



Jaromír Tauchen,  
David Kolumber (eds.)

# **EDGE OF TOMORROW: THE NEXT GENERATION OF LEGAL HISTORIANS AND ROMANISTS**

Collection of Contributions  
from the 2022 International Legal History Meeting  
of PhD Students

**MASARYK  
UNIVERSITY  
PRESS**

# **EDGE OF TOMORROW: THE NEXT GENERATION OF LEGAL HISTORIANS AND ROMANISTS**

Collection of Contributions from the 2022  
International Legal History Meeting  
of PhD Students

Jaromír Tauchen, David Kolumber (eds.)



Masaryk University  
Brno 2022

---

# Non-pledgeable Property in Ancient Law – A Reflection of *favor debitoris*?

DOI: <https://doi.org/10.5817/CZ.MUNI.P280-0156-2022-2>

Vid Žepič

Master of Law, Department of Legal History, Faculty of Law, University of Ljubljana, Slovenia / E-mail: vid.zepic@pf.uni-lj.si / ORCID 0000-0001-7526-1545

## Abstract

One of characteristic features of ancient law was a particular form of restriction on contractual autonomy in the form of provisions on the non-pledgeability of items indispensable for the social or economic life of citizens. This paper outlines the evolution of the closely related provisions in the Code of Hammurabi, the Decalogue, the Code of Gortyn, and Roman Imperial Constitutions, and considers the underlying motives for their enactment. A particular question is whether the relevant norms on non-pledgeability of the Roman Imperial period were motivated by a Christian tendency to favour the debtor (*favor debitoris*).

## Keywords

Pledge; Restriction of Contractual Autonomy; the Law of Things; *favor debitoris*.

## 1 Introduction

Ἐγγύα πάρα δ'ἄτα,<sup>1</sup> an adage attributed to the Seven Wise Men and reputedly inscribed on a column of the Delphic oracle, can be interpreted both as a warning against taking surety as well as against pledging. A potentially harmful and easily misused institution was one of the crucial matters of debt regulation in ancient laws. A common aspect of the Babylonian, Hebrew,

---

<sup>1</sup> DIODORUS. *Bibliotheca historica* 9, 10. The saying, usually translated as “Surety brings ruin”, can generally be understood as a warning against taking on too many demanding commitments. Liddell and Scott translate the word ἐγγύα (ἐγγύ-η) as a “pledge put into one’s hand” as well as “a surety, security, whether received or given”. Therefore, one could also translate the saying as “Pledge is close to ruin”. See LIDDELL, H. G., SCOTT, R. *A Greek-English Lexicon*. Oxford: Clarendon Press, 1996, p. 468.

and Greek legal tradition was a limitation of contractual autonomy by way of designating certain objects, indispensable for the social or economic life of citizens, as being non-pledgeable. According to the prevailing opinion, early Roman law, which is usually considered to have great respect for private autonomy, did not impose any socially oriented legal restrictions on pledging. While such restrictions first appear in Imperial law in a rather limited form, their origin and the rationale for their enactment is still in dispute. A particular question is whether the relevant reforms of Roman Imperial period were motivated by a Christian tendency to favour the debtor (*favor debitoris*).

## 2 Non-pledgeability in Ancient Law

The pledge is probably the most important form of debt security in ancient laws. At the same time, many legal precepts emphasized the importance of at least providing a minimally secure living environment for the destitute debtors.

In the Code of Hammurabi, an express clause threatens, under the penalty of forfeiting one-third of a mine of silver, a creditor who would take an ox as a pledge.<sup>2</sup> The reasoning behind the rule is clear: without its ox, a poor family would have been unable to cultivate its property and would thus ultimately lack the resources to pay back a loan.<sup>3</sup>

Many rules which strive to provide protection and dignity to the borrower by limiting pledgeability can be derived from Hebrew law.<sup>4</sup> The norms of Deuteronomy, characterized by their humanitarian and social orientation, intend to protect the most vulnerable classes of society, especially widows, orphans, and the “poor” at large.<sup>5</sup> Some Biblical rules share the policy

---

<sup>2</sup> The Code of Hammurabi § 241: “If a man seizes an ox for debt, he shall pay one-third mana of silver.” English translation by HARPER, R. F. *The Code of Hammurabi, King of Babylon*. Chicago: The University Press, 1904, p. 85.

<sup>3</sup> WESTBROOK, R. *A History of Ancient Near Eastern Law. Volume One*. Leiden, Boston: Brill, 2003, p. 406.

<sup>4</sup> WESTBROOK, R. *Security for Debt in Ancient Near Eastern Law*. Leiden, Boston, Köln: Brill, 2001, pp. 254–256.

<sup>5</sup> RASOR, P. Biblical Roots of Modern Consumer Credit Law. *Journal of Law and Religion*. 1993–1994, Vol. 10, no. 1, p. 164.

of modern exemption law by stating that the creditors should not deprive debtors of the necessities of life, although they are unable to pay the debts.<sup>6</sup> The Decalogue makes it clear that a pledgee was not allowed to take a millstone from a debtor as security for debt as whoever took the millstone, took what was necessary to preserve the life of the debtor and his family, and in this sense, he literally “pledged their lives”.<sup>7</sup> Moreover, creditors were urged to be particularly considerate of the poorest when contracting pledges.<sup>8</sup> Whoever received a cloak from a poor man as a pledge was to return it to him before sunset so that the man may sleep in it and protect himself from the cold of the night. Then, as stated in Deuteronomy, “*the poor pledgor would be grateful, and the Lord pleased with the pledge*”.<sup>9</sup> Similarly, it was forbidden to receive as a pledge the cloak of a widow, who was an archetype of a destitute, defenceless, and vulnerable person.<sup>10</sup> Nevertheless the Bible recounts many violations of the aforementioned rules.<sup>11</sup>

The Gortyn law from the 5<sup>th</sup> century BC exempted the weapon of a free man, loom, wool, iron tools, a plough, ox-yokes, hand-mill stones, equipment from the men’s quarters, and marriage beds from being taken as pledges.<sup>12</sup> Furthermore, Oxylus king of Elis is purported to have enacted a law that forbids the securing of loans on a certain proportion of a man’s property.<sup>13</sup> A contract resulting in the economic and social ruin of the debtor would

<sup>6</sup> RASOR, 1993–1994, op. cit., p. 180.

<sup>7</sup> Deut 24: 6: “Do not take a pair of millstones – not even the upper one – as security for a debt, because that would be taking a person’s livelihood as security (ψυχήν οὗτος ἐνεχυράζει).”

<sup>8</sup> Amos 2: 7: “They trample on the heads of the poor as on the dust of the ground and deny justice to the oppressed.”

<sup>9</sup> Dt 24: 12–13: “If the neighbor is poor, do not go to sleep with their pledge in your possession. (13) Return their cloak by sunset so that your neighbor may sleep in it. Then they will thank you, and it will be regarded as a righteous act in the sight of the Lord your God.” See also Exod. 22: 25. Deut 24, 17.

<sup>10</sup> Job 24, 3. See also Ezek. 22:12; Neh. 5:1–12.

