

THE PERIODS OF ROMAN LAW *

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Roman law did not end with the history of Rome but its force in one way or another has continued up to the present day. This presence is one of its most surprising characteristics; after thirteen centuries of life it has had as many more of survival or persistence. This persistence does not deny the historicity or evolution of the law; what it does is to reduce it to its proper limits¹.

Although the Roman law endured in the orient due, above all, to the scientific academicism of the Law Schools of Beryt and Constantinople which continued the work of the *Corpus Iuris* and in the West thanks to the legislation of the Germanic kings, especially the Breviarium of Alaric II, the persistence was realised in virtue of the Reception which took place from the end of the 11th century in Italy, where in Bologna the *Corpus Iuris* of the emperor Justinian (527-565 A. D.) and above all its fundamental part the Digest commenced to be studied with unusual effort by the Glossators and Commentators emerging over all the eminent figure of Bartholus, giving place to the *Ius Romanum Commune*, the Common Roman Law, received afterwards with varying intensity in almost all European countries giving rise to the European Legal Science².

The new sensitivity of the Renaissance in the study of Graeco-

* Este trabajo, que sigue la periodificación propugnada desde algunos años por mi maestro Alvaro d'Ors, fue expuesto oralmente en varias universidades del Reino Unido por invitación del British Council.

¹ A. GARCÍA GALLO, *Historia, Derecho e Historia del Derecho*, in *AHDE*. 22 (1953), p. 25.

² F. WIEACKER, *Europa und das römische Recht. Verborgenheit und Fortdauer*, in *Vom römischen Recht* (1961), p. 288; *Der gegenwärtige Stand der Disziplin neueren Privatrechtsgeschichte*, in *Eranion C. S. Maridakis* (1963) 1, p. 11.

Roman Antiquity³ influenced the Roman law studies treating the writings of the Roman jurists not only as texts susceptible of interpretation with pragmatic conclusions, but as esteemable pieces to reconstruct a past reality.

Contemporary to Humanism was the reception of the Roman law in the German empire as a law in force, and as such cultivated not without modern contaminations giving place to the *Usus Modernus Pandectarum*, to the so called Actual Roman Law, *Heutigen römisches Recht*.

With the rationalistic natural law of the 18th century—the century of lights—the studies of Roman law suffered a hard time, and it was not forgotten thanks to its force in the German empire.

Initiated in the 19th century, the Historical School obedient to the vivifier impulsion and leadership of the genial Friedrich Carl von Savigny⁴ provoked a flourishing reappearance of the Roman law and deferred for a century the codification of the law in Germany producing dogmatical studies elaborating with intensity the Common Roman Law on one hand, and historical studies on the other.

The study of the organic development of the Roman law and the dogmatic elaborations yielded, at the end of the 19th century, to a new critical route initiated by Alibrandi, and in the 20th century the Roman law acquires an historical character and emerges an illustrious florescence of Romanists whose works unite the tendency of the Renaissance Humanism, which having settled in especially the French Schools received the name of *mos gallicus*, with the modern methods of the science of Antiquity.

The expression Roman law is a paradigmatic abstraction to indicate more than thirteen centuries of legal history. It can be understood differently. It can indicate the law formed in the various ages of the history of Rome up to the Justinian's compilation, but it can also indicate the Roman law in the development which influenced the medieval and modern life and in a great way determined the law of almost all the Western nations up to the formation of the codifications that followed the example of the Civil Code of Napoleon (1804) and in Germany up to 1900. Therefore the expressions of Roman law, Roman Justinian Law and Common Roman Law are derived. "Justinian's law is . . . the link which con-

³ H. RÜDIGER, *Die Wiederentdeckung der antiken Literatur im Zeitalter der Renaissance*, in ed. H. HUNGER, *Geschichte der Textüberlieferung der antiken und mittelalterlichen Literatur* (1961) 1, p. 525.

⁴ W. KUNDEL, *Savignys Bedeutung für die deutsche Rechtswissenschaft und das deutsche Recht*, in *Juristenzeitung* 17 (1962), p. 463.

nects the law of Antiquity with that of the Middle Ages and later times⁵.

