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# ANCIENT ROMAN MUNIFICENCE: THE DEVELOPMENT OF THE PRACTICE AND LAW OF CHARITY

William H. Byrnes, IV\*

## INTRODUCTION

This article traces Roman charity from its incipient meager beginnings during Rome's infancy to the mature legal formula it assumed after intersecting with the Roman emperors and Christianity. During this evolution, charity went from being a haphazard and often accidental private event to a broad undertaking of public, religious, and legal commitment. To mention the obvious, Rome was the greatest and most influential empire in the ancient world. It lasted more than a thousand years, traditionally beginning in 753 B.C. as a kingdom under Romulus.<sup>1</sup> In 509 B.C. it became a republic with permanent tyranny beginning in 31 B.C. under direction of the immortal Julius Caesar.<sup>2</sup> The exact date of the end of

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1. See Plutarch, *Romulus* (John Dryden trans.), The Internet Classics Archive, at <http://classics.mit.edu/Plutarch/romulus.html> (last visited Jan. 7, 2005). Found here is the wonderful Roman myth of the founding of Rome. *Id.* King Alba's daughter, pledged as a Vestal was found with child, then ignominiously forced to divest her progeny. *Id.* The offspring were twins, and were abandoned by the river, suckled by a she-wolf – the Capitoline wolf – and finally found by a swineherd. *Id.* Raised by the swineherd, they grew up to found the city of Rome. Romulus designed the holy city Rome, and busied himself with laying its foundation, but when Remus disrespected the gods by stepping over the furrow representing the city walls, Romulus killed him. In this legend we see the Roman view of themselves as civilized, religious people who shunned the barbarian way, and in doing so created civilization to save all of mankind from living as animals. *Id.*

2. See 501 TIDBITS OF ROMAN ANTIQUITY # 1-3 (Albert E. Warsely ed., 1951) [hereinafter Warsely].

the Roman Empire is in dispute. Charitable giving within ancient Rome was quite extensive and longstanding with some obvious differences from the modern definition and practice of the activity. The main differences can be broken into four key aspects. First, as regards the republican period, Roman charity was invariably given with either political or ego-driven motives, connected to ambitions for friendship, political power or lasting reputation. Second, charity was almost never earmarked for the most needy. Third, Roman largesse was not religiously derived, but rather drawn from personal, or civic impetus. Last, Roman charity tended to avoid any set doctrine, but was hit and miss in application. It was not till the imperium's grain dole, or *cura annonae*, and the support of select Italian children, or *alimenta*, were established in the later Empire that the approach became more or less fixed in some basic areas. It was also in the later Empire that Christianity made an enormous impact, helping motivate Constantine – who made Christianity the state religion – and Justinian to develop legal doctrines of charity.

This study of Roman charitable activities will concern itself with two enquiries. The first being the historical, societal, and religious aspects, versus the legal aspects of Roman charitable activities. The second will follow the Pagan versus Christian developments in roman charitable activities. The first part is a reckoning of Roman largesse in its many expressions with explanations of what appeared to motivate Roman benefactors. This will be buttressed by a description of the Roman view of society and how charity fit within it. The second part will deal with the specific legal expressions of euegertism (or “private munificence for public benefit”)<sup>3</sup> that typify and reveal the particular genius that Romans had for casting their activities in a legal framework. This is important because Rome is the starting point of much of charity as we understand the term, both legally and institutionally, in the modern world. Studying Roman giving brings into highlight and contrast the beginnings of charity itself—arguably one of the most important developments of the civilized world, and the linchpin of the Liberal ethos.

## PART I: ROMAN CHARITY — SOCIETY, RELIGION, & HISTORY

### *A. Background*

#### 1. Political Realities of Rome

*THE ROMAN WAY:* To understand ‘Roman Charity,’ we should

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3. ‘BREAD AND CIRCUSES’ EUEGERTISM AND MUNICIPAL PATRONAGE IN ROMAN ITALY 1 (Kathryn Lomas & Tim Cornell eds., 2003) [hereinafter BREAD AND CIRCUSES].

know the distinctive Roman approach to life that framed their views and responses to its vagaries. This *weltanschauung* was composed of different elements and influences, some seeming to appear by pure chance, while others the ineluctable result of a thousand years of preeminence. Additional elements of Roman life appear to have seen innovations other cultures introduced to the Romans. The Romans were quite open to novel religions and gods. The thinking seemed to be that since the minds of the gods were mostly inscrutable, a new deity might help them become better grounded in reality, and help avoid disasters. Some of the immovable monuments in the Roman mind were service in the army and victory in war, life in Rome – glorious city of cities, achievement in the political arena – and money, reputation, charitable giving and fame to help grease the skids to glory.

**GLORY & ROME:** The one goal for any self-respecting citizen in ancient Rome was to create glory for oneself. Historians have commented that “whatever position [the citizen] occupied in society – that of peasant, senator, centurion, or general – the Roman citizen had only one aim: to glorify his name in the eyes of the people.”<sup>4</sup> Glory itself was achieved in straightforward manner, through military greatness, political achievement, charitable public giving or ideally all three.<sup>5</sup> Certainly the studied use of largesse aided one’s glory, becoming a tool of manipulation of public opinion as the Empire matured, especially from the viewpoint of the *plebes urbana*.<sup>6</sup> The path for achieving celebrated magnificence tracked a strangely circular course in the Empire’s history. The first kings were dumped (after the sins of Tarquinius Superbus)<sup>7</sup> for a civil republican government of magistrates and senators, which was then replaced by audacious emperors who sought the ultimate goal – apotheosis and official deification, a la’ Augustan.<sup>8</sup> The relentless seeking of glory greatly impacted the lives of the poor, as public opinion itself had enormous import for any politician attempting to democratically rise

4. FLORENCE DUPONT, *DAILY LIFE IN ANCIENT ROME* 8 (Christopher Woodall trans., Blackwell Publishers 1993)(1989) [hereinafter DUPONT].

5. See *id.* at 11. (“In Rome only that which was honourable – that is, honoured – was considered good. And the only evil was that which was dishonourable – that which brought dishonour.” The practical result of this view of honor was a fallacy of categories, such that the Romans “confused morality and honour (*honestum*), evil and shame (*turpe*)”).

6. See Z. YAVETZ, *PLEBS AND PRINCEPS* 96 (1969).

7. See DUPONT, *supra* note 4, at 8. Tarquinius’ sins were with his son raping Lucretia, attempting to kidnap a girl, and other evil things. *Id.* By doing these lawless acts, he treated the Romans as slaves, taking away their dignity. *Id.* Therefore, he had to go into exile to escape being killed. *Id.*

8. *Id.*

to the level of consul.<sup>9</sup> Unfortunately, as time went on it took increasing amounts of giving to please the *plebs*, and this encouraged graft and lawlessness in the money gathering of the ambitious, which decidedly weakened the Empire.<sup>10</sup> In the early to middle periods of the Empire, top civil posts were determined by popular vote.<sup>11</sup> The *plebes urbana* therefore had to be placated and romanced, which is difficult to achieve while they were starving.<sup>12</sup> To achieve a prominent position in the Empire, one worked their way up the political food chain.

**ASCENT TO GLORY:** The youthful Roman scion of noble lineage would first be farmed into the staff headquarters of a family friend's military campaign where he would be groomed and observed.<sup>13</sup> A man would have to tally multiple military campaigns before he could be considered for a magistracy.<sup>14</sup> Then, in between military campaigns, the young man would wage the guerilla war of redressing the wrongs done to his father and family.<sup>15</sup> The goal was nothing less than the utter humiliation, political extirpation and banishment of family foes.<sup>16</sup> One such incident is related:

We are told that a certain young man, who had got a verdict of civil outlawry against an enemy of his dead father, was passing through the forum on the conclusion of the case, and met Cato, who greeted him and said: "These are the sacrifices one must bring to the spirits of our parents; not lambs and kids, but the condemnations and tears of their enemies."<sup>17</sup>

After a young man had established his preliminary *bona fides*, at around the age of thirty, he could begin to climb the ladder of military and civic rank.<sup>18</sup> Until the end of the Republican period, Rome was fanatically opposed to monarchy.<sup>19</sup> In fact, Cato committed suicide rather than accept Julius Caesar's tyranny. Instead, Rome employed a series of civil positions for administration of their

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9. See *id.* at 12-13.

10. See YAVETZ, *supra* note 6, at 43.

11. *Id.* at 45-46.

12. See *id.* at 42.

13. DUPONT, *supra* note 4, at 13.

14. See *id.* at 12-13.

15. *Id.* at 13-15.

16. *Id.* at 15.

17. *Id.* at 15.

18. *Id.*

19. It was only in times of extreme crisis that a tyranny was allowed to develop, and even then, it was only for a limited period. See YAVETZ, *supra* note 6, at 56. It became a sign of the creeping civic decay that set into the late Empire that the populous accepted dictatorship as an inevitable, or even good thing. *Id.*

increasingly complex and far-flung Empire.<sup>20</sup> These positions, all deemed types of 'magistrate,' logically increased in difficulty, power and prestige, and had certain age restrictions as well.<sup>21</sup> What typically occurred was that an ambitious Roman would begin to ascend the scale of these posts, and if luck and skill converged, he would find the crowning achievement of a consulship before the end of his life.<sup>22</sup> These positions themselves developed after the struggle between the *plebes* and the *patricians* was somewhat resolved,<sup>23</sup> after conflicts starting in the sixth to fifth centuries B.C.<sup>24</sup> According to legend, the first civil leadership post in Rome was the dual *consul*, created in the wake of the expulsion of king Tarquinius Superbus, after his son Sextus raped Lucretia.<sup>25</sup>

**LEVELS OF GLORY:** The levels of magistrate and descriptions are as follow: *Consul*,<sup>26</sup> the chief civil magistrates who were two in

20. See YAVETZ, *supra* note 6, at 45-46.

21. See Warsely, *supra* note 2, at 178-84.

22. See A. H. J. GREENIDGE, ROMAN PUBLIC LIFE 196-97 (1911).

23. See M. CARY & H. H. SCULLARD, A HISTORY OF ROME, DOWN TO THE REIGN OF CONSTANTINE 49-52 (3d ed. 1979). The clan, or *gens* was replaced by the family unit, or *familia*, as the societal unit; yet the senate originated as a leader of any *gens*, with a hundred being gathered to help advise the king. *Id.* at 49-50. The king was nominated by the senate, then the citizen body, or *curia* voted upon the nomination, there being thirty *curiae* derived from the three (apparently) Etruscan descended families of the tribes named Ramnes, Tities, and Luceres. The king had three main obligations. He was head of the *pax deorum*, or the agreement (or contract) between the Romans and the gods, which included responsibility for preserving and expounding the laws, or *ius divinum*, which was given to the religious colleges and omen interpreters. Second, the king was in charge of foreign relations, including making war, suing for peace, treaties, and fielding and heading the army. Lastly, he made and declared law, although civic law tended to be framed by popular practice, while the kings own law was religious in nature and expression.

24. See *id.* at 49-50. In short, the difference developed on an economic divergence, whereas the *patricians* were landowners, and the *plebes* as their clientele, in the form of laborers and part-tenants.

25. See *id.* at 55-56.

26. See DUPONT, *supra* note 4, at 21. There was no separation of powers in the Roman republic. *Id.* The power of the legislature, executive and judicial branches, so well divided in the American political system, met as one in the office of *consul*. Polybius says of them:

The consuls, previous to leading out their legions, exercise authority in Rome over all public affairs, since all other magistrates except the tribunes are under them . . . . As for preparations for war and the general conduct of operations in the field, here their power is almost uncontrolled. They are authorized to spend any sum they decide upon from the public funds, being accompanied by a questor who faithfully executes their instructions. So one may reasonably pronounce the constitution to be a pure monarchy or kingship.

*Id.* (quoting Polybius, Universal History, VI.12.1-9.). It is also fascinating to note that the *consuls* had inherited from the Etruscan kings the entire pomp and circumstance

number and whose job it was to call the senate to session, the post lasting one year, age of eligibility 43 years;<sup>27</sup> *Praetors*, whose duty it was to administer justice, and who had judges below them, their number being from 1 to 16 in Roman history, age of eligibility 40 years;<sup>28</sup> *Aediles*, whose duty it was to repair temples, public buildings, streets and sewers, regulate markets, weights and measures, provide for funerals, games and shows, age of eligibility 37 years;<sup>29</sup> *Quaestors*, whose job it was to care for public revenues as a sort of treasurer, age of eligibility 31 years.<sup>30</sup> There were also various *Tribunes*<sup>31</sup> (who historically were leaders of the three traditional Roman tribes),<sup>32</sup> such as: *Tribuni Militum*, these were tribunes of the soldiers and these varied in number and position through the period of the Empire;<sup>33</sup> *Tribuni Aerarii*, these were tribunes of the treasury and assisted the quaestors in helping pay the soldiers and also became judges of the people through *Lex Aurelia*;<sup>34</sup> *Tribuni Militum Consulari Potestate*, these were military tribunes with consular power, and were the highest officers of state from 445 BC to 365 BC – they had the same exact powers as a regular consul;<sup>35</sup> *Tribuni Plebis*, these were tribunes of the common people, or *plebeians*.<sup>36</sup> After 179 B.C., the *Cursus Honorum* was passed, making the ascent to consulship a linear vertical progression.<sup>37</sup>

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of their office, including the toga with purple hem, the 'curule' (or chair of state), and the twelve lictors. *Id.* Lictors were the aid staff and guard of magistrates, who formed a 'human rampart' around the consul. *Id.* They led his way, announced his position, and were ready to execute his every whim, including sentences of immediate arrest and execution, on the spot. *See id.*

27. *See* Warsely, *supra* note 2, at # 178.

28. *Id.* at # 180.

29. *Id.* at # 181.

30. *Id.* at # 182.

31. *Id.* at # 193. The tribunes were finally abolished in the year 1354 A.D.

32. *Id.* at # 182.

33. *Id.* at # 189.

34. *Id.* at # 190. Augustus later abolished this position.

35. *Id.* at # 191.

36. *Id.* at # 192. The *Tribuni Plebis* had wide powers and protections. If they said 'Veto' after the senate passed legislation, the bill failed to pass. If the *Tribuni Plebis* approved of legislation, they subscribed the letter 'T', and the bill became law. They were accompanied by *viatores* who waited upon and protected them. The *Tribuni Plebis* were also *sacrosancti*, meaning that if anyone laid a hand upon them, such a person would do so only under penalty of death. As protector of the *plebians* rights, their doors had to remain open both day and night, and they had to be present at the forum to be ready for such an appeal. The *Tribuni Plebis* could not leave Rome, therefore. Even one *Tribuni Plebis* could cancel the votes of all the rest. At the end of the Empire they became the most powerful tribunes in Rome, such was growth of the stature of the *plebians*.

37. *See id.* at # 188.

**OTHER IMPORTANT OFFICIALS:** Other important positions in Rome included *Censor*, elected every five years for a period of six months.<sup>38</sup> The titular job description was to conduct the five-yearly census, where all in Rome were counted and their estate valued<sup>39</sup> (such a census being mentioned in the book of Luke).<sup>40</sup> But also included in the role was chief of public morals, whereas he could strip unworthy or immoral persons of their rank, or publicly rebuke profligate youth. Censors also oversaw public works, making sure contracts were adhered to.<sup>41</sup> There were also various tribunes during Rome's heyday, and the final goal every noble aspired to was inclusion in the Roman Senate. The latter was only possible for those of three generations of magistracy who continued in public greatness.<sup>42</sup> Only senators, nobles and a few knights could ever really vie for the top magistracies.<sup>43</sup> Along with winning military greatness, these were the posts that all ambitious Romans longed for, but therein lied a tremendous contradiction. Namely, no official civil posts were paid positions, and thus, a fortune would have to be spent to achieve them, through such aegis as public works and unadulterated largess.<sup>44</sup>

**ROMAN POLITICS – TWO PARTIES:** There were two historic political parties in ancient Rome: “the *populares* (‘on the side of the people’) and the *optimates*, or senatorials.”<sup>45</sup> Membership in either party was based upon identity of the clientele base and not connected to personal ideology.<sup>46</sup> The *populares* represented the aspirations of the *plebs*, and called for tax reform, cancellation of debts, land distribution, and extension of citizenship.<sup>47</sup> Needless to say, the *optimates* represented the *status quo*.<sup>48</sup> The *populares* continually asked for grants and gifts from the state and must have motivated the Empire to consider the needs of the underclass.

**POLITICS AND CHARITY:** During the republican and imperial

38. See *id.*

39. See *id.*

40. Luke 2:1-3 (King James). Luke writes, “And it came to pass, in those days, *that there went out a decree from Caesar Augustus, that all the world should be registered. . . .* [This census took place] while Quirinius was governor of Syria. . . . [So] all went to be registered, everyone into his own city.” *Id.*

41. See Warsely, *supra* note 2, at # 185.

42. See *id.* at # 187-93.

43. DUPONT, *supra* note 4, at 160.

44. *Id.* at 30-31.

45. *Id.* at 20.

46. *Id.*

47. *Id.*

48. See *id.* (“[S]enatorials opposed any form of innovation, praised tradition and celebrated the austerity of the good old days, the glory of the bygone nobles, and the respectful discipline of the people.”).



period, giving largess in diverse form was an irreplaceable means for garnering popular support.<sup>49</sup> There simply could be no public life without public generosity, and miserliness was scorned.<sup>50</sup> For instance, from sometime after 180 A.D., there is a document *Epigraphica* concerning the central Italian town of Corfinium that regards this fact.<sup>51</sup> It says:

[Q. Avelius Priscus] for a public office gave five gladiatorial shows, and for the public office of *quattuorvir* gave dramatic shows, and for the office of *aedile* gave games in honour of the goddess Vetidina, and to help the corn supply he donated 50,000 sesterces to the state of Corfinium, and for the Avelian bath for women 30,000 sesterces and many feasts and distributions of money to the whole body of citizens from his own funds, and frequently he gave financial assistance to meet heavy obligations of the state. The people of Corfinium [dedicated] publicly [this monument] to mark his outstanding goodwill towards the city: Avelius Priscus accepted the honour but himself bore the cost.<sup>52</sup>

The political life increasingly became synonymous with public largess, and the higher one aimed, the deeper pockets one needed.

## 2. Roman Religion

*RELIGIOUS IDENTITIES—THE ROMAN GODHEAD:* Rome was self-consciously intoxicated with the idea of religion and the gods and considered this its crowning glory. For this reason, it is amazing to describe an undeniable fact about Roman religion, namely, their conception of the gods was extremely vague and simplistic.<sup>53</sup> For

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49. See FRANK FROST ABBOTT, *THE COMMON PEOPLE OF ANCIENT ROME: STUDIES OF ROMAN LIFE AND LITERATURE* 183-85 (1911). Abbott says:

These gifts from generals, from distinguished citizens, and from candidates for public office . . . show clearly enough that the practice of giving large sums of money to embellish the city, and to please the public, had grown up under the Republic, and that the people of Rome had come to regard it as the duty of their distinguished fellow citizens to beautify the city and minister to their needs and pleasures by generous private contributions.

*Id.* at 185.

50. DUPONT, *supra* note 4, at 31. Roman satires frequently poked fun of misers. *Id.* Romans felt money was to be spent bringing people together, helping friends in need, or throwing a feast. *Id.* The reason Romans loathed penny-pinching was that it removed a person from the social milieu, and ended up depriving all of one's potential social contacts of the benefits of generosity. *Id.* Misers were thought to live alone in their houses like animals or 'savages.' *Id.*

51. A.R. HANDS, *CHARITIES AND SOCIAL AID IN GREECE AND ROME* 186-87 (1968).

52. *Id.*

53. See DUPONT, *supra* note 4, at 214. Dupont writes:

Horace's *Odes* tells us a great deal about Roman religion, a religion of few words and no theory that lived through its rituals alone. Yet, if these rituals

instance, the average Roman was confused about what the gods looked like, or even their gender, such was the hazy understanding of Roman deities.<sup>54</sup> In fact, a typical Roman citizen would not have been overly curious about even the birth of the gods,<sup>55</sup> as their origin and existence – as contradictory a notion this may be – was co-extensive with the Empire itself.<sup>56</sup> Further, the Roman Empire could be viewed as the greatest cult of all, and the fact that the priests were a sub-entity under the senate proves that religion was inseparable from the Roman government.<sup>57</sup> Perhaps, because the gods were a mere pantheon, there was no true family tree” for the gods.<sup>58</sup> The work of ancient poets has given a deceptive gloss upon Roman divinities, but as one writer says, “[t]he historical religion of the Romans, who were so proud of their religiosity and so famed for it, was based on meaningless survivals from a primitive, exclusively magical period.”<sup>59</sup> Their simple acts of sacrifice and worship would have included gifts of milk, wine, cake, or a sacrificial animal, laid upon an altar of turf, denoted by an invocation to activate the sacrifice. What does this mean for modern analysts of Rome’s charitable impulses? Since Roman euegetism was not derived from a truly religious worldview, this undoubtedly was because Roman religion was morally dwarfed. Because of this, Roman cults probably didn’t have the maturity or depth to value the underclass. It may be inevitable that Roman largesse was motivated from personal ambition and love for glory, as despite all of Rome’s undeniable technical and governmental brilliance, private life in the Empire was almost wholly undisturbed by doubt and introspection.<sup>60</sup> Pagan religion affected Rome, but was not sublime enough to touch its soul.

