The Roman Legal Treatment of Self Defense and the Private Possession of Weapons in the *Codex Justinianus*

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The Corpus Iuris Civilis*—a collection of ancient Roman statutes and juristic writings since the age of Cicero—has had a profound effect on the development of modern law. This article examines how* the Codex Justinianus*, one fourth of the* Corpus*, regulated the private individual's ability to own weapons and engage in self defense. The Article finds that provisions in the* Codex *are generally very supportive of an individual's right to self defense. Though the Codex's treatment of the private possession of weapons is mixed, the Article draws on historical context (widespread slavery, constant threat of barbarian invasion) and identifies background assumptions behind many* Codex *provisions to argue that private ownership of weapons must in fact have been commonplace. The Article offers new English translations of many Roman laws for which no adequate English translation currently exists.*

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By the time Justinian succeeded to power in Constantinople in A.D. 527, the Roman Empire was in serious decline. The Empire no longer stretched from the Firth of Forth in Scotland to the walls of ancient Jerusalem. Africa and the western provinces had been overrun by Goths and Vandals; Rome itself was no longer in the Emperor's hands. The eastern borders were besieged by a formidable alliance of Persians and Armenians, who managed to sack Antioch, the capital of the important eastern province of Syria, in A.D. 540.

Justinian took control of the Empire with two ambitious plans in mind. The first—the *renovatio* of Italy and the West—met with initial successes. Roman generals retook Africa, drove the Goths out of Italy, and regained a foothold in Spain. But the project to reclaim the West was abandoned by Justinian's successors and ultimately failed. Justinian's second plan—the systematic codification of the vast, overlapping, contradictory archives of Roman law—was destined to have a more lasting impact.

In less than a decade, a committee of legal scholars selected by Justinian condensed six centuries of Roman law into a set of manageable treatises. The first, known as the *Codex Justinianus* ("Code"), was issued in A.D. 529 and contained a comprehensive systematization of thousands of scattered imperial enactments since the reign of Hadrian (A.D. 117-138).[i] The Code was soon joined by the *Digesta* ("Digest")—or the *Pandectae*, in its Greek name—a codification in fifty books of extant juristic writings, some from authors so ancient that they would have been known to Cicero, the great lawyer and orator of the last days of the Roman republic.[ii]

In A.D. 534, Justinian's committee produced an additional work, an introductory textbook for beginning Roman law students, named the *Institutiones* ("Institutes").[iii] In the same year, the committee promulgated a second edition of the Code (*Codex repetitae praelectionis*), as the earlier version had been superseded in part by a plethora of fresh imperial enactments.[iv] It is this second edition which survives to us today, and which, along with the Digest, the Institutes, and a small group of imperial laws which post-date the revised Code, the *Novellae constitutiones* ("Novels"),[v] comprises what is now known to us as the *Corpus Iuris Civilis* ("*CJC*"): the "Body of Civil Law."

The *CJC*'s influence on the development of modern law has been profound. In the East, Byzantine emperors after Justinian used the *CJC* to administer their famously complex bureaucracy for nearly a millennium. In the West, the *CJC* was incorporated by early church fathers into canon law, and though the *CJC* was eclipsed for several centuries by the codes of Rome's Germanic conquerors, it was revived in the 12th century by early Italian Renaissance scholars. It survives to this day (in extensively revised form) in the civil law systems of the various western European continental states, as well as in their former colonies worldwide—and in one U.S. state, Louisiana.

This article examines provisions in one of the *CJC*'s four works, the Code, which regulate self-defense and the possession and use of weapons by private individuals. The most recent English translation of the Code is by Samuel Parsons Scott, was last revised in 1932, and is notoriously unreliable.[vi] Therefore, all

provisions from the Code which appear in this article have been retranslated from the original Latin. The Latin text used for this purpose is the Krueger/Mommsen edition of the *CJC*, published last in 1954.[vii]

I. SELF DEFENSE

Roman law was very protective of the individual's right to defend himself and his property from violence, whether offered by a thief on a darkened highway or a soldier in search of plunder.[viii] A provision attributed to the late fourth century A.D. reads:

> We grant to all persons the unrestricted power to defend themselves (*liberam resistendi cunctis tribuimus facultatem*), so that it is proper to subject anyone, whether a private person or a soldier, who trespasses upon fields at night in search of plunder, or lays by busy roads plotting to assault passers-by, to immediate punishment in accordance with the authority granted to all (*permissa cuicumque licentia dignus ilico supplicio subiugetur*). Let him suffer the death which he threatened and incur that which he intended (*Codex Justinianus* ("*CJ*") 3.27.1).

