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Actiones Populares in the Reception of Roman Law: Doctrinal Survival, Transformation, and Decline

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Abstract
This paper examines the role of Roman *actiones populares* in the history of the reception of Roman law. Although these actions are usually studied as institutions of classical Roman law, their later doctrinal fate remains less explored. The article focuses on their conceptual ambiguity: while formally framed as *actiones*, they could be brought by any citizen and often served interests broader than those of the individual plaintiff, placing them at the boundary between private and public law. By tracing their treatment from the glossators and commentators to Cujas, De Luca, Pothier, and the Pandectists, the paper argues that *actiones populares* were not received as a stable institution of the *ius commune*. Medieval jurists treated them as part of living law, but often expanded or misunderstood their Roman meaning; later scholarship increasingly regarded them as historically obsolete. The paper concludes that Roman *actiones populares* were only partially and indirectly received, mainly through their possible influence on certain statutory and later public-interest remedies.

Keywords
Actiones populares; Roman law; reception of Roman law; *ius commune*; glossators; post-glossators; legal humanism; public interest

Summary: 1. Introduction; 2. From Late Antiquity to the *Ius Commune*: The Doctrinal Fate of *Actiones Populares*; 3. The Glossators: Accursius (*Accursio*); 4. The Post-Glossators: Bartolus and Albericus à Rosate; 5. The School of Elegant Jurisprudence: Cujas (*Cuiacius*); 6. Later Legal Scholarship; 7. Conclusions: Were *Actiones Populares* Included in the Reception?; Bibliographical references

1. Introduction

An *actio popularis* is understood as an action that may be brought by any citizen, without the need to demonstrate a specific legal interest or standing in the dispute[1]. Yet actions accessible to any citizen, which existed historically in many legal systems and continue to exist in certain modern jurisdictions, have differed considerably both with respect to the delicts they sanctioned and the procedures according to which they were conducted[2]. The term itself did not always encompass all actions characterized by general active standing, nor was it

[1] D.47.23.1 (*Eam popularem actionem dicimus, quae suum ius populi tuetur*); D.3.3.43.2 (*In popularibus actionibus, ubi quis quasi unus ex populo agit*); Cf. Buckland, W.W. *A Text-Book of Roman Law from Augustus to Justinian*, Cambridge, 1921, pp. 593–594, 604.

[2] Voeffray, F., *L'actio popularis ou la défense de l'intérêt collectif devant les juridictions internationales*, Genève, 2004, pp. 6–22; Buckland, *A Text-Book of Roman Law...*, pp. 593–594; and Mommsen, Th., *Römisches Strafrecht*, Leipzig, 1899, p. 183.

consistently applied to those actions which, according to the rules governing them, could be subsumed under the concept of the Roman *actiones populares*.

During certain periods of Roman legal development, any citizen was entitled to initiate criminal proceedings, while the prosecutor in such cases assumed a role comparable to that of the modern public prosecutor[3]. This institution was widespread in the ancient world, especially in Athens[4], as well as in some early feudal legal systems. In Roman law, it was known as *accusatio publica*[5]. In contrast, the juristic category of *actiones populares* should not be equated with every Roman legal proceeding accessible to citizens. According to the praetorian edict, certain *actiones populares* functioned as penal remedies targeting specific unlawful acts and were typically pursued through private-law procedures rather than public criminal trials. However, popular standing extended beyond this context. During the final centuries of the Republic, municipal and colonial legislation also authorized proceedings initiated by community members to enforce penalties for certain public offenses and statutory violations. Such legislation could utilize the formula *cui volet* or similar expressions without explicitly employing the term *actio popularis*. Therefore, the penal or public nature of the prosecuted conduct alone does not determine whether a remedy falls within the juristic category of *actiones populares*. Furthermore, although many proceedings were available to citizens based on popular standing, the sources explicitly identify only a subset as *actiones populares*[6]. Modern scholarship, therefore, continues to debate whether Roman jurists regarded all actions of this type, or only certain among them, as belonging to the category of *actiones populares*[7].

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[3] Mommsen, *Römisches Strafrecht*, pp. 192–193; See also the work, Riggsby, A.M., *Roman Law and the Legal World of the Romans*, Cambridge, 2010, chapter on public prosecution.

[4] Comparable procedural structures are well attested in classical Athens, where public accusations (*graphai*) could likewise be initiated by citizens acting in the name of the community. The Roman *actiones populares*, by contrast, generally remained within the framework of private-law procedure notwithstanding their orientation toward collective interests (Cf. MacDowell, D.M., *The Law in Classical Athens*, Ithaca, 1978, pp. 57–65.

See: Lecrivain, Ch., "L'action populaire et les primes aux denonciateurs dans le droit grec", *Mémoires de l'Académie des sciences, inscriptions et belles-lettres de Toulouse (MAT)* 10/5 (1905), pp. 40–50; Ziebarth, E., "Popularklagen mit Delatorenprämien nach griechischem Recht", *Herms* 32 (1897), pp. 609–628.

[5] Cf. Giagnorio, M., "Brevi note in tema di azioni popolari", *Teoria e storia del diritto privato* 5 (2012), pp. 10–12; Voeffray, *L'actio popularis...*, pp. 6–7; Mommsen, *Römisches Strafrecht*, pp. 192–194; I.4.18.1 (*Publica iudicia dicta sunt, quod cuivis ex populo executio eorum plerumque datur*).

[6] Giagnorio, *Brevi note...*, pp. 4–9; Cf. Albanese, A., *L'azione popolare da Roma a noi*, Roma, 1955, pp. 23–30. Cf. D.9.3.5.13 (the penal and popular character of the praetorian remedy); *Lex coloniae Genetivae Iuliae* (*Lex Ursonensis*), ch. XCIII (*cui volet petitio persecutioque esto* for a statutory penalty involving colonial magistrates); Fernández de Buján, A., "La acción popular romana, *actio popularis*, como instrumento de defensa de los intereses generales, y su proyección en el derecho actual", *Revista General de Derecho Romano* 31 (2018), pp. 1–18; López Huguet, M.L., "*Delicta* et *quasi ex delicta* perseguidos mediante acciones de legitimación popular en algunas leyes coloniales, municipales y comiciales de la República Romana y el primer siglo del Imperio", *Revista General de Derecho Romano* 38 (2022).

[7] Roman jurists themselves emphasized the exceptional nature of the *actio popularis*. Whereas the ordinary *actio* constituted the procedural instrument through which an individual vindicated a subjective right belonging to him personally, the *actio popularis* was characterized precisely by the circumstance that proceedings could be initiated *quivis ex populo*. The classical texts therefore reveal a certain conceptual tension between the traditional understanding of *actio* as the judicial enforcement of one's own right and those actions granted for the protection of collective interests. Modern Romanistic scholarship has repeatedly observed that this anomaly explains why the institution later attracted particular attention among medieval and nineteenth-century jurists concerned with the relationship between public and private law (Giagnorio, *Brevi note...*, pp. 3–18). The later Summa's characterization of *actiones populares* as criminal actions, as discussed elsewhere in this manuscript, should be distinguished from the procedural classification of *accusatio publica*. The penal nature of a remedy does not inherently render it a public criminal accusation.

This distinction appears in the Justinianic sources as well. Paulus characterizes the *actio popularis* as an action safeguarding the rights of the people, whereas Justinian's *Institutiones* explicitly differentiate public criminal proceedings from ordinary actions, even though prosecution was generally accessible to community members[8]. Thus, the shared feature of popular standing did not necessarily indicate an identical legal nature or procedural structure, a distinction that became particularly significant in the later interpretation of *actiones populares* by medieval and early modern jurists.

In certain particular legal systems of medieval Italy, as well as in the laws of several Adriatic coastal cities of the South Slavic lands, there existed actions closely resembling the Roman *actiones populares*, although there is no surviving evidence indicating whether they were designated by that name[9]. By contrast, actions available to any citizen in contemporary Italian law are expressly termed *azione popolare*, despite differing substantially from the Roman *actiones populares*[10].

From the standpoint of Roman law itself, the very expression *actio popularis*, an action granted to any citizen, stands in tension with the Roman concept of *actio*. In Roman law, *actio* denoted a private-law remedy which, as a rule, could be brought only by the individual whose right had been infringed[11]; at the same time, the term also referred to the subjective right whose judicial protection was sought[12]. An action granted *cui volet* was therefore inconsistent both with the classical concept of *actio* and with the principle that only the holder of the contested or violated right could seek its protection. In contrast to ordinary private actions, which were generally available to individuals seeking to protect their own rights, *actiones populares* could be initiated by Roman citizens to safeguard public or collective interests, even in the absence of individual injury to the plaintiff. This distinctive characteristic set them apart from actions predicated on the violation of personal rights[13]. It is precisely for this reason that *actiones populares* appeared puzzling to jurists who, beginning in the late Middle Ages, studied Roman law. This also explains, at least in part, why they were ultimately not incorporated into the reception of Roman law. In the earlier Pandectist tradition, *actiones populares* were mentioned merely in passing as an institution without any place in the system of modern law[14].

In the mid-nineteenth century, however, the nearly forgotten *actiones populares* unexpectedly attracted renewed attention among jurists and legal historians, precisely because they granted the right of action to any citizen[15]. These actions were now viewed through the

[8] D.47.23.1 (*Paulus, libro octavo ad edictum*): "Eam popularem actionem dicimus, quae suum ius populi tuetur"; Inst.4.18.pr (*De publicis iudiciis*): "Publica iudicia neque per actiones ordinantur"; Inst. 4.18.1: "Publica autem dicta sunt quod cuivis ex populo exsecutio eorum plerumque datur".

[9] Cf. Margetić, L., Strčić, P., *Statut Rapske komune iz 14. Stoljeća*, Rab-Rijeka, 2004, pp. 23–31; and Strohal, I., *Statuti primorskih gradova i općina: bibliografički nacrt*, Zagreb, 1911, pp. 10–15.

[10] Giagnorio, *Brevi note...*, pp. 34–39. For a recent discussion of popular action in contemporary public debate, see Fernández de Buján, A., "La acción popular en el debate público", *El Cronista del Estado Social y Democrático de Derecho* 121 (2026), pp. 62–73.

[11] Buckland, *A Text-Book of Roman Law...*, pp. 603–604.

