

Chapter 9

READING 2

SECTION 2

Persia, Byzantium, and the Rise of Russia

Justinian's Code

The greatest contribution of the Byzantine emperor Justinian to civilization was in the field of law. Early in his reign, Justinian established a commission of legal scholars to organize and clarify all Roman law. After six years of work, the commission produced what today is known as the Justinianic Code. In the excerpt below, the nature of the law is discussed. As you read, think about the kinds of law described in the code.

Justice is the constant and perpetual [unending] desire to give to each one that to which he is entitled.

Jurisprudence is the knowledge of matters divine and human, and the comprehension of what is just and what is unjust. . . .

The following are precepts [rules] of the Law: to live honestly, not to injure another, and to give to each one that which belongs to him.

There are two branches of this study, namely, public and private. Public Law is that which concerns the administration of the Roman government; Private Law relates to the interests of individuals. Thus Private Law is said to be threefold in its nature, for it is composed of precepts of Natural Law, of those of the Law of Nations, and of those of the Civil Law.

Natural Law is that which nature has taught to all animals, for this law is not peculiar to the human race, but applies to all creatures which originate in the air, or the earth, and in the sea. Hence arises the union of the male and the female which we designate marriage; and hence are derived the procreation [reproduction] and the education of children; for we see that other animals also act as though endowed with knowledge of this law.

The Civil Law and the Law of Nations are divided as follows. All peoples that are governed by laws and customs make use of the law which is partly peculiar to themselves and partly pertaining to all men; for what each people has established for itself is peculiar to that State, and is styled the Civil Law; being, as it were, the especial law of that individual commonwealth. But the law which natural reason has established among all mankind and which is equally observed among all peoples, is called the Law of Nations, as being that which all nations make use of. The Roman people also employ a law which is in part peculiar to them, and in part common to all men. . . . Our Law, which We make use of, is either written or unwritten, just as among the Greeks written and unwritten laws exist. The written law consist of the Statutes, the *Plebiscita*, the Decrees of the Senate, the Decisions of the Emperors, the Orders of the Magistrates and the Answers of Jurisconsults.

A Statute is what the Roman people have established as the result of [a formal proposal] of a senatorial magistrate, for example, a consul. The *Plebiscitum* is what the plebeians have established upon [a formal proposal] of a plebeian magistrate, for instance, a tribune. . . .

A Decree of the Senate is what the Senate orders and establishes, for since the Roman people have increased in numbers to such an extent that it is difficult for them to be convoked [called together] in an assembly for the purpose of adopting a law, it has seemed advisable for the Senate to be consulted instead of the people.

Whatever is approved by the sovereign has also the force of law, because by the *Lex Regia*, from when his power is derived, the people have delegated to him all their jurisdiction and authority. Therefore, whatever the Emperor establishes by

Chapter 9, Reading 2, continued ►

means of . . . decrees, . . . [or] by an Edict, stands as law, and these are called Constitutions. . . .

that . . . a judge was not permitted to deviate [vary] from what they had determined.

The Answers of Jurisconsults are the decisions and opinions of persons upon whom has been conferred [granted] authority to establish laws; for it was decided in ancient times that the laws should be publicly interpreted by those to whom the right to answer had been granted by the Emperor, and who were called jurisconsults, and the unanimous decisions and opinions of the latter had such force

The unwritten law is that which usage has confirmed, for customs long observed and sanctioned [approved] by the consent of those who employ them, resemble law.

From *The Eagle, the Crescent, and the Cross*, edited by Charles Davis.

1. According to the code, what are the precepts of the Law?

2. Why did the need for Decrees of the Senate develop?

3. How are the Civil Law and the Law of Nations different?

HRW material copyrighted under notice appearing earlier in this work