Growth of Grecian and Roman Law.

Thesis

By

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Some have lived long, prosperous and happy lives, who
never read this Thrice.

No one has ever lived a long, prosperous and happy life since reading it.

... Gentle Reader...
The growth of Law, like that of Science, Government and Religion, is governed by fixed and eternal laws. To one standing on the bank of a flowing stream, and viewing the water as it passes, it seems but a disconnected portion, having no relation to the world of waters, with which it is united. But could he be placed upon an elevated station, and view at a glance, the whole as a motionless silver thread, he could but observe the perfect connection, and constant growth, from the tiny rivulets, which trickle down the rocky cliff, to its final destination in the grand, majestic deep.

It is true with the growth of Law. To the casual observer, who notes but here and there, small portions of this great development, it seems but the creature of chance; but to the careful investigator who traces its development from the very dawn of History, our Law seems to issue from some obscure cavern in prehistoric times and becoming broader, and deeper as it comes down through the ages, finally forming the great flood of the present.

As Law is a human institution of course it naturally partakes of human imperfections and changes, as the human intell...
lack developed. But as Intellectual Development is governed by law, the human "Rule of action," which is a product of the mind, will vary under the same law. To illustrate:— The most refined States, among the ancients, seem to have had almost no concept of the moral obligations of justice and Humanity. Strangers and enemies were synonymous, and death was the proper portion of each. In the most enlightened age of Greece, Piracy was regarded as an honorable employment. Warfare was the highest aim of Nations, etc. To-day Strangers are friends. Piracy is high crime, and War, so far from being the object of Nations, has been almost entirely replaced by Diplomacy.

Thus has man's idea of right ever varied, and the Laws which he has made, have varied in proportion. While it is a seeming contradiction to affirm that civilization is the natural outgrowth of barbarism, it perhaps will be more apparent, to consider that this difference is purely of Degree, and not of Kind.

That they are relative, and not absolute terms.

The primitive form of Government seems to have been the Patriarchal. Of this form we have a Scriptural account of the Hebrew.
The patriarchs of Lower Asia. The eldest male ascendant is absolutely
superior in his own household. He is the source of all power and
right. He holds Legislative, Judicial, and Executive power. He owns
all property— in short he is second only to the gods to whom he
is closely connected. This seems to have been the condition of Greece
in its early history. A remnant of the old system is to be seen
in later Greece and Rome, in the Family, House and Tribe.

The individual seems to have had no place in the Gov-
ernment. The unit, or elementary division, was the family, which
was under exclusive control of the eldest male ascendant. An
aggregation of families formed the tens or House, The aggrega-
tion of Houses composed the Tribe, and the aggregation of tribes
made up the Commonwealth. The earliest, Special Laws, of which
we have any accounts, were promulgated in verses. Homer,
sings of "Phaenix" who appears later in the Greek Parthenon as
the Goddess of Justice, and his "Themistocles" were the rewards de-
vinely, indicated to the Judges, In the Odyssey Homer has given
a description of the Cyclops which some have considered typical
of the ancient Greeks. "tōdor oút ò Kypè Courtypóor oútê démi-
They have neither assemblies for consultation nor
themselves, but every one exercises jurisdiction over his wives and
children, and they pay no regard to one another.

In the heroic age of Greece, the power of the king was limited
by no law; he was descended from the Olympian god and was the
sole source of power. It was an absolute monarchy. In this
form a government may be the maximum of strength, but wisdom
and justice, will probably be unknown, or exist in the minimum.

As the people advance in wisdom, the absolute
solution of the king diminishes; an aristocracy is usually
formed. This may be designated as a wise body, but it is liable
to lack both power and justice in government; and should
the rights of the most humble individual in the nation finally become
recognized, and a pure democracy be formed. Justice would un-
doubtedly be secured, but at the expense of both wisdom and
power. But the highest ideal Government is established by
uniting the power of a single ruler, the wisdom of a learned
body and the justice of the direct representatives of the people.
It is in this order that Governments have mostly developed. Thus it was in Greece. Two Bodies soon appeared, which finally became, in Republican Greece the sole depositories of political power. These were the Boule (Βουλή) composed of chiefs and the Agora (Αγορά) which was the general assembly of free men. The king surrounded himself by a number of nobles, who were known, as was the king himself as Basilene (Βασιλεύς).

