Roman Law Code Influence on American Jurisprudence within the Sixth Amendment: *Illustrated by Supreme Court Cases*

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Spring 2015

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ABSTRACT

This thesis examines how Roman Law has affected American Jurisprudence by examining the Sixth Amendment through Supreme Court case law.

INTRODUCTION

The purpose of this thesis is to show the influence of Roman Law Code traced through history to its current resting point in American Jurisprudence. Jurisprudence is the philosophy of law, and in Charles Sherman's book, *Roman Law in the Modern World Volume II: Manual of Roman Law Illustrated by Anglo-American Law And The Modern Codes,* it states how Roman legal philosophy is the foundation of many legal traditions in Europe including France, Spain and Italy along with other parts of the world but it also runs deep in the United States of America's legal traditions. To show a specific correlation between Roman Law and American Jurisprudence, the thesis will focus solely on the Sixth Amendment of the United States Constitution. The Sixth Amendment deals primarily with criminal procedures:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense (U.S. Const. amend. VI).

The Sixth Amendment guarantees certain rights for criminal defendants. These rights include the right to a public trial (without unnecessary delay), the right to counsel, the right to an impartial jury (innocent until proven guilty), and the right to face your accusers (the confrontation clause) along with the nature of charges and evidence against you. The primary focus of this thesis will be on the concepts of Innocent until Proven Guilty, the Confrontation Clause, and the right to a Public Trial. Three United States Supreme Court Cases will be analyzed that discuss these concepts: *Coffin v. United States, Crawford v. Washington,* and *Eric Presley v. Georgia* in support of showcasing how Roman Law Code has directly influenced American Jurisprudence.

Roman Law still lives within American Jurisprudence in the modern world today. Though it can be argued that Roman Law is of little use in the current legal profession, this is a superficial belief (Sherman, 1993). Some believe that because the ancient Roman Law Code perished centuries ago that the concepts and philosophy of Roman Law itself are dead today. However, this is inaccurate. Roman jurisprudence is alive today and can be proven by tracing the influence it has had throughout history within different legal systems. From its influences in major government systems throughout Europe into our modern judicial system in the United States, its influence can be easily seen.

Structurally, this thesis begins with a method section. Within the methodology section, each step is explained that was taken in the research process that helped in the investigation of this thesis. This section discusses the types of sources used, how they were used and for what purpose they were used. The method section also describes the research process that was taken with tracing the history of Roman Jurisprudence into English Jurisprudence and finally at its resting spot in American Jurisprudence. It will show a narrowing focus from Roman Law Code influence on American Jurisprudence in general into a specific concentration within the Sixth Amendment and why that particular amendment was chosen.

The next section within the thesis, which follows the method section, is the history section. This section sets the historical beginnings of Roman Jurisprudence and its subsequent influence throughout Europe, particularly on English Jurisprudence. From English Jurisprudence, Roman Law is then traced into the heart of the American legal system, and will hit upon key points, aspects, and fundamental concepts that are essential to our foundation. This section is crucial as it sets the groundwork that is necessary to show the Roman Law influence on the Sixth Amendment that is discussed within the following section, the analysis.

The thesis will end with a case by cases analysis of the Roman Law influence within the Sixth Amendment of the United States Constitution illustrated by *Coffin v. United States, Crawford v.*

Washington, and *Eric Presley v. Georgia.* This area is the bulk of the thesis, which clearly shows how Roman Law Code has influenced the fundamental concepts of the right to a public trial, the right to an impartial jury, and the right to face your accusers within the Sixth Amendment of the United States Constitution.

METHOD

To begin my investigation, I started with a translated source of the Digest of Justinian. Within these four volumes, I distinguished statutes and laws that related to statutes and laws found under the United States system of government. I further distinguished links between the two, for example, in The Digest of Justinian: Book Two, the title is *"The Same Rule Which Anyone Maintains Against Another is To Be Applied to Him"* and can be related to our system as the Equal Protection Clause under the 14th amendment or Clemency Proceedings. Through this process I focused on different aspects of law that I believed to be related to the Roman Law Code. In the beginning, I found that this influence had a wide range, too wide to show an accurate and direct influence on American Jurisprudence, specifically the United States Constitution.

I did further general research using Lexis Nexis and Google Scholar to find publications that showed a correlation between the Roman Law Code and American Jurisprudence. I found that there were many correlations regarding criminal proceedings. Since the Sixth Amendment of the United States Constitution focuses on criminal proceedings, I broke down the amendment into its different aspects and searched for correlating Roman Law codes.

From this breakdown of the Sixth Amendment, I decided to focus on three specific parts that are important to American Jurisprudence: Innocent until Proven Guilty, the Confrontation Clause, and Right

to Public Trial. These three aspects were prevalent in the Roman Law Code on multiple occasions not only from my reading of *The Digest of Justinian,* but in other scholarly sources as well.

