

QUESTIONS FOR JOHN & PHILIP'S WEBINAR:

LAW AND CHRISTIANITY: HOW THE ROMANS MADE THE MODERN WORLD AND WHAT CHANGED **John Fisher's answers in red.**

Q1. And yet wouldn't you say that it was the Greeks - or at least the "Eastern Romans"! - who played the biggest part in the early years and formation of Christian doctrine (eg the Eastern based Ecumenical Councils and theological/philosophical ideas debated at them). Even the West's greatest early theologian, Augustine of Hippo, was North African though his City of God may belie his Roman pedigree and allegiance! Perhaps the West's greatest later theologian - Aquinas - was an Aristotelean. Perhaps you may fairly say I am reading your Roman designation too narrowly and if it includes the Justinian Code (as I assume it must do) fair enough! Looking forward to your talk!

A1. What you say may be the case but how far would all this have got us if Emperor Constantine had not first of all recognised Christianity and then resolved the huge split in the church over whether God the Father and God the son were one or two people and later Emperor Theodosius recognised the trinity? You would have had two churches at a very early stage of Christianity and what would happen to the trinity in each church? It is my view that it was the trinity that resulted in Christianity underpinning Western Civilization and made Christianity a world religion.

Q2. Could you explain to what extent and how Christianity influenced or contributed to the construction of our democratic societies.

A2. I think this is explained in Philip's recent book "*Do and Think-an Allegory for Survival*". If religion and law are the foundations of Western civilisation, then with this secure base, democracy can be built on this. This enables a person to do and think to survive so he can try to understand and achieve as much as possible so that at the end of the day, he considers his life has been worthwhile.

Q3. Do other religions form the basis of laws/legal systems in other countries- and are those laws/systems very different?

A3. The concepts in all 320 jurisdictions in the world are generally speaking based on Roman law. None are indigenous. Roman law was secular, particularly as it was flourishing and obeyed 100's of years before Christ was born. Cicero explained why law was voluntarily obeyed because it is based on natural law. Natural law is a body of norms or principles which are inherent in all of us. Cicero died 43 years before Christ was born. We are talking here of civil law. We are not talking about the 12 or so countries which in addition have religious law. Of course, Roman law plays no part in this religious law.

Q4. Does the homogeneous principles in Christian countries account for unconscious bias to non-Christian culture?

A4. There has certainly been an unconscious bias in the past by Christians to non-Christian religions and possibly even now. The theme of this talk is how through law and Christianity, the Romans made the modern world until recently. Personally, I think this theme has strong foundations but obviously, it is open to the criticism that it is too Eurocentric.

History and law are similar in that they are both an interpretation of evidence. In a legal dispute, one side is always wrong. However, all history goes through Hegel's dialectic: thesis-antithesis-synthesis. The problem at the moment with this theme is that it has not even reached the thesis stage. Hardly any classicists, historians, academics or lawyers have even read "*An Introduction to*

Roman law” by Barry Nicholas, an Oxford academic, despite the fact that it is very readable. If this book is not required reading amongst these people who spend much of their lives reading, what book is?

Big questions have been raised in this talk. So, it would be a good thing if the debate on this theme reached such a point that we could move onto the antithesis stage and debate the sort of issues that have been raised here. At the moment we are nowhere near this stage. Lawyers generally get a bad press but we have a good story to tell in the enormous impact law and in particular commercial law has had on civilization. If we do not tell this story then no one else will. In my view, it is important that we have this debate before it is too late.

Q5. Have you read "Trial of Socrates" by I.f. Stone. Although this is not the subject: to what extent Greek legal concepts influenced Roman law. In particular regarding fair litigation.

A5. The Greeks made a huge contribution to civilization e.g. literature, architecture, philosophy and the Romans copied Greek culture but not with regards to law. The Greeks were more into jurisprudence than law. The Romans were practical people. They were more into central heating and lavatories than philosophy. When it came to law, they wanted something which had practical value and worked. The Greeks simply did not have anything remotely like Justinian’s Digest. With regards to fair litigation, Table 2 of the Twelve Tables of 450 BC sets out a fair court procedure not some airy, fairy philosophical concept.

Q6. How does faith play a part in your work?

