# Jurists and Political Authority in Ancient Rome

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**Abstract:** The relationship between jurists and political authority has a profound importance in every society. This is especially true for Ancient Rome where law was related so directly to politics and jurists had significant influence in public life. This paper aims to give an insight on the evolution of the relations between Roman jurists and the political authorities. When the legal science emerged in the Late Republican period jurists enjoyed a considerable freedom and autonomy, then during the Early Pricipate emperors begun to restrict their autonomy through *ius respondendi*. In the Late Principate the majority of the leading jurists were governmental officials and the balance in relations between jurists and the politics shifted towards the later. During the Dominate jurists were anonymous and under the total control of the emperor. The treatment of the relation between Roman jurists and emperors through centuries usually reflects the political climate of the time, some favoring the freedom of jurists while others the sovereign authority of emperors.

**Keywords**: jurists; legal scholarship; response; emperor; state administration

## 1. Introduction

It is not easy to single out a society, before Rome, where the law was related so directly to politics, as an element of the art of government and social order. Law proved to be an indispensable mechanism for building the ever more intricate institutional architecture the Romans designed to organize their political hegemony. The law offered the primary coordinate system for the general structure and the specific intellectual instruments the Roman governing elites utilized throughout Rome's exceptional expansion. The law pervaded everybody's life, embracing the totality of the Romans' daily existence; but it also dictated the language and the reasoning on which the entire structure of the state was based. It

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was accordingly intrinsic to framing the main characteristics of Roman society in a manner that would profoundly influence later history (Colognesi, 2014, p. 140).

The jurists were the most prominent figures of Roman legal culture. What we commonly think of as "Roman law" is hence primarily their creation. In Schiavone's account, Roman jurists were not only the scientists of law, they were also its main designers and producers: a professional class of specialists working for dozens of generations, pursuing a path that had never before been followed (Schiavone, 2012, p. 32). Roman lawyers were a small group with specialized legal training. They had a mutually beneficial relationship with state officials. They expound the law as enacted by state authorities, who themselves then relied on the jurists' output to amend the law, and as a result of that create new law for the jurists to interpret it (Gordley, 2014, p. 6). Generally, jurist's approach towards the law was conservative: they sought to safeguard the system within which they operated, and simultaneously advancing it by searching new methods of putting its norms to adequate practical use. Hence, they established a system and a science through which they succeeded to develop the law and adapt it to the needs of an expanding society (Mousourakis, 2013, p. 304).

Even though jurists from time to time took part in the law-making process through their advices or formulation of the law, they did not deem it part of their job to study the law from ethical, historical or theoretical perspective, nor did they have any interest in the laws of other people, except when they could be integrated into the conceptual framework of Roman law. Despite of being undogmatic towards the developments of social and economic life, they did not analyze and interpret the law from the outside, as a philosopher, sociologist or historian would do. Obviously, as members of a learned profession, the jurists were exposed to the intellectual and ideological trends of their times and as a consequence to some degree their way of thinking was influenced by them (Mousourakis, 2013, p. 303).

The context in which law was professionalized at Rome would have major significance for the European legal history. Law was, in a sense, professionalized 'from the top down': first at the level of analytical jurisprudence; only later within the judicial system itself. While the early Principate witnessed the steady differentiation of the profession of lawyer into numerous sub-professions, the selected group of jurists continued to exercise control over the profession until the middle the third century A.D (Frier, 1985, p. 287).

## 2. The Emergence of Professional Jurists

In the early days of Roman history knowledge of legal procedure and the law in general was restricted to the pontifical college, whose members' origin was exclusively patrician. The priests were not religious experts explicating mystical knowledge. They had read books on how to perform sacrifices, how to take auspices, and how to bring lawsuits. For a long time, these books remained highly secretive for the public and they could sometimes be used as a weapon against lower classes (Gordley, 2014, p. 5). According to Roman tradition, the pontiffs' monopoly of legal expertise came to end in c. 304 BC when Gnaeus Flavius, secretary to Appius Claudius, published a text that included the legal formulae and ritual words that were used when lawsuit took place. Afterwards, a growing number of prominent Roman citizens embraced the practice of offering legal advice without membership in the college of the pontiffs. The pontiffs' exclusivity of the technical legal knowledge decreased and this knowledge became an important element the Roman culture. The law captured the intellectual allure of people and those involved in the law had formidable reputation (Mousourakis, 2007, p. 30).

