PEER REVIEWED ARTICLE

MAGISTRATE:

The Most Important Political Body of Roman Republic

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Peer Reviewed Article

ABSTRACT

However Roman State were based on monarchy when it was founded, the Romans needed transition to democracy regime and they preferred the Republic. Roman republic period had been the longest period in Roman political history. Roman government structure had been affected not only for the period of Republic but also in Principatus period. This situation shows us how the Roman government structure under the republic built on a steady foundation.

In this period, structure of government changed and tree main bodies had been effective on government: Magistrate, The Senate and The Assembly. A complex constitution gradually developed, centered on the principles of a separation of powers and checks and balances and executive branch had been exercised by magistrates.

Keywords: *Roman Law, Republic Period, Magistrate, Powers, Inspection and Deposition of Magistrate*

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INTRODUCTION

When we talk about Roman law, the Roman private law system is the one which comes into our mind first. Roman private law system has an impression as it affected other private law systems throughout the centuries.

Roman public law system had also an advanced structure. If some wants to study and research about Roman public law, he or she has to deal with Roman political periods at first hand. One of these periods is the Roman Republic period, in other words *Consuls*' period, was effective between 509 B.C. and 27 B.C. and started with the deposing the Last King from his office by civil revolution.

In this work, we will examine the Roman magistrate which is the striking political body of Roman Republic period and we will try to underline the significance of magistrates in Roman history.

1. The Functions, Significance and Place of Magistrates in Roman History

Before we talk about governmental structure of Roman Republic period we have to mention *cursus honorum* which constitutes the main structure of Roman administration. *Cursus honorum* means; the list of necessary things to be elected as an official on many levels and shows the sequential order of public offices held by aspiring politicians in both the Roman Republic and the early Empire[1].

Cursus honorum of Republic period's magistrates was not required apprenticeship, probation or salary. These important positions of government were filled up with brave and attractive men of Roman society which wanted to rise in political positions and desire of a political career. In addition to political aspects of *cursus honorum*, there was military aspects of it too[2]. First of all, each position had its own election age. Performing the same duty in same position was forbidden. The people who wanted to rise in these positions first had to end his last duty and gave a break in order to keep on working in a higher position.

Magistrate was the name of government leaders in different periods, at the same time magistrate was still a part of three significant bodies of Republic and Principatus periods[3]. Magistrates were functionally executive bodies in Roman history especially in Republic period. They were performing duties in administrative, political, military aspects and they were able to give decision in

[1] Umur, Ziya. Roma hukuku lügatı. İstanbul: Fakülteler Matbaası, 1975, p 53.

[2] Ihne, W. Researches into the history of the Roman constitution with an appendix upon the Roman knights. London: William Pickering, 1853, p. 45.

[3] Brennan, T. Corey. The *praetors*hip in the Roman Republic. Oxford: Oxford University Press, 2000, p.3; Abbott, Frank Frost. A history and description of Roman political institutions,. 3rd ed. Boston: Ginn & Co., 1911.s. 150; Loewenstein, Karl. The governance of Rome. The Hague: Nijhoff, 1973, p.42.

court as a judge. They could give the right to sue and make law[4]. Magistrate which was one of the most important political institutes of Republic period ceased in Dominatus period but in this last period of Roman Politics it was not effective as it was before and was just a political symbol of Republic period[5].

Magistrates were the members which were respected by Roman society. Before they were selected as magistrate they were either senatus or knight. After magistrates finished their office term which was one year, they gave a ten year break in order to be elected again[6]. Magistrates were political institutions and they were performing their duties in accordance with the division of tasks. But division of tasks did not mean division of decision making. In other words their authority was equal[7].

In Roman language many classifications for magistrates were in use like; *magistratus maiores/minores*, *patricii/plebeii*, *cumimperio/sine*. The most-preferred one is *magistratus cum imperio* and *sine imperio*, this is for the discrimination of magistrate who has *imperium* or not[8]. Magistrates in the Republic period, were classified according to authorities called *imperium* or *potestas*. In this period *dictator*, *consul* and *praetor* were the magistrates who had *imperium*. *Censor*, *quaestor*, *aedilis curulis*, *tribunus plebis* and *aedilis plebis* were the magistrates who had no *imperium* but had *potestas*.

