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God, Justice and Harm in Justinian's *Iuris Praecepta*

> Justice is the steady and enduring will to render unto each his right.
> The precepts of right are: to live honorably, not to harm another, to render to each his own. Jurisprudence is a knowledge of God's and men's affairs, the understanding of justice and injustice. Digest 1.1.10[1]

> Does it not follow from this [dependence of jurisprudence on knowledge of God] that whoever wants to be a legal scholar or attorney should read theology? I answer: No, all can be found in the body of law. Accursius, Gloss "iurispruentia" ad D 1.1.10[2]

For three reasons, Justinian's precepts of right are a useful place for inquiry into the relation between justice and harm – an inquiry which if pursued in the traditional manner leads us to God. The "precepts" (which is the term used herein to refer to the precepts in connection with the whole complex of ideas quoted above, including the definition of justice and jurisprudence) are seminal, illuminating and insufficiently considered. First, the precepts are historically seminal for modern law and jurisprudence. They were presented as basic introductory principles in both Justinian's Institutes and Digest, which are the two parts of Justinian's sixth-century Corpus Iuris Civilis codifying Roman private law. The Digest collected and organized the near millennium of Roman private-law jurisprudence before its composition, and the Institutes introduced this jurisprudence for law students as modified by subsequent imperial legislation. That subsequent legislation was itself collected and organized in Justinian's Code, which was brought up to date by the Novels; these works comprise the Corpus Iuris Civilis.

Because Roman jurisprudence was so important to all later Western law, the precepts as a fundamental part of it are seminal to modern jurisprudence both as it developed among jurists of the civil- and common-law systems and to Western philosophers concerned with understanding law and justice as they experienced it. During the formative periods of European private-law jurisprudence (from the eleventh century among the Glossators and then the Commentators and later the Humanists through to the seventeenth-century), Justinian's precepts were the subject of centuries of commentary that laid the groundwork for the self-understanding of modern civil-law jurisprudence and the proper relation between harm and justice. The precepts were also well regarded by foundational common-law jurists like Bracton, Coke and Blackstone (all of whom prominently cite the precepts). Philosophers, too, concerned with universal questions like Grotius, Pufendorf, Leibniz, Vico and Kant, considered the

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[1] Iustitia est constans et perpetua voluntas ius suum cuique tribuendi.
Iuris praecepta sunt haec: honeste vivere, alterum non laedere, suum cuique tribuere.
Iuris prudentia est divinarum atque hmanarum rerum notitia, iusti atque iniusti scientia. [Ulpianus, 1 reg] D 1.1.10

[2] "Sed sumquid secundum hoc oportet quod quicumque vult iurisprudens el iurisconsultus esse, debeat theologiam legere? Respondeo, non, nam omina in corpore iurus inventiuntur."

precepts, treating them with great respect not only as influential principles of law but because of their origins in Plato, Cicero and in a radically different form from Epicurus.

We find all these concepts together first in Plato in the Republic, affirmed but limiting and shaping each other. First, Plato introduces the idea that justice is to give each what is owed. Republic 331 e. Later, he explores the idea that a just man might owe harm to his friend's enemies and denies this by affirming that justice also prohibits harm: "Εἰ ἄρα τὰ ὀφειλόμενα ἑκάστῳ ἀποδιδόναι φησίν τις δίκαιον εἶναι," [So if anyone claims that it is just to render to each what is owed] if that means harming even an enemy this must be wrong because ("οὐδαμοῦ γὰρ δίκαιον οὐδένα ἡμῖν ἐφάνη ὂν βλάπτειν."["it's become apparent to us that it is in no way just to harm anyone."] 335 e. At the end of the first book, 353 e, he concludes that the just man will live well and the unjust badly:" Ἡ μὲν ἄρα δικαία ψυχὴ καὶ ὁ δίκαιος ἀνὴρ εὖ βιώσεται, κακῶς δὲ ὁ ἄδικος." ["So the just soul and the just man will live well, and the unjust man badly."] This is the same basic vocabulary of terms, with some modification in favor of Stoic terminology, in which the Greek Paraphrase of the precepts is written.[3] By contrast, in Diogenes Laertius account of Epicurus, we find justice reduced to the precept not to harm and with no relation to intrinsic goods of life: "There never was an absolute justice, but only an agreement made in reciprocal intercourse in whatever localities now and again from time to time, providing against the infliction or suffering of harm. Injustice is not in itself an evil, but only in its consequence, viz. the terror which is excited by apprehension that those appointed to punish such offences will discover the injustice. Taken generally, justice is the same for all, to wit, something found expedient in mutual intercourse." Lives of Eminent Philosophers. 10:33-36

