

DOI: 10.7596/taksad.v7i4.1800

Citation: Shmeleva, L., Utkina, K., & Shmelev, D. (2018). Diplomatic Activities of Rome in the VIII–III Centuries BC According to Data of the Juridical Tradition. *Journal of History Culture and Art Research*, 7(4), 8-15. doi:<http://dx.doi.org/10.7596/taksad.v7i4.1800>

Diplomatic Activities of Rome in the VIII–III Centuries BC According to Data of the Juridical Tradition

Liudmila Shmeleva¹, Kseniya Utkina², Dmitry Shmelev³

Abstract

This paper investigates the diplomacy of the city of Rome in Royal and Early Republican periods fragmentation. It is known that the diplomatic authorities of Ancient Rome had a legal basis, fixed in Roman law. The oldest legal norms are preserved in the quotations and paraphrases of the Roman writers, lawyers and antiquaries (Cicero, Livy, Varro, Fest and others), who lived at a later time. Based on their data it is possible to reconstruct the field of public law governing the powers of fetials and ambassadors, *ius gentium* in the period VII - III centuries BC. In addition, they provide an opportunity to recreate some aspects of international relations in the region (relations with the Latin League, Etruscans, Volsci, Aequi and other Italian peoples) and diplomatic activities of Ancient Rome (diplomatic rituals - the Declaration of war, conclusion of peace Treaty; the position of ambassadors, diplomatic activities of the Roman Senate and consuls).

Keywords: Ancient Rome, Roman Law Tradition, *Leges regiae*, The Law of the Twelve Tables, The Digest, Roman diplomacy.

¹ PhD in History, associate professor, Department of General History, Institute of International Relations, Kazan Federal University. E-mail: procella@rambler.ru

² Student, Kazan Federal University, global@ores.su

³ Sc.D. in History, professor, Kazan National Research Technical University named after A.N. Tupolev, dmitryShmelev@mail.ru

1. Introduction

The diplomatic activities of the bodies of power in Ancient Rome and those individuals who had been given these activities by Rome and the Roman people were based on rightful principles which had been registered in the Roman legislations since the times of the kings. The diplomatic activities were in the sphere of the public law. In Ancient Rome the international and diplomatic activities were regulated in by the rights of the fetials, the rights of the people and the ambassadorial law [1; 2].

In ancient Rome the fetials had the right to regulate international relations [3, 12.120; 1.62; 8. 641; 4, 5.86]. The fetials were entitled to announce the declaration of war and making peace. They also had the right to extradite Roman citizens to an opposing party as a result of the violation of rules of the declaration of war and making peace. The feacial law had to do with the announcement of the religious aspect of international acts that is why the fetials did appear quite early in the society of the Italic peoples. The Romans adopted the feacial law during the period of the state system formation. *Ius fetiale* is considered to be a set of regulation the fetials had to build relations between Rome and other countries [5, 164].

Peoples' rights in this context can be defined as 'a complex of juridical rules of the relations between Rome and other states' [5, 165]. *Ius gentium* regulated reception and position of other peoples' ambassadors who came to Rome. This how the peoples' right is mentioned in the works of Tit Livy, M. T. Cicero and other Rome authors.

Ambassadorial law (*ius legatorum, ius legationis*) is considered to be 'a state of Rome ambassadors' status and activity' [5, 165]. It regulated the embassy's aims, its membership, and the status of Rome ambassadors. *Ius legationis* and its regulations are often mentioned by Livy in his descriptions of the Romans' ambassadorial missions.

The Ancient Roman law was first made in written form in the times of the kings. At least it did exist in written in the period of Numa Pompilius [6, I. 32.2; 7, II. 27.4].

However, the regulations of the public law that regulated the ambassadorial activity of Ancient Rome in the VIII – III centuries BC can be found in the quotations of Roman writers, antiquaries and lawyers of later periods (II century BC – V century AD). Since the ancient law was relevant in Rome in those days they were very good at its regulations. In their works the authors tried and wrote in detail about the process of the Roman law formation and the norms of the public law being fixed, paying much attention to the ambassadorial activity in this respect.

It allows us to choose those regulations of the law which regulated the ambassadorial activity.