They all traced their origin to the gods. Notwithstanding his great body with whom the king advised, he alone made all laws, as Homer expresses it in 203-6 of his Iliad: "οὐκ ἀραθῶν πολυκορασίας ἐπὶ κοίρανος ἔστω ἐπὶ βασιλεύς, ὥσπερ κρόνου πᾶς ἀρχολομήτως". The rule of many is not a good thing; let us have only one ruler, one king; let us give to whose Jove has given his sceptre and the authority."

Greece soon became divided into many provinces rules over by as many kings. As Sparta is among the most prominent, we will follow her history. Aristodemus having left twin sons, the Government was shared between them. This division of the Royal power, of course, weakened it, and the
power of the assembly varied in inverse ratio. Sparta was but a mere handful of men (9000), who had won the country by the sword, and who could retain it only by the same means.

It was at this time (about eight centuries B.C.), and under these circumstances that Lycurgus gave to Sparta that rigid constitution. However much it may surprise a reader as he views it from the light of the 19th century—when it is considered that the state exists for the citizen, and its great object is to secure the enjoyment of life and property—when it is viewed in the light of surrounding circumstances—when the citizen existed only for the state, when he was bound to give his time, his affections, his energies, his property, his life—his all, for its honor and glory. When Sparta's great object was to raise warriors— it is not surprising that Lycurgus provided that,

I. Marriage should be superintended by the state.
II. That the state should decide whether or not a child should be permitted to live.
III. That the state should take charge of all male children, at the age of seven, and subject them to that rigid discipline,
which made them the best warriors in the world.

In that girls also should be subjected to the most rigid discipline, that they would be healthy and strong.

Lycourges gave more power to the Senate, which was composed of thirty members, who became judges in all criminal cases affecting the life of a free citizen. The popular Assembly had but little power, but it was the same, which in later times developed to such an extent, that it has affected every civilized Nation upon the face of the earth. And lastly the Constitution of Lycourges provided for five Ephors elected by the people, who were to enforce the Constitution and who soon gained almost absolute power in the Kingdom. Thus had Sparta developed from an absolute Monarchy to a close oligarchy. At Athens, the kingsy period had gradually developed into an aristocracy. Codrus was followed by thirteen Areons for life, whose rule extends until 752 B.C. The Decennial Areons became tyrannical as their power was unlimited. Thus was a universal clamor for a Constitution to check their mad careers. The desperate case received a more desperate remedy, in the Codex
of Greece. But the most important period in its Athenian growth, was that in which Solon introduced his immortal Code. It was this Constitution that made Athens, as the Constitution of Lycurgus had made Sparta. The Laws of Solon were inscribed upon wooden rollers and triangular tablets, in language called "Dorostropheion" (The lines were read alternately from left to right, and from right to left). His Laws were very multifarious and cannot be treated of, in full, here. They embraced Political and Religious, Public and Private, Civil and Criminal, Commercial and Agricultural, Remedial and Disciplinary laws.

The main objects of Solon's Constitution seems to have been to introduce a moderate Government, which should admit all classes of citizens, to a share in its power, in place of the distasteful and oppressive oligarchy and, II to furnish a remedy for the wide spread distress, degradation and poverty naturally caused thereby. [It may be doubted that the form of Government exists any considerable influence upon the prosperity of a nation. To illustrate this fact, we have but to compare Ireland and Holland in modern times. Ireland is blessed by
nature, it is a garden—mild, fertile, salubrious. It has been
fifty called the emerald Isle. It is populated by an industri-
ous, hard-working people. Yet owing to the system of gov-
ernment, the wretched inhabitants drag out a miserable existence
and the failure of one year's crops, causes a famine, which
carries away thousands. Holland, by the utmost exertion has been
reclaimed from the sea, and is only protected from its devastat-
ing power by constant labor and expense. Yet the people are prosper-
ous and happy. 1 One can but note the advancement—the
growth according to fixed law referred to in the beginning, when
he compares the laws of to-day, with those of his predecessors,
1 The abolition of the power of father and brother to sell
their daughters and sisters into slavery.
11 The amendment of the Debtor and Creditor Laws.
111 The granting of citizenship to foreigners etc. etc., indicate that
the people has outgrown the laws that has once been consid-
ed good. From Greece it is but a step to the Institutions and
crude Laws of ancient

— Rome—
The history of the ancient system of Roman jurisprudence is especially interesting, as it not only governed the greatest people of the ancient world for nearly fourteen centuries, but after undergoing many vicissitudes after the downfall of the "Eternal City" it was transfused into Germany, Bohemia, Hungary, Poland, Scotland, France, Italy, Spain, Holland, Canada, Louisiana, and many islands of the sea. Roman jurisprudence naturally divides itself into three epochs.