The legislator then explains the rationale for this provision, stating, "For it is better to meet the danger at the time, than to obtain legal redress (*vindicare*) after one's death." And he concludes:

> We therefore permit you to seek your own revenge (*ultionem*) and we join to this decree those situations which a legal judgment would be too late to remedy (*quod serum est punire iudicio*). Thus, let no one shrink from facing (*parcat*) a soldier, whom it is fitting to challenge with a weapon (*telo*), just as it is fitting to challenge a thief (A.D. 391).[ix]

This provision recognizes not only an individual's right to self defense, but explicitly permits the private use of a weapon (*telum*) for the purpose of countering an assailant as well.[x]

Similar language can be found in Book Nine, in a series of provisions relating to protection against murderers (*sicarii*). The first states: "He who, when placed in peril (*discrimine constitutus*) and in doubt of his life, has killed his aggressor or anyone else, ought not to fear malicious prosecution (*calumniam*) on account of such an act" (*CJ*.9.16.2, A.D. 243). The second states: "If, as you say, you have killed a highway robber (*latrocinantem*), there is no doubt that he who first possessed the intention of committing murder (*inferendae caedis voluntate praecesserat*) is viewed as rightfully killed" (*CJ*.9.16.3(4), A.D. 265). Unlike the first provision quoted above, there is no explicit mention of weapons in these provisions. It is unlikely, however, that the abstract right to defend oneself from a highwayman would have been worth much if the law did not also presume that private individuals had the ability to possess weapons of some kind.

In addition to recognizing the basic right to defend one's life from assassins and thieves, the Code contains various provisions specifically addressing a private individual's right to defend his property. For instance, there is a provision from the late third century A.D. which states: "A rightful owner may, for the purpose of defending his property which he was holding without defect of title, repel (using the moderation of a blameless guardian) any force which has been brought against him (*inculpatae tutelae moderatione…vim propulsare licet*)" (*CJ*.8.4.1, A.D. 290).[xi] Again, this provision makes no explicit reference to weapons. It again seems clear, however, since creditors seeking to seize property sometimes utilized weapons for this purpose,[xii] that lawful owners attempting to exercise the right to defend their property must have been entitled to use weapons as well; otherwise, the privilege this provision creates would also have turned out to be largely worthless.

Private persons were entitled to defend their property from overzealous creditors, or, as in the following provision, from government agents acting outside the color of law:

> All whom this decree interests are permitted to lay hands on (*obicere manus*) those who have come for the purpose of seizing the property of anyone who has submitted to the laws, so that, even if officials should dare to depart from the terms of this law (*a tenore datae legis desistere*), they may be prevented from causing injury by the resistance of private persons themselves (*ipsis privatis*

resistentibus a facienda iniuria arceantur) (*CJ*.10.1.5, no date).[xiii]

The fact that permission is granted in this case only to *obicere manus*—"use one's fists"—suggests that here, at least, the use of weapons as a means of private resistance was beyond the scope of this provision.

Related to the right to defend one's life or property was the obligation, recognized in at least one location in the Code, to defend the life or property of another. Slaves, for instance, in addition to being rewarded with their freedom for helping to convict their former master's killer,[xiv] were required to defend their living masters from a sudden attack:

> We, therefore, desiring to cut off every opportunity for slaves to avoid being punished for the neglect of their master's health, decree that all slaves, wherever they are—in the house, on the highway, in the fields—if they should hear their master's cries or perceive an attack, but do not bring assistance, are to be subjected to the punishment decreed by the Senate. They must, whenever they sense their master is in danger, rush to prevent him from being ambushed (*CJ*.6.35.12, A.D. 532).

