



The Contribution of Roman Law to the Theory of Legal Argumentation

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KEYWORDS

Roman law
Theory of legal
argumentation
Dimensions

ABSTRACT

This study analyzes the theoretical and methodological influence of Roman law on contemporary trends in legal reasoning. In contrast to dogmatic or purely historiographical interpretations, the article examines the relevance of Roman jurisprudential reasoning through a three-dimensional analytical model. The research adopted a qualitative approach at the explanatory-comprehensive level, employing historical-legal, theoretical-legal, and comparative legal methods applied to a defined corpus of primary sources drawn from the Digest and classical and contemporary doctrinal sources. The results demonstrate the conceptual effectiveness of the model in its three dimensions: historical-foundational (interpretatio, analogy, and *aequitas*), methodological-practical (factual distinction, enthymematic logic, refutation, and topical argumentation), and critical-deconstructive (the critical function of rhetoric and the ethical regulation of discourse). It is concluded that the Roman law tradition's contribution transcends mere historical affiliation, constituting an active epistemological matrix that foreshadows the decision-making and weighing frameworks of modern theories of legal discourse.

RECEIVED: 10/06/2026

ACCEPTED: 23/09/2026

1. Introduction

The contemporary debate on the rationality of judicial decisions and the structure of legal discourse has been dominated by analytical and normative models developed in the second half of the 20th century (Alexy, 2007; Atienza, 2013; McCormick, 2005). However, contemporary legal doctrine has tended to sever modern argumentative frameworks from their historical and methodological roots, often relegating Roman law to the status of a static precursor or a repository of Latin maxims devoid of systemic articulation. Although legal historians and Romanists have extensively examined the functioning of Roman institutions (Betancourt, 2007; Guzmán Brito, 2011), an epistemological disconnect persists between the analysis of primary Roman sources and the formal and material tools of contemporary legal argumentation theory.

The existing literature reveals a critical gap: the absence of a unified conceptual framework that systematizes how the operational tools of Roman jurisprudence directly foreshadow the logical, topical, and axiological structures of contemporary reasoning, while formally distinguishing historical continuity from mere conceptual analogy. Given this limitation, the present study poses the following research question: In what way do the technical-methodological and pragmatic developments of Roman law constitute a coherent conceptual framework that underpins, systematizes, and applies critical analysis in contemporary legal argumentation theory? Consequently, the main objective of this study is to evaluate the contribution and relevance of Roman law to current argumentative theories through the formulation and implementation of a three-dimensional analytical model.

The novelty of this research lies in the methodological proposal of a three-dimensional typology (Historical-Foundational, Methodological-Practical, and Critical-Deconstructive). This framework allows for the coherent integration of the analysis of the primary sources of the *Corpus Iuris Civilis* with the premises of discursive pragmatism and contemporary neo-rhetoric, moving beyond purely descriptive approaches to offer an interpretive tool of theoretical and pedagogical value.

2. Methodology

The methodology adopted encompasses historical-legal, theoretical-legal, and comparative legal methods, utilizing bibliographic analysis for this purpose. The first of these methods allows for the contextualization of the categories under study; the second facilitates their detailed doctrinal examination; and the third enables the identification of similarities and differences in the handling of the legal issues studied in order to highlight patterns.

To organize the analysis coherently, three dimensions were established, each with its respective constituent elements. The criteria for determining whether an element belongs to a given dimension were established in advance to verify the logic of their integration.

Thus, to evaluate the impact of Roman law on the historical order—as a foundational element in the field of legal argumentation—the following indicators were considered: direct causal influence, which explains how conditions, structures, and/or dynamics are generated that enable or significantly determine the emergence or nature of current theories of legal argumentation; identifiable continuity, given by the existence of a demonstrable link between the two phenomena; constitutive relevance, based on the way in which the contributions of Roman law become central elements of the identity, functioning, or purpose of legal argumentation; and recognition of the historical link, through relevant studies on the subject.

In order to assess the implications of Roman law's contributions to the methodological and practical framework of theories of argumentation, the following were taken into consideration: the transfer of methods, techniques, and procedures developed throughout the history of Roman law; the selective adaptation of these methodologies, tailoring them to present-day needs; the proven effectiveness of these elements, as demonstrated in the development of effective solutions; and their explicit recognition among scholars in the field.

