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Roman Law and the Law-and-Finance Debate

I. Introduction

The historic roots of contemporary legal systems have attracted a surprising amount of attention in the modern economics and finance literature. Economists who investigate the determinants of financial development and economic growth across countries have long debated the importance of the institutional environment, including a country's legal system. Only more recently, however, they have started distinguishing between civil-law systems with "Roman legal origin" and common-law systems. Legal origin is used as an econometric instrument, i.e., an empirical technique to causally identify how amenable different legal systems are to economic growth and financial development. The main result is that countries with Roman legal origin have been found to have less developed financial markets. The literature commonly interprets this finding as showing that the codified legal systems that build on Roman origin are too rigid to accommodate financial and economic development. However, these conclusions have not remained unchallenged. While the legal-origin technique is novel and clever, its validity has also been fiercely disputed.

In this article, we first introduce the reader to the current debate in the economic literature on law, finance, and growth. In particular, we discuss the use of "legal origins" to identify the causal impact of a country's legal environment on its economic development and the debate about the validity of this approach. We then argue that a closer look at the evolution and functioning of Roman law and at the reasons for its widespread reception, starting in the 11th century, as well as its modern-day influence provides direct insights for the ongoing law-and-finance debate. We point out that the distinction between legal systems with and without Roman origin – so-called civil-law and common-law countries – is less sharp than the law-and-finance literature suggests. As shown in the work of the jubilarian[1] among others, the legal rules and the methodology of Roman jurisprudence have exerted significant influence beyond civil-law countries. Moreover, the adaptability of Roman law to economic and political intentions (e.g., towards the *favor libertatis*[2]) appears hard to reconcile with the characterization of Roman legal-origin countries as "rigid" and unwelcoming towards economic growth. The common elements of the different legislative environments, in turn, cast doubt on the value of "Roman legal origin" as an econometric instrument to measure the causal impact of law on growth. Quite to the contrary, the evolution of Roman law during the Roman Republic and then the Roman Empire illustrate, as we will argue, that legal restrictions per se may matter little for economic growth as long as the law as practiced is flexible. The flexibility of the

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[1] See, for example, *Rolf Knütel*, Ius commune und Römisches Recht vor Gerichten der Europäischen Union, in: JuS 36 (1996), 768-778; *Rolf Knütel*, Roms Recht – „und erstaunlich ist es nicht, daß die bedeutendsten europäischen Völker sich der Herrschaft dieses Rechts gebeugt haben" in: K. Rosen (ed.), Das Mittelmeer – die Wiege der europäischen Kultur, 1998, 130-173.

[2] *Rolf Knütel*, Rechtsfragen zu den Freilassungsfideikommissen, in: Th. Finkenauer (ed.), Sklaverei und Freilassung im römischen Recht (Symposium für Hans Josef Wieling zum 70. Geb.), 2006, 131-151.

"law as practiced", in turn, can depend on very different circumstances such as the political environment.

II. The Law-and-Finance Approach and the Role of Roman Legal Origin

One of key question in the economics and finance literature is why some countries enjoy advanced financial development and fast economic growth while other countries stagnate. What conditions guarantee a well-functioning capital market? Why do firms flourish in one country but not in another one? What encourages individuals to found new enterprises, and what allows these entrepreneurs to grow their firms?

In this debate, the law-and-finance literature has focused on one specific determinant of growth: a country's legal environment. Generally speaking, legal rules are expected to be more favorable to growth if property rights are enforced and transaction costs are low. The law-and-finance literature aims at providing empirical evidence on the growth-friendliness of different legal environments. But, while it is intuitive that a reliable and efficient legal system fosters economic growth, it is difficult to prove that there is a causal effect. Moreover, even if the thesis is true it is difficult to prove which types of legal environments are more amenable to economic growth. The big hurdle in the empirical analysis is the "endogeneity" of economics and law: The legal environment of a country is endogenous to its growth path. Suppose, for example, that a country makes a political choice in favor of a bank-financed economy and then adopt laws that strengthen banks' position as creditors. The resulting correlation between laws in favor of creditor protection and growth might reflect the political choice rather than a causal effect of laws since the country's growth path might predominantly be determined by the political decision to create a bank-financed economy. Hence, it is difficult to establish a *causal* effect of the legal environment on economic growth.

This is where the "legal-origins" idea comes in. In a series of papers, *La Porta*, *Lopez-de-Silanes*, *Shleifer*, and *Vishny* argue that relating modern-day economic and financial outcomes to a country's legal tradition rather than to its current laws ameliorates the causality problem.[3] Typically, countries do not "choose" a legal tradition on the basis of modern-day economic and financial determinants. Thus, legal origin is less likely to be endogenous to a country's growth path. At the same time, a country's legal origin might still leave a lasting imprint on its legal environment. Hence, it captures the independent effect of legal rules on economic and financial growth similarly to an "instrument" in the econometric sense, i.e., by isolating the influence legal rules have on economic growth that is exclusively due to their origin.[4]

La Porta et al.[5] distinguish four legal traditions: British common law, French civil law, German civil law, and Scandinavian civil law. Common law is the legal tradition of England and its former colonies, including the United States. One of its main characteristics is that it is case-based: appellate judges establish precedents by solving concrete legal cases. The civil-law tradition, instead, originates in Roman law and generally relies more on formal legislation and less on case-based evolution. Among the three types of civil law distinguished by the authors – French, German, and Scandinavian – the French civil-law tradition is most wide-

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3 *Rafael La Porta/Florencio Lopez-de-Silanes/Andrei Shleifer/Robert W. Vishny*, Law and Finance, in: Journal of Political Economy, 106(6) (1998), 1113-55; *Rafael La Porta/Florencio Lopez-de-Silanes/Andrei Shleifer/Robert W. Vishny*, The Legal Determinants of External Finance, in: Journal of Finance 53(3) (1997), 1131-50.

4 For a historical overview of the instrumental variables approach see *James Stock/Francesco Trebbi*, Who Invented Instrumental Variable Regression?, in: Journal of Economic Perspectives, 17(3) (2003), 177-194.

5 See nt. 3.

spread. It is found in large parts of continental Europe, Latin America, most of Asia, and French colonies in Africa.

