



REMARKS

ON

THE STUDY OF THE CIVIL LAW.

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## REMARKS, &c.

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1. *An Historical Essay on the Laws and the Government of Rome; Designed as an Introduction to the Study of the Civil Law.* 8vo. pp. 298. Cambridge, [Eng.] 1827.
2. *Précis Historique du Droit Romain, depuis Romulus jusqu'à nos jours, &c.; or, An Historical Summary of the Roman Law, from Romulus to our own time.* By Mr. DUPIN, Advocate in the Royal Court at Paris. 18mo. pp. x. and 106. 4th edition. Paris. 1822.

THE civil law, or, to adopt the language of Sir William Jones, 'the decisions of the old Roman lawyers, collected and arranged in the sixth century by the order of Justinian, have been for ages, and in some degree still are, in bad odor among Englishmen;' which, he adds, 'is an honest prejudice, and flows from a laudable source; but a prejudice most certainly it is, and, like all others, may be carried to a culpable excess.' (a) This hostility to the Roman law is generally ascribed by historians and lawyers to the spirit of liberty, which has been so conspicuous in the English nation, and to their detestation of the arbitrary maxims of a code, whose fundamental principle was, that 'the will of the prince had the force of law.' Blackstone is of opinion, that the *common law*, however compounded, or from whatever fountains derived, having subsisted immemorably in the kingdom and survived the rude shock of the Norman conquest, had become endeared to the nation; but being only handed down by tradition, and not committed to writing, 'was not so heartily relished by the *foreign clergy*, who came over in shoals during the reign of the Conqueror and his two sons, and were utter strangers to our constitution as well as our language.' The accidental discovery of Justinian's Pandects at Amalfi, he adds, had nearly completed the ruin of the common law; for this circumstance brought the civil law into vogue all over the west of Europe, and that law became 'the favorite of the *popish clergy*, who borrowed the method and many of the maxims of the canon law from this original.' (b) The Norman kings, too, according to Sir John Fortescue, found the constitutional maxims of the

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(a) Law of Bailments, p. 12.

(b) 1 Black. Com. 17.

civil law so congenial to their notions of sovereignty, that they exerted themselves to introduce that law into the government of England; (a) but this was so odious to our 'sturdy' English ancestors, that, according to John of Salisbury, 'they burned and tore all such books of civil and canon law as fell into their hands.' (b)

But, although the monkish *clergy*, devoted as they were to the will of a foreign primate, (Theobald, a Norman abbot, made archbishop of Canterbury,) received the civil law with eagerness, yet the *laity*, who were more interested to preserve the old constitution, and had already severely felt the effect of many Norman innovations, continued wedded to the use of the common law; and, in coincidence with this feeling, even one of the kings, Stephen, forbade by proclamation 'the study of the laws then newly imported from Italy,' which the primate above named had attempted to make a part of the studies at Oxford. This proclamation of king Stephen, we are told by historians, was treated by the monks as a piece of impiety; and, though it might prevent the introduction of the civil law process into the English courts of justice, yet did not hinder the clergy from reading and teaching it in their own schools and monasteries. The nation thus became divided into two parties; the ecclesiastics, of whom many were foreigners, applied themselves to the civil and canon laws; while the laity, both nobles and commoners, adhered with equal pertinacity to the old common law; both of them, as Blackstone observes, 'reciprocally jealous of what they were unacquainted with, and neither of them, perhaps, allowing the opposite system the real merit which is abundantly to be found in each.' (c)

The same jealousy of the Roman law prevailed above a century after the period last mentioned; when, in the reign of Richard II., the nobility, with a sturdiness surpassing even that of their sturdy ancestors, declared, (as Blackstone remarks) with a kind of prophetic spirit, that 'the realm of England hath never been unto this hour, neither by the consent of our lord the king and the lords of parliament *shall it ever be*, ruled or governed by the civil law.' (d)

Indeed, so much of this hostile spirit has remained in the land of our ancestors, that even so lately as the reign of the

(a) Fortescue De Laud. Leg. Angl. c. 33, 34.

