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INTERNATIONAL COMMITTEE OF THE RED CROSS

PRINCIPAL ITEMS OF INTEREST

Greece. — The Delegation of the ICRC at Athens has continued its visits to Camps, especially to the Exiles Camp of St Eustace (Aghios Efstratios) on July 8 and 18, where more than 4 tons of relief supplies to a value of Swiss Fr. 30,500 were distributed. This relief lot, which came from a number of different donors, comprised clothing, footwear, materials, two sewing machines, foodstuffs, soap, DDT powder, sanitary material and medicaments. Shortly after this visit the Delegation sent this Camp a consignment of 500 kg. from Athens, consisting largely of leather for the Camp cobblers. (See "Refugees".)

Reunion of families. — 85 Volksdeutsche, formerly soldiers, arrived in Vienna from Roumania on July 16. A previous convoy from Roumania of 95 former soldiers had made their way to Friedland Camp in April.

Refugees. — The close-down of the IRO has led to a notable increase in the applications to the ICRC received from refugees. In order to be in a position to give these people accurate information as to existing possibilities of assistance, and to guide them in respect of the steps they should take, the ICRC has made enquiries of the Office of the United Nations High Commissioner for Refugees and of the Migrations Committee (formerly the *Comité intergouvernemental provisoire pour les mouvements migratoires d'Europe*) as to the respective powers of these two bodies.

In Spain the ICRC Delegate is concerned principally with the emigration of certain refugees previously assisted by the IRO, which had arranged for their transfer overseas before itself closing down. The ICRC Delegate is also concerned with foreign refugees in prison. He is constantly active in

attempts to give effect to the large number of applications he receives from refugees, who want permits to live in Spain, work permits, medical care, travel documents 10,100 bis, or visas for countries to which they hope to go.

In Greece the ICRC Delegation has given relief to 70 Albanian refugees from the Syra and Lavrion Camps. Each refugee received an assortment of new clothes, including a coat, a pair of trousers and a pair of shoes, as well as soap.

In Trieste 17,000 packets of cigarettes, offered by a Swiss firm, have been distributed to displaced persons through the agency of the ICRC.

Further, the Social Service of the Venezuela Red Cross and the ICRC Delegate in Caracas are actively engaged in finding work for refugees, facilitating their settlement and solving the many and manifold problems with which they are continually confronted. There is a law, which limits the number of foreign workers in any undertaking to 25% ; and many refugees, who have been authorised to enter Venezuela by the Immigration Committees of this country, are thereby reduced to unemployment.

India. — A second consignment of medicaments for the victims of the famine, which is now raging in Madras and Central India, has just been dispatched from Geneva to the Indian Red Cross. This consignment, worth Swiss Francs 9,500, is a gift of the ICRC.

Indochina. — At the beginning of July, the ICRC delegate to Vietnam, Mr. A. Durand, visited several prison camps. The numbers of these camps were 40, 41, 61 and 61A.

Indonesia. — Mr. J. Munier, who has been representing the ICRC for three months in Indonesia, has on several occasions visited hospital establishments set up by the Indonesian Red Cross, including recently two polyclinics and a blood bank which are run by the Djakarta section.

Korea. — We stated last month that the United Nations Forces High Command had temporarily withdrawn from the

ICRC delegates the authorisation to visit certain camps in Southern Korea for reasons of personal security. This measure has been cancelled, and on July 6 the ICRC representatives resumed visits to these camps. A delegate will stay for about a month in Koje island.

Between the beginning of April and the end of July the Central Prisoners of War Agency received official communication of the names of 9469 North Korean military personnel and Chinese volunteers, prisoners of the United Nations forces, and of 1699 deceased military personnel of the same nationalities. In accordance with the normal procedure, it forwarded this information to the authorities of the Power in whose armies these prisoners served. A certain number of requests for news concerning captured military personnel of the United Nations forces were also sent to these authorities. Information relative to Chinese volunteers and requests for news have on the other hand been brought to the notice of the Chinese Red Cross.

The Central Prisoners of War Agency. — It is a frequent occurrence for Governments or official organisations concerned with the tracing of missing persons to apply to the Central Prisoners of War Agency in Geneva for the purpose of throwing light on cases where their own records have no particulars, or merely of ascertaining whether the information in their possession is exact. For instance, before issuing an attestation concerning a missing person, the Italian Government regularly requests the Agency services to make all relevant search in its files.

It is common knowledge that nearly all the information on record in Geneva was communicated in the past ^{by} ~~by~~ the Governments concerned who made use of it to set up their own files. Nevertheless the Agency's card indexes are today still considered to be the most accurate and complete instrument for tracing purposes. This is mainly due to the fact that circumstances in the war sometimes prevented the transmission of particular information by the International Committee of the Red Cross, as also to the fact that archives were dispersed, and sometimes destroyed, by bombing.