This four-part classification scheme (common law versus the three types of civil law) has become standard in the law-and-finance literature. Since we will argue below that the distinction between those legal traditions is less sharp than presumed in the law-and-finance literature, some more details are in order. In proposing the four-part classification, *La Porta et al.* refer to the classification of commercial legal systems by *David and Brierley*[6], who put forward a tripartite division of Western law into a Romano-Germanic, a common-law, and a socialist family. This division is also utilized by *Merryman*[7]. Neither *Merryman* nor *David and Brierley*, however, use the fourfold distinction. *Merryman* suggests that Scandinavian law should be outside the civil-law tradition, and he classifies French and German law as two of many subclasses of civil law. In fact, according to *Merryman*, French law and German law are both rather unique and unrepresentative of the civil-law tradition – in the case of French law, because of France's revolutionary roots and, in the case of German law, because of the large influence German scholars exerted on their jurisprudence. *David and Brierley* group Latin, Germanic, Scandinavian, Latin American, etc. as subgroups of the "Romano-Germanic" family. Similarly, *Dawson*'s often cited history of the transformation from lay to professional judges in England, France, and Germany[8] treats these countries as regions with distinct histories and thus distinct institutions but does not suggest that they are exhaustive typologies of legal systems. In summary, the now most commonly used fourfold typology in the law-and-finance literature does exist in prior legal literature but is by no means universally accepted. The classification itself is part of a joint hypothesis tested in the law-and-finance literature.

Based on this classification of legal systems, *La Porta et al.* attempt to show empirically that common law leads to better economic outcomes than civil law. The empirical analyses exploit that, through colonization and later also through imitation, especially in transition economies, legal traditions spread beyond Europe, allowing the authors to employ cross-country comparisons around the world. In other words, the authors test whether countries with different legal traditions have systematically different finance and growth outcomes.

To perform the empirical analyses, the authors compile an impressive data set of legal rules and financial outcomes across common-law and civil-law jurisdictions. Their sample covers 49 different countries, though it does not include any socialist or transition countries. They include only countries that have at least five domestic, non-financial, publicly traded firms with no government ownership. Their final sample contains twenty-one countries from the French civil-law tradition, six countries from the German civil-law tradition, four from the Scandinavian civil-law tradition, and eighteen from the common-law tradition.

In *La Porta et al.* (1998)[9], the authors relate the legal traditions of those countries to one specific aspect of financial development: investor protection. The quality of investor protection is likely to determine how smoothly a financial market is working in funding growth. If the rights of investors are not enforced, managers can divert the return of corporate investments into their own pockets, and investors will be unwilling to finance such investments in the first place. Note that relating legal origin to investor protection provides only for a very indirect test of the relationship between law and financial or economic growth. A more direct test would relate the different legal traditions directly to growth outcomes, e.g., to annual GDP

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6 *René David/John E.C. Brierley*, Major Legal Systems in the World Today, London 1985.

7 *John Merryman*, The Civil Law Tradition, Stanford 1985.

8 *John Dawson*, A History of Lay Judges, Cambridge 1960.

9 See nt. 3.

growth across countries. As we will further discuss below, it is noteworthy that *La Porta et al.* never provide such direct evidence.

The authors use several measures of investor protection. For shareholders, they measure how much and how easily shareholders can influence corporate decisions and obtain a share of the company's cash flow, e.g., via voting rights and minorities protection.[10] For creditors, they measure the rights creditors have when the borrowing company becomes illiquid and is reorganized or is sold.[11] In both cases, they find that investors are best protected in common-law countries and worst in French civil-law countries. The results are less pronounced, though, for creditor protection. For example, while common-law countries are generally most likely to disallow automatic stay on assets and to remove management during reorganization, the United States have an automatic stay provision during reorganization, allow managers to petition for reorganization with no restrictions and to manage the firm in reorganization. The mixed results may reflect that the authors' creditor-protection criteria are somewhat problematic since they assume the standpoint of senior secured claims, whose rights often come at the expense of unsecured creditors, and the standpoint of reorganization rather than liquidation, even though creditors in countries with weak protection during reorganization might enjoy high overall protection if they are protected in liquidation and if reorganization is rare.

From these statistics and correlations, the authors conclude that legal origin explains both weak shareholder and creditor rights. If we adopt the authors' view that legal origin is exogenous to modern-day financial development, civil-law systems and in particular French civil law emerge as most detrimental to financial development.

La Porta et al. (1997)[12] take this evidence one step further and argue that countries with better investor protections have higher-valued and broader capital markets and therefore easier access to external finance. The underlying mechanism is that investor protection allows creditors and shareholders to realize the return on their investment with greater certainty and thus facilitates external finance. These outcome variables are one step closer to the ultimate outcome of interest – the impact on economic growth – though it is still not economic growth itself. The basic regression relates stock market capitalization held by outside shareholders to various measures of shareholder protection rights and legal origin dummies. The authors find a negative effect of civil law traditions, which becomes, however, insignificant if an "Antidirector Rights" index along the lines of *La Porta et al.* (1998)[13] is included in the regression.[14]

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[10] Shareholders protection measures are: (1) one-share-one-vote rule; (2) proxy voting can be done by mail; (3) firms are prevented from blocking shares before a general shareholders meeting (i.e., from requiring shareholders to deposit them); (4) minorities can cast all their votes for one board candidate (cumulative voting) or name a proportional number of directors to the board; (5) oppression protections (minority shareholders can challenge major management actions, such as mergers and changes to the corporate charter), (6) shareholders get the first opportunity to buy new issues of stock, and the minimum percentage of ownership that allows a shareholder to call for an extraordinary meeting is below 10%, (7) firms must pay a mandatory dividend as a percentage of net income. See *La Porta* et al. (1998), nt. 3, for more details.

[11] Creditor protection measures are: (1) no „automatic stay" on assets when a firm files for reorganization (which would prevent creditors from getting possession of collaterals), (2) secured creditors receive priority when firm assets are sold, (3) creditors must consent before a company files for reorganization, (4) a party appointed by the court or by creditors, rather than management, runs the firm during reorganization, and (5) a minimum amount of share capital must be kept in reserve. See *La Porta* et al. (1998), nt. 3, for more details.

[12] See nt. 3.

[13] See nt. 3.

[14] The Antidirector Rights index is defined on a scale from one to five, adding up shareholder protection rights (2) to (6) from *La Porta* et al. (1998) (see nt. 10). *Holger Spamann* shows (in his paper „On the Insignificance and/or Endogeneity of *La Porta* et al.'s 'Antidirector Rights Index' under Consistent Coding", Harvard John M. Olin Fellow's Discussion Paper No. 7, 2006) that the coding of this index suffers from systematic

The authors also relate legal origin to countries' debt financing (private-sector bank debt and outstanding non-financial bonds), using creditor rights as control. They find that common-law systems facilitate debt financing. French civil law scores again worst. Overall, the measured effect is often small and statistically insignificant.

In summary, the series of cross-country comparisons in the two seminal papers *La Porta et al.* (1998) and (1997)[15] suggest that common law systems are correlated with better investor protection and better access to external financing than legal systems with Roman legal origin. Even though the effects are not always robust and the ultimate goal, to explain economic growth and financial development, has not fully been achieved, the findings have been interpreted as evidence that legal systems in the common-law family lead to better economic outcomes than those in the civil-law family.