Consul was the highest magistrate. At the beginning of the Republic period there were just two *consul*s and they had wide authority. By the time the national borders had been enlarged not to be ruled by two *consul*s from one center and new magistrates came into power in order to administrate local areas. *Dictator* was one of those and their duty was to keep in safe the boundaries and handle some kind of military issues. *Preator*ship established with a law named *Liciniae Sextiae* in 367 B.C and had a significant judiciary duty. They were empowered with this law and ranked after *consul*s. The most authorized member of the government were *praetor urbanus* in other words urban *praetor* in absence of *consul*s. B.C. second century is the time when *praetor peregrinus* in other words foreigners' *praetor* established. *Praetors* can be described as the head of the Roman law system. They were taking the main roles of Roman law system and were given *imperium* power to *praetors* in 327 B.C. *Imperium* had greatly helped *praetors* in judicial and administrative matters. There were just two of them in Republic period than the number had changed increasingly. In 244 B.C. they were two and in 227 B.C. two more *preator*s had been assigned in

[4] Abbott, p.150.
[5] Berger, Adolf. Encyclopedic dictionary of Roman law. Philadelphia: American Philosophical Society, 1953, p.571; Brennan, p.3.
[6] Umur Lügat, p.173.
[7] Ramsay, William, and Rodolfo Amedeo Lanciani. A manual of Roman antiquities. 17th ed. London: C. Griffin and Co., 1901, p.135.
[8] Abbott, pp.152-153.

order to handle military matters in Sicily and Sardinia. With the participation of the new states their number increased to six. At that time their number was thought to be enough but in 81 B.C. their number increased again and they were finally sixteen. Moreover, pro*praetors* whose tenures were extended for one year had used for the administration of Rome. Also they were assigned as a judge and they were on duty in permanent criminal courts which founded at the end of Republic period. *Censor*s were different than other magistrates since their office term was five years and mostly they were responsible in social and economic areas for the checking moral and financial matters of Roman families[9].

In Principatus period magistrates' functions and powers had decreased[10]. Moreover new magistrate, named as *Princep*s came to power. In Dominatus period, magistrates were in use but they were not as important as before since the most powerful authority at that time was the emperior himself.

Magistrates were elected by Roman citizens and they were representing directly the citizens[11]. However, *tribunus plebis* and *aediles plebis* were not accepted as magistrate in this sense as they were elected by plebs. On the other hand *dictator*s were directly assigned by *consul* as magistrate and he had extreme powers. Although *dictator*ship was described as a Republic institution, it had characteristics of kingdom. *Dictator*s were not elected by citizens, however they were assigned by *consul*. *Consul*s were elected by citizens so it was thought that *dictator*s had been representing citizens' rights. So they might had been described as magistrate[12].

Each magistrate was described as they had maior *potestas* so they had important powers. Because of being in different levels, magistrates could have been evaluate as effective and less effective. Giving *potestas* power to magistrate was the right of Roman citizens[13]. The most wide one of *potestas* was *imperium*. It shows a sign of reliance to the administrators who were elected by citizens[14].

2. "Imperium" Authority

In narrow sense *imperium* means the power given to magistrate about military issues. *Imperium* in broad sense is the political leadership in the state administration as a symbol of the judicial authority[15]. It contains many authorizes almost in all areas, e.g. *ius militare* commanding the army, *ius agendi cum popula* and *agendi cum senate* calling the citizens or senate to the assembly, *ius*

[9] Brennan, p. 3-8; Abbott, p.150-153; Ramsay, pp.153-154; Loewenstein, p.44.
[10] Ramsay p.155.
[11] Loewenstein, p.42.
[12] Abbott, a.g.e. pp. 151-152; Lowenstein, p.43.
[13] Lintott, A. W. The constitution of the Roman Republic. Oxford [England: Clarendon Press, 1999, p.95; Abbott, p. 151.
[14] Loewenstein, p.45.
[15] Ramsay, p.134; Loewenstein, p.45.

