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STANLEY N. KATZ
EDITOR IN CHIEF

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Prussian Allgemeines Landrecht–Torture

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COMMON ABBREVIATIONS USED IN THIS WORK

ABGB	Allgemeines Bürgerliches Gesetzbuch Österreich, Austrian General Civil Code
A.D.	*anno Domini,* in the year of the Lord
ADHGB	Allgemeines Deutsches Handelsgesetzbuch, General German Commercial Code
A.H.	*anno Hegirae,* in the year of the Hajj
ALR	Allgemeines Landrecht für die Preussischen Staaten, Prussian Civil Code or General Territorial Law for the Prussian States
A.M.	*Artium magister,* Master of Arts
b.	born; ibn (in Arab names)
B.C.	before Christ
B.C.E.	before the common era (= BC)
BGB	Bürgerliches Gesetzbuch, German Civil Code
c.	*circa,* about, approximately
C	Codex (of Justinian)
C.E.	common era (= AD)
cf	*confer,* compare
CIC	Codex Iuris Canonici, Code of Canon Law
CMBC	Codex Maximilianeus Bavaricus Civilis, Civil Code of Bavaria
d.	died
D	Digest (of Justinian)
diss.	dissertation
EC	European Community
ed.	editor (pl., eds), edition
EEC	European Economic Community
EU	European Union
f.	and following (pl., ff.)
fl.	*floruit,* flourished
GG	Grundgesetz, Basic Law for the Federal Republic of Germany
HRE	Holy Roman Empire
I	*Institutes* (of Justinian)
IPL	International Private Law
l	line (pl., ll.)
LL.D.	*Legum doctor,* Doctor of Laws
n.	note
NBW	Nieuw Burgerlijk Wetboek, Dutch New Civil Code
n.d.	no date
no.	number
n.p.	no place
n.s.	new series
p.	page (pl., pp.)
pt.	part
rev.	revised
ser.	series
supp.	supplement
UCC	Uniform Commercial Code
USSR	Union of Soviet Socialist Republics
vol.	volume (pl., vols.)
ZGB	Zivilgesetzbuch, Swiss Civil Code

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P–Q

PRUSSIAN ALLGEMEINES LANDRECHT. The Allgemeine Landrecht für die Preussischen Staaten (General Territorial Law for the Prussian States), commonly abbreviated to ALR, came into effect on June 1, 1794. The ALR represented the most important legislative achievement of Prussian enlightened absolutism and summed up this epoch. It was the first legal code in Europe and belongs, like the French Code Civil and the Austrian Allgemeines Bürgerliches Gesetzbuch (ABGB), to the codifications of natural law, but it differs from those in significant points.

History and Development. Almost 100 years of preparations precede the ALR. The initial motive was the wish of King Frederick William I to promote the political unity of his territories by uniform civil law legislation. In 1714 he ordered Christian Thomasius at the law faculty of Halle University to work out a couple of constitutions with "gesunder Vernunft" (sound reason) as their basis. This project had no success. Similarly unsuccessful was the royal cabinet order by King Frederick II (Frederick the Great) for his chancellor Samuel von Cocceji to develop a uniform code of law, German in character and general in application, "based purely on reason and on the constitutions of the territories" (1746). In 1749 and 1751 two drafts for Frederick's code came into being, concerning the law of persons and the law of property and succession, but they never came into force. As a result of the Seven Years' War and the death of Cocceji in 1755, the project could no longer be continued.

Work on codification started again in 1780. As a consequence of the well-known Müller-Arnold case, Chancellor von Fürst had been replaced by the Silesian minister of justice, Heinrich Casimir von Carmer. Together with Carl Gottlieb Svarez and Ernst Ferdinand Klein he tackled the improvement of the administration of justice. A royal cabinet order of April 14, 1780, commissioned a reform of the constitution of the courts, the procedural law, and the substantive law. By 1782, the Corpus Juris Fridericianum, which regulated procedural law, was enacted, and in 1783 the Allgemeine Hypotheken-Ordnung (Prussian Mortgage Act) was introduced. Between 1783 and 1788 the outline of an extensive codification of the complete substantive law was published in six volumes and submitted to public reaction. The final product was voluminous and provoked Frederick II's comment: "But it is very thick, and laws must be short and not wordy."

Many proposals for alterations and improvements were processed between 1789 and 1791. In the end, the Allgemeine Gesetzbuch für die Preussischen Staaten (AGB) (General Code for the Prussian States) came into force on June 1, 1792. But after the death of Frederick II in 1786, the influence of the conservative circles increased. They were afraid that the new code could diminish feudal prerogatives. Under the leadership of the Silesian minister of justice Adolph Albrecht Heinrich Leopold Freiherr von Danckelmann they obtained the suspension of the code for an unlimited period of time. Nevertheless, Carmer and Svarez kept a firm hold on their work, which they took care to promote in the tract *Unterricht über die Gesetze für die Einwohner der preussischen Staaten* (Instructions on the laws for the inhabitants of the Prussian states), published in 1793.

Following the Second Partition of Poland in 1793, Prussia acquired greater territories in the so-called Süd- and Neu-Ostpreussen. There the AGB was first established for a trial period. After a reworking that took into consideration the criticism of the conservative circles, the ALR came into effect on June 1, 1794, in all Prussian territories.

Contents. The ALR is characterized by rules down to the smallest details. It contains 19,194 paragraphs, divided into an introduction and two parts. The introduction contains 108 paragraphs and includes general rules about the laws and their application and interpretation, as well as general legal maxims.

The first main part is applied to the law of property in terms of a law of patrimony (acquisition of ownership and possession, including the law of contractual obligations, acquisition of ownership *mortis causa* [succession], retention and loss of ownership, joint ownership, real and personal rights over things).

The second part is focused on the diverse social groups and governs family law, the law of matrimonial property, the relationship between servants and their masters, the law of the estates, constitutional law, and administrative law. Thus, the ALR starts with the individual and comes via matrimony and family to the estates and the state. The provisions regarding the legal status of Prussian citizens also include commercial law, law dealing with bills of exchange and promissory notes, maritime law, and insurance law.

The ALR is to be identified as a codification of natural law, and not only by its system, which concentrates on the

central terms of "property" and "person." Its character, strongly based on reason, is also expressed by the model for the codification, which was intended to include a complete arrangement of the entire law, guided by general concepts. The central term is "Pflicht" (duty), which had been thoroughly developed and analyzed by Christian Wolff (1679–1754). Following the will of the authors of the ALR, it was also seen as "ein Grundgesetz der Freiheit" (a basic law of freedom) (Hattenhauer). The aim of the ALR, to be free of contradictions, rational, and complete, had a considerable impact on the judges: the jurisdiction should be strictly confined to the law, the aim of which was to replace customary law as well as to supersede the making of the law by judges and jurisprudence (§§ 3 f., 6, 46 ff. I Introduction ALR).

