

## CHAPTER I

# INTRODUCTION

This is not quite a book about Roman law, on which there already exist any number of excellent treatises.<sup>1</sup> Neither is it quite a book about Roman social and economic life; that subject, too, is already illuminated by massive works of scholarship.<sup>2</sup> It is about Roman law in its social context, an attempt to strengthen the bridge between two spheres of discourse about ancient Rome by using the institutions of the law to enlarge understanding of the society and bringing the evidence of the social and economic facts to bear on the rules of law. Nowadays, with good reason, the nature of law is usually discussed in sociological terms; we insist on asking what role laws and lawyers and courts actually play in the life of their societies.<sup>3</sup> No one supposes, of course, that by looking only at the law you can get a whole picture of society, neither are the detailed legal institutions of a particular society a product of nothing but its social and economic patterns. Nevertheless, law is certainly some reflection of society (usually of its more conservative aspects, because of the law's function as a guarantor of stability), and not only a reflection, but also in some degree an influence upon it (usually a brake, providing only cautiously and tardily the mechanisms to fulfil the changing desires of society as a whole, but sometimes an accelerator, a tool in the hands of a particular section of the community such as an intelligentsia for achieving new ends that people in general do not actively want but will not positively oppose).<sup>4</sup>

In complex societies everyone is enmeshed in a vast network of legal rules, although people may go through their lives unconscious of most of them (even if 'ignorance' of them 'is no defence'). Roman society was quite complex enough for this to be

true of it, but it is likely that more Romans knew more about their legal institutions than Englishmen do about theirs. For reasons connected with the amateurism (until quite late in its history) of Roman public life—whereby the standard education included forensic rhetoric,<sup>5</sup> and the law was run by members of a financially independent upper class in the interstices of pursuing political careers or just managing their estates, so that the talkers of law were also the readers and quite often the writers of literature—for such reasons, legal talk and terminology seem rather more frequent and more at home in Roman literature than in ours. Legal terms of art could be used for literary metaphor, could be the foundation of stage jokes or furnish analogy in philosophical discussion. And a corollary of this is that many a passage of Latin *belles lettres* needs a knowledge of the law for its comprehension.

Society and law are subject to change, and Roman history went on for a long time. The present book cannot possibly provide a chronological account of the relations between law and society at every stage of that long history.<sup>6</sup> The picture must be a 'still', and must therefore be focused on a particular stage. However, the period chosen is itself a long one—simply for convenience, in order to exclude as little as possible of the interesting evidence—and there is no need for it to have a very precise beginning or end. One way of describing it would be to say that it goes from Cicero to Ulpian; Cicero's earliest surviving oration, *pro Quinctio*, was delivered in 81 BC, and Ulpian, the most famous of all the Roman jurists, was murdered by the praetorian guard between December, AD 222 and May or June 224.<sup>7</sup> Another way of describing it would be to say that it goes from the legislation of 90–89 BC by which all free persons in Italy south of the River Po became entitled to possess Roman citizenship, to AD 212, the traditional date<sup>8</sup> of the legislation of the emperor Caracalla by which almost all free persons in the whole Roman empire became possessors of Roman citizenship. This stage of Roman law and society (which will be called 'our period' in all that follows) corresponds neither to the 'classical' period of Latin literature, which runs roughly from Cicero to Tacitus, nor to the 'classical' period of Roman law, which runs roughly from Augustus to Ulpian; the latter dis-

crepancy calls for comment and, as some scholars would hold, for apology. To the experts in Roman law the age of Cicero, the late Republic, is 'pre-classical' in an important sense, its legal institutions being significantly different from those of the 'classical' period of law and, where uncertain, not to be casually extrapolated from what we know about the 'classical' period.<sup>9</sup> Consequently our picture of a period that embraces both Cicero and Ulpian cannot be a unity, and the 'still' is bound to be out of focus. In the present book this undeniable truth will nevertheless be boldly ignored, partly because for the matching up of law and society the evidence of Cicero is too valuable to sacrifice, and partly because for our purposes it is not as devastating as it might seem. The fact is that by Cicero's day the whole structure of Roman society, and enough of the fundamental structure of Roman law, were already there; the 'Roman Revolution' was a revolution of government, not of social structure; and in the age of the Principate the ground-bass of both society and law remained the same, however subtle and remote the variations played above it. There were of course important developments, not least as a result of the legislation of the emperor Augustus;<sup>10</sup> of course neither society nor law remained static for three hundred years. But these changes are comparatively easy to take into account, and will indeed often be our theme.

As to the appropriateness of treating Roman law as a reflection of, and using it to throw light on, Roman society, some further preliminaries are necessary in order that the reader may not be under any illusions about the difficulties and limitations of the whole enterprise. To begin with, it is simply not possible to do a proper 'sociology' of Roman law.<sup>10a</sup> Sociology depends on measurement, upon statistical techniques for discovering what most people mostly do, and so upon measurable evidence. Notoriously, the ancient world very seldom provides such evidence, only particular statements of individual alleged facts.<sup>11</sup> The sociologist will supplement his material by the use of models, and he will assume that if the community he is studying behaves in certain ways like some other known group of communities it probably does so in other ways too, unless there is

specific evidence to the contrary. Dangers arise, however, if you apply this technique in comparing imperfectly known societies with other societies that are also imperfectly known.<sup>12</sup> A second difficulty is due to the fact that Roman society was very oligarchical. It perpetuated enormous differences in wealth and social power, and the upper class which determined its legal rules enshrined in them a code of values relevant to itself which cannot automatically be assumed to have been equally relevant to the lives and habits of the mass of people. Furthermore, the intellectual power and subtlety and thoroughness of the great Roman jurists, which made their surviving writings a justly admired paradigm of law for later ages, was achieved at the price of concentration on certain groups of rules (those most relevant to the oligarchy of which they were members) and unconcern for what might in fact be going on below or outside that sphere.<sup>13</sup> The nature of Roman legal training and discussion puts in our way another stumbling-block. In the schools of rhetoric and law they invented, and argued the *pro* and *contra* of, imaginary legal tangles,<sup>14</sup> so that a proportion—very difficult to estimate—of what looks like case law in our sources is imaginary-case law.