We can find the Latin terms of the precepts almost directly at various places in Cicero. For example, with respect to the precept to live honorably, De finibus 3.8, "ex quo intellegitur idem illud, solum bonum esse, quod honestum sit, idque esse beate vivere: **honeste**, id est cum virtute, **vivere**" [Here then is another proof of the same position, that Moral Worth alone is good, and that to live honourably, that is virtuously, is to live happily.] Again, De Finibus bonorum et malorum, 2.34-5. The same with respect to harm: Cicero, De Officiis "fundamenta iustititae, primum ut ne **cui noceatur**" 1.31 […the fundamental principles of justice: first, that no harm be done to anyone…]; "**violare alterum** naturae lege prohibemur" 3.27. […to harm another is prohibited by the law of nature…]. And giving to each his own, Cicero, De re publica, 3.24 "iustitia autem **praecipit … suum cuique reddere** " [… justice commands that we give each what is his…]; De nature deorum, 3.38 "Nam iustitia quae **suum cuique distribuit** …" [justice assigns to each what is his…] And, we find the precepts operating on one another as in Plato: "Videndum est enim, primum ne obsit benignitas et iis ipsis … tum ut pro dignitate **cuique tribuatur**; id enim est iustitiae fundamentum, ad quam haec referenda sunt omnia." [we must, in the first place, see to it that our act of kindness shall not prove an injury either to the object of our beneficence or to others; … then that it shall be proportioned to the worthiness of the recipient; for this is the foundation of justice; and by which all these [acts of kindness] must be measured.] De Officiis, 1.42.

[3] "τα δε του δικαιω παραγγελματα ταυτα τρια: καλως βιωναι, ετερον μη βλαπτειν, **και** το οικειον δικαιον εκαστω νεμειν."

Even after the partial breaks in this *ius commune* tradition caused by jurists of the rationalist natural-law and historicist schools of the eighteenth and nineteenth centuries, as well as by the political revolutions of these periods, the precepts were considered, at least as major contenders, for the real rational structure underlying the kaleidoscopic rules of private law, e.g, as in Leibniz and Kant.[4] Indeed, the efforts of the civilian jurists to explain how each of these many rules each referred to one or all of the precepts is plausibly considered the start of the effort to elaborate a rational system for laws. Additionally, given the prominence of other threefold divisions of law in Roman jurisprudence[5], the question immediately arose how to relate these three precepts of right with the other divisions laid down by Justinian:

> (1) that private law is "tripartite" according to its derivation from the "precepts" of ius naturale, ius gentium, ius civile;[6] (Is natural law concerned with honorable life? The basic law of all peoples not to harm one another? While civil law alone is concerned with giving positively to all men by enforcement what is theirs?)
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> (2) that all law is about persons, things, or actions;[7] (is honorable living the measure of personal rights? Does not be harmed measure the right in things including one's own corporal good, and each being given his own the rights to legal action?)
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> (3) that public law comprises rights pertaining to religion ("sacred" matters or things), priests and magistrates. [8] (is honorable life the basic duty of religion, while respect for priestly offices is the public manifestation of not harming and obeying magistrates giving to each his due?)

Outside of Justinian, in classical literature and the Scriptures, the jurists could also find a number of three-fold divisions of law. Cicero taught that the offices of civil life are three: (1) to be a good man, (2) a

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[4] Leibniz, Codex juris gentium diplomaticum, preface, discussed below; Kant, Science of Right, Introduction, Division of Rights "In this division we may very conveniently follow Ulpian, if his three formulae are taken in a general sense, which may not have been quite clearly in his mind, but which they are capable of being developed into or of receiving." Much earlier, Aquinas gave an entire article to an exegesis of Justinian's definition of justice. ST II-2, 58, 1.

[5]And three-fold divisions of ethics: Substantial consideration was also given to how the precepts directly reflected the three Stoic cardinal virtues of Fortitude (personal virtues allowing us to live honorably amidst difficulties), Temperance (virtues toward things), and Justice (virtues avoiding harm to and legal actions from others). This aligned the precepts doubly with the virtues and the division of private law into persons, things and actions. See, e.g., Christian Thomasius, Notae Ad Institutiones Justinianeus., p. 6-7 (Halle Magd. 1712). Thomasius analyzed them so because he rejected Justinian's definition of justice; he thought the wrong of "not giving to each his due" was a form of harming him; harm, he considered, was more fundamental. By contrast, earlier jurists in line with Aquinas considered that Justice was productive of the three other Aristotelian cardinal virtues (prudence, temperance and fortitude) but likewise considered how to assign the precepts of right to those virtues.