The regulations of the private law by the ALR often follow the tradition of *ius commune*, hence the acknowledgment of the doctrine of *laesio enormis* (§§ 58 ff., 250 ff. I 11 ALR) or of *clausula rebus sic stantibus*. *Laesio enormis* is the ability of a seller of immovable property to rescind the sale if the price paid for the property is less than (usually half of) the real value of the property; *clausula rebus sic stantibus* states that a contract is binding only as long as matters remain the same as they were at the time of conclusion of the contract, (§§ 377 ff. I 5 ALR). The contract doctrine, however, is based on the natural law categories of "freye Handlung" (free action) (§§ 1 ff. I 3 ALR) and the declaration of intention (§ 1 I 4 ALR).

The ALR differs from the two other natural law codifications, the French Code Civil and the Austrian ABGB, by size and by its inclusion of fields of nonprivate law such as local government law, laws regulating the rights and duties of civil servants, constitutional law, feudal law, and criminal law. In addition, the ALR differentiates between the individual estates (peasantry, citizens, nobility), while the Code Civil supersedes the corporative state and accomplishes equality before the law. Furthermore, the casuistic language does not correspond to the style of the two other natural law codes.

Effects and Reactions. At first, the ALR attracted a positive response from contemporaries, especially for its comprehensible language. The ALR inspired Anton Friedrich Justus Thibaut in his idea for uniform national legislation. Alexis de Tocqueville wrote of the code that no other of Frederick's works throws as much light on the mind of the man or on the times in which he lived. But it would turn out disadvantageously that the ALR kept such a skeptical distance from jurisprudence and the judiciary. Savigny's severe criticism of the ALR in his tract "The Vocation of Our Age for Legislation and Jurisprudence" (1814), and two years later in a letter to Arnim ("in Form und Inhalt eine . . . Sudeley" [in form and content a mess]), contributed significantly to the impression that concentrating on the ALR was not worthwhile for jurisprudence. But Savigny also gave lectures on the ALR in Berlin from 1819 on. Beginning in the 1830s, a more intense discussion about the ALR started. An academic consolidation followed first with the textbooks of Christian Friedrich Koch, Franz Förster (revised by Max Ernst Eccius), and, especially, Heinrich Dernburg.

Main parts of the ALR had already been suspended by the reforms of Baron Karl Freiherr vom Stein and Karl August von Hardenberg. The attempts at a revision of the law in the nineteenth century did not succeed. Parts of the criminal law were valid until the Prussian criminal code came into effect in 1851, while parts of the commercial law were replaced by the Allgemeine Deutsche Handelsgesetzbuch (Code of Commercial Law) in 1861. On January 1, 1900, the ALR was replaced by the BGB.

In general, the ALR has a character of a compromise. It contains guarantees of fundamental rights that appear modern, such as "natural" liberties (§§ 83 ff. II Introduction, 505 I 9 ALR), equality before the law (§ 22 I Introduction ALR), the ban on slavery (§ 196 II 5 ALR), and freedom of religion and conscience (§§ 2, 37 II 11 ALR). These guarantees are based on Enlightenment ideas of freedom and equality as well as on the natural law concepts of a social contract. On the other hand, the ALR maintained the existing system of absolutist society and economy. It confirmed the corporative state and compulsory membership in a guild as well as the privileges of the nobility, civil servants, and soldiers.

Even if Franz Wieacher, in his *History of Private Law* (1967), called the ALR "in style and contents an expression of legal culture on a high level," the reserved attitude of the Historical School towards the ALR continued to have an effect until the twentieth century. Only gradually did the research of legal historians begin paying attention to the development of the ALR and its embedding in the tradition of natural law. Recently, research has focused on the effect of the ALR in the neighboring countries as well as on its reception in the Prussian judicial custom.

[*See also* Absolutism; Administration, Public Law of; Constitution; Enlightenment; Family, *subentry on* Medieval and Post-Medieval Roman Law; Insurance, *subentry on* Medieval and Post-Medieval Roman Law; Maritime Law, *subentry on* Medieval and Post-Medieval Roman Law; Natural Law, *subentry on* Medieval and Post-Medieval Roman Law; Thomasius, Christian; *and* Wolff, Christian von.]

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RUDOLF MEYER-PRITZL

PUBLIC AUTHORITY (*SULṬĀN*) IN ISLAMIC LAW.

The word "sultan" (Arabic, *sulṭān*) is often associated with images of exotic oriental rulers, particularly rulers of the Ottoman Empire. Likewise, historians of Islamic political history sometimes distinguish the first 250 years of Islamic history—during which caliphs effectively exercised centralized control over a more or less united Islamic empire—from subsequent centuries, which witnessed a rise in the power of sultans who owed their power to the military prowess of their soldiers at the expense of the power of the caliphs. As a result, the term "sultan" is also associated with the decline in legality within Islamic polities.

In Islamic law *"sulṭān"* is a term of art that connotes lawful power. The legal usage derives from the term's ordinary meaning as "evidence" or "proof," from which it was transferred to rulers because it was to rulers that individuals presented their evidence and obtained their rights. *Sulṭān* also refers to the inherent power of any individual, including the sovereign. Accordingly, a person's power over his or her property has been described by early Muslim jurists as *sulṭān* over that property. *Sulṭān* is also used to refer to power received from another via delegation. As will be further described below, this is also probably the basis for the notion in the writings of Muslim jurists that the actions of public officials are subject to the requirement that they serve the interests of the public.

Closely related to *sulṭān* are the terms *wilāya* (jurisdiction); *walī* (protector); and *wālī* or [*ḥākim*] (ruler, judge). Islamic public law therefore may use the terms "sultan," "hakim," "imam," and *khalīfah* (caliph) generically to describe the ruler; these terms may also be used to refer to any holder of a public office who is exercising the delegated power of the ruler. For example, Malik ibn Anas refers to the judge presiding over the effect of an oath on the freedom of a slave or the divorce of a wife as *al-sulṭān*. Similarly, Khalil ibn Ishaq al-Jundi, the fourteenth-century author of the leading treatise on Maliki substantive law, uses the term *al-sulṭān* to describe the judge who is obliged to determine, using his discretion, an appropriate length of time for the exercise of an option when the optionee is precluded from exercising it because of a mental defect. Elsewhere, the term *al-sulṭān* is used to describe a ruler who enters into a treaty with non-Muslims; "imam" is used synonymously with "caliph"; and *khalīfah* designates the authority who appoints a judge.

