



5-1-1934

Digest

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Recommended Citation

Torquoto C. Giannini, *Digest*, 9 Notre Dame L. Rev. 412 (1934).

Available at: <http://scholarship.law.nd.edu/ndlr/vol9/iss4/4>

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THE DIGEST*

Justinian was the great Emperor who fought for the unity of Empire, Religion, and Law. But among the numerous statues erected to the memory of great men, one hardly sees any to the Illyrian boy, born in Tuaresium, who changed his name of Ubranda to that more Roman appellation, namely, Justinian. But two monuments or memorials of his work still exist and will exist forever, namely, the *Cantica* of Paradise in the poem of Dante, and the Digest, or better the *Corpus Juris*.

Justinian is chosen by Dante in his narration of the vicissitudes of the Roman Eagle, the symbol of Empire, to illustrate the marvelous course of Roman history. Thus, in the first chapter of the fifth *cantica* of Paradise, Dante sees the shade of Justinian in the heaven of Mercury. The flame becomes brighter than it was before and hides the hallowed figure to emphasize its glory. Then Justinian speaks in the following manner:

"I was Caesar. I was Justinian, who at the bidding of primal love removed from Law what was superfluous and useless. It pleased God to inspire me with His Grace, in order that I might perform the great task, which I have done my utmost to accomplish."

These four verses depict in a very picturesque way the Emperor's feat. Although he did not succeed in achieving the unity of the Empire, or in settling the disputes of the Church, nevertheless, the Digest, which was written at his command, represents a work which belongs to all epochs and all peoples.

Dante points out the real merit of the man, whose greatest contribution to the world was his purging of the answers and opinions of thirty-eight or thirty-nine jurisconsults, and his elimination of what was archaic and unimportant. Two thousand volumes were actually consulted. In all, three mil-

*Paper read at a meeting of the Riccobono Seminar of Roman Law at the Catholic University of America, April 28, 1933.

lion lines were read and condensed into one hundred and fifty thousand, that is, one-twentieth of the original number, by the members of the committee, which was presided over by Tribonian, the Prefect of the Palace, a man of versatile talent, conversant with philosophy and law, poetry and astronomy. Tribonian succeeded in completing the work in three years, although ten had been allowed him by the Committee.

Justinian might have arbitrarily proclaimed by executive edict a Code drawn up by himself without regard to the legal precedents of the past and in defiance of the opinions of the great jurists of his own time. But instead he chose to let the famous jurists of Rome speak, for he was moved by the spirit of Republican and early Imperial Rome, and preferred to honor with his name the immortal residue of these glorious periods, which might be retained and utilized as the basis of the new codification, for Rome was still living as an historical ideal and a spiritual force. Barbaric chieftains, for instance, Theodoric, who proclaimed himself *filius et servus Imperatoris*, had bowed before it. Its ancient majesty lived on under Justinian. Rome was still living in all its fascination, and this would naturally justify the jural dream of Justinian.

In sponsoring the great juristic compilation, Justinian felt that he was shaping the future course of history. He was collecting, as it were, in a safe the most precious treasures of Roman legal science, so that all the aspirants to the succession of the Empire might be influenced by the spiritual riches, and thereby persuaded to become supporters of Rome.

The world is indebted to two sailors for two great discoveries made in Amalfi in the twelfth century. A sailor from the fleet of the Empire, Lotarius, who had conquered the old maritime Republic, found by chance two volumes of the Pandects which he handed to his captain on account of the

beautifully illuminated frontispieces representing the descent of Moses from Mount Sinai and the Emperor Justinian surrounded by Tribonian and other men of law. Flavio Gioia, another mariner from Amalfi, discovered the compass, and both discoveries led the way to progress, the former to a progress of law, the latter, of navigation.

The Pandects were brought from Pisa to Florence in the year 1406, and a chapel was built for them in the Library, called the Laurentiana. Up to the seventeenth century, no human being was permitted to consult the precious Code except in the presence of the first magistrate of the town, assisted by some monks, bareheaded, in reverent attitude, holding in their hands burning candles. But this habit is no more observed. Today all visitors to the Library are permitted to look at the famous text called *palladium—templum justitiae*, doubtless the most complete and authentic of all. Students, upon seeing it, are nevertheless seized by a feeling of reverence.

Sumner Maine was right when he compared the precision of Roman Law to the science of mathematics, which transcends countries and periods. Even today when a contract is entered into, it is similar to the *negotium* of the Roman Law. Similarly, principles of Roman Law are applied in numerous ways in modern jurisprudence. Theodore Mommsen was amazed at the universality of the Roman Law. But Dr. M. D. Amelio, the learned Chief Justice or President of the Supreme Court of the Italian Kingdom, well remarked that the spirit which fills the Digest is the result of the collaboration of men of strong mentality, who came to Rome from all parts of the then known world. Paulus came from Padua; Ulpianus was a Phoenician; Papinianus came from Syria;

Modestinus from Africa; Gaius from Italy, although it is not known exactly where the latter was born. Papinianus had been, moreover, *Praefectus Pretorii*, at York, in England.

The chief reason for the vitality of the Digest lies in its very essence, and in the origin of the formation of its provisions. While the laws of the Ancient World present themselves as merely chronological successions of provisions, or disordered compendiums of traditions or customs, the Roman Law presents itself as a system with a definite structure, based upon fundamental social relationships, that is, upon ultimate human rights. It thus assumes the character of a system of impressively logical propositions. There was in-born in the Roman people a sense of proportion and beauty which is reflected in the decisions of the Digest.

The influence of Roman Law upon the development of law in general has been immense. It is well known that all the existing Codes of the European continent are Roman in method and structure. The influence of Roman Law has been felt upon the jurisprudence of the Scottish, Canadian, and South African nations, as well as upon that of Ceylon, where the so-called Roman-Dutch Law was introduced. The Japanese codes, although characterized by a certain amount of originality, were framed after the European Codes. Finally, as Professor Pollock pointed out in his lectures at Oxford, Roman Law has had a remarkable influence upon Anglo-Saxon jurisprudence. Professor Maine has written that Englishmen adapt themselves slowly but surely to the moulds of the juridical conceptions of the Roman Institutes; thanks to the treasures of experience which are inherent in them. Shall we not then subscribe to the words of Bernard

Windscheid that Roman Law is eternal, for its contents are the expression of a general human way of understanding human relations developed with a mastery which has never been achieved since?

The Digest, in fact, is an imposing structure which in the solemn grandeur of its contents and in its commixture of very ancient and relatively modern elements, has all the characteristics of a magnificent Roman work of Art, even though the classical materials are sometimes mixed together with Greco-Oriental ones. If this is adequately realized, modern centuries may yet redress the injustice done to the great Roman Illyrian Emperor by passionate and malignant critics of the past.

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