[12] D.44.7.51 (*Nihil aliud est actio quam ius quod sibi debeatur iudicio persequendi*); Buckland, *A Text-Book of Roman Law...*, p. 604.

[13] Bilalli, A., Bahtiri, B., *E drejta romake*, Prishtinë, 2015, p. 236.

[14] Glück, Ch.F., *Ausführliche Erläuterung der Pandecten nach Hellfeld: ein Commentar*, vol. 10, pt. 1, Erlangen, 1808, p. 410 ("Die *actio popularis*...fällt heutigen Tages ganz weg. Stattdessen setzt ab Beschaffenheit der Umstäande... eine öffentliche Strafe erkannt"). Cf. D.47.23.1; D.3.3.43.2; Buckland, *A Text-Book of Roman Law...*, 593–594, 604.

[15] The rediscovery of the *actiones populares* during the nineteenth century formed part of the broader historical jurisprudence associated with the German Historical School and with renewed scholarly interest in

ideological lens of liberal bourgeois thought: the right of every citizen to institute proceedings against those who violated public order came to be regarded as one of the hallmarks of ancient democracy[16]. The plaintiff, any citizen whatsoever, was understood to protect the public interest, thereby expressing the unity of public and private interests encapsulated in Cicero's famous maxim *res publica est res populi*. Such actions were therefore interpreted as a form of participation by all citizens in public life[17].

At the same time, the renewed scholarly attention devoted to these actions was accompanied by calls for their reception into modern law[18]. Proceeding from the liberal-capitalist conception that bourgeois society embodied a harmony between public and private interests, nineteenth-century jurists viewed *actiones populares* as an institution fully consistent with idealized notions of law and justice and as a further concretization of democratic principles, insofar as they enabled the people themselves to assume certain public functions[19]. Thus, for example, Jhering described *actiones populares* as one of the most significant expressions of the Roman republican order and its democratic character, lamenting their disappearance from modern law[20]. In his view, their high moral value lay above all in the fact that the plaintiff initiated proceedings not in defense of immediate personal rights, but for the sake of the very "idea of law"; Roman law, he argued, provided in the institution of *actiones populares* the clearest manifestation of the reality of ideal moral sentiment[21].

Particular interest in *actiones populares* emerged in Italy, where historical and legal studies of the institution were regularly accompanied by proposals advocating its introduction into modern law[22]. Evaluating their significance, Brugi argued that *actiones populares* could exist only within political communities characterized by genuine political freedom[23]; where law ceased to be conceived as a common concern and instead became subordinated to "the egoistic predominance of an individual or a class", no place remained for such an institution. Comparable arguments recur in late nineteenth-century Italian scholarship[24]. Indeed, beginning in the second half of the nineteenth century, Italian law introduced a series of actions enabling

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Roman republican institutions. Jurists such as Rudolf von Jhering interpreted *actiones populares* not merely as procedural anomalies, but as manifestations of civic participation and of the organic unity between individual and collective interests within the Roman polity. Particularly influential was Jhering's contention that the citizen who exercised a *actio popularis* defended not only a concrete legal entitlement, but the authority of the legal order itself. Such interpretations contributed significantly to later attempts to revive analogous institutions within modern public law (Voeffray, *L'actio popularis...*, p. 6; Giagnorio, *Brevi note...*, p. 12).

[16] Voeffray, *L'actio popularis...*, pp. 6–8.

[17] Cicero, *De Republica* 1.39. This sentence has been misinterpreted as reflecting the actual relations in the Roman Republic, relations that should also prevail in a modern state. In reality, even in Cicero, these words only serve as a program that should be realized (Cf. Leppore, E., *Il principe ciceroniano e gli ideali politici della tarda repubblica*, Napoli, 1954, p. 269).

[18] Voeffray, *L'actio popularis...*, pp. 6–8.

[19] A review of the literature from that period on *actiones populares* is provided by: Casavola, F.P., "Fadda e la dottrina delle azioni popolari", *Labeo* 1 (1955), pp. 131–153.

[20] Jhering, R., *Geist des römischen Rechts auf den verschiedenen Stufen seiner Entwicklung*, Leipzig, 1891, pp. 56 *et seq*.

[21] Cf. Jhering, R., *Der Kampf um's Recht*, Mainz, 1873, p. 77 ("Aber diese Höhe, mag Mancher sagen, liegt so hoch, dass sie nur noch für den Rechtsphilosophen wahrnehmbar bleibt, für das praktische Leben kommt sie gar nicht in Betracht; Niemand führt einen Process um die Idee des Rechts. Ich könnte, um diese Behauptung zu widerlegen, auf das römische Recht verweisen, in welchem die Thatsächlichkeit dieses idealen Sinnes in dem Institut der Popularklagen...").

[22] Casavola, *Fadda e la dottrina...*, pp. 143–153; Albanese, *L'azione popolare...*, pp. 88–95.

[23] Cf. Brugi, B., "L'azione popolare romana in materia di opere", *Archivio giuridico* 27 (1881), p. 441–475.

[24] Cf. Casavola, *Fadda e la dottrina...*, pp. 131–153; Albanese, *L'azione popolare...*, pp. 88–95.

citizens, particularly in matters involving oversight of municipal authorities and electoral commissions, as well as in certain other areas, to bring judicial proceedings against public bodies, institutions, or other citizens who had violated legal norms or infringed municipal interests, without the plaintiff needing to demonstrate the violation of any personal right[25]. Similar actions existed, though to a considerably lesser extent, in several other states during the era of liberal capitalism.

Yet while these modern Italian actions were introduced under the claim that they revived the Roman *actiones populares* as an institution characteristic of democratic government, they in fact differed fundamentally from the Roman model. By contrast, considerably greater similarities with Roman *actiones populares* can be observed in the actions accessible to any citizen within certain medieval legal systems[26]. In the statutory laws of Italian cities[27], numerous prohibitions and commands were sanctioned through pecuniary penalties whose recovery could be sought by any citizen; a comparable institution existed as well in the legal systems of the Adriatic coastal cities of the South Slavic territories[28]. An even more widespread analogous institution appeared in English law. Introduced during the waning period of developed feudalism in England, the English *actiones populares* subsequently attained very broad application and, despite later restrictions, survived into modern times[29].

The common feature shared by Roman actions granted to any citizen and the aforementioned actions of medieval legal systems lies not merely in the fact that any citizen could appear as plaintiff. Although they emerged within different legal systems and across a span of many centuries, they frequently sanctioned similar, and in some cases identical delicts.

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[25] Beginning in the second half of the nineteenth century, Italian public law increasingly employed the notion of *azione popolare* in matters concerning municipal administration, electoral supervision, and the protection of collective administrative interests. Despite the conscious invocation of Roman terminology, these modern actions differed substantially from the classical *actiones populares*. Whereas the Roman institution remained embedded in the framework of private-law procedure and delictal protection, modern Italian *azioni popolari* developed primarily within administrative and constitutional law as mechanisms of civic oversight over public authorities. Modern scholarship therefore tends to regard them less as direct continuations of the Roman institution than as later "avatars" or transformations sharing only the feature of open standing (Brugi, *L'azione popolare...*, p. 442).

[26] Lucchini, L. (ed.), *Il Digesto Italiano*, vol. IV, pt. 2, Torino 1892, see under title "Azione popolare".

[27] Cf. Gaudenzi, A., *Statuti delle società del popolo di Bologna*, vol. 1–2 [*Fonti per la storia d'Italia*], Roma, 1889–1896.

[28] Medieval communal statutes in Italy and the Adriatic coastal cities exhibit a number of procedural mechanisms that bear noteworthy similarities to the Roman *actiones populares*. In several statutory systems, pecuniary sanctions imposed for violations of communal regulations could be pursued not solely by directly injured parties but, under certain circumstances, by members of the community more generally. Although the surviving sources do not permit definitive conclusions regarding direct Roman influence, modern historiography has frequently emphasized the structural affinities between these institutions and the Roman *actiones populares*, while simultaneously cautioning against assuming simple continuity. The legal systems of the eastern Adriatic in particular reveal a complex interaction of Roman, Lombard, feudal, and local customary elements (Cf. Ascheri, M., *I diritti del medioevo italiano*, Roma, 2000, pp. 193–198; Margetić, L., *Srednjevekovno hrvatsko pravo*, Zagreb, 1997, pp. 145–154).

[29] A particularly significant parallel development occurred in English law through the evolution of informer and *qui tam* actions. Emerging in the late medieval and early modern periods in connection with the limited capacity of centralized criminal enforcement, these actions permitted private individuals to sue for statutory penalties, often retaining a portion of the recovery for themselves. Although historically distinct from the Roman *actiones populares*, English *qui tam* actions reveal important structural analogies insofar as they relied upon private initiative for the vindication of interests conceived as public in character. Their remarkable persistence into modernity further illustrates the enduring practical utility of procedural mechanisms based upon broad standing (Cf. Holdsworth, W.S., *A History of English Law*, vol. 4, London, 1923, pp. 355–358; May, A.W., "Qui Tam Actions and the Rivers and Harbors Act", *Case Western Reserve Law Review* 173 (1971), pp. 178–180).

Moreover, as with many Roman *actiones populares*, the plaintiff in these later actions was often entitled to receive a portion of the monetary penalty imposed upon the defendant. Although the surviving sources do not permit definitive conclusions regarding the extent to which Roman law influenced the development of these medieval actions, the similarities they display with Roman *actiones populares* justify their inclusion within the broader historical study of this legal institution. Modern *actiones populares*, by contrast, share with Roman *actiones populares* little more than the fact that they may be brought by any citizen; consequently, they may be studied together with Roman *actiones populares* primarily as part of the prehistory of their emergence.

By contrast, *accusatio publica*, the right of any citizen to prosecute the perpetrator of a criminal offense, despite certain affinities with *actiones populares* and perhaps even a partially common origin, constituted a distinct legal institution in procedural terms, despite the existence of statutory proceedings that allow popular standing for certain public offenses[30] and, for that reason, will not be examined in greater detail in this paper.

This distinction does not preclude the existence of other statutory proceedings that allowed popular standing in the enforcement of public interests. For instance, the *Lex Irnitana* authorized individuals entitled under its provisions to initiate proceedings for the recovery of pecuniary penalties payable to the municipality, without requiring proof of personal injury as a prerequisite[31]. These remedies were not always classified as *actiones populares* in Roman juristic terminology; their legal character depended on the relevant statutory provisions and the procedural rules governing their exercise[32].