I utilized Lexis Nexis again to search for Supreme Court Cases whose issues regarded one of the three sections of the Sixth Amendment I chose to analyze. When finding cases I then searched case briefs regarding those cases; in particular I used oyez.org for reviewing the cases. From this research I chose to use *Coffin v. United States* to show the correlation of Innocent until Proven Guilty. I decided to analyze *Crawford v. Washington* to show the Confrontation Clause and *Eric Presley v. Georgia* to evaluate the right to Public Trial. All three of these cases are considered to have set the standards in these areas by legal scholars (law.cornell).

To help find sources to support my argument, I again used Lexis Nexis in addition to Google Scholar and JSTOR databases to find secondary sources that addressed each of these cases and issues within them.

I also used various outside sources for my historical section. This research ranged from online sources to printed books to online books and various articles. The purpose of this was to trace the various government systems that the Roman Law Code influenced and how the Code also came to influence American Jurisprudence.

HISTORY

Roman Jurisprudence

In order to trace how the Roman Law Code has influenced American Jurisprudence, it is necessary to examine what the Roman Law Code is and where it came from. Roman Law has come to

influence every western legal code on every continent and is the foundation for both British Common Law and American Jurisprudence.

The Justinian Code is a unique document is the basis of western civil law, as it is known today. Edward Gibbons' gives a brief history of the codification of Roman Law Code in his article, *Publication of the Justinian Code A.D. 529-534.* The history of its composition is essential in comprehending its development. To begin, this prodigious work is indebted to Justinian I (Flavius Anicius Justinianus, 450 A.D. to 527 A.D.), who is undoubtedly the most famous of the emperors of the Eastern Empire since the era of Constantine. Justinian was born as a Slavonian peasant (p. 83). His name, originally Uprawda, was later Latinized to Justinian after he became an officer in the Imperial Guard. He was then adopted, educated and trained by Justin I, his predecessor (p. 83). Under Justinian, the Byzantine Empire regained its majesty and power previously known to ancient Rome, but the true glory of his reign was the assimilation of the Code. As stated in Gibbon's *Publication of the Justinian Code*,

> One of the greatest historians says of his reign: "Its most instructive lesson has been drawn from the influence which its legislation has exercised on foreign nations. The unerring instinct of mankind has fixed on this period as one of the greatest eras in man's annals" (p. 86).

Justinian knew the importance of the compilation of all Roman Law Code texts and he has been admired for his work and determination to compile such an important document. The composition of the Code was a digest of the Roman Law literature in its entirety. Under the command of Justinian, the lawyer Tribonian, with his helpers, compiled and interpreted the muddled mass into a logical system. This system of jurisprudence became the essence of Roman Law as it is today and is looked upon with high regard by many scholars and judicial persons.

There were many revisions to the Code before it became its finished masterpiece. The first part was compiled in less than a year and published in April 529; this was known as the *Codex Constititionem*

(p. 85). The second part, the Digest, emerged in December of 533. Ensuring conformity, there were other revisions until it was then reissued in November of 534, when the *Institutiones* of Gaius were added (p. 85). Tribonian and his colleagues worked tirelessly until they were certain of its completeness. The compilation was then given to law schools across the Roman Empire as an elementary style textbook, which became the institutions' teaching foundation. Kolbert, author of *The Digest of Roman Law: Theft, Rapine, Damage and Insult,* stresses the importance that it must be noted that not every doctrine or institution of Roman Law actually matured during the reign of Justinian. The Roman Law Code matured during the Republic and more during the Early Empire and first two centuries of the Later Empire (p.7). Therefore, the law and its various revised manuscripts collected from different points in time were codified and referred to as Roman Law.

Roman Law was unique for its time as it encompassed not just legal rules but, as Sherman writes, resembles a close relationship between both law and ethics and it essentially rested upon moral principles:

> But the Roman Law did not confuse the percepts of morality with rules of law; Roman Jurisprudence clearly recognizes the fact that a rule of conduct is a law only because it is made so and enforced by some arm of the sovereign authority in a State (p. 10).

These morality principles are clearly displayed aspects of American Jurisprudence today. Just as equally important, Kolbert discusses how the Romans were the first to actually regard the legal system as a science by which they could look at and evaluate the world within its people and property, their intermingling relationships, through a purely judicial concept which is every bit as orderly and precise as the concepts used, by, say, mathematicians for their own particular observations. (p. 7) Kolbert also puts it well when he states:

> Much has been disputed about 'the ghost of the Roman Empire' that still lurks far beyond the shores of the Mediterranean. The heritage of Roman Law is not a ghost but a living reality. It is

> present in the court as well as in the market-place. It lives on not only in the institutions but even in the language of all civilized nations (p. 7).