The better performance of the common-law system has been attributed to its flexibility: The so-called adaptability thesis (as discussed, for example, by *Beck* and *Levine*[16]) holds that case-based law is better able to respond to economic and financial development than the more rigid, codified law of civil law countries. The common-law reliance on judicial discretion and on cases has allowed it to adapt more easily to changing commercial and financial needs, also because judges are more objective than legislators and are shielded from political pressure. The adaptability thesis also points to the common law's eschewal of rigid guidelines for the presentation of evidence and communication between parties that can otherwise hamper the judicial process. By contrast, the civil-law system has evinced, at least from the time of Napoleon, a mistrust of judges and has tied their hands with formalistic statutes and procedures that cannot easily be adapted to changing needs. A second possible channel (and a close cousin of the first) is political structure. The political-structure thesis holds that civil-law countries accord excessive power to the state and constrain property rights. These countries are less likely to maintain politically independent judiciaries, to grant courts jurisdiction in cases involving executive or legislative power, and to extend to courts the power of constitutional review. Civil-law countries thus impede the development of financial markets by diverting resources toward state functions and state clients. In contrast, common-law countries promote private property through politically independent judiciaries who are capable of pronouncing binding judgments on the other branches of government. In a recent overview article, *La Porta et al.*[17] push the argument even further and argue that common law supports private market outcomes while civil law seeks to cement state-desired allocations.

III. Criticism of the Law-and-Finance Approach

A large body of research has followed up on the two seminal papers by *La Porta et al.* and relates investor protection laws and private property rights to firm valuation, to dividends, to reinvestment of earnings, and to weak liability rules and insufficient information disclosure

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measurement error, such as using default rules in some countries but optional rules in others. Leaving the variable definitions (2) to (6) unaltered but making the interpretation more consistent across countries, *Spamann* finds that the coefficient of the Antidirector Rights index becomes insignificant. However, the effect of legal origin does not depend on the inclusion of the Antidirector Rights index; in fact, it is stronger when not including the index.

15 See nt. 3.

16 *Thorsten Beck/Ross Levine*, Legal Institutions and Finance Development, in: C. Ménard/M. Shirley (eds.), Handbook of New Institutional Economics, Amsterdam 2005, 251-278.

17 *Rafael La Porta/Florencio Lopez-de-Silanes/Andrei Shleifer*, The Economic Consequences of Legal Origins, in: Journal of Economic Literature 46(2) (2008), 285-332.

rules in French legal origin countries.[18] At the same time, however, the law-and-finance approach and its use of legal origin as an "instrument" have triggered fierce debates in the literature. Legal and economic scholars have criticized the validity of the instrumental variable, the classification of legal environments in general and in specific cases (e.g. South Africa and Israel as common law, despite significant civil-law elements), the comparison between countries at very different stages of development, the cross-country methodology, and the measurement of economic and financial outcomes. Omitted variable candidates abound; e.g. common law is perfectly correlated with England as the colonizing power, and with the Anglican Communion as the dominant Protestant denomination.

Going beyond concerns about the empirical methodology, the most fundamental criticism is rooted in different interpretations of legal rules, legal systems, and legal evolution. Is civil law really more rigid than common law? Are private property rights really less well protected in civil-law countries? And, even if the classification by legal origin is useful, how relevant is it for financial development? For example, it has been argued that the mere presence of French or English legal code is a poor proxy for the actual institutional reality of a legal system. According to *Berkowitz*, *Pistor*, and *Richard*[19], the origin of a country's legal system matters less to the development of its legal institutions than the country's receptiveness to the legal system at the time it was introduced. Countries like England and France, in which legal systems developed organically over time, are the most in tune with their legal institutions, mores, and customs. Former colonial countries, instead, differ in their historical receptiveness. The authors classify as "receptive transplants" countries like Japan, with indigenous traditions of formal legal practices, institutions, and personnel, who selectively borrowed from foreign systems while preserving the characteristics of their own system. "Unreceptive transplants" are countries in which foreign legal codes were adopted wholesale and without the support of a domestic constituency. The authors show empirically that receptiveness matters more than most types of legal origin.

A closer look at the evolution of Roman law provides some insights related to these concerns. First, the legal-origin approach overstates the dissimilarity of common-law and civil-law systems. In particular, as the description "Roman legal origin" for civil-law countries suggests, Roman law is presumed to have exerted significant influence only on civil-law countries. Roman law research suggests, however, that the distinction maybe more gradual. For example, *Knütel*[20] points out that the influential 18th century treatise of common law by William Blackstone, the *Commentaries on the Law of England*, contains numerous references to the Institutes and other parts of the *Corpus Iuris Civilis* and that even modern-day court decisions in England refer directly or indirectly to Roman law. Occasionally, English law even reflects Roman legal rules more closely than civil law countries. For example, German civil law interprets liability according to the criterion of *diligentia quam in suis* only as reducing liability. English law is closer to Roman law in also considering increased liability as a possible result

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[18] *Rafael La Porta/Florencio Lopez-de-Silanes/Andrei Shleifer/Robert Vishny*, Investor Protection and Corporate Valuation, in: Journal of Finance 57 (2002), 1147-1170; *Gerard Caprio/ Luc Laeven/Ross Levine*, Governance and Bank Valuation, in: NBER Working Paper 10158 (2003); *Rafael La Porta/Florencio Lopez-de-Silanes/Andrei Shleifer/Robert Vishny*, Agency Problems and Dividend Policies around the World, in: Journal of Finance 55 (2000), 1-33; *Simon Johnson/John McMillan/Christopher Woodruff*, Property Rights and Finance, in: American Economic Review 92 (2002), 1335-56; *Rafael La Porta/Florencio Lopez-de-Silanes/Andrei Shleifer*, What Works in Securities Laws?, in: Journal of Finance 61 (2006), 1-32.

[19] *Daniel Berkowitz/Katharina Pistor/Jean-François Richard*, Economic Development, Legality, and the Transplant Effect, in: European Economic Review 47 (2003), 165-195.

[20] *Knütel* (1998), see nt. 1, 159.

of the *diligentia quam in suis*.[21] *Knütel*[22] provides similar evidence for the United States, including examples of judges relying on ancient Roman rules when the common law leaves a question unanswered and examples from the ten amendments in the Bill of Rights, a number of which are more or less direct translations of Roman legal rules.