A host of similar provisions obligated various persons—sons of murdered fathers,[xv] cousins,[xvi] siblings,[xvii] or any other heir who stood to benefit from a murdered person's will[xviii]—to "avenge" (*ulciscor*), or "vindicate" (*vindicare*), or at least not leave unavenged (*inultus*), the deceased, before they could claim any property or testamentary gift. It is unclear, however, whether "vengeance" in this sense meant actual physical reprisal, o rather, as is perhaps more likely, merely the duty to pursue to fruition a criminal charge against the alleged murderer in a court of law.[xix]

II. Private Possession of Weapons

The provisions examined in Part I entitled individuals to defend themselves and their property from attack, theft, or illegal seizure and, at least in one circumstance, to defend or "avenge" the life of someone else. In order for any of these provisions to be meaningful, the private ownership of weapons must have been commonplace. The abstract right to defend one's life, for instance, as one traveled along a deserted highway or slept alone in one's farmhouse at night and encountered an armed robber or soldier threatening violence, would have been of little value unless adequate means of self-defense happened to be present as well. A hoe or stick or stone or some other common household instrument not commonly termed a weapon would have been unsuitable for meeting a heavily armed soldier's sudden onslaught.

The manner in which Roman law treated the private ownership of weapons was contradictory, and not always permissive. Indeed, it seems the Code could hardly have been less permissive on the question of private weapon ownership than it was in the provision which reads: "Absolutely no one is granted the ability to wield arms (*nulli…armorum movendorum copia tribuatur*) of any description whatsoever without our knowledge and consent" (*CJ*.11.47(46).1, A.D. 364).[xx]

Or could it? The Latin phrasing in this provision is ambiguous: though *movendorum* can indeed be translated, as Scott translates it and as it has been translated here, as "bearing" or "wielding,"[xxi] it can also be translated in its more literal sense: "moving," "transporting." Thus, the provision might be interpreted instead to forbid the unauthorized transportation of arms shipments, rather than the personal possession of arms. This alternative translation receives indirect support, at least, from a separate provision in the Code which regulates the transportation of arms for the military, indicating that this was perhaps one of the legislators' special concerns.[xxii]

The problem is that, because so many of the provisions which appear in the Code, this one in particular, are so heavily excerpted—that is, they appear in relative textual isolation, without any surrounding context at all to help determine their precise meaning—it becomes difficult to say with complete certainty what sort of conduct they were intended to address.[xxiii]

Even if this provision could be read definitively to deny the individual right to carry weapons, it is dated only to the year A.D. 364, and imposes its ban prospectively. Thus, prior to 364—that is, for the great bulk of Roman history—it is possible, even likely, that the law would have adopted a more permissive attitude toward

the presence of weapons in private hands. (The statute is, after all, most likely reacting *against* some state of affairs existing prior to its passage.) And even after this provision would have gone into effect, it was still possible, as the provision indicates, to obtain the government's consent to escape being covered by the prohibition.

Significantly, the restrictive law was repealed in A.D. 440, long before the *CJC* was composed. Although the repeal statute is not reprinted in the Code, the Code does appear to recognize a state of affairs in which armament was widespread. Valentinian's decree, a response to barbarian attacks in some coastal areas, urged private citizens to take up arms:

> By this edict we urge one and all, with confidence in the strength of Rome and with the courage with which one's own ought to be defended (*propria defansari*), to use, if the occasion demands it, along with one's close relatives and friends (*cum suis*), whatever arms they can (*quibus potuerint utantur armis*) against the enemy, preserving public discipline and the dignity attending their station; and to protect, in faithful concert and with a united front, our provinces and their own fortunes. (*Nov.Val.* IX, A.D. 440).

A. Barbarians

When it came to individuals other than Roman citizens owning weapons, the Code tended to be much less ambiguous. For understandable reasons, the Romans imposed a heavy penalty on arms merchants or manufacturers foolish enough to peddle their wares to barbarian tribes:

> Let no one dare to sell to foreign-born barbarians of any race whatsoever, who claim to have come to this most holy city on an embassy, or on any other errand, or to any other city or place, leather cuirasses *(loricas),* shields *(scuta),* arrows for the bow *(arcus sagittas),* doubled-edged swords *(spathas),* ordinary swords *(gladios),* or arms *(arma)* of any other type. Not a single weapon *(tela)* and absolutely nothing made of iron, finished or still unfinished, is to be sold to these same persons in pieces *(distrahatur)* by any person. For it is destructive to the Roman Empire and next to treasonous to furnish such barbarians, who should be deprived of these things, with weapons *(telis),* with the result that they become more fearsome. If anyone, moreover, has sold in any place to foreign-born barbarians from any nation any kind of arms *(aliquid armorum genus)* contrary to the piety of our laws, we decree that his entire property immediately be confiscated and added to the public treasury, and that he also suffer the penalty of death (CJ.4.41.2, a.d. 455-57).xxiv

The severe penalty affixed to the sale of arms to barbarians reflected the Romans' abiding concern with the restless hordes constantly threatening their Asian, African, and European borders. Indeed, as Brunt suggests, it would seem to contravene common sense to suppose that the Emperor would ever have desired loyal inhabitants of the border provinces, who would have been useful for quelling insurrections or fending off barbarian invasions, especially in those vast areas where no Roman troops were stationed, to be disarmed.[xxv]

B. Slaves

If the law was prejudiced toward barbarians, it evinced a similar suspicion toward slaves, a group which could threaten Roman society from within:

> We desire that license to harbor cattle thieves (*bucellarios*), Isaurians, and armed slaves (*armatos servos*) be foreclosed to all persons, both in the towns and in the countryside. But if anyone, contrary to this law which we, in our clemency, have advantageously provided, has attempted to entertain armed slaves (*armata mancipia*), Isaurians, or cattle thieves on his estates or near to himself, we order that he undergo a most severe punishment, after having been sentenced to pay a fine of a hundred pounds of gold (*CJ*.9.12.10, A.D. 468). (*Isaurians were barbarians in Asia Minor*.)

Similarly, armed slaves were not afforded the traditional right of immunity belonging to accused persons seeking refuge in a church or other sanctuary. The Code permitted, indeed obligated, their masters to roust them out:

> If anyone's slave, while armed (*armatus*) and with no one observing it, unexpectedly takes refuge in a church or at an altar, let him be removed at once therefrom, or let the situation at least be indicated to his nearest master or to the person from whom so insane a terror drove him away, and let a present opportunity to remove the slave not be denied this person. But if, with madness urging him on, trust in his arms (*armorum fiducia*) has kindled the slave's spirit of resistance, his master is granted the power to remove and take him away, using the force with which it is possible to achieve this. But if it happens that in the midst of the dispute and the fight the slave is killed, the master will not be blamed for this (*nulla erit eius noxa*), nor will any ground for a criminal prosecution remain (*conflandae criminationis…occasio*), if he who has leapt from the servile condition to that of an enemy and a murderer should lose his life (*CJ*.1.12.4, A.D. 432).

Like many of the provisions examined above, this provision also, by authorizing the use of force to overcome the resistance of an armed slave, appears necessarily to contemplate the private owner's reliance on some kind of weapon. The owner could hardly be expected to use his bare hands alone for this purpose.

Indeed, just as it is unlikely that the law would have disarmed loyal border inhabitants in an age of ever-present barbarian menace, it would also seem unlikely that, in a society as dependent on slave labor as Rome, the law would have forbidden private citizens, some of whom probably owned many hundreds of slaves or more, from arming themselves as a protection against slave disobedience, escape, or revolt. Though there is no provision in the Code which deals neatly with this issue, other provisions do imply that private owners were entitled to use weapons as a means of keeping their slave populations in check. For instance:

> If a master has struck his slave with stripes (*virgis*) or whips (*loris*), or, for the sake of keeping him in custody, has placed him in chains, after any distinction or explanation based on the time of his confinement has been rejected (*dierum distinctione sive interpretatione depulsa*), the master need endure no fear of criminal prosecution for having killed the slave. Let him not exercise this right immoderately, but let him be charged with homicide, if he should kill the slave through intentional blows with rods (*fustis*) or stones; or certainly if he should inflict a fatal wound with a weapon (*telo*); or order the slave to be suspended from a noose; or direct him with a disgraceful command to be hurled from a precipice (*praecipitandum esse*); or pour him a glass of poison; or mutilate his body publicly, either by applying iron hooks (*ferarum unguibus*) to his sides or by burning his limbs with the application of fire; or should force, exhibiting the savagery of wild barbarians, the slave's wasting limbs, flowing with black blood and gore almost onto the instruments of torture themselves (*atro sanguine permixta sanie defluentes prope in ipsis…cruciatibus*), to relinquish their hold on life (*CJ*.9.14.1, A.D. 319).