I From Romulus to the establishment of the Twelve Tables.

II From the Twelve Tables to the time of Justinian.

III From Justinian to the downfall of the Empire.

The II Epoch from the Twelve Tables to the reign of Justinian may be divided into three periods of nearly equal length distinguished by the intelligence and character of the civilians.

I From the Twelve Tables to the time of Cicero

II From Cicero to the reign of Severus Alexander

III From Alexander to Justinian.

Tacitus says that Romulus rules over us Romans according to his own pleasure,忽然 by religious devicia and divine law.
Dullus Hortius and Ancius Martius introduced some institutions but Servius Tullius stands prominent as founder of the laws which kings were bound to obey. The state gradually inclined towards a democracy. The Senate originally was composed of three hundred citizens, regard being had to age, honor, rank, birth, and property. The King was nominated by the Senate and elected by the Curia for life. The assemblies of the people were the

I. Curia
II. Centuriata
III. Tributa

The General assembly of the people (the Comitia cum illis) formed a very efficient portion of the Legislative power. They met in their respective Curiae (thirty in number). Every citizen having an equal vote in his curiata, the Curiae or wards which were ten in number for each of the three tribes -- the Romans, the Tities and the Luceres -- from whose amalgamation the Roman people sprang. In the Comitia Centuriata the citizens were divided into six classes, and one hundred sixty-three (163) centuries. The first of the classes contained patricians, Knights
and rich citizens, and ninety-eight centuries, and as in the Comitia Centuriata they voted by centuries, this arrangement threw the power of government into the hands of men of property and of the patrician order. The resolutions passed by this body were called "leges" and were laws of the highest authority and binding on the whole people. The Comitia Tributa was an assembly of plebeians alone. They elected tribunes and subordinate magistrates and enacted "plebiscita" which were laws binding on the plebeians alone, unless sanctioned by the Senate and the Curia. Thus we have various sources of law in Rome, at this time they were as follows: I King, II Senate III Curia IV Centuriata V Tributa.

The powers of these bodies were limited by no public rules. The people suffered all of the evils of uncertain and varying laws, and beyond the walls of the city the rule of the consul was absolute and tyrannical. The Senate and magistrates long and bitterly resisted the public demand for written laws but finally they were compelled to institute a commission to form a system of laws. The result was the Twelve Tables which commenced the
middle period of Roman jurisprudence, they mark a very considerable advance from Barbarism, as they indicate that they were studying the science of government, and investigating the laws of foreign Nations. [Liv. informs us (bk. iv. 30) that "Ambassadors were sent to Athens — Spurious Posthumus Albus Anius Marulus Publius Sulpicius Camerinus — and they were ordered to copy out the celebrated laws of Solon, and to become acquainted with the institutions, customs, and laws, of the other states of Greece"] and Tacitus (bk. iii. c. 26) says "The laws in most renown were those framed for the Grecians by Minos, for the Spartans, by Lycurgus and afterwards that more elaborate and extended code which Solon composed for the Athenians") and in the 27 c.) "After the Jaucuns were expelled the Hecumans were creators who composed the Twelve Tables — that combination of equitable legislation in which were adopted whatever excellent could be found in any other code in existence." This overwhelming testimony, as well as the similarity of the laws themselves, would seem to indicate very conclusively that the celebrated Laws of the Twelve Tables were of true origin. These laws have had such a permanent
influenced upon Roman jurisprudence, and hence upon countries 
influenced by Rome, that a brief summary of them will not be 
annexed here.
The First Table related to law suits. The creditor was allowed to 
seize the debtor, and drag him before the praetor for trial.
The Second was concerning "Robbery, Theft, Breach of 
trust." It gave the right to kill a robber by night, (ii) To inflict 
corporal punishment and slavery upon conviction. (iii) Slaves guilty 
of robbery, were thrown down Porcine Arch. (iv) Dispossessors by night 
on cultivated fields were capitaly punished, as victims to cere.
The Third related to Loans and the right of creditors over their 
debtors. (a) It allowed but one percent interest. (b) A debtor was made a 
slave of his creditor. (c) If there were several creditors, each had 
a right to the debtor's body, and it could be cut to pieces and 
shared among them.
The Fourth prescribed the rights of fathers and families. 
Fathers had power of life, or sale of their children as well 
as the right to kill immediately a deformed child. Should the 
father neglect to teach his child a trade, he would be absolved 