(b) See Jones on Bailments, p. 13. (c) 1 Black. Com. 19. (d) Ibid.

last king, in the ever-memorable attack made upon his lord chief justice Mansfield by the unsparing pen of Junius, which seared as it went, a partiality for the civil law was prominently set out as one of the severest reproaches against that distinguished judge: 'In contempt or ignorance of the common law of England,' says Junius, in the spirit of an old English baron, and with that severity and boldness which felt no awe in assailing either the highest law officer or the sovereign who appointed him, 'you have made it your study to introduce into the court where you preside maxims of jurisprudence unknown to Englishmen; *the Roman code*, the law of nations, and the opinion of foreign civilians are your perpetual theme; but who ever heard you mention *Magna Charta* or the *Bill of Rights* with approbation or respect? By such treacherous arts the noble simplicity and free spirit of our Saxon laws were first corrupted. The Roman conquest was not complete until Norman lawyers had introduced their laws and reduced slavery to a system. This one leading principle directs your interpretation of the laws.'<sup>(a)</sup>

Exceptions, indeed, there have been to this state of feeling even during the period just mentioned. In that well written work called *Eunomus*, which we are inclined to think is not so much read at the present day as it deserves to be in the course of our legal studies, it is candidly admitted, though in cautious terms, that the civil law, 'in due subordination, deserves on many accounts to be studied by the professors of our own. The law of England often borrows the rules of the civil law in the construction of wills and trusts; the latter was the offspring of the civil law, and both are treated by it with great precision and exactness. Our law, too, has perhaps borrowed, at least agrees with the civil law in many other particulars.'<sup>(b)</sup> These remarks, in our judgment, need not have been made in so guarded language; we think it may be said, without such qualifications, that a great part of what we familiarly denominate 'common law' is 'borrowed' from the *Roman code*. It is true, indeed, that certain fundamental principles are recognised alike in all codes—as well in the *Institutes of Menu* as of *Justinian*. But when we find in the common law the same body of principles regulating the merely conventional rights of property, similar rules of evidence, and

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(a) Lett. 41.

(b) *Eunomus*, Dialog. 1. § 18.

even matters of practice, handed down to us in the language of the Roman law, we cannot hesitate in pronouncing the former to be derived from the latter. In proof of this, it would be sufficient to refer to that ‘best of our juridical classics,’ Bracton, whose work follows the civil law so closely, that some writers without much examination have discarded it from among the common law authorities. Yet, as Sir William Jones remarks, though Bracton had been a civilian, he was ‘a great common lawyer, and never, I believe, adopted the rules and expressions of the Romans, except when they coincided with the laws of England in his time.’ (a) It is true, indeed, that in the well known case of *Stowell v. Lord Zouch*, in Plowden’s Reports, (b) it is said, by counsel, that ‘Bracton and Glanvil are not authors *in our law* ;’ and the counsel adds, in respect to the former, in language which now excites a smile, that he cited Bracton ‘as an ornament to discourse where he agrees with the law,’ and ‘for consonancy and order where he agrees with better authorities ;’—a character of him which that profound juridical antiquary, Selden, pronounces to be founded in gross error, notwithstanding some great men have adopted it. (c) Lord Hale, too, says of Bracton’s work, ‘The book itself in the beginning seems to borrow its *method* from the civil law ; but the greatest part of the *substance* is either from the course of proceedings in the law, known to the author, or of resolutions and decisions in the Court of King’s Bench and Common Bench, and before justices itinerant.’ (d) This authority fully supports the character given of Bracton by Sir William Jones, and justifies the remarks of Mr. Reeves, that ‘Bracton was deservedly looked up to as the first source of legal knowledge, even so low down as the days of Lord Coke, who seems to have made this author his guide in all his inquiries into the foundation of our law ;’ (e) a very extraordinary guide for Lord Coke to select, if, as the counsel in Plowden contended, Bracton was not to be cited as an authority in our law, but only ‘as an ornament to discourse.’

To the proofs of the affinity of the Roman law and our own we might, after the example of some distinguished writers, add even the much boasted *trial by jury*. This mode of trial has been shown, with a high degree of evidence as we think,

(a) Jones on Bailments, 75.

(b) Plowd. 357.

(c) Dissertat. ad. Fletam, c. 1. (d) Hale’s Hist. Com. Law, ch. 7, p. 150.

(e) 2 Reeves’ Hist. Eng. Law, 89.

by that very learned antiquary, Dr. Pettingal, to be substantially derived from the Romans, who also had themselves received it from the Greeks. (a) Such a mass of evidence is to be found on this subject by those who will take the pains to examine the question, that Sir William Jones, whose scholarship and legal knowledge eminently qualified him to judge in the case, and who had arrived at the same conclusion with the author here cited, expresses himself in the following strong terms: 'I have always been of opinion with the learned antiquary, Dr. Pettingal, that they [the judges at Athens] might with propriety be called *jurymen*; and that the Athenian juries differed from ours in very few particulars.' (b) As this, however, is a different view of the origin of juries from that which has been handed down in our elementary books, we here subjoin an extract from Dr. Pettingal's preface; intending to recur to this subject on some future occasion:

