CIVIS EUROPEUS SUM:
Some thoughts on Latin for lawyers

By Ditlev Tamm

Latin has a long history among lawyers. In this contribution we will look at this history and give examples of how lawyers made their own lawyers' Latin.

A fundamental principle of EU law, the law of the European Community, is what is called 'European citizenship,' which carries with it special rights within the Community. The statement "civis europeus sum," used here as the title of this essay, belongs in this context. The statement derives from the English Advocate General Jacobs. In the so-called Konstantinides case[1] before the European Court of Justice, Advocate General Jacobs in his opinion of 9 Dec. 1992 declared – in somewhat bombastic terms – that a citizen of the European Community who moves to another Member State for employment as a worker or as self-employed does not only have the right to exercise his trade on equal footing as the Member State's own citizens. He may also count on being treated in accordance with a common code of fundamental values and the European Human Rights Convention, whereupon the Advocate General let loose with this fanfare: "In other words, he is entitled to say 'civis europeus sum' and to invoke that status in order to oppose any violation of his fundamental rights."[2]

The Advocate General chose to express the effect of this so-called European citizenship in terms that lead one's thoughts back to the protection Roman citizens received in the Roman Empire. The quote naturally evokes – undoubtedly deliberately, given the Advocate General's classical training – associations with the famous passage in the Acts of the Apostles in which

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[1] *Christos Konstantinidis v. Stadt Altensteig-Standesamt and Another* (*Case* C-168/91). Before the Court of Justice of the European Communities (6th Chamber). Opinion of Advocate General Jacobs delivered on 9 Dec. 1992.

[2] The quote reads in its entirety: "46. In my opinion, a Community national, who goes to another Member State as a worker or self-employed person under Articles 48, 52 or 59 of the Treaty is entitled not just to pursue his trade or profession and to enjoy the same living and working conditions as nationals of the host State; he is in addition entitled to assume that, wherever he goes to earn his living in the European Community, he will be treated in accordance with a common code of fundamental values, in particular those laid down in the European Convention on Human Rights. In other words, he is entitled to say 'civis europeus sum' and to invoke that status in order to oppose any violation of his fundamental rights."

Paul pleads his Roman citizenship, which secures him from being interrogated and judged by the local authorities in Jerusalem.[3]

With this decision in the Konstantinidis case (a well-known case among legal professionals), the European Court of Justice in Luxembourg took a position on an issue – in itself a minor one but for classicists quite interesting – as to whether a Greek citizen who ran a business in Germany should have to accept having his Greek name transcribed in Germany according to an official system that, in his opinion, distorted his name and made it less recognizable to his business associates and, therefore, was, in reality, a discriminatory violation of his rights, contrary to EU law. Among his arguments was that his name *Christos* (Χρήστος), transcribed as *Hréstos*, was distorted in such a way that it approached a mockery of his religion.[4] The German court that handled the case referred the matter to the European Court of Justice[5], which held for Mr. Konstantinidis in accordance with what the Advocate General had recommended. Thus, the judgment became one of many on the rights of European citizens and, thanks to the almost Biblical formulation quoted here, a leading decision in EU law even though many today presumably do not quite understand the background and trenchancy of the statement.

We shall not delve more deeply here into either EU law, which is a part of Danish law, or into the principles for the transcription of Greek names. The issue here is to remind ourselves that Latin is still a living language among jurists. Latin was once the language of law. It is no longer, but there are still significant reminders of its Latin past in the language that lawyers actually

[3] See Acts 22, v. 25–29: "And as they bound him with thongs, Paul said unto the centurion that stood by, is it lawful for you to scourge a man that is a Roman, and uncondemned? When the centurion heard that, he went and told the chief captain, saying, Take heed what thou doest: for this man is a Roman. Then the chief captain came, and said unto him, Tell me, art thou a Roman? He said, Yea. And the chief captain answered, With a great sum obtained I this freedom. And Paul said, But I was free born. Then straightway they departed from him which should have examined him: and the chief captain also was afraid, after he knew that he was a Roman, and because he had bound him."

