

# 4 NEW SQUARE

CHAMBERS

## WHAT DO WE KNOW ABOUT LAW IN ROMAN BRITAIN?

A talk by Sir Rupert Jackson to the Northern Legal History Group on 21 March 2024

### PRE-ROMAN BRITAIN: WARLORDS AND DRUIDS

In pre-Roman Britain, executive power was held by tribal leaders. They are called 'kings' by Julius Caesar, who actually met some of them. They may be more accurately described as war lords.

It appears that the only independent judicial authorities were the Druids. Three ancient authors have described their practices, namely Caesar, Strabo and Pliny the Elder. According to Caesar, Druids originated in Britain and anyone wishing to study their practices should come to Britain. So, the first overseas students whom we took in were trainee Druids.

The Druids presided over religious ceremonies and sacrifices. These sometimes centred on oak trees and mistletoe.<sup>1</sup> The ceremonies often involved human sacrifice. According to Strabo, one favoured procedure was to stick a dagger into the victim's back and then to divine the future from the way in which the subject struggled as he died. For this and other reasons, it was unwise to fall out with the Druids.

More relevantly for present purposes, the Druids sat as judges, dealing with criminal offences and civil disputes. Anyone who did not abide by their decisions was banned from sacrifices and denied access to justice. They were effectively ostracised. Sometimes the Druids even arbitrated between warring tribes. They also provided education for the young. All Druids underwent lengthy training and learnt 'a large number of verses'.<sup>2</sup> According to Caesar and Strabo, the Druids were held in high esteem. They were exempt from military service and from any liability for taxes. The Chief Druid had authority over them all.

Religion may be viewed as a means of naturalising power structures. In Iron Age Britain the Druidic system appears to have sustained an élite priestly class and also to have reinforced the authority of the leaders/war lords.

### THE ROMAN CONQUEST IN AD 43: BRITAIN'S FIRST CENTRAL GOVERNMENT

Modern scholars tend to be sceptical about the notion of 'conquest'. They point out that by AD 43 Britain was already part of the Roman world, with extensive cross-Channel trade and cultural exchanges. Communities in southern Britain were minting coins with Latin inscriptions. Ousted British leaders sometimes fled to Rome for refuge or to seek support.

With all due respect to those eminent scholars, this is not a sensible analysis. What the evidence establishes is that Roman culture spread beyond the frontiers of the empire. That is hardly surprising (cf American culture of French culture). The ousted British leaders who fled to Augustus are similar to

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<sup>1</sup> Pliny the Elder, *Natural History* 16.95

<sup>2</sup> 'Magnum ibi numerum versuum ediscere dicuntur.' Caesar, *Gallic War* 6.14

Mary Queen of Scots who fled to England to escape the turmoil of Scottish politics. That doesn't mean that England controlled Scotland in 1568 – quite the opposite.

If Britain was already *de facto* part of the Roman Empire, why on earth did Rome need to invade with four legions and about 20,000 auxiliaries?

The reality is that the Roman conquest was a watershed event and involved massive structural change.

The Roman authorities banned Druidism and imposed a wholly different legal order upon the new province of *Britannia*.

The scattered and independent Iron Age communities were brought under a single central government, headed by the governor. The governor was a man of senatorial rank and a formidable figure. His official title was *legatus Augusti pro praetore*, meaning legate of the Emperor with the rank of pro-praetor. The governor was sometimes a former consul and referred to as '*consularis*'.

The governor combined the roles of prime minister, head of the armed forces and lord chief justice. So naturally he needed a back office (*officium*) to help him. The head of this office was the *princeps praetorii*, a legionary centurion on secondment. That was a senior government post, roughly equivalent to Cabinet Secretary. One incumbent was Vivus Marcianus, a centurion seconded from the Second Legion Augusta. His tombstone (RIB I, 17) shows an important looking man in a tunic, holding a centurion's staff in his right hand and a scroll in his left hand. Each legion provided *speculatores* to serve on the governor's staff. They were military policemen, whose role included executing prisoners under sentence of death. Torturers (*quaestionarii*) assisted with the interviewing of witnesses and suspects.