The problem is indeed the same as in considering the relation to society of the elaborate legal systems—the codes, particularly—of other peoples remote in time: the Babylonians, Assyrians, Egyptians, Hindus. How far do the texts reflect what actually happened?<sup>15</sup> How available were the remedies of the law? What were its delays and its costs? To what degree was it at the mercy of power, bribery or corruption?<sup>16</sup> What practical chance had the slave of getting freedom from his master, or the shopkeeper of getting his bill out of the consul, or the miner of getting damages for injury in the course of his employment? How many people just broke the laws, and which laws did they break? How much of the law was enforceable, in any case?

Even then the tale of difficulties is not fully told. One more question arises: what are we going to mean by 'Roman' law and 'Roman' society? The dominions of Rome embraced many culturally very un-Roman people: Greeks, Egyptians, Semites, Celts and so on. Rome did not (or only in a sense that will be briefly

discussed at the very end of this book) impose a unitary system of legal institutions like a giant dishcover upon all these diverse sets of people. Their legal relationships inside their own communities went on in most ways as before, at least in our period, and it would be quite impossible to describe them all—not least because of some of them virtually nothing is known.<sup>17</sup>

Can one, then, obtain only so vague, partial and distorted a reflection of Rome in its heyday, by looking through the eyes of the law, as to make the entire undertaking worthless? One or two considerations, at least, can be set on the other side of the scale, and how far they help to tip it the reader will judge by results. In the first place, although one might suppose that in the slums of Rome or the remote countryside of Gaul the rules laid down by the jurists, the Labeos and Ulpian, had little significance, this is not entirely so. The great (perhaps the emperor) owned the land on which you were a tenant, they owned your habitation, they were the employing class; the rules of debt and damage and wages would indeed concern you. Ambition might take you up in the world, and, as you rose, more and more of the rules of Roman law would be relevant to you; above all, if, having been a foreigner, you became a Roman citizen (as during our period more and more people did) the Roman law would become your law. Secondly, to redress the balance of the evidence, there is much that we can add to the juristic treatises.<sup>17a</sup> On the one hand there are hundreds of references to legal affairs in Roman lay literature. Here, indeed, we are still in the upper brackets of society, but at least we are in the realm of practical, everyday law, not the meshes of technical professional theorizing (and such references also provide useful chronological indications). On the other hand, and much more important still, there survive in remarkable richness, on stone and bronze and papyrus and wooden tablets, actual documents of day-to-day legal business—*instrumenta* and *negotia*. We can read the humble man's will, the auctioneer's receipt, the sale of a horse, the miner's contract of service. Not only does this take us down into the middle-class world of Pompeii, of Trimalchio's Dinner Party, and further down still to the barmaids and common soldiers and apprentices, and out

into the countryside and the provincial towns; it also enables us to judge, a little, how far this lower world did order its lives according to the rules made by the great men in Rome. Many such everyday documents survive from the even older Near Eastern societies of Babylonia and Assyria,<sup>18</sup> but only in the Roman case are we fortunate enough to have all four kinds of evidence in abundance: the legislation, the juristic commentaries on the law, the lay literature referring to the law, and the documents of daily legal relationships.<sup>18a</sup>

Of these materials, then, the present book will be made; but before they are set out in greater detail a word must be put in (not with apology) about what it does not contain. Nothing will here be found about the origins of Roman substantive or procedural law; the Twelve Tables, the *legis actiones*, even the extensive, though tricky, evidence of Plautus for the law of his age, will hardly be mentioned. Secondly, there will be almost nothing about the local law of people in the provinces. We shall see under what conditions the metropolitan law of Rome applied to them, but for more there is not room; and this has the effect of excluding one massive subject: the law of Roman Egypt.<sup>19</sup> From Egypt we have an overwhelming mass of legal and economic papyri; here more than anywhere else it is possible to make contact with the legal relationships of ordinary folk. But because of the diversity of its population and the pedantry of its bureaucracy the law, like the administration, of Egypt remains a thing apart from all the rest. It would burst the modest bounds of this book, and so will not appear as such, though this need not preclude our occasionally taking into account an illuminating papyrus. A third omission of a different kind must be signalled. We cannot go, as a textbook of Roman law would, into the details of the legal rules and how they were applied to innumerable complex sets of facts; we can only sketch the main institutions and state some of the basic rules. This has an effect which the author does much regret. It makes it impossible to view the Roman law in one of its most characteristic and impressive lights—as a mode of argument. The law reflects not only the social and economic but also the intellectual life of a people, and the Roman

jurists, arguing in their pragmatic, case-to-case way, provide important evidence for the strengths and weaknesses of the intellectual equipment of the Romans; but another volume would be needed to embrace the subject, and sadly we must leave it.

Two aspects in particular of what follows may give pain to those accustomed to the usual presentation of the grand theme of the Roman law. The first is this: unlike the Roman jurists and the modern scholars who study them, who were and are accustomed to separate very rigidly the sacred law, the administrative law, the criminal law and the pure civil law of relations between one individual and another, the present book treats of all these indiscriminately as its historical purpose seems to demand. Secondly, for the same reason (but perhaps more heinously) the traditional divisions of the civil law—persons, things, obligations (contracts and then delict) and actions—will be quite ignored here, and topics will be taken up in an order designed to bring out their social relationships.

It would not be possible to set out in a page or two all the evidence for Roman law,<sup>20</sup> but a sketch of the principal sources actually to be used in this book is necessary, if only to introduce the reader to some further difficulties.

First there is the great mass of juristic literature. We have the benefit of a quite good 'Introduction to Roman Law' written by a learned lawyer in the second century AD—the *Institutes* of Gaius.<sup>21</sup> The enormous treatises of the most famous lawyers, however, survive only in excerpt. The emperor Justinian, in the sixth century AD, attempting to revive from Byzantium the physical reality of the Roman empire, set out to revive also its law as a universal code.<sup>22</sup> He entrusted this enormous task to his most learned academic lawyers, headed by Tribonian, and they were required to perform it in a furious hurry. The ultimately resulting 'Corpus of Civil Law', which we possess, contains *Institutes*, an elementary textbook based on Gaius; the *Codex Iustinianus*, a collection of legislation by emperors from Hadrian onwards; and the *Digest* (or *Pandects*), published in AD 533.<sup>23</sup> To compile the *Digest* Tribonian and his colleagues gathered