<sup>12</sup> Coll. II: “... ὄπλα ἀνδρὸς ἐλευθέρου ὅττ’ [ἐ]νς πόλεμο(ν) ἴσχει, πλὴν Φέμας χάντιδέμας, ἰστός, ἔρια χερίθεχνα Φεργαλεῖα, σιδάρια, ἄρατρον, δυγὸν βοου, χάπετον, μύλαν, ὄνον ἀλέταν, ἐ(χ)ς ἀνδρείο ὅτ’ ὁ ἀρχὸς παρέχει χατ’ ἀνδρείον, εὐνὰ ἀνδρὸς καὶ γυναικός...” Edited by DARESTÉ, R., HAUSSOULLIER, B., REINACH, T. *Recueil des inscriptions juridiques Grecques. Deuxième Série*. Paris: Ernest Leroux, 1898, p. 328. The list of non-pledgeable things is of special historical interest as it is constituting the essential possessions of a free person in Gortyn. See WILLETS, R. F. *Aristocratic Society in Ancient Crete*. London: Routledge, 1995, p. 221.

<sup>13</sup> ARISTOTELES. *Polit.* 1319a 12.

be illegitimate since no Greek polis could afford citizens without weapons or existential goods.<sup>14</sup>

According to the Law of Ptolemaic Egypt, as described by Diodorus of Sicily, debtors may only be required to repay debts from their estates and under no circumstances could the debtor's person be seized: it would be absurd for a soldier to be placed under arrest by his creditor as he prepared to fight for his country. Thus, private citizens' greed may put everyone's safety at risk. This regime, however, appears to deviate from the "Panhellenic" legal rule, reflected by the law of Gortyn:<sup>15</sup>

Diodorus, *Bibliotheca historica* 1, 79: Μέμφονται δέ τινες οὐκ ἀλόγως τοῖς πλείστοις τῶν παρὰ τοῖς Ἑλλησι νομοθετῶν, οἵτινες ὄπλα μὲν καὶ ἄροτρον καὶ ἄλλα τῶν ἀναγκαιοτάτων ἐκόλυσαν ἐνέχυρα λαμβάνεσθαι πρὸς δάνειον, τοὺς δὲ τούτοις χρησομένους συνεχώρησαν ἀγωγίμους εἶναι.<sup>16</sup>

Diodorus, The Historical Library 1, 79: But certain individuals find fault, and not without reason, with the majority of the Greek lawgivers, who forbade the taking of weapons and ploughs and other quite indispensable things as security for loans but allowed the men who would use these implements to be subject to imprisonment.<sup>17</sup>

In the Greek world at large, the poor debtors were allowed to pledge their own body or the bodies of their children.<sup>18</sup> Indeed, the debt-bondage was,

<sup>14</sup> WEISS, E. *Pfandrechtliche Untersuchungen, Beiträge zum römischen und hellenischen Pfandrecht enthaltend*. Weimar: Hermann Böhlau, 1909, p. 27; HITZIG, H. F. *Das griechische Pfandrecht. Ein Beitrag zur Geschichte des griechischen Rechts*. München: Ackermann, 1895, p. 20.

<sup>15</sup> WEISS, 1909, op. cit., p. 28, spoke about "offenbar gemeingriechische Gedanke".

<sup>16</sup> Edition: VOGEL, F. *Diodori Bibliotheca Historica*. Stuttgart: Teubner, 1985.

<sup>17</sup> English translation by OLDFATHER, Ch. H. *Diodorus of Sicily in Twelve Volumes I*. Harvard University Press, 1933, p. 273.

<sup>18</sup> ISOCRATES, *Plataicus* 14, 48: τίνα γὰρ ἡμᾶς οἶσθε γνώμην ἔχειν ὀρώντας καὶ τοὺς γονεάς αὐτῶν ἀναξίως γηροτροφούμενους καὶ τοὺς παῖδας οὐκ ἐπὶ ταῖς ἐλπίσιν αἷς ἐποιησάμεθα παιδευομένους, ἀλλὰ πολλοὺς μὲν μικρῶν ἔνεκα συμβολαίων δουλεύοντας, ἄλλους δ' ἐπὶ θητεῖαν ἰόντας, τοὺς δ' ὅπως ἕκαστοι δύνανται τὰ καθ' ἡμέραν ποριζομένους, ἀπρεπῶς καὶ τοῖς τῶν προγόνων ἔργοις καὶ ταῖς αὐτῶν ἡλικίας καὶ τοῖς φρονήμασι τοῖς ἡμετέροις;. [What, think you, is our state of mind when we see our own parents unworthily cared for in their old age, and our children, instead of being educated as we had hoped when we begat them, often because of petty debts reduced to slavery, others working for hire, and the rest procuring their daily livelihood as best each one can, in a manner that accords with neither the deeds of their ancestors, nor their own youth, nor our own self-respect?]. Edition and English translation by NORLIN, G. *Isocrates. Isocrates with an English Translation in three volumes*. London, 1980.

except for Solon's Athens,<sup>19</sup> widespread in ancient Greece<sup>20</sup> and the same applies to various Middle Eastern legal traditions.<sup>21</sup>

### 3 Non-pledgeability in Roman Law

#### 3.1 Classical Roman Law

The jurist Gaius provides us with a very unequivocal statement regarding the object of the pledge. Whatever can be sold can also be pledged.<sup>22</sup> The object of the pledge hence consisted in every patrimonial right which was not exempted from legal traffic (*res in commercio*),<sup>23</sup> i.e. not only corporeal and incorporeal things<sup>24</sup> but also assets which constituted so-called general hypothecs.

There were, however, some exceptions to the rule that, at least at first glance, seem to take the social dimension into account.

In republican times, the *pater familias* was not only entitled to sell but also to pledge his child.<sup>25</sup> The right over the child, deriving from his *patria potestas*, was regarded as potentially profitable and could therefore be exploited

<sup>19</sup> On the well-known law which Solon is supposed to have brought to Athens from Egypt in 594 BC (the so-called *σεισάχθεια*, literally “shaking-off the burdens”), see ARISTOTELES, *Const. Ath.* 6, 1; PLUTARCH, *Sol.* 15, 3.

<sup>20</sup> MILLET, P. *Lending and Borrowing in Ancient Athens*. Cambridge: Cambridge University Press, 1991, p. 78; MITTEIS, L. *Reichsrecht und Volksrecht in den östlichen Provinzen des römischen Kaiserreichs*. Leipzig: Teubner, 1891, p. 359.

<sup>21</sup> See Exod. 21:7; Neh. 5:5; 2 Kings 4:1; Isa. 50:1.

<sup>22</sup> D. 20, 1, 9, 1 Gai. 9 ad ed. provinc.: *Quod emptionem venditionemque recipit, etiam pignorationem recipere potest.*

<sup>23</sup> On this see DERNBURG, H. *Das Pfandrecht nach den Grundsätzen des heutigen römischen Rechts*. Zweiter Band. Leipzig: Hirzel, 1864, p. 426 s.

<sup>24</sup> Even though administrative positions, such as *adiutores sacri palatii*, were negotiable under Roman imperial law (Nov. 35), they were not deemed to be pledgeable. In Justinian's law, a pledgee in the case of a general pledge was permitted by Justinian's order to seize and sell an office (Iust. C. 8, 13, 27, 1). According to the later enactment, imperial permission was required for the pledge of the official post (Nov. 53, 5 pr.). See DERNBURG, H. *Das Pfandrecht nach den Grundsätzen des heutigen römischen Rechts*. Leipzig: Hirzel, 1964, pp. 422–425.