Since the activity of the priests passed gradually into the activity of the jurists, modern scholars have referred to a 'secularization' of Roman law. According to Gordley, secularization indicated that the interpretation of law was transferred from generalists into the custody of jurists, a new class of secular specialists that had never existed before (Gordley, 2014, p. 6). The 'secularization' of law ended the unquestioned authority of the pontiffs' legal expertise, after a lengthy period in which they had offered solutions to citizens' legal questions and problems, articulating them in an understandable and complete form. Since legal opinions were not anymore announced by a state authority but by a number of private jurists, a new kind of legal creation emerged, and it was known as *ius controversum* (Colognesi, 2014, p. 6).

With a handful of exceptions, the majority of these jurists were part of Rome's upper classes and were directly involved in politics. Similar to the pontiffs, they did not get any payment for their work as they regarded it their duty to provide instruction in law and to help the citizens who had legal problems. Even though legal scholarship was not a vocation through which one could make money, it presented a channel for affluent and educated citizens who wanted to become discernible in social and political life (Mousourakis, 2013, p. 129). Because of the respect and reputation which they achieved through their work, jurists, especially

some of those who did not have origin from noble Roman families, increased their influence among Roman citizens and, widened the number of their friends and dependents, to assume public office (Kunkel, 1973, p. 96).

Through clever elucidation of the provisions of the Twelve Tables and later laws, the jurists filled up the lacuna in the law and also were successful in imbuing the archaic rigid norms with new content, thus adapting them to altered circumstances. As old formalism rejected any amendment in the letter of the law, Roman jurists strived to create new law by expanding the significance of the words within existing legal rules behind their literal meaning. They reacted positively to new intellectual trends, particularly to the inflow of Greek philosophy, which happened around the same time as these jurists emerged (Tellegen-Couperus, 1993, p. 61). The Roman jurists also assessed the altered socio-economic and political circumstances. Mousourakis observes that the contributions of the jurists are not equally spread; private law and civil procedure clearly dominate, though some parts of public law never attracted the same meticulous attention (Mousourakis, 2007, p. 60). Nevertheless, not all responses and interpretations of jurists were of equal importance or exert the same influence on Roman citizens, magistrates, or judges. The opinions of one jurist were more important than those of another, and his views would be more persuasive, not only as a result of its innate merits, but also because of the authority he exerted (Colognesi, 2014, p. 131).

## 3. The Late Republic

The late Republic is a turbulent and creative period, a time of rapid economic expansion, social conflicts, political disorder, and considerable skepticism about inherited manners of doing and believing (Frier, 1985, p. 270). During the last century BC, the Roman magistrates, assemblies, and Senate steadily transferred much of its daily control of the rules of private law to legal experts. Even though they were private persons, jurists were more and more called upon to help and give counsel to public officials in carrying out public duties (Chroust, 1955, p. 527). The judges were non-professional whose duty was only to establish the facts in a case after the praetor had established the form of the action. Although *praetor urbanus* presided in civil cases between citizens, in practice the Roman private law became mostly subject to determination by the jurists (Frier, 1985, p. 195).

Working within the traditional structure of civil procedure, the jurists succeeded in develping the law on a new and more rational foundation. Under their guidance,

private law achieved a degree of independence and 'autonomy' from the central political authorities (Robinson, 2013, p. 715). Possibly at no point in the Western legal tradition has the 'autonomy' of law came so nearly on the absolute as in this period. The jurists began to handle and analyze the materials of private law in an organized and coherent way. Through their endeavors, the intellectual substance and social function of private law were noticeably improved; and already the discipline of law became beyond the reach of those not specifically trained in it. To this degree, Brian Frier has spoken 'professionalization of law' which was transformed into a self-consciously autonomous area of study (Frier, 1985, p. 272).