In the pre-Justinian's law it is agreed to distinguish a period which separates epochs determined by changes in the law due to political occurrences and socio-economic transformations.

The first period is that of the archaic law which encompasses the traditional date of the foundation of Rome (753 B. C.) up to the conventional date of 130 B. C., the approximate date of the introduction of a new judicial procedure which was the peculiar of the classical age⁶.

In this period the small city of Rome developed arriving to dominate the basin of the Mediterranean and established the basis for the future empire. This period of the Quirítarian Law attributes great importance to the *mores maiorum* —a sort of customary law of the ancestors— the Law of the XII Tables and its interpretation by the Pontifical Jurisprudence.

The second period is the classical age, thus called because it presents the very great magisterial value by the perfection of its style, coinciding with the great cultural splendour and with the culmination of the Roman power. It extended from the year 130 B. C. up to 230 A. D., a date equally conventional in which the empire, once it reached its top of territorial development and the maximum number of inhabitants enters an anarchical crisis. It is significative that in 224 A. D., Ulpian, the last great classical jurist was assassinated by the pretorian soldiers⁷.

In this period the sun of Rome strives splendidly on all fields, especially on the juridical area. It enlarges and refines the social coexistence, it increments the commercial relations, and Rome dominates the orbis terrarum.

Commercial relations exist with neighbours and foreigners and the Roman commercial area reaches to Scandinavia and to the shores of the Baltic, the Danube and the Dnieper. The Russian products arrive through the Sarmatian tribes and gain contact with the silk route, making easy the relations now existing with Egypt and Arabia, extending up to the other countries of Africa and Asia.

The law adapting to the universality and variety of commerce, making more flexible its own shape and going on creating a new

⁵ F. SCHULZ, *History of Roman Legal Science* (1953), p. 2.

⁶ A. D'ORS, *Elementos de Derecho Privado Romano* (1960), p. 33.

⁷ F. PRINGSHEIM, *The Unique Character of Classical Roman Law*, in *Journal of Roman Studies* 24 (1964), p. 60, places de beginning of the classical period in the year 150 B. C. and the end in 300 A. D.

dynamic law in constant change and adaptation to the new times. The *praetor* and the jurists being its propellers, acting now directly and through the imperial constitutions.

We fix the final date of this period in the last studies on the sources that have obliged to revise the periods. Up to now, due to the "classical" tone of the rescripts of Diocletian, the start of the postclassical epoch was established at the beginning of the 4th century, making it coincide with the irruption of the Christian influence. Today, above all, after WIEACKER, *Textstufen klassischer Juristen* (1960) that emphasizes the importance of the glosses of the 3rd century, we are obliged to admit that the classical age ends around the year 230 A. D., a date which approximately coincides with the death of Ulpian (224 A. D.) and of the emperor Alexander Severus, and the birth of the law school of Beryt (239 A. D.).

A. d'Ors did not hesitate in establishing this date some years ago, maybe for the effect of the *Constitutio Antoniniana* of 212 A. D., since the postclassical age is an age of provincialization⁸ which implicates Vulgarism, and although it is certain that the effects of the *Constitutio Antoniniana* are not produced immediately, they are produced in a relatively short period, taking into account that many phenomena which dominate the post-classical period, are now incipient in the "last" classical age, in the post-Hadrianean epoch that could be established from the year 130 A. D. to 230 A. D. We place before it the "high" classical epoch, central or apogee of the year 30 B. C. to 130 A. D., and the "first" classical age—"pre" classical for some others— from 130 to 30 B. C.

For that reason, the transit from the classical period to the post-classical should not be placed under Diocletian as did Schulz⁹, but half a century before as did Rabel, Kaser, Wieacker and Wolff¹⁰ among others, that placed it towards the year 235 A. D. the date of the death of emperor Alexander Severus¹¹.

During the period of the classical Roman law, Rome changes from a Republican constitution, as inherited from the ancestors,

⁸ A. D'ORS, *Estudios sobre la constitución Antoniniana*, in *AHDE*. 17 (1946), p. 586.

⁹ F. SCHULZ, *Geschichte der römischen Rechtswissenschaft* (1961), p. 336.