**ROMAN RELIGION & CHARITY – CONTRADICTION?:** To modern Western eyes the religious life of the Romans presents itself as superstitious,<sup>61</sup> derivative,<sup>62</sup> obsolete, ritualistic, and

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were free of dogma, they were no mere mechanical gestures. From their earliest infancy, religious rituals became second nature to Romans so that, whether joyous or serious, they became associated with the atmosphere of each day. It was not so much a matter of putting their faith in some sort of spirituality but rather having faith in the Roman way of doing things.

*Id.*

54. See SCULLARD, *supra* note 23, at 48.

55. See *id.* at 49 (describing the irrelevancy of the emotion and art of the ancient Roman religion and the importance of its social value to daily life and traditions).

56. See C. KER'ENYI, *THE RELIGION OF THE GREEKS AND ROMANS* 222 (Christopher Holme trans., Greenwood Press 1973) (1962).

57. See *id.*; SCULLARD, *supra* note 23 at 49-50.

58. See *id.*

59. See *id.* at 221.

60. See *id.* at 222.

61. See *id.* at 213-13. A simple stroke of lightning would send the alarmed Romans

reactionary,<sup>63</sup> but never pastoral or devoted to the underclass. It was also intensely humanistic in that the senate ruled all the priestly colleges, and the opposite occurring was never suggested. For instance, it was the job of the *haruspices* to investigate such ominous portents as, say, "a snake falling in through the *impluvium*."<sup>64</sup> If asked, they reported their findings to the senate, sometimes resorting to a perusal of the *Sibylline* books to plumb an answer,<sup>65</sup>

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scurrying for their augurs for an interpretation; the interpretations themselves often appearing a study in deranged creativity. *Id.* For example, In 114 A.D., a squall blew through Rome and caused a lightning strike that hit a Vestal Virgin and killed her. *Id.* This greatly alarmed the populace. A special court of inquiry was assembled upon the matter led by infamous judge L. Cassius Longus, who by the end of the trial had secured convictions against three of the other Vestals for unchastity (the Vestals as a group were pledged to remain virgins during their reign). *Id.* This measure, meant to quell the unease of the masses, did not work. *Id.* So the Sibylline oracles (see below for Sibylline details) were consulted and, at their direction, the Romans sacrificed a Greek and a Gallic couple (as was done during the crisis of the battle of Cannae). *Id.*

62. *See id.* at 33-34. The Romans received a great number of their religious ideas and sentiments from the Greeks, Etruscans, and other ancient peoples. *Id.* For instance, a great part of the Roman godhead was simply a recapitulation of the Greek pantheon renamed. *Id.* And also, two of the three divination groups used by the Romans were Etruscan, both called *haruspices*. Significantly, the Roman type of temple was taken *in toto* from the Etruscan model. *Id.*

63. SIR JOHN EDWIN SANDYS, *A COMPANION TO LATIN STUDIES* 149 (1935). According to Sandys, the religion of the Romans

consisted partly of ideas, rites, and priesthoods, surviving from the earliest age of that [c]ity-state . . . but in the literary age the ideas had become almost extinct, the rites had become in great part fossilized or obsolete, and of the priesthoods only those which had acquired political influence still remained in a flourishing condition. Upon this original religious stratum there had been deposited another, consisting of Greek ideas, deities, and ritual, which had been imported chiefly from the Greek cities of Italy and Sicily with which the Romans came into contact, partly also at second-hand from their neighbors the Etruscans. . . (and) as early as the second Punic war, Oriental cults had begun to make their appearance . . .

*Id.*

64. *See* DUPONT, *supra* note 4, at 183.

65. John North, *Diviners and Divination at Rome*, in *PAGAN PRIESTS* 51 (Mary Beard & John North eds., 1990) [hereinafter *PAGAN PRIESTS*]. *See also* Warsely, *supra* note 2, at 18-19. The Sibylline books were said to have been nine prophetic volumes brought by the famed Cumaeen Sibyl to Tarquinias Priscus or Tarquinias Superbus and offered for sale. *Id.* Supposedly when she offered the nine for a price, and was rebuffed, she destroyed three, and offered six for the same price. Refused again, she destroyed three more, and offered the remaining three for the same price. *Id.* The king relented and finally bought the last trio. *Id.* They were said to be written in Greek, concerned the future of the Roman people, and were locked in a stone chest, and kept in a vault below the Capitoline and only read during times of great crisis. *Id.* A Sybil was the name given several Roman women prophetesses. *See also* SCULLARD, *supra* note 23, at 16. Cumae itself was the oldest of Greek settlements on the Italian peninsula, and so would be a logical nexus for the transmission of the Greek mystery religions and their arcane arts. *See also* VERGIL, *ECLOGUE NUMBER 4*. This 'Cumaeen

but the senate itself chose the response.<sup>66</sup> In the Republican period, in terms of religious activity, or *religio* there were official sacrifices held at all public events, and three types of divination practiced in Rome. The first was ritual activity (*sacra*) commissioned by the Senate and accomplished by the different priestly colleges (*collegia*), including the likes of the Virgins of Vesta,<sup>67</sup> the Arval Brethren,<sup>68</sup> and the *Flamian Dialis*<sup>69</sup> (the latter serving as Jupiter's singular priest).<sup>70</sup> The first type of divination was augury, done by way of observing avian activity. This was technically 'auspice' (*auspicia*) and bird specie, flight, landing, and general activities were all scrutinized.<sup>71</sup> The second type was investigation of unsought prodigies, monsters (*monstra*),<sup>72</sup> miraculous events, and the like. An

Prophecy' is mentioned in Virgil's fourth eclogue (pastoral poem) claimed by some to be a Christian Messianic prophecy considered one of the greatest literary works of antiquity.

66. See PAGAN PRIESTS, *supra* note 65, at 52.

67. See Warsely, *supra* note 2, at # 71.

68. PAGAN PRIESTS, *supra* note 65, at 20.

69. See KER'ENYI, *supra* note 56, at 225-28. There were five known duties of the *Flamen Dialis*, being: taking part in the Procession of the Dead; taking part in the festival of Lupercalia, where he would – at the same exact moment a sacrificed he-goat was disemboweled – cut the first bunch of grapes whilst the goat's entrails were pulled out; the sacrifice of the white lamb (*ovis Idulis*) on the Ides of the month; and the sacrifice of *Fides* – the last two being associated with Jupiter's brightest appearance. *Id.* The last duty was his function at the *confarreatio* wedding ceremony. There were also certain prohibitions that he must avoid at all costs, being, he must not: touch anything dead nor walk near a grave; look upon an army ready for battle; mount a horse; touch or even name either a dog or bean – both being precious to the underworld; and must avoid flour, yeast, and raw meat; and must avoid ivy and goats. There were many other restrictions upon him that emphasized his avoidance of anything symbolizing death or the underworld. *Id.*

70. PAGAN PRIESTS, *supra* note 65, at 20-21. A full list of known Roman priests (*flamines*) would include: *Augures* (Augurs); *Flamen Dialis*; *Flaminica Dialis*; *Flamen Martialis*; *Flamen Quirinalis*; *Minor flamens* (flamines); *Fetiales*; *Fratres Arvales* (Arval Brethren); *Luperci*; *Pontifices* (Pontiffs); *Pottiti & Pinarii*; *Quindecimviri sacres faciundis*; *Rex Sacrorum*; *Saliae Virgines* (Salian Virgins); *Salii*; *Septemvirii epulones*; *Sodales Titii*; *Virgines Vestales* (Vestal Virgins). *Id.*

71. DUPONT, *supra* note 4, at 183. Dupont writes:

For military campaigns, the augurs had elaborated a special system for examining the auspices, which involved sacred chickens. On the morning of battle, they looked to see if the chickens were eating properly, letting food drop from their beaks. If they were, then the auspices were deemed favourable. If they were not, it was best to avoid engaging in combat. During the First Punic War, the chickens of Publius Claudius Pulcher, commander of the fleet, had no appetite – perhaps they did not like being at sea. In his fury, the commander threw them overboard, yelling, 'If they won't eat, let them drink!' After losing the battle, the people condemned him. It was felt that his impiety had brought about the death of many citizens.

*Id.*

72. NAPHTALI LEWIS & MEYER REINHOLD, ROMAN CIVILIZATION, Vol. II, THE

example of this might be the birth of a dreadfully deformed baby, such as Siamese twins. The third kind was the reading of entrails – specifically livers—of animals, such being called ‘extispicy.’<sup>73</sup> The last was practiced in conjunction with the state sacrifices of animals, and occasionally men.<sup>74</sup> While taken with utmost seriousness, Roman emphasis upon the technique of ritual sometimes created absurd scenarios, as when performing rites they might be repeated almost endlessly until perfectly executed to the minutest detail.<sup>75</sup> One aspect differentiating Roman from Jewish or Christian priesthood was a decided lack of pastoral concern for the poor.<sup>76</sup> Such a notion would have been beyond the ambit of the Roman or pagan priest.<sup>77</sup> It was simply not part of their job description.<sup>78</sup>

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EMPIRE 276 (Jacques Barzun et al. eds., 1955) [hereinafter ROMAN CIVILIZATION]. During the reign of Hadrian, Lewis and Reinhold note some ‘amazing stories,’ taken to be prodigies that represented a message from the gods – needing interpretation, occurring during the Empire period. *Id.* Some include:

There was born in Rome a hermaphrodite, in the year when Jason was archon at Athens and Marcus Plautius Hypsaesus and Marcus Fulvius Flaccus were consuls at Rome. On this account the senate bade the pontiffs consult the Sibylline Oracles, and they interpreted the oracular responses.

*Id.*

Another example is mentioned:

There was brought to Nero a child having four heads and its other members corresponding, in the year when Thersyllus was archon at Athens and Publius Petronius Turpilianus and Lucius Caesennius Paetus were consuls at Rome. And another child was born with its head growing out of its left shoulder.

*Id.*

A last example should suffice to reveal the lurid and irresponsible nature of some of these reports:

There happened an incredible wonder in Rome, in the year when Demophilus was archon at Athens and Quintus Veranius and Gaius Pompeius Gallus were consuls at Rome. One of the most esteemed serving women of the wife of Raecius Taurus, a man of praetorian rank, gave birth to an ape.

*Id.*

73. *Id.*

74. See PAGAN PRIESTS, *supra* note 65, at 51.

75. See ALAN WATSON, THE STATE, LAW AND RELIGION: PAGAN ROME 10 (Univ. of Georgia Press, 1992).

76. See PAGAN PRIESTS, *supra* note 65, at 66. Other differences include a general lack of prophetic utterances, or the existence of specific and identifiable holy men. *Id.* Needless to say there was no ‘church’ in ancient, pre-Christian Rome.

77. See PAGAN PRIESTS, *supra* note 65, at 19. Mary North takes pains to argue that it is misleading to see the Roman ‘priests’ as a homogenous group even amongst themselves. *Id.* For example: most were men, but some were women; most acted as a group, but some operated solo; some had specific duties, while others were vaguely focused; some required chastity, while others had no restrictions in terms of relations. *Id.*

78. See Warsely, *supra* note 2, at # 68. In fact, even the term ‘priest’ in ancient

## 3. Roman Poor

*POOR IN ROME:* Several myths exist concerning the Roman poor. First, the very definition of 'poor' in ancient Rome needs clarification, as the usage does not agree with modern forms. Romans called the *plebs* their 'poor,' or the general masses of common people.<sup>79</sup> The 'poor' of Rome were simply less of a 'poor' class, and more technically, the political underclass, as being definitively disenfranchised. *Plebs* typically owned a small farm on the outskirts of Rome,<sup>80</sup> and had at least some economic vitality. A few were wealthy, others genuinely poor, but they were both free and non-citizens. This group might be seen as loosely analogous with the American 'blue collar' class, and would also include former slaves as freedmen and women.<sup>81</sup> But there is no reason to see the Roman 'poor' as the most destitute of the Empire.<sup>82</sup> The totally impoverished would have seen little or no recognition as people in ancient Rome, as they were politically and morally inconsequential.<sup>83</sup> The view of the Romans on beggars was not sympathetic, as they viewed such individuals not as lacking in opportunity, but simply as lazy.<sup>84</sup> Second, and generally speaking, one was either "rich" or "poor" in ancient Rome.<sup>85</sup> A myth has arisen about a capitalist middleclass existing in Rome. Moses Finley has commented on this false notion,

Nothing has bedevilled the history of the later Roman Republic more than this false image of the *equites*, called businessmen, capitalists, the new moneyed class, *ad lib.*, resting on the large, deeply entrenched assumption that there must have been a

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Rome referred to a civil magistrate appointed by the state to officiate in its ceremonies. *Id.*

79. See DUPONT, *supra* note 4, at 32.

80. See *id.* at 33. Dupont says:

The "poor" Roman peasant therefore lived with his family on a small farm that [met] everyone's needs. Nothing changed during the five centuries of the republic, and a seven *iugera* property remained sufficient to feed and raise a family. Caesar's veterans, even if they had three children, were granted only two and a half hectares of land. These surface areas seem ridiculously small to contemporary historians. But Italy was cultivated like a garden, and the abundance of labour [sic] ensured excellent yields from these small plots of land.

*Id.*

81. See YAVETZ, *supra* note 6, at 7-8. The *plebes urbana* represent a delightful mixture of all the diverse ethnicity of the mature Empire, including: Greeks, Italians from farther north, Asians – especially Syrians, Illyrians, Egyptians, Gauls, and many others. *Id.*

82. See DUPONT, *supra* note 4, at 32-37.

83. See *id.* at 32.

84. See HANDS, *supra* note 51, at 65.

85. See DUPONT, *supra* note 4, at 30.

powerful capitalist class between the land-owning aristocracy and the poor.<sup>86</sup>

The general attitude towards money was pragmatic. Either one had political ambitions, and therefore needed an immense fortune to stoke these desires; or one was poor and had little motivation to try and scrape together a small pile of extra coins.<sup>87</sup> The two extremes to be avoided were miserliness and prodigality.<sup>88</sup> Misers were especially ridiculed and high public opinion would not adhere to those seen as skinflints.<sup>89</sup> The Roman ideal, whether rich or poor, was always that one had a farm in the idyllic Roman countryside.<sup>90</sup> There, whether rich or poor, one could live in dignity.<sup>91</sup> Unfortunately, the urban poor could not farm or live in pastoral bliss. For them, famines and disruptions in Rome's grain deliveries played havoc with the price and supply of the much needed grain.

**LANDLESS POOR:** The poor in Rome could fare very well as long as they possessed at least some land.<sup>92</sup> Land not only enabled them to put food on the table at little cost, but also was the basis of their citizenship; thus, nothing was as important to the ambitious as land ownership.<sup>93</sup> It was therefore a tragedy when a peasant lost their land, which could result from enemy invasion, loss while in the army, debts from mortgaging it for taxes, or to buy seeds or ploughshares.<sup>94</sup> Going off to war was dangerous, since one's land might be ransacked and pillaged, mismanaged by tenants, or stolen by unscrupulous neighbors.<sup>95</sup> Losing one's land meant losing the family home, too, along with the household gods, tomb of the ancestors, and the ability to rate as citizen-soldier.<sup>96</sup> The issue of

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86. *Id.* at 30-31 (quoting M.I. FINLEY, *THE ANCIENT ECONOMY* 49 (1973)).

87. *See id.* at 31.

88. *See id.*

89. *See id.*

90. *Id.* at 32-33.

91. *See id.* According to Dupont:

Unless you are immensely rich, it is best to live in poverty on your own property: so said the moral consensus. One could live happily surrounded by children and by solid and prosperous servants. A life of rustic poverty meant that one had few needs. Whether one's property was large or small, one slept on straw, ate vegetables, bread and bacon, went barefoot and wore simple tunic.

*Id.* at 32.

92. *See id.* at 44.

93. *See id.*

94. *See id.* at 44-45.

95. *See id.* at 45. After the 3rd century B.C., debt no longer forced slavery, but the indebted still might be forced to become gladiators to salve their debt, or even sell their children into slavery. *See id.*

96. *See id.*

land, indebtedness and loss of one's farm was of the deepest concern to the *plebs*, and it would be Tiberius Gracchus who answered the call of the landless, disenfranchised poor.<sup>97</sup>

*PEASANT FARE:* A poor Roman farmer still had a plentiful spread on his dinner table.<sup>98</sup> His diet favored vegetables more than corn, and he was proudly almost self-sufficient.<sup>99</sup> He would have been proficient enough to harvest all year long.<sup>100</sup> His land would typically have a grape arbor, a fruit orchard, "a small herd of goats," some swine, and poultry for eggs and meat.<sup>101</sup> He also had an oxen team to plow.<sup>102</sup> While he did enjoy vegetables, during periods of heavy work, the peasant farmer would also buttress his diet with "bread, mashed beans, bacon and cheese."<sup>103</sup> The favorite vegetables were "brassicas, greens, marrows, sorrel, cucumbers, lettuce, leeks," and many others unfamiliar to modern people.<sup>104</sup> For flavor, they also grew "garlic, onion, cress, chicory," and many herbs.<sup>105</sup> Conversely, a soldier led a hard life and ate hard food, eating a diet of primitive wheat cakes baked on a stone griddle almost exclusively, with water to drink and vinegar when weather was hottest.<sup>106</sup> Consumers of meat and wine during a battle campaign were usually the enemy, such being the diet of irresolute barbarians.<sup>107</sup> Poor urban dwellers would not starve, but their diet was not as good as a farmer's.<sup>108</sup> However, the urban poor did have one thing going for them that the farmers did not — they had an opportunity to advance in politics.<sup>109</sup> The great Cincinnatus had the best of both worlds; the enjoyable life of a modest country farmer, and service and distinctions at the highest levels of Roman government—and more than once.<sup>110</sup>

### *B. Roman Charitable Activities*

#### 1. Types of Roman Charity — Public & Private

*INTRODUCTION:* Throughout Roman history, there was an

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97. *See id.*

98. *See id.* at 33.

99. *Id.* at 35.

100. *Id.*

101. *Id.*

102. *Id.*

103. *See id.*

104. *See id.* at 100.

105. *See id.*

106. *See id.* at 125.

107. *See id.*

108. *Id.* at 35-37.

109. *See id.*

110. *See id.* at 41.



extraordinary amount of ancient charitable activity, if we are more expansive in our definitions of charity. Here, several points need to be made so as to define our subject. First, different types of giving predominated during different periods of the Empire. In Rome's early period, the smallness of giving matched the size of the community. As Rome began to take on the characteristic qualities that would guide and define her greatness, giving blossomed. This was due to the increasingly important role of public charity that political success demanded.<sup>111</sup> To wit, a public figure's overall popular support dictated how far he might go in elected office, and this was greatly influenced by his public generosity.<sup>112</sup> This was not only expected before a politician took office, but afterwards, too.<sup>113</sup> In the final, post republican era of Roman Emperors, imperial giving became a way of not only of seducing the masses, but of ensuring immortality.<sup>114</sup> As the Caesars and their heirs became increasingly deified, a conflict arose. The emperor became the only person who could be seen as giving public largess in the mother of cities – Rome. To defy this was to assert oneself as a danger to the empire, one who fomented insurrection and treason by attempting to seduce the love of the people.<sup>115</sup> Finally, towards the end of the Empire, public office itself went from being the *raison d'être* of human existence to a terrible albatross upon the neck, to be borne with resignation.<sup>116</sup> This was because political office had become so identified with donative munificence, that it often bankrupted those unfortunate enough to be put in office.<sup>117</sup> Here we have a surprising aspect of ancient Roman 'charity'—that it was really nothing more than euphemistic socialism, as the wealthy were divested of large sums delivered to the poor, in exchange for their being allowed office. The truth is their 'donations' were often not given joyfully, and were simply a dreary aspect of civic magistracy, such that the wealthy were caused to give, repair and build the Republic and Empire. The Roman government historically sponsored different types of official largesse, the most instantly recognizable being the "grain dole," or as referred to sarcastically by Roman poet and wit Juvenal – "bread and circuses."<sup>118</sup>

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111. See *id.* at 31.

112. See *id.* at 31-32.

113. See *id.*

114. See *id.* at 54.

115. See *id.* at 54-55.

116. See *id.* at 55.

117. There are many accounts in the late Empire of those being forced into office, joining the army, or actually running away to escape such responsibility and certain financial ruin.

118. See JUVENAL'S SATIRES BOOK 10, lines 75-80 (Michael Mendry ed., 2004),

## a. Public Support Of Amenities &amp; Staples

**BASIC AMENITIES:** The fundamental public support offered in the ancient world was in some variation of “[c]orn, oil and cash.”<sup>119</sup> Unfortunately for the most destitute, the largess was not earmarked for the poorest members of the society.<sup>120</sup> Hands adds, “[o]nce again there is no indication that any private donor discriminated in favour [sic] of the lower classes nor has there been any tendency to regard public distributions as doles instituted primarily to aid the destitute.”<sup>121</sup> It comes as no surprise that a people as religious as the Romans would have mixed charity with their many festivals.<sup>122</sup> Examples abound.<sup>123</sup> A wealthy man who attained the magistracy would invariably fund at least one religious festival a year, bearing most or all of the costs himself.<sup>124</sup> For example, one “Epaminondas of Akraephia in Boeotia, . . . in the first . . . century A.D. . . . reviv[ed] the . . . festival of Apollo.”<sup>125</sup> It is recorded he made distributions of corn and wine to “all citizens, residents, and slaves.”<sup>126</sup> He also gave out “meat and meals and sweetmeats and dinners . . . .”<sup>127</sup> His wife, for ten days gave meals to children and wives of citizens, and female slaves.<sup>128</sup> Such largess would be ostentatious, and the wealthier the individual, the larger the gifting. And so acclaim towards him would fill the air, and he might hope – waft towards the heavens like a fragrant aroma to the nostrils of the gods.