2. From Late Antiquity to the *Ius Commune*: The Doctrinal Fate of *Actiones Populares*

Roman *actiones populares* belonged primarily to the period of the late Republic and the Principate; it was during this period that they emerged and found their widest application. The relatively extensive scholarship devoted to them has remained confined almost exclusively to this era, examining them solely based on sources originating from it. The question of the subsequent fate of Roman *actiones populares* has, however, not been explored. Within the historiography of Roman law, no study has been dedicated either to the development of this institution during the Dominate or to its history after the collapse of the Roman state, and these issues are scarcely even acknowledged[33].

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[30] Riggsby, *Roman Law...*, pp. 187–191. Although Roman *accusatio publica* shared with the *actiones populares* the possibility that proceedings might be initiated by private citizens, Roman jurists and modern scholarship consistently distinguished the two institutions according to their procedural character and legal function. *Accusatio publica* belonged to the sphere of public criminal justice and reflected the absence, during important phases of Roman legal development, of a separate professional prosecutorial apparatus (Cf. Mommsen, *Römisches Strafrecht*, p. 192; Giagnorio, *Brevi note...*, pp. 12; Voeffray, *L'actio popularis...*, p. 13). In this narrower procedural sense, the distinction does not deny that municipal and colonial statutes could confer standing on members of the public to pursue penalties for public offences. Cf. Fernández de Buján, *La acción popular romana...*, pp. 1–18; López Huguet, *Delicta et quasi ex delicta...*, *Revista General de Derecho Romano* 38 (2022).

[31] *Lex Irnitana*, ch. 74–75; González, J., "The *Lex Irnitana*: A New Copy of the Flavian Municipal Law", *The Journal of Roman Studies* 76 (1986), pp. 147–243.

[32] D.47.23.1–8 (*De popularibus actionibus*); Inst.4.18.pr–1 (*De publicis iudiciis*).

[33] Cf. Albanese, *L'azione popolare...*, pp. 110–112. Albanese's monograph appears to be the only modern work, among those consulted here, that directly touches upon the history of Roman *actiones populares* during the period of the reception of Roman law. On p. 110 he summarizes Bartolus' views, while on p. 112 he cites passages from Cardinal Giovanni Battista De Luca. However, Albanese discusses only these two jurists, and even their

Prior to examining their subsequent development, it is essential to distinguish the *actiones populares* analyzed by Roman jurists from other statutory remedies that confer popular standing. Municipal and colonial legislation sometimes authorized individuals, as specified by statute, to pursue pecuniary penalties. However, such proceedings did not necessarily constitute *actiones populares* in the technical sense or public criminal prosecutions[34]. The Flavian *Lex Irnitana*, particularly ch. 74–75, exemplifies this statutory enforcement. Its provisions regarding municipal jurisdiction and procedure underscore the significance of the relevant local legal framework[35]. As a first-century municipal text, the *Lex Irnitana* alone cannot establish the existence of similar remedies during the late Republic, nor can it confirm their continued application during the Dominate. This distinction remains critical when assessing the later survival and doctrinal interpretation of Roman *actiones populares*.

Although the history of this institution during the Dominate is not examined in greater detail in the present study, the available sources nevertheless suggest that no new *qui volet* actions were introduced in that period. As to the question whether, and to what extent, the previously established *qui volet* actions continued to be used during the Dominate, this issue is directly connected with the broader problem of the extent to which Classical law, which formally and officially remained in force, was in practice actually applied throughout the various regions of the Eastern and Western Empire. It is beyond doubt that, with the decline of many municipalities and colonies, numerous municipal actions likewise ceased to exist, together with those subsidiary colonial statutes from which they derived; consequently, a considerable number of *qui volet* actions provided for therein also fell into oblivion[36]. Justinian's codification preserved the category and systematized the material, notably by including the title *De popularibus actionibus* in the Digest; yet this alone is insufficient to conclude that *actiones populares* continued to be consistently applied in legal practice during the Dominate or that, in Justinian's time, they still constituted a generally known and widespread legal institution. On the contrary, it appears far more likely that, with the gradual decline of urban life in many parts of the Empire, the very conditions in which this institution had flourished likewise disappeared, so that in many regions, particularly those governed by vulgar Roman law, the *actio popularis* fell entirely into disuse. It is therefore absent from the barbarian compilations of Roman law, and it may be stated with certainty that, in the period between the final collapse of the Roman state and the revival of Roman legal studies in the Italian law schools, *actiones populares* belonged among those numerous institutions of Roman law that had become completely unknown.

The history of Roman *actiones populares* during the period in which the reception of Roman law was being prepared, as well as during the reception itself, is of considerable importance for the general history of *actiones populares* in modern legal systems. Two principal questions arise in this regard: first, whether Roman *actiones populares* were encompassed by the reception and consequently applied as part of the valid "common law" (*ius*

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treatment of the *actio popularis* is presented rather briefly, without a full reconstruction of the doctrinal development. For this reason, Albanese is useful as a point of departure, but insufficient as the sole authority for the reception-history of *actiones populares*.

[34] D.47.23.1–8; Inst.4.18.pr–1; Cf. López Huguet, M. L., *Delicta et quasi ex delicta...*, *Revista General de Derecho Romano* 38 (2022).

[35] Rodger, A., "The *Lex Irnitana* and Procedure in the Civil Courts", *The Journal of Roman Studies* 81 (1991), pp. 74–90; González, J., *The Lex Irnitana...*, pp. 211–223, 235–239.

[36] Jones, A.H.M., *The Later Roman Empire 284–602*, Oxford, 1964, vol. II, sections on curial and municipal decline; González, J., *The Lex Irnitana...*, pp. 147–243; See also for contextual reference the work: Lamberti, F., *Tabulae Irnitanae. Municipalità e "ius Romanorum"*, Napoli, 1993.

commune) in the legal life of late feudalism and the early modern period; and second, whether they exercised any influence upon the emergence of *actiones populares* within the particular legal systems of the Middle Ages.

Although the question of the reception of Roman *actiones populares* has not been examined based on sources relating to the history of the *ius commune*, nor through the judicial practice applying received Roman law, it may nevertheless be illuminated to a certain extent through an analysis of the works of those jurists who prepared and, to some degree, enabled the reception, as well as of those later jurists who elaborated the received Roman law and constructed the legal theory of the modern age upon Roman texts[37]. The place accorded to this institution in legal literature, together with the manner in which it was interpreted and treated, allows one to determine whether it could at all have been revived in practice, whether it was in fact applied, and what significance it possessed within the system of the *ius commune*.

Furthermore, the manner in which *actiones populares* were treated in the works of the glossators and commentators, as well as the importance attributed to them therein, provides certain indications which, although necessarily incomplete, may shed some light on the question whether *actiones populares* exerted any influence upon the emergence of analogous institutions within the particular legal systems of that period. For this reason, the views held regarding *actiones populares* by the most prominent representatives of the various legal schools that, throughout history, studied Justinian's *Corpus*, from the glossators to, and including, the Pandectists, will be examined here in somewhat greater detail.

3. The Glossators: Accursius (*Accursio*)

In accordance with their general understanding of the law contained in Justinian's compilation, the glossators treated *actiones populares* as an institution of positive law that required explanation and interpretation. They approached them in the same manner and with the same degree of attention as other institutions of Roman law.

That this was an institution with which the glossators were thoroughly familiar and which they regarded as relatively close to contemporary legal reality is demonstrated, *inter alia*, by glosses in which *actiones populares* and the specific rules governing them are invoked merely by way of comparison, even where the gloss itself concerns an entirely different institution[38]. Thus, for example, when Azo (of Bologna) commented on constitution C.2.4.12, a text dealing with settlement (*transactio*), in which the *actio popularis* is not even mentioned, he observed that, even where an *actio popularis* had been brought, a settlement would be valid only if concluded *bona fide*. Elaborating upon this observation, he referred to a passage in the *Digest* in which Paulus states that a dispute initiated by means of the *actio popularis* and resolved by oath cannot subsequently be reopened unless the oath had not been given *bona fide*; otherwise, any citizen might once again sue on the same matter (D.12.2.30.3)[39]. Azo therefore, while

[37] Bellomo, M., *The Common Legal Past of Europe, 1000–1800*, Washington, D.C., 1995, pp. 57–77; Stein, P., *Roman Law in European History*, Cambridge, 1999, pp. 45–70.

[38] Cf. Lange, H., *Römisches Recht im Mittelalter*, Bd. I: *Die Glossatoren*, München, 1997, pp. 255–271.

[39] Azo, *Azonis ad singulas leges XII. librorum codicis Iustinianei, commentarius et magnus apparatus: nunc primum lucem editus*, Lyon, 1596, p. 82, ad C.2.4.12: "*Simile in populari actione quia si unus de populo bona fide intentaverit eam et videns se habere probationes transegit, postea alius non poterit agere, ut ff. de iureiurando eius qui, § in popularibus*" ("A similar rule applies in *actiones populares*: if one member of the people has brought such an action in good faith and, seeing that he has evidence, settles the dispute by transaction, another person may not afterwards bring the same action, as stated in the Digest, *De iureiurando*, § *In popularibus*").

analyzing issues arising in connection with settlement agreements, also considered the possibility that such an agreement might be concluded by a plaintiff proceeding through a *actio popularis*, and, by analogy with the rule formulated in Paulus' text, concluded that the dispute could be resolved by settlement only where the agreement had been entered into in good faith (*bona fide*).

On the other hand, certain passages in the *Digest* dealing with *actiones populares* were insufficiently clear to the glossators, who were unable satisfactorily to explain the contradictions between particular rules governing them. In the aforementioned commentary on settlement, Azo openly admitted that neither he nor Placentinus clearly understood whether a settlement agreement concluded after an *actio popularis* had been initiated ought to provide for the payment of a sum of money to the plaintiff[40]. Likewise, in his gloss on D.9.3.5.5, Accursius raised the question whether the monetary penalty sought through an *actio popularis* belonged to the plaintiff or to the fisc, observing that opinions on the matter were divided, although he himself believed that the money most likely accrued to the fisc. In reality, however, under the action deriving from the edict *de his qui effuderint vel deiecerint*, to which the text referred, the plaintiff received the penalty in its entirety[41].