Public Offices in Islamic Law. Muslim jurists, as early as the second Islamic century, were formulating rules governing the organization and powers of state officials within the broader enterprise of developing general principles of Islamic law. Nevertheless, public law did not become an independent genre of legal scholarship until the fifth Islamic century, when specialized works in public law, known by the term *al-aḥkām al-sultāniyya*, were first authored.

According to this body of law, public authority originates contractually, either through the selection of a ruler by duly qualified electors or by the assumption of rule by the duly designated successor (*walī 'ahd*) of the previous ruler upon the latter's death or resignation. In each case, the electors or the incumbent "offer" the office of ruler to the candidate, with the contract not taking effect until the candidate accepts it. In addition, in both cases, the parties making the offer do so on behalf of the general Muslim community. As a result, neither the electors nor the incumbent ruler, respectively, can dismiss the ruler or the designated successor except for legal cause, because this would interfere with the general rights of the Muslim community.

By virtue of this public contract, the ruler, theoretically assumes all public powers recognized by Islamic law. As a practical matter, the ruler is entitled to delegate some or all of his powers to his representatives so as to allow him to discharge effectively the responsibilities entrusted to him as a result of his appointment. There were ten of these general obligations: (1) protection of orthodox Islamic teachings; (2) resolution of private disputes and enforcement of judicial rulings; (3) provision of physical security to members of the community; (4) enforcement of divine ordinances; (5) fortification of the frontiers of the empire; (6) the carrying out of jihad; (7) collection of lawful taxes; (8) organization of the public finances; (9) appointment of honest and capable administrators and delegates to assist him; and (10) personal supervision of these matters, for delegation does not relieve the ruler of responsibility.

Muslim jurists writing in the area of public law customarily recognized several jurisdictions emanating from the original delegation of power from the Muslim community to the ruler. The judge's authority is an expression of the power of the community, and the caliph is simply their messenger. Therefore, the actions of the caliph are actions of the Muslim community. From the perspective of the legal system, the most important of these powers were the power of ordinary courts, *qaḍā'*; the power over administrative claims, *naẓar al-maẓālim*; the power over criminal prosecutions, *al-jarā'im*; and ordinary police power, *ḥisba*. It is useful to conceptualize the differences among these jurisdictions according to the procedural rules that governed them.

Qaḍā'. In the ordinary courts, judges were appointed by the ruler, were generally deemed to be his agents, and, accordingly, served at his pleasure. The terms of their jurisdiction, as was the case for all delegates of the ruler, were set forth in the terms of their appointment. As a general matter, judges could not initiate investigations but could only hear claims brought by individuals. It was the responsibility of the litigants to supply evidence to the court. Generally the judge was not permitted to rule on the basis of evidence not presented to him during the course of the litigation—that is, the judge, with some exceptions recognized by the Hanafi and Shafi'i schools of law, generally could not rule based on his own knowledge of the facts. As a general matter, the judge would admit evidence and evaluate its sufficiency in accordance with the prevailing doctrines of one of the recognized schools of Islamic law. As a result, the discretion of ordinary courts was highly circumscribed.

Ordinary courts were responsible for resolving all manner of complaints involving individuals, such as property, contractual disputes, family law, or torts. Criminal cases could also be brought before the ordinary courts, but as a general matter, ordinary courts were constituted primarily for the resolution of civil litigation involving private litigants. Ordinary courts also had supervisory and investigatory powers over matters related to the administration of charitable endowments, the administration of estates, and preservation of the public's rights in highways and marketplaces. Ordinary courts could grant either monetary relief or orders binding a litigant's person or property.

Naẓar al-maẓālim. According to authors of public-law treatises, the *maẓālim* jurisdiction included judicial, prosecutorial, and executive powers: it provided a forum for complaints against or involving government agents (including complaints regarding abuse of power, unlawful taxes, and irregularities in public finances); complaints by government bureaucrats regarding their compensation; and allegations of unlawful takings of private property. It had jurisdiction concurrent with ordinary courts over the supervision of endowments and private litigation, and possessed ordinary police powers that could be invoked when the *muḥtasib* (see below) was unable to act. It also had authority to enforce decisions of the ordinary courts in the event of a party's noncompliance.

As a general matter, rigorous compliance with the rules of evidence and the rules of substantive law that characterized ordinary courts was relaxed in matters presented to the *maẓālim* jurisdiction. For example, the decision maker had greater latitude in the admission of circumstantial evidence, could base his decisions on equitable standards that were not strictly obligatory under the law (e.g., the enforcement of a unilateral promise), and could compel the parties to settle their claims. It also had greater prosecutorial powers, because the officeholder could initiate investigations on his own without waiting for an individual complaint.

Jarā'im. Criminal prosecutions were generally handled by the ruler or his agents directly and not by the ordinary courts, largely because of the procedural limitations in the ordinary courts. Criminal tribunals, however, were permitted to admit circumstantial evidence implicating the defendant. In addition, these tribunals had the power to detain suspects immediately upon their indictment. The decision-maker in criminal cases was also responsible for investigating the claims made by the government rather than taking its charges at face value. The decision maker could admit circumstantial evidence, require suspects to answer questions under oath, administer corporal punishment to suspects, and impose terms of imprisonment, including life sentences.

Ḥisba. The holder of this office was called the *muḥtasib* and is sometimes referred to as the marketplace inspector. This office was exclusively prosecutorial and investigative, and was limited to correcting violations of public law, including trespass on, or conversion of, public property and open violations of religious standards. The *muḥtasib* was also responsible for preventing fraud and other deceptive commercial practices. In either case, the *muḥtasib* could impose limited sanctions against a violator of the law.

Although the *muḥtasib* had authority to act in matters requiring empirical discretion, such as deciding whether treatment of an animal is "cruel," he did not have authority to interfere in any conduct that required legal interpretation, for example, whether a certain sale was lawful. The *muḥtasib* could act without a complaint so long as the dispute was not limited to private rights. Otherwise, he could interfere only after a complaint was made, in which case he was to refer the complainant to the ordinary courts.

Public-law treatises, to the extent that they suggest sharp and fixed jurisdictional differences between the various offices described above, simplify both the legal

doctrine governing jurisdictional law and the historical practice of Muslim states. Both of these sources vested in the ruler broad discretion in defining the legal, administrative, and investigatory powers of public offices.

