

Law and Christianity: How the Romans made the modern world and what changed

My talk is divided into the following headings as set out on the slide.

1. Jurisprudence.
2. Commercial law
3. Christianity in Roman times.
4. Could the collapse of the Roman empire have been avoided?
5. The importance of Christianity to Civilization after the Fall of the Roman Empire.

We all admire Roman architecture, civil engineering, classical texts etc. However, the two most important achievements Rome left us were none of these but law and the Christianity.

1. Jurisprudence.

Civilization comes from the Latin “civitas.” You cannot have a city without a legal code. Generally speaking, all 320 jurisdictions in the world are based on Justinian’s Digest of 533 AD as it provides law’s fundamental architecture. The most important being how a court establishes jurisdiction by a defendant appearing before it and the method of working out the law through case studies-Justinian’s Digest has thousands of them; other concepts include court procedure and the enforcement of judgments; all the principles in English law in Latin; offer and acceptance from the early Roman contract of *stipulatio*; contract and conveyance of legal title in land and goods, including intangible property such as computer software through the Roman invention of the assignment; trusts; negligence and other torts etc. If this one copy of the Digest had not been found in 1070 at Amalfi in Italy after being lost for 500 years, the world’s law would be very different. Generally speaking, all 320 jurisdictions are based on this one copy which is now in Florence.

The Roman jurists were much more analytical than we are. We have merged contract and conveyance of legal title in goods. The Romans kept them separate. Take the Supply of Goods and Services Act 1982. Here we have also merged the sale of goods and services. However, the Romans had a separate Sale and a Hire contract format. The Hire contract included not only the hire of goods but also leases of property, hire of services and employment law. It makes it so much easier to analyse these concepts if they are kept separate.

With the establishment of cities, came a great growth in population and therefore services. Rome at its height had a huge population whereas Athens’ population at its height was tiny. Services have to be paid for. Barter will not work, hence the need for a money economy. You cannot have a money economy without law.

There were other legal codes both before and after the Romans. The Greeks had a legal code as did the “barbarian” states that followed the collapse of the Roman Empire. However, “primitive” is what all of these legal codes have in common and that is why they failed. Why is it that only a very detailed legal code as in Justinian’s Digest-1.5 times the size of the bible-succeeded?

The answer was provided by Cicero prior to 46 BC in his work called “*De Legibus*” when he said that people will only obey a moral law. If a law is immoral, they will not obey it. Of necessity, this must be complex. There is no point in having a legal system if nobody will obey it. Law must be voluntarily obeyed. There are not enough policemen in the world to enforce law.

We can ascertain what Cicero considered to be morality from his surviving writings. He was writing at least 43 years before the birth of Christ, so it was certainly not Christian morality. After all Cicero owned slaves. A slave was property in Roman law. Fundamental to Cicero, was that the law respected property rights. Cicero believed that civil law must be based on natural law which is a body of norms or principles inherent in all of us. If civil law was not then it was invalid and nobody would obey it. If we translate Cicero’s ideas of morality into modern terms, it was probably something like a moral code based on expected or acceptable conduct. It took until 1961, for Hubert Hart in his book “*The Concept of Law*” to identify this as the reason law was voluntarily obeyed.

2. Commercial law

When you ask a layman about law, he will understandably only think of criminal law. Criminal law is important but is a tiny part of law which is gigantic. Far more important to civilization is commercial law for, above all else, law protects property rights. In commercial law today, we must consider international finance.

One does not want to be too breathless and wide-eyed about the amounts involved in international finance. However, they are huge. To get one’s bearings, one may imagine a piece of graph paper which is a metre square and therefore representing a million. A billion is the same metre of graph paper but stretched a kilometre to the side-just over half a mile. A trillion is the same square metre of graph paper but stretched a kilometre to the side and also a kilometre upwards-just over half a mile upwards. Thus, a billion is much bigger than a million and a trillion is much, much bigger than a billion.

Global gross domestic product or the total value of all goods and services bought and sold in 2019 was probably around \$77 trillion.

Foreign exchange transactions on the major exchanges in the world are probably over \$500 trillion a year. The turnover of electronic payments is over \$1,500 trillion a year. These systems get through the total GDP of the world every 14 days. The total turnover of the face value of derivative contracts each year runs to \$ hundreds of trillions.