The glossators' conception of *actiones populares* may best be presented through an examination of Accursius' glosses. In Accursius' commentary on Justinian's *Digest*, *actiones populares* are treated in a relatively extensive fashion. The glosses attached to the titles and fragments concerning individual *actiones populares* are somewhat shorter and less numerous; however, the title *De popularibus actionibus* is glossed in considerable detail, with at least two glosses accompanying each fragment and an introductory *summa* preceding them[42].

The *Summa* sets forth the fundamental explanations concerning the institution. First and foremost, it emphasizes that *actiones populares* are penal actions: *"Nota bene super hoc titulo regulariter quod hae actiones de quibus hic tractantur non sunt rei familiaris persecutoriae, sed ex aequo et bono extrinsecus ad vindictam propositae sunt"* ("With regard to this title, it should be noted that the actions discussed herein are not directed toward the recovery of

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Azo treats the *actio popularis* through the procedural question of whether a settlement by one citizen bars subsequent proceedings by another. His answer indicates that, although the action is open to *quivis de populo*, it is not infinitely repeatable once validly exercised and compromised in good faith. The relevant Roman-law background is Dig. 12.2.30.3 (*"In popularibus actionibus iusiurandum exactum ita demum adversus alios proderit, si bona fide exactum fuerit: nam et si quis egerit, ita demum consumit publicam actionem, si non per collusionem actum sit"*).

[40] Azo, *Azonis ad singulas...*, p. 82: "*Nec distinguo utrum pactio sit gratuita an non, sic P. [Placentius]*" ("Nor do I distinguish whether the agreement is gratuitous or not; so also Placentius").

Azo follows Placentius in refusing to distinguish between gratuitous and non-gratuitous settlements. In the context of *actiones populares*, this suggests that the preclusive effect of a settlement does not depend on whether consideration was given. The decisive point is that the first plaintiff acted in good faith and validly disposed of the action.

[41] Cf. Accursius, *Commentarius Accursii in Digestum vetus*, vol. I, Lyon, 1569, p. 1095, gloss *p*: "*An haec poena L. aur. agenti vel fisco applicabitur? Responsa dividitur, puto fisco*" ("Whether this penalty of fifty aurei is assigned to the plaintiff or to the fisc? Opinions are divided; I think it belongs to the fisc").

This gloss is important because it shows that medieval jurists were already uncertain whether the monetary sanction in a *actio popularis* accrued to the private plaintiff or to the public treasury. The issue is central to the legal nature of the *actio popularis*: if the penalty goes to the plaintiff, the action appears closer to a private penal action; if it goes to the fisc, it assumes a more public or quasi-prosecutorial character.

[42] Cf. Accursius, *Digestum novum cum Glossa ordinaria Accursii*, Norimbergae, 1483. See also for contextual reference the work: Cavallar, O., Kirshner, J. *Jurists and Jurisprudence in Medieval Italy. Texts and Contexts*, Toronto-Buffalo, 2020.

property, but are established in order that punishment may be imposed, independently of what is determined according to equity and fairness")[43].

The gloss then explains that *actiones populares* are actions that may be brought by any member of the people, and that for this reason they are termed *populares*: *"popularis actio dicitur quae cuivis ex populo datur"*[44]. At the same time, the gloss points out that the court is in every case obliged first to examine the character of the plaintiff: *"inspecta persona quae ad agendum admittitur"*. This requirement is repeated twice in the *Summa*[45], and although no specific text from Justinian's codification is cited, it was most likely derived from D.47.23.4, where Paulus states that the action is granted only to an *integra persona*, that is, to a person whom the edict permits to litigate. Paulus' fragment is further explained in the relevant glosses: gloss *k* on the word *integrae* states that the plaintiff must not be affected by infamy, while gloss *l* refers to the praetorian edict *de postulando* (D.3.1–2).

Finally, the *Summa* also mentions the rule that, where several persons wish to bring an action concerning the same matter, the court selects the most suitable plaintiff, preference always being given to the party possessing a particular interest in the dispute. With respect to these rules and defining characteristics of *actiones populares*, the gloss accurately interpreted the Roman texts. However, regarding the question of which actions qualify as *actiones populares*, the gloss advances interpretations inconsistent with Roman conceptions and ultimately formulates a definition entirely foreign to Roman law.

In the introductory *summa* to title D.47.23, Accursius provides examples of *actiones populares*: the *actio de sepulchro violato*, actions for the killing or wounding of a free person arising under the edict *de his qui effuderint vel deiecerint*, the *actio de positis vel suspensis*, and those actions "which today (*hodie*) are granted" in place of the former interdicts for the protection of public property[46]. The *actio sepulchro violati*, which addresses the violation of a tomb, exemplifies the popular standing characteristic of certain Roman legal actions. According to the praetorian edict, proceedings could be initiated primarily by individuals with a specific legal interest in the tomb. If such individuals were absent or unwilling to act, standing was extended to other citizens. Ulpian explicitly classified this remedy as an *actio popularis*[47].

These examples are fully consistent with the Roman texts. Immediately thereafter, however, he concludes that the actions *repetundarum* and *de peculatu*, directed against former magistrates for abuses and plundering in the provinces or for the embezzlement of public funds,

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[43] This passage concerns the title *De popularibus actionibus* in the Digest. Accursius' treatment is significant because the glossators attempted to systematize a Roman institution which did not fit easily within the later medieval distinction between private action, public accusation, and fiscal enforcement. His comments on D. 47.23 therefore provide important evidence for how the *actio popularis* was understood in the medieval reception of Roman law (Accursius. *Digestum novum seu Pandectarum iuris civilis. Commentarii Accursii*, vol. III, Lyon: 1596, p. 1410).

[44] *Ibid*.

[45] Accursius, *Digestum novum...*, p. 1410: "*Cuilibet de populo conceduntur, cum praetoris tamen indagine*" ("They are granted to anyone from the people, though subject to prior examination by the praetor"); Dig. 47.23.2: *Si plures simul agant populari actione, praetor eligat idoneiorem.*

Accursius stresses both the broad active standing of *actiones populares* and the need for procedural control by the magistrate. The action is not simply an unrestricted right of any individual to sue; rather, it is open to any citizen but still mediated by the authority of the praetor. This corresponds to the Roman rule that, where several persons sought to bring the same *actio popularis*, the praetor selected the more suitable plaintiff.

[46] Accursius, *Digestum novum...*, ad D.47.23, summa, pp. 1410–1411.

[47] D 47.12.3.pr, 47.12.3.9–10, 47.12.3.12 (*Haec actio popularis est*), and D.47.12.6; Cf. Bilalli, A., Bahtiri, B., *E drejta romake*..., p. 526.

also constitute *actiones populares*, notwithstanding the fact that these actions were not penal but restitutory (*rei persecutoriae*) and were not limited to a one-year period[48]. Moreover, in the gloss on D.47.23.2, the action *de collusione detegenda* is cited as a *popularis actio*, although modern historiography generally holds that in Roman law this action was not available *cui volet*, nor do the sources anywhere describe it as *popularis*[49].

From these examples, one might conclude that the glossators merely broadened or incorrectly interpreted the Roman texts. Yet the gloss departs even further from Roman law when, without any basis in the Roman sources, it formulates a "distinction": where a private delict is punishable by corporal punishment, the action may be brought only by the interested party, whereas where a monetary penalty is prescribed, the action is granted to any citizen: *"…cum vero privatim sit crimen quod obicitur, ei dumtaxat interdicere licet cuius interest, non propter pecuniam exigendam sed propter poenam corporalem infligendam. Pecuniaria vero petitio si competat, cuilibet de populo datur…"*.

Through this distinction, the glossators effectively formulated an entirely new rule. Whereas in Roman law only certain delictual actions were granted to any citizen and designated *actiones populares*, the glossators generalized on the basis of the type of sanction involved: whenever a delict carried a monetary penalty, the action was deemed available to *cuilibet ex populo*. Considering the well-known attitude of the glossators toward Justinian's codification, which, in their view, embodied a complete and immutable body of positive law, such an expansive interpretation and formulation of a wholly new general rule represented a significant departure from their usual method and remained exceptional within the school.

At the same time, it seems highly probable that this new rule resulted less from a deliberate attempt to adapt the institution to contemporary needs or to particular legal systems than from an insufficient understanding of the Roman institution of *actiones populares* itself. Urban statutes in Italy during this period, and later as well, certainly contained actions that could be brought by any citizen; yet for numerous delictual actions seeking the recovery of predetermined monetary penalties, the statutes either expressly stated or implicitly suggested that only an interested party could act as plaintiff[50]. Accordingly, the rule formulated in Accursius' *Summa* was not actually applied within the particular legal systems of the period. Although the distinction was later adopted by the post-glossators, it nevertheless appears unlikely that the principle according to which every action involving a pecuniary penalty was available to any member of the populace was ever genuinely applied in practice[51].

In the glosses attached to individual paragraphs, the usual method of philological and logical interpretation was employed, together with the practice of connecting the glossed text to other relevant passages within the *Corpus*. Contradictions between texts posed serious

[48] *Ibid*. *"Sane actiones repentundarum et peculatus..."* ("Of course, including *repentundarum* and for the embezzlement of state money...").

[49] Accursius, *Digestum novum...*, ad D.47.23, summa, pp. 1410–1411. Accursius distinguishes between cases in which the sanction is corporal and those in which the sanction is pecuniary. Where a private delict is punished by a corporal penalty, only the person directly interested may proceed. Where, however, the penalty is monetary, the action may be granted to anyone from the people. This distinction became central for later medieval jurists, especially Bartolus. It allowed jurists to preserve the idea that certain proceedings were not true public criminal prosecutions, while still explaining why any citizen could sue when the sanction was a fixed monetary penalty.

[50] Calasso, F., *Introduzione al diritto comune*, Milan, 1951, pp. 72–75; Bellomo, *The Common Legal Past...,* pp. 74–77.

[51] *Ibid*.

difficulties for the glossators, since for them every passage in the *Digest* constituted binding law (*lex*) and possessed the authority of *ratio scripta*[52]. Consequently, when two "laws" regulated the same issue differently, scholastic reasoning had to reconcile them at all costs.