Distinguishing Public Acts from Private Acts. The most important difference between private acts and public ones is that the latter must be directed for the benefit of persons falling within the jurisdiction of the actor, whereas private acts may be directed to any lawful end of the individual actor. The implicit agency relationship between public officials and the Muslim community is evidenced in numerous rules governing the conduct of public officials, from the caliph's relationship to his designated successor to the continued jurisdiction of judges following the death of the ruler who appointed them. For example, although the ruler could dismiss his personal delegates at will, he could dismiss his successor only for cause. Jurists explain that delegates are merely the private assistants of the ruler who help him discharge his personal obligations under the contract of governance, whereas a successor is appointed by the incumbent to further the interests of the Muslim community in maintaining stable governance. Accordingly, the designated successor can be removed only for cause, just as the electors may remove an incumbent ruler only for cause. Likewise, judges' appointments, although they could be discontinued at the will of the ruler, survived his death because they acted on behalf of the general Muslim community. A judge's appointment derived from the power of the community; the ruler acted as the community's agent in appointing the judge.

Substantive Areas of Public Law. Muslim jurists wrote on various areas of substantive law, including land-tax law (*kharāj*), the law of war involving non-Muslim powers (jihad) or against Muslim rebels (*baghy*), international relations, including peace treaties with non-Muslim powers (*muwāda'a*), and treaties of protection agreements with various groups of non-Muslims (*'aqd al-dhimma*). Under the rubric of international relations, Muslim jurists also regulated trade between Islamic and non-Islamic states. The law of endowments (*awqāf*) also became an important part of Islamic public law, because of the importance of endowments in the finance of public goods and the public's status as a contingent beneficiary of even private foundations. Another important area of public law arose out of the obligation of the government to manage public property, such as a town's market and streets. Closely related to this area of the law were discussions of whether government agents were personally liable for their torts, or whether the treasury was liable, the rule being that to the extent the government agent was acting in good faith, liability would be borne by the treasury, and not by the agent himself. Only if the agent lacked good-faith belief in the legality of his conduct would he be personally liable.

Inviolability of person and property (*'iṣma*) was also a function of public law, with Muslims resident in the territory of an Islamic state generally enjoying the greatest level of protection. Protected communities enjoyed protection of their lives and properties largely to the same extent as Muslim residents, whereas non-Muslims from hostile powers temporarily resident in an Islamic state pursuant to a grant of safe passage (*amān*) were generally only assured of protection from residents of that particular state. Accordingly, although Muslims were obligated to protect *dhimmī*s from enemy attack, they were under no such obligation to defend non-Muslim temporary residents from attack. If there was a treaty between a Muslim state and a non-Muslim state, however, the terms of that treaty would govern the rights of the citizens of the non-Muslim power if they ventured into the territory of the Islamic state, and there would be no need for an individually negotiated grant of safe passage. Finally, non-Muslims from hostile powers who did not receive a grant of safe passage enjoyed none of the protections of Islamic law.

[*See also* Administrative Decrees of the Political Authorities (Qānūn); Criminal Law, *subentries on* Crime and Punishment in Islamic Law; Judiciary, *subentries on* Islamic Law; Procedure, *subentry on* Proof and Procedure in Islamic Law; *and* Public Law, *subentry on* Public and Private Law in Islamic Law.]

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MOHAMMAD FADEL

PUBLIC INTEREST LITIGATION IN INDIA. Access to justice has been an intrinsic problem in India, a state of more than a billion people. This has necessitated procedural innovations in a democratic and plurality-conscious legal system in which the judiciary is expected to play a pivotal role in preventing and remedying injustice and the abuse of power. Some sections of India's judiciary, alert to such problems, have since about 1980 liberated themselves and their legal system from the shackles of Western positivist thought in order to improve access to justice. Departing radically from traditional Anglo-Norman principles of *locus standi* (the right to appear before a court), the Indian Supreme Court (under Article 32 of the constitution) and High Courts (under Article 226) have used their broad powers of judicial review to bring justice within the reach of socioeconomically depressed, rights-deprived, and otherwise disadvantaged groups. The development of a new jurisprudence of public interest litigation (PIL) or social action litigation (SAL) has, in turn, encouraged the democratization of law and justice.

PIL is one of several activist strategies for securing greater socioeconomic justice for poor, oppressed, and underprivileged Indians. A type of affirmative action, it is one of the most notable recent developments in Indian law. As a strategic arm of the Legal Aid Movement, it is a collaboration between the court and a bona fide petitioner, often acting pro bono, to secure legal rights and remedies for vulnerable individuals or communities who would not otherwise have access to justice.

Early Development of PIL. While PIL springs from the *actio popularis* (a legal action to obtain a remedy by a person or a group in the name of the public) of Roman jurisprudence that allowed access to every citizen in matters of common wrong, as well as from ancient Indian principles of macrocosmic and microcosmic interconnection inspired by Hindu law, it was first notably refashioned in the United States during the early 1960s. Since the late 1970s, Indian PIL has stressed the use of mediation (*Mumbai Kamgar Sabha*, 1976). It focused initially on the exploitation of vulnerable groups like prisoners under trial (*Hussainara Khatoon*, 1979; *Sunil Batra*, 1980), bonded and migrant laborers (*Bandhua Mukti Morcha*, 1984), slum dwellers and homeless people (*Olga Tellis*, 1986), and on countering state repression, governmental lawlessness, administrative deviance, and executive defiance. In the process, Indian PIL developed peculiar characteristics during the 1980s and 1990s and has now acquired legitimacy as an effective—but still often rhetorical—weapon in the legal armory for helping to translate fundamental rights into reality. Despite various obstacles, PIL has entered almost all spheres of India's legal system and has revolutionized modern Indian public law.

PIL has been described as a distinctive by-product of the catharsis of the 1975–1976 national emergency, when representative proceedings were allowed by the Supreme Court of India. New meaning was added to the concept of *locus standi* when Indian courts, ignoring the age-old rules of "person aggrieved" and "person with sufficient interest" overcame their apprehensions of the "meddlesome interloper" and gradually recognized the rights of trade unions, social workers, and public-interest groups to approach courts on behalf of an individual or a class of persons (*Fertilizer Corporation Kamgar Union*, 1981). The 1980s witnessed significant expansion of PIL, both vertically and horizontally, especially in the landmark case of *S. P. Gupta* (1982), which protected the interests of lawyers and judges.

Much credit for promoting PIL goes to a few enlightened humanists (*Upendra Baxi*, 1983) and some activist judges of the Indian Supreme Court who broadened *locus standi* to accommodate a "community orientation" and relaxed the technical and procedural formalities of the judicial process. This in turn encouraged journalists, lawyers, public-interest organizations, social workers, and rights activists to file PIL cases (*Sheela Barse*, 1983). The media played a significant role, helping to turn petty instances of injustice and tyranny at the individual and local levels into matters of public interest.

