IN NOMINE DOMINI NOSTRI JESU CHRISTI.

IN THE NAME OF OUR LORD JESUS CHRIST.

Imperatoriam majestatem non solum armis decoratam, sed etiam legibus oportet esse armatam, ut utrumque tempus et bellorum et paecis restitutus possit gubernari; et princeps Romanus victor existat non solum in hostilibus praebitis, sed etiam per legitimos tramites calamantium inequitates expellens, et fiat tam juris religiosissimus, quam victis hostibus triumphator.

1. Quorum utramque viam cum summis vigiliis summaque providentia, annuente Deo, perfecimus. Et bellicos quidem auores nostros barbaricas gentes sub juge nostra deductae cognoscamus, et tam Africa quam aliae numerosae provinciae post tanta temporum spatia, nostris victoriis a celesti Numine prestitis, iterum dictione Romana nostroque additis imperio protestantur; omnes vero populis legibus jam a nobis promulgatis vel compositis reguntur.
2. Et cum sacretissimis constitutiones anteas confusae in luculentam arceptam consonantiam, tune nostrum extendimus caram ad immensa veteris prudentiae volumina; et opus desperatum, quasi per medium profundum aquae, certei favere jam adimplerantis.

3. Cumque hoc Deus propitius peractum est, Triboniano viso magnifico, magistro et eruditore sacri palatii nostri, nec non Theophil et Dorotheo viris illustribus, antecessoris nostris (quorum omnium sectentiam et legem scientiam et circa nosstras jussiones idem jam ex multis rerum argumentis accipientibus) convocatis, mandavimus specialiter ut nostrae auctoritate nostri nostroque non inutile nihilque tam nihilo sed quod in ipsis rerum obtinet tempore mentis, ribus contingebat, honore et initium vobis et finem legonstitutiona A Digestorum senibus quatuor libros easdem illustres et facundissimos confecimus, ut omne jus est et quod Tribonianum nee non ceteros viros quos titis legitimare menta.

2. When we had arranged and brought into perfect harmony the hitherto confused mass of imperial constitutions, we then extended our care to the endless volumes of ancient law; and, sailing as it were across the mid ocean, have now completed, through the favour of heaven, a work we once despaired of.

3. When by the blessing of God this task was accomplished, we summoned the most eminent Tribonian, master and ex-querister of our palace, together with the illustrious Theophilus and Dorotheus, professors of law, all of whom have on many occasion proved to us their ability, legal knowledge, and obedience to our orders; and we specially charged them to compose, under our authority and advice, Institutes, so that you may no more learn the first elements of law from old and erroneous sources, but apprehend them by the clear light of imperial wisdom; and that your minds and ears may receive nothing that is useless or misplaced, but only what obtains in actual practice. So that, whereas, formerly, the foremost among you could scarcely, after four years' study, read the imperial constitutions, you may now commence your studies by reading them, who have been thought worthy of an honour and a happiness so great as that the first and last lessons in the knowledge of the law should issue for you from the mouth of the emperor.

4. Igitur post libros quinquaginta Digestorum seu Pandectarum, in quibus omne jus antiquum collatum est, quos per eundem virum excelsum Tribonianum nec non eusteros viros illustres et facundissimos confecimus, in hos quatuor libros eandem Institutiones peribui jussimus, ut sint totius legum scienciam prima elementa.

5. In quibus breviter expositum est et quod antea obtinuit, et quod postea desmetudine inanitatum imperialis remediae illuminatum est.

6. Quas ex omnibus antiquorum Institutionibus, et precipue ex com-
Liber Primus.

Tit. I. DE JUSTITIA ET JURE.

Justice is the constant and perpetual wish to render every one his due.

Justitia est constans et perpetua voluntas jus suum cuique tribuendi.

This definition is borrowed from Ulpian (D. i. 1. 10), as is that of jurisprudence in the next section. Justitia is the constant disposition to follow what jus prescribes, perpetua meaning, "on every occasion that offers." Some editions read voluntas tribuens, a disposition that renders what is due, which justice is when it is seen in action. By jus (id quod jussum est) is meant all that is imposed, or that by a contemplation of the higher law of nature, we conceive ought to be imposed, as a rule of action, on the dwellers in a particular state by the general authority of that state. Celsus defined jus (D. i. 1. 1) as ars boni et aequi, the doctrine of all that is good and equitable. If we wish to separate distinctly the province of jus from that of morality, we must understand this to mean all of that which is good and equitable, that we think ought to take the form of law, that is, be imposed as obligatory by the supreme authority. (See Introd. sec. 39, 40.)