This provision graphically illustrates the brutal lengths to which some slaveowners might go in seeking to punish their slaves. More important for our purposes, however, it also illustrates that slaveowners were ordinarily permitted to punish their slaves with nonlethal weapons—whips and chains—as well as with lethal weapons (*tela*), provided the slave did not in fact die as a result of the punishment. Thus, the law again seems to presuppose the private individual's ability to own or possess weapons of some kind, in this case for the purpose of maintaining the obedience of slaves.

C. Hunting

This presupposition is also evident in the provisions dealing with hunting. Hunting, today pursued largely for recreational purposes, in ancient Rome would have played a far more practical role—feeding, clothing, and also protecting individuals from the threat posed by wild beasts: "We give the power (*potestatem*) to everyone to kill lions, and we do not allow anyone to fear any kind of malicious prosecution on this account" (*CJ*.11.45(44).1, A.D. 414). Without the ability to carry weapons, of course, the permission this provision grants—not just to soldiers, but to "everyone"—to kill lions certainly would not have amounted to much, as

few lions, one imagines, would have submitted to the indignity of being slain by an unarmed human foe. Of course, hunters might have relied on traps as well, but probably not exclusively.

D. Criminals

Finally, weapons were not always used for strictly licit purposes, and the Code occasionally addresses weapons in the criminal context as well: "Let anyone who has traveled about with a weapon (*cum telo*) with the intention of killing a man (*hominis necandi causa*), just as he who has actually killed someone or on account of whose malicious deceit such an act has been committed, be punished in accordance with the *Lex Cornelia* relating to murderers" (*CJ*.9.16.6(7), A.D. 374).[xxvi] Note in particular how this law criminalizes the *intent* to commit murder while armed, but not the carriage of arms *per se*; if possessing arms on its own were illegal, we would not expect the presence or absence of intent to matter.[xxvii]

CONCLUSION

The *CJC* constitutes an enormous body of law, in which the Code occupies only a small and, as compared to the Digest, rather unimportant place. It is still useful, however, to examine the Code, since it is manageable, gives a good overall impression of the content of Roman law, and has not been adequately revised in its English translation for several generations.

When an innocent man's life or property was faced with violence, Roman law demonstrated a pervasive respect for his right to self defense. It permitted threatened individuals to kill thieves, soldiers, and other violent attackers and to drive off or, if necessary, to kill creditors or government agents who had come to seize property illegally. In many instances it recognized, expressly or by implication, an individual's ability to own or possess weapons as a means of procuring his self defense.

Though the unauthorized carrying of arms was perhaps prohibited after the mid fourth-century, the Code indicates that prior to that time, at least, private weapon ownership was commonplace. Weapons allowed private individuals not only to defend themselves from violent assault and their property from illegal seizure, but also to hunt, to punish and recapture and maintain the obedience of slaves, and to protect the Roman *imperium* itself from barbarian invasion or internal revolt. Under these circumstances, Rome seemingly would have had little to gain by disarming her citizens, and potentially much to lose. Nor is it clear, in any case, that complete disarmament would even have been practicable.[xxviii]

Much of the law of the modern world can trace its source to these ancient precedents. The *CJC* grounds the legal systems of a dozen civilized nations—France, Germany, Japan, Italy, Spain, Brazil, to name a few. Even countries whose laws derive from a mostly independent source—such as our the United States Constitution—can find in these dusty statute-books, written for a vanished society in a long-dead foreign tongue, a kindred spirit. The right to self defense and its concomitant, the right to bear arms, have enjoyed significant support in the Roman law roots of the western legal tradition.

ENDNOTES

[1]. W.W. Buckland, A TEXT-BOOK OF ROMAN LAW FROM AUGUSTUS TO JUSTINIAN 38-40 (1921).

[2] *Id.* at 41-46.

[3]. *Id.* at 46.

[4]. *Id.* at 47.