¹⁰ E. RABEL, *Grundzüge des römischen Privatrecht* (1955), p. 3; M. KASER, *Römisches Privatrecht. Ein Studienbuch* (1960), p. 4; F. WIEACKER, *Über das Klassische in der römischen Jurisprudenz* (1950), p. 3; H. J. WOLFF, *Introducción histórica al Derecho Romano* (1953), p. 153.

¹¹ The expression "classical Jurisprudence" was established in the 19th century; cfr. F. SCHULZ (n. 5), p. 98.

to a monocratic form of government culminating in the empire with the Dominate.

In times when in all the central—oriental Mediterranean surged out autonomous urban entities, the Roman Republican constitution emerged arduously after the fall of the monarchy and after long and cruel fights between the nobles and the plebians, dominators and dominated. Only in the year 367 B. C. with the *Licinia Sextiae* laws, which permit the plebeians access to the consulate, can we consider the conflict finished and the Roman constitution firmly configured.

The Greek historian Polybios does not happen to fit this constitution between those prevailing in that time because of the peculiarity of its balance of powers.

A) The *imperium*, which in the abstract means power of command and in the concrete scope of application of such power, of a magistracy culminated by two yearly consuls provided with a power only limited by the collegiality, which is supposed to have contingency of the veto of the colleague, by the temporality and by the responsibility before the Senate when the mandate ceases;

B) The *auctoritas* of the Senate, composed of exmagistrates, a stable unprovided authority of imperative force depending on the letter of convocation by the high magistrate or by the tribune of the *plebs*, that intervened in all the political life, especially the external or foreign affairs, assigning the provincial governorships, the military command for the war, and controlling the finances and the official religion. The Senate was an institution which guaranteed the stability and continuity of the Roman government because the magistrates and the people's assembly were in permanent mutation. In the Senate the constants of politics were fixed and the observance of the constitution watched. In the period of the principate, the Senate lost its decisive role in politics and then begins its interference in the matters of law;

C) The *maiestas* of the Roman people, which in its originary sense means the gathering of men disposed to fight the war, composed of all free men who have reached puberty and can wear the *toga virilis*. Afterwards, the meaning changed to mean the gathering of the people at meetings to elect magistrates, to vote for statutes and to act in certain lawsuits of criminal appeal.

The equilibrium or balance between these three powers—auto-cratie, aristocratic and democratic—gave Rome a flexibility to which

one must attribute without doubt its having surpassed the gravest dangers of its history and having reached its great power.

This political constitution enters into a crisis in the first century B. C. when Augustus, once dominated a century of civil wars, instaures the principate on seeing the impossibility of the normal functioning of the republican constitution.

Many events of the preceeding hundred years influenced Augustus' decision. The necessity of extraordinary military powers by the prolongation of the campaigns in the Orient, the convenience of creating a professional army with high military commands to last more than six months, the impossibility of maintaining a power in the front without influence in the rear-guard, the inevitable of having a power in the army without influence in the city of Rome, the war against Iugurta in Africa, the war against the slaves in Sicily, the social war in Italy, the wars against Mitridates king of Pontus in Asia, the dictatorship of Sila, the rebellion of Spartakus, the campaigns of Pompey in the Orient, the conjuration of Catilina, the first and second triumvirate, the war of Julius Caesar, the proscriptions of citizens and many other events were sufficient motives to convince Octavius Augustus of the inefficiency of the so called mixed constitution and to establish the principate, a word given by Cicero worried and exhausted by the crisis of the Republic that needed a defender who ought to be the best man of Rome, the *princeps*¹².

Augustus taking advantage of this need of a protector erected himself, although nothing outwardly had transformed. He pacifies the Roman world and establishes a form of government that persists during three centuries.

The power of Augustus organises itself progressively by means of civil servants or public officials which do not usurp the powers of the old magistracy, but which emptied them effectively, leaving them void, like a facade, like impotent figureheads, governing progressively in fact the bureaucracy. Nevertheless this situation is not officially acknowledged and declared up to Diocletian (emperor in power from 284 to 305 A. D.).