<sup>25</sup> CICERO. *De Orat.* 1, 181, claims that the notion of the *patria potestas* had originally included a kind of a right to sell one's children. See also Gai. 1, 132; 5, 79. During the period for which we possess reliable sources, the sale of a free person is void (Paul. D. 18, 1, 34, 2). Emperor Caracalla disapproved of a father's sale of a freeborn son as an illicit and dishonest act (C. 7, 16, 1).

commercially. It was not until the Imperial era, which sought to curtail the private autonomy of the *pater familias* and transform the precepts of morality and piety into legal norms, that the pledging of children was forbidden.<sup>26</sup> They were not *in commercio* and could thus not be pledged even with their own or the father's consent.<sup>27</sup> From this point onward, the pledge of children was declared null and void and anyone who knowingly took a household's child as a pledge was threatened with the penalty of deportation.<sup>28</sup>

The question of whether the Romans imposed any societal limitations on pledging beyond the mentioned family-law context emerges especially when considering a very wide range of pledgeable objects as pronounced by Gaius. In this respect, two approaches should be mentioned. The first concerns the interpretation of the general pledge and the second the exclusion of specific items as an object of the pledge.

1. Following a strict interpretation of general pledge, the creditor would be allowed to seize the pledgor's personal belongings or the things that comprise the basis of the pledgor's existence. Ulpian mentioned the established presumption exempting the furniture, clothes, and things which had a special emotional value for the pledgor – for example, house slaves, unmarried apprentices, and concubines

<sup>26</sup> C. 4, 43, 1 Diocl./Maxim. AA. et CC. Aureliae Papinianae: *Liberos a parentibus neque venditionis neque donationis titulo neque pignoris iure aut quolibet alio modo, nec sub praetextu ignorantiae accipientis in alium transferri posse manifesti iuris est.* <a. 294 D. XVI k. Dec. Nicomediae CC. cons.>

<sup>27</sup> Pomp. D. 18, 1, 6 pr. (Pomp. 9 ad Sab.): *Sed Celsus filius ait hominem liberum scientem te emere non posse...* C. 8, 16, 6 Diocl./Maxim. AA. et CC. Rufo: *Qui filios vestros vel liberos homines pro pecunia quam vobis credebat pignoris titulo accepit, dissimulatione iuris se circumvenit, cum sit manifestum obligationem pignoris non consistere nisi in his, quae quis de bonis suis facit obnoxia.* <a. 293 s. k. Mai. Heracliae AA. cons.> Dernburg assumed that Quintilian was referring to an unknown Greek statute. DERNBURG, H. *Das Pfandrecht nach den Grundsätzen des heutigen römischen Rechts. Zweiter Band.* Leipzig: Hirzel, 1964, p. 429, n. 24.

<sup>28</sup> Paul. 5, 1, 1: *Qui contemplatione extremae necessitatis aut alimentorum gratia filios suos vendiderint, statui ingenuitatis eorum non praediciant: homo enim liber nullo pretio aestimatur. Idem nec pignori ab his aut fiduciae dari possunt: ex quo facto sciens creditor deportatur.* See also Paul. D. 20, 3, 5 (Paul. 5 sent.)



and their children.<sup>29</sup> These things were assumed to not have been pledged individually by the owner and the named presumption had no meaning either in the case of special pledges or non-contractual pledges.<sup>30</sup>

2. There are no direct legal sources from the pre-classical and classical eras regarding the non-pledgeability of certain objects.<sup>31</sup> However, from Quintilian's discussion on syllogistic reasoning in the *Institutio oratoria* it is possible to draw the conclusion that a rule prohibiting the pledging of the plough as the primary agricultural means of production might have already existed in ancient Rome.<sup>32</sup> In this context, the question arose whether it was forbidden to pledge a ploughshare as an element of a plough, given that there was a legal rule against pledging a plough. As noted by Quintilian, everything that was prohibited in whole was also prohibited in a part:

Quint. Inst. Orat. 7, 8, 4: *Ergo hic status ducit ex eo quod scriptum est id quod incertum est: quod quoniam ratione colligitur, ratiocinativus dicitur. In has autem fere species venit: [...] An quod in toto, idem in parte: 'aratrum accipere pignori non licet; vomerem accepit.*

Quint. Inst. Orat. 7, 8, 4: The *syllogistic basis*, then, deduces from the letter of the law that which is uncertain; and since this conclusion is arrived at by reason, the *basis* is called *ratiocinative*. It may

<sup>29</sup> Ulp.–Paul. D. 20, 1, 6–8: (6) *Obligatione generali rerum, quas quis habuit habiturusve sit, ea non continebuntur, quae verisimile est quemquam specialiter obligatum non fuisse. ut puta supellex, item vestis relinquenda est debitori, et ex mancipiis quae in eo usu habebit, ut certum sit eum pignori daturum non fuisse. proinde de ministeriis eius perquam ei necessariis vel quae ad affectionem eius pertineant (7) vel quae in usum cotidianum habentur Serviana non competit. (8) Denique concubinam filios naturales alumnos constitit generali obligatione non contineri et si qua alia sunt huiusmodi ministeria.* [(6) A general mortgage of present and future assets does not cover things which someone is unlikely to mortgage specially. Thus, the debtor must be allowed to keep household equipment, clothing, and slaves so employed that he would certainly not want to mortgage them, for example, in services essential to him, or with whom he was on affectionate terms. (7) And the Servian action does not lie for slaves in everyday service. (8) Lastly, a mistress, natural child, or foster child, and anyone in a similar position is excluded.] English translation by WATSON, A. *The Digest of Justinian, Volume 2*. Philadelphia: University of Pennsylvania Press, 1998, p. 124.

<sup>30</sup> FLEISCHMANN, M. *Das pignus in causa iudicati captum. Eine civilistische Studie*. Breslau: Koebner, 1896, p. 32.

<sup>31</sup> LIIEWSKI, W. *Pignus in causa iudicati captum. Studia et documenta historiae et iuris*. 1974, Vol. 40, p. 253.

<sup>32</sup> BERTI, E. *Law in Declamation: The status legales in Senecan controversiae*. In: AMATO, E., CITTI, F., HUELSENBECK, B. (eds.). *Law and Ethics in Greek and Roman Declamation*. Berlin, München, Boston: De Gruyter, 2015, p. 22.

be subdivided into the following *species* of question. [...] Is that which is lawful about the whole, lawful about a part? Example: “*It is forbidden to accept a plough as security. He accepted a ploughshare.*”<sup>33</sup>

Quintilian’s account does not make it clear if the restriction was merely of ethical or also legal nature. It is possible that the rhetor even considered a non-Roman legal source that might have some impact on Roman legal thought. The pledge could place a serious social burden on the pledgor if the property pledged served as a means of production that enabled the pledgor to repay their debt. The farmer seldom decides to sell his property instantly, and in most cases only for a good reason, and the possibility of pledging in the naive hope of a highly unlikely redemption is especially dangerous for him.<sup>34</sup>

### 3.2 Roman Imperial Law

Emperor Constantine forbade tax officials, creditors, decurions, as well as prefects to seize ploughmen slaves and plough-oxen, and imposed the death penalty on violators of the Constitution:

