



Roman Tax Policy in Roman Britain^{*}

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1. Introduction

Roman public law has been the subject of many studies, but its popularity is still much smaller than the general appreciation for Roman private law. There are two obvious reasons for this situation — the lesser number of sources suitable for research and the lesser importance given to it in the overall historical development of the law. Especially in the last few decades, however, these common views have become less reasonable than they used to be in the past. Another thing that has also won much approval among earlier generations of scholars is the image of a univocal Roman law that existed all around the Roman Empire. This myth is nowadays much weaker, while studies on the Egyptian papyri have revealed an unprecedented exclusivity in the law of Roman Egypt. It allows scholars to believe that the law in other regions of the Roman Empire were also equally special. This has been partially proved already by the studies undertaken on the wooden wax tablets mainly from the western corners of the Roman world¹.

Merging both, to be frank, problematic themes of study seems to be an interesting and challenging task. This can be easily encompassed, if we choose to study public law (or more precisely its practice) in a province like Britain. Legal sources

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1. About the practice of Roman law, see E.A. MEYER, *Legitimacy and Law in the Roman World. Tabulae in Roman Belief and Practice*, Cambridge 2004. About Roman provincial law and its coexistence with local laws see e.g. T. SPAGNUOLO VIGORITA, 'Diritti locali e modello romano nell principato', in J.G. FERNÁNDEZ (ed.), *Roma y Las Provincias. Realidad administrativa e ideología imperial*, Madrid 1994, pp. 209–224 and recently S. KERNEIS, 'Les étranges formes du droit romain. Normes romaines et valeurs coutumières (II^e–IV^e siècles)', in F. STURM, Ph. THOMAS, J. OTTO, H. MORI, *Liber Amicorum Guido Tsuno*, Frankfurt am Main 2013, pp. 145–167.





concerning Roman Britain almost do not exist. There are about ten legal texts that refer to Britain more or less — usually less — directly. There is a constantly growing number of epigraphic sources that contain some juridical material, but their number is still inconsiderable and the majority of them refer to private law. And there are, of course, some literary testimonies, but most of them focus rather on political history than on its legal counterpart².

Still some research may be and even have to be undertaken in the subject of Roman law in Britain. Following the idea of studying public law, it seems interesting to look at the practice of Roman tax policy which was undertaken in the time of the Roman occupation of Britannia.

The lack of the sources has forced the decision to select only three issues that can be more intensely analysed in the present article: (1) what type of financial levy was imposed on the Britons by Caesar in 55 B.C., (2) Roman tax policy during the Principate and (3) the ambiguous rescript of Constantine to Pacatianus, Vicar of the Britains.

2. What Did Caesar Order The Britons To Pay?

The earliest example of the mutual relations between the Romans and Britons occurred in the middle of the 1st century BC. Two expeditions to Britain in 55 and 54 BC undertaken by Julius Caesar are considered to be his only major failures throughout his Gallic campaign. Although modern scholars possess first-hand testimony written by Caesar about his enterprise in Britain, it is still problematic to answer all questions relating to his visit to the island. In the concluding passage referring to his presence in Britain, Caesar wrote:

*Caesar, cum constituisset hiemare in continenti propter repentinis Galliae motus, neque multum aestatis superesset, atque id facile extrahi posse intellexeret, **obsides imperat et quid in annos singulos vectigalis populo Romano Britannia penderet constituit; interdicit atque imperat Cassivellauno, ne Mandubracio neu Trinobantibus noceat***³.

The key phrase in that passage is the one referring to the annual payment levied on the Britons by Caesar. The term used is *vectigal*, which is rather ambiguous, especially in those circumstances. The word *vectigal* denoted many different

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2. For more about the legal sources concerning Roman Britain see E. BIRLEY, 'Law in Roman Britain', in *ANRW*, II. B. 13, Berlin–New York 1980, pp. 609–625 and recently Ł. J. KORPOROWICZ, 'Roman Law in Roman Britain. An Introductory Survey', *Journal of Legal History* 33.2 (2012), pp. 133–150 and IDEM, 'Buying a Slave in Roman Britain. The Evidence from the Tabulae', *RIDA* 58 (2011), pp. 211–224. About the source problems in connection with the economic history of Britain see. M. FULFORD, 'Economic Structures', in M. TODD (ed.), *A Companion to Roman Britain*, Malden–Oxford–Carlton 2004, pp. 309–310.
 3. Caes., *Gal.*, V, 22,4.





institutions of Roman public law⁴. Normally, however, it represented indirect taxes⁵. Only exceptionally was the term used to denote taxes in general. There is also an example of the use of *vectigal* in the sense of money that was ordered to be paid as war tribute. Besides Caesar, Livy also supplies his readers with such an understanding of the term. In the thirty third book of his *Ab urbe condita* the Roman historian tells the story of the tribute levied by the Romans on Carthage after the end of the Second Punic War⁶. In general, however, such usage of *vectigal* is somewhat improper and the word usually attested in the Roman sources to denote such a financial duty would be *stipendium*⁷. The dues levied by Caesar on the Britons could be another example of Livy's usage of the term, but it need not be interpreted like that. In reality, Livy uses both terms quite randomly. He is talking about the *vectigal* while he is presenting Hannibal's speech to the members of the popular assembly of the Carthage. The Carthaginian is explaining to his fellow citizens that the amounts coming from collected taxes and port duties are high enough to cover the tribute (*vectigal*) that they have to pay to Rome. But a few sentences earlier he is clearly speaking about the *stipendium* to be paid annually to Rome (*pecunia quae in stipendium Romanis suo quoque anno penderetur*)⁸. Interesting, however, is the fact that Caesar also used the term *stipendium* in relation to the subjugation of the Helvetians and Gauls on a few occasions⁹.

So, is it possible that Caesar made a mistake similar to that made by Livy? It may not be precluded, but it is less likely. It is important to remember that Livy was writing his Roman history not for historical reliability, but for the demonstration of Roman greatness. Terminological mistakes were totally acceptable; the important thing was the story itself. In the case of Caesar it has to be remembered that the information about *vectigal* is given by its imposer himself. There is also the accepted view that Caesar's *Commentaries on the Gallic War* were, at least partially, drafts of his reports that he was sending to Roman Senate¹⁰. In such circumstances it is hard to believe that Caesar could make terminological mistakes.

Some help in answering the above question may be in a comparison of Caesar's text with the texts of other ancient authors. Suetonius's testimony is not helpful at all. He informs his readers only that Caesar:

4. See R. CAGNAT, 'Vectigal', in *Le Dictionnaire des Antiquités grecques et romaines*, vol. 5, Paris 1919, pp. 656–657.
5. On that kind of *vectigalis* see recently S. GÜNTHER, 'Vectigalia nervos esse rei publicae' *Die indirekten Steuern in der Römischen Kaiserzeit von Augustus bis Diokletian*, Wiesbaden 2008.
6. Liv., XXXIII, 47.
7. R. CAGNAT, *Vectigal*, 656. See also A. BERGER, *Encyclopaedic Dictionary of Roman Law*, Philadelphia 1953, p. 716, s.v. *Stipendium*.
8. Liv., XXXIII, 46.
9. Caes., *Gal*, I, 30, 3; I, 36, 5; I, 44, 2; I, 45, 2.
10. R. VERSTEEG, 'Law and Justice in Caesar's Gallic Wars', *Hofstra Law Review* 33 (2004–2005), p. 590.





(...) *adgressus est et Britannos ignotos antea superatisque pecunias et obsides imperavit*¹¹.

Suetonius declares that Caesar imposed some financial (monetary) dues on the Britons, but he does not explain what kind of dues these were¹². Similarly unhelpful is the passage from Livy's *Periocha* 105 where in a vague summary manner it is said that Caesar:

(...) *ac deinde Oceano in Britanniam primo parum prospere tempestatibus aduersis traiecit, iterum felicius, magnaue multitudine hostium caesa aliquam partem insulae in potestatem redegit*¹³.

The foregoing passage does not contain information on any financial dues imposed on the Britons, but in fact it contains an interesting phrase suggesting that Caesar could have planned to establish a more permanent outpost in Britain than is usually believed. The phrase *in potestatem redegit* may point to the existence of a much more formal superiority over Britain than only the subjugation of a few local tribal chiefs¹⁴. In reality this understanding of the above mentioned phrase is supported by Caesar himself, when he reports that the British tribes surrendered to him unconditionally — their leaders performed *deditio*¹⁵:

*Cassivellaunus hoc proelio nuntiato tot detrimentis acceptis, vastatis finibus, maxime etiam permotus defectione civitatum legatos per Atrebatem Commium de deditioe ad Caesarem mittit*¹⁶.