together copies of the principal juristic writings of the eminent lawyers of former days (many were already very hard to come by), chopped them up, and redistributed them under Titles or headings, each Title concerning some particular rule of law—‘Concerning military wills’, ‘Concerning *peculium*’ and so forth. Each Title, therefore, was composed of a number of Fragments or Excerpts, each fragment being a passage from a named work of legal literature.<sup>24</sup> Thus we have at first sight a great mass of the actual written arguments and discussions of all the eminent jurists from Cicero’s day to Ulpian and beyond. The great bulk of the material is from Papinian, Paul and Ulpian, the giants of the ‘classical’ period of Roman jurisprudence in the late second and early third centuries AD, which creates the problem that the bulk of our evidence for the Roman law of our period comes from treatises composed at the very end of it. But there is a very much more serious problem, deriving from the simple fact that the whole of Justinian’s ‘Corpus of Civil Law’, including the *Digest*, was given the force of law; it was to be living law, not history, and it alone was to govern the lives of the people and the practice of the courts. Now since the writings of the eminent jurists of the distant ‘classical’ past, though in general too valuable to lose, contained much that was by Justinian’s time obsolete and had to be abolished, it was necessary to alter or ‘interpolate’ their excerpts in the *Digest*, to bring them up to date, expunge references to dead institutions, contradictory opinions and so on (which added to the scale and so to the extreme haste of the whole operation). Only, therefore, if we can distinguish the original from the interpolated in these fragments can we say what the law was in the opinion of Ulpian and the rest; and in very many cases we cannot do this with conviction. If all the places in the *Digest* that have been incriminated for interpolation in the last hundred years were laid end to end and expunged there would be little left; but many a passage has passionate defenders, too. Moreover, in fairly recent years the problem of alterations in the *Digest* has been shown to be even more complex. It has become apparent that those precious texts of the old jurists on which Tribonian and his fellow commissioners set to work as the data of their



task had already suffered change in the 'post-classical' centuries lying between Ulpian and Tribonian, and the same is true of other independently preserved works, like Gaius' *Institutes*. Men had been re-editing them all the time to bring them into line with changes in the law.<sup>25</sup> Views as to the extent of all these interpolations vary like other fashions; from our present point of view there is no need to despair, because on the whole controversy is concerned with the details of the law rather than its broader rules, and because for the existence of those broader rules we often have other evidence which will save us from gross anachronism.

A difficulty already referred to is that of knowing whether legal situations discussed in the *Digest* are real or imaginary. We very often do not know, but the range of uncertainty can be circumscribed a good deal. First, there are many references to specific enactments by the emperor or senate on named dates, and answers to petitions by particular emperors or discussion of cases in their presence; with these there is no problem. Secondly, we know something of the imaginary cases that were argued in the rhetorical schools;<sup>26</sup> they were fantastic *Arabian Nights* sort of stuff, and the cases in the *Digest* have a quite different ring of practicality—even if imaginary they are in terms of law and society always *ben trovato*. The *Digest* often gives its litigants stock names (Seius, Titius and so on), and cases where these names appear may well be invented for discussion; but often it uses specific names unlikely to have been invented or indeed patently real, as in the discussion of the wills of Pannonius Avitus, procurator of Cilicia, and Seius Saturninus, senior helmsman of the fleet of Britain, or the concubine of Cocceius Cassianus.<sup>27</sup> And the cases discussed under these real names are not different in character from those discussed under stock names. Sometimes the jurist concerned is found saying 'I remember a discussion on the following actual circumstances' (*ex facto consultum, ex facto tractatum*),<sup>28</sup> or he quotes letters to him asking for advice, or remembers an argument he had when sitting on the panel of the praetor,<sup>29</sup> or even an argument with the emperor.<sup>30</sup> As far, then, as this difficulty goes the *Digest* can be used confidently enough.

Besides Gaius and the *Digest* there survive some other substantial fragments of juristic writings, particularly the 'Vatican Fragments', the 'Titles from Ulpian' and the 'Opinions of Paulus', all post-classical, but based on works by the classical jurists. But the second main category of evidence for the law consists of legislative and administrative texts found on inscriptions in stone or bronze and in papyri. (This is the point at which to say parenthetically that, apart from the *Digest*, almost every text the reader could want or this book will use is collected in the three small but marvellous volumes of *Fontes iuris Romani anteiusustiniani*, compiled by the finest Italian Romanists of the last generation.)<sup>31</sup> There would be no point in formally listing these texts here, as we shall use them in due place; they include the municipal charters of Urso and Salpensa and Malaca in Spain, the Lex Rubria from Gaul and the Table of Heraclea from Italy, Augustus' edicts for the province of Cyrenaica, the 'Gnomon of the Idiologos' (part of the rules of the Department of Special Revenues in Egypt), and 'Apokrimata', a collection of legal rulings of the emperor Septimius Severus.<sup>32</sup>

In the third category of evidence come the *negotia* and *instrumenta*. Again, since they will be a constant preoccupation in all that follows, they need not be set out in detail now; most of them will be found in the third volume of *Fontes*. Amongst them are several substantial archives belonging to a single person, place or time, such as the records of loans and sales and labour contracts of Dacian miners that come from Verespatak in Hungary (the 'Transylvanian Tablets'), and the documents from the strong-box of Caecilius Iucundus, the banker-auctioneer of Pompeii, which lay buried beneath the dust of the earthquake of AD 79. One marvellous collection of eighty-seven documents has turned up quite recently from the other buried Campanian city, Herculaneum: the 'Herculaneum Tablets',<sup>33</sup> which include several important groups, especially the dossier of proceedings concerning the claim of a woman Petronia Iusta to a declaration of free birth. Another such homogeneous collection is the archive of documents relating to a single Greek family from Tebtunis in Egypt and running from AD 89 to 224.<sup>33a</sup> And some of the papyri from

Dura-Europos, the 'caravan city' on the Euphrates, offer a glimpse into the legal life of a community on the fringe of the Roman world.<sup>34</sup> That even wooden tablets, smeared with wax, and writing incised in the wax, should survive to be read today, is astonishing; but the reader who looks at these texts in the print of modern books should permit himself two reflections: first, that the originals are mostly very broken indeed, full of holes and cracks and smudges—often therefore very heavily filled in by editorial conjecture, and so to be assessed critically and cautiously; and secondly, that he owes the possibility of making use of them at all to the brilliant and patient detective skill and the limitless erudition of some of the giants of classical scholarship. These are the tasks of the flourishing academic disciplines of 'juristic epigraphy' and 'juristic papyrology'; there also exists 'juristic archaeology',<sup>35</sup> for the law of land and buildings must be compared with the actual remains (types of shops and houses, air-photographs of centuriation and so on), and the sculptured reliefs on tombs and public and private monuments sometimes refer to or represent procedures of the law.