The Government of the German Federal Republic recently handed the Agency a list of 4,507 cases not yet cleared up. The list concerned on the one hand 992 German military personnel reported missing on the Western front, and on the other hand 3,515 former German prisoners of war in Allied hands who could not be traced. A systematic checking by the Agency's German Section brought new information to light. It should however be noted that in such enquiries a positive result does not necessarily mean that the persons sought are still alive although in this particular instance the proportion of deaths was not on the whole large. A positive result covers any number of contingencies such as escape, liberation, change to civilian work as well as death, including information to be added to that already on record.

In the case of missing military personnel the percentage of positive results could not be very high. It varied, according to the countries where the parties were presumed to have disappeared, between 0.33 and 3 per cent.

On the other hand, for all cases notified as prisoners the positive results were much greater. The average percentage was 20, varying according to the country of captivity between 3 and 40 per cent.

This particular test is worthy of mention as it proves that seven years after the close of hostilities the Agency is still able, in addition to its current work, to make useful contribution towards clearing up cases relating to past events.

CHRONICLE

THE ORIGINS OF HUMANITARIAN LAW

The Convention signed at Geneva in 1864 was the first to confer upon the Red Cross a status in law; it also introduced into positive International Law the great and humane principle that the wounded combatant must be respected and cared for on the same terms, whether friend or enemy.

From this point onwards began the development which led to the present Geneva Conventions and certain provisions of the Hague Conventions. The principle was applied originally to the wounded only; it has gradually been extended to other categories of war victims - to the shipwrecked, to prisoners of war, and now at last, to civilians.

It would not be true to say that there had previously been no examples of respect for humane principles. The Conventions, however, have the great merit of having transformed into positive International Law rules that had previously left a dangerous discretion with the relevant authorities in applying the laws of war, since their application depended on religious and moral conceptions alone.

Humanitarian law, originating in the same idea as the Red Cross which is its symbol, forms a necessary corollary to respect for the individual and his dignity as such, particularly in time of war, when the ordinary rules of law are superseded.

The historical background of the principles and practices embodied in the Geneva Conventions and the provisions deriving therefrom are important for an understanding of the text; it illustrates their underlying philosophy and shows that these concepts are common to humanity.

The principle behind the Red Cross is universal, as is the law to which it has given rise. It is an element in all religious and moral systems and, to the rationalist mind, corresponds to man's own idea of his value as an individual.

We propose, in a series of papers, to dwell on the universal aspect of this body of law, whilst outlining the principal stages along which it has developed.

I

HUMANITARIAN IDEAS AND ROMAN LAW

The greatness of Rome rested on war.

In the seven hundred years which elapsed from the foundation of the city until Rome had given the world peace under its dominion, the doors of the temple of Janus—always kept open in wartime—were only closed twice.

Nevertheless, the law of Rome finally brought a peace which lasted several centuries ; about the ensuing benefits historians are for once agreed.

We shall first attempt to define the essentials of Roman law and trace their connection with the principles of humanitarian law. Strict and inflexible in the early centuries and during the period of conquest, Roman law gradually mellowed under the influence, first of Greek philosophy, and later of Christianity. It remained closed, however, to the idea of human brotherhood and equality between men, which was the prerequisite of International Law as we now understand it.

I. — ROME AND WAR

Exclusion of the Alien

In Rome, only citizens possessed any rights at law ; the alien had none. This being so in peacetime, the exclusion was even more rigorous in time of war.¹ There can be no recognition that an enemy may be just or unjust ; Mucius Scaevola regarded

¹ See REVON : *Le droit de la guerre sous la République romaine*, pp. 38 et seq.

even the murder of an alien enemy as praiseworthy. This principle, incidentally, was also held in the Greek cities. In peacetime, Phoebidas, the Lacedaemonian, took an enemy fortress by assault. Agesilaus, when asked for his opinion, replied: "Consider if it is useful; any action is laudable that serves one's country."

For the early Romans, every alien was an enemy. Cicero said: "He whom we now call a stranger (*peregrinus*)¹, our ancestors held to be an enemy (*hostis*)." This being so, we can gauge the narrow harshness of the Twelve Tables, which provided: *Adversus hostem aeterna auctoritas esto*. "Let everything be permissible against an enemy"—and that, in fact, meant against a foreigner. Need we feel surprised that Valerius Corvus was looked upon as a hero for his easy victory over a giant Gaul whose eyes had been pecked out by a crow? Fair play towards barbarians was unknown.