In all their numerous services to law and society, the Roman jurists, at least until the time of Augustus, were private citizens who operated without any authorization of public authority. Their status originated from their overly specialized knowledge, technical skills and, above all, the respect and admiration that the general populace had for them (Mousourakis, 2007, p. 110). The social reputation of the republican jurists originated from their membership in the senatorial class, which cleared the way for their economic independence. The majority of them were senators, but being a senator did not make automatically one a jurist. On the contrary, there were some outstanding persons who were acknowledged as first-class jurists but never attained senatorial rank (Mousourakis, 2007, p. 110). In the late Republic lots of jurists came from more modest upbringings. The majority and the best of them were equestrian by birth. Still more interesting is that many of these jurists were not from Rome but from the municipalities of the Apennine Peninsula. How could the decline of the jurists' status in the late Republic be explained? The dominant theory puts forward two explanations: first, legal profession was underrated because of chaotic political circumstances, which made demagogic oratory an easier path to political success; second, since the aristocracy was both ravaged by civil war and morally depleted, legal scholarship fell to the equestrian class. The outcome of all these developments was a sharp drop in law's attractiveness for younger members of upper classes. Instead of them came persons of rather lower social status, for whom, even the decreased monetary benefits of legal profession were yet considerable (Frier, 1985, p. 255).

The jurists actually sorted out each other through various tests that were never exactly defined. Young students learned about law by joining themselves to experienced teachers, gathering around him in the Forum, watching and listening, having conversations, asking sporadic questions. According to Dawson it was a hugely informal tutorial system, but it succeeded in producing future jurists

(Dawson, 1968, p. 109). The most prominent jurist of the republican era was probably Quintus Mucius Scaevola, who served as pontifex maximus and consul in 95 BC. Scaevola is said to have been the first jurist who arranged the norms of the *ius civile* in a systematic way. Unlike previous jurists, he did not limit himself to the analysis of isolated legal cases or problems. Instead, by through the application the dialectic method, he aimed to identify and classify the different types of legal relationships with which the various legal norms were related (Mousourakis, 2013, p. 192).

## 4. The Early Principate

At the beginning of the Principate the jurists, were, to a large degree, asked to help magistrates in multiple key public functions, obtaining as a result of that what might be called a semiofficial status in that the magistrate regularly complied with their counsel. However, they continued to be chiefly private persons. But even in that capacity they still had countless ways of exerting their influence on public activities and, mostly, on the administration of justice and the further development of Roman legal system (Chroust, 1955, p. 530).

In the period of Principate, new areas of activity were revealed to the jurists. The state authorities had to cope with demands created by the switch from politics to administration, the increase of the number of Roman citizens in the provinces and the growth of legal transactions triggered by the expansion of trade and commerce. The new needs could not be satisfied without the firm support of the jurists. It is not surprising that not only did the jurists' advisory functions became more important, but the jurists in the period of Principate began to participate directly in governmental functions and the imperial administration of justice. The emperors recruited jurists to help them in dealing the numerous issues of the imperial administration beginning from Augustus' era (Mousourakis, 2007, 110). The early Principate witnessed an increasingly special relationship between jurists and the princeps. It is not accidental that legal scholarship now turned into a paid 'profession' in the matter of teaching and jurists' participation in the imperial government. Augustus turned out both astute and effective in keeping a tight grip not only on the Roman government but on Roman society as a whole, and the law was a main sphere through which he exercised this control. Instead of sticking to Caesar's original plan of codifying Roman law, he opted for an imperceptible and indirect way to legal reform. The Roman legal system was based on the

autonomous activities of jurists and the praetor's edict. As Colognesi observed, from outside, nothing changed under Augustus: the praetor carried on with issuing his edict, and jurists interpreted the existing legal norms, giving opinions, answers and solutions more actively than in the earlier period (Colognesi, 2014, p. 320).

Augustus regarded full autonomy in such socially significant activity as law and the administration of justice as irreconcilable with his rule, which aspired to bring about broad unification and centralization of important activities such as the creation and interpretation of law (Galinsky, 2005, p. 70). Being inherently against military autocracy and to the marked bureaucratic tendency toward centralization and monopolization of all legal activities introduced by the Principate, some jurists retreated from the practice of giving *responsa*. They began to focus their attention on writing and teaching. Those jurists who had continued to pursue their career path in the profession, soon experienced the consequences of the new bureaucratic tendencies. Following their firmly embedded Republican conventions and aristocratic inclinations, most of the leading jurists, at least during the early Principate, manifested a stiff opposition toward the Emperors and their faithful supporters (Mousourakis, 2007, pp. 541-542).

