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The Influence of Roman Law on Early Medieval Culture*

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ROMAN LAW IN THE CLASSICAL PERIOD.

The subject of this Note is one on which a great deal of light has been thrown by research done during the last thirty years. Prior to the 1950's, we knew that the Germanic tribes which overran the Roman Empire and settled on Roman soil in the fourth and fifth centuries A.D. made a rather extensive use of the Roman law which was in force in the conquered territories. But we did not know much about the characteristics and practical administration of the system of law which controlled life in the period marking the demise of ancient civilization in Western and Central Europe and the birth of a new age which we call the Middle Ages.

Our knowledge of the contribution of Roman law to early medieval culture was quite incomplete until recently because scholars of Roman law in the nineteenth and first half of the twentieth centuries concentrated their efforts on the reconstruction of that Roman law which governed Roman society during the first two centuries after the birth of Christ. This was the period of the classical Roman law, and by classical Roman law we mean the Golden Age of Roman law, the time of its highest development. The chief accomplishments of the classical law were the following. In the first place, the Roman jurists dissected human social life for the purpose of arriving at concepts which denoted the typical relations and arrangements between the members of society. Examples of such concepts are ownership, possession, conveyance, widely used contracts like sales, leases, contracts for services, and legal devices such as agency, parental power, and marital property.

Secondly, they used these concepts in building a structure of legal

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norms which allocated rights and obligations to the citizens and regulated many of their relations and transactions in some detail.

Thirdly, they succeeded in the practical administration of the legal system to impart a considerable measure of stability to the social system without indulging in undue dogmatism and conceptual rigidity. It is the hallmark of a mature legal system to provide orderliness and predictability in social relations and at the same time meet the need for flexibility and change when an unbending adherence to established norms would produce clearly undesirable results. The classical Roman law came close to this ideal, though perhaps not in all of its branches.

For more than a century, Roman law scholars were engaged in an endeavor to reconstruct the classical law. This statement implies that for the most part we do not have a direct and immediate knowledge of Roman law but only an indirect, circuitously communicated knowledge.2

In spite of the incomplete character of our information, there is a great deal we do know about the classical Roman law. We know, for example, that it was only to a relatively small extent legislative law, that is, a law promulgated by way of statutes or codes. The classical Roman law was in some important respects similar to the Anglo-American common law, in that it developed out of the practice of the courts.

There was, however, a significant difference between these two systems of law. The chief sources of Anglo-American law have for the most part been precedents, that is, opinions written by judges who have rendered judgments in litigated cases. The judges of the classical Roman law, on the other hand, were usually incapable of writing learned judicial opinions. Except for a limited sector of the court system manned by state-appointed officials, judges were laymen selected by the praetor,3 usually after consultation with the parties to a lawsuit.

It might be said that these judges constituted a one-man jury, because they occupied no permanent place in the judicial system and did not even serve a term of office for a stated period: they passed judgment only in the particular case for which they were appointed. Since these judges were not trained in the law, they usually asked distinguished private practitioners for an opinion on how they should decide a case before them. The legal opinions prepared by these practitioners were called responsa. Many of the responsa, especially those on novel

2. See text following note 22 infra.
3. The praetor was the Roman functionary responsible for the administration of justice.
points of law, were collected and published. They were used not only in the case in which they were rendered but also in later cases presenting similar fact situations. These responsa constituted the most important source of law during the classical period of Roman law.4

The language used by the Roman jurists, especially in their responsa, was usually clear and concise. The jurists omitted inessentials and drove right to the core of the problem. They stated the facts with masterly brevity and developed an ingenious way of making fine distinctions and persuasive analogies. Many of the responsa were actually pieces of art, in formulation as well as in argumentation. It was in this art of approaching the complexities of life from a legal perspective that the Romans showed their most superb talents, and it was in this art that they became teachers of a large part of the world.5

The peculiar genius of the Roman jurists found its fullest expression in the law of contracts and property. The jurists brought these two branches of the law into a form which remained a model for future ages. A clear distinction was drawn between ownership and possession. The various modes of transferring title to property were analyzed in detail and cast into an elaborate legal mold. The general rules governing dealings between individuals were worked out. Most of the special types of contracts known to us today were subjected to a detailed legal treatment. In particular, the relation between seller and purchaser was dissected in all its ramifications and many of the rules developed by the Romans in this branch of the legal system still form part of the law in many countries of the world.

