabled powerful and unscrupulous men to gain control of the state by manipulating the magisterial offices and the assemblies of the people. Thus, although the outward forms of the republican constitution were retained, the republican system of government was inexorably undermined by forces alien to the traditional framework.

The erosion of the traditional constitutional structure was accompanied by an increasingly violent internal strife, both between rival factions and individuals within the ruling class, and between the aristocracy and various disadvantaged groups. During the revolutionary period of the first century BC, these circumstances degenerated into an almost permanent state of civil war, which prompted the disintegration and eventual collapse of the republican system of government.

1.4 The Classical Period (Early Empire or Principate)

1.4.1 *General Historical Background*

When Octavian gained control of the state in 31 BC, the Roman world was still in a state of confusion. The main demand of the age was the return to the stability that only a properly functioning system of government could provide. But the whole administration of the state was so inextricably bound up with the republican constitution that political stability was virtually impossible without upholding the republican traditions. Based on this realistic appraisal of the situation, Octavian–Augustus, through a series of masterful manipulations, established a constitution that artificially preserved the republican institutions but in fact created a new monarchical power and a new system of government for the provinces. This constitution, referred to as the Principate, made possible for more than 200 years the peaceful development of the Roman empire and its civilization. The work of Augustus was continued and developed further by his successors: the Julio-Claudians (Tiberius AD 14–37, Caligula AD 37–41, Claudius AD 41–54 and Nero AD 54–68); the Flavians (Vespasian AD 69–79, Titus AD 79–81 and Domitian AD 81–96); and the Antonines (Nerva AD 96–98, Trajan AD 98–117, Hadrian AD 117–138, Antoninus Pius AD 138–161, and Marcus Aurelius AD 161–180).

For nearly a century and a half after the establishment of the Principate the Roman empire continued to expand territorially until it included all the countries within the natural boundaries outlined by Augustus: Thrace, the Rhine regions, Britain, Armenia and Mauretania. During the same period the Roman world enjoyed an unprecedented degree of peace and the Greco-Roman civilization continued to spread throughout the provinces. The conditions of peace and security that prevailed promoted economic development and produced high levels of prosperity throughout the empire. This prosperity was to a large extent based on an enormous increase in industry and commerce that was precipitated by the expansion of the Roman road network, the security of transport and the establishment of a currency system for the whole empire.³⁰ The cultural and economic basis of the

³⁰ In the second century AD, regular commercial contacts were established with lands as distant as India, China, Arabia, central and southern Africa, and the Scandinavian regions. Of far more importance was the trade conducted within the empire itself, between different provinces and cities.

empire was a vast network of city-states spread throughout the provinces. These enjoyed a large measure of autonomy, and all had a share in the same civilization and favourable economic conditions.³¹ Moreover, from the early years of the Principate age Roman citizenship began to spread in the provinces. From the time of Emperor Claudius on, provincial aristocrats were admitted as members of the senate, and by the reign of Hadrian they filled nearly half of this body. By the second century AD, the provincials shared in all the privileges of Rome and even the office of emperor itself was opened to persons of Roman descent whose families lived in the provinces. The process of Romanization of the empire was completed in AD 212, when Emperor Caracalla issued an edict, the *constitutio Antoniniana*, by which he bestowed Roman citizenship on all the free inhabitants of the empire who were members of organized communities. Caracalla's edict was a milestone in the history of the Roman Empire: it signified the triumph of the idea of a supra-national world empire over the old idea of the city-state and led to the gradual leveling of the inhabitants of the empire with respect to their legal and political rights. The republican traditions, which Augustus had artificially preserved and which in the course of time had become an empty shell, were ripe for collapse.

