

CAPUT VI. LEX AQUILIA AND INIURIA

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ROMAN LAW AND THE CITIZEN

A six-part series presented in two, three-month segments

JANUARY-MARCH AND JULY-SEPTEMBER

It is recommended you read the January introduction

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si veritatem quaeris, cum tabernario loquere
If you seek the truth, speak with a tavernkeeper
Said of those who seek advice

* * *

THE BACKGROUND

This series on Roman law provides a view into *individual* lives. You see more than the trial's grit; you also see *personal* hopes and fears on display. An *actio iniuriarum*, an *action of outrage*; the *civis Romanus*, the *Roman citizen* bares his *animus*, *soul*

INIURIA AN AFFRONT TO DIGNITY

The *lex Duodecim Tabularum*, the *Laws of the Twelve Tables*, are published in 449 BCE. Included in the Twelve Tables is the offence of *iniuria*. Statute law limited *iniuria* to physical injury against a free person

Street-smart ruffians refer to *iniuria* as *vindictam spirans*, *vindicative vapour*

Romans are aware of *personal* viciousness associated with *vindictam spirans*. To guard against the viciousness, they liken *iniuria* to being a "fence". The allusion speaks equally to Roman social and psychological links of kinship

The plaintiff, having suffered a vicious verbal attack, initiates the action. Depending on the extent of the attack, the attack may have referenced other kin. On application to the *Praetor Urbanus* the action may be extended to include other family members. In all instances of insult, the action must be brought within one year of occurrence, else; the matter dies. Though the Romans emphasized familial and ancestral ties; *iniuria* is always *personal*. *iniuria* is *not* transferable through inheritance

Nota bene. The Roman *gens*, the *clan* is relational, through either birth or marriage. In addition, clan members share a common name and are often united by specified social customs and religious rites. By example: *Gaius Iulius Caesar*. *Gaius* is the personal name, *Iulius* or *Julius* is the family name, and *Caesar* is the *gens*, *clan* name

The *Praetor Urbanus* has jurisdiction over *all* actions in the law court. His *edicta* cite *general* and *special* offences. The term *general* refers to offences from an earlier era, such as the Twelve Tables. *Special* offences are those controlled by the *Praetor Urbanus*

The edicts issued by the *Praetor Urbanus* change the public's perception of *iniuria*, *outrage* and *damnum*, a *wrong*

Over time, *iniuria* broadens to include almost all *intentional* offences, such as: assault and battery, trespass to land, defamation, misuse of legal procedure, interference with family relations, preventing the exercise of ordinary citizen rights, and (to a limited extent) invasion of privacy and interference with economic relations. *iniuria* becomes a disparate range of offenses to one's *dignity* and *personal wellbeing*. For the plaintiff to succeed in court, he must argue the defendant's behaviour is *deliberate*

The plaintiff initiates an *in factum* action. *iniuria* is not economic loss, it is an outrage to feeling. The action may assert *damnum iniuria datum*, an *unlawful action* or *illicitum impedimentum ius*, an *unlawful interference with right* or *iniustum iudicium*, an *unjust judgement*. Always, outrage is reproach, invective, libel, or common street-brawling bodily assault. In Greek, the allusion is to ὕβρις, *hubris*

An action of *iniuria* is brought against the defendant and any accomplice. A simple accomplice may be a random passer-by who stops and joins the fray by encouraging the defendant in his contemptuous speech and behaviour. Or, the accomplice is a bully co-defendant with a loudmouth and aggressive behaviour. (The Court's procedural rules are discussed below)

The plaintiff claims a monetary sum that estimates the extent of his outrage. The case goes before the **recuperatores**, the **tribunal recovery board** and the board's **aestimator**, the **valuator**. If there is a **condemnatio**, a **verdict** in favour of the plaintiff, the **valuator** fixes the monetary penalty. The plaintiff's sum may be accepted or lowered. Whatever the court decides, the judgement is treated as a **poena**, a **penalty** against the defendant's conduct, versus compensation to the plaintiff

If the **iniuria** is **aggravated**, the judgement may be adjusted higher. If such, then the adjustment is set by the **Praetor Urbanus**

Further, if an award for damages is granted to the plaintiff, all the plaintiffs joined within the context of family may *not* be awarded the same sum. The sums vary. An insult to a wife and a child is insult to the **paterfamilias**, the converse may not be present

Procedural rules for an action of **iniuria** are strict. Roman courts are busy places, the litigants are bound by specific rules in their pleading. One such rule is the following: the plaintiff cannot use **dissimulatio aboletur**, **dissimulation is abolished**. **iniuria** is about insulting speech and dissimulation is changing the sound or sounds in one word to another word with the aim of obscuration to win. Equally, the defendant is *not* permitted to plead **mistaken identity**. The defendant is *deemed* to know the plaintiff

The plaintiff is allowed one exception concerning **dissimulatio aboletur**, the presence of **anger**. If the plaintiff wins his case, the **poena**, the **penalty** among other points cited by the **iudex**, the **judge** includes two criteria. The plaintiff's **social position** and secondly, the defendant's behaviour is deemed to have been of a **gross nature**

The defendant can only cite mistaken identity if the person was either the **paterfamilias** of a **gens**, the **senior male**, the **chief of the clan** or a widow. Roman society is hierarchal and litigious

Lucius Cornelius Sulla Felix, late 2nd Century BCE, muddled the legal waters

Sulla reviews the existing laws governing **iniuria**, when he served as dictator. He introduces legislation, the **lex Cornelia de iniuriis**, the **Cornelian Law of Outrage**. The law provides for either a criminal or quasi-criminal remedy. The legislation appears to **restrict** the **recuperatores**, specifically, the duties of the **aestimator**, the **valuator**. It is not until the emperors Septimus Severus and Caracalla, that the confused legislated is adjusted. A second opinion asserts the dual confusion of **Sulla** and **Praetor Urbanus** co-existed