The Higher Judiciary and PIL. The Supreme Court of India began to explicitly invite letters and telegrams from complainants and conscientious third parties, provided there was infringement of a fundamental right (*S. P. Gupta*, above) and thus relaxed procedural technicalities and lowered barriers to access. Article 32(1) of the Indian constitution (1950), which guarantees as fundamental the "right to move the Supreme Court by appropriate proceedings," was radically reinterpreted to accept such so-called epistolary jurisdiction. Realizing that government lawlessness, consumer exploitation, and ecological disequilibrium seriously affected the public at large and that group action was likely to be more appropriate and successful, the Indian higher judiciary also engaged in *suo motu* actions (actions brought on its own motion), using PIL as an effective speedy method for airing contested issues and improving socioeconomic justice.

PIL has given relief to many people facing systematic violations of basic human rights, including mentally ill people languishing in jails, victims of police atrocities and military excesses, child laborers in hazardous industries, children adopted by foreigners, people affected by riots, refugees, domestic servants, AIDS patients, and victims of accidents, medical malpractice, rape, and sexual harassment at work (*Vishakha*, 1997).

In some cases, the Supreme Court, departing from traditional adversarial models of litigation, assumed responsibility for directing proceedings. New forms of remedy and monitoring mechanisms such as "rolling reviews" were developed. Where compliance with court orders was unlikely, interim orders designed to give some immediate relief and allowing time for corrective and increasingly compensatory action have been tried. PIL has become a more inquisitional system, with the court playing a more active role in ascertaining the truth. A strategy motivated and directed by judges, PIL was prominently propelled by two activist justices of the Indian Supreme Court, V. R. Krishna Iyer (until 1980) and P. N. Bhagwati (later chief justice, until 1986) but has been developed and consolidated by some visionary successors. At the heart of India's PIL activism lies the realization that the denial of basic rights to some individuals or to a class of disadvantaged individuals would have a negative impact on the entire public (*People's Union for Democratic Rights*, 1982).

PIL and Environmental Law. While PIL continues to stress the struggle against governmental lawlessness, administrative inaction, and executive wrongdoing, it has expanded beyond the field of basic human rights and has become crucially important in environmental law (*Ratlam Municipality*, 1980 and many cases under an activist's name; see, e.g., *M. C. Mehta*, 1987) and in consumer protection. Besides liberally construing various environmental-protection laws and constantly reminding successive governments of their responsibilities to protect the natural environment, the higher judiciary in India aims to enforce strict compliance with antipollution laws. Establishment of green (environmental) courts and making the public more conscious of their environmental responsibilities have considerably widened the scope of Article 21 of the constitution, to the point that the right to a clean environment has now become an aspect of the right to life. While tackling problems like the pollution of rivers and coastal areas, motor vehicle pollution, hazardous industries, and the destruction of plants and animals, the Indian Supreme Court has developed a number of principles of far-reaching significance, such as the "precautionary principle," the "polluter pays principle," and the principle of strict liability of people and entities causing environmental pollution and climatic degradation. Besides encouraging the efforts of environmental activists and nongovernmental organizations, the higher judiciary has also emphasized the need for sustainable development.

PIL and Consumer Protection. The use of PIL in the pursuit of consumer justice has become a powerful phenomenon in India, particularly since the enactment of the Consumer Protection Act in 1986. This socioeconomic legislation created a hierarchy of Consumer Disputes Redressal Agencies, now frequently approached by consumer activists and voluntary consumer organizations to call attention to consumer grievances and seek relief against the malfunctioning of all kinds of service providers as well as irresponsible and unethical businesses. A large number of consumer-oriented decisions have laid down commendable guidelines.

Misuse of PIL. Notwithstanding much success, PIL has also been abused, has been misused as a vehicle of harassment, and has acquired negative monikers like Personal Interest Litigation, Political Interest Litigation, and Publicity Interest Litigation. Many instances of gross misuse of PIL by unscrupulous people and organizations filing false, frivolous, and vexatious petitions against rivals, often from personal motives, test judicial alertness. It is feared that if the higher judiciary does not restrict such petitions, traditional litigation will suffer, and the overburdened courts of law will, instead of dispensing justice, collapse under the added burden of monitoring administrative and executive functions. It has also been argued that problems of the poor, disadvantaged, and depressed cannot be solved by any trickle-down method, and that whatever the Indian higher judiciary has done is merely symbolic, perhaps simply to secure legitimacy for itself. PIL has been criticized as a painkilling strategy that does not cure the underlying disease.

Against this, judicial activists argue that the judiciary is the ultimate guardian of justice and has, within the Indian constitutional framework, a critical watchdog function. While widespread violations of fundamental rights continue in India, PIL activism remains a constitutionally sanctioned tool to counter abuses of power and increase accountability. Article 38(1) of the Indian constitution of 1950 obliges the state to "strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social economic and political, shall inform all the institutions of the national life." This remains a constant challenge and an unfulfilled constitutional promise for many Indian citizens.

While PIL is a powerful weapon, the Indian judiciary must be cautious whenever entertaining public-interest petitions. Dubious PIL petitions should, where appropriate, be rejected at the threshold, with exemplary costs imposed. While the doors of the court should not be left ajar for vexatious litigants, an activist judiciary, under the pretense of redressing public grievances, must be careful not to encroach unduly upon the sphere reserved by the constitution to the executive and the legislature, an argument often advanced by traditionalists and die-hard constitutionalists. The approach in PIL cases must be a judicious mixture of activism and restraint dictated by existing realities.

Assessment. The prolonged presence of PIL in India has raised public confidence in judicial processes. PIL is

considered a strategic arm of the legal-aid movement intended to bring justice within the reach of the socially and economically disadvantaged masses. It represents an evolution from status to contract, from idealism to realism, from an analytical view of law to a more functional social-engineering approach to jurisprudence, from judicial passivism to judicial activism. It has brought revolutionary changes in the fabric of post-independence Indian law. Its development depends upon the continued activism of judges with a deep understanding of the interactions between law and society. Indian PIL is here to stay and has sunk deep roots in the Indian legal system, an example to be emulated elsewhere, as it already has been in other South Asian jurisdictions.

[*See also* Consumer Protection, *subentry on* Hindu Law; Environmental Law, *subentry on* Indian Law; *and* Fundamental Rights.]