In the later half of the second century AD, several forces began to gather to complete the transformation of the empire from its previous structure under Augustus. The most important among these forces originated from the conditions present in the socio-political milieu of the times: the increasing reliance of the emperors on the army as a means of maintaining control of the state; the creation of a vast administrative apparatus that, in the long run, could not be supported by the resources of the empire; the perpetuation of a class structure that failed to give the producing classes rewards equal to the burdens imposed on them; and the sharp decline of public spirit in a state where servility to imperial authority had replaced active participation in public affairs. With the final abandonment of the principle of diarchy (the double rule of the emperor and the senate) during the reign of Emperor Septimius Severus (AD 193–211) and the further militarization of the administration, the army discarded its position as the empire's servant and became its master. From AD 235, the collapse of the central government authority entailed disorder and civil war as different field armies proclaimed their generals as emperors and used their own strength to plunder the lands of the empire. The continuous military mutinies and struggles between different pretenders to the throne weakened the state's defences at a time when new external enemies increasingly threatened its frontiers. In the wake of the devastation caused by war and plunder, the civilian populations and the economies were severely damaged; law and order disintegrated; commerce and industry came to a standstill; and once flourishing urban centres fell into decay. In the closing years of the third century, the crisis was

³¹ An outstanding social by-product of the empire's prosperity was the emergence of a numerically small but significant middle class in the provincial cities and towns, which was composed largely of landowners, merchants, bankers, and private contractors. This class furnished the members of the municipal councils (*decuriones*) who, after their election, became citizens of Rome.

finally checked under a succession of capable emperors but only at the cost of establishing a despotic government and a rigidly regulated society.

1.4.2 The Constitutional Framework

As previously noted, in the new system of government inaugurated by Augustus there was no sharp break with the past. The powers he was invested with were conferred upon him in forms compatible with republican precedents, and the Republic itself still functioned. The assemblies and senate still met, the regular magistrates were elected each year, and the senate continued, as in the past, to be recruited from ex-magistrates. Augustus was successful because he was able to establish a stable regime, a disguised kind of monarchy cleverly hidden behind a constitutional, republican façade. But the new political system was heavily encumbered by its contradictions between façade and reality. However successful Augustus' programme proved to be, neither he nor his successors resolved the contradictions inherent in the elective theory supporting the new regime and its dynastic practice. In the course of time, the absolutism inherent in the imperial system became progressively more pronounced and, inevitably, the relics of the republican state (senatorial independence of action and the sovereignty of a people legislating and electing magistrates in popular assembly) withered away.

1.4.2.1 The Republican Elements in the Augustan Constitution

The Popular Assemblies

During the early years of the Principate age, the assemblies of the people continued to function as legislative and elective bodies. However, from the beginning of the new order, the political role of the assemblies was destined to wither away yielding to the necessities of a society transformed from a city-state into an empire in which leadership had shifted from short-term magistracies to the supremacy of a single ruler. Thus, as early as the time of Tiberius, the election of magistrates was transferred to the senate and by the end of the first century AD, popular legislation was superseded by the decrees of the emperor and the resolutions of the senate.³² As a result, the assemblies lost their significance as independent political bodies, although they continued in existence in an honorary or ceremonial capacity until the end of the third century AD.

³² The last law passed by the *comitia* was a *lex agraria* enacted under Emperor Nerva (96–98 AD). This law is mentioned in the Digest of Justinian in an extract of the jurist Callistratus (D. 47. 21. 3. 1.).

The Senate

In contrast with the people's assemblies, the senate received a considerable accession of dignity, as well as electoral and legislative powers. Officially, the senate had become a full partner in the government. Theoretically, it was even more: the ultimate source of the emperor's power, as his *imperium* and legitimacy on accession was derived from the senate's approval of his nomination. In reality, however, the senate was much under the control of the emperor, who regulated its composition, dominated its proceedings and prescribed its tasks. Elections of magistrates always corresponded with the wishes of the emperor; legislative proposals brought before the senate by the emperor or his representatives were accepted without much debate³³; the conduct of foreign policy was in the hands of the emperor, who also controlled all the politically important provinces; and the management of public finances was gradually assumed by the emperor following the establishment of the imperial treasury (*fiscus*). Thus, in the end, the division of government between the emperor and the senate (diarchy) was more apparent than real; although the emperors owed all their powers to the senate, once these powers were given the senate became virtually impotent and unable to retract them, even if it had desired to do so.

