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On Civil Law and Natural Law

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“On Civil Law and Natural Law”

By Gaius

A.D. 161

[Gaius. “De Iure Civile et Naturali” [On Civile Law and Natural Law]. *Gai Institutiones or Institutes of Roman Law by Gaius*. With a Translation and Commentary by the late Edward Poste, M.A. Fourth edition, revised and enlarged by E.A. Whittuck, M.A. B.C.L., with an historical introduction by A.H.J. Greenidge, D.Litt. Oxford: Clarendon Press. 1904. Accessed 7/22/2016. <http://oll.libertyfund.org/titles/1154>. Used with the permission of the Online Library of Liberty.]

§ 1. The laws of every people governed by statutes and customs are partly peculiar to itself, partly common to all mankind. The rules established by a given state for its own members are peculiar to itself, and are called *jus civile*; the rules constituted by natural reason for all are observed by all nations alike, and are called *jus gentium*. So the laws of the people of Rome are partly peculiar to itself, partly common to all nations; and this distinction shall be explained in detail in each place as it occurs.

§ 2. Roman law consists of statutes, plebiscites, *senatusconsults*, constitutions of the emperors, edicts of magistrates authorized to issue them, and opinions of jurists.

§ 3. A statute is a command and ordinance of the people: a plebiscite is a command and ordinance of the commonalty. The commonalty and the people are thus distinguished: the people are all the citizens, including the patricians; the commonalty are all the citizens, except the patricians. Whence in former times the patricians maintained that they were not bound by the plebiscites, as passed without their authority; but afterwards a statute called the *lex Hortensia* was enacted, which provided that the plebiscites should bind the people, and thus plebiscites were made co-ordinate with statutes.

§ 4. A senatusconsult is a command and ordinance of the senate, and has the force of a statute, a point which was formerly controverted.

§ 5. A constitution is law established by the emperor either by decree, edict, or letter; and was always recognized as having the force of a statute, since it is by a statute that the emperor himself acquires supreme executive power.

§ 6. Power to issue edicts is vested in magistrates of the people of Rome, the amplest authority belonging to the edicts of the two praetors, the home praetor and the foreign praetor, whose provincial jurisdiction is vested in the presidents of the provinces, and to the edicts of the curule aediles, whose jurisdiction in the provinces of the people of Rome is vested in quaestors: in the provinces of the emperor no quaestors are appointed, and in these provinces, accordingly, the edict of the aediles is not published.

§ 7. The answers of jurists are the decisions and opinions of persons authorized to lay down the law. If they are unanimous their decision has the force of law; if they disagree, the judge may follow whichever opinion he chooses, as is ruled by a rescript of the late emperor Hadrian.

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