In the opinion of C.E. Stevens this phraseology is quite correct and understandable. He believed that “[B]ritain, juridically, is like Gaul after the ‘pacification’ of 57 B.C., a *provisional* Roman province¹⁷”. This provisional condition needed its finalisation through the official act of the inclusion of Britain in the Roman state. Gaul gained such a status in the final years of Caesar’s presence there. Britain, unfortunately, was forgotten due to the political disturbances that eventually led to civil war¹⁸. Plans to establish a province in Britain by Caesar can be considered as a slight exaggeration, but it is quite possible that Caesar was indeed planning to connect

11. Suet, *Iul.*, 25.

12. Also Cicero in his letter to Atticus written on November 54 B.C. informed his friend that (...) *confecta Britannia, obsidibus acceptis, nulla praeda, imperata tamen pecunia exercitum ex Britannia reportabant* (Cic., *Att.*, IV, 18.5).

13. Liv., *Periocha* CV.

14. The term is purely technical. Its usage is attested in many sources, e.g. Suet., *Tit.*, 4 (*Taricheas et Gamalam urbes Iudaeae validissimas in potestate redegit*), Justin, *Historiarum Philippicarum*, XLI, 6, 4 (*Quinto itaque mense liberatus Indiam in potestatem redegit*).

15. More about *deditio* see F. DE MARTINO, *Storia della Costituzione Romana*, vol. 2, Napoli 1966, pp. 47–54.

16. Caes., *Gal.*, V, 22, 3.

17. C.E. STEVENS, ‘55 B.C and 54’, *Antiquity* 21 (1947), p. 7.

18. *Ibidem*, pp. 7–8.





Britain with the Roman state more tightly by creating some kind of dependent territory.

The problem of pecuniary dues, however, still remains unsolved. There are three further sources where authors mentioned such dues. All of them, however, are written in Greek.

Dio confirms Caesar's information about a yearly due saying that:

...ἕτεροι ἀπέωσαντο, κατέδεισαν καὶ κατελύσαντο ὁμήρους τε δόντες, καὶ φόρον ἐτήριον ταζάμενοι¹⁹.

To describe that payment Dio use the Greek word φόρος that seems to be an equivalent of the Latin *tributum*²⁰. The same word is used by Plutarch in his *Parallel Lives*, where he says that Caesar: “took hostages from the king, imposed tributes, and then sailed away from the island²¹” and by Diodorus Siculus: “and after subduing the Britons he compelled them to pay fixed tributes²²”. This in fact opens new question as to “what Caesar ordered Britons to pay”. It is not certain what φόρος really meant and how the meaning of the word evolved. In the older literature we find the view that φόρος was analogous to Roman *vectigal*, but in the sense of every tax that is collected by the state²³. In newer works we can see that φόρος is treated rather as being a direct tax that was paid by the conquered population of certain territory²⁴. In comparison to information given by Caesar about the unconditional surrender of the Britons and Livy's *in potestatem redegit* testimony it seems quite understandable why Greek writers used the above mentioned term. In reality, it seems to be even more suitable to describe the kind of financial obligation imposed on the Britons than the terms used by the Latin writers. It is worth saying, however, that the main fault of modern scholars who are researching Roman tax law is to transfer modern terminology and divisions to the legal world of the Romans. It certainly simplifies the academic discussion, but

19. Dio., XL, 3, 2 “They then became terrified and made terms, giving hostages and agreeing to **pay a yearly tribute**”. English translation from *Dio's Roman History*, vol. 3, trans. E. Cary, Loeb Classical Library, London–New York 1914, p. 410.

20. See *LSJ*, rev. supp. 1996, p. 1951, s.v. φόρος.

21. Plu., *Caes.*, XXIII, 3. English translation from *Plutarch's Lives*, vol. 7, trans. B. Perrin, Loeb Classical Library, Cambridge, Mass.–London 1919, p. 501.

22. D.S., V, 21, 2. English translation from *The Library of History of Diodorus Siculus*, vol. 3, trans. C.H. Oldfather, Loeb Classical Library, Cambridge, Mass.–London 1939, p. 153.

23. See W. SMITH, *A Dictionary of Greek and Roman Antiquities*, London 1875, p. 1184, s.v. *Vectigalia*,

24. See e.g. T.M. COLEMAN, ‘Binding Obligations in Romans 13:7: A Semantic Field and Social Context’, *Tyndale Bulletin* 48 (1997), pp. 309–313. In the opinion of B.D. Shaw the terms φόρος, *tributum* and *vectigal* were replaceable and there is no significant difference between them, see. B.D. SHAW, ‘Roman Taxation’, in M. GRANT, R. KITZINGER (eds.), *Civilization of the Ancient Mediterranean*, vol. 2, New York 1988, p. 813.





simultaneously it has a negative influence on academic honesty²⁵. Returning to the question, it is quite probable that Caesar successfully conquered the South-Eastern territory of modern England. He was willing to return to Britain to continue his earlier attempts to form a new Roman province or other dependent state at the “edge of the world”, but the political situation in Gaul and soon after that also in Italy effectively prevented him from fulfilling his plans and as a result he never asked Senate to confirm his achievement²⁶. Nevertheless, his short visit to Britain was profitable enough to establish a surrogate of proper dependency, quite similar to that established in Gaul in early 50s BC. The constitutive element of that “being” was a regular payment levied on the Britons. As far as they were conquered they were treated by Caesar as *deditici* — those who surrendered to him and on whom he was able to impose a kind of tax similar to other taxes imposed on conquered nations. In the Greek tradition such tax would be known as φόρος.

Another matter is the effectiveness of the execution of the levied payment. There are a few hints that shed some light on this issue. According to Cassius Dio:

... τόν τε Αὔγουστον ἐς τὴν Βρεττανίαν, ἐπειδὴ μὴ ἠθέλησαν ὁμολογήσαι, στρατευσεῖοντα κατέσχον οἱ τε Σάλασσοι ἐπαναστάντες αὐτῷ καὶ οἱ Κάνταβροι οἱ τε Ἄστυρες πολεμωθέντες²⁷.

The foregoing passage refers to the events of year 26 BC — nearly thirty years after Caesar’s imposition of the levy on the Britons. In fact there is no information that the Britons had ever paid any tribute besides the year 54 BC. There is also a technical problem. If Britain was only a provisional dependent territory and the change of its status was postponed, who was eligible to collect the tax in the meantime? The simplest answer would be — Caesar’s representatives, but there is no information about any such collectors being sent to Britain. From another point of view, there is no information about them collecting war tributes from the Gallic tribes either. In reality a passage from much later work, Tacitus’s *Annales*, can be quite helpful. Tacitus describes the British tribal chief Caratacus who was fighting with the Romans led by the governor Scapula. Before the final battle started Caratacus, according to Tacitus, spoke to his warriors.

(...) *Caratacus* (...) *vocabatque nomina maiorum, qui dictatorem Caesarem pepulissent, quorum virtute vacui a securibus et tributis intemerata coniugum et liberorum corpora retinerent*²⁸.

25. See A. PIKULSKA, ‘Portorium in the Roman Republic’, in F. STURM, Ph. THOMAS, J. OTTO, H. MORI (eds.), *Liber Amicorum Guido Tsuno*, Frankfurt am Main 2013, p. 302.

26. For the exact procedure of creating a new province in the Republican period see F. DE MARTINO, *Storia*, pp. 283–286.

27. Dio, LIII, 25,2 “Augustus was planning an expedition into Britain, since the people there would not come to terms, but he was detained by the revolt of the Salassi and by the hostility of the Cantabri and Astures”. English translation from *Dio’s Roman History*, vol. 6, trans. E. Cary, Cambridge, Mass.–London 1955, pp. 256–258.

28. Tac., *Ann.*, XII, 34.





Caratacus apparently reminded his warriors that their ancestors managed to expel “dictator Caesar” and they “released themselves from the hatchets and tributes”. The usage of the term *securibus* is quite striking. In ancient Rome that term besides its literal meaning was also used as a metaphor to describe state control²⁹. It is totally understandable that Tacitus was not reflecting Caratacus’s actual language, but was putting into the Briton’s mouth his own opinions. In fact, they are even more relevant to the foregoing problem than they would be if the real speech were recounted.