In the second century A.D., *hostis* was defined by jurists as meaning *enemy*, properly so-called—i.e. one of the enemy in time of war—but other foreigners (*coeteri*) were treated no better; according to the most authoritative teaching of the time, they were looked upon as "thieves", or "brigands".²

Victory thus justified the worst forms of excess.

No distinction was made between belligerent and non-belligerent. Old people, women, and children were treated as were the warriors themselves: one and all were liable to massacre.

Macrobius gives the wording of a curse used by the Romans before battle: "Ye Gods! spread dismay, terror and calamity amongst our enemies! May their men and all who dwell in their lands and cities, be deprived of the light of the sun!

¹ CICERO: *De Officiis* I, II. We should not overlook the kinship between "hostis" and "hôte" in French, and with the less closely related "guest" in English ("Gast" in German), with a totally different meaning. The original sense of *hostis* survives in derivatives such as: "hostile" and "hostilities".

² POMPONIUS: *Hostes hi sunt qui nobis, aut quibus nos publice bellum decrevimus; coeteri aut latrones, aut praedones sunt*. L. 118, Dig. *De verb. signif.*, 50, 16.

Cf. ULPIAN, L. 24. Dig. *De captivis*, 49, 15.

May this city, and their fields, heads and bodies be dedicated to you.' Livy quotes a similar form of words. Tarquin, addressing the delegates from the vanquished Sabines, asked: "Are you the deputies and spokesmen of the Collatine¹ people? for your own surrender and that of your people?" — "We are." — "Do you deliver yourselves, you and all the Collatine people, your town, land and waters, your terminal gods and temples, your goods and all things divine and human into my hands and those of the Roman people?" — "We do" — "If so, I accept you."

The vanquished were thus stripped of everything—religion, family and property; Rome seized all. If, as an act of grace, the prisoners' lives were spared, Rome nevertheless disposed of them arbitrarily. In earliest times, the captives were sometimes merged with the Roman population. After the capture of Alba Longa, Horatius ordered the inhabitants to leave their homes with all their possessions; he then razed the city to the ground. Brought to Rome, the Albans settled on the Coelian hill and shortly afterwards became Romans.

Slavery

Generally, the vanquished were sold as slaves for the benefit of the State, their masters having the right of life and death over them. Hundreds of thousands were sold in this way after the victory of Aemilius Paullus over Perseus², when seventy cities of Greece were completely destroyed; and similarly after the fall of Carthage, Numantia and Jerusalem—to mention only the major disasters which befell the peoples brought under the Roman yoke.

The children of slaves were themselves slaves, and were bred like human cattle. This reservoir supplied servants for the wealthy, labour for the large patrician estates, and the gladiators who were maintained by the State until they fought and died in the arena for the delectation of the Roman mob.

¹ *I.e.* of the town of Collatia, near Rome.

² At Pydna, 168 B.C.

Slavery seems to have always existed in Greece and Rome ; it was accepted without question by all moral teachers until the advent of Christianity, and was a fundamental institution of the ancient world. It continued until the overthrow of Rome by the Barbarians.¹

As an institution, slavery was not devoid of risks. In 70 B.C., the gladiators of Capua revolted under Spartacus, and were soon joined by an army of slaves, nearly 100,000 strong. They routed the generals sent against them by the Senate. Victorious in twenty battles, they were finally overcome only after the countryside had been devastated and several cities pillaged. All citizens taken prisoner were mercilessly executed. Likewise, the easy conquest of Rome by Alaric and his Barbarians at the beginning of the fifth century was due largely to a rising of great numbers of Goths who lived as slaves in the city.

Many incidents, which today seem hardly compatible with military honour, can be explained by the contempt for the individual which slavery symbolised.²

Prisoners of War

Generally speaking, Rome showed lenience to the enemy chiefs who were prepared to come to terms, sometimes even honouring them as allies. Those, however, who bravely resisted were treated with the utmost rigour. Perseus, in clothes of mourning, was first made to walk before Aemilius

¹ Much ingenuity has been spent on the origin of the word " *servus* ", which we translate as " slave ". Some have associated it with *servare* (to spare). *Servi ex eo autem appellati sunt quod imperatores captivos vendere ac per hoc servare et non occidere solent* (FLORENTINUS, L. 4. Dig. *De statu hominum*, I, 15). This etymology is barely tenable. It is simpler to connect it with *servire*. Bréal and Bailly, Darmesteter and Hovelacque believe that *servus* literally meant " guardian ", and that it corresponds to the Greek *ourus*, cf. the Zend " *haurvô* " = guardian. This origin having been gradually forgotten, *servus* came to mean slave ; this is then found in *servire*, *servitus* (Cf. REVON, *op. cit.*, p. 76). The word " slave " was unknown in Rome ; it made its appearance in the tenth century, when many East European Slavs were captured by the Emperor Otho the Great.