Politically, the period of classical Roman law coincided to a large extent with the period of the Principate, which had been a period of limited monarchy starting with Augustus. This phase of Roman history came to a close at the end of the third century and was replaced by the absolute monarchy of the Dominate period. This change in the political system also had an effect on the law. The instrument of legislation had been used sparingly during the classical period of Roman law. By contrast, in the third and fourth centuries, the emperors made wide use of their legislative powers through constitutiones6 which regulated many aspects of life.

6. Constitutiones were statutory enactments.
Furthermore, the responsa of the Roman jurists lost their importance in the Dominate and gradually came into disuse. They were replaced in part by an untechnical and popularized law which is known today under the name Roman Vulgar law. This segment of Roman law was largely unknown to us before 1950. It was researched and described in the painstaking studies of Ernst Levy.7

THE VULGAR LAW

The Vulgar law flourished particularly in the Western part of the Roman Empire, including Italy, but it also gained a great deal of ground in the Eastern Empire which was governed from Constantinople. Because its use centered in the Western Empire, it is commonly referred to as the West Roman Vulgar law. It grew out of the daily arrangements and customs of the people and the practices of the courts and it formed a complement to imperial legislation.

This type of law differed considerably from the law of the classical period. It was a much cruder form of law which reflected the decline of Roman civilization. It was a law averse to carefully elaborated concepts and not equipped to measure up to the standards of classical jurisprudence with respect to artistic form and logical construction. For example, the classical jurists had perceptively distinguished between ownership and possession, realizing that a person may own an object which is in the possession of another, or possess a thing which he does not own. When the sources of the West Roman Vulgar law use the term ownership, they frequently mean possession, and when they talk of possession, one may never be sure whether they refer to bare possession or to seisin supported by title.

Subtle classical distinctions between full-fledged and limited ownership rights were ignored or obfuscated.

Another example of the difference between the two periods of law is that the classical jurists had differentiated between the sale of a commodity, which they conceived as a contract, and a conveyance of real or personal property, which they classified as a property transaction designed to vest title in another person. The lawyers of the Vulgar law period, on the other hand, failed to draw a clear distinction between the contractual and proprietary aspects of a sale. For example, when two parties agreed on the sale of a piece of land, the lawyers usually as-

sumed that title passed by the sale. They paid little attention to the fact that an agreement to sell and the conveyance of title are conceptually different things which need not coincide in time or place.

Thus the Vulgar law was characterized by the absence of well-defined concepts. It exhibited much fuzzy thinking and conceptual confusion. It was an oversimplified and often outright primitive system with hardly any trace of the architectural grandeur of the classical law.8

This lack of technical refinement did not mean that the West Roman Vulgar law was altogether devoid of merit. Not infrequently it dispensed a somewhat coarse but nevertheless earthy sort of equity. The vulgar law was naturalistic, often governed by sentiment rather than analytic logic, and not at all methodical. Consequently it was closer to the perceptions of the common man than the classical law and the lower classes of society often fared better under it than under the complex and sophisticated classical law.9 The classical law had been an instrument handled by a legal aristocracy which was very much preoccupied with the estates and property transactions of wealthy people.

It is worthy of note in this connection that, as a general rule, in classical Rome a lawsuit could be brought only when the fact situation was covered by a well-circumscribed type of action which had been recognized in the annual Edict of the praetor. Occasionally, the praetor would grant a special actio in factum which was adjusted to the facts of a particular case, but he made a cautious and restrictive use of this power. Conversely, vulgar law looked to social and economic results rather than to consistency of a legal act with the requirements of a formal and technical structure. Unlike their predecessors, the judges of the postclassical period were inclined to grant a remedy whenever they thought that the substance of the complaint warranted such remedy. The fine distinctions between various forms of action, which had been worked out by the classical jurists, gave way to an amorphous mass of result-oriented means of redress.10 From the standpoint of plaintiffs in all strata of the population, this was a distinct advantage.

The social and economic changes which took place in the third

9. See also the penetrating analysis of the social and legal attitudes underlying the vulgaristic legal style by F. W eacker, Vulgarismus und Klassizismus im Recht der Spätantike (1955).
10. Levy, West Roman Vulgar Law, supra note 7, at 202-03.
and fourth centuries A.D. also left an imprint on the style of imperial legislation. Whereas in earlier times the language used in statutes had been terse and compact, it now became flowery, bombastic, and sometimes turgid. The legislation of the emperors in the Dominate was full of self-adulation, in the sense that the Emperors praised themselves for their concern with the welfare of the people. It was also moralizing in its tone, imploring the population to honor certain rules of conduct deemed beneficial for the common weal.