It may be observed here, that the sphere of natural law, jus naturale, is co-extensive with that of morality, but that they differ in the mode in which they severally regard this sphere. The sphere of both is right and wrong, good and evil; natural law pronounces what in this sphere God, through the medium of our reason, enjoins as right, and forbids as wrong. Morality sees in right and wrong a field in which the free-will of man is to make its choice. If man, as a free agent, chooses what God enjoins, we may speak indifferently of that which he chooses as being right by natural law or right morally. Jus,
taken absolutely, has a sphere less than that of morality, as it only includes that portion of right which is, or we conceive ought to be, enjoined by civil authority. We have no word in English that expresses *jus* accurately. "Right" is sometimes adopted, but it is too wide in its application, as it may mean morally right, or legally right, whereas the exact equivalent of *jus* would be, "that which is in fact, and in theory should be, legally right."

1. Jurisprudentia est divinarum etque humanarum rerum notitia, justi atque injusti scientia.

D. i. 1. 10.2.

Jurisprudentia is the knowledge of what is *jus*, and *jus* not only lays down the rights and duties of men (*res humanae*), but also the mode in which religious worship is to be carried on and is to enter into the administration of law and the government of the state (*res divinae*). The place which the sacred or pontifical law held in the Roman system was so conspicuous that no Roman jurisprudent could fail to treat of *res divinae* in this sense as a part of law. The jurisprudent is, of course, only concerned with things divine and human, so far as to examine what in them is just and unjust.

2. His igitur generaliter cognitum et incipiens nobis exponere juris populi Romani, ita videtur esse posse trinchi commodissime, si primo levi et simplici via, post dein diligentissima atque exactissima interpretatione singulae traducat. Alloquin, si station ab initio rurum ebatus et insinuum animus studiorum multitudine aut variabat rerum univeravarium, duorum alterum, aut desertum studiorum effusus, aut cum magno labore, scio etiam eum dividentia qua plerique juvenes averto, sanus ad id pervenisset, ad quod leviere via ductus sine magno labore et sine ulla dividentia maturius perdixi putisset.


D. i. 1. 10.

These *juris praecipita* are not rules of law, but short statements of the chief moral obligations on which rules of law are based. The first and most general of these moral obligations is that *honeste vivere*, to live honestly, in the wide acceptance of the word "honest" in which it connotes the general fulfilment of social duties. Sometimes, although not generally, this obligation takes the shape of positive law, as when, for instance, the marriage of very near relations is forbidden. How rules of positive law are based on the two other *praecipita* juris is too obvious to need explanation.

The Romans clearly perceived the distinction between *jus* and morality—Non omne quod licet, honestum est, says Paul (D. i. 17. 144); not all that is permitted by law is morally right. The obligation *honeste vivere* was much wider in its application than could be expressed by positive law.

4. Hujus studii sunt positiones, publicum et privatum. Publicum *jus* est, quod ad statum reg Romanae spectat; *privatum*, quod ad singularum utilitatem. Discendum est igitur de *jus privato*, quod triplex est; collectum est enim ex naturalibus praeciptis, aut gentium aut civilibus.

D. i. 1. 1. 2.

Both the *jus publicum* and the *jus privatum* fall under municipal law, that is, the law of a particular state. *Publicum jus* in sacris, in sacerdotibus, in magistratibus consistit. (D. i. 1. 1.) Public law regulates religious worship and civil administration; private law determines the rights and duties of individuals. *Jus gentium* is the rules of right which govern the transactions of social life and nations in their dealings with each other. *Jus civile* here means the law peculiar to the Roman state.

Trt. II. DE JURE NATURALI, GENTIUM ET CIVILI.

**Jus naturale est, quod natura omnia animallia docet: nam jus istud non humani genera propria est, sed omnium animalium quae in caelo, quae in terras, quae in mari nascentur. Hinc descendit maris et terrae matrimonium, atque matrimonium applicamus; hinc liberorum procreationem, hinc educendum. Videmus**

The law of nature is that law which nature teaches to all animals. For this law does not belong exclusively to the human race, but belongs to all animals, whether of the earth, the sea, or the air. Hence proceeds the union of male and female, which we term *matrimony*; hence the *procreation* and education of chil-
This description of natural law is taken from Ulpian (D. i. 1. 3), who makes a three-fold division of law, adopted here, into the *jus gentium*, jus *civile*, and *jus naturale*; the last being quite distinct from natural law in the sense that which is based on man's natural reason, and being scarcely in any sense a division of law at all, but merely the result of observing that many things, such as animal instincts and wants, which afford matter for the regulations of human law, are shared by man with the brute creation. The Stoic definition of virtue was, living according to nature; and as brutes lived according to their nature, it was hence, perhaps, that they seemed to be following the same law as man, who is *pro iure omnes gentes utuntur*... 