² A brief picture of that " canker of the old world, slavery " under the Roman Empire will be found in Buchan, *Augustus*, Bk. IV, chap. I.

Paullus in his triumphal chariot, and then thrown into a narrow cell where, two years later, he died. One of his children, who survived the family disaster, was allowed, as a favour, to live in obscurity in Rome as an ordinary artisan. Jugurtha, in chains, walked in the triumph of his conqueror, Marius. He was then stripped and thrown into a damp cell, where he died of cold and hunger six days afterwards (104 B.C.). Vercingetorix perished ignominiously in the Mamertine prison after six years of suffering (46 B.C.).

Harsh to their enemies, the Romans were no less so towards their own citizens. Nothing could be more characteristic than the episode of the Caudine Forks (321 B.C.). Trapped and dominated on all sides in a narrow gorge, and exposed to destruction by the Samnites who hurled rocks down on them, the Roman army under Posthumius was forced to capitulate. They were spared and released after surrendering their arms, passing under the yoke and undertaking not to fight against their conquerors. They were freed and returned by night to their homes, where they hid in shame. The Senate refused to accept the capitulation and delivered Posthumius to the Samnites.

Any exchange of prisoners arranged by a Roman general on the battlefield was valid only if ratified by the Senate. The latter frequently refused to tolerate the return of citizens who were coward enough to surrender, and did not hesitate to leave them to their fate.

After his victory at Cannae, Hannibal sent to the Senate three bushels of gold rings, taken from patricians and knights who had been killed or captured, and proposed to return the prisoners as a pledge of peace. His offer was proudly refused ; in preference, Rome was ready to constitute a new army of veterans and enfranchised slaves (216 B.C.).

A Roman who succeeded in escaping could recover his place in the city through his right of *postliminium*. But this right was refused him if he had surrendered unconditionally,¹

¹ See L. 17 Dig. 49-15.

or if, entitled under the terms of a treaty to return home, he continued to live abroad.¹ Renegades were never forgiven.

The full rigour of Roman Law was applied to property as well as to persons.

Booty

As a matter of principle, the site of any conquered city became a Roman possession, as a part of the *ager publicus*. The former owners were expropriated by law and the conquerors took possession "by the lance", the instrument of conquest and its symbol. The territory was distributed to the poor of Rome, farmed out (subject to State rental) to colonists, given in reward to Army veterans, or simply sold by the *quaestor*, the proceeds being paid into the Treasury.²

As regards booty, Cicero judiciously remarks that, it being lawful to kill an enemy, it is not against nature to despoil him, if possible. *Neque est contra naturam spoliare eum, si possis, quem honestum est necare*. This rule has ancient sanction. The Book of Deuteronomy (XXI, 14) had already declared: "All that is in the city, even all the spoil thereof, shalt thou take unto thyself: and thou shalt eat the spoil of thine enemies."³

In Rome, booty was not individual but belonged by law to the State. The Roman soldier, at the outset of a campaign, took an oath not to cheat in regard to spoil, and never to pillage more than one silver *nummus* in money value within a radius of 10,000 paces from the camp.⁴ Frequently, however, to stimulate the men, victorious generals were at liberty to distribute part of the booty, without previous reference to the Senate. The spoil to be divided was heaped up in one part of the camp and allocated by the Tribunes in the proportions laid down by the commander. Knights usually received three times the

¹ See L. 12 Dig. id.

² Livy, XXXV, 1, XXVIII, 46 — Aulus GELLIUS, XIII, 24.

³ For a practical application of this command, see Numbers, chap. XXXI.

⁴ Aulus GELLIUS, VI, 4.

amount given a legionary. The strict discipline in the Roman army allowed this system to work.

The remainder of the booty was sent to Rome, to adorn the triumph, and sold for the benefit of the State. When Aemilius Paullus entered Rome in triumph, a stream of chariots, laden with statues and valuable pictures, took three days to pass by ; thousands of men carried gold and silver vases, and four hundred golden crowns offered by the cities of Greece to the Roman people were borne past.

The rule of devolution of spoils to the State was so strict that a general might always fear prosecution, on demand of a Senator, for illegal appropriation of part of the spoil—technically known as “peculation”. Even the great Scipio Africanus, who finally defeated the Carthaginians, was called on to meet this charge, and severely punished for paying into the treasury 480 pounds less silver than he had received.¹

Religious Foundation of Law

Roman severity, therefore, did not apply solely to the vanquished, and the rectitude and firmness of Roman Law, which justified its prestige, must be recognized. Like everything else in ancient cities, law was based on religion, and if it included certain concepts which seem to foreshadow international law, it is because these ideas were ethical, and founded on religious sentiment.