dicendi declaring laws and other rules, *publishing edictums*, creation of interdictums which means orders and prohibitions, *iudices privati* assignment of private judges to solve disputes between the parties, *ius coercitionis* preparing official orders and instructions to protect public peace and order[16]. By using this power, magistrates were able to fine somebody[17], garnishment of movable property (*pignoris capio*[18]), protect private property owned by persons, asking for implementation of imprisonment (*in vincula deductio*[19]), flogging (*verberatio/castigtio*[20]). *Potestas* authority was including shortly *ius dicendi* and *ius coercitionis*[21].

First, *consul*s were able to have *imperium*. Then *praetors* and *dictator*s were able to have *imperium*[22]. Magistrate's *imperium* authority was quite broad and unlimited while the magistrate was outside of the city of Rome.

However, within the borders of the city of Rome, the idea which states *imperium* is broad and unlimited authority was not accepted. Thus, the freedom of the citizens living in Rome was protected against magistrates' oppressive government[23].

Magistrates' oppressive governments stemmed from their coercitio authority. *Coercitio* is the public authority to use force or threat against people to do or not to do something. The executive authority of magistrates which is more in the public sphere results from *imperium* and *potestas* which they have[24]. Magistrates' coercition authority, with some exceptions, could be used almost everyone[25]. However all citizens living in the city of Rome had the right to apply against the authority coercition of magistrates which called as *provocatio*[26]. The use of *coercitio* was not limited outside of Rome[27].

3. Magistrates' Jurisdiction Authority *(Iurisdictio)*

In the division of judicial functions between the Magistrates and *Iudex (private judge)* consisted what is called the *Ordo Iudiciorum Privatorum*, which existed

[16] Kunkel, Wolfgang, and J. M. Kelly. An introduction to Roman legal and constitutional history. Oxford: Clarendon Press, 1966, p.15.
[17] D. 50.16.131.1
[18] Gai. Inst. 1.200; Iust. Inst.1.24.3
[19] D. 48.19.8.9; Iust. Cod. 9.47.6
[20] D. 2.1.12; D. 11.7.8.2
[21] Plescia, Joseph. "*Judicial Accountability and Immunity in Roman Law,*" The American Journal of Legal History, Vol. 45, No. 1: 51-70, 2001. p.52.;Loewenstein, pp. 45-48;
[22] Brennan, p.3.
[23] Abbott, p.153.
[24] Plescia, p.52.
[25] All magistrates had coercitio authority which ensured the power to impose sanctions. Coercitio was being used by Magistrates in order to ensure the continuity of public order. Lintott, pp.97-99.
[26] Mackay, Christopher S. Ancient Rome: a military and political history. Cambridge: Cambridge University Press, 2004, p.135; Ramsay, p.141.
[27] Loewenstein, p.48; Plescia, p.55.

in the early periods of Rome, and continued till the time of Constantine. *Ordo Iudiciorum Privatorum* which is a period in Roman procedural law period there were two phase and first of it was named as '*iniure*'.The *iure* word in this expression does not mean right, It was used to specify the authority to whom the right claimed. The authority to whom the right claimed in in uire expression was magistrate[28].

Iurisdictio is one of the powers in *imperium*[29]. The meaning of it is to say law, in other words ius dicare[30]. But in Roman law texts, it was used in order to express jurisdiction of magistrates[31]. It can be also defined as the authority to determine the rules to be applied in a matter. In this sense, it could be thought that magistrates were able to use iurisdictio in all kinds of his judicial activities[32]. However, magistrates were using his jurisdiction authority in two ways: identifying the dispute that was claimed by the person who applied for the recognition of the right to sue *(dare iudicium)* and after that, to give the judging duty to the judge on which parties agreed *(iudicare iubere)*[33].

