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History of the Laws of Louisiana and of the Civil Law

Thomas J. Semmes

REDISCOVERED TREASURES OF LOUISIANA LAW

HISTORY OF THE LAWS OF LOUISIANA AND OF THE CIVIL LAW

Thomas J. Semmes*

INTRODUCTION TO THE NEW PUBLICATION

Thomas Jenkins Semmes (1824-1899) was once described as "the most distinguished statesman and brilliant lawyer of the south."[1] Born in Georgetown, D.C., in a mercantile family of English and French descent, he graduated from Georgetown College in 1842 and received a law degree from Harvard in 1845. He practiced law in Washington, D.C., till 1850, when he moved to New Orleans. He became a leader of the Democratic Party and was soon elected a member of the Louisiana House of Representatives. He later served as a member of the Louisiana Constitutional Conventions of 1879 and 1898.[2] A U.S. Attorney in New Orleans and later state Attorney General, he became a strong advocate of secession. He served in the Confederate Senate from 1862 to 1865 and, after having received presidential pardon, he returned to New Orleans to practice law. He became a professor of law at the University of Louisiana, later to become Tulane University. There

* Professor of Law, University of Louisiana (1873-1899). This lecture was first published by Melvin M. Cohen and Joseph A. Quintero in New Orleans through Clark and Hofeline, Book Printers, 9 Bank Place, in 1873; it was republished in 1875 in 3 LA REVUE CRITIQUE DE LEGISLATION ET DE JURISPRUDENCE DU CANADA 405.

1. JAMES S. EASBY-SMITH, 2 GEORGETOWN UNIVERSITY IN THE DISTRICT OF COLUMBIA (1789-1907), ITS FOUNDERS, BENEFACTORS, OFFICERS, INSTRUCTORS AND ALUMNI 146 (1907). *See* for more detail, CHARLES ROBSON, REPRESENTATIVE MEN OF THE SOUTH 529-551 (1880).

2. Georgia Chadwick, *Thomas Semmes*, 5 DE NOVO, THE NEWSLETTER OF THE LAW LIBRARY OF LOUISIANA, Issue 3, 7 (2007).

he taught civil law (1873-1879) and common law (1879-1899), till the day of his sudden death.[3]

The Journal of Civil Law Studies owes to Mr. Louis de la Vergne the rediscovery of this inaugural lecture, first published as a book in New Orleans in 1873. Ms. Georgia Chadwick[4] was instrumental in having the text entirely retyped and edited. The lecture proves the vast expertise and intimate knowledge Semmes had of the civil law tradition and its impact in Louisiana, at the moment he started an academic career, at the age of forty-nine. He was an accomplished scholar. The first part of the text gives a very informative and accurate survey of the history of Louisiana law till the revision of its Civil Code in 1870. The second part explains how the civil law tradition evolved in Rome, from the *Law of the Twelve Tables* to Justinian's *Corpus Juris Civilis*, discussing the main steps of the evolution and their significance.

At a time where many a legal scholar would devote fifty pages to the discussion of a small problem, it is good to remember old masters who could cover with clarity and accuracy centuries of legal history in half this volume. To readers looking for a short but informative account of the development of the civil law tradition in Louisiana and its interaction with the common law until the post-Civil War years, Semmes gives a most useful and readable answer. In Louisiana or in other parts of the world, teachers of comparative law and of legal traditions may safely use this text. If pressed to cover the development of Roman law in just one class or two, they will find in the second part of Semmes' lecture a most useful and reliable guide.

The short book was retyped from the original at the Louisiana Law Library, and edited by Ms. Jennifer Lane at the LSU Center of Civil Law Studies. It is published with minimal edits, aiming at

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3. *Id*.

4. Law Librarian of Louisiana, Executive Director, Supreme Court of Louisiana Historical Society, and Curator, Supreme Court of Louisiana Museum.

making the text easily readable in the 21st century. Sequentially numerical footnotes are references by the author, sometimes complemented by the editors. Additional editorial notes are announced by an asterisk.

Olivier Moréteau

PREFACE TO THE ORIGINAL EDITION

The following introductory lecture, delivered by the Hon. Thomas J. Semmes, Professor of Civil Law in the Louisiana University, at the opening of the Institution, needs no comment.

The reputation of the writer, as a jurist of eminent ability, is as firmly established, as it is universally conceded. Of his study, culture, and research, the reader can best judge from a perusal of the lecture. As elaborate in detail as the limits of a discourse will sanction, it is as pointed in application, as the scope of the subject justifies, and doubtless establishes its authenticity, by the citations it introduces.

We present it to the profession in the conviction of its affording them satisfaction; and grateful for the favors conferred in their patronage, hope to offer them other lectures on equally valuable legal themes.

The Publishers

Thomas Semmes[*]

I. AN EPITOME OF THE HISTORY AND SOURCES OF THE LAWS OF LOUISIANA AND OF THE CIVIL LAW

Before I enter upon the consideration of the history and sources of the civil law, I propose to review the history and sources of the laws of Louisiana. In Louisiana, the civil law prevails, and it is the only state in the federal union, carved out of the vast territories acquired by the United States from France, Spain and Mexico, in which the civil law has been retained as the basis of jurisprudence. The common law modified by statute dominates all our sister states.

The intimate relations and intercourse between the people of Louisiana and the citizens of other state, have given rise, in our courts, in consequence of the dissimilarity of the two systems of

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* Engraving of Thomas Semmes, from REPRESENTATIVE MEN OF THE SOUTH (Chas. Robson & Co., Philadelphia, 1880), a volume in the Rare Book Collection of the Law Library of Louisiana.

law, to more numerous and intricate questions of conflict of laws than in the courts of any other state.

Happily for us, many of these questions were considered and adjudicated while Chief Justice Martin was, by his ability and learning, the ornament of our supreme judicial tribunal.

You will perceive in Story's elaborate work on the Conflict of Laws,[5] numerous and copious references to the decisions of the Louisiana courts. The conflict of laws is a subject daily considered by the legal practitioner in Louisiana, and I commend it to your careful study, as an essential branch of the law, and necessary to fit you for the intelligent performance of your professional duties.

