

particular, that, by contrast with Common Law for which a clearly defined antiquity was a necessary qualification, Roman mos was regarded as something in continuous development. 'This also will become established, and what we now defend by precedents (exempla) will itself join the ranks of precedents.' So Tacitus in his version of the emperor Claudius' speech on the Gallic senators-and the emperor himself in the preserved text of his speech had included constitutional changes in his panorama of Roman growth. Furthermore, we find in the next book of the Annals a much more serious breach of tradition Claudius' marriage to his niece-justified by the need to accommodate trios to the times. This sort of argument was treated as commonplace by Cicero in 66 Bc when replying to those who claimed that Pompey's proposed command under Manilius' bill was a breach of precedent and the practices of their ancestors: 'I will not point out here that our ancestors have always followed precedent in peace, but expediency in war and have always adapted the ideas of new policies to suit changing circumstances.'"

The ambiguous nature of mos is best illustrated by an incident from the period of the Second Punic War. In 209 BC the pontifex maximus Publius Licinius Crassus forced a dissolute and prodigal young man, Gaius Valerius Flaccus, to be inaugurated as flamen Dialis (an ancient priesthood subject to numerous taboos). The latter, the story goes, immediately threw off his wicked ways and then claimed a seat in the senate in respect of his priesthood-a tradition which had fallen into disuse, allegedly because of the poor calibre of previous incumbents. He was expelled from the senate by Lucius Licinius Crassus, the brother of the pontifex maximus, who happened to be praetor at the time, and in consequence he appealed to the tribunes. The praetor's argument was that 'law did not depend on obsolete precedents from ancient annals but on the usage established by all the most recent customs'. However, the tribunes decided that 'it was equitable that the negligence of previous holders of the priesthood should detract from them and not from the status of the priesthood itself', and they brought Flaccus back into the senate amid the approval of both the senators inside and the crowd outside. The implication of the praetor's conduct was that recent precedent tended to prevail over what was more remote and that mos was expected to change. The young flamen Dialis, however, showed that one could win arguments by citing ancient tradition, if other circumstances were favourable.¹²

Jochen Bleicken has tried to create a theoretical model for the development of mos," which is usefully provocative, even if it cannot do justice to all the complexities. For him the early Republic was a period, in which lex-written law, such as the Twelve Tables-and mos were not in conflict, but were complementary aspects of an aristocratic regime based on consensus-a golden age, one might say. Mos and consuetudo described simply practice-whatever was done for whatever