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available at <http://www.curculio.org/Juvenal/s10.html>. This states, “*iam pridem, ex quo suffragia nulli uendimus, effudit curas; nam qui dabat olim imperium, fasces, legiones, omnia, nunc se continet atque duas tantum res anxius optat, panem et circenses.*” Or, “Now that no one buys our votes, the public has long since cast off its cares; the people that once bestowed commands, consulships, legions and all else, now meddles no more and longs eagerly for just two things—bread and circuses.” *Id.*

119. HANDS, *supra* note 51, at 89. From the first or second century AD comes a record found at Ebusus (*Ibiza*) in the western Mediterranean that says:

This man bequeathed to the state of Ebusus [ninety] thousand sesterces, with the intention that from this sum each year the tribute to the Romans might be paid and that the citizens should not be compelled to pay tribute at a difficult time. The remaining [six] thousand are to be lent out and from the interest games are to be held each year, together with provisions of five illuminated vessels on his birthday.

*Id.* at 191 (alterations in original).

120. *See id.* at 89.

121. *See id.* at 115.

122. *Id.* at 89-91.

123. *Id.* at 89.

124. *See id.* at 89.

125. *See id.* at 89-90.

126. *See id.* at 90.

127. *See id.*

128. *See id.*

**GRAIN DOLE:** This first record we have of Rome amassing grain, fixing the price and then selling it to the people is in 203 B.C., and the idea slowly became entrenched.<sup>129</sup> In 123 B.C. the tribunate of Gaius Gracchus<sup>130</sup> officially established the "corn law,"<sup>131</sup> offering subsidized allotment of corn for all freemen in Rome.<sup>132</sup> This was provided monthly for a fixed and reasonable price, and was not funded by the generosity of a few nobles, but out of the Empire's profits.<sup>133</sup> The law on the dole was in some state of flux, with Saturninus, Sulla and others trying to modify it.<sup>134</sup> While corn remained available only to freemen, certain slave owners had a clever response to the aid, and actually – and perhaps only technically – freed some slaves so that they might also qualify for a portion.<sup>135</sup> After some time the dole went from a modest fee to *gratis*, as a result of P. Clodius' tribune in 58 B.C.<sup>136</sup> There were initially no restrictions on dole eligibility, except for having the patience or stamina to stand in line long enough to buy.<sup>137</sup> The first dole probably had 50,000 takers.<sup>138</sup> This figure eventually rose above 300,000,<sup>139</sup> and it is possible there were millions tied to state aid in one way or another during the dole.<sup>140</sup> At one point, two pounds of bread were issued to all citizens and olive oil, pork, and salt were also distributed at regular intervals.<sup>141</sup>

**SOCIAL CONDITIONS & GRAIN DOLE:** Famine was an ever-present danger in antiquity, especially in urban areas, with one writer saying, "[t]he specter of hunger and famine hovering like a

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129. See YAVETZ, *supra* note 6, at 39.

130. See HANDS, *supra* note 51, at 101. The study of Gaius Gracchus is one of the most intriguing of all the leaders of ancient Rome, although an in-depth biography must be eschewed, except to mention three things: (1) that he is rated by some the second greatest orator of his day after Cicero; (2) that he apparently was very pious and sincere in his commitment to Roma and the people, and did much to benefit them through his legislation and leadership; and (3) that he was very unlucky in how his career played out. See SCULLARD, *supra* note 23, at 207-10.

131. See SCULLARD, *supra* note 23, at 207-11.

132. See HANDS, *supra* note 51, at 101.

133. See *id.*

134. See *id.* at 102-03 (relating that even Caesar carefully regulated distribution).

135. See *id.* at 103 (discussing that this scheme complicated an orderly and lawful dole).

136. See *id.* at 102 (alleging the tribune used the law as a "vote-catching device").

137. See *id.* at 100-01.

138. HENRY HAZLITT, THE CONQUEST OF POVERTY, 67 (1973), available at <http://www.hazlitt.org/e-texts/poverty/Ch6.html>.

139. HANDS, *supra* note 51, at 103.

140. HAZLITT, *supra* note 138, at 68.

141. *Id.*

permanent incubus over the cities and towns of the ancient world.”<sup>142</sup> The popular response to such shortages were frequently “bread riots, and other acts of mob violence.”<sup>143</sup> Such rioting was not restricted to the *plebs*, but sometimes threatened the very elite of Rome, such as, Claudius, who was once cornered by a group of angry, starving *plebs* in the middle of the forum, and almost killed by their stones for lack of bread.<sup>144</sup> Tiberius suffered similar food uprisings.<sup>145</sup> After this problem became entrenched, it was seen as one of government’s basic functions in Rome to locate grain overseas, amass it in storage facilities, and then sell it at a fixed price, this was referred to as *cura annonae*.<sup>146</sup> Grain prices fluctuated wildly due to years of glut, times of famine, war, political intrigue, and market speculations.<sup>147</sup> The Sicilian and African markets would dump their surplus upon the Romans, causing wild swings in prices.<sup>148</sup> Also, grain growers often converted their land from grain to the production of more profitable crops, such as olive oil or wine grapes.<sup>149</sup> To complicate matters, there was no adequate grain storage facility in Rome, which gave grain speculators added incentive to shortfall the market to line their

142. ROMAN CIVILIZATION, *supra* note 72, at 336.

143. *Id.* at 138-40.

144. *See id.* at 139-40. Tacitus described this event as follows:

Many prodigies occurred that year . . . . A shortage of grain again and the resulting famines were regarded as a portent. And people did not merely grumble in private, but they surrounded Claudius with mutinous clamor as he sat in judgment, drove him to the edge of the Forum, and kept jostling him about until the arrival of a band of soldiers made it possible for him to force his way through the hostile throng. It was ascertained that the city had provisions for fifteen days, no more, and the desperate situation was relieved only by the great mercy of the gods and the mildness of the winter. And yet, by heaven, in former times Italy used to export supplies for their legions in far-distant provinces, and even now does not suffer from infertility, but it is we who prefer to cultivate Africa and Egypt and commit the life of the Roman people to ships and all their risks.

*Id.* at 140 (quoting TACITUS, ANNALS XII, xliii.).

145. *See id.* at 139-40. Tacitus again provides:

The excessive price of grain led practically to insurrection, and for several days the theatre was the scene of many demands shouted with greater boldness than was customary toward the emperor. Aroused by this, Tiberius upbraided the magistrates and the senators for failing to restrain the populace by the authority of the state, and reminded them of the provinces from which he imported the supply of grain and of how much greater a supply it was than Augustus had provided.

*Id.* (quoting TACITUS, ANNALS XII, xliii.).

146. *See id.* at 138-39.

147. *See* SCULLARD, *supra* note 23, at 207.

148. *Id.*

149. ROMAN CIVILIZATION, *supra* note 72, at 336.

pockets.<sup>150</sup> Gaius, in the interest of overall stabilization of the grain markets, negotiated overseas grain harvests in bulk purchase by the government, delivered to a warehouse in Ostia.<sup>151</sup> Then he enacted a monthly fixed price of  $11/3$  *asses a modius*, which was slightly below the current market prices.<sup>152</sup> The law was criticized, but did not weigh too heavily on the treasury, and was very popular with the masses.<sup>153</sup> The grain dole was Gaius' response<sup>154</sup> to the need of poor Romans, especially those who were not interested in leaving the city for a new community in order to get their free land from the agrarian commission, initiated by his brother Tiberius.<sup>155</sup> The *aediles* were generally invested with organizing this duty, but in times of severe crisis a special commissioner of *cura annonae* would be appointed.<sup>156</sup> Finally, after Augustus came to power he made the *cura annonae* a matter of top importance to the Empire, and so created an entire department in his government dedicated to it, which remained intact for 500 years.<sup>157</sup> The head of this was the "prefect of the grain supply," and while the headquarters of this important department were in Rome, the main substations were in the Italian port cities of Ostia and Puteoli.<sup>158</sup> An entirely new port and city was even built for the express purpose of easing grain delivery problems in 42 A.D., called 'Portus.' There were also grain outposts found throughout the territory of the Roman Empire, including Egypt and Africa.<sup>159</sup> This enterprise represented the largest single commercial activity in the Empire.<sup>160</sup> Rome's need for a reliable and constant overseas grain source is reminiscent of the modern West's dependence upon Middle East oil, and laid open the possibility of disaster as an ever-present fact of life.<sup>161</sup> As Tacitus comments:

But no one makes any proposal about the fact that Italy is dependent on supplies from abroad, that the life of the Roman is tossed every day at the mercy of wave and wind. And if the harvests of the provinces ever fail to come to the aid of our

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150. See SCULLARD, *supra* note 23, at 207.

151. See *id.*

152. See *id.*

153. See *id.*

154. See *id.* at 209-10. It is unfortunate to relate that Gaius, just like his brother Tiberius, died at the hands of politically motivated mob violence, caused in part by strong response to his reforms.

155. See *id.* at 207.

156. See ROMAN CIVILIZATION, *supra* note 72, at 138-39.

157. *Id.* at 139.

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

masters, slaves, and fields, then our parks and villas [in Italy] will support us forsooth. This, Conscript Fathers, is one of the services that the emperor assures; if neglected, this will drag the state down in utter ruin.<sup>162</sup>

Grain was sometimes paid for by private citizens, and undoubtedly most gifts like this would be given to one's place of origin, helping cement his legacy there.<sup>163</sup>

*TRANSPORTATING GRAIN TO ROME:* The transportation of so much grain on a regular schedule presented tremendous logistical problems to the Empire. The grain was harvested in various countries and then brought to port in the countries of origin, whether Egypt, Africa, or elsewhere, then shipped to Rome. Dio Cassius mentions how committed Claudius was to solving the grain supply problems, not just for his administration, but for future times, as well.<sup>164</sup> He constructed the harbor at Portus because "the Tiber had no safe landing" for receiving shipments.<sup>165</sup> Claudius also insured the importers to assure a profit, even if there was a loss by storm.<sup>166</sup> As to the actual shipping, we have a real example. One place grain came from was Middle Egypt, which shipped it to Alexandria. In Alexandria the shipment "would be opened and compared" to a sealed sample, to make sure it was dry and not adulterated or moldy. If it were bad, the source of the grain would make the shipment good.<sup>167</sup> Originally, the Roman soldiers guarded the shipments, although later the duty was transferred to Egyptian officials.<sup>168</sup> Then the grain was shipped and unloaded at a Roman port.<sup>169</sup>

*CAESAR'S GRAIN DOLE LAW*<sup>170</sup>: An example of specific

162. *Id.* (quoting TACITUS, ANNALS III. LIV. 6-8).

163. *See* HANDS, *supra* note 51, at 187. A late second century AD document from the town of Camerinum, in central Italy provides:

This man's father often met the burden of the corn supply when corn was dear and frequently he gave a feast. The people of Camerinum [dedicated this] in view of the very many and great benefits conferred on themselves by his father and himself. He accepted the honour [sic], but he gave back the amount which they had collected. At the dedication he gave a feast.

*Id.* (alteration in original).

164. *See* ROMAN CIVILIZATION, *supra* note 72, at 139-41.

165. *See id.* at 141. Despite being told the enormous costs of creating a new harbor, he intrepidly committed the Empire to the task. He excavated a large area of the shore and built retaining walls to fortify the whole of the excavation. He enclosed the seaward side with buttressed moles, and then let the sea in. *See id.*

166. *See id.* at 140.

167. *See id.* at 140-41.

168. *See id.* at 141.

169. *See id.* at 141-42.

170. *See also* *Essays on Money, Government, Economics, Politics*, in HAZLITT, *supra* note 138, at ch. 6, available at <http://www.hazlitt.org/e-texts/poverty/ch6.html> (last visited Oct. 12, 2004). What were the results of this largesse? The dole was very

legislation on the dole was the Law of Caesar on Municipalities, from 44 B.C.<sup>171</sup> The story behind this law's passage is notable. Supposedly, the law was under preparation by Julius Caesar at the time of his murder.<sup>172</sup> After Caesar's untimely demise, Mark Antony<sup>173</sup> discovered drafts of this law amongst his papers and published them together, as a *lex saturna*, or a mixed law passed as an omnibus. The beginnings and end are no longer extant, but the first six sections deal with the grain dole. It appears that it was only available to Romans of limited means.<sup>174</sup>

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popular, yet contributed to debasing the population's work ethic, as they were paid 'money for nothing.' The dole was paid for by taxes, many of which were arbitrarily assessed to the wealthy, or by outright property takings. Rome had other problems, such as an economy so slave-based that unemployment was rampant and wages were obscenely low for those who did find work. Beyond this, the slave-economy worked against technological innovations as they made such investments counterproductive. Ultimately, the dole was one of the many factors leading to the decline and fall of Rome.

171. See Yale Avalon Project, *Law of Caesar on Municipalities 44 B.C 1*, available at [http://www.yale.edu/lawweb/avalon/medieval/law\\_of\\_caesar.htm](http://www.yale.edu/lawweb/avalon/medieval/law_of_caesar.htm) (last visited Jan. 1, 2005) [hereinafter Yale Avalon Project]. See also ALLAN CHESTER JOHNSON ET AL., *ANCIENT ROMAN STATUTES: A TRANSLATION, WITH INTRODUCTION, COMMENTARY, GLOSSARY, AND INDEX* (Clyde Pharr ed., U. of Tex. Press 1961) (used with the Permission of the Univ. of Texas Press).

172. See JOHNSON ET AL., *supra* note 171, at 97 n.19 (noting that City Charters could be refused for an entire year after the law was passed).

173. See DUPONT *supra* note 4, at 230. It is interesting to note Cicero's visceral antipathy towards Mark Antony, due in part because of Antony's adolescent love affair with Cicero's student Curio, from which Antony apparently made a great deal of money.

174. See Yale Avalon Project *supra* note 171. This law comes from pieces of a bronze tablet found in 1732 and 1735 in Heraclea, a formerly Greek city on the Gulf of Tarentum. The first five parts are here:

- 1) If by this law it is proper for anyone to make his declaration before the consul and if he is absent from Rome when it is proper for him to make his declaration, then his agent shall declare in the same manner and on the same days before the consul all the same things that his principal properly should have declared by this law if he were in Rome.
- 2) If by this law it is proper for anyone to make his declaration before the consul and if he or she is a ward, then his or her guardian shall declare in like manner before the consul all the same things on the same days, just as the owner properly should have declared by this law if he or she were not a ward.
- 3) If the consul before whom by this law it is proper for these declarations to be made is absent from Rome, then the person required to make the declaration shall make it before the *urban praetor* or, in his absence, before the *peregrine praetor* in the same manner as one properly should declare by this law before the consul if he were in Rome at that time.
- 4) If none of the consuls or the *praetors* before whom by this law it is proper for declarations to be made are in Rome, then the required declaration shall be made before the *plebeian* tribune in the same manner as one properly should declare by this law before the consul or the *urbanpraetor*

Section six of the Law of Caesar on Municipalities continues:

The distributor of grain to the people or whoever has charge of such distribution shall not give, order, or permit grain to be given to anyone of those persons whose names in conformity with this law have been posted by the consul, the *praetor*, or the *plebeian* tribune on the bulletin board. If anyone in contravention of this regulation gives grain to anyone of those persons so posted he shall be liable to a penalty of 50,000 *sesterces* payable to the State for each *modius* of grain so given, and anyone so minded shall be entitled to sue for this sum.<sup>175</sup>

A reasonable interpretation of this law was that Caesar was attempting to reduce the roll by removing the wealthier from the lists. Caesar may have been interested in both saving the Empire money and also making sure the dole helped the poorest.<sup>176</sup> Caesar also dropped names of the deceased from the roll.<sup>177</sup> Caesar did reduce the dole from 320,000 to 150,000, in part, by making arrangements for 80,000 former recipients to be sent to new colonies overseas.<sup>178</sup> The dole, like any state aid scheme, was probably never able to truly roll back all the cheats from its subscriptions. Augustus was perplexed at the phenomenon of manumitted slaves showing up in droves for their 'rightful' portion, so he made a law that no slave freed after the announcement of a distribution would receive a part thereof.<sup>179</sup> It seems the largest group ever to receive the dole was on the presentation of Augustus' adopted son and grandson.<sup>180</sup> While Augustus longed to reform the dole, the task may have been too daunting. It appears that his main success was in the reorganization of the scheme, where a 'coupon' in the form of wooden tablets indicated that the holder was eligible for his portion.<sup>181</sup>

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or the *peregrine praetor* if he were in Rome at that time.

- 5) The magistrate, before whom is made the declaration, which it is proper for anyone to make in accordance with this law, shall provide that each person's name, the things which he has declared, and the day on which he has declared them shall be entered in the public records and that all these entries shall be accurately copied on a tablet on the bulletin board in the Forum. Whenever and wherever [sic] grain is distributed to the people he shall keep this list displayed daily, for the greater part of each day, where it can be easily read from the ground level.

*Id.*

175. *Id.*

176. See HANDS, *supra* note 51, at 103-04.

177. See YAVETZ, *supra* note 6, at 46.

178. *Id.*

179. See HANDS, *supra* note 51, at 105.

180. See *id.*

181. See *id.* at 106.



## b. Charitable Land Distribution

*LAND REFORM OF TIBERIUS GRACCHUS*: Land was always precious in ancient society because of the relative poverty of the average person, and a lack of 'modern' checks against drought, famine, or any disruptions in the food supply. Therefore, charitable land reform was an immensely popular idea amongst the *plebs* in Rome. There were many land grants in Roman history, although most simply involved grateful generals awarding captured lands to their victorious troops, as happened with Sulla in 81 B.C.<sup>182</sup> The story of a person who proposed real land reform in the Empire—Tiberius Gracchus, elder brother of Gaius, is one of the most compelling on record. Patriot, coward, statesman, traitor, reformer, demagogue, hedonist, virtuous leader, friend of the poor, or enemy of the state—who was he?<sup>183</sup> Tiberius' character remains unexplained in full, and it depends upon how one interprets his history and motives as to how he rates as a leader of the Empire.<sup>184</sup> Tiberius was elected tribune for 133 B.C., and proposed his land reform in the same year.<sup>185</sup> It appears that Tiberius wanted to help the sad state of many of Rome's lower landless class, like soldiers who—in defending their nation, lost the farms they left behind,<sup>186</sup> and unemployed

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182. See SCULLARD *supra* note 23, at 234 (stating that Sulla's land donations to his soldiers benefited approximately 120,000 soldiers).

183. See *id.* at 203-04. Tiberius was son of the elder Sempronius Gracchus—a powerful nobleman who was twice consul and once censor, and his mother was Cornelia, daughter of Scipio Africanus. He had been the first officer over the wall in Carthage during the Third Punic War. Conversely, he had negotiated the treaty at Numantia that had saved Hostilius Mancinus's army, but he also managed to escape the infamy associated with such an armistice—which was thoroughly un-Roman, because of the influence of his powerful brother-in-law Scipio Aemilianus. *Id.*

184. See *id.* One thing is beyond contention—namely, that between Tiberius and his brother Gaius, Rome ultimately benefited greatly for posterity by their legislation and deeds.

185. *Id.* at 204.

186. See DUPONT, *supra* note 4, at 45 (citing PLUTARCH, TIBERIUS AND GAIUS GRACCHUS 9). Tiberius gave a speech that stated his position on land reform which provides:

The wild beasts that roam over Italy have, every one of them, a cave or lair to shelter in; but the men who fight and die for Italy enjoy only the light and air that is common to all above their heads; having neither house nor any kind of home they must wander about with their wives and children. It is with lying tongues that their imperators exhort soldiers in battle to defend sepulchers and shrines from the enemy, for not a man of them has a hereditary altar; not one of all these many Romans has an ancestral tomb, yet they fight and die to maintain others in wealth and luxury. Though they are styled masters of the world, they have not a single clod of earth to call their own.

*Id.*

farmers who had no land to till, and no means to buy any.<sup>187</sup> The *plebs* demanded land reform, asking for the *ager pulicus*, or public land owned by Rome.<sup>188</sup> The rich and poor argued over what would be done with land won in war, but all Roman debts were paid with land captured during the Second Punic War.<sup>189</sup> Public land within fifty Roman miles (seventy-five kilometers) of Rome was abandoned, then this was reversed and the Gracchi laws enacted.<sup>190</sup> The law was controversial, in part because of how Tiberius attempted to implement it without a full senate review.<sup>191</sup> He passed the law, then set up an agrarian commission, but the Senate stonewalled funding.<sup>192</sup> Yet, Tiberius got money when a wealthy Roman died, leaving his entire estate to the people.<sup>193</sup> The issue provoked a full-fledged constitutional crisis when Tiberius attempted to run again for tribune, so his land legislation would not be killed.<sup>194</sup> Instead, a session of the Senate meeting on his repeat candidature became so heated that a group of zealous senators formed a mob, rushed Tiberius and 300 of his supporters, clubbing them to death.<sup>195</sup> But, this did not end Tiberius' agrarian land-commissions.<sup>196</sup> The agrarian commission, first composed of Tiberius, his brother Gaius, and Claudius Pulcher as sitting commissioners, went to work.<sup>197</sup> Tiberius' law concerned the land gained during the Second Punic War.<sup>198</sup> He proposed to leave 500 *iugera* of land (approximately 300 acres) a piece for the original owners, with an additional 150 for every child.<sup>199</sup> He wanted the rest of the land to be granted to smallholders in various sized parcels, with certain stipulations.<sup>200</sup> They made allotments of land in various districts of Italy, especially in the hinterlands of central and southern Apennines.<sup>201</sup> The land law intersected with the general desire within Rome's allies for a more

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187. SCULLARD, *supra* note 23, at 203-04.