Dig. 2.1.3[34]

Ulpianus 2 de off. quaest.

"*iurisdictio est etiam iudicis dandi licentia.*"

"*Jurisdiction includes the power of appointing a judge.*"

The content of the jurisdiction of the magistrate was not final decision of the dispute. It was including the determination of dispute and assignment of the judge. So iurisdictio did not provide to make trial as judge *(iudex)* and reach a verdict for *magistrates*[35]. *Iudicare* or *iudiciatio* words were used to describe the judges' activities. *Iudicare* means to reach a binding and reasonable verdict for parties[36]. The difference between magistrates' jurisdiction and

[28] Çelebican, Özcan. Roma hukuku: tarihi giriş-kaynaklar genel kavramlar- şahsın hukuku hakların korunması. Cebeci, Ankara: Yetkin, 2005, p.273.

[29] Buckland, W. W. Equity in Roman law. London: University Press, 1911, p.20.

[30] Kunkel, p.82.

[31] "The debate about the origin of this authorization are made around the occurence of the cases that appeared in iurisdicto's Roman law period. Many roman jurists accepts that this authotiy was first belonged to kings, then the *consul*s and later, the *praetors* had it. .But some believe that this authority occured with the acceptance of *praetor*s in 367 B.C." Alessandro Corbino, "*Roma'da Arkaik ve Cumhuriyet Dönemlerinde, Anayasal-Politik Dengeler-Hukuksal Gelişim, Hukukçuların Hukuk Yaşamındaki Rolleri,*" Çev. Özcan Çelebican. AUHFD, Cilt no 44, Sayı no 1: 61-79, 1995. p. 74.

[32] Umur, Ziya. Roma hukuku: tarihı giriş, kaynaklar, umumı mefhumlar, hakların himayesi. İstanbul: Fakülteler Matbaası, 1979, p.201.

[33] Kaser, Max. Roman private law. 2nd ed. London: Butterworths, 1968, p.345.

[34] For Roman Law texts in Latin, we applied to the website, "*http://faculty.cua.edu/Pennington/Law508/Roman%20Law/RomanLawTexts.htm*". English texts of Justinian's Digest, check the websites; "*http://droitromain.upmf-grenoble.fr/Anglica/digest_Scott.htm*" http://www.constitution.org/sps/sps.htm

[35] Kunkel, p. 82.

[36] Umur, p.96.

iudex's jurisdiction was expressed by using two different words as *iurisdictio* and *iudicare*[37]. But in early times and especially in criminal courts, magistrates had the right of decision-making authority as a judge[38].

While magistrate was in trial, he were getting the opinion of jurists since magistrate stands out with his politician identity. A committee *(consilium)* composed of expert jurists were ready to help magistrate on his judicial duty[39]. Magistrate could make his own decisions without considering the opinion of expert jurists but his decisions were in the same way as the committee did. In this way, the combination of the public power represented by magistrates and consilium's opinions created the rules of law used in practice. The effect of *praetors* declarations - *named as edictum* - in making of laws was pretty much. The *praetor* declared the rules and implementations in judicial affairs by means of his edictum[40]. The principles in his edictum also had a leading function for parties. However, *edictum* was not a law itself, it was only binding for *praetor* who declared it[41].

The new *praetors* were changing the edictum of previous ones' partially. However, by the time the edictums were accepted as concrete rules of law in practice and were enough not to be changed anymore[42].Thus *edictum*s provided the needs of rule of law and ensured the judicial continuity[43].

As a result of *edictum*s which had become one of the important aspects of Roman law[44], a new judicial system named ius *praetorium* or *ius honorarium*

[37] Schulz, Fritz. Classical Roman law. Oxford: Clarendon Press, 1951, p.13.

[38] Umur, Hakların Himayesi, p.196.

[39] Moreover, in B.C. 2. the documents of jurists were the ones which helped magistrate to perform his job. Corbino, p.77.