These are part of the billions of contracts entered into every day in the world. Generally speaking, all these contracts are legally binding based on the concepts as set out in Justinian’s Digest and Cicero’s *De Legibus*.

The largest securities settlement system in the world holds American traded securities worth over \$27 trillion, that is, around half of the world's GDP. It is called the Depository Trust Corporation. Euroclear (a securities settlement system in Brussels) holds securities worth more than one and half times the GDP of all the EU countries. Settlement systems are effectively trusts which derive from the Roman will trust called a *fidei commissum*. *Fidei* means trust and *commissum* means to commit and thus denotes that something is committed to one's trust.

When the above is considered, all other expressions of wealth may seem trivial. Indeed, it would have been if world governments had not stepped in to stop the implosion of derivative contracts in the credit crunch in 2008 as the world's banking system would have collapsed.

3. Christianity in Roman times.

Whilst law is necessary for civilization, in the past in extreme circumstances, it would not alone have held civilization together. Something else was required and that was Christianity. When Christ said "You must love your neighbour", this was revolutionary for the Gentile (non-Jewish) world. They all thought "dog eats dog". Life for the majority of people was pretty grim. Christianity, with its moral code and promise of supernatural help in this world and eternal life in the next, appealed particularly to the dispossessed and the downcast-i.e. the majority of the people. Christians had hope, and Christianity spread like wild fire.

When Constantine seized the emperor's throne in 312 AD at the Battle of Milvian Bridge, to woo the support of the Roman Christians, he had the Chi Rho painted on his legions' shields. Chi Rho are the first two letters of Christ in the Greek Alphabet (i.e. Chi Rho in the Greek Alphabet is X with a P down the middle). Not the catchiest of brands. A red as opposed to a white cross on the legions' shields to give camouflage for night fighting would have been better.

Emperor Constantine's support for the Christians did not end here. With no television or radio, talking about philosophy was a popular topic in bars and dinner parties in Roman society. The conversation became heated as opposing factions argued either that Christ and God were two or one person with the holy ghost thrown in as a third party. The dispute in the church became serious when Priest Arius and his followers argued that God was a separate individual from Christ and threatened a breakaway from the Church.

In an act of first-class statecraft, Emperor Constantine, at the Council of Nicaea (as in creed-not far from Constantinople) in 325 AD, settled this dispute by stating that God, the father and God, the son was one person. The holy ghost was recognised as part of the trinity but questions about this were left to be resolved at the Council of Constantinople in 381 AD convened by Emperor Theodosius. This now meant that Christ was alive every day of the week forever and the spread of Christianity was unstoppable not only through the Roman empire but also in "barbarian lands".

Christianity became the philosophy of life. In my view, if this simple concept had been more readily understood and expressed, many of the problems which the Church encountered in history could have been avoided. For example, we would not have seen the tremendous decline in religion in my life time. Instead, religious preaching and practice went down many highways and bye-ways without these being tied into religion being the philosophy of life.

4. Could the collapse of the Roman empire have been avoided?

Many people have pondered whether or not the Roman Empire's collapse could have been avoided. A huge number of theories have been proposed, many of them based on the Senate having far more power over the emperor and the legions than it had. But would this have worked as it has never worked even in our modern era? We can see this in Tony Blair's invasion of Iraq where our institutions were incapable of stopping this country getting involved in an illegal war.

In my view, a root cause of the collapse not only of the Roman empire but of most organisations throughout history has been down to one thing-the ego of the leader getting out of control. Tacitus called it "*Ruler's Craze*" such as escalating narcissism and hubris likely to lead to nemesis.

Lord (David) Owen, the former Labour Foreign Secretary, SDP leader and a medical doctor has identified "*Ruler's Craze*" in his book "*In Sickness and in Power*". He calls it the "*Hubris syndrome*": His long diagnosis of this mental illness includes "A narcissistic propensity to see the world primarily as an arena in which [the ruler] can exercise power and seek glory rather than as a place with problems that need approaching in a pragmatic and non-self-referential manner; excessive confidence in their own judgement and contempt for the advice or criticism of others; exaggerated self-belief, bordering on a sense of omnipotence, in what they personally can achieve; restlessness, recklessness and impulsiveness; loss of contact with reality; a type of incompetence in carrying out a policy, which could be called hubristic incompetence."

