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LEX LAETORIA: WHY SO DIFFICULT?
Aspects and challenges of teaching lex Laetoria – a case-study

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1. Background

It is well-known for anybody versed in Roman law that adults under the age of 25, the so-called *minores* had full capacity, they still enjoyed additional legal protection of a certain kind. This legal protection manifested in the fact that a guardian (*curator*) could be appointed to administer their affairs. In addition to this, a strong statutory protection was granted to *minores*. As for this latter kind of protection, most textbooks contain that a law from around 200 BC, the *lex Laetoria* [*Plaetoria*?] granted multiple remedies.[1] On the one hand, criminal action (*actio poenalis*), a presumable *actio popularis*, could be brought against the person who duped a *minor* in order to play upon their susceptibilities or naiveté. On the other hand, further praetorian remedies were simultaneously eligible against the duper, with two different options: the one was *exceptio legis Laetoriae*, applicable in case of being sued for completion by the other party, whereas the other was *in integrum restitutio*, available in case of apparent damage of the *minor* in the absence of any other remedies. This practically means that after completion, the *minor* only had recourse to *in integrum restitutio*, because there's no further action could be granted on the basis of their transaction with the other partly, because completion naturally dissolves the obligation between them.
From all these pieces of information, the bottom line facts are that *lex Laetoria* granted a criminal action against the duper, and the *praetor* extended the variety of remedies via granting *exceptio* in case of being sued, and *in integrum restitutio* in case of damage with no other remedy to tend to. The second layer of information, where a deeper knowledge and practical

[1] The secondary literature for *lex Laetoria* is ample. Amongst the most important works the following are to be mentioned: Friedrich Karl von SAVIGNY: Schutz der Minderjährigen und Lex Plaetoria 1831. *Vermischte Schriften*, (1850), pp. 321–395.; Félix SENN: *Leges perfectae minus quam perfectae et imperfectae*. A. Rousseau, 1902. pp. 55–69.; William Warwick BUCKLAND: *A text-book of Roman law from Augustus to Justinian*. Cambridge Univ. Press, 1921. p. 171.; Fritz SCHULZ: *Classical Roman law*. Oxford, Clarendon Press, 1951. p. 191.; Wolfgang KUNKEL: *Untersuchungen zur Entwicklung des römischen Kriminalverfahrens in vorsullanischer Zeit*. Abhandlungen der Bayerischen Akademie der Wissenschaften, Philosophisch-Historische Klasse. München, Verl. d. Bayer. Akad. d. Wiss., 1962. pp. 52–53.; Max KASER: *Das römische Privatrecht*. Bd. 1. Handbuch der Altertumswissenschaft. München, C. H. Beck, 1971. 2. Aufl., pp. 276–277.; Max KASER: *Über Verbotsgesetze und verbotswidrige Geschäfte im römischen Recht*. Österreichische Akademie der Wissenschaften, Philosophisch-Historische Klasse. Wien, Verl. d. Österr. Akad. d. Wiss., 1977. pp. 39–42.; Bernardo ALBANESE: *Le persone nel diritto privato romano*. Palermo, Tipografia Montaina, 1979. pp. 514–528.; Settimio DI SALVO: *Lex Laetoria. Minore età e crisi sociale tra il III e il II a. C*. Pubblicazioni della Facoltà di Giurisprudenza dell'Università di Camerino. Napoli, Jovene Editore, 1979. XVI, 340 S.; Andreas WACKE: Zum Rechtsschutz Minderjähriger Gegen Geschäftliche Übervorteilungen. *Tijdschrift voor Rechtsgeschiedenis*, 48 (1980), pp. 203–225.; Hans-Georg KNOTHE: *Die Geschäftsfähigkeit der Minderjährigen in geschichtlicher Entwicklung*. Frankfurt – Bern, Peter Lang Verlag, 1983. pp. 53–68.; Francesco MUSUMECI: L'interpretazione dell'editto sui minori di 25 anni secondo Orfilio e Labeone. In: Silvio ROMANO (ed.): *Nozione, formazione e interpretazione del diritto dall'età romana alle esperienze moderne. Ricerche dedicate al Professor Filippo Gallo*. II. Napoli, Jovene Editore, 1997. pp. 39–58.; Cesare SANFILIPPO: *Istituzioni di diritto romano*. Rubbettino Editore, 2002. 10ª edizione, 60.; Francesco MUSUMECI: *Protezione pretoria dei minori di 25 anni e ius controversum in età imperiale*. Pubblicazioni della Facoltà di Giurisprudenza, Università di Catania. Torino, Giappichelli, 2013. XI, 262 S.; Elisabeth Christine ROBRA: *Die Drittwirkung der Minderjährigenrestitution im klassischen römischen Recht*. Berlin, Duncker & Humblot, 2014. 204 S.