C. Th. 2, 30, 1. Const. A. ad universos provinciales: *Intervessores a rectoribus provinciarum dati ad exigenda debita ea, quae civiliter poscuntur, servos aratores aut boves aratorios pignoris causa de possessionibus abstrahunt, ex quo tributorum illatio retardatur. Si quis igitur intercessor aut creditor vel praefectus pacis vel decurio in hac re fuerit detectus, a rectoribus provinciarum capitali sententiae subiugetur.* <Dat. IV. non. Iun. Sirmio, Constantino A. IV. et Licinio IV. cons.>

C. Th. 2, 30, 1 Emperor Constantine Augustus to All Provincials: Enforcement officers appointed by governors of the provinces for the collection of those debts which are demanded in civil proceedings are dragging away from landholdings slave ploughmen and plow oxen as pledges and, as a result, the payment of tribute is being delayed. (1) Therefore, if any enforcement officer or creditor or prefect of the peace or decurion should be detected in this practice, he shall

<sup>33</sup> English translation by EDGEWORTH BUTLER, H. *Quintilian. With An English Translation.* Cambridge, Mass., Harvard University Press; London, William Heinemann, Ltd. 1922.

<sup>34</sup> DERNBURG, H. *Das Pfandrecht nach den Grundsätzen des heutigen römischen Rechts. Zweiter Band.* Leipzig: Hirzel, 1964, p. 429.

be subjected to a capital sentence by the governor of the province. Given on the fourth day before the nones of June at Sirmium in the year of the fourth consulship of Constantine Augustus and of Licinius (June 2, 315).<sup>35</sup>

The Constitution is primarily addressed to the provincial tax collectors (*intercessores*). The Visigothic interpretation of the Constitution highlights that it only covered the enforcement of tax debts (*pro fiscali debito*).<sup>36</sup> The harsh penalty of death (*poena capitalis*) imposed on the violators of the constitution was an official response to the abuses of tax collectors who notoriously disregarded imperial acts.<sup>37</sup> However, in the light of the second passage of the Constitution which mentions private creditors, the ban was not limited to public tax law relations as argued by Gothofredus.<sup>38</sup> It would be incomprehensible why a tax debtor in a privileged tax procedure would enjoy a special advantage that would not extend to private relationships.<sup>39</sup>

The Constitution of Constantine was incorporated into Justinian's Code with minor revisions.

C. 8, 16, 7 Const. A. ad univ. provinciales: *Executores a quocumque iudice dati ad exigenda debita ea, quae civiliter poscuntur, servos aratores aut boves aratorios aut instrumentum aratorium pignoris causa de possessionibus abstrahunt, ex quo tributorum illatio retardatur. (1) Si quis igitur intercessor aut creditor vel praefectus pagi vel vici vel decurio in hac re fuerit detectus, aestimando a iudice supplicio subiungetur.* <a. 315 D. III non. Iun. Sirmi Constantino A. IIII et Licinio IIII cons.>

<sup>35</sup> English translation by PHARR, C. *The Theodosian Code and Novels and the Sirmionian Constitutions*. Princeton University Press, 1952, p. 60.

<sup>36</sup> IT 2, 30, 1.

<sup>37</sup> E.g. C. Th. 1, 16, 7 Const. A. ad provinciales.: *Cessent iam nunc rapaces officialium manus, cessent inquam: nam si moniti non cessaverint, gladiis praecedentur* [The rapacious hands of the apparitors shall immediately cease, they shall cease, I say; for if after due warning they do not cease, they shall be cut off by the sword!] English translation by PHARR, C. *The Theodosian Code and Novels and the Sirmionian Constitutions*. Princeton University Press, 1952, p. 28. On the abuses of tax-collectors see WIEWIOROWSKI, J. The Abuses of Exactores and the Laesio Enormis – a Few Remarks. *Studia Ceranea*. 2012, Vol. 2, pp. 75–82.

<sup>38</sup> GOTHOFREDUS, J. *Codex Theodosianus cum perpetuis commentariis Jacobi Gothofredi*. Mantua: Pitter, 1740, p. 249.

<sup>39</sup> FECHT, W.-R. von der. *Die Forderungspfändung im römischen Recht*. Köln, Weimar, Wien: Böhlau, 1999, p. 107; DUPONT, C. *La réglementation économique dans les constitutions de Constantin*. Lille: Impr Morel & Corduant, 1963, p. 26.

C. 8, 16, 7 Emperor Constantine Augustus to all provincials: Bailiffs (*executores*), given by any judge (i.e. governor) to collect debts demanded in civil proceedings, are dragging away from possessions the slave farmers, plough oxen, and farming equipment as pledges, and in consequence, tax collection is being hindered. (1) So, if some mediator or creditor or a district or village prefect or a decurion is found to be doing this, he shall be subjected to a punishment fixed by the judge. <Given June 3, at Sirmium, in the consulship of Constantine Augustus, for the fourth time, and Licinius, for the fourth time (315).><sup>40</sup>

In Justinian's version, the word *intercessor* is substituted by the *executor*. Both words denote tax officials.<sup>41</sup> In addition to agricultural slaves and plough oxen, the prohibition covered all means of agricultural instruments (*instrumenta aratoria*), which might include seed grain, manure, straw, and fodder.<sup>42</sup> Justinian also replaced the death penalty with a penalty according to the discretion of the provincial judge.<sup>43</sup> This change corresponds to the extension of the prohibition as when the scope for transgressing the commandment is increased, it was only fair to reduce the punishment of the delinquent *executor* and creditor.

Weiss describes the ban as an important link in a long chain of imperial legislative measures seeking to protect the socially weaker strata of society.<sup>44</sup> Constantine's ban should, however, not be idealised in the light of specific social, humanitarian, or even religious inclinations, as uncritically suggested

---

<sup>40</sup> English translation by FRIER, B. *The Codex of Justinian, A New Annotated Translation, with Parallel Latin and Greek Text, Vol. 3, Books VIII–XIII*. Cambridge: University Press, 2016, p. 2087.

<sup>41</sup> On this see LITIEWSKI, W. *Pignus in causa iudicati captum. Studia et documenta historiae et iuris*. 1974, Vol. 40, p. 242.

<sup>42</sup> FLEISCHMANN, M. *Das pignus in causa iudicati captum. Eine civilistische Studie*. Breslau: Koebner, 1896, p. 31; LITIEWSKI, W. *Pignus in causa iudicati captum. Studia et documenta historiae et iuris*, 1974, Vol. 40, p. 254.

<sup>43</sup> *Rector provinciae* was substituted by *iudex* – a clear sign that the constitution was now valid in the whole Empire.

<sup>44</sup> WEISS, E. *Pfandrechtliche Untersuchungen, Beiträge zum römischen und hellenischen Pfandrecht enthaltend*. Weimar: Hermann Böhlau, p. 57 s; STÜHF, G. *Vulgarrecht im Kaiserrecht unter besonderer Berücksichtigung der Gesetzgebung Konstantins des Großen*. Weimar: Böhlau, 1966, p. 104.

by Brassloff and Biondi,<sup>45</sup> but rather in the light of a pragmatic fiscal policy.<sup>46</sup> It is evident from the very justification of the Constitution, which explicitly recognises that tax exactions, at that time normally collected in natural form,<sup>47</sup> would suffer from the delays caused by the requisitioning of agricultural means of production.<sup>48</sup>

According to the Constitution of Honorius and Theodosius, which was incorporated into the Justinian Code under the title *Quae res pignori obligari possunt vel non*, the prohibition introduced by Constantine seems to no longer be restricted to pledges based on judicial decree (*pignus ex causa iudicati captum*), but also on contractual and statutory based pledges.<sup>49</sup> It also goes much further than Constantine's enactment by not only covering slaves and oxen but also other agricultural means. This rule was subsequently valid throughout the Empire, and not only in the provinces.