After the Third Punic War in 146 BC and the subsequent defeat of Macedonia leaving open the road into Egypt, the Roman generals became hugely powerful. Many times more powerful than Tony Blair. They controlled vast and rich provinces. The money they were able to raise from selling slaves and levying taxes to pay their legions were of a scale that dwarfed Tony Blair's power. For example, after the Gallic Wars in 50 BC, Caesar ruled Gaul, encompassing present-day France, Belgium, Luxembourg, most of Switzerland, parts of Northern Italy, and Germany west of the Rhine. This great power of the generals laid the ground for never ending tilts at the throne of the Roman emperor and eventually the downfall of the Empire. For example, in 238 AD, Rome had 6 emperors, 5 of whom were murdered.

We were not immune from "*Ruler's Craze*." It afflicted the Governor of Britannia, also called Constantine, who in a mad cap scheme declared himself emperor Constantine III in 407 AD and took the remaining legions to Gaul where he was defeated and killed in 411 AD. The resulting collapse of civilization in England could have been avoided but for Governor Constantine's "*Ruler's Craze*." As an island, we were impregnable. Raising British legions would have been no problem. The Saxons would easily have been defeated. If so, our history would have been radically different. We would not have had the English language. President Trump would have been tweeting in Breton. Breton is similar to Brittonic, the native British language in Roman times. Many British fled to Brittany, France to escape the Saxons.

In my view, there was only one chance of avoiding the collapse of the Roman Empire and that was if the red cross of Christ was painted on the legions' shields. Unfortunately, Emperor Constantine I blew this chance. After seizing the throne, Constantine I never again had even the Che Rho, let alone a cross, painted on his legions' shields.

Sovereigns whose only fundamental concern was holding onto power quickly realised the huge emotional hold of Christianity over their subjects. The concept of what is known to history as “*the Donation of Constantine*” quickly gained ground even in barbarian lands as their leaders converted to Christianity. With this concept, the leader gives the church all temporal power over the sovereign’s subjects in return for the church’s permission for him to govern on its behalf. The church did not sell this right cheaply. For example, William the Conqueror obtained the Church’s support for invading England in 1066 in return for the church being granted 25% of all arable land.

If the chance had been seized by Emperor Constantine I and he made it known that he was the defender of the Christian religion, the Roman empire may have been saved. If the rapidly Christianising barbarians had been faced in battle with a sea of Roman shields all painted with the red cross of Christ defending Christianity, they may have had second thoughts about attacking. If so, the world would be very different today.

5. Importance of Christianity to Civilization after the Fall of the Roman Empire.

Why is Christianity important to the modern world?

In “*The Fall of the Priests and the Rise of the Lawyers*,” Philip explains that for over 1,500 years religion held society together until the 1850’s when religion started going out of fashion and law took over.

In the two years of the Black Death from 1348, our population dropped from about 5m to 3m. Roughly 2m of our population died which was about 40%. The bubonic plague returned again and again and by the end of the 17th Century -300 years later-our population was only about what it was before the Black Death.

The recent Covid crisis is eerily similar to the Black Death in terms of where it came from, the speed of its travel and the lack of cures at the time of its occurrence. The difference between the Black Death and Covid was that in 1348 and the following 300 years, religion held civilization together as the philosophy of life. Now we only have law.

In his recent book, “*Do and Think-an Allegory for Survival*”, Philip uses music as an allegory for a philosophy of life actually put into practice. Religion and law have been the foundations of Western civilisation. With this secure base, a person can do and think to survive so he can try to understand and achieve as much as possible. Music is an allegory of a person’s journey through life to feel at the end of the day, it was all worthwhile.

With religion going out of fashion, we may have rejected this metaphysical belief system but the desire for belief has neither been rejected nor has it disappeared. We still have beliefs but we no longer know their shape or foundation. My good A&O friend, John Scriven, in his book “*Beyond the Odds-Providence in Britain’s wars of the 20th Century*,” explores turning points in the wars from the Christian perspective of the times. We must still love our neighbour to live in a city and have civilization. Now we only have law to give some structure, generally based on Justinian’s Digest and Cicero’s *De Legibus*. As an example, product liability created by *Donoghue v Stevenson* (1932), came from the Roman delict of negligence as set out in Justinian’s Digest. Lord Atkins, took the neighbour concept from the bible to cover this up as Roman law is not a source of English law.

We have to hope law is sufficient to hold civilization together. If not, we may consciously have chosen to fail.

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