In certain cases, this reconciliation was achieved by designating one text as a *lex generalis* and the other as a *lex specialis*. Thus, in the gloss on D.47.23.3, where Ulpian states that the defendant may invoke the defense of *res iudicata* against a repeated *actio popularis*, Accursius characterizes this as a *lex generalis* and simultaneously refers to the *lex specialis* contained in D.12.2.30.3, according to which the defense may be raised only if collusion between plaintiff and defendant had not occurred in the first proceeding[53].

Similarly, the gloss presents as a general rule the principle expressed in D.47.23.7.1, namely that a plaintiff bringing an *actio popularis* does not thereby enrich himself[54], while immediately explaining, with reference to D.50.16.17, that after *litis contestatio* the plaintiff's patrimony is in fact increased. Yet, as already noted, Accursius elsewhere concluded in his gloss on D.9.3.5.5 that the monetary penalty most likely accrued to the fisc, which would mean that the plaintiff suing *quivis ex populo* did not enrich himself even after *litis contestatio*. This inconsistency demonstrates that the glossators did not fully understand the problem as a whole.

In some glosses, Accursius merely indicates that a particular rule does not always apply, without offering further explanation or conclusions. Thus, in the gloss on D.47.23.5, where Paulus states that the plaintiff may not act through a representative, it is simply noted that in certain cases a representative may nevertheless be appointed[55]. Likewise, in the gloss on Ulpian's fragment in D.47.23.8, where the *actio popularis* is described as an action that must be brought within one year, Accursius adds with a degree of surprise that some "laws" contradict this rule, referring to passages in the *Digest* concerning *interdicta popularia* for the protection of public property, the interdict *de homine libero exhibendo*, and the action *de collusione detegenda*[56].

While certain texts concerning *actiones populares* remained insufficiently intelligible to the glossators, in other instances, they offered remarkably appropriate explanations. Thus, for example, Accursius explained that a woman could not bring an *actio popularis* because she could not act as prosecutor in criminal proceedings[57]; elsewhere, he observed that *actiones populares* do not pass to heirs precisely because the heir too would sue merely as *quilibet de populo*[58].

Based on Accursius' glosses on the texts concerning *actiones populares*, one may therefore conclude that the glossators treated this institution as part of living law and analyzed

[52] Cf. Stein, *Roman Law...*, pp. 49–57; Bellomo, *The Common Legal Past...,* pp. 73–77.

[53] Accursius, *Digestum novum...*, p. 1410, glossa *h* to word *opporit*.

[54] *Ibid*., glossa *q* to word *locupletior*.

[55] Accursius, *Digestum novum...*, p. 1410, glossa *n* to word *non potest*.

[56] *Ibid*., glossa *s* to word *supra annum*: "*Nam fallit quandoque ut sunt ne quid in loco publico, supra, lex 15 et de libero homine exhibendo lex 111 in fine, quae in collusione detegenda, ut sunt contra*" ("For the rule sometimes fails, as in the interdict *ne quid in loco publico*, above, law 15, and in *de libero homine exhibendo*, law 111 at the end, and in cases concerning the detection of collusion, where the opposite rule applies").

Accursius recognized that the rules governing *actiones populares* were not entirely uniform. Certain remedies, although broadly accessible or public in function, followed exceptional rules. This observation is important because it anticipates later doctrinal debates on whether all actions granted to *quivis de populo* were properly *actiones populares*, or whether only some belonged to that category in the strict sense.

[57] *Ibid*., C. 9.1.12, cited in the gloss concerning persons who cannot accuse, referring to the Justinian Code – *"...qui accusare non possunt, lex de crimine"*.

[58] *Ibid.*, glossa *p* to word *cui* (referring also to Dig. 47.23.7).

it in considerable detail. Nevertheless, the *actiones populares* as represented in the glosses did not fundamentally correspond to the *actiones populares* of the Roman sources. Although many of the characteristics attributed to these actions by Roman law were correctly identified and interpreted, the glossators' general concept of the *actio popularis* was significantly broader. For them, *actiones populares* included not only those actions recognized by Roman law, both those expressly designated as such in the Roman texts and those which the glossators mistakenly believed to have been *populares*, but also every delictual action seeking the punishment of a wrongdoer through the imposition of a predetermined monetary penalty.

4. The Post-Glossators: Bartolus and Albericus à Rosate

In the works of the commentators, *actiones populares* continued to be treated as an institution of positive law. The difference, however, lies in the fact that this was no longer merely a general and abstract position deriving from the conception that the law contained in Justinian's *Corpus* constituted immutable and eternally valid positive law. For the commentators, *actiones populares* were instead a living institution whose place within the legal life of the period had to be determined. At the same time, the commentators devoted considerably less attention to these actions than had the glossators.

Within his extensive oeuvre, Bartolus dedicated very little space to *actiones populares*. As far as can be seen from the index attached to the 1590 edition of his collected works[59], he addressed the issue only in his commentary on title 23 of book 47 of the *Digest*[60].

In this commentary, Bartolus raised four principal questions. The first two concern the legal nature of *actiones populares*: what their purpose is, what constitutes their defining characteristic, and why they are called *populares*. His answer merely reproduces the gloss: their purpose is punishment (*dicit glossa quod tendunt ad vindictam et bene*), and they are available to every citizen (*cuilibet de populo competunt*), which is precisely why they are termed *populares*[61].

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[59] Bartolus de Saxoferrato, *Opera omnia*, 10 vols, Venetiis, 1590. See also vol. XI, index of *regulae*, compiled by Luciano Bassano, professor of law at Padova. Cf. Calasso, F., *Medio Evo del diritto*, vol. I, Milan, 1954, p. 574.

The index to Bartolus' *Opera omnia*, compiled by Luciano Bassano, is relevant because it shows how later jurists organized Bartolus' doctrines into general rules. For the study of *actiones populares*, this is important because the reception of Roman law often operated not only through direct commentary on Roman texts, but also through the extraction of general principles from authoritative medieval jurists.

[60] Cf. Albanese, *L'azione popolare...*, p. 110. Albanese states that Bartolus also discussed *actiones populares* in *De regimine civitatis*, where he allegedly repeated the glossatorial distinction according to which an *actio popularis* is available where a fixed pecuniary penalty is provided for a delict. Albanese further reports that Bartolus distinguished between disputes concerning injury to a person and those concerning public morality, good customs, and public order, granting the *actio popularis* in the latter category. However, this passage could not be found in the cited edition of Bartolus' collected works. This should be treated cautiously and cited only as Albanese's report, not as a directly verified Bartolian text.

[61] Bartolus de Saxoferrato, *Opera omnia*. vol. VI: *In secundam Digesti Novi partem*, Venetiis, 1590, p. 137. The introductory part of the commentary reads as follows: "1. *Actiones populares tendunt ad vindictam.* 2. *Actiones populares dicuntur quia cuilibet de populo competunt.* 3. *Poenae imponendae ex crimine privato si poena est pecuniaria quilibet de populo admittitur, si corporalis, ille tantum cuius interest. Accusatio quae oritur ex statuto imponente poenam dicitur privata.* 4. *Poena cui applicetur quando agitur actione popularis*" ("1. *actiones populares* aim at punishment. 2. They are called *popularis* because they belong to anyone from the people. 3. If, for a private delict, a pecuniary penalty is provided, anyone from the people is admitted to sue; if the penalty is corporal, only the interested person is admitted. An accusation arising from a statute imposing a penalty is called private. 4. To whom the penalty is assigned when proceedings are brought by *actio popularis*").

Whereas the first two questions demonstrate that Bartolus remained within the framework of the Roman texts and the gloss, the third question reveals that he also connected *actiones populares* with statutory law. The question posed is whether any citizen may bring an action whenever the delict in question is sanctioned by a monetary penalty. In answering, Bartolus first adopts the solution advanced by the gloss and, relying upon it, states that any *quilibet ex populo* may sue whenever a pecuniary penalty is prescribed for the delict, whereas, if corporal punishment is provided, only the interested party may bring the action[62]. He immediately adds, however, that private delicts also include those for which municipal statutes prescribe monetary penalties, and that in such cases as well any member of the people may appear as plaintiff: *"...pro delictis poenam pecuniariam ... quam imponunt statuta ... admittant ad accusandum quilibet de populo..."* ("for delicts for which the statutes impose a pecuniary penalty … any member of the people is permitted to accuse")[63].

Bartolus therefore regarded as *actiones populares* not only those actions recognized by Roman law, but also actions brought on the basis of statutory provisions imposing fixed pecuniary penalties for various delicts. The abstract expansion of the concept carried out by the glossators, who generalized the notion to all cases in which an action was granted for a delict sanctioned by a predetermined monetary penalty, was thus concretized by the commentators, who classified the corresponding actions in statutory law as *actiones populares* as well.

Within the framework of this third question, Bartolus further emphasized that delicts sanctioned in this manner were private delicts and, invoking Justinian's *Institutes*, concluded that those who considered them public delicts were mistaken[64]. Particularly significant is the summary of this brief discussion on the nature of delicts, placed at the beginning of the commentary. Although the text itself does not specify whether the delicts in question are sanctioned by Roman or statutory law, the summary makes clear that the discussion concerns delicts sanctioned by statutory provisions and enforceable through *actiones populares*. The summary reads: *"Accusatio quae oritur ex statuto imponente poenam dicitur privata"* ("An accusation arising from a statute imposing a penalty is called private").

The fourth question is of a purely practical nature and concerns the pecuniary penalty payable by the wrongdoer. Unlike Accursius, Bartolus displayed no uncertainty on this issue.

Bartolus' formulation is one of the clearest medieval attempts to classify the *actio popularis*. He emphasizes three elements: its punitive function, its broad standing, and the decisive role of the type of penalty. For Bartolus, the fact that a proceeding may be brought by anyone does not automatically make it a public accusation; if the proceeding arises from a statute imposing a pecuniary penalty, it may still be characterized as private.

[62] Bartolus de Saxoferrato, *Opera omnia*, p. 137: *"Tertio quaestio, utrum pro poena imponenda ex crimine privato admittatur quilibet accusator? Glossa dicit: aut agitur ad imponendam poenam corporalem, et tunc non admittitur quilibet, sed ille tantum cuius interest; aut agitur ad poenam pecuniariam, et tunc quilibet de populo admittitur"* ("The third question is whether anyone may be admitted as accuser for the imposition of a penalty arising from a private offense. The Gloss says: either proceedings are brought for the imposition of a corporal penalty, and then not everyone is admitted, but only the person who has an interest; or proceedings are brought for a pecuniary penalty, and then anyone from the people is admitted").