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PUBLIC LAW. [*This entry contains five subentries, on public law in the Roman Republic, in the Roman Empire, in Byzantium, in English common law, and in Islamic law.*]

The Roman Republic

The constitution of the Roman Republic was not the result of legislation or the discussions of learned men but of the principle of trial and error and the determination to create something new, where "something new" means anything but the rule of the Etruscan kings (Tarquinii). It was they who had made a city-state out of a village by the Tiber's mouth. The monarchy of the Tarquinii has much in common with the *tyrannis* of the Greek city-states. Thus the kings' behavior gave rise to hatred—especially of the last king (Tarquinius Superbus)—and to political opposition. This ultimately led to the abolition of monarchy as an institution. The contempt for monarchy became an important part of the Republican constitution and the Roman mind. At the end of the Republic it was still strong enough to be used to justify Caesar's murder.

In the beginning, we can already discern the institutions which were to play a key role in the Republic: the magistracy, the assemblies (*comitia*), and the Senate. The Republic's period of political trial and error lasted from the sixth century B.C.E. until 367 B.C.E.

The contempt for monarchy inspired two principles which aimed to prevent those holding the highest offices from reintroducing the monarchy—that of annual succession and that of collegiality. The Roman Republic knew no exception to these principles with respect to magistrates. Moreover, any magistrate at the same or a superior level could invalidate official acts of his *collegae* (colleagues): this constitutional principle is called *intercessio* (intercession). Finally, appointment to office was by election and not by birth.

The head of the new state was also to be the head of the army. It was thus natural that the army should be allowed to choose the new head of state. So began the army's role as a political assembly, and the principle of annual succession. Hence most of the political offices in the Roman Republic, such as the praetorship, originate in the military sphere. The principle of collegiality was not strictly enforced in the beginning; only later did it become a real constituent of the Roman constitution. We can deduce this from the fact that initially the main leader, the *praetor maximus*, had not one but several colleagues, the *praetores minores*. We have learned the term *praetor maximus* from its association with the ritual of driving the *clavus annalis* (annual nail) in a temple as a marker in the official chronology.

The Senate, as the assembly of the heads of the patrician families, was of vital importance from the beginning because it was its members, the chiefs of the *gentes*, who had overthrown the monarchy.

The period of trial and error was characterized by continuing and difficult political contests. The two parties were the *patres* (the patricians) and the *plebs* (the plebeians). The former were the chiefs of the old Latin *gentes* or those of other origins who had become assimilated in the course of time, and the latter were all those who did not belong to one of the patrician *gentes*. Shortly after the inauguration of the new regime the patricians had to acknowledge the plebeians' spokesman and representative, the *tribunus*, as a representative not only of the plebeian class but of the whole state and thus as falling under the special protection of *sacrosanctitas*.

The plebeians asked for protection of life and limb against violence by government officials and for an extensive codification of the law as a protection against arbitrariness.

Everyone, not just the patricians, should live under the rule of law. These political demands were granted in the form of statutes (*leges*), the *leges Valeriae Horatiae* (Valerian-Horatian laws, ca. 450 B.C.E.) against violence by the government, and the Law of the Twelve Tables: these two statutes became the "Magna Carta" of the Romans. The Law of the Twelve Tables laid down that only the *comitatus maximus*, the Roman people's assembly, could rule on capital punishment. The Twelve Tables contain many other provisions concerning what in modern terms are called public law, private law (and procedure), and criminal law (and procedure). This legislation helped to solidify the hitherto uncertain law and to write down the known law unequivocally. But it did not lay down those rules that were uncontested.

The patricians granted concessions to the plebeians not only in legal matters but, particularly after 450 B.C.E., in political and constitutional matters. The most important concession regarded the highest military and political office, the praetorship. The early praetorship with its military character came to an end after the Law of the Twelve Tables was enacted, and the consul took the praetor's place in a new, more civilian form of government. It is not by chance that at same time the unequal form of collegiality (*praetor maximus* and several *praetores minores*) was abolished, though it was not immediately replaced by the classical form of collegiality, which still had to be arrived at through trial and error.

It is interesting from a political point of view that in the years after the Twelve Tables, the office of *tribunus militaris consulari potestate* (military tribune with consular power) is mentioned often. The term *tribunus* is closely linked to the political demands of the *plebs*. We can deduce from this terminology that plebeians also could hold the consulate, the highest office in the state. The fact that at this early stage the patricians were ready to share power with the plebeians would take on great importance in Roman history.

The quarrels between patricians and plebeians came to an end with the Leges Liciniae Sextiae (Licinian-Sextian rogations, a rogation being a law proposed by a consul or tribune and accepted by an assembly). After these laws the Roman constitution was molded into the classical shape in which it became common knowledge and an integral part of the Western cultural heritage.

The Magistrates. From that time on two consuls headed the state. They were elected for one year and had the same executive powers. Thus the principle of collegiality reached perfection. One consul was to be a patrician and the other a plebeian. Later on, this rule was undermined—not in favor of the patricians, as one might have expected, but of the plebeians: the first consulate of two plebeians took office in 172 B.C.E.

The power connected with the consulship is called *imperium*. This *imperium* entitled the consuls on the one hand to manage affairs of state and to maintain law and order (*imperium domi*) and on the other to act as commanders in chief of the army (*imperium militiae*). They were entitled to introduce motions in the assemblies of the people (*ius agendi cum populo*, the right of transacting business with the people) and to charge the Senate with any state business (*ius agendi cum patribus*, the right of transacting business with the Senate). The consuls were attended by *lictors*, civil servants each of whom carried a bundle of birch rods (*fascis*) and an ax (*lictor*) as symbols of the consuls' power.

When the praetor was superseded by the consul, the praetor was given jurisdiction limited to deciding whether or not there lay an appropriate action—either civil or criminal—for the claimant's demands, and appointing a judge to decide the case if he determined there was an appropriate action. In order to make his decisions more predictable and thus lessen the burden on his office, the praetor began to publish a collection of all the actions granted by him in the so-called edict. In addition, the praetor was free to create new actions and add them to the edict. The edict, published annually, would become the foremost achievement of the praetor, making him the principal law-giver in the Republican age. By the middle of the third century B.C.E. a second praetorship was created, that of the *praetor peregrinus* (praetor for aliens), who was charged with supervising proceedings between Roman citizens and foreigners and between foreigners. During the second century the number of the praetors was successively increased as they were appointed to govern conquered territories.