Nota bene. **Lucius Cornelius Sulla Felix**, 138–78 BCE, was a Roman general and statesman. He won the first major civil war in Roman history and became the first man of the Republic to seize power through force

INIURIA AND SLAVERY

iniuria and **servitus**, **slavery** has elaborate rules

verberatio is torture

If an action of **iniuria** cites **verberatio** it is *not* necessary to prove the insult. Any action is in the name of the master. A slave is property; with the noun **peculium** cited. The word **peculium** may be understood in either of two senses, **private property** or **monetary savings**. The **aestimator**, the **valuator** assesses the damages. From the **lex Duodecim Tabularum**, the **Laws of the Twelve Tables**, the **formulae**, the **formula** to calculate pecuniary compensation for damaged property of cattle and slaves is: **pretium magni ex prior anno**, **the highest price from the previous year**. It is surmised, by the late Republican era the cited monetary formula may be regarded as simplistic. It is not known what additional factors may have been added to the formula to either increase gain (plaintiff) or reduce liability (defendant). Regardless, the master has no alienation of property

If there are several masters in a co-action, each has a separate interest. In this circumstance, the award of damages varies *not* by share but by each master's social position

If a slave works for another master, **usus fructus**, **usufruct of property**, provides: if the slave is returned to his master in the same state as loaned, there is *no* action. If, the slave is **damaged**, then the master may have an action of **iniuria**

Except in cases involving **verberatio**, all other actions involving servitude are perfunctory. The ordinariness of the utilitarian action is exemplified by the judicial phrase **etiam causa non cognita**, **even where the cause is not known**. In other words, a decision is reached with neither inquiry nor trial

Edicts published by the **Praetor Urbanus** are mute regarding master's outrage

ATROX INIURIA

There is a distinction between **atrox** and **iniuria**

res tam atrox, **matters so hideous** is extreme behaviour **ex persona**, **from the person** the nature of which to a person of high rank exhibits **iniuria** is classed as **atrocitas**, **atrocious**

The damages for **res tam atrox** are calculated separately. The plaintiff fixes a maximum claim by means of a **taxatio**, an **assessment**. The **iudex**, the **judge** may or may not accept the **poena**, the **penalty**. One matter is certain, if the **Praetor Urbanus** adds an even higher rate, the **iudex** will not interfere with it

In some instances, in addition to a high pecuniary assessment, there may be the additional penalty of mandated servile labour. A penalty of servitude often means travelling to another part of the Empire to perform hard labour (see Other Remedies)

OTHER REMEDIES

iniuria, in many instances, has criminal remedies. The range and severity of a finding of **extraordinarium indicium**, **extraordinary evidence** is alternative punishment. The person is sentenced to **damnatio**, **condemnation**. The person performs servile labour elsewhere in the Empire, either working in salt mines or building roads. **damnatio** includes **infamia**, **dishonour**

If the **iudex**, the **judge** cites the phrase **extra ordinem**, **very outside of set order** the defendant may be thrashed with a whip or beaten with a cudgel (a short, thick stick). Depending on your social standing you could perform a period of hard labour and be exiled or have specified property confiscated

INIURIA AND FREE SPEECH

Case LIII, below, concerns the plaintiff who sues the defendant heckler. Included, as an aside within the case, is the plaintiff who sues the judge from his previous trial. He claims the defendant judge used harsh words. Both cases address the issue of free speech from different perspectives

Following Case LIII, is the short essay, "*Regarding Free Speech in the Roman Forum*"

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In reading the Cases cited below, take into consideration the importance of maintaining social order

Ten juristic cases are discussed below: XLV to LIV

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CASE XLV

Gaius ¹ 3.2220. **libro Institutiones. obiter dictum.** Types of Iniuria. **lex Aquilia** iniuria

Iniuria autem committitur non solum cum quis pugno puta aut fuste percussus vel etiam verberatus erit, sed etiam si cui convicium factum fuerit, sive quis bona alicuius quasi debitoris, sciens eum nihil sibi debere, proscripserit, sive quis ad infamiam alicuius libellum aut carmen scripserit, sive quis matrem familias aut praetextatum adsectatus fuerit, et denique aliis pluribus modis

Outrage (iniuria) is committed not only by beating someone, that is; a fist or stick, or even thrashing him, but also by raising a clamour against him, or if someone; knowing that another owes nothing to him, advertises his estate for sale as a debtor, or if he writes a booklet or song to defame another, or if he pursues a matron or a youth, and in short in many other ways

CASE XLVI

Paulus ² 5.4.6-8. **libro Sententiae. obiter dictum.** Basis of an Action of Iniuria. **lex Aquilia** iniuria

Iniuriarum actio aut lege aut more aut mixto iure introducta est. Lege Duodecim Tabularum de famosis carminibus ³. membris ruptis et ossibus fractis. Moribu, quotiens factum pro qualitate sui arbitrio iudicis aestimatur, congruentis poenae supplicio vindicator. Mixto iure actio iniuriarum ex lege Cornelia ⁴ constituitur, quotiens quis pulsatur, vel cuius domus introitur ab his, qui vulgo derectarii appellantur. In quos extra ordinem ⁵ animadvertitur, ita ut prius ingruentis consilium pro modo commentae fraudis poena vindicetur exilii aut metalli aut operis publici

The action on insult (iniuria) was introduced either by statute or by morality or by mixed law; by the Law of the Twelve Tables, concerning evil songs (famosis carminibus), broken limbs, and broken bones. By morality, when conduct is evaluated in accord with its character through the judgement of a judge. And is avenged by a punishment of appropriate penalty. By mixed law, an action on insult (iniuria) is established under the Law of Cornelia (lex Cornelia) when someone is beaten, or his house is entered by those who are commonly called "burglars". Against them there is very extra ordinary (extra ordinem) punishment, so that the previous intent of the assailant is punished by the penalty of exile or the mines or public works, depending on the degree of the offense committed