The prince could do no more than intermeddle in such an important sphere as the juridical, and the *auctoritas principis* had a specific consequence for the jurisprudential activity because the *ius respondendi* of the jurists depended on the particular *auctoritas* of the prince.

¹² CICERO, *De republica* (ed. Ziegler), 2.39.51.

Augustus showed appreciation of those jurists who were his "friends" with the concession of his support, with a participation in the prestige of the ruler, in such a form that they gave responses *ex auctoritate principis* and acquired thus a preferential position which gave force to their juridical opinions if they were not in contradiction with the opinion of other jurists of the same rank. That is, Augustus "bestowed on some, not very numerous jurists the right to give *responsa ex auctoritate principis*: they were to give them by his permission, or the personal *auctoritas* of the *princeps*. This did not mean that *responsa* could only be given by imperial license" ¹².

The *ius publice respondendi* constituted the point of change for a process of absorption of the jurisprudential function by the public power, and an absorption of the *auctoritas* which corresponds in a political sense to the Senate —*auctoritas patrum*— and in a juridical sense to the jurists —*auctoritas prudentium*— by the political power.

The power could do no less than influence in the development of the juridical life, manifesting itself in the last classical age in an extinction of the creative force of the jurisprudence and in a culmination of the rules given directly by the prince, the imperial constitutions, which at the beginning seemed not to violate the constitutional traditions with respect to the creation of the *ius* and which only had a force similar to an honorary law and did not alter the *ius*; but it did not take long to be admitted that its strengths were as if they had been laws, leading to transfer the law creating powers to the emperor.

The imperial constitutions were the primary source of a *ius novum*, a new law, which displaced the creative force of all the other sources, but with the peculiarity that in the legislative work of the imperial chancery collaborate the best jurists of each time, a work that attracted their attention towards matters of what we call today public law, administrative law, etc.

From Augustus up to Hadrian, from Labeo to Julian, the Roman jurisprudence presented itself as the most perfect realization of the jurisprudential activities of all times acquiring, with respect to the past step, a greater consciousness of the substantivity of the juridical studies and a liberation from philosophical and rhetorical influences.

¹² F. SCHULZ (n. 5), p. 112.

Now, having once established the terminology and created a general frame of the institutions in its master lines, the jurists make an effort to complete the system adding it through a casuisticly in all its details, isolating and depurating the fundamental reasons that inspire the case decisions and opinions, combining without confusing the different sources, old and new alike, civil and praetorian, and uniting the work of the free practicing jurist with the assistance to the function of the imperial government which amplifies the field of interest of the jurists not only because of the subject matter but also by a new consideration of the provincial reality without damaging the maintenance of the tradition of a *ius civile* purely urban, thus getting to a greater consciousness of the teaching tasks and to a greater uniformity in the types of juridical literature.

It is Schulz contention that "Classical private law is a homogeneous, original and, in truth, quite unique system which is basically different from any other system of antiquity or of later times. It is this which makes its study both attractive and difficult"¹⁴ and "Aversion to far-reaching abstractions is a characteristic feature of classical law which the historian has to preserve carefully"¹⁵.

After Salvius Julianus, that is, after the conventional date of 130 A. D., the Roman jurisprudence enters a new phase in which some traits of beginning decay increase. The codification of the praetorian edict (a sort of "register of writs") dries up its productivity; the jurists write encyclopedic works in which they retouch the tradition of the preceding age, especially in the commentaries to the books of Sabinus and to the *Edictum praetorium*, as the same time as they write monographies on public Law.

It is the time of Pomponius, Venuleius, Florentinus, Scaevola, Papinianus, Paulus, Ulpianus, Marcianus and Modestinus. Paulus and Ulpian provide the fundamental base to the Justinian compilation, taking into account that they offer the most abundant systematization of the classical jurisprudence.

The end of the classical period coincides with the government of the Severi. Caracalla grants the Roman citizenship to all the free subjects of the empire (212 A. D.). This act was probably inspired by his religious syncretism that wanted to melt the different peoples by means of worshipping the sun, by his demagogic spirit, by his design of social levelling that gives place to a ruralization of the society, to a racial fusion with the consecutive barbarization of the

¹⁴ F. SCHULZ, *Classical Roman Law* (1951), p. 4.