Roman Law has been replaced by modern jurisprudence; this new juris did not derive out of thin air but rather Roman Law, which "had been transmitted, were placed in a statutory framework which provided a modern, systematic order" (Questions and Answers on Roman Law). Most importantly, Roman Law Code is a common foundation to which European jurisprudence is built upon. Gibbons writes,

> It forms the basis of the systems of law in all the civilized nations of the world... and even in these the principles of the civil law--as the Roman Law is called in contradistinction to the common and statute law of these nations (p. 83).

Roman Law Code's influence can be found within every modern civilized jurisprudence; some were more greatly influenced than others but a trace of Roman Law Code influence can always be found because of the fundamental concepts within the Roman Jurisprudence. The common foundation within European legal systems is important to this thesis because it is from the European nations that America created its own system of jurisprudence.

English Jurisprudence

It is clear that Roman Law Code influence in England was not as direct as it was to other countries on the continent, but it became the legal fabric on which the foundation was laid. To begin, the words *ius commune,* which are from the Code of Theodosius, can be directly translated as "Common Law". In Edward D. Re's article, *The Roman Contribution to the Common Law,* he states that Common Law is the basis of English Jurisprudence (p. 470-471). Common Law is based upon case law and precedent rather than codified laws. It is important to note that as a result of precedent, judges have had

an enormous role in shaping not only British Law but American Law as well, often citing Roman Law as their precedent. Roman Law is civil law, which is codified. But Common Law has been influenced by Canon Law, which is the body of laws that govern the Catholic Church and its members. This is derived from decrees and rules that have been created by the Popes and ecclesiastical councils. Donahue explains in his analysis of *Ius Commune, Canon Law, and Common Law in England,* that *Ius commune* is thought to be a combination of Canon and Roman Law that formed the basis of a common system of legal thought in Western Europe through the rediscovery of Justinian's Digest (p. 1746). There are many scholars whose works can be attributed to this rediscovery of the Roman Jurisprudence, but in England this can be accredited practically to Ranulf de Glanvill, Henry de Bracton and William Blackstone.

Ranulf de Glanvill who died in 1190was both an ecclesiastic and Chief Justiciar of England and was said to have contributed to the writings of the most ancient work on the Common Law of England, as posited in Edward D. Re's article. It has been suggested that Glanvill had the *Institutes,* and "His ideas of what a law-book should be had been derived from some one of the many small manuals of Romano-Canonical procedure that were becoming current" (p. 469). Glanvill took many of his ideals from Roman Jurisprudence and there have been correlations found in his writings that were also found in many Roman manuals. Edward D. Re points out that he was no partisan of Roman Law, as many Englishmen did not wish to associate themselves with a Catholic entity. Glanvill's books show Roman Law influence throughout their title and preface, which cite the *Institutes.* He continually draws upon Roman Law in his writings. He borrows the Canon Law rules to create the English Common Law, which was developed from the "procedure from the Roman actions" (p. 470). While Glanvill became one of the most influential legal writers in the English legal system he was not the only writer who had an impact on English Jurisprudence and was also influenced by Roman Jurisprudence.

Edward D. Re breaks down the history of English Common Law by writing about Henry de Bracton's(1210 to 1268) influence as an ecclesiastic and royal judge who gave the greatest momentum to the early development of English Common Law and who relied upon the Roman Law Code within his writings (p. 471). Bracton added clarity to the work of Glanvill and contributed to the development of the English legal system that has so greatly influenced American Jurisprudence. D. Re writes, "Bracton must hold a unique place of honor worthy of special treatment. The "broad cosmopolitan learning" and use of "foreign materials" *i.e.* the Roman Law, which made possible the very format, style and comprehensive treatment for which English law is in Bracton's debt" (p. 471-472). Bracton also added clarity to Glanvill's work in English Common Law and continued the use of Roman Jurisprudence as an influence to his works. There were many critics of Bracton though the importance of his work is irrefutable. One critic, Sir Henry Maine, with contempt and scorn wrote,

> That an English writer of the time of Henry III should have been able to put off on his countrymen as a compendium of pure English law a treatise of which the entire form and a third of the contents were directly borrowed from the Corpus Juris, and that he should have ventured on this experiment in a country where the systematic study of Roman Law was formally proscribed, will always be among the most hopeless enigmas in the history of jurisprudence (p. 472).