Right of Asylum

One of the oldest of humane institutions is the right of asylum. In Rome, as in Greece, this right afforded protection to those who sought refuge in temples or sacred groves. Out of respect for the deity, justice and vengeance had to yield. Rome itself seems to have originally been such a place of asylum.

¹ Val. Max., V, 3.

The obligation to keep faith, the sanctity of treaties, the immunity of ambassadors and respect for the persons of hostages, are ideas which externally seemed to govern the citizen of Rome in his relations with other men. In fact, these obligations bound him only towards himself, because he respected the vows made to his gods—so much so that Rome considered herself obliged to carry out the provisions of a treaty, even when her adversaries disregarded their duties under it. Though often deceived by the Carthaginians during the wars in Africa, they always refused to imitate, even in reprisal, what they reprobed as *punica fides* (Punic faith).

Highly formalist, as the religion itself, the customs of war among the Romans might have led to misconception. The idea of a just war—*bellum justum*—had always been their guiding principle. The phrase, however, has not the moral sense given it by Canon Law in the Middle Ages, and subsequently conserved in International Law. It only meant that war had been declared in accordance with certain ritual by the proper authorities—the *collegium fetiale*¹—and might be applied indifferently to defensive war, or an aggressive war waged for the benefit of the Republic.

It must, however, be admitted, that this insistence on a declaration of war made for order in international relations. Neglect of the formality was always punished; a general who was conqueror in an undeclared war had no right to a triumph. The Roman legate Clineas, for example, was delivered over to the Ligurians whom he had attacked in disregard of a treaty of alliance²; the consul Lepidus, fighting in Spain in violation of the fetial law, was ordered to stop.

¹ A college of ten members recruited by co-optation amongst the great families; its function was to apply the *ius fetiale* relating to the declaration of war, conclude treaties, deal with extradition, and so on.

² Dio CASSIUS, *Fragments* 45.

Immunities of Ambassadors

Respect for ambassadors was equally characteristic of Roman law.¹ Political organization being so fragmentary in the ancient world, ambassadors formed the only links possible. The Romans could boast that they always respected the persons of ambassadors. Thus Tarquin sent an envoy to Rome, who under the pretext of claiming his master's property fomented a revolt and was arrested. The Senate, on consideration, allowed him to leave unharmed. Even when her own ambassadors had been badly treated, Rome did not retaliate. Thus we find Scipio, in Africa reassuring the Carthaginian envoy, who, remembering the behaviour of his countrymen, had misgivings about his own safety.

Hostages

Hostages were likewise treated correctly and sometimes granted particular favour. Their status, however, was different, and their safety precarious. Those who attempted to escape were put to death. Rome was also merciless of treachery: when the Pometian colony rebelled, three hundred hostages were executed.

The Oath

The conception of the oath, quasi religious and binding absolutely, was fundamental to the idea of law. Regulus, taken prisoner by the Carthaginians, accompanied their ambassador coming to Rome to negotiate peace; he had sworn to return if the negotiations failed. Far from advising Rome to come to terms after defeat, he contributed much to the break-down of negotiations; he returned to Carthage and the torture that awaited him, refusing both the chance of escape and the possibility of meeting his wife and friends in Rome (250 B.C.).

The oath was a prerequisite of military service. Cato's son had been *ipso facto* released from his oath when his legion

¹ *Sacrum legatorum jus et fas.* (Tacitus, Hist., III, 80).

was dissolved, but wished to volunteer for the campaign against Perseus. "Beware of taking part in any encounter", his father wrote him, "because with the name of soldier goes the right of fighting the enemy". Cato hastened to arrange with the general, Popilius, for his son to recover his right of fighting, through a fresh oath. "So great was the respect for the laws of war", Cicero exclaims.

We have seen how narrow and one-sided was this concept of the "laws of war". It is none the less true that certain principles had been established, which only needed reference to a wider philosophical context to become the elements of International Law.

Moreover, in extending its conquests, Roman law would, step by step, lose its "quiritary" character, that is to say, it would cease to apply exclusively to Roman citizens. It extended, first in Italy and later in the Empire, to the millions of people who acquired citizenship.¹

We shall find that, as Roman law gradually extended to ever larger numbers, its essential principles were tinged by new ideas, less rigid than those of primitive Rome. The minds of Roman legislators were already opening to more humane ethical precepts when Christianity came, bringing with it a new conception of the brotherhood of man.

2. — PAX ROMANA

Having conquered the world, Rome gave it peace.

This *Pax Romana*, lasting from the first to the fifth centuries A.D. and extending to all peoples in the Greco-Latin world, left enduring memories; historians have written at length in its praise. Not only Roman authors such as Livy², but also

¹ At the beginning of the first century B.C., the "allies"—i.e. the various Italian peoples who successively came under Roman domination—demanded and finally, after a bloody civil war, obtained Roman citizenship. In the first century A.D., Caracalla gave citizenship by edict to all inhabitants of the Empire.