¹⁵ F. SCHULZ (n. 14), p. 7.

empire, by his anti "bourgeois" mentality that favors the countrymen and the soldiers. As the social equalization can never become total, the disappearing of the old distinction produced now a new one, founded on economical criteria and not in family ancestry, giving place to the distinction *honestiores-humiliores* that characterizes the Low Empire. The provincial soldiery prevails over the Italian ancestry and the urban and juridical culture decays much before Diocletian who gives a new political shape to a social reality. It increments the provincialization of the Roman law and the classical period has now finished.

The third period goes from around 230 A. D. until the Justinian compilation. With didactic aims we can subdivide three steps: (a) Diocletianean from 230 to 330 A. D., (b) Constantinianean from 330 to 430, (c) Theodosian from 430 to 530.

With the dynasty of the Severi, that are orientalized enough, above all Caracalla, comes a new politico-theological concept according to which the *princeps* is something like a divinity, transferring the monotheism to a monarchical idea that dares to eliminate all scruples of absolute power. The period of military anarchy of the third century ended with the official instauration of an absolute government without respecting the republican appearances that persisted until the fall of Rome in the hands of Odoacer king of the Heruli in 476 and subsisted in the East with Constantinople as its capital.

This continuity of the Roman empire in the East has a notable impact for us because of Justinian that transmits to Western Europe the Roman juridical science. The empire of Byzantium lasts until 1453, date in which Constantinople falls into the power of the Turks.

At the beginning of the fourth century and in the same year as the death of Diocletian, a hard persecutor of the Christians, who retired from power in 305 A. D., the Christianity is acknowledged by Constantine as the official religion (313 A.D.) excluding the short interval of the emperor Julian the Apostate (361-363).

Diocletian, without losing his mighty power, continues legislating by rescripts with a style not different from the emperors of the classical age. In his rescripts the classical law is defined against the provincial intrusions. This classical appearance of the Diocletian work roots, the same as the form of government he establishes, in a deep juridical decay¹⁶.

¹⁶ See review by G. LUZZATO, in *IVRA* 13 (1962) 2226 of M. AMELOTTI, *Da Diocleziano a Costantino. Note in tema di costituzioni imperiali*, in *SDHI*. 27

With Constantine the legislation acquires a hitherto unknown verbosity. His constitutions reject the past classical tradition by considering it perhaps part of the past political age. Besides, the members of the imperial chancery were free of the classical tradition because many of them came from the provinces where the juridical teaching were conducted with rethorical and "vulgar" ostentation.

Due to its reception in the Constantine constitutions the Roman Vulgar Law acquires the solidity and effectivity to which it owes its signification as an independent phase of development in the history of Roman Law ¹⁷.

Constantine is one of the greater legislators not only because of his prolific amount of statutes, but by the new seal of the triumphant Christianity. According to the Roman historian Ammianus Marcellinus, the emperor Julian the Apostate (361-363) *memoriam Constantini vexavit* by considering him *novator turbatorque priscarum legum et moris antiquitus receptis* ¹⁸.

Constantine coincides with the age of Roman Vulgar Law, that is to say, the law of the juridical books of the post classical tradition in the measure in which they present a deformation of the patterns or models of the classical jurisprudence.

The term "vulgar" is not a depreciatory estimation, but an undeniable fact of the corruption of the transmission, by motive of the apparition of the use of the codex ¹⁹ and the new editions and re-editions.

The historico-juridical criticism of the last twenty years refutes the equivocal association between Christianity and the decay of Roman law, because the technical corruption of Roman law had already begun in a complete pagan age from the time of the death of emperor Alexander Severus (235 A.D.), and Diocletian, in spite of some of his great efforts, belongs to this fall and decay and is a classicist unable to dispossess, himself of his own age. As Wieacker de-

(1961), p. 241. This work of Amelotti continues and completes another of the same author, *Per l'interpretazione della legislazione privatistica di Diocleziano* (1960).