The most gifted and authoritative anti-monarchic jurist of the early Principate was Marcus Antistius Labeo. He enjoyed considerable fame during Augustus' reign, but his personality, moral standards, and style mark the final chapter of the republican legal tradition. Labeo opposed the imperial form of government, and he resolutely resisted Augustus' sustained efforts to put him into the orbit of his associates. His unswerving loyalty to the values of the old aristocracy kept him away from political life, now controlled by the princeps. He held the title of praetor but turned down the title of consul when it was offered to him by Augustus (Colognesi, 2014, p. 147). Labeo committed himself to legal scholarship, teaching, and his *responsa*, and was the author of a very large number of writings proving his intellectual freedom and great creativity. The quality of his reasoning is recognizable from numerous citations found in the works of later jurists. Labeo's main rival was Ateius Capito a man of exceptional learning and talent, but ardent supporter of the empire and submissive to the new regime. He had been a faithful adherent of Augustus by whom he was granted the title of consul. Capito as a jurist was disposed to follow tradition and to rest upon authority (Buckland, 2007, p. 26).

Pomponius tells that around Labeo was created the school of the Proculeans, while that of the Sabinians was founded by Capito. However, the names of the schools are associated with prominent jurists of the first century A.D., Proculus and

Massurius Sabinus (Jolowicz, 1972, p. 378). Regardless of the political positions of their founders, the schools seem to be distinguishable only with respect to the techniques and methods which they used in dealing with legal issues rather than in their general outlooks or approaches. Mousourakis assumes that, when dealing with legal issues, the Sabinians favored to stick to the letter of the law, whereas the Proculians sought to find the purpose of the law and then to come to a decision according to its spirit. The Sabinians were followers of Stoicism, whereas the Proculians embraced the principles of Aristotelian philosophy (Mousourakis, 2013, p. 295).

Throughout the early Principate, there is no evidence for the existence of formal law schools teaching. The legal profession relied on the type of instruction and transmission of knowledge similar to the republican tutorial practice, which was based on the interpersonal relationship between an experienced jurist and his students, without ever earning the characteristics of a *schola*. In the provinces, some practical teaching might have been offered by a rudimentary type of school with goal of training middle-ranking officials; these officials might have had basic knowledge in applying the law but lacked the sophisticated technical knowledge of Rome's leading jurists (Colognesi, 2014, p. 334).

## 5. Ius Respondendi

In the last decades of the Republic the number of people practicing law significantly increased and, as in principle their opinions had the same value, it was difficult to determine exactly which opinions are more trustworthy. As a consequence, the practice of law was plunged into a state of general confusion, which was aggravated by the numerous complex and problematic statutes adopted during this period (Schulz, 1946, p. 112). In reaction to this issue and in order to create an indirect domination over the jurists Augustus introduced an act by which the most prominent jurists were awarded with the right to publicly give *responsa* under the seal and in the name of the princeps, i.e. the right of speaking with imperial authority (*ius publice respondendi ex auctoritate principis*). In the beginning the *ius respondendi* was conferred only to jurists that had the senatorial status, but from the period of Tiberius jurists who had the equestrian status were also granted this privilege (Plisecka, 2009, p. 385).

The earliest information on *ius respondendi* is found in Pomponius's introduction to legal history:

"*Massurius Sabinus was of equestrian rank, and was the first person to give state certificated opinions (publice respondere). For after this privilege (beneficium) came to be granted, it was conceded to him by Tiberius Caesar. 49. To clarify the point in passing: before the time of Augustus the right of stating opinions at large was not granted by emperors, but the practice was that opinions were given by people who had confidence in their own studies. Nor did they always issue opinions under seal, but most commonly wrote themselves to the judges, or gave the testimony of a direct answer to those who consulted them. It was the deified Augustus who, in order to enhance the authority of the law, first established that opinions might be given under his authority. And from that time this began to be sought as a favor. As a consequence of this, our most excellent emperor Hadrian issued a rescript on an occasion when some men of praetorian rank were petitioning him for permission to grant opinions; he said that this was by custom not merely begged for but earned and that he [the emperor] would accordingly be delighted if whoever had faith in himself would prepare himself for giving opinions to the people at large. 50. Anyway, to Sabinus the concession was granted by Tiberius Caesar that he might give opinions to the people at large. He was admitted to the equestrian rank when already of mature years and almost fifty*" (D. l.2.2.48-50).