The Magistrates

After the establishment of the Principate, the old republican magistracies continued to exist and their apparent importance was shown by the fact that the emperors forged their power by relying on the most important of these, such as the consulship and the tribunate. In fact, however, the authority of the magistrates was now considerably limited. The consuls no longer directed the political life of the state, nor did they hold military command as these functions were transferred to the emperor. Nevertheless, the consulship remained until the closing years of the Empire an important status symbol and a gateway to the highest offices in the imperial administration.³⁴ The praetors retained the civil and criminal jurisdiction they had held during the Republic.³⁵ However, their role in the administration of

³³ In the first century AD the procedure leading to the enactment of a *senatus consultum* was initiated by the emperor himself, or a magistrate acting in his name, through a speech containing the emperor's legislative proposal (*oratio principis in senatu*). From the second century AD the emperor's proposals were approved by the senate as a matter of course and, in most cases, without discussion.

³⁴ Whereas during the Republic the office of consul was normally held by two persons in the course of one year, it now became common practice to appoint several pairs of consuls during one year, and this number varied according to the number of persons on whom the emperor wished to bestow the title.

³⁵ During the Principate the number of praetors was increased, initially to twelve and later to eighteen. Of these the *praetor urbanus* and the *praetor peregrinus* had general jurisdiction, whilst

justice gradually decreased in importance following the expansion of the emperor's judicial functions, and the establishment of new civil and criminal courts under the jurisdiction of imperial officials.³⁶ The tribunes continued to exist down to the fourth century AD, but their authority was considerably diminished by the decline of the popular assemblies and their complete dependence on the will of the emperor.

1.4.2.2 The Emperor and Imperial Administration

Under the Augustan constitution, the powers of the emperor were those exercised by the higher magistrates of the Republic, now combined and concentrated in one person. In the course of time these powers were gradually extended, although their legal basis remained largely unchanged. A great deal of the emperor's authority emanated from his *tribunicia potestas*, the power the tribunes had held under the republican constitution. This enabled him to veto acts of the magistrates and other state organs (*intercessio*); it allowed him to call together and submit proposals to the senate and the assemblies of the people; it afforded his person inviolability (*sacrosanctitas*), so that any indignity offered to him could be treated as a criminal offence; and it allowed him to present himself as the protector of the common man's interests. The *imperium proconsulare*, the overriding authority of a proconsul, gave the emperor supremacy over the key frontier provinces and secured his position as commander-in-chief of the army. Yet it should also be noted that much of the emperor's authority derived from sources quite beyond the traditional republican institutions. Thus, the emperor was seen as enjoying *auctoritas*: supreme political prestige, moral authority and social influence.³⁷ In 27 BC the senate granted Octavian the title *Augustus*, signifying grandeur and majesty, but also meaning holy or worshipful. Despite of all his powers and titles, Octavian refrained from assuming the position of king, professing to be no more than a *princeps*, a term simply meaning 'the first citizen of the state'.³⁸ He boasted that he had not taken a single magistracy in conflict with ancestral custom and that the official powers he possessed were not greater than those of his colleagues in the office concerned. The

the jurisdiction of the rest was limited to certain matters only. Thus, in the Augustan era the management of the public treasury (*aerarium*) was entrusted to two praetors, referred to as *praetores aerarii*; from the time of Claudius a special praetor was appointed to deal with cases concerning trust estates (*praetor de fideicommissis*); under Nerva a special praetor was entrusted with the resolution of disputes that arose between private individuals and the imperial exchequer (*praetor fiscalis*); and in the time of the Antonine emperors the appointment of guardians and the resolution of disputes which arose between guardians were consigned to a special praetor known as *praetor tutelarius*.

³⁶ The office of *praetor peregrinus* disappeared after the Roman citizenship was granted to all the free inhabitants of the empire in the early third century AD.

³⁷ Subsequent emperors regarded their *auctoritas* as the ultimate source of their acts in the legislative, judicial and administrative fields (*ex auctoritate nostra*).