188. See DUPONT, *supra* note 4, at 45.

189. *Id.* at 45.

190. *Id.* at 45-46.

191. See SCULLARD, *supra* note 23, at 204-05 (stating that taking this short cut resulted in a constitutional crisis).

192. *Id.* at 205.

193. *Id.*

194. *Id.*

195. *Id.*

196. See *id.* at 206 (noting that the senators gravely persecuted Tiberius' followers but did not impede land commissions).

197. *Id.* at 206.

198. *Id.* at 204.

199. *Id.*

200. *Id.* Tiberius offered the land with "a small quit-rent, and a promise not to alienate" them for a certain amount of years. *Id.*

201. *Id.* at 205.

open enfranchisement. This was defeated, then Tiberius was slain.<sup>202</sup> After Tiberius' death, P. Licinius Crassus, Gaius' father-in-law took Tiberius' place.<sup>203</sup>

*GAIUS GRACCHUS' LAND REFORM:* Tiberius' brother Gaius was elected to Tribune in 123 B.C., and again in 122.<sup>204</sup> He reaffirmed his brother's land reforms, cutting out any subsequent alterations.<sup>205</sup> To help the new settlers in the donated areas, Gaius proposed a series of smaller roads, so that produce and commerce might be encouraged in these outlying areas.<sup>206</sup> They would also help travel between Rome and these areas, and enable the populace to more easily become political players.<sup>207</sup> Gaius also founded new sites, such as the colonies of Tarentum and Capuaa, so that companies growing food, or doing any other business would still be able to conduct it in a 'Roman' environment. He went so far as to convert the former mortal enemy of Rome – Carthage – into a new Roman colony.<sup>208</sup>

### c. Public Entertainment

#### i. Gladiatorial Displays

*GLADIATORIAL BATTLES:* One indelible image in the modern mind concerning ancient Rome were its bloody and cruel gladiatorial battles, fought in the crowded confines of the mammoth Coliseum. The reaction of the people to these free combats was deep affection.<sup>209</sup>

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202. *Id.* at 206.

203. *Id.*

204. *Id.* at 207.

205. *Id.*

206. *Id.*

207. *Id.*

208. *Id.*

209. See ROMAN CIVILIZATION, *supra* note 72, at 230. Seneca writes about a trip to see some entertainment in his *Moral Epistles vii. 3-5*:

I chanced to stop in at a midday show, expecting fun, wit, and some relaxation, when men's eyes take respite from the slaughter of their fellow men. It was just the reverse. The preceding combats were merciful by comparison; now all trifling is put aside and it is pure murder. The men have no protective covering. Their entire bodies are exposed to the blows, and no blow is ever struck in vain . . . In the morning men are thrown to the lions and the bears, at noon they are thrown to their spectators. The spectators call for the slayer to be thrown to those who in turn will slay him, and they detain the victor for another butchering. The outcome for the combatants is death; the fight is waged with sword and fire. This goes on while the arena is free. "But one of them was a highway robber, he killed a man!" Because he killed he deserved to suffer this punishment, granted . . . "Kill him! Lash him! Burn him! Why does he meet the sword so timidly? Why doesn't he kill boldly? Why doesn't he die game? Whip him to meet his wounds! Let them

A good way to understand Rome's pitiless love for these dramas is to realize they came into vogue as the Empire was coming into its prime, when savage foreigners were appearing after being vanquished. So it was a dramatic and enjoyable way for the average Roman to understand and see in the flesh the subjugation of these barbarians—and what better way than to show them thrown into a combat like animals?<sup>210</sup> As Dupont says:

It is no accident that gladiators were introduced to Rome at a time when the city had just embarked upon an expansionist policy that changed the way in which Romans pictured the universe and when Rome was assuming its position at the centre of the world and of civilization.<sup>211</sup>

**GLADITORIAL CONTESTS & LOGIC:** There is a spiritual aspect to the gladiator deaths few moderns know about, that make them akin to a type of sacrifice in the minds of the ancient Romans.<sup>212</sup> Gladitorial combat was felt necessary to appease the dead manes<sup>213</sup> of the Underworld. The blood flowing in these public places was thought "to slake the thirst" of these departed beings.<sup>214</sup> In fact, these netherworld dwellers were believed to live off human blood.<sup>215</sup> What made a man a gladiator was not his place of birth, or station, but the state of his soul.<sup>216</sup> Therefore, Romans of degenerate habit, as well as foreign barbarians could both be used.<sup>217</sup> The fighters were human waste, unfit for civilized life, and so worthy of becoming animated fighting machines. They used strange weaponry, and the pairs were always anachronistic – yet fair. A large and heavily armored fighter would be matched against a small, unprotected one, whose ease in moving helped him avoid the larger, whom he might attack at ease.<sup>218</sup> The Romans believed they had inherited gladiator fights from the Etruscans, but more recent evidence points to the Samnians as their inventor. Well before any Etruscan mention of them, we have Samnian depictions of such dating from 400 B.C. The Samnites came to Campania in the 5<sup>th</sup> century B.C., and Rome

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trade blow for blow, chests bare and within reach!" And when the show stops for intermission, "Let's have men killed meanwhile! Let's not have nothing going on!"

*Id.*

210. See DUPONT, *supra* note 4, at 88.

211. *Id.*

212. See *id.*

213. *Id.* at 88 (noting that manes are "the deceased ancestors of the Underworld").

214. *Id.*

215. *Id.* at 89.

216. *Id.* at 88.

217. *Id.*

218. *Id.* at 89.

annexed the area in the 4<sup>th</sup> century B.C.<sup>219</sup> The gladiators, when called up for actual Roman war duty turned out to be mediocre soldiers at best.<sup>220</sup>

## ii. Games—Public & Private

There were many games held in the ancient Empire, all of them based upon the original Roman games, or *ludi Romani*, held during the first two weeks of September.<sup>221</sup> Needless to say, attendance at these games was free to all Romans, and the feasting would have been frequent and conspicuous. Jupiter was the god who presided over Roman games, and the games brought a close to the military season, bringing the fighters back from the fields of Mars to the realm of Jupiter.<sup>222</sup> Jupiter Capitolinus opened the games, represented by his priest the *flamen dialis*.<sup>223</sup> These games celebrated the values of peace and freedom through, music, theatrical performances, and dance – Jupiter being the god of theatre.<sup>224</sup> As time passed, Romans spent an increasing amount of time hosting games. In the first century A.D., the games and feasts lasted from September 4th to 19th. The games began with a procession through Rome, starting in the “field of Mars, up to the Capitol, back down to the forum and then across to the Circus Maximus.”<sup>225</sup> The atmosphere of the games was one of high spirits, celebrating dance and music, as they fell between the seasons of war and agriculture.<sup>226</sup> The procession featured an army of children, sons of military men, dressed for war but too young to go.<sup>227</sup> Dancers, or *ludiones*, also marched, accompanied by the flute-players, and all were dressed in military garb, replete with short swords.<sup>228</sup> If any flute-player or dancer stopped, the entire procession would have to start from scratch.<sup>229</sup> Clowns followed the *ludiones*, with hair pushed up straight and wearing flowery cloaks.<sup>230</sup> They aped the dancers, causing great merriment.<sup>231</sup> In the rear were flute-players, lyre-players, and people carrying incense in thuribles, leaving great

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219. BREAD AND CIRCUSES, *supra* note 3, at 48-49.

220. DUPONT, *supra* note 4, at 89.

221. *Id.* at 207.

222. *Id.*

223. *See id.*

224. *See id.*

225. *Id.*

226. *Id.* at 208.

227. *Id.*

228. *Id.*

229. *Id.*

230. *Id.*

231. *Id.*

clouds of sweet smelling scent.<sup>232</sup> At the very back marched citizens carrying statues of the gods. It ended with a large number of cattle being sacrificed, directly before the circus started.<sup>233</sup>

*REVIVAL OF SECULAR GAMES:* 'Secular Games' were held at different times in the history of Rome to provide entertainment and honor the gods. Emperor Caesar Augustus decided to hold Secular Games to honor the reinvigoration of the state cult.<sup>234</sup> Augustus' religious theory was based upon a fusion of cult and state, and he banned oriental religious imports, while rebuilding temples and revitalizing the Roman/Greek pantheon. He added to this a liberal dose of Roman emperor worship.<sup>235</sup> Helping this was his ascent to the position of *pontifex maximus*.<sup>236</sup> Augustus and Agrippa re-started and conducted Secular Games, beginning in May of 17 B.C.<sup>237</sup> These were revived after many years lapse.<sup>238</sup> An inscription found describing them contains many details.<sup>239</sup> The games were reorganized and "ordained for religious purposes."<sup>240</sup> For the games, nine ewes were burnt as whole sacrifices, and likewise nine goats were burned as a holocaust.<sup>241</sup> The sacrifice was conducted by Caesar Augustus and accompanied by a rite using the following prayer announced by him:

O Fates! As it has been prescribed for ye in those books – and by virtue of this may every good fortune come to the Roman people, the Quirites – let sacrifice be made to ye with nine ewes and nine female goats. I beseech and pray ye, just as ye have increased the empire and majesty of the Roman people, the Quirites, in war and in peace, so may the Latins ever be obedient; grant everlasting safety, victory, and health to the Roman people . . .<sup>242</sup>

After the sacrifices, a play was staged without a formal theatre and seats, except two for the gods Juno and Diana.<sup>243</sup> On June 1, Augustus and Agrippa both sacrificed perfect bulls to Jupiter Best and Greatest, and said similar prayers to the one above, and later nine cakes were sacrificed.<sup>244</sup> Also, near the Tiber Augustus

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232. *Id.* at 208.

233. *Id.*

234. ROMAN CIVILIZATION, *supra* note 72, at 55.

235. *See id.*

236. *Id.*

237. *Id.* at 56.

238. *Id.* at 57.

239. *See id.* at 56-57.

240. *Id.* at 57.

241. *Id.* at 58.

242. *Id.* at 58.

243. *Id.*

244. *Id.* at 58-59.

sacrificed a pregnant sow.<sup>245</sup> "On June 2 in the Capitol, Emperor Augustus sacrificed a cow to Queen Juno" during her month.<sup>246</sup> On June 3, sacrifices of cakes were again made, this time to Apollo and Diana.<sup>247</sup> After this, twenty-seven boys and twenty-seven girls previously selected sang a hymn composed by Quintus Horatius Flaccus.<sup>248</sup> Then, after all the theatrical performances had ended, in the place where the makeshift stage had been, a temporary hippodrome was assembled, and chariot races were held.<sup>249</sup> After this, more plays, both Latin and Greek were staged.<sup>250</sup> On June 12, an animal hunt and circus games were presented.<sup>251</sup> Great feasting accompanied these festivities, and all were free, paid for out of the state purse.<sup>252</sup>

*CIRCUS:* The circus usually lasted just one day, but 250,000 to 300,000 men, women and children would squeeze into the Circus Maximus.<sup>253</sup> Eventually, even slaves were allowed to enter and enjoy the spectacle. The Circus Maximus was a hippodrome built in the shape of a giant "U", with a low wall dividing the center, and the starting boxes at the flat end of the formation. The entertainment was chariot racing, and the game was fourteen laps, with each team running seven from each direction.<sup>254</sup> There were two different chariot teams or "factions," each having a color scheme that represented the political divide; one green, the other blue. The Greens—or Leeks represented the popular, i.e., *plebian* party; whereas the Blues – or Venetians represented the conservatives.<sup>255</sup> Much money was placed on bets for the contests, divided along partisan lines – one bet for one's party, regardless of the skill of either team. Both parties "laid out vast sums of gold to secure the best" drivers and horses. The participants, should they survive, could earn fortunes for themselves if they won many races.<sup>256</sup>

### iii. Plays and Theatre

*THEATRES:* The construction of public theatres was a powerful way for a politician or emperor to connect with and please the *plebes*

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245. *Id.* at 60.

246. *Id.* at 59.

247. *Id.* at 60.

248. *Id.*

249. *Id.*

250. *Id.* at 60-61.

251. *Id.* at 61.

252. *Id.* at 57.

253. See DUPONT, *supra* note 4, at 209.

254. *Id.*

255. *Id.*

256. *Id.*

*urbana*.<sup>257</sup> Pompey built the great theatre named after him, the first permanent stone theatre in Rome.<sup>258</sup> He commissioned it in fifty-five B.C., and it remained the only theatre in Rome for forty years.<sup>259</sup> Pompey, one of the wealthiest and most powerful men ever seen in the Roman world,<sup>260</sup> used his war booty to fund his expansive schemes.<sup>261</sup> This made the people a part financier of his theatre because they owned a share in war spoils.<sup>262</sup> Because of a law prohibiting such a structure, Pompey claimed that the massive theatre was simply a monumental staircase leading to the temple of Venus Victrix, located on top of the *cavea*.<sup>263</sup> Pompey dedicated his theatre to this deity, which enabled him to ostensibly claim the complex as a triumphal work in honor of his triple military victory in 61 B.C.<sup>264</sup> Yet, since it was called neither a temple nor sanctuary meant this was an open deception, meant to overcome the legal restrictions against theatres.<sup>265</sup> It is doubtless that Pompey, in open competition with Julius Ceasar for the love of the masses, was attempting to outstrip his popularity.<sup>266</sup> Caesar replied to this move by starting some public works of his own, including his own large theatre, among other buildings he planned.<sup>267</sup> He cleared the area adjacent to the temple of Apollo, and was working on plans for the structure when he was murdered.<sup>268</sup> It was Rome's perverse stilted development, caused in part by extreme lack of developable land in the city, that caused it to lag behind in development of public entertainment venues, although there was a general association of theatre with 'Greek' effeminacy that undoubtedly hurt their support.<sup>269</sup> Some smaller Roman cities in the late Republic had theatres, dating before Augustus.<sup>270</sup> For instance, Pompeii had the first known theatre in Italy, which predates Pompey's in Rome by fifty years.<sup>271</sup> Pompeii had an entire entertainment district that also

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257. *See id.*

258. *See* Claire Holleran, *The Development of Public Entertainment Venues in Rome and Italy*, in *BREAD AND CIRCUSES*, *supra* note 3, at 52.

259. *See id.* at 53.

260. *Id.* at 53.

261. *Id.*

262. *See* ABBOT, *supra* note 49, at 181.

263. *See* Holleran, *supra* note 258, at 53-54.

264. *Id.* at 54.

265. *See id.*

266. *Id.*

267. *Id.*

268. *See id.*

269. *See id.* at 48.

270. *Id.* at 47.

271. *See id.* at 48.



included a monumental bath.<sup>272</sup>

**THEATRE PRODUCTIONS:** Roman theatre lacked one thing prized by modern theatergoers – realism.<sup>273</sup> Latin theatre was more a venue for dancers, singers, actors, and musicians than for writers.<sup>274</sup> Usually the production of theatre openings were held in makeshift wooden structures, waiting for Pompey's stone building in 55 B.C.<sup>275</sup> The sense of unreality was heightened by tragic-drama themes.<sup>276</sup> Heroes of Greek myths would morph into monsters, and commit horrific crimes to the sound of flutes.<sup>277</sup> The costumes, wigs, and over-the-top makeup would help create drama, and no special effect was left out – rolls of thunder, gods winging across the heavens, or screeching blood-drenched ghosts popping up from Hell, via a trap door.<sup>278</sup> In fact, the productions typically had such a mesmerizing and emotional effect they had to be interspersed with pratfall comedy to break the spell.<sup>279</sup> The comedians were stock characters, like "Pappus the ridiculous old dodderer, [and] Maccus the nincompoop," etc.<sup>280</sup> The comedians also sang and danced, and their themes were well-worn tales from Roman life, such as "newborn[s] [snatched] by pirates," young girls kidnapped and raped by slave traders, or a child apparently "lost in a . . . fire."<sup>281</sup> Every type of comic character from Roman society was lampooned: execrable "skinflints, whining and [broke] young lovers, slaves" dashing like beheaded chickens to serve impetuous masters, prostitutes dressed to the eye-teeth – full of lusty stares and comments, pimps, bankers, and even the gaunt freeloader, "ever on the look-out for a [free] banquet to . . . crash."<sup>282</sup> At the end, all the players would receive their rough justice; the pimp robbed, the slave drunk on wine, the young lover getting both money and his maid, and the parasite offered a party to attend.<sup>283</sup> The curtain fell on a wild dance of joy.<sup>284</sup>

**AMPHITHEATRES:** Statilius Taurus, a general of Augustus, built Rome's first permanent amphitheatre in 29 B.C., designed to

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272. See *id.* at 47.

273. See DUPONT, *supra* note 4, at 211.

274. *Id.* at 210.

275. *Id.* at 211.

276. *Id.*

277. *Id.*

278. *Id.*

279. *Id.*

280. *Id.*

281. See *id.*

282. *Id.* at 212.

283. *Id.*

284. *Id.*

showcase gladiatorial contests.<sup>285</sup> Nero also constructed an amphitheatre, but both were wooden and therefore consumed by the great fire of 64 A.D.<sup>286</sup> Nero, while vilified as a willful and wanton despot, was actually greatly beloved by the Roman people, who even after his death insisted he was still alive (not unlike modern America's fascination with Elvis Presley).<sup>287</sup> Vespasian, emerging after the fire, saw an opportunity to seduce the masses with great works and entertainment.<sup>288</sup> Vespasian began to rebuild Rome from the ashes of that terrible fire, so he "rebuilt the Capitol, . . . [the] temple of Peace, a sanctuary dedicated to Claudius, and" then moved on to his masterwork – the Flavian amphitheatre, or as we know it – the Roman Colosseum.<sup>289</sup> In doing this Vespasian had created the enduring Roman symbol for the ages, and an undeniable architectural masterpiece on the grandest scale.<sup>290</sup> Yet he also symbolically gave back to the Romans the prime city land that Nero had taken for his own private residence, the *Domus Aurea*, and in so doing made a shrewd political move to claim the people as Rome's, and vice versa.<sup>291</sup> "The Colosseum was the largest amphitheatre in the Roman world," and experts believe it could have held 50,000 spectators.<sup>292</sup> Yet, with the population of ancient Rome certainly near one million, or beyond, only one in twenty could fit into it—so many would have never been able to go to inside.<sup>293</sup> Tickets would have originally been free, yet it would have been political or social connections that got one a seat, and many would then have been 'scalped' at exorbitant prices.<sup>294</sup>

#### iv. Feasts, Festivals and Banquets

*FEASTS*: Feasts and feast days, or *dies festus*, were public holidays celebrated by the entire population, so would qualify as choice charitable opportunities for the poor frequenting them.<sup>295</sup> This did not preclude private feasts,<sup>296</sup> thrown by a host that could

285. Holleran, *supra* note 258, at 55.

286. *Id.*

287. *See id.*

288. *See id.* at 55-56.

289. *Id.* at 56.

290. *See id.*

291. *See id.*

292. *Id.*

293. *Id.*

294. *See id.*

295. *See* DUPONT, *supra* note 4, at 47-50.

296. *See* HANDS, *supra* note 51, at 189. In central Italy, the town of Pisaurum left behind this record:

To Titius Valentinus, son of Gaius, of the Camilian tribe, *quaestor, duovir*,

encompass just a few people, or an entire community.<sup>297</sup> One author argues that feasts and festivals were more than the mere window dressing of the Roman love of partying, but really the very glue that helped bond Rome together, between its urban and rural populations, its rich and poor, and its noble versus common man aspects.<sup>298</sup> The notion of a "feast" to the Roman was inseparable from religious "sacrifice."<sup>299</sup> So during a feast, there was a massed presentation of the community and a sacrifice to a god, "celebrat[ing] the cult of a particular god."<sup>300</sup> The food served at such feasts was not ordinary Roman fare, but would include the animals slaughtered at the altars, then cooked and consumed; wine was also drunk.<sup>301</sup> The larger the gathering, the better the animals used.<sup>302</sup> A *paterfamilias*, or father of a house, might sacrifice "a piglet or kid."<sup>303</sup> A civic feast would be much larger, with three animals usually sacrificed together: "a bull, a sheep and a pig."<sup>304</sup> Such sacrifices were costly. Pulling up a root from one's garden, or picking fruit did nothing to harm further harvests, but when animals were sacrificed, all their potential

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who by his will gave to the colonists of the colony of Iulia Felix at Pisaurum one million sesterces, so that each year from the interest on 400,000 a feast should be given to the people on the birthday of Titus Maximus, his son, and that from the interest on 600,000 gladiatorial games should be given every fifth year. Erected by the people of the city.

*Id.*

297. *Id.* at 184 (citing Pliny, *ep.* VII, 18). Here Pliny writes to a friend about the feast he sponsored:

Greetings from Pliny to his friend Carinus. You raise the question as to how the money which you have offered to out townsmen for a feast is to be safeguarded after your death. Suppose you pay over the money to the state – there is the fear that it will be mis-directed [sic]; suppose you hand over land – then once it has become public it will be neglected. For my own part I find nothing more expedient than what I myself have done. For, instead of the 500,000 sesterces which I had promised for the maintenance of free-born boys and girls, I made over to the administrator of public lands a piece of land from my estate which was worth considerably more, and then I took it back again burdened with a ground rent by which I was to pay 30,000 sesterces annually. In this way the amount due to the state is secure and the financial return is not subject to variation, while the land itself, because of the very fact that its yield greatly exceeds the rent, will always find an owner to work it.