This type of legal language is a sociological characteristic of governmental systems in which the state has assumed a paternalistic, educative role and intervenes frequently and actively in the daily lives of the citizens.

The 1975 Constitution of the People's Republic of China is a modern legal document representative of this kind of legal style. It declares that "the people of all nationalities of our country, continuing their triumphant advance under the leadership of the Communist Party of China, have achieved great victories in socialist revolution and socialist construction." It goes on to say that "we should build socialism . . . with the initiative in our hands, through self-reliance, hard struggle, diligence, and thrift, and by going all out, aiming high and achieving greater, faster, better, and more economical results, and we should be prepared against war and natural disaster and do everything for the people." In these formulations we find a combination of self-congratulation and moralistic exhortation which would be foreign to the style of Western constitutions but which abounds in the enactments of the late Roman emperors.

Another facet of imperial legislation in the late period of antiquity was that it shied away from laying down abstract, generalized norms of law. It preferred to direct its attention to the solution of single, concrete problems. For example, instead of decreeing that "unconscionable contracts shall not be enforced" (an enactment which introduces two abstract concepts, namely, "contract" and "unconscionable"), the imperial law would describe a specific, individual contract and set forth the concrete misrepresentations which had induced one party to accept

12. Id. at 28 (preamble).
13. Id.
the terms of the contract; it would then decree that this contract shall not be enforced. This attention to detail and observable events made the statutes more loquacious and cumbersome, but at the same time, these pieces of legislation were more graphic in their contentual concreteness than the generalized pronouncements of the classical period.

**RECEPTION OF ROMAN LAW BY THE GERMANIC INVADERS OF THE ROMAN EMPIRE**

When a number of Germanic tribes (among them the Visigoths, Ostrogoths, Vandals, Burgundians, and later the Franks) invaded the Roman Empire in the fourth and fifth centuries and established Germanic kingdoms on Roman soil, the Roman law which they found to be in force in Italy, Spain, Southern France, North Africa, etc., was the vulgar law and the late imperial legislation. All of these tribes adopted the Roman law to a considerable extent. What is important to realize and not widely known is the fact that it was not the highly developed classical law which they assimilated but the cruder, less complicated law of the late period, especially the West Roman Vulgar law.\(^{14}\) The very fact that this law was simpler, less abstract, closer to the senses than the refined classical law made its reception by the Germanic tribes possible.

It must be remembered that these were Germans in a very early state of civilization. They lived under a primitive agricultural system; their cultivation of the soil was limited to a few products; they had not developed any major handicrafts; and they did not engage in trade and commerce to any significant degree. Before they conquered the cities of the Roman Empire, their housing consisted of single dwellings and small villages. They wore sleeveless garments, and plain pieces of cloth around them as a protection against cold.

These early Germans would have been unable to absorb the classical Roman law with its conceptual finesse and intellectual sophistication. They were able to comprehend and use the Vulgar law which was closer to the mental horizon of common people and was often inspired by a naturalistic sense of right and wrong.\(^{15}\)

One reason why the early Germans would have been unable to administer the classical law was the degree of abstraction which was characteristic of this law. The power of abstraction is an ability which evolves slowly in the process of civilization and tends to erode when a

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15. *See* text accompanying notes 7-8 supra.
civilization enters the stage of regression. The Germanic invaders had not yet developed the level of sophistication which would allow them to approach legal phenomena in the form of abstract concepts. It is instructive in this respect to take a look at the early period of Roman law. When the popular assembly in Rome passed a law, it would not take an abstract form such as “Whoever appropriates a chattel belonging to another shall be sentenced to death or to a term of imprisonment.” The law would declare: “Citizen Caius has taken a cow in the possession of citizen Julius and shall suffer punishment by being precipitated from the Tarpejan rock.” When Caius and Julius both claimed ownership of a cow, the cow had to be taken into the courtroom or to the marketplace where the court was held. If the court adjudged Julius to be the owner, the cow had to be physically handed over to him. When the object of a lawsuit was a piece of land or a building, it was obvious that the object could not be taken into the courtroom. In the oldest time, when the Roman state was limited to the city of Rome, the legal proceeding took place on the land or in front of the building. Later on, a symbolic form of transfer of title was used. In the case of land, a clod of earth had to be brought to the courtroom and placed in the hands of the winner. In the case of a building, the symbolic object signifying the conveyance was a brick removed from the building.\footnote{16. See generally M. Kaser, Das Altrömische Ius (1949); I M. Kaser, Das Römische Privatrecht 129 (2d ed. 1971).}

Although the late Roman law did not restore most of the rules of the early law, it exhibited a considerable number of similarities. There was a revival of physical acts with legal significance; transactions perceptible by the senses were favored over operations of the reflective mind.