No common consensus exists among scholars of Roman law about the nature and extent of the imperial intervention by Augustus and Tiberius. The older books on Roman legal history interpreted the account literally, i.e., that individual jurists were granted by the princeps the right of to give *responsa*, and accordingly their opinions were binding upon the judge to whom they were directed. Then, struck by the obvious contradictions in the passage, different explanations were put forward (Schiller , 1978, p. 298). The analysis of Pomponius's passage has followed two paths: text criticism, which has tried to reveal the original form of the text, and source criticism, which analyzed Pomponius's position and his reliability. Text critique pointed to fact that the text has a number of contradictions and inconsistencies, such as who was the first to confer the *ius respondendi*, Augustus or Tiberius, which caused legal scholars to edit and alter the text. The interpolation criticism intended the removal of the parts that were considered unclassical repetitions written by uninformed Late Antique scribes (Tuori, 2004, p. 290).

The second main source of the ius respondendi is a passage of Gaius referring to the sources of the law:

"*Juristic answers are the opinions and advice of those entrusted with the task of building up the law. If the opinions of all of them agree on a point, what they thus hold has the status of an act; if, however, they disagree, a judge may follow which opinion he wishes. This is made known in a written reply of the Emperor Hadrian*." (G. 1.7).

According to Buckland, Gaius whose passage is corrupt but explicit, says that Hadrian made the *responsa* of jurists binding if they agreed, and it does not refer to Augustus. It is said actually that Augustus decreed a rule and Hadrian an essential correction (Buckland, 2007, p. 23). Moreover, Gaius' explanation of the juristic answers is unique. It is much broader than anticipated and includes opinions written in works of the jurists, as well as the juristic answers given for an individual case. Hence a number of scholars have come to the conclusion that the text has been altered in the post-classical period, to set the stage for the *Lex Citationis* (Schiller, 1978, p. 301).

Another passage appears in the Institutes of Justinian, and it refers to *ius respondendi* more directly:

"*The answers of those learned in the law are the opinions and views of persons authorized to determine and expound the law; for it was of old provided that certain persons should publicly interpret the laws, who were called jurisconsults, and whom the Emperor privileged to give formal answers. If they were unanimous the judge was forbidden by imperial constitution to depart from their opinion, so great was its authority*." (Inst. Just. 1.2.8).

The fact that the reference to the opinions of jurists is in the past tense has not escaped the eye of Roman law scholars. Schulz claims that the post-classical authors did not understand the meaning of the ius respondendi and thus thought of it as a right to make law (Schulz, 1946, p. 115). Cancelli says that the author of the Institutes of Justinian interpreted Gaius according to prevailing outlook of his time that all law originated from the emperor. Nevertheless, few have contested the reliability of the text (Tuori, 2004, p. 301).

The importance, even the very existence of the *ius respondendi* is one of the most challenging and intriguing topics in Roman legal history. According to Tuori the studies on *ius respondendi* have vacillated between two contrasting stereotypes, of the benevolent and the malevolent emperor. According to the first approach, the considerate emperor supported the jurists with unselfish intentions and did not use the *ius respondendi* as an instrument to restrict their freedom. According to the

second approach, the unscrupulous emperor usurped the legal scholarship and used it as a means for his political goal, the complete dominance over Roman society (Tuori, 2004, p. 317).

## 6. The Late Principate

During the second century A.D. legal profession became one of the quickest ways for becoming high-ranking official in the imperial administration. The emperors granted authority and considerable material rewards to persons whose family background was from the knightly class or who moved to Rome from provinces. During the last decades of the classical period the majority of the leading jurists were governmental officials. Their power was based less and less on family origin and personal status (Dawson, 1968, p. 110). It was a type of dim manifestation of the growing authority of the rulers they served. The need for jurists and the new possibilities for promising career in the imperial civil service brought novelties in legal education. The first law schools were established in Rome and in Beirut in the early third century AD. In the later period new schools were opened in Alexandria, Caesaria, Athens, Constantinople, Carthage and Augustodunum (Gordley, 2014, p. 363). The methods of teaching and training jurists changed considerably, and they were adapted to the new political and economic conditions.

