ZSOLT SARKADY

The Lex Aquilia and the Standards of Care

In Ancient Rome the only acts recognized as criminal were „exceptional invasions of public security or of the general order of society".[1] As such, Roman 'criminal law' would have failed to meet the needs of any highly organized society. The Romans decided upon a „practical remedy", the laws of Delict, by which they „extended the doctrine of civil obligations",[2] to cover the realm of personal property. Violations of these standards of care carried with them „penal consequences".[3] Private law was originally dominated by the Twelve Tables, which soon became „harsh and inflexible antique rules" in cosmopolitan Rome. The „punitive vengeance" of the Twelve Tables evolved into legal sanctions to compel compensation when damage was done to private property. However, these sanctions retained a distinct „punitive character".[4]

Sanctions were thus developed to protect three principal rights of the Roman citizen not originally protected by criminal law: the security of his property, his security from theft and his right to be „protected from deliberate anti-social attacks" on his dignity.[5] The Lex Aquilia governed loss wrongfully inflicted to property (damnum iniuria datum), whereas the Delicts of Furtum, Rapina and Iniuria were designed to deal with theft, robbery and attacks on personal dignity respectively. In order to be liable under the Lex Aquilia the defendant had to be found guilty of intent and culpable conduct (iniuria datum), and thus to have „wrongfully inflicted" loss (datum) on the plaintiff.[6]

The early Romans maintained strict standards that governed personal behavior and this is reflected in the legal reasoning implicit in the lex. Frier argued that while the ancient Romans „were under no general obligation" to ensure that others did not experience material loss, they were required „to act with care" in circumstances where their actions risked causing such loss to another.[7] An examination of the twin pillars of the lex, the Praetor's Edict and the juristical interpretations of the Lex Aquilia (illustrated by the actions ad factum and actio utiles) and selected cases from Frier's Casebook on the Roman Law of Delict will demonstrate that unwritten 'standards of care' clearly existed in Roman law though they are never mentioned explicitly.[8] The

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[1] AMOS, SHELDON. *The History and Principles of the Civil Law of Rome*. London, 56. p.
[2] Ibid. p. 56.
[3] Ibid. p.57.
[4] DAUBE, DAVID. *Roman Law*. Edinburg University Press, 1969, p.106.
[5] FRIER, BRUCE W. *A Casebook on the Roman Law of Delict*. Scholars Press, Atlanta, 1989., 265–268. pp.
[6] Ibid. pp. 265–268.
[7] Ibid, p.269.
[8] Ibid, p. 270.

foremost legal reasoning behind the lex was the understanding that one had a civic responsibility as a Roman to not wrongfully cause another loss.

Standards of care as expressed by Culpa and Dolus

„Loss wrongfully inflicted" (damnum iniuria datum) forms the basis of Aquilian liability. Definitions of the term „iniuria" changed during the evolution of Roman law. The term was originally held to mean „without legal right". Juristical interpretation lent iniuria an additional meaning, that of „wrongfulness". Defendants were considered only guilty of inflicting loss without legal right if they had „acted in a way positively improper and worthy of legal reproach". The concept of „wrongfulness" strongly suggests that „legal rules" governing what conduct was expected from citizens „in various situations". Frier[9] points out that the Lex Aquilia „only sketchily described the content of such rules" and that those which do exist are the creation of the jurists. This is not unsurprising however. The early ancient Romans, a people with both a traditional loathing for autocracy and a deep respect for the rights of the citizen would have resisted codifying laws explicitly stating what conduct was expected of them. Nicholas argues[10] that the Romans would have interpreted such an attempt to impose defined duties as „an unwarranted restriction on personal freedom". Thus „standards of care" as expressed in the Lex Aquilia were not codified, but can be defined as such: citizens were expected to act in the manner befitting a Roman.

