**Collapse: How civilization and law in England chose to fail and then succeed**

**Introduction**

When Allen & Overy asked for ideas for the virtual alumni week, I thought it would be appropriate to suggest a talk on how civilization and law in England chose to fail and then succeed. I called my talk “Collapse” so as to be the third in a trilogy of theses on the collapse of civilizations. Jared Diamond in *“Collapse: How Societies Choose to Fail or Succeed”*, looks at 5 past societies which have collapsed of which the best known would be the Maya of Central America and identifies 5 factors that contributed to all 5 collapses.

Eric Cline in *“1177 BC: When Civilization Collapsed”* looks at the collapse of dozens of bronze age civilizations from Italy to Egypt and from the Hittites in Anatolia to Assyria and Babylonia in modern day Iraq-Troy of Iliad fame was just one of the Hittite societies to collapse in about 1180 BC. It is generally considered that what is set out in the Iliad of the Trojan Wars is all made up. As an aside, my view is that Troy was destroyed by the Sea People but there is no evidence to support this though the Sea People were utterly defeated in two great sea and land battles in the Nile delta by Ramses III in 1177 BC.

Eric Cline identifies fairly similar factors to Jared Diamond for the reasons for these collapses and goes on to say that almost all civilisations eventually collapse. The one factor that all Diamond’s and Cline’s societal collapses have in common is the collapse of central authority. I would suggest that we have the collapse of central authority in England in spades in the 20 years from 410 AD. Similarly in spades, just as Jared Diamond has said, this collapse could have been avoided. We chose to fail… but later the English chose to succeed.

Of course, the collapse of the Roman Empire is well known. In the last 20 years, with the enormous increase in knowledge from archeology, the collapse of civilisation in England after 410 AD is, I would suggest, generally accepted. However, there is a curious blackhole in classicists’ and historians’ knowledge of the history of law. This is because in my view you have to be an experienced solicitor or barrister to understand the history of the common law and then you have to have a good working knowledge of Roman law to understand civil law, which as it happens you should get as an English notary public. Classicists’ and historians’ simply do not have this working knowledge and therefore they are not interested in the history of law.

To me, it was fitting that I gave the forerunner of this talk to St John’s College, Cambridge as the two greatest legal historians, Frederick Maitland and Peter Stein, were both Cambridge University dons. Both have stated that without Justinian’s Digest (which is the cornerstone of my talk) the common law would be radically different. To the common law, we can add world law because generally speaking, all 321 jurisdictions in the world are based on Justinian’s Digest. None are indigenous. Philip Wood is willing to take the story of world law up from where I leave it in what is really a two-part talk—provided that there is sufficient interest so I would urge you all to e-mail Allen & Overy to suggest that Philip gives part II of this talk if you find it interesting.

The reason why I thought it appropriate to have this talk now is not only because A&O is a global law firm but also it is not too far-fetched to think that but for global governments’ responses to the Covid pandemic, civilisation could have collapsed. Similarly, in 2008 with the sub-prime crisis, but for world governments’ responses, civilisation could have collapsed then. We chose to succeed.

In *“The Fall of the Priests and the Rise of the Lawyers”,* Philip Wood explains that for 1,500 years religion kept Western Civilisation together. When religion went out fashion from 1850’s onwards, law kept societies together. I have been astonished (as has Jonathan Sumption) at the extent the government has used the law (which has been obeyed) to keep civilisation together in the Covid crisis. We will never know whether or not civilisation would have collapsed in the Covid crisis if governments had not stepped in, and whether or not law would have stopped this. So, this talk is very appropriate now.

Generally, the world is divided into two great legal systems. Civil law based on

Roman law and common law based on English law. Roughly 2/3rds of the world live

under a civil law system and 1/3rd under the English common law system. As a rule of thumb, former English colonies have a common law legal system and all other countries have a civil law legal system. This was never pre-ordained and was the result of choices. This story is in three acts. From 509 BC to 410 AD; from 411 AD to 1154; and from 1154 to the present day.