[40] Sohm, Rudolf, and James Crawford Ledlie. The Institutes of Roman law. Oxford: Clarendon Press, 1892, .p.49.

[41] Sohm p.54.

[42] However, it is not considered as one of the sources of Roman law. Girard, Paul Frédéric, and A. H. F. Lefroy. A short history of Roman law. Toronto: Canada Law Book Co., 1906, p.81.

[43] In B.C.130 emperor Hadrianus, in order to make edictum permanent, gave a task to one of the great jurists of the period, his name was Salvius Iulianus. The purpose of emperor Hadrianus was to inhibit another judicial system's develop that were possible to established by *praetors* at that time. In order to give the edictum a permanent specification Salvius Iulianus combined other edictums and created one general edictum. Lately this new edictum was approved by senatus and named edictum perpetuum, in other words permanent edictum. Thus the monopoly of the law for the emperor was easier. Because, the *praetors* had to obey the permanent edictums. So, the effect of edictums in this time was decreased on the rules of law. Girard, p.109-110; Sohm, p. 56.

[44] In addition to recognition of the right to sue and appointment of the judge, *praetors* had some other rights in jurisdiction. Interdictum was another way of legal protection. It was a verbal order given by *praetor*.It was a pre-offer for solution asked before starting of the court. Other protective applications are stipulationes pratoriae, in integrum restitutio and missio possessionem. So *praetors* brought innovations in all areas of private law. Kaser, p. 357-359; Schulz, p. 51; Buckland, pp. 21-39.

emerged in the field of law[45]. The idea of fairness takes place on the basis of ius *honorarium*. *Praetor* was considered to be as the main source of farness in this new judicial system. *Praetor* also had been accepted as legistrator[46]. As a temporary legal system, the general characteristics of ius honorarium is explained in the text below written by Papinianus.

Dig. 1.1.7.1

Papinianus 2 def.

"*Ius praetorium est, quod praetores introduxerunt adiuvandi vel supplendi vel corrigendi iuris civilis gratia propter utilitatem publicam. quod et honorarium dicitur ad honorem praetorum sic nominatum.*"

"*The Praetorian Law is that which the Praetors introduced for the purpose of aiding, supplementing, or amending, the Civil Law, for the public welfare; which is also designated honorary law, being so called after the "honor*" of the *Praetors*."

Therefore, the basic function of *ius honorarium* which emerged from judicial activities of magistrates was to complete legal loopholes of ius civile and to resolve its contradictions. Ius honorarium was a temporary law and it was only applied to the cases in which magistrates used his authority[47].

Another specification of *iurisdictio* was that magistrates were able to hand over it someone for a while. Representative of *praetors* called as *praefecti iure dicundo* could take decisions in the city squares named as forum by using iurisdictio[48]. There were specific times for using this authority. It could not be applied in evil day called as *nefasti* but it could be applied in non evil day called as *fasti* which is declared by priests.

4. The Immunity of Magistrates

Magistrates who were elected by citizens were not responsible against them and it was impossible to judge magistrates as defendant within the tenure of his office[49]. *Ulpianus* clearly explains the immunity of magistrate in the text below.

Dig 2.4.2

Ulpianus 5 ad ed.

"*In ius vocari non oportet neque consulem neque praefectum neque praetorem neque proconsulem neque ceteros magistratus, qui imperium habent, qui et coercere aliquem possunt et iubere in carcerem duci;*"

"*Neither a Consul, a Prefect, a Proconsul, nor any other magistrate who exercises authority, and has the power of restraining others and ordering them to be confined in prison, can be summoned to court;*"

Roman magistrates were the persons whose tenure of office was limited with

[45] Kaser, p.15-16.
[46] Buckland, p.5.
[47] Corbino, p.76.
[48] Umur, Hakların Himayesi, p.203.
[49] Plescia, p.46.

one year and as a rule they had privilege of immunity in this time. Magistrates could not be deprived of their official rights. However, in terms of their duties or transactions they may been subjected to various control mechanisms. They could have been prisoned with control mechanisms but they would continue to have duties and powers to some extent[50]. This situation clearly indicates us that in Roman law, magistrates had a broad immunity related to their duties and powers.