[4] Thus, the Advocate General stated in paragraph 40 of his opinion (footnote 1 above): "In the case of Mr Konstantinidis, the violation of his moral rights, if he is compelled to bear the name 'Hréstos' instead of 'Christos', is particularly great; not only is his ethnic origin disguised, since 'Hréstos' does not look or sound like a Greek name and has a vaguely Slavonic flavour, but in addition his religious sentiments are offended, since the Christian character of his name is destroyed. At the hearing Mr Konstantinidis pointed out that he owes his name to his date of birth (25 December), Christos being the Greek name for the founder of the Christian — not 'Hréstian' — religion."

[5] In EU law, there is a system in which a national court, when facing an issue whose decision requires the use of EU law, may refer the question for a preliminary ruling (preliminary references). The decision of the European Court of Justice then forms the basis for the decision of the case by the national court. On this, see Broberg & Fenger 2021.

use.[6] Many legal concepts may trace their history back to a Latin origin, but it is just as important that our entire mode of legal reasoning bears the marks of law's origin in ancient Rome. This is what we are reminded of when the English Advocate General paraphrases the words with which the apostle Paul claimed his Roman citizenship and his consequent claim to be tried under Roman law and its principles.

We are talking about lawyer's Latin or legal Latin. It was once the language, that jurists learned in order to read Roman legal sources. For a long time, it was also the academic language for law; and even when it was no longer used as a teaching language, it was the language in which legal dissertations were written. In Denmark, this was the case well into the 1800s. For a long time, people also studied Roman law through Latin sources. I still own my grandfather's copy of the Krüger edition of *Corpus Juris Civilis* with his marks and underlinings. My grandfather studied law in Copenhagen in the 1890s – so, even that late, law students were expected to know a sufficient amount of Latin to read the sources in the original language and, thus, form a direct acquaintance with the language of Roman jurists and, thus, grasp their way of analyzing legal cases. One may learn much here about precision, economizing language, and elegance of formulation. The Latin of Roman jurists from the classical period (approx. 1st century B.C.E. – 3rd century C.E.) is characterized by its accuracy when it comes to describing the facts to which a position is to be taken and, as a rule, a brief justification for the result that opens up great latitude for interpretation. In its origin, Roman law is case law; that is, it is linked to specific legal disputes on determined issues. This 'case law' is what one learns to study and reflect on as a jurist.

Roman law deals to a high degree with rights but only to a lesser degree with fundamental rights or human rights as in the Konstatinides judgment referred to above. The Romans would hardly have had much understanding for that sort of case. You could simply write your name in Greek and expect others would understand it. But the Romans would easily have understood the underlying premise that, if you had citizenship in the Roman Empire, then you enjoyed the protection of Roman law. Roman law was the right of Roman citizens; and, until Emperor Caracalla in 212 extended the right to call yourself a Roman citizen to everyone in the Roman Empire, Roman

[6] There is extensive literature in many languages on so-called 'lawyers' Latin.' A number of works only contain an overview of Latin terms or are a collection of more or less well-known maxims. For a comparative linguistic introduction to legal language, see Mattila 2002 (2nd ed. 2017), which is translated into French as *Jurilinguistique comparée. Language du droit, latin et langues moderne* (2014).A detailed section on Latin is found in an expanded edition in Spanish as *El latín jurídico*, ed. Olejnik, Chile 2020. On legal Latin in Danish, see, for example, Tamm 1994.

citizenship, or being a *civis romanus*, was a privilege for only a limited number of the inhabitants of the Empire.

Danes call the study of law, or the legal curriculum, *jura* and, thus, use a plural form of the word *ius*, which means 'law'. In Norway, they call the legal curriculum *jus*, but in Denmark we stick to the plural form, which points back to the medieval past in which a fully equipped university could boast two legal faculties: one where people studied Roman law and one where people studied ecclesiastical law, so-called canon law.[7] A doctor of laws was a *doctor iuris utriusque,* who was expected to be familiar with these two basic legal disciplines of which Roman law was the first to be studied. A student of canon law would normally have followed courses in Roman law before entering 'postgraduate' training in the living law of the church with its own authoritative legal sources.