“Release from the hatchets” may not refer directly to Caesar’s presence in Britain. He was a conqueror, an evil enemy who was willing to subdue the Britons. And, as may be assumed, it really happened. Britain, or at least some of her tribes, became dependent upon Rome. State control over them was established. And at some point they managed to overturn it, e.g. they killed tax collectors sent to them by Caesar or maybe there came a year, when no new tax collectors appeared. It is hard to say when that happened, but it may be suggested that the years 50 or 49 BC are suitable. Caesar was first fully absorbed with the defeat of Vercingetorix, and then all his efforts were connected with the preparations for the civil war. Even, if there had been news that the Britons had killed his representatives, Caesar was simply unconcerned with such a small problem, while in Rome and Gaul his entire career was at stake. It is additionally interesting that Tacitus is the only Latin writer who describes the levy imposed on the Britons as *tributum*, as so uses the Latin equivalent of φόρος.

3. The Financial Policy of the Romans in Early Roman Britain

After a century the Romans returned to Britain. Claudius sent his legions to Britain in AD 43 and then he approached the island, once most of the hard military activity had already been done by the legionaries and their commander Aulus Plautius. The new province was established and the creation of its organizational structures begun. Plautius became the first governor, but simultaneously he continued his military operation. The same tasks were entrusted to his successor, Publius Ostorius Scapula. At the end of his governorship, in AD 52, most of the territory of modern England was already subjected to Rome and the process of proper Romanization was initiated.

The population of Britain, as of every new imperial province, was obliged to pay taxes³⁰. It is possible to enumerate at least four of them: (1) *tributum soli*,

29. See e.g. OLD, vol. 2, 1899, s.v. *Securis*.

30. Generally about the taxation system in imperial provinces during the Principate see R. DUNCAN-JONES, *Structure & Scale in the Roman Economy*, Cambridge 2002, pp. 187–210. See also the “speculative and tentative” essay by K. HOPKINS, ‘Taxes and Trades in the Roman Empire (200 B.C.–A.D. 400)’, *Journal of Roman Studies* 70 (1980), pp. 101–125.





(2) *tributum capitis*, (3) all kinds of *vectigalia*, especially *portoria*³¹ and (4) tax-grain (*annona militaris*). All the responsibilities for the collection of the taxes were entrusted to the *procurator* — an equestrian officer who was in charge of the entire financial administration of the province. His allegiance was to the Emperor, not to the governor, which in practice caused many problems, because both superior officials in the province were independent emperor's deputies. They were not obliged to consult themselves and since that the difficulties and struggles between the two chief Roman representatives had to occur³². One such struggle is attested by Tacitus who notes that governor Suetonius Paulinus had to deal with major problems initiated by procurator Julius Classicianus³³. It is quite interesting that the presence of the latter in Britain is attested also by the discovery of the fragments of procurator's tombstone at Trinity Square, near the Tower of London³⁴.

In the literary sources it is easy to find quite interesting and unexpected information that the Britons were eager to pay taxes, provided they were not connected with major abuses. Tacitus clearly says that:

*Ipsi Britanni dilectum ac tributa et iniuncta imperii munia impigre obeunt, si iniuriae absint: has aegre tolerant, iam domiti ut pareant, nondum ut serviant*³⁵.

The acceptance of paying taxes was quite probably connected with earlier British practices. It is possible that the Britons had been accustomed to the imposition of financial or quasi-financial dues for a long time. Strabo, who was writing his *Geography* in the last decades of the 1st century BC, mentions that the Britons “submit so easily to heavy duties, both on the exports from there to Celtica and on the imports from Celtica³⁶”. Additionally, Caesar, in relation to Gaul, speaks twice about the tributes imposed by one Gallic tribe on another³⁷. It is believed that most of the Gallic customs and traditions were similar to those in Britain. It may also be true for taxation matters³⁸.

As to particular kinds of taxes it is hard to say anything certain. The first two categories — *tributum soli* and *tributum capitis* were early inventions of imperial

31. For the examples of other indirect taxes see R.G. COLLINGWOOD, J.N.L. MYRES, *Roman Britain and the English Settlements*, Oxford 1968, p. 164.

32. See A.R. BIRLEY, *The Roman Government of Britain*, Oxford 2005, pp. 298–320.

33. Tac., *Ann.* XIV, 38.

34. *RIB* I 12 = *CIL* VII,30. Recently about the tombstone see R.D. GARSBY, R.S.O. TOMLIN, ‘The Sepulchral Monument of the Procurator C. Julius Classicianus’, *Britannia* 33 (2002), pp. 43–75.

35. Tac., *Agr.*, 13.

36. Strabo, IV, 5, 3. English translation from *The Geography by Strabo*, vol. 2, trans. H.L. Jones, Loeb Classical Library, Cambridge, Mass.–London 1923, p. 259.

37. Caes., *Gal.* I, 18, 3 and V, 27, 2.

38. In early medieval Ireland members of the *túath* — tribe — were obliged to pay a special tax to their king. See F. KELLY, *A Guide to Early Irish Law*, Dublin 1988, p. 4.





policy introduced to the Roman tax system during the time of Augustus³⁹. Both taxes replaced earlier Republican payments. Generally speaking, *tributum soli* was designed as a common land tax imposed on all inhabitants of the Empire who possessed provincial lands⁴⁰ and the *tributum capitis* was a poll-tax imposed only on the conquered population. It is not entirely certain how the fulfilment of the tax obligations was achieved and how effective this was⁴¹. Two concurrent possibilities are payment in money and payment in kind. Although some authors try to establish a general rule governing both manners of payment, the analysis of the sources cannot give clear answers⁴². It is possible, as in the case of Roman Wales, that payments that were originally planned to be fulfilled in money were in reality paid in kind retrospectively⁴³.

The existence of both types of tax in Britain gives rise to some observations. An imposition of *tributum soli* must have forced the Roman government of Britain to establish a group of specially trained *agrimensores* to survey plots of land, from whose measurements a final estimation of the tax rate could be calculated⁴⁴. As of the present, archaeologists have not found any traces of boundary markers (*termini*) that could attest the *agrimensores*' activity in Britain. The closest evidence, in the opinion of David Mattingly, is a text of a deed of sale of a forest in Cantium⁴⁵. The contractual parties describe a property by referring to neighbouring grounds in private ownership and adjacent road. Although it is known that the Roman land surveyors used to include natural objects besides the *termini* stones during

39. See e.g. F. DE MARTINO, *Storia*, vol. 3, pp. 243–244.

40. For more about provincial lands during the Principate see A.H.M. JONES, 'In eo soli dominium populi romani est vel Caesaris', *Journal of Roman Studies* 31 (1941), pp. 26–31.

41. It is possible that some members of the rural aristocracy were attempting to avoid taxation by hiding their money and creating so called 'tax-evasion hoards', see C. JONES, 'The Classification and Interpretation of Romano-British Treasures', *Britannia* 27 (1996), p. 7.

42. R. DUNCAN-JONES, *Structure*, pp. 197–198.

43. P. GUEST, 'The Early Monetary History of Roman Wales: Identity, Conquest and Acculturation on the Imperial Fringe', *Britannia* 39 (2008), p. 55. In the opinion of D. Mattingly this was true for all Roman Britain. See D. MATTINGLY, *An Imperial Possession. Britain in the Roman Empire*, London 2007, p. 496. The example of Eastern provinces shows that payment in money was obtained only in case of *vectigalia*, while payment in kind concerned both types of *tributum*. In Anatolia, for instance, money taxation reached only 20% of all state revenues, see more C. KATSARI, *The Roman Monetary System. The Eastern Provinces from the First to the Third Century AD*, Cambridge 2011, pp. 149–150.

44. Generally about *agrimensores* see e.g. A. PIKULSKA, 'Les arpenteurs romains et leur formation intellectuelle', *RIDA* 51 (2004), pp. 205–216 and EADEM, 'Les arpenteurs romains — experts et arbitres', *Orbis Iuris Romani* 11 (2006), pp. 153–159.

45. D. MATTINGLY, *An Imperial Possession*, p. 361. For the tablet see R.S.O. TOMLIN, 'A Five-Acre Wood in Roman Kent', in J. BIRD, M.W.C. HASSALL, H. SHELDON (eds.), *Interpreting Roman London. Papers in Memory of Hugh Chapman*, Oxford 1996, p. 206–215.





the *limitatio* procedure⁴⁶, the arguments presented by Mattingly seem not to be convincing enough to attest the presence of *agrimensores* in Roman Britain.