*Id.*

298. See DUPONT, *supra* note 4, at 47-50.

299. *Id.* at 47.

300. *Id.* at 196-97.

301. *Id.* at 48.

302. *Id.*

303. *Id.*

304. *Id.*

offspring were also extinguished.<sup>305</sup> Sacrifices and prayers together helped the god co-mingle with his followers.<sup>306</sup> There were also "movable feasts," controlled by magistrates and priests, their dates remained unannounced until the last minute.<sup>307</sup> The nature of these tended to be agricultural, because of the vagaries of the seasons of growing and reaping, the exact date of the year's harvest could still be recognized.<sup>308</sup> There was also another type of feast that would often be a one-time event.<sup>309</sup> These involved prodigies, and other unique miraculous events that the Romans felt needed special recognition.<sup>310</sup> Feasts were added continually through the history of the Roman Empire, given all the conquests and new deities added, making Roman feasting a fairly constant activity towards the end.<sup>311</sup> The Roman celebration calendar, with many months near barren of feasts, seems haphazard to modern eyes, yet of course was not.<sup>312</sup> The equinoxes and solstices, so beloved by the Celts, were almost totally overlooked.<sup>313</sup> The Roman feasts were not solar, nor were they tied directly to any seasons, the moon, or the agricultural watermarks. Instead, they were associated with the gods who directed all these things.<sup>314</sup>

*FESTIVALS:* Festivals celebrated include: The Kalends of March, the first day of the year, also marked the festival of matrons;<sup>315</sup> April was the month of Venus;<sup>316</sup> Lupercalia;<sup>317</sup> *Hilaria* (Festival of Joy);<sup>318</sup> Festival of October Horse;<sup>319</sup> festival of the dead;<sup>320</sup> Midsummer festival;<sup>321</sup> Saturnalia;<sup>322</sup> Festival of the Compitalia;<sup>323</sup> and Vedijovis.<sup>324</sup> Suffice it to say that the number of

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305. *Id.*

306. *Id.* at 197.

307. *Id.*

308. *Id.*

309. *Id.*

310. *Id.*

311. *Id.*

312. *Id.*

313. *Id.*

314. *Id.* at 197-98.

315. *Id.* at 214.

316. See W. WARDE FOWLER, *THE ROMAN FESTIVALS* 66-67 (Macmillan 1899).

317. DUPONT, *supra* note 4, at 205-07.

318. SIR JAMES FRAZER, *THE GOLDEN BOUGH* 350 (1922).

319. *Id.*

320. See RICHARD GORDON, *The Weil of Power: Emperors, Sacrificers and Benefactors*, in PAGAN PRIESTS, *supra* note 65, at 227.

321. See FRAZER, *supra* note 318, at 153-54.

322. See DUPONT, *supra* note 4, at 205.

323. See FRAZER, *supra* note 318, at 153-54.

324. *Id.* at 392.

festivals, the sheer capital invested in these, and the energy and seriousness with which they were approached, would shock most moderns.<sup>325</sup>

**BANQUETS:** There were many reasons that a banquet might be thrown, a formal festival for a god being one of many. Other reasons could include the banquet thrown for games, the wedding of a prominent person, or the end of a successful military campaign, celebration of which was known as a "triumph."<sup>326</sup> How large or opulent such a feast might be would depend entirely upon the wealth of the individual throwing it, and how far they wanted to go with the affair.<sup>327</sup> It was the duty of the rich to give generously at such times, and if they didn't their name would fall in the opinion of the common people,<sup>328</sup> which would quite seriously damage any ambitions they might have towards attaining public office. Yet, conversely, if they gave in too profligate of a manner, they could also be condemned and cast out of fine society.<sup>329</sup> A good banquet was often citywide, and might be the result of the bounty afforded by war-booty.<sup>330</sup> Such a feast would begin with a procession through the town, and if it were a triumphal war procession, the booty would be dragged through town in heaps upon wagons, along with the animals that awaited sacrifice and consumption.<sup>331</sup> Also included would be musicians, actors, and dancers.<sup>332</sup> Entire days were spent in wanton idleness and partying, or "what the Romans called *luxuria*."<sup>333</sup> These feasts were sometimes not just orgies of food and drink, but rank examples of conspicuous waste. For instance, when everyone had already eaten until they were literally sick from gorging, whatever food was left over from the fetes would be discarded, sometimes including whole sides of beef thrown into the Tiber.<sup>334</sup> An outstanding example of such a feast was when the Romans finally vanquished Alexander the Great's successor, Perseus (The description of whose triumphant parade is mentioned in the following section on 'War Booty').<sup>335</sup> As time went on, and the cost of doing politics increased, more time was spent raising money by the ambitious, and more of that money was

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325. FOWLER, *supra* note 316, *passim*.

326. *See generally* DUPONT, *supra* note 4.

327. *See generally id.*

328. *See id.* at 49.

329. *See id.* at 49-50.

330. *See id.* at 50.

331. *See id.*

332. *See id.*

333. *Id.* at 49-50.

334. *Id.* at 49.

335. *See infra* I.B.1.d. ("War Booty & Charity").

spent entertaining to try and make a name for oneself.<sup>336</sup> Rome felt justified in feasting because it was the logical result of being the victor and subjugating the world.<sup>337</sup> That is the type of thing victors did.<sup>338</sup>

#### d. War Booty & Charity

*CHARITABLE USE OF WAR SPOILS:* War victories helped make Rome great, and not uncommonly magnified the Romans who took part. An extremely large source of Roman prosperity, including that used for charity, was derived from the spoils of war.<sup>339</sup> Booty from war was the direct result of the pillaging of farms, villages, and cities that had been captured by Roman soldiers and tributes.<sup>340</sup> It was the three Punic Wars against Carthage that helped shape and define Rome's approach to war. The First Punic War was fought over the island of Sicily; although Rome & Carthage had a general treaty, for some odd reason no one had bothered to include Sicily in the document.<sup>341</sup> So when Carthage began to show designs on the island, Rome felt it needed to fight for defensive reasons,<sup>342</sup> and also because the citizens on Sicily, while not Roman, were Italian.<sup>343</sup> The Punic Wars taught Rome how to be a great sea power,<sup>344</sup> and also about the incredible gain that wars could gather.<sup>345</sup> Wars were important first as a means of the defense of Rome,<sup>346</sup> second as a way for the poor landholder to advance himself,<sup>347</sup> third as a way to gain riches for Rome,<sup>348</sup> and fourth as a means of gaining territory for the Empire.<sup>349</sup> The spoils taken belonged to the generals and officers, the soldiers, and the Roman people themselves.<sup>350</sup> A famous example of Roman victory and subsequent looting was the case of victory of

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336. DUPONT, *supra* note 4, at 53-55 ("On embarking upon a political career, therefore, the wealthy had to spend more and more just to keep up with their predecessors and rivals.").

337. *See id.* at 53-54.

338. *See id.*

339. *Id.* at 50.

340. *See id.* at 53-54.

341. SCULLARD, *supra* note 23, at 116-17.

342. *Id.* at 117.

343. *See id.*

344. *See id.* at 117-19.

345. *Id.* at 121.

346. DUPONT, *supra* note 4, at 37.

347. *Id.*

348. *Id.* at 49.

349. *Id.* at 53.

350. *See id.* at 50 (explaining how war booty was used to contribute to public wealth).

Aemilius Paullus over Perseus of Macedonia, in 167 BC.<sup>351</sup> So great was the war booty taken from this pillaging that the triumphal procession through the city lasted three days!<sup>352</sup> In addition, Roman income taxes thereafter were cancelled because of the massive influx of wealth.<sup>353</sup> Plutarch writes:

The first day barely sufficed for the exhibition of the captured statues, paintings and colossal figures, which were carried on 250 chariots. On the second, the finest and richest of the Macedonian arms were borne along in many wagons . . . . After the wagons laden with armor there followed 3,000 men carrying silver coins in 750 fifty vessels, each of which contained three talents and was borne by four men, while still more men carried dishes of silver, drinking horns, bowls and cups . . . . On the third day, as soon as it was morning, trumpeters led the way, sounding out . . . such a strain as the Romans use to rouse themselves to battle. After these were led along 120 stall-fed oxen with gilded horns, bedecked with fillets and garlands . . . . These were followed by the chariot of Perseus, which bore his arms, and his diadem above them. Then, after a short interval, came the children of the king, two boys and one girl, led along as slaves . . . . The children were too young to grasp the fate that had befallen them, and the thought of their future sorrows evoked great pity in the Romans. Perseus walked along almost unheeded . . . . He appeared to be utterly dumbfounded and bewildered by his ill fortune . . . .<sup>354</sup>

#### e. Public Works & Buildings

**PUBLIC WORKS:** A large number of ancient Roman public works were constructed out of the imperial *fiscus*, or treasury.<sup>355</sup> Conversely, it was typical of ancient Roman elites to show grand expressions of munificence by the construction of public buildings and other public works.<sup>356</sup> One author states, "[t]he construction of public works at their own expense was a traditional practice of prominent [Roman] citizens under the Republic."<sup>357</sup> Why would this be so? First, because through doing such works the prominent approached greatness, which helped them on their way in political life.<sup>358</sup> Also, in ancient communities most wealth was found in only a

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351. *Id.*

352. *Id.* at 50-51.

353. *Id.* at 50.

354. *Id.* at 51-52 (quoting Plutarch, *Aemilius Paullus* 31-35).

355. See ROMAN CIVILIZATION, *supra* note 72, at 151.

356. See Kathryn Lomas, *Public Building, Urban Renewal and Evergetism in Early Imperial Italy*, in BREAD AND CIRCUSES, *supra* note 3, at 28.

357. See ROMAN CIVILIZATION, *supra* note 72, at 67.

358. See DUPONT, *supra* note 4, at 54. Says Dupont, "While the conditions of the

few hands. So communities often needed donated public works to achieve a civilized status. One should not forget how much smaller ancient economies were than their modern counterparts, and to what extent infrastructure – whether for safety construction, like sewers, or buildings for entertainment – would be overwhelming for a primitive economic system. In this climate the impetuous largess of a wealthy person to build roads, inter a sewer, or create a temple or stadium would have been a stunning revelation. Second, the emotional impact created by private party gifts is not accidental, but a key to the psychology of Roman public donations. The entire reason for such extraordinary works, ones that might easily dwarf anything else that stood in the community (remembering that donors often returned to give in their small towns of origin after making a fortune in Rome or elsewhere in the Empire), was to put the stamp of greatness and immortality upon the donor's own name.<sup>359</sup> In this way, ancient public donations were usually motivated by exactly the same desires a modern person might give a large sum of money: so that their name could be attached to the wing of a hospital, a collection at a museum, or a building on a college campus – the quest for leaving a good name, and therefore touching upon tertiary immortality.

**BUILDING:** Many different types of community structures were constructed in the name of the people, both at the local level of the small towns, cities, and Mother Rome herself. There were two distinct types of these works, the *euegertistic* munificence of individuals who paid out of pocket for the structures, or '*de sua pecunia*,' and those paid for out of the city or imperial purse, or '*de pecunia publica*.'<sup>360</sup> Sometimes it's hard to discover which approach was used.<sup>361</sup> Such charity ranged anywhere from the repairs and upkeep for existing buildings, refurbishment for other structures, to the planning and coverage of every detail of large public works.<sup>362</sup> Italy was transformed in "the period between the Social War and the end of the first century A.D."<sup>363</sup> We can trace three distinct phases of this fecund period of urban architectural sophistication, placed linearly first after the Social War,<sup>364</sup> second being Augustan's

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poor remained unchanged, the number and opulence of Roman feasts increased the more Rome extended its empire. On embarking upon a political career, therefore, the wealthy had to spend more and more just to keep up with their predecessors and rivals." *Id.*

359. See Lomas, *supra* note 356, at 40-41.

360. *Id.* at 38.

361. *Id.*

362. *Id.* at 28.

363. *Id.*

364. *Id.* at 29.



campaign of works after the civil wars, and third being "the era of Trajan and the Antonine emperors."<sup>365</sup> We can group the types of building works constructed in some general categories, like: fortifications, temples, major public works, macella, basilicas/curiae, baths, and theatres/ampitheatres.<sup>366</sup> Fortifications and city walls were often paid for by magistrates of cities, but many were also underwritten by the imperial family.<sup>367</sup> Imperial arches and entrances to cities were built mostly by emperors via bequest. Many were in fact tied into imperial road building programs, or the commencement of military campaigns.<sup>368</sup> Temples were repaired after being damaged by the civil wars, and their renewal helped invigorate the imperial cult.<sup>369</sup> Major public works were all of large scale, and most were multiple projects. These included "construction of aqueducts, cisterns and drains, through paving roads and altering street patterns, to wholesale reconstruction of entire areas of a city."<sup>370</sup> For example, in a private bequest, L. Betelienus Varus paid for the rebuilding at Aletrium of all "the city's streets, a portico, a macellum, a basilica, a public sundial, and various aspects of the water supply."<sup>371</sup> The empire saw a large-scale shift in building projects dedicated to "leisure and entertainment."<sup>372</sup> These include public baths, theatres, amphitheatres, and circuses. Such a shift in expenditures roughly coincides with the Augustan period and what the leisure industry gained in terms of capital seems to have been lost by the temples.<sup>373</sup>

**ROADS & TEMPLES:** Roads were an exceptionally important factor to the greatness of the Roman Empire, for the purposes of trade, Italian unity, and warfare. Roads were constructed not only by locally recruited manual laborers, but also by soldiers stationed in the vicinity of a particular road who were often brought in to work on them.<sup>374</sup> Their construction increased during the Empire and was paid for by the imperial purse.<sup>375</sup> Plutarch writes of the "utility,"

365. *Id.*

366. *See id.* at 31.

367. *See id.* at 32.

368. *Id.*

369. *Id.* The temples of Mithras, Isis, and the temple of Apollo at Cumae were extensively redone. *Id.*

370. *Id.*

371. *Id.* at 33.

372. *Id.*

373. *See id.* at 34-35.

374. *See* ROMAN CIVILIZATION, *supra* note 72, at 153.

375. *Id.* at 153. Several examples noted in Roman official documents should suffice to show this support. Records about roads built on the right bank of the Danube River deliver this statement:

Emperor Caesar Nerva Trajan Augustus Germanicus [(i.e. Trajan),] son of

grace, and beauty of the roads built by Gaius Gracchus, [observing] that he measured out every road by miles and set up stone pillars in the ground as markers of the distances."<sup>376</sup> The roads became a very powerful testament to the impact of a given emperor, as these mileposts bore the emperor's name and title, and told the distance of the post from Rome.<sup>377</sup> Augustus used war booty to construct the Forum of Augustus, measuring some four-hundred feet long, three-hundred feet wide, and twenty feet in height.<sup>378</sup> Surrounding the forum of Augustus was a wall that was one-hundred and twenty feet high covered in stucco and marble.<sup>379</sup> Inside it he erected an amazing edifice, the extraordinary temple of Mars the Avenger.<sup>380</sup>

**WATERWORKS & AQUEDUCTS:** The Roman Empire had extremely high standards for water. Before approaching a god, Romans had to wash with clean water.<sup>381</sup> No water was to be left standing in Rome, and a body of putrid water anywhere was considered a horror.<sup>382</sup> To this end, a very elaborate sewer system was built in Rome, large enough to be traversed by boat.<sup>383</sup> In fact, so high were standards for the building of such a sewer system, that the large sewer built in Rome to drain all the smaller sewers, called *cloaca maxima*, is still extant, and used today.<sup>384</sup> Water arrived in Rome in various ways. There were many pure springs located throughout the city.<sup>385</sup> When the city grew large enough this did not satisfy the city's needs so aqueducts were constructed to bring in pure water from outside the city. Four were built in all during the

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the deified Nerva, *pontifex maximus*, holding the tribunician power for the fourth year, father of his country, consul three times, built this road by cutting through mountains and eliminating the curves.

*Id.*

Furthermore, the statement also provides that:

The Emperor Caesar Trajanus Hadrian Augustus, son of the deified Trajan Parthicus, grandson of the deified Nerva, *pontifex maximus*, holding the tribunician power for the seventh year consul three times, rebuilt the Appian Way for 15  $\frac{3}{4}$  miles where it had become unusable through age, adding 1,147,000 sesterces to the 569,100 sesterces which the landowners contributed.

*Id.*

376. BREAD AND CIRCUSES, *supra* note 3, at 94.

377. *Id.* at 95.

378. ABBOTT, *supra* note 49, at 182.

379. *See id.*

380. *Id.* at 182-83.

381. *See* DUPONT, *supra* note 4, at 152.

382. *Id.*

383. *Id.*

384. *See generally* SCULLARD, *supra* note 23.

385. *See* DUPONT, *supra* note 4, at 153.

republican period,<sup>386</sup> eight in the history of the Empire.<sup>387</sup> These were lined with lead pipes and the water coursed throughout the city to baths, fountains, and houses.<sup>388</sup> The first aqueduct was built by Appius Claudius in 313 BC bringing water from the Sabine hills through a subterranean passage eleven miles long.<sup>389</sup> Another was the Anio aqueduct (*Anio Nova*) that ran sixty miles, and only the last five or six miles were not underground, finally crossing magnificent arches into the city.<sup>390</sup> It is likely the aqueducts were such large undertakings that no private individual could afford one by himself, therefore we presume they were paid for, at least largely, by emperors.<sup>391</sup> A document recording the imperial support of a reservoir in Arsinoe, Egypt, has been found:

For the reservoir at the Grove with its sixteen *shadufs* "[a] water lifting device consisting of two uprights supporting a horizontal crossbar, on which is balanced a long pole with a bucket at one end and a weight at the other. *Shaduf* is the Arabic name for this primitive machine, still in use in Egypt today,"<sup>392</sup> at a man and a half drawing water from morning till evening, Year 16 of the Lord Trajan Caesar: Pachon—to Aphrodisius, foreman of the pumpers, wages for himself for Pachon, dr. 40, and for payment to the pumpers, from the 1<sup>st</sup> to the 30<sup>th</sup>, 797 men at the reservoir and the outlet [?], and likewise 306 night workmen, total 1,103 men at a wage of dr. 40 per 30, 1,470; for payment to the men working the Archimedean screws, 200 men at ob. 10 each, ob. 2,000, equals dr. 276; cost of oil burned in lamps for the night workmen, dr. 12 ob. 2; cost of earthenware buckets, dr. 1. Total for the month, dr. 1,799 ob.2 . . . .<sup>393</sup>

**BATHS:** Nothing was more quintessential to Roman values and celebrated joys than the public baths.<sup>394</sup> Baths, which on the small scale were called *balnae*, or for the large Roman type, *thermae*, were found all throughout the Empire.<sup>395</sup> *Thermae* were usually created *gratis*—either by the government, or more likely, in a smaller city or

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386. See *id.*

387. See Warsely, *supra* note 2, at # 290.

388. See DUPONT, *supra* note 4, at 153.

389. See Warsely, *supra* note 2, at # 290.

390. See *id.*

391. BREAD AND CIRCUSES, *supra* note 3, at 90.

392. *Id.* at 334, n.44.

393. ROMAN CIVILIZATION, *supra* note 72, at 334.

394. See Warsely, *supra* note 2, at # 288. Baths were extremely important to Romans and their sense of their own civility. We know this because of the massive outlay they poured into these complexes. *Id.*

395. See ROMAN CIVILIZATION, *supra* note 72, at 227.

town, by wealthy donors.<sup>396</sup> Hand comments, "Romans. . . developed baths on a large scale in the Empire period. They also did this largely through the gifts of the wealthy."<sup>397</sup> These baths were important for many reasons: personal, health, civic and religious. The baths were often large complexes. For example, the bath of Caracalla represents the largest single set of ruins from the old city extant in Rome, not withstanding the Colloseum.<sup>398</sup> Other famous baths in Rome included those of Agrippa, Constantine, Diocletian, Nero, and Titus.<sup>399</sup> The Caracalla bath could hold 1,600 patrons at once, and the water was supplied exclusively by the Antonine Aqueduct.<sup>400</sup> These baths were warm, heated by construction of a certain type of *hypocaust*,<sup>401</sup> called *suspensura*, that circulated the hot air through tubes below the appropriate rooms.<sup>402</sup> There were also changing rooms (*apodyterium*), exercise rooms (*palaestra*)<sup>403</sup> and courts for sunning, as Romans felt it very appropriate and fitting to work up a sweat before taking a bath.<sup>404</sup> There were also steam rooms and areas where masseuses gave rubdowns,<sup>405</sup> and pools for cold (*frigidarium*), medium (*tepidarium*), or hot baths (*calidarium*).<sup>406</sup> While it's true that some baths charged a nominal fee, others were free,<sup>407</sup> and the entire bath

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396. See HANDS, *supra* note 51, at 208. An ancient document from the second century A.D. regarding Altinum in Northern Italy provides:

This man gave to the state of Altinum, 1,600,000 sesterces so that the Sergian and Putinian baths might be repaired from the expenditure of 800,000 and be enjoyed by the townfolk, another 400,000, that from the income therefrom the baths might be heated, and 200,000 in perpetuity for their upkeep, and also 200,000, so that from the interest thereon, on his own birthday, the 7<sup>th</sup> [or 9<sup>th</sup>] of [?], and on the same day of that month, the birthday of Petronia Magna, his mother, and on the 16<sup>th</sup> of December, the birthday of L. Fabius Amminianus his father, the decurions, *Augustales* and board of six [*sevir*] might receive presents.