As citizens, Romans were obliged to understand the „prerequisites of social life" and were expected to tailor their actions so as to avoid causing loss to others. In Case 19 Paul maintains[11] that a tree-trimmer on private land is liable for killing a passing slave by „throwing down a branch" because in failing to call out or „foresee what a careful person should have foreseen" he had violated these social prerequisites. Culpa (fault), as Paul stipulated,[12] arises when a defendant ignores the mutually understood, but unwritten, obligations of the Roman and wrongfully causes loss to another.

It is for this reason that Ulpianus „construes iniuria as loss inflicted by culpa" even when „the wish to harm" was absent, for one has a duty to be careful and aware. Dolus, (intentional fault) arises when one ignores these obligations „with a deliberate intent" to cause loss.[13] The civic obligations implicit in the notions of culpa and dolus imply the existence of an unwritten standard of care, and Frier even describes the adherence to the aforementioned obligations as a „duty of care". Daube points out[14] that the existence of a third standard of Aquilian liability, that of casus (accident) can only be seen as concerned with compensation, because unlike culpa (characterised by negligence) or dolus (characterised by evil intent) sheer accident does not involve a breach of any standard of care. It is important to note that the juristical interpretation of the lex there was no liability for casus.

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[9] FRIER, BRUCE W.: A Casebook on the Roman Law of Delict. Scholars Press, Atlanta, 1989. Ibid, p. 278.

[10] NICHOLAS, BARRY: *An Introduction to Roman Law.* Oxford, Clarendon Press, 1972., p. 232.

[11] KEGAN PAUL: *Trench and Co.*, 1883. p. 65.

[12] Ibid, p. 66.

[13] DAUBE, DAVID: *Roman Law.* Edinburg University Press, 1969. p. 211.

[14] Ibid, p. 213.

'The Meaning behind the lex' – actions ad factum and actio utiles and the Standards of Care

Nicholas states[15] that Roman law did not formally utilize the concept of duty. By implying that the lex upheld standards of care, one would be implying that Romans could be liable for acts of omission, by failing to live up to those standards and thus omitting their duties. Nicholas suggests that because the lex itself couldn't be used to directly impose standards of care[16] (possibly for the reasons suggested above). This role was played by juristic interpretation and the use of individual actions ad factum and actio utiles. This was to lead to an extension Aquilian liability, which often established liability for individual omissions of duty.

The first section of the Lex Aquilia covered the unlawful „slaying" (occidere) of four footed animals and slaves (the most important possessions in an archaic, agrarian society), whereas the third section covered all other unlawful damage to property caused by „burning, breaking, or rending" (urere, frangere, rumpere). Frier claims that the lex was not drafted in a skilful manner and „required rather awkward interpretation"[17] which led the lex to be redefined by the Roman jurists, who narrowed the interpretation of what was considered „slaying" but broadened the meaning of „rending" to include as many forms of damage as they could. However, in his History and Principles of the Civil Law of Rome, Sheldon Amos argues that the interpretation of such „wrongful acts" was left deliberately vague.[18] This was done precisely to allow for such liberal interpretation on behalf of the jurists, in the hope that the juristical interpretations would enable the lex to apply to as many offenders as possible. In his The Rise of the Roman Jurists Frier himself hails these jurists as the „oracles of law".[19]

The lex and the juristical texts of Gaius, Celsus, Ulpianus and others guided the decisions of Praetors by giving them a reference to legal precedent and to juristical interpretation. The number of instances where actions ad factum and actio utiles are recorded by Frier demonstrates that the Praetors were often left to deal with cases not covered by the lex,[20] using only the what precedent existed, juristical thought, the unwritten Roman standard of care and their own common sense as guides. Juristical interpretation led to a widening of the lex by lending Aquilian liability to the actions ad factum and actio utiles. The terms ad factum (action „on the facts") and actio utiles (an analogous action) seem to be used interchangeably. They would be granted by the Praetor to provide legal sanction in cases where the Defendant had not contravened the literal wording of the lex. The notion clearly existed that the defendant's actions, which were not technically in contravention of the wording of the lex, but could in fact, by way of the facts of the case or by simple analogy, be seen to contravene the ideal behind the lex were liable nonetheless. This strongly confirms the existence of unwritten standards of care.[21]

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[15] NICHOLAS, BARRY: op. cit. p. 234.
[16] Ibid, p. 235.
[17] FRIER, BRUCE W: op. cit. p. 318.
[18] AMOS, SHELDON: op. cit. p. 126.
[19] FRIER, BRUCE W.: op. cit. p. 38.
[20] Ibid, p. 40.
[21] Ibid, p. 38.