It is evident through his critics that Bracton's work had been influenced through the work of Justinian in his codification of Roman Law Code and while they perhaps did not agree with Bracton's work, it set a foundation of English Jurisprudence. The excellence of his works should be, and is, attributed to his knowledge and understanding of Roman layers of Law. Bracton used Roman terms, Roman maxims and Roman doctrines to construct the foundations of Common Law. He continually uses Roman illustrations and phrases (p. 473) in his works. Roman Jurisprudence influenced Bracton's work tremendously, and in turn, Bracton's work influenced future scholars who continued to refine English Jurisprudence.

William Blackstone (1723 to 1780) came almost 500 years after Henry de Bracton, but he used Bracton's and his contemporaries' works together to form a basis for understanding English Common Law and transforming it into his own model, which he titled *Commentaries.* In *Common Law and Civil Law Traditions,* it notes that Blackstone's *Commentaries* have been considered by some scholars to be "the most important legal treatise ever written in the English language," (p. 5). It was the first treatise on Common Law that was actually comprehensive and clear to its audience. Furthermore, Blackstone's *Commentaries* was influenced by previous scholars who used Roman Jurisprudence as their basis of writings. It was not only powerful in England, but it also provided much of the Common Law foundation within American Jurisprudence. There are many notations in the work of Thomas Jefferson that cites Blackstone's *Commentaries* along with the works of various judges such as Chief Justice John Marshall who defined much of American Jurisprudence and Constitutional Law we know today through Supreme Court cases from 1801-1835.

In Morris Cohen's journal article, *The Common Law in the American Legal System: The Challenge of Conceptual Research,* the first two definitions he uses to define English Common Law are:

1. The general or central law of any community, as distinguished from divergent local customs or other bodies of rules having a particular source, or applied by a particular court, or applicable to a particular group or area. Examples include the *ius commune* in Roman Law; the general law of the universal Church in Canon Law, as distinguished from provincial rules or customs, papal edicts, etc.; and, on the European continent, the law which was common to the whole of a state's jurisdiction, as distinguished from regional customs or variations.

2. The centralized system of law developed in the courts of the English kings by the royal justices from the 12th century on, as embodied in the Yearbooks, the later reports, and the older commentaries (p. 18).

The aspects of his definition have been mentioned above in tracing the influence of Roman Law Code to American Jurisprudence. The first definition mentions directly the Roman Law Code as essential in

Canon Law, which was in turn an influential aspect in the development of Common Law. The "older commentaries" in the second definition are referring to the Roman Jurisprudence. The founders of American Jurisprudence have been cited many times using English Jurisprudence, which inevitably was influenced by Roman civil law (law.berkeley). It can often be found in the opinions of the courts as it is common for judges to write upon the history of a legal concept and trace it to English Jurisprudence and even to Roman Law Code.

In Edward D. Re's *The Roman Contribution to Common Law*, he writes that Roman Law authorities "were habitually cited in Common Law courts, and relied upon by legal writers, not as illustrative and secondary testimonies as at present, but as primary and as practically conclusive" (p. 468). These citations of Roman Law Code are not only found in English courts but can also be found in the opinions of judges in American courts which will be discussed and cited later on in this thesis. D. Re goes on to write about law reports in English history during the reign of Edward II around the years 1307 to 1327 that specifically cite Roman Law authorities. Edward D. Re, when writing on the Magna Carta (1215), says that "...clearly its source and inspiration were not the English feudalistic institutions, but notions of the majesty and universality of the law as proclaimed by the Roman legal tradition" (p. 477). This shows that even the Magna Carta, an essential legal work of English Jurisprudence, has also shown traces of Roman Jurisprudence within its composition. Through these three essential writers and other contributors to English Common Law, it is evident that Roman Law directly influenced their thought process and writings.

American Jurisprudence

It can be stated without a doubt that English Jurisprudence had a direct impact on the founding of American Jurisprudence. Beginning in the 1600s, English Common Law was applied to the American

colonies. The University of California at Berkley's article *The Common Law and Civil Traditions* points out that, "the American legal system remains firmly within the Common Law tradition brought to the North American colonies from England." They also make note that "while Blackstone prevails as the principal source for pre-American precedent in the law, it is interesting to note that there is still room for the influence of Roman civil law in American legal tradition." Thomas Jefferson, a founding father not only used the works of Blackstone, but he also owned several editions of Justinian's *Institutes*, "and praised the first American translated edition from 1812, with its notes and annotations on the parallels with English law, for its usefulness to American lawyers" (p. 4). As the authors of *Common Law and Civil Law Traditions* point out, "The founding fathers and their contemporaries educated in the law knew not only the work of English jurists such as Blackstone, but also the work of the great civil law jurists and theorists" (p. 4). The constructors of American Jurisprudence used the work of their predecessors in England to compose essential legal documents in the American juris. The University of California at Berkley clearly state that:

> The founding fathers and their contemporaries educated in the law knew not only the work of English jurists such as Blackstone, but also the work of the great civil law jurists and theorists. Thomas Jefferson, for example, owned several editions of Justinian's *Institutes*, and praised the first American translated edition from 1812, with its notes and annotations on the parallels with English law, for its usefulness to American lawyers (law.berkeley.edu).