During the rule of Hadrian, jurists became more directly involved in the imperial administration. It is real that in republican period and during the early Principate lots of jurists served as magistrates. However, from early in the second beside their private legal activities a growing number of jurists occupy newly created governmental positions. The career of Salvius Julianus, the most famous jurist during the reign of Hadrian, is typical of the service assumed by a jurist of the senatorial class in the middle of the second century (Schiller, 1978, p. 304). He held various posts in the imperial administration. He was, among other things, quaestor to the emperor, tribune of the plebs, praetor, prefect of the treasury, consul and caretaker of Rome's public buildings. He also held the post of provincial governor in Germany, Spain and Africa. Moreover, Salvius Julianus is famous that on the orders of Hadrian codified the Praetorian Edict which would have a huge impact on the shape of private law in late antiquity (Peachin, 2016, p. 164).

Hadrian also reorganized the Imperial Council (*consilium principis*) by adding more jurists into it. There is no consensus among scholars on the origin of the Council, but many of them have urged that the addition of jurists to it was a crucial

component in the reformation of the administration of justice. The Imperial Council, which later would be known as *consistorium*, was a relatively sizable advisory body to which some of the most distinguished jurists were regularly summoned. The leading member of the Council, besides the Emperor himself, was the *praefectus praetorio* (a kind of Prime Minister), who was regularly a qualified jurist and who was considered as the most outstanding jurist of his day (Chroust, 1955, p. 544). Famous members of the Imperial council during the reign of Hadrian were Iuventius Celsus, praetor and twice consul, and Salvius Julianus. Among the prominent jurists from Hadrian to the Severi, only Pomponius was not employed in the imperial administration, instead he committed himself mainly to legal science (Colognesi, 2014, p. 329).

The creation of the Imperial council as the utmost point of reference, both for the imperial administration and for the state's legal life in general, was instrumental in reinforcing and legitimizing imperial power itself. The new configuration of the government irrevocably put the legal scholarship into the orbit of the emperor's power. In the grand plan of Hadrian and Julian, legal scholarship and imperial legislation were affirmed as cornerstones of the vast regeneration of the empire. The jurists had a major role in this process, because, as advisers of the emperor they were able to manage his normative decisions in a prudent way. As Schiavone observed, although the closer relationships with the emperor entrusted them with vital tasks of management and supervision in legal affairs, the balance in relations between jurists and the emperor still leaned towards politics and government (Schiavone, 2012, p. 378).

The period of the Severan dynasty in the beginning of the third century, has always been considered as the glorious epoch of governmental jurists, when the most celebrated Roman jurists of all time, were appointed to upper levels of the administrative system and controlled the imperial council. In the Severan period and a few years after the most prominent jurists were Papinian, Paul, Messius, Claudius Tryphoninus, Ulpian, and Modestinus. Opellius Macrinus and Valerius Patruinus were highly skilled bureaucrats in legal affairs (De Blois, 2001, p. 136). The most pre-eminent jurist of this generation was Aemilius Papinianus. He had a brilliant career within the imperial administration, eventually becoming *praefectus praetorio* under Septimius Severus: a great privilege, but one that also caused his ousting under Caracalla. He was killed at the order of the emperor: a definite indication of the dramatic decline of the state authority under this unfitting emperor. Likewise, other leading jurists of the Severan period Paulus, and

especially Ulpian, were appointed to important positions in the imperial administration and were members of the Imperial council. Ulpian also became *praefectus praetorio*, but he too was killed by praetorians, during the time of the ineffectual emperor Severus Alexander, who was powerless to protect his minister (Colognesi, 2014, p. 330). According to Tony Honore jurists like Papinian, Paul, and Modestinus not built brilliant careers in the imperial administration, but they ran successful private legal practice and wrote many scholarly works. They worked as legal advisors and gave legal answers to parties in litigation and to other interested persons (De Blois, 2001, p. 141).