2. Methods

The methodology of this article is based on the principles of historicism, that is, consideration of all events in their historical conditionality. General principles of historiographic analysis were used: definition of research problems, analysis of theoretical and methodological positions of the authors. A comparative historical method was also used, which allows to consider historical sources in their comparison with each other and the historical conditions of their emergence, and a historical and genetic method, which allows to consider the choice of legal information by Roman and Greek authors, taking into account the purposes of their works and the time of their creation.

3. Results and Discussion

The Sources of the Roman Law Tradition

The earliest works devoted to the regulations of the public law were written by the historians and lawyers of the II – I centuries BC. These are the essays of Plutarch, Livy, Dionysius of Halicarnassus, Cicero and Varro. They referred to the laws often quoting them having tried and kept the language archaism. The authors quite often quoted the earlier sources of information. The ancient writers pointed out they knew the texts of the ancient laws, they saw and read them. They also paid attention to the fact that because of the old language used in the ancient texts they sometimes could not understand them [8, 1. 44. 195]. It means we can trust the Roman and Greek tradition and try and mark out the regulations of the ancient Roman law which regulated the ambassadorial and international activity of Rome in VIII – III BC [9; 10].

As far as an older Roman tradition of the I – V centuries AD, a bigger number of quotations from the ancient law and references can be marked than in the previous period. The most important authors of this period are Maurus Servius Honoratus, Fest, Gaius and many others. We should also mention a legislative work of the Digest which was written in the times of Justinian. It consisted of both regulations of the imperial period and the regulations which were built much later, including those that regulated the ambassadorial activity of the Roman state.

The main works which logically and fully demonstrate the history of Rome and its law in the VIII–III centuries BC and refer to the regulations known as *ius gentium*, *ius legationis*, *ius fetiale*, are still the works of Tit Livy and Dionysius of Halicarnassus. Their data are supplemented with the information found in the essays of M. T. Cicero, Guy, Fest and others.

Leges Regiae

The legal regulations which regulated the diplomatic relations, appeared in the times of the rex and were recorded in *Leges regiae*. Since VIII BC the Romans had known the Greek and Etruscan alphabets, and in VII BC they invented Latin alphabet. This fact proves the information found in the works of the Roman authors according which the ancient laws were written down [11, 11. 8. 2 (Marcellus); 12, 6 L. 13, 294; 14]. The references to *Leges regiae* are represented in works of M. T. Cicero, T. Livy, Dionysius of Halicarnassus, Plutarch, Fest, Aulus Gellius, Pliny the Younger and others. Some norms of the king's legislation became part of the Law of the Twelve Tables.

The first regulations which governed the relations between Rome and other communities appeared in the times of Numa Pompilius. His reign was marked by the appearance of the collegium of fetials [7, 2. 72. 1; 15, *Numa*. 12; *Cam*. 18]. Other authors attribute the appearance of the collegium fetiales to the reign of Tullus Hostilius and Ancus Marcius [6, 1. 24. 4; 32. 5; 16, 2. 31; 17, 5. 4]. This collegium was in charge of the ceremonies which were necessary for making peace and declaring a war [7, 2. 72.4-5].

The expansion of the fetial collegium's functions happened during the time of the kings. For example, in the reign of Tullus Hostilius the collegium was given the right of making peace. According to Cicero, the right of declaring a war were given to fetials in the time of the same rex [18, 2. 17. 34; 2. 21; 16, 2. 31]. It has much in common with the notion of a legal war which is discussed by Cicero in his essays 'About the State' and 'About the Laws' [16, 3; 18, 2. 34]. During the reign of Ancus Marcius fetials were given the right to declare wars [6, 1. 24], though, according to Livy, in the times of Tullus, the war was declared by the rex himself [6, 1. 22].

Thus, we are able to restore some regulations of the public law which were used in the diplomatic and international activity in Ancient Rome during the reign of the kings.

The Law of the Twelve Tables

The next period of appearance of the legal regulations in Ancient Rome goes back to the mid of 5th century BC [19; 20]. These were the times when the Law of the Twelve Tables was created. It included all the rules including the public rule which regulated the rights and activities of Roman masters. The Ninth Table was devoted to the public law which also had to do with regulation of the diplomatic and international activity of Rome [6, 3. 34; 8, 1. 43]. The Tenth Table contained the sacral regulations which also could be used to regulate the diplomatic activity of the Roman Republic. We do not have all the texts of the Twelve Tables, but those data we have allow us to reconstruct some of the legal regulations. It is worth paying attention to the fact that some regulations contained in the Twelve Tables have much in common with the contract made between Rome and the Latin communities in 493 BC [21; 22; 23, 16. 10. 8; 24; 25, 1. 12. 37; 26; 27, 344].