'This kind of judicial process was first introduced into the Athenian polity by Solon; and thence copied into the Roman republic, as probable means of procuring just judgment and *protecting the lower people from the oppression or arbitrary decisions of their superiors*. When the Romans were settled in Britain, as a province, they carried with them their *Jura* and *Instituta*, their *Laws* and *Customs*; which was a practice essential to all *colonies*; hence the Britons, and other countries, of Germany and Gaul, learned from them the *Roman* laws and customs; and upon the irruption of the Northern nations into the Southern kingdoms of Europe, the laws and institutions of the Romans remained when the power that introduced them was withdrawn. And Montesquieu tells us, that under the first race of kings in France, about the fifth century, the Romans that remained, and the Burgundians, their new masters, lived together under the same Roman laws and police, and particularly the same forms of judicature. *Esprit des Lois*, liv. xxx. ch. 11. How reasonable then is it to conclude, that in the Roman courts of judicature, continued among the Burgundians, the form of a *jury* remained in the same state it was used at Rome. It is certain, Montesquieu speaking of those times mentions the *Paires* or *Hommes de Fief*, homagers or peers, which in the same chapter he calls *juges*, judges or jurymen. So that we hence see how at that time the *Hommes de Fief*, or Men of the Fief, were called *Peers*, and those peers

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(a) Pettingal's Inquiry into the Use and Practice of Juries among the Greeks and Romans. 1769.

(b) Jones's Speeches of Isæus, Prefatory Disc. p. 25.

were *juges*, or jurymen. These were the same as are called in the Laws of the Confessor *Pers de la Tenure*, the Peers of the Tenure, or Homagers, out of whom the jury of Peers were chose, to try a matter in dispute between the lord and his tenant, or any other point of controversy in the manor. So likewise in all other parts of Europe, where the Roman colonies had been, the Goths succeeding them continued to make use of the same laws and institutions which they found to be established there by the first conquerors.'

The learned author justly adds,  
 'This is a much more natural way of accounting for the origin of a jury in Europe than having recourse to the fabulous story of Woden and his savage Scythian companions, as the first introducers of so humane and beneficent an institution.'

Feeling the force of the facts above stated, and of the occasional examinations of original authorities which we have been able to make, we cannot but entertain a strong conviction that a very large portion of our common law, perhaps nearly all, except the law of real estate, is derived from that very Roman law, which has for ages been the subject of so much jealousy in England, and to which English lawyers have been so reluctant in acknowledging their obligations. And, under this conviction, we have sometimes been quite as much amused by the vehemence of a certain class of professional authors who have exhausted their lilliputian artillery in trying to batter down the venerable fabric of the common law, which they have supposed, and very honestly we have no doubt, to be wholly of barbarous origin and therefore of little worth, as we have at other times by the equally conspicuous enthusiasm of their adversaries, who with about the same justice have poured out their idolatry to their supposed native English law, with what the caustic Gibbon too harshly calls 'that blind and partial reverence which the lawyers of every country delight to bestow on their municipal institutions.'<sup>(a)</sup>

But the prejudices which once existed against the civil law are fast wearing away in England. In our country it can hardly be said that the effects of them are felt. We have hitherto been so much of a business nation, that we have contented ourselves with discussing and settling the rules by which the rights of property and persons were to be regulated, without having found leisure to inquire, whether those rules originated among the uncultivated natives or the civilized conquerors

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(a) Decline and Fall, ch. 44.

of our mother country. Our situation has in this respect been favorable; we can now take up the study of the civil law, as a wonderful repository of human reason, with as much impartiality as we could the Institutes of Menu or of Confucius, if they were equally useful to us in the study of our own jurisprudence.

The study of the Roman code has, within the last half century received a fresh impulse even in Europe, where we could hardly have expected that any department of it had left room for new investigations. This impulse is in a considerable degree to be ascribed to the writings of the eminent German jurist, Hugo, who, in the year 1780, was made professor of law at the university of Göttingen (where we believe he still remains) when he was only twenty-four years of age. He immediately projected a general reform in the method of study, and changed the common scholastic mode for one which was more lucid and founded upon the more solid bases of philology, history, and sound philosophy. He then composed elementary books to be used at his lectures; and commenced the publication of his *Civilistisches Magazin*, or Magazine of Civil Law, which contained interesting treatises on different topics of jurisprudence. Among other things, it is not an uninteresting fact to professional and other readers, to know, that in aid of his proposed improvement he translated into German, the celebrated 44th chapter of Gibbon's Roman History, which contains the well known historical sketch of the Roman Law; a work which some of the continental writers have, though in too strong terms we think, pronounced to be more profound than the treatises of Gravina, Heineccius, or Bach. But Hugo undoubtedly perceived the insufficiency of Gibbon's sketch for a professional reader, however well suited to a general scholar; for he afterwards wrote a history of the Roman law himself; and this, as might be expected, was soon preferred to that of Gibbon; he adopted in it, however, that writer's divisions of the subject.