The *aediles* were officials initially involved in the self-administration of the plebeians. After the Licinian-Sextian rogations were passed, two patrician colleagues (the *aediles curules*, originally, *aediles* entitled to sit in a *sella curulis*, a special chair of state) were added, and after 304 B.C.E. we regularly find among the curulian *aediles* a patrician and a plebeian. Generally speaking, their duty was the administration of Rome: they exercised some police functions and were responsible for such things as the repair and preservation of temples, sewers, and aqueducts; street cleaning and paving; the regulation of traffic, dangerous animals, and dilapidated buildings; precautions against fire; superintendence of baths and taverns; investigation of the quality of articles for sale and the correctness of weights and measures; the purchase of corn for disposal at a low price in case of necessity; and the superintendence and organization of public games.

The office of quaestor, who supervised the treasury and the financial affairs of the state, was created during the abovementioned reforms in the fifth century B.C.E.

The censors, elected every five years, had two important duties, to count citizens and to supervise their morals. Counting citizens was required for enrolling them as electors in the proper assemblies [*see* Legislative Assemblies

(Leges, Plebiscites)]. The counting took eighteen months, so the censors were the only civil servants in Rome to serve for more than a year. Supervising the citizens' morals (*cura morum*) required measures to be taken by the government in instances where the law did not provide pertinent rules but the traditional conventions (*mos maiorum*, customs of the ancestors) required action.

From the beginning, the tribunes' role was political. They were representatives of the whole Republic on the one hand but the spokesmen and leaders of the plebeian assembly (*concilium plebis*) on the other. They had the exclusive right to make motions in this assembly (*ius agendi cum plebe*, the right of transacting business with the plebeians). This responsibility assumed great importance after the Lex Hortensia (287 B.C.E.) ordained that the *plebiscita* (the resolutions of the *concilium plebis*) should have the same power as the *leges* enacted by the general assemblies of the people.

The most important special magistrate was the dictator. The Romans chose dictators only in times of extreme peril. A dictator was never elected but always created (*creare*) by a supreme magistrate—normally by a consul or, in the absence of a consul, by a praetor. The dictator had no colleague of equal standing, but he nominated a minor colleague, the *magister equitum* (commander of the cavalry) as his second in command. He was attended by twenty-four *lictors*. There was no recourse against the act of a dictator. The dictator's term invariably ended after six months or by the end of the appointment of the magistrate who had created him, whichever came first.

The Assemblies. While the oldest of Roman assemblies, the *comitia curiata* (those divided into *curiae*), were to lose their political importance in Republican times and retained the responsibility only for certain matters of family and hereditary law, three other assemblies would become important: the *comitia centuriata* (divided into centuries), the *comitia tributa* (organized by tribes), and the *concilium plebis*.

According to tradition, the *comitium centuriatum* was established as a military unit by King Servius Tullius. The terminology concerning its subunits, the *centuriae*, derives clearly from the military sphere. In Republican times and particularly after the Licinian and Sextian rogations, the *comitia centuriata* were composed of 193 *centuria*. The *centuria* were divided into classes. The first eighteen centuria, at the top of the pyramid, were made up of *equites* (knights), that is, the patricians. The next eighty *centuria*, the first class, were composed of those men who had property worth at least 100,000 *asses* (according to Livy 1,42,4-1,43,13) or 120,000 (according to Pliny [*Nat. Hist.* 33.3.43]). The second class was composed of those worth 75,000 *asses*, the third of those worth 50,000 *asses*, the fourth of those worth 25,000 *asses*, and the fifth of those worth 11,000 *asses*. The second, third, and fourth classes comprised twenty *centuria* each, and the fifth class comprised thirty *centuria*. Then came five more *centuria*, three for craftsmen and two for *proletarii*, who had no property at all.

The *comitia centuriata* were reformed at the end of the third and beginning of the second century B.C.E. In the course of this reform, ten *centuria* were transferred from the first class to the second. The *comitia centuriata* had the following responsibilities:

1) electing the highest officeholders such as magistrates, consuls, praetors and censors;
2) passing bills (*leges*). A *lex* in the proper sense could only be passed by the *comitia*;
3) declaring war.

Whereas the *comitia centuriata* were structured according to their members' property—with the result that the first class (the eighteen *centuria* of cavalry and the first eighty *centuria* of infantry) held power though it represented only a small part of the population—the general assemblies of the people (*comitia tributa*) were structured according to the principle of territoriality. Yet even this territorial structure resulted from a historical process which meant that not every vote counted equally. The city of Rome was divided into four districts (*tribus*), the Capitoline, the Colline, the Esquiline, and the Palatine, and the hinterland was divided into another seventeen districts with names derived from the most prominent clans (*gentes*) of Rome's earliest history, such as Fabia, Claudia, and Cornelia.

In the course of Rome's expansion into Italy, more *tribus* were created, in the end totaling thirty-five. The last were the Quirina and Velina in 241 B.C.E. From this year on, every Roman citizen had to be enrolled in one of the thirty-five *tribus*. It is evident that the city's population, which had grown enormously during the third and second centuries B.C.E., was not represented properly in the four urban *tribus*. Since most of the well-to-do people were enlisted in the seventeen *tribus* of the hinterland and since the vote of every *tribus* counted equally, a class division was superimposed on the territorial division.

In the beginning this assembly was presumably responsible for passing statutes. We can assume that it was easy to convoke the *comitia tribus* and secure a proper vote; every *tribus* had only one vote, and the majority of *tribus* decided the issue at hand. The *comitia tributa* also had the responsibility of electing the *magistratus minores* (such as the curulian *aediles*), and were therefore called *comitia leviora* (assemblies of lesser authority). The *comitia tributa* were also a sort of court of appeal for fines issued by the *aediles*.

The decline of the *comitia tributa* was connected to the rise of the *concilium plebis*, which was also made up of *tribus*. The resolutions of the *concilium plebis* having been given the force of law by the Lex Hortensia in 287 B.C.E.,

most important statutes after that time were passed in this assembly. It was the tribunes' responsibility to convoke the *concilium plebis* (*ius agendi cum plebe*).

The Senate. The Senate had an all-important role in coordinating Roman politics, though its constitutional responsibilities were rather inconsequential. Its importance stemmed from the former higher civil servants who were its members for life and who were held in high esteem. The Senate's resolutions (*senatus consulta*) were in most cases respected. The *senatus consultum ultimum* especially, which emerged at the end of the Republic, was regarded as expressing the sense of the whole body politic and was therefore duly executed.