The pervasive influence of Roman law, across the civil-law versus common-law divide has also been visible in the process of legal harmonization in the European Union. For example, *Knütel*[23] argues that the European courts developed Europe's new "common law" (in the sense of a modern *ius commune*) frequently going back to legal rules from Roman law or at least to the actual historical *ius commune*. As it is well-known, the so-called reception of Roman law in Europe started with the rediscovery of the *Corpus Iuris Civilis* and the redesign of law-school curricula in Bologna and then throughout Europe in the 11th century AD. A common body of legal rules spread throughout Europe during the following centuries. When, over the past two decades, European courts were building upon common legal principles and common ideas to form European law, they often relied on legal traditions emanating from Roman law, at least in terms of private civil law questions and legal methodology.

These historical considerations do not refute that common law differs from civil law. However, they indicate that the divide is less sharp than the law-and-finance literature suggests. The common elements of the different legislative environments, in turn, cast doubt on the value of "Roman legal origin" as an econometric instrument for the causal impact of law on growth across countries. It is unclear what the "instrument" of legal origin is proxying for when used as an explanatory variable.

A related issue is that the law-and-finance literature interprets the divide between common-law countries and civil-law countries as one between countries with flexible and adaptable case law versus countries with rigid codified law. This categorization misses the fact that, as far as "origins" are concerned, Roman law is fundamentally case law. The only early Roman "codification" is the famous Twelve Tables (450 BC). While generally considered the foundation of Roman law, the Twelve Tables were not an exhaustive codification of all legal rules, as far as we can judge from the surviving text fragments.[24] Rather, they defined a number of private rights and legal procedures and ensured basic economic and political rights for the plebeians in their power struggle with the patricians. Instead of codified law, it was the jurists of the last two pre-Christian centuries (the so-called pre-classical period) who developed a "legal science" with formal legal concepts and systematization and it was the jurists of the first 250 years AD (the so-called classical period) who brought Roman law to its height. During both the pre-classical and classical periods, legislated statutes played a fairly small role. Rather, the law emanated from the advice of legal experts, the *responsa prudentium*, to the judicature, i.e., to the judge (*praetor*), to the senatorial superintendents (*aediles curules*), and to the governors in the provinces. These magistrates and their jurors (*tribunals*) usually had no legal training, but would grant actions (*actiones*), defenses (*exceptiones*) and other legal remedies based on the opinion of a committee of legal experts, the *consilium*. Those jurists' opinions shaped the legal system, even if they had no formal legal power. Since legal experts did not discuss abstract concepts but concrete cases of current interest, Roman law developed

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21 *Rolf Knütel*, Römisches Recht und deutsches Bürgerliches Recht, in: H. Ludwig (ed.), Die Antike in der europäischen Gegenwart (Veröffentlichung der Joachim Jungius-Gesellschaft der Wissenschaften Hamburg Nr. 72), 1993, 43-70 (page 53, with references).

22 *Knütel* (1998), see nt. 1, p. 161.

23 See nt. 1.

24 See *Rudolf Schöll*, Legis XII tabularum reliquiae, Leipzig 1866, for a widely cited reconstruction of the Twelve Tables.

in step with the legal issues of the day. In fact, Roman law textbooks often characterize Roman law as “juristic law”[25] or liken Roman law to English law today: largely free of abstract concepts and essentially “case law”[26].

The case-oriented evolution gave Roman law a high degree of flexibility and the ability to cope with the transformation of Rome from a rural community to a large empire and the ensuing rapid economic change, without the formal legislative changes and recognition of legal concepts often considered indispensable.[27] Two famous examples that illustrate this flexibility are limited liability and agency law. Roman law never recognized limited liability for private businesses – besides removing the right of creditors to kill or sell into slavery a debtor who failed to pay (*lex Poetelia Papiria de nexis*) in 326 BC. Instead, Rome accommodated the demand for limited liability by exploiting the *peculium* of slaves. Slaves were legally “things” and, as such, could not own other things. In practice, however, they were allowed to accumulate earnings and other property, denoted as their *peculium* (allowance). They became the legal owner of their *peculium* after manumission, i.e., when granted freedom. To remedy the lack of a business format with limited liability, Romans employed “company slaves” (*exercitores servi communes non volentibus dominis* or *servi communes negotiatores*) as managers and funded them with a *peculium* for business transactions. That way, they avoided liability for business conducted by the slaves beyond the funds with which they provided them.[28]

Similarly, Rome never instituted the law of agency. In order to meet the increasing demand for binding representation in business matters in Rome’s growing economy, the Romans employed the *potestas*, i.e. the power of a Roman father (*pater familias*) over his (adult) children (*patria potestas*) as well as the ownership of his slaves, as a form of agency.[29] The Roman *pater familias* and *dominus* could act through children and slaves, in which case he was liable for their offenses.[30] Slaves managed estates and arranged trading and banking transactions on the master’s behalf. Even top managers were typically selected from among slaves, explaining the common phenomenon of Romans “placing themselves into slavery.” Free men sold themselves into slavery in order to attain a high position in the enterprise of a senatorial house.[31]

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[25] Examples are *Fritz Schulz*, Classical Roman Law, Oxford 1951, or *W.W. Buckland/P. Stein*, A Textbook of Roman Law from Augustus to Justinian, 3rd edition, Cambridge 1963.

[26] See, for example, *Max Kaser*, Roman Private Law, 3rd edition in translation by *Rolf Dannenbring*, Durban 1980; *P.W. Duff*, Personality in Roman Private Law, Cambridge 1938.

[27] For more details in the context of the *societas publicanorum* see *Ulrike Malmendier*, Societas publicanorum, Cologne/Vienna 2002, 212-213.

[28] See *Lujo Brentano*, Das Wirtschaftsleben der antiken Welt. Vorlesungen, gehalten als Einleitung zur Wirtschaftsgeschichte des Mittelalters, Jena 1925, 143; and *András Földi*, Remarks on the legal structure of enterprises in Roman law, in: Revue Internationale des Droits de l’Antiquité 43 (1996), 179-211. *Földi*, especially the summary on page 211. For a discussion of the exceptions, in which the liability went beyond the *peculium*, see *Heinrich Honsell/Theo Mayer-Maly/Walter Selb*, Römisches Recht. Fortführung des Werkes von Paul Jörs, Wolfgang Kunkel und Leopold Wenger, 4th edition, Berlin/Heidelberg/New York 1987, 378-381.

[29] On the law of agency and its substitutes see *Peter Garnsey/Richard P. Saller*, The Early Principate. Augustus to Trajan, Oxford 1982, 33 and *John A. Crook*, Law and Life of Rome, London 1967, 60. On the same topic in the context of the Roman labor market see *Peter Temin*, The Labor Market of the Early Roman Empire, in: Journal of Interdisciplinary History 34(4) (2004), 513-538 (536).