The phrase 'source of law'[8] is a favorite among lawyers. It designates the authorities to which reference may be made to find a legally valid result. As one may imagine, the phrase has its origin in Latin, *fons iuris*, but is international such as in the Danish *retskilde*, the German *Rechtsquelle* (from which the word entered into Danish), the Italian *fonte del diritto*, etc. Sources of law are typically statutes, judgments, customs or even legal treatises or general principles of law. The doctrine of source of law is a fundamental starting point in legal thinking. Historically, even a single person may have sufficient status to be considered a source of law. One of the most famous jurists of medieval Bologna, Johannes Andreae (ca. 1270–1348), was known as *iuris canonici fons et tuba.*[9]

Another central issue for academic jurists is whether law can be considered a 'science' on the same level as other recognized 'sciences' – especially, natural science. That law is not an exact science is well known, but can we really speak of a *scientia iuris*?[10] We do, but we may doubt whether it is a *scientia* that entirely corresponds to the normal use of the English word 'science'. Nevertheless, we talk about *legal science*, which is a translation of

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[7] On the oldest legal faculty at the University of Copenhagen and the history of the study of law, see Tamm 2006.

[8] The phrase is used in every introduction to legal method; but, like other central legal concepts, there is no fixed definition of the concept or agreement about its content. See, for example, Ravnkilde 2013.

[9] On him, see Kuttner 1964. It is also said that he had a daughter Novella (the same word as 'new laws' that were added to Justinian's collection of laws!), who, when her father became ill, gave lectures in his stead. However, she was so beautiful that she had to hide behind a screen, see Donahue 2007, 215 n. 12.

[10] Roman jurists spoke freely of *scientia* in connection with the law. See, for example: "Iuris prudentia est divinarum atque humanarum rerum notitia, iusti atque iniusti scientia" (Ulpian in *Digest* (D) 1.1.10.2).

the German *Rechtswissenschaft,* which does not sound so exact; nor is it. Here, too, of course, we are facing some fundamental methodological questions: whether, as the so-called 'realists' believed, a sort of evidence can be created for legal statements by referring to practice, or whether we must understand law more as a linguistic discipline in which the primary weight lies in interpretation (hermeneutics) or the use or understanding of fundamental principles. Recognizing good jurists is a little like defining elephants. It is hard to specify what they are, but you recognize them when you meet them or – where attorneys are concerned – listen to them or read what they write. This was the case even with lawyers in ancient Rome. The Romans had their own hierarchy of jurists, whom they called *iureconsulti*, and the many extracts from the works of Roman jurists that have been transmitted in Emperor Justinian's collection of Roman law[11] clearly show differences between jurists who took up more complicated legal problems and those who stuck to more elementary cases.[12] In the Republic's final years, Cicero was perfectly clear about the special status of advocates. In his own self-understanding, he was not a jurist, even though he engaged in lawsuits and wrote about the law in a gifted way. He referred many times as an example of a genuine jurist to his older, contemporary friend Quintus Mucius Scaevola (169 B.C.E.–88 B.C.E.), while Cicero considered himself a rhetorician whose task was to litigate cases but not to debate legal details. And this was quite proper. Cicero's mode of reasoning was very different from what we find in the Roman sources of law and what we understand as the genuine jurist's' way of reasoning.

It is also important for jurists to be able to make distinctions: *Distinguendum est*! In medieval universities, people learned to find a legal solution by maneuvering among the sources and reaching, through interpretation, the precise meaning of the source and its significance.[13]

Once, Latin bound together jurists all over Europe. You could travel from university to university and the basis for the study of law would be the same: Roman law and sometimes, to a certain extent, canon law. Over the course of the Middle Ages, the so-called *ius commune* developed: A 'common'

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[11] Roman law, including the writings of Roman jurists chiefly from the 1st century B.C.E. to the 3rd century C.E., was collected and published as *Digestae*, in English the *Digest*, by Emperor Justinian in Constantinople in the years 529–534. We are talking about the Code of Justinian or, since the end of the 1500s, the *Corpus Juris Civilis*.

[12] For an introduction to Roman law in Danish, see Tamm 1980 or in a shorter form Tamm 2020.

[13] The method used is comprehended in this distichon:
Præmitto, scindo, sumo, casumque figuro,
Perlego, do causas, connoto & objicio.
On this, see, for example, Ernst Andersen: *Træk af juraens udvikling* I (1970).