Notwithstanding the reduced degree of methodological skill and argumentative acumen which characterized the Vulgar law, this system of law was still far superior in quality to the primitive customs of the Germans which, prior to the migrations, had not been elaborated into legal norms. When we compare the state of the law in the early Middle Ages, that is, at the beginnings of Germanic civilization, with the condition of law in early Babylonia, Egypt, Greece, and Rome, we find that the Germanic tribes began at a higher level of legal culture than the nations of antiquity. This phenomenon is attributable to the fact that the Germans acquired the heritage of a magnificent civilization which, although it had declined due to its advanced age, still preserved quite a few of the achievements of its golden age.
After taking over the reins in large parts of the Roman Empire, the Germans produced a number of elaborate codifications which show the strong impact that the West Roman Vulgar law had upon early medieval culture. In approximately 475 A.D., the Codex of the Visigothic King Euric was promulgated. In 506 A.D., it was followed by the Breviarium Alaricianum, which in the following century was replaced by the Lex Visigothorum. In the sixth century, the Ostrogoths put into effect the Edict of King Theodoric and the Burgundians had earlier produced the Lex Burgundionum. Some of these codes were only destined for the Roman part of the population which was very substantial. Other codifications were applicable to Germans and Romans alike. Even when the codes were limited in their operation to the Romans, the spirit of the late Roman law came to pervade the Germanic sector of the legal system.17

ROMAN LAW IN THE EASTERN HALF OF THE ROMAN EMPIRE

The discussion thus far has dealt with legal developments in the Western half of the Roman Empire. The Roman Empire was divided into two halves in 395 A.D. Rome was the capital of the Western portion, and the Eastern portion was governed from Constantinople by a different emperor. This Eastern Empire was not conquered by the Germans. It is commonly referred to as the Byzantine Empire and preserved its existence until 1453 when the Turks captured Constantinople, although it had already lost substantial territories to the Arabs in the seventh century.

This Byzantine Empire reached its widest expansion under the Emperor Justinian, who reigned from 527-565 A.D. Justinian was not of Roman origin but born in Illyria (now Yugoslavia) of Greek-speaking parents. Between 540 A.D. and 550 A.D., he recaptured Italy from the Ostrogoths, who had established their rule there at the end of the preceding century, and North Africa, which had been in the hands of a Germanic tribe called the Vandals.

The state of the East Roman law at the time Justinian came to power was one of confusion and uncertainty. There were many thousands of volumes filled with legal opinions, innumerable textbooks which had been written in different epochs of Roman legal history, and

17. P. Vinogradoff, Roman Law in the Middle Ages 15-16 (2d ed. 1929); Levy, Reflections on the First Reception of Roman Law in Germanic States, 1 Gesammelte Schriften 201-09 (1963); Kunkel, supra note 4, at 148-51.
many isolated legal enactments which were not available in any conve-

definite collection. If a judge or a lawyer wished to look up a point of
law, he would find hopeless disagreement among the authorities.

In the century preceding the reign of Justinian, the confusion be-
came so intolerable that the Emperor Theodosius II passed the famous
Law of Citations in 426 A.D. By this law, the works of five classical
jurists (Papinian, Paulus, Ulpian, Modestinus, and Gaius) were de-
clared to be primary authorities. Their writings were given quasi-statu-
tory force and made binding upon the judges. In addition, it was
permissible to quote only the work of an author who had been cited by
one of the primary authorities and no other.

This law is evidence of the low level to which jurisprudence had
degenerated during this period. No living jurist was deemed worthy of
being consulted. If there was disagreement on a question of law among
the five primary authorities, the majority of the authors was to be fol-
lowed. This was a wholly mechanical solution which did not permit a
judge to argue that the minority had in his opinion adopted a better
view than the majority.

Several years after the passage of this law, the same Emperor
promulgated a code known as the Codex Theodosianus. This code col-
lected the scattered mass of isolated statutes and imperial decrees. The
bulk of Roman law, however, did not consist of statutes, but of
responsa written by Roman jurists in earlier times and the uncodified
body of vulgar law. These segments of the law were not included in the
Codex Theodosianus.18

JUSTINIAN'S CODIFICATION-CORPUS IURIS CIVILIS

In order to remedy this unsatisfactory state of affairs, Justinian de-
cided to undertake a comprehensive codification of the Roman law. It
was completed in 534 A.D. and published under the name Corpus Iuris
Civils. This legislation was a combination of statute law, the law
found in textbooks and the opinions of classical jurists. It was designed
to remedy a major shortcoming of the Codex Theodosianus by broad-
ening the scope of the materials incorporated into the code.