Louisiana was settled by the French in 1699, and was subject to the dominion of France until August 1769, when it was taken possession of by Alejandro O'Reilly for Spain under a secret treaty concluded in November 1762, but not made public until April 23, 1764. About three months after taking possession, O'Reilly published in the French language extracts from the whole body of the Spanish law, with references to the books in which they are contained, purporting to be intended for elementary instruction to the inhabitants of the province. This publication, followed by an uninterrupted observance of the Spanish law, was received as an introduction into the Louisiana of the Spanish Code in all its parts.[6]

The laws of Spain are contained in various codes, the most complete of which is known under the name of "*Las Sieté Partidas*." The other codes are the *Fuero Juzgo*, *Fuero Viejo* and *Fuero Real*: to which may be added the laws regulating the practice of courts, the Royal Ordinances (*Ordenancas Reales de Castilla*), and those of Alcala; the Laws of Toro, the *Recopilacion de Castilla*, and the *Recopilacion de las Indias*.

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5. JOSEPH STORY, COMMENTARIES ON THE CONFLICT OF LAWS, originally published by Hilliard, Gray, and Company in 1834.

6. FRANCOIS-XAVIER MARTIN, 4 THE HISTORY OF LOUISIANA: FROM THE EARLIEST PERIOD 368 (2000), originally published by Lyman and Beardslee, New Orleans, in 1827.

The *Fuero Juzgo* was published about the year 693. It was first published in Latin under the title of "*Forum Judicum*" and afterward translated into Spanish in the 13th century under Ferdinand III. It was originally called "*El Fuero de los Jueces*," but this name was changed by corruption of words into *Fuero Juzgo*, and under that title it was published in the year 1600.

The *Fuero Viejo* was published in the year 992, and contains the ancient customs and usages of the Spanish nation.

Alphonso the Wise, desiring to establish a uniform jurisprudence in all his dominions, published a third code, under the name of "*Fuero Real*;" this was the precursor of the *Partidas*, which Alphonso had ordered to be compiled, and is to the *Partidas*, what the *Institutes of Justinian* are to the *Pandects*.

The *Partidas* is the most perfect system of Spanish laws; they were compiled in imitation of the *Pandects*, and as a digest of the laws of Spain, are worthy of the praise bestowed on them by jurists of every country.

The work was projected by Ferdinand III, but accomplished by his son and successor, Alphonso the Wise, who appointed four jurists to execute it. This task was entered upon in the year 1256, and finished in seven years. Strange to say, the names of these enlightened jurists have not been preserved. All those parts of the new code relating to religious matters, were compiled from the canonical laws of Spain: those which relate to civil and criminal matters, are derived principally from the Roman laws, which were freely translated without acknowledgment of the fact. The *Partidas* were not promulgated until 1343, and were not actually put in operation until 1505, when Ferdinand and Joanna gave them their sanction at the Cortez held that year in the city of Toro.

The *Partidas* are divided into seven parts, each part divided into titles, and each title sub-divided into laws.

The first part details the canons and liturgy of the church. The second is a summary of the ancient usages of the Spanish nation and of the rules of its government. The third, fifth and sixth parts

contain an abridgment of the principles of the Roman laws on actions, suits, judgments, contracts, successions, testaments, minority and tutorship. The fourth is a compendium of the laws relative to marriage and family relations, legitimate and illegitimate, freedom, slavery and enfranchisement. The seventh details crimes, offences, and punishments, and, in imitation of the *Pandects*, concludes with one title on the signification of words, and another on the rules of law.

The *Partidas* contain the fundamental principles of the Spanish law, expressed with grace, with simplicity and in the purest idiom of the Spanish language. The elevation of the sentiments of the *Pandects* has attracted the admiration of the learned. They contain these remarkable words, "despotism tears the tree up by the roots; a wise monarch prunes its branches."

The Laws of Toro were published at the Cortez held at the city of Toro, in 1505; they relate principally to wills, successions and donations.

The Royal Ordinance was published by Ferdinand and Isabella in 1496; it is divided into eight books and the greatest part of it has been inserted in the *Recopilacion of Castilla*, which completes the system of Spanish legislation. This *Recopilacion* was published by Philip II, in the year 1567. The Ordinance of Alcala, the Royal Ordinance and the Laws of the Toro, are contained in it.

The laws of Spain regulated and governing her immense dominions in America were collected and digested by order of Philip IV, and published in the year 1661, in the *Recopilacion de las Indias*.

The transfer from France to Spain did not change the system of law governing the territory; for the civil law, as a system, then was, and now is, the law of both those nations. Spain, so far as possession affected our laws, remained in possession until 1803, when Louisiana was transferred to the United States.

It is true the territory was acquired from France during the administration of Mr. Jefferson, for by the Treaty of Ildefonso, in

the year 1800, Spain had retroceded Louisiana to France, but the actual possession of France lasted only from November 30, 1803 to December 20, 1803. During this brief interval no material change in the law was made. The French merely re-established the *Code noir* of Louis XV, prescribing rules for the government of slaves, and substituted a mayor and council in the place of the Cabildo, for the administration of affairs of the city of New Orleans.

Therefore, so far as our law is concerned, it may be said that it was French from 1699 to 1769 and Spanish from 1769 to 1803. But as French and Spanish law both descend from the same parent source, the changes made during Spanish rule, so far as private rights are concerned, were not radical, but modifications of the system founded by the French.

The material changes consisted in the substitution of the Spanish for the French language in all legal proceedings, the introduction of Spanish laws respecting public order, and the disposition of the national domain. It is thus perceived, that at the time Louisiana came into the possession of the United States, her law was a system established by the French and modified by the Spanish, but derived from the civil law that was common to both peoples.

By the Treaty of Paris, the inhabitants of Louisiana became citizens of the United States, and were guaranteed the enjoyment of their liberty, property, and religion.

Congress, in anticipation of the transfer, on the October 31, 1803, provided for the temporary government of the territory by a statute vesting all the military, civil and judicial powers exercised by the officers of the existing government, in such person or persons as the President might appoint, to be exercised in such manner as the President might direct. By act of Congress approved March 26, 1804, a territorial government was organized under the name of the "Territory of Orleans." The territory described in that act embraced all the territory of the present state of Louisiana, and

separated it from the residue of the Louisiana cession, as described in the Treaty of Paris. For at the time of transfer, Louisiana, as acquired from France, embraced all of the country from the Gulf of Mexico to the 49th parallel of latitude, and from the Mississippi River to the Rocky Mountains.

Although the terms of the territorial act of 1804 embraced the territory now comprised within the limits of the state of Louisiana, the part of the state commonly called the "Florida Parishes" was at that time actually in possession of Spain and was held by her until the year 1810.