It remains to bring in the evidence from lay literature.<sup>36</sup> We are fortunate in having, distributed along the path of our period, two large mines to quarry and a third quite substantial one. The largest by far is Cicero, of whom it should be remembered that he was a famous barrister, so that on the one hand he knew plenty of law but on the other hand his statements of it are advocate's statements, not necessarily to be believed because he says so. There are four surviving civil law speeches of Cicero (all defences),<sup>37</sup> but naturally many of his criminal law speeches contain important legal references (especially the Verrines and the defence of Archias). So also do the works on rhetoric, particularly *de oratore* and *Topica*. But, above all, the massive unexpurgated correspondence not only abounds in legal details but, through the family and property and commercial transactions of Cicero and his friends, gives a detailed picture of the nature of aristocratic society in the late Republic. Hardly less illuminating, this time for the age of Trajan, is the collection of letters of the younger Pliny—except that he only allowed in what was respectable and

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redounded to his credit. The famous tenth book (a separate collection of his official correspondence with the emperor) is exceedingly important for the way Roman law worked in the provinces under the Principate. Thirdly, the *Apologia de magia* of Apuleius, his defence of himself on a charge of using magic arts to secure the affections of a wealthy widow, delivered before the governor of Africa in about AD 160, is not only superb rhetoric but also an important legal source for its period. Some law can be got from his fictional work, the 'Golden Ass', and some from the *Satyricon* of Petronius. That great novel gives a picture of 'low-life' which, however much its colours may have been enriched by the author's powerful imagination, nevertheless recreates as nothing else does the actualities of small-town life—including law—in the first century AD. Of course, Tacitus and Suetonius and Dio, the historians, and Valerius Maximus and Aulus Gellius, the collectors of antiquarian information, are not without profit for our purposes. Of the Latin poets it is naturally the satirists, closest to everyday life, who abound most fruitfully in legal evidence—Horace in his *Satires* and *Epistles*, Persius, Martial, Juvenal; but wherever the element of 'social realism' is present, as sometimes in Propertius and particularly in Ovid, in comes the law. Beyond this list we come to the territory of mere legal allusions, of which no Latin author is free; but in their case it is not so much a matter of their being useful to elucidate the law as of knowledge of the law being required to elucidate them.

All in all, then, there is a huge body of information which, though scattered, complicated and difficult to assess, gives the historian some chance of escaping (at least for the purposes of such a work as the present book) from the vicious circle of 'interpolation doctrine' to which the most massive single source of our knowledge, the *Digest*, is subject.

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One more preliminary question must be gone into: what *was* law at Rome? The question is not here intended as a jurisprudential or philosophical one, but simply signifies: of what propositions might a Roman have said 'You can't get away from that; it's the law'? This is virtually the same as asking how and by

whom the law was made, or what the 'sources of law' were at Rome.<sup>38</sup> Cicero gives an answer for his day:<sup>39</sup>

'Partitive division of a subject is dividing it like the limbs of the body, as when one says that the civil law consists of legislation [*leges*], resolutions of the senate [*senatus consulta*], decided cases, the formal opinions of the jurists, the edicts of magistrates, custom, equity.'

Some of these 'limbs' are awkward and difficult, so consideration of them may be postponed until we have looked at the more professional answer of Gaius for his day (200 years later):<sup>40</sup>

'The laws of the Roman people consist of legislation, enactments of the plebeians [*plebiscita*], resolutions of the senate, constitutions of the emperors, the edicts of those who have the right to issue edicts, and the answers of the jurists.'

'*Leges*' and '*plebiscita*'. These are the ancient formal legislation of the Roman Republic. In its early days the Republic's only law-making authority was the *populus Romanus* assembled and voting in its *comitia*, thereby making *leges*. Subsequently equal authority was accorded to the *plebs Romana*, assembled and voting in its *concilium* and thereby making *plebiscita*. These two kinds of enactment were equally 'legislative', and they were the only 'laws of Rome' in the full sense of the word.<sup>41</sup> In the earlier part of our period, the late Republic and the principate of Augustus, important legislation in this full sense was still enacted, but as a genuine organ of the people's will the assemblies inevitably declined, and after Augustus legislation was very rare; the last known 'law of the Roman people' was passed under the emperor Nerva in AD 97.<sup>42</sup> (These laws were based on a bill, *rogatio*, put to the people; they were *leges rogatae*. It is customary to list and treat separately the big municipal charters of Urso and Malaca and so on, and to call them *leges datae*, on the ground that, while they did indeed count as legislation for the community on which they were imposed, they need not necessarily have been passed as formal *leges* by the community of Rome which imposed them; they could be 'given' by a Roman magistrate on his executive authority. This belief

has been recently and powerfully challenged;<sup>43</sup> the distinction is not a genuine ancient one, and the charters were based on formal legislation at Rome but written up locally and adapted to the community to which they applied.)

*Constitutions of the emperors.* It will be convenient to take this heading next, because as might be expected the command of the emperor, from the beginning of the Principate, to all intents and purposes replaced the vote of the people as supreme authority in the state. A bald statement such as this is constitutionally speaking shockingly incorrect, for the Principate began constitutionally as a concatenation of magistracies—executive, not legislative powers.<sup>44</sup> Technically speaking the emperor's command, though you had better obey it, did not at the beginning make law. At the end of our period it did, and Ulpian could say:<sup>45</sup>

'That which has been decided by the emperor has the force of law.'

It was being treated as such already by Hadrian's day, in the early second century AD, though Gaius, having included it amongst his sources of law, has to give a few sentences later a rather illogical reason for doing so:<sup>46</sup>

'because the emperor himself is given his *imperium* by a law.'

However, from a practical point of view this does not matter very much. It is more important to consider the different forms in which the emperor's will was expressed. To begin with, one must note that both the few 'laws of the Roman people' that were still passed and the many important 'resolutions of the senate' (to which we shall come presently) were enacted at the emperor's instigation, or at least as far as we know never without his approval. Imperial decisions proper can be subdivided in many ways, and more minutely than is needed here;<sup>47</sup> Gaius says they are 'by *decretum* or *edictum* or *epistula*'. *Decreta* are judicial decisions (and of the emperor as judge there will be more to say in a later chapter). *Edicta* are the pronouncements of an officer of the people to the people (or to some particular set of them), saying what he requires to be done—not only about the law but about anything; for example:<sup>48</sup>

'Imperator Caesar Augustus, pontifex maximus, in the seventeenth year of his tribunician power, says: if any persons of the province of Cyrene have been granted the privilege of [Roman] citizenship, I order that they shall nevertheless be rated for municipal charges. . . .'

