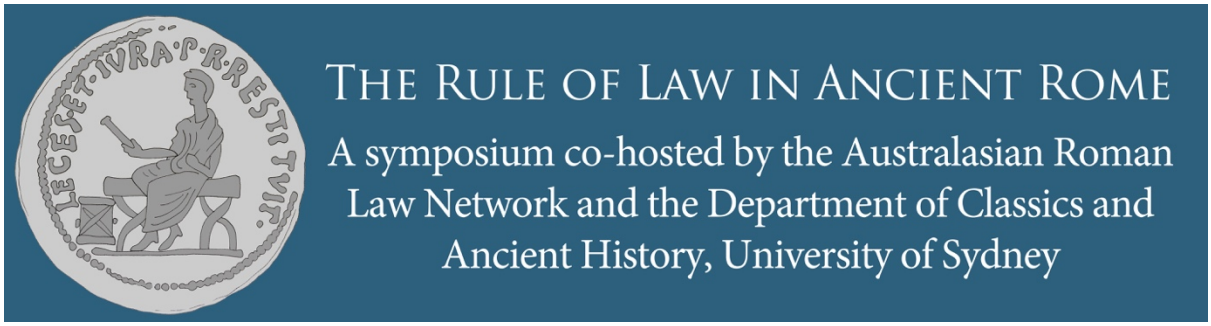

Abstracts

Paul Du Plessis (University of Edinburgh)
The 'Rule of Law' in the last century of the Roman Republic

Can the collapse of the Roman Republic be attributed to a breakdown of the 'Rule of Law'? Although Latin writers of subsequent periods were keen to describe the late Republic as a period in which the Romans had seemingly abandoned all *leges* and *mores*, the role played by the legal order in the collapse of the Roman Republic remains open to debate. This knotty question (and possible answers to it) will form the core of this paper. In addressing this issue, I will engage with the legal concept of the 'Rule of Law', its origins in the works of Aristotle and its elaboration in the writers of legal philosophers of the early modern period. Drawing on modern legal scholarship, I will also assesses whether it is a suitable paradigm for discussing the late Republic and how it has influenced scholarship on the subsequent fate of the Roman legal order in the Principate thereafter.

Kit Morrell (University of Sydney)
Cato and the rule of law

The historical tradition ascribes to M. Porcius Cato (pr. 54) a number of statements and attitudes which resemble tenets of the modern doctrine of the 'rule of law'. These include opposition to retroactivity, deference to laws of which he personally disapproved, and the sentiment that 'the laws should not take security from Pompey, but Pompey from the laws' (Plut. *Cat. Min.* 47.1). At the same time, Cato showed himself willing to break the letter of the law when he felt the public interest demanded it. This paper examines Cato's attitude to law in order to ask how far he and his contemporaries subscribed to an ideal of the rule of law, however imperfectly realised in practice.

Andrew Pettinger (University of Sydney)

Predictability and consistency are often considered essential elements for the rule of law. Arbitrary judgement and decisionism, on the other hand, are thought to signpost autocracy and cronyism. The edict in the late Republic offers us an ancient example by which we can explore the complex interaction of consistency and individual judgement in civil and administrative law, and the effect of this interaction on the rule of law. I will argue that the importance of the edict increased as traditional avenues for solving political and social

problems, such as the assemblies, strained in the face of obstruction, violence, and declining levels of consensus. The Juristic response, ever larger and more detailed dialectical commentaries on edicta, should in turn be interpreted as an attempt to regulate their use and so ensure that law remained relevant but not arbitrary.

Andrew Riggsby (University of Texas)
Not in the last instance

This paper explores an area of exception to what might otherwise reasonably be described as Cicero's commitment to the "rule of law," and situates this position within his broader political project. Despite the fact that Cicero's own career trajectory was so closely tied to this career in the Roman public courts, he expresses scepticism of the institution in two quite different contexts: his speech pro Rabirio reo perduellionis and de Legibus. In the former he argues that the present court was an out-of-control instrument of (at best) murder and (at worst) sedition. In the latter he appears to remove standing courts altogether from the constitution of his ideal state, in favor of magisterial authority. And, in fact, the crux of his argument in the speech is to place trust in the right sort of people rather than in institutions and formal rules. The political theory implicit in all this can be illuminated by comparison and contrast with Harriet Flower's account of what was "republican" about the Roman Republic(s). Cicero is increasingly willing to destroy the Republic to save it.

Amy Russell (Durham University)
The divided *populus* and the rule of law

This paper explores the concept of the *populus*'s sovereignty in the context of the political divisions of the late Republic. Roman political discourse assumes that the *populus* is a unit: it can only be singular, and it is assumed to have a single opinion, which it then expresses in legally binding votes to create law – even though it was composed of people, who did not necessarily agree with each other. The procedures of Roman lawmaking were designed to create consensus from diversity, and the language of Roman politics insisted on it.