Probably the Law of the Twelve Tables could contain the regulations concerning the collegium of fetials and the fecial law. Servius notes that the fetials' right was written down in the Law of the Twelve Tables: *Justos dicit faliscos, quia populous Romanus missis Xuiris ab ipsis jura fetialia collegit et nonnulla supplementa XII tabularum accepit, quas habuerat ab Atheniensibus* [3, 7. 695].

Legal regulations of the Roman Republic in VIII – V centuries BC can be reconstructed with the help of the data having been cited by Cicero, Livy, Gaius and other Roman and Greek authors.

M.T. Cicero in his essays 'About the State' and 'About the Law' pointed to some of the regulations from the Law of the Twelve Tables and the regulations *ius fetiale* (the regulations about *auctoritas*, about *sonatas* and a day of judgment with foreigners, the regulations of the fecial law connected with declaration of a war or making peace) [18, 2. 8. 21].

The data supplied by Tit Livy allows us to describe the position of Roman ambassadors, the conditions of forming the embassy and its functions in the period of the Young Rome Republic as well as to reconstruct some regulations called *ius gentium* and *ius legationis*. In his work Livy stressed many times the ambassador's inviolability which was given them according to the regulation *ius gentium* [6, 2. 4; 4. 17; 5. 28, 35, 51; 6. 1, 17; 21. 25; 24. 33]. According to *ius gentium* those citizens who were guilty of breaking the ambassador's inviolability were extradited to the country of the insulted ambassadors [6, 38. 42.7; 11, 50.7.18]. Livy also pointed out that each embassy had to have a definite aim [6, 21. 33; 31.11.4-12]. The same data can be found in the comments of a lawyer Ulpian, cited in the Digest [11, 50.7.15].

The Institutes of Gaius are considered to be interesting for solving the question of the legal maintenance of the diplomatic and international activity in Ancient Rome. The Institutes of Gaius are an only literary heritage of a scientific legal system of Ancient Roman and a source of information about the state of the Roman law in the early periods of its development. To study the diplomatic activity of Rome it is considered to be useful to look through the articles devoted to the rights of Latin citizens and foreigners. '*ius postlimini*' means the right of coming back from captivity and become a Roman citizen again [28, 1], making peace and declaring wars [28, 3. 93-93]. Gaius also stressed the legal regulations and claims [for example, 28, 2. 65, 69]. He noted that all peoples used both their rights and the rights which resided in all the peoples [28, 1.1].

Thus, in the writings of Roman historians and lawyers, we find the norms of the Roman law, which formed the legal basis of diplomatic and international activities of the Roman Republic.

The Digest

The Digest is considered to be the last codification of the Roman law. The Digest is a set of works written by the authoritative Roman lawyers and part of the Roman Law *Corpus iuris civilis*. The Digest was created

by order of Byzantine Emperor Justinian I in the period of 530-533. One of the sections is devoted to embassies and their ambassador [11, 50.7]. This part contains both new regulations of the Emperor time and comments to the essays of the Roman lawyers of earlier times. In this section the Roman lawyers paid attention to the question of appointing ambassador and their inviolability.

The majority of the regulations of this section refers to the Emperor time and shows the situation and the law of the V – I centuries BC. At the same time the compilers of the Digest included into the section some new regulations which had been used in the times of the Republic. As far as our research is concerned the following comments cited in the Digest are of great interest to us comments of Ulpianus [11, 50. 7. 3; 50.7. 15] and Pomponius [11, 50. 7. 18; 29].

These regulations from the Digest sort with Livy's descriptions of ambassadors' status during the Republican period. This allows us to make a conclusion that some of the legal regulations which referred to the legal base of the international and diplomatic activity of the Roman Republic were quiet stable.

4. Conclusions

As a whole the information about the legal basis of the diplomatic and international activity of Ancient Rome during the king and early Republican times seems to be very fragmentary. Never the less we can reconstruct some regulations of the early Roman legal law which regulated the diplomatic activity of Ancient Rome.