- Footnotes:**
- 1 *Gaius* is a jurist mentioned in the *lex Citatium*
 - 2 *Paulus* is a jurist mentioned in the *lex Citatium*
 - 3 *famosis carminibus*. “Evil songs”. Historically, the Romans may have either said or sung poems to either defame or place a spell over another. The Twelve Tables cited the phrase, *mala carmina*: “evil songs”
 - 4 *lex Cornelia*. The Law of Cornelia is statute law, criminal law enacted in the year 80 BCE. The law allowed for three specific offenses: beating another person, thrashing a person, and forceable entry into another’s domicile. *iniuria* is case law, with many areas of suit, including the same three offences as *lex Cornelia*. If prosecuted civilly, the penalty was a fine payable to the plaintiff. But Paulus is writing his comment in the late Empire, the year 300 CE. Now, if you are successfully prosecuted the difference is more that a fine. The defendant is now brought before an imperial judge. A higher court means the trial’s wording shifts. The judge cites the phrase *extra ordinem*...
 - 5 *extra ordinem*. The phrase’s approximate sense is: “very outside of set order”. In Latin, *extra* is an adverb with the sense of either “outside of” or “beyond”. *ordinem*, is the verb *ordino*, conjugated in the first-person singular present, subjunctive mood. Since the verb is in the subjunctive, the verb’s sense reinforces and heightens the adverb’s significance

Cases XLV and XLVI provide the background and evolution to actions citing *iniuria*

To discern Roman history, the time span is approximately 700 years, commencing with the Early Republican era through to the end of Empire. This period allows the social historian to observe and comment on trends across *all* aspects of Roman life. The premise is social problems occur and re-occur. *iniuria* is a light into evolving social norms and expectations, from the relatively liberal late Republic to the harsh late Empire

Gaius, a jurist, cites physical beating. Under *lex Aquilia*, statute law, a freeman must suffer actual physical harm, else there is no case

Here is an example of battery with *no* physical injury

The defendant yells and uses vulgar language. He advances. He wildly waves his arms. He has a knife. Others seeing the knife, stop the defendant. An *iniuria* action *in factum* versus statute law allows the plaintiff to sue for battery though he is *not* physically harmed. For *Gaius*, for the action to be successful: the plaintiff must prove the defendant’s behaviour is *deliberate*

Ulpianus, a well-known jurist, in one *obiter dictum* cites three acts that may constitute *iniuria*

Ulpianus, following *Labeo*, another jurist; distinguishes between three types of acts that may constitute *iniuria*. They are to the *body* (striking somebody), to the *dignity* (abducting a woman’s chaperon), and to the *reputation* (assaulting a woman’s chastity)

To further understand *iniuria*, let us look at the role of the *chaperon*

Since ancient Rome did *not* have a constabulary, a police force; the *chaperon* is either a trusted adult male friend of the family or a long-serving family retainer. In both circumstances, the chaperon escorts and guards against effrontery

The chaperon’s primary duty is to escort. His secondary duty is being companionable, such as conversation or carrying goods: a child’s schoolbooks or a woman’s shopping purchases

Women and children are the chief benefactors of the chaperon, though any person may benefit, such as an elderly person

Effrontery is safeguarding *dignity* and *reputation* and includes reporting of such acts as *striking* the body, that is either literally or metaphorically an act against one’s personal *dignity*; secondly, abducting a woman’s chaperon. The act of abduction interferes with the chaperon’s duty to keep safe the woman’s *reputation*; and finally; assaulting a woman’s *chastity*, again, an act that seeks to sully a woman’s virtue

The defendant’s effrontery may be words or gestures or other acts against *dignity* and *reputation*

Paulus, a jurist, cites the *lex Duodecim Tabularum*, the “Twelve Tables”, which underlays the common morality of society. Criminal penalties may be given for beating another person, thrashing a person, or entering another person’s domicile

An action for *iniuria* was never a compensatory settlement but a *poena*, a “penalty”, paid by the defendant to the plaintiff

By the end of Empire, defendants in addition to the *poena*, could encounter added and harsher penalties. Case XLVI, the judge cites the phrase *extra ordinem*. Confronting *extra ordinem*, the defendant may be thrashed with a whip or beaten with a cudgel (a short, thick stick). Depending on your social standing you may perform a period of hard labour and be exiled or have specified property confiscated

Hermogenianus is jurist of the late 3rd Century CE, writes:

Regarding *iniuria*, it is now usual to determine if *extra ordinem* is in accord with the case and the person. Slaves are thrashed with whips and returned to their owners; free persons of low rank are subjected to cudgels; and all others are punished either by exile for a term or by forfeiture of specified property

Case XLV, the *obiter dictum* is indicative of moderate comment of mid-to-late 2nd Century, era of Emperor Marcus Aurelius

Case XLVI, the *obiter dictum* is indicative of measured comment of late 2nd Century-to-early 3rd Century, era of Emperor Commodus

CASE XLVII

Ulpianus. D.47.10.15.2-3,5-6,8,12. libro LVII Edictum. *obiter dictum*. Declaiming Against Someone. *lex Aquilia iniuria*

Ait Praetor Urbanus, 'qui adversus bonos mores convicium cui fecisse cuiusve opera factum esse dicetur, quo adversus bonos mores convicium fieret: in eum iudicium dabo.' Convicium ¹ iniuriam esse Labeo ² ait... Sed quod adicitur a Praetore 'adversus bonos mores' ostendit non omnem in unum collatam vociferationem Praetorem notare, sed eam, quae bonis moribus improbat quaeque ad infamiam vel invidiam alicuius spectaret. Idem ait 'adversus bonos mores' sic accipiendum non eius qui fecit, sed generaliter accipiendum adversus bonos mores huius civitatis...Fecisse convicium non tantum is videtur, qui vociferates est, verum is quoque, qui concitavit ad vociferationem alios vel qui summisit ut vociferentur... Ex his apparet non omne maledictum convicium esse: sed id solum, quod cum vociferatione dictum est, sive unus sive unus sive plures dixerint, quod in coetu dictum est, convicium est: quod autem non in coetu nec vociferatione dicitur, convicium non proprie dicitur, sed infamandi causa dictum