³⁸ From the word *princeps* arose the term 'princiate', by which the new system of government became known.

truth, however, is that as the powers of the *princeps* were not subject to the limitations traditionally imposed on magisterial authority, initiative passed from the senatorial oligarchy to one man and the whole system functioned under the autocratic control of an emperor.

As the true master of the state, the emperor marshalled a huge administrative machine: a vast civil service composed of trained, paid and permanent officials. These new officials gradually assumed those duties the emperor deemed impossible or undesirable for the old republican magistrates to perform. The imperial officials differed from the magistrates of the Republic in some important respects: they were chosen by the emperor himself, without the approval of the senate or the popular assemblies, and reported directly to him; they were appointed for an indefinite period, although the emperor could dismiss them at any time at his pleasure; and they were not invested with *imperium* or *potestas*—their only powers were those delegated by the emperor who could approve, reverse or modify their decisions as he thought fit. The most important imperial officials were the praetorian prefect (*praefectus praetorio*) and the city prefect (*praefectus urbi*). The former was originally the commander of the special military units that served as the emperor's personal bodyguard (the praetorian guard). The office evolved into one of the most powerful in the state, and the praetorian prefect became the emperor's chief adviser and executive officer in military and civil matters. From the late second century onwards, he also assumed important judicial functions. The city prefect was responsible for maintaining public order in Rome with the Roman police (the urban cohorts) at his disposal. He had extensive jurisdictional powers as he headed the chief criminal court in Rome and the surrounding area, and also dealt with civil matters connected with his criminal jurisdiction. Other important officials of this period were the prefect of the grain supply (*praefectus annonae*),³⁹ and the prefect of the watch (*praefectus vigilum*).⁴⁰ Another category of officials with a varying extent of power embraced the procurators (*procuratores*). Acting as agents of the emperor, procurators carried out a number of tasks within the civil administration, such as the collection of taxes, the management of state revenues and the supervision of public buildings and factories. When dealing with important administrative and legal matters the emperors consulted a body of advisors (*consilium principis*) composed of trusted friends, senior state officials and experts. By the middle of the third century AD, this body had assumed most of the functions and duties of the Roman senate. The administrative apparatus of imperial Rome included also a complex network of offices (*scrinia*): these were manned initially by slaves and freedmen, and then by members of the equestrian class in later eras (from the second century AD). The *scrinium a rationibus* dealt with matters relating to public finance; the *scrinium a libellis* responded to petitions from private citizens; the

³⁹ The *praefectus annonae* had general jurisdiction in matters connected with the supply and trade of foodstuffs.

⁴⁰ This official was the head of Rome's fire brigades (*cohortes vigilum*) and his duties included policing the city by night and dealing with fires and any other natural emergencies that might arise.

scrinium ab epistulis handled the emperor's official correspondence; the *scrinium a cognitionibus* investigated judicial disputes referred to the emperor; and the *scrinium a memoria* performed the secretarial work on all decisions, letters, appointments and orders issued by the emperor. State revenues derived from taxation and other sources were deposited in the central state treasury (*fiscus*) managed by the *procuratores a rationibus* or *fisci*.⁴¹

Probably the weakest point of the constitutional regime of the Principate was that it did not provide for an orderly system of succession to the imperial throne. This weakness stemmed from the contradiction between the emperor's constitutional position as a Roman magistrate whose tenure derived from the senate and the people, and his *de facto* status as a monarch whose maintenance of power ultimately depended on army support. Aware that he could not legally nominate a successor, Augustus (and then the Antonines) adopted the most apparently effective means of ensuring the peaceful succession to imperial power: the designation of a successor by the incumbent emperor, the adoption of the individual designated as the emperor's son, and then the training of the successor for his future duties (by sharing in the government of the state). The system of adoptive emperorship broke down in the late second century AD, and thereafter emperors were made and unmade at the will of different field armies that each backed its own general to power.