1. Iusfetiale (declaration of war, making peace, making a contract (foedus) in a form of a verbal obligation);
2. Regulations iusgentium concerning ambassadors' personal inviolability;
3. Regulations iuslegationis concerning Roman ambassadors. Their status and duties;
4. A regulation concerning the status which meant the people who yield themselves prisoners in the Roman Republic;
5. A regulation concerning a Roman citizen status who left their home country for a colony.

More than that, the juridical tradition gives an opportunity to reconstruct some aspects of international relations in Italy and Lazio (the relations with the Latins, the Roman colonies and other communities) in the VIII – III centuries BC.

Thus, the juridical tradition helps reconstruct some aspects of diplomatic and international relations of Ancient Rome in the king's and early Republican periods.

5. Acknowledgements

The work is performed according to the Russian Government Program of Competitive Growth of Kazan Federal University.

Footnotes

[1] J. Rüpke, "Historians of religions and the space of Law", *Religione e Diritto Romano. La cogenza del rito*. A cura di S. Rondazzo. Trecase, pp. 43-49, 2014.

[2] F. Chini, Idee vecchie e nuove intorno ai concetti di ius e fas, *Religione e Diritto Romano. La cogenza del rito*. A cura di S. Rondazzo. Trecase, pp. 115-152, 2014.

- [3] Maurus Servius Honoratus, "Servii Grammatici qui feruntur in Vergilii carmina commentary" / Recensuerunt G. Thilo et H. Hagen. Leipzig, 1881.
- [4] Marcus Terentius Varro, "De lingua Latina" / Hrsg. Erkl. v. H. Dahlmann. Berlin, 1940.
- [5] M. Bartoshek, "Rimskoe pravo: (ponyatiya, terminy, opredeleniya)". Moskva, 1989.
- [6] Titus Livius, "Titi Livi Ab Urbe condita" / Rec. R.S. Conway et C.F. Walters. Tomi I-II. Oxonii, 1948.
- [7] Dionysius of Halicarnassus, "The Roman Antiquities" / With an English translation by E. Cary on the basis of the version of E. Spelman. Vol. I-VII. Cambridge-London, 1981-1986.
- [8] Marcus Tullius Cicero, "De oratore" / Ed. K.F. Kumaniecki. Lipsiae, 1969.
- [9] M. Johnson, "The pontifical Law and civil Law. Towards an understanding of the ius pontificium", *Athenaecum*, Vol. 103, pp. 140-156, 2015.
- [10] P. Sánchez, "Latini, id est foederat: Le statut juridique des colonies latines sous la République", *Athenaecum*, Vol. 104, pp. 50-82, 2016.
- [11] Digesty Iustiniana / per. s latinskogo, pod red. L.L. Кофанова. Moskva, 2005.
- [12] Sextus Pompeius Festus, "Sexti Pompei Festi de verborum significatu quae supersunt cum Pauli epitome" / Ed. W.M. Lindsay. Lipsiae, 1913.
- [13] I.L. Mayak, "K voprosu o carskih zakonah v Rime", *Mnemon*, Vol. 12, ss. 288-298, 2013.
- [14] S. Stassi, "La presenza del sacro nel territorio albano". In: Silvia Aglietti (ed), *Res sacrae santuari e Luoghi di culto nei colli albani*. Albano, pp. 7-24, 2014.
- [15] Plutarchus, "Vitae parallelae" / Recogn. C.Lindskog et K. Ziegler. Vol. 1-3, Lipsiae, 1969-1973.
- [16] Marcus Tullius Cicero, "De re publica librorum sex quae manserunt" / Rec. K. Ziegler. Lipsiae, 1969.
- [17] Aurelius Victor, "Sexti Aurelii Victoris Liber de Caesaribus: praecedunt Origo gentis Romanae et Liber de viris illustribus urbis Romae, subsequitur Epitome de Caesaribus" / Rec. F. Pichlmayr. Lipsiae, 1966.
- [18] Marcus Tullius Cicero, "M. Tulli Ciceronis De legibus libri" / Rec. T. Vahleni. Berolini, 1883.
- [19] G. Cifani, "Aspects of urbanism and political ideology in archaic Rome", *Journal of Roman Archaeology*, Vol. 97, pp. 15-28, 2014.
- [20] F. Fulminante, *The Urbanization of Rome and Latium Vetus: From the Bronze Age to the Archaic Era*. Cambridge, 2013.
- [21] O. Diliderto, "La responsabilità nelle XII Tavole: profili palinogenetici", in a cura di L. Capogrossi Colognesi e M. F. Cursi, *Forme di responsabilità in età decemvirale*. Napoli, pp. 1-20, 2008.
- [22] O. Diliderto, "Ut carmen necessarium (Cic. leg. 2,23,59). Apprendimento e conoscenza della legge delle XII Tavole nel I sec. a. C.", in ricordo di E. Narducci, a cura di M. Citroni. *Letteratura e civitas. Transizioni dalla Repubblica all'Impero*. Pisa, pp. 141 – 162, 2012.
- [23] Aulus Gellius, "Auli Gellii Noctes Atticae" / Recognovit brevique adnotatione critica instruxit P.K. Marshall, Oxonii, 1968.
- [24] P. Sánchez, "Le fragment de L. Cincius (Festus p. 276 L) et le commandement des armées du Latium", *Cahiers du Centre Gustave Glotz*, Vol. 25, pp. 7-48, 2014.