1. *Jus autem civilis vel gentium ius dividitur*. Omnes populi qui legis et moribus regulant, parum suo proprio, parum communi omnium hominum jure utuntur; nam quod quisque populus ipsi sibi jus constituit, id ipsius civilitas proprium est, vocaturque jus civilis, quasi jus proprium ipsius civilitas. Quod vero naturalis ratio inter omnes homines constituit, id apud omnes pereque custoditur, vocaturque jus gentium, quasi quo jus omnium gentium utuntur. Et populus itaque Romanus parum suo proprio, parum communi omnium hominum jure utitur; quod singula quidem sunt, suis locis praeponentes.

2. *Civil law* is thus distinguished from the law of nations. Every community governed by laws and customs, uses partly its own law, partly laws common to all mankind. The law, which a people makes for its own government belongs exclusively to that state, and is called the civil law, as being the law of the particular state. But the law which natural reason appoints for all mankind obtains equally among all nations, and is called the law of nations, because all nations make use of it. The people of Rome, then, are governed partly by their own laws, and partly by the laws which are common to all mankind. We will take notice of this distinction as occasion may arise.

**GAI. I. 1.**

What modern writers term natural law is here called the *jus gentium*, i.e. those principles of right dictated by our reason, which are common to all men alike. If these are looked upon as constituting the basis of the dealings of nations with each other, they form what we call the *jus gentium*, that is, international law. They also enter into and determine the public and the private law of each state; but each state, in the composition of its own public and private law, also adds certain arbitrary enactments. The enactments of each state are termed by the Roman writers *jus civile*, or, as we should say, municipal law. This *jus civile* embraces those principles of the *jus gentium* which are incorporated in public or private law, because, though those principles have an independent authority, they are adopted, or perhaps expressly enacted, in each state, by the same power which makes purely arbitrary enactments.

3. Constat autem *jus nostrum* aut ex scripto aut ex non scripto, ut apud Virgilius. Jus autem gentium omnia quae sunt civitatis, nostrum jus significat: sicuti est postea dicimus, nos addimus nomen, subauditum quidque Graecos egregius Homerus, aed nos Virgilus. *Jus autem gentium* omnia humanum generis communis est; nam usus exigit et humanis necessitatis, gentes humanae quasdam sibi constituerunt. — Bella etiam oris sunt et capitvata secute, et servi tutes que sunt naturali juri contrarie; jure enim naturali ab initio omnes homines liberi nascebantur. Et ex hoc iure gentium, omnes quae contractus introducti sunt, ut emittam venditio, locatio, conductio, societas, depositum, mutuum et ali immenra bilis.

**D. I. 1. 5.**

*Jus gentium* here means the established usages of man, growing out of the requirements of social life, such as the rights of war and the different kinds of contracts; and these are often, as in the case of slavery, at variance with natural law. *Jus gentium* in this sense includes the law regulating the dealings of one nation with another, to which modern writers appropriate the term *jus gentium*, but which is expressed more correctly by the term *jus inter gentes*.

3. Civil law takes its name from the state which it governs, as, for instance, from Athens; for it would be very proper to speak of the laws of Solon or Draco as the civil law of Athens. And thus the law, which the Roman people make use of, is called the civil law of the Romans, or that of the Quirites, as being used by the Quirites; for the Romans are called Quirites from Quirinus. But whenever we speak of civil law, without adding the name of any state, we mean our own law; just as the Greeks, when "the poet" is spoken of without any name being expressed, mean the great Homer, and we Romans mean Virgil. The law of nations is common to all mankind, for nations have established certain laws, as occasion and the necessities of human life required. Wars arose, and in their train followed captivity and slavery, both of which are contrary to the law of nature; for by that law, all men are originally born free. Further, by the law of nations almost all contracts were at first introduced, as, for instance, buying and selling, letting and hiring, partnership, bai lments, loans, and very many others.