The *procurator provinciae* was the senior official who dealt with financial matters. He was an equestrian, so one notch below the governor in the social hierarchy. As an independent officeholder, he reported directly to the Emperor and was not subject to the governor's jurisdiction. This bifurcation of authority gave rise to substantial problems. The procurator's first task was to pay the army. With some 40,000 soldiers stationed across the province, that was no easy task. There were four legions at the time of the conquest and three legions in later years, not to mention about sixty auxiliary cohorts. The procurator's second (but urgent) priority was to create a taxation system on conventional Roman lines and then to organise the collection of taxes. Even in the age of word processors and Excel spreadsheets, these would be formidable tasks. In the first century AD the financial administration of Britannia was highly labour intensive. The procurator had his own administrative staff, many of whom were freedmen. It is a feature of slave-based societies that sometimes slaves, or former slaves, rise to senior official positions.<sup>3</sup>

## LOCAL GOVERNMENT

The Romans brought with them the concept of the city. Urbanisation was a key feature of Roman policy and the growth of cities can be traced across the whole Empire.<sup>4</sup> In the mid-first century Roman style cities and towns started to develop in southern Britain, often on former local centres. Historians put the towns of Roman Britain into neat categories: *civitas capital* (administrative centre, as discussed below), *municipium* (town with enhanced civic status), *colonia* (veterans' settlement/ model Roman town) and, in the later period, 'small town'. The use of these terms provides a coherent framework, but it is a mistake to think of all towns in each category as being uniform.

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<sup>3</sup> Hazell, A. 'The Last Slave Market' (2011) p. 12.

<sup>4</sup> Woolf, G. *Rome: an Empire's Story* (2012) 190-191

*Coloniae*, in particular, evolved. They started as veteran settlements and showcases for the Roman way of doing things, Colchester being the first,<sup>5</sup> followed by Lincoln, Gloucester and York. But the veterans married local women. The second and third generations were a fusion of populations. The *coloniae* would soon have lost any special character which they once possessed.

The *civitas* system was a characteristic feature of Rome's provincial administration. The word *civitas* means a community of citizens. That could be an independent state or a community with some measure of self-governance existing within a state. As Rome extended its reach across Europe, it did not have either the resources or the inclination to micro-manage individual provinces. It therefore established *civitates* as separate communities which would exist within the framework of provinces. The idea was that they would pay their taxes, provide conscripts to serve as auxiliaries and generally do as they were told by the Roman authorities. Subject to those minor inconveniences, the *civitates* were free to govern themselves.

In the Mediterranean region city states were long established. Rome converted them into *civitates*. Northern Europe was different. There were no flourishing city states on the Graeco-Roman model. The Romans therefore found it simplest to take the existing 'tribes' (as they assumed them to be) and convert them into *civitates*. The previous informal boundaries were preserved and ratified within the new political order. The Romans implemented this system in Gaul following Caesar's conquest and Gaul seemed to function satisfactorily, apart from the occasional rebellion. So, the Romans did the same thing in Britain a century later.

Administrative control passed to pro-Roman aristocrats who governed their traditional territories on Rome's behalf. The old oligarchies of the Iron Age survived within Roman political structures.<sup>6</sup> Rome reinforced the power and authority of the existing leaders; they in turn acted as tax collectors and were generally loyal to Rome. This relationship of mutual support may be the reason why the *civitas* system endured.

The landowners and wealthiest members of a district became *decurions* (*decuriones*), who formed the senate (*ordo*) of the *civitas*. There was a governing council (*curia*), whose members were appointed from the senate. Magistrates were elected annually from the senate, usually in pairs. They presided in courts. They also had administrative responsibilities, such as overseeing the water supply and public works.

Inscriptions survive which record individuals who served as magistrates or local councillors. A tombstone found at Old Penrith (RIB I, 933) commemorates Flavius Martius. Apparently Flavius was a senator in the *civitas* of the Carvetii. He had also served as a quaestor. A tombstone found in Lincoln (RIB I, 250) records that the deceased was the wife of a *decurion* called Aurelius Senecio. Her hairstyle suggests that she lived in the mid-third century. A stone coffin found in Scarborough (RIB I, 674) records that the deceased, Flavius Bellator, was a *decurion* of the colony of York. Bellator cannot have served for long: he died at the age of 29.

A statue base recovered from Caerwent (which now stands in the church porch) is evidence of the *civitas* system in operation. It reads:

'To Tiberius Claudius Paulinus, legate of the Second Legion Augusta, proconsul of the province of Gallia Narbonensis, imperial governor of the province of Lugudunensis, by decree of the senate, the republic of the *civitas* of the Silures set this up.'<sup>7</sup>

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<sup>5</sup> Tacitus *Annals* 12.32.

<sup>6</sup> Millet, M. *The Romanization of Britain* (1990) chapter 4.