[30] *Rafael Taubenschlag*, The law of Greco-Roman Egypt in the light of the papyri, Warschau 1955, 307ff., 505ff.

[31] Ulpian (D. 28,3,6,5) denotes such slavery as *ad actum gerendum*, i.e., to secure the post of an actor, who runs the senatorial household.

Both examples illustrate how the Romans achieved modern organizational functions without formal legal reform by expanding the interpretation of existing legal institutions.

The case-based and flexible evolution of Roman law is, to some extent, mirrored in the evolution of its later incarnation, the *ius commune*. The key elements of the *ius commune* are, of course, two codifications: the *Corpus Iuris Civilis*, the codification of Roman law under Justinian in the sixth century AD, and the *Corpus Iuris Canonici*, the law of the Catholic Church. However, we cannot equate the *ius commune* – nor the *Corpus Iuris Civilis* – with codified law from later centuries. Justinian's *Corpus Iuris Civilis* is not a compilation of abstract legal rules. Instead, the Digest continuously lists cases and their variations and then the (often differing) legal opinions of Roman jurists. Hence, by returning to the *Corpus Iuris Civilis*, judges were not simply looking at legal rules but at case-based deliberations. Second, continental Europe shared not only two *Corpora* but also the commentaries, text books, and collections of legal opinions, which naturally evolved following judicial decisions.

As a result, the influence of Roman law can hardly be described as making the law rigid and hard to adapt to changing economic realities. While it is certainly correct that civil law countries today are characterized by codified law, they also live in the Roman-law tradition of dialectically arguing, on a case-by-case basis, how to adapt to the specific circumstances of the case in question.

IV. Politics and Finance

So far, we have seen that the evolution and reception of Roman law in Europe is not always consistent with its characterization in the modern law-and-finance literature. In addition, a more careful consideration of Roman law also illuminates the debate about one of the main alternative views on the determinants of growth, the so-called politics-and-finance approach. This literature argues that the legal and economic institutions of a country are endogenous to its political environment. According to this view, the political elites of a country produce institutional outcomes, including the legal system, which then affect economic outcomes. According to this view, the cross-country analyses of *La Porta et al.* that relate financial outcomes to legal origins are picking up correlated political circumstances. We briefly summarize the main points of this debate.

A starting point for this alternative view is the consideration of legal systems over time. If legal institutions and their instrument, legal origin, are to be reliable predictors of financial development, then they ought to be such predictors not only today but throughout history. That does not appear to be the case. A time-invariant attribute like legal origin cannot explain the historical evolution of particular polities and their financial systems, nor can it explain the evolution in the differences between countries over time. In fact, several comparative historical studies have highlighted that civil-law institutions have better served the organizational needs of evolving commercial societies than the common-law environment at various points in history. *Lamoreaux* and *Rosenthal*[32], for example, argue that, French law has historically allowed more flexible forms of liability and ownership than US common law. Businesses could not form limited-liability corporations in France before 1867. However, as the authors argue, the need for this form was not acute because the *société en commandite* provided a sufficient substitute. The *commandite* consisted of general partners, who managed the firm and had unlimited liability for its obligations, and of special partners, whose liability was limited

32 *Naomi R. Lamoreaux/Jean-Laurent Rosenthal*, Legal Regime and Contractual Flexibility: A Comparison of Business's Organizational Choices in France and the United States during the Era of Industrialization, in: American Law and Economics Review 7 (2005), 28-61.

to their investments and who had no managerial role. These organizations issued shares as well. In the mid-19th century, when stock quotations were only available for a few firms in New York and around 50 in Boston, over 200 firms had their securities actively traded in Paris. No such flexible partnership arrangements were available in the United States. New York's 1822 enable statute for the *commandite* required partners to declare the amount of their individual investments, precluding the trade of shares, and courts often interpreted these arrangements as exposing limited partners to unlimited liability. The lack of flexibility in American corporate law was particularly onerous to minority shareholders, who could neither force dissolution of the company nor exit easily by selling their shares. This and other examples illustrate that the opposition of a flexible, judge-led common law tradition to an ossified, code-besotted civil law does not stand up to historical scrutiny. Even if it were to characterize the legal environments today, it did not do so at previous points in history, which casts doubt on the perceived fundamental differences between the two legal systems.

More broadly speaking, researchers have voiced the concern that the comparison of legal systems and resulting financial outcomes relies solely on data from the latter half of the twentieth century. *Rajan* and *Zingales*[33] show, for example, that civil-law countries had *larger* stock markets than common-law countries prior to 1913. For example, Belgium, France, Germany and Sweden all had more developed financial systems than the United States in 1913, but their financial development declined more steeply after 1913. The authors observe a general pattern, across countries, of highly-developed financial systems in the early twentieth century, decline in response to the Great Depression of the 1930's and recovery only after the demise of the Bretton Woods system in the 1970s. Civil-law countries, however, appear to have slowed more than common-law countries during periods of decline.

The authors relate the historical patterns of financial development to the interests of industrial and financial elites. If their interests coincide with financial and economic development, the elites chose to implement institutions that fostered development. If their interests and desire to cement their political power demanded institutions that were unfavorable to growth and development, they implemented those. In other words, legal traditions do not suffice to explain the difference in financial development *between* civil-law and common-law countries and its variation *within* countries over time, and "politics" or "political economy" in the spirit of *North*[34], appear to be the missing ingredient.[35]

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[33] *Raghuram G. Rajan/Luigi Zingales*, The Great Reversals: The Politics of Financial Development in the 20th Century, in: Journal of Financial Economics 69 (2003), 5-50.

[34] *Douglass C. North*, Structure and Change in Economics History, New York 1981.

[35] Related papers in this vein investigate the role of relevant stakeholders and their political weight in the context of investor protection. *Mark J. Roe*, Legal Origins, Politics, and Modern Stock Markets, in: Harvard Law Review 120 (2006), 460-526, details how competing political groups have, through history, cumulatively determined the present form of American corporate governance. *Marco Pagano/Paolo Volpin*, Shareholder Protection, Stock Market Development, and Politics, in: Journal of the European Economic Association 4 (2006), 315-341, point out that good shareholder protection triggers stock-market participation of a broader portion of voters, who then favor even more shareholder protection. *Enrico Perotti/Ernst van Thadden*, The Political Economy of Corporate Control, in: Journal of Political Economy 114 (2006), 145-175, focus on the identity of the majority shareholder and the political consequences. For example, if the financial participation of the middle class is low, the median voter will choose low investor protection and favor bank or family control. If, instead, middle-class participation is high, the median voter will choose equity control and investor protection. *Pagano/Volpin*, The Political Economy of Finance, in: Oxford Review of Economic Policy 17(4) (2001), 502-519, argue that similar dynamics are at play in a variety of policy arenas, including corporate control, public ownership of enterprise, bankruptcy, and securities market regulation. *Stephen Haber/Amrando Razo/Noël Maurer*, The Politics of Property Rights: Political Instability, Credible Commitments, and Economic Growth in Mexico, Cambridge 2003, use the case of Mexico from 1876-1929 to ex-