The territorial act of 1804 vested the legislative power in a governor, appointed by the president, and thirteen persons who were to be appointed annually by the president. But on March 2, 1805, Congress authorized the president to establish in Louisiana a government similar to that existing in the "Mississippi Territory." That governance had been created by adopting the Ordinance of 1787, relative to territory northwest of the Ohio River, excluding the portion of the ordinance regulating successions and the last article prohibiting slavery. It is thus perceived that the celebrated Ordinance of 1787 regulated the form of government existing in Louisiana until she was admitted into the Union as an independent state. The second article of the Ordinance of 1787 guaranteed, among other fundamental rights, the benefit of writ of *habeas corpus*, the right of trial by jury, and judicial proceedings according to the course of the common law.

The first important and radical change made by the new government in the laws of the territory was the necessary result of the change of rulers and of the guarantees contained in the Ordinance of 1787.

The criminal law and proceedings of the Latin races of Europe, whose absolute governments ignored the guarantees contained in our Federal Constitution, were repugnant to the Anglo-Saxon ideas of individual liberty and constitutional limitations of governmental power, which predominated in the American mind. The territorial

statute of May 4, 1805, defined what acts should constitute crimes and offences and provided for the trial and punishment of offenders. In so doing, the language and terms of the common law of England were used, and the following provision was embodied in the act, viz:

> All the crimes, offences, and misdemeanors hereinbefore mentioned, shall be taken, intended and construed according to, and in conformity with, the common law of England, and the forms of indictment, (divested, however, of unnecessary prolixity,) the method of trial, the rules of evidence, and all other proceedings whatsoever, in the prosecution of said crimes, offences and misdemeanors, changing what ought to be changed, shall be (except by this act otherwise provided for) according to the common law.

This section of the act of 1805 had never been repealed; even in the Revised Statutes of 1870, it is expressly excepted in the general repealing clause contained in the last section of the statutes. The result of this enactment was an entire displacement of the existing criminal law of the territory, and the substitution of the provisions of the act in its stead. Hence, no act of man is criminal in Louisiana unless a statute of the state can be produced stamping it as a crime or offense. There is no such thing in Louisiana as a common law offense; all offenses are created by statute. The common law is resorted to for purpose of interpretation and construction of the terms of the statutes creating offenses, but criminality cannot be predicated on an act that the legislature has not, in express terms, denounced as crime or offense.

An additional result of this statute of 1805 is that the common law of England, as construed and interpreted in 1805, is the standard by which we are governed; hence, no change or modifications of the English laws affect our criminal jurisprudence in Louisiana, unless adopted by statute. In addition, the English decisions and the opinions of English commentators since 1805, in opposition to the decisions and standard works prior to that period, are not authoritative expositions of our criminal law.

The next important legislative measure was a codification of the civil law of the Territory. Prior to this codification, the laws were in the Spanish language, and the fact that the vast majority of the people were of French descent and Americans, rendered it necessary that the new compilation should be published in English and French. It is generally supposed that the Civil Code of Louisiana* is but a re-enactment of the *Code Napoleon*, but such is not the fact. It is true that French code preceded our Code of 1808 by four years, and a *projet* of it may have suggested to our legislators the idea of codification; however, at the time of the preparation of the Louisiana Code of 1808, the *Code Napoleon* as adopted had not reached the territory.

In June 1806, the legislature of the territory appointed two lawyers of eminence, James Brown and Louis Moreau Lislet, to prepare the Civil Code. Brown and Moreau Lislet were given express instructions to make the civil law, by which the territory was then governed, the ground work of the code.

On March 31, 1808, the code was adopted by the Territorial Legislature and all ancient laws inconsistent with it were repealed. The effect of this was that the Spanish laws remained in force, to the extent to which they were not in conflict with the Code of 1808, and they were quoted and acted on as authoritative until 1828.

On the March 28, 1828, the legislature repealed all the civil laws of the state in force prior to the Code of 1825,** except a portion of title ten of the Code of 1808 treating of the dissolution of corporations. The state of Louisiana was admitted into the federal Union under the dominion of the Code of 1808, and the Spanish laws not in conflict with that code.

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* The author refers to the Civil Code of Louisiana throughout the article. The actual name of the enactment is DIGEST OF THE CIVIL LAWS NOW IN FORCE IN THE TERRITORY OF ORLEANS (1808). The Digest was often called the Old Code.

** One page further, the author explains how the Digest of 1808 was replaced by a Civil Code in 1825.

On the February 20, 1811, Congress passed an act to enable the people of the Territory of Orleans to form a constitution and state government, and for the admission of said state into the Union on an equal footing with the original states.[7]

The people in convention assembled, having framed a constitution and adopted the name of Louisiana as the title of the new state, Congress, on April 8, 1812, declared Louisiana to be one of the United States of America and admitted into the Union on an equal footing with the original states in all respects whatever. Provided, that it should be taken as a condition upon which the said state is incorporated into the Union, that the river Mississippi, and the navigable rivers and waters leading into the same, and into the Gulf of Mexico, shall be common highways and forever free as well to the inhabitants of said state as to the inhabitants of other states and the territories of the United States, without any tax, duty, impost of toll therefor, imposed by the said state, and that the above condition, and also all the other conditions and terms, contained in the third section of the act of 1811, shall be taken and deemed as fundamental conditions and terms upon which the said state is incorporated into the Union.[8]

It was further declared, that all the laws of the United States not locally inapplicable were by that act extended to the said state.

At the same time the state was organized into one federal judicial district, and the appointment of a District Judge of the United States with circuit court powers, was provided for. While on this subject of judicial districts, I may as well mention, that on July 29, 1850, by act of Congress, the state was divided into two judicial districts, called the Eastern and Western districts, but since

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7. Louisiana Enabling Act, Ch. 21, 2 Stat. 641 (February 20, 1811), available at http://memory.loc.gov/cgi-bin/ampage?collId=llsl&fileName =002/llsl002.db&recNum=0678.

8. Admission of the State of Louisiana into the Union, Ch. 50, 2 Stat. 703 (April 8, 1812), available at http://memory.loc.gov/cgi-bin/ampage?collId =llsl&fileName=002/llsl002.db&recNum=740.

the war* these two have been merged into one, styled the "District of Louisiana."

The *Partidas* were translated into English at the expense of the state, by virtue of a law passed March 3, 1819. On the March 14, 1822, a resolution of the Legislature of the state was adopted, by which Messrs. Livingstone, Derbigny and Moreau Lislet, three distinguished members of the bar, were appointed to revise the Civil Code of 1808, by amending it in such a manner as they should think proper, and adding to it such laws in force as had not been adopted in that code.