<sup>7</sup> RIB I, 311: 'Tiberio Claudio Paulino legato legionis II Augustae proconsuli provinciae Narbonensis legato Augusti propraetore provinciae Lugudunensis ex decreto ordinis res publica civitatis Silurum'

For the system to work, each *civitas* had to be centred on a principal town. The Romans often established these *civitas* capitals either on existing local centres or, where there was no convenient *oppidum*, on military sites after the army had moved on. It is a mistake to think of *civitas* capitals springing up rapidly as soon as the Romans were in control. The process was a gradual one. In areas where there was no pre-existing Iron Age polity, it was not easy to set up Roman style local government. It is likely that centurions, based at local forts, supervised these areas. Before a *civitas* capital was established at Carlisle, a centurion called Annius Equester was in charge of the region.<sup>8</sup>

Over time, the Romans appear to have established the following *civitas* capitals:

<u>Community</u>	<u>Capital town</u>	<u>Latin name</u>
Cantiaci	Canterbury	<i>Durovernum Cantiacorum</i>
Regni	Chichester	<i>Noviomagus Reginorum</i>
Belgae	Winchester	<i>Venta Belgarum</i>
Atrebates	Silchester	<i>Calleva Atrebatum</i>
Durotriges	Dorchester	<i>Durnovaria</i>
Dumnonii	Exeter	<i>Isca Dumnoniorum</i>
Catuvellauni	St Albans	<i>Verulamium</i>
Dobunni	Cirencester	<i>Corinium Dobunnorum</i>
Corieltauvi	Leicester	<i>Ratae Corieltauvorum</i>
Iceni	Caistor St Edmund	<i>Venta Icenorum</i>
Cornovii	Wroxeter	<i>Viroconium Cornoviorum</i>
Silures	Caerwent	<i>Venta Silurum</i>
Demetae	Carmarthen	<i>Moridunum Demetarum</i>
Brigantes	Aldbrough	<i>Isurium Brigantium</i>
Parisi	Brough	<i>Petuaria Parisorum</i> (uncertain)
Carvetii	Carlisle	<i>Luguvallum</i>

Rome promoted a massive building programme across Britain, especially during the first two centuries of occupation. Every major town had its complement of forum, basilica, temples and so forth. These were an essential part of the process of 'Romanising' Britain and encouraging the indigenous leaders to see themselves as Roman officials.

#### WHAT SYSTEM OF LAW DID THE ROMANO-BRITISH COURTS ADMINISTER?

Roman law, as developed by praetors and jurists since the second century BC, was the law of the Roman Empire. There must be considerable doubt, however, about how much law the various judicial authorities actually knew. Roman law was not codified until long after Britain had dropped out of the Empire.

One of the Bloomberg tablets (WT 51) provides the earliest record of civil litigation. It is part of the judgment on a preliminary issue in litigation between two London businessmen. It reads: "In the consulship of the Emperor Vespasian for the seventh time and of Titus for the fifth time on the eleventh day before the Kalends of November [i.e. 22 October AD 76]. Responsibility for the case between Litugenus and Magunus on the fifth day before the Ides of November [i.e. 9 November] having been given by the Emperor, my preliminary judgment is ..."

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<sup>8</sup> *Tab Vindol I*, 250

Obviously, the Emperor would not have been remotely interested in this dispute. It would have been the provincial governor, acting on behalf of the Emperor, who assigned a judge to deal with this dispute.

Although he was chief justice of the province, the governor was primarily a military man. He may not have been terribly interested in legal matters. When he was too busy to discharge his judicial functions personally, he appointed a lawyer, known as *iuridicus*, to take on this role. The first recorded *iuridici* in Britain were appointed during the Flavian period. Gaius Salvius Liberalis served between AD 78 and 81 or possibly between 81 and 83. Lucius Javolenus Priscus served between AD 83 and 86. Both men were jurists of high repute, particularly Javolenus.<sup>9</sup> Many of Javolenus' opinions are cited in Justinian's *Digest*.

It is always a pleasure to see lawyers arriving. But why did such eminent and expensive jurists travel to the remote province of Britain at this particular time? A possible explanation is that good lawyers were needed to deal with the dissolution of the last surviving 'client kingdom': that of Togidubnus in Hampshire/Sussex area.

The first recorded probate litigation in Britain concerned Seius Saturninus. He was a helmsman in the *classis Britannica* (the British fleet). He died leaving his estate to Valerius Maximus (a captain in the fleet) to hold on trust until Seius' son became sixteen and then to hand it over to him. The son died before attaining sixteen. There was a dispute between the boy's maternal uncle and Maximus as to who should have Seius' estate. Javolenus dealt with the matter as *iuridicus* in AD 83. He ruled in favour of the uncle.<sup>10</sup> Any modern judge sitting in the Business and Property Court would come to the same conclusion.