3. Our law is written and unwritten, just as among the Greeks...
4. A lex is a word made by the commentators on the analogy of plebiscitum, was passed originally only in the comitia curiata; after the establishment of the comitia centuriata, in both these comitia; but, excepting in the case of conferring the imperium, almost always in the centuriata. (See Introd. sec. 16.)

The lex Hortensia, 467 A.C., had been preceded by the lex Valeria, 304 A.C., and the lex Publica, 414 A.C., by both of which it was provided that plebiscita should bind the whole people. Either the effect of their provisions had been disputed, or exceptions had been made to them, or perhaps the extension of the authority of the plebiscitum which they gave was not so complete as their terms would seem to imply. (Nieb. 2. 366.) The term lex is very frequently applied to plebiscita as well as to populi scita. (See Introd. sec. 16.)

5. Senatus consultum est quod senatus judex aequo constituit: nam cum auctoritas populi Romani in sum modum ut difficile esset in unum sum convocari legis sanando causa, sequum visum est senatum vice populi consultum.

6. A senatus-consultum is that which the senate commands and appoints: for, when the Roman people was so increased that it was difficult to assemble them together to pass laws, it seemed right that the senate should be consulted in the place of the people.

The senatus-consultum had in some instances the force of a law even in the times of the republic, for we have a few preserved of a date antecedent to the Caesars, which undoubtedly had the force of law; but they all relate to matters of social administration, such as prohibiting burial within the city, or the importation of wild beasts. (See Introd. sec. 16.) But we cannot speak of senatus consulta as a substantial part of the general legislation till the times of the emperors, when they superseded every other except the emperor's enactments. The appeal of the emperor to their authority dwindled down almost immediately into a mere form. (Cod. i. 14. 12, in present leges condere soli imperatori concessum est.) (See Introd. sec. 20.)

9. Sed et quod principi placuit, legis habet vigorem; et summa regia, que de ejus imperio lata est, populus ei et in eum ornatum imperium suum et possidatem concessit. Quodcumque ergo imperator per epistolam constituit, vel cognovit descrevit, vel edicto praecepit, legem esse constituit; ha sunt que constitutiones appellabantur. Plane ex his quasdam sunt personales, quae nec ad exemplum trahuntur, quoniam non huius principis vult; nam quod aliui ob meritum induxit, vel si alii posuisset irrogavisse, vel si alii sive exemplo subvenit, personam non transgressit. Alias autem eximias sunt, omnes procul dubio sententiae.
the emperor derives his authority from the \textit{lex regia}. This does not refer to any one law of that name; but to the law of the \textit{comitia curiata} by which the \textit{imperium} was conferred. Gaius says, \textit{I. 15, nec sanguinem deditatam est quin principis constitutio legis vicem obtinet cum ipsa imperator per legem imperium accipiat.} This law was a relic of that by which the king had been invested with the royal authority, intrusted to him by the \textit{curia} representing the \textit{populus}; and it was considered that the emperor was in like manner invested with all the power of the Roman people transferred to him on receiving the \textit{imperium}. (See Introd. sec. 18.)

7. The edicts of the \textit{prætori} are also of great authority. These edicts are called the \textit{edictum juris civilis} because those who bear honours in the state, that is, the magistrates, have given them their sanction. The \textit{curiales edictum de quibusdam causis}, quod \textit{edictum juris honorarium} portio est.

\textit{Gai. i. 6; D. xxii. 1. 1.}

Papinian says (\textit{D. i. 1. 7}), that the \textit{jus prætorum} was introduced by the \textit{prætori}, \textit{adjuvandi vel suppullendi vel corrigendi juris civilis gratiâ.} New circumstances, new habits of thinking, and, in the case of the \textit{prætor perennis}, a new scope for authority, compelled the \textit{prætor} to use an equitable power, and frequently equitable fictions, to extend the narrow limits of the old civil law. (See Introd. sec. 14.) The decisions by which he did this were called \textit{edicta}. At the beginning of his year of office, the \textit{prætor} published a list of the rules by which he intended to be bound, and this was called the \textit{edictum perpetuum}, because it was to apply to all cases that might fall under it during the year of office, and was not made, like an \textit{edictum repentina}, to meet a particular case. Of course each \textit{prætor} borrowed much from his predecessors, and thus the edict, or rather all that was not new in it, was called the \textit{edictum traetatum}. (Citra. \textit{Ad. At. v. 31.}) The \textit{law Cornelia} (\textit{n.c. 67}) forbade a \textit{prætor} to depart during his term of office from the edict he had promulgated at its commencement. In the time of Hadrian, a jurist named Salvius Julianus, who filled the office of \textit{prætor}, systematized and condensed the edicts of preceding \textit{prætori} into one which he called the \textit{edictum perpetuum}, and thus this term, \textit{edictum perpetuum}, which generally means the edict for the year, is sometimes the name of this work of Julianus, which was intended, no doubt, to serve as the basis for future annual edicts. (See Introd. sec. 21.)