**Act I.**

With the invasion of England, soon to be Britannia, in 43 AD, the Romans not only brought with them their law but also civilization. Celtic England consisted of settlements in the low lands and oppida or hill forts. With the Roman invasion came cities. Civilization is derived from the Latin *“civitas”* or city. So, with the foundation of cities, society had to move to a services economy. Sale of goods alone would not work. There were all manner of services from blacksmiths to publicans, to renting out rooms and to leisure activities such as bath houses and athletic activities, the theatre, gladiators in the amphitheatre and chariot racing in the hippodrome-all of which required tickets. With services, you had to have a money economy-barter would not work. For services, you had to have a legal system. People would not provide services on credit unless they knew they would be paid and if the debtor did not pay then they could get judgement against him and make him bankrupt.

The Romans kept the Celtic tribal boundaries but changed them into Civitates (from which we get the modern word counties) and established an administrative centre or Civitas in each Civitates. So, for example, the tribal boundaries of the Iceni were kept and Norwich became the administrative centre. As far as this talk is concerned, there were Basilicas (which are Town Halls which often doubled up as Law courts) in every Public Town which were like mini-Pompeii’s.

London did not exist in 43 AD but within 20 years was a flourishing port with its own civil court. When Bucklersbury House (where as young solicitors we used to sometimes have lunch) was knocked down in 2010 to make way for the Bloomberg Building, 405 Roman writing tablets were discovered. The writing stylus had gone through the beeswax and scratched the wood. Using MRI scans, the Latin on these tablets has been translated. One of the tablets sets out pre-trial directions of a judge in a contract dispute. Another sets out a sale of goods contract executed on 8 January 57 AD-of course this is using our dating system, not the Roman system in use at the time.

Rome was a litigious society. Caesar in *The Gallic Wars* recounts that when he was not fighting, he was hearing legal cases. So great was the demand for law in Britannia that even as early as 77 AD-just 34 years after the invasion-, Emperor Vespasian appointed a *Legatus Juridicus* or Law Officer as a deputy to the Governor, Agricola.

The story of Roman law starts in 509 BC with the rape of Lucrezia by Tarquinius. Legend has it that the Romans were so outraged by this *droit de seigneur* (for which Tarquinius could not be prosecuted) that they overthrew their monarchy and founded a Republic. They vowed never again to have kings who were replaced by two consuls elected yearly. In the Middle Ages, judges were appointed and dismissed by the kings so a king could indirectly make law. Thus, unlike with a common law system, even today in a civil law system, judges cannot make law. This is the big divide between civil and common law systems. A definition of common law is judge made law or law based on previously decided cases.

In a civil law system, all law is made by parliament or its equivalent. This was no more vividly shown than in 450 BC when the Romans passed the Twelve Tables, etched in bronze, which became the bedrock of Roman law. By 450 BC, the plebians were fed up with the way the patricians in the Senate were governing. The Republic had a bicameral or two chamber legislature consisting of popular assemblies, the senate and the consuls. Whilst the speaker of the popular assemblies was a senator and all legislation had to be introduced by him, all law had to originate and be passed by the popular assemblies in Rome before it went to the Senate. Many democracies today have of course adopted the bicameral legislative system

Turning back to the Twelve Tables, you cannot have law without a system of bringing a defendant to trial-jurisdiction-, court procedure and the execution of judgments. These are all dealt with in tables I & II of the Twelve Tables whilst table VIII deals with the torts (delicts) of personal injury and damage to property. Unless a court judgment can be enforced, you do not have a legal system. Judgments would only have moral authority. This is why international law today is chiefly just a moral code. So here you have an example of not only the bedrock of all legal systems but also of many systems of democratic government in the world today.

By 400 AD Britannia was as Romanized as any other Roman province and very

prosperous- dozens of public towns with bathhouses, fora, basilica, curia (town council), theatres, amphitheatres etc- and more than a hundred small towns. The population is considered to be about 3 m. Then came the collapse of Roman civilization-the abandonment of the cities, the collapse of the money economy and the abandonment of Roman law. Most severe in England, less severe in Gaul and less severe still in the East.