*Id.*

397. *Id.* at 143.

398. Warsely, *supra* note 2, at # 288. The baths of Diocletian covered 440,000 square yards! *Id.*

399. *Id.*

400. *Id.*

401. See WEBSTER'S UNABRIDGED DICTIONARY OF THE ENGLISH LANGUAGE 942 (2001). "Hypocaust: A hollow space or system of channels in the floor or walls of some ancient Roman buildings that provided a central heating system by receiving and distributing heat from a furnace." *Id.*

402. Warsely, *supra* note 2, at # 288.

403. *Id.*

404. See DUPONT, *supra* note 4, at 264.

405. See *id.*

406. Warsely, *supra* note 2, at # 288.

407. See HANDS, *supra* note 51, at 208. One document dated from the late second century, referring to baths found in the Roman Spanish town of Murgis provides:

L. Aemilius Dapnus, *sevir*, gave to his fellow citizens, the Mugitani, these

complex was invariably an act of largess from some wealthy generous donor.<sup>408</sup>

f. 'Alimenta' – Aid to Children & Education

*ALIMENTA & EDUCATION:* A compelling charitable development concerning poor children occurred during the reign of Trajan, according to documentation, including a panegyric written by Pliny.<sup>409</sup> A group of children, about 5,000 souls initially, were taken from infancy and given *frumentum publicum*, or state assistance.<sup>410</sup> The program eventually expanded into nine districts in Italy, and was administered by *praefecti alimentorum*, who were usually chosen from men of senatorial status, and acted as *curators viarum* or equestrian *procurators alimentorum*.<sup>411</sup> The idea was apparently Emperor Nerva's—in keeping with Augustus' sentiments on preserving the Italian race.<sup>412</sup> It was called a plan "for girls and boys born of needy parents to be supported at public expense throughout the towns of Italy."<sup>413</sup> This program was implemented and continued for two hundred years, until mercurial state economics caused its cessation, but it was revived under church auspice later.<sup>414</sup> Imperial *alimenta* operated in this manner.<sup>415</sup> In towns participating in the scheme, the Roman government would loan money to farmers from its state purse (*fisc*).<sup>416</sup> As Lewis and Reinhold state, "The interest on these loans, at 5 percent, was then paid into a special municipal fund earmarked for the support of a predetermined number of poor children."<sup>417</sup> The loans were attractive because they were below the market rate. The payments probably stopped when boys became fifteen, and the girls thirteen, although this is not clear.<sup>418</sup> The

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baths, meeting all the expense; and on the day of their dedication he gave a *denarius* apiece to the citizens and residents by way of a feast; as long as he lived he promised that on the same day he would give to the same a *denarius* apiece and 150 *denarii* for the upkeep of the baths, as long as he lived.

*Id.*

408. See DUPONT, *supra* note 4, at 264. Many baths only charged a quarter of an *as* for entrance. *Id.*

409. See HANDS *supra* note 51, at 107.

410. *Id.*

411. See *id.* at 110-11.

412. See ROMAN CIVILIZATION, *supra* note 72, at 344.

413. *Id.* (quoting AURELIUS VICTOR in *Epitome*, xii 4).

414. *Id.*

415. *Id.*

416. *Id.*

417. *Id.*

418. See *id.* One quote from extant official records on the subject reads:

Likewise the liens on properties taken by Cornelius Gallicanus to the amount of 72,000 sesterces, so that through the indulgence of the best and

scheme was expanded throughout much of Italy, and there may have been a role for some private largess, but the Emperor was presented as the major domo of the activity.<sup>419</sup> Coins were even minted to commemorate the program, and an evocative sculpture seems to be traced to it, with "the Emperor seated on a platform in a *toga*, with the personified *Italia* and two children before him . . ." <sup>420</sup> There is some evidence that the gift of *alimentia* was not without any expectations.<sup>421</sup> What might be some of the motivations of this scheme? An altruistic view of this would be in the hopes of a Rome eternal, or its *aeternitas*. Italians would need to exist for the city to last forever. Others more pragmatically claim that such a force of government children would be expected to fight for the fatherland, if need be.<sup>422</sup> Conversely, sometimes a generous citizen would take it upon himself to give charity for a group of children.<sup>423</sup> As to education, there was very little in the way of free or charitable support of education in the entire period of the Roman Empire. Polybius reacted with amazement to find that even upper level studies were "left in the hands of parents," even in the second century A.D.<sup>424</sup> The Romans established *collegia* for the training of their upper-class young men in the social virtues and sports. These were apparently, at least in some places, open to all classes, with one catch: the student had to be rich.<sup>425</sup> In 74 A.D., Emperor Vespasian gave a tax exemption to doctors and teachers, which indirectly helped to establish schools throughout the towns of the Empire, thereafter—although the schools themselves were not free.<sup>426</sup> It was only in the city of Rome itself, and at the highest levels of learning, that

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greatest *princeps*, the Emperor Caesar Nerva Trajan Germanicus, boys and girls may receive support [as follows]: legitimate boys, 18 in number, at 16 sesterces [per month], equals 3,456 sesterces; legitimate girl, 12 sesterces [per month]; total both, 3,600 sesterces, which equals 5 percent interest on the aforementioned amount.

*Id.*

419. See HANDS, *supra* note 51, at 108-09.

420. *Id.*

421. *Id.*

422. See *id.* at 111-13.

423. See *id.* at 108. In the second half of the first century A.D., in Atina in Southern Italy a document provides:

To Titus Helvius Basila, son of Titus, aedile, praetor, proconsul, legate of Caesar Augustus, who bequeathed to the people of Atina 400,000 sesterces, so that from the interest therefrom there might be supplied corn for their children until they came of age and that afterwards 1,000 sesterces per head should be given. Procula, his daughter set up [this monument].

*Id.* at 184.

424. HANDS, *supra* note 51, at 127.

425. See *id.* at 128-29.

426. See *id.* at 129.

Vespasian created two chairs, one for Latin Rhetoric, the other for Greek Rhetoric.<sup>427</sup> Likewise, a century later Marcus Aurelius established four chairs in Athens for Greek Rhetoric.<sup>428</sup>

g. Disasters, Tax & Rent Relief

**DISASTER RELIEF:** Roman nobles and emperors sometimes responded to the disasters the *plebs* experienced, from what would appear to be a mixture of sympathetic and political motivations. For instance, when Octavian (later to become the deified Augustus) was mobbed and stoned by the starving crowd and almost killed, he suddenly found which side of his bread was buttered – so to speak, in terms of quelling the angry masses.<sup>429</sup> He strove to meet the dietary needs of the *plebs* thereafter, and once even contemplated suicide when told only 3 days supply of food remained in the capital.<sup>430</sup> Likewise, even a subsequently excoriated emperor like Nero helped the homeless masses after the great fire of Rome in 64 A.D.<sup>431</sup> He allowed the people to shelter in the grand state monuments, and even in his own garden.<sup>432</sup> He hurriedly built shelters for them and dispatched food from Ostia to feed them.<sup>433</sup> As to Nero's motivations we can't know for certain, but had he not done these things it may have affected his popularity, which was still fairly high up to this point.<sup>434</sup>

**TAX REMISSION:** Tax relief or abatement—both temporary and permanent was given to some groups as a special favor or because of perceived extreme need.<sup>435</sup> For instance, in A.D. 66-67, Nero visited Greece and competed in many of their famous games, and thespian contests.<sup>436</sup> He was so enchanted (perhaps because he invariably won whatever event he entered) with Greece that he declared, during a special convocation of the Isthmian Games, a liberation of all Greece from tax and tribute. This special Greek tax-exemption was later revoked by Vespasian.<sup>437</sup> Also, Julius Caesar and the Roman emperors following him had held the Jews to have a special exemption from tax given their particular obligation to their own

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427. *Id.*

428. *Id.*

429. YAVETZ, *supra* note 6, at 86.

430. *See id.* at 101.

431. *See id.* at 126.

432. *Id.*

433. *Id.*

434. *See id.*

435. *See* ROMAN CIVILIZATION, *supra* note 72, at 394, 397.

436. *Id.* at 394.

437. *Id.*

Temple at Jerusalem.<sup>438</sup> Unfortunately for them, after the Jewish revolt of A.D. 66-70, Vespasian ordered them to pay a temple tax into a "Jewish Account" which would then be delivered to the Temple of Jupiter on the Capitoline Hill in Rome.<sup>439</sup> The order from Caesar reads,

Caesar Augustus, *pontifex maximus*, holder of the tribunician power, declares: Whereas the Jewish people have proved themselves grateful toward the Roman people not only at the present time but also in the past – particularly under their high priest Hyrcanus in the time of my father, the dictator Caesar – I and my council have decided . . . that the Jews [be allowed to] practice their own customs according to their ancestral law, just as they used to under Hyrcanus, high priest of the highest god, that their sacred moneys be inviolable and be sent to Jerusalem and delivered to the custodians at Jerusalem, and that they not [be compelled to] post bail on the sabbath or on the day of preparation for it from the ninth hour. If anyone is caught stealing their sacred scrolls or their sacred money whether from a synagogue or from an ark of the Law, he shall be guilty of sacrilege and his property confiscated to the public treasury of the Romans.<sup>440</sup>

Tax relief also came in the form of a temporary moratorium for areas hard hit by drought, famine, etc.<sup>441</sup> Hadrian granted the Egyptian farmers such a moratorium because of two successive years where the Nile did not rise properly.<sup>442</sup> Hadrian said, "I have deemed it necessary to bestow a benefaction on the farmers, although I hope – may this be said with divine favor! – that any present deficiencies will be restored in the coming years by the Nile itself and earth . . ." <sup>443</sup>

**DEBT & RENT RELIEF:** The debts of the poor were a large problem at certain points in Roman history, as they consumed small budgets and enervated the will. Thankfully, there were times when the government stepped in to help, notably during the rocky civil war period when Sulpicius, Sulla, and Cinna all proposed different legislation for debt relief.<sup>444</sup> When Cinna was installed as a virtual dictator, the debt issue was addressed.<sup>445</sup> This was done in the name of L. Valerius Flaccus, consul after Marius died, who passed a

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438. See *id.* at 396.

439. *Id.* at 395.

440. *Id.* at 396.

441. See *id.* at 396-97.

442. See *id.*

443. *Id.*

444. See SCULLARD, *supra* note 23, at 226-28.

445. *Id.* at 228.



measure in which three quarters of the debts owed by the people were cancelled.<sup>446</sup> The strong impact of this legislation was mitigated upon the group hardest hit – “the money-dealers of the Equestrian order,” by re-establishing the old exchange rates of silver and gold.<sup>447</sup> The government intervened again when Julius Caesar stepped in to reduce the return on principle, but not cancel debts altogether.<sup>448</sup> In 47 B.C., the tribune Dolabella caused a great deal of unrest by suggesting debts simply be cancelled.<sup>449</sup> Although this would have been superficially popular, it would have ended up creating fiscal anarchy, as no one would loan money again, having nothing to gain but loss from such a proposition.<sup>450</sup> When Caesar returned to Rome he abolished exorbitant interest rates, but did not dissolve debts so as not to extinguish the use of credit.<sup>451</sup> He eased rents, exempting “those who paid low rents (up to 2,000 sesterces) from paying for one year,”<sup>452</sup> and even fixed the maximum.<sup>453</sup> He only did this in Rome and Italy.<sup>454</sup> Not long after Caesar was killed.<sup>455</sup>

#### h. Female Charity

*WOMEN & CHARITY – FEMALE EUEGERTISM:* While not typical, it was not unheard of for women to provide for charity in the ancient Empire, and in doing so become important and powerful active members of the community.<sup>456</sup> This occurs especially in the latter stages of the Empire and shows that laws on inheritance warped somewhat while still leaving the general status of women's roles intact.<sup>457</sup> There is a particular example of Menodora, coming from Sillyon in Pamphylia, which is located in Southern Turkey.<sup>458</sup> Menodora, daughter of Megacles, came from a line of rich land owners, one of the wealthiest in Sillyon.<sup>459</sup> Menodora held many offices in the city, both religious and civil, including: “high priestess of the Augusti” assembly (presumably representative of the emperor); “priestess of Demeter and of ‘all the gods’”; “hierophant for life of the

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446. *Id.*

447. *See id.* at 228-29.

448. *See* YAVETZ, *supra* note 6, at 46.

449. *See id.* at 64.

450. *See id.* at 64-65.

451. *See id.* at 65.

452. *See id.*

453. *See id.* at 45.

454. *Id.*

455. *See id.* at 65.

456. *See* PAGAN PRIESTS, *supra* note 65, at 225-30.

457. *Id.* at 230.

458. *See id.* at 228.

459. *Id.*

city's gods, *dekaoptos*, *demiourgos* and *gymnasiarch*."<sup>460</sup> She also secured prestigious positions for her family, as her unnamed daughter was *gymnasiarch* and "her son Megacles was *demiourgos*."<sup>461</sup> To receive these positions we are told she gave three types of gifts: 1. She distributed "money and corn to the entire people"; 2. She gave "300,000 drachmae to aid orphans and children"; and 3. She gave "304,000 drachmae for building a temple, three silver statues inside it, a gilt and ivory statue of Tyche, . . . a silver sacrificial table, and the coffering" to beautify the temple's ceiling.<sup>462</sup> A few interesting facts stand out about Menodora's largess in Sillyon. First was the interweaving and blurring of civic and religious functions, making clear such was typical of ancient Rome.<sup>463</sup> Second, Menondora's giving was not just massive, but very emperor-like in its attempt to cover the whole of the needs of community – religious, the general citizens, the poor, and the physical construction of the city – in almost superhuman deified style.<sup>464</sup> Third, the main goal of her charity was not in redressing poverty, but to embrace and celebrate the city's hierarchy and establish her preeminence there.<sup>465</sup> Lastly, there is the clear and static hierarchy that her gifting reveals. She gives, in drachmae: *bouleutes* (councillors) 86, *geraios* (elders) 80, *ecclesiastes* (members of the assembly) 77, the wives of the foregoing 3, citizens 3, *vindictarius* (freed slaves) 3, *apeleutheros* (freed slaves) 3, *paroikos* ('serfs') 3.<sup>466</sup> We see quite clearly here that while Menodora obviously was an important and influential woman, women in general were no more highly regarded than a freed slave, even if they were married to a town leader.<sup>467</sup> There were many other examples of female charity.<sup>468</sup>

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460. *Id.*

461. *Id.*

462. *See id.* at 228-29.

463. *Id.* at 228.

464. *See id.* at 229.

465. *See id.*

466. *See id.* at 229.

467. *Id.* at 230.

468. *See ROMAN CIVILIZATION, supra* note 72, at 352. In Tarracina, Italy in the 2nd century A.D., we have record of female *alimenta*. *Id.*

Caela Macrina, daughter of Gaius left 300,000 sesterces in her will for the construction of this monument, and . . . thousand sesterces for its decoration and upkeep. She also left 1,000,000 sesterces to the town of Terracina in memory of her son Macer, so that out of the income from this money child-assistance subsidies might be paid to one-hundred boys and one-hundred girls – to each citizen boy 5 *denarii* each month, to each citizen girl 3 *denarii* each month, the boys up to sixteen years, the girls up to fourteen years – in such a way that the payments should always be received by groups of a hundred boys and a hundred girls.

*Id.*

## i. Release Of Slaves As Charity

**MANUMISSION:** An intriguing kind of charity practiced in ancient Rome was manumission, or the release of a slave from his or her bonds to become a freedman or freedwoman. There were two types of manumission<sup>469</sup>: *manumissio justa*, and *manumissio non justa*. A slave freed *manumissio justa* could be freed three different ways: the first, by *per censum*, meaning that the name of the slave was entered into the censor's roll; the second way was *per vindictum*, or by a stroke given by a rod delivered by a praetor in the forum; and third, by *per testatum*, or by being freed in the will of the master after his death.<sup>470</sup> This first type of freed slave was to wear a special hat, called a *pileus*, to denote his status, and was able to achieve citizenship. The second type, the *manumissio non justa* was released to freedom but could not become a citizen.<sup>471</sup> Why would a master free a slave, given the amount of money a good slave might be worth? There were many reasons: a slave became old and worth less, and so would save his master money simply by being released;<sup>472</sup> a master might become infatuated with a slave's character or personality and decide he deserved freedom;<sup>473</sup> a master might become literally and romantically infatuated with a slave, whether male or female, and decide to free them; a master could free them on his death after a loyal service;<sup>474</sup> and a master might free them for religious reasons – especially a Christian master in the age of the emperors.<sup>475</sup> It was also a good thing to communicate the idea that any slave could

469. See Warsely, *supra* note 2, at # 109.

470. *Id.* at # 110.

471. *Id.* at # 111. This type of release also came in three forms. The first way was by *inter amicos*, or by a master declaring the slave free in the company of five witnesses. The second way was *per epistolam*, or by a letter from the master signed by five witnesses; and the third way being by *per mensam*, or when a master ordered a slave to eat at his table with five witnesses present. *Id.*

472. See DUPONT, *supra* note 4, at 62-63.

473. See ROMAN CIVILIZATION, *supra* note 72, at 266. A Roman gravestone epitaph notes the transition of one slave to adopted son [the assumption that the adopted son would have been prone to steal for his father is odd, especially announced on a grave marker, but may reveal a common Roman societal presumption that a slave, or former slave, would be prone to dishonesty].

Here lies Vitalis, slave of Gaius Lavius Faustus and also his son, a slave born in his home. He lived sixteen years, [was] a clerk at the Aprian shop [?], popular with the public, but snatched away by the gods. I beg your pardon, wayfarers, if I ever gave short measure to make more profit for my father. I beg you by the gods above and below to take good care of my father and mother. And farewell.

*Id.*

474. *Id.* at 53. The Fufian-Caninian Law and the Aelian-Sentian Law both put limitations upon the manumission of slaves. *Id.*

475. See generally DUPONT, *supra* note 4, at 62-65.

potentially become a freedman someday, since many were prisoners-of-war and therefore raised in freedom. This helped cut down on their innate desire to revolt, a la Spartacus.<sup>476</sup> Of course a slave could give charity to himself by saving a nest egg, or *peculium*, and buy his own freedom.<sup>477</sup>

### B. Imperial Period & Emperors

#### 1. Emperor as 'Papa'

The devolution of the Roman republic into the rule of a single *princeps* (princiate), or Emperor, caused charitable giving to the *plebes urbana* to be officially vested in the Emperor, and for a politician to try otherwise was treasonous.<sup>478</sup> The Emperor came to be accepted as savior of the people, and a strong element from the Roman familial designate of *paterfamilias*, or father of the Roman people was projected.<sup>479</sup> This explains to a certain degree the largiendo, or largess, given by some Emperors in that they genuinely felt responsible for the *populus*, or people, and felt a corresponding guilt and empathy when they starved, or needed land. But on the other hand, no Roman Emperor, regardless of how powerful or popular, could long ignore the starving masses without feeling a compelling need to respond.<sup>480</sup> Their popularity was tied into their ability to get and keep power, which was certainly the ultimate aphrodisiac in ancient Rome. The common people in Rome could not be had by simple bribery either, as they did have their pride, emotional life, and occasionally quixotic reactions to events.<sup>481</sup> Most seriously, once a politician had fallen too far in their estimation, no amount of bribery could overcome the sense that an emperor felt above them, that he was viciously cruel, too interested in life outside Rome or hopelessly immoral.

**LEVITAS VERSUS GRAVITAS:** Roman politicians, especially as time went on in the mature Empire, had to decide whether they would employ *levitas*, *gravitas*, or a combination of both to try and achieve their goals for office. Both terms refer to the public image of nobles (realistically speaking, Roman life had no depth of introspection, anyway).<sup>482</sup> *Gravitas* was the Latin term for "conduct

476. See *id.* at 63.

477. See *id.* at 62.

478. YAVETZ, *supra* note 6, at 43. Yavetz writes, "Since the political situation at the end of the Roman Republic had deprived the *nobilitas* of their freedom of action, they now had to act with covert political principles." *Id.*

479. *Id.* at 109.

480. *Id.* at 42.

481. *Id.* at 65.

482. *Id.* at 44.

conforming to an old-established principle which was not to be disregarded for some ephemeral achievement."<sup>483</sup> Conversely, *Levitas* was the Roman term for "general behaviour [sic]. . . acceptable to the masses and contrary to the traditional *gravitas* . . ."<sup>484</sup> *Levitas* would certainly include charity, but even the most generous politician could never rise too high in office if he was perceived as aloof to the *plebes urbana*. The source of this phenomenon had a great deal to do with the plight of the *plebs* and their level of poverty, and sense of disenfranchisement in Rome. For instance, Julius Caesar was in competition with Pompey for leadership of the Empire. While Caesar was able to craft for himself an image as 'friend of the *plebs*,' Pompey was seen as the exact opposite, the 'enslaver of the people,' and consequently hated for it.<sup>485</sup> Were the people right—did Pompey not care for the average Roman, and was Caesar truly their friend? Through some animal-logic (which Tacitus called *inanis favor*), the *plebs* preferred one Roman politician to another, despite the fact they all tended to give public alms liberally.<sup>486</sup> It appears that Caesar was able to craft a platform of policies that was a shrewd combination of being fairly popular and also prudent.<sup>487</sup> It was only later, at Caesar's death, that we see genuine evidence of his caring for the *plebs*, since he gave them all 300 sesterces each in his will, and also his garden on the Tiber.<sup>488</sup> As to Pompey, his early political pact and close friendship with the arbitrary, vengeful and brutal dictator Sulla<sup>489</sup> probably meant that he would never be trusted or liked by the *plebs*, regardless of his future deeds.<sup>490</sup>

## 2. The Largesse of Emperors

The following section recounts the charity of the Emperors of the later Empire, a study of which is necessary, as the rules on giving had changed by this time, precluding the open and spontaneous giving by other nobles. We start with Julius Caesar, one of the most gifted leaders in history, who for his many talents brought the Empire into its imperial period, extinguishing the Republic forever.