Finally, to assess the scope of this dimension, we consider Roman law's capacity to facilitate active deconstruction in contemporary legal argumentation by exposing the presence of contradictions, omissions, and mechanisms of domination; and its disruptive intent, by providing the conceptual tools that shape the theoretical frameworks arising from the study and overcoming of its own historical precedents.

Procedure for Constructing the Three Analytical Dimensions

To systematize the object of study, three dimensions were operationally defined based on explicit criteria of homogeneity and functional differentiation:

Historical-Foundational Dimension: Evaluates the causal impact and conceptual continuity of original Roman categories (interpretatio, analogy, aequitas) in the establishment of the pillars of normative reasoning.

Methodological-Practical Dimension: Measures the degree of transfer and instrumentalization of operational techniques (factual qualification, enthymematic logic, refutation of fallacies, and use of topics) in litigation practice and the adjudication of specific cases.

Critical-Deconstructive Dimension: Analyzes the Romanist model's capacity to incorporate rhetorical filters and ethical-axiological assumptions that serve as tools for dismantling strict legal formalism (summum ius, summa iniuria).

3. Results

By systematizing the sources examined, it can be argued that Roman law makes significant contributions in the three dimensions indicated, as set forth below.

- Historical-Foundational Dimension

Fundamentally, three elements highlight this dimension among the phenomena studied. The first of these is the Roman interpretatio, insofar as it constitutes an act of selecting arguments.

Celsus's (D. 1.3.17) recognition that "To know the laws is not merely to know their words, but their force and power" constitutes the cornerstone of this approach: the search for the spirit over the letter. ULPIAN's (D. 50.16.6.1) assertion on this matter—that "The phrase 'by virtue of the laws' must be understood as follows: both according to the spirit and according to the words of the laws"—delimits two spheres for interpretation, since every legal norm is composed of two elements: its words and its ruling. In turn, ULPIAN himself extends the scope of interpretive activity beyond the clarity of the letter of the law (D. 25.4.1.11) by maintaining that "Even if the praetor's edict is crystal clear, its ' ' interpretation must not, however, be disregarded." Meanwhile, JULIAN (D. 1.3.10) justifies the need for interpretation in the face of gaps or unforeseen cases, since "Neither laws nor senate consultations can be written in such a way as to cover all the cases that occur from time to time; rather, it is sufficient that they cover those that ordinarily occur."

The second element of this dimension is analogy, understood as the use of similarity to resolve diverse situations in Roman law.

JULIAN (D. 1.3.12) states that "Not all cases can be specifically covered by laws or senate consultations; but when their meaning is clear on a given occasion, the judge must proceed by analogy and thus render a judgment." Thus, when the intent or spirit of the law is clear, the judge must extend its application to cases not expressly provided for but which are analogous in their fundamental rationale. This is not a matter of creating new law, but rather of discovering and applying the implicit intent of the law.

ULPIAN enshrines the principle of teleological coherence, understanding that the legal system is not a catalog of disparate solutions, but rather a rational and teleological body of law. Therefore, once the purpose of a rule has been discovered, it becomes a logical imperative to apply it to all analogous situations, thereby unifying the law based on its guiding principles. This is evident in D.3.1.13, which states: “For, as Pedio says, whenever the law has introduced one provision or another, it is a good opportunity for the others that serve the same purpose to be supplemented—either through interpretation or, certainly, through judicial decision.”

TERTULIAN introduces a temporal perspective into analogical interpretation. He argues that: (D. 1.3.27) “And therefore, just as it is customary to interpret older laws in light of later ones, it is also appropriate to believe that the following is always implicit in the laws: that they should also extend to those persons and things that are similar at any given time.” This endows the law with temporal “flexibility,” a crucial factor for the survival and relevance of a legal system over time, as it allows ancient laws to adapt to new circumstances without the need for constant legislative reform.

The third and final element of this dimension is *aequitas* (equity), the ideal of concrete justice, adapted to the circumstances of the case, which tends to be objectified in the *ius* while simultaneously remaining an internal element of the *interpretatio* (VACCA, 1978, p. 409) to mitigate the rigor of strict law (*ius strictum*).