Justinian's code consists of four parts. (1) The Institutes, an intro-
ductive summary account of the law based on the writings of Gaius, a
classical jurist: the unconventional character of Justinian's code is am-
ply demonstrated by the fact that it starts out with a kind of textbook

18. On the Law of Citations and the Codex Theodosianus see KUNKEL, supra note 4, at
146-48.
resting chiefly on the work of a jurist who had lived three-hundred years earlier. (2) The Digest, which is a collection of excerpts from the writings of the Roman jurists, some preclassical and some postclassical, but primarily classical writings. (3) The Codex, which is a collection of imperial statutes from Hadrian to Justinian. (4) The Novels (Novellae), which contained new legislation enacted by Justinian. The Novels were written in Greek; the Codex was written partly in Greek, partly in Latin, while the first two parts of the Code used the Latin language.

The Digest was the most important part of the Code for the future of European law, though not for the immediate future of the Roman Empire. Forty jurists are represented in the Digest, and the materials taken from their writings cover a period of five hundred years. It has been estimated that three million lines from two thousand books were reduced to 150,000 lines in the Digest.  

The fact that the Digest included so much classical law, and even some preclassical law, posed serious practical problems. It had been Justinian’s desire to restore the classical law, because it was clearly superior to the Vulgar law which had gained considerable ground in the Eastern Empire. The social and economic system at the time of Justinian was substantially different from that prevailing during the classical period, and the law is always an expression and crystallization of social and economic forces.

Economic Factors Which Influenced the Drafting of Justinian’s Code

The practical difficulties faced by the draftsmen of the Code are best illustrated by briefly examining Roman economic history. The economic system at the time of classical jurisprudence was a free enterprise system superimposed upon a primarily agricultural civilization. Trade, commerce and, industry had developed considerably since the days of the early feudal economy. But capitalism never attained the high technological level in Rome which has been achieved in our own civilization.

Industry remained largely in the hands of a multitude of small


20. The survey of Roman economic developments which follows is based on M. ROS-TOVTZEFF, THE SOCIAL AND ECONOMIC HISTORY OF THE ROMAN EMPIRE (1926); M. WEBER, GESAMMELTE AUFSATZE ZUR SOZIAL-UND WIRTSCHAFTSGESCHICHTE I-45, 253-78 (1924); Gümmerus, Industrie und Handel bei den Römern, 9 PAULY’S REALENCYKLOPAĐIE DER CLASSISCHEN ALTERTUMSWISSENSCHAFTEN 1454-1535 (1916); S. RUNCIMAN, BYZANTINE CIVILIZATION 171-76 (1933).
craftsmen and artisans. Large scale production in factories was limited to a small number of products such as bricks, red-glazed pottery, lamps, iron, and bronze wares. The preferred investment was nonindustrial; for the senatorial nobles it was land, and for the commercial class (called "equestrians") it was finance or trade.

Trade in the Roman empire was considerable, although again it would not stand comparison with the modern development of commerce. Italy imported grain, raw materials, and luxury articles from the provinces, and paid for these imports in part by exporting wine, olive oil, pottery, and metal products. Trade and commerce were given a relatively free course.

During the early period of the Principate, the state interfered little in economic matters. This situation changed in the later Principate when the state increased regulation of industry and commerce. In the Dominate, the Roman economy was converted into a state-controlled and planned economy, a system resembling state socialism. Every detail of the economic life of the Empire was considered to be the government's business.

Wages, working hours, and prices were fixed by the Government. Exports were strictly controlled and there were restrictions on travel. A number of state monopolies existed in industry, e.g., the important silk industry and the manufacture of armaments. The building trades and the mines were nationalized; even the bakeries were state-owned. The Emperor owned a large portion of the land in the Empire and collected taxes from those who cultivated it for him. The imperial lands were not treated as private estates of the rulers, but as a form of state farm.

There was no unemployment in this state controlled economy. Workmen could not be dismissed except with governmental permission, and any able-bodied person out of work was at once made to take on some job of public work or utility. But the abolition of unemployment was bought at the high price of a severe restriction in the freedom of occupational choice. Men could no longer change their jobs except with official permission; they had to perform the work which the government considered essential or important. Already Diocletian had decreed\(^2\) that a son must follow his father's profession, whatever it might be. He felt that only by such rigidity could stability be maintained and industrial dislocations avoided. If there was more than one son, the second or third might be permitted to enter the Church, the Army or the Civil Service.