The report of these jurists was adopted by the Legislature on April 12, 1824 and is denominated the "Civil Code of 1825" because it was put in operation during that year. Many articles of the Codes of 1808 and 1825 are identical with articles in the *Code Napoleon*; no doubt the compilers appropriated the language of the *Code Napoleon*, or its *projet*, whenever the rule of the law intended to be established in Louisiana, was the same as that adopted in France. Many provisions of the *Code Napoleon* are not to be found in either of our codes, and, in some instances, the text of the *Code Napoleon* was amended to conform to our law and so adopted; in other instances, the Spanish law was first written in French and translated into English. The constitution of the state required the laws to be enacted in the English language, hence, in cases of difference between the English and French texts of the Code of 1825, the English text prevailed. But as the Code of 1808 was enacted during the regime of the territorial government, when laws were passed in both languages, the French text of the code has been held to be of equal force with the English text and has been accepted by the courts to avoid the evils of incorrect translation.

The practice of the state courts of Louisiana in civil cases was based on the Spanish law and was regulated by the Territorial Act

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* The author refers to the U.S. Civil War (1861-1865).

of 1805 and its amendments until the Code of Practice, approved in April 1824, was put in operation in September 1825.

The Code of Practice, prepared by authority of the Legislative resolution of 1822, was written in French and many inaccuracies exist in the English translation.

By the act of 1828, all other rules of proceeding in civil cases, except those contained in the Code of Practice, were abrogated. In case the Code of Practice contains any provisions contrary, or repugnant, to those of the Civil Code, the latter are considered as repealed or amended by the Code of Practice.[9]

The revised Civil Code and Code of Practice adopted in 1870 were prepared under legislative sanction. They are almost identical with the Codes of 1825, except that all the provisions in relation to slaves are omitted, and the statutory amendments, enacted from time to time, are incorporated in the new codes. The Codes of 1870 are written and promulgated in the English language only, in conformity with the mandate of the constitution of 1868.

The Legislature, in 1855, undertook a revision of the statutes of the state. This revision was effected by the enactment of many separate statutes, relating to various and distinct subjects; all previous statutes relating to a particular subject were grouped together and incorporated into one statute relative to that subject, and at the end of each revised statute was annexed a clause, repealing all laws on the same subject matter, except what was contained in the Civil Code and Code of Practice. The object of the Legislature was to facilitate the study of law by confining investigation, so far as our statutory law was concerned, to the two codes and the Revised Statutes. The object was not fully accomplished, because the courts have held that there are statutes previous to 1855 not repealed by that revision, as the subject of the un-repealed statutes is entirely omitted from the Revised Statutes of 1855. The Revised Statutes of 1870 are but a reenactment of the

9. LA. REV. STAT. §§314 & 592 (1825).

Revised Statutes of 1855, with amendments and additions since made, omitting, however, all legislation pertaining to the institution of slavery.

The revising legislation of 1870 was mainly intended to obliterate from our system of laws every vestige of the institution of slavery and to accommodate our legislature to the new order of things, inaugurated by the various amendments of the Federal Constitution, or resulting from the adoption of the new Constitution of 1868 and the reconstruction measures of Congress.

A *projet* of a commercial code was prepared under the resolution of 1822, but it failed to meet the approval of the Legislature. Questions of commercial law are, therefore, settled in Louisiana by reference to approved works on the subject and the decisions of the enlightened judicial tribunals of the civilized world. The decisions of the English and American courts are most generally consulted and accepted as authority.

An attempt was made in 1820 to codify the criminal law of the state. In 1821, Edward Livingston was appointed by the Legislature to prepare and submit to its consideration a criminal code. This distinguished legist made an elaborate and scientific report, which increased his literary fame, but its philosophic speculations never received the sanction of law.

Our lawyers, accustomed to the civilian practice, were much embarrassed as to the method of conducting civil cases in the courts of the United States. The distinction between "law and equity" is unknown in Louisiana practice; the courts adjudicate all civil cases without reference to such distinction, which is peculiar to countries in which the common law prevails. In Louisiana, where the distinction, derived from the common law system, between writ or error and appeal is ignored, the evidence in any civil case of which the court of final resort has jurisdiction is, at the request of either party, reduced to writing. The appellate court reviews the law and the fact, without regard to the circumstance of whether the case was tried by a jury in the court below.

All the evidence is transmitted to the appellate court which disposes of the case on its merits, even though no bills of exception are taken by either party, to the judgment of the court below on questions of law. All that is necessary to bring into activity the revisory power of our Supreme Court is the presentation of all the evidence, on which the judge below decided the case; on that evidence, the court will proceed to adjudicate *de novo* both the law and fact involved in the cause.

Congress attempted to conform the practice of the courts with the United States, sitting within this state, to the practice of the state courts. A special statute for Louisiana was passed by Congress, May 26, 1824,[10] by which it is enacted that the mode of proceeding in *civil causes* in the courts of the United States, that now are or may hereafter be established in the state of Louisiana, shall be conformable to the laws directing the mode of practice in the district courts of said state. Provided, the judge may alter the times limited or allowed for different proceedings in the state courts, and make by rule such other provisions, to adapt the said laws of procedure to the organization of the United States courts, and to avoid any discrepancy between such state laws and the laws of the United States.

The object of this act has been almost completely nullified by the decisions of the Supreme Court of the United States.

That court was compelled to admit, that the term "civil cases," used in the process act of 1824, would include cases at law or in equity. But, it held that the acts of Congress in the general legislation of the country have always distinguished between remedies at common law and in equity. To effectuate the purpose of the Legislature, the remedies in the courts of the United States are to be at common law or in equity—not according to the practice of the state courts, but according to the principles of

10. Act to Regulate the District Courts of Louisiana, Ch. 181, 4 Stat. 62 (May 26, 1824), available at http://memory.loc.gov/cgi-bin/ampage?collId =llsl&fileName=004/llsl004.db&recNum=109.

common law and equity, as distinguished and defined in that country from which we derive our knowledge of those principles. Since there are no courts of equity, or state laws in Louisiana regulating the practice of equity cases, the federal courts in the state are bound to proceed according to the principles and usages of courts of equity, and the rules prescribed by the Supreme Court of the United States.

Louisiana had not then, and has never had, a representative of her legal system on the bench of the Supreme Court of the United States.* This decision, which was not given without a vigorous protest from Mr. Justice McLean, renders it absolutely necessary for a Louisiana lawyer, who desires to practice in the federal courts, to study the common law, in order to ascertain what is a common law case and what is a case in equity. When he finds out that his case is one in equity, he must become familiar with chancery practice in order to prosecute it with success.[11]

If his case is a common law case, he can adopt the Louisiana practice of pleading, but he must be careful in the trial of the case to resort to the common law method of proceeding. The Supreme Court has held:

> First, that if the record contains the evidence, but no bills of exceptions, and nothing raising any point of law distinct from the evidence, the Supreme Court cannot revise the judgment on writ of error.[12]
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> Second, if a case is tried by a jury, even though all the evidence may be reduced to writing and transmitted to the Supreme Court, that court cannot revise the judgment of the facts, as the Supreme Court of Louisiana does. This decision is based on the Seventh Amendment of the

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* Since the writing of this article, there has been a U.S. Supreme Court Justice from Louisiana: Edward Douglass White, who served from 1894-1921, and was Chief Justice from 1910-1921.