European law that was built on Roman law, some procedural canon law, and other shared elements. This is the law you studied and the law a court would apply if the judge had received a legal education. Local law was known as *ius proprium*; and, in principle, it was only used by learned courts if evidence was traduced that other rules in local law were applicable instead of Roman law. It is a part of this history that, in Denmark, Roman law never became *ius commune* and, thus, automatically used by the courts. Danish law is based on the recording in Danish of local law in the 13th century. Therefore, the influence of both Latin and Roman law in Danish legal language and Danish law is less – and, as a rule, later – than in the major countries of continental Europe: Germany, Italy, Spain, and, in part, France. Even English law has its own history, and English 'common law' is something quite different from the *ius commune*, which is the core of continental European law. English law is permeated by both so-called *Law French* and *Law Latin*, which has its own meaning in English law.[14]

The idea of a common European law suffered a decisive blow around and after 1800, when national codes of law began to see the light of day. Now, it was no longer Roman law that was taught but national law based on national codes in the national language. In particular, the French *Code civil* had wide circulation and laid the groundwork for new national legislation in much of Europe. It took a longer time in Germany, which did not compile one until 1900, *Bürgerliches Gesetzbuch*, which was based to a high degree on Roman law but which was a German national code written in German and was also quite complicated, albeit not as complicated, of course, as Roman law, which was disseminated across a sea of individual decisions. The crux of the so-called codifications, the new comprehensive national codes of law, was to simplify and systematize law, so that the code became the most important source of law and, thus, the natural place to consult when a legal solution had to be found. The new codes led to diversity in the law all over Europe. These codes were written in their national languages and, thus, the rationale behind the need for lawyer's Latin ceased. One could still study Roman law on historical grounds, but since the Roman sources of law were no longer applicable law, it was not so relevant for jurists to spend time on it. Roman law was now history and no longer living law used by the courts. A steady decline of Latin for lawyers was, of course, the result. And even worse: Not even Latin terms of art were common to jurists anymore. Various Latin terms are used here and there, randomly and inconsistently in different countries.[15]

[14] On this, Baker 1979; on the linguistic turn, Pope 1934.

[15] On this, Mattila 2002 (id. note 1). For a study of Latin terms in Estonian legal language, see Ristikivi 2009, 123 ff. In Estonia, an introduction to Latin and Latin legal language is an obligatory part of the study of law. In Poland, there is a long tradition for the use of Latin;

In recent years, there has been a trend in most countries towards energetically getting rid of the still extant remnants of Latin. A good argument for this endeavor is that lawyers (or their clients) do not understand Latin. Fragments of Latin, thus, make it more difficult to understand what is meant – especially for lay people. In American law, for example, they use such terms as *prima facie*, which the somewhat Latin-savvy person can translate as 'at first glance' but would not immediately connect with the position in a lawsuit that a significant presumption is created as to the burden of proof. Or that *nisi prius* in English law has something to do with whether a case has been heard by a trial court. Nor is it obvious that an American *amicus curiae* is a person who, unbidden, addresses the court with information or declarations about a case.

The eradication of the Latin past has also left traces among Danish jurists. Familiarity with ordinary Latin maxims is in grave decline. Yet, one or two things stick. A number of jurists will presumably still be able to decipher an *audiatur et altera pars* as a call to respect the contradiction that both parties to a lawsuit must be heard or understand that the ultra-short statement *in dubio pro reo* refers to the fact that a presumption of innocence must be respected. They also know that the same case cannot be judged several times, *ne bis in idem*, and that no one should be punished unless there is a law criminalizing the relevant act, *nulla poena sine lege* or *nullum crimen sine lege.* Most would probably also know that, when we distinguish between so-called private law, which has to do with family and property, and public law, which is the part of the law that deals with crime, procedure, constitutional questions, and administrative authorities, then we are basing this on the Roman law distinction between *ius privatum* and *ius publicum*. That contracts must be observed is expressed in Latin as *pacta sunt servanda*, which does not even derive from Roman law but from the legal Latin of a later age[16] when it was ordinary to develop general legal principles. The Romans did this only to a limited extent, but the last title in the Roman law code, the *Digest* (D. 50.17), is called *De Regula Iuris* and contains a long series of general rules. Corresponding general rules are found in canon law in Pope Boniface VIII's *Liber Sextum* from 1298. Among the statements we find in the *Digest*'s title on legal rules is the rule often cited by lawyers that no one can be obliged to do the impossible, *impossibilium nulla obligatio est.*[17] The statement is ascribed to the jurist Publius Juventius Celsus, who lived at the end of the 1st

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and, in Russia in recent decades, there has been great interest in Roman law. Among other things, Justinian's *Digest* has been translated in its entirety into Russian.