At the very beginning of the Ulpian Digest, citing Celsus (D. 1. 1. 1 pr.), law is defined as “the art of the good and the equitable.” This implies that the very essence of law is not that of a rigid set of rules, but rather that of an **ars**—understood as an art or practical technique—whose ultimate purpose is to achieve what is good (**bonum**) and equitable (**aequum**). Consequently, this concept takes on the character of a guiding principle that directs its formulation and application. This idea is reinforced by elevating the jurist’s “ ” function to that of a priest whose devotion is the realization of equity, thereby underscoring the ethical and almost sacred nature of this pursuit in every case.

In turn, PAULUS (D. 50.17.90) legitimizes the role of equity as a corrective to the *ius*, urging us to go beyond the *verba* to grasp its spirit, its purpose, and its moral power.

Human reason is what provides—as can be argued following HUMBERT (1969)—the foundation for the development of the Roman legal system; therefore, the notion of proportion and adjustment must be sought through reason and argued in each case by those authorized to do so. The praetorian edict is therefore regarded as the quintessential practical instrument for operating with and in accordance with *aequitas*.

- Methodological-Practical Dimension

A first element to consider within this dimension is the approach to distinguishing the facts as the basis of the dispute. Roman jurists understood that the law applies to specific facts. The distinction between *quaestio iuris* (question of law) and *quaestio facti* (question of fact) was fundamental. Hence, it is considered essential to narrate the facts in a plausible manner and to select those relevant to the applicable rule.

CICERO, in **De Inventione** (I. 19–28), explains that **narratio** “consists of the presentation of the case,” the requirements of which are “to be brief, clear, and credible.” QUINTILIAN, in his **Institutio Oratoria**, states: “Narration is the exposition of a fact that has occurred, or appears to have occurred, useful for persuasion; or, as Apollodorus defines it, a discourse that instructs the listener on what the matter in dispute is” (IV.2.31). This author already distinguishes between formal and content-based criteria, a dichotomy in which Roman rhetoricians emphasized the latter aspect, as it is the foundation upon which the legal argument is built, based on presenting a coherent sequence of facts to which the *ius* would be applied.

Second, the construction of syllogisms must be taken into account. Although these were not syllogisms in the strict Aristotelian sense, Roman jurists constantly employed this logical structure by resorting to the enthymeme. Its shortcoming—the lack of premises—lies solely in the verbal expression; thus, it can be just as conclusive and probative as a complete syllogism, depending on the validity of the premises, whether expressed or not (GUZMÁN BRITO, 2011, p. 337).

In this regard, GUZMÁN BRITO (2011, pp. 338–340) illustrates this by analyzing passages from D. 48.10.22.8 and D. 43.20.1.13. Its argumentative merit lies in streamlining the discourse and appealing to the listener's shared knowledge or capacity for inference, thereby making the listener a participant.

In the classical procedural order, the structure of legal litigation also incorporates a formal logic that has survived to the present day in the form of the judicial syllogism. As BETANCOURT argues, “it is a logical formulation in which there is a major premise (the *ius*, an abstract category) that is omitted from the procedural formula (enthymematic premise), a hypothetical conditional middle or minor premise that must be proven (factum—a legal appearance—and factum that directly infringes upon the former and only indirectly upon the *ius*, an abstract category), and a conclusion based on agreement (conviction) or disagreement (acquittal) between the two premises” (2007, p. 160).

A third issue of a technical-methodological nature to be addressed is the refutation (*refutatio*) of deceptive or weak arguments. Roman forensic rhetoric focused on identifying and dismantling such arguments. In the works of CICERO and QUINTILIAN, common fallacious tactics used in court were cataloged to help counter them, describing possible variations of these tactics and warning against the manipulation of popular prejudices or uncontrolled emotions that lie outside the logic of the case.

To combat these fallacies, the aforementioned authors proposed a set of measures focused primarily on the development of professional skills: rigorous training in critical analysis, which is essential for developing the keen judgment needed to detect one's own and others' fallacies; exhaustive preparation involving mastery of the case's merits, anticipation of the opponent's arguments and fallacies, and the preparation of specific refutations; ethical behavior consisting of a commitment to truth and justice; and clear, well-structured discourse (introduction, narration, argumentation, refutation, conclusion) based on solid evidence and sound arguments.

Topoi serve as the concluding element of this dimension. Roman jurists, trained in rhetoric, used commonplaces (*topoi*, *loci*) as starting points for developing arguments. Cicero attests to their widespread use and level of elaboration in his work **Topica**, in which he systematizes the *topoi* (definition, genus/species, cause/effect, analogy, opposites, etc.) that jurists applied extensively.