¹⁷ M. KASER, sub voce *Vulgarrecht*, in PAULY-WISSOWA, *Realencyclopedie der Altertumswissenschaften*; F. WIEACKER, in *Ius Romanum Medii Aevi*, 1, 2, a (1963), p. 13.

¹⁸ A. MARCELLINUS, *Rerum gestarum* (ed. Gardthausen) 21.10.8.

¹⁹ *Codex* is a physical denomination. The word *codex* means a bunch of pages bound by one of the borders, that is a book bound as we use to have today. Before the *codex* they used to have scrolls. ROBERTS, *The Codex*. 40 *Proceedings of the British Academy* (1959), p. 169; F. WIEACKER, *Textstufen klassischer Juristen* (1960), p. 93.

monstrates²⁰, from the time of Constantine it is possible to check a tendency to save the authenticity of the juridical texts after a period of intense ruin in the second half of the third century.

Constantine means a surpass of the decay of the pagan classicism by a new form more congruous with the political and religious circumstances of his time. He shares a gigantic effort, though the accomplished facts were not reversible: it could not grow fresh and green again the classical jurisprudence extinguished a century ago. He is the founder of a new step by attending to his legislative power with a mind to transform the Roman society according to the moral directions of Christianity. His period of government and his relations with Christianity are one of the most interesting subjects in world history²¹.

He represents a moment of constructive effort. The facility with which the medieval and, of course, the visigothic people could receive with new patterns the Roman juridical tradition along with the Justinian top work depends on this period. This effort to follow a new orientation could be observed, too, in the time of Theodosius II (408-450 A.D.) who in 429 orders to compile the *leges* — that is, the imperial constitutions— only from the time of Constantine. The official and extraofficial legislative collections show how in the 4th and 5th centuries are felt the great differences between the laws of the Christian and non-Christian emperors, up to the point of spouting the candid idea of slanting the past legislative and jurisprudential production.

The emperors take measures in favour of the economically weak persons: allowances between relatives, protection of the dowry, hereditary protection of the widow when poor, protection of the *coloni* (tenants), concrete measures in favor of the debtors, regulation of the amount of interest in loans, flourishing of organizations and foundations in favor of the necessitous, etc.

In this postclassical period, erected the imperial constitutions as a living source of the law, their transmission is completed with a tradition of the old jurisprudential *ius* called now *ius vetus* — old law. A skillful divulgation of the juridical books takes place (impossible without simplification), with utilitarian criteria, omitting all that was not interesting to the allegation in court or to the elementary teaching.

²⁰ F. WIEACKER (n. 19), p. 25-56.

²¹ A. D'ORS, *Sulla periodizzazione del Diritto Romano*, in *Laeca* 10 (1964) 1, p. 116.

All the books of this age reflect a deep scientific poverty because of the disappearance of the jurisprudence, the provincialism, the tendency to consider the juridical reality from the naturalistic point of view, with predominance of economical and fiscal aspects, the pragmatism, the trivialization of the teaching. All these are phenomena that determine the Vulgarism that implies absence of jurisconsult, and it is a relative concept only possible where a cultivated jurisprudence exists or has existed.

Vulgarism is a lacking of style, more than a style in itself. The absence of jurisconsult may be simultaneous (and then we have the provincialization) or successive as in this case now that the jurisprudence fails to exist, loses its guidance, and, therefore, the post-classical law is fundamentally "vulgar" ²².

To understand the phenomena of Vulgarism it is necessary to consider the history of Roman law in the sense of the history of the juridical manuscripts and to consider the importance of the apparition of the *codex* in order to explain the work of reproduction, recasting and epitomization of the classical juridical literature. All these aspects are magisterially studied by Ernst Levy, Alvaro d'Ors, Franz Wieacker and a few others ²³.

The consideration of Vulgarism must always be present in the textual criticism following the method of the different alteration steps as clearly explained by Albertario ²⁴, according to which it is not only necessary to separate the *glossemata* from the tribonianisms but also to isolate the textual alterations coming from the moving away from the classical understanding.

In the West, Vulgarism lasts a long time in a series of summaries of the Theodosian Code and of the remaining sources of the *ius* that we use to call generally the *Interpretatio*, whose non unitarian confection may be dated in the beginning years of the second half of the fifth century.