[6] Privatum ius tripertitum est: collectum etenim est ex naturalibus praeceptis aut gentium aut civilibus. D 1.1.2

[7] Omne autem ius, quo utimur, vel ad persons pertinet vel ad res vel ad actiones. I 1.2.12

[8] Publicum ius in sacris, in sacerdotibus, in magistratibus constitit. D. 1.1.2

good citizen and (3) a good magistrate, and that in forensic rhetoric, it is necessary to bear in mind and express the duties of three persons: (1) oneself, (2) one's adversary and (3) one's judge. Likewise, as Ovid and Varro record, Roman law considered the praetor's jurisdiction to be comprehended by three legal acts, captured in their required prefatory formulary: "do, dico, addico."[9] [i.e. (1) To give a right to an action, i.e. assign a cause of action to a judge for trial, or (2) to declare negatively the law or the standard of right, i.e. not to grant an action but immediately to declare an interdict of prohibition, or (3) positively, to adjudge or bestow the rightful goods owed, i.e. by giving an interdict or decretal of command.] In the early modern period, beginning with Pufendorf and then Grotius, the precepts would be considered in terms of their relation to Aristotelian distinctions between retributive, commutative and distributive justice.

For Christian jurists, likewise, questions immediately arose as to how these related to well-known three-fold divisions of duty and law in Scripture. E.g., Deuteronomy 6:5 "Love the LORD your God with [1] all your heart and [2] with all your soul and [3] with all your strength."; Micah 6:8 "He has showed you, O man, what is good; and what does the LORD require of you but [1] to do justice, and [2] to love kindness, and [3] to walk humbly with your God?"; Deuteronomy 17:8 "If any case arises requiring decision between [1] one kind of homicide and another, [2] one kind of legal right and another, or [3] one kind of assault [stroke/plague/ritual impurity] and another…." Likewise, Christians followed a traditional division of the Mosaic law into (1) ceremonial, (2) judicial and (3) moral precepts. And, from Jerome's Prologue to the Book of Kings, the division of the Old Testament into three divisions, (1) the Law, (2) the Prophets and (3) the Hagiographa, paradigmatically represented by the Psalms per Luke 24:44.[10] Much consideration was also given to how to relate Justinian's precepts with Jesus' precepts to love God, to love your neighbor as yourself, and to do to others as you would have them do unto you. Sometimes, as by Hotman who was followed in this by Kant, the three precepts were derived from the doing unto others by considering how others would you have act to yourself, to others and to society.[11]

The commonness and obviousness of the idea to connect these three-fold patterns of law with more fundamental structures of theology, metaphysics, and other arts like medicine and rhetoric[12] is well illustrated by the fourth-century Roman jurist-poet Ausonius' Riddle of Three, who after a long

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[9] Varro, Latin Lingua 6.30; Ovid, Fasti 1.47

[10] In his inaugural lecture on the Commendation and Division of Sacred Scripture, Aquinas explains that the division derives from the three different types of precepts in each part: "Thus it is that three kinds of command are distinguished, that of the king, that of the herald and that of the father. On this basis the Old Testament is subdivided into three parts, according to Jerome in his prologue to the Book of Kings."

[11] F. Hotman, Inst. De Ius., Sec. 3.

[12] Rhetoric especially offered points of comparison with its division into encomiastic (concerned with expressing honor), deliberative (concerned with showing the harmfulness or benefit of a proposal) and forensic (concerned with establishing what was due concerning a past action.) Equally, there was the classical division of stasis into "An sit? Quid sit? Quale sit?"

listing of the three-foldness of things seems to resolve the riddle of the triune nature of reality with a final reference to the Trinity:

> … Everything follows that law of three, or three threes: The shaping of a man, his full gestation period, and his life-span's final end at nine times nine years … Three Graces, Three Fates, three vocal registers, three elements. … Three philosophical branches … Physics knows three prime causes: God, matter, form. Three-formed is all formation: the former, what is formed, and the formed itself. The system of triangles ranges through three types… Three parts make the perfect number, so that with a third three added, it divides into three threes…
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> Three fields of law are decreed by thrice four Tables [i.e. the primitive law of the Republic, the Twelve Tables]: Sacred, private, and public which is universal. Any legal interdict has one of three formulae: the "whence by force", the "wherever he were", and the "goods in question."[13] Three ways is freedom given [purchase, manumission, testament], three ways reduced. [the rights of legal personhood, which could be reduced by punishment in Roman law, consisted of three rights: (1) personal liberty, (2) political/civic rights, and (3) family rights.]
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> There are three modes of speech: sublime, restrained, Fine-woven. Medicine too has a threefold discipline, called Theoretic, Methodical and Empirical. Healthcare is also threefold: maintain, prevent, cure. Oratory has three styles: that of Rhodes, dominated by its Colossus; that which Attic Athens delights in; and that dragged from theatre to stern courtroom by Asiatic prose, aping choral song in legal hearings.
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> Music too, measure's parent, is triple: sent from the lips, hidden in the stars, heard onstage. Mars' own Rome is threefold: knights, plebs, senate. From "tris" are "tribes", and "tribunes" of the Sacred Hill. Three squadrons of knights, three names for the nobility… Three is the greatest number: God is three in one. For this poem to hit a meaningful number too, let it have thrice triple tenfold, or ten times ninefold.[14]

The intent of Ausonius poem, which is actually very playful and light hearted, is less important than its evidence of a common way of seeing parallels between fundamental metaphysical principles, the arts and jurisprudence.

