



Sources of the Roman Civil Law an Introduction to the Institutes of Justinian.

William Grapell

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CHAPTER G. SECOND PERIOD--(Continued.) The Higher Magistrates, the Honor-Bearers of the Roman State, were directly Expounders, indirectly Makers of the Law. Nor, if one thinks of the unbending strictness of the Law which they had to administer, and of the wants of those on whose behalf it was administered, could this be otherwise. It must be borne in mind that the Laws of the Decemvirs were never formally repealed; and that those Laws addressed themselves to Citizens alone, nor mentioned Strangers save to bar them from its benefits. Usage made certain modifications, special Laws made more, but to the last the Law of the Twelve Tables was that which the Magistrate was sworn to administer, interpret and expound.

Legislation has been shrewdly called the art of interpreting a written Law. Such art must beyond all doubt, have been needed by those who, like the Magistrates of Republican Rome, were bound by the letter of a Law, framed in other ages and with other ends. Impossible, according to any ordinary rules of construction, it must have been to bring Strangers and Sojourners within the provisions of a Code addressed to Citizens alone. Impossible, according to such rules to make enactments framed for a handful of soldiers and their followers apply, to a mixed and swollen population, to the requirements of commerce, to the considerations of wealth, and to the breaking down of those old barriers which at one time severed Class from Class. An application, such as this, must clearly have been Legislation, by what name soever it were known. Nor does it seem that the Magistrate was subject to any present check. During his term of office, and within his own sphere, he was absolute; and none might dare to question the correctness of his views. Ulterior checks indeed,...

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