The founding fathers were not only well versed within the Roman Law Code but English Common Law as well. As Roman Law Code helped construct English Common Law, English Common Law helped to construct American Jurisprudence. The influence of Roman Law Code on English Common Law means there was an influence of Roman Law Code in the construction of American Jurisprudence. It was not just the founding fathers who utilized the indispensable works of English Common Law and Roman Law Code, but subsequent Justices on the United States Supreme Court. In an analysis of James Kent: *Commentaries on American Law; Conflict of Laws; Equity Jurisprudence*, he states how the work of

Chief Justice Marshall and Justice Kent gave America law coherence, stability and strength through their court decisions. They were both essential in the building of American Jurisprudence. When they began their work there was practically nothing written on America law within the courts. These two men worked in laying the foundations of American law through their court decisions by seizing upon the principles of Common Law and applying them to American conditions. They are cited using *Blackstone's* Commentaries and Roman Law Code itself (law.berkeley). They also each wrote many books on Jurisprudence and its principles. They made English Common Law compatible with American principles and therefore Roman Law Code as well. They laid the legal groundwork for future Justices to use (bartleby.com). Even in American Jurisprudence today, in court cases, justices still seek the foundation of Roman Law Code for guidance when deciding their cases. These citations are found within various opinions, few of which are mentioned in the subsequent section.

ANALYSIS

CASE I

Innocent Until Proven Guilty

Also known as presumption of innocence, it is derived from the Sixth Amendment. The prosecution must prove, beyond a reasonable doubt, that each essential element of the crime is charged (law.cornell).

According to *Salem Press Encyclopedia*, the presumption of innocence describes the right of a defendant to offer no proof of innocence in a criminal case; it is not the duty of defendant to prove their innocence. Rather, it describes that the duty of the prosecution must offer evidence that the defendant has been allegedly charged of. The prosecution must also convince the jury that the defendant is guilty

beyond a reasonable doubt. The jury is to be instructed to presume the innocence of the defendant until proven guilty. The notion of innocent until guilty assists the jury in understanding the limited circumstances under which it should vote to convict the defendant. Along the lines of presumption of innocence, *Salem Press Encyclopedia* states that,

> It also cautions the jury to not convict based on the fact the defendant was arrested and is being tried or on mere suspicion that the defendant committed the crime charged. In this sense the presumption of innocence aids the jury in understanding the requirement that the prosecution prove its case beyond a reasonable doubt, a concept which, can be difficult for a jury to understand (Salem Press Encyclopedia).

For the purpose of this section, beyond a reasonable doubt will not hold the focus but rather solely the presumption of innocence.

Coffin v. United States

Coffin v. U.S., 156 U.S. 432.

Coffin v. United States was decided March 4, 1895, in error to the District Court of the United States for the District of Indiana. The defendants F.A. Coffin and Percival B. Coffin had been charged with aiding and abetting the former President of the Indianapolis National Bank, Theodore O. Haughey in misdemeanor bank fraud between January 1, 1881 and July 26, 1893. This case included a 50-count indictment. The lower court judge had refused to instruct the jury that the law presumes that persons charged with a crime are to be considered innocent until they are proven by proficient evidence that they are guilty. The judge in the lower court did instruct the jury that before they could find any one of the defendants guilty, they must be satisfied of his guilt as charged beyond a reasonable doubt. Coffin appealed to the Supreme Court based on the lower court's refusal to instruct the jury of their right to be innocent until proven guilty. The Supreme Court allowed this case to determine whether reasonable doubt was essentially the same concept as presumption of innocence (p. 403).

Justice Edward Douglass White wrote the majority opinion for this case. In the opinion, the Supreme Court of the United States decided to go into a detailed and complete legal history of the presumption of innocence. In the holding, the court stated that "The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law" (p. 403). Justice White traces the presumption of innocence through Roman Law and into English Common Law. He cites this history on multiple occasions throughout the opinion. In one section of the opinion he cites directly the Roman Law Code, which acts as a foundation for the concept of presumption of innocence,

> 'Let all accusers understand that they are not to prefer charges unless they can be proven by proper witnesses or by conclusive documents, or by circumstantial evidence which amounts to indubitable proof and is clearer than day.'
>
> L. 4, tit. 20, 1. 25.

> 'The noble (divus) Trajan wrote to Julis Frontonus that no man should be condemned on a criminal charge in his absence, because it was better to let the crime of a guilty person go unpunished than to condemn the innocent.'
>
> Dig. L. 48, tit. 19, 1, 5.

