

ROMAN ORIGINS OF THE BRAZILIAN CIVIL CODE

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Because of its logical nature and practical utility, Roman law is the cornerstone of legal education in many countries. A considerable number of modern civil codes, including those outside of the Roman-Germanic legal system, incorporate a large variety of Roman legal norms, principles and institutions. Thus, the exegesis of Roman juridical sources, especially the *Corpus Juris Civilis*, allows us to correlate most of the rules in the Brazilian Civil Code of 2002 with their corresponding Roman legal texts. Article by article, the influence of Roman sources on the current civil law becomes evident. Although comparisons have been made between Roman law and the contemporary Civil Law established in the Brazilian Civil Code of 1916, the *Bürgerliches Gesetzbuch*, the *Codice Civile Italiano* di 1942, and even the *Code Civile Belgique*, the “Brazilian Civil Code and Roman Law” thematic project sets out to accomplish a task that has not previously been undertaken in Brazil: to objectively and meticulously compare the first three Books of General Part and the General Theory of Obligations in the Brazilian Civil Code of 2002 with Roman law to clarify the meaning of the rules and institutions in the present Civil Code. The identification of one main Roman juridical source and a set of secondary sources for each rule, made possible by the work of a select and interdisciplinary group of researchers, offers the best interpretation of legal rules and institutions and reinforces the presence of the “always old and new Roman Law” in Latin America and, particularly, in Brazil.

SUMMARY OF RESULTS TO DATE AND PERSPECTIVES

The following are the basic stages of the project's development: (i) identifying the sources (Roman legal texts) pertinent to the section of the Brazilian Civil Code of 2002 designated for study; (ii) reading the identified sources; (iii) selecting and translating one or more sources classified as "primary" in accordance with the criterion of closest correlation with the legal rule in question; (iv) collectively discussing the sources selected as well as the dogmatic topics relevant to them and the corresponding articles of the Civil Code; (v) selecting the "secondary" sources from among the texts collected in "(i)", and (v) writing introductory texts for some of the sections of the Civil Code, highlighting the most important alterations introduced by the law.



Emperor Justinian (482 – 565), whose juridical ordination, the Corpus Juris Civilis, is the basis of the modern law, including the Brazilian Civil Code (detail of a portrait in the Basilica of San Vitale, Ravenna, Italy)

Book I ("On Persons") and Book II ("On Things"), which comprise Articles 1 through 103 of the "General Part" of the Civil Code of 2002, were included for exegetical work through the use of this methodology. The final part of the "General Part" (Book III) and Book I of the "Special Part" ("On the Law of Obligations") are part of the same program.

In addition to providing a detailed, article-by-article account of the influence of the Roman juridical legacy upon Brazilian private law, one of the main objectives of this project is to provide access to Roman legal texts for a public not exclusively composed of Roman law specialists. For this purpose, the original texts have been translated as plainly and clearly as possible, taking into account the terminology currently employed in Brazilian laws and in civilian literature.

The present project required an in-depth study of the Brazilian Civil Code currently in force, including an individual analysis of various recent amendments and the factors that resulted in these modifications.

MAIN PUBLICATIONS

Silveira Marchi EC, Rodrigues DRM, Queiroz de Moraes BB. *As origens romanas do Código Civil Brasileiro – Artigos 1 a 103 (temporary title)*, vol. I (forthcoming).

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