[16] A collection with explanations of a number of legal phrases, see Liebs 1998.

[17] On the statement and its use as a fundamental principle of the European law of obligations, see, for example, Zimmermann: 1990, 686 ff.

and beginning of the 2nd centuries C.E. Celsus was famous for his style, which is discussed by other jurists with admiration as *eleganter*. The Germans sometimes drop legal bromides (*Rechtsfloskeln*) without any real purpose than to show the speaker's familiarity with elementary Latin. That may sometimes be correct, but such statements express a deep, albeit general, truth that has been a leading legal principle for centuries.

For the Romans, private law or civil law was the basic component of law. The term 'civil law' also comes from Roman law. The ancient Romans referred to the law that only applied to Roman citizens as *jus civile*. The expression had several meanings. *Jus civile* was in contrast to *jus honorarium*, created by the Roman official the praetor, or to *ius gentium*, which is the law that applied to all peoples. In later Roman law, *jus civile* was also contrasted with natural law, *jus naturale*, i.e., general principles of law. All these expressions and meanings have had great significance for legal terminology. *Ius gentium* is another designation for the law of nations (or customary international law). In this discipline as well as in so-called international private law, a great deal of Latin is preserved.[18]

Despite eradication efforts, a number of Latin expressions are still in widespread use in Danish law and familiar to jurists. This is true, for example, for a fundamental distinction that jurists must respect between statements about law as it is, i.e., applicable law, and statements that express a desire for the law to be changed in some particular way. In legal language, this is expressed as statements *de lege lata*, about the given law, and *de lege ferenda*, about law as we would like it. It is also implied that a later law, a *lex posterior*, replaces an earlier law. In the same way, a law at a higher level, a *lex superior*, supersedes a law (or decree) at a lower level just as a more specialized law, a *lex specialis*, supersedes more general determinations.

Danish legal jargon has actually preserved astonishingly many Latin phrases or legal terms from Latin that are still prevalent in our legal vocabulary. Family law still expresses the presumption that a child born within wedlock is the child of the male spouse by referring to a principle from canon law, *pater est quem nuptiae demonstant*, as a rule in the shortened form of the *pater-est* rule.[19] In family law, people also speak of a dissolution of

[18] On Latin terms in international law, see Fellmeth & Horwitz 2009.

[19] The expression is so prevalent that it is even used in answers to questions in the Danish Parliament, see "Besvarelse af spørgsmål nr. 29 af 17. maj 2001" [Response to inquiry no. 29 of 17 May 2001] from Folketingets Retsudvalg (Parliament's Legal Affairs Committee] concerning a proposal on a children's act and a proposal to amend the law of civil procedure and other laws (Ændringer som følge af børneloven m.v.) (L 2/ L3 – bilag 67): "the Minister is asked to undertake a comparison between his amendment proposal to § 6 in L 2 and the *pater est rule* [my emphasis] and account for any differences between the proposed amendment and this rule."

marriage by divorce (with effect from the time of divorce) as *ex nunc* and the annulment of marriage, which abrogates its effect with retroactive force, as *ex tunc*.

In the law of inheritance, the testamentary will is an invention of Roman law that, via canon law, entered into Danish law as an option for benefitting others than spouse and relatives. When I studied inheritance law many years ago, we also learned about the Roman principle, which is not applicable in Danish law, that you cannot both dispose of your estate by testament and partially allow the estate to be distributed to heirs in accordance with statute. This is expressed in Latin as "nemo pro parte testatus pro parte intestause decedere potest", but you will not hear Danish lawyers quote it.[20] On the other hand, people speak about death as *mortis causa* and thus an inheritance-triggering factor.

An important question in the discipline called property law has to do with the transition of a right of ownership to an object that can be transferred from one person to another. The rules of Roman law on this (*mancipatio* and *in iure cessio*) are, in part, peculiar to Roman law; but, in Roman law, there is also a term, which is ordinary in European legal systems, that the actual surrender is decisive. The Roman term is *traditio*, and the juridical issue is, as a rule, whether ownership rights pass already upon entering into an agreement or not until *traditio.* This issue has many solutions, which shall not be discussed here.