\(^2\) See, *e.g.*, KASER, *supra* note 19, at 213.
Freedom of movement also ceased to exist in agriculture. The tenants on the large imperial and private estates became unfree agricultural laborers. The large estates were divided into smaller plots which were leased to tenants called coloni. They were not slaves (slavery as a system of agricultural management declined in the Dominate), but rather citizens. In their social status, however, they were degraded to the condition of serfdom. In return for patronage and protection by his landlord, the colonus had to sacrifice his freedom of movement. Agricultural workers on public and private lands became bound to the soil. They could not leave the land and were sold with it.²²

The legislation which controlled economic life in the Dominate is found in the third and fourth parts of Justinian’s Code. The fourth part, the Novellae, which contained Justinian’s own legislation, was entirely up-to-date. The third part, the Codex, for the most part contained earlier statutes, some of which could not be reconciled with subsequent enactments. Serious problems were raised by the second part, the Digest, which consisted primarily of excerpts from the works of classical jurists who had written their legal opinions three or four hundred years before Justinian’s time and under entirely different social and economic conditions. Many of the classical responsa had become obsolete by the time of Justinian, but the Emperor wished to restore the grandeur of the classical law to the greatest interest possible.

The Legislative Method and Enforcement of the Code

The compilers of the Digest solved this problem by adopting a technique which is entirely arbitrary and unprofessional to the modern mind. When the statement of a classical jurist no longer fit the social and economic conditions of Justinian’s time, the compilers revised the passage without indicating that they had made a change. The quotation would still go under the name of the classical jurist. The term “interpolation” is used by the scholars of the Roman law to designate these textual changes.

The interpolations have made the task of reconstructing the Roman law and separating the classical elements from postclassical developments unusually difficult. Fifty or sixty years ago the view prevailed that the majority of classical sources had been tampered with. Today it is believed that changes were not as frequently made as it had been assumed earlier. In any event, interpolation research has kept the guild of Roman law scholars in business. Many of them are convinced that

²² Kaser, supra note 19, at 214.
the whole truth about Roman law in its historical evolution will never be known.

There is also considerable doubt whether the *Corpus Iuris* was ever enforced like a modern code of laws. The *Corpus Iuris* was too big, too complicated and too incoherent to serve as a firm guide for judicial practice. Furthermore, most of it was written in Latin, a language which few judges and lawyers in the Byzantine Empire could understand. The only parts of the Code which presumably had a great deal of validity were the *Novels* and those parts of the *Codex* which included the early legislation of Justinian and laws passed by his immediate predecessors. In addition, the vulgar law, to the extent it had penetrated into the East Roman Empire, formed an important source of adjudication.\(^2\)

After Justinian had reconquered Italy from the Ostrogoths,\(^2\) he introduced his *Corpus Iuris* into Italy. But in 568 A.D., Northern Italy was again invaded by a Germanic tribe, the Lombards, who established a kingdom there under their own laws, and the South was lost to the Byzantine Empire around 1000 A.D., when the Normans took over the rule of Southern Italy. During the years of Byzantine domination, the practical effect of Justinian’s Code in Italy was even smaller than in the East. It proved to be impossible to erase the predominance of the West Roman Vulgar law.

**THE IMPACT OF ROMAN LAW ON MEDIEVAL CIVILIZATION**

**Influence on Early Medieval Culture**

It now becomes necessary to raise a problem which is crucial to an understanding of the impact which the Roman law had on medieval civilization. The economic system of the late Roman Empire\(^2\) was a state-controlled system in which private ownership of land and business enterprises was extensively replaced by governmental ownership. Conversely, the prevailing economic system of the Middle Ages was feudalism, which is characterized by relationships between private feudal holders of land and their tenants, and which bears little resem-

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24. *See* text accompanying note 17, *supra*.

25. *See* text accompanying notes 20, 21 *supra*. 
blance to state socialism. What role could a Roman law, shaped by bureaucratic, etatist conceptions and enforced by an all-powerful monarchy, play in the transition to feudal forms of social and economic life?

The answer is that the seeds of feudalism were contained in the late Roman system, especially that of the West. The imperial estates were managed by conductores (administrators) who leased parts of it to cultivators called coloni, as was pointed out earlier. The conductor was a person of some substance, while the colonus was a poor half-free peasant who contributed only the labor of himself and his family.