Case 5 demonstrates the presence of an underlying yet unwritten ideal behind the first section of the lex. In this case Labeo distinguishes between slaying and furnishing the cause of death. The wording of the first section of the lex maintains liability only when someone „slays" another. However, cases exist where despite no contravention of the literal wording of the lex, the civic responsibility of the standards of care have clearly been breached, resulting in a death and thus the loss of property. In Case 5 Labeo maintains that a midwife who doesn't directly „slay" by actually administering a poison is liable for an action ad factum even though she merely prescribed a poison as a drug, for in so doing she had furnished the cause of death. Labeo is clear that technically the lex was unbreached, but demonstrates equally clearly there had been a breach of something, resulting in the action ad factum. Though the lex was unbreached, the „meaning behind the lex" had been. This deeper „meaning" could only be the unwritten Roman standards of care. By negligently or deliberately prescribing a poison the midwife was guilty of culpa, for she had violated not only her contract with the slaves' owner but also the social prerequisites of Roman life.

Juristical interpretation also aided the development of the third section of the lex. In Case 8 Frier quotes from Gaius' interpretation of the third section in his Institutiones: „...a thing is considered as »rent« (ruptum) when it is »spoiled« (corruptum) in any way...torn, dashed and poured out and in any way harmed or destroyed".[22] The jurists chose to interpret rent as spoiled, thus allowing the actions ad factum and actio utiles to prevent defendants from escaping Aquilian liability for causing loss not directly forbidden by the wording of the lex. In Case 12 Paul records that when someone „consumes another's wine or grain" they could not escape a fine by arguing that the wine and grain had not been damaged (neither torn, rent or broken) but instead used for its implicit purpose, that of consumption.[23] As there has clearly been a violation of civic responsibility in that the defendant knowingly or negligently violated the standards of care, Paul writes that an analogous action should be given against him.

In Case 13 Ulpianus is recorded as maintaining that Aquilian liability is also extended to a carter who had „improperly packed" his cargo, which had then subsequently come loose and caused loss. Ulpianus is not suggesting that the carter deliberately rigged his cart to cause another wrongful loss. Rather Ulpianus is holding the carter responsible for negligent behaviour, in violation of the standards of care. Thus, the culpa lay not in damage done (which was physically caused by a rock) but in the violation of the standards of care, the failure to take the required amount of care in the act of packing the cart. In having failed to live up to the unwritten code of conduct of the Ancient Romans, the man is liable.

Causation

The Roman notion of causation ensures defendants are liable for the consequences of their actions.[24] If loss was directly caused by a defendant's actions he would be liable under the lex. If a significant degree of physical directness existed between the act and the result and loss was caused, the defendant was held liable for an ad factum or

[22] FRIER, BRUCE W.: op. cit. p. 126.
[23] KEGAN PAUL: op. cit. p. 152.
[24] LEAGE, R. W.: op. cit. p. 36.

analogous action. Even in cases where no intent existed and that the result may have been entirely undesired by the defendant, liability still exists because one is held to be responsible for the causes of one's actions. Frier illustrates the notion[25] of „causation" in Case 50 with a quote from Ulpianus' Edict. Ulpianus presents us with the opinions of Labeo and Celsus about the following hypothetical situation: a man starts a fire on his property, and the fire spreads to engulf his neighbours property. Even assuming that the man did not intend the fire to cause damage his neighbours property, he is still liable according to Celsus. R.W Leage, in Roman Private Law, suggested that „where an act is done in certain circumstances blame is automatically attributed to the actor and his state of mind is irrelevant", allowing the facts to speak for themselves.[26]