Second, genealogy aside and considered as a formula, Justinian's precepts frame the relation between justice and harm in a way that makes apparent and heuristically useful important questions

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[13] "Unde vi, De utrubi, Quorum bonorum" were interdicts allowing for recovering, retaining, and acquiring possession of property respectively. See Digest 43.16, 32, 2. By honorable life, one acquires; against harm one retains, and one recovers by the judge giving to each what is his.

[14] Translation adapted from Dunatan Lowe, Ausonius' Griphus ternarii numeri.

concerning the nature of justice.[15] Initially, the precepts assert a constituting relation between justice and, inter alia, not harming: justice is an attitude toward right, and right directs, along with the other two precepts, non-harm. Thus, justice is -- in some kind, aspect or part -- constituted by a will not to harm. (Some jurists, like Thomasius and Hotman, were led to identify justice and not-harming based on the consideration that dishonorable life and "not giving to another his due" harmed others.) Next, the way this claim is expressed provokes a searching inquiry, as the civilian jurists noted and pondered at length, because the nature of this relation is left open by the grammar of the precepts, particularly the lack of conjunctions (but also the ambiguous reference of the pronouns).

To treat the missing conjunctions, if "and" is implied, we would read "the precepts of right are: to live honorably and not to harm another and to give to each his own." In willing right, on this reading, the just person simultaneously seeks three distinct things all together, as one who wants to taste ice cream anticipates three distinguishable aspects of the experience (sweetness, creaminess, and coolness) but in unified combination. A will to give each his own, for example, would be not just unless it is also a will to not to harm and to live honorably. (And, just to glance at the issues arising from the ambiguous reference of the pronouns, who is the person other than God, the jurists wondered, who has a constant and perpetual will? And, whose right is it that justice wills to give to each? The right of each himself or justice's right? Or, as Hotman considered, are the precepts addressed to all or just to the magistrate administering justice?)

Alternatively, if "or" is implied, there are two further readings, depending on whether the "or" is taken subjectively in the way of related synonyms/metonyms ("vel" which we might translate with a plain "or" but which signifies more definitely, in legal Latin, a free choice from its root, velle, to want) or objectively as trichotomous necessarily separate alternatives ("aut … aut … aut" where the sense follows from the root of "alter [other]" so that it signifies "either … or … or"). Taken in the first sense of synonyms/metonytms, we would read "to live honorably, or to not harm, or to give due" to mean that "not harming" is the same as, or just another way of saying something like, "living honorably" and "giving to each his own" (as if we said that the precepts of spying are "to camouflage, to hide or to dissemble" or that someone's will commands "to give, i.e. to devise or to bequeath, the inheritance to the heir" or that an arbitration agreement requires parties "to name, to constitute, to appoint" a panel of arbitrators.) On this reading, we are to understand that there is one thing that justice wills, which can be expressed synonymously or metonymically in three forms.

If the terms are metonymically or analogically related, it may be that there is a structure among the three terms so that one entails the other two, i.e., right requires us to live honorably, and thereby not to harm or to give other what is his. That is, if the terms themselves seem linked by their content, the implication of the phrase is that right requires just living, "which itself clearly involves abstaining from harm and rendering aid since these actions are all contained within the preceding one." We might say something like this if we said "realizing an architectural design requires following the architect's plan, his elevations and his blueprints." In this form, Christians might say that being just requires us to

[15] So, as I discussed above, the precepts placed in relation to justice led Thomasius to conclude that not harming others was more fundamental to the shape of law than any other principle of right.

live loving lives, or not to harm others and to help them, where we are emphasizing that the sense of love includes these others. Leibniz, for example, considered the entire phrase to descend metonymically with honorable living entailing not harming and not harming entailing giving each his due, but not the reverse.[16]

On the other hand, if we could understand the "or" as indicating trichotomous alternatives, as when a biologist says that each individual animal must be classified either as Archaea, or Bacteria, or Eukaryota, or a medic doing triage separates those who will certainly die regardless of medical care, from those who will live regardless, from those for whom case will affect the outcome. Then we mean that something must strictly be included in one and not the other two. Then, right directs either to live honorably, or not to harm, or to give to each what is his, depending on the kind of right or situation. In this case, justice comes in parts of which not harming is one part (as arms, legs, head and torso are all parts of a bronze statue).[17]