A fundamental juridical discipline, and one in which law truly stands the test, is the so-called law of obligations. The word *obligatio* was used by the Romans as a designation for duties (from the word *ligare*) in connection with agreements or that arose from harmful actions or various other circumstances. The principles of the law of obligations may often be traced back to Roman law even in a legal system like Denmark's, which is not directly based on Roman law. Yet, Danish jurisprudence has been highly influenced by jurisprudence from Germany. The law of obligations was developed as an important discipline in the 1800s by a number of prominent German jurists with European-wide reputations. In Danish law, too, there is a tradition for a high level in the law of obligations. Much of the Latin here as in other places is no longer ready knowledge among lawyers, but we still talk about creditors and debtors, about delay as *mora*, about the misunderstandings between purchaser and seller as *error*, and we have preserved Latin designations for two idiosyncratic legal concepts. One we know in Danish as *uanmodet*

[20] Jurists of my generation will know the expression from Ernst Andersen's textbook on inheritance law, which contained many references to Latin and the Roman law foundation of the law of inheritance. The very expression is one of the so-called *brocardica*, which derive from medieval collections of legal expressions.

forretningsførelse (the 'unsolicited management of business'), but today's jurists also speak, as a rule, of *negotiorum gesti*o, which exists when a person without express agreement undertakes obligations on another's behalf in situations in which that person is incapable of safeguarding his or her interests. This, for example, may be a neighbor's intervention in case of fire or some other detriment. In this case, the acting party has a right to have his or her own costs compensated. The Romans talked about quasi-contracts, and with this was also reckoned the principle that a debtor who repays too much to his or her creditor or a person who pays an amount in good faith to which another person has a claim may get the excess or the sum back. The first person in Danish law to write about quasi-contracts was Ludvig Holberg, a professor at the University of Copenhagen and a famous playwright (in later editions of his treatise on natural law from 1734 onwards). His Latin designations have remained standing even though the Latin terms could be replaced by the 'unsolicited management of business' or the somewhat heavier 'action of recovery for debts paid on the presumption of an obligation'. Here, for once, the Latin is an easier way. In the law of obligations, we also find concepts such as 'good faith', which is a direct translation of the Romans' *bona fides.*

However, probably the most striking example of Danish conservatism with respect to Roman law terminology ostensibly derives from so-called tort law (in Danish, *erstatningsret*, which is a part of the law of obligations and much of which overlaps with English tort law). This deals with the right of a victim to receive damages from a tortfeasor for harmful actions. In the law of damages, two fundamental principles face each other. One is the so-called doctrine of 'strict liability' (*objektivt ansvar*), when a tortfeasor is obligated to pay damages regardless of the fact that it cannot be proven specifically that he/she has committed a wrong. The rationale is that it is meaningless for the victim whether it was the tortfeasor's "fault" or not. The damage was done, and it was not the victim's fault. Today, such strict liability applies, *inter alia*, to automobile accidents and harms committed by dogs. The placement of liability is based on a balancing of where responsibility is most reasonably placed.

Strict liability was the original stance in the history of tort law. We find it in a four-thousand-year-old Babylonian law, Hammurabi's Code, in the form of the so-called talionic principle – also from the Latin: *talio* – which emphasizes that compensation is measured exactly in relation to the damage and is a mirror reflection of it. If a house collapses and kills the owner's son, the rule of this law is that the son of the builder must be killed. When it comes to the principles for compensation, Roman law marks an especially large step in civilizational progress. In the last century B.C.E., the Romans began to

reason in a new way with respect to tortious injuries. Roman jurists now put weight not on the damage but on whether the tortfeasor could be deemed responsible because he/she could have foreseen that an action could lead to harm. The Romans' standard of measure was what a so-called *bonus pater familias* would have foreseen and taken precautions for and, in relation to that, whether the tortfeasor acted with intent to cause damage, *dolus* (malice), or negligently, demonstrating *culpa* (fault).[21]