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483. *Id.* at 52 (internal citation omitted). We might think of American or British politicians who have the reputation for being 'blue-bloods,' or patrician in their bearing as an analog here.

484. *Id.*

485. *See id.* at 53.

486. *See id.* at 64.

487. *Id.* at 44-47.

488. *Id.* at 53.

489. SCULLARD, *supra* note 23, at 234. Sulla was perhaps the most contradictory and puzzling leaders in Roman history. Immediately after coming to power he went on a murderous rampage against Marius' friends. *Id.*

490. *See* YAVETZ, *supra* note 6, at 49.

*JULIUS CAESAR*: Julius Caesar was an extremely intelligent, capable, savvy and ambitious man, who apparently really did care about the underclass. Yet he will always remain a controversial figure regarding the lengths he went to achieve power.<sup>491</sup> Shakespeare's funeral oration from his play *Julius Caesar*, given by Marc Antony expresses well this ambivalence:

Friends, Romans, countrymen, lend me your ears:  
 I come to bury Caesar, not to praise him.  
 The evil that men do lives after them:  
 The good is oft interred with their bones.  
 So let it be with Caesar.  
 The noble Brutus  
 Hath told you Caesar was ambitious:  
 If it were so, it was a grievous fault,  
 And grievously hath Caesar answered it.  
 Here, under leave of Brutus and the rest  
 (For Brutus is an honourable man;  
 So are they all, all honourable men)  
 Come I to speak in Caesar's funeral.  
 He was my friend, faithful and just to me;  
 But Brutus says he was ambitious,  
 And Brutus is an honourable man.  
 He hath brought many captives home to Rome,  
 Whose ransoms did the general coffers fill.  
 Did this in Caesar seem ambitious?  
 When that the poor have cried, Caesar hath wept:  
 Ambition should be made of sterner stuff.  
 Yet Brutus says, he was ambitious,  
 And Brutus is an honourable man.  
 You all did see, that on the Lupercal  
 I thrice presented him a kingly crown,  
 Which he did thrice refuse. Was this ambition?  
 Yet Brutus says, he was ambitious,  
 And sure he is an honourable man.  
 I speak not to disprove what Brutus spoke,  
 But here I am to speak what I do know.  
 You all did love him once, not without cause:  
 What cause withholds you then to mourn for him?  
 O judgement, thou art fled to brutish beasts  
 And men have lost their reason. Bear with me.  
 My heart is in the coffin there with Caesar,  
 And I must pause till it come back to me.<sup>492</sup>

It was an enormous challenge for Caesar to enter public life aiming for the top since he came from a family without means, although this was not an absolute bar in Rome. It was the nature of a man's soul,

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491. See *id.* at 51.

492. See WILLIAM SHAKESPEARE, *JULIUS CAESAR*, act 3, sc. 2.

and not his status at birth that ultimately decided where a man ended up in the Empire.<sup>493</sup> Not having money was something that Caesar had to overcome. Caesar came from a family in decline, and he used his abilities as a first-rate orator, and a tendency towards demagoguery against upper-class corruption as a beginning.<sup>494</sup> But his initial foray into power came when he finagled his way into becoming the *pontifex maximus*, by colluding with tribune T. Labienus, and also landing a praetor in the same year. But already he had built up debts from various activities associated with his politicking.<sup>495</sup> Caesar found many ways to implement charity during his reign. He moderated rents and reduced debts and interest rates associated with them.<sup>496</sup> He reduced the number of people on the corn dole, but not in a haphazard or capricious way, in order to trim spending.<sup>497</sup> Caesar continued the policy of land grants of his predecessor's, but enlarged the number of provinces from which they came to beyond Italy's borders.<sup>498</sup> He sought to find work for the unemployed, doing so by hiring them for the building of the Basilica Iulia (Julia) and the Forum Iulium (Julian).<sup>499</sup> He gave many gifts to his soldiers and the common people, and also staged many banquets and triumphs for them. He even went so far to give some banquets in the section of the city where foreigners lived, in their language.<sup>500</sup> Of course, when Caesar was murdered, his will left money to all the Romans, and his gardens bear the Tiber for their use.<sup>501</sup> Caesar's approach to wooing the plebs was used by many other Roman leaders. Emperor Augustus recorded in his imperial epitaph, "In my sixth consulship, acting under a decree of the senate, I restored eighty-two temples in the city, neglecting no temple which needed repair at the time."<sup>502</sup> He also "mentions a large number of theatres, porticos, basilicas, aqueducts, roads and bridges which he built in Rome" and the Empire.<sup>503</sup>

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493. See DUPONT, *supra* note 4, at 63-64.

494. PIERRE GRIMAL, THE CIVILIZATION OF ROME 430-31 (W.S. Maguinness trans., 1963).

495. See SCULLARD, *supra* note 23, at 245-46 ("Of recent years his heavy debts had driven him in somewhat compromising association with Crassus . . .").

496. YAVETZ, *supra* note 6, at 45-46.

497. *Id.* at 46.

498. *Id.* at 46-47.

499. *Id.* at 47.

500. *Id.*

501. *Id.* at 53.

502. See ABBOTT, *supra* note 49, at 183.

503. See *id.*

## PART II: ROMAN LEGAL EXPRESSIONS – CHRISTIANITY &amp; CHARITY

*A. Background*

## 1. Legal Substructure

*ROMAN LEGAL FOUNDATIONS:* It is a truism that when ancient Roman law was rediscovered it made a staggering impact upon the legal foundations of the West.<sup>504</sup> The scope of that ancient law was massive and clearly great thoughtfulness and care were used when it was conceived and drafted. The Roman private law, or *ius civilis* (law of the state)<sup>505</sup> was not an essentially religious or public body of laws, although public and religious laws did exist in ancient Rome. A perfect example is the seminal Roman legal work, known as the Twelve Tables, from around 450 B.C.,<sup>506</sup> upon which all subsequent Roman law was said to stand.<sup>507</sup> From what is recovered of that code, it dealt mainly with areas of the private law that were in flux, and so needed exposition and elucidation. Other areas of the law were not as controversial.<sup>508</sup> As to gifts, originally in the ancient

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504. *But see* MAURIZIO LUPOI, THE ORIGINS OF THE EUROPEAN LEGAL ORDER 3 (Adrian Belton trans., 2000). The loss of the Roman law towards the end of the Empire, and the re-emergence of it in the eleventh century is one of the most important developments in the history of the world. *See also* GEORGE MASOURAKIS, THE HISTORICAL AND INSTITUTIONAL CONTEXT OF ROMAN LAW, at ix (2003). Masourakis writes:

The law of ancient Rome, as transmitted through the sixth century codification of Emperor Justinian, has been one of the strongest formative forces in the development of what we now think of as the Western legal tradition. It furnished the basis of the Civil law family of legal systems – one of the major groups of legal systems in the world today – and supplied an almost inexhaustible reservoir of legal concepts, doctrines, and principles the influence of which can be traced in any body of law, both national and international, and in any system of courts and procedures.

*Id.*

505. Geoffrey Mac Cormack, *Sources*, in A COMPANION TO JUSTINIAN'S INSTITUTES 1; at 6 (Ernest Metzger ed., 1998).

506. *See generally* *The Twelve Tables*, in ANCIENT ROMAN STATUTES 8-18 (Allen Chester Johnson et al. trans., Clyde Pharr ed., 1961).

507. *See* WATSON, *supra* note 75, at 14-29; *see also* WILLIAM A. HUNTER, SYSTEMATIC AND HISTORICAL EXPOSITION OF ROMAN LAW (1876) (explaining that it was a part of the general myth of the Romans that their law had originally come from the gods. Such a view was entirely consistent with the ancient world's view on the origin of the laws of man).

508. *See* WATSON, *supra* note 75, at 22. According to Livy, the reason that the laws were redacted was because of a power struggle between the plebians and the patricians, the former feeling yoked by the arrogant power of the patrician's consuls. Ironically, while achieving their goal of having a written law, in the hopes of protecting their status and rights, the plebs were not actually aided by the Twelve Tables. It gave them no new powers. *Id.*



Roman Empire there were no rules regarding donations.<sup>509</sup> Before the advent of the Catholic Church, gifts to charities were known, typically earmarked for the great pagan cults, which did not generally use the proceeds for the poor.<sup>510</sup> But afterwards charitable giving flourished, which was usually channeled through the local church.<sup>511</sup> The first law amenable to Roman charity that we know of occurred around 150 B.C., and was when the heir concept was amended to make an association able to inherit, just like a person.<sup>512</sup>

## 2. Roman Charity as Law: *Pia Causa* & The Birth of Western Legal Charity

**ROMAN CHARITY – *PIA CAUSA*:** The area of Roman law containing charitable law, or *pia causa*<sup>513</sup> (for pious uses), was the section *Donatio*, or donations, found within the area of *Obligatio*, or obligations of law.<sup>514</sup> Justinian recognized two types of donation, the *donatio inter vivos*, or donation done during the life of the giver, and the *donatio mortis causa*, or the donation given upon death of the owner by will.<sup>515</sup> Similar to modern law, the *donatio mortis causa* could be revoked up till the time of death.<sup>516</sup> The *donatio mortis causa* could also be made in the face of hardships that the testator felt he might not survive, such as a belief of impending death.<sup>517</sup>

509. See 2 CHARLES PHINEAS SHERMAN, D.C.L., *ROMAN LAW IN THE MODERN WORLD* Vol. III, 226 (1922); see also WILLIAM L. BURDICK, *THE PRINCIPLES OF ROMAN LAW* 94 (Lawyers Coop. Publ'g Co., 1938). To drive the point home, Pomponius claims that in the days of the kings of Rome there was simply no fixed law, but rather people lived under the direct control of the king. *Id.*

510. W.H. RATTIGAN, *DE JURE PERSONARUM: OR, A TREATISE ON THE ROMAN LAW OF PERSONS* 214-15 (Wm. W. Gaunt & Sons, Inc., photo. reprint 1994) (1873).

511. See *id.* at 215-16.

512. David Villar Patton, *The Queen, The Attorney General, And The Modern Charitable Fiduciary: A Historical Perspective On Charitable Enforcement Reform*, 11 U. FLA. J. L. & PUB. POL'Y 131, 134 (2000).

513. RUDOLPH SOHM, *THE INSTITUTES: A TEXTBOOK OF THE HISTORY AND SYSTEM OF ROMAN PRIVATE LAW* 197 (3d ed. AUGUSTUS M. KELLY 1970) (James Crawford Ledlie trans., 1940).

514. REINHARD ZIMMERMANN, *THE LAW OF OBLIGATIONS, ROMAN FOUNDATIONS OF THE CIVILIAN TRADITION* 477 (1990).

515. ANDREW STEPHENSON, *A HISTORY OF ROMAN LAW* 395 (1912).

516. See *id.*

517. ANDREW BORKOWSKI, *TEXTBOOK ON ROMAN LAW* 197 (1994). Justinian's Digest (D.39.6.3-6) stated,

It is permissible to make a gift *mortis causa* not only on grounds of weak health, but also on grounds of impending danger of death due to enemies or robbers or the cruelty or hatred of a powerful man or when about to undertake a sea voyage, or to travel through dangerous places, or when one is worn out by old age, since all these circumstances represent impending danger.

**NATURE OF OBLIGATIONS:** To first discuss 'obligation,' as used in Roman law, we must examine *causa*. *Causa* was the element within an agreement that made the stated relationship one that was actionable at law.<sup>518</sup> Conversely, *causa* is not the Roman equivalent of the Anglo-American contractual notion called 'valuable consideration,' which we can sum up simply as the *quid pro quo* of contracts, although some have claimed this. At best we can say that *causa* sometimes mimicked valuable consideration, but the two are simply not synonymous.<sup>519</sup> The original Roman sense of obligation was that one was bound to return their commitments not merely to another person, but beyond that to God as an expression of pious '*religio*,' or religion. This sense was retained when Justinian created history's most famous legal redaction in his Institutes.<sup>520</sup> As opposed to the modern definition of 'obligation' that focuses merely upon the individual in a relationship who is most duty-bound, the Roman conception looked at obligations from the view of both parties.<sup>521</sup> The Institutes opens the section on obligations by stating, "*Obligatio est juris vinculum quo necessitatet astringimur alicujus solvendae rei secundum nostrae civitis jura*," or "Obligation is a legal bond, that is, the [obliged] being compelled to some performance by the law of the State (power of the sovereign)."<sup>522</sup> These are obviously contractual type concepts, and the Romans had already evolved their private law from one rooted in the family model with the *paterfamilias*<sup>523</sup>

*Id.*

518. See J.A.C. THOMAS, TEXTBOOK OF ROMAN LAW 222 (1976).

519. See *id.* The exact definition of *causa* in Roman law has long been debated, but outside of *causa* a contractual type case would not be accepted. See *id.*

520. See ZIMMERMANN, *supra* note 514, at 1. Conversely, some might argue that Christ's Sermon on the Mount, from chapter 5 of Matthew presents the greatest revision of law in history. *Id.* His subject matter was the expansion of the Ten Commandments by way of divine and Natural Law argumentation. *Id.*

521. *Id.*

522. This source does not contain that quote. See GAIUS, ELEMENTS OF ROMAN LAW 340 (originally published sometime before Hadrian's death, who reigned from 117-138 A.D. It was reprinted in 1820 after being rediscovered in Verona). See also J.B. Moyle, The Institutes of Justinian (5th ed. 1913). The subtext provides:

1. The leading division of obligations is into two kinds, civil and praetorian. Those obligations are civil which are established by statute, or at least are sanctioned by the civil law; those are praetorian which the praetor has established by his own jurisdiction, and which are also called honorary. 2. By another division they are arranged in four classes, contractual, quasi-contractual, delictal, and quasi-delictal. And first, we must examine those which are contractual, and which again fall into four species, for contract is concluded either by delivery, by a form of words, by writing, or by consent: each of which we will treat in detail.

*Id.*

523. A COMPANION TO JUSTINIAN'S INSTITUTES, 102-03 (Ernest Metzger ed., 1998).

standard, to an exquisitely articulated theory of private contract law, current in a surprising number of respects.<sup>524</sup> Conversely, from the subsequent Anglo-American position, Roman donation law lacked an invariable 'valuable consideration' component to be classified as a true modern contract.<sup>525</sup>

*NATURE OF PIA CAUSA:* The general parameters of the *pia causa* could be a transfer of property (*dando*), or an obligatory promise (*promittendo*), or the discharge of a debt by a 'contract of release' (*liberando*).<sup>526</sup> *Pia causa* were given the status of legal *persona*.<sup>527</sup> For this classification they needed official recognition by the state, but it is not clear if such status preceded creation, or it was awarded after formation. There is disagreement, but it is possible they could have been established either way. Some believe a foundation *ad pia causae* could be created through a will, which would then be viable to inherit estate property *personam*.<sup>528</sup> Of the organizations able to become *pia causa* were churches, monasteries, hospitals, and poor-houses.<sup>529</sup> Also, the pagan cults were able to receive *pia causa* status.<sup>530</sup> This is not at all surprising given the wealth, power, and influence these cults had before the advent of Christianity. Such cults included those of Gallic Mars, Ephesian Diana, and the Tarpeian or Capitoline Jupiter, to whom the Senate had given such an honor.<sup>531</sup>

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The *paterfamilias* was the notion that the eldest male was in charge of the family, which gave them great power within the family. *Id.* In early Rome it meant that they literally held the power of life and death within their family. *Id.*

524. See ZIMMERMANN, *supra* note 514, at 2-5.

525. See *id.* at 477-481.

526. See SOHM, *supra* note 513, at 211-12.

527. See *id.* at 197-98.

528. See *id.*

529. See *id.*

530. See *id.*

531. RATTIGAN, *supra* note 510, at 214; see also WATSON, *supra* note 75, at 30-31. An amazing story is attached to how the Capitoline hill was renamed from the Tarpeian. Tarquinius Superbus, the seventh king of Rome, had ordered some excavations to lay the foundations for a group of temples he planned for Jupiter, Juno, and Minerva. *Id.* at 30. This was a fulfillment of a vow previously made by his grandfather. *Id.* While earth was being removed from a great depth a prodigy appeared that none in Rome could interpret. *Id.* A decapitated human head was discovered effused with fresh, warm blood. *Id.* When asked, the Roman soothsayers threw their hands up in dismay, so the real experts – the Etruscan haruspices—were called in to decipher the riddle. *Id.* According to Dionysius of Halycarnasus, a venerable and aged Etruscan when pressed for the meaning replied, "Romans, tell your fellow citizens it is ordained by fate that the place in which you found the head shall be the head of all Italy." *Id.* at 31. The hill was then renamed Capitoline, *capita* meaning 'head' in Latin. *Id.* This incident is a small window into the power and subjective logic of the pagan *cultus* within Rome before Constantine's conversion. *Id.*

*THE LEX CINCIA PLEBISCITUM*: The law of donations had an important plebiscitum<sup>532</sup> modification added in 204 B.C. called *Lex Cincia de donis et muneribus*,<sup>533</sup> that prohibited the giving of gifts over a prescribed value, of which the exact amount we have no record. The specific wrong to be corrected by this law was not stipulated, but some believe it was drafted to address the large gifts given to politicians and public leaders by rich families trying to influence justice.<sup>534</sup> Adding to the problem was the fact that influential people in Rome found being 'officially' paid for work to be a demeaning idea, but conversely the same effect – coined as a financial 'honorarium' was seen as an agreeable, and even delightful substitute.<sup>535</sup> Therefore, large amounts of cash gifts were passed to the great for their charitable deeds, which predictably undermined the vitality of public life.<sup>536</sup> The *lex Cincia* was as a practical law 'imperfecta,' as it had no attached penalties for its breach, and therefore was toothless in application. Unsurprisingly, the law had a limited tenure.<sup>537</sup>

### 3. The Emperor's Reforms

*CONSTANTINIAN LEGAL REFORM*: It was during the reign of Constantine that donations law and activity experienced a remarkable blossoming. Constantine was an enthusiastic private supporter of charity and he also 'emancipated' the definition of donative activities.<sup>538</sup> He personally gave large sums to support the

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532. Mac Cormack, *supra* note 505, at 7. A *plebiscite* was a statute passed by a group of common Roman citizens, or *plebes*, as opposed to the higher-class *patricians*. *Id.* See also SOHM, *supra* 513, at 39-42. The *plebians* were actually the bulk of Roman society. *Id.* Their numbers had originally come from the small towns and areas conquered by the Romans, who then allowed them access to the kingdom. *See id.* at 38-42. They initially had no legal status, but their very bulk eventually argued for them to have some rights. *See id.* at 38-42

533. See SHERMAN, *supra* note 509, at 226.

534. *Id.*

535. *Id.*

536. See ZIMMERMANN, *supra* note 514, at 482-83.

537. *See id.* at 482-85; see also THOMAS, *supra* note 518, at 191 n.8. A *lex imperfecta* was a law that "forbade an act, but which neither penalized nor annulled it, if done." *Id.* See also HUNTER, *supra* note 507, at 174. The technical rules for *lex Cincia* relaxed the exemptions for "(1) All persons related by blood up to the fifth degree, and to second cousins in the sixth degree . . . (2) Persons related by affinity, so long as the tie lasts but no longer, (3) Tutors to pupils, but not pupils to tutors, 4. Patrons and freedmen, (5) A blood relation beyond the sixth degree could make a gift as a dowry." *Id.* It was originally ruled that natural children or concubines could take neither from the testator *inter vivos* during life, or by will after death. *Id.* at 321-22. But this harsh rule was gradually softened. *Id.* at 322.

538. See ZIMMERMANN, *supra* note 514, at 482-83.

needy and poor, widows, soldiers, and churches.<sup>539</sup> While historians have debated the genuineness of his Milvian Bridge battlefield conversion, suggesting a pragmatic political motivation,<sup>540</sup> it is undeniable that Constantine's giving followed the Biblical paradigm described in the Old and New Testaments.<sup>541</sup> Adding to the momentum in the change of donative law were the inconsistencies and difficulties riddling the old law. The *lex Cincias* was impossible to apply fairly, an astute legal practitioner could easily defeat its purpose, and it proscribed no penalties, anyway.<sup>542</sup> Also, the law of donations was involved in many other areas of law, denying it *sui generis* status. Constantine therefore set out to simplify donative law.<sup>543</sup>

**CONSTANTINE'S DONATIVE REFORMATION:** Constantine reclassified *donatio* law and placed it within its own area, making its legal form unique. His view of donations focused upon the unenforceable bilateral act of the donation that immediately transferred the gift, vesting instant ownership in the donee.<sup>544</sup> His change was quite formulaic. Each donation was to be recorded in a document, in front of witnesses, and it had to have the name of the donor, a description of the gift, and proof of the donor's title.<sup>545</sup> Next, the gift had to be handed to the "*advocate vicinitae*," that is, in front of neighborhood witnesses.<sup>546</sup> The number of witnesses varied historically, but can be safely numbered between five and seven.<sup>547</sup> The final step was official registration of the gift. If any of the steps were skipped, or done incompletely, the transfer failed.<sup>548</sup> These steps were designed to prevent people from giving away property they did not own, but the format had no fiscal significance, as gifts were not taxed.<sup>549</sup> Constantine severed all gifts to concubines or

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539. *Id.*

540. See Christian History Inst., Constantine Triumphed Under the Sign of the Cross, <http://www.gospelcom.net/chi/DAILYF/2001/10/daily-10-28-2001.shtml> (last visited October 12, 2004).