Speaking generally, the traditional position of the earliest jurists was that the precepts taught one thing in different ways. The Accursian gloss "iuris praecepta" ad D.1.1.10 teaches that the only differences between the precepts is in the mode of precepting; Accursius interprets the precepts as linked by "vel." A precept may either punish, prohibit or permit; they all prohibit the same thing in synonymous but slightly different modes. Thus, the precepts were interpreted as permitting one to live an honorable life, prohibiting harming another and providing for punishment of those who transgress by giving them their due. Leibniz, by contrast, considers the precepts likewise to be linked by "vel," but in a metonymical construction. Working from his concept of justice as the charity of the wise, he says:

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[16] Aquinas illustrates something similar in his account of how the single precept of natural law, like the single will of justice to give to each his right, yields three structured precepts in relation to man's various good, ST I-II Q 94 A 2:

> Wherefore according to the order of natural inclinations, is the order of the precepts of the natural law. First, because in man there is first of all an inclination to good in accordance with the nature which he has in common with all substances: inasmuch as every substance seeks the preservation of its own being, according to its nature: and by reason of this inclination, whatever is a means of preserving human life, and of warding off its obstacles, belongs to the natural law. Secondly, there is in man an inclination to things that pertain to him more specially, according to that nature which he has in common with other animals: and in virtue of this inclination, those things are said to belong to the natural law, "which nature has taught to all animals" [Digest, De Justitia et Jure I, tit. i], such as sexual intercourse, education of offspring and so forth. Thirdly, there is in man an inclination to good, according to the nature of his reason, which nature is proper to him: thus man has a natural inclination to know the truth about God, and to live in society: and in this respect, whatever pertains to this inclination belongs to the natural law; for instance, to shun ignorance, to avoid offending those among whom one has to live, and other such things regarding the above inclination.

[17] It's interesting to note that the contemporary greek Paraphrase by the co-editor Theophilus, later adopted into the Basilica, the ninth century greek translation of the Corpus Juris Civilis specifies the conjunction "and.": "τα δε του δικαιω παραγγελματα ταυτα τρια: καλως βιωναι, ετερον μη βλαπτειν, **και** το οικειον δικαιον εκαστω νεμειν."

> Now from this source flows natural right, of which there are three degrees, strict right in commutative justice; equity in distributive justice, and finally piety (or honeste) in universal justice; hence come the most general and commonly accepted principles of right – to injure no one, to give each his due, and to live honestly (or rather piously) … The precept of mere or strict right is that no one is to be injured, so that he will not be given a motive for a legal action within the state nor outside the state a right of war. From this arises the justice which philosopher call commutative and the right which Grotius calls a legal claim.
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> The next higher degree [loving wisdom, which is, to give each his due] I call equity, or if you prefer charity in the narrower sense, and this I extend beyond the rigor of strict right to include those obligations which give to those whom they affect no ground for legal action in compelling us to fulfill them, such as gratitude and alms-giving – to which, as Grotius says, we have a moral claim, not a legal claim. And as the precept of lowest degree of right is to harm no one, so that of the middle degree is to do good to everybody; but only so far as befits each one or as much as he deserves; for it is impossible to favor everybody. It is then here that distributive justice belongs, and the precept of the law which commands us to give to each his due. And it is here that the political laws of a state belong, which assure the happiness of its subjects and make it possible that those who had merely moral claim acquire a legal claim; that is, they become able to demand what it is equitable for others to perform…
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> … The highest degree of right I have called probity, or rather piety. What I have said thus far can be interpreted as limited to the relations within mortal life [avoiding harm and doing good proportionately to ability and need] …. But beyond that, we should hold this life itself and everything that makes it desirable inferior to the great advantage of others, and that we should bear the greatest pains for the sake of those near us… In order really to establish by a universal demonstration that everything honorable is useful and everything base is damned, one must assume the immortality of the soul, and of God as the ruler of the universe. In this way, we can think of all men as living in the most perfect state under a monarch who can neither be deceived in his wisdom nor eluded in his power; and who is also so worthy of love that it is happiness to serve such a master. Thus whoever expends his soul in the service of Christ will regain it….Thus, I think I have interpreted the three precepts of Roman law, or the three degrees of justice in the most fitting way and have indicated the sources of natural law.[18]

Thus, Leibniz establishes like Accursius that justice always mean the same thing. It refers always to love of the wise. But, the forms of justice are only linked analogically depending on whether we are loving men with strict equality, with consideration of their worth, or in relation to God. Kant, by contrast, considers the precepts to require three separate duties and to form justice only by their conjunction. He explains that the precepts are addressed to "internal duties, external duties, and duties that involve the

[18] Codex Iuris Gentium, Preface, 13 (1693)

derivation of the latter from the principle of the former by subsumption."[19] These separate duties are to assert oneself against be treating as mere means for others (vivere honest); not to wrong others; and to enter into a social state so that all can secure what is his against others. The duties are separate because they are addressed not to a single action but to three different actions, which in combination create the conditions of justice.