*Epistulae*, letters, cover several phenomena. On the one hand the emperor might take the initiative and (as a result of requests, an embassy or such like) write a letter to a community; for example:<sup>49</sup>

'Imperator Caesar Vespasian Augustus to the magistrates and local senators of the Vanacini, greetings. . . . The privileges accorded to you by the deified emperor Augustus after his seventh consulship, which you retained down to the reign of Galba, I confirm.'

Or he might write an answer, to a petition (*libellus*) that had been sent in, on the bottom of the petition itself (*subscribere*, to write a *subscriptio*); the legal *Apokrimata* of Septimius Severus are actually a collection of such answers.<sup>50</sup> These two kinds of answers to people's appeals are most commonly lumped together under the name of 'rescripts', *rescripta*; Marcianus says:<sup>51</sup>

'If anyone, when he has one will already made, makes another, even if in the second one he has instituted heirs to specific things, the former will is rendered void, as the deified emperors Severus and Antoninus wrote in a rescript, the words of which I append. . . .'

And since appeals on points of law, before ever a case came on, were much the commonest, we hear of a great many more *rescripta* than *decreta*. Very many rescripts in the *Digest* are in fact answers to the queries of officials about the state of the law; many of Trajan's replies to Pliny are just this. There is one other category of imperial enactment which Gaius does not mention, perhaps because he thought of it (quite reasonably) as another kind of letter, namely the *mandatum*. *Mandata* were instructions to officials (again not necessarily about the law), either to an individual official or to all relevant ones, like Trajan's confirmation

of the military will:<sup>52</sup>

‘... moved by a sentiment of honest dealing towards my noble and loyal fellow-soldiers I have decided to make provision for their simple natures by allowing their intentions to be fulfilled irrespective of the form of their wills. Let them therefore make wills in whatever way they wish and can.’

Ulpian says that this decision ‘came to be inserted in the mandates’, which suggests that the mandates came to be a kind of official code.<sup>52a</sup>

*Resolutions of the senate* (‘*senatusconsulta*’). The decisions of the senate, like those of the emperor, did not at first strictly speaking have the force of law. The senate of the Republic, though technically only the advisory council of the state’s executive officers, acquired a wide competence which did not conflict with legislation because it was exercised mainly in a different field, the day-to-day running of foreign policy and dealing with states and peoples outside Rome. From Augustus onwards *senatusconsulta*, named usually after the magistrate who had proposed the bill in the senate-house, became a frequent and important engine of development of the law. Sometimes the proposing speech was made by the emperor himself, sometimes it was read on his behalf:<sup>53</sup>

‘Since a set of rules about all this was made by resolution of the senate, it is best to give a commentary on that resolution, and I begin by quoting it [says Ulpian]: “Quintus Julius Balbus and Publius Juventius Celsus Titus Aufidius Hoenius Severianus, consuls [AD 129], brought forward a bill based on a paper of Emperor Caesar Hadrian Augustus, son of Trajan Parthicus, grandson of the deified Nerva, greatest princeps, father of the state, on 3rd March. On the question what action to be taken, the senate resolved: i. Since . . . etc. etc.”’

Consequently, *pari passu* with the emperor’s word coming to be treated as making law, so did the *senatusconsulta* proposed by him, and eventually his speech in the senate-house came to be quoted



without reference to the formal resolution to which it was supposed to lead, as one more form of imperial legislation:<sup>54</sup>

‘The deified Marcus [Aurelius], by an oration spoken in the senate, laid down that a pact to convert an annuity into a lump sum should be valid only if approved by the praetor.’

*The ‘Edicts of those who have a right to issue edicts’.* Magistrates had this right—the consuls, praetors, aediles and governors of provinces (and indeed also the tribunes, who were—in the end—magistrates, and the censors and *pontifices*, none of whom had *imperium*; but they will not concern us). We possess edicts of governors laying down particular rules for the province in their charge:<sup>55</sup>

‘Marcus Mettius Rufus, prefect of Egypt, says: I am informed by Claudius Areius, the controller of the Oxyrhynchite district, that both private and public property are in confusion because of long-standing failure of management of the property registry office. . . . I therefore order all owners, within six months, to register in the property registry office their personal property etc. etc.’

But for the law there is an enormously more relevant aspect of the edicts of magistrates, which can be approached by looking at a third and even later definition of the ‘sources of law’, that of Papinian:<sup>56</sup>

‘The civil law is that which derives from laws, decisions of the plebeians, resolutions of the senate, decrees of the emperors and the formal opinions of the jurists. The praetorian law is that introduced by the praetor in the public interest, to support, supplement and correct the civil law; it is also called *ius honorarium* from the office [*honor*] of the praetors.’

A full historical description of this vital and characteristic development cannot be attempted here,<sup>57</sup> but very roughly it is this. The urban praetor (from 367 BC) and the peregrine praetor (added in 241 BC) were in practice in charge of the courts of the Republic.

They had, to work with, a primitive system of law based on the Twelve Tables, standard and rigid forms of procedure, and ancient custom. What they did was to build up alongside that primitive system more flexible institutions, enabling the law of the Republic to keep pace with its economic and social development and its increasing contact with foreign peoples. This was the *ius honorarium*, the 'Roman Equity'. The Edict was the tool they employed; it was the right and duty of each praetor to publish an 'annual edict', *edictum perpetuum*, when he entered on his term of office, which was for a year, and the annual edict set out what actions at law he would allow—in what circumstances he would grant a legal action or other remedy (such as an injunction) if requested to do so, or in what circumstances he would refuse. The praetor could not legislate; if there was legislation he must provide actions to give it force (though he might refuse an action in an individual case). But where there was none he had it freely in his discretion to grant or refuse legal remedies, and the remedies and protection he gave were in effect legal rights as against all the world except a superior magistrate or someone claiming under legislation or the civil law.<sup>58</sup> The praetor's edict was his own, but as the praetors were simply career politicians, not necessarily learned in the law, their edicts tended to copy that of their predecessors, occasionally being added to or improved by a legal luminary who happened to be, or advise, the praetor. Thus a basically permanent set of rules grew up, and already Labeo, in Augustus' time, was able to write a 'Commentary on the Perpetual Edict' on a large scale.