C. 8, 16, 8 pr. Honor. Theodos. AA. Probo com. sacr. larg.: *Pignorum gratia aliquid quod ad culturam agri pertinet auferri non convenit.* <a. 414 D. III id. Iun. constante et Constantio cons.>

C. 8, 16, 8 Emperors Honorius and Theodosius Augusti to Probus, Count of Imperial Finances: It is improper that anything which is used for cultivating land be taken away as a pledge. <Given June 11, in the consulship of Constans and Constantius (414)><sup>50</sup>

<sup>45</sup> BRASSLOFF, S. *Sozialpolitische Motive in der römischen Rechtsentwicklung*. Wien: Perles, 1933, p. 1933; BIONDI, B. *Il diritto romano cristiano*, III. Milano: Giuffrè, 1954, p. 225. See also VOGT, J. Zur Frage des christlichen Einflusses auf die Gesetzgebung Konstantins des Grossen. In: *Festschrift für Leopold Wenger. Zweiter Band*. München: C. H. Beck, 1945, p. 142.

<sup>46</sup> FLEISCHMANN, M. *Das pignus in causa iudicati captum. Eine civilistische Studie*. Breslau: Koebner, 1896, p. 32: "Das sozialpolitische Moment hat das finanzpolitische überwunden." SCHWARZ, F. Begriffsanwendung und Interessenwertung im klassischen römischen Recht. *Archiv für die civilistische Praxis*, 1952/1953, Vol. 152, no. 3, p. 212; FECHT, W.-R. von der. *Die Forderungspfändung im römischen Recht*. Köln, Weimar, Vienna: Böhlau, 1999, p. 107. The motive that led Constantine can be also deduced from C. 8, 16, 8 pr. addressing the *comes sacrarum largitionum*, i.e. senior fiscal official.

<sup>47</sup> WIEACKER, F. *Römische Rechtsgeschichte, Zweiter Abschnitt, Die Jurisprudenz vom frühen Prinzipat bis zum Ausgang der Antike*, Herausgegeben von Joseph Georg Wolf. München: C. H. Beck, 2006, p. 182.

<sup>48</sup> For similar fiscal motives limiting contractual autonomy in Ptolemaic Egypt preserved in the papyri, see WEISS, E. *Pfandrechtliche Untersuchungen, Beiträge zum römischen und hellenischen Pfandrecht enthaltend*. Weimar: Hermann Böhlau, 1909, p. 28.

<sup>49</sup> DERNBURG, H. *Das Pfandrecht nach den Grundsätzen des heutigen römischen Rechts*. Zweiter Band. Leipzig: Hirzel, 1964, p. 429.

<sup>50</sup> English translation by FRIER, B. *The Codex of Justinian, A New Annotated Translation, with Parallel Latin and Greek Text, Vol. 3, Books VIII–XIII*. Cambridge: University Press, 2016, p. 2087.

A legal principle concerning the pledge exemption was thus finally established. In this light, Constantine's regulation may be seen as a merely tentative attempt.<sup>51</sup> Roman law established no other exemptions concerning the pledgeability of various items than those listed by Honorius and Justinian.<sup>52</sup>

The generalisation of Constantine's constitution by Honorius and Theodosius is attested to by a provision in the Syro-Roman Lawbook prohibiting the pledge of cattle.

§ 138. "Should a man borrow a sum of money from another, write him a document about the amount of money and set him a pawn regarding something which he has had and that which comes to him. If it happens that among these, he has oxen or cows, they cannot be pawned, because they are servants and the workers of the ground. The law has excluded oxen from pawning."<sup>53</sup>

The pledge "regarding something which he has had and that which comes to him" is a general pledge (*generalis obligatio*).<sup>54</sup> As mentioned above, although oxen and cows were not listed as things that were presumed to be exempted from the general pledge this does not mean that, in practice, the presumption was not extended by analogy to cattle, which represented an essential means of production. Bruns suggested that the writer of the Syro-Roman Lawbook had confused the presumption of the general pledge with Honorius' Constitution on non-pledgeability.<sup>55</sup> However, more recent literature tends to believe that it is far more plausible that the drafter was referring to a lost source, which probably suggests a restrictive interpretation of the general pledge.<sup>56</sup> It used to be believed that this very provision of the Syro-Roman

51 FLEISCHMANN, M. *Das pignus in causa judicati captum. Eine civilistische Studie*. Breslau: Koebner, 1896, p. 32.

52 *Ibid.*, p. 32.

53 English translation by VÖÖBUS, A. *The Syro-Roman Lawbook. II. a Translation with Annotations*. Stockholm: Etse, 1983. See also German Translation by SELB, W., KAUFHOLD, H. *Das syrisch-römische Rechtsbuch. Band III, K*. Vienna: Verlag der österreichischen Akademie der Wissenschaften, 2002, pp. 141, § 100; as well as corresponding commentary by SELB, W., KAUFHOLD, H. *Das syrisch-römische Rechtsbuch. Band III, K*. Vienna: Verlag der österreichischen Akademie der Wissenschaften, 2002, p. 212.

54 D. 20, 1, 6 Ulp. 73 ad ed. *Obligatio generali rerum, quas quis habuit habiturusve sit...*

55 BRUNS, K. G., SACHAU, E. *Syrisch-Römisches Rechtsbuch aus dem fünften Jahrhundert*. Leipzig: Brockhaus, 1880, pp. 281.

56 SELB, W., KAUFHOLD, H. *Das syrisch-römische Rechtsbuch. Band III, K*. Vienna: Verlag der österreichischen Akademie der Wissenschaften, 2002, p. 212.

Lawbook was influenced by the Hammurabi Code. This theory, however, has since been rejected.<sup>57</sup>

The prohibition against the pledging of free persons, especially children,<sup>58</sup> already established by classical law,<sup>59</sup> was repeated several times by Diocletian, demonstrating that the pernicious practice became dominant during the period of economic collapse and austerity of the late 3<sup>rd</sup> century AD.

C. 4, 43, 1 Diocl. Max. AA. et CC. Aureliae Papinianae: *Liberos a parentibus neque venditionis neque donationis titulo neque pignoris iure aut quolibet alio modo, nec sub praetextu ignorantiae accipientis in alium transferri posse manifesti iuris est.* <a. 294 D. XVI k. Dec. Nicomediae CC. cons.>

C. 4, 43, 1 Emperors Diocletian and Maximian Augusti and the Caesars to Aurelia Papiniana: It is plain law that children cannot be transferred to another by their parents under the tide of sale or donation, or the right of pledge, or in any other way, or under the pretext of the ignorance of the person receiving them. (294)

The fact that the pledging of free persons, and hence debt slavery, persisted in several areas well into the 6<sup>th</sup> century is shown by the renewed prohibition in Justinian's Novella in 134. To eliminate the practice of abusing the creditor, Justinian imposed the penalty of forfeiture of the claim.