Finally, the juristic analysis of justice in terms of the precepts is insufficiently considered by modern legal theorists and philosophers in considering how justice and harm relate. For example, These arguments over how to interpret the relation between the precepts anticipates and illuminates modern debates over the asserted indivisibility and interrelatedness of all civil, political, economic, and social human rights.[20] Although now largely supplanted by more abstract interpretations of justice and harm in the liberal tradition, e.g., Mill, Justinian's precepts were used to develop a number of practical legal principles that continue today in the civil and common law systems. These legal principles illuminate how understanding justice in terms of not harming, whether not harming is taken as a separate part or a necessary aspect of justice, can function practically. For example, the civil law principle of "abuse of right,"[21] descends from the idea of "alterum non laedere"[22] viewed as an integral part of justice and should be a larger part of modern jurisprudence and philosophical reflection on harm and justice. Given the bloody lessons of the twentieth century (where "fiat iustitia ut ruat caelum," seemed to predominate over "alterum non laedere") we need all the resources we can gather to correct those who would use abstract ideas of justice, whether calling for collectivist redistribution according to a scheme of social justice or to the supremacy of the liberalist individual will or fascist national will, to justify present harms.

In conclusion, we might step back and ask more generally: What are precepts of right? To gather an initial feel for Justinian's precepts as precepts organizing all legal rules, i.e., to understand what it might mean to seek precepts of right for all law at all, we might adopt a different translation found in another familiar text and see something of the argument for it as a dynamic equivalent. To do so is to leap over around twelve hundred years of intervening legal and political developments in terminology, but the core expressions and ideas are still recognizable. Instead of "the precepts of right are to live

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[19] The Metaphysics of Moral, Introduction to the Doctrine of Right, Division of the Doctrine of Right.
[20] See, e.g., Daniel Whelan, Indivisible Human Rights (Penn. 2010)

[21] Also in the common law, the maxim is given "Sic Utero Tuo Ut Alienum Non Laedas." Though found in Glanvil, Bracton, Fleta and Britton, it was cemented in the common law via Bracton from Azo to Coke. Bracton says that the just will to "ius suum cuique tribuere" is limited by the other precepts for "de hoc autem quod dicit 'cuique,' id est sibi ipsi, ut honest vivat; item Deo, ut Deum diligat; item proximo, ut eum non laedat." ["'to each' means to him, that "he live honorably to himself, and to God, that he love God, and to his neighbor, that he not harm him."] Bracon, De Legibus et Consuetudinibus Angliae, (Thorns Vol. 2), p. 23, l. 29-31.

[22] See also, "male enim nostro iure uti non debemus." [we ought not to make bad use of our right, referring to limitations on abuse of slaves and prodigals use of proeprty], Gaius, Institutes 1.52, and Institutes 1.8.2 "expedit enim rei publicae ne quis 're sua male utatur." [it is in the public interest that no one treat his property badly.], but cf. "Nullus videtur dolo facere qui suo iure utitur. Dig. 50.17.55

honorably, not to harm another, to render to each his due," one might translate them into a modern idiom as:

> we hold these truths to be self-evident, that all men are … are endowed … with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

With respect to rights being self-evident and grounding the institutions of government, this is found in the full context of the precepts. Justinian presents ius, law or right, as deriving from justice and being the end of the law. As principles of jurisprudence, which involves a science of justice, according the classical view,[23] they are left undefended and treated as self-evident because axioms are necessarily indefensible, known as axioms in their self-evidence. Knowledge of law/right, jurisprudence, simply is an understanding of the just and unjust and realized in a will toward it. Thus, it is fair to translate the precepts as "self-evident"; this is how they are presented within the commonplaces of classical scientific method, for jurisprudence is defined as a notitia and scientia.[24] Next, law arises from the will to give each (the undifferentiated "to each one" captures the Declaration's idea of equality and "all men") his *right* according to three principles: life, freedom from harm, and giving him what is his. Freedom from harm is replaced with "liberty" according to something like Blackstone's definition of political liberty, meaning natural liberty – the free will of men -- limited for the public good so as to "restrain a man from doing mischief to his fellow citizens."[25] Finally, the eighteenth-century replacement of "the pursuit of happiness" with what is one's due occurred through the judgment of Leibniz and Burlamqui et al. that the pursuit of happiness was the proper activity of man and thus his paradigmatic due and right. Alternatively, in respect of the precepts, the Declaration can be read as reversing the order of the precepts. To live "honeste" is according to Cicero to live happily, "beate."[26] Thus, right ordains man to live happily, free from harm, and to be given what is his own, namely life. This is not to say that the drafters of the Declaration of Independence had Justinian's precepts in mind, but something stronger. The structure of the precepts seems to appear *volens nolens* whenever basic issues of law and right and justice are addressed by those influenced by the jurisprudence flowing from the Corpus Iuris Civilis.