Access to justice may have been a problem for the poor and for outsiders. We get a glimpse of this from one of the Vindolanda tablets (Tab vindol II, 180). This is an account of wheat deliveries, probably made by a civilian contractor. It is a useful document, but hardly brimming with human interest. The reverse side, however, is more revealing: a foreign merchant got hold of the tablet and wrote a petition on the back (Tab Vindol II. 344). It appears that he had been beaten and his goods had been poured down the drain. The merchant addresses his petition to an important person, including the words 'I implore your majesty' (*tuam maiestatem implore*). He begs the recipient to prevent any further beatings, asserting that he is an innocent man from overseas. He says that he could not complain to the prefect, who was ill, and the centurions took no notice.

The background story to the merchant's letter is a matter of speculation. It is possible that he tried to sell poor quality foodstuffs to the fort; that the soldiers rejected his produce and then flogged him. Why they were proposing to flog him again is unclear. Perhaps trading standards officers were unduly severe in those times. One also wonders who the addressee was. It has been suggested that 'your majesty' could mean the Emperor, Hadrian. Hadrian probably called in at Vindolanda during his tour of Britain. But it is unlikely that the Emperor was there at exactly the time of this incident or that he would have been bothered about such trivial matters as traders being beaten.

A century later, by the *Constitutio Antonina*, Roman citizenship was granted to everyone who lived within the frontiers of the Empire. That included the entire population of *Britannia*, which had by then been divided into two provinces.

## THE LEGACY

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<sup>9</sup> Nicholas, B *An Introduction to Roman Law* (1987) 29.

<sup>10</sup> Justinian, *Digest* 36.1.48

Britain was the first major province to drop out of the Empire, in AD 409. During the fifth and sixth centuries, there was large-scale migration of Germanic peoples who settled in an area which roughly equates to modern England. Roman towns and buildings fell into decay. Roman coinage ceased to circulate. Existing industries closed down. Many technologies, such as use of the wheel for pottery production, vanished. The Anglo-Saxon settlers showed no desire to learn Latin and they rejected the trappings of Roman culture.

Events on the continent took a different course. The Visigoths and Ostrogoths occupied south-west Gaul and Spain. The Franks moved into northern Gaul. These peoples generally respected the Roman heritage and became Christian. The Franks in Gaul imposed their ethnic identity (*franci*, which later became *francais*) and accepted much of the indigenous Gallo-Roman culture. They adopted Christianity and spoke a version of Latin, which evolved into modern French.

The legal structures of Roman Britain disintegrated rapidly after AD 409. The codification of Roman law by Justinian in the early sixth century passed unnoticed in Britain. The Anglo-Saxon kings issued their own law codes, which owed nothing to Roman law. The first and most famous of those codes was promulgated by Æthelbert, king of Kent. It was principally concerned with the maintenance of public order, through the prescription of a detailed tariff of monetary penalties for personal injury and other offences. Subsequent Anglo-Saxon law codes were also crafted with political objectives.<sup>11</sup>

Unfortunately, Justinian's *Digest* was lost for several centuries after the fall of the Roman Empire. It came to light in the eleventh century. It was closely studied across mainland Europe, especially in Bologna (which claims to be the oldest university in the world). This prompted the revival or 'reception' of Roman law on the Continent. The *Digest* had less direct impact in England, which was developing its own system judge-made common law during that same period. Nevertheless, Justinian's works exerted an influence over the thinking of the judges and scholars who developed our common law during its formative period, including Glanvill and Bracton.

Some parts of Roman law were expressly incorporated into the emerging principles of the common law: for example the doctrine *donatio mortis causa*: see *King v Dubrey* [EWCA] Civ 581; [2016] Ch.221. The Roman rules of *specificatio* provide another example. This is the subject of an article in the latest issue of the *Law Quarterly Review*.<sup>12</sup> If D manufactures a product out of materials belonging to C, who owns the product? The rules as stated in Justinian's *Institutes* (2.1.25) are:

*'si ea species ad materiam reduci possit, eum videri dominum esse, qui materiae dominus fuerat; si non possit reduci, eum potius intellegi dominum qui fecerit'*

I would loosely translate this as: 'if the product can be reduced to its original materials, then it belongs to the owner of those materials; if not, then the product belongs to the manufacturer.'

A number of authorities suggest that these principles are part of English law. Waghorn argues that they can be justified on economic or policy grounds.

Conclusion. The Roman occupation of Britain has left a lasting legacy in many respects. These include the creation of London as our capital city, the outline of our road system and the separation of England from Scotland (which was never absorbed into the province *Britannia*). Roman law is also part of our inheritance, but its influence is indirect.

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<sup>11</sup> See D.V. Gibbs *The Laws of King Æthelbert*, PhD thesis, University of London (IALS), 2020.

<sup>12</sup> A. Waghorn, 'Specificatio's raw materials' (2024) 140 LQR 85-105.