[63] *Ibid.*; D.47.21.3.

[64] *Ibid.*; Inst. 4.18.1, on *publica iudicia*. "*Nec obstat si dicis, ergo est accusatio publica, quam competit cuilibet de populo, quia non est verum, ut dixit Institutionum titulus...*" ("Nor is it an objection if you say: therefore it is a public accusation, since it belongs to anyone from the people; for that is not true, as the title of the Institutes says...").

Bartolus rejects the automatic identification of broad standing with public criminal prosecution. This is doctrinally important because it preserves a distinction between *actio popularis* and *accusatio publica*. For Bartolus, an action may be open to anyone without thereby becoming a public criminal accusation.

Referring to the *Digest* text concerning the action under the *lex agraria* (*D.47.21.3 de termino moto*), he explained that when an *actio popularis* is brought, one half of the prescribed pecuniary penalty belongs to the plaintiff. This solution was probably influenced by the rules governing actions that could be brought by any citizen under the statutes of the Italian communal cities[65].

Albericus de Rosate discussed *actiones populares* not abstractly or systematically, as Bartolus had done, but rather in connection with concrete practical cases and from the perspective of the statutory law of the city of Florence. He wrote in the fourteenth century, a period in which the principle formulated by Baldus had already gained acceptance in Italy: where no relevant rule existed in the statute, Roman law was to be applied[66]. For Albericus, the central issue was therefore under what circumstances, and in what manner, the Roman-law rules concerning *actiones populares* should be applied in practice. One of his commentaries dealing specifically with an *actio popularis* may serve as an illustration.

The commentary raises the following question: if a person, pursuant to the statutes of the city of Florence, has been sentenced to two years' banishment from the territory of the commune and fails to comply with the judgment, may he be punished at the discretion of the *Podestà*, or should an *actio popularis* be brought against him? Albericus answers that in such a case, judicial proceedings may be initiated by any member of the people: *"Circa primum forte non irrationabiliter dici possit, quod possit per quemlibet de populo accusari; quia non potest negari, quin proponatur pro poena imponenda ei, qui praetoris maiestatem contempsit et ideo sit popularis…"* ("Concerning the first issue, it may reasonably be said that any member of the people may accuse; for it cannot be denied that [the action] is provided for the imposition of a penalty upon one who has disregarded the dignity of the praetor, and therefore it is *popularis*")[67].

It is noteworthy that Albericus here relied upon the praetorian action *de albo corrupto* (D.2.1.7), which was directed against persons damaging the praetor's album and would not in fact have been applicable in this case. His *argumentum* was therefore inaccurate. The more appropriate analogy would have been the action deriving from the praetorian edict *si quis ius dicenti non obtemperaverit* (D.2.3), concerning disobedience to judicial orders, which Albericus only cited later in the course of his analysis.

Having concluded that any member of the people might sue in such circumstances, Albericus proceeded to consider several subsidiary questions: within what period the action could be brought, how the matter should be handled if two citizens sought to bring the action regarding the same issue, and what consequences would follow if the *Podestà* were replaced

[65] For the existence of *actiones populares* or *quasi-populares* in Italian communal statutes, refer to the later section of the study dealing specifically with Italian statutory law. The Bartolian material should be connected to the statutory context because many medieval city statutes imposed fixed pecuniary penalties enforceable at the initiative of citizens. Cf. Calasso, *Introduzione...*, pp. 72–75.

[66] Baldus de Ubaldis, *In Digestum vetus*, vol. I, Venetiis, 1551, c. 1, 9, no. 1. "*Ubi cessat statutum habet locum ius civile*" ("Where the statute ceases, the civil law applies"). Cf. Calasso, *Introduzione...*, pp. 72–75.

This maxim expresses a fundamental principle of the *ius commune*: local statutes applied within their proper scope, but where they were silent, Roman-canonical common law supplied the governing rules. For *actiones populares*, this is important because municipal statutes frequently created pecuniary penalties and enforcement mechanisms, while Roman law provided the conceptual vocabulary through which jurists interpreted such remedies.

[67] Albericus de Rosate, "Commentarii de statutis", en *Tractatus de statutis diversorum auctorum*, Francofurtum, 1608, pp. 73–74, quaestio CXXVIII.

in the meantime. Referring appropriately to passages from Justinian's codification, he answered that the action could be brought only within one year, because this was prescribed by the "law" (*lex*) in D.47.23.8; if several persons appeared, the court would determine which among them should proceed as plaintiff, in accordance with D.47.23.2. Should the *Podestà* change during the proceedings, the litigation would continue, as stated in the Justinianic title *De officio eius qui vicem alicuius iudicis obtinet* (C.1.50)[68].

As may be seen, all these issues were resolved through the application of Roman law. One answer, however, was based not upon the rules of the *ius civile* but upon statutory provisions. Asked whether the defendant possessed a right of appeal, Albericus replied in the negative, because the statutes of Florence did not permit appeals in criminal proceedings. Having found a statutory rule, he considered applicable to the case, Albericus applied not Roman but statutory law. It is nevertheless significant that disobedience to the court's order was here characterized not as a private delict, as it had been by the glossators and Bartolus, but rather as a *crimen*[69].

Finally, Albericus considered the possibility that no one might bring an action against the person who had violated the court's order. Once again invoking the general law, that is, Roman law, he maintained that in such a case proceedings could not be initiated *ex officio*, since the matter did not belong among those for which Roman law allowed inquisitorial procedure. If, however, a statutory provision authorizing such proceedings existed, statutory law would apply, and criminal proceedings could then be commenced officially: *"Sed supposito, quod nullus accusaret, non crederem, nisi aliud per statutum caveretur, quod ex forma iuris communis iudex posset per inquisitionem procedere…"* ("But assuming that no one accused, I would not believe, unless otherwise provided by statute, that according to the form of the common law the judge could proceed by way of inquisition…")[70].

From everything Albericus states in this commentary, one may conclude that, for him, the *actio popularis* was an action applied subsidiarily as an institution of the *ius commune*, according to all the rules governing such actions in Roman law and recorded in Justinian's *Corpus*. Those rules, however, applied only in the absence of a corresponding provision in statutory law. Where such a provision existed, it either replaced the relevant Roman rule or supplemented the legal regime governing *actiones populares* under Roman law.

5. The School of Elegant Jurisprudence: Cujas (*Cuiacius*)

[68] Albericus de Rosate, *Commentarii de statutis*, pp. 73–74; C.1.50.

[69] Albericus de Rosate, *Commentarii de statutis*, p. 74. "*Cum statuto Florentino caveatur quod in criminalibus non possit appellari... obstante statuto non potuit appellare*" ("When the Florentine statute provides that in criminal matters there can be no appeal... because the statute stands in the way, he could not appeal").

Albericus' discussion illustrates the authority of municipal statutes in criminal and quasi-criminal matters. Where a statute expressly excluded appeal, the statutory rule prevailed. This is relevant to the reception-history of *actiones populares* because many such actions arose not directly from Roman law, but from local statutory regimes imposing penalties and determining the procedural consequences of their enforcement.

[70] *Ibid*. "But let us suppose that no one accuses. I do not believe, unless the statute provides otherwise, that the judge may, on the basis of the common law, initiate inquisitorial proceedings, because this does not belong to the cases in which one may proceed *ex officio*".

This passage shows the tension between accusatory and inquisitorial models of enforcement. If no private accuser appeared, the judge could not necessarily proceed on his own initiative unless the statute expressly allowed it. Such a structure helped preserve a role for private or citizen initiative in enforcing statutory penalties.

Within the French school of elegant jurisprudence, *actiones populares* were no longer treated as an institution of positive law, but rather as an institution characteristic of Roman law itself. As such, they received considerable attention from both Faber and Cujas, though more extensively from the latter; accordingly, the following discussion will focus primarily on Cujas interpretations and views.

Cujas explained the concept and legal nature of *actiones populares*, as well as the rules governing them, in his commentaries on Justinian's *Digest*, particularly in the *paratitlon* to D.47.23, and also in his work on Paulus' books *ad edictum*. Although he predominantly employed the present tense, for Cujas *actiones populares* belonged to the past. This is evident both from his general mode of exposition, in the course of which he referred to a wide range of sources, including non-legal ones, and from passages in which he expressly stated that such actions had once existed in Roman law. Thus, for example, in discussing the action *si quis iusdicenti non obtemperaverit*, Cujas remarked: *"ea actio videtur quondam fuisse popularis"* ("that *actio* appears once to have been *popularis*")[71].

Cujas defined the *actio popularis* in essentially the same manner as the glossators and commentators, and in accordance with the Roman texts: a *popularis* was an action granted to any citizen willing to sue, *cuilibet de populo agere volenti*[72]. He did not, however, accept the distinction advanced by the gloss according to which every private delict sanctioned by a fixed pecuniary penalty constituted the object of a *actio popularis*. Cujas was, above all, a historian, and for him *actiones populares* were only those that had actually existed as such in Roman law, or those which, based on the Roman texts, could be identified as *populares*. Significantly, however, he concluded that not only praetorian actions, many of which are expressly designated in the *Digest* as *actiones populares*, but also *actiones* granted *cui volet* based on statutes belonged to this category. In one passage, speaking generally on the subject, he offered as examples of *actiones populares* only actions introduced by the praetorian edict, adding that many of the interdicts contained in book 43 of the *Digest* were likewise *populares* (*"pleraque interdicta popularia ex libro 43"*)[73]. However, while analyzing the *action de albo corrupto*, he stated that actions established under the agrarian laws (*in legibus agrariis*) and the action arising from the *Senatus Consultum de aquaeductibus* were of the same nature[74].

Cujas further emphasized that these actions served to protect the public interest. In his commentary on Paulus' first book *ad edictum*, he stated that it was in the public interest that all citizens defend and vindicate matters belonging to the public sphere: *"...et publice interest omnes cives ad defendendum et vindicandum causam publicam"*[75]. Elsewhere, he observed that the praetor had made the *actio de albo corrupto* "*populares* or public" (*popularem sive publicam*) because the praetor's album deserved public protection[76]. From this, one might

[71] Cf. Cujacij, J., *Opera omnia*, vol. V, Prato, 1838, *In librum I Pauli ad edictum*, p. 26.