from the responsibility of maintaining his fashi when in need.
The Fifth. Rules of Inheritance and Guardianships. Nearest
relations were heirs. In default of relation, a man of the same
name became heir. Sons and Daughters inherited equally. Yet
a woman was at all times under civil disabilities.
The Sixth. had to do with Property and possession. It requir-
es payment to pass the right of possession. The presumption
of Law was with the possessor, and in case of dispute as
to Liberty, Liberty was presumed. All sales were delivered
before witnesses.
The Seventh was concerning Trepassing and Damages.
For Arrow, the offender was burned. A thief was punished
by a slight fine, but a slanderer was to be beaten with a
curb. False witnesses were thrown headlong from the Capitol.
The Eighth relates to estates in the Country. Trees and one-
half feet must be left between houses Roads must be eight
feet wide &c. &c.
The Ninth had to do with the rights of the people. The prin-
cipal provision was that cases relating to life, liberty or rights of
a Roman should be tried in the Centuriate.

The Tenth Related to funerals. The dead could not be interred on burial within the city, or within sixty feet of any house. Excessive wailing was prohibited. It regulated the expenses dress &c., &c.

The Eleventh concerned Religion. It required all to attend the religious assemblies. Healing what was devoted to gods, as well as incest were capital crimes.

The Twelfth and last related to marriage, and the rights of husbands, divorced their wives, at will, and for certain acts could put them to death. Patricians could not intermarry with Plebes.

Thus did they mingle wisdom and good sense, with injustice, and cruelty. As Rome increased her territory, wealth, art, refinements—her civilization her laws were greatly enlarged and improved, and adapted to the progress of her society and its greatly increased wants. The laws of the Twelve Tables gradually passed into forgetfulness, as they were concealed by the multitude of new regulations. The sources of Roman civil Law at this time were,
I. Domitia Tributa

II. Senatus Consulta

III. Leges Actions

IV. Praetor

V. Edicta Magistratuum

VI. Response Prudentium

VII. Constitutionis principis.

After many severe struggles the "plebiscita" were made binding upon the patricians by the Six Hortensia, and thus the laws of the Plebeians made in the Tributa were of equal authority with the Leges. Frequently the Senate promulgated laws by their own authority, which were known as "Senatus Consulta." They continued in force but one year unless ratified by the people. The prohibition of intermarriage of Plebs and Patricians seems to have been done away with soon after the adoption of the Twelve Tables, but the patricians retained control of the administration of justice by means of the Pontifices, who regulated the calendar, who fixed the "Nonis fasti" and "Nonae fasti" and by means of the Leges Actions. These judicial forms known as Leges Actions, were mysterious additions to Jurisprudence confined to the patrician order, which could not be changed by the people, and could be interpreted only by the pontifical college. These forms were
reclaimed from confusion and chaos by a member of the college
(Apianus Claudius Boccon) and reduced to a single collection known
as "Jus civilis Flavianum." The second collection of these legal
precedents, was afterwards compiled and known as "Jus civilis
Alcianum." Another very important addition to Roman Law
was the Edicts of the praetor, who held office for one year, and
whose administration seems to have been very changeable and
erroneous until the temptations to injustices were removed by
the Cornelian Law, which compelled the praetor to adhere
to the spirit of his first proclamation. Finally, Galvus
Julianus compiled the various Edicts of the praetors into a code
known as the "Perpetual Edict," which was ratified by the senate
and Emperor and which in place of the Twelve Tables
became the fixed and invariable standard of Roman Civil
Jurisprudence. 5. A fifth source of civil law, was the opinions
of Lawyers, and Pagens, commonly known as "Responsor Pudici-
num." [This corresponds to our text book authority]

The law was becoming quite intricate and involved, and
a class of men gradually arose who turned their attention
to the interpretation and expounding of the ancient statutes.