541. See ZIMMERMANN, *supra* note 514, at 491.

542. *Id.*

543. See *id.* at 490-92.

544. *Id.*

545. *Id.*

546. See *id.* at 492.

547. W.W. BUCKLAND AND ARNOLD D. MCNAIR, ROMAN LAW & COMMON LAW 264 (1936).

548. *Id.*

549. *Id.* at 491-93. See also Eusebius, *Medieval Sourcebook: Constantine I: Laws for Christians* (1996), at 382-83, at <http://www.fordham.edu/halsall/source/const1-laws2.html> (last visited Oct. 12, 2004). Bishop Eusebius quoted a letter from Constantine: "Law: Granting Money to Churches: Eusebius; Book 10, Chapter 6, Copy of an Imperial Epistle in which Money is granted to the Churches." Therein Eusebius

natural children because of what appears to be a strong desire to completely wipe out concubinage.<sup>550</sup>

*THE RISE OF CHARITABLE SOCIETY:* As donative law evolved, and society became increasingly Christian minded, the expression of such gifts were associated with dispositions *morti causa*, or by will.<sup>551</sup> In the case of the last will *donatio mortis causa* it is interesting to note that Justinian allowed the testation to be done orally in front of the witnesses, no written documentation necessary, apparently under the theory that such a will could be quite easily amended for a changed mind.<sup>552</sup> It became a presumption that a person's will was *Tertium comparationis*, or motivated by either a design to care for their family, or the Church and its charitable institutions.<sup>553</sup> This change was certainly wrought by an increasingly

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reprinted the communication, "CONSTANTINE AUGUSTUS to Caecilianus, bishop of Carthage":

Since it is our pleasure that something should be granted in all the provinces of Africa and Numidia and Mauritania to certain ministers of the legitimate and most holy catholic religion, to defray their expenses, I have written to Ursus, the illustrious finance minister of Africa, and have directed him to make provision to pay to thy firmness three thousand folles. Do thou therefore, when thou hast received the above sum of money, command that it be distributed among all those mentioned above, according to the briefs sent to thee by Hosius. But if thou shouldst find that anything is wanting for the fulfillment of this purpose of mine in regard to all of them, thou shalt demand without hesitation from Heracleides, [(10)] our treasurer, [(11)] whatever thou findest to be necessary. For I commanded him when he was present that if thy firmness should ask him for any money, he should see to it that it be paid without delay. And since I have learned that some men of unsettled mind wish to turn the people from the most holy and catholic Church by a certain method of shameful corruption, do thou know that I gave command to Anulinus, the proconsul, and also to Patricius, vicar of the prefects, when they were present, that they should give proper attention not only to other matters but also above all to this, and that they should not overlook such a thing when it happened. Wherefore if thou shouldst see any such men continuing in this madness, do thou without delay go to the above-mentioned judges and report the matter to them; that they may correct them as I commanded them when they were present. The divinity of the great God preserve thee for many years.

*Id.*

550. See HUNTER, *supra* note 507, at 174. Historically, donations were not allowed between husband and wife, although this was not found in the *lex Cincia*. *Id.* Some exceptions were allowed, such as a birthday gift or other such presents was acceptable, if not too expensive. *Id.* According to the custom of the times, husbands gifted their wives on the Kalends of March, and wives did likewise during the Saturnalia. *Id.*

551. See ZIMMERMANN, *supra* note 514, at 492-94.

552. THOMAS, *supra* note 518, at 194. While Justinian categorized wills as the same as legacies, there were in practice important differences. For instance, the rule of construction for legacies, *regula Catiniana*, did not apply to them. *Id.* Also, even if a will failed, the *donatio cuasa mortis* did not, and the title was still transferred. *Id.*

553. See ZIMMERMANN, *supra* note 514, at 493-94.

pessimistic view about the meaning of earthly riches and the brevity of life. The main concern for many was the salvation of their souls, which might be hurried along towards heaven via the impetus of charity in their last official act upon earth.<sup>554</sup> Such provisions were denoted '*ad pia causas.*' As the Church matured into the Middle Ages, such provisions were thought the essential purpose of the last will, and were termed '*pro animae remedio,*' or that which makes provision for the soul.<sup>555</sup>

**JUSTINIAN'S INSTITUTES:** When Emperor Justinian came to power he gave himself the massive task of digesting the diverse Roman law, and recording it by an army of scribes.<sup>556</sup> The Institutes can be summarized as being the amalgamated capsulization of the following main ingredients: (1) Writings of the ancient Roman jurists, as sanctioned by Valentinian's Law of Citations; (2) The Hermogian and Gregorian Code; and (3) The Theodosian Code combined with the Post-Theodosian Novels.<sup>557</sup> A first code was started in 528 A.D. finished in 529 A.D., but it was merely a combination of all the laws. After finishing this he immediately changed his mind and set himself on the epic of creating a masterwork of jurisprudence, interpolating a Christian element.<sup>558</sup> This monumental task took three years and was organized and overseen by Tribonian<sup>559</sup> and associates, being published on Dec. 16, 533 A.D. The Institutes went into effect on Dec.

554. See *id.* at 494.

555. *Id.*

556. *Id.*

557. BURDICK, *supra* note 509, at 158; see also *id.* at 88-89. To set this in history, a timeline of the legal periods "[f]rom the Empire to the Death of Justinian or from 31 B.C. to 565 A.D." can be established. *Id.* at 88. Four periods existed, being the times of: (1) The *Quiritary* Law; (2) The *Jus Civile*; (3) The *Jus Gentium*; and, (4) The Imperial Law. *Id.* at 89.

558. See *id.* at 159. In commissioning the task, in the preface of the Institutes, Justinian said:

It was our first desire to amend the constitutions of former emperors, to arrange them in proper order, and to collect them into one book. This work having been done, we now hasten to make a full and complete amendment of the law, to amend and rearrange the entire jurisprudence of Rome, and to present in one volume the scattered books of many authors, a thing which no one ever dared to hope, the task appearing not only of great difficulty but impossible. However, we have prayed for divine aid, and have undertaken this enterprise, trusting in God who in the greatness of His goodness is able to grant success in matters seeming hopeless.

*Id.*

559. See *id.* at 162. Tribonian was from Pamphylia and "served Justinian many years" as quaestor, "master of the imperial house, praetorian prefect and consul." *Id.* at 159. Of him, Justinian writes in his Institutes preface, "The entire work was has been executed by the illustrious and most learned magistrate Tribonian, ex-quaestor and ex-consul; distinguished both for eloquence and legal knowledge, and also eminent in practical affairs." *Id.* at 159-60.

30 of the same year.<sup>560</sup> The work was organized into seven parts perhaps because of the mystical or religious significance of that number, although the work itself strikes the modern reader as poorly organized.<sup>561</sup> Justinian then proclaimed to the Senate and all peoples, "We have these books. . . the name of [which being] Digest or Pandects because they contain all matters of questions and their legal decision."<sup>562</sup> He made this law the supreme authority of the land, superseding every previous legal pronouncement. He said, "In every trial or other legal contest . . . where rules of law have to be enforced let no one quote or strive to maintain any rule of law save such as are composed and promulgated by us."<sup>563</sup>

**CHARITY AS CONTRACT:** Under Justinian, the law of donations was brought back towards its source, and a promise to give a gift became binding and enforceable.<sup>564</sup> So Justinian was able to create a new entity, the donation clothed in the form of a binding contract. Justinian's Institutes in Book II (Of Things), Title VII: 'Of Gifts' states, "If the transaction be complete, they cannot be revoked at pleasure; and it is complete when the donor has manifested his intention, whether in writing or not. Our constitution has settled that such a manifestation of intention binds the donor to deliver, exactly as in the case of sale; so that even before delivery gifts are completely effectual, and the donor is under a legal obligation to deliver the object."<sup>565</sup> Conversely, Justinian did relax some aspects of the donation. He modified donation law by raising the minimum recording value threshold, and in some cases even abolished the need for gift registration by the donor.<sup>566</sup> In the latter he dispensed with documenting manumissions of Christians by benefactors, or *pro redemptio ad hostibus*.<sup>567</sup> No recording was needed either for gifts to rebuild a burnt dwelling, or for gifts to the emperor.<sup>568</sup>

**JUSTINIAN'S PAULINE ANALYSIS:** Following Constantine's lead, Justinian favored the pious act of cheerful giving, and likewise seemed motivated by a Biblical view of *les miserables*, divining a Scriptural response to their plight.<sup>569</sup> The Christian take on the topic was '*humanitas, per quam solam dei servatur imitatio*,'<sup>570</sup> or roughly

560. *Id.* at 162.

561. *Id.* at 163.

562. *Id.* at 162.

563. *See id.* at 162-63.

564. *Id.*

565. Moyle, *supra* note 522, at tit. VII.

566. *See id.*

567. *See id.*

568. *See* ZIMMERMANN, *supra* note 514, at 494-96.

569. *See id.*

570. *See id.* at 496.



that one imitates God by serving mankind. In his enthusiasm for such altruistic activity, Justinian expanded the very definition of *donatio*, bringing it together with *pollicitationes*, or "the promise of a gift of money or of the performance of work. . . which a citizen made to his municipality, usually on the occasion of his candidacy for a municipal office or for a priesthood (*"ob honorem"*)."<sup>571</sup> Such acts might include creation of a public building.<sup>572</sup> "Such a promise was binding and actionable in the *cognitio extra ordinem*, even though it was based upon a unilateral, informal declaration."<sup>573</sup> In the post-classical period the main focus was placed upon the intent of the giver as the essential characteristic of donations. Justinian took this legal doctrine to an entirely new level by expanding the law to underscore the 'noble spirit' of the undertaking of private largesse.<sup>574</sup> By doing so he infused a strong ethical element into the formerly formulaic description of the *donatio*.<sup>575</sup> The one exception to this new doctrine of obligations made without 'consideration' was that of the *animo remunerandi*, or the promise of a gift for past good deeds.<sup>576</sup> Even when these came in the form of one's *naturalis obligatio*, or natural obligations, the formal area of law for these was still categorized with remunerations.<sup>577</sup> But, remunerative gifts were still irrevocable once promised.<sup>578</sup>

**CHRISTIAN ETHICS AS PUBLIC POLICY:** One can detect in this new formulation of donation a theory of selflessness beholden to St. Paul's 'cheerful giver.'<sup>579</sup> This inspiration was gleaned from the New Testament, from, amongst other parts, the Second Book of Corinthians, 2 Cor. 9:7, which states: "Each one must do as he has

571. *See id.*

572. *See* Scott Davis, *Philanthropy as a Virtue in Late Antiquity and the Middle Ages*, in *GIVING, WESTERN IDEA OF PHILANTHROPY* 1 (J. B. Schneewind ed., 1996). "In imperial Rome, the [creation] of 'grand public works' [was] reserved to the [E]mperor, at least in the [area of] the capital . . ." *Id.* The motivation for these acts was to awe the citizens with his godlike largesse, and to weaken the hold on the imagination of other political poseurs. *Id.*

573. ZIMMERMANN, *supra* note 514, at 496. Another facet that the new *donatio* formulation was meant to discourage was that of *suffragium*. *Id.* *Suffragium* was also the promise of a reward in order to gain office. *Id.* But in the case of *suffragium*, once the candidate had gained office, his promise was seen as binding. *Id.*

574. *Id.*

575. *See id.* at 496. The old law code was interpolated with this statement, "[D]at aliquis ea mente, ut statim velit accipientis fieri nec ullo sacu ad se reverti, et propter nullam aliam causam facit, quam ut liberlitatem et munificentiam exerceat: haec proprie donatio appellatur." *Id.* This text stresses the idea that a noble giver must rise above petty human selfishness, and give his gift as a selfless act of generosity. *Id.*

576. *Id.*

577. *Id.*

578. *Id.* at 496-97.

579. *Id.*

made up his mind, not reluctantly or under compulsion, for God loves a cheerful giver.”<sup>580</sup> Thus, Christianity, an underdog religion that arguably had its biggest supporters among the underclass of Rome – the poor, the *plebes* and enslaved, had made an extraordinary impact upon the most powerful organism in Rome – the law.

#### 4. Church & The Law of Charity in Rome

*THE ROMAN CHURCH'S ROLE:* The Church in Rome was not a corporation, but instead defined as a juristic person, who had certain rights of personhood, including the ability to own property.<sup>581</sup> Justinian reasoned that since it was Jesus Christ himself who technically received the gift given to a church, and since the church was his home, the status of *personam* fit the church splendidly.<sup>582</sup> The precursor to the institution of the Church was of course the *collegia* of pagan priests, who were given the ability to own property in a similar way through their temples.<sup>583</sup> The status of juridical personhood was thus easily adopted by the Church. By Justinian's era, the Church became the general trustee of charitable gifts. The net result was a smooth transition to property bequeathed via will.<sup>584</sup> The standard way that gifts were distributed was when a charitable gift was specifically directed to a particular church, the directions were followed.<sup>585</sup> On the other hand, if the gift was made in the name of a Saint, the gift could be forwarded to a Church in the saint's name.<sup>586</sup> Otherwise, when *donatios* were made without specific reference, it was simply administered through the local church of the giver.<sup>587</sup>

*ROMAN CY PRES:* The Roman version of the *cy pres*<sup>588</sup> doctrine ruled: if the testator's intentions were completely known, and it was possible to follow them, the Church would.<sup>589</sup> If they could not be followed, or were not fully expressed, then the church would try to

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580. THE BIBLE, REVISED STANDARD VERSION, <http://etext.virginia.edu/frames/bibleframe.html> (last visited Oct. 12, 2004). Or as the King James Version has it, “Every man according as he purposeth in his heart, so let him give; not grudgingly, or of necessity: for God loveth a cheerful giver.” 2 Corinthians 9:7 (King James).

581. BURDICK, *supra* note 509, at 294.

582. RATTIGAN, *supra* note 510, at 215.

583. *See id.*

584. *See* ZIMMERMANN, *supra* note 514, at 493-94.

585. *See id.*

586. *See id.*

587. BORKOWSKI, *supra* note 517, at 77.

588. *Cy pres* is the Anglo-American legal doctrine used in trust law that allows the intent of the donor to be honored if the exact trust he had in mind is impossible, or fails for some reason. BLACK'S LAW DICTIONARY 387 (6th ed. 1990).

589. RATTIGAN, *supra* note 510, at 215.

get as close to his wishes as possible.<sup>590</sup> If a particular church received more gifts compared to a poorer neighbor, future funds might be directed to that neglected church.<sup>591</sup> If a donation were generally made to the poor without mention of a church, Justinian allowed the local bishop in the testator's area to distribute the largesse directly to the poor.<sup>592</sup> Likewise, bishops were generally appointed the trustees for legacies left to be used in the manumission of slaves, and any other legacy directives.<sup>593</sup>

**REVOCATIONS:** The Institutes eventually made *donatio* revocable under the theory that no one should be forced to watch their generosity benefit an ingrate.<sup>594</sup> If the donor felt enough provocation, he could take the case to court under the *vindicatio* proceedings, and could then attempt to factually prove ingratitude at trial.<sup>595</sup> This was in tenor with the overall notion that donative law should be biblically ethicized. So the law became focused upon the mindset of both the donor and donee. For instance, if a husband gifted his wife with some type of present, she was not then free to spurn her husband for a rival with impunity.<sup>596</sup> The cuckold could certainly cancel her gift. Also, the idea that a donee could insist on the fulfillment of a pledge of donation, in spite of changed circumstances for the donor, to the ruin of the owner, was also made a voidable exchange.<sup>597</sup> Of course, a gift could also lapse if the donee failed to follow through on a conditional promise attached to the *donatio*.<sup>598</sup> A gift to a freedman by his patron could also fail if the

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590. *Id.*

591. *See id.*

592. *Id.* at 215. This intrepid use of a vague will legacy appears to be a first, because it seems that under the constitutions promulgated by both Emperors Valentinian and Marcianus that unclear dispositions *morti causa* would fail due their indeterminacy. *Id.* at 216.

593. *See id.* at 215-17. There were other ways that churches were treated as a special juristic persona, under Justinian's reform. For instance, church property, like chalices, ornaments, or vestments, etc., could not be alienated except in the case of most dire distress, where people were starving or the church owed money. *Id.* at 215. Additionally, the buyer was supposed to restore the item later without allowance for his own costs. *Id.* Justinian also changed the period of prescription for bringing an action against a church, and set it at one hundred years, which was considered the longest that a human could live, or *longissimum vitae hominum tempus*. *Id.* at 216-17. He later reduced that period to forty years. *Id.* at 217.

594. *See* ZIMMERMANN, *supra* note 514, at 497.

595. *See* THOMAS, *supra* note 518, at 192-93.

596. *See id.*

597. *See* ZIMMERMANN, *supra* note 514, at 497-98. This idea of the return of property to the newly impoverished reached its logical conclusion in the 16th century when a generous person whose fortune was for some reason ruined might even get back title to gratuitously bequeathed property after title was formally transferred. *Id.*

598. SHERMAN, *supra* note 509, at 227.

gift was given when the patron was childless, and later he produced offspring.<sup>599</sup>

**JUSTINIAN'S DONATIVE RULES:** The rules governing gifts under Justinian's *donatio* reformation were:

A. Gifts between husband and wife were void (§ 94 *ad fin.*).<sup>600</sup>

B. Gifts exceeding a certain value (drawn at 500 solidi) were made void beyond the excess, unless the owner registered them in court (or *insinuatio*),<sup>601</sup> and thereby publicly proclaimed his intention to donate.<sup>602</sup>

C. Gifts were made revocable on the grounds of gross ingratitude by the donee recipient. This could occur through various means, such as the donee scandalously libeling his benefactor.<sup>603</sup> Other means of cancellation via ingratitude were attempting to take the donor's life, severely injuring him, or causing the loss of property.<sup>604</sup>

**SHORTCOMINGS OF JUSTINIAN CHARITABLE RULES:** The nuances of the Institute's emphasis on donations having a proper moral foundation, or *animus donandi* (the motive of liberality)<sup>605</sup> was agreeable to theologians and met the appetites of an increasingly Christian society, but it naturally created problems of interpretation. The standard was entirely too subjective. The law has a poor ability to peer into the individual soul and plumb its piety. When studied from a more objective angle, what became apparent was the necessity of deciding whether the donor meant to enrich the donee. This was the only genuine issue, as everything else was guesswork. But by virtue of one person choosing to gift another, and thereby enrich the second with no material benefit to the first, one could quite rightly imply an altruistic motive. In fact, later Roman law theorists realized that focusing upon any other topic than the aspect of whether the gift was an unrecompensed benefit, was not only impossible, but also disorienting to the organs of the law.<sup>606</sup>

**MEDIEVAL EUROPE AND ROMAN DONATIO:** When Roman law was grafted into the medieval European legal tradition, it was the Justinian view of donations that was established. From the very

599. BORKOWSKI, *supra* note 517, at 197.

600. See SOHM, *supra* note 513, at 212.

601. See SHERMAN, *supra* note 509, at 226. *Insinuatio* in the Roman format did not die until the reign of Leo VI, or 886-912 A.D. *Id.*

602. See SOHM, *supra* note 513, at 212.

603. *Id.*; see also SHERMAN, *supra* note 509, at 226.

604. SHERMAN, *supra* note 509, at 226.

605. SOHM, *supra* note 513, at 212.

606. See ZIMMERMANN, *supra* note 514, at 503-04. It was the great Romanist Otto Lenel who drove home this point. *Id.*

beginning, it was measured as an obligatory transaction that transferred the *iusta causa* along with the gift. The legal transfer of title could either occur at the end of the contract, or sometime thereafter. The form of the *donatio* was contractually bilateral, with the agreement of the donor to give, and the acceptance of the donee to the offer completing the requirements. Yet, the contract did not have to be formalized. The mere outline of such an agreement was sufficient. But one old Constantinian donative standard was carried into European law, that of the necessity of registration of large gifts.<sup>607</sup> The standard minimum amount for registration was even obediently set upon Justinian's limit of 500 solidi, which was then somewhat arbitrarily translated into an amount of another modern coinage, depending on which state was involved.<sup>608</sup>

**ENGLISH CONSIDERATION:** Whereas the French and German jurists made their theory of contracts legally binding upon the technical formalities of the agreement, with some substantial elements, the British and later Americans took a different route. The doctrine of 'valuable consideration' arose, which created the absolute necessity of establishing a *quid pro quo* within the contract, or contra-wise seeing the agreement lacking such as a vain and legally irrelevant deed. This set the Anglo-American genus of contract off from the Continental, but made it quite easy to differentiate between a normal contract and a charity, since the latter definitively lacked consideration. One should not overlook either the fact that Roman law had already somewhat developed the idea of 'valuable consideration' in their concept of *causa*.<sup>609</sup>

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607. *Id.* at 498-99.

608. *See id.* at 498-99. Some examples of the attempt to apply Justinian's standards were Savigny choosing 2,000 guildens, or for the Windscheid marking it at 500 ducats. *Id.* Whereas as late as 1886, the Cape Supreme Court ruled that a pound sterling was equivalent to a Roman Aureus, which then in post-colonial times became equal to 1,000 Rand. *Id.*

609. *See id.* at 504-07.