

reason with whatever authority. We may object immediately that it is doubtful if such a golden age ever existed. Bleicken's picture of an ideal consensus, social unity, and internal peace does not correspond well with the Romans' own conception of the early Republic. However, for the sake of argument at least, we may concede that there was a time when there was no essential conflict between written statute (*lex*) and unwritten tradition.

Bleicken's second stage is one in which drastic changes in law (ius) were required in order to cope with the ever more complex demands on the regime. New norms tended to be introduced by statute (lex), but, when this did not occur, recent mos came to supplement, even supplant, earlier mos. Bleicken's example is the process by which the capital trials for treason (perduellio) laid down by the Twelve Tables were supplemented by tribunician prosecutions for a fine (multa)." I myself am not sure that prosecutions by a magistrate for a fine were not envisaged in the Twelve Tables. However, what does seem to have been an important development in this field, not dependent on statute, is the regular appearance of the tribune as the prosecutor in both capital and noncapital cases, which must have been the result of the evolution of the tribune into an element of the government from the fourth century onwards.

By this time mos appears as something which is separate from and hence potentially may be in conflict with lex.¹⁵ Moreover, in the revolutionary period which followed, when aristocratic consensus was fragile, it became the norm to deal with new needs by legislation (when this was resisted, we find legislators even requiring oaths of obedience from magistrates and senators)" The consequence was that trios by contrast came to be regarded as preponderantly ancient tradition, idealized by conservatives as a counterpoise to new developments which, in their view, were rooted in corrupt statutes. This point of view lies at the heart of Tacitus' sketch of the growth of legislation in Annals 3. 27-8, where the Twelve Tables are the end of equitable law, and legislation subsequent to them is inspired by ambition and jealousy with a view to self-promotion or injury to rivals. Custom tended to become a conservative catchword in so far as it was used to describe actions in opposition to the populares, even those taken after new expedients like the senates consulturn ultimurn."

It should be clear from this that the constitution of the Republic was not something fixed and clear-cut, but evolved according to the Romans' needs by more means than one. It was also inevitably controversial: there were frequently at least two positions which could be taken on major issues. What must also be evident is the most likely way that young Romans from the elite learnt about the constitution. Occasionally, they might have referred to the text of a law or *senatus consultum* or