

Thinking historically about historical thinking

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§1. *CFA* #65, ll. 13-14, from 109 C.E.; #75, ll. 9-14 from c. 134 C.E.

63. [- - -, *Ti. C*]atius Fronto, Metilius Nepos, Trebicius [Decianus - - -]
64. [- - - *ex decret*]is prioribus nihil immutamus (vacat)
9. [- - -, *Iul(ius) Alexander*] Iulianus, Antonius Albus, Valerius Iunianus
10. [- - - *publicis s*]uis postulantibus, ut ex sententiis fratrum aru(alium)
11. [- - - ?]n portionibus apud ipsos etulitum (!) Eutychen
12. [- - - *perl*]ectis codicibus, quibus sententiae priorum
13. [fratrum aru(alium) relatae sunt, collegium decreu]it: (vacat) "Ex decretis prioribus nihil
14. [immutamus]."

I translate #75, lines 12-14:

The notebooks in which are transmitted the decisions of earlier Arval brethren having been read aloud, the College decreed: "From earlier decrees we depart in no way whatsoever."

§5.1 Gellius 20.10.9, describing a change in the legal ritual for vindication of ownership:

Correptio manus in re atque in loco praesenti apud praetorem ex duodecim tabulis fiebat, in quibus ita scriptum est: si qui in iure manum conserunt. Sed postquam praetores, propagatis Italiae finibus, satis iurisdictionis negotiis occupati, proficisci vindiciarum dicendarum causa ad longinquas res gravabantur, institutum est contra duodecim tabulas tacito consensu, ut litigantes non in iure apud praetorem manum consererent, sed "ex iure manum consertum" vocarent, id est alter alterum ex iure ad conserendam manum in rem de qua ageretur vocaret atque profecti simul in agrum de quo litigabatur, terrae aliquid ex eo, uti unam glebam, in ius in urbem ad praetorem deferrent et in ea gleba tamquam in toto agro vindicarent.

According to the Twelve Tables, a seizure by hand of thing or place took place in the presence of the praetor. For there it is written, "If any lay on hands in court...." But later, after the boundaries of Italy were extended, the praetors became preoccupied by legal matters and were reluctant to travel for the sake of hearing claims to far-off objects. As a result, it was

decided by tacit agreement, contrary to the Twelve Tables, that litigants would not lay on hands in court before the praetor, but they would call for "a laying-on of hands according to the law." That is, one litigant would summon the other to the disputed object for a laying-on of hands in accordance with the law. Having set out at the same time to the field in question, they would bear back from it some bit of earth--a clod, for example--to the city, into court before the praetor and on that clod, as if on the whole field they would speak their claim.

§5.4 Varro, *Antiquitates rerum divinarum* frs. 2A, 5, 12, 18, 36, 37, 44, 45, & 219 Carthage

(5) *propterea se prius de rebus humanis, de divinis autem postea scripsisse . . . , quod prius extiterint civitates, deinde ab eis haec instituta sint. ... Sicut prior est ... pictor quam tabula picta, prior faber quam aedificium, ita priores sunt civitates quam ea, quae a civitatibus instituta sunt.*

Si de omni natura deorum et hominum scriberemus, prius divina absolvissemus, quam humana adtigissemus. ... Rerum ... humanarum libros non quantum ad orbem terrarum, sed quantum ad solam Romam pertinet.

Wherefore he wrote first about human things and later about divine ones, because political communities come into being first and later the things instituted by them. Just as the painter is prior to the painting, or the builder to the building, so political communities are prior to those things that are instituted by political communities.

If I were writing about the totality of the nature of gods and humans, I should have completed the divine matters before I touched upon human matters. But the scope of the books on human affairs do not relate to the entire world, but to Rome alone.

(12) *non se illa iudicio suo sequi, quae civitatem Romanam instituisse ... si eam civitatem novam constitueret, ex naturae potius formula deos nominaque eorum se fuisse dedicaturum. ... Sed iam quoniam in vetere populo esset, acceptam ab antiquis nominum et cognominum historiam tenere, ut tradita est, debere se ... et ad eum finem illa scribere et perscrutari, ut potius eos magis colere quam despiciere vulgus velit.*

For [he confessed] that he did not pursue in accord with his own judgment the things which the Roman community had established... If he had been founding a new community, he would instead have consecrated the gods and their names according to the rule of nature. ... But as it was, as he was among an ancient people, he was obliged to hold to the history received from antiquity of names and *cognomina* as it was handed down ... and to record and examine them with this end in mind,