understanding is tested is related to on the one hand the *popularis* nature of the criminal action, and the practical application of *in integrum restitutio* on the other.

2. The framework and background of the act in education

Lex Laetoria comes up in connection with capacity and its restriction. Even the reference to capacity as a notion, or even as an institution is a false friend. Roman law didn't know it expressly, they didn't even name it the way we do today. Still, the fact that they didn't have a notion, nor an institution, doesn't necessarily and automatically mean that they failed to adopt a similar concept. They were aware of the fact that some could be held liable for what they had done, whereas others couldn't, and in turn some are able to administer their affairs alone, while others being temporarily or permanently unfit to do so were given legal aid.
The legal protection granted to *minores* comes up in connection with one of the determinant factors of capacity. Amongst age, gender and mental status, age is the one which is linked with the topic of *lex Laetoria*.
As for age, people according to Roman law are twofold: they're either *puberes* (adults) or *impuberes* (underage). An interesting category in this group was the *pupilli* who are addressed as *impuberi sui iuris*. People reached puberty at the age of 12 (women) / 14 (men) in accordance with the Proculian view later accepted by Justinian. There was also a Sabinian approach of puberty, according to which girls grew adults at the age of 12, boys, however, only when they were able to put up a fight in war. *Impuberes* could be infants under the age of 7, or *impuberes infantia maiores* above this age. Again, *puberes* could be *minores* or *maiores XXV annis*, hence the short designation *minores*.[2]

3. Lex Laetoria in textbooks and manuals

With regard to the education of lex Laetoria, the approach taken by certain authors could be interesting and rewarding to be cited here. It should be noted that this selection doesn't represent a preference, nor does it imply any order of importance. Works cited here are the most well-known and most apparently available textbooks and manuals. At this point only the texts are cited without any further addendum or explanation.

Buckland, A text-book of Roman law from Augustus to Justinian.[3]

> "[…] *l. Plaetoria* […] An action based on fraud on minors seems to have been set up by it, and another, based on acts contrary to the *lex*, to have been introduced not much later. One of these, probably the first, is described by Cicero as a *iudicium publicum rei privatae*. Both of them appear to have been noxal. They leave but little trace in later law. There was also, though no doubt of somewhat later development, an *exceptio legis Plaetoriae*, a defence if an action was brought to enforce the impeached transaction. Further we are told by a non-legal writer of the fourth century that *curatores* were appointed *e lege Plaetoria* for specific causes. This seems to mean not that the *lex* provided for these, but that persons dealing with minors took the precaution of seeing that the minor had an adviser. This was probably a mere *de facto* guarantee of good

[2] With this regard, German terminology interestingly uses the term "Minderjähriger" to designate *minores*, which term means "underage". In detail cf. KNOTHE op. cit. 54.; ROBRA op. cit. passim. However, it seems appropriate to assume that within the framework of Roman law terminology, the term "Minderjähriger" is used in a different sense from the mainstream German usage, because "Minderjähriger" as a technical term appears to dub the Latin expression "*minores*".
[3] BUCKLAND op. cit. (1921), p. 171.

faith. The curator probably acted only in the specific transaction and it may be doubted if he had any legal *status*. The praetor carried the matter further. He supplemented the provisions of the *lex* by a machinery for setting the transaction aside *restitutio in integrum*. Not every unprofitable transaction could be set aside but only one in which either the minor was tricked or he made a bad bargain owing to inexperience, what Ulpian calls *inconsulta facilitas* It was in the hands of the praetor, decided *causa cognita* and on the merits of each case".