[v]. *Id.* at 48-49.

[6]. S.P. Scott, 6-7 THE CIVIL LAW (1932). For Scott's notorious unreliability, *see*, *e.g.*, O.F. Robinson, THE SOURCES OF ROMAN LAW 57 n.11 (1997).

[7]. 2 CORPUS IURIS CIVILIS (Paul Krueger and Thedorus Mommsen eds., 1954). The Latin text can also be found on the web at <http://www.upmf-grenoble.fr/Haiti/Cours/Ak/codjust.htm> (last visited March 22, 2004) or <http://www.gmu.edu/
departments/fld/CLASSICS/justinian.html> (last visited March 22, 2004).

[viii]. It is somewhat anachronistic and perhaps even misleading to speak of a "right to self defense" or a "right to bear arms" within the context of Roman law. The Romans, of course, did not have access to our thinkers or our political history; they would have thought about these things in a different way than we do. Nevertheless, this Article will sometimes employ the term "right" as shorthand for identifying a concept familiar to the modern reader. Although the Romans did not use the modern conceptual framework of rights, the Romans did intuite the existence of rights.

[9]. The provision immediately following reads:

> We grant to the inhabitants of provinces the power by law to arrest deserters (*opprimendorum desertorum facultatem*). If they dare to resist, we order them to be punished swiftly, wherever they are. Let all persons know that, for the sake of the common peace, they are granted the authority to exercise public vengeance (*ius…exercendae publicae ultionis indultum*) against public thieves and deserters from the army (*CJ*.3.27.2, A.D. 403).

This provision also apparently recognizes that private individuals could possess their own weapons: how else would they have been able, as the legislator here encourages them, to arrest deserters, who presumably would have been heavily armed themselves?

[x]. What kinds of weapons would likely have been meant by the word *telum*? *Telum* is generic in a sense, and could apparently refer both to military arms (missiles, spears, javelins), as well as to *vilia arma*, or everyday weapons, such as daggers, shafts, axes, etc. In its broadest sense it was simply something sharp and metallic which could be used either for thrusting or for sending toward an enemy through the air and which was capable of inflicting a fatal wound. The word *arma*, on the other hand, though also generic in a sense, tended to be reserved mostly for military weapons—a soldier's accoutrement, such as heavy swords, shields, javelins, bows, etc.

[11]. The "moderation of a blameless guardian" is a strange phrasing. It appears to have been a term of art in Roman law, adopted by the framers of canon law as well, meaning something like: "the least amount of harm that one need cause to an aggressor in order to successfully defend his own life."

[12]. For example, a provision in Book Four states:

> People who deny that they are debtors *should not be threatened by armed force* (*armata vi*), but should be discharged from liability if the plaintiff does not prove his case (*petitore…non implente suam intentionem*), or if the exception is withdrawn; but if they are convicted they should be condemned and compelled to make payment by means of legal remedies (*CJ*.4.10.9, A.D. 294 (emphasis added)).

In conjunction with *CJ*.8.4.1 (noted above), this provision suggests that private persons, who were entitled to repulse creditors who came to seize their property unjustly, must have been allowed to use weapons for this purpose, if the creditors themselves were armed.

[13]. A somewhat related law vested in the hands of managers of public property and also private citizens the power to expel (*expellandi facultatem*), for the sake of the Emperor's *serenitas*, from any of the Emperor's estates any surveyor (*metator*) come for the purpose of fixing boundary-markers. *CJ*.12.40(41).5.

[14]. *See CJ*.7.13.1.

[15]. *CJ*.2.40(41).1; *CJ*.6.35.6.

[16]. *CJ*.9.1.4.

[17]. *CJ*.6.35.9-10.

[18]. *CJ*.6.35.1.

[xix]. There was at least one set of circumstances, however, in which extra-judicial punishment was expressly authorized, as an undated provision from Book Nine informs us:

> If Gracchus, whom Numerius killed after catching him at night in the act of adultery, was of the condition such that he could be killed with impunity under the *Lex Julia*, then that which was lawfully

done merits no penalty. The same thing must be proved by his sons (*idem filiis…praestandum est*) who were obeying their father's orders (*CJ*.9.9.4, no date).

