Decisive role of Roman Law in development of International Law

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Abstract –Roman Law has been generally conceived by legal academia as a system of private law, which mainly deals with contact, marriage and property. Though it has been not much widely discussed Justinian's "Corpus Juris" contains a good deal of Roman Public Law. The usage of this legal treatise was confined to Roman Empire and it was faded into oblivion by the decline of Rome in 5th century A.D. The research problem of this research primarily deals with the fact that how Roman Law caused to create the pillars of International Law in the West and it further examines how Romans practiced customs with foreign nations and how those customs turned into be legal norms in coming years by making impacts to the development of International Law. The term Jus Gentium in Roman Law had a different meaning in practice. It designed primarily for the litigation among foreigners and in addition to that it was included rules of International Law such as sanctity of envoys or the captor's right to war booty. In the post Roman era famous Jesuit scholar in Law Francesco Suarez (1548-1617) was the first modern jurist to apply "Jus Gentium "as International Law. Apart from that when Grotius developed the international law in 17th century his works were mainly influenced by Roman legal thinking. For instance the concepts of jus ad bellum and jus in bellum (Right to War) were developed under the thread of Roman notion of bellum justum (Just War). The doctrinal approach will be applied to the assessment of this research on the basis of Roman legal texts and historiography. At the end of this work reader will get a clear understanding of how the modern roots of International Law were shaped through the annals of Roman juridical contribution.

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It is said Rome conquered world three times. Firstly from her armies, secondly through her religion (Roman Catholicism) then by her law. Indeed the legal legacy left by Roman civilization has made a profound impact in major legal systems in the world. This paper intends to trace the historical contribution of Roman law upon the formation and development of International Law. In the legal academia general notion always has been to consider Roman law as a branch of Private Law which concerns property, contracts and family relations. But the practice of law by Romans had given so many contributions that firmly establish Roman law's dominance in the sphere of Public Law. This paper comprehensively traces how Roman legal tradition had played a crucial role in carving the foundations of international law. Justinian's "*Corpus Juris*" contains a good deal of Roman public law which has left a profound impact upon the rise of absolutism in sixteenth and seventeenth centuries in England, but more importantly the uniqueness of Roman Law was virtually confined to the imperial domain of Roman empire. In general overview Roman legal legacy has more precisely focused on its imperial position and internal standards, but there has been few significant factors made by Roman law with regard to the inception of modern international law. A systematic observation will be made in this paper to understand how Roman legal principles exactly influenced on construction of International Law as a norm in practice.

Legal Elements in Roman Foreign Affairs

Corpus Juris has paid a less concern on the international affairs of the empire except the fact that it recognized the sanctity of envoys. In Rome foreign envoys were treated equally and harassing them was regarded as a violation of Jus Gentium.[1] According to the historical writings of Pliny Roman Emperor Marcus Antonious had received a set of Sri Lankan envoys sent by King Bhatikabaya during Anuradhapura era. Both Sri Lankan and Roman sources have affirmed the Sri Lankan delegation was well received in Rome with proper manner.[2] In fact treating foreign envoys respectfully was an unknown practice among Western nations in ancient era, especially even Greeks who were considered to be the champions of liberty and democracy had scornfully harassed foreign envoys in number of instances.[3] Though the *Corpus Juris* is considered as the prime text on Roman law, there are various rules in Roman municipal law on its international element. Indeed those standards had mainly emerged from the historical customs and various practices in Rome. The Law of booty of war could be taken as one instance. Under this law the captured objects were distributed by the government officials and one quarter of the captured property was sent to the national treasury. This practice was conceived as a common practice in the battle field and later it turned into be a part of Roman law. One of cardinal features of Roman international law was the formation of a group of religious priests known as Jus fetiale , this group was responsible to administer religious ceremonials used in treaty making and military affairs. Furthermore during the Roman republic this religious body was entitled to decide whether Rome should go to war with foreign nations. It is true that *Jus fetiale* was formulated within the municipal legal system of Rome, but it played a pivotal role in participating in the external affairs till end of Roman republic. In examining the process of how Rome involved in International Law during the Roman empire, it is an interesting factor to observe Rome frequently took part in treaty making. Most of those treaties were manefsted a singular character. Today unequal treaty is a common phase in International law and its inception technically dates back to Roman era. When the treaty making took place between Rome and a weaker nation. The weak paerty was compelled to accept the conditions made by Rome at any cost. These alliance were therefore called “Unequal Alliances” (*foedra enequa*). Under this Rome became the ultimate authority to set the rules of the treaty, especially the other party was subject to abide by the Roman conditions. In the same period of empire, Rome developed a practice of subjugating a conquered nation in a peculiar way. This was known as “*deditio*”. It was designed as a part of large body of Roman private law, whereas Roman administrator would ask the ruler of conquered nation for some preliminary statement and after receiving a satisfactory answer from them, the vanquished nation was further examined whether it is willing to transfer their citizens and

[1] DIGEST 50.7.18 (Pomponius), "Si quis legatum hostium pulsassit, contra jus gentium id commissum esse existimatur, quia sancti habentur legati."