The economic stimulus for Roman civilization was the bullion paid to the legions and auxiliary troops-the troops had to be paid in bullion and not brass coins. In 410 AD the last bullion was shipped to England from the Roman mint in Trier, Germany. Prior to then the legions were being withdrawn from Britannia, starting in 401 AD and then Governor Constantine took the remaining legions to the continent in his disastrous bid to become emperor in 407 AD.

In the 4th Century, the ability to pay and levy tax and the security provided by the army (on which the bulk of the tax was spent) were in rough equilibrium. 90% of the population lived

on the land and sold their surplus produce to the towns which enabled the money economy to

exist and tax to be paid. As Rome was a military state, spending on the army and by the

soldiers stimulated the economy. Any disturbance would jeopardise the entire system. This is

what happened in the first decade of the 5th Century.

England was impregnable in view of the country’s natural defences as an island. There were dozens of strongly fortified walled cities, forts and signalling stations all along the “Saxon shore” from the Isle of Wight to Newcastle-the Saxon shore was so named because the enemy had been identified for decades. The interior lines of England were superb. All weather roads and a postal service allowed reserves to be called up quickly from garrison towns, commerce to continue and the army to be fed and re-supplied. Whilst the Roman legions were here, the Saxons would never have succeeded.

Alexander around 330 BC in his march from Greece to Afghanistan and India, regularly called up reinforcements from Macedonia. He took a siege train with him to take walled cities but only ever had to take 2 walled cities-Tyre and Gaza- and these were long drawn out, bloody affairs as they always were in ancient times. The rest of the cities Alexander took had mud walls. He financed his army by plundering the treasuries of the fabulously rich Persian empire and forced the conquered lands to pay taxes to him. No way could the Saxons take walled cities--siege towers with battering rams would have been needed which the Saxons did not have. An example can be seen at Masada in Israel today. To take King Herod’s fortified palace, the Romans pushed a siege tower containing a battering ram up a man-made ramp to the walls. It was the only way to do take a walled, strongly defended city.

We had no artillery. The Romans did and so could we. The main artillery weapon at the time was the ballista which is a giant catapult whose bowstring was made from the sinews of animals. It fired an iron bolt, had a greater range than an arrow and was surprisingly accurate. Mounted on city walls, ships or even mobile in a cart, the bolt would go through wood, body armour and a human body.

In the first Punic War around 250 BC-650 years earlier than 410 AD-, our sources tell us that to counter the very good Carthaginian navy, Rome built 1,000 warships (probably “a lot” rather than the exact number) of which the majority were quinqueremes or 5’s and over hundred triremes or 3’s. 5’s had five rowers to a unit and triremes had one rower per oar on three decks. So, if a ballista’s iron bolt killed a rower, there were still 4 others in a 5 to give power to the boat. With a trireme, one bolt would knock out that oar. We had no navy to oppose the Saxons. Neither did we have a navy later to oppose either the Vikings nor William the Conqueror. As soon as we had a navy e.g. against the Spanish armada, we see what happened. We could so easily have built our own navy and the Saxons would have been powerless against it.

Potentially, we were far stronger in 410 AD than in 1940 when we defied Hitler. The Saxons neither had the organisation nor the economic capacity even to feed, let alone resupply, expeditionary armies. They had no economic capacity to wage a sustained war. Their forces were tiny, just raiding parties. They had no navy and no artillery. Their lines of communication were impossible over the North Sea.

As so often in history, the out -of-control egos of the political elite, lead to catastrophe. Governor Constantine should easily have been able to replace the Roman legions with British legions and pay for them because Britannia was a rich country. If he could not do this, then the local leaders in the *Curias’* of the Civitates could have done so. The money economy of the cities and Roman law could have continued in a successor state based on the Roman model. None of this happened. There was a complete failure of leadership. Central authority collapsed with England splitting into the 7 kingdoms. In 1086, 600 years later as recorded in the Doomsday Book, the population was less than in Roman times.

Of about 6 sources writing about the collapse of civilization, only one, Gildas, a Welsh monk, was writing contemporaneously in England. He wrote in the first half of the 6th Century. He writes like Ian Paisley used to speak, full of fire and brimstone. Whilst he hates the Saxons, he is even more scathing about 5 British kings at the time. He says they were absolutely useless.