Dig. 47.10.32.

Ulpianus 42 ad sab.

"*Nec magistratibus licet aliquid iniuriose facere. Si quid igitur per iniuriamfecerit magistratus vel quasi privatus velfiducia magistratus, iniuriarum potest conveniri. Sed utrum posito magistratu an vero et quamdiu est in magistratu? Sed verius est, si is magistratus est, qui sine fraude in ius vocari non potest, exspectandum esse, quoad magistratu abeat. Quod et si ex minoribus magistratibus erit, id est qui sine imperio aut potestate sunt magistratus, et in ipso magistratu posse eos conveniri.*"

"*Magistrates are not allowed to do anything by which an injury may be caused. Therefore, if a magistrate, either as a private individual, or in his magisterial capacity, is instrumental in committing injury, he can be sued for injury. But will it be necessary to wait until he has relinquished his office, or can the suit be brought while he still holds it? The better opinion is, that if he is a magistrate who cannot legally be summoned to court, it will be necessary to wait until he relinquishes his office. If, however, he is one of the inferior magistrates, that is to say, one of those not invested with supreme jurisdiction or authority, he can be sued, even while he is still discharging his judicial duties.*"

Considering the passage stated above, it is understood that magistrates who had *imperium* as *dictator*, *consul*, *praetor*, pro*consul*, pro*preator* and magistrates who had *potestas* as *censor*, *aedilis curulis* and *tribunus plebis* were exempted from judgment within the tenure of his office. With the end of tenure of his office magistrates could have been judged by *questiones perputuae*[51] *(permanent*

[50] Plescia, pp. 51-52.

[51] Iudicia populi,is the name of the popular assembly which was serving as judiciary committee. The functions of this assembly increased B.C. second century in Roman law. In addition to its politic tasks, other various tasks had been given, so the name of the assembly was called as high court of parliament. Their main task was to examine the objections made against the decisions of the criminal courts. Shortly after the second century A.D. the effectiveness of the proceedings of this assembly gradually decreased. The main reason of that was the regulations made by Sulla in criminal justice system in 81 B.C. *(questionis peerpetuae)*. Another reason is that the cases were being completed in approximately four months. Besides that the number of cases which parliament was dealing with were too much and to vote in parliament was impossible since the population was too much. Lastly, Sulla had brought some restrictions which reduced the effectiveness of the public assembly in Roman law. Duncon Cloud, The Cambridge Ancient History, The Last Age of The Roman Republic *(146-43 B.C.)* Vol. IX. Cambridge: Cambridge University Press, 1994, p. 501-503; Bauman, Richard A. Crime and punishment in

criminal court) which is a court consisted of senate members and *iudicia populi*[52] *(tribun court or public court)*.

However, throughout the history of Rome, a small number and details as a sample of magistrates' trial had arrived in present day, except Sulla[53] case in 87 B.C[54].

5. Inspection of Magistrates

5.1. With Provocatio

Throughout the history of Rome, restriction of individual freedoms and rights which stemmed from misapplication of magistrates' power of *imperium* and *potestas* caused an unpleased situation among Roman citizens and as a result of that disputes between Roman public authorities and people triggered the need of new forms of magistrates' inspections. The law named *lex valeria de Provocatione (Valeria Act which provides right to appeal)* had been the corner stone for the freedom of the Roman citizens who were subjected to the unfair use of public powers by magistrates[55]. With this law, Roman citizens who were convicted by death penalty or chaining had the right to appeal at people's assembly. The most important way to inspect magistrates' was called *provocatio*[56] which was a guaranty for fundamental rights and freedoms of Roman citizens against unfair punishment of magistrates.

Dig. 1.2.2.16

Pomponieus 1.S enchir.

