

Roman Theory of Law

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Rome contributed little to the literature of political thought. In fact, compared to ancient Greek, the political thought of Rome would seem to be rather insignificant. But her political institutions and legal system, however, exerted a tremendous influence on political evolution ; and for many centuries after her fall the idea of the state was based upon the institutions that Rome had established. While ancient Greek are acknowledged to be the source of free and democratic political system, ancient Rome is associated with the endeavour for establishing a successful and orderly system. There is no doubt that it was the Romans who for the first time presented and acceptable and realistic interpretation of law. It was in ancient Rome that **laws were codified in** written form for the first time.

ORIGIN OF THE ROMAN LAW-

Prof. R.G. Gettell's believed that the Roman idea of law developed gradually. The first Roman laws were a mixture of religious regulations, customary rules and popular conceptions of justice. At that period , theology influenced political and legal thoughts. The Roman laws appeared about 450 years before the birth of Jesus Christ as the **Twelve Tables** were primarily a collection of a few ordinary customs of the Roman society. Clearly the Twelve Tables were different from the religious dictums. The Twelve Tables indeed ushered in a new era in the field of legal thinking. It clearly announced that man and his endeavours were the source of law. In this time (451 B.C) the law of Twelve Tables gradually politics started influencing the religion. The law of the Twelve Tables were said to be written after studying all the issues of the social and day-to-day life of Romans. In fact, in **451B.C**, the responsibility of compiling Roman laws fell on a committee of 10 eminent persons, which was called **Decemvirate**. First they prepared a list of 10, and then other 2 laws- which made it total of 12.For a long time , it was the origin of all Roman laws. Gradually, with the expansion of the Roman empire, newer ideals and ideas came to the fore and these were reflected in the legislation. The law becomes more liberal in nature so as to be conducive to the governance of an expanding empire. Therefore, the Twelve Tables needed to overcome their narrow confines. In order to enact more rational laws which would be applicable to all, the idea of **jus gentium** or one common legal system was established. In this new system (Jus gentium) The intention was to make law uniformly applicable to all- the victor as well as the defeated. With this, jus gentium came to be established in Rome.

THEORIES OF ROMAN LAW-

Roman law represents a unique achievement in legal history. One of the most original contributions of Roman civilization to humankind, it was a characteristic product of Roman genius and probably Rome's greatest intellectual legacy. The Roman law reached an unprecedented balance between justice and fairness, natural and civil justice, private and public interest, moral authority and coercive power, judicial flexibility and legal certainty, tradition and innovation, simplicity and scholarship and abstraction and casuistry. Roman law constitutes a perennial model for the appropriate developments of legal systems for all times, as well as a foundational pillar of emerging global law. Roman law offers a good example of how a legal system can be developed and modernized based on equitable ideas and principles.

1. Jus gentium- Jus gentium belonged to the same class as natural law. It developed by merging with jus naturale. The purview of jus gentium was expanded further by adding the judgments of eminent jurists. There are few characteristic of jus gentium- 1. The entire Rome and all the provinces under governed this law. 2. Its legitimacy was unquestionable and its appeal was spontaneous. 3. This law was applied uniformly everywhere without any discrimination. 4. This law became a symbol of the Roman prosperity by reflecting the Roman civilization and culture while maintaining law and order as well.

2. Jus civile- Etymologically its meaning the law of the Roman citizens, the law that binds the Romans. The body of civil law growing out of the Twelve Tables was narrow and formal. It contained many survivals of early religious ideas and of conditions peculiar to Rome, and involved many technicalities that were destructive of justice. In the Republican period, jus civile was often used as a synonym for private law, but in a narrow sense; civile law referred to the body of rules the Roman jurist developed by means of interpretation.

3. Jus naturale- Deeply inspired by the doctrines of Plato, Aristotle and the Stoics, Cicero provided the most complete theory of natural law. According to Cicero this law does not apply to human acts automatically; it has to be consciously apprehended by human beings and applied by them by an act of will, it is self-imposed. Since it is self-imposed, an individual need not obey it, though everyone ought to do so. The law of nature thus does not resemble the physical law; it is of the nature of the nature of moral law, it may better be termed the Law of God. In the teaching of Cicero the concept of the law of nature is bound up with another doctrine of very great importance, the doctrine of the natural equality of men. Men are equal in the eyes of God. This doctrine is the profoundest contribution of Stoicism of political thought.

Comments- contribution of Roman law-(follow class lecturer's)

1. The concept of secular law.2. Universal law.3.Contractual nature of law 4.State as a legal person 5. Individual the centre of the law.
2. Criticism

Suggested Short Reading List-

1. R.G.Gettell- History of Political Thought. **Chapter –vi.** New Delhi: Surjeet Publications(Indian Edition),2001. **Page no-**75, 78-80 and 89-90.
2. C.H.Mellwain- The Growth of Political Thought in The West. **Chapter –iv.** New York: Macmillan Publishers, 1932. **Page no.**103-110.
3. George Holland Sabine- A History of Political Theory. **Chapter-x.** New Delhi: Oxford & IBH Publishers(Indian Edition), 1973. **Page no.** 164-169.

N.B. If you have questions, or if you require any clarification, Please send e-mail to e- mail to **hellotiash2012@ gmail.com.**

Dear All, Hope you all are well. **STAY WELL, STAY SAFE, STAY HOME.**

Best wishes,

Tuhin Kumar Das.09/04/2020.