The edict of the aediles governed the markets of Rome, and had an importance which will be seen later. Governors of provinces also had to publish an edict when they entered their province, both to provide the special rules of law applicable to their territory and to make available to Roman citizens in the province a set of legal remedies parallel to those they had at home. The provincial edict tended, for the same reason as the urban, to become standardized, though in Cicero's day it was still subject to modification by governors who had the learning or interest. We hear a lot about it from Cicero, both in what he says about

the administration of his *bête noire* Verres<sup>59</sup> and in his description of his own edict for Cilicia. He writes, for example, to his precursor:<sup>60</sup>

'I worked my edict out in Rome. I've not added anything, except what the tax-companies, when they came to see me at Samos, asked me to copy straight out of yours.'

And to Atticus he says:<sup>61</sup>

There's nothing unusual about Bibulus's edict except the clause you told me about in your letter, when you said it was a "slap in the eye for the whole equestrian order". But I've got a counterpart to it, only less crudely put, taken from Mucius Scaevola's edict for Asia . . . and I've followed a lot of the clauses of Scaevola, including the one that gives the Greeks a great feeling of liberty bestowed—that in suits where all parties are Greeks they can use their own laws.'

The praetor's edict, which was not wholly static in the first century AD, was finally codified by Hadrian's most eminent jurist, Salvius Julianus,<sup>62</sup> and it was as commentaries on the codified edict that the largest works of interpretative jurisprudence were written in the latest part of our period, especially that of Ulpian.

*Answers of the jurists.* It is well known that in no society does the law consist entirely of legislative enactments; it may rest on very few, or none—most tribal law is entirely non-legislative. We must therefore turn to the non-legislative sources of Roman law, and can begin with the last source mentioned by Gaius, the 'answers of the jurists'. It will be seen in a later chapter how the learned lawyers, by advice to judges and counsel and litigants, influenced how the rules of law should be applied to particular cases, and so made law rather as the courts do today. And the published works of jurisprudence, available to practitioners, were simply an extension of oral advice. Now this was a quite informal process. Acceptance of a jurist's statement of the law would depend on his distinction, and his distinction would

depend on the learning and subtlety of his replies. Was there anything more formal, any rule, for example, for deciding between the conflicting opinions of two distinguished jurists? Not until long after our period (in AD 426) was a formal rule of thumb promulgated, a 'law of citations'<sup>63</sup> for a generation of lawyers to whom not much in any case was left of the old unwieldy—when not inaccessible—mass of juristic publications. Within our period there is only one phenomenon to record, and this will be done briefly, because its significance is furiously controversial and, unless new evidence turns up, likely to remain so. From Pomponius's historical excursus quoted in an early title of the *Digest*<sup>64</sup> we learn (though the passage may have undergone a whole series of interpolations) of a 'right to give answers publicly with the authorization of the emperor', established by Augustus;<sup>65</sup> and Gaius in the *Institutes* says that 'answers of the jurists' are the decisions and opinions of those who 'have received permission to lay down the law', and if they are unanimous what they so hold has the force of law, if not, a judge may (and must) think for himself.<sup>66</sup> Some scholars hold that from the beginning of the Principate anyone who wanted to be called a *iuris consultus* and give formal legal advice had to have an imperial patent. Others hold that there was an inner circle of patented jurists (perhaps connected with the emperor's advisory council) whose opinions if unanimous made law, whereas the opinions of others remained mere advice. Again, it is held by many that in spite of Gaius<sup>66a</sup> no opinion of any jurist or group of them had in our period the force of law—the imperial patent just improved your standing. From our point of view what matters is that it is never stated in the sources that such-and-such is a rule of law *because* it was so laid down by jurists X and Y and Z; beyond that the problem is not worth pursuing here. Nor can we do more than mention a much more important connected topic—the way in which the influence of the jurists on the law underwent change. Two outstanding books in recent years have shown how this happened. It was a result partly of the increasing bureaucratization of the Roman empire (law became less aristocratic and amateur, and more and more formally tied to the emperor and his council),

and partly of the changing social origin of the jurists (again from aristocratic amateurs to salaried officials of equestrian and provincial background).<sup>67</sup>

*Decided cases.* The modern Englishman is accustomed to the rigid principle of *stare decisis*, whereby a court's decision in a particular case is binding for the future, if such a case comes up again—makes law, in fact—unless it is either overruled by a higher court or the new case can be shown to be significantly different from the one decided. Did Rome have such a source of law? Cicero, in the passage of the *Topica* with which we began, appears to say so; but the short answer is that he cannot mean what, with our background, we are liable to assume him to mean. What he probably meant is suggested by a parallel passage in the treatise *ad Herennium*;<sup>68</sup> the courts in Republican times might have precedent or the 'current of decisions' quoted at them by counsel, but the decision in the case on hand did not necessarily follow such precedent. What the emperor said when he decided a case was naturally law, but even he did not, like the House of Lords until the other day, bind himself or his successors absolutely, though they would normally quote and follow him, and the existence of a final and central court of appeal put a different complexion on things.

'Custom' and 'equity' (Cicero). The latter was not so much a 'source of law' as a principle by which cases could be judged and the law interpreted and developed—the guiding principle, above all, of the *ius honorarium*.<sup>69</sup> The former is the subject of long stretches of every treatise on jurisprudence; for of course in the broadest sense, if we maintain that law somehow reflects society we are implying that in some way and to some degree what people actually normally do comes to influence the law, and the notions of ancient tradition, 'time out of mind' and so on are very general characteristics of legal systems. But as soon as one asks specific questions, such as 'how does this particular system decide what is a custom?', or 'what does it do if alleged custom conflicts with legislation?', one begins to see that custom plays different roles in different systems. On the role of custom in the

Roman system there are many excellent discussions<sup>70</sup> and some important disagreements. Certainly, from quite early days the Roman jurists clearly and rather ruthlessly distinguished between legal customs and mere social observances, in which they were quite uninterested. As to 'custom of the realm', the law of the Roman Republic, according to historical tradition, began its serious career with a statute or code, the Twelve Tables, which no doubt partly enshrined contemporary custom and partly made new rules. (It was convenient later, when the original significance of those hoary but often parroted clauses was no longer understood, to attribute to them meanings which gave venerable legislative sanction to what were in fact more recent Roman customs.) The jurists in interpreting the law might be influenced by what they believed to be men's general habits—of agreement and the like; and they might look to such habits when there was no express law on a point. But no general theory was developed about the part played by custom as against, for example, legislation, or of how custom was to be determined. There is indeed a famous text in the *Digest*, attributed to Salvius Julianus:<sup>71</sup>

'Ingrained custom is not unreasonably maintained as good as law; this is what is known as the law based on men's habits. For since actual legislation is only binding because it is accepted by the judgment of the people, those things of which the people have approved without any writing at all will justly be binding on everyone. And therefore the following principle is also quite rightly accepted, that legislation can be abrogated not only by the vote of a legislator but also by desuetude, with the tacit agreement of all men.'