"*Exactis deinde regibus consules constituti sunt duo: penes quos summum ius uti esset, lege rogatum est: dicti sunt ab eo, quod plurimum rei publicae consulerent. qui tamen ne per omnia regiam potestatem sibi vindicarent, lege lata factum est, ut ab eis provocatio esset neve possent in caput civis romani animadvertere iniussu populi: solum relictum est illis, ut coercere possent et in vincula publica duci iuberent.*"

"*After the kings were expelled two consuls were appointed, and it was established by law that they should be clothed with supreme authority. They were so called*

ancient Rome. London: Routledge, 1996, pp. 21-22.

[52] Plescia, pp. 54-55.

[53] In 87 B.C. after Sulla left to Rome, Cinna who was elected as *consul* changed the system of Sulla and adopted a completely opposite policy .Meanwhile in absence of Sulla he had declared to be a traitor. For more detailed information, check http://penelope.uchicago.edu/Thayer/E/Roman/Texts/Plutarch/Lives/Sulla*.html

[54] Plescia, pp. 54-55.

[55] It is known as Provocatio ad populum. Roman law texts include the Lex Valeria de Provocatione which is a law that regulates the right to appeal. This law that determines the provocatio had lead the new laws as Lex Valeria Horatia in 449 B.C..and Lex Valeria in 300 B.C.

[56] Provocatio is the source of today's English and American law systems by means of' habeas corpus', which is translated as "*your body belongs to you*".

from the fact that they specially "consulted" the interests of the republic; but to prevent them from claiming for themselves royal power in all things, it was provided by enactment that an appeal might be taken from their decisions; and that they should not be able, without the order of the people, to punish a Roman citizen with death, and the only thing left to them was the exertion of force and the power of public imprisonment. ''

Upon the request of the citizen, until the final decision of the people's assembly was confirmed, magistrate could not use this authority entirely against the citizen. *Provocatio* was not a method applied against magistrate's transactions outside the borders of Rome since magistrate's *coercitio* authority was unlimited and non-restricted outside the borders of Rome[57].

At first times *provocatio* was perceived as an inspection way of magistrate's *coercitio* authority. It became different with the changes in the structure of the criminal courts. Towards the end of the Republican era, the idea of the establishment of the criminal courts emerged to restrict magistrate's power. Investigations about the bribery of the Roman administrators were left to a committee that consists of magistrate and five senators in 171 B.C. Then this committee started to investigate the demands which could be claimed as lawsuits with a law named *Lex Calpurnia de repetundis* in 149 B.C.[58] and it gained a permanent statute. Another change come with this law was that the Roman citizens could ask to be revised the criminal sanctions applied to them by magistrate in people's assembly with *provocatio*[59]. Magistrate's punishment authority was not restricted theoretically but the establishment of the criminal courts and its decisions restricted this authority practically. As magistrate was the head of these courts, it could be accepted that he was more effective than the other members of courts in trial but the judges in this court were more than a *consul*tant. These judges were also highly important in jurisdiction because they were investigating all the events and evidence in trial and the decision was taken by the majority of the votes[60].

However, these privileged inspection way named as *provocatio* was limited for only major punishments like death penalty or heavy fine[61]. In case of lenient punishments such as imprisonment, small fine and confiscation of property which are respectively light, application to the people's assembly was not allowed.

When we considered that in early years of the Republic period there were

[57] Lintott, pp. 101-102.
[58] Davidson, James Leigh. Problems of the Roman criminal law. Oxford: Clarendon Press, Vol. I. 1912, pp.223-227.
[59] Loewenstein, p. 45
[60] Davidson, James Leigh. Problems of the Roman criminal law. Oxford: Clarendon Press, Vol. II. 1912. pp. 45-50.
[61] Girard, p. 43-44.

no way for the inspection of the power and discretion of the magistrates, restriction of magistrates' abused application using his power and discretion by *provocatio* was an important development in Roman Law. In early years of the Republic period, traditional structure of Kingdom's period did not ceased. This is the reason of how magistrates applied arbitrary penalties with his power of coercitio without any limitation. Any limitation would be contrary to the purpose of giving public administration to the magistrates. During the first four hundred years of Roman law, since the use of public authority was left to the magistrate by citizens, he should respect fundamental rights and freedoms of citizens who chose him. However, arbitrary applications of magistrates were often seen in this period[62].