Even more directly, *Acemoglu* and *Johnson*[36] (2005) question how central legal institutions are to the economic and financial development of a country compared to political institutions. They point out that a weak legal environment (weak protection of contractual rights) can be remedied, for example in private agreements and via reputation. Weak political institutions (weak property protections), instead, cannot be remedied. They test their hypothesis empirically, relating various measures of financial and economic development to indices of both legal and political institutions. For their empirical analysis, they use two instruments for political institutions: settler mortality and population density. They exploit that, in former colonies with high initial settler mortality, colonial powers established extractive political institutions to expropriate wealth from the colonies, while in colonies with low mortality they created settlements with greater property protection.[37] Similarly, colonizers set up institutions to extract resources through slave or bonded labor in more densely settled societies.[38] They use legal origin as the empirical instrument for legal institutions. Comparing the role of political and legal institutions, the authors find that, none of the (instrumented) proxies for legal institutions (legal formalism, procedural complexity, and the number of procedures necessary to resolve a court case of unpaid commercial debt) predict growth. The coefficient estimate for the political-institutions proxy (variable "executive constraint") is, instead, significant and large. The authors conclude that legal institutions do not have a big impact when they are not backed by political power. And, vice versa, even dysfunctional legal institutions suffice to support economic and financial growth as long as political institutions provide security against expropriation by elites and government.

How does the evolution of Roman law support this view? A closer look at both the legal and economic development of ancient Rome illustrates how politics can determine financial and economic outcomes, regardless of the state of the legal development. We observe a number of advanced financial institutions at a time when Roman private law was little developed and regress at a time when the legal development reaches its height but political interest reverses. One example is the legal format of businesses in Rome, in particular of the *societas publicanorum*. The *societas publicanorum* owes its creation to Rome's Republican "lean" government. During its five centuries of existence, the Roman Republic never assembled a sizable

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plain how economic systems can remain stable in spite of considerable political instability when governments selectively enforce the rights of those property holders who are integrated into the political system.

36 *Daron Acemoglu/Simon Johnson*, Unbundling Institutions, in: Journal of Political Economy 113 (2005), 949-995.

37 The authors check the validity of settler mortality as an instrument for contemporary institutions in *Daron Acemoglu/Simon Johnson/James A. Robinson*, The Colonial Origins of Comparative Development: An Empirical Investigation, in: American Economic Review 91 (2001), 1369-1401.

They show the robustness of their results to the inclusion of a large range of proxies for other determinants of contemporary per-capita income that might be correlated with settler mortality in particular geographic and climatic factors (as traditionally suggested, e.g., by *Diamond*, *Sachs*, *Montesquieu*).

38 Here, some further investigation whether or not the instrument is valid, i.e., uncorrelated with determinants of per-capita income like disease would be valuable, especially in light of *Jared Diamond*'s thesis on the link between the early development of populations and the transmission of human disease (*Jared M. Diamond*, Guns, Germs and Steel: The Fate of Human Societies, New York 1997): hunter-gatherer populations were typically less dense and had less proximity to animals than settled agricultural societies. As a result, they did not develop immunities to human diseases transmitted from domesticated animals – like measles and smallpox – and were virtually exterminated by such diseases after encountering Europeans. *Diamond*'s argument suggests that the transmission of diseases strongly affected the development of different societies. Some of the robustness checks in a related paper by *Acemoglu*, *Johnson* and *Robinson* (Reversal of Fortune: Geography and Institutions in the Making of the Modern World Income Distribution, in: Quarterly Journal of Economics 117 [2002], 1231-1294) address this concern indirectly (e.g. dropping the Americas, where the arrival of Europeans after prompted a dramatic demographic collapse or excluding countries with extremely low population in 1500).

bureaucracy. Instead, public services were contracted out and public income sources were leased to private entrepreneurs. These private contractors were called "government leaseholders" or publicans (*publicani*). Roman senators were not allowed to participate in the government leases, and a separate class of entrepreneurs emerged, later often equated with the knights (*equites*).

The three main business activities of the publicans were (1) the provision of goods and services for the public, (2) utilization of public property, and (3) collection of public revenues, all of which are described in *Badian*'s classic work and in *Malmendier* (2002)[39]. The most (in-)famous type of contracts was the last one, the outsourcing tax collection, especially poll or land taxes from the provincials. Indirect taxes and tributes on goods and services were imposed primarily on non-Romans and non-Roman goods, namely traders arriving at ports, city gates, and market places.[40] While the types of contracts did not change much throughout the Republic, the economic opportunities grew with the addition of new territories, and the scale of all three types of business activities expanded vastly.

How did pre-classical Roman law deal with these large-scale businesses? Government leaseholders had to set up their companies as *societates* since the only form of corporation besides the public corporations (such as the *populus Romanus*, *aerarium*, and *fiscus*) was the *collegium*. The *collegium* was, however, available only to organizations with "public purpose" such as religious and political associations, not including government lease holding.[41] The *societas* was the Roman version of partnerships and evidently not well-suited for the large-scale and long-term operations of government leaseholders: Partners (*socii*) could not limit their liability; the partnership ceased to exist with the death or renunciation of a partner and in case of legal disputes among the partners; and the firm could not assume rights or obligations separately from its members.[42] The pre-classical jurists resolved this deficiency by reinterpreting the prevailing legal rules and allowing exceptions that were applicable only to lease-holding companies. Differently from the simple *societas*, a single person could contractually bind the *societas publicanorum* and assume rights in the name of the firm.[43] The *societas publicanorum* did not cease to exist if a partner died or left the firm, nor did legal disputes among the partners necessarily affect its existence.[44] Relatedly, the departure of the key executive, the *manceps*, did not affect the contractual relationship between the company and the Roman government.[45] Investors could provide capital and acquire shares (*partes*) without becoming a

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[39] *Ernst Badian*, Publicans and Sinners, New York 1972/1983 (corrected reprint). The 1997 edition of *Badian*'s work (in German: Zöllner und Sünder, Darmstadt 1997) incorporates some newer sources and offers modified interpretations. For *Malmendier* (2002) see nt. 27. Older literature includes *Ferdinand Kniep*, Societas Publicanorum, vol. 1, Jena 1896; *Antonin Deloume*, Les manieurs d'argent à Rome: les grandes compagnies par actions, le marché, puissance des publicains et des banquiers jusqu'à l'empire, Étude historique, Paris 1890; and *Georg Ürödgi*, Art. Publicani, in: Real-Encyclopädie, Suppl. 11, Stuttgart 1968, col. 1184-1208.