Labeo maintains that if the fire was started in an apartment the defendant would be liable under the lex. This is probably due to the fact that fires in urban centres were incredibly dangerous, and that one could not suppose that lighting a fire in an apartment would have any other consequences except mass destruction. Celsus maintains that even if the fire was started in a field, where the burning of fields was common practice to clear land of brush and stubble, one was liable for the destruction caused by one's fault. Celsus argued that the defendant „did not burn the field directly" and thus was not liable under the lex. Nonetheless the defendant had caused the damage in „allow(ing) the fire to escape", which constituted a violation of the standards of care. This, Celsus concluded, enables the plaintiff to sue for an action ad factum.[27]

Likewise, regardless of intent or desire, a defendant would be liable under the lex for striking a slave with a pillow if this caused his death or in any way caused loss to his master. Case 49 stipulates „different things are fatal for different people" thus the defence that the blow was weak or that the blow was not strong enough to slay the average man would not allow the defendant to escape liability. This suggests that Romans were bound by certain unwritten conventions to be careful (Frier's dubs them a „duty of care") when dealing with another's property.[28]

Frier writes[29] that the Romans likely „avoided intricate analysis of causation" to avoid the possibility that the myriad questions surrounding „proximate and foreseeable causes" would perhaps „restrict the duty of care that Romans owed to the property of others". However, this did not prevent „the two greatest jurists of the high classical period" of Roman Law, Celsus and Julian from being sharply divided when the chain of events („the chain of causation") „doesn't run to its likeliest outcome, but is interrupted by another event". Frier also suggests that this controversy illuminates the debate as to whether the lex was designed to be punitive or merely to compensate for loss.[30]

The Nature of the Lex

In Case 54 Celsus argues that, if a slave is stabbed and mortally wounded by one assailant and then given an additional wound by another assailant which results in actual

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[25] FRIER, BRUCE W.: op. cit. p. 216.
[26] LEAGE, R. W.: op. cit. p. 48.
[27] Ibid, p. 38.
[28] FRIER, BRUCE W: op. cit. p. 221.
[29] Ibid, p. 229.
[30] Ibid, p. 216.

death, the first attacker is liable for wounding and the second for the slaying itself.[31] In Case 56 Julian disagreed and maintained that both assailants would be liable under the lex. Julian defends this position against those he fears will think it preposterous by pointing out that „it would be far more preposterous if neither was liable under the Lex Aquilia, or just one, since it ought not to be that misdeeds go unpunished (...)". By arguing that both men would be liable under the lex, Julian is suggesting that both men would owe compensation (though in differing valuations depending on the circumstances of the case) for the same dead slave. Even Celsus, who takes a slightly more liberal view, still maintains that the first assailant could be liable for having wounded the slave, whereas only the second assailant would be liable for having slain.[32] No doubt the amount of compensation varied greatly between „wounding" and „slaying", but Celsus nonetheless agrees that the plaintiff could be compensated twice for the same deceased slave.

What was the true nature of the lex? Was it punitive, an archaic left over from the personal vengeance of the Twelve Tables? Was it designed to punish Romans who had violated the crucial standards of care which bound Roman society together? Or did the lex only exist to ensure pecuniary compensation for loss ? Nicholas believed[33] that Roman law generally was „a movement, never completed in Roman times, from the principle of vengeance for an injury to that of compensation for damage done".

The Laws of Delict, like all aspects of Roman law, evolved from the Twelve Tables. Originally, a „manifest thief" (one caught „red-handed") was subject to membrum ruptum, or severe bodily harm.[34] If the thief was brought to a magistrate with the goods in hand he would have been promptly scourged and handed over to the plaintiff, who could then demand financial compensation (or continue the corporal punishment). Soon the plaintiff was bound to accept an arbitrary sum as compensation and corporal punishment could only be visited on the wrong doer's person if he defaulted on payment. Soon reipersecutory action (the payment of compensation) alone could be visited on the defendant. Nicholas argues[35] that delictual actions were clearly classified by the Romans as being penal, as its origins seem to attest. The term „penal" implies that the fine imposed was a penalty, whose essential characteristic was vindictive, rather than a compensation to the plaintiff.

