

The proposed generality of contract law during the roman republic essay sample



The Roman republic is known for many things. It is especially known for its developments affecting modern day law. These developments are said to be the very essence of modern day law. It is important for us to know how and when these developments took place in order to understand how our society developed into what it is today. I intend to look specifically at the law and how it came to be and developed into what we know it as today. More specifically I intend to make a detailed investigation into contract law.

Contract law has a detailed history but its interpretation differs, it appears, from source to source, modern and ancient. There exists a debate, to which I will later refer, involving the generality of contract law that has existed between authors for close to a century. It is this debate I wish to research and report on and hopefully come to a definitive conclusion.

Various theories exist showing that contract law during Rome's republican era was in fact not general at all but was instead a compilation of laws and regulations applying to specifically different circumstances. These are the views shared by various scholars throughout modern history. "It is often said that the Romans never developed a system of contract but only of individual contracts." "The classical law of contract was a complicated and heterogeneous collection of legal rules which seems to have developed piecemeal to satisfy the needs of commerce." The arguments of the above authors are those I wish to challenge based on knowledge from other authors as well as what we know today as a collective society.

It serves us well to look at a definition of a contract as understood by a trusted contemporary source. The Encyclopedia Britannica frames it as

follows, “ A promise enforceable by law. The promise may be to do something or to refrain from doing something.” It goes on to say, “ The law of contracts considers such questions as whether a contract exists, what the meaning of it is, whether the contract has been broken, and what compensations are due to the injured party.”

In order to understand and evaluate the statements made by Thomas and Pugsley we must dissect various outlooks and sources concerning the Republican concept of contract law in its historical sense meaning that a detailed assessment is required of the agreements that existed during the republic. I will start by looking at the Republic as an historic period, analyzing its key moments and turning points that could have affected the development of contract law. Next I will write about the history and development of contract law in order to get a more detailed and focused idea of what we will actually be dealing with. Following this it serves us well to outline the tension which is the focus of this paper and a result of the preceding introductions. After discussing this we must look at the sources I will be using in order to get a general idea about the reliability and relevancy of the information I will be using.

After this I will introduce further details and begin discussing individual forms of contract making sure to point out the parts of them that add to my argument. This discussion will represent the bulk of my argument. Finally after weighing up all the evidence I will clarify my findings and present a conclusion based on all the facts and evidences I have discussed.

The aim of this paper is to prove to the reader that during the Republican era of Rome there did in fact exist a type of general law of contract, if not directly then indirectly. I will attempt to prove this by showing that, although there might have been different rules for different situations, the main idea or concept behind these rules and classifications came from one central idea which lent its identity to these other forms of contracts, therefore making it appear as though they were completely separate when in fact they were actually part of a system.

From this brief history of the Republic one will notice that Rome was never in a constant enough state for any law to develop in a manner not considered piecemeal. Rome's population was constantly changing which brings a myriad of social factors that could have affected especially the private law sphere. Rome's government and its leadership structure never stayed the same long enough during the republic for the law to develop around such a system. It is important for us to know this if we want to understand exactly where and how contract law developed.

The Republican era is believed to have lasted from 509 BC until 31BC. It encompasses an era lasting from the time the Tarquins were expelled from Rome, thereby ending the regal era, until the famous battle of Actium that took place around 31BC.

Upon the expulsion of the Tarquins it was decided that Rome would have no more kings and that all the royal powers previously vested in a single figure would now be given to two democratically elected people called Consuls.

These consuls were believed to have been democratically elected by the

senate of Rome. As for the King's pontifical duties they were to be assigned to a third position henceforth known as the Rex Sacrificulus or Rex Sacrorum. During this time of change the Roman senate was restored and given back its power. The senate consisted of Patrician as well as Plebeian members who were representatives. This period also saw a series of documents being drawn up in honor of the developments seen thus far. These documents outlined the legal rights of Roman citizens (excluding women, slaves and resident aliens).

The Republic saw the introduction of three major political components. The first was the introduction of two consuls which formed the executive branch of the government. They shared supreme military authority. The consuls served a one year term after which they would retire into the senate for life. Each of them had a veto right against the other which in effect gave supreme Roman power equally to two people changing every year. The second was the introduction of the Roman senate, an advisory body with legislative duties and responsibilities. Thirdly there was the commission of the assemblies; one for the centuries and another for the tribes which included every citizen. While the assembly of the tribes included everyone, the century assembly was reserved for those who could afford to fight in Rome's armies.

The tribal assembly was responsible for rejecting or approving laws and attempts at war while the centuries were directly responsible for the election of the consuls. It is said that the republic was classified by its checks and balances put in place so that a regal system would not happen again. The idea was that no one person could seize ultimate power. This did not mean <https://assignbuster.com/the-proposed-generality-of-contract-law-during-the-roman-republic-essay-sample/>

that anyone could be a consul though. It was said that unless you had an ancestor who was a consul you could not yourself become one.