Nov. 134, 7: *Quia vero et huiusmodi iniquitatem in diversis locis nostrae rei-publicae cognovimus admitti, quia creditores filios debitorum praesumunt retinere aut in pignus aut in servile ministerium aut conductionem, hoc modis omnibus prohibemus, et iubemus, ut si quis huiusmodi aliquid deliquerit, non solum debito cadat, sed tantam aliam quantitatem adiciat dandam ei, qui retentus est ab eo aut parentibus eius; et post hoc etiam corporalibus poenis ipsum subdi a loci iudice, quia personam liberam pro debito praesumpserit retinere aut locare aut pignorare.*

We have become aware that there is another impious crime being committed in various regions of our realm, such that creditors are daring to take debtors' children into custody, either as security, or to work them as slaves, or hire them out. This is something that

<sup>57</sup> See MÜLLER, D. H. *Das syrisch-römische rechtsbuch und Hammurabi*. Vienna: Alfred Hölder, 1905, p. 184.

<sup>58</sup> See MAYER-MALY, T. Das Notverkaufsrecht des Hausvaters. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung*, 1958, Vol. 75, no. 1, p. 130.

<sup>59</sup> Paul. D. 20, 3, 5; Paul. 5, 1, 1; Diocl. Max. C. 8, 16, 6. TAUBENSCHLAG (Das römische Privatrecht zur Zeit Diokletians. In: *Opera minora*, I. Warsaw: Panstwowe wydawnictwo naukowe, 1959, p. 137) claims significant deviations in provincial law.

we entirely forbid. We command that anyone who commits any such offence is not merely to forfeit the debt but is also to be condemned to pay as much again to the person held by him, or to that person's parents. He is then to be subjected by the authorities of the region to corporal punishments, for having dared to detain a free person for a debt, hire him out or take him as security.<sup>60</sup>

Justinian might have been inspired by the writings of the Milanese bishop Ambrose. The latter repeatedly attacked the exploitative encroachments of creditors, especially the widespread pledge of the corpses of a debtor, whereby the creditors tried to put pressure on the debtor's heirs to repay the debts of the deceased as soon as possible.<sup>61</sup>

## 4 Conclusion

In his studies on the Roman pledge, Kaser surprisingly concludes that the balance of interests regarding the rights and obligations of the parties in the Roman pledge is untenable. He even went a step further and emphasized that a fundamental aspect of the Roman pledge is a favourable treatment of the pledgee as the socially and economically superior party.<sup>62</sup>

In certain ways, it makes sense that the pledgee is in a favourable legal position. Given that the main goal of a pledge agreement is to provide security for the creditor, every legal system encourages the debtor to carry out their responsibilities carefully and on time. It can also be accepted that the financial, social, and economic position of the pledgee as a creditor tended to be stronger than the position of the debtor (the pledgor) since, being the more experienced party, it was the pledgee who dictated the terms

<sup>60</sup> English Translation by MILLER, D.J., SARRIS, P. *The Novels of Justinian. A Complete Annotated English Translation*. Cambridge: Cambridge University Press, 2018, p. 895. The brutal practices of the sixth-century creditors are richly documented in Justinian's 60<sup>th</sup> Novella. See BONINI, R. Comportamenti illegali del creditore e Perdita dell'azione o del diritto (nell Novelle Giustiniane). *Studia et documenta historiae et iuris*. 1974, Vol. 40, p. 111–150; PURPURA, G. La 'sorte' del debitore oltre la morte. Nihil inter mortem distat et sortem (Ambrogio, De Tobia X, 36–37). *Iuris antiqui historia*. 2009, Vol. 1, no. 1, pp. 41–60.

<sup>61</sup> AMBROSIIUS. *De Tobia*, 8 (Ed. MIGNE, Jacques Paul. *Patrologiae cursus completus, tomus XIV, S. Ambrosii tomi primi pars prior*, 1845, p. 769).

<sup>62</sup> "Unsere pfandrechtlchen Studien haben ein Wesensmerkmal der römischen Pfandordnung sichtbar gemacht, den Gläubigervorzug." KASER, M. *Studien zum römischen Pfandrecht*. Naples: Jovene Editore, 1982, p. 215.



of the contract.<sup>63</sup> Nevertheless, the legal position of a Roman creditor as a pledgee should not be overestimated.<sup>64</sup>

In my opinion, Roman real security has undergone innovative developments in the post-classical age. In this process, the contractual autonomy had been curtailed, as demonstrated by the pledge exemption. The same holds for the ban on pledging free persons and, for the grounds of piety, the ban on pledging the debtor's body. Concerning how the contractual general pledge as well as the pledge of the fruits<sup>65</sup> should be interpreted, the scales likewise leaned in the debtor's favour. The pledgeability exemptions which, in early Roman law, were more of a moral precept, were judicialized in Imperial legislation. This was, however, at least originally not intended as a specific

<sup>63</sup> WACKE, A. Max Kasers Lehren zum Ursprung und Wesen des römischen Pfandrechts. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Romanistische Abteilung*. 1998, Vol. 115, no. 1, p. 176; HONSELL, H., SELB, W., MAYER-MALLY, T. *Römisches Recht*. Berlin, Heidelberg, New York, London, Paris, Tokyo: Springer Verlag, 1987, p. 195; KASER, M. *Studien zum römischen Pfandrecht*. Naples: Jovene Editore, 1982, pp. 215–218; BÜRGE, A. Vertrag und personale Abhängigkeiten im Rom der späten Republik und der frühen Kaiserzeit. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung*. 1980, Vol. 97, no. 1, p. 145.

<sup>64</sup> The tendency to balance the rights of the pledgee and the pledgor, rather than privileging the creditor is – at least until the late classical period – a remarkable trait of the evolution of Roman pledge. See ŽEPIČ, V. Interesno ravnotežje med zastaviteljem in zastavnim upnikom v rimskem pravu. *Zbornik znanstvenih razprav (Ljubljana Law Review)*. 2022, Vol. 82.

<sup>65</sup> In classical law, only those fruits of pledged item that passed into the pledgor's ownership by separation were held to be implicitly pledged without the express consent of the pledgor (Alex. C. 8, 14, 3. Cf. Pap. D. 20, 1, 1, 2 and Paul. D. 13, 7, 18, 3). Following an old tradition, the same applied to the somewhat peculiar and privileged position of a pledged slave's children (Alex. C. 8, 24, 1). According to PS 2, 5, 2 and probably also to the Syro-Roman Lawbook, the pledge only extended to the children of pledged slaves and animal offspring if the parties had explicitly agreed to this. Unfortunately, it is unclear from the wording in Paul's Sentences whether the new perspective can be generalized to all products of the thing pledged, or exclusively to the case of the pledge of a slave and an animal. In this context, I do share the view of Kaser, who explained the discrepancy between the classical and postclassical conceptions considering the increments by saying that the classical jurists regarded the fruits as a marginal property value sharing the destiny of the main pledged thing (KASER, M. Partus ancillae. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Romanistische Abteilung*. 1958, Vol. 75, no. 1, pp. 191–192). In the economic decline of the early Dominate and general impoverishment of its society, the notion that fruits were of such significant economic value that they had to be explicitly defined as pledged, prevailed. The reversal of the classical view, as Kaser suggests, shows the same tendency of post-classical law to protect the pledgee as can be inferred from Constantine's prohibition of *lex commissoria* (Const. C. Th. 3, 2, 1 ( = Const. C. 8, 34, 3).