The penal aspect of delictical actions survived in the Lex Aquilia, and can be clearly perceived in cases where the plaintiff is awarded a payment that exceeds the amount that could be justified by a mere compensatory statute. The penal aspect of the lex can be seen in Cases 53 and 56, in which the plaintiff is given just such a double compensation.[36] More importantly, this penal nature is also written into the text of the lex. In the first section the defendant must pay „as much money as the maximum the property was worth in the year (previous to the slaying)". Likewise the third section provides that „as much as the matter (res) will be worth within the next thirty days (after the act in question)". In both cases the maximum value of the property is awarded as compensation, the unfairness of which can easily be demonstrated. If the intent of the lex

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[31] NICHOLAS, BARRY.: op. cit. p. 256.
[32] Ibid, p. 217.
[33] Ibid, p. 217.
[34] KELLY, J. M.: „The Meaning of the Lex Aquilia", *Law Quarterly Review*80 (1964) p. 153.
[35] NICHOLAS, BARRY: op. cit. p. 217.
[36] KELLY, J. M.: op. cit. p. 49.

was merely to compensate why then would the owner of a slave killed in November be entitled to compensation for the value of the slave in the previous November even if the slave had been crippled during the summer and thus had been significantly devalued? H. F Jolowicz says[37] such a result is „so obviously unfair that one cannot believe any legislator intended it".

Jolowicz very plausibly suggests that this situation developed because the Romans never established a „consistent theory of damages" nor „clearly distinguished between market value and value to the owner".[38] However, it is equally plausible that the „unfairness" of the fines imposed by the Lex Aquilia could be the last vestiges of the scourging once delivered to violators of the standards of care. The punishment is no longer physical, but exists nonetheless in a financial form. Leage sees this move to financial rather than corporal punishment as the beginning of the shift towards the principal that the fines were to be „remedies granted for acts" and not punishments.[39]

However, the Lex Aquilia undeniably retained a penal character. If the basis for Aquilian liability was compensatory, and did not involve a penalty for the violation of unwritten standards of care, why then does an action under the lex against a lunatic or a minor fail? Surely the owner has a right to compensation for the loss incurred? However, the Romans recognised that neither party was privy to the „social prerequisites" of Roman life, and thus were incapable of culpa or of wrongful conduct.

Damnum

An examination of the Roman concept of loss (damnum) further suggests the possibility of punitive fines due to a violation of the standards of care. Aquilian liability required the plaintiff to have „suffered a measurable loss" and that the loss had been caused by the defendant. Lupines points out[40] that even if a slave was not reduced in price the defendants was liable for acts that caused the plaintiff to suffer "expenses for his (the slave's) health and safety."

Damnum came to represent the loss directly incurred by the incident and also „the loss stemming indirectly from the act" or the damnum emergens. With juristical interpretation, compensation for damnum was extended as the definitions of such key terms as „to slay" and „to rend" were widened to encompass as many transgression of the standards of care possible. Liability was even achieved for loss or injury to free sons under the power of the paterfamilias, but not in the case of actual death (as the son was not technically property) but for „expenses or lost income that stem therefrom".[41]

[37] JOLOWICZ, H. F.: „The Original Scope of the Lex Aquilia and the Question of Damages". *Law Quarterly Review* 38 (1922) p. 46.

[38] Ibid, p. 48.

[39] Ibid, p. 48.

[40] KELLY, J. M.: op. cit. p. 50.

[41] Ibid, p. 50.