The Praetor Urbanus says. "I will give a trial against a person who allegedly raised a clamour (convicium) against someone contrary to good morals, or by whose help it allegedly occurred that a clamour was raised contrary to good morals." Labeo says that a clamour is an insult (iniuria) ... But the Praetor's qualification "contrary to good morals" (adversus bonos mores) should be interpreted not with respect to the morals of the offender, but generally, contrary to the morals of this community (adversus bonos mores huius civitatis) ... Not just the person who cried out is held to have raised a clamour, but also a person who roused others to cry out, or who brought about the outcry ... From this it is clear that not all abusive language is a clamour (non omne maledictum convicium), a clamour is only something that was uttered loudly – whether one person said it or many – and was said in a group. If something is not said in a group nor loudly, it is not properly called a clamour, but rather defamatory speech

Footnotes: 1 convicium. 2nd declension, neuter noun. A clamour or outcry, also sense: censure or reproof
2 Ulpianus cites Labeo, a jurist not mentioned in the *lex Citationum*

The case defines "clamour" as an offence of *iniuria*

A clamour may be an act of *iniuria*, but only if the outcry is in a loud voice and insults community morals (heard by many), versus personal morals (heard by few): then, clamour is defamatory speech

The Praetor Urbanus had both "general" and "special" powers concerning *iniuria*. "General" powers dated from the era of the Twelve Tables. These powers were outside of his control. However, he did have control over "special" powers granted in the Praetor's Edict. The downhill slope from clamour to defamatory speech is slippery. One of the Praetor's special powers referred to: *ex intentione infamiam accusare*, "intentionally defamatory accusations" when the defendant does not proclaim the accusation but writes or publishes them or acts in such a manner that the result is disrespectful

Ulpianus cites the following examples of successful prosecutions of *iniuria*. The wearing of either mourning or filthy clothing in respect to others or letting a man's beard grow are disrespectful acts. These acts imply you have been unjustly wronged and you're returning the "compliment". The writing or posting a satirical lampoon, to post a "For sale" notice of another's goods (when not for sale) or to seize another's property (when no action exists) are judged insulting, for the insult is in the implied bad credit of the other

Ulpianus, regarding this Case; cites the standard of "good morals"

adversus bonos mores, "contrary to good morals", not with respect to the morals of the defendant, but contrary to the morals of this community

The plaintiff felt insulted that others were speaking ill of him, specifically; the plaintiff is said to be a "guilty" person. In fact, the plaintiff had been successfully prosecuted on an offence. Therefore, saying the plaintiff is a "guilty" person is true

The plaintiff's action is denied

CASE XLVIII

Ulpianus. D.47.10.15.15,20-22. libro LVII ad Edictum. obiter dictum. Accosting a Woman's Chaperon. *lex Aquilia* iniuria

Si quis virgines appellasset, si tamen ancillari veste vestitas, minus peccare videtur, multo minus, si meretricia veste feminae, non matrum familiarum vestitae fuissent. si igitur non matronali habitu femina fuerit et quis eam appellavit vel ei comitem abduxit, iniuriarum tenetur... appellare est blanda oratione alterius pudicitiam adtemptare, hoc enim non est convicium, sed adversus bonos mores adtemptare. qui turpibus verbis utitur, non temptat pudicitiam, sed iniuriarum tenetur. aliud est appellare, aliud adsectari, appellat enim, qui sermone pudicitiam adtemptat, adsectatur, qui tacitus frequenter sequitur, adsidua enim frequentia quasi praebet nonnullam infamiam

If someone had accosted maidens, provided they were dressed in a slave woman's clothing, the offense seems small; and smaller still if the women were dressed in prostitute's clothing and not in that of matrons. Therefore, if a woman was not in a matron's dress, and someone accosted her or abducted her chaperon, he is liable for insult (*iniuria*)... To accost is to assault another's chastity with smooth talk. This is not clamour (*convicium*), but to make an assault contrary to good morals. One who uses foul language does not assault chastity but is liable for insult (*iniuria*). It is one thing to accost and another to pursue. One accosts by using speech to assault chastity; one pursues by often following in silence. For (a pursuer's) constant presence virtually ensures considerable dis-repute

The chaperon guards "good morals" against *iniuria*

A chaperon is a person appointed to accompany another person in the public domain. A chaperon may also be appointed to accompany another within a private residence. In both instances, the intent is to guard "good morals". Roman law protected persons from sexual advances. If the man in question is a youth, there is no sexual advance

To *accost* another is to approach and address another boldly or aggressively. *appellare est blanda oratione alterius pudicitiam adtemptare*... "To accost is to assault another's chastity with smooth talk..." But in some instances, words may not have been spoken, simply following a person along a street is sufficient, for it *reputes* the followed person

To *abduct* means either successfully forcing or persuading the chaperon to leave the side of the accompanied person. It is an offense to abduct the chaperon of a matron or a young person of either gender

CASE XLIX

Ulpianus. D.47.10.13.7. libro LVII ad Edictum. obiter dictum. Preventing Exercise of a Right. *lex Aquilia* iniuria

