Vulgar Roman Law in the West

The third century was a period of economic crisis and political turbulence — in the first 262 years of the Roman Empire there were some twenty-five emperors, and then in the next fifty years a further twenty-one. This ended the stability and self-assurance which had permitted individual jurists to have an authority of their own without casting any doubt on the reality of imperial power. The *Codex Gregorianus* and the *Codex Hermogenianus,* Diocletianic collections of imperial legislation, presumably reflect their compilers' names, and we also hear of a jurist called Innocentius working under Diocletian (AD 284-305), but thereafter, although there must have been individuals who were acknowledged experts, none are on record; they are veiled behind the various offices of the imperial administration. Stability was restored, but at the price of overtly autocratic government. Only under the Emperor Justinian (AD 527-65), the restorer of the ancient law, do we again learn something of the careers of certain major jurists of his time. (And by his time much of the West had fallen, and the Empire was centred on Constantinople, the Greek Byzantium, modern Istanbul.)

In AD 212 an edict known as the *constitutio Antoniniana* had extended Roman citizenship to practically all free inhabitants of the Empire […]. The enormous expansion in the number of persons subject to Roman law, and the political upheavals of the third century, led to a widespread desire for simplification and certainty. Men thought it more important to get a decision that could be given effect at once than to seek the ideal solution. In the late third century, therefore, elementary legal books were published with this aim in mind; there survive epitomes of the *Institutes* of Gaius, the *Regulae* of Ulpian, the *Sententiae* of Paul (all jurists of the classical period) and then, a little later, in the early fourth century, selections from some of the leading jurists of the past, known as the *Vatican Fragments* (because found in a manuscript in the Vatican library) and the *Collatio legum Mosaicarum et Romanarum (Comparison of Mosaic and Roman laws).* Their acceptance as the working manuals of the courts is one aspect of what is described as the vulgarization — the over-simplification — of law, which also showed itself in such things as, for example, the blurring of the previously clear conceptual distinction between ownership and possession.

The Later Roman Empire may be said to have begun under the Emperor Constantine (306-37) a century after the *constitutio Antoniniana.* Thereafter the only active source of law was imperial legislation; all legal authority, whether making or applying the law, stemmed explicitly from the emperor. In the fifth century, Theodosius II, emperor in the East, had a project to codify the whole law; as far as juristic work was concerned it came to nothing, but a collection was made of imperial enactments issued since Constantine, the first Christian emperor. This was published in AD 438, in both East and West, as the Theodosian Code. Although it did not include much vulgarized substantive law, this Code is notable for its stress on statutes and its relative neglect of contract — foreshadowing the mediaeval world. Furthermore, custom was recognized as a source of law, provided that it was not in conflict with reason or with statute. This meant local custom rather than the *mos maiorum,* the ançestral custom of Rome; it meant, therefore, the usages of the Greek speakers of the East, and the traditions of the recently enfranchised tribesmen, perhaps even of barbarían *foederati* (allies).

Robinson, O. F., Fergus T. D. and Gordon cit. pp. 2-4