1.5 The Post-classical Period (Late Empire or Dominate)

1.5.1 General Historical Background

The assassination of Emperor Alexander Severus in AD 235 marks the beginning of a long period of crisis during which the Roman Empire came close to disintegration. But in the later part of the third century a succession of capable emperors⁴² began the work of restoring the crumbling empire. The work of these so called 'soldier emperors' paved the way for the systematic changes of structure that took place during the reigns of Diocletian and Constantine the Great in the late third and early fourth centuries AD. Diocletian (AD 285–305) succeeded in re-establishing peace and regular government within the realm, and in strengthening the imperial frontiers against foreign foes. Constantine completed the work of Diocletian, infusing the empire's organization with the basic characteristics it retained until the fall of

⁴¹ In the course of time the *fiscus* assumed a special legal personality and, from the late second century AD, it began to be represented in the courts when disputes arose between the *fiscus* and private individuals concerning debts. Distinct from the *fiscus* was the personal property of the emperor, referred to as *patrimonium Caesaris*, which was administered by officials known as *procuratores patrimonii*.

⁴² Claudius Gothicus AD 268–270, Aurelian AD 270–275, Probus AD 276–282.

the Empire in the West and its transition to the Byzantine Empire in the East. Constantine's reign is marked by two dramatic new developments: the rise of Christianity as the dominant religion of the empire and the establishment of a new imperial capital, Constantinople, in the East (AD 330).⁴³ The reforms of Diocletian and Constantine marked a significant stage in the abandonment of the outward forms and guiding spirit of the Augustan system of government. As the autocratic tendencies that had strengthened over the previous years prevailed, the republican façade of the Principate was replaced by an unconcealed and unlimited monarchy supported by a complex and ever-growing bureaucratic apparatus. During the same period, the predominance of Rome and Italy in the empire faded and the eastern, Greek-speaking provinces came to be seen as a separate, and possibly as the predominant part of the empire. The transformation of the Roman state and society that transpired under Diocletian and Constantine inaugurated the last phase of Roman history, known as the 'Dominate' (*dominatus*), and in many respects it ushered in the medieval world as well.

The development of the imperial society during the Dominate age was a direct continuation of the process of change that had begun as early as the late second century AD. Clear indications of the altered structure and direction of the late Roman society embrace: the polarization between the impoverished masses and the concentrated wealth and power of privileged dignitaries; the power consolidation of the senatorial land barons and the growing inability of the central government to control them; the institutionalization of rigidly defined and closely regulated hereditary castes, each with a definite rank in society; and the rapid decay of the cities' governing classes (*decuriones*, *curiales*) owing to the incessant and excessive demands imposed upon them by the government. The transformation of the Roman state into a machinery of power supported by relatively small groups and the consequent absolutization of state demands provoked the refusal of large sections of the population to identify themselves with the state. Thus, the rule of the emperor and his machinery of power, exalted to unprecedented heights by an artificial enhancement of the system's brilliant façade of display, finally became an end in itself: a pure burden that only oppressed society with its coercive measures and impositions. With mounting indifference to the state's fate and few individuals prepared to sustain the regime, the forces of dissolution acquired momentum and the demise of the empire appeared unavoidable.

After a breathing spell in the first half of the fourth century, the difficulties of the empire began to mount. In particular, the external pressures on the imperial frontiers increased. Finally, after several years of intense fighting against the Germanic tribes in the North, the Rhine–Danube frontier gave way: in AD 378, the Visigoths and Ostrogoths crossed the Danube River, and simultaneously the Franks, Vandals and Burgundians poured across the Rhine River into Gaul and the western provinces. These invasions exacerbated problems within the empire

⁴³ Constantine's decision to establish a new capital city testifies to the fact that the empire's political and economic centre of gravity had shifted inexorably to the East.

itself, in particular those deriving from the continued failure to establish a firm system of succession to the imperial throne; the shortage of manpower as citizens and officials fled from the tasks imposed upon them; the heavy burden of taxation imposed to set up and maintain new armies for the conduct of war; and the overall demoralisation of the Roman society. In the face of these problems, the division of the empire into western and eastern halves was seen as a necessary remedy. Although imperial unity was in theory preserved, in reality the empire was split into two independent states and from the late fourth century this division became permanent.