It is easy to think of how the trichotomy of Justinian's precepts maps onto a variety of other familiar basic categories. For example, each one can be taken to represent a major approach to political justice. The precept of right to live honorably, for example, summarizes in itself the classical and pre-revolutionary view of government as primarily, if not exclusively, interested in promoting the virtuous

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[23] See, e.g., Aristotle, Posterior Analytics 72b

[24] On the other hand, axioms are not supposed to be derivable from one another and yet it seems like one who lives honorably would also not harm and so forth, which supports the alternative explanation of the precepts as topics.

[25] Commentaries, 1.126

[26] Cicero, De Finibus, 8.30 "Ex quo intelligitur idem illud, solum bonum esse quod honestum sit, idque esse beate vivere, honeste, id est cum virtute vivere." [Here then is another proof of the same position that moral worth alone is good and that to live honorably, that is virtuously, is to live happily.]

living of the people; this view is also witnessed in Confucianism's emphasis on the priority of promoting virtue to other roles of government.[27] The precept not to harm another summarizes the classical liberal view of right, limiting government's role to the prevention of harm by one of another as embodied in Mill's harm principle. The precept to give each his due stands in for views of just government that emphasize redistribution of wealth and equality of outcomes. To justify the focus on a single precept, it is generally the view that by emphasizing one of these precepts, the others will be taken care. Thus, in the Confucian view, a government which instills virtue in the people takes the best course for preventing harm and instilling equal sharing of goods. In the liberal view, by preventing mutual harm, the government also brings about virtue and economic prosperity. In the communist view, by attending to proper equal distribution of goods, true virtue and non-harm are also attained. The spirit of all these systems is opposed to the Justinian precepts, not in recognizing these elements of virtue, harm and distribution, but in attempting to order them into a hierarchy. By contrast, in the Justinian system, the precepts stand all equally under Justice. Justice alone orders the precepts, rather than the precepts ordering one another. Again, this is not to suggest that Mencius, Mill and Marx were all attending to Justinian's precepts in working out their own views. But the apparent ease by which most views of justice tend to emphasize one of the precepts and to account for the others as an integral part of their approach to justice does align with another aspect of the precepts. It is also very tempting to associate the precepts with the major divisions in ethical theory among virtue ethics, consequentialism and deontology. They also correspond to the three divisions of classical rhetoric because of the three genera, encomium or epideictic, deliberative, and forensic: encomium concerns honor, deliberative how to avoid harm or gain good, forensic who is entitled to judgment in a particular dispute over a right.

The English term "precept" is a transliteration of the latin word praeceptum, pl. praecepta. The root latin word, praecipere, has a very broad range, from instructing to commanding. But, most literally, it means simply to take or receive something in advance, in which sense it is used in law of someone who receives something in advance, e.g, D. 30.125 (an heir is ordered to deliver an estate after reserving ("iussus sit praecipere" i.e., by taking in advance) a portion of the estate to himself thereby diminishing his remaining legacies in proportion to the reserve, which is called the "praeceptio." (The derivation of fundamental legal terms for laws from the substantive terms for acts of distribution is common, e.g., the greek nomos from nemein, to distribute.) It can also have the sense of our "preconception." The term "praeceptum" is the perfect passive participle of the very praecipere, i.e. it refers to that which has been given or taken or set out in advance. But outside this literal use, it was also used as a translation of the greek term "παραγγελμα," i.e. parangelma, which has a very different etymology of the same root of the more familiar greek word eu-angelion or evangelion or evangel, as it comes into English, meaning the eu- "good" message or new angelion. Parangelma has the basic meaning of a transmitted message, news passed along, but it comes to mean, like praeceptum in its figurative meaning, as an instruction or

[27] See, e.g., Mencius, The Great Learning: "The ancients wished to exemplify illustrious virtue throughout the empire first ordered well their states. Desiring to order well their states, they first regulated their families. Wishing to regulate their families, they first cultivated themselves. Wishing to cultivate themselves, they first rectified their purposes. Wishing to rectify their purposes, they first sought to think sincerely. Wishing to think sincerely, they first extended their knowledge as widely as possible. This they did by investigation of things."

a command. This use is very common as well. Parangelmata is used as the translation of praeceptum in the Basilika/Paraphras of Theophilus. Another technical meaning of parangelmata arises in greek rhetoric to refer to a principle that organizes rhetorical topics.[28] Part of the great worth of the precepts comes in that they are effective heuristics. By them, precisely in their ambiguity, one can remember and contain a sense of the great debates and ambiguities concerning the nature of justice. Because they are short and easy to remember and mentally plausible, they can be retained easily in the mind. This is the great advantage of properly formed precepts.[29]

We can bring this to a close with two quotes, which should take on a different appearance in light of what has been said before.