Denying Liability

However, the very wording of the lex ensures that the fines imposed are often disproportionate with the loss caused has already been examined. Moreover, in what Frier dubs the „quasi-punitive nature of the lex" a double indemnity can be incurred when the defendant denies liability and liability is in fact discovered to exist by the iudex (judge).[42] In this situation the plaintiff would receive double the amount due him to compensate him for the loss incurred. This could have been done to encourage the truthfulness which would avoid the necessity of a trial, perhaps also serving to reduce the flow of cases before the weary Praetors and iudices.

Nevertheless, the double indemnity suggests the lex had a distinctly punitive nature. This punishment infers that above and beyond the responsibility to compensate the plaintiff the defendant has also violated and is liable for violating unwritten standards of care. This is reflected in the generally harsh treatment of the defendant under the lex. The defendant is often held liable for causing damnum regardless of the existence of intent, the defendant could be required to pay the plaintiff more compensation than he is technically due and the defendant was forced to either admit liability instantly or risk a double indemnity. This could be explained because the defendants, assumed to have violated the standards of care, were not considered as deserving of much consideration.[43]

Defences

In order to understand the theory of the standards of care implicit in the lex one must examine the exceptios (defences) that could be offered to deny liability. One could escape liability if one could prove that the injured or deceased slave had assumed responsibility for the risk which caused the loss, that one was acting in legitimate self-defence or if one was acting out of legitimate necessity. In these circumstances the standards of care had been waived either by the slave himself or by the gravity of the situation.[44]

Though the „prerequisites of social life" bound only fellow masters, a slave was an intellectual free agent whose actions could alter the duties implied by the standards of care. Thus, in Case 60 an action under the lex is unsuccessful when the a slave is struck down crossing a field reserved for javelin-throwing. Contributory negligence arises because the slave „ought not to have passed through a field reserved for javelin-throwing". Case 60 also confirms that intent is sometimes unnecessary for liability under the lex to exist, for if a slave is killed while others were tossing javelins „in sport" the defendants will be liable. Paul writes[45] „a harmful game is also counted as culpa", because, one must speculate, such behaviour was beneath what was expected of a Roman citizen and thus transgressed against the unwritten standards of care.

When a defendant slays a slave in self-defence no liability is allowed under the lex and the owner of the slave is not entitled to compensation. However, as Case 64 details, the natural right of self-defence did not permit the victim of aggression to himself

[42] FRIER, BRUCE W.: op. cit. p. 63.
[43] Ibid, p. 65. pp.
[44] Ibid, p. 67.
[45] KEGAN PAUL: op. cit. p. 86.

violate the standards of care. Even when engaged in the act of self-defence Paul records „it is permitted to strike only the person who used force".[46] Thus, when a bystander is injured by the victim of aggression, the victim is liable under the lex.

In Case 66 Celsus advances the notion that one cannot be held to be liable for destroying a neighbour's house in order to construct a firebreak because of the existence of „legitimate fear" in the defendant. It is this same principal of legitimate fear, which evokes the natural right to self-preservation, which enables the defendant to use lethal force to repel an armed attacker and likewise provides for fire breaking.[47] Thus, exceptional circumstances exist whereby the defendant is excused from liability. This could be explained by arguing that the standards of care cease to be relevant when legitimate fear is aroused. However, in Case 69 Ulpianus clarifies that if the victim of aggression is seen to have killed an armed assailant when he could have just as safely taken him prisoner, then he is guilty of undue vengeance and, under the Lex Cornelia, is held to have „wrongfully killed" the slave. This is another example of the defendant being held responsible for not acting in a manner which befitted a Roman, for cowardly or vengeful killings were ignoble, and thus meant to be beneath a Roman citizen.[48]

Conclusion

The fact that standards of care were deliberately omitted from the wording of lex is a subject that has been extensively commented upon by Nicholas, Amos and a host of scholars in the field of Roman Law. Neither the austere patrician Republicans nor the ever agitating Tribunes of the Plebs of Ancient Rome would ever have abided the direct intrusion of legal regulations into the private sphere. However, the strict but common idealised virtues of the Roman citizen (honesty, integrity, obedience, honour) defined the „prerequisites of social life" Romans had to observe to avoid the risk of culpa. These virtues were unofficially woven into the fabric of the Lex Aquilia by Rome's jurists, who in widening the definition of Aquilian liability, subtly entrenched the concept of the standards of care.