The example of professor Hugo was soon followed. At the close of the last century M. de Savigny made himself known by a work upon the Law of Possession, according to the Roman code; which placed him in the first rank of jurists. He was appointed professor of law at Landshut, in 1808; and in 1810 was transferred to the University of Berlin, where he is now in the full enjoyment of the honors and rewards to which his genius and learning entitle him.

During the period now under consideration the constitution and laws of the German empire were much shaken by the power of France, and a portion of the German states annexed to that kingdom. The new French *Code* was, of course, to be extended to that new territory of France. This event brought that celebrated code under the notice of the German civilians, and led to much discussion and frequent comparisons of its provisions with the existing laws of the German states. Some jurists of the very first rank became desirous of making a general reform in the legislation of Germany. Among these was M. Thibaut, who was desirous of having a *civil code* applicable to all the states of the Germanic confederation; while others would have had distinct codes for each state. This difference of opinion produced a controversy. M. de Savigny wrote against the scheme of a general code; contending, that we ought not to take away from a people the laws which had been formed by their national habits and usages and modified by the spirit of successive ages; that a system of laws slowly matured by enlightened jurists, was always to be preferred to a new body of legislation, formed, as it were, at a single casting. He supported himself by the evidence of history as to the formation of the Roman law, which attained to its highest perfection in the age of Papinian, Paul, and Ulpian; a period, when there was a very small number of *positive laws*. These doctrines of Savigny met with much opposition; and his opinion, 'that our age was incapable of producing a good system of legislation,' gave great unpopularity to his views. He was, however, supported by Hugo, who declared himself against M. Thibaut. The great point of inquiry then became, whether we could promise ourselves more advantages from the establishment of a system of *positive legislation*, than from perfecting the *science of law*. Hugo and Savigny maintained the negative, and became the heads of a new school, called the *Historical School* of Jurisprudence. A journal was established, entitled *A Journal of Historical Jurisprudence*, to which Hugo, Cramer, Heise, Haubold, Hasse, and other eminent jurists contributed.

From that period to the present time, the law has been enriched with numerous distinguished works of continental writers, which have contributed to keep up the impulse originally given in the manner we have mentioned.

But, perhaps, a circumstance which above all others stimulated the civilians to new exertions in their professional inquiries,

was the brilliant discovery made at Verona, in 1816, of an ancient *palimpsest* manuscript, containing the Institutions of Gaius, covered over with a transcript of the Epistles of St. Jerome. The recovery of this work, it is well known, is due to Mr. Niebuhr, whose name is now familiar to every reader, and we might almost add, in every branch of learning.

This discovery is justly considered by the learned editors of the work itself as one of the most important that has been made since the revival of letters. In the official report, made to the Royal Academy of Berlin, on the 6th of November, 1817, one of them says—‘This manuscript gives us not only a series of principles on points of law entirely new to us and of great interest, but also some curious views of certain parts of the law already known; there is not a single page which does not impart some instruction. I may say, therefore, that of all the discoveries respecting the ancient Roman law, made since the middle ages, there is no one so important as that which I have the honor now to communicate, and for which we take pleasure in making our acknowledgments to Mr. Niebuhr.’ This great event accordingly excited the most intense interest throughout Europe; and we should give a more particular account of it on this occasion, if the limits of the present article permitted, and if some of our popular journals had not already noticed it. We shall, if necessary, recur to it hereafter.

The distinguishing characteristic of the present method of studying the civil law in the continental schools is, that it shall be *critical*. While its professors pay all respect to the authority of eminent jurists, they require that we should ascend directly to the sources of the law, and bring to our aid everything which can be furnished by history and by the study of languages and philosophy; the knowledge of the Roman law is regarded *as the foundation of all jurisprudence*, for Europeans; and, above all, this mode of study inculcates upon us, that we must, as their writers express themselves, enter into the conceptions of the jurists of a nation, which more than any other was ambitious of the perfection of its law.