Another matter is assessment for the poll-tax that should occur during the provincial census. Its best known example is the census of Quirinius mentioned in Saint Luke's Gospel in relation to the Nativity story⁴⁷ as well as in Josephus's testimony⁴⁸. The practice of a provincial census was somewhat ambiguous. It was introduced by Augustus and was designed to be held every seven years in each province separately. In practice, however, those time intervals were not obeyed⁴⁹. Its practical meaning was different than in the Republican period. New Augustan census was planned as a land register rather than personal one. The Republican census was designed as a register of the Roman citizens while the Augustan one was undertaken to register provincial taxable lands. In the opinion of B.D. Shaw: "[B]ecause of the disparate absorption of different territories into the empire, each provincial census retained certain regional peculiarities⁵⁰". An interesting example of a census which was undertaken in Roman Britain is documented in a dedication found in ancient Fulginiae (modern Foligno in Umbria, Italy) that is most probably addressed to T. Haterius Nepos⁵¹. Among his many posts inscription mentions also his position of *censitor Brittonum Anavionensium*. According to many commentators Anavionensium should be identified with Annandale valley in Scotland⁵². This identification was criticized, e.g. by S. Frere, while the date of the tablet was settled at about AD 112. At that period and until AD 140 southern Scotland was not governed by the Romans⁵³. But the discovery of a letter by Haterius Nepos found in Vindolanda allowed scholars to establish the probable date of his presence in Britain between 90s and 100s⁵⁴. In such circumstances the Annandale area was part of Roman Britain at that time. Nevertheless, even this sole item of information about a *censitor* in Britain is of significant value. Additionally, S. Frere mentions the existence of at least one another *censitor* from Colchester

46. Fron. *agrim*, 9.

47. Luc. II, 1–7.

48. Joseph, *AJ*, XVIII, 1, 1.

49. In Egypt e.g. the time intervals were fourteen years, see R.S. BAGNALL, *Hellenistic and Roman Egypt. Sources and Approaches*, Aldershot 2006, p. 95. For more about the provincial census see J.A. CROOK, *Law and Life of Rome*, Ithaca 1967, p. 147–149.

50. B.D. SHAW, 'Roman Taxation', p. 814.

51. *CIL* XI,5213 = *ILS* 1338. See also A.R. BIRLEY, *The Roman Government*, pp. 321–322.

52. See e.g. A. BIRLEY, *The people of Roman Britain*, Berkley–Los Angeles 1980, p. 52, M. TODD, *Roman Britain*, Malden, Mass. 1999, p. 101, J. CROW, 'The Northern Frontier', in M. TODD (ed.), *A Companion to Roman Britain*, Malden–Oxford–Carlton 2004, p. 118, D. MATTINGLY, *An Imperial Possession*, p. 495. Anavionensium is attested also in Tab. Vindol. III, 594.

53. S. FRERE, *Britannia*, London 1991, pp. 188–189 and n. 9.

54. Tab. Vindol. III, 611. For more information see A.K. BOWMAN, *Life and Letters on the Roman Frontier. Vindolanda and its People*, London 2003, p. 21 and A.R. BIRLEY, *The Roman Government*, p. 322.





and two low-ranking procurators selected to hold a census — one serving during the reign of Hadrian and another during the reign of Antoninus Pius⁵⁵. Another four officials responsible for holding the census were enumerated by A.R. Birley. All of them undertook their duties in Britain during the 2nd century⁵⁶. It is also worth mentioning that in a single tablet found in Vindolanda, quite possible a letter, someone wrote *census administret unam* which may also be treated as proof of the occasional organising of such events in Britain⁵⁷.

In the case of *portoria* there are not many relevant sources either. According to S. de Laet it is certain that a special British customs district existed (in his own words: *une circonscription douanière*) and its headquarters were located in London⁵⁸. During the archaeological work at the site of the Roman port in London, archaeologists found a large set of leaden labels that were quite probably attached to imported goods. They were used presumably as marks from which custom officers knew whether the tax was already paid or not. One amphora with such a label still attached was in fact discovered at the site⁵⁹. The effective collection of custom duties, however, was not confined to London alone. Special local collecting checkpoints were scattered all around Britain. Most of such places were probably situated nearby or inside military forts close to main routes. At least one reference to such a place lasted until modern times. Near North Tawton, Devon there are the remains of the Roman fort which is believed by some authors to be Nemetostatio from the “Ravenna Cosmography” — an early medieval record of all known places around the world⁶⁰. The location of the fort near road and the *statio* fraction of the name quite clearly indicate that there could be some small toll-collecting checkpoint there.

As to the other types of *vectigalia* there is only one hint that may be found in a tablet discussed recently by A.K. Bowman and R.S.O. Tomlin⁶¹. Vindolanda tablet 974 (currently unpublished in any part of the *Tabulae Vindolandenses* corpus)

55. S. FRERE, *Britannia*, pp. 188–189.

56. The description of all census-officials can be found in A.R. BIRLEY, *The Roman Government*, pp. 321–329.

57. Tab. Vindol. II, 304. See also a tablet published by A.K. Bowman and J.D. Thomas where the word *capitularia* was used, A.K. BOWMAN, J.D. THOMAS, ‘New Writing-Tablets from Vindolanda’, *Britannia* 27 (1996), p. 303.

58. S. DE LAET, *Portorium. Étude sur l’organisation douanière chez les Romains, surtout à l’époque du Haut-Empire*, Brugge 1949 (reprint 1975), p. 284.

59. N. HOLDER, ‘Mapping the Roman Inscriptions of London’, *Britannia* 38 (2007), p. 23.

60. A.L.F. RIVET, *Town and Country in Roman Britain*, London 1958, p. 154, A. FOX, *South-west England, 3500 BC–AD 600*, Newton Abbot 1973, p. 171, M. WOOD, *In Search of England. Journeys into English Past*, Berkeley–Los Angeles 1999, pp. 233–235.

61. A.K. BOWMAN, R.S.O. TOMLIN, ‘Wooden *Stilus* Tablets from Roman Britain’, in A.K. BOWMAN, J.M. BRADY (eds.), *Images and Artefacts of the Ancient World*, Oxford 2005, pp. 11–13. See also the first mention of the tablet in E. BIRLEY, R. BIRLEY, A. BIRLEY, *Vindolanda Research Paper n.s. vol. II. The Early Wooden Forts: Reports on the Auxiliaries, Writing Tablets, Inscriptions*,





contains a rather ambiguous text which is clearly connected with a slave. It is certain that the tablet features some legal content. An early interpretation suggested that the tablet might contain a deed of sale of a slave. But the concluding formula *et eum servum nutriui annos dece(m) quinque* suggest rather an emancipation record. It seems to be proved by the only readable word at the top of the table — *vicesima*. This may suggest a reference to *vicesima libertatis (manumissionum)* — a 5% tax paid by the masters of the freed slaves⁶².

The final public levy imposed on the provincial population was a grain tax which was predominantly designed to support the governor and his civil and military staff (*annona militaris*). It is believed that it was predominantly an invention of the late Roman Empire⁶³, but the imposition of such an exaction is attested in the Principate as well. Tacitus mentions it twice in the biography of his father-in-law, Agricola. Firstly, he informs his readers that when Agricola was appointed as governor of Britain, he inaugurated a new method of ruling the Britons. Among the new rules, he ordered the tax and grain burdens to be lightened:

*Frumenti et tributorum exactionem aequalitate munerum mollire, circumcisis quae in quaestum reperta ipso tributo gravius tolerabantur*⁶⁴.

Later on, he puts a hypothetical speech in the mouth of Calgacus — commander of the Britons who led them against the Romans during the Battle of Mons Graupius, somewhere in modern Northern Scotland in AD 83 or 84. Calgacus, in the words of Tacitus, says:

*Bona fortunaequae in tributum, ager atque annus in frumentum, corpora ipsa ac manus silvis ac paludibus emuniendis inter verbera et contumelias conteruntur*⁶⁵.