Kaser, Das römische Privatrecht.[4]

"Eine lex Plaetoria (vielleicht ‚Laetoria') um 200 v. Chr. führt darum eine weitere Altersstufe ein. Sie schützt die noch nicht 25jährigen beiderlei Geschlechts, ‚minores viginti quinque annis'). Das Gesetz sieht eine pönale actio popularis gegen den vor, der eine Person dieses Alters (sui oder alieni iuris) übervorteilt hat (circumscribere). Der Prätor baut dann den Schutz dieser ‚Minderjährigen' (minores) weiter aus: Er gewährt dem minor zunächst gegen die Klage aus dem Geschäft, bei dem er übervorteilt worden ist, eine ‚exceptio legis Plaetoriae'. Außerdem verheißt sein Edikt, er werde nach seinem Ermessen, d. h. in auch wenn der minor ohne Übervorteilungsabsicht des Gegners benachteiligt worden ist, eine in integrum restitutio geben. Schließlich bestellt er dem minor auf dessen Verlangen einen curator anfangs für einzelne, seit Mark Aurel wohl für alle Geschäfte. Die Geschäfte des mündigen minor bleiben zwar gültig, auch wenn er den Konsens des Kurators, der für dieses oder für alle Geschäfte bestellt worden ist, nicht eingeholt hat. Doch verweigert ihm der Prätor in solchem Fall die Restitution und wohl auch die exceptio."

Honsell, Römisches Recht.[5]

"Eine um das Jahr 204 v. Chr. ergangene *lex Plaetoria* hat noch eine weitere Altersstufe eingeführt, das vollendete 25. Lebensjahr. Jugendliche, die zwar mündig waren, aber dieses Alter noch nicht erreicht hatten (*minores viginti quinque annorum*, Minderjährige), wurden durch dieses Gesetz vor Übervorteilung geschützt. Eine noch weitergehende Hilfe gewährte das prätorische Edikt, indem es dem Minderjährigen die Wiedereinsetzung in den vorigen Stand gewährte (*restitutio in integrum*), wenn er aus Unerfahrenheit oder Leichtsinn ein nachteiliges Geschäft abgeschlossen hatte".

Kaser – Knütel, Römisches Privatrecht.[6]

„Eine **lex Laetoria** (nicht *Plaetoria*) um 200 v. Chr. führte darum eine neue Altersstufe ein. Sie schützt die noch *nicht 25jährigen* Mündigen (*minores viginti quinque annis* oder einfach **minores**, davon heute ‚*Minderjährige*') gegen den, der sie *übervorteilt* hat (*circumscribere*), vermutlich durch eine auf Bußzahlung gerichtete Popularklage (Cic., De nat. deor. 3.30, 74). Der Prätor baut danach aufgrund seines Edikts *De minoribus vigintiquinque annis* (Über Mündige, die jünger als fünfundzwanzig Jahre sind, vgl. D. 4, 4, 1, 1) den Schutz weiter aus: Ergibt dem Minderjährigen gegen die Klage aus dem Geschäft, bei dem er übervorteilt worden ist, eine **Einrede**, die *exceptio legis Laetoriae*. Außerdem gewährt er nach seinem Ermessen, d. h. allenfalls auch dann, wenn der

[4] KASER op. cit. (1971, 2nd ed.), 239.

[5] Heinrich HONSELL: *Römisches Recht*. Berlin – Heidelberg, Springer Verlag, 2010. 7. Aufl. p. 31.

[6] Max KASER – Rolf KNÜTEL: *Römisches Privatrecht*. Kurzlehrbücher für das Juristische Studium. München, C. H. Beck, 2014. 20. Aufl. p. 98.

