

Sources: recapitulation

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- Reading of Pomponius' Enchiridion

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- The Creative Interpretation of Rituals:
Mancipatio

Pomponius' *Enchiridion*

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- pr.-2: the Time of the Kings. *Ius Papirianum*

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- 3-6: *lex, interpretatio, actiones*

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- 12: Recapitulation

Gai 1.2-3

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- Gai 1.2-3: The Civil Law of the Roman people consists of statutes, plebiscites, Decrees of the Senate, Constitutions of the Emperors, the Edicts of those who have the right to promulgate them, and the opinions of jurists. (3) A statute is what the people order and establish. A plebiscite is what the plebs order and establish. Moreover, the plebs is distinguished from the people by the fact that the entire body of citizens including the patricians, is designated by the appellation, "the people"; but the other citizens, exclusive of the patricians, are indicated by the term plebs; for which reason the patricians formerly declared that they were not bound by plebiscites, as they were enacted without their sanction; but subsequently the *Lex Hortensia* was passed, by which it was provided that plebiscites should bind the entire people; and hence, in this way, they were placed on the same footing as laws.

Gai 1.6-7

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The magistrates of the Roman people have the power of promulgating edicts, but the highest authority attaches to the edicts of the two Praetors, the urban and the foreign, whose jurisdiction is vested in the Governors of the provinces; as well as to the edicts of the curule Aediles, whose jurisdiction the Quaestors administer in the provinces of the Roman people, for Quaestors are not appointed in the provinces of the Emperor and, therefore, the latter edict is not published in these provinces. (7) The answers of jurists are the decisions and opinions of those who are authorized to define the law. If the opinions of all of them concur, what they agree upon obtains the force of law; if, however, they disagree, the judge has a right to follow whichever opinion he may wish, and this is set forth in a rescript of the Divine Hadrian.

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Mancipatio

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- G. I.119 Mancipation... consists in the following process: in the presence of not fewer than five witnesses, citizens of Rome above the age of puberty, and another person of the same condition, who holds a bronze balance in his hands and is called the balance holder, the alienee holding a bronze ingot in his hand, pronounces the following words: this man i claim as belonging to me by right quirtary and be he (or, he is) purchased to me by this ingot and this scale of bronze. He then strikes the scale with the ingot, which he delivers to the mancipator as by way of purchase money.

What does the ritual mean?

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- Gai 1.122: A piece of brass and a balance are employed for the reason that in former times only brazen money was in circulation, and this consisted of asses, double asses, half asses, and quarter asses; nor was any gold or silver coin in circulation, as we learn by the Law of the Twelve Tables. The value of the purchasing power of these coins was not estimated by their number, but by their weight; hence an as consisted of a pound of bronze, a double as of two pounds (whence it derived its name, which is still retained), while the half-asses and quarter-asses were estimated by their respective parts of a pound. Therefore, in former times, those who paid out money to anyone did not count it but weighed it, and the slaves who were permitted to disburse money were called "weighers."

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- For 'b': Caius, fearing his imminent death, and having no children, wants his estate to go to his two nephews, orphans from a dead brother, not to his other brother.

Conquering testamentary freedom

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- Gai 2.102: Afterwards, another kind of will was introduced, which was executed by bronze and balance. Where a man who had not made a will at the *Comitia Calata* ... was apprehensive of sudden death, he usually transferred his estate by sale to a friend, and requested him to distribute it to whomever he desired to have it after his death. This kind of testamentary disposition is styled a will by bronze and balance, because it is effected by the ceremony of mancipation.

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- A ritual for 'a': disinheriting a son. Lucius has seven children, two daughters and five sons. An important owner of land, he wants to avoid the excessive division of the estate -and consequent loss of political influence of his family- by bestowing most of it to his elder son. How?

Emancipation

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- Gai 1.132: Again, children cease to be under parental authority by means of mancipation. A son, however, by three mancipations, and other children either of the male or female sex by a single mancipation, are released from parental authority; for the Law of the Twelve Tables only mentions three mancipations with reference to a son, as follows: "If a father sells his son three times, let him be free from the control of his father." ...

The Edict and *ius honorarium*

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- Gai 4.36: Likewise, there is a pretended usucaption in the action which is styled Publician. This action is granted to a party who claims property which has been delivered to him for some legal reason, and of which he lost possession before obtaining a title to it by usucaption; for because he cannot claim it as his under quiritarian right, the fiction is employed that he has acquired it by usucaption and hence, as it were, to have become its owner, by quiritarian right; for instance, as follows: "Let So-and-So be judge. If the slave whom Aulus Agerius purchased and who was delivered to him remained in his possession for a year, the said slave would then have lawfully belonged to the said Aulus Agerius by quiritarian right, etc."