The Briton was trying to spur his brethren on to fight the Romans. He specified all the abuses of the Romans including the collection of huge taxes, the plundering of their fields and the annual collection of grain. Such information about the collection of *frumentum* should definitely be treated as an indication of the collecting of an early version of the *annona militaris*. It need not be treated as a reference to a tax payment in kind, while in both Tacitus passages tax — *tributum* — is

Brands and Graffiti, Hexham 1993, pl. XXI inv. 974. See also Ł.J. KORPOROWICZ, 'Buying a Slave', pp. 222–224.

62. More about *vicesima libertatis* see K.R. BRADLEY, 'The *vicesima libertatis*: Its History and Significance', *Klio* 66 (1984), pp. 175–182, S. GÜNTHER, 'Vectigalia nervos esse rei publicae', pp. 95–126.

63. See e.g. A.D. LEE, *War in Late Antiquity. A Social History*, Malden–Oxford–Carlton 2007, p. 86. But other authors are eager to admit Augustus's participation on creation *annona*, see e.g. P. CERAMI, 'Il controllo finanziario in diritto romano. Rifflessioni metodologiche e profile storico', in A. BISCARDI, C. CASTELLO, A. DELL'ORO, G. GANDOLFI, F. PASTORI (eds.), *Studi in onore di Gaetano Scherillo*, vol. 2, Milano 1972, p. 796.

64. Tac., *Agr.*, 19.

65. Tac., *Agr.*, 31.





mentioned separately. It is also worth saying that Tacitus in his earlier passage clearly spoke about the *exactio* of grain and tax. The word *exactio* is attested as a purely technical (legal) term meaning collection of taxes. In such a situation it is unreasonable to believe that early version of the *frumentum* was not a tax to the period of the early Principate and even late Republic. Cicero, in the *Orationes in Verrem*, in the second half of the 1st century BC used the word *exactio* in reference to grain and money (*An me ad M. Antoni aestimationem frumenti exactionemque pecuniae revocaturus es?*⁶⁶). It is true that the manner of collecting *frumentum* could differ from collecting other types of taxes, but it has to be treated as an example of such. An opinion offered by J.C. Mann that “there was no corn-tax in Principate” and governor was entitled to “requisition what he required for feeding and maintaining himself and his staff”⁶⁷ are not entirely convincing. The requisition of grain would be described as *frumentum exigere*, while Tacitus consequently speaks about collection — *exactio*⁶⁸.

Besides the above mentioned literary evidence, the collection of *frumentum* is also indirectly attested by a *modius* found near Carvoran fort, part of the Hadrian’s Wall fortification infrastructure. An inscription engraved on the measuring corn says that its measure comes to 17 and a half *sextarii*⁶⁹. Its real measurement, however, is circa 15% bigger. It has been suggested that it could be connected with the fraudulent practices of the military grain-tax collectors⁷⁰. It is interesting, however, that according to some authors the extraordinary measurement of the corn is connected with its military application as a weekly ration container⁷¹.

4. At the Threshold of Cultures.

Some Remarks on Roman Tax and Celtic Law

Roman tax policy in Britain evolved throughout the next centuries. The early 3rd century brought the division of Britain into two separate provinces, and later during the time of Diocletian another division created another two new provinces. These changes influenced both private and public law carried out in Britain. A further important factor in these changes occurred in AD 212, when the emperor Caracalla enacted the famous *Constitutio Antoniniana de civitate* that granted

66. Cic., *Verr.* IV, 213.

67. J.C. MANN, ‘Two Topoi in the *Agricola*’, *Britannia* 16 (1985), pp. 21–22.

68. See also *TLL*, vol. V, 2 fasc. VIII, col. 1134–1135.

69. *RIB* II 2415.56.

70. J. LIVERSIDGE, *Britain in the Roman Empire*, London 1968, p. 177. A penalty for falsifying such corn measures was introduced by Trajan who extended the application of the rules of the *lex Cornelia de falsis*. Later Hadrian introduced a new penalty — relegation to an island. See D. 47,11,6,1–2 (*Ulpianus libro octavo de officio proconsulis*).

71. R.J. BRICKSTOCK, ‘Commerce’, in L. ALLASON-JONES, *Artefacts in Roman Britain. Their Purpose and Use*, Cambridge 2011, p. 44.



Roman citizenship to nearly all inhabitants of the Empire⁷². It is not easy to determine how successful this action was, but it is quite commonly accepted that at least one of the reasons for the promulgation of the constitution was closely connected with the financial (taxation) matters⁷³. The constitution's impact upon the Romano-British inhabitants of Britain, however, is hard to examine⁷⁴.

Sources referring to taxation issues in Britain during the period of the Late Empire are even scantier than for the Principate. The organisation of the financial administration can be reconstructed just from the general knowledge about such structures in the Western provinces⁷⁵. The office of procurator was abolished and the sole administration of the governor was established. In the case of Britain all four provinces that were established at the turn of 3rd and 4th century formed the new administrative structure known as a diocese with its vicar as the chief magistrate. Among his many and vague duties was also an appellate jurisdiction from the provincial courts. The criteria of such jurisdiction are hard to verify. In the opinion of A.H.M. Jones the office of the vicars was a "rather unnecessary wheel in the administrative machine⁷⁶". The British historian believes that the appellate procedure was "half-baked" and as an example he refers to a situation when the sentence could be appealed either to the vicar's court or directly to the imperial court⁷⁷. Nevertheless, some legal proceedings were undertaken by the vicars. An example of one such situation, and, to be frank, the only legal source referring to Roman Britain in the 4th century, is a constitution issued by Constantine to the Vicar of the Britains, Pacatianus⁷⁸.

72. FIRA I,88.

73. Still the most complete of all the works that have been written about *Constitutio Antoniniana* is C. SASSE, *Die Constitutio Antoniniana: eine Untersuchung über den Umfang der Bürgerrechtsverleihung auf Grund des Papyrus Giss. 40.1*, Wiesbaden 1958. For recent work see J. MÉLÈZE-MODRZEJEWSKI, 'L'Édit de Caracalla de 212: la mesure de l'universalisme romain', in T. GIARO, *Roman Law and Legal Knowledge. Studies in Memory of Henryk Kupiszewski*, Warsaw 2011, pp. 21–36.

74. Key datum for potential research might be rapid increase of the emperor Caracalla's *gentilicium* 'Aurelius' after the *Constitutio Antoniniana*. But, as A.R. Birley notice, "this is really little better than guesswork". See A. BIRLEY, *The people of Roman Britain*, p. 18.

75. In *Notitia Dignitatum* there is only one financially involved magistrate mentioned. He is known as *Rationalis summarum Britanniarum*, see *Notitia Dignitatum, Pars Occidentis*, 11.

76. A.H.M. JONES, *The Later Roman Empire 284–602. A Social, Economic and Administrative Survey*, vol. 1, Oxford 1964, p. 374 and F. DE MARTINO, *Storia della Costituzione Romana*, vol. 5, Napoli 1967, pp. 269–270. For more recent study of the vicars' jurisdiction see F. PERGAMI, *L'appello nella legislazione del tardo impero*, Milano 2000, pp. 409–412.

77. A.H.M. JONES, *The Later Roman Empire*, p. 374.

78. About Pacatianus see *PLRE*, vol. 1, p. 656 and P. PORENA, *Le origini della prefettura del praetorio tardoantico*, Roma 2003, pp. 428–429



Imp. Constantinus a. ad Pacatianum vicarium Britanniarum.

Unusquisque decurio pro ea portione conveniatur, in qua vel ipse vel colonus vel tributarius eius convenitur et colligit; neque omnino pro alio decurione vel territorio conveniatur. Id enim prohibitum esse manifestum est et observandum deinceps, quo iuxta hanc nostram provisionem nullus pro alio patiatur iniuriam.

Dat. XII kal. decemb. Constantino a. et Licinio c. cons⁷⁹.

The foregoing constitution was included in the seventh chapter titled *De exactionibus* of the eleventh book of the Theodosian Code. It is chronologically the third known rescript that involves British matters. Two earlier come from the Principate. The first one was issued by Hadrian between AD 118 and AD 122⁸⁰. The second comes from the end of the 2nd century AD and its addressee was the Roman governor of Britain, Virius Lupus⁸¹. Both rescripts dealt with inheritance issues⁸².

Pacatianus's constitution has usually been cited in reference to the existence of the colonate in late Roman Britain. But to date the most intriguing discussion of the passage has been that published by C.E. Stevens in his article entitled 'A Possible Conflict of Laws in Roman Britain'⁸³. The British historian suggested there that the rather unclear content of the rescript could be explained through a comparison and mutual amalgamation of Celtic and Roman legal rules governing land ownership.