11. Gaines v. Relf, 40 U.S. (15 Pet.) 9, 14 (1841); Story v. Livingston, 13 Pet. 368, 406 (1839); Ex Parte Story v. Story, 37 U.S. (12 Pet.) 339 (1838); Ex Parte Poultney v. City of La Fayette, 37 U.S. (12 Pet.) 472, 474 (1838); Livingston v. Story, 34 U.S. (9 Pet.) 632, 658 (1835).

12. Minor v. Tillotson, 43 U.S. (2 How.) 392, 394 (1844), 11 L.Ed. 312.

> Constitution of the United States, which provides "that no fact once tried by a jury shall be otherwise re-examinable in any court of the United States, than according to the rules of the common law."[13]
>
> Third, when the judge passes on the law and the fact, if a jury trial is not claimed, the judge must find the facts, and the Supreme Court must treat such facts as conclusively settled and, therefore, cannot revise the case on the facts, even though the evidence on which the judge based his findings is transmitted in the record.[14]
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> Fourth, the practice of the courts in Louisiana as to giving reasons for judgment, which the Louisiana law requires under penalty of nullity and as to the form and effect of verdicts of a jury, is governed by the acts of Congress and the rules of the common law, not by the laws of the state.[15]

It is therefore perceived that, so far as practice is concerned, in the courts of the United States little is left of the state laws with which these courts are to conform. If the case is an equity case, there is absolutely no conformity with the state law. If it is a common law case, the pleadings and rules of evidence are the same as those in the courts of the state; the method of trial, and preparing a case for the appellate court, the form of the verdict and judgment, and the effect of the verdict are totally different. I do not perceive that the judicial acts of 1872 have made any material changes in the particulars I have mentioned.

The act of Congress, approved June 8, 1872, departs from the practice of the state courts as to the number of peremptory challenges in civil cases; in the state courts, four peremptory challenges are allowed, while only three are permitted in the Federal Courts. The same rule applies to criminal cases, except in trials for treason and felony. The act of Congress approved June 1, 1872, merely requires the practice pleadings and forms of

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13. Parsons v. Bedford, 28 U.S. (3 Pet.) 433, 447 (1830), 7 L.Ed 732.

14. United States v. King, 48 U.S. (7 How.) 833, 853–54 (1849), 12 L.Ed. 934.

15. Parks v. Turner, 53 U.S. (12 How.) 39, 44 (1851), 13 L.Ed. 883.

proceedings, in other than equity and admiralty causes, to conform to the practice, pleadings and forms of proceeding in the state courts. This act seems to adopt the views of the Supreme Court of the United States, in regard to the process act of 1824, as it expressly excludes "equity causes" from its operation.

II. CIVIL LAW

The Justinian collections called the *Corpus Juris Civilis*, constitute the basis of modern civil law so far as private rights are concerned.

The public law of the Romans, their criminal law, their laws of practice or procedure, and their laws as to private rights, before and after Justinian, are not received; though a few of the provisions and principles derived from these sources have been incorporated in the modern civil law system.

Even the Justinian collections exercise little or no influence on modern civil law, except in regard to rights of Roman origin or growing out of transactions known to the Romans.

The law in regard to bills of exchange and promissory notes, insurance, stocks, banks, the modern rights of corporations, the modern laws of trade and commerce, and the laws of community between the husband and wife are not of Roman origin, or they have been so radically and thoroughly transformed in the process of adaptation to the requirements of modern civilization that the germ of the Roman law can be scarcely traced.

The Roman jurists are distinguished above all others, ancient or modern, for their classic mode of enunciating principles of law, as well as for the art of tracing, and the method of applying those principles. The celebrated metaphysician Leibnitz remarks:

> I have often said, that after the writings of the geometricians, there is nothing extant comparable for force and subtility with the writings of the Roman jurisconsults;

> so much nerve is there in them, and so much profundity.[16]

Again he says:

> I admire the digests, or rather the labors of the authors from whom the Digests are extracted; whether you consider the acumen of the reasoning, or the vigor of the expression, I have never seen anything more nearly approach the precision of mathematics.[17]

The law of the *Pandects* is but a system of general legal principles. For this reason, the enlightened jurists of the civilized world resort to it as a magazine of jurisprudence, based on reason and philosophy, and therefore, in its application and usefulness, unrestricted by time and place.

It is necessary however, that you should have some idea of the manner, in which the Roman law was gradually developed, and molded into the system embodied in the *Corpus Juris Civilis*, as well as of the sources of that law. I proceed to give you a rapid, and therefore imperfect, sketch of the history and development of the Roman law, preparatory to a discussion of its principles, so far as they are incorporated into the jurisprudence of Louisiana.

It is well known that in the earliest period the Roman government was a limited monarchy, the political power being vested in king, senate and people. The people were separated into two classes: the patricians, or hereditary nobility, and the plebeians, or free citizens. At first, the plebeians were excluded from any participation in the government and from the use of the public lands.

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16. In Latin: "*In juris prudential regnat (romani). Dixi saepius post scripta geometrarum nihil extare quod vic ac subtilitate cum romanorum jurisconsultorum scriptis comparari possit:tantum nervi inest; tantum profunditatis.*" Gottfried Wilhelm Baron von Leibniz (1646–1716), German philosopher and mathematician. NINETEENTH CENTURY NATION BUILDING AND THE LATIN AMERICAN INTELLECTUAL TRADITION 57 (Janet Burke & Ted Humphrey ed. & trans., 2007).

17. In Latin: "*Ego Digestorum opus, vel potius auctorum, unde excerpta sunt, labores admiror, nec quidquam vidi, sive rationum acumen, sive dicendi nervos spectes, quod magis accedat ad mathematicorum . . . .*" JOHN GEORGE PHILLIMORE, INTRODUCTION TO THE STUDY AND HISTORY OF THE ROMAN LAW 233 (William Benning & Co., London 1848).

The king and senate proposed laws that were submitted for adoption to the vote of the national assemblies, called the *curiae*, composed exclusively of patricians.