[2] Smith Gerald, (1981), Roman power in Indian ocean, Universal law publishing house, New Delhi, p.54.

[3] Cyril Robinson , A History of Greece, (1919), Oxford University Press, London,p 213.

properties to Rome. In the case of an affirmative reply Roman representative would declare his acceptance of the deditio. Though these treaties seemed to be unequal in its external nature, there was not entirely absence of equality element in some of their international treaties. As an example three times 509, 306 and 279 BC Rome had entered into treaties with Carthage. They were mainly framed as commercial treaties and essentially different from the modern aspect of commercial agreements. Roman emperors sometimes signed treaties with foreign nations. The treaty between Roman emperor Marcus Aurelius and a German tribe in 175 A.D was the first event from the set of treaties in Roman history. Another peculiarity of Roman treaty law was the distinction drawn between an international agreement and its ratification, a prerogative of the Senate. If sworn to, the agreement as such gave rise in the Roman negotiator was extradited to the adversary." The rule, repeatedly followed during Republican times, was probably motivated by a desire to satisfy the gods invoked by the negotiator.

In modern history of International Law , the term " Unequal Treaty " has been used as a phase to describe the treaties signed between Western powers with the Far Eastern States which were denied the reciprocal concessions. For instance the set of treaties took place between the British-French forces and Chinese imperial dynasty was regarded as a typical unequal treaty. The treaty which was formulated between Rome and weak nations always shaped as unequal form whereas Rome always had the supremacy of making the treaty for her own good. The modern international legal concept "Sovereign Equality" was not a concern of the treaty makers in Roman Empire.

The Broader Influence of Roman law in International Legal Sphere

The real importance to Roman law in International Law emerged only with the formation of nation states in Europe. It was the practice of medieval ecclestical order in Europe to look for Corpus Juris as the guiding point of their municipal laws. As modern day scholar Andrew Borkowsky points out the second life of Roman law was begun after many centuries after he fall of Roman Empire from its earthly glory in 11th century A.D. The Europe was in many forms of chaos in the middle age. In fact the revival of Roman law in Europe was an offshoot of the excessive works of the commentators who were known as "Glossators".[4] Italian cities like Padua, Bologna, Verona and Pavia became centers of learning in Roman law in the middle age where Glossators taught and worked on Roman law. The uniqueness of Roman law's renaissance in Europe was, though the Justinian's code essentially focused on municipal laws such as contracts and obligations, its influence was expanded to a larger arena. As an example the Roman legal notions on personal laws were used in the international sphere as a remedy. In 11th Century Roman law held its helm in the entire territory of Holy Roman Empire and its impacts shaped the medieval legal thinking of Europe. In Rome the practice that existed relating to the affairs on foreigners was known as "*Jus Gentium* " , but this term had a different legal significance. Though primarily it was intended to the litigations among foreigners stayed in Rome, in a broader sense it meant the law common to all nations or for many nations. This attitude of universal nature caused in Roman Empire period to look at the

[4] Andrew Boorkowski, Roman Law, (1994), Oxford University Press, London, p 123.

issues like sanctity of foreign envoys in a more universal format. The famous Jesuit, Francesco Suarez (1548-1617), was the first to see clearly that the term jus gentium had come in post-Roman times to mean two different things: (1) universal law and (2) international law (though the latter term and the present application of the first term are of later date) ; but he did not carry through his observation to the sphere of international relations. In this significance it has systematically. Only since Hobbes (1588-1679) has the phrase jus gentium been definitely confined remained popular up to our day though it is more and more being forced into the background by the term "international law" invented by Bentham in 1789.