It is usual, though not unanimous, to regard both the positive and the negative parts of this assertion as 'post-classical' interpolations and not, at the very least, applying to our period.<sup>72</sup>

Local custom is a different matter. On the one hand, precisely because local custom is local, the law of a large unified state will inevitably impose certain uniformities that override what the people of such-and-such a village or valley have always done. On the other hand one meets a number of cases in the *Digest*

where local custom is specifically looked to. Thus we are told<sup>73</sup> that:

‘if land is sold, security against eviction must be taken according to the custom of the region in which the transaction takes place;’

and that under certain circumstances a guardian may have to pay interest on his ward’s property ‘according to the habit of the province’.<sup>74</sup> And one of the letters of Pliny to Trajan, with the emperor’s reply, gives a very neat case.<sup>75</sup> ‘Several of the cities of Bithynia-Pontus,’ says Pliny, ‘claim that they are privileged creditors of bankrupts as against private creditors. Many governors have accepted this, and it is now taken as settled law here; but I should be happier with a general ruling.’ ‘It depends on the charter of each city,’ replies Trajan. ‘If they have such a privilege, uphold it, but I am making no general rule to the detriment of private creditors.’

This leads us on to Rome’s relationship to the general legal customs of the non-Roman peoples in her dominions. *Ius civile* is opposed in one sense to *ius gentium*, ‘law of the peoples’. Now *ius gentium* certainly does not mean (as it came in the seventeenth century to mean)<sup>76</sup> ‘international law’. What it does refer to is those legal habits which were accepted by the Roman law as applying to, and being used by, all the people they met, whether Roman citizens<sup>77</sup> or not. (Thus, slavery was *iure gentium*—everybody had it; whereas *sponsio* as a form of verbal contract was *iure civili* and available only to Roman citizens.) Rome did not destroy the legal systems of her subjects, in respect of their dealings amongst themselves; what is more, Rome borrowed some legal institutions from the highly sophisticated standard practice of the Greek-speaking part of her dominions (though the degree of borrowing is rather variously estimated).<sup>78</sup> So some customs of foreign peoples did become part of the law of Rome. Nevertheless, if you, a Greek, came into a Roman court it was by Roman law your case was judged (though the provincial courts were not necessarily deaf to peregrine legal traditions);<sup>78a</sup> it would be no use, for example, pleading a national custom which had not been

accepted by Roman law. And in numerous important spheres the Romans stoutly refused to take any notice of quite widespread eastern customs.

Having surveyed the sources of Roman law we must return to that part of it which consisted of specific enactments, to enquire what was the scope of their validity in space and in time. *Leges* proper could, according to Julianus (as we saw, but saw also the doubtfulness of the passage), be abrogated by disuse; otherwise they were perpetual unless abolished by the passing of something else. The characteristic Roman way in fact was to set up a new legal institution, such as a more flexible form of procedure, alongside the old and let the old gradually be forgotten or survive for some limited purpose to which it was best adapted. The most famous case of this is the way in which the *ius honorarium* in its long development simply got round the old *ius civile* without abrogating anything. In respect of extension, *leges* at their widest applied only to Roman citizens; but they determined the law that was applied in the Roman courts, so that it would be no use a non-citizen saying 'by my law I am allowed to inherit from a Roman citizen', since he could only make such a claim before a Roman magistrate, for whom the rule was that non-citizens could not inherit from Roman citizens. *Senatusconsulta* were valid, as far as we know, without limit of time. They were not confined in extension, in the time of the Principate, to 'senatorial' provinces;<sup>79</sup> and especially those numerous *senatusconsulta* that regulated the private law applied to all Roman citizens everywhere, governed the Roman courts, into which non-citizens might come, and sometimes extended the application of *leges* to non-citizens.<sup>80</sup>

When we come to the pronouncements of magistrates the situation is different. Edicts of magistrates were technically valid only for the term of the magistrate's office, though in the provinces it was probably normal to assume that rules made by one governor went on unless his successor enacted something different, and to quote them to his successor. We have seen that the edicts most important for the law, the annual edicts of the urban and



peregrine praetors, were in effect handed down with less and less change. What of imperial constitutions? It has been much argued whether they were valid only under a given emperor, and subject therefore to ratification by the next. A recent reconsideration has led to the conclusion that 'constitutions of all sorts continued in effect long after the deaths of their authors'; even 'abolition of the memory' of a hated emperor did not necessarily cancel his *acta*, though evil ones might be individually abrogated. For 'the stability of society in all its phases demanded that the imperial pronouncements, which reached into every corner of the empire and touched its life in every aspect, should remain in force unless specifically changed'.<sup>81</sup> The emperor Nerva made much the same point:<sup>82</sup>

'Since the arrangements of everything, which were begun and completed in former times, need to be maintained, we must stand by even the letters of Domitian.'

Many imperial constitutions were for particular provinces or sets of people, and so only applied to them.<sup>83</sup> We have seen the reluctance of Trajan to be jockeyed into issuing general rules; it is exemplified again in the famous letter about the Christians:<sup>84</sup>

'It is not possible to lay down anything general that will have a kind of set formula.'

Nevertheless, imperial decisions could apply to everybody; they were not constitutionally confined to the 'provinces of the emperor',<sup>85</sup> nor to Roman citizens:<sup>86</sup>

'Imperator Caesar Vespasian Augustus, pontifex maximus, in the sixth year of his tribunician power, imperator for the fourteenth time, pater patriae, consul for the fifth time and designated for the sixth, censor, says: since the pursuits suitable for free persons are held in all cities to be for the public and private good and sacred to the gods, the profession of elementary and higher school-teachers who raise the minds of the young to civility and public virtue being sacred to Hermes and the Muses and the profession of doctors and physical trainers to

Apollo and Asclepius (for to the disciples of Asclepius only is given the care of physical health, since they are hailed as sacred and divine); I therefore order that these persons aforesaid shall not be liable to billeting or to taxation of any kind.'