In later times, the laws were submitted for adoption to assemblies, called *centuriae*, in which the plebeians, to a limited extent, obtained some share in legislation. The law adopted in assemblies of the *curiae* was called *lex curiata*, and law adopted in assemblies of the *centuriae* was called *lex centuriata*.

When the kings were expelled, a republic was established, and two consuls, who were patricians, were substituted for the king.

The plebeians, dissatisfied with the insignificant influence exercised by them in the assemblies of the *centuriae*, which had been so constituted as to almost overwhelm their voice by the weight of rank and wealth, succeeded, after severe contests, in establishing officers called "tribunes of the people", to be chosen from the plebeians, and, for the protection of their rights, vested with authority to render any law ineffectual by a veto.

Soon, however, the tribunes acquired the right of proposing laws to assemblies of the plebeians called *comitia tributa*, and these laws, when approved, were called *plebiscita*.

The struggle between the two parties resulted in the adoption of the celebrated *Law of the Twelve Tables*.[*] This law is both a political constitution and a law in regard to private rights. One of its objects was to establish the political equality of the plebeians with the patricians, and to define the limits of judicial power then in the hands of the consuls. Besides this, it reduced to writing the laws in regard to private rights, which had previously existed, and merged the peculiar law of each tribe in one system. This law is also called *lex decemviralis*, from the number of persons selected to compose it.

The *decemvirate* first appointed was composed solely of patricians; they reported ten tables. But the year following, a

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∗ In 450 BC.

decemvirate, composed of seven patricians and three plebeians, added two to the former ten. Those twelve were engraved on wood, ivory, or brass and exposed on the rostra for public examination. It is said that an Ephesian exile imparted his knowledge to the Roman legislators and, in recognition of his services, a statue was erected in the forum to the memory of Hermodorus.

The Romans entertained the greatest reverence for the *Twelve Tables* and delighted to bestow encomiums on them as the highest evidence of the wisdom of their ancestors. They vaunted the superiority of Roman legislation over the jurisprudence of Draco, Solon and Lycurgus, which Cicero does not hesitate to characterize as rude and ridiculous while he asserts that the brief composition of the *decemvirs* surpasses in genuine value of the libraries of Grecian philosophy.[18] The *Twelve Tables* survived the devastation of the Gauls, and subsisted at the time of Justinian; their subsequent loss has been imperfectly repaired by fragments, collected by modern critics, from the commentaries of Gaius contained in the *Pandects*, from Ulpian's fragments, from the lately discovered *Institutes of Gaius*, and the Vatican fragments.

After the *Twelve Tables*, the Romans divided their law into *jus scriptum* and *jus non scriptum*, or law established by custom. The *Institutes of Justinian* perpetuated this distinction and defined "the unwritten law to be that which usage has approved—for daily customs, established by the consent of those who use them, put on the character of the law."[19] The written law consisted of the *leges*, the *plebiscita* and the *Senatus Consulta*.

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18. MARCUS TULLIUS CICERO, DE RE PUBLICA DE LEGIBUS 223 (Clinton W. Keyes trans., 1977); MARCUS TULLIUS CICERO, DE ORATORE 123 (E.W. Sutton trans., Harvard Univ. Press, 1942).

19. In Latin: "*Ex non scripto jus venit, quod usus comprobavit: nam diuturni mores cousensu utentium comprobati legem imitantur*." *See* THE INSTITUTES OF JUSTINIAN 85 (Thomas Collett Sandars, trans. & ed., Longmans, Green, and Co. 3d ed., London, 1865).

The *leges* were enacted on the proposal of a magistrate presiding in the Senate and adopted by the Roman people in the assemblies of the *Centuriae*, composed of patricians and plebeians. These related almost entirely to Public Law.

The *plebiscite* were proposed by the tribune, and adopted by the plebeians alone in the *comitia tribute*. For this reason, they were binding on the plebeians only until, at a subsequent period, it was decreed that all the Roman people should be bound by the *plebiscita*.

The *Senatus Consulta* were decreed by the Senate, without the concurrence of the plebeians, who objected to the force of these decrees as to them; but when the Senate submitted the *plebiscite*, the plebeians in turn acquiesced in the authority of the *Senatus Consulta*.

The proper administration of justice in civil cases soon required the establishment of the office of *Praetor*. He was styled *Praetor urbanus*; his jurisdiction, at first, was restricted to cases in which both parties were citizens of Rome. The increase of business intercourse with strangers occasioned about a century later the establishment of another *Praetor* to decide the suits of strangers among themselves or with Romans. He was styled *Praetor Perigrinus*. The term of office of the *Praetor* was one year.

The proper Roman law, *jus civilis*, was never applicable to strangers. It was intended for Roman citizens only. But when the Roman power was extended over Italy and other countries, the necessities arising out of the new relations, and the incessant intercourse with strangers, led the Romans to acknowledge and apply a universal natural law in addition to their peculiar *jus civile*.

The principles of this universal natural law (called by them *jus gentium*) were at first applied to strangers, but subsequently they were extended to Romans also to moderate the rigor and correct the injustice arising from the strict application of the *jus civile*. This change was effected by the edicts of the *Praetors*, who annually, on taking possession of office, announced the legal

principles in accordance with which they would administer justice during the year. Each successive *Praetor* adopted such rules of his predecessor as had been sanctioned by reason and justice, so that the annual edicts, by continual repetition of the same principles, soon became in practice a fixed system of law. So fixed, indeed, had become the principles of the *Praetorian* edicts, and for such a long period had they been annually announced, that the annual edict assumed the name of the "Perpetual Edict." This *praetorian* law was denominated *jus honorarium*, because, says the *Institutes*, "the magistrates who have honors in the state have given their sanction."[20]

The main principles of law having been thus established by the *Twelve Tables* and the *Praetor's* edicts, the lawyers began to develop them more fully by interpretation. The law thus introduced by jurists was called *auctoritas prudentum*. These opinions of lawyers were never regarded as authority until Emperor Augustus allowed some distinguished jurists to answer in his name. In the reign of Tiberius, these *responsa prudentum* grew into considerable credit. But it was not until the reign of Hadrian that the *responsa prudentum* were vested with the authority of the law. He decreed that the unanimous opinion of the jurists, specially authorized to respond, should have the force of law. In case the lawyers disagreed, the judge should follow the opinion which he himself considered just. At a later period, Constantine determined, by special ordinance, what writings of the old jurists should have special authority. A century later, in the year 426, Theodosius II issued a more extensive ordinance, in which he confirmed, by name, the writings of Gaius, Ulpian, Paul, Papinian and Modestinus, and forbade the judges to depart from the opinion of these lawyers on questions of law. In case they differed in opinion, the Emperor ordained, the judges should be governed by a majority; in case of equal division, they should follow those to