Rules that constitute recurring tropes for arguing fair solutions can also be found in the examination of Roman legal sources (e.g., D. 1.1.10 §1: “The precepts of law are these: to live honestly, not to harm another, to give to each what is due”).

These technical resources possess strategic value as generators of arguments, by offering preestablished pathways to explore cases from multiple angles; as structurers of reasoning, by providing a logical framework to organize ideas and present them in a coherent and persuasive manner; as tools for critical analysis, by allowing one to break down the opposing party's arguments to identify their foundations; as a bridge between fact and law, by serving as a means to connect concrete facts with abstract concepts and norms; and as a source of “ ” support for common language, by providing recognizable terminology to discuss the foundations of arguments within the legal profession.

Critical-Deconstructive Dimension

In the critical-deconstructive sense, the first element to consider is rhetoric, as an essential art for constructing and—crucially—dismantling arguments, which may be legal in nature. It stems from the understanding that persuasion depends on exposing the opponent's weaknesses through specific critical techniques and, therefore, is regarded as a tool of deconstruction.

CICERO and QUINTILIAN provided the intellectual framework that transformed the role of the orator from a merely persuasive craft into an exercise in **techné iuris**, a systematic legal art. Their works helped endow the practice of law in Rome with a rational, ethical, and deeply effective method.

In **Orator ad Brutum**, CICERO evaluates past orators not only for their style but also for their effectiveness and legal knowledge, establishing a standard for assessing what constitutes a good orator in Rome and directly linking rhetorical excellence to success in defending cases and in public life. He offers a framework for evaluating rhetorical performance by defining the characteristics that distinguish the ideal orator—through mastery of three styles (simple, moderate, and sublime); the abilities to move, delight, and persuade; and the expressive skills needed to present a case convincingly before the various actors in the Roman judicial system.

In **Institutio Oratoria**, QUINTILIAN, in his capacity as a teacher of rhetoric—a pioneer in exercising this role as a public office—offers a pedagogical treatise through which the relevant competencies of orators continue to be examined in two main areas: the legal and the political.

Ethics, for its part, takes on significance given that in Roman law there was a constant tension between the formally valid argument and the ethically acceptable argument. Legal criticism frequently appealed to higher ethical principles to deconstruct rigid or unjust legal arguments.

In Roman law, law (*ius*) was inseparable from *aequitas* and *boni mores*. The rigidity of the *lex* was tempered by equity, and the validity of legal acts depended on their honesty. Law was, in essence, the technical application of an ethical ideal, as can be seen, among other places, in passages D.1.1.1 pr, D.16.3.31, and D.2.14.1.

In **De Oratore**, CICERO argues that the perfect orator must fuse **sapientia** (philosophical/legal wisdom) with **eloquentia**. He introduces the concept of **decorum** (appropriateness) as an ethical and strategic guide for adapting the speech to the case, the audience, and the circumstances. In **De Officiis**, he articulates his famous critique of the rigid and “ ” literal application of the law, establishing an ethic that permeated the interpretation and evaluation of norms and arguments.

4. Discussion

Taking Roman contributions to the field of argumentation as a starting point, we have traced their development to arrive at key issues in contemporary argumentative theories. By consistently applying the model of the three dimensions outlined above, it is possible to recognize that Rome's influence is evident in all of them, as analyzed below.

Historical-Foundational Dimension

From the preceding discussion, it is evident that there was a broad understanding of interpretation. This gives rise to Professor GUZMÁN BRITO's view that such an activity would lead to interpretive results encompassing the declaration, restriction, extension, and correction of the rule. From Savigny's study of these and other sources in his **System of Contemporary Roman Law** comes the classification—central to the training of continental jurists—of legal interpretation into grammatical, logical, systematic, and historical.

Contemporary theories of legal argumentation assume that interpretation is inherent to any communicative process; therefore, it is obvious that arguing necessarily involves interpreting:

attributing some meaning to the premises and the conclusion (ATIENZA, 2013, p. 514). Thus, the centrality of interpretation in legal life endures, as does the diversity of methods that were systematized by Romanist doctrine and are now embedded in current theories of argumentation.