> 'In all cases of doubt, the most merciful constructions of facts should be preferred.'
>
> Dig. L. 50, tit. 17, 1. 56.

> 'In criminal cases the milder construction shall always be preserved.'
>
> Dig L. 50, tit. 17, 1, 155 § 2

> 'In cases of doubt it is no less just than it is safe to adopt the milder construction.'
>
> Dig. L. 50, tit. 17, 1. 192 § 1

(p. 12).

Justice White uses these five laws from the Roman Law Code and Justinian's Digest to show the historical importance and foundation in the concept of presumption of innocence. Justice White continually showed his extensive legal history knowledge by not only citing texts from the Roman Law Code and the Digest but also by citing a story from the Roman historian Ammianus Marcellinus. He ends the story with a quote from the Decretum Gratiani de Presumptionibus, which says, "The rule found in the Roman Law was, along with many other fundamental and human maxima of that system, preserved for mankind by the Canon Law" (p. 455). He uses this quote to flow straight into the Roman Law influence on English law and how the presumption of innocence can also be found in English Common Law. Through this he cites Forescue and Lord Hale. His extensive knowledge does not end there, but he goes on to cite Blackstone's words, "the law holds that it is better that ten guilty persons escape than that one innocent suffer" (p. 456). The holding in the cases stated that it was the duty of the judge within all jurisdictions, that when requested and in some cases when not requested, to explain to the jury his charge. And to state that every man is presumed to be innocent until that man's guilt is proven beyond a reasonable doubt.

This case is an essential cause to examine because it recognized the presumption of innocence of persons accused of a crime or crimes. It is clear through Justice White's opinion of the court that the presumption of innocence can quite directly be traced back to Roman Law Code. Roman Law Code has been proven to be the foundation of a defendant having the right to be considered innocent until proven guilty. *Coffin v. United States* set a precedent of presumption of innocence. It stated the importance of the separation between beyond a reasonable doubt and presumption of innocence. Though one entity under the Sixth Amendment, it is two separate parts. The Romans recognized this distinction, which Justice White used in his citations throughout his opinion. It is evident that the Roman Law Code set a

foundation of innocent until proven guilty, which influenced the Sixth Amendment of the United States Constitution.

CASE II

Confrontation Clause

In all criminal prosecutions, the accused shall enjoy the right to be confronted with the witnesses against him. (U.S. Const. amend. VI).

The Confrontation Clause guarantees all criminal defendants the right to face the prosecution's witnesses in the case against them and cross-examine the witnesses' testimony. This assurance applies to statements made in court and to statements made outside of court that are taken and used as evidence during trial.

Crawford v. Washington

Crawford v. Washington, 541 U.S. 36 (2004).

Crawford v. Washington was argued on November 10, 2003 and was decided on March 8, 2004 in 124 S. Ct. Michael D. Crawford, the defendant, was convicted by jury trial of first-degree assault while armed with a deadly weapon against Richard A. Strophy, in the Washington Superior Court. The defendant then appealed and the Washington Court of Appeals reversed. On review, the Washington Supreme Court 147 Wash2d. 424, 54 P 3d. 656, reversed and reinstated the defendant's previous conviction. Certiorari to the U.S. Supreme Court was granted.

The Petitioner's (Crawford) wife (Sylvia) gave her statement on a tape recording the night of the incident at the precinct. In her statement, she gave a description of the stabbing involving her husband with her alleged potential rapist. At trial, Crawford claimed self-defense. The tape was then played at court on behalf of the prosecution, but Sylvia did not testify due to marital privilege. Marital privilege

generally bars a spouse from testifying without the other spouse's consent. In Washington, this privilege does not extend to a spouse's out-of-court statements admissible under a hearsay exception. Her statement cast doubt on her husband's claim of self-defense. The prosecution played the tape for the jury and then relied on it in the closing argument stating that it was "damning evidence" which refuted the [petitioner's] claim of self-defense. The jury then convicted the petitioner of assault. The Petitioner argued that the tape in admission of evidence would violate his Sixth Amendment right to be "confronted with the witnesses against him." The issue in this case was whether allowing the taped confession during trial complied with the Sixth Amendment's guarantee that, "[i]n all criminal prosecutions, the accused shall enjoy the right... to be confronted with the witnesses against him."

Scholars concur that this case is essential to American Jurisprudence due to its defining and narrowing of the Confrontation Clause's application. Many state that *Crawford* narrowed the application of the Confrontation Clause and, according to Counseller and Rickett, gives it "teeth by requiring confrontation, regardless of the reliability of the heresy statement" (p. 21). The holding accepts that the purpose of the Confrontation Clause is to guarantee reliability.