² "It was the sense of justice and the good faith of the Roman people that brought it greatness". Livy: *Hist.*, XLIV, 1.

foreigners like Polybius, critically regarding contemporary life with exemplary sobriety and acuteness, decided that Rome had fully earned her dominating position.

In more modern times, Machiavelli, in his Discourse on Livy, expressed his admiration of Rome's success, which he attributed to two causes: the strength and wisdom of her political organization and her skilful treatment of the vanquished. In the seventeenth century Gravina thus expressed his enthusiasm: "The Romans considered alone as enemies, the enemies of humanity. They took from the vanquished only the possibility of doing evil; their ambition sought to spread civilization and establish a universal order."¹ Bossuet referred eloquently to "the mighty Empire that engulfed the empires of the universe, and gave rise to the greatest realms of our own times; whose laws we still revere—an Empire we should in consequence better know than any other."

So much praise may set us wondering after what was said above of the harshness and rigour of early Roman law. But history shows, again to take Bossuet's words, that the Roman people learned "to confine its warlike spirit within the bounds of equity".

Growth of Ideas

Already in the fourth century B.C., Camillus, the dictator, showed that he realized the advantages of a humane policy towards the vanquished. There is the story of the traitor schoolmaster who came to deliver up the children of a besieged town; Camillus had him ignominiously thrashed by his pupils who were sent home. When Veii was taken, Camillus ordered that no one who had been responsible for the sacred vessels should be ill-used.² After the capture of Falerii he forbade pillage. Called upon by the Senate to explain this forbearance, he asked: "Are your rights as victors to be used for an extreme of cruelty?—You are entitled, if you wish, to turn Latium into one vast

¹ *De ortu juris civis*, I, 16.

² *LIVY: Hist.* V, 21.

desert. Following the example of your forefathers, will you not add rather to the resources of Rome? Admit the vanquished as citizens, and you enhance both your power and your glory".¹ Camillus failed to convince his judges; he was exiled for not allowing the town to be sacked. But his greatness is to have, none the less, foreshadowed methods of warfare that would one day prevail.

From its very first encounters with Greek civilization, Rome was given the example of humane behaviour. Pyrrhus, King of Epirus, called to assist the Greek cities in Southern Italy, had crossed to the Peninsula with his elephants, and was at first victorious. Far, however, from showing cruelty to the Romans, he had the wounded cared for and the dead buried, and praised the courage of the soldiers taken alive. Such generosity was rare in those ancient times. The Senate, in spite of it, rejected the offer of peace, proudly refusing to negotiate so long as Pyrrhus remained on Italian soil.

But the lesson was not wholly lost. The Senate gradually adopted the wiser policy recommended earlier by Camillus. A besieged town which unconditionally surrendered was treated with clemency and became an "ally". We even find generals who acted otherwise being heavily punished.²

Certain practices were discountenanced—the poisoning of springs and fountains, for example, was looked upon as reprehensible.³ Livy quotes cases where a disarmed adversary's life is spared. The noble saying: *hostes dum vulnerati fratres* (enemies while wounded are brothers),⁴ seems to presage Jean-Jacques Rousseau's dictum⁵ and the cry *Tutti fratelli* of the Piemontese women at Castiglione, after the battle of Solferino, who gave the same care to their own wounded countrymen, their French allies, and the Austrian enemy. Scipio Aemilianus is praised

¹ Livy: VIII, 13, 14.

² CICERO, *De officiis*, I, II.

³ FLORUS, II, 20.

⁴ Quoted by BURET, *Le droit de la guerre chez les Romains*, p. 46.

⁵ "As soon as combatants give up their arms or surrender, they are no longer enemies or instruments of the enemy; they are simply men once more". *Contrat social* (1762), Bk. I, chap. 4.

for refusing to molest his female captives. Many began to think like him, amongst them his friend, the Greek historian Polybius. He considered that the citadels, ramparts and ships of the enemy might be destroyed, but to despoil him when he is beaten, to throw down his temples and statues without reason, to burn his crops in vengeance, is a mark of incredible folly.¹ Scipio refused to give their part of the spoil to the soldiers who had desecrated the Temple of Apollo.² He was also the patron of Terence, who wrote : *Homo sum : humani nihil a me alienum puto* (I am a man, nothing is foreign to me that is human).³

With Cicero, the affirmation of humane principles becomes more decided. He was one of the first to couple charity and humanity,⁴ and to say. "Right cannot be where justice is not." He quotes and endorses Sophocles, who makes Antigone reply to Creon that the written law yields to the unwritten, that is, to the natural law. He does not, however, draw all the logical inferences, still maintaining that the humanitarian principle (*humanitas*) must give way before loyalty to the State (*pietas*).⁵