> Truly, "the precepts of the law are good" if we use them lawfully. Indeed, by the very fact that we firmly believe "the just and good God could not possibly have prescribed impossibilities," we are admonished both what to do in easy paths and what to ask for when they are difficult. All things surely are easy in love, to which alone "Christ's yoke is light" or rather love alone is the burden which is light. Accordingly it is said: "and his precepts are not heavy," [so whoever finds them heavy must pray for love.] Inchoate love is inchoate justice; great love is great justice; perfect love is perfect justice … Augustine, Concerning Nature and Grace, 1.83-84. [30]

> Render therefore to all their dues…Owe no man anything, but to love one another: for he that loveth another hath fulfilled the law… 10 Love worketh no ill to his neighbour: therefore love is the fulfilling of the law. … 13 Let us walk honestly … not in rioting and drunkenness, not in chambering and wantonness, not in strife and envying. 14 But put ye on the Lord Jesus Christ, and make not provision for the flesh, to fulfil the lusts thereof. Romans 13:7-14

How does Christian jurisprudence relate justice and not harming? After the twentieth century's demonstration of the fruit of pursuing justice without regard to harm, this should be an urgent question for Christians, especially as revived forces seeking "social justice" seek to harm various groups in the

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[28] Aristotle may make an early use of the term in the sense in the Rhetoric. Peripatetic Rhetoric After Aristotle, p. 161 Topics are premises deduced from paranglemata, i.e. from the more general topics by which whole system of dialectic could be organized, e.g., the precept "argue from contraries leads" to the topic of "if a property belong to something thing then a contrary property belongs to its contrary."

[29] As Horace observed: quidquid praecipies, esto brevis, ut cito dicta/percipiant animi dociles teneantque fideles:/omne supervacuum pleno de pectore manat. Precept in brief. Even true/learners can get only briefs;/Excess just pours over minds. Horace, Ars Poetica, 336-7

[30] Valde autem "bona sunt praecepta" si legitime his utamur. Eo quippe ipso quo firmissime creditur "deum iuste et bonum impossibilia non potuisse praecipere." Hinc ammonemur et in facilibus quid agamus et in difficilibus quid petamus. Omnia quippe fiunt facilia caritati, cui uni "Christi sarcina levis est" aut ea una est sarcina ipsa quae levis est. secundum hoc dictum est: "et praecepta eius gravia non sunt" … Caritas ergo inchoata inchoata justitia est; caritas prouecta prouecta iustitia est; caritas magna magna iustitia est; caritas perfecta perfecta iustitia est, sed caritas de cords puro et conscientia bona et fide non ficta, quad tunc maxima est in hac vita, quando pro illa ipsa contemnitur vita. De Nature et Gratia, Liber Unus, Augustinus, 83-84

name of social egalitarianism. A Christian jurisprudence explains how Christians should approach law in faith so as to glorify God before men by relying on Jesus Christ.[31] Accordingly, to understand justice and harm, Christian jurisprudence requires an account of the relation among God, justice and harm that shows where trust in Christ is involved, how we act for the sake of Christ. We are taught, for example in the Epistle to the Romans, that not harming is related to God and justice through Christ-born love, not harming fulfills the law and we are able by love to live an honest life faithfully identifying ourselves with Jesus. More succinctly, Paul says love gives all that is due, does not harm, lives honorably. In a remarkable parallel, if we substitute justice for love as Augustine would have us do, this accords with the account of justice and harm in the precepts, which were after all compiled in the name of the Christian Emperor Justinian. The precepts teach that justice is related to not harming and God in two steps: first, justice and harm are related to one another through "ius," law or right. Justice involves giving right and right involves not harming. Second, practical understanding of right is among other things an awareness of God. The full connection to God comes in the idea of serving ius as a priesthood, a way of being consecrated to the service of God spelled out in the Digest elsewhere. It is only by faith in the providence of God that we can trust non-harming's compatibility with doing justice, i.e., the convenientia between proper social action and respect for the good of each person. For the Christian, making an omelet does not require breaking a few eggs, when the recipe and the eggs are part of the Kingdom of God.

[31] Any another kind of useful legal analysis (e.g., even "natural law") even if it could derive all truths about law rationally, except propositions relating law to Christ would be inadequate for the Christian. It would be insufficient in that it would not enable the Christian: (1) per Col. 3, to do all in the name of Jesus, for Jesus; (2) per Rom. 14, to act in law from faith in Jesus; (3) per 1 Cor. 10, to act in law for the glory of Jesus; (4) per 2 Cor. 10, to make all our legal thought obedient to Christ; (5) per 1 Pe 2, to obey the law and legal authorities for the sake of Christ. Christian Jurisprudence begins with the desire to do all in Christ's name, from faith in Christ, for Christ's glory, in obedience to Christ, for Christ's sake. These passages are seeds from which grow the entirely different Christian attitude toward jurisprudence.