[72] *Ibid.*, vol. V, *In librum VIII Pauli ad edictum*, p. 181; Cujacij, J., *Opera omnia*, vol. VII, Prato, 1839, *Paratitla in libros L Digestorum*, p. 137.

[73] Cujacij, J., *Opera omnia*, vol. III, Prato, 1837, p. 301.

[74] *Ibid.*, vol. VII, p. 137.

[75] *Ibid.*, vol. V, p. 26.

[76] *Ibid.*, vol. VII, p. 137: "*Qua quidem clausula actionem albi corrupti praetor popularem facit sive publicam quia et haec res publicam tutelam, publicam vindictam meretur*" ("By this clause the praetor makes the action for corrupting the album *popularis* or public, because this matter also deserves public protection and public punishment").

Cujas' treatment is particularly valuable because he avoids a simplistic identification of public interest with public or *actio popularis*. An action may serve public utility without being technically *publica* or *popularis*. "*Non*

conclude that Cujas regarded *actiones populares* as actions belonging to public law. Yet in several places, he also reiterated that proceedings initiated through an *actio popularis* always took the form of a civil action[77].

The introduction to the *paratitlon* on D.47.23 clearly reveals his understanding that *actiones populares* shared many characteristics with actions belonging to criminal procedure. In the opening sentence of the *paratitlon*, he drew attention to the position accorded to *actiones populares* within the structure of the *Digest*: they appear after the titles devoted to private delicts and before book 48, which deals with public crimes: *"...post privata iudicia et extraordinaria quae ex delictis nascuntur, subicit popularia..."*[78]. Immediately thereafter, he undertook a detailed analysis of the rules governing *actiones populares*, emphasizing that these same rules also applied within criminal proceedings[79].

Considerable attention was likewise devoted to the question in whose favor the pecuniary penalty was recovered. This issue was analyzed within the context of the *actio de albo corrupto* and *si quis iusdicenti non obtemperaverit*. Referring to information provided by Frontinus concerning the *Senatus Consultum de aquaeductibus* and to Plautus' verses on quadruplators in the comedy *Persa*, Cujas concluded that, as a rule, one half of the pecuniary penalty was paid to the fisc and the other half to the plaintiff[80]. Elsewhere, discussing the same issue, he referred to Accursius and to the *Senatus Consultum Silanianum* (D.29.5, the *actio de testamento aperto*) and stated that the penalty was ordinarily divided between the fisc and the plaintiff, although at times it was recovered entirely for the benefit of the public treasury: *"...et ea poena... utique partienda erit inter actorem et fiscum, ut plerumque fit... vel ut Accursius tentavit tota cogenda erit in fiscum..."*[81].

It is noteworthy that Cujas nowhere mentioned the third possibility, namely, that the entire amount might be recovered by the plaintiff for his own benefit, although this was in fact the rule for most praetorian *actiones populares*, including the very two actions he discussed while examining the destination of the pecuniary penalty paid by the condemned party. At the same time, it is significant that, as a careful historian, he based his conclusions not solely upon the texts of Justinian's *Corpus*, but upon a broader range of source material as well[82].

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omnis actio, quae publicam utilitatem pertinet, etiam publica aut popularis est" ("Not every action that concerns public utility is also a public or *actio popularis*").

[77] Cf. *Ibid.*, vol. III, p. 301; and *Ibid.*, vol. V, p. 181.

[78] *Ibid.*, vol. III, p. 301–302.

[79] *Ibid.*, p. 302: "*Quae omnia obtinent etiam in publicis iudiciis, de quibus agitur titulo sequente et ubique ita procedunt nisi agat is ad quem res pertinet*" ("All these rules also apply in public trials, which are treated in the following title, and they proceed in this way everywhere unless the person concerned brings the action"). Conversely, certain actions are made *popularis* by praetorian formulation because the matter deserves public protection and public vindication. This distinction is important for your theoretical introduction: *actiones populares* are not defined merely by the public interest involved, but by the procedural grant of standing and the legal form through which that interest is protected.

[80] *Ibid.*, vol. VII, *Paratitla in libros L Digestorum*, p. 138: "*Quod etiam puto Plautum significare in Persa cum ita scribit: Nam publicae rei causa...*" ("I think Plautus also indicates this in the *Persa*, when he writes: For the sake of the public matter...").

Cujas' use of Plautus demonstrates the humanist method of interpreting Roman legal institutions through literary as well as juristic sources. His discussion of *quadruplatores* connects *actiones populares* or *quasi-populares* enforcement with broader Roman practices of citizen prosecution and reward-based denunciation.

[81] Cf. Cujacij, *Opera omnia*, vol. VII, p. 182.

[82] *Ibid.*, p. 137–138, 182.

Finally, it is worth noting that within the course of these discussions, Cujas also identified an interpolation. With regard to the *actio de albo corrupto*, he observed that the formula in the praetorian edict had originally stipulated a penalty of 50,000 sestertii, but that Tribonian, as he had done elsewhere, converted this amount into gold, so that the *Digest* instead refers to fifty gold pieces[83]. The interpolation itself is not especially significant, nor was this the only instance in which Cujas pointed out interpolations; yet his attention to such matters once again demonstrates that, for him, *actiones populares* were a historically conditioned institution worthy of study only in that historical capacity.

6. Later Legal Scholarship

In the works of later jurists, *actiones populares* gradually received less and less attention. Among the later authors, however, the seventeenth-century Italian jurist, civilist, and canonist De Luca remains significant, both for his understanding of the *actio popularis* and for the importance he attributed to such actions. By that time, the *ius commune* no longer consisted solely of the law contained in Justinian's compilation, the *lex scripta in corpore iuris*, but also encompassed the body of law subsequently developed based on Roman legal texts[84]. In his work *Theatrum veritatis et iustitiae*, De Luca distinguished between *ius civile* in the narrower sense, meaning Justinian's law itself, and *ius civile* in the broader sense, meaning the common law that had emerged through the further development of Roman law and which, to a considerable extent, had been unknown even to the Romans themselves[85]. It is therefore hardly surprising that, in De Luca's writings, the concept of the *actio popularis* differs substantially from what it had been in Roman law.

For De Luca, the essence of the institution lay in its representative character: the plaintiff brought the action as the representative of a particular collective body of which he himself was a member, and the privilege of that collective consisted precisely in the fact that any of its members was entitled to defend its interests. Exceptionally, *actiones populares* could also serve to protect the interests of privileged natural persons. A somewhat similar explanation of the legal nature of *actiones populares* was offered much later by Mommsen[86]; however, unlike him, the civilist and canonist De Luca did not regard *actiones populares* merely as a limited number of Roman delictual actions characterized by general active standing. Rather, for him, they encompassed all actions that could be brought by any member of a given collective body or by any citizen for the protection of the rights of certain privileged legal or natural persons[87].

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[83] *Ibid.*, p. 137.

[84] Cf. Calasso, *Introduzione al diritto comune*, pp. 82. Calasso is useful for framing the reception of Roman law within the broader structure of the *ius commune*. *Actiones populares* were not received as an isolated Roman institution; rather, they were filtered through medieval doctrines concerning statutes, penal clauses, public utility, and the relationship between local law and Roman-canonical common law.

[85] De Luca, G.B., *Theatrum veritatis et iustitiae: Cum Decisionibus et Mantissa Decisionum*, vol. 15, Venetiis, 1759, part I, *De iudiciis*, discursus XXXV, § 3. "*Maior pars illarum materiarum, quas hodie habemus, antiquis Romanis ignota erat*" ("The greater part of those matters which we have today was unknown to the ancient Romans").

De Luca seems to explicitly recognize that early-modern legal reality contained many matters unknown to the ancient Roman jurists. This is significant because it shows the limits of applying Roman categories mechanically to later legal institutions. In relation to *actiones populares*, De Luca's point supports the argument that later *actiones popularis* or *quasi-popularis* should not be treated as simple continuations of Roman law, but as transformations shaped by medieval and early-modern institutional needs.

[86] Cf. Mommsen, *Römisches Strafrecht*, pp. 183–188.

[87] De Luca, *Theatrum veritatis...*, discursus XII, § 6, pp. 33–34.

That De Luca considered the representative character of the *actiones populares* to be its essential feature is also evident from the place he assigned to these actions within his legal system. He discussed them within his broader treatment of legal representation before the courts and gave the relevant section the subtitle: *"De actionibus popularibus, in quibus unus pro alio comparere potest etiam sine mandato, quomodo intelligetur"* ("On *actiones populares*, in which one person may appear on behalf of another even without a mandate; how this is to be understood")[88].

In this discussion, De Luca explained that certain legal entities enjoyed the privilege that their rights and interests could be judicially asserted by any member of the community. By way of example, he stated that any monk might sue on behalf of a monastery or the religious order (*religio*), any priest on behalf of his church, and, most generally, any citizen on behalf of the state. Likewise, any citizen might sue on behalf of a minor, a mentally incapacitated person, a church, or for the execution of a testamentary disposition. All such actions, according to him, were termed *populares*[89], and in these cases, the plaintiff could not be dismissed *a limine* merely because he lacked a direct personal interest in the dispute. If another person subsequently attempted to reopen proceedings concerning the same matter, the defendant was entitled to invoke the defense that the case had already been adjudicated. As is evident, De Luca's ideas differ substantially from the original Roman conception of *actiones populares*. Nevertheless, in certain respects, he may be regarded as a precursor of modern understandings of the institution: in contemporary legal systems as well, *actiones populares* are often granted only to members of particular social formations for the protection of the interests of a specific administrative-territorial unit, usually the municipality, or of institutions engaged in social welfare activities[90].

Unlike this Italian writer, jurists belonging to the school of natural law and the German Pandectists devoted very little attention to the *actiones populares*. They generally referred to them merely as an institution belonging to the past and devoid of contemporary significance, or ignored them altogether. A characteristic example is provided by the well-known Pandectist Leiser. In his work *Meditationes ad Pandectas*, whose structure follows the arrangement of Justinian's *Digest*, he entirely omitted the titles devoted to individual *actiones populares*, as

[88] De Luca, *Theatrum veritatis...*, discursus XII, § 6, p. 33.