kindness to the debtor in terms of Christian notion of *favor debitoris*, but as a guarantee to the creditor or to the fisc that the debts and taxes would at least partially be repaid.<sup>66</sup> The Emperors realized that the excessive onerosity, over and above a certain limit, does not result in a benefit of the creditor, but rather in his disadvantage, for rather than strengthening his position it weakens it. It was therefore in the interest of creditors that the obligations imposed on the everyday life of the debtors were not immoderate.<sup>67</sup>

Maintaining the viability of the community comprising the debtors who were likely fathers, soldiers and, ultimately, taxpayers, had to take priority over individual claims. The reasons for the lenient treatment of debtors in the Imperial Constitutions were primarily based on economic and fiscal considerations and not on the social feelings toward the citizens as the state could not simply bolster contractual provisions resulting in the economic ruin of the taxpaying citizen.<sup>68</sup> In this sense the presupposed privilege of non-pledgeability of the debtors might be – somehow paradoxically – considered as a *favor fisci* or *favor creditoris* at large.

## References

- BERTI, E. Law in Declamation: The *status legales* in Senecan *controversiae*. In: AMATO, E., CITTI, F., HUELSENBECK, B. (eds.). *Law and Ethics in Greek and Roman Declamation*. Berlin, München, Boston: De Gruyter, 2015, pp. 7–34. DOI: <https://doi.org/10.1515/9783110401882.7>
- BIONDI, B. *Il diritto romano cristiano. III*. Milano: Giuffrè, 1954.
- BONINI, R. Comportamenti illegali del creditore e Perdita dell'azione o del diritto (nell'Novelle Giustiniane). *Studia et documenta historiae et iuris*. 1974, Vol. 40, p. 111–150.
- BRASSLOFF, S. *Sozialpolitische Motive in der römischen Rechtsentwicklung*. Wien: Perles, 1933.

---

<sup>66</sup> MAINE, H. S. *Lectures on the Early History of Institutions*. New York: Henry Holt and Company, 1888, p. 266.

<sup>67</sup> See also TAFARO, S. Debitori e debito: nuove prospettive. In: *Annali della facoltà di giurisprudenza di Taranto*. Bari, 2008, Vol. 1, no. 1, p. 261.

<sup>68</sup> For modern arguments on debtor protection in civil enforcement proceedings, see HERBERGER, M. *Menschenwürde in der Zwangsvollstreckung*. Tübingen: Mohr Siebeck, 2022, pp. 45–51; see especially the historical introduction p. 1–4.

- BRUNS, K. G., SACHAU, E. *Syrisch-Römisches Rechtsbuch aus dem fünften Jahrhundert*. Leipzig: Brockhaus, 1880.
- BÜRGE, A. Vertrag und personale Abhängigkeiten im Rom der späten Republik und der frühen Kaiserzeit. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung*. 1980, Vol. 97, no. 1, pp. 105–156. DOI: <https://doi.org/10.7767/zrgra.1980.97.1.105>
- DARESTE, R., HAUSSOULLIER, B., REINACH, T. *Recueil des inscriptions juridiques Grecques*. Deuxième Série. Paris: Ernest Leroux, 1898.
- DERNBURG, H. *Das Pfandrecht nach den Grundsätzen des heutigen römischen Rechts*. Zweiter Band. Leipzig: Hirzel, 1864.
- DUPONT, C. *La réglementation économique dans les constitutions de Constantin*. Lille: Impr Morel & Corduant, 1963.
- EDGEWORTH BUTLER, H. *Quintilian. With An English Translation*. Cambridge, Mass., Harvard University Press; London, William Heinemann, Ltd. 1922.
- FECHT, W. R. von der. *Die Forderungspfändung im römischen Recht*. Köln, Weimar, Wien: Böhlau, 1999.
- FLEISCHMANN, M. *Das pignus in causa iudicati captum. Eine civilistische Studie*. Breslau: Koebner, 1896.
- FRIER, B. *The Codex of Justinian, A New Annotated Translation, with Parallel Latin and Greek Text, Vol. 3, Books VIII–XIII*. Cambridge: University Press, 2016.
- GOTHOFREDUS, J. *Codex Theodosianus cum perpetuis commentariis Jacobi Gothofredi*, Mantua: Pitter, 1740.
- HARPER, R. F. *The Code of Hammurabi, King of Babylon*. Chicago: The University Press, 1904.
- HERBERGER, M. *Menschenwürde in der Zwangsvollstreckung*. Tübingen: Mohr Siebeck, 2022. DOI: <https://doi.org/10.1628/978-3-16-161208-4>
- HITZIG, H. F. *Das griechische Pfandrecht. Ein Beitrag zur Geschichte des griechischen Rechts*. München: Ackermann, 1895.
- HONSELL, H., SELB, W., MAYER-MALLY, T. *Römisches Recht*. Berlin, Heidelberg, New York, London, Paris, Tokyo: Springer Verlag, 1987. DOI: <https://doi.org/10.1007/978-3-642-61576-4>

- KASER, M. Partus ancillae. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Romanistische Abteilung*. 1958, Vol. 75, no. 1, pp. 156–200. DOI: <https://doi.org/10.7767/zrgra.1958.75.1.156>
- KASER, M. *Studien zum römischem Pfandrecht*. Naples: Jovene Editore, 1982.
- LIDDELL, H. G., SCOTT, R. *A Greek-English Lexicon*. Oxford: Clarendon Press, 1996.
- LITEWSKI, W. Pignus in causa iudicati captum. *Studia et documenta historiae et iuris*. 1974, Vol. 40, pp. 205–302.
- MAINE, H. S. *Lectures on the Early History of Institutions*. New York: Henry Holt and Company, 1888, pp. 250–278.
- MAYER-MALY, T. Das Notverkaufsrecht des Hausvaters. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung*. 1958, Vol. 75, no. 1, pp. 116–155. DOI: <https://doi.org/10.7767/zrgra.1958.75.1.116>
- MILLER, D. J., SARRIS, P. *The Novels of Justinian. A Complete Annotated English Translation*. Cambridge: Cambridge University Press, 2018.
- MILLET, P. *Lending and Borrowing in Ancient Athens*. Cambridge: Cambridge University Press, 1991. DOI: <https://doi.org/10.1017/CBO9780511518577>
- MITTEIS, L. *Reichsrecht und Volksrecht in den östlichen Provinzen des römischen Kaiserreichs*. Leipzig: Teubner, 1891.
- OLDFATHER, Ch. H. *Diodorus of Sicily in Twelve Volumes I*. Harvard University Press, 1933.
- PHARR, C. *The Theodosian Code and Novels and the Sirmondian Constitutions*. Princeton University Press, 1952.
- PURPURA, G. La ‘sorte’ del debitore oltre la morte. *Nilil inter mortem distat et sortem* (Ambrogio, De Tobia X, 36–37). *Iuris antiqui historia*. 2009, Vol. 1, no. 1, p. 41–60.
- RASOR, P. Biblical Roots of Modern Consumer Credit Law. *Journal of Law and Religion*. 1993–1994, Vol. 10, no. 1, pp. 157–192. DOI: <https://doi.org/10.2307/1051172>
- SCHWARZ, F. Begriffsanwendung und Interessenwertung im klassischen römischen Recht. *Archiv für die civilistische Praxis*. 1952/1953, Vol. 152, no. 3, pp. 193–215.
- SELB, W., KAUFHOLD, H. *Das syrisch-römische Rechtsbuch. Band III, K*. Vienna: Verlag der österreichischen Akademie der Wissenschaften, 2002.