Si quis me prohibeat in mari piscari vel everriculum (quod Graece *sagene* dicitur) ducere, an iniuriarum iudicio possim eum convenire? Sunt qui putent iniuriarum me posse agree, et ita Pomponius ¹. Et plerique esse huic similem eum, qui in publicum lavare vel in cavea publica sedere vel in quo alio loco agree sedere conversari non patitur, aut si quis re mea uti me non permittat, nam et hic iniuriarum conveniri potest...si quem tamen ante aedes meas vel ante praetorium meum piscari prohibeam, quid dicendum est? Me iniuriarum iudicio teneri an non? Et quidem mare commune omnium est et litora, sicuti aer, et est saepissime rescriptum non posse quem piscari prohiberi, sed nec aucupari, nisi quod ingredi quis agrum alienum prohiberi potest. usurpatum tamen et hoc est, tametsi nullo iure, ut quis prohiberi possit ante aedes meas vel praetorium meum piscari, quare si quis prohibeatur, adhuc iniuriarum agi potest. In lacu tamen, qui mei domini est, utique piscari aliquem prohibere possum

If someone forbids me from fishing in the sea or dragging a net (which in Greek is called a *sagene*), can I sue him for outrage (*iniuria*)? Some think that I can sue for outrage (*iniuria*); and so Pomponius. And many (hold) that he is like a person who does not allow (me) to use a public bath, or to sit in a public theatre, or to conduct business or sit or talk in some other place, or does not permit me to use my property; for he can be sued for outrage (*iniuria*)... But what should be ruled if I forbid someone from fishing in front of my house or my villa? Am I liable in an action for *iniuria*, or not? And indeed, the sea and its shores are, like the air, common to all; and Imperial rescripts have often held that a person cannot be forbidden from fishing, no more than from bird catching, except if he is forbidden to enter another's land. But people have claimed, although without legal right (to do so), that someone can be forbidden from fishing in front of my house or my villa; hence if someone is forbidden, the suit on outrage (*iniuria*) can lie for this. However, I can at any rate forbid someone from fishing in a lake that I own

Footnote. 1 Pomponius is an unknown person. However, Ulpianus cites him in his comment. Speculatively; he may be a lawyer or a neighbour. Regardless, the plaintiff has a friend, with moral support

The case is about a private citizen who pursues own daily business, contrary to the busy-body neighbour. The neighbour assigns his know-it-all authority by citing broken "rules" of *iniuria*

piscatus sum in conspectu domus meae, "I was fishing in front of my house

The defendant asserts a prerogative he does *not* possess. To quote the juristic comment: *et quidem mare commune omnium est et litora*, "the sea and its shores are common to all"

CASE L

Paulus. D.47.10.23. libro IV ad Edictum. obiter dictum. Comment on Trespass as an Offence. **lex Aquilia iniuria**

Qui in domum alienam invito domino introiret, quamvis in ius vocat, actionem iniuriarum in eum competere Ofilius¹ ait

If someone enters another person's house when the owner is unwilling, even to summon (that person) to court, Ofilius says that the action on outrage (iniuria) lies against him

Footnote. 1 **Paulus** cites **Ofilius**, a jurist not mentioned in the *lex Citationum*

The defendant walks across his neighbour's property. The plaintiff gives no permission to cross his property. Trespass is annoying, but is walking across another's property *iniuria*?

To prohibit trespass, you must publish the offence, either verbally of "No entry" or written signage of "No Trespass"?

If a prohibition to trespass is given, how should the prohibition be presented (to be enforceable)?

The plaintiff even refuses the defendant's request to cross his property to attend the Court's Summons. The defendant takes the long route, circumnavigating the property's perimeter

The act of trespass is annoying, is it *iniuria*? "No" is the answer

To succeed, the plaintiff must show the defendant's outrage is in his *repeated* request to trespass

CASE LI

Gaius. 3.222. libro III Institutiones. obiter dictum. Outrage Against Another's Slave. **lex Aquilia iniuria**

Servo autem ipsi quidem nulla iniuria intellegitur fieri, sed domino per eum fieri videtur, non tamen eisdem modis quibus etiam per liberos nostros vel uxores iniuriam pati videmur, sed ita cum quid atrocius commissum fuerit, quod aperte in contumeliam domini fieri videtur, veluti si quis alienum servum verberaverit; et in hunc casum formula proponitur. At si quis servo convicium fecerit vel pugno eum percusserit, non proponitur ulla formula, nec temere petenti datur

No outrage (iniuria) is held to be done to a slave himself, but it is held to be inflicted on the master through him, although not in the same way as we are held to suffer outrage (iniuria) through our children or wives, but only when something quite serious is inflicted that is regarded as obviously done to insult the master, that is; if someone thrashes another's slave, a formula is published (in the Urbanus Praetor's Edict) for this case. But if someone raises a clamour against a slave or strikes him with a fist, no formula is published, nor is one lightly given to a plaintiff

The Case looks at the issue of, "Where does *iniuria* lie when your slave is mis-treated by another than, the rightful master?"

Gaius quotes the *Urbanus Praetor's* Edict in his comment:

I will give an action against one who allegedly thrashed another's slave contrary to good morals, or who submitted him to questioning (under torture) without the owner's order. Likewise, if anything other is alleged to have been done, I will grant an action after considering the case

The second comment:

...for it matters greatly what kind of slave he is: honest, a supervisor or steward, or instead common or middling or whatever

Central to the essence of Roman society is the *paterfamilias* and his paramount authority. The introduction to this paper speaks of *gens*, the Roman "clan" with its familial and cultural links: *...iniuriam pati per liberos aut uxores*, "...to suffer outrage through our children or wives"

The second aspect of Roman hierarchy, a slave is property. The causal link in the case is the *domus*, the lord or master. What is not obvious but inferred in raising a clamour against the slave, the slave acted outside the moral norm

Though the offence of *iniuria* is committed against the slave, it is the master who suffers *personal outrage*

CASE LII

Ulpianus. D.47.10.7.5. libro LVII ad Edictum. obiter dictum. Comment on Multiple Outrages. **lex Aquilia iniuria**