- [25] Mark Tulliy Ciceron, O gosudarstve. O zakonash. O starosti. O družhbe. Ob obyazannostyash. Rechi. Pis'ma / per. s lat. V.O. Gorenshteyna. Moskva, 1999.
- [26] C.J. Smith, 2014: "The Latins: historical perspective". In: Aberson, M., Biella, M. C., di Fazio, M. & Wullschleger, M. (eds.) *Entre archéologies et histoire: dialogues sur divers peuples de l'Italie préromaine: Etudes Genevoises sur l'Antiquité 2*. Berne, pp. 22-30, 2014.
- [27] L.L. Kofanov, "Lex i ius: vznikovenie i razvitie rimskogo prava v VIII – III vv. do n.e.", Moskva 2006.
- [28] Gai institutiones secundum codicis Veronensis apographum Studemundianum et reliquias in Aegypto repertas / M. David. Leiden, 1964.
- [29] Y.B. Tsirkin, "The first Roman-Carthaginian treaty". In: O.L. Gabelko, A.V. Korolenkov (red.), *Punicheskie voyny: istoria velikogo protivostoyaniya. Voennye, diplomaticheskie, ideologicheskie aspekty bor'by mezhdru Rimom i Karfagenom* [O.L. Gabelko, A.V. Korolenkov (ed.), *The Punic Wars: A History of the Great Confrontation. Military, Diplomatic and Ideological Aspects of the Struggle between Rome and Carthage*]. Saint-Petersburg, pp. 125-142, 2017.

References

- Aulus Gellius (1968). "Auli Gellii Noctes Atticae". Recognovit brevique adnotatione critica instruxit P.K. Marshall, Oxonii.
- Aurelius Victor (1966). "Sexti Aurelii Victoris Liber de Caesaribus: praecedunt Origo gentis Romanae et Liber de viris illustribus urbis Romae, subsequitur Epitome de Caesaribus". Rec. F. Pichlmayr. Lipsiae.
- Bartoshek, M. (1948). "Rimskoe pravo: (ponyatiya, terminy, opredeleniya)". Moskva.
- Chini, F. (2014). Idee vecchie e nuove intorno ai concetti di ius e fas, *Religione e Diritto Romano. La cogenza del rito*. A cura di S. Rondazzo. Trecase, pp. 115-152.
- Cifani, G. (2014). "Aspects of urbanism and political ideology in archaic Rome". *Journal of Roman Archaeology*, Vol. 97, pp. 15-28.
- David, M. (1964). Gai institutiones secundum codicis Veronensis apographum Studemundianum et reliquias in Aegypto repertas. Leiden.
- Digesty Iustiniana per. s latinskogo (2005). pod red. L.L. Кофанова. Moskva.
- Diliderto, O. (2008). "La responsabilità nelle XII Tavole: profili palingeneticici", in a cura di L. Capogrossi Colognesi e M. F. Cursi, *Forme di responsabilità in età decemvirale*. Napoli, pp. 1-20.
- Diliderto, O. (2012). "Ut carmen necessarium (Cic. leg. 2,23,59). Apprendimento e conoscenza della legge delle XII Tavole nel I sec. a. C.", in ricordo di E. Narducci, a cura di M. Citroni. *Letteratura e civitas. Transizioni dalla Repubblica all'Impero*. Pisa, pp. 141-162.
- Dionysius of Halicarnassus (1981-1986) "The Roman Antiquities". With an English translation by E. Cary on the basis of the version of E. Spelman. Vol. I-VII. Cambridge-London.
- Fulminante, F. (2013). *The Urbanization of Rome and Latium Vetus: From the Bronze Age to the Archaic Era*. Cambridge.
- Johnson, M. (2015). "The pontifical Law and civil Law. Towards an understanding of the ius pontificium". *Athenaecum*, Vol. 103, pp. 140-156.