With regard to analogy, Chaim PERELMAN and Lucie OLBRECHTS-TYTECA, in their **Treatise on Argumentation: The New Rhetoric**, acknowledge—in the early development of contemporary schools of argumentation—that reasoning by analogy is one of the fundamental argumentative frameworks for gaining support for a thesis. The Roman structure, based on the legal function of similarity, is at the core of this framework, whose strength lies in its orientation toward substantive justice.

Roman equity, for its part, is the direct historical precursor to arguments based on equity and substantive justice in contemporary legal argumentation. ATIENZA demonstrates how these arguments appeal to moral principles and their consequences to temper the literal application of the law when it is unjust, constituting an essential part of the internal and external justification of decisions (ATIENZA, 2005). In the work of Ronald DWORKIN (2012), although the Roman experience is not directly analyzed, his concept of Judge Hercules evokes the work of the classical Roman jurist in seeking what is *bonum et aequum*.

Consequently, interpretation, analogy, and equity demonstrate a provable historical-foundational causal relationship between Roman law and contemporary theories of legal argumentation, insofar as they contribute essential elements to their identity and functioning and are recognized as their legitimate origin within a transformative continuity.

- Methodological-Practical Dimension

The centrality of the factual is one of the first points addressed by VIEHWEG (2025) in his work, acknowledging the Roman influence on argumentation through its focus on the concrete and the probable. The *narratio* transcends the nature of mere chronology to become a strategic construction aimed at establishing the most plausible version of the facts, foreshadowing the modern “theory of the case.”

In turn, PERELMAN and OLBRECHTS-TYTECA (1989) emphasize the importance of reaching an agreement on the facts as the basis for any subsequent argumentation, drawing on the *narratio* and its refutation through the opposing narrative.

The Roman contribution remains methodologically relevant in this regard, as its emphasis on the *factum/iuris* distinction and on the persuasive—rather than merely descriptive—construction of the factual version constitutes the ABCs of modern litigation.

Robert ALEXYS’s formalization of the “legal syllogism” as the basic structure of internal justification in **Theory of Legal Argumentation** (2007) highlights the continued relevance of this analytical framework. Although he acknowledges its inadequacy for capturing the full complexity of argumentation—which requires “external justification”—he agrees with the Romans on its central role: ensuring coherence between the law, the facts, and the decision.

Roman law, therefore, deserves credit for anticipating the syllogistic structure underlying the application of law, striking a balance between normative abstraction and factual specificity. Its relevance and continued validity lie in the fact that this remains the minimal logical framework for ensuring internal coherence.

Refutation remains a central theme in the most recent studies of logic and argumentative criticism, which have expanded and systematized the subject. Anthony WESTON’s **A Rulebook for Arguments** (2009) offers a concise and extremely practical manual of basic rules for constructing and evaluating arguments, serving as a modern handbook of preliminary exercises, comparable in pedagogical utility to QUINTILIAN’s **Institutions**. In his **A Practical Theory of Fallacy** (1995),

Douglas N. WALTON reinterprets traditional fallacies, reviving the practical sensibility of CICERO, who in **De Oratore** warns that refutation techniques depend on the specific case, distinguishing between the legitimate and the sophistical use of arguments.

The Roman contribution to the identification and refutation of flawed arguments is deeply practical and ethically relevant. Their forensic experience made them pioneers in mapping out the deviations of persuasive reasoning in an adversarial context. Their relevance remains undiminished: the very fallacies they described continue to permeate professional practice; hence, recognizing them—as the Romans taught—is the first line of defense for the health of rational legal discourse and a safeguard against irrationality and bad faith in the law.

The reception of topics in contemporary argumentative theories is evident from the very title of VIEHWEG's pioneering work, **Topics and Jurisprudence** (2025). It validates the Roman method of topical jurisprudence, which resolved problems not only by applying rules but also by seeking relevant arguments (topoi) in the specific case. Furthermore, in the very foundations of contemporary argumentation, PERELMAN and OLBRECHTS-TYTECA (1989) reaffirm the importance of the audience and of the loci communi for argumentation in scientific disciplines such as law.

Roman rhetoric provided the essential pragmatic and persuasive context for legal reasoning. It demonstrated that law does not operate in a logical vacuum, but rather in a space of dispute where clear presentation, the selection of convincing arguments, and appeals to shared values (e.g., *aequitas*, *bona fides*) are decisive. VIEHWEG and PERELMAN rediscovered this topical-rhetorical core as vital for overcoming formalism.