20. In Latin: ". . .*quod qui bonoremgerunt, id est magistratus, auctoritatem huic juri dederunt.*" *Id*. at 83.

whom Papinian adhered. This ordinance was intended for the Eastern Empire, but it soon obtained force in the Western Empire as well. From Augustus to Trajan, says Gibbon, "the modest Caesars were content to promulgate their edicts in the various characters of a Roman Magistrate; and in the decrees of the Senate, the epistles and orations of the princes were respectfully inserted."[21]

The *Institutes of Justinian* expressly declare that the pleasure of the emperor has the vigor and effect of law, since the Roman people, by the royal law, have transferred to their prince the full extent of their own power and sovereignty. Therefore, whatever the emperor ordains by rescript, decree or edict is law. Such acts are called *constitutions*.[22]

In what manner the emperors were invested with legislative power, is not precisely known. The newly discovered *Institutes of Gaius* state that it was in virtue of a law, but it is uncertain, whether this was a general law passed on the transition of the government from a republican to the imperial form or a law passed on the accession of each emperor. At all events, from the time of Hadrian, the public and private jurisprudence was molded by the will of the sovereign. The "gloomy and intricate forest of ancient laws" in the language of Tertullian, "was cleared away by the axe of royal mandates and constitutions."[23]

The period just preceding Augustus surpassed all the others for the variety and profundity of the productions of its jurists, whose learning and sagacity advanced the science of law to a high degree of perfection, but little is preserved of their writings to vindicate their title of the appellation of "the classical jurists." It is certain,

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21. EDWARD GIBBON, 5 THE HISTORY OF THE DECLINE AND FALL OF THE ROMAN EMPIRE 268 (John Murray, London 1854)

22. In Latin: "*Sed et quod principi placuit, legis habet vigorem; cum lege regia quae de ejusimperio lata est, populus ei et in eum omne imperium suum et potestatem concessit. Quodcumque ergo imperator per epistolam constituit, vel cognoscens decrevit, vel edicto praecepit, legem esse constat; hae sunt quae constitutions appellantur*." *Supra* note 19, at 82-83.

23. *See* GIBBON, *supra* note 21, at 269.

however, that the jurists of the age, in which Cicero's voice resounded in the forum, being thoroughly imbued with Grecian philosophy and the logic of Aristotle and the stoics, established law as an art on a certain and general theory, and diffused over its then-shapeless mass, the light of order and eloquence. The foremost and most distinguished of these jurists was Servius Sulpicius.

The period from Augustus to Alexander Severus is illustrated by the writings of Gaius, Papinian, Ulpian, Paulus and Modestinus, none of which, save the *Institute of Gaius*, have been preserved except such fragments as are contained in the *Pandects* or in the *Fragmenta Vaticana*. The *Institutes of Gaius* are particularly interesting to us because they formed the foundation of the *Institutes of Justinian*. It was not until the year 1816 that the genuine *Institutes of Gaius* were discovered by Neibuhr in a *codex rescriptus* in the library of the Cathedral chapter of Verona.

While the Syrian priest of the sun, Heliogabalus, surrounded his throne with eunuchs, buffoons, and dwarfs, made senators of coachmen and strollers, and created a senate of women to decide upon questions of fashion, his successor and cousin, Alexander Severus, was learning the great art of ruling from the celebrated Christian doctor Origen who, in the early part of the third century, was the friend of the future emperor's mother. Alexander Severus never became a Christian, but he revered Christianity and its divine founder. He rendered divine honors to Jesus Christ, whose statue was placed in his oratory. He even made a proposition to the Senate to admit to rank among the gods the founder of a religion whose morals were so pure. But the Senate, having consulted the Oracles, received a response that if this new apotheosis were to be celebrated, the temples would soon be abandoned and all of the world become Christian. Notwithstanding the good will of Alexander towards Christianity, the Roman legislation was not changed in its hostile disposition towards the disciples of Jesus Christ. The legists of the imperial palace, Ulpian and Paulus,

whose names are as imposing in jurisprudence as they are odious in the annals of Christianity, took pleasure in compiling the ordinances which devoted the Christians to death.

The assassination of Alexander Severus at Mayence, in his 28th year, extinguished the hopes of good government, which seemed so flattering at his accession to the throne.

The Roman law never felt the influence of the gospel until after the Battle of Actium for Christianity was fought in the year 312. The famous labarum of Constantine floated from a staff in the form of a cross; above it sparkled a crown of gold and precious stones, in the midst of which was the monogram of Christ.

Under this banner, two religions and two worlds met at the Milvian bridge; two religions were face to face, armed on the banks of the Tiber, in view of the capitol. Maxentius interrogated the Sybilline books, sacrificed lions, and opened pregnant women, to search the bosom of infants torn from their mothers' wombs, for it was supposed hearts that had never palpitated could not conceal imposture. Constantine came by a divine impulse and the greatness of his genius. These words are engraved on his triumphal arch, *Instinctu divinitatis, mentis magnitudine*.[24]

Scarcely had the "Successor of the Caesars" entered Rome as victor when he sought out the representative of the Christian church, the purple of whose spiritual royalty until now had been the blood of the martyrs, and presented to him the Lateran palace as a pontifical residence.

Constantine, born in ancient Maesia, brought up at the court of Nicomedia, and proclaimed Emperor in Britain, had no sympathy with Rome. Julius Caesar had once wished to rebuild Troy, the

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24. The entirety of the engraving of Constantine's triumphal arch reads:

> To the Emperor Caesar Flavius Constantinus Maximus Pius Felix Augustus the Senate and the Roman People dedicate this arch as a memorial to his military triumphs, who by the inspiration of divinity and his own genius avenged, with righteous arms in one instant, the Republic against the tyrant and his faction.

The selection of "*Instinctu divinitatis, mentis magnitudine*" translated from the Latin is: "to divine inspiration, mental magnitude (genius)."

fabled cradle of the Roman race, and to make it the seat of Empire. Constantine took up the idea with modification and fixed his throne at Byzantium, which he called Constantinople. The rising city was enriched with the spoils of Greece and Asia; they brought idols of the now-unworshipped gods and the statues of great men. The old metropolis also paid its tribute to the youthful rival now growing at its side; Constantinople clothed itself with the nakedness of other cities. The families of senatorial and equestrian rank were brought from the banks of the Tiber to those of the Bosphorus, here to find palaces equal to those they had forsaken. From this time, the Christian religion became predominant and the Latin language was gradually displaced by Greek. The two principle cities had each an administration of its own, unconnected with that of the Empire; the former state authorities thereby became municipal magistrates. The Empire itself was divided into four *praefecturae praetoriae*: the *praefectus Orientis* resided at Constantinople; the *praefectus Illyrici*, at Thessalonica; the *praefectus Italiae*, at Milan, and the *praefectus Galliae*, at Treves.