8. The answers of the jurists are the decisions and opinions of persons who were authorized to determine the law. For anciently it was provided that there should be persons to interpret publicly the laws, who were permitted by the emperor to give answers on questions of law. They were called \textit{jurisconsulti}, and the authority of their decisions and opinions, when they were all unanimous, was such, that the judge would not, according to the constitution, refuse to be guided by their answers.

\textit{Gal. i. 7.}


It is to the change in the position of the \textit{jurists} effected by \textit{Augustus} (sec. 22), that allusion is made in the words \textit{quibus a Cæsare jus respondendi datum est, qui jurisconsulti appellantur: quorum omnis sententiae et opiniones emem custodiam tenentum, ut judicem receperit a responsi orum non liceret, ut est constituutum. refer.}

9. Ex non scripto jus venit, quod usus comprehendit: nam duorum mores secunam ueliam comprehendit legis intentur. (\textit{D. i. 32.}) The unwritten law is that which usage has established; for ancient customs, being sanctioned by the consent of those who adopt them, are like laws.

10. Pet multa in quas species jus civilis distributum esse videtur: nam origo ejus ab institutis duarum civitatum, Athensarae saliscet et Lacedemoniae fluente videtur. In eis enim civilibus ipsi sediscet erat, ut Lacedemonii quidem magis ea quae pro legibus observavant, memoriam manuarent; Athenienses vero, ea quae in legibus scripta comprehensissent, custodirent. (\textit{D. i. 33.}) The civil law is not improperly divided into two kinds, for the division seems to have had its origin in the customs of the two states Athens and Lacedaemon. For in these states it was to be the case, that the Lacedaemonians rather committed to memory what they observed as law, while the Athenians observed at law what they had consigned to writing, and included in the body of their laws.
It is hardly necessary to say, that the distinction between written and unwritten law must always exist where laws are written at all, and where no attempt has been made to express all law in positive terms; and that this Greek origin for the two branches of Roman law is quite imaginary.

11. Sed naturalia quidem jure que quidem gentes peregrinas servantur; divina quidem providentia constituta, semper statua imperialis immutabilia permanet. Ea vero quae ipsa sibi sibi civilitas constituit, sese mutari solent, vel tacito consensu populi, vel alia postea lega lata.

Gal. i. 1; D. i. 3. 32. 1.

Justinian, abandoning the threefold division of Ulpian, which he had adopted in the earlier paragraphs of this chapter, now follows the twofold division of Gaius (1. 1), into jure naturale and jure civilis. This twofold division is the one prevailing in, and proper to, the general system of the jurists. (See Appendix 1. to vol. i. of Savigny's Droit Rom.) It may be useful here to state the different uses of the terms denoting the divisions of law. 1. Jure naturale, i.e. the law based upon natural right (we may omit Ulpian's use of jure naturale, i.e. the law man shares with beasts, as being quite unsystematic). 2. Jure gentium, used (a) in the same sense with jure naturale, as in paragraph 1, (b) meaning the usages regulating the dealings of civilized societies, as in paragraph 2, in which sense it may be at variance with jure naturale. 3. Jure civilis, meaning municipal law, as in paragraph 2; and also used in a narrower sense, either when it was opposed to jure pontificium, and meant secular law; or to jure praetorium, in which sense it most frequently occurs, and then means the old strict law of Rome, both the old customary law and the law of the Twelve Tables, and the law created by leges, plebiscita and senatus-consulta, as opposed to the law as modified by the praetors, the jurisprudents, and the imperial constitutions.

TIT. III. DE JURE PERSONARUM.

Omnes autem jure quo utimur vel ad personas pertinent vel ad res vel ad actions. Et prius de personis videmus: nam parum est, si personae quae in causa constitutum est, ignoantur. Summa itaque divisione de jure personarum hae est, quod omnes homines aut liberi sunt, aut servi. 1. Freedom, from which men are said to be free, is the natural power of doing what we each please, unless prevented by force or by law. 2. Slavery is an institution of the law of nations, by which one man is made the property of another, contrary to natural right.