Analysis of the main features of the rescript reveals that it was issued on the 20 November 319 by Constantine himself (*Imp. Constantinus a. ad Pacatianum*). Pacatianus questioned the emperor about the proper manner of land tax collection from decurions and their *coloni* and *tributarii*⁸⁴. The emperor's answer was clear

79. C.Th. 11.7.2 "Emperor Constantine to Pacatianus, Vicar of Britain. Every decurion shall be sued for only that portion of land in respect to which either he or his colonus or his taxable dependent is sued and from which they collect the fruits, and no decurion shall be sued at all on account of another decurion or for the territory of another. For this is manifestly prohibited, and henceforth it must be observed that in accordance with Our provision no person shall suffer wrong on account of another" (trans. *The Theodosian Code and Novels and the Sirmondian Constitutions. A Translation with Commentary, Glossary, and Bibliography*, ed. C. Pharr, Princeton 1952, p. 299).

80. D. 28.3.6.7 and quite probably also D. 29.1.34.pr.

81. D. 28.6.2.4.

82. See more at Ł.J. KORPOROWICZ, 'Roman Law and Roman Britain', p. 141.

83. C.E. STEVENS, 'A Possible Conflict of Laws in Roman Britain', *Journal of Roman Studies* 37 (1947), pp. 132–134.

84. Term *tributarius* is hard to explain. However it is translated, by A. Berger for instance, as a taxpayer, payer of taxes of any kind (A. BERGER, *Encyclopaedic*, p. 744, s.v. *Tributarius*), in reality its presence in legal sources is not so frequent. According to M. Mirković, the position of *tributarius* was closely connected with the position of *inquilinus* and in three legal texts (C.Th. 11.7.2; 10,12,2,2 and C. 11.48.12) where the term survived it is always used in fiscal circumstances and in relation to some dependence upon *dominus*. See in more detail M. MIRKOVIĆ, *The Later Roman Colonate and Freedom*, Philadelphia 1997, pp. 108–109.





— a decurion may be sued only for his own land including the land used by his *coloni* and *tributarii*. He may not be sued for someone else's land, because no one may be punished for someone else's wrongdoing. The meaning of the rescript and Constantine's *prohibitum manifestum* are obvious. The reasons, however, for which such a question was asked are much more problematic. It is interesting also as to why the codification committee included a rather unimportant provincial rescript in the Code.

C.E. Stevens attempted to answer both questions. The British historian was surprised that the members of the codification team put the rescript into the Code. He is sure that they were unable to get documents from the archives of the praetorian prefect in Arles, just as they could not obtain them from the British vicar's archives. In his opinion "the law with the British subscription was available because it lay with a such subscription in the archives at Rome, and it lay there because it had been cited by British advocates in a case taken right up to the supreme appellate court of an emperor"⁸⁵. Stevens arranged his argumentation according to the groundwork laid earlier by O. Seeck in his famous work *Regesten der Kaiser und Päpste*⁸⁶.

It has to be said, however, that Stevens's suggestions referring to the finding of the foregoing rescript in Rome's archive are at least doubtful. The whole generations of the scholars are quarrelling about the methods used by the Theodosian compilers during their work. Seeck, for example, who seemed to be a great authority for Stevens, believed that most of the constitutions included in the Code were found in provincial archives⁸⁷. Others believed that the primary source used by the compilers were imperial archives in Rome and Constantinople for newer constitutions and local archives for older one⁸⁸. In recent years, A.J.B. Sirks excluded from that short list Rome and suggested that definite majority of the constitutions were found solely in Constantinople (some copybooks could be transferred from Rome to the new capital city of the Empire on compilers request)⁸⁹. This proposition did not convince all, including J.N. Dillon, who offered the idea of intermediate collections⁹⁰.

Even if it is possible that the compilers were using archives at Rome, it is not likely that the case really went up to the emperor's court. Stevens did not clearly

85. C.E. STEVENS, 'A Possible', pp. 132–133.

86. O. SEECK, *Regesten der Kaiser und Päpste für die Jahre 311 bis 476 n. Chr. Vorarbeit zu einer Prosopographie der christlichen Kaiserzeit*, Stuttgart 1919. Recently about Seeck's theory see A.J.B. SIRKS, *The Theodosian Code. A Study*, Norderstedt 2007, pp. 110–121.

87. O. SEECK, *Regesten der Kaiser und Päpste*, pp. 2–11.

88. J.F. MATTHEWS, *Laying Down the Law. A Study of the Theodosian Code*, New Haven–London 2000, pp. 288–289.

89. A.J.B. SIRKS, *The Theodosian Code*, pp. 136 and 146.

90. J.N. DILLON, *The Justice of Constantine. Law, Communication, and Control*, Ann Arbor 2012, pp. 19–20.





state which court he was talking about. First he said the “supreme appellate court of an emperor” and in the following sentence he referred to “the court of the Praetorian Prefect”. It is true that since the time of Constantine the Praetorian Prefect’s court was normally the highest appellate tribunal, but not necessarily always so. There was some scope for cases to be heard directly by the emperor himself⁹¹. In this last instance it is rather improbable that Constantine could have heard the case in Rome. Historical accounts indicate his infrequent presence in Empire’s capital city. It is believed that Constantine disliked Rome. He stayed at the old capital during the turn of AD 312 and 313 after he won the Battle of Milvian Bridge, later in AD 315 during his *decennalia* (10th anniversary of his reign) and finally in AD 326⁹². First two dates may not be referred as long as the rescript was issued in November 319. Third date is no better than the previous. Utility matters had to prevail. It is hard to believe that the parties were waiting for seven years before Constantine could preside the trial in Rome. Distance from Britain to Rome was not so big to postpone the trial so drastically⁹³. The time needed to send documents from the province to the old capital city may be easily calculated thanks to the information found in a letter written by Cicero to his brother during the Caesar’s British campaign. Cicero notified Quintus that he obtained a letter from Caesar dated on 1 September on the 28 September⁹⁴. It took then exactly four weeks to deliver a message from Britain to Rome through still unfriendly territories. In the 4th century, however, this was not a problem anymore. It is possible even that documents could be delivered to Rome more quickly⁹⁵. So the idea of the emperor’s direct involvement in the case is unbelievable⁹⁶. As to the Praetorian Prefect, the entire story is much more plausible, especially because, since the time of Diocletian, the prefects were responsible for the collection of taxes in the Empire⁹⁷. But it has to

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91. For more about imperial tribunal see e.g. F. Pergami, *L'appello*, pp. 440–447. See also brief notes in A.H.M. JONES, *The Later Roman Empire*, p. 481, F. DE MARTINO, *Storia*, vol. 5, p. 437.
 92. Generally about Constantine and his reign see e.g. R. MACMULLEN, *Constantine*, New York 1987 and most recently T. BARNES, *Constantine. Dynasty, Religion and Power in the Later Roman Empire*, Malden–Oxford–Chichester 2011.
 93. Although it is true that delays in court proceedings were common in that period, see A.H.M. JONES, *The Later Roman Empire*, p. 494.
 94. Cic., *Ad. Quintum* III,1.
 95. About the time lags in official correspondence see S. CORCORAN, ‘State Correspondence in the Roman Empire. Imperial Communication from Augustus to Justinian’, in K. RADNER (ed.), *State Correspondence in the Ancient World. From New Kingdom Egypt to the Roman Empire*, Oxford 2014, pp. 203–206.
 96. It may not be, however, totally abandoned, e.g. A.H.M. Jones notices that Constantine used to seat as a judge even in very minor cases, see A.H.M. JONES, *The Later Roman Empire*, p. 505.
 97. Ch. KELLY, ‘Bureaucracy and Government’, in N. LENSKI (ed.), *The Cambridge Companion to the Age of Constantine*, Cambridge 2012, p. 190.





be said that most of our current knowledge about Prefects' judicial duties are based upon sources issued after Constantine's AD 331 edict *ad universos provinciales*⁹⁸.

Finally, it is also important to notice that there could be no formal court proceeding before the emperor or the Praetorian Prefect at all. Stevens seemed to exclude from his way of thinking the *consultatio* (or *relatio*) procedure. The *consultatio* was a prejudicial question asked by the judge in the extra ordinary litigation to superior instance, most notably emperor, in controversial and uneasy cases to resolve. The answer on such a question was sent back in the form of rescript and it differed from an *appellatio*⁹⁹. Such *consultatio* was sent directly to the emperor irrespectively of his current presence location. The copies of the issued rescripts were hold, most probably, in the emperor's personal archive and were later delivered to the state archives in the capital city. It is possible also that in the meantime they could be rewritten and inserted in some local collections of constitutions stored in the local archives. This might be the source of intermediate collections mentioned by J.N. Dillon.