Augustus conquered the world and made an end of civil war ; he laid the foundations of peace and Empire. The ideas he shared were new and far removed from early Roman austerity and rigour. When Vidius Pollio, following his barbarous custom, wanted to throw a slave as food to the muraenae in his fishpond for having broken a precious vase, Augustus ordered the slave to be spared, all Pollio's crystal vases to be smashed and the fishpond filled in. Augustus insisted, in the negotiations with the King of the Parthians, for the return of the eagles lost by Crassus at Carrhae and the release of all Roman prisoners. On learning the total defeat sustained by Varus, the Emperor "for a time let his beard and hair grow in token of mourning... he was often heard to say, as if the words were unconsciously wrung from him : "Varus, Varus, give me back my legions !"⁶

¹ POLYBIUS, V, 11 and 12.

² APPIUS, *De rebus punicis*, 133.

³ TERENCE, *Heautontimorumenos*, I, 1, 23.

⁴ *Caritas humani generis*. See *De finibus*, V, 23.

⁵ See DE LIGT, *La paix créatrice*, Vol. I, p. 208.

⁶ JOHN BUCHAN, *Augustus*, Bk. IV, chap. 5.

Six years later, Germanicus occupied the scene of the disaster ; he ordered the remains that could be found to be buried and himself placed the first sod upon the mound.

The Stoics

At the dawn of the *Pax Romana*, in the reign of Augustus, Jesus Christ was born. The event was unnoticed by contemporaries, yet time was to date from it, and it was to transform the world ; the humanity of even the greatest of the Romans had little to offer, compared with the new message.

The philosophical ideas of Cicero, Scipio, and Terence were in the main Stoic. Their teachings were noble and possessed unquestionable moral weight ; they could inspire a dignity in life capable of attaining the heroic.¹ But they remained moral ideas, valid only for the individual, and had little social consequence. They were accepted mainly amongst the aristocrats, who did not dream of abandoning the privileges which the social and juridical organization conferred. The rigours of slavery had, nevertheless, in many respects abated. Slaves could be freed very simply : in the presence of a magistrate the master gave his slave a slight box on the ear. A freeman was even counted a citizen if he could support his dependents. In great families, particularly gifted slaves were taught music or literature, and later freed. Terence had been Scipio's slave ; Phaedrus, the fabulist, was a slave of Augustus. Under Nero, freemen occupied the highest posts in the state ; Nero's former tutor, the philosopher Seneca, taught the noblest Stoic maxims, such as : *Homo sacra res homini*—To man, man should be sacred. He wrote : " We should treat our enemies with forbearance."² and condemned the shedding of blood, either on the battlefield or in the arena. To kill soldiers and non-combatants indiscriminately is as wasteful as ruin and conflagration.³

¹ Loc. cit., Bk. IV, chap. 3. " Stoicism... best suited the Roman character. It may be defined as puritanism stripped of its element of rapture."

² Letters to Lucilius, 95, 33.

³ *De ira*, II, 27.

These teachings, unfortunately, had only theoretical value and their influence was not far-reaching. Seneca, incidentally, was condemned to death by his own pupil.

Christianity

Christianity went far beyond Stoicism in its teaching. On consideration, it is not surprising that, when the great Roman Pantheon was open to the gods of all the conquered peoples—Jupiter of Praeneste, Juno of Veii and Lavinium, the Samnite Venus, the Faliscan Minerva, the gods of Hellas and the East,—Christians were being cruelly persecuted. What must have been the effect on Roman ears of the words of the Apostle Paul, opening the Kingdom of God to all men, and saying: “Where there is neither Greek nor Jew, Barbarian, Scythian, bond nor free.”¹ Yet Paul was only drawing the logical inference from the parable of the Good Samaritan, of which Bossuet writes: “Let us realise that our neighbour is every man, and that the precept to love one another, although it refers in a special way to the faithful, professing the same faith and co-heirs of the same Kingdom, yet embraces the whole human race, because all are called to the same grace.”

“My neighbour is all mankind” was a concept which upset all the narrow and exclusive principles of Roman law, and was wholly foreign to Paganism. The natural equality of men, as being all God’s creatures, created in His Image and redeemed by Christ from original sin, established the idea of the dignity of the human person—henceforth the principle of inalienable individual rights. To the established order, it seemed a crazy attempt at revolution. The very idea of one God, the objective criterion of Good and Evil, and consequently of justice and injustice, was enough to uproot all the ancient and formal traditions of Rome. It is easy to understand the disquiet of those in authority and their hatred for ideas which could only appear subversive. Hence the attitude towards Christianity not only of the worst Emperors like Nero, but even of the best.