The fifth century witnessed the complete disintegration of the Roman Empire in the West, in the face of continuous barbarian invasions and the permanent, large-scale settlement of Germanic tribes in its territories. During the same period, the political power of the central government faded as the western emperors depended entirely on the support of Germanic war bands and warlords who, as 'king-makers', actually ruled the state. Western Roman emperors continued to rule in name until AD 476, when Emperor Romulus Augustulus was overthrown by the Germanic troops which had placed him on the throne.⁴⁴ By the close of the fifth century, the western provinces of the empire were in the hands of various Germanic tribes: the Ostrogoths controlled Italy; the Visigoths ruled Spain and south-western Gaul; the Burgundians were settled in the Rhine River area; the Franks established themselves in northern Gaul; the Angles and Saxons were settled in England; and the Vandals had established their own kingdom in northern Africa. The effect of this was that the civilization and forms of social and economic life characteristic to the ancient Greco-Roman world gradually faded away. The public institutions of the Roman Empire in the West gave way to the more primitive personal loyalty of the barbarians to their tribal chiefs and political conditions shifted towards the decentralized localism associated with the feudal system; once flourishing urban centres were destroyed or abandoned, giving way to forms of habitation constructed around fortified manors and small village communities; and trade and industry declined as economic life reverted to an agricultural and pastoral type geared to maintaining local self-sufficiency.

While the Empire in the West succumbed to the control of Germanic warlords, the Eastern Empire survived the crisis with its institutions and frontiers largely intact. The emperors at Constantinople successfully guarded their territory in Asia Minor against the restored power of Persia and resisted the infiltration of the Germanic tribes and the decentralizing influence of the great landlords and generalissimos. The Empire in the East survived as its socio-economic circumstances were more favourable. In fact, the Eastern Empire underwent a considerable economic revival; a certain amount of flexibility returned to its society; urban life remained strong; and, particularly during the reign of Emperor Theodosius II (AD 408–450), it experienced a remarkable cultural rebirth. From this base, the gifted ruler Justinian worked for the restoration of the empire to its former greatness.

⁴⁴ This date is traditionally regarded as marking the end of the Roman Empire in the West.

1.5.2 *The Constitutional Framework*

The Roman Empire in the third century had been dogged by two interconnected problems: the weakness of the imperial authority and the inadequacy of the empire's administrative structure. Politically, the emperor was in the hands of the army, which had become the real master of the state. Administratively, the government was incapable of ruling the empire efficiently and of defending its frontiers against external enemies. The character of the new order created by Diocletian is reflected in the solutions he devised for these problems: the transformation of the imperial power into an absolute monarchy; the institution of the system of co-regency or 'tetrarchy'; and the reorganisation and transformation of the empire's administrative machine into a rigid bureaucratic system.

Diocletian sought to bolster his authority by imbuing the imperial ideology with a new form and content. The emperor was elevated to the position of an absolute monarch and invested with the dignity and grandeur of the oriental god-kings.⁴⁵ Secluded in his palace and set apart by a framework of complicated ceremonial and court etiquette, he demanded divine veneration from his courtiers, officials and community.⁴⁶ His powers were now unashamedly unlimited and were seen to pervade every sphere of government, administrative, military, legislative and judicial. He appointed and dismissed the public officials, who were now regarded as servants of the throne rather than as servants of the state as an abstract entity; directed foreign policy; exercised control over Church matters; and regulated economic policy. He was also the sole author of laws and their final interpreter. His unchallengeable legislative supremacy conformed to the nature of an absolute monarchy whose omnipotence precluded constitutional or any other limitations on the emperor's law-making power.⁴⁷ The emperor was also the supreme judge and all other judges were deemed his representatives.