This defeat by the Saxons could so easily have been avoided. If so, our history would have been totally different. The Dark Ages would not have happened, we would have had a civil law system based on Roman law and President Trump would have been tweeting in Breton-similar to the Celtic language of Brittonic, predominant in Roman Britain. As it was, the cities were abandoned, the gates left open and the Saxons just walked in. It still took a small band of Saxon warriors about 200 years to conquer the whole of England. We chose to fail.

**Act II.**

By 597 AD, when St Augustine came to England, nothing remained even in memory

of Roman Britain. However, out of collapse, came a brand-new civilization, the English, with their own language first evidenced in Ethelbert’s Legal Code circa 600 AD, totally different from Brittonic and the English had the self-confidence to do things their own way.

From St Augustine’s time onwards, the church started to acquire land, often by gift, during the lifetime or on the death of the transferor, eventually owning a quarter of all arable land in England after the Norman Conquest. The one thing the church wanted, was to hang onto its’s wealth. Roman law had been forgotten in Europe but in its place came the primitive legal codes such as the Visigoth, Burgundian and other European law codes (called “Vulgar Roman law”). Thus, the concept of wills and codicils and the deed from Roman law can be found in the Vulgar law codes and were re-introduced to England by the church. The hallmark of a deed even today is that it must be “signed, sealed and delivered” when legal title is transferred or conveyed to the new owner. The word “delivery” is very odd in this context. It must come from the Roman conveyance of *traditio* where by tradition, legal title was transferred by delivery. To make sure it had the evidence of its ownership of land, the church was the depository for all legal documents.

Meanwhile, in early 6th Century Constantinople, Justinian called the “Great” because he believed he was God’s representative on earth, became emperor. But for one stroke of genius, he was an appalling man and a complete failure. The Vandals in North Africa and the Goths in Italy were not barbarians at all but perfectly civilised people for the times. Justinian’s attempt to reconquer North Africa and Italy commanded by Belisarius lead to an enormous loss of life, huge destruction and financially impoverished the Empire in the East, making in vulnerable to Persian attack. In Count Belisarius there was a military general of the same ilk as Marlborough, Wellington or Montgomery. Justinian was so jealous of his success that he blinded him which led to an early death.

Between 529-534 AD, Justinian produced in Latin the *Corpus Iuris Civilis* (Body of Civil law) on papyrus comprising Justinian’s Digest, the Institutes (student textbook), the Codex (a collection of Imperial Enactments) & later the Novels (Imperial enactments from 534 AD). By far the most important was the Digest. Justinian’s jurists copied and pasted 1,000 years of Roman law contained in jurists’ opinions by reducing them from 1,500 books (about 30 times the size of the Bible) to 50 books. Even after this, the Digest was still 1.5 times the size of the bible. The Digest contains statements of principle and thousands of actual and theoretical case studies in which jurists work through legal concepts, fairly similar to a standard English legal textbook. It took the jurists just three years to put together the Digest, compared with the Savile Report with all our modern technology which took 10 years. The *Corpus Iuris Civilis* contains the whole of Roman law if only because Justinian ordered all other legal sources to be destroyed.

From the end 6th C AD to the 11th C AD, Justinian’s Digest and the rest of *Corpus*

*Iuris Civilis* were lost so customary law took over for at least 500 years which in England included feudal law. In about 1070, a 6th Century copy of the Digest was found in Amalfi, Italy. Shortly afterwards, all the 3 other parts of the *Corpus Iuris Civilis* were found.

This papyrus copy of the Digest is now in Florence. Generally speaking, all 321 of the world’s legal systems are based on this one copy of the Digest. There has never remotely been in the history of the world any legal code which has equalled the Digest.