The effects of the impulse thus given to the modern study of the civil law have been various, and of greater or less importance in several respects. The most important of them, perhaps, has been, that the jurists of Europe have had a more extensive correspondence with each other than has ever before

been known ; they have travelled over all parts of the continent, have examined all the libraries, and discovered numerous manuscripts of great value ; by collations of which they have been enabled to correct or explain the received texts of the ancient legislation, and to settle doubtful points in them as well as in the writings of the juridical commentators. Among the matters of minor importance, but yet of rational curiosity, we may mention, that the long existing perplexity of the civilians in respect to the origin of the character used in citing the Pandects, *ff*, is at length removed. The common tradition in all the elementary books of our common lawyers (who follow the civilians) has been, that this character was only a corruption of the Greek letter  $\Pi$ , the initial letter of the Greek name of the Pandects, Πανδέκται. But we now learn, by Savigny's masterly work on the history of the Roman law during the middle ages, that the manuscripts of the 12th century remove all doubts as to the true origin of this sign ; it is nothing but the letter *D*, a little contracted or narrowed, and having a stroke across it in the usual manner, in order to show that it stands for an abbreviated word ; but the copyists and editors have gradually changed it into the character *ff*. It is not a little remarkable, that the true explanation had already been given by several authors of the 16th century, but had been overlooked by their successors. (a)

We now proceed to give a brief account of the two works at the head of this article. The first of them is designed as an *introduction* to the study of the civil law. The author's object, as expressed in his preface, is,

'To offer a view of the principal revolutions which have taken place in the constitution and in the jurisprudence of the most celebrated people with whose history we are acquainted. The subject is in every point of view highly interesting. Indeed it may fairly be asserted that none of the numerous branches of study, which must be cultivated to obtain a knowledge of antiquity, is fraught with so much real and practical interest as that of laws and governments. It is not disputed that the manners and habits, the manufactures, the commerce of a great nation offer abundant materials for the gratification of a very natural curiosity ; but still they are, in most instances, an object of curiosity only. If the importance of every study were to be computed by its utility alone, this would have but slender pretensions in comparison

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(a) Vol. iii. p. 407, as cited in the *Thémis ou Bibliothèque du Jurisconsulte*.

with that of laws and of political institutions, which may be and often are actually reproduced in our own times and even in our own country. Indeed it is a fact so well known, that it need scarcely to be mentioned here, that the jurisprudence of Rome has formed the groundwork of the jurisprudence which to this day governs almost every nation of Europe. England is perhaps less indebted to it than any of the continental nations; but even the English law *owes it many and deep obligations*; and the neglect into which the study of it has fallen in this country must be imputed to motives very different from its want of connexion with our own system of jurisprudence.'

The learned and sensible author then goes on to show the great value of a knowledge of the civil law, as an aid in classical studies.

'It must be remarked,' says he, 'that there is one class of persons to whom some knowledge of the Roman jurisprudence is absolutely indispensable; those who have a desire, not only to catch the spirit, but even merely to understand the literal meaning of the Roman classics. In those writings, an acquaintance with which the unanimous consent of ages has agreed to consider as essential to a liberal education, allusion is as frequently and as familiarly made to the prætor's tribunal, or to a *vocatio in jus*, as in the works of our own popular authors we find casual mention of a grand jury or a writ of *habeas corpus*. Of course, in both instances, the author supposed his allusion to be perfectly intelligible to those who were likely to read his works; and if the lapse of time and change of language place us in a very different situation from the contemporaries of the writer, we must, if we aspire to place ourselves on anything like an equal footing with them in this respect, endeavor to overcome, as far as we are able, the obstacles which our situation puts in the way.'

We have often thought of this subject in the point of view last mentioned, as well as in its relation to jurisprudence; and we entirely concur in these opinions of our author. In proof of the justness of his remarks respecting *classical* studies, we are satisfied from our own observation, that of the commentators on the classics, taken as a body, the civilians have been the best. And, if we can transport ourselves to a period of two thousand years hence, when Burke, and Fox, and Pitt, and other English statesmen, and we may add Shakspeare, and other poets, shall have become ancient classics to our posterity,—who, we may ask, will then be able fully to comprehend them, and feel the force of many of their expressions

and allusions, unless he has some knowledge of the constitution and laws of England? The case is the same with the works of the statesmen and other writers of antiquity. If, then, a just and accurate knowledge of man is of any value to us,—and all agree that it is of the highest importance,—it is essential that we should make ourselves acquainted with the *governments and laws* of those ancient nations, whose history we would study with the expectation of deriving any advantage from them.

The work now before us is well adapted to the purposes of a general introduction to the civil law. It is not rendered forbidding by a mass of technical learning, and yet is sufficiently full to initiate both the student of law and the general scholar in this branch of knowledge. It is arranged in seven general divisions, as follows: 1. The Roman Constitution, previous to the establishment of the empire. 2. The Legislature [i. e. the legislation] of Rome, previous to the establishment of the empire. 3. The Pontifical Law. 4. The Prætorian Law. 5. The Roman Jurisconsults. 6. The Constitution of Rome under the Emperors. 7. The Imperial Jurisprudence.