A6. I am afraid it does not. In my view, the success of Christianity was that it was a philosophy of life. In my view, the Church has departed from this principle. I do however attempt to give first class advice and service to my clients and put the clients’ interests before mine. The strap line of my practice is “*Where the client comes first.*” I believe this is a moral code but like Cicero, it is not a Christian moral code.

Q7. How does the message from the bible/gospels influence the law / legal sphere today positively?

A7. Personally, the only example I can think of is the neighbour principle in *Donoghue v Stevenson*.

Q8. How is it that Christianity gets over the bible's sometimes critical views of money lending etc whilst other religions have taken different paths?

A8. Personally, I see Christianity as more of a philosophy of life that underpins civilization than going into the nitty gritty of Christian doctrine. Obviously, many people may disagree about this and it is one of a large number of ideas which should have much more widespread discussion.

Q9. How much of Thomist-Aristotelean natural law is used in modern judicial judgments?

A9. We have a common law system in this country which means legally binding case law. My experience is that civil law countries also treat cases as binding even though legally they are not. So, I fundamentally disagree with the premise of this question that court decisions are based on ideas. They are based on prior cases.

Cicero said that if civil law did not comply with natural law then it was invalid. Natural law is a body of norms or principles inherent in all of us i.e. I would suggest a moral code based on expected or acceptable conduct. So, I would suggest that natural law is very important in understanding why law is voluntarily obeyed but not in forming the basis of judgments.

Q10. I would assume Roman law does not include Islamic law, can you explain why all concepts come from Roman law and none come from Islamic law?

A10. Justinian's Digest. Until the Napoleonic Code in 1804, no legal code in the world ever came close to rivalling Justinian's Digest. The Napoleonic Code was largely based on Justinian's Digest.

Q11. Roman commercial law has influenced many legal systems around the world, but not all. Some 'Common Law' systems have followed their own path. In the future, do you expect that the ongoing globalisation will reduce or eliminate the differences between Common Law and Civil Law jurisdictions in commercial law or eventually integrate into one law system?

A11. The European Union carried out a study to try and harmonise the Common law and Civil law. They only found two problems with this. 1. The principle of *caveat emptor* in Common law compared with the duty of good faith in Civil law. 2. English land law is not based on Roman law, like Civil law, but on feudal law. Personally, I think these are pretty big hurdles.

Q12. Was the Roman legal system / its principles influenced by Greek ideas (as with so much else)?

No, see answer to question 5.

Q13. What are the positive and negative consequences brought about by law being used instead of Christianity to regulate human behaviour?

A13. The positives are that we have a secular law system which is voluntarily obeyed. The Catholic Church has the concept of Universal law based on Christian morality. It is simply not voluntarily obeyed and hardly anybody has heard about it. In Covid, the law was used to an incredible extent to regulate human behaviour and it worked. However, this was for a very limited time in an emergency. It would surely not have worked for the three hundred years from 1343 that the bubonic plague returned to England time and again and decimated our population. Only Christianity kept civilization together. With the rejection of Christianity, 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.

Q14. What is the connection (if any) between the Christian concept of 'debitum' and the modern concept of (commercial) debts.

Q15. "When I studied history of law at a German university 1995-96, the prevailing view that the discovery of the roman legal books (the Digest and the Institutions) in the middle age was the basis of the first "modern" European University in Bologna. Over centuries these legal principles have been studied at university across Europe, adopted and further developed by continental legal systems by practical application (not by a formal instruction of any authority) of the educated practitioners - but not on the other side of the channel. Therefore I was always somewhat surprised when I found in US/UK legal literature or judicial cases quotes on roman wisdom (and, apart from that, pictures of court houses built in Italian-roman (Gregorian/Continental) style). My question to you: does English/US law and/or their lawyers and judges consider themselves unilaterally as heirs of Roman law and roman lawyers wearing a toga when pleading? If that is the case, what is the reason for doing that - ie, is there any kind of evidence and/or common understanding that today's US/UK legal substance and legal method is based on Roman traditions? Or do these references to Roman traditions aim to get some shine from a long standing and powerful empire?"