- Kofanov, L. L. (2006). "Lex i ius: vzniknovenie i razvitie rimskogo prava v VIII – III vv. do n.e.", Moskva.
- Marcus Terentius Varro (1940). "De lingua Latina". Hrsg. Erkl. v. H. Dahlmann. Berlin.
- Marcus Tullius Cicero (1883). "M. Tulli Ciceronis De legibus libri". Rec. T. Vahleni. Berolini.
- Marcus Tullius Cicero (1969). "De oratore". Ed. K.F. Kumaniecki. Lipsiae.
- Marcus Tullius Cicero (1969). "De re publica librorum sex quae manserunt". Rec. K. Ziegler. Lipsiae.
- Mark Tulliy Ciceron (1999). O gosudarstve. O zakonash. O starosti. O družhbe. Ob obyazannostyash. Rechi. Pis'ma. per. s lat. V.O. Gorenshteyna. Moskva.
- Maurus Servius Honoratus (1881). "Servii Grammatici qui feruntur in Vergilii carmina commentary". Recensuerunt G. Thilo et H. Hagen. Leipzig.
- Mayak, I. L. (2013). "K voprosu o carskih zakonah v Rime". *Mnemon*, Vol. 12, pp. 288-298.
- Plutarchus (1969-1973). "Vitae parallelae". Recogn. C.Lindskog et K. Ziegler. Vol. 1-3, Lipsiae.
- Rüpke, J. (2014). "Historians of religions and the space of Law". *Religione e Diritto Romano. La cogenza del rito*. A cura di S. Rondazzo. Trecase, pp. 43-49.
- Sánchez, P. (2014). "Le fragment de L. Cincius (Festus p. 276 L) et le commandement des armées du Latium", *Cahiers du Centre Gustave Glotz*, Vol. 25, pp. 7-48.
- Sánchez, P. (2016). "Latini, id est foederat: Le statut juridique des colonies latines sous la République". *Athenaecum*, Vol. 104, pp. 50-82.
- Sextus Pompeius Festus (1913). "Sexti Pompei Festi de verborum significatu quae supersunt cum Pauli epitome". Ed. W.M. Lindsay. Lipsiae.
- Smith, C. J. (2014). "The Latins: historical perspective". In: Aberson, M., Biella, M. C., di Fazio, M. & Wullschleger, M. (eds.) *Entre archéologies et histoire: dialogues sur divers peuples de l'Italie préromaine: Etudes Genevoises sur l'Antiquité 2*. Berne, pp. 22-30.
- Stassi, S. (2014). "La presenza del sacro nel territorio albano". In: Silvia Aglietti (ed), *Res sacrae santuari e Luoghi di culto nei colli albani*. Albano, pp. 7-24.
- Titus Livius (1948). "Titi Livi Ab Urbe condita". Rec. R.S. Conway et C.F. Walters. Tomi I-II. Oxonii.
- Tsirkin, Y. B. (2017). "The first Roman-Carthaginian treaty". In: O.L. Gabelko, A.V. Korolenkov (red.), *Punicheskie voyny: istoria velikogo protivostoyaniya. Voennye, diplomaticheskie, ideologicheskie aspekty bor'by mezhdurimom i Karfagenom* [O.L. Gabelko, A.V. Korolenkov (ed.), *The Punic Wars: A History of the Great Confrontation. Military, Diplomatic and Ideological Aspects of the Struggle between Rome and Carthage*]. Saint-Petersburg.