Consequently, Rome is the foundation of rhetoric as the backbone of practical legal reasoning, providing the methodological tools to develop a flexible, persuasive, and deeply human legal system. Its legacy endures as the indispensable foundation upon which all legal argumentation that aspires to be both rigorous and just is built.

To summarize, from a methodological and practical standpoint, it can be asserted that Roman law serves as a benchmark for legal argumentation that applies, adapts, and recognizes as valid the operational tools of Roman law—namely, the distinction of facts, the construction of syllogisms, the refutation of flawed arguments, and the use of topics—due to their proven effectiveness and functional relevance to their common objectives.

- Critical-Deconstructive Dimension

The echoes of Roman contributions to rhetoric resonate in PERELMAN and OLBRECHTS-TYTECA's **Treatise on Argumentation** (1989), whose theory of the audience provides the framework for analyzing and dismantling the premises accepted by an audience, which form the basis of all persuasion; in Robert ALEXI's **Theory of Legal Argumentation** (2007), where the “weight formula” is established as a method to provide a system for deconstructing a difficult case into its conflicting dimensions and weighing them rationally; and in “Argumentation, Communication, and Fallacies” (2016) by Frans VAN EEMEREN and Rob GROOTENDORST, as their pragma-dialectic leads to a system for deconstructing arguments by identifying fallacies as violations of the norms of an ideal critical discussion.

Roman rhetoric is therefore regarded as the starting point for a rigorous method of testing the soundness of arguments in an adversarial setting, being essential to justice in an accusatory and dialectical system. Without this critical capacity, Roman law would have been dogmatic and inflexible.

An ethical understanding of law is also evident in contemporary theories of argumentation. Robert ALEXI's (2007) work attests to the reception of Roman influence in his concept of the “claim to correctness” inherent in law, whose origins lie in the appeal to *aequitas* and *boni mores* to critique

and limit purely legal arguments. The balancing of principles proposed by ALEXY reflects the Roman practice of weighing the letter of the law against higher ethical principles.

In **The Empire of Justice** (2012), Ronald Dworkin presents his conception of law as integrity, in which decisions must fit coherently within the system's underlying moral principles. This position resembles the way Roman jurists sought to interpret laws and arguments in light of legally relevant values.

Since the time of Roman law, deconstruction based on ethical principles has served as a vital check against extreme formalism and as a mechanism for the evolution and humanization of the law. The phrase "summum ius summa iniuria" (Cicero, 2009, p. 15) encapsulates the Roman awareness that a formally impeccable legal argument can be materially unjust, and its relevance is evident in the propositions of contemporary argumentative theories.

As a corollary to the foregoing, it can be asserted that Roman law serves as a critical-deconstructive framework for legal argumentation, as it constitutes a living dialectical process in which rhetorical criticism and ethical scrutiny function as intellectual and practical tools for constantly evaluating, deconstructing, and humanizing the law, in order to prevent its irrationality or immorality. This is an enduring and necessary lesson for any legal system that aspires to be just.

5. Conclusions

Theoretical Contribution of the Study: This research demonstrates that the relationship between Roman law and contemporary legal argumentation theory is not limited to a list of historical citations or a mere fortuitous coincidence. Through the three-dimensional analytical model formulated, it has been verified that Roman jurisprudence () constituted a genuine technology of legal discourse. Its main contribution lies in having articulated, for the first time in the Western legal tradition, teleological interpretation, reasoning by analogy, the enthymematic technique, and the ethical control of decision-making into a coherent whole.

Practical and methodological implications: In the context of legal education and contemporary judicial practice, the findings demonstrate the usefulness of Roman topics and rhetoric for developing critical skills in the formulation of case theory, factual structuring, and adversarial debate. The study of Roman jurisprudence as dialectic provides contemporary jurists with methodological tools to avoid both hyper-formalistic dogmatism and judicial arbitrariness.

Limitations and Future Research Directions: Given the limitations of the analyzed corpus, the following are proposed as future research directions: 1) A comparative-quantitative analysis of the explicit presence of Romanist tropes in the rulings of contemporary high courts and constitutional courts; 2) An exploration of the argumentative dimension in the sources of Roman public and criminal law during the Principate; 3) A study of the reception and transformation of the Roman argumentative model in the traditions of common law.

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