Diocletian's answer to the empire's administrative problem was the introduction of the system of the 'tetrarchy'. Recognising that the empire could not be governed efficiently by a single ruler, or from a single administrative centre, he devised a system whereby imperial rule was divided whilst, at the same time, the principle of imperial unity remained unaffected. In AD 285 he appointed Maximian, one of his ablest generals, as Caesar and co-ruler. In AD 286 Maximian was promoted to Augustus and was made ruler of the West, while Diocletian himself took over the rule of the East. In AD 293 each Augustus appointed as his assistant

⁴⁵ He was referred to as *dominus* (lord), and so this era has become known as the Dominate.

⁴⁶ In later years, the recognition of Christianity as the state religion compelled an adaptation of the imperial cult to the demands of a stringent monotheism. The emperor was installed by the grace of God and his empire existed as a reflection of the heavenly kingdom; both were deemed divinely inspired and protected, and everything remotely connected with the imperial personage partook of imperial sanctity.

⁴⁷ The emperor was held to exist above the laws, in the sense that he could not be held responsible for his legislative and administrative acts; however, he was bound to respect the laws and abide by his own edicts as his authority rested on obedience to them.

and successor a Caesar and the four ruled jointly, each having control over one quarter of the empire. From Nicomedia, his capital city, Diocletian ruled over Asia, Egypt and Thrace, while his Caesar, Galerius, governed the Balkan peninsula. Maximian, whose seat of government was at Mediolanum (Milan), had control over Italy, Africa and Spain, while his Caesar, Constantius Chlorus, ruled over Britain and Gaul.⁴⁸ This proliferation of the imperial summit was designed not only to facilitate the administration of the empire but also to discourage attempts at usurpation by establishing a stable succession mechanism.

As the imperial government assumed the characteristics of an Eastern despotism, the remaining republican institutions became mere shadows of their former selves or were entirely abandoned. The assemblies of the people had long disappeared. Some of the old republican magistracies continued to exist, but they were divested of all their former powers. The consulship was still regarded as a high honour and was frequently held by the emperor himself. However, it was now a purely honorary office without political importance. The praetors and quaestors also continued to exist but only in an honorary capacity. The senate was retained and, in fact, a second senate was established in Constantinople (c. AD 340). This body retained a certain prestige and dignity, and its members formed the highest rank of imperial subjects from which the heads of the imperial civil service and army were chosen. However, the actual administration of Rome and Constantinople was in the hands of the urban prefects and their subordinates, and the only political role the senate played was in the inauguration of a new emperor.

When carrying out the various responsibilities of his office, the emperor relied upon a machinery of official and non-official confidants who proffered him advice and assisted him in the formulation of policy decisions. He also depended upon an apparatus of execution that translated his decisions into the realities of the political process. Among the most important civil functionaries of this period was the *magister officiorum* (master of the offices): he was chief of the imperial secretariats (*scrinia*), supervised the division of the various imperial offices and regulated imperial audiences. Another key official was the *quaestor sacri palatii* (magistrate of the sacred palace) who was the emperor's Minister of Justice. This official prepared the drafts of laws and answers to petitions, and presided over the imperial Council of State when the latter met in the absence of the emperor. The Council of State (*sacrum consistorium*) consisted of the highest officials of the imperial civil service that acted as the emperor's advisory council in legislative, administrative and judicial matters. It also operated as an imperial court of justice, usually dealing with appeals from decisions of the lower courts.⁴⁹ Besides the officials resident at the central imperial court, an important branch of the administrative apparatus consisted of officials engaged in provincial rather than central government. The

⁴⁸ In later times the city of Ravenna in Italy was chosen as the new home of the Western emperors, while the administration of the East centred around the eastern emperor at Constantinople.