What may surprise those accustomed to think of the Romans as an administratively efficient people is that it seems to have been quite difficult even for the authorities to discover what currently valid legislation there was on problems with which they had to deal.<sup>87</sup> Evidence comes from several of the official letters of Pliny—as extraordinary imperial commissioner governing the province of Bithynia-Pontus—to Trajan, with the emperor's answers. He forwards a petition and appends copies of letters of Domitian and an edict of Nerva.<sup>88</sup> On another occasion, requesting advice about a legal difficulty, he writes: 'Numerous imperial constitutions have been quoted to me about this—an edict, said to be of Augustus, for Andania, a letter of Vespasian to Sparta, etc. None, however, apply either specifically to this province or to all areas generally. I am not appending copies, because their authenticity and textual accuracy is dubious, and I expect you have proper copies in Rome.' Trajan replies: 'Yes, there are many enactments, but no general ordinance; here is a decision for your case.'<sup>89</sup> He seems to have the copies, as Pliny surmised; but when in another letter Pliny asks: 'On certain legal questions previous proconsuls of this province have given judgments, and there is a letter of Domitian; but the *senatusconsultum* on this branch of law mentions only proconsuls. May I (who am technically not a proconsul) give judgments on these questions?', Trajan sends back the astonishing answer: 'Send me a copy of the *senatusconsultum* and I'll tell you whether you may.'<sup>90</sup> Finally, in another letter Pliny actually encloses the text of the relevant clauses of the *lex Pompeia*, the ancient charter of the province, and of an Augustan edict.<sup>91</sup> It may be that the firing of the Capitol in the civil war of AD 69 had disastrous effects on the archives; certainly Vespasian set up a committee to recover documents.<sup>92</sup> The situation was therefore perhaps worse for *leges* and *senatusconsulta* than for imperial constitutions, copies of which were presumably

kept by a bureau of the emperor's administration. But it does appear that the safest way to preserve a decision that concerned you was to take a copy of it yourself when it was promulgated; and this is in fact how our surviving documents have mostly come down to us.

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In the Greco-Roman world litigation was a public spectacle. Rhetoric (which of course was not only forensic but also political and sometimes just 'epideictic'—for display) and rhetoricians fulfilled in ancient society the role that the stars of entertainment hold today. And these rhetorical performances, including the speeches of the great barristers in legal actions, took place in public, in the stoas and basilicas the remains of which are still to be seen. Pliny gives a vivid picture, congratulating himself on success in a *cause célèbre*:<sup>93</sup>

'There they were, one hundred and eighty jurors (for that's what the four panels come to when they are joined together), a huge collection of counsel for both plaintiff and defendant, rows and rows of seats in court, and a deep ring of auditors standing up, surrounding the whole huge court in a multiple circle. The magistrate's dais was crowded, and even from the upper stories of the basilica men and women peered down in an effort to hear, which was difficult, and see, which was easy enough. . . . I piled on every canvas—indignation, rage, distress—and sailed the seas of that tremendous action like a ship before the gale.'

Besides this, it was a part of the philosophy of the Romans that the duty of a citizen included taking his share of the burdens of the law: acting as judge, arbitrator or juror and supporting his friends in their legal affairs by coming forward as witness, surety and so on. Many a familiar passage of Latin verse testifies to this; Juvenal's recipe for the good citizen:<sup>94</sup>

'be a good soldier, good guardian, honest arbiter, unperjured witness;'

or Horace's answer to the question 'Who is a good man?':

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‘the man who keeps the resolutions of the senate, the statutes and the law, before whom many great suits are brought to judgment; when he is surety affairs are safe, when he is witness causes are upheld;’

or Horace’s description of the daily legal life of Rome in his encounter with the Bore, and his complaints about all the legal business a man gets involved in.<sup>95</sup> Still more exacting were the claims on those who professed legal learning; Pliny says:<sup>96</sup>

‘I’ve done a lot of speaking in court; I’ve often been a judge; I’ve often been on a judge’s panel of advisers,’

and:

‘I’m almost more often a judge than a barrister.’

It is, as was suggested at the beginning of this introduction, the constant sense of the omnipresence of legal concepts amongst the Romans that gives the stimulus to closer study of the relation between their law and their life. This could be carried out in an anecdotal way; one meets in the legal sources, not least the formidable bulk of the *Digest* itself, many human circumstances and predicaments—piquant, comic, pathetic—which help, like a first sight of Pompeii or Ostia, to bring us closer to the ancient world and to make us feel that in their attitudes and activities they were ‘people rather like ourselves after all’. Since we shall not return to this anecdotal approach, the reader may care for a few samples:

There is the man who runs into a shop to escape the police and is bitten by a dog (D. 9. 1. 2. 1); the quarrel over removal of a street-lamp, which might as easily come out of Petronius or James Joyce (D. 9. 2. 52. 1); the question whether robbers can have an action for division of profits (D. 10. 3. 7. 4), reminiscent of the English ‘Highwaymen’s Case’ of 1725;<sup>97</sup> the argument for holding that no fare need be paid in respect of a baby born on board a ship (D. 19. 2. 19. 7); the problem of the slave who spends too much time in picture-galleries (D. 21. 1. 65 pr.); and the disgraceful story of the knight who took to burglary (D. 47. 18. 1. 2). There are rules for punishing wreckers (D. 47. 9. 10)

and for the better ordering of snake-charmers (D. 47. 11. 11). Both sides of the law are represented: the lawyer's sigh of despair at the unbusinesslike habits of laymen (D. 19. 1. 38. 2):

'What happens if neither buyer nor seller has forseen this eventuality, as is usually the situation in such cases?';

and the layman's contempt for the niceties of law (D. 31. 88. 17):

'I, Lucius Titius, have written this my testament without any lawyer, following my own natural reason rather than excessive and miserable diligence.'

Valerius Maximus has a splendid cautionary legal tale (VIII, 2, 2) about a man who, being mortally ill and wishing to leave money to his mistress, adopted the legal 'dodge' of letting her put him down in her account-book as owing her a large sum (which his heir would have to pay); but he recovered, and was sued on the account by the rapacious object of his affections. And anyone who cares to look up the facts stated in a case judged by the emperor Augustus in 6 BC (they can be read in *Fontes* III, no. 185) will find them piquant indeed.

There is an endless variety of matters of this sort, but we shall not pursue our subject by way of them, because such an approach is both trivial and misleading. Of course men of all ages have the same quirks and tend to get into the same scrapes, but it is the differences, not the similarities, between one society and another that call for comment and investigation, and for an attempt to fathom some of their reasons; and it is to this task that the chapters which follow will be addressed.