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XXIX.17 The wrong way to promulgate laws

- The Spirit of Law - Book XXIX. On the manner of composing laws -

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The Roman emperors, like our princes, manifested their wills through decrees and edicts ; but as our princes do not, they allowed judges or individuals, in their disputes, to question them by letter, and their replies were called rescripts. Papal decretals are, properly speaking, rescripts. Clearly it is a bad sort of legislation. Those who ask for laws in this way are poor guides for the legislator ; the facts are always wrongly stated. Trajan, says Julius Capitolinus, often refused to issue these sorts of rescripts, so that one decision and often a private favor would not be extended to all cases. [1] Macrinus had resolved to abolish all these rescripts ; he could not suffer the replies of Commodus, Carracala, and all those other incompetent princes, to be considered as law. [2] Justinian thought otherwise, and filled his compilation with them.

I would like for those who read the Roman laws to distinguish carefully between these sorts of hypotheses and the senatus consulta, the plebiscites, the general constitutions of emperors, and all the laws based on the nature of things, on the fragility of women, the weakness of minors, and public utility.

[1] See Juleius Capitolinus, in *Macrinus*.

[2] *Ibid.*