Another political change of considerable importance in the history of private law was that the natural free development of the law by the courts and jurists became more and more limited, in conformity with the spirit of the autocratic government. The autocracy assumed even the interpretation of the law, and hence the multitudinous imperial decrees and constitutions.

Before Constantine, most of the Imperial ordinances were decrees and rescripts. A decree was a decision in a judicial cause, which had been brought by appeal before the *Auditorium principis*.

The rescript was the answer or direction of the emperor upon applications, or questions, in doubtful cases.

The edicts were general ordinances, intended for the whole people, and called *constitutiones generales*.

During the reign of Constantine and subsequently, the edicts became frequent and often introduced extensive changes in the

constitution of the nation, for the prevalence of Christianity had changed, or subverted, many ancient opinions and usages.

The imperial constitutions, or edicts, having become very numerous and complex, led two jurists, about the middle of the 5th century, to make two compilations; that of Gregorius contained the constitutions from Hadrian to Constantine, and that of Hermogenes was a supplement to the former, containing the constitutions of Diocletian and Maximian.

These were followed by the *Theodosian Code* (*Codex Theodosianus*). Sixteen jurists compiled this code under an ordinance of the Emperor Theodosius the Younger; it was a collection of the edicts and many of the rescripts and was published as a code for the Eastern Empire in the year 438. Theodosius sent this code to his son-in-law, Valentinian III, who confirmed it in the same year for the Western Empire. The Theodosian code consisted in sixteen books, each of which was subdivided into titles; from the conclusion of the sixth book to the end of it remains entire. Lately, the first five books and part of the sixth have been discovered at Turin.

The *Fragmenta Vaticana*, edited by Angelo Mai in 1823 from a *codex rescriptus* of the Vatican Library, contains fragments of law-writers from the time of Alexander Severus to Justinian, and of imperial constitutions. They appear to be remains of a large collection during the time that intervened, between the *Codex Hermogenianus* and the *Codex Theodosianus*.

In the year 500, Theodoric, King of the Ostrogoths, after the fall of the Roman Empire of the West, issued an edict intended not only for the Romans, but also for the Ostrogoths. This edict is entirely derived from the Roman law, especially from the *Codex Theodosianus*, the later novels and Pauli *sententiae rescriptae*.

Alaric II, King of the Visigoths, in the year 506, published a code affecting only the Romans living in his Empire. This code is a compilation from the previous codes, the later novels, and the writings of Gaius, Paulus and Papinian.

This collection is called the *Breviarium Alaricianum* and in it many passages have been preserved which would otherwise have been lost from the first five books of the *Theodosian Code* and the writings of Gaius, Paulus and Papinian.

After the time of Theodosius II, nothing was done in the East to facilitate the administration and study of the law until Justinian ascended the imperial throne in the year 527.

Justinian was the first, after Theodosius, who undertook a new collection of the imperial constitutions, which was intended to form a substitute for previous collections.

For this purpose, he appointed ten lawyers; among them was the celebrated Tribonian and at their head was Johannes the Ex-quaestor of the Sacred Palace.

In fourteen months, the labors of this commission were completed. This new code consisted of twelve books; it was confirmed by a special ordinance prohibiting the use of the older collections of rescripts and edicts. This first code of Justinian is called the *Codex Vetus* and is now entirely lost.

After the code was published, Justinian, in the year 530, ordered Tribonian and sixteen other jurists to select all of the most valuable passages from the writings of the old jurists, which were regarded as authoritative, and arrange them according to their subjects under suitable headings. He gave them extensive powers and suspended the citation law of Theodosius II, who had prohibited citation from the writings of any other jurists than those specified in his ordinance. The Tribonian commission, however, were not confined to the letter of the passages they might select. They had the privilege to abridge, to add, and to alter, but were directed to avoid repetitions, remove contradictions, and omit the obsolete. The result was that the extracts contained in the *Pandects* did not always truly represent the originals, which were often interpolated, or amended, to conform to the views of the commission as to the existing law.

These alterations, additions, or modifications were called *Emblemata Triboniani*.

The work was completed in three years; within this time the commission had extracted from the writings of thirty-nine jurists all that was considered valuable. It is said the writings inspected and extracted from consisted of two thousand treatises, containing, in the aggregate, three million lines, which were reduced to fifty books containing one hundred and fifty thousand lines. Over every extract a heading was placed containing the name of the work from which it was, or should have been, derived.

The whole composition consisting of fifty books was entitled *Digesta sive Pandectae juris enucleate ex omni vetere collecti*. The *Pandects* were published December 16, 533 A.D., and were put in force on December 20, 533. In compiling the *Pandects*, the commission met with important unsettling controversies.

Justinian, however, settled thirty-four of the controversial questions before the commencement of the *Pandects*, and before its completion these decisions increased to fifty. These decisions were afterwards embodied in the new code of Justinian called *Codex repetitae praelectionis*.

As the *Pandects* were unsuited to the use of those just beginning the study of law, Justinian ordered Tribonian, with the assistance of Theophilius and Dorotheus, to prepare a brief treatise, which should contain the elements of legal science.

This resulted in the *Institutes*, published November 21, 533, which obtained legal force on the same day as the *Pandects*—December 30, 533.

This work is but a revised edition of Gaius' *Institutes*, in which the obsolete was omitted and the new constitutions of Justinian were referred to. After the publication of the *Pandects* and *Institutes*, the code was revised by Tribonian and four other lawyers. This revision included a great many new constitutions and the fifty decisions; it was put in operation November 16, 534, and the old code was abolished.

During the long reign of Justinian, after the publication of the new code, many constitutions were issued, by which the laws were materially changed; the greater part of these new constitutions were written in Greek and are also called novels: *Novellae Constintutiones*.

After the death of Justinian, a collection of 168 novels was made, 154 of which had been issued by him and the residue by his successors.

Justinian's law collections were intended only for the East, but after he conquered the Ostrogoths, who then ruled Italy, he sent his compilations there, and, by special edict, ordered them to be introduced in the court and law schools.

During all the political changes which subsequently took place in the West, the use of Justinian's collections continued uninterruptedly, even in the Empire of the Lombards in France.