D. i. 5. 4. 1.

The Romans referred the origin of slavery, as an institution, to the jure gentium; but peculiarities in the position of their slaves, as that they could hold no property of their own, belonged to the jure civilis, the municipal law of Rome.

3. Servi autem ex eo appellati sunt, quod imperatori captivos vendere, ac per hos servare nec occidere solent: qui etiam mancipia dicti sunt, co quod ad hostibus manu captivat. 4. Servi autem sunt nascuntur aut sunt. Nascuntur ex ancillis nostris: sunt aut jure gentium, id est ex captivitate; aut jure civilis, cum liber homo, major viginti annis, ad
Children born out of the pale of lawful marriage always followed the condition of the mother; and as slaves were incapable of contracting a lawful marriage, in the peculiar sense of “lawful” adopted by Roman law, the children of a female slave were necessarily slaves. They were called *vernae* when born and reared on the property of the owner of their mother. (See Intro. sec. 42.)

In order to prevent a fraud, by which a person, having allowed himself to be sold, turned round on the purchaser and claimed his liberty as being free-born, a law, perhaps the *Senatus consultum Claudianum* (D. xi. 8. 5), enacted that the perpetrator of the fraud should be bound by his statement, and be held to be a slave. In the early law of Rome, it may be observed, a citizen could really sell himself so as to lose his freedom; but he always retained a right of redemption.

There were other modes by which slavery could arise under the Roman law, as (1) when a free woman had commerce with a slave, or (2) when malefactors were condemned to the amphitheatre or the mines, the guilty parties were held in law to be slaves. These latter modes of legal slavery were abolished by Justinian. (Bk. iii. 12. Nov. 22. cap. 8.) Lastly, (3) an emancipated slave, if guilty of ingratitude towards his master, might be reclaimed to slavery. (D. xxv. 3. 6.)

In the older law, *addictio*, that is, delivery of the person to a creditor by way of execution for a debt, being detected in *furium manifestum*, and omitting to be inscribed in the tables of the census in order to defraud the revenue, were each a cause of slavery; but these causes had become obsolete long before the time of Justinian.  

5. In servorum conditione nullus est differentia, in libris mulieris differentia sunt: aut enim sunt ingenui aut libertini.

In the later empire there was introduced what may be almost termed a difference in the condition of slaves by the institution of *colonii*, that is, persons attached to the soil, *ascripti glebae*, passing with it, and bound to remain on it, but entitled to retain for their own use all they could gain from it beyond the value of a yearly payment, which they had to make to the owner of the soil, and enjoying also all the family rights of freemen.

**Trtr. IV. DE INGENUIS.**

A person is *ingenuus* who is free from the moment of his birth, by being born in matrimony, of parents who have been either both born free, or both made free, or one of whom has been born and the other made free; and when the mother is free, and the father a slave, the child nevertheless is born free; just as he is if his mother be free, and it be uncertain who is his father; for he had then no legal father. And it is sufficient if the mother is free at the time of the birth, although a slave when she conceived; and conversely, if she be free when she conceives, and is a slave when she gives birth to her child, yet the child is held to be born free; for the misfortune of the mother ought not to prejudice her unborn infant. The question hence arises, if a female slave with child is made free, but again becomes a slave before the child is born, whether the child is born free or a slave? Marcellus thinks it is born free, for it is sufficient for the unborn child, if the mother has been free, although only in the intermediate time; and this is true.

**Gar. I. 11. 82. 89, 90; D. I. 5. 5.**

If a child was born in *matrimonio*, a tie which could only, in the eyes of the civil law, be contracted between two free persons, the child was free from the moment of conception. If it was not born in *matrimonio*, then it followed the condition of the mother; and it was her condition at the time of birth, not at that of conception, which decided the *status* of the child. It was only by a departure from the strict theory of law that the enjoyment of liberty by the mother before the birth was allowed to make the child free.

1. Cum aetem ingenuus alienus natus sit, non officit illi in servitute sua, et postea manusmissum esset; sequimur enim constitutum est, nullus aut officio manusmissum est, et colo habitus non officio manusmissum esse.

2. When a man has been born free, he does not cease to be *ingenuus*, because he has been in the position of a slave, and has subsequently been enfranchised; for it has been often settled that enfranchisement does not prejudice the rights of birth.

Ed. Note: Duhaime.org extract ends here.