The Confrontation Clause provides the accused the right to confront and cross-examine the witnesses against him. It applies to those who bear testimony against him, which is typically a vital declaration or affirmation made for the purpose of establishing or providing some fact in the case. This does not only apply to in-court testimony but also to any and all out-of-court statements that are introduced at trial. This is regardless of admissibility of statements under the law of evidence. The law of evidence includes rules and legal principles that govern the proof of facts during a legal proceeding. The rules within the law of evidence determine what evidence must or must not be considered by the trier of fact in reaching its decision and, sometimes, the weight may be given to that evidence (*legal-dictionary.thefreedictionary.com*). Out-of-court statements that qualify as testimonials are not admissible

under the Confrontation clause unless the witness is unavailable and the defendant had a prior opportunity to cross-examine the witness. This also stands for testimonies taken under police interrogations.

Justice Scalia delivered the opinion of the court, which was a 9-0 unanimous decision in favor of the Petitioner. The opinion states that the historical background of the clause must be examined first. The Framers of the Constitution would not have allowed the admission of testimony of a witness who did not appear in court during trial proceedings unless that witness was not available to testify and the defendant already had the opportunity to use his right of cross-examination prior to the admission of the testimony into evidence against the defendant. The holding states that the clause was of Common Law when it was founded. Scalia confirms that the right a person has to confront his accusers "is a concept that dates back Roman times." (p. 43). While originally English Common Law did not adopt all Roman Law Code practices, Scalia mentions that, "Nonetheless, England at times adopted elements of the civil-law practice." (p. 43). Scalia also states that essentially it is a common-law tradition that gives live testimony subject to cross-examination and confrontational testing. Throughout his opinion, Scalia references historical context to prove the necessity of the Confrontation Clause.

In conclusion, the Court decided in favor of Crawford and thereby ruled that the Sixth Amendment's Confrontation Clause does give a defendant the right to confront and cross-examine a witness for their testimony. The testimony includes any and all information gathered by police departments. The Court utilized the Framers by stating that their intention of the Confrontation Clause was to exclusively, therefore prohibit out-of-court testimony to be used as evidence against defendants. The Court then overruled Roberts, another case dealing with the right to confront an accuser. Chief Justice Rehnquist, joined by Justice Sandra Day O'Connor, also concurred with Justice Scalia, but opposed the overruling of Roberts.

The right to face your accuser, also known as the Confrontation Clause, was one of three principles of the Roman Code Festus used in Paul's, Jesus' disciple, trial. It protects two basic rights of the defendant: the right of refutation and cross-examination of the witness, and the prohibition of hearsay testimony. In the New Testament of the Bible in the book of Acts, chapter 25 verse 16, it states, "I told them that it is not the Roman custom to hand over anyone before they have faced their accusers and have had an opportunity to defend themselves against the charges" (biblehub.com). Magee explains in his evaluation of the *New Confrontation Clause,* that Porcius Festus had also explained to "King Agrippa that 'it was not the custom of the Romans to give up anyone before the accused met the accusers face-to-face and had the opportunity to make his defense concerning the charge against him'" (p 1-2). This statement was later codified in the Roman Law Code that required the prosecution's witnesses to testify in the court before the one who was accused (p. 2). In Watson's *Digest of Justinian Vol. 4,* a translated section of the code states,

> For if the defendant in a public proceeding assert to his accuser that he has been previously charged with the same offense by someone else and been acquitted, it is provided by the lex Julia on public prosecutions that the present proceedings cannot go on until the collusion of the previous accuser has been established and a declaration thereof made. And so the declaration of such collusion is held to be in public proceedings.

Clearly, the foundation of the Confrontation Clause can be attributed to the Roman Law Code. The right to face one's accuser can be traced through history into different systematic law codes that influenced American Jurisprudence and the formation of the Sixth Amendment by the Framers of the Constitution.

CASE III

Right to Public Trial

The Sixth Amendment guarantees the rights of criminal defendants, including the right to a public trial without unnecessary delay (U.S. Const. amend. VI). In all criminal prosecutions, the accused has the right to a speedy and public trial by an impartial jury.

Eric Presley v. Georgia

Presley v. Georgia, 558 U.S. 209 (2010).