> Minderjährige durch das Geschäft ohne eine vom Gegner begangene Übervorteilung benachteiligt worden ist, eine **Wiedereinsetzung** in den vorigen Stand *in integrum restitutio*, um die erbrachten Leistungen und die sonstigen Maßnahmen, durch die der minor benachteiligt worden ist, wieder rückgängig zu machen. Auf Verlangen des Minderjährigen bestellt der Prätor ıhm zur Beratung einen **Pfleger** (*curator*), anfangs für einzelne, seit dem Kaiser *Mark Aurel* (2. Hälfte 2.Jh.) für alle Geschäfte. Har der *minor* den *consensus* (die formfreie Zustimmung) des ihm erteilten Kurators nicht erhalten, sind seine Geschäfte gültig, doch schützt ihn der Prätor bei Benachteiligung mit der Wiedereinsetzung oder der genannten Einrede. Die Schutzmaßnahmen des Prätors haben die Popularklage aus der *lex Laetoria* immer mehr zurückgedrängt; Justinian hat sie spurlos beseitigt."

Burdese, Manuale di diritto privato Romano.[7]

> "Già una *lex Plaetoria* o, più probabilmente, *Laetoria de circumspectione adulescentum*, del 200 circa a. C., introduce sanzioni contro chi raggiri i *minores viginti quinque annis*, siano essi *sui* o *alieni iuris*. Successivamente il pretore assicura ai minori di venticinque anni, che risultino raggirati o anche solo danneggiati nella conclusione di un negozio, una più diretta e più ampia protezione, concedendo loro, se raggirati, *un'exceptio* fondata sulla *lex Laetoria* da opporsi alla controparte che agisca sulla base del negozio, e, se danneggiati, anche se non a causa di raggiro altrui, una *restitutio in integrum* diretta ad annullare gli effetti del negozio di per sé valido. Questa è data anche al minore *sui iuris*, purché raggirato, che abbia concluso il negozio con l'assenso di un *curator*, designato dietro sua richiesta dal magistrato. Dopoché il *curator minoris*, a partire da Marco Aurelio, è divenuto un curatore stabile per tutti gli affari del minore. e in età postclassica tendono ad assimilarsi *cura minorum* e *tutela impuberum*, si introduce con Costantino la *venia aetatis*, la possibilità cioè per l'uomo, raggiunti i 20 anni, e per la donna, raggiunti 1 18, di essere esonerati, dietro richiesta, dalla assistenza del curatore, sempreché siano di buoni costumi e di condotta regolare."

These are just some examples of textbooks and manuals citing the rules attributed to *lex Laetoria*. At this point, it would be scientifically interesting to follow and sort out the reasons why the name of the law had changed.[8] Again, the actual description of what the Romans considered dupe (*circumscriptio*), or even whether the actual deed is to deceive, to mislead, to delude, to dupe, or rather to hoodwink would likewise be very rewarding to examine. Questions related to the diverse Latin terminology, such as *minor captus* or *deceptus*, *circumscriptus*, *circumventus* or *lapsus* also induce further scientific investigation.[9] The issues whether *lex Laetoria* was a *lex imperfecta* or something else[10] with regard to its sanction, and if it implied an *actio popularis* or a *iudicium publicum*[11] are also dealt with in secondary literature. Still, we have to stick to the actual issues and challenges of teaching this institution.

4. Difficulties, general mistakes

[7] Alberto BURDESE: *Manuale di diritto privato romano*. Torino, UTET, 1995. 4. ed. p. 142.

[8] As for *Plaetoria* Savigny, Senn, Girard, Buckland, Knothe and from recent literature Robra is to be mentioned. The form *Laetoria* is used mainly by Di Salvo and Musumeci in Italian literature, as well as Kaser and Wacke. Bibliographical references are cited in footnote no. 1.

[9] On this cf. MUSUMECI op. cit. (2013). pp. 66–102.

[10] See KASER op. cit. (1977). p. 40., with literature.

[11] Cf. Max KASER: *Das römische Zivilprozeßrecht*. Handbuch der Altertumswissenschaft, Abteilung 10, Rechtsgeschichte des Altertums. München, Verlag C. H. Beck, 1996. 2. Aufl. 164. and Ld. KUNKEL op. cit. 51–53.