While Vulgarism triumphs definitively in the West and persists there during the Middle Ages ²⁵, the Vulgarization in the orient,

²² A. D'ORS, in *Labeo* 6 (1960) 2, p. 231.

²³ E. LEVY, *West-östliches Vulgarrecht und Justinian*, en *ZSS.* 76 (1959), p. 2; A. D'ORS (n. 22); A. D'ORS, *El Código de Eurico* (1960), p. 2; F. WIEACKER, *Nochmals über Vulgarismus. Ein Diskussionsbeitrag*, in *Studi Betti* (1962) 4, p. 509.

²⁴ E. ALBERTARIO, *Glossemi e interpolazioni*, in *Studi di Diritto Romano* (1934) 5, p. 379.

²⁵ On the persistence of the Roman Law in the Middle Ages see F. C. VON SAVIGNY, *Geschichte des römischen Recht im Mittelalter* 1-8 (1850-1851); M. CONRAT, *Geschichte der Quellen und Literatur des römischen Recht in früheren Mittelalter* (1891); P. VINOGRADOFF, *Roman Law in Medieval Europe* (1929). Particularly relating to the Iberian peninsula see C. SÁNCHEZ ALBORNOZ,

recently checked by Ernst Levy²⁶, lives together with and Hellenistic juridical trend whose importance should not be overestimated. But this vulgarization of Roman law in the Orient is partially stopped and at last surpassed by a classicism which came from the law school of Beryt that along with the law school of Constantinople, founded in the year 425 A. D., were successful in shaping a selected group of jurists. In the Orient it existed along with a librarian tradition that allowed the conservation of the classical books giving a chance, through a more scientific study, to an academical classicism through which the Justinian compilation could be incomparably superior to that of King Alaric II enacted some years before. Thanks to the Justinian compilation, the Roman law could be received scientifically in Europe, constituting one of the most solid columns of its culture.

Nevertheless, against the previous prevailing opinion, Ernst Levy²⁷ has managed to collect enough information to make credible the idea that, though in the kingdoms of Leo I (457-474 A. D.) and his successors, the law schools in Beryt and Constantinople were very flourishing, the classicist movement *in complexu* begins essentially with the ascension to the throne of Justinian (527-565) and reaches the culminating point of the orbit in the features of the project of the Digest or Pandects, an anthology of the writings of the classical jurists.

Justinian conserved and gave new life to old juridical material with a new evaluation and made it possible to hear the Roman jurisprudence with the voice of the imparted bloom of youth of the actual legislative source. His innovative tendency is directed to a great deal to the rectification of the former law; with the effort of restoring a more pure form, through this intervenes very often more as an idealized model than as a restaurable historical reality. Palpitating under the appearance of an archaic tendency is a clear decisory attitude, moved by a longing for clarity with the aim of solving the disputes of the old jurists, the contradictions of the imperial legislation and the incorrigible adulteration of postclassical rebuilders and commentarists. Justinian sits up with his theocratic autho-

Pervivencia y crisis de la tradición jurídica en la España goda, in *Settimane di studio del centro italiano di studio sull'alto medioevo*. 9. *Il passaggio dall'antichità al medioevo in Occidente* (1962), p. 127, 132.

²⁶ E. LEVY, *Öströmisches Vulgarrecht seit dem Zerfall des Westreiches*, in *ZSS.* 77 (1960), p. 1.

²⁷ E. LEVY (n. 26), p. 1.

urity to disperse the darkness of the law, and though he feels himself a Roman, the Greek genius of clarity could do no more than manifest itself through him in the way of definite classification, purification and structure of the sources of the law.

We have distinguished three periods profoundly diverse, expressive of three historically different ages. It can be affirmed that the first two periods reflect the authentic Roman spirit more than the last one which is plenty of new and contrasting elements because of the intellectual decay of the jurists and because of the withering of the specific attitude of the Romans for the cultivation of the law. Between the old and the new law there was not a fusion but frequently a mixture, though the latter innovations constituted almost always substantial progress.