The senators were initially divided into *patres* and *conscripti*, the former being the patricians and the latter the plebeians (who were conscripted [i.e., enrolled] in the Senate), but this division became obsolete after the Licinian and Sextian rogations. Following a custom originating with the Lex Ovinia (312 B.C.E.), the censors chose former magistrates as members of the Senate (*lectio senatus*) starting with the consuls and the praetors; later, the quaestors were also eligible. There was no fixed number of senators; it probably varied between three hundred and six hundred. The Senate was responsible for confirming with its *auctoritas* (informal decree of authorization) the statutes passed and the elections of magistrates by the assemblies. In ancient times this responsibility was reserved for the *patres*, but later it was extended to the *conscripti* as well. The Senate was also obliged to give its confirmation before a bill was passed or an election carried out. The Senate played an important role in the distribution of the provinces to former magistrates with *imperium*. The term *provincia* originally had no territorial implication but referred only to the constitutional competences and powers of former magistrates in the conquered territories, and the actual distribution was made by drawing lots.

The Roman constitution, which was based partly on statute law and partly on usage, worked astonishingly well after 366 B.C.E. Rome's enormous expansion—first in Italy, then in the East, and finally in the West—took place under this political system. One of the decisive preconditions for this success was a solid upper class made up of the patrician and plebeian *gentes* which functioned so well partly because it was able to accept new members. This upper class, the *nobilitas*, ruled the state through the magistracies, the assemblies (especially the *concilium plebis*), and the Senate. The preeminence of the latter derived from the presence among its members of the chiefs of the most eminent patrician and plebeian *gentes*.

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The Roman Empire

The constitution of the Roman Republic—under which a person's public power over his fellow citizens was legitimized by the office he filled, access to office was legitimized by election by the people or by appointment, and laws were issued by magistrates through their edicts or were enacted by the Roman people—disintegrated in the first century B.C.E. When Augustus became undisputed ruler of the Roman Empire in 31 B.C.E., he gave up all his offices. He thus restored the Republic in name, and until about 541 C.E. several Republican offices (praetorship, consulate) survived intact. But in reality things changed.

The Constitution of the Roman Empire. Every year, Augustus allowed the Senate to grant him further tribunician and proconsular powers (*potestas tribunicia, imperium proconsulare*). He thus did not violate the rules of officeholding, because he did not technically occupy the office—though no one else was appointed tribune—but he nevertheless enjoyed all its power and perquisites. Through tribunician power he obtained sacrosanctity and the

power to enact edicts, and through the *imperium proconsulare* he obtained the authority to appoint governors (as his delegates) in all provinces where legions were stationed. The governors of the other provinces were, at least during the first two centuries C.E., appointed by the Senate. Augustus thus quietly gained control of the army and the greater part of the Empire, was able to veto laws and *senatus consulta*, and could issue edicts. He was also appointed *princeps senatus*, which meant that he had the right to speak and vote first and was given the power to appoint new members of the Senate. All of this strengthened his position in that body.

This power, informal and formal, with which a formally private citizen was endowed was passed on to Augustus's successors by decree of the Senate, usually as heirs of the previous emperor. From the second half of the second century, the army wielded progressively more influence in this choice. Offices were filled by the emperor or by the Senate—in the latter case, at the instigation of, or at least without the veto of, the *princeps*. Of elections we hear nothing more after Augustus, although the Lex de Imperio Vespasiani, the law which conferred power on Vespasian, should have been ratified by the *comitia* of the Roman people. *Leges rogatae* are unknown. In the first century C.E., it must already have become customary for the accepted successor to the *princeps* to carry his titles of Caesar and Imperator and to be endowed with the same powers. Legislation was created by edict and by senatusconsults, but later, a mere speech (*oratio*) by the emperor in the Senate sufficed.

These developments took place during the first three centuries C.E.; by the beginning of the fourth century the transformation was complete. Senatusconsults are no longer mentioned as a source of law. A speech of the emperor, delivered to the Senate as a letter, was now considered a law (*constitutio*), as were his letters to officials (if it contained the word "edict" or if the letter was declared generally binding); his decrees, judicial decisions, and legal opinions were already considered so.

The political instability of the Empire in the third century—after the reign of Severus Alexander (r. 222–235)—with its wars between candidates for the throne, threatened the unity of the Roman state. To secure unity and stability, Diocletian (r. 284–305) designed a new executive structure. He divided the Empire into two administrative parts. Each part had an emperor (augustus) to govern it, and each emperor had a caesar as aide and successor: this constituted the Tetrarchy. The unity of the Empire was preserved by issuing new laws in the name of the Tetrarchy. Under Diocletian's system, succession was by appointment, but after his own abdication (305 C.E.) the dynastic principle soon reemerged. The Tetrarchy was dissolved and kinsmen appointed caesar or co-emperor, the senior emperor taking precedence. After 364 the Empire was divided into two parts, which would last (except for the period 390–395) until the reunification by Justinian I in 534–535. The formal unity of the Empire was maintained, all laws being issued in the joint names of all emperors, but in practice the parts were independent. Within the Empire the longer-reigning of the two emperors took precedence. Accession to the throne was now legitimized, if possible, by a family relation to the former emperor, and in any case by the approval of both the Senate and the army of the respective part of the Empire and by the acknowledgment of the Emperor of the other part. The Senate was reduced to a body of rank and social distinction.

Apart from these three elements of legitimization, no other condition was necessary for the emperor's power; his powers were less clearly defined than they had been in the Lex de Imperio Vespasiani. Long before the fourth century, the powers deriving from the *tribunicia potestas* and *imperium proconsulare* had fused into one imperial power and authority. This probably merely signified a transition to what would be called in modern terms a customary unwritten constitution, as contemporary writings opine that an emperor, although being the supreme lawgiver and judge, is bound by the law and may not transgress its boundaries without reason.

Administration in the Roman Empire. The development of a bureaucracy furthered the transition from republic to empire. The Republican authorities scarcely had offices, and the first emperors, formally private citizens, ruled primarily through their private staffs, the accounts being managed as funds of the emperor (*fisci caesaris*). Under Trajan (r. 98–117), however, Roman citizens began to be employed in paid offices, offering career possibilities; thus was a civil service established (including military responsibilities). The main officials were the praetorian prefect, who acted as a prime minister with both civil and military duties, and the *quaestor palatii*, who acted as minister of justice. The *magister libellorum* (the master of petitions) functioned as head of the chancery division. The capital was administered by an urban prefect, the provinces by governors as representatives of the emperor. The state treasury (*aerarium*) was combined with the *fiscus caesaris*. As these officials were dependent on the emperor for their appointment and advancement, a hierarchy was established which further diminished senatorial power. Lastly, the possibility of appeal to the emperor, whose decision was binding, took away the judicial powers of the surviving Republican officers, while the Senate exercised an insignificant judicial office. Virtually all taxes were now collected through the imperial bureaucracy.

The development of the bureaucracy and the possibility of appeal caused a certain evolution of public law and even led to a monograph on the subject by the end of the