[89] *Ibid.* "*Hic proinde, quamvis in iure plures dentur personae favorabiles, pro quibus quilibet in iudicio esse potest, puta quilibet monachus pro monasterio vel religione, quilibet canonicus pro capitulo et quilibet civis pro civitate ac magis generaliter, quilibet de populo pro pupillo vel pro furioso, seu pro ecclesia, pia causa, cum similibus, quasi quod istae actiones dicantur populares*" ("Here, therefore, although in law there are several favored persons on whose behalf anyone may appear in court, for example, any monk for a monastery or religious order, any canon for a chapter, any citizen for a city, and more generally anyone from the people for a ward or insane person, or for a church, a pious cause, and similar cases, it is as if such actions were called *popularis*").

De Luca broadens the idea of *actiones populares* beyond the strict Roman category. He associates it with cases in which the law permits a person to act on behalf of favored persons, institutions, or pious causes. This is not identical with the classical Roman *actio popularis*, but it reveals how early-modern jurists used the language of *actio popularis* to describe broader forms of representative or public-interest litigation.

[90] De Luca, *Theatrum veritatis...*, discursus XII, § 6, pp. 33–34.

well as title D.47.23 (*De popularibus actionibus*)[91]. Similarly, the Pandectist Stryk, in his major work *Usus modernus pandectarum*, paid no attention whatsoever to this subject matter[92].

Pothier, in his *Pandectae Justinianae in novum ordinem digestae*, devoted only a few sentences to the *actiones populares*. He concluded his commentary on book 47 of Justinian's *Digest* with a discussion of *collegia* and corporations, which form the subject of title 22. Instead of a detailed treatment of title 23, *De popularibus actionibus*, he added only a brief note[93]. In that note, Pothier observed that, alongside civil actions, there also existed certain delictual actions of a particular nature, because they gave rise not to criminal proceedings but to civil litigation. Tribonian, he explained, had inserted into the *Digest* a separate title concerning these actions, which were termed *populares* because they could be brought by any member of the *populus*. Pothier then listed as examples the actions *de sepulchro violato*, *de termino moto*, *de albo corrupto*, *de deiectis vel effusis*, and *de tabulis testamenti*[94]. He concluded, however, that there was no reason to dwell upon *actiones populares*, since they no longer possessed any significance for contemporary positive law[95].

7. Conclusions: Were *Actiones Populares* Included in the Reception?

[91] Von Leyser, A., *Meditationes ad Pandectas*, vol. VIII, Lipsiae, 1746, pp. 447–448. Leyser's *Meditationes ad Pandectas* omits a commentary on D. 47.23, *De popularibus actionibus*. In vol. VIII, p. 447 ends with the commentary on Dig. 47.22, while p. 448 begins with Dig. 48.1, thereby leaving out Di.g 47.23 entirely. Similarly, in vol. II, pp. 484–491 contain the commentary on Dig. 9.2, while the next section begins with Dig. 9.4, omitting Dig. 9.3, *De deiectis vel effusis*. We can also further observe that Leyser nowhere discusses any action that was an *actio popularis*.

This omission is significant because it illustrates the marginal place of *actiones populares* in parts of the *usus modernus Pandectarum*. By the eighteenth century, some leading jurists treated the institution as having little relevance for contemporary legal practice.

[92] Strykii, S., *Continuatio Altera Usus Moderni Pandectarum*. Editio quinta, Halae–Magdeburgicaem 1728, p. 46–48. In this contex, Stryk should be cited in connection with the early-modern practical reception of Roman law. Where *actiones populares* appear in the *usus modernus*, they are generally treated not as a living autonomous category, but as a marginal or historically residual institution. This supports the broader argument that the classical Roman *actiones populares* were not fully received into modern private-law systems.

[93] Cf. Pothier, R.J., *Pandectae Justinianeae, in novum ordinem digestae, cum legibus Codicis et Novellis, quae jus Pandectarum confirmant, explicant aut aborgant*, vol. 4, Paris, 1820, p. 386–387: "*Antequam ad ea transitum faciat Tribonianus pauca hic inserit de alia generali actionum civilium et forensium specie, quae populares ideo dicuntur quod competunt cuilibet a populo, quemadmodum in criminibus iudicia publica*" ("Before Tribonian passes to those matters, he inserts here a few words concerning another general kind of civil and forensic actions, which are called *popularis* because they belong to anyone from the people, just as in criminal matters public prosecutions do").

Pothier treats *actiones populares* only briefly, but his formulation is useful because he clearly defines them as civil or forensic actions available to anyone from the people. He also recognizes their analogy with public criminal proceedings while preserving their civil character.

[94] Although Pothier does not dwell on *actiones populares*, he appears to know the material well, since he gives as examples not only praetorian actions expressly called *populares* in the Digest, but also the statutory action *de termino moto*.

[95] Pothier, *Pandectae Justinianeae...*, 386–387: "*Hic porro earum actionum nulla singulari specie proposita, natura tantum expenditur generaliter*" ("Here, moreover, no particular species of these actions is set forth; only their nature is considered in general terms").

Pothier treats *actiones populares* only briefly, but his formulation is useful because he clearly defines them as civil or forensic actions available to anyone from the people. He also recognizes their analogy with public criminal proceedings while preserving their civil character. The Serbian note further observes that, although Pothier does not dwell on *actiones populares*, he appears to know the material well, since he gives as examples not only praetorian actions expressly called *populares* in the Digest, but also the statutory action *de termino moto*.

Although the writings of medieval and later jurists alone cannot provide a definitive answer to the question whether *actiones populares* were revived during the reception of Roman law, the place these actions occupy in legal literature and the interpretations attached to them nevertheless permit certain conclusions to be drawn. The glossators treated *actiones populares* by employing the same method and with the same degree of attention as they devoted to the other institutions of Justinianic law. They presented them as part of living positive law and regarded them as an unquestionable component of the Roman legal system. In principle, this made their reception possible, since the maxim *quod non agnoscit glossa, nec agnoscit curia* — what the gloss does not recognize, the court likewise does not recognize — could not be applied to them.

Yet *actiones populares* were institutions whose emergence had been conditioned by the particularities of Roman legal development, and those peculiarities profoundly shaped their nature. From a strictly legal perspective, they arose at the boundary between public and private law, and many rules of criminal procedure were applied to them; nevertheless, the delicts sanctioned through these actions were not regarded as criminal offenses, and consequently, such actions never gave rise to a *iudicium publicum*. Viewed from a broader perspective, the delicts sanctioned by *actiones populares* reflected the specific social and institutional conditions characteristic of their period, and these actions attained their widest application primarily within the context of developed urban life.

The glossators, who regarded the texts of Justinian's codification as immutable "laws" and failed to perceive their historical conditioning, were unable to fully understand and correctly interpret the specifically Roman institution of *actiones populares*. The picture presented by the gloss corresponded to Roman conceptions only insofar as, for the glossators too, *populares* were actions granted *cuivis ex populo*. However, for Accursius, the concept of the *actio popularis* became considerably broader, since after his various analyses, he concluded that any *quivis ex populo* might sue whenever a delict was sanctioned by a fixed pecuniary penalty. In this respect, *"quod agnoscit glossa"* differed substantially from Roman law itself.

The commentators proceeded from the definition formulated by the glossators and discussed *actiones populares* as an institution of the *ius commune*. Particularly significant is the fact that, for Bartolus, an *actio popularis* encompassed every action — whether deriving from common law or statutory law — that could be brought by any citizen whenever a private delict was sanctioned by a fixed pecuniary penalty. In other words, Bartolus applied the Roman term even to statutory actions, although neither he nor the glossators clearly understood which actions in Roman law had actually been *populares*. Nevertheless, even though fourteenth-century Italian learned jurists, and still less legal practitioners, lacked a precise conception of Roman *actiones populares*, it appears highly probable that at least some of these actions were in fact applied in practice as institutions of the *ius commune*. This is suggested by the detailed analysis provided by Albericus of one *actio popularis* and its practical application within the city of Florence.

In subsequent centuries, however, *actiones populares* appear once again to have fallen into oblivion, assuming that during the early period of reception they had ever been applied outside Italy at all. In Italy itself, based on what De Luca wrote, one might conclude that the very concept of the *actio popularis* as an action available to any member of the people remained known, and that such actions may have continued to exist as institutions of the *ius commune*, albeit in a considerably altered form increasingly removed from the Roman model. In other

countries, by contrast, they most likely were never truly encompassed by the reception. For Cujas and later for Pothier, they were merely institutions that had once existed in Roman law. The Pandectists, for their part, generally did not even consider them worthy of mention within their system of "modern" Roman law.

The reasons why *actiones populares* ultimately failed to become part of the reception are readily apparent. The institutions of Roman law that were received were precisely those that corresponded to the needs of the emerging bourgeoisie. Thus, reception embraced everything connected with private property and its free disposition *inter vivos* and *mortis causa*, as well as the legal regulation of developed commodity-money relations. What was received was Roman property law, not Roman criminal law. Yet *actiones populares* stood precisely at the boundary between civil and criminal law and constituted an institution that the new society simply did not require.

Accordingly, there are substantial grounds for concluding that, although *actiones populares* may initially have been applied in Italy as institutions of the *ius commune*, the further development of legal doctrine did not lead to a genuine reception of Roman *actiones populares*. They were neither sufficiently comprehensible to the jurists preparing the reception, nor necessary to the social groups whose interests brought about the reception of Roman law in the first place. The jurists who, beginning in the seventeenth century, constructed new legal principles and systems upon the foundations of Roman law and the achievements of Roman jurisprudence, systems corresponding to the needs of bourgeois society and the modern state, had no reason to incorporate into civil law an institution that had arisen from the specific conditions of a particular phase in the development of the Roman legal system. Within the new legal order, it was simply superfluous. As for the question whether Roman *actiones populares* influenced the emergence of *actiones populares* in certain particular legal systems during the period of developed feudalism, no definitive answer can be given without more detailed research into both the origins of those particular legal systems in general and this issue in particular. Nevertheless, given that *actiones populares* were studied at Italian universities and therefore known to many generations of jurists educated there through their study of Justinian's *Corpus*, it is in principle possible that they served, at least in some instances, as models for the introduction of analogous institutions into the statutory law of the Italian communes. Such a possibility might even be suggested in relation to English law, since, as is well known, the teachings of the glossators were not entirely unknown in medieval England.

On the other hand, as has already been indicated, Roman *actiones populares* undoubtedly played a significant role much later in the introduction of *actiones populares* into modern Italian law.

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