Their subtle interpretations guided by reason and simple dictates of nature, concurred with the equity of the practic to reform many of the tyrannies of the darker ages. Law became a science and was taught in the homes of many a civilian.

VII The last source of Roman Law which we will mention is the ordinances of the Emperors, which were designated "Constitutio Principis." In the interval of nearly one thousand years which elapsed between the adoption of the Twelve Tables and the reign of Justinian the "Resemped Prudentiani" was perhaps the most important as affecting subsequent legislation. This interval, as we have seen, can be divided very properly into three periods, as follows:

1. To the time of Cicero
2. One thousand years from Twelve Tables to Justinian
3. To Justinian

Until the time of Cicero, ignorance kept the science of Law in very narrow limits. At first masters of the subject were to be seen in the forum advising anyone for a trifle; as time
increased, they seated themselves at home and received their clients, who as Horace informs us, knocked at their door at the dawn of day. "Aequas leges juris legunque piritur sub galli cantu, consultr ubi ostia pulsat."

From the time of Cicero, dates the commencement of a very brilliant and learned Jurisprudence. A regular system was attempted, schools were founded, and books written, and law became quite an important, and common study. But from the reign of Alexander, to Justinian's time, tyrants and Barbarians occupied the throne, the investigating minds was wholly absorbed in religious disputes; and Jurisprudence was neglected.

The writers of Law, like those of Philosophy, recognized the authority of no master. The authorities were as various as the authors, and almost every sentence, that might be pronounced was justified by the sanction of some venerable page.

The great multitude and disorder of the laws, rendered their condition most deplorable. From this labyrinth of contradictions, Theodosius selected the works of Taino, Paulus, Papinian, Ulpian, and Modestinus, as those only to be cited in the courts.
Many able men undertook, from time to time, a digest of the Civil Law. The Gregorian, Hermogenian, and Theodosian Codes seem to have been the most noted prior to the Code of Justinian. During the ten centuries which we have just examined, the infinite variety of legal opinions, and laws were said to fill Two Thousand Books and about Three millions of verses.

"Hinc pene millia librorum esse conscripta, et plus quam tricentium decem millia versuum, a veteribus effusa.

The subjects of the Greek provinces knew nothing of the language which governed them. Many of the books could not easily be found, and some, fortunes could not purchase. Such was the condition of things when Justinian came to the throne. He recognizes the necessity of bringing order out of this chaos, as it was beyond the power of any human capacity to digest as it was. Accordingly Tribonian with nine learned associates, were ordered to compile a code containing all of the imperial ordinances and decrees, from the time of Hadrian to Justinian, which they considered worth preserving. They were to correct all errors and contradictions, omit
what had become obsolete and pick only wise and salutary laws. They were furthermore given power to extend, limit or alter the sense as they thought would best facilitate their future use. Thus did the compilers become law makers and thus did the "principae prudentium" become the most important source of law.

Compilations of Justinian

Institutes Four "

Pandects Fifty "

Novels

It has been said that the Code was compiled in about fourteen months. The Institutes were arranged in four books and contained the elements — the fundamental principles of Roman Law, and were especially adapted for the use of the Law School. They are arranged in a most systematic order treating of I Persons II Things, III Actions IV Private Wrongs, V Criminal Law, and remained one of the great English commentators - Blackstone. The Pandects are an abridgment in fifty books, of the decisions of the Pratcers, and the writings of eminent Lawyers, and were designed to contain the
Embodied wisdom of the nation in civil jurisprudence for over one thousand years. The Code, Pandects, and Institutes were declared the sole legitimate system of jurisprudence. They alone were taught in the schools at Rome and Constantinople: They alone were admitted in the tribunals: They alone were translated into the Greek language for the benefit of all nations.

The Novels are a collection of "Imperial Statutes" and ordinances passed subsequent to the formation of the Code.

But a short time had elapsed from the issuing of the Code, until it was condemned as imperfect. The despotic Emperor made arbitrary additions to the laws, until one hundred sixty-eight Novels were admitted into the authentic mass of "Civil Jurisprudence". The general destruction which attended the irruption of the barbaric hordes finally extended to these treatises, until all Italy passed under the laws of the Barbarians "Bellinas atque ferinas imnvanescque Longobardorum leges acceptis."

Finis