The *Lex Julia de adulteriis coercendis* was passed in 17 B.C. by Emperor Augustus in an effort to deter a practice which was becoming distressingly prevalent, at least from the Emperor's perspective. (His own daughter was a notorious sexual profligate.) It is conceivable, and perhaps even likely, that Numerius (and other cuckolded husbands in similar situations) was able to do away with his wife's lover by means of his bare hands or with some ordinary household implement seized in the heat of the moment and put to an irregular use. It is also, however, at least plausible that Numerius accomplished his revenge by means of a weapon properly described, either carried on his person or stored somewhere in his home, before the unfortunate paramour could manage his escape.

[20]. *Cf. Dig*.48.6.1 ("Whoever has collected arms (*arma tela . . . coegerit*) in his home or fields or in his villa, unless for the purpose (*usum*) of hunting or for making a journey by land or by sea, will be found liable under the *Lex Julia* concerning public violence."). Note the two exceptions, as well as the fact that this provision prohibits only the "collection" of arms (i.e., for seditious purposes), not the mere possession of arms *per se*. It seems difficult, to say the least, to reconcile this explicit license to carry weapons for hunting and traveling (which dates to the early third century A.D.) with the apparent flat prohibition on private weapon ownership found here in the Code. One should perhaps note at this point that the Digest is considered more authoritative than its companion volumes. For a discussion of the above-cited provision as well as a treatment in general of the ownership of arms by private individuals in ancient Rome, *see* P.A. Brunt, *Did Imperial Rome Disarm Her Subjects?*, 29 PHOENIX 260 (1975) (answering in the negative).

[xxi]. *Cf.* Vergil, *Aeneid* XII.6, *movet arma leo* ("the lion brandishes its arms").

[22]. The provision reads, in relevant part:

> Whenever requisitions (*angariae*) are reasonably necessary for the transportation of arms (*translatione armorum*), your highness shall order a letter to be sent to the most eminent prefect which shall indicate to him the quantity of arms (*numerum…armorum*) and the place from which they are to be transferred (*transferenda*), in order that the prefect immediately gather together the most illustrious governors of the province regarding the requisitions that must be made in proportion to the number of arms that are transferred (*pro numero eorum quae transferuntur armorum*) in accordance with your instruction, so that, following the notice sent by your highness, ships or other requisitions are immediately offered at public expense (*CJ*.11.10(9).7, no date).

[xxiii]. An additional problem is that we can not know for certain whether the legislator in this provision intended to mean something specific by using the word *arma* as opposed to the word *tela*. *See* note 10, *supra*. To the extent one can draw a sharp distinction between the meanings of these two words, it may be possible to read this provision as forbidding the possession by private individuals of *military* arms (*arma*)—swords, shields, javelins, bows—while leaving the possession of ordinary weapons (*tela*)—daggers, shafts, axes, small-swords—untouched. Again, given the lack of context, it may be impossible to tell for certain.

[24]. Note the apparently sharp distinction drawn in this provision between *arma* and *tela*. *See supra* notes 10 and 22. Sometime after A.D. 534 Justinian apparently forbade the private sale of arms to *all* persons, barbarians and Roman citizens alike, thus turning arms sales into a state monopoly. *See Nov*.9.1. The existence of state monopoly does not imply that the monopolized commodity was scarce. For example, some American states make gambling and alcohol sales a state monopoly. Later Byzantine emperors liked the idea of an armed populace so much that they urged every free man to possess his own arms. The Emperor Maurice (582-602 A.D.) proclaimed: "We wish that every young Roman of free condition should learn the use of the bow, and be constantly provided with that weapon and with two javelins." Charles Oman, A HISTORY OF THE ART OF WAR IN THE MIDDLE AGES 178 (vol. 1, 1998)(1st pub. 1924).

[xxv]. *See* Brunt, *supra* note 20, at 264.

[26]. *See also Dig*.48.8.1. pr. The *Lex Cornelia* was the name given to a series of laws passed in 82 B.C. by the Roman general Sulla; the penalty described in the *Lex* for murderers was, as one might expect by this point, death.

[xxvii]. *See also* Brunt, *supra* note 20, at 262-63.

[xxviii]. *Id.* at 268-69.