In the late Republic, however, no one could reasonably ignore the polarisation of political opinion. When Cicero makes Laelius exclaim, in the opening scene of the *de Republica* (1.31), that Tiberius Gracchus has divided the *res publica* so that there are almost two *populi*, he means it as a statement of unprecedented alarm, a threat to the republic's very existence. In such a situation, the rule of law becomes meaningless.

How did the divided nature of the *populus* affect the legitimacy of the laws they made? In this paper, I examine Ciceronian and non-Ciceronian political speeches in order to trace prevalent attitudes to the rule of law and popular sovereignty in a time of political upheaval. When Cicero wants to discredit an idea which has gained support, he does not claim that only a minority of the *populus* backs it; instead, he argues that those who back it are not in fact members of the *populus* at all. We can find in his treatises traces of discourses of majoritarianism or constitutionalism which were unfolding among legal scholars of the time. The deliberative oratory of Cicero and his contemporaries, however, centres on a different set of concepts that are more likely to reflect general attitudes. There, he insists on the *populus*'s

unchanging indivisibility, and must rescue concepts of popular sovereignty and the rule of law by effectively disenfranchising his opponents.

Catherine Steel (University of Glasgow)
Auctoritas and Law in the late Republic

The Roman Republic was a Republic of Laws – to a certain extent. The procedural activity of the *res publica* was governed by rules whose breach could generate legal action. Yet Roman public law involved a range of overlapping provisions, and political practice itself combined adherence to precedence with a startling capacity to innovate. In this contribution to the discussion, I focus on these contradictions in relation to the activities of the Senate – a body which encapsulates many of the difficulties we face in trying to understand how statute law interacted with tradition, collective memory and individual agency in determining what was and was not acceptable and effective behaviour.

Tristan Taylor (UNE)

Princeps legibus solutus est an non? Cultures of legality in the later Roman Empire

By the beginning of the fourth century, the developments were already well in progress that would enable Justinian's compilers to elevate Ulpian's reference to the *princeps*' specific absolution from the Augustan marriage laws to a general principle: *princes legibus solutus est* (*Dig.* 1.3.31). The *princeps'* emergence in the later Roman empire as essentially the sole source of new law in one sense facilitated compliance with a bare formalistic notion of the rule of law: as long as the emperor ruled through the due form of *constitutiones*, he could be said to be acting in accordance with the law. However, such a development *prima facie* appears inimical to any more substantive notions of the rule of law – if the word of one man is law, what distinguishes mere rule *per legem*, from rule *sub lege*? In this paper, it will be argued that, the later Roman emperor of the 3rd-4th centuries CE was constrained by a pervasive culture of legality, which included some (though by no means all) of the elements often associated with modern substantive notions of the rule of law. The content and pervasiveness of this culture of legality will be exemplified not only by the hortatory statements of jurists, but also through the very construction of this culture by the discourse of petition and response to the emperor, where both petitioner and respondent acknowledge the importance of deciding matters in accordance with existing law. The strength of this culture will then be explored through a particular case study of the legal responses by emperors in the fourth century to the aftermath of usurpation: at this time, usurpers often ruled territories for periods of years, what would happen to their legal enactments on their removal? *Codex Theodosianus* 5.14 allows us to examine here different responses, from Constantine's *per legem* invalidation of all of Licinius' legal acts (*CTh* 5.14.1), to later constitutions that – while overturning what we might term administrative actions such as official appointments – preserve, and protect from arbitrary invalidation, many (though not all) private law transactions (eg, *CTh* 5.14.11). Such an interaction between formal rules, and an informal

culture of legality, lies at the heart of any effective realisation of the rule of law – ancient or modern.

Jeff Tatum (Victoria University, Wellington)

Non iure rogata: the people, the senate, and the rule of law in republican Rome

The rule of law in republican Rome reflected the reality of the people's majesty: 'The people', Polybius states, 'have the power of approving or rejecting laws' (Polyb. 6.14.10). And yet by the late republic the senate clearly possessed the authority to issue exemptions from the laws and to declare invalid legislation it decreed *non iure rogata*, a prerogative often denominated by the term *solutio*. Although various explanations, all unicausal in nature, have been advanced, the dominant view of this prerogative proposes that the senate's capacity for declaring legislation invalid was established by the *lex Caecilia Didia* of 91. In this paper, however, I attempt to demonstrate that the senate's authority cannot have been based solely on the *lex Caecilia Didia*. Instead, senatorial annulment arose in crisis and developed by way of a tentative, ad-hoc process that was never comprehensively codified. And whereas the senate exhibited few inhibitions in the matter of legal exemptions, the same body regarded *solutio* as a solemn exercise of its authority and, consequently, only rarely annulled legislation by decree – an attitude that can to some degree be explained by the origins and development of *solutio*.