

Medieval Sourcebook: Corpus Iuris Civilis, 6th Century

Although Law as practiced in Rome had grown up as a type of case law, this was not the "Roman Law" known to the Medieval, or modern world. Now Roman law claims to be based on abstract principles of justice that were made into actual rules of law by legislative authority of the emperor or the Roman people. These ideas were transmitted to the Middle Ages in the great codification of Roman law carried throughout by the emperor Justinian (527-565). The Corpus Iurus Civilis was issued in Latin in three parts, The Digest, the Institutes and a textbook. Currently in the World there are just three widespread legal systems: the "Common Law" of the Anglo-American legal tradition, Islamic Sharia, and Roman Law [in, for instance, most of Europe, Scotland, Quebec and Louisiana]. Each was spread by different sorts of imperialism in the past.

The Digest: Prologue

The Emperor Caesar, Flavius, Justinianus, Pious, Fortunate, Renowned, Conqueror, and Triumpher, Ever Augustus, to Tribonianus His Quaestor., Greeting:

With the aid of God governing Our Empire which was delivered to Us by His Celestial Majesty, We carry on war successfully. We adorn peace and maintain the Constitution of the State, and have such confidence in the protection of Almighty God that We do not depend upon Our arms, or upon Our soldiers, or upon those who conduct Our Wars, or upon Our own genius, but We solely, place Our reliance upon the providence of the Holy Trinity, from which are derived the elements of the entire world and their disposition throughout the globe.

Therefore, since there is nothing to be found in all things s worthy of attention as the authority of the law, which properly regulates all affairs both divine and human, and expels all injustice; We have found the entire arrangement of the law which has come down to us from the foundation of the City of Rome and the times of Romulus, to be so confused that it is extended to an infinite length and is not within the grasp of human capacity; and hence We were first induced to begin by examining what had been enacted b former most venerated princes, to correct their constitutions, and make them more easily understood; to the end that being included in a single Code, and having had removed all that is superfluous in resemblance and all iniquitous discord, they may afford to all men the ready assistance of true meaning.

After having concluded this work and collected it all in a single volume under Our illustrious name, raising Ourselves above small and comparatively insignificant matters, We have hastened to attempt the most complete and thorough amendment of the entire law, to collect and revise the whole body of Roman jurisprudence, and to assemble in one book the scattered treatises of so many authors which no one else has herebefore ventured to hope for or to expect and it has indeed been considered by Ourselves a most difficult undertaking, nay, one that was almost impossible; but with Our hands raised to heaven and having invoked the Divine aid, We have kept this object in Our mind, confiding in God who can grant the accomplishment of things which are almost desperate, and can Himself carry them into effect by virtue of the greatness of His power.

We desire you to be careful with regard to the following: if you find in the old books anything that is

not suitably arranged, superfluous, or incomplete, you must remove all superfluities, supply what is lacking, and present the entire work in regular form, and with as excellent an appearance as possible. You must also observe the following, namely: if you find anything which the ancients have inserted in their old laws or constitutions that is incorrectly worded, you must correct this, and place it in its proper order, so that it may appear to be true, expressed in the best language, and written in this way in the first place; so that by comparing it with the original text, no one can venture to call in question as defective what you have selected and arranged. Since by an ancient law, which is styled the *Lex Regia*, all the rights and power of the Roman people were transferred to the Emperor, We do not derive Our authority from that of other different compilations, but wish that it shall all be entirely Ours, for how can antiquity abrogate our laws?

From *The Digest of Justinian*, C. H. Monro, ed. (Cambridge, Mass.: Cambridge University Press, 1904).

The Institutes: Sources of Laws

Justice is the set and constant purpose which gives to every man his due. jurisprudence is the knowledge of things divine and human, the science of the just and the unjust....

The precepts of the law are these: to live honestly, to injure no one, and to give every man his due. The study of law consists of two branches, law public and law private. The former relates to the welfare of the Roman State; the latter to the advantage of the individual citizen. Of private law then we may say that it is of threefold origin, being collected from the precepts of nature, from those of the law of nations, or from those of the civil law of Rome.

The law of nature is that which she has taught all animals; a law not peculiar to the human race, but shared by all living creatures, whether denizens of the air, the dry land, or the sea. Hence comes the union of male and female, which we call marriage; hence the procreation and rearing of children, for this is a law by the knowledge of which we see even the lower animals are distinguished. The civil law of Rome, and the law of all nations, differ from each other thus. The laws of every people governed by statutes and customs are partly peculiar to itself, partly common to all mankind. Those rules which a state enacts for its own members are peculiar to itself, and are called civil law: those rules prescribed by natural reason for all men are observed by all people alike, and are called the law of nations. Thus the laws of the Roman people are partly peculiar to itself, partly common to all nations; a distinction of which we shall take notice as occasion offers....

Our law is partly written, partly unwritten, as among the Greeks. The written law consists of statutes, plebiscites, senatusconsults, enactments of the Emperors, edicts of the magistrates, and answers of those learned in the law. A statute is an enactment of the Roman people, which it used to make on the motion of a senatorial magistrate, as for instance a consul. A plebiscite is an enactment of the commonalty, such as was made on the motion of one of their own magistrates, as a tribune.... A senatusconsult is a command and ordinance of the senate, for when the Roman people had been so increased that it was difficult to assemble it together for the purpose of enacting statutes, it seemed right that the senate should be consulted instead of the people. Again, what the Emperor determines has the force of a statute, the people having conferred on him all their authority and power by the *lex regia*, which was passed concerning his office and authority. Consequently, whatever the Emperor settles by rescript, or decides in his judicial capacity, or ordains edicts, is clearly a statute: and these are what are called constitutions.

From *The Institutes of Justinian*, B. Moyle, trans. 3rd ed. (Oxford: Oxford University Press, 1896), pp. 3-5.

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