Stevens in his analysis pointed out also that the background of the case mentioned in the rescript could be of Celtic origin. This theory, although very "sourceless" is interesting and it is worth looking at it more closely. The whole idea presented by the British historian was quite simple. Welsh medieval legal texts contain provisions relating to the acquisition of land through a specific method known as *priodolder*. It was a kind of prescription of land which became effective from the fourth generation. Land once acquired, even if subsequently abandoned, remained in the *priodawr*'s family ownership for the next five generations. If, however, another family cultivated the same land for four generations, they also gained *priodolder*, so that it was possible to have two distinct, but perfectly lawful, titles to the same land. Thus Stevens imagined a hypothetical man of Celtic origin who had built a villa on virgin land at the end of 1st century. The fourth generation, in Stevens' opinion, would acquire the land around AD 200. Later the same land and villa were lost by the family, and another family used the land for another four generations. In the meantime, in AD 212 Caracalla promulgated the *Constitutio Antoniniana* and original Celtic ownership became Roman. But during the reign of Constantine a man of the ninth generation representing the interests of the first family appeared and he claimed that under the rules of Celtic law he was still the legal owner of the land. Under such hypothetical circumstances a legal question could arise, in the opinion of Stevens, "can double 'dominium' be admitted, so that the claim of the 'ninth man' can be satisfied?". And the answer to such a question could be as it was in the above mentioned rescript that "By implying that no one

98. C.Th. 11.30.16. About Prefect's juridical functions see more F. de Martino, *Storia*, vol. 5, 258–260 and recently F. PERGAMI, *L'appello*, pp. 413–416. For the Constantine's prefects see P. PORENA, *Le origini della praefectura*, pp. 339–562.

99. A. BERGER, *Encyclopaedic*, p. 412, s.v. *Consultatio*, J. HARRIES, *Law and Empire in Late Antiquity*, Cambridge 1999, p. 111, J.N. DILLON, *The Justice of Constantine*, pp. 204–205.





pays taxes for any other *territorium* but his own, the law lays down that a man is only 'dominus' of his own estate, so that an estate can only have one 'dominus'¹⁰⁰.

Priodolder shall be considered then as a specific interest in land that transfers possessory into the proprietary rights. This transfer is quite significant, while it clearly shows that medieval Welsh law separated facts from conditions protected by law.

Much concern has to be emphasised on the relation between Celtic and Roman law in provincial Britain. It is generally accepted that the autochthonous legal systems of the Roman provinces merged with Roman rules. Very often such a process was even manifestly initiated by the Romans who were eager to leave former local rulers, tribal chiefs or other authorities in their positions and to govern a new province with their assistance. Legal relations, then, were a natural consequence of political decisions.

Returning to Stevens' hypothesis it has to be said it is quite a convincing idea. But, it seems to be slightly too complicated. It is much easier to imagine that Welsh *priodolder* was a descendent of a Roman prescription that influenced Celtic property law. The lack of a similar institution in medieval Irish law lends credence to above stated conception¹⁰¹.

Let us imagine a step by step evolution of postclassical Roman prescription known as *longi temporis praescriptio* into prescription of a property by several generations. Originally prescription of provincial land was impossible¹⁰². In practice, however, provincial governors allowed defendants in possessory trials to invoke a defence of long possession¹⁰³. In time, such possessors could sue anyone who infringed their possession with an *in rem* action and finally it was settled that the ownership could be acquired after ten or twenty years of possession based on just grounds (*iusta causa*). But already in the 4th century it is possible to observe a tendency to prolong the required time of prescription. An imperial rescript from AD 349 included in the Thodosian Code bears information about the *annorum quadraginta praescriptio*¹⁰⁴ and the same is mentioned in a papyrus which

100. C.E. STEVENS, 'A Possible', p. 134. About *priodolder* in Welsh law see e.g. T.P. ELLIS, *Welsh Tribal Law and Custom in the Middle Ages*, vol. 1, Oxford 1926, pp. 215–223, T. JONES PIERCE, 'Social and Historical Aspects of the Welsh Laws', *Cylchgrawn Hanes Cymru / Welsh History Review* Special Number (1963), pp. 41–42. It is interesting also to note that in the opinion of other scholars the legal antecedents of *priodolder* could be recognised by the pre-Roman Gallic law, see more E.M. WIGHTMAN, 'Rural Settlement in Roman Gaul', in *ANRW*, II. B. 4, Berlin–New York 1975, pp. 599–600.

101. About the medieval Irish property law see F. KELLY, *A Guide*, pp. 99–124.

102. G. 2,46.

103. About the origins of *longi temporis praescriptio* see e.g. W.W. BUCKLAND, *A Text-book of Roman Law: From Augustus to Justinian*, rev. ed. P. Stein, Cambridge 1963, pp. 248–252, P. CORNIOLEY, 'De l'origine de la longi temporis praescriptio', *Tijdschrift voor Rechtsgeschiedenis* 41 (1973), pp. 119–130.

104. C.Th. 4,11,2. The same term, however, may be find also in C. 7,39,2.





contains court records from AD 339¹⁰⁵. Finally, ten and twenty year limits were re-established by Justinian¹⁰⁶, but this is of no account for the Roman Britain.

As to the possible history of *longi temporis praescriptio* in Britain, it may be assumed that when Roman government ceased there, the accepted rule for the prescription of property was the forty years mentioned above. It has to be stated also that the generally accepted rule at that time was to add the years that already passed in favour of the former possessor (e.g. deceased father) to the general time limit required for the prescription (*accessio temporis vel possessionis*). The changing political situation and increasing danger from Saxon invaders quite probably heavily influenced the demography of the Romano-British inhabitants of the island. The average life expectancy for men at that period had to have declined drastically¹⁰⁷. Most of them were actively fighting against the invaders and they were unable to cultivate their farms, so they were for long periods of time lying waste. All this makes it possible to imagine three or four generations passing in one family within the space of forty or fifty years.

The survival of Roman law rules in sub-Roman Britain would not be very surprising. Although older authors believed that Roman law did not persist in Britain beyond the middle of the 5th century, newer research suggests the opposite. It is worth to mention, for example, studies undertaken by M.E. Jones on legal practice in sub-Roman Britain. He has proved that Celtic rulers (ancestors of later Welsh kings) were issuing various land charters closely based on Roman examples, though substantive law survivals are less possible¹⁰⁸.

Returning now to the Constantine's rescript to Pacatianus and a possible court trial. It is possible that the *longi temporis praescriptio* was at some point an important factor in the later creation of Welsh *prïodolder*, so is it possible that C.Th. 11,7,2 was connected with *longi temporis*? A papyrus already mentioned above in relation to the evolution of prescription can be quite helpful here.

105. FIRA III,101 = P.Col. VII 175 = columbia.apis.p210. More about time limits needed to proscribe a thing in late Antiquity see E. LEVY, *West Roman Vulgar Law. The Law of Property*, Philadelphia 1951, pp. 180–190.

106. I. 2,6,pr.

107. It is interesting to note that by the end of 4th century the number of male skeletons buried at excavated Romano-British cemeteries increase and exceed the number of female skeletons. See C.J. ARNOLD, *Roman Britain to Saxon England*, Bloomington 1984, p. 134.

108. M.E. JONES, 'The Legacy of Roman Law in Post-Roman Britain', in R.W. MATHISEN (ed.), *Law, Society, and Authority in Late Antiquity*, Oxford 2001, pp. 52–67. Positively, however, the wider amalgamation of Roman and native legal rules is seen by T.G. Watkin in his works, e.g. 'The Death and Later Life of Legal Symbols. Welsh Legal Symbols after the Union with England', in R. SCHULZE (ed.), *Symbolische Kommunikation vor Gericht in der Frühen Neuzeit*, Berlin 2006, pp. 214–215 and T.G. WATKIN, 'Ceremonies, Survivals and Syncretism: Ritual Search in Roman Law and The Native Laws of Wales', in F.M. D'IPPOLITO (ed.), *φιλία. Scritti per Gennaro Franciosi*, vol. 4, Napoli 2007, pp. 2851–2864.