Si mihi plures iniurias feceris, puta turba et coetu facto domum alicuius introeas et hoc facto efficiatur, ut simul et

If you inflict several (simultaneous) outrages on me, that is; after gathering a throng and crowd, you enter

convicium patiar et verberer, an possim separatim tecum
experiri de singulis iniuriis, quaeritur. et Marcellus ¹
secundum Neratii ² sententiam hoc probat cogendum
iniurias, quas simul passus est, coniungere

someone's home and thereby bring it about that I
simultaneously endure a clamour and am thrashed
(whipped), it is asked whether I can sue you separately on
each outrage (iniuria). Marcellus, following Neratius' view
holds that (the plaintiff) should be forced to join (in a single
action) the outrages (iniuria) he suffered simultaneously

Footnote. 1 *Ulpianus* cites *Marcellus*, a jurist not mentioned in the *lex Citatiumum*
 2 *Ulpianus* cites *Neratius*, a jurist not mentioned in the *lex Citatiumum*

The plaintiff is denied taking multiple and separate actions against each defendant

Roman jurisprudence permits combining several actions in one suit. An action of *iniuria*, by its nature, is *cumulative* and *punitive*. One event consisting of several types of *iniuria* is combined as one action. Vulgar vocabulary and brutal battery of is combined to ensure each separate act has the same purpose, that is *insulting behaviour*

plures actus coniunctione in unum actum efficit ut aequabilitas contumeliae et aequabilitas ultionis, "Combining several acts as one act ensures *uniformity of insult* and *uniformity of redress*"

CASE LIII

Ulpianus. D.47.10.7.5. libro LVII ad Edictum. obiter dictum. Comment on Disrespect. *lex Aquilia* iniuria

Si quis per iniuriam ad tribunal alicuius me interpellaverit
vexandi mei causa, potero iniuriarum experiri. Si quis de
honoribus decernendis alicuius passus non sit decerni ut
puta imaginem alicui vel quid aliud tale: an iniuriarum
teneatur? Et ait Labeo ¹ non teneri, quamvis hoc
contumeliae causa faciet, etenim multum interest, inquit,
contumeliae causa quid fiat an vero fieri quid in honorem
alicuius quis non patiat

If, to annoy me, a person interrupts me with an insult
before someone's tribunal, I will be able to sue on outrage
(iniuria). If, with regard to decreeing honours for someone,
a person did not allow that, for instance, a statute or
something similar be decreed in someone's honour,
should he be liable for outrage (iniuria)? Labeo says he is
not liable, even though he did this to be insulting. For, he
says, there is a great difference between what is done to
insult and what does not allow to be done to honour
another

Footnote. 1 *Ulpianus* cites *Labeo*, a jurist not mentioned in the *lex Citatiumum*

Ulpianus cites *Labeo* in his *obiter dictum*

The plaintiff is a prominent public figure, he gives a public speech. During his speech, a man heckles. He is suing the heckler. The allegation is *iniuria*

The defendant's heckling may be annoying, his words do not meet the test of *iniuria*. For words to be an outrage, they must meet the test of personal *vindictam spirans*, "vindictive vapour"

In a related case, not cited in the *obiter dictum*

The plaintiff, in his previous case, claims the earlier judge's words were harsh. He is suing the judge. The allegation is *iniuria*

The defendant judge may have spoken harsh words, his words do not meet the test of *iniuria*. For words to be an outrage, they must be spoken *outside* of duty *si, qui publicum ius agendi habet, hic actus nullam iniuriam habet*, "A person who has a public right to act, this act has *no* outrage"

Both cases cite *iniuria* and imply "free speech". Does Rome have *free speech*?

* * *

REGARDING FREE SPEECH IN THE ROMAN FORUM

sermo datur cunctis, animi sapiential paucis

Speech is given to all, wisdom to few

Said of those who shield their counsel

*

dic cogitationes, speak *your thoughts* for you are a *civis Romanus*, a Roman citizen

What is *free speech*?

Zosimus, a Greek philosopher, in the year 364 CE, writes to **Valentinian**, a Christian emperor, requesting the re-instatement of magic as a traditional, pagan religious rite. His solicitation is a great personal risk

Valentinian and **Valens** are brothers, each in his own right an emperor. The former brother rules the Western half of the Byzantine Empire, the latter in the East. They meet in Constantinople to agree on co-sharing their rule. During their discussion, both brothers fall sick. They suspect their illness is due to either poison or a magic spell

The brothers jointly issue an edict which prohibits nocturnal religious rituals. The edict is in accord with custom that bans magic (which causes harm to others)

Zosimus complains banning magic, as a religious rite; is unbearable ...*vitam intolerabilem Hellenes facit*, ...*makes life unbearable for Hellenes*. He requests pagan, ritual magic; be re-instituted

It is only 51 years since the signing of the *edictum Mediolanensis*, the *Edict of Milan*, 313 CE. Many assume the edict establishes Christianity as the sole religion to the exclusion of other practices. This interpretation of the edict is wrong, and it persists. The *edictum Mediolanensis* permits *all* religions and bans persecution

The story continues...

Vettius Agorius Praetextatus is an *officialis publici Proconsulis officium tenens*, a public official holding the office of a *proconsul*. He has long service with recognition *ab omni virtute*, *by way of all virtue*. He is the proconsul at Achaëa, the northwestern Peloponnese Peninsula. He speaks with **Zosimus**

Praetextatus citing his position as proconsul; he requests and receives an audience with **Valentinian**. At the meeting he advises affirming the *edictum Mediolanensis*

Valentinian avows the theocratic benevolence of the *edictum Mediolanensis* (It is the *edictum Thessalonicae*, the *Edict of Thessalonica*, 380 CE; that establishes Christianity as the paramount faith)

The story's behind scenes...