It is true that Roman Law had conceived many concepts to the development of International Law and especially its understanding of Just War (*Bellum Justum*) has left a significant impact upon the the modern day evolution of laws of war. In the roots of Just War in Roman History it is a fact beyond dispute that it was imbued with the Christian theological understanding of war. According to the theological works of St. Augustine only the just war is permissible and even such a war cannot be begun out of greed for power or out of vindictiveness.[5] This conception led its way to establish a firm legal justification on war in the middle age by another erudite Christian theologian Thomas Aquinas (1225-1274) who laid down three prerequsites of a just war. (1) The ruler's capacity to declare a war (2) Justa Causa or the good reason to doing so (3) *recta intentio* or a subjective righteous intent. Even after the collapse of Wesern Roman Empire these principles remained static in practice in European legal usage. As an example Romanization of European municipal laws by the commentaries of Glossators and canon laws did include the principle of " *Bellum Justum* " as an integral part of law. In the writings of jurists like Suarez, Ayalla and Belli, just war was taken up as a cardinal matter in both moral and legal perceptions. In the era of colonial expansion the just war was aptly used by colonial powers to uphold their hejamony over some inferior races. If war is conceived as a reaction of law against injury done, an investigation of the various kinds of injuries presenting a just cause for war is imperative. Such injury may consist in invading nation, etc. Hence the elaboration of the causes of just war will inevitably result in laying out a system of international law itself. This aspect of the just war doctrine is startlingly illustrated by the history of Byzantine and Russian civilization: there the just war idea was not adopted, and no conception of a law of nations was evolved. In examining the contribution made by Roman law to the development of International Law, it becomes an interesting factor to study that no state in Europe had adopted Roman legal principles into its international law approach than England. In English legal history the first clear indication of adopting Roman law dates back to Tudor era. Especially when Queen Elizabeth 1 ruled England some interesting remarks had made by Queen herself which verified the applicability of Roman law in international legal affairs in England. For an instance when Spanish ambassador in Queen's court protested on Sir Francis Drake's naval exploration of Western Indies Territories, Queen's reply was ""the use of the Sea and Air is common to all, neither can a title to the Ocean belong to any people or private person; for as much as neither Nature nor public use and customs permitteth any possession thereof".[6] Indeed this position was a resemblance of Classical Roman Law on natural resources. As it was stated in Justinian's " *Institute* " Roman Law had clearly admitted the no nation can

[5] Martin Jerome, Augustine and his world, (1945), Pelecan books, London, p 34.
[6] Richard Mclavain, Political works of Tudor rulers, (1918), Cambridge University Press, p34.

claim the Ocean personally and it belongs to the entire humankind". UNCLOS (United Nations Convention on the Law of Sea) document has called high sea as common heritage of the mankind and navigation in the high sea has been regarded as an open act by the Law of the Sea itself. In English Court of Elizabethan era, the offence of piracy was plunder Spanish ships in high sea, but when it came to the court interpretation of English courts , judges of courts often used Roman legal principles on piracy. As an example in the writings of Cicero during the considered a criminal act though Queen personally patronized those prominent pirates like Walter Ralley , Francis Drake to classical period of Roman Law, Cicero had insisted piracy as a grave crime and the same dictum had been descended upon the courts in 16th century England. There is another salient historical illustration from English legal history which would demonstrate how Roman " *Jus Gentum* " Law of Nations infiltrated into the practice of diplomacy in Tudor court. When in 1584 Spanish ambassador was charged for treason, English government approached a jurist called Gentili at Oxford who held the chair of Civil Law at that time. Gentili argued according to law of the nations (International Law in modern terminology) England could do nothing except to expel him. Though England had not totally adhered to Roman law as its common law, in order to decide the Anglo-Spanish relations English finally opted for Roman law as the decisive factor. In such an event England could not be harsher to Spanish ambassador except banishing him. Even till now the Vienna Treaty of 1966 has ensured safe passage to the diplomats even in the circumstances of treason. It could be just to assume the deeply rooted influence of Roman law has caused the foundation of diplomatic protocols of modern world to include sense of civility in its affairs.

Historically no other country had relied on Roman law in the international legal sphere than Holland. In 1599 when Holland detached from Spanish influence, its general assembly applied the principles of Justinian as the " Common law of nations " against the Spanish blockade.[7] The Dutch law giver Grotius who is considered to be the father of International Law had often referred to Roman legal principles in his legal treaties. With the emergence the great codifications towards the turn of 18th and 19th century, the authority of Justinian's legislation began fast to recede. With this background Roman law was assimilated into the domain of public law in Europe.

Conclusion

Generally modern international law owes a heavy conceptual debt to the Roman law. For instance number of terms in modern international law has derived from the Roman legal terminology with different meanings. The expression of state servitude emerges from Roman "servitude" and its modern interpretation essentially focuses on rights of the passage and similar enactments confining the ownership of a parcel of land. Apart from that terms such as occupation, assertion, have refared in Corpus Juris with different annotations. The legal usage for occupation in Roman law was the appropriation of things which is movable or immovable, belonging to no one. But the same term has been borrowed from Roman law to international law with a different usage, whereas occupation is used to the seizure of enemy territory or a territory not yet under a soverign. In today's application of

[7] James Crawford, Creation of States in International Law, (1989), Oxford University Press, p 234.

international law, one cannot exactly point out to which extend Roman law has directly expanded in the domain of international law. Because mainly the fragments of Roman legal principles have been superseded by the modern needs and they rather have been modified or improvised. The above mentioned terminological usage borrowed from classical Roman law is an ideal example for it. The statement made by US legal historian Arthur Nussbaum in an article would be an appropriate phase to epitomize and evaluate the historical significance of Roman law on coining the modern foundation of international law. He states “Perhaps all this does not amount to very much, but it means at least that in some places Roman law served to fasten the shifting sands of international law. The historic significance of Roman law is far greater; it was an indispensable tool in the early development of a doctrine of international law."

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