Furthermore, a landed aristocracy continued to exist in the Empire, although the imperial power fought against it and sought to curb its prerogatives. The Emperors legislated particularly against the power of the landed magnates to buy up the land of the poor, but much of this legislation remained ineffective in the long run. The landowners gradually recovered their political and economic strength and they ultimately gained a great deal of independence from the government. The system of colonate spread to the private sector of the agricultural economy. Sometimes a wealthy landowner would lease part of his estate to one or more free tenants, who would then in turn employ coloni to cultivate it.

When the imperial power became reduced and fragmented in the successive invasions of Germanic tribes, the governmental sector of the agricultural system also took a turn towards feudal independence. The appointed managers of the imperial estates gained an increasing degree of autonomy. Although title to the land may have remained in the sovereign ruler, the managers gradually ceased to be subordinate officials of the state. The former relation of command and subjection gave way to one of increasing equality. The conductores became free tenants who regulated their relations with the Crown by way of contract. Like the private landholders, they would sometimes lease portions of their land to subtenants, who in turn would operate it with the assistance of half-free serfs. Thus emerged the feudal system with its hierarchical and pyramidal structure and its gradated forms of landholding. While we are still facing a great deal of obscurity in tracing the origins of feudalism, the broad outlines of the development appear to have been brought into better focus by modern historical research. It needs to be emphasized, however, that the shift to a new economy was considerably slower in the Eastern Empire, an Empire which was less up-

26. See text accompanying note 22 supra.
rooted by cataclysmic events and therefore remained an outpost of ancient civilization for many centuries.\textsuperscript{27}

**Influence on Mature Medieval Culture**

Although the subject of this discussion is the impact of Roman law on the early culture of the Middle Ages, it is of interest to pursue the inquiry briefly into the period of medieval maturity. As noted previously,\textsuperscript{28} the *Corpus Iuris* of Justinian played a rather insignificant role in the Western Roman territories recaptured temporarily by the Emperor. The West Roman Vulgar law, blended with Germanic custom, remained dominant. But in the course of time the Germanic tribes who were the heirs of the Roman Empire became more civilized and their social institutions became more highly developed. The result was that interest in the great classical epoch of Rome began to grow. Justinian's *Corpus Iuris* was the only existing monument of Roman classical law and thus the only possible source for a revival of that law.

The first faint signs of a resurrection of the classical law appeared in the eleventh century in the studies of Roman law that were carried on in the Italian universities of Pavia and Ravenna. It was primarily Lombard law that was taught at these universities. Roman law was studied by the Lombard lawyers as a kind of universal law that might be used to supplement and elucidate their own law when gaps or uncertainties appeared. Hence, Justinian's *Corpus Iuris* was first studied as a supplementary law.

The really great revival of Justinian's law, especially that set forth in the *Digest*, began in the twelfth century at the University of Bologna. One of the greatest of the revivers was Irnerius, who taught at that university from 1100 A.D. to 1130 A.D.; the main subject of his research was the *Digest*. Another one of the Glossators, as the scholars expounding the *Corpus Iuris*\textsuperscript{29} were called, was Azo whose scholarship was to influence later English legal developments. The term Glossators derives from the fact that these jurists interpreted the *Corpus Iuris* by means of glosses, \textit{i.e.}, explanatory notes appended to the text of the Code. This intensive study of Roman law in its mature form is called the \textit{theoretical reception} of Roman law. The work of the Glossators

\textsuperscript{27} The account of legal and social developments presented in this part of the paper is based on personal conversations with the late Professor Ernst Levy over a number of years. See also Runciman, \textit{supra} note 20, at 103; 2 Kaser, \textit{supra} note 8, at 96-100; M. Rostovtzeff, \textit{Studien zur Geschichte des Römischen Kolonats} (1910).

\textsuperscript{28} See text accompanying note 24 supra.

\textsuperscript{29} See text following note 31 infra.
was theoretical because it did not have any immediate large-scale effect on legal practice.