- STÜHFF, G. *Vulgarrecht im Kaiserrecht unter besonderer Berücksichtigung der Gesetzgebung Konstantins des Großen*. Weimar: Böhlau, 1966.
- TAFARO, S. Debitori e debito: nuove prospettive. In: *Annali della facoltà di giurisprudenza di Taranto*. Bari, 2008, Vol. 1, no. 1, pp. 249–270.
- TAUBENSCHLAG, R. Das römische Privatrecht zur Zeit Diokletians. In: *Opera minoru*, I. Warsaw: Panstwowe wydawnictwo naukowe, 1959, pp. 3–180.
- VOGEL, F. *Diodori Bibliotheca Historica*. Stuttgart: Teubner, 1985.
- VOGT, J. Zur Frage des christlichen Einflusses auf die Gesetzgebung Konstantins des Grossen. In: *Festschrift für Leopold Wenger. Zweiter Band*. München: C. H. Beck, 1945, pp. 118–148.
- VÖÖBUS, A. *The Syro-Roman Lawbook. II. a Translation with Annotations*. Stockholm: Etse, 1983.
- WACKE, A. Max Kasers Lehren zum Ursprung und Wesen des römischen Pfandrechts. *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Romanistische Abteilung*. 1998, Vol. 115, no. 1, pp. 168–202. DOI: <https://doi.org/10.7767/zrgra.1998.115.1.168>
- WATSON, A. *The Digest of Justinian, Volume 2*. Philadelphia: University of Pennsylvania Press, 1998.
- WEISS, E. *Pfandrechtliche Untersuchungen, Beiträge zum römischen und hellenischen Pfandrecht enthaltend*. Weimar: Hermann Böhlau, 1909.
- WESTBROOK, R. *A History of Ancient Near Eastern Law. Volume One*. Leiden, Boston: Brill, 2003. DOI: <https://doi.org/10.1163/9789047402091>
- WESTBROOK, R. *Security for Debt in Ancient Near Eastern Law*. Leiden, Boston, Köln: Brill, 2001. DOI: <https://doi.org/10.1163/9789004497214>
- WIEACKER, F. *Römische Rechtsgeschichte, Zweiter Abschnitt, Die Jurisprudenz vom frühen Prinzipat bis zum Ausgang der Antike*, Herausgegeben von Joseph Georg Wolf. München: C. H. Beck, 2006.
- WIEWIORSKI, J. The Abuses of Exactores and the Laesio Enormis – a Few Remarks. *Studia Ceranea*. 2012, Vol. 2, pp. 75–82. DOI: <https://doi.org/10.18778/2084-140X.02.07>
- WILLETS, R. F. *Aristocratic Society in Ancient Crete*. London: Routledge, 1995.
- ŽEPIČ, V. Interesno ravnotežje med zastaviteljem in zastavnim upnikom v rimskem pravu. *Zbornik znanstvenih razprav (Ljubljana Law Review)*. 2022, Vol. 82.

## **Publishing Board (Convocation) of the Masaryk University**

Prof. PhDr. Jiří Hanuš, Ph.D. (chairman);  
Assoc. Prof. Ing. Pavel Bobál, CSc.; Prof. JUDr. Marek Fryšták, Ph.D.;  
Mgr. Michaela Hanousková; Assoc. Prof. RNDr. Petr Holub, Ph.D.;  
Prof. MUDr. Lydie Izakovičová Hollá, Ph.D.;  
Prof. PhDr. Tomáš Janík, PhD., M.Ed.; Prof. PhDr. Tomáš Kubíček, Ph.D.;  
PhDr. Alena Mizerová; Assoc. Prof. Mgr. Markéta Munzarová, Dr. rer. nat.;  
Assoc. Prof. RNDr. Lubomír Popelínský, Ph.D.; Ing. Zuzana Sajdlová, Ph.D.;  
Mgr. Kateřina Sedláčková, Ph.D.; Prof. RNDr. Ondřej Slabý, Ph.D.;  
Prof. PhDr. Lubomír Spurný, Ph.D.; Assoc. Prof. Ing. Rostislav Staněk, Ph.D.;  
Prof. PhDr. Jiří Trávníček, M.A.; Assoc. Prof. PhDr. Martin Vaculík, Ph.D.

## **Editorial Board of the Faculty of Law**

Prof. JUDr. Marek Fryšták, Ph.D. (chairman);  
Prof. JUDr. Josef Bejček, CSc.; Prof. JUDr. Jan Hurdík, DrSc.;  
Prof. JUDr. Věra Kalvodová, Dr.; Prof. JUDr. Vladimír Kratochvíl, CSc.;  
Assoc. Prof. JUDr. Petr Mrkývka, Ph.D.; Prof. JUDr. Radim Polčák, Ph.D.;  
Assoc. Prof. JUDr. Ivana Průchová, CSc.; Assoc. Prof. JUDr. Ing. Josef Šilhán, Ph.D.

## **EDGE OF TOMORROW: THE NEXT GENERATION OF LEGAL HISTORIANS AND ROMANISTS**

**Collection of Contributions from the 2022 International  
Legal History Meeting of PhD Students**

**doc. JUDr. Bc. Jaromír Tauchen, Ph.D., LL.M. Eur.Int.,  
JUDr. David Kolumber, Ph.D. (eds.)**

Published by Masaryk University  
Žerotínovo nám. 617/9, 601 77 Brno  
in 2022

Publications of the Masaryk University  
Edition Scientia, No. 728

1st, electronic edition, 2022

ISBN 978-80-280-0156-8 (online ; pdf)  
DOI <https://doi.org/10.5817/CZ.MUNI.P280-0156-2022>  
[www.law.muni.cz](http://www.law.muni.cz)

This publication is an output from a conference of PhD students of legal history and Roman law. The International Legal History Meeting of PhD Students followed up from similar meetings of Czech and Slovak PhD students that commenced back in 2013 on the instigation of Karel Schelle and Jaromír Tauchen, lecturers at the Masaryk University Faculty of Law in Brno. The progressive approach so typical for the Faculty of Law in Brno resulted in the decision to organise a similar international supra-regional meeting of PhD students in which 30 PhD students from ten countries eventually participated. The conference participants thus demonstrated not only an interest in the material addressed but also an active approach, openness, friendliness and curiosity. One objective of the conference was to symbolise a certain milestone in cooperation among the youngest generation of legal historians and Romanists, who are prepared not only to present their topics and their professional interest, but also to demonstrate their range of knowledge through listening to, and actively discussing, all the presented topics, which touched on almost every conceivable field.

Although the presented collection does not include all the papers presented in Brno in September 2022, we believe that it will provide its readers with an idea of the areas of interest for the coming generation of legal historians and specialists in Roman law.



**MASARYK**  
**UNIVERSITY**  
**PRESS**

**MUNI**  
**LAW**

ISBN 978-80-280-0156-8