Under these general divisions are discussed, in as clear and satisfactory a manner as the author's limits would allow, various interesting particulars which every well informed man, in or out of the profession ought to make himself acquainted with; as, the relative condition of the Patricians and Plebeians; the Senate, Curia, Comitia, Leges, Plebiscita; Patria potestas, Patron and Client; the Twelve Tables; the manner of enacting laws; the Priesthood; Dies fasti et nefasti; actiones legum; the Prætorian Law; the Patrician Jurisconsults; Responsa Prudentum; difference between the *causidici* and professed jurisconsults; Schools and Sects of Lawyers; Constitution of Rome under the Emperors, and improvement of the Jurisprudence; Codes of various Emperors; Justinian; Sources of the Roman Law, and comparison with the laws of England; the Institutes, Digest, Novellæ, etc. with numerous other particulars which we have not room to state.

Such is the plan of this useful and interesting work; which, though of small compass, is the result of much reading and reflection; and, among the books read by the author, we are glad to see occasional references to the eminent *German* lawyers of the present day, whose works however, we regret to add, are probably not better known in England than they are in this country.

We ought not to omit mentioning, that in the course of the work, our author takes occasion briefly to discuss some of the contested points in Roman history and jurisprudence; and his conclusions are always such as approve themselves to the judgment of practical men. On *constitutional questions*, his inclination is decidedly in favor of liberal principles, but moderated by a due regard to what is *practicable*, rather than what would be metaphysically exact in the social order.

In his opinions upon the subject of legislation, or, as he chooses to call it, *legislature*, (for which use of the word lawyers would require some authority, and which we do not find even in the capacious repository of our new American Dictionary,) we observe the same cautious and well-considered decisions as in other cases.

Among the controverted points in the juridical history of the Romans is that of the celebrated embassy, which Livy and other historians assert was sent to Athens, in order to procure materials for a body of legislation for the use of the Romans. He observes, very justly, that it is difficult to refuse credence to such authority as exists in favor of its having actually taken place; that it must have been a subject of great notoriety at the time, and not so likely, he thinks, to have been impaired by tradition as many other Roman stories were. But, as he observes, *the total silence of Cicero*, whose works abound with remarks on the Roman laws, and who had occasion frequently to mention those which were supposed to have been derived from Greece, very nearly amounts to a decided contradiction of it. He adds, in rather too strong terms we think, that this is one of those supposed historical facts, 'which modern criticism has in general rejected.' It is true that Gibbon and some other writers have boldly rejected it; but, as our author himself says in a note, there have not been wanting those who have taken up the other side of the question. And among these latter we would name one of our own time, who is himself a host in a question of this kind, and who should not have been overlooked; we mean that very high authority, Heeren, professor of History at Göttingen, who says in emphatic language, that 'the doubts, which have been raised respecting the embassy to Athens, are by no means sufficient to shake our confidence in a fact which is so positively stated.' (a)

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(a) Heeren's Handbuch der Geschichte der Staaten des Alterthums, or

Another disputed point of *constitutional* law, is the well known one relating to the *Lex Regia*; which, according to a passage of Ulpian, cited in the Digest, lib. i. tit. 4, *transferred to the emperor all the power which had formerly belonged to the people*. 'It has frequently been doubted,' as our author observes, 'whether this passage was genuine; and as it has only been transmitted to us through the medium of Justinian's compilation, many have accused that emperor of interpolating a forged authority for the purpose of giving a legal color to his own enactments. But the recent discovery of the Institutes of Gaius has completely refuted this opinion; and among the numerous obscure points of the Roman jurisprudence, which have been elucidated by that valuable work, there are not many of more importance than this. The testimony of Gaius on the subject of the *Lex Regia* leaves no room to doubt that such a law was actually passed. *Gaii Instit. Com.* 1. § 5.' p. 217. (a)

The remarks of our author upon the Imperial *rescripts* deserve notice, particularly as an incorrect notion of them has been propagated by the older common law writers, and has thence found its way into our juridical classic, Blackstone, and might mislead the student. He makes the following correction of the commonly received opinion :

'With regard to the *Rescripta* or personal decrees, which formed one of the most valuable branches of the imperial legislature, a very erroneous opinion has been advanced. They were the answers or judgments of the prince in particular cases where a disputed point of law was referred to his decision; and thus scarcely differed from the authorized *responsa prudentum*, since they were actually framed by the most eminent jurisconsults of the empire. Montesquieu, and Blackstone who has copied him, have inveighed against the impropriety of making private decisions (applicable only to few cases) serve for general rules of legislation. The fact is, *they were not considered as such*. Their authority was only that of legal precedent; and, like that of the *responsa prudentum*, could only depend on the applicability of their principles to anal-

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Manual of the History of the States of Antiquity, p. 421, edit. 1817. A translation of this valuable work has been lately made by Mr. Bancroft, of Round Hill; and we may justly take some credit to ourselves, that the first *English* translation of it has been made in America.