⁴⁹ The *sacrum consistorium* developed from the earlier *consilium principis* as organized by Emperor Hadrian in the second century AD.

latter formed a separate administrative hierarchy whose structure was linked with the territorial division of the empire into prefectures, dioceses and provinces. The highest-ranking civil official of the provincial administration was the praetorian prefect (*praefectus praetorio*), the officer heading the administration of each of the four prefectures (Gaul, Italy, Illyricum and the Orient) into which the empire was divided. Subordinate to the prefects were the chiefs of dioceses, called vicars (*vicarii*), and the provincial governors. The cities of Rome and Constantinople were exempt from diocesan government and each was administered by a city prefect (*praefectus urbi*). The complex administrative machinery of the Late Empire was designed to secure efficient administration, and maintain order and regularity for revenue collection and judicial proceedings. Despite the tight controls that theoretically existed, the system was rife with corruption as office holders sought career advancement and self-enrichment at the expense of civilians. In AD 368, the newly created office of *defensor civitatis* was entrusted with the protection of the lower classes within the population against abuses committed by state officials and great landowners.⁵⁰

1.6 The Reign of Justinian (AD 527–565)

1.6.1 General Historical Background

In 527 AD a vigorous new ruler, Justinian, ascended the throne at Constantinople. Imbued with the Roman imperial tradition, Justinian directed all his energies to fulfilling his essential ambition: the restoration of the Roman Empire to its earlier grandeur. Thus he inaugurated a programme that focused on three interrelated goals: the re-establishment of imperial rule throughout the Mediterranean basin; the restoration of unity in the Church through the enforcement of religious orthodoxy; and the systematic restatement and consolidation of the law.

After concluding a peace agreement with the Persian Empire in the East, Justinian mounted an expedition under general Belisarius against the Vandal kingdom of North Africa in AD 533. Within a year the Vandals were defeated and Africa was restored to its former position as a province of the empire. The invasion of Sicily in AD 535 marked the initiation of the reconquest of Italy. After a bitter struggle that endured for more than two decades, the Ostrogothic kingdom was overthrown and Rome, the empire's ancient capital, was recaptured. In AD 554 Justinian's ambitions directed him to the far western Mediterranean, where southern Spain was wrested from the Visigoths and adjoined to the empire. By exploiting the diplomatic isolation of his opponents in the West and assuming a

⁵⁰ However, the institution of the *defensor civitatis* ultimately failed to achieve its declared goal as many of those individuals who held the office often committed abuses themselves or were prone to manipulation through bribery or intimidation.

defensive stance in the East, Justinian succeeded in converting the Mediterranean once more into an imperial lake. However, the reconquest of Africa, Italy and Spain entailed mixed blessings for their inhabitants; their initial acceptance of imperial rule was soon tempered by misgivings prompted by the obligations placed upon the population by the imperial authorities.

Within the empire, Justinian introduced a series of administrative reforms designed to protect his subjects against the rapacity of government officials and soldiers, and to curb the oppression of the rural population by powerful land barons. Moreover, he adopted measures devised to revitalize commerce and industry; embarked on an extensive architectural and artistic program, furnishing the empire with churches, public buildings and fortifications; and accomplished his ambitious tasks of codifying the law and transforming legal education. However, he encountered impediments when endeavouring to restore religious orthodoxy within the Church, whose unity was threatened by various schisms.

Modern historians are generally divided as to their assessment of Justinian and his work. Some point to his authoritarianism and his ruthless suppression of all internal opposition, and to the fact that his reconquest of the West proved ephemeral and exhausted the empire both economically and militarily (after his death in AD 568 renewed attacks by Germanic tribes reduced imperial authority in the West to a few strong points). Others draw attention to his undeniable military successes and to his tremendous internal achievements, notably in the fields of art and law. They point out that at a time when the ancient world was ending, Justinian did succeed in finally assembling and preserving for posterity the heritage of Roman law—an immense body of legal materials spanning hundreds of years of legal development.

1.6.2 The Constitutional Framework

The government and administrative structure developed in the later imperial age continued in operation, except for certain minor changes.⁵¹ The administration of the Eastern Roman Empire continued as before, while the reconquered provinces in the West were placed under the control of viceroys, with full civilian and military power, who ruled in the name of the emperor from the centres of Ravenna in Italy and Carthage in North Africa.

⁵¹ For example, the office of consul was abolished by imperial decree in AD 541.