P.Col. VII 175 is dated to 12 May 339. It was acquired by Columbia University from private individuals in 1924 in two separate instalments. Third instalment (*P.Cairo Journal d'entrée* 48016+) of the text was uncovered much later (in 1974), published for a first time in 1979 and re-edited in 1982¹⁰⁹. It contains a quite detailed, but incomplete court proceedings record. One of its characteristic features is a comprehensive record of the parties' statements. Thanks to the discovery of the third instalment of the record it was possible to determine that the case was delegated by the Prefect of Egypt to the magistrate known as σύνδικος (*defensor civitatis*) of the Arsinoite nome¹¹⁰. Normally, the papyrus is treated as a unique illustration of the early activity of the *defensor civitatis*¹¹¹. But another curiosity of the papyrus is the citation of Constantine's constitution dated between AD 326 and 333¹¹² dealing with *longi temporis praescriptio*:

- 21 ... Οἱ δεσπότε ἡμῶν Κωνσταντῖνος Σεβαστὸς
 22 καὶ Κωνσταντῖνος καὶ Κωνσταντῖ[ο]ς ἐπιφανέστατοι Καίσαραις Ἀγριππίνῳ
 23 βουλ(ευτῆ). Καὶ παλαιᾶς νομῆς εἰς τοσοῦτον ἤρρεσεν ἔχεσθαι τὸν λογισμὸν
 ἵνα
 24 ἀπ' ἐκίνων εἰ συνέστηκεν τὸ [...]. περὶ οὗ ἐστὶν ἡ ζήτησις τεσσαράκοντα
 ἔτεσιν νενεμῆσθαι, μηδὲ τὸν κανόνα τῆς νομῆς ζητῆσθαι. ἤρε-
 25 σεν καὶ δικαίου κανόνος [...]. ρ. κόντος τῆ τῆς δεκ[α]ετίας ἢ εἰκοσαετίας
 παραγραφῆ τὴν κάτοχον βοηθεῖσθαι καὶ τὰ ἐξῆς.

The English translation of the rescript, following C.J. Kraemer Jr. and N. Lewis — the first editors of the text, is as follows: “Our masters Constantine Augustus and Constantine and Constantinus most noble Caesars to the decurion¹¹³ Agrippinus: It is our pleasure that consideration be taken also of the length of the possession, to the extent that, if it is established by inquiry from them that the property (?) with which the investigation is concerned has been held for forty years, not even the grounds of the possession be investigated. It is our pleasure moreover that, since legal grounds of possession are necessary (?) only for prescription after ten or

109. B. KRAMER, D. HAGEDORN, ‘Zum Verhandlungsprotokoll P.Columbia VII 175’, *Zeitschrift für Papyrologie und Epigraphik* 45 (1982), pp. 229–241.

110. Delegating jurisdiction to lower functionaries was common practice in Roman Egypt, see recently B. KELLY, *Petitions, Litigation, and Social Control in Roman Egypt*, Oxford 2011, p. 83.

111. See e.g. B.R. REES, ‘The *defensor civitatis* in Egypt’, *Journal of Juristic Papyrology* 6 (1952), pp. 84–85, R.M. FRANKS, ‘*Contra potentium iniurias*’. *The ‘Defensor Civitatis’ and Late Roman Justice*, München 2001, pp. 50–51. A.H.M. Jones mentioned a case in relation to the attempts to guarantee a fair and inexpensive trial for the humblest citizens of the Empire, see A.H.M. JONES, *The Later Roman Empire*, p. 517.

112. C.J. KRAEMER Jr., N. LEWIS, ‘A Referee’s Hearing on Ownership’, *Transactions and Proceedings of the American Philological Association* 68 (1937), p. 360.

113. The original translation by C.J. Kraemer Jr. and N. Lewis consists in this place word ‘senator’, but the ‘decurion’ translation seems to be more suitable. This term is used by modern scholars, see e.g. J.N. DILLON, *The Justice of Constantine*, p. 15.





twenty years, the present holder of the property be awarded the protection of the court, etc.¹¹⁴”.

The above mentioned rescript was cited by one of the advocates during the court trial. The background to the case can be summarised briefly: Atisis, who was a peasant in the village of Karanis had died. For at least forty-five years he was in possession of a plot of land which was cultivated by him. After his death the land was inherited by his two daughters — Taesis and Herois and their families. Additionally the daughters received from their father a house in the village. Due to the amount of the tax liable, both women decided to flee. When that happened the *praepositus pagi* decided to share the field between the other peasants and to start paying taxes on those fields. After five years, the sisters and Nilos (husband of Herois) decided to return to the village and demanded from the peasants payment of rent for the use of their land. The peasants and the village chief were not eager to do so, but Germanos, a peasant who was questioned by the *defensor* during the court trial, admitted that they wanted to remit to the sisters and Nilos three *artabas* of wheat from every *aroura* of land¹¹⁵. Nilos declared that this was not true. Nevertheless the *defensor* declared that because the land was in the just possession of Atisis for forty-five years his daughters — Taesis and Herois — and Nilos were lawful owners of the land and were obliged to pay the taxes imposed on the land by the imperial treasury. The papyrus ends with Nilos’s appeal, but the remaining part of the text is now lost. It is possible to think that Taesis, Herois and Nilos believed that the *defensor* would only confirm their ownership and that they would be freed from the tax burdens. But as it was said twenty years earlier in Constantine’s rescript to Pacatianus — everyone can be financially liable just for his own land and not for someone else’s land. In such a situation the money paid by peasants from Karanis as a tax imposed on the land should be returned to them by the two sisters and Nilos as they were rightful owners of the land and in future the tax has to be paid by plaintiffs¹¹⁶.

114. C.J. KRAEMER Jr., N. LEWIS, ‘A Referee’s Hearing on Ownership’, p. 360. The translation is available also at the Advanced Papyrological Information Service (APIS) under this hyperlink: <http://wwwapp.cc.columbia.edu/ldpd/apis/item?mode=itemkey=columbia.apis.p210>. The rescript is also shortly mentioned at L. WENGER, *Die Quellen des Römischen Recht*, Wien 1953, p. 470.

115. In the opinion R.M. Frakes that wheat was considered as the requested rent, see. R.M. FRAKES, ‘*Contra potentium iniurias*’, p. 51.

116. For more about the court proceedings and circumstances of the trial see C.J. KRAEMER Jr., N. LEWIS, ‘A Referee’s’, pp. 364–370. It has to be remembered, however, that this analysis of the papyrus was undertaken before the finding of the third instalment of the text. Recently about the P.Col. VII, 175 see M. MIRKOVIĆ, ‘Count Ammonios and Paying Taxes in the Name of Somebody Else in the Cadastre from Aphrodito’, in T. GAGOS, A. HYATT (eds.), *Proceedings of the 25th International Congress of Papyrology*, Ann Arbor 2010, pp. 570–571 and P. BIANCHI, ‘*Sulla praescriptio constantiniana*. P. Col. VII 175: Ricostruzione di una vicenda processuale’, in S. GIGLIO (ed.), *Atti dell’Accademia Romanistica Costantiniana. XVII Convegno Internazionale in onore di Giuliano Crifò*, Roma 2010, pp. 707–744.





Is it possible that the case that lay behind the issuing of Pacatianus's rescript was similar to that which took place twenty years later in Egypt? It is impossible to give an indisputable answer, but there is a chance to think like that. *Longi temporis praescriptio* was definitely very attractive, but also a very dangerous proprietary remedy that caused major legal consequences.

5. Conclusions

The above article is an attempt to analyse as many sources referring to tax issues in Roman Britain as possible. It is certain that the picture presented is not full, but at least at some points a vivid picture has been created, especially for the early Principate. Our knowledge of Roman tax policy is very limited in general. Uncovering that knowledge is usually attempted with the usage of methods characteristic for Roman private law — a detailed interpretation of legal sources. It may be assumed, however, that this method is less practical for studying Roman taxes. Only time consuming checking of the local practices can act effectively. Roman taxes were, quite possibly, much more related to provincial traditions, than to systematic measures taken by the Romans. It has to be remembered that for a very long period of time Roman citizens were not obliged to pay state taxes with only few exceptions (i.e. inheritance, manumission and sales taxes). Only the inhabitants of the provinces had to fulfil that obligation. An effective collection of the taxes must, quite probably, be closely related with local standards.