(a) We subjoin the passage of Gaius, from the second Leipsic edition, which is the one we have before us:—*Nec unquam dubitatum est, quin id (the emperor's decree or edict) legis vicem optineat, cum ipse Imperator per legem imperium accipiat.* *Gaii Institutt. Com.* i. § 5.

ogous cases. Blackstone, who was fully aware of the improvements the English law had undergone by the means of similar decisions, might certainly have better appreciated the value of this branch of the Roman jurisprudence; for certainly no English lawyer of the present day, experiencing as he continually must the practical authority of the law reports, will hesitate to confess that the *statutes* of the realm are not of more frequent use in our courts than the *rescripts* of Westminster Hall. Those of the Roman emperors were certainly not less confined in their application.' p. 223.

Among our author's criticisms, we may notice the following; which, though not of much importance, yet gives us more distinct and precise conceptions of the use and import of words frequently occurring in the works of the Roman lawyers and other writers.

The words *populus* and *plebs*, he remarks,

'though frequently confounded by translators, were in fact very distinct. The former comprehended the whole body of the free citizens; the latter was applied to such of them alone as were not of the patrician order. Every free citizen of Rome was entitled to a vote in the *Comitia*, or popular assemblies; and by the majority of votes every affair of importance connected with the administration of the state was decided.' p. 18.

We recollect that several years ago, when we felt a natural indignation at the reproaches cast upon us by certain British writers, one of the champions on our side of the controversy, in the warmth of argument, asserted that in this country we had no *plebs*; but according to the classical acceptance of this word, as above explained, the case is exactly the reverse.

Again: The customary formula, *Patres Conscripti*, is repeated in the daily exercises of our youth, even by students at the universities, without an accurate knowledge of its origin; for this can only be obtained by a knowledge of the Roman constitution, in which they are very imperfectly instructed.

'The original application of the term *patres*,' says our author, 'is doubtful. Their number is said to have been first limited to an hundred; an assertion which cannot be looked on but with great distrust, since it is supported only by an uncertain and improbable tradition. On the overthrow of the monarchical government, Brutus increased it to three hundred; and very few additions, if any, were made during the flourishing periods of the republic. It is worthy of observation, however, that the *newly enrolled* members did not assume the title of *Fathers*. Either

they were the first who had been elected for other qualifications than that of age, or the recent date of their admission did not entitle them to the distinction; but it was thenceforward customary to address the body of the Senate by the words *Patres et Conscripti*. This is one of the many forms of speech in which, for the sake of brevity, the adjunctive particle was afterwards disused.' p. 12.

Further examples of this abridged mode of speaking may be found in Ernesti's *Clavis Ciceroniana*, verb. *Conscriptus*.

We quote a remark or two of our author upon the mode of framing laws; which, though not new, deserve the attention of those persons who think the business of legislating to be a very simple one. We are perpetually told by men, who have never themselves attempted to draw an act, that our laws ought to be short and plain, so that everybody may understand them as well as lawyers; qualities, we agree, which are excellent in themselves, but no less difficult to incorporate into our laws than into a contract, a deed, a will, or any writing not of a legal character. If the subject-matter of a law or of a common contract is in itself intricate and difficult to be comprehended except by the particular class of men to whose business it relates, how is it to be expected that the language which is to describe those intricacies and difficulties can be made plain to every man in the community? But let us hear the author's remarks in relation to the characteristics of the Roman laws:

'There is one other circumstance relating to these laws [the Twelve Tables] which cannot be passed over in silence; their extreme brevity. That "admirable concision" which has often been proposed as a model, and quoted as a reproach to modern legislators, was not without its motive. It was intended to leave ample scope for dubious comment and interpretation. It will be seen hereafter, that the intention was fully accomplished. Few of the laws that have been preserved consist of more than one short sentence; so that the strict maxim alone could be conveyed in the text, while every deviation from it, to suit the emergency of particular cases, was left entirely to the discretion of the judge. The consequences of this laconism proved, that the convenience resulting from the brevity of laws may be more than counterbalanced by the disadvantages attendant on it.' p. 86.