At this instance I take the term "teaching" as handing certain pieces of information down and over to students. This activity implies two abstract methods of approaching and handling information.
The first one is that information is handed down to students in a sense that there's a considerable generation gap now, which has almost nothing to do with age, but rather with the fact how today's students symbiotically depend on their devices (cell phones, tablets, laptops, and any other devices). At this point, it could be extremely rewarding, mainly because there's an immense information pool behind these devices, all to be found on the internet. However, as a result of the fact that students are able to obtain simple responses on the net relatively quickly, no matter what the actual question was, they might as well fall into two inherent traps. The one is that they immediately lose attention and interest when something is long or fails their requirement to be simple. Thus handing down information requires us to do so in a concise way. The second trap is that they are far from being versed to differentiate between information and information based on quality, and therefore they often end up being unable to choose the appropriate sources of information.
The second method to handle and approach information forces us to hand any pieces of information over to students, which requires us to find the appropriate form: that is how to place the information, how to edit the text, which emphasise to use, etc.
The reference to the textbooks and manuals cited above was necessary, because reading these passages and excerpts attentively, we quickly realise that they add several factors to our basic difficulty of approaching and handling information.
There are elements which are consistently present in each of the texts:

a) a transaction between the minor and a third party is presupposed within the framework of this particular act;
b) *iudicium publicum*, the character of being a "Popularklage" or "Bußklage";
c) the meaning and the nature of *circumscriptio*;
d) the actual mechanism of *exceptio* and *in integrum restitutio*.

At this point, suffice it to present how our textbooks and manuals in question mention the last two elements of the list above.
Kaser (Knüttel) and Burdese separate dupe (Übervorteilung, raggirati) and damage (Benachteiligung, danneggiati) at first. In addition, they inherently set up a one-way relation between the two: if one is duped, damage may follow necessarily, but if one suffered damage, it isn't necessarily the result of having been duped. In other words, damage may emerge from other sources than dupe.
I deem this relation inherent due to the fact that they don't linger with mentioning this one-way logic, but we can trace them when they cite the rules of *lex Laetoria* concerning the applicability of *exceptio* and *in integrum restitutio*. Kaser (Knütel) expressly say that *in integrum restitutio* is only applicable, when there's no tendentious intention to dupe the *minor*.

a) They both state that *exceptio* was granted to give a means to the *minor* to defend themselves from the action brought against him on the basis of the transaction, when the *minor* was duped by the third party. (Cf. "Ergibt dem Minderjährigen gegen die Klage aus dem Geschäft, bei dem er übervorteilt worden ist, eine Einrede, die *exceptio legis Laetoriae*" / "[…] concedendo loro, se raggirati, *un'exceptio* fondata sulla *lex Laetoria* da opporsi alla controparte che agisca sulla base del negozio […]"
b) *In integrum restitutio* is used when the *minor* is not duped, yet there's an obvious damage that occurs at the end of the day. ("Außerdem gewährt er nach seinem Ermessen, d. h. allenfalls auch dann, wenn der Minderjährige durch das Geschäft ohne eine vom Gegner begangene Übervorteilung benachteiligt worden ist, eine

Wiedereinsetzung in den vorigen Stand *in integrum restitutio*" / "[…] e, se danneggiati, anche se non a causa di raggiro altrui, una *restitutio in integrum* diretta ad annullare gli effetti del negozio di per sé valido."

Buckland, however, claims that the *exceptio* was due if an action was brought to enforce the impeached transaction, whereas *in integrum restitutio* was another, additional means for the praetor to set the transaction aside as sort of a supplement to the provisions of the *lex*.
When we come back to students at this point, general mistakes as batches could be enumerated here. These batches are not formed on a scientific basis; they are the first-hand depiction of overall empirical experience. In addition, I also take the liberty to point out why these general mistakes result in any sort of defect in knowledge.

a) Students don't know anything about *lex Laetoria*. This comes in two different forms. When ask directly about the content, and they are ignorant, it's downright problematic, since a particular amount of knowledge actually missing. If, however, they come across *lex Laetoria* within the framework of a particular case and they fail to recognise that this act should be applied here, it's still a grave issue, but it may as well indicate that the skill of considering abstract concepts is not fully developed.
b) Again, it occurs on several occasions that students bear some rudimentary pieces of information pertaining to *minores*, deceit and *in integrum restitutio*. These are, however, merely keywords, and it is again downright problematic, because besides indicating the lack of capacity to fully and properly outline a particular rule, in most cases it also expose the uncomfortable truth that some students take keywords and misty information for actual and solid knowledge. The truth is with such an attitude they would hardly be able to gather a clientele or respond successfully to workplace requirements.
c) Some students erroneously do not recognise the fact that *lex Laetoria* decreed the appointment of a guardian for a *minor*, and they fail to recognise that action-based legal remedies, such as *exceptio* and *in integrum restitutio* are praetorian remedies, legal aids, attributed by the praetors to whoever petitioned these, and had a justifiable cause thereupon. Still, the means of regulating such aids was not legislation, but praetorian edict; hence the background of the whole concept here is different. It's a nice application of what Papinian claims in the Digest that *ius praetorium* was introduced *adiuvandi, suppplendi, corrigendi iuris civilis gratia* (cf. Pap. D. 1, 1, 7, 1[2 def.]).