The theoretical exclusion of plebeians from ruling Rome and not being given enough power led to a split in Roman citizens. The patricians represented less than one percent of Rome's population and were legally and socially superior to the majority of citizens. They had earned their position through wealth and land ownership over many years and had a monopoly of social, political and economic power even though the Plebeians heavily outnumbered them. The Plebeians on the other hand consisted of peasants and people who, although had wealth, could not become Patricians due to their ancestral position.

The competition between these two groups is known as the 'Struggle of the Orders'. The struggle arose because Plebeians could no longer, by law, be in the senate (which had most of the power). They were allowed to vote but their votes were often overpowered by a skewed voting proportionality system used and supported by the senate. The result was that the Plebeians decided to leave Rome as a state and start their own state. This led to a near collapse of the Roman economy and the Patricians therefore asking the Plebeians to return to Rome. The Plebeians were given the right to elect their own tribunals and were given an absolute veto power over the actions of the state.

This political upheaval resulted in the creation of a document known as the XII Tables in 451 BC. It was drafted as a response to the desire to know the law by the Plebeians as well as an accommodation provided for their return.

The document effectively codified the laws concerning specific matters, crimes and the relations among other family members. This is considered to be an important event in terms of the development of the law, and more specifically the law of contract, because it recognizes only certain types of contracts specifically.

In 396 BC Rome destroyed long time enemy, Veii. This represented Rome's expansion over the Mediterranean world. After this Rome conquered many other cities effectively making them partners in their quest for domination. This is a clear example of Rome making use of the 'compromise and assimilate' doctrine. This idea led to the building up and strengthening of the Roman republic. During this time Rome was continually at war beginning with the First Punic War in 264 BC against Sicily then the Second Punic War over Saguntum in 281 BC then the Third Punic War against Carthage in 149BC then the Macedonian war in Asia Minor. These wars eventually led Rome to be the victor over Africa and Asia Minor.

Rome had developed an efficient tax system by now and was effectively charging its new 'Provinces for the privilege of being part of the Roman world. The system did inevitably become corrupt because Roman leaders were not concerned with how much profit tax collectors made. This new flow of money could be seen to have increased the demand for more complicated contracts and maybe even a system of contract.

From 133 BC Rome experienced a revolution in the form of many civil wars due to a change of loyalties of soldiers based in far away provinces. By now

Patricians had also begun buying the votes of peasants who desperately needed the money due to heavy tax increases.

The above problems led to a threefold problem for Rome. The senatorial class was becoming more powerful and numerous. The urban masses were no longer fulfilling their role and finally the army was beginning to disagree with the senatorial class. Eventually Rome became divided into two main factions. The Optimates, whose interests lay only with wealth. They were conservative and scarce but still managed to maintain power over Rome. The Populares are described as “ Champions of the depressed portion of the citizenry.” They wanted a redistribution of land amongst all those who deserved it, not only the wealthy class. This class especially highlighted peasants who were moving to the city in their masses in order to sell their votes.

The clash of these two groups led to a civil war leading to the death of prominent figures. These Populares leaders were replaced with more leaders. In particular Gaius Gracchus who's wish it was to transform Rome into an actual democracy once more. He had gained the support of the public assembly. The senate did not approve of him though and so declared martial law in order to have him killed.

Later, Germanic tribes from North of the Danube River invaded the Republic. This attack exposed the true weakness of the senatorial system. Rome sent poorly organized armies who were unwilling to fight and led by corrupt leaders. The Germanic tribes were eventually defeated by a private army led by Gaius Marius who had gained his power through the abolishing of the laws

which stated that a soldier had to own land. The result was that his army consisted of poor men who wanted to fight. His popularity led to his election as consul several times.

Gaius was eventually overthrown by Sulla in 88 BC. When Sulla left to conquer Mithridates Rome became once again subject to rival factions battling for power. When he returned he killed hundreds of his opponents and named himself dictator for life. He refashioned Rome and introduced measures which afforded the army generals and tribunes less power than before. He made them unable to pass a law without the senate's approval. He made the office of tribune a lifetime one which meant that men with political ambitions would no longer be attracted to it and finally he limited the term of governor to one year as to prevent any one man from becoming a hero to his men. Basically Sulla was trying to prevent another Sulla from happening.

We skip ahead in time now to where the second triumvirate has achieved power through the death of Caesar. This eventually leads to the famous conflict between Anthony and Octavius culminating in the battle of Actium which Octavian wins and is henceforth known as Augustus Caesar. Once he had cemented his power we see the beginning of the empire and the end of the Republic.