The same difficulty has been experienced, during our own times, in the application of the celebrated French code; which, though perhaps the most comprehensive that was ever made, yet from its very conciseness leaves too much to construction;

and indeed, without the benefit of constructions *ab extra*, as, by usage aided by numerous supplementary enactments and endless commentaries and expositions of the civilians, even that celebrated code with all its excellencies would be wholly insufficient for regulating the complicated concerns of society; in which, as in the natural world, scarcely any two cases will be found precisely alike, and where our various legal and moral rights and duties differ from one another by delicate gradations, which are perceptible only to minds long practised in the discrimination of those rights and duties. Just as in the fine arts the skill of a painter is necessary, to distinguish in a picture the numberless shades of color, which run into each other, and whose united effect is perceived and felt by every spectator, but whose differences are discernible only by a practised eye. In France, accordingly, it is the fact, we believe, that the community at large are as much puzzled to know the exact bearing and extent of the *two thousand two hundred and eighty-one* concise and perspicuous laws of their code, as the people of Massachusetts, for example, often are to ascertain the meaning and application of the more prolix and obscure enactments of their voluminous statutes. In making comparisons, therefore, between our own and the French law, we must know not only the statutes or positive enactments of the respective countries, but how much of their law consists in usages (which must ever exist) and how much in constructions given to the positive law; all which must be looked for in the Digests and Abridgments, as we call them in our professional language, and the corresponding works called *Repertoires* of Jurisprudence by the French. We have, for example, as every lawyer knows, the valuable Abridgment of American Law by Mr. Dane, which the learned author has with vast labor been able to condense within the space of seven large octavo volumes, and which to persons out of the profession seems to be unnecessarily bulky. But, in comparison with the best Abridgments or *Repertoires* of France, the simplicity and conciseness of whose law is so often recommended to our imitation, Mr. Dane's work shrinks to a pigmy size. The most modern and most valuable French work of this kind, the *Repertoire de Jurisprudence*, by Mons. Merlin, is now extended to nineteen closely printed quarto volumes. The simple fact that a work of this bulk is found necessary in France, where, according to some fanciful theorists, a code was to supersede

all other law books, we may truly say speaks volumes upon this subject.

From our remarks, however, upon the subject of codes, the reader must not understand, that we should by any means object to a more methodical and systematic mode of legislation than has been practised. Method and system are as necessary in the law as in any science. Our statutes have much superfluous phraseology and are too carelessly drawn; even those of a general nature are too often made to suit a particular case, and are accordingly framed either with a studied ambiguity in order to conceal the real object, or at least without taking that large and general view which the public good requires. If, therefore, any improvement is to be made in our legislation, it should be done in the manner lately adopted in England; not by setting out *de novo*, and making at a single casting an entirely new code, or, in the cabala of Jeremy Bentham's school, by *codifying*, but by carefully revising and methodizing the existing laws; always preserving as nearly as possible, the very words of the statutes where they are now clear, and in other cases, where necessary, resorting to the language of the judicial decisions in which they are expounded. The author of the work now before us justly observes, that

'Every system of law which is accommodated to the growing exigencies of the state, and gradually increases according to the wants of the citizens, must possess a great superiority over the best of uniform codes, which are comparatively the work of a moment; inasmuch as the former must of necessity be adapted to the manners and habits of the people, among whom it is begun and from whom it receives almost daily additions.' p. 152.

The multiplication of laws, which has been a subject of frequent complaint in modern days, is undoubtedly an evil; but when we consider the innumerable and complicated relations arising from the constant changes and progress of society, particularly in a new country like our own, we shall the less wonder at the multitude of our laws. And, as to the fanciful wish of some philanthropic persons, that our laws might be made so plain as to be intelligible to every man in the community, we might as rationally attempt to abolish and sweep away all those improvements which constitute the superiority of modern society over that of past ages, but which at the same time give occasion to new laws for its due regulation. The mere necessity of terms peculiar to the different arts and

sciences and the various professions and kinds of business in common life, though by no means the greatest of all difficulties, presents an insurmountable obstacle at the very threshold of all attempts to legislate in *popular* language; for, until we can banish all the arts and sciences, we must retain the language which is appropriate to them. The divine and the physician, the merchant, the mechanic, the seaman and the farmer cannot dispense with their terms of art; and the law-makers, whose duty it is to make rules for regulating the social relations of all the different professions and callings in life, must frequently use language which will not be understood by everybody without the aid of an interpreter, any more than it would be possible for every man to make himself master of every one of those professions and callings. But we have not room to enlarge upon this topic in the present article; we therefore repress all further observations upon it, and will only add one other remark respecting the work under consideration.

One defect of this performance ought not to be overlooked; we mean a total omission to give an account of the *Agrarian* laws of the Romans, which produced so many political convulsions in their government. To general readers, as well as lawyers, who would have just notions of the Roman history and constitution, a correct view of the agrarian laws is indispensable; and we are the more surprised, that this well read and sensible author has barely mentioned them (at p. 77) without any explanation, as Mr. Niebuhr, in his celebrated *Roman History*, has lately given a view of them which is new to English and American readers, though it