## 7. The Dominate

During the Dominate the process of centralization, monopolization and bureaucratization of law, which had begun with Augustus became complete and absolute. Economic interventionism, price freezes, inflation, the expansion of taxation, redistributive fiscal programs, the tendency to return to practices of the natural economy and the huge increase in the size of the military gave rise to the creation of a new entity would emerge from this metamorphosis: the nearly complete form of a great absolutist State (Schiavone, 2012, p. 395). But the new full-blown state structure was now moving into an era of chaos and bad government. Kipp designates as a source of the problems the increasing absolutism and despotism of the emperor, who no longer grants *ius respondendi*, but strives to make himself the source of all. Krueger refers to the emergence of Christianity, which led to serious physical and intellectual confrontations, and redirected peoples' outlooks to a new channel. Karlowa, identifies this period with a widespread decrease of the intellectual level, which is only another epithet for decline of the State (Buckland, 2007, p. 33).

The end of the classical period is related to the death of the jurist Modestinus in 235 AD. Since then, jurists ceased to write legal commentaries. The texts of the prominent jurists such as Julian, Papinian, Ulpian, and Paul became 'classicized', and they were taught in law schools by jurists who never sought to elaborate them further. According to Gordley, one reason for this might had been the bureaucratization of the state during the reign of Diocletian four decades later. Another reason might had been a belief that the works of the classical jurists are preeminent and unsurpassable (Gordley, 2014, p. 1). In addition, gifted youngsters

would not commit themselves to the lengthy and arduous study of the law if their hard work were to be hampered by chaos and corrupt institutions.

When the major importance of legal scholarship began to diminish over the course of the third century and the creation of law to a quite exceptional degree, became a bureaucratic issue, the whole of Roman law entered an irrevocable territory of gloom (Schiavone, 2012, p. 33). In this period legal science was anonymous and bereft of inventiveness. There were not anymore jurists who, in a twofold dual role as senators and legal experts, would give opinions on legal issues and write down thousand volumes of books. They were superseded by senior governmental officials whose names are mostly unknown, and by professors at newly opened law schools. These individuals did not bring any new perspectives on the law but made selections and compilations of opinions of the classical jurists. During this period some collections of imperial constitutions were compiled (Tellegen-Couperus, 1993, p. 124).

The crisis in the third century, which resulted in the concertation of absolute power in the hands of one person. All legal authority whether making or applying the law, emanated explicitly from the emperor. This fundamentally changed the character of Roman legal science because it was no longer an active source of law and the responses of the jurists were superseded by imperial legislation. The works of the classical jurists were now considered as a body of generally accepted doctrine which could be invoked in a case at any time (Mousourakis, 2013, p. 357). On the other hand, imperial legislation in the period of dominate must be understood as a hybrid product. Emperors had the right to determine what the law was, but they did not have any legal education. At the same time, the majority of the drafters of imperial legislation, known as quaestors, were qualified lawyers with a sound understanding of law, who had been taught some works of classical jurists and had basic knowledge on legal science. According to Harries, when emperors asked their officials for advice from, it became possible the opinions of the classical jurists to be merged subtly with the imperial legislation. However, there was no independent mechanism to check the whether a proposed imperial enactment was ‘lawful’ or not (Harries, 1999, p. 2).

## 8. Conclusion

The jurists were the most prominent figures of Roman legal culture. What we commonly think of as "Roman law" is primarily their creation. In the early days of Roman legal history knowledge of legal procedure and the law in general was restricted to the pontifical college. According to Roman tradition, the pontiffs' monopoly of legal expertise came to end in c. 304 BC with Gnaeus Flavius. The 'secularization' of law ended the unquestioned authority of the pontiffs' legal expertise. During the late Republic, the Roman magistrates, assemblies, and Senate steadily transferred much of its daily control of the rules of private law to legal experts. The jurists began to handle and analyze the materials of private law in an organized and coherent way. In all their numerous services to law and society, the Roman jurists, during the late Republic, were private citizens who operated without any authorization of public authority.