[40] Cicero mentions the three most important taxes that were contracted out in De imp. Cn. Pomp. 6,15: the port tax (*portorium*), the „tenth" of the harvest of agricultural products including grain (*decuma*), and the grazing fee (*scriptura*).

[41] *Duff* (nt. 26), 95ff.

[42] See, for example, *Kaser* (nt. 26), 225-227.

[43] D. 3,4,1,1.

[44] The special legal action was called *actio pro socio manente societate*, see D. 17,2,65,15.

[45] We can infer this from paragraphs 46 and 54 of the *Lex Portorii Asiae*, the translation of a Latin tax law inscribed on the *Monumentum Ephesenum* from 62 A.D. The nucleus of this law, paragraphs 1-36, originates in the late Republic, 75 or 74 B.C. (*Helmut Engelmann/Dieter Knippe*, Das Zollgesetz der Provinz Asia. Eine neue Inschrift aus Ephesos, in: Epigraphica Anatolica 14 [1989]) and reveals numerous details about the functioning of the lease-holding companies.

partner and without being liable for the company's obligations.[46] We also know that the shares were traded and had fluctuating prices. For instance, Cicero writes about 'shares that had a very high price at that time.'[47] Traders met on the *Forum Romanum*, supposedly near the Temple of Castor.[48] Finally, the company could assume rights and obligations, e.g., file actions against fraud or embezzlement, own property, and inherit items.[49]

These adjustments to the needs of an expanding Roman economy during the time of the Republic are hard to reconcile with the characterization of Roman legal-origin countries as "rigid" and inhibiting economic growth. Most importantly, however, the timing of the rise and fall of the Roman *societas publicanorum* point to the relevance of political support for Roman law 'in practice'. The *societas publicanorum* developed and flourished under the Republican state whose minimal bureaucratic body required outsourcing to private parties. But the decline of the Roman Republic and the onset of the Principate brought an end to the success story of the publicans. The knights (*equites*), and thus many of the publicans, were subject to proscriptions during the last century BC, resulting from power struggles with the senatorial aristocracy.[50] Legal reforms restricted the business activities of the publicans to collecting taxes and dues.[51] Augustus transferred even the tax collection in Gaul, Asia, and finally in all imperial provinces to a *procurator Augusti*, who was part of his bureaucracy.[52] The Julio-Claudian emperors continued to gradually reduce the contracting with private entrepreneurs, and in the 2nd century AD, Trajan finally limited it to a few specific taxes such as the inheritance tax. The large-scale operations of the publicans reverted to smaller-sized businesses of so-called *conductores* (contractors), similar to their origins in the early Republic.[53] Hence, the rather advanced business format of the *societas publicanorum*, which in many ways assumed the function of a business corporation in the modern sense, disappeared at a time when the legal system reached its height of "classical" development.

The correlation with political interests is clear. The *publicani* were able to establish large-scale business operations when the governing class supported and, in fact, benefited from those businesses. Laws were reinterpreted to facilitate government lease holding. With the

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[46] Several ancient authors refer to the shareholders of the *societates publicanorum* as *participes* or *adfines*, e. g. Cicero, Pro lege Manila 2,6, Pro C. Rabiro Postumo 2,4; Plautus, Trinummus 330-331; Livy, Ab urbe condita 43,16,2. The meaning of *adfines* is vaguer; they are never mentioned in Cicero's work.

[47] Cicero, In P. Vatinium testem interrogatio 12,29. *Badian* (see nt. **Error! Bookmark not defined.**), 102, points out that the high stock prices Cicero mentions are consistent with a price reduction for tax collection rights in the same year.

[48] See Plautus, Curculio, 78, and the references in *Edward Chancellor*, Devil Take the Hindmost: A History of Financial Speculation, 1999, 4.

[49] D. 47,2,31,2; D. 3,4,1 (*habere res communes*), and D. 37,1,3,4 (*bonorum possessio*).

[50] According to Appian (Bell. civ. 4,5), 2000 *equestri* were killed; see also the detailed account of the brutality of the proscriptions in Cassius Dio (47,14). More on this in *Ürödgi* (see nt. **Error! Bookmark not defined.**), col. 1201.

[51] *Maria Rosa Cimma*, Ricerche sulle Società di Publicani, Milan 1981, 99ff.; *Otto Hirschfeld*, Die kaiserlichen Verwaltungsbeamten bis auf Diokletian, 3rd edition, Berlin 1963 (reprint of the 2nd edition, 1905), 69ff.; *Michail Rostovtzeff*, Geschichte der Staatspacht in der römischen Kaiserzeit bis Diokletian, Leipzig 1902, 379ff.

[52] *Joachim Marquardt*, Römische Staatsverwaltung, vol. 1-3, 2nd edition, Leipzig 1884-1885 (= reprint Darmstadt 1957), 301-318; *Ürödgi* (see nt. **Error! Bookmark not defined.**), col. 1200, 1202. A province was called imperial if the emperor appointed the governor, and senatorial if the senate appointed the governor.

[53] See Pliny, Epistulae 7,14; Panegyricus 3,7,7; 39,5.

transition to an imperial government, however, the Roman economic system gradually switched from contracting with private entrepreneurs to large-scale nationalization.

But what motivated the emperors to suppress the activities of the *publicani*? It was not to Rome's economic advantage. Concurrent with the demise of the *societas publicanorum,* economic growth slowed down in several industries. One example is the mining industry, which had formerly seen an explosion in output, likely due to technological improvement and its use by the companies of the publicans. As *Wilson*[54] reports, the use of the new water-powered mining techniques and the output from various mines shrank significantly in the first century AD, which is after the emperors took over the mines.

Traditionally, historians have linked the demise of the publicans to their abuse of power. In the 16th century, the legal historian *Cujaz* described the publicans as "unsurpassed in fraud, avarice, immodesty and audacity."[55] Over the last four centuries, this verdict has changed little. *Deloume* and *Ürödgi* portray the publicans as revenue-hungry exploiters.[56] *Mommsen* relates the rise of a class of profit-oriented entrepreneurs, i.e., of the publicans, to the emerging social tensions in the Roman Republic and the later disintegration of the Roman Empire.[57] *Cunningham* lists "avarice," "extortions," and "greed" as their main business motivation.[58] These historians interpret the elimination of the government lease-holding system and its replacement by public administration as an attempt of the emperors to remedy the shortcomings of contracting and outsourcing that relied on monetary incentives. Augustus is hailed for organizing an effective public administration that eliminated the abuses of the publicans.