Concerning **Valentinian**, we do not know his motive in affirming the *edictum Mediolanensis*. He shares rule with his brother. The sharing is family business. He also shares rule with *two* feuding prelates. **Damasus** and **Ursinus** are priests. Both men claim to be the Bishop of Rome, the Pope. Their bitter feud is near two-years old

Emperors, their character and behaviour, are often described as cruel, vengeful, power hungry and so forth. Regarding **Valentinian**, he has one trait at odds with other imperial attributes. He is described as having an *open mind*. History recognizes him as the benefactor and protector of *traditional*, meaning *pagan*, Grecian cults

Praetextatus, after having slumbered for more than twenty years in Achaëa, is promoted to the rank of **Praetor Urbanus**, **Urban Prefect** in 367 CE. He now works at the Imperial Chancellery. He has a generous salary

The audacity of *free speech*...

*

Rome has no laws against the freedom of expression. No government body exists to regulate what you can say or write. Furthermore, as demonstrated by **Zosimus** and his letter, there is no consequent for speech that criticizes those in power. If another citizen objects to the content of your speech, there is *no* standard against which to judge offensive language

There is the *lex Duodecim Tabularum*, the *Laws of the Twelve Tables*, or simply the *Twelve Tables*, published in the year 449 BCE. The *Twelve Tables* cite earlier statute law concerning *calumnia*, *slander*

calumnia pertains to *songs* with *slandorous lyrics*, the penalty is *ad mortem fustibalum*, the *clubbing to death*. The offence of *calumnia* also applies to *slandorous pamphlets*. (Few authors affix their name to a pamphlet.) In this instance, the penalty for *offensive text* is *gladius ultor impositus collo*, the *avenging sword being placed upon the neck*

Nota bene. See Caput I, for the origins and development of Roman jurisprudence: the *lex Duodecim Tabularum* and the office of the *Praetor Urbanus* and case law

Though no laws exist against the freedom of expression, the *civis Romanus* is advised to be prudent. The “good” citizen knows the difference between what is *permitted* and what is *permissible*. Self-censorship limits expression in anticipation of a negative consequence. Being guarded means being circumspect even in a circumstance that does not require caution

How did the Romans manage *free speech* and *politics*?

By the late Republican era, elite political speech is protected. Rome's elite observe social convention, with an eye on career prospects, the *cursus honorum*

The first two emperors of the Principate are **Augustus** and **Tiberius**. What is their policy regarding *free speech*?

Augustus has political and social constraints. The constraints are *not* defined

Tiberius sends most administrative matters to the Senate. When certain decrees are passed contrary to his express opinion, he does not complain. On occasion, his is the sole dissenting vote. Critics feel free to express publicly their disagreement. But this atmosphere of *laissez-faire* policy of leaving matters to take their own course without interference is neither absolute nor enduring

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Publius Clodius Thrasea Paetus is a senator

Thrasea Paetus is also a Stoic philosopher. His antics in the **Curia**, the **Senate House** are memorable. Over the period of thirty-plus-years from **Tiberius** through the reigns of **Caligula** and **Claudius** to **Nero**, he openly criticizes the emperor. Memorably, during the debate concerning Nero's execution of his mother, mid-debate; he walks out of the chamber

But bad-boy behaviour thins quickly. In 62 CE, he withdraws from public life. He writes and publishes a hugely successful biography of **Marcus Porcius Cato Uticensis**, known to history as **Cato Minor**, **Cato the Younger**. The work champions **Cato Minor**, for **Cato** chooses suicide over the tyranny of **Gaius Iulius Caesar**

Too much! **Thrasea Paetus** is tried and found guilty by the Senate. Not execution, but suicide! Moments before committing the act of suicide, he addresses the mob **meus sanguis libatio est, Iovi Liberatori**, **my blood is a libation to Jupiter Liberator**

*

Free speech, as an ideal, persists

Philostratus, the Athenian sophist writes about his personal audiences with emperors **Vespasian** and **Domitian**. He portrays each emperor in accord with their character. **Vespasian** willingly accepts Apollonian counsel and **Domitian** does not

Consequently, **Vespasian** is the *good* emperor while **Domitian** is the *tyrant*. The trend is obvious, *free speech* is associated with a good emperor, tyranny with a bad emperor

The reality for *all* emperors: it is unwise to limit speech. **Domitian** exiles philosophers, punishing those who praise **Thrasea Paetus**. In equal measure, **Domitian**, a *bad* emperor and **Claudius**, a *good* emperor each executes approximately the same number of senators

The true reality is that **Domitian's** reign of terror against senatorial opponents may be largely a literary creation. The **civis Romanus** took risk when speaking freely, but the risk of punishment is small. As stated, there is no mechanism to find and punish treasonous comments. Constraint is self-imposed

If the **civis Romanus** is silent, constraint is a personal decision, such as citing an unsure literary ability

*

Gaius Valerius Catullus, a late Republican poet, has the last word on free speech

Catullus, few details of his personal life are known. He is born in Verona, a town situated in Cisalpine Gaul. He is a member of a prominent family. Through his father, he meets **Gaius Iulius Caesar**. The date of the Caesarian meeting is not recorded

In his late teens, he drifts to Rome. He meets like-minded persons who have a literary orientation. Who these associates are is not known. But Catullus discovers his poetry is in demand. Renown comes through invitations to recite own poetry at socially prominent dinner-parties

Lesbia is a pseudonym. **Catullus** pens many poems in her honour. But **Claudia**: if that is her name, is forbidden fruit, for she is the wife of a prominent Roman. Suppressed desire is in these two-lines:

Odi et amo. Quare id faciam fortasse requiris
Nescio, sed fieri sentio et excrucior

I hate and I love. Why I do this, perhaps you ask
I know not, but I feel it happening and I am tortured

Catullus pines. My girl, my love; the evening is a success: good friends, good wine, good food

And also –

Catullus cannot help himself. He writes vicious verse

Homosexuality is legal
Gossip is legal
Jingles amuse *all* but *one*

Multus homo es, Naso, neque tecum multus homo qui
descendi: Naso, multus es et pathicus

Naso, you're a man's man, and yet there are not many
men who would care to play at being what you are to
many men---
to go at full length downward, Naso,
everything to many men, and homosexual

Naso, of Naso whom?