**Act III**

It is no coincidence that this copy of the Digest was found when the world started becoming cleverer again with the start of the Renaissance. The importance of the Digest was immediately recognised. It was “glossed” or annotated by the law school at Bologna University and the “Reception” or receiving back of Roman law swept through Europe and started to sweep through England from 1140’s. However, England had a new precocious civilization. It was going to do things its own way. In 1154, a fierce debate took place as to whether or not England should follow the “Reception” or have its own unique legal system based on cases. Shortly before this, the Church had won a big court case over land against King Stephen’s brother. It did not help the “Receptionists’” cause that the Church had brought over from Bologna University, the great legal scholar, Roger Vicarius (1120-1200), as part of their legal team. The Receptionists lost the debate; we have a common law system which has been to our inestimable benefit because it allows the law to be changed quickly. We chose to succeed.

The self-confidence of the English is quite staggering. We are the only country in the

world to refuse to accept a readymade comprehensive civil law code which took 1,000 years to create by the Romans and was in a user-friendly form first in Justinian’s Digest and then in the Napoleonic Code. The common law is very none user friendly because it is to be found in 100,000’s of cases.

However, lawyers have a natural liking for precedents and did not want to reinvent the wheel. Whilst Roman law can never be a source of English law, from the 12th Century onwards judges introduced it through the back door so we have the best of both the common law and civil law legal systems. Throughout his long life, Roger Vicarius stayed in England, wrote the *“Liber Pauperum”* a “glossed” or annotated compendium of the Digest and the *Codex*(Justinian’s updated Theodosian Code) written on parchment in nine volumes which became popular at Oxford and Cambridge. An almost complete copy is in Worcester Cathedral library.

In the 12th Century, French and Latin vied with vernacular English as the language of

the elite. However, by Chaucer's time in the mid 1300’s, vernacular Middle English

was well established. On the other hand, for hundreds of years after the Conquest,

serious matters in England were written about in Latin. Shakespeare read Livy and

Ovid. In 1605, of the 2,000 books in the Bodleian Library in Oxford, only 58 were in

English. So, there would have been no problem in reading copies of Justinian’s Digest or Vicarius’ *Liber Pauperum*

Of English private law, trusts come from the Roman will trust as does the concept of unjust enrichment which, to cover up its origins, we changed to the tort of money had and received. We have a copy of Lord MacMillan’s, the Scottish Law Lord’s, draft judgment in *Donoghue v Stevenson* (1933) which is based exclusively on Roman delict. In order to have a principle applicable throughout the common law world, Lord Atkins asked Lord MacMillan to delete all references to delict and changed the concept in the bible that you should love your neighbour to you should have a duty of care to your neighbour.

Recent work in devising a European law of contract found no real problems in reconciling common and civil laws of contract except for the conflict between the principles *of caveat emptor* and good faith. Land law comes chiefly from feudal law though dominant and servient tenements e.g., a right of way, adverse possession and usufruct etc are concepts from Roman law. Societies’ views on crime and criminology have changed hugely in the last 1,500 years but Latin concepts abound.

As a postscript, imagine a legal world without paper. The IP of papermaking by using wood pulp was invented by the Chinese certainly by 100 BC and possibly as early as 200 BC and paper came down the Silk Road into the Roman Empire. However, the Chinese kept the IP of papermaking secret and it proved extraordinary difficult for what are now the Central Asian Republics to steal it, for the IP to go down the Silk Road and for the Arabs to introduce it to Europe with the Moorish invasion of Spain. It took over 1,500 years for the IP of papermaking to come to England with the first papermaking mill being opened in England in 1495. This quickly had revolutionary consequences with the invention of the printing press, Tyndale’s bible in English and the Reformation but that is a topic for another occasion.

To conclude, in my view, Roman law has had by far the most influence of all Rome’s achievements. For understandable but not acceptable reasons, there is a curious blind spot in classicists’ and medieval historians’ ignoring it. It is the 8th and greatest wonder of the Ancient World. I hope you have enjoyed listening to this talk as much as I have enjoyed giving it. I urge you to e-mail A&O and ask that Philip Wood gives part II of this talk. It sounds rather grand to say this but as academics have a curious blind spot for the role law has played in the history of civilization, if this could be more widely known, we would be making a worthwhile contribution to our knowledge of the history of civilization. Very appropriate for A&O.

J.A.Fisher

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Battle of the Milivian Bridge 312 AD Constantine Maxentius Chi Rho on shields