There are two problems with this traditional view. First, it is unclear how severe the abuses of the publicans were. As *Badian*[59] points out, the negative image of the publicans is biased. At times when the system of public contracts was working well, there was little reason for the ancient writers to report about it. The excesses and abuses of the publicans, instead, stirred the interest of the ancient historians and led to a partial treatment of the publicans in the historical literature centuries later. Second, however grave the abuses of the publicans were, it is unclear whether the governing political class wanted to prevent them. Attempts to restrain excesses of the publicans towards the inhabitants of the provinces, such as the legislation of Q. Mucius Scaevola as governor of the province of Asia in the early first century BC, were rare. Politicians had to overcome resistance among their fellow magistrates in order to enact such legislation, as Cicero reports in his letter to Atticus (6.1). Quite to the contrary, the proconsuls displayed similarly abusive behavior in the provinces they were governing.[60] Thus, the traditional explanation for the demise of the publicans, which invokes the "benevolent paternalism" of the imperial Roman government, lacks plausibility.

Instead, the correlation of the rise and fall of the *societas publicanorum* with changes in Rome's political economy suggests that political interests were the driving force. The short tenure of the consuls and other magisterial offices precluded a stable bureaucracy in charge of

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54 *Andrew Wilson*, Machines, Power and the Ancient Economy, in: Journal of Roman Studies 92 (2002), 1-32.

55 *Cujaz* characterizes the publicani in his commentary on De publicanis et vectigalibus et commissis (D. 39,4) as: „Hi quam fraude, avaritia, immodestia, audacia superent ceteros homines nemo est qui nesciat…" (*Jacques Cujaz*, Opera omnia: Opera quae de iure fecit, vol. II, Frankfurt 1595, 54).

56 *Deloume* (see nt. **Error! Bookmark not defined.**), 475f.; *Ürödgi* (see nt. **Error! Bookmark not defined.**), col. 1191f.

57 *Theodor Mommsen*, Römische Geschichte, vol. 2, 14th ed., Berlin 1912, 379f.

58 *W. Cunningham*, An Essay on Western Civilization in its Economic Aspects, Cambridge 1902, 157 and 165.

59 See nt. **Error! Bookmark not defined.**.

60 See for example, *Max Cary/H.H. Scullard*, A History of Rome, 3rd ed., New York 1975, 174.

public works during the Republic but not during the Roman Empire. The emperors established a permanent bureaucratic apparatus.[61] Hence, there was less need for outsourcing. The emperors also re-directed public revenues into their (private) pockets and Rome's public treasury, and the *aerarium*, lost its importance.[62] Such diversion was likely easier when the emperors' own employees collected public revenues rather than when the task was publicly auctioned off and performed by private entrepreneurs. In fact, as *Badian*[63] points out, earlier during the Republic, Gaius Gracchus started to outsource tax collection in the province of Asia to the publicans in order to *prevent* the governors from diverting public revenues. The reverse argument explains why the emperors wanted to discontinue outsourcing.

Relatedly, the switch from private entrepreneurs to bureaucrats coincided with the gradual increase in taxes under the emperors. The Romans generally viewed taxation as intruding on civil liberty, and increases had caused violent resistance all over the empire.[64] If the emperors wanted to collect more taxes, public collection by government employees with public enforcement rights might have resulted in a better yield than collection by private entrepreneurs, outweighing revenue-enhancing features of the auction-based outsourcing system, i.e., that it identified the lowest bidder for the provisions of services and the highest bidder for revenue rights.

A last political-economy reason relates to the tensions between the political and business elites in ancient Rome. It is likely that the emperors may have had concerns about powerful and large business organizations and perceived the power of the publicans as a threat to their own imperial position, consistent with arguments in the modern political-economy debate (e. g. *Rajan* and *Zingales*[65]). During the Republic the Roman government repeatedly came to realize its dependence on the services of the publicans, particularly in times of war. The emperors were in the position to avoid such dependence building up their own bureaucracy.

Overall, the determinants are complex. Still, whatever political interests affected the development, the Roman case allows us to distinguish the influence of political changes from that of legal changes more clearly than other historical analyses. It overcomes a basic identification problem faced in the empirical analysis of law, politics, and finance: As law and politics evolve over time, they often develop in the same direction – either fostering or limiting financial development. For example, many countries become more democratic and implement market-oriented legislation at the same time. That makes it difficult to distinguish correlation from causality and to attribute financial development to either source. The *societas publicanorum* provides a rare case in which the evolution of law and politics diverged. During the Roman Republic, when Roman law was still far from a complete body of civil law ("preclassical" period), political interests demanded stable business organizations that could raise large-scale financing. During the Roman Empire, when Roman legal science peaked ("classi-

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[61] *Alfred Heuss*, Römische Geschichte, Braunschweig 1960, 363; *Rostovtzeff* (see nt. 51), 382.

[62] During the Republic, all state finances went through the *aerarium*. It was the role of the two quaestors to manage the *aerarium*, following the decrees of the Senate. During the Principate, the emperors established an additional treasury, the fiscus, with whose usage they bypassed Senate. They also started to nominated the quaestors themselves or replaced them with dependent officials. See *Cary* and *Scullard* (nt. 60), 379.

[63] See nt. **Error! Bookmark not defined.**.

[64] *Bernhard Laum*, Geschichte der öffentlichen Finanzwirtschaft im Altertum und im Mittelalter, in: Wilhelm Gerloff/Franz Meisel (eds.), Handbuch der Finanzwissenschaft, vol. 1, Tübingen 1926, 211ff. (218); *Jens Peter Meincke*, Steuerprotest in der Antike, in: Gottfried Baumgärtel/Hans J. Becker/Ernst Klingmüller/Andreas Wacke (eds.), Festschrift für Heinz Hübner zum 70. Geburtstag am 7. November 1984, Berlin/New York 1984, 159-172 (170-171).

[65] See nt. 33.

cal" period) and the law-related transaction costs of economic interaction diminished, political interests reversed and grew less favorable toward the smooth operation of large-scale economic activities. Financial contracting regressed despite the progress in legal framework. Hence, economic development that coincides with government interest appears to require little formal legal underpinning other than a willingness to sanction experimentation with existing legal forms on a case-by-case basis. Without government support however, economic development may wither despite an existing legal framework.

IV. Conclusion

The continuing influence of Roman law in today's legal environment is one of the pillars of *Rolf Knütel*'s work. Even he may be surprised, though, about the degree of interest "Roman legal origin" has attracted in the ongoing debate about institutional, including legal determinants of financial development and growth. In order to make progress in this debate, economists would benefit from more interaction with Romanists who are willing to cross their disciplinary boundaries and to illuminate the historical and modern role of Roman law.