¹ Col., III, 11. — See also Gal. III, 28; I Cor. XII, 13.

The philosophic Emperor Titus, called by Suetonius "the ornament of the human race", who felt his day to be wasted if it passed without helping someone and wished his clemency extended to even the most guilty, so that in his reign no citizen might be put to death,—he, too, allowed Christians to be persecuted.

Christianity, nevertheless, at no time became a political rival to Roman power. It was through its moral influence, powerful and widespread in a way far different from the influence of Stoicism, that it succeeded as Stoicism did—but much more fundamentally—in changing Roman institutions. His faith requires the Christian to conform to a natural order set up outside himself, and respect authority without which the life he must live as a member of society would be impossible. "Render unto Caesar" is an integral part of Christ's teaching, equally with respect for the individual and the duty of those in authority to govern for the good of their subjects.

The scrupulous observance of these moderate principles to some extent offset the revolutionary force of Christianity, which was in turn helped on by the failings and excesses of its enemies.

The Pax Romana

In the second century, the structure of the Empire was saved by men from the provinces. Trajan, and Hadrian, both come from Spain, were witnesses outside Rome of the advantages of the *Pax Romana*. The orgies and crimes of Augustus' successors were foreign to both. Disdaining ostentation, they set Rome on foundations which might have made the Imperial achievements lasting. Trajan entered Rome on foot, through the midst of the crowd, where everyone could see and even speak to him, a few lictors only preceding to clear the way. Hadrian also took pains to be accessible, and, on several critical occasions, gave proof of his generous humanity.

Antoninus, and Marcus Aurelius after him, prolonged the golden era of the *Pax Romana*. Aurelius was a moral philosopher, who might have changed the face of the Empire, had he put

his philosophical ideas into practice. "That which is in conformity with man's nature", he wrote, "is good and useful for him. I am essentially a creature of reason, inclined to the social life. As an Antonine,¹ Rome is city and country to me; as a human being, the whole world is my fatherland. What is good for Rome and the world can alone be good for me." But the international problem remains for him moral and "humanitarian", not political.²

Marcus Aurelius, who forbade gladiators from fighting with sharpened weapons, continued to persecute the Christians. His example is typical of the inability of the Roman world to depart from the paths it had followed in its glory. Even when it had become Christian—with occasional reversions to paganism—it could not entirely detach itself from ancestral custom. In 390 A.D., the city of Thessalonica revolted against its governor, and Theodosius ordered his troops to massacre seven thousand people in the arena, without distinction of age or sex. He, however, repented bitterly and made amends at the behest of St. Ambrose, Bishop of Milan. In 404 A.D., the triumph of the Emperor Honorius and his general Stilicho were celebrated by fights in the arena, and many gladiators were slain. It was then that Telemachus, a monk who had come to Rome to protest against these barbarous practices, rushed among the combatants and was killed. His martyrdom was not vain; the same day, Honorius, restoring the edicts of Constantine, proscribed the gladiatorial shows for all time.

But Rome was only five years from the disaster which delivered her to the Barbarians.

With her, the Western Empire foundered. In the sixth century, Justinian, Emperor in the East, re-established the unity of the Roman Empire for a time. He gave orders to have all the chief legal texts assembled in the Corpus, which included

¹ Marcus Aurelius was the adopted son of Antoninus Pius, whose reign was so popular that his successor took the name of "Antoninus" as Augustus and his successors had taken the name of Caesar.

² See Chr. L. LANGE, *Histoire de la doctrine pacifique et de son influence sur le développement du Droit international*. The Hague, 1926, 13, III.

the Digest, Codes, Institutes and Novellae. Thus was Roman law preserved for posterity. But the Corpus remains true to the general trend of ancient tradition, and slavery is still recognized : *Servitus autem est constitutio juris gentium*.¹

* * *

Roman Law was founded upon religion and contained provisions which introduced a certain pattern into the relations of Rome with other peoples. These rules were, however, wholly one-sided, and cannot be looked upon as constituting a “ law of war ”, and still less a system of “ humanitarian law ”.

Roman Law, as customs and ideas developed, gave equitable peace to the ancient world, but was only *de facto* universal : its tendency was to consolidate civil and political privileges. The principle of the equality of men, on which alone universal law can rest, did not succeed in establishing itself in the Roman world despite the advance of Christianity which had proclaimed it. Accordingly, the *jus gentium*—the law of nations applicable to the alien *peregrini*—is unilateral in Roman Law ; it is merely a concession. Only much later on, as we shall see, did it acquire the meaning we now attach to the term International Law.

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¹ *Institutes*, Bk. I, Part III, par. 2.