5.2. Other Inspection Ways

Inspection of magistrates with other ways was possible. One of this ways called as collega or collegialitas means that inspection of one magistrate by other magistrate. Each magistrate had the authority to veto the decisions of others. It can be understood that this authority shows the interventions of magistrates to each other by using their veto rights. Two conditions were necessary for the use of this way. First one is; the verdict of magistrates should have been uncompleted or inaccurate so the other magistrate could interfere it. The second one is; veto could only be used by equal or higher magistrates[63]. The main purpose of this control way is to protect citizens against arbitrary applications of one magistrate.

However, the veto power which was used by another magistrate who is equal or higher, does not mean that one magistrate's decisions subjected to approval of equal or higher magistrates. In principle, magistrates were independent in his transactions' and decisions[64].

Veto power was considered as a caveat which sent magistrate to take decisions according to law but it had not significantly affected the final decisions given by magistrates. For that reason equal or higher magistrate would use his veto power rarely[65].

In later times to prevent the conflicting decisions between two equal magistrates, *provincia* was accepted. *Provincia* was the term which was used to express the regional administration of the lands and regions outside the boundaries of Italy which were seized by Romans in war. In another meaning, provincia expresses province of a high degree official's[66].When it is used

[62] Strachan Davidson, Vol. I., pp. 96-110.
[63] Girard, p.43; Abbott, p.154.
[64] Loewenstein, pp.48-49.
[65] Abbott, p. 154.
[66] Halil Demircioğlu, "*Roma Devletinin Eyalet Sistemi,*" AÜDTCFD, Cilt no 5-6, Sayı no 8-11: 443-459, 1967-1968, p. 443.

for Roman magistrates, it has to be accepted with this second meaning. This could also be considered as another way to inspect magistrate's authority since magistrate was not able to use his authority out of his province[67].

6. Deposition of Magistrates

Magistrates could only be judged in terms of private or public law at the end of their term of office when their applications were contrary to law and equality. Deposition of magistrate was not possible with a court decision. Higher magistrates, senate or public assembly were entitled deposition of one magistrate from his office. In addition, magistrates' office could have been ended by *dictator*s[68].

There is no sample of deposition of magistrate until B.C. 1st century. The best known samples of dismissed or punished magistrates were the judgment of Lentus Sura in 63 B.C.[69] and Gallius in 43 B.C.[70] In addition, some *censor*s served in 169 B.C. and Appius Claudius Pulcher in 57 B.C. were the samples of magistrates who were judged or resigned by their own will before the end of their term of office[71].

[67] Lintott, p. 102.
[68] Plescia, p.55.
[69] T. P. Wiseman, The Cambridge Ancient History, The Last Age of The Roman Republic *(146-43 B.C.)* Vol. IX. Cambridge: Cambridge University Press, 1994, pp.225, 344 and 354-356.
[70] "In 43 B.C. *Praetor* Gallius, had been judged and deposited from his office since he made an attempt at Octavius's life. After that, he was mystically found dead in the sea. Levick, Barbara. Tiberius the politician. Rev. ed. London: Routledge, 1999, p.19.
[71] Plescia, pp. 55-56.

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Conclusion

Roman Republic was the period in which the government adopted a republic-like regime. Traditional roman structure has changed with the senate and the magistrates who were elected by citizens and who headed the strong government system. This model evolved gradually and adopted the principle of separation of powers.

Magistrates appeared to be the leading organ of the government on the way of adopting Republic and served as executive branch of government. Especially considering the *imperium* which facilitates their rights and powers, we can conclude that the most powerful organ of this period had been magistrates.

Although we can not accept that literally there were a Republic regime in Rome as today's states have, as being executive organ of this period magistrates served and took place in a critical position during the Roman Republic period.

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