Eric Presley v. Georgia was decided January 19, 2010. Presley was convicted of cocaine trafficking by the Georgia Supreme Court. Before the prospective jurors entered into the courtroom to begin the voir dire process (questioning and selection of potential jurors), the trial judge noticed a single courtroom observer and instructed the observer that he was required to leave the court room during the process. The judge had been made aware that the observer was the uncle of the defendant. The defendant's counsel objected to his dismissal and the exclusion of the public, but the court required the observer to leave the courtroom claiming there was not enough room for the public to sit in the audience with the potential jurors. Once the defendant was convicted he moved for a new trial on the grounds that the voir dire process was closed from the public in violation of his right to a public trial. Presley presented evidence that stated 14 jurors could have fit in the jury box of the courtroom and that the remaining 28 potential jurors could have fit solely on the other side of the courtroom. With this being said, there was more than an adequate amount of room possible for the public to view the voir dire process. The Judge in the case stated that it was at her discretion whether or not family members of Presley were to be permitted into the voir dire process with the idea that there was a possibility that Presley's family members in the courtroom may intermingle with the jurors and sit directly behind them where they might overhear some

unintended comment or conversation regarding the defendant. The Court of Appeals of Georgia agreed stating, "[t]here was no abuse of discretion here, when the trial court explained the need to exclude spectators at the voir dire stage of the proceedings and when members of the public were invited to return." (p. 211). After the ruling, Presley filed petition for writ of certiorari to the United States Supreme Court stating his Sixth Amendment right to a public trial was violated when the trial court excluded the public from the voir dire of potential jurors.

In a 7-2 decision in favor of Presley, the Court held that the public has the right to be present even if that right is not asserted. The voir dire is part of the trial and the public, even if they do not assert the right, have the right view the trial. The courts are required to consider alternatives to closure to the public of the voir dire (p. 214). In a 2010 New York Times article entitled *Supreme Court Rules on Trial Conduct in Georgia,* "The court also resolved whether a defendant seeking to open a courtroom must present alternatives to the trial judge. The Supreme Court said no. Whether trial judges are given a menu of options or not, the majority opinion said, they 'are obligated to take every reasonable measure to accommodate public attendance at criminal trials'" (NYtimes.com).

It is important to mention the dissent, written by Justice Thomas in which Justice Scalia joins by expressed their discontent in the lack of definite establishment that, "the trial court must then consider reasonable alternatives to closing a proceeding… nor does it expressly address whether the trial court must suggest such alternatives in the absence of a poffer" (p. 727). This dissent is more about what should constitute the beginning of a trial and is not specifically about the issue of the right to a public trial.

The right to public trial is guaranteed through the Sixth Amendment and is a liberty that can be traced back to English Jurisprudence and English Common Law in addition to Roman Law Code. In Alan Watson's translation of the *Digest of Justinian,* in book 48 it states, "Criminal Proceedings, book 1: Not all trials in which an offense is concerned are public criminal trials, but only those which arise from the

statutes on criminal proceedings..."(p. 309). Clearly, public trials have made their mark in history tracing back to the Romans. Susan Herman writes in her book *The Right to a Speedy and Public Trial: A Reference Guide to the United States* "...public trial seems to have been a feature of Roman Law..." (p. 3). It is evident that the basis of public trials in criminal trials comes from the Romans by reading the Digest written and published between 534 and 536 ad.

CONCLUSION

The purpose of this investigation was to indicate the Roman Law Code's influence on a portion ofAmerican Jurisprudence and to illustrate this connection through United States Supreme Court Cases that dealt with criminal proceedings and were decided by rights delineated in the Sixth Amendment. This was a completely objective investigation and was based solely upon facts rather than personal opinions. The thesis itself began with a brief, but detailed history that traced the Roman Jurisprudence into English Common Law that eventually influenced American Jurisprudence. The history review hit upon crucial elements, aspects and fundamental concepts that are essential to the foundation of American Jurisprudence and were necessary to set a background for the argument of the thesis. There was then a case-by-case analysis, which showed the Roman Law Code influence on American legal proceedings in this example.

Additionally, there was a discussion based upon how the Sixth Amendment guarantees rights of criminal defendants. Specifically, within the Sixth Amendment, the right to a public trial (without unnecessary delay), the right to counsel, the right to an impartial jury (innocent until proven guilty), and the right to face your accusers (the confrontation clause) along with the nature of charges and evidence against the accused were discussed. The primary focuses were on three concepts: Innocent until Proven Guilty, the Confrontation Clause, and the right to a Public Trial. Three United States Supreme Court

Cases were then analyzed that discussed and ruled upon these three distinct concepts: *Coffin v. United States,* in regards to innocent until proven guilty, *Crawford v. Washington* in regards to the Confrontation Clause, *and Eric Presley v. Georgia* in discussion of the right to a public trial, all of which showed support in displaying how Roman Law Code has directly influenced the holdings of these cases and influenced American Jurisprudence in modern society today.

In conclusion, this investigation reveals that while some believe that the Roman Juris is dead and long forgotten, it is in fact still alive today. It has helped shaped American Law and will continue to do so because the Roman Law Code was based on foundational human principles of democracy, which do not deteriorate over time.

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