The very nature of the lex, at first apparently concerned merely with compensation, seems punitive when one considers the issues of double compensation and the recent 'maximum value' compensation. This punitive nature denotes that defendants were being punished for their actions as well as being called to offer compensation to the plaintiff. What but for a violation of the standards of care could this punishment be addressing? What is the notion of culpa but the admission that such an unwritten code existed to be transgressed upon? Moreover, the „quasi-punitive" fines imposed for denying liability seem to be nuisance fees imposed on violators of the standards of care for not only committing a wrongful act, but for having wasted the court's time by displaying the un-Roman audacity to deny responsibility when called to account. Foremost amongst the all important social prerequisites of Roman life was the idea that one should not cause loss to others (exceptional exceptios aside) and it was this ideal that stands as the principal tenant in the legal reasoning behind the Lex Aquilia.

[46] KEGAN PAUL: op. cit. p. 88.
[47] FRIER, BRUCE W.: op. cit. p. 67.
[48] KEGAN PAUL: op. cit. p. 88.

ZSOLT SARKADY

A LEX AQUILIA ÉS A GONDOSKODÁSI MÉRTÉK

(Összefoglalás)

Az ókori Róma csupán egyetlen magatartást ismert mint bűncselekményt: a közbiztonság, illetve az általános társadalmi rend elleni támadást. Ugyanakkor ez nem jelenti azt, hogy a Római büntető jog elmulasztotta volna megalkotni egy magasan szervezett társadalom rendjét óvó szabályokat, különösen nem jelenti azt, hogy ne létezett volna büntetőjog.

Ellenkezőleg, az erősen kazuista jellegű római jog egy „praktikus jogorvoslati módszert" dolgozott ki a mai értelemben vett „tényállásszerű magatartások" szankcionálására. A magán tulajdon megóvására megalkotott magánjogi – ezen belül kötelmi jogi – doktrínákat kiterjesztette egyéb magatartásokra is. Ennek következtében ezeknek a gondoskodási mértékeknek (Standards of Care) az áthágása poenalis következményekhez vezetett.

A pozitív jogot eredetileg uraló XII. Táblás törvény hamarosan túlságosan nyers, merev és szigorú antik szabállyá vált a kozmopolita Romában. Éppen ezért bír különös jelentősséggel a Lex Aquilia, mely vitathatatlanul a legjelentősebb jogalkotási terméke volt a XII. Táblás törvényt követő Római jognak. Jelentőségét különösen az indokolja, hogy elfogadását, illetve hatályba lépését követően hatályát vesztette valamennyi korábbi jogellenes károkozással kapcsolatos jogszabály. Ez elsősorban abból a szempontból bír különös jelentőséggel, hogy a Lex Aquilia elfogadásával létrejött egy egységes kódex-szerű jogszabály, mely egy helyen igyekezett szabályozni a tulajdonjoggal kapcsolatos valamennyi károkozási cselekményt.

A Lex Aquilia elfogadását alapvetően a változó társadalmi viszonyok tették szükségessé. Az autarchikus parasztgazdaság helyét egyre inkább a rabszolga munkarendszer váltja fel, melynek következtében felbomlanak a házközösségek. A házközösségek felbomlása pedig szétfeszítette a régi vagyoni kereteket.

A szűk paraszti életviszonyokból kibontakozó Róma viszonyainak tehát már nem feletek meg a régi kötött szabályok, valami rugalmasabb megoldást kellett találni a legfontosabb vagyontárgyak – a rabszolga, valamint az igavonó barom – védelmére.

Ilyen körülmények között jött létre a Lex Aquilia, melynek három része nem csupán a magánjogi, hanem a büntető jellegű szabályok foglalatát igyekezett nyújtani.