Catullus dies about age thirty. The cause of death is not known. Herein is his *plausible* exit:
From behind, the assailant's left hand is up, over the shoulder and across the neck, the arm-crook holds firm the body
The right hand with stiletto blade penetrates the back, rib cage; many times

*

Regarding the old town on the Tiber: *free speech* is, "what is *permitted* and what is *permissible*"

* * *

CASE LIV

Gaius. 3.224-225. *libro III Institutiones. obiter dictum*. Comment on aggravated offence. *lex Aquilia iniuria*

Sed nunc alio iure utimur, permittitur enim nobis a Praetore ipsis iniuriam aestimare, et iudex vel tanti condemnat quanti nos aestimaverimus, vel minoris, prout illi visum fuerit. Sed cum atrocem iniuriam ¹ Praetor aestimare soleat, si simul constituerit quantae pecuniae eo nomine fieri debeat vadimonium ² hac ipsa quantitate taxamus formulam, et iudex, quamvis possit vel minoris damnare, plerumque tamen propter ipsius Praetoris auctoritatem non audit minuere condemnationem. Atrox autem iniuria aestimatur vel ex facto, veluti si quis ab aliquo vulneratus aut verberatus fustibusve caesus fuerit, vel ex loco, veluti si cui in theatro aut in foro iniuria facta sit, vel ex persona, veluti si magistratus iniuriam passus fuerit, vel senatori ab humili persona facta sit iniuria

But we now use another rule for estimating the penalty. The Praetor allows us as plaintiffs to evaluate the insult (*iniuria*) ourselves, and the judge (*iudex*) condemns for either the value we set or less, as seems right to him. But since the Praetor usually evaluates a cruel insult (*atrocem iniuriam*) simultaneously with determining the amount of the bond for appearance (*vadimonium*), we limit the formula to this amount, and the judge (*iudex*), although he can condemn also for less, normally does not dare to lessen the judgement because of the Praetor's authority. An insult (*iniuria*) is evaluated as serious (*atrox iniuria*) either from the act, that is, if someone is wounded or thrashed or slain with cudgels by another, or from the place, that is, if insult (*iniuria*) is inflicted on someone in the theatre or in the forum, or from the person, that is, if a magistrate suffers insult (*iniuria*), or insult (*iniuria*) is inflicted on a Senator by one of low degree

Footnote. 1 *atrocem iniuriam*, phrase in the accusative. *atrox iniuria*, nominative. Translated as, cruel insult
2 *vadimonium*, -i. 2nd declension, neuter noun. A formal promise to appear in court, secured by paid bond

The key sentence is: *sed cum atrocem iniuriam Praetor aestimare soleat, si simul constituerit quantae pecuniae eo nomine fieri debeat vadimonium*. "But since the *Praetor Urbanus* usually evaluates a cruel insult simultaneously with determining the amount of the bond for appearance (*vadimonium*)"

The *Praetor Urbanus* sets the agenda and tone of the Court. *iniuria* is cited in the Twelve Tables. With time, the categories of *iniuria* broaden to allow a wider range of anti-social behaviour. If the breadth of behaviour widens, so too the degree of punishment. This Case addresses the issue of *atrox iniuria*, "fierce outrage"

Case LIV is from the late Empire. Social attitudes have evolved and hardened during the centuries. *iniuria* has progressed from "simple" outrage to "fierce" outrage. Previously, if you insult a merchant or a magistrate, the social standing of the person insulted had no bearing on the penalty. Now, the social position of the offended has a bearing on the penalty

From *iniuria* to *atrox iniuria*, it is the penalty that shifts. The defendant must now post a bond to guarantee appearance in Court, the *vadimonium*. The bond and penalty are said to be relational to the *severity* of the act

See *Caput VI. Lex Aquilia and Iniuria*, bottom page 2, *Atrox iniuria*, the discussion of punishments on conviction *atrox iniuria* seeks to maintain social order

CONCLUSION

iniuria, **outrage** is an offence

iniuria is *personal* affront

Caput I stated, that while we know Cicero's thoughts about governance and society, from his works, **de re Publica** and **de Legibus**; we do *not* know the thoughts of individual Roman citizens

The **obiter dicta** allows brief insight into individual lives. Peeking is a poor second to Cicero. This paper's best offer is for the reader to re-read individual actions, and then imagine what life must have been like for the **plebs**. What are your personal thoughts concerning Case **XXVIII** and **XXIX**, the Cobbler's Apprentice and the duty of care and corporal punishment, with the son losing an eye. Case **XXXVII** offers a rare view of marriage, the husband is upset when he learns **uxor**, the **wife** has altered *his* property; having single pearls pierced so they may be strung as wearable jewellery

iniuria, has its origins in the **duodecim tabularum**, the **Twelve Tablets**. The offence is also a product of the **Praetor Urbanus** to circumnavigate the inadequacy of statute law. Cases cited under **iniuria** demonstrate the wide application of an action for **insult**, such as accosting maidens, perceived rules by others, trespass, an insult rests with the master not the slave, dealing with multiple outrages, public speaking being interrupted by hecklers, and the aggravated offence of **atrox iniuria** (applicable to safeguard persons such as magistrates and senators)

iniuria, is **insult**; it is also about *speech*

The **civis Romanus** navigates daily life. If case law succeeds, this paper succeeds

* * *

de animalibus intelligentes asini sunt

The intelligent animals are donkeys

Said of those who bray loudest

* * *

ROMAN LAW AND THE CITIZEN

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