5. A case-study of practical education

Mainly amongst seminary circumstances, we have the opportunity to invent a practical case which aims to support a better understanding of what *lex Laetoria* was about. Within the general framework of the case there's a 20-year-old Roman citizen purchases a horse from an adult merchant, who determines a far higher price for the horse than its common market value. The horse is transferred instantly, but the merchant agrees the price to be payed the next day. At this point, the actual form of the purchase is irrelevant; it might be mentioned that it could be a promise of sale and purchase, containing explicit promise of paying the price (*stipuatio*).
In version A, the 20-year-old buyer isn't aware of this fact at first, they conclude the sale, the horse is handed over, but before payment is due, the buyer finds out about the high price and wouldn't pay. The merchant sues for completion. The buyer seeks praetorian advice and protection in this case. We ask if there's any, and if yes, on which grounds.
This is a nice example of how *exception* worked, how it sticks to the role of the defendant.
In version B, the buyer is ignorant of the fact that the horse is much more expensive than its casual value. The horse is transferred, and he pays the price the next day. Then a neighbour

informs him on the current prices. The buyer seeks praetorian advice and protection in this case. The same questions apply as above.
This brings in the application of *in integrum restitutio*. Most students quickly realise that with the contract fulfilled, the obligation between the parties also dissolves, so the only way out is restitution.
Additionally, a further case-variant could be used, when we set the stage so that the 20-year-old Roman citizen is granted *peculium* by his father purchases a horse from an adult merchant, who determines a far higher price for the horse than its common market value. The horse is transferred instantly, but the merchant agrees the price to be payed the next day.
This case could be presented with versions **A** and **B** respectively. Here the point is to emphasise that *peculium* is the property of the father and it remains so even after being granted to the minor. Therefore, it's not the minor who sustains damage, as a consequence the *exceptio* or the *in integrum restitutio* is not granted here. With advanced students, it could be mentioned that the situation in the praetorian edict was more complex, and decisions were never so cut-and-dry, but generally it is sufficient to point out the main differences between the two cases.
As a summary, both the sources and the secondary literature with textbooks and manuals included show that *lex Laetoria* was complex. Complex, but not complicated, and it was a means of settling disputes. Additionally, it is a good means of presentation how praetorian remedies worked in practice. With students of a new era, we are bound to respond all the challenges induced by secondary education, and we shouldn't be afraid to rely on those means and devices which are around us, especially because our students use them as an additional arm, sort of an extension of their persona.

SUMMARY

Lex Laetoria as a piece of Roman legislation from around 200 BC ordered that adults under the age of 25, the so-called *minores*, while having full capacity, are granted additional legal protection in the form of a guardian (*curator*), and additionally a criminal action (*actio poenalis*), a presumable *actio popularis*, could be brought against the person who duped a *minor* in order to play upon their susceptibilities or naiveté. On the grounds of this law, further praetorian remedies were made eligible against the duper, with two different options: the one was *exceptio*, applicable in case of being sued for completion by the other party, whereas the other was *in integrum restitutio*, available in case of apparent damage of the *minor* in the absence of any other remedies, which practically referred to an after-completion phase of the contract in question.

This short paper is aiming to present *lex Laetoria* not from a scientific, but rather from an educational aspect, trying to outline some general difficulties of legal education, and many of the challenges realted to this particular legislative measure in Roman law. Through the presentation of a classical case, the case-based approach of Roman jurists could also be presented via this act, and the extensions carried out in praetorian edict.