The Roman mode of reasoning with its starting point in what is to be expected from a tortfeasor became the leading principle in Danish tort law. It appeared for the first time in Danish law in the deliberations of the Danish Supreme Court in 1759[22] in which one of the judges in a case about liability for damage caused by a raft that had come loose in Copenhagen's harbor said that the decisive thing was which of the parties had been *in culpa*. And *culpa* was here to stay although not until the beginning of the 1800s when the jurist A.S. Ørsted developed the principle of *culpa* in a more jurisprudential way as a principle in Danish tort law. Other codes of the time were based on the principle of *culpa* – for example, in the French Code from 1804 as *faute*, and the great German jurists worked with the principle known as *das Schuldprinzip.* One prominent jurist, Rudolph von Jhering, even created a legal neologism in the form of a special *culpa in contrahendo*[23] as the designation for when liability-incurring conduct occurred, before a contract was entered into. All this is legal hair-splitting, mentioned here simply to emphasize the creative power of Roman law and Latin legal terminology for the future. It is noteworthy that, in Denmark unlike in German law and other legal systems, we do not talk about a principle of "guilt or fault" (*skyldprincip*) but that we have preserved the term "*culpa* rule" as the ordinary principle in tort law, which puts weight on the victim's behavior, judged pursuant to a *bonus pater* measure. To that degree, the *culpa* rule has come to stay in Danish legal terminology in which the word *skyld* is used, as a rule, about a monetary debt but not about the subjective relationship in connection with tortious injury.

[21] There is a comprehensive literature on the development of tort law. On the Roman *lex Aquilia*, reference may be made to previously mentioned works on Roman law. In Germany, the well-known jurist Thomasius (1655–1728) was made spokesman for the controversial point of view that the *culpa* rule (*lex Aquilia*) was not a part of German law. See Thomasius 2000.

[22] On this, see Nielsen 1951, who found the relevant deliberations, which are now a fixed part of the curriculum in legal history for Danish jurists. See, for example, Tamm 2005, 302.

[23] von Jhering 1861, 1 ff. (also in von Jhering 1881). The expression is also used in Danish law even though its meaning is linked to the lack of a norm for responsibility in German contract law for such harms.

Legal Latin has just as long a history in Denmark as the study of law itself, which was introduced in the first university in Copenhagen in 1479. In reality, people were familiar with Latin legal terminology even earlier. The old Danish medieval laws from the 13th century were written in Danish, but to this body of laws also belongs a book about the law in the then Danish province of Scania (today, the southern part of Sweden), written by Archbishop Anders Sunesen in Lund.[24] He was familiar with Roman law; and, in this reproduction of Scanian law, he uses the legal concepts of his contemporaries as he presumably had learned them in Bologna. The history of Danish legal Latin is, thus, more than eight hundred years old. Anders Sunesen's work was translated into Danish, but a great number of dissertations authored by Danish jurists on legal topics are today inaccessible to modern readers, whose Latin abilities are limited to so-called legal bromides, a few resonant adages put forward without real understanding of the content, or simply to disconnected words such as *culpa*. Jurists have a long tradition behind them, but – as it is often said – nothing is so quickly forgotten as an old legal text. On the other hand, the ancient Roman legal texts that we find in Justinian's *Digest* are still alive and are also read as a part of modern studies of Roman law. However ruthlessly we purge Latin terms from our legal language, it is a part of being a European jurist to be familiar with our own tradition and to be able to identify the European Community with appropriate pride as a legal community based on fundamental principles formulated by Roman jurists.[25] Therefore, I join with the jurist Ulpian, the most productive and quoted of them all, who at the beginning of the 4th century wrote these words about law and justice – probably, the words most frequently quoted by lawyers throughout the course of time:

> Juris praecepta sunt haec: honeste vivere, alterum non laedere, suum cuique tribuere.[26]

That's how you should do it!

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[24] The work is found in Danish (by Axel Olrik) in Brøndum-Nielsen 1933, reprinted in Kromann & Iuul 1945–1948. The most recent edition with an English translation is Tamm 2017.

[25] A foundational account of the connection between Europe and Roman law is Koschaker 1947.

[26] These words about the fundamental principle of the law – to live honorably, not to harm others, and to each their own – are at the very beginning of Justinian's *Digest* (D. 1.1.10.1). Similar thoughts are expressed by Cicero: "*Iustitia suum cuique distribuit*", see *De Natura Deorum*, 3.38.

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