A15. Roman law is not a source of the common law. It can never be referred to in a common law court. However, judges, not wishing to invent the wheel, introduced Roman law concepts into English law by the backdoor e.g. *Donoghue v Stevenson*

On Christianity: I always understood that one key element in civil law comes from a Christian element. The idea of a binding contract is much older than Christianity, but it is a Christian idea that a contract can be binding just because of expressions of will ("...you should not lie..."). Concepts of contracts in everyday life (i.e. other than relating to real estate etc) that require more than just expressions of will for becoming legally binding are based on other traditions than Christianity. Against this background, the requirement of a consideration under US/UK law indicates that in this very fundamental element, the US/UK follows a different approach than the continental legal systems (that does not mean one is better or worse than the other, it is just different) - do you agree?

A15. Law must be binding and enforced. If not, it is not law but morality. Roman law predates Christianity by probably about 700 years. When Rome started in around 750 BC, it was slowly transitioning from a barter to a money economy. This is why the early Roman contracts e.g. *stipulatio* and the early jurists make no mention of consideration. By the Empire from 27 BC, Rome had transitioned to a money economy. Price is fundamental to the great Roman sale and hire contracts and the jurists in the Empire were absolutely certain that consideration was necessary. If not, it would be a gift. However, the Romans, unlike ourselves, had no general contracting principle apart from *stipulatio* (and innominate contracts). *Stipulatio* was still used in the Empire to fill in the gaps in contracts. So civil law can never have consideration as a key element of a contract.

The idea of defining legal rules is older than Christianity, just have a look at Jewish traditions about religious rules. Somehow any modern law must be based on traditions from religious rules as religious rules were older than the "non-religious secular rules". When the idea of a secular legal system parallel to the religious system was invented and broadly accepted, the legal experts working with the secular rules would apply the same interpretation and application principles they or their predecessors had used for religious rules before. Do you agree?"

A15. All 320 jurisdiction in the world are based on Justinian's Digest not Judaic law.

Q16. I would love to get an answer (even a non-answer) to the following question: why did Christianity never come up with a plan for debt forgiveness - in spite of the "pater noster": as we forgive our debtors? (to be honest – I am searching myself for an answer together with Jay Westbrook - with no result other than the introduction of the mosaic jubilee year into Christianity in the year 1300)

Q17. Historically, religion has been understood in international and European law as connected to national sovereignty. The discourse of international law takes Westphalia and the principle of *cuius regio eius religio* as the trigger for the system of individual, sovereign states in Europe; states as *primus inter pares*. Inherently, this narrative presupposes that religion carries a fundamental trait of territoriality.

Will we ever experience the complete and utter secularisation of the states, naked of any mention to religion in the West, mainly in Poland or PIIGS? If so, what dangers (if any) do you foresee?

A17. We do not have to go as far as Poland or the PIIGS. Look at England. With the rejection of Christianity (Church of England), 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. We have to hope that law will suffice to hold civilization together. If not,

we will consciously have chosen to fail as a civilization. Personally, I am a positive person but surely when you read in the media about the amount of time which is given to absolute trivia, we should have the debate as to whether we can rely on law alone to hold civilization together.

Q18. To what extent do you think Christianity has contributed to legal concepts of personal rights for individuals and limits on the authority of the State?

The short answer to this question is that Justinian's Digest and legal systems based on it are secular and not based on religious theory. I am the first to acknowledge that the ancient world was a cruel, slave civilization. I will just say that the ancients did consider human rights and they called them natural rights. These however were negative and not positive human rights e.g. freedom of expression, freedom from arbitrary arrest etc. Now we have positive human rights e.g. right to a family life.

Philip and I are non-practising commercial solicitors. Big questions have been raised by the topics we have discussed. We have expertise in commercial law, not human rights law. The problem with venturing into human rights law is that now you must consider whether judges have the right to investigate legislation passed by parliament or past cases to analyse whether or not it contravenes e.g. Article 8 of the Human Rights Act 1998 - the right to respect for your private and family life. This must inevitably lead to judicial activism where a court is generally considered more willing to decide constitutional issues and to invalidate legislative or executive actions. This is a huge new area of discussion in which I have no expertise and in my view deflects from the very necessary discussion we should have on the role commercial law has played in civilization.