In the period of early Principate jurists began to participate directly in governmental functions and the imperial administration of justice. This period witnessed an increasingly close relationship between jurists and the princeps. However, A number of the leading jurists, at least during the early Principate, manifested a stiff opposition toward the Emperors. The most gifted and authoritative anti-monarchic jurist of the early Principate was Labeo. Moreover, Augustus was the first who introduced *ius respondendi* by which the most prominent jurists were awarded with the right to publicly give *response* in the name of the princeps. The importance, even the very existence of the *ius respondendi* is one of the most challenging and intriguing topics in Roman legal history. The studies on *ius respondendi* have oscillated between two contrasting stereotypes, of the benevolent and the malevolent emperor.

During the period of late Principate the majority of the leading jurists were governmental officials. Although the closer relationships with the emperor entrusted them with vital tasks of management and supervision in legal affairs, the balance in relations between jurists and the emperor still leaned towards politics and government. The epoch of the Severan dynasty in the beginning of the third century, has always been considered as the glorious epoch of governmental jurists, when the most celebrated Roman jurists of all time, were appointed to upper levels of the administrative system. The crisis in the third century resulted in the concertation of absolute power in the hands of the emperor. In the period of Dominate all legal authority emanated explicitly from the emperor. This fundamentally changed the character of Roman legal science. When the importance

of legal scholarship began to diminish over the course of the third century and the creation of law became a bureaucratic issue, the whole of Roman law entered an irrevocable territory of gloom.

## References

Buckland, W. W. & Stein P (2007). *A Text-Book of Roman Law from Augustus to Justinian*. Cambridge: Cambridge University Press.

Chroust, A (1955). Legal Profession in Ancient Imperial Rome. *Notre Dame Law Review*, Vol. 30, No. 4, pp. 521-616.

Colognesi, L. C (2014). *Law and Power in the Making of the Roman Commonwealth*. Cambridge: Cambridge University Press.

Dawson, J (1968). *Oracles of Law.* Ann Arbor: The University of Michigan Law School.

De Blois, L (ed.) (2001) *Administration, Prosopography and Appointment Policies in the Roman Empire.* Amsterdam: J.C. Gieben Publisher.

Du Plessis P.; Ando C. & Tuori K (eds.) (2016). *The Oxford Handbook of Roman Law and Society*. Oxford: Oxford University Press.

Frier, B. W (1985). *The Rise of the Roman Jurists: Studies in Cicero's Pro Caecina*. Princeton: Princeton University Press.

Galinsky, K (ed.) (2005). *The Cambridge Companion to the Age of Augustus*. Cambridge: Cambridge University Press.

Gordley J (2013). *The Jurists: A Critical History*. Oxford: Oxford University.

Harries, J (1999). *Law and Empire in Late Antiquity*. Cambridge: Cambridge University Press.

Jolowicz, H.F. & Nicholas B (1972). *A Historical Introduction to the Study of Roman Law*. Cambridge: Cambridge University Press.

Katz, S. N (ed.), (2009). *The Oxford International Encyclopedia of Legal History*, Oxford: Oxford University Press.

Kunkel, W (1973). *Introduction to Roman Legal and Constitutional History*. 2nd ed., Oxford: Oxford University Press.

Mousourakis G (2007). *A Legal History of Rome.* New York: Routledge.

Mousourakis, G (2015). *Roman Law and the Origins of the Civil Law Tradition*. Heidelberg: Springer.

Plisecka, A (2009). The Roman Jurists' Law during the passage from the Republic to the Empire. *Jahrbuch Junge Rechtsgeschichte*, Vol. 4, pp. 372-392.

Robinson, O. F (2013). Lawyers and Jurists. *Georgia Journal of International and Comparative Law*, Vol. 41, No. 3, pp. 711-718.

Schiavone, A (2012), *The Invention of the Law in the West*. Cambridge: Harvard University Press.

Schiller, A (1978). *Roman Law: Mechanisms of Development*. The Hague. Mouton Publishers.

Schulz, F (1946). *History of Roman Legal Science.* Oxford: Oxford University Press.

Tellegen-Couperus, O (1993). *A Short History of Roman Law*. New York: Routledge.

Tuori, K (2004). The ius respondendi and the Freedom of Roman Jurisprudence. *Revue Internationale des droits de l'Antiquité*, 51, pp. 295-337.