In Italy as well as elsewhere in Europe, law continued to be administered along traditional lines with a predominance of local custom. The classical Roman law was not received in practice because the social and economic system of the Middle Ages was feudalism and, as discussed earlier,\(^{30}\) the classical Roman law was a law responsive to a society in which free enterprise and commerce had established themselves and from which feudal elements had disappeared.\(^{31}\)

The preparatory work done by the Glossators did bear rich fruit at a later period of time. At the end of the Middle Ages, when feudalism gave way to the commercial civilization of the modern age, Roman law, in the form in which it had been cast by Justinian’s Code, was received as a living law in Continental Europe, with the exception of the Scandinavian states. The most thoroughgoing reception was effected in Germany in 1495.\(^{32}\)

One of the chief reasons for this reception was the nature of Roman law as a legal system that could easily be adapted to the new social and economic conditions emerging in Europe. The Roman law of contracts and property particularly suited the needs of an age in which trade and business enterprise began to replace feudal ties and restrictions on expansion imposed by the guild system. The traditional medieval law had been a law gravitating around a hierarchical structure of real property arrangements. In the new age, the emphasis shifted to personal and commercial property and the law of personal property had attained a highly developed form in classical Roman law. Furthermore, an era of increasing trade and commerce requires flexible contractual relations, which the Roman law adequately provided.

**Influence on English Legal History**

Finally let us briefly consider the fate of the Roman law in England. Unlike most of the Continental states, England did not receive the Roman law at the end of the fifteenth century. Scotland, however, which at that time was an independent country, did adopt it, although not in a wholesale fashion.

This did not mean that Roman law remained entirely without in-

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30. See text accompanying note 20 supra.
31. On the revival of Roman law studies at the Universities of Pavia, Ravenna, and Bologna see Vinogradoff, supra note 17, at 43, 49-61.
32. On the reception of Roman law in Continental Europe see Wolff, supra note 23, at 193-206.
fluence on English legal developments. That influence made itself felt at an earlier time. First of all, Roman law was actually in force in England during the period of Roman rule, which lasted from the first to the end of the fifth century A.D. England was then invaded by the Angles and Saxons who conquered the country and set up a state of their own. Unlike the Germanic tribes on the Continent, they did not use the West Roman Vulgar law or any other part of Roman law, but established their own laws and customs. The Anglo-Saxon state was destroyed in the eleventh century by the Normans who became the creators of the English common law. That law has remained the foundation of the Anglo-American legal system up to the present time.

The man who wrote the first comprehensive treatise on the English common law was Henry de Bracton, who published his work around 1250. Bracton had been a thorough student of the Bolognese Glossators, especially the works of Azo. In writing his treatise, he borrowed quite extensively from Roman law. Sir Henry Maine, the famous English legal historian, expressed the view that the whole form of Bracton's treatise and about one-third of its substantive content were influenced by Roman law ideas. This is probably an exaggeration, but there is no doubt that a great deal of Roman law is embodied in the treatise. Bracton used Roman terms, Roman maxims, and Roman doctrines. Many sections are almost literal copies of certain parts of Azo's gloss on Justinian's Code.

The area in which Bracton followed the Roman law model more closely than any other was the law of contracts. He did this at a time when English law hardly had any theory of contracts and did not need one, except for a theory of feudal contracts. The latter, however, were types of contracts which bore little resemblance to the contracts dealt with by classical Roman law. The economic basis of this Roman law of contracts was the free exchange of commodities, a form of transaction for which there is little room in a feudal economy. Thus Bracton's Romanized treatment of contracts was out of place in his time because he discussed problems which were far removed from any case argued and decided in the royal courts of England.

Nonetheless, the subsequent history of the common law demonstrated that Bracton had not wasted his time; there was a Bractonian renaissance in the sixteenth century. At that time, it was felt that the common law suffered from defects of excessive technicality and that it was in need of being broadened, reformed, and modernized. And it is interesting to note that the lawyers who were searching for help in expanding the common law turned to the pages of Bracton. They found
that by copying certain principles and solutions of the Roman law in its advanced form, Bracton had solved some questions which had become pertinent and burning in the sixteenth century through the medium of the Roman law.

So it happened that Bracton was printed in 1569 because the lawyers found his Romanism well adapted to the needs of that period. It was especially Bracton's exposition of the law of contracts which proved to be of great usefulness in the sixteenth century when contracts became an important element in English law. There is room for speculation as to whether English law might have gone through a more extensive reception of Roman law in the sixteenth century if the lawyers had not had available a source of English law which brought them into contact with Roman solutions of legal problems which at that time were acute and in need of being solved.33

CONCLUSIONS

To summarize the main points, which are based on the most recent research on Roman law, it might be said that the Roman law which had a significant impact on the youthful culture of the early Middle Ages was the senile Roman law in force during the period when ancient civilization was in decline. The mature Roman law of the classical period, which was transmitted to us in a frequently garbled form by Justinian's Corpus Iuris, was not revived in Continental Europe as a living law until the end of the Middle Ages. It was resuscitated at that time because this was the beginning of a period of European history which bore some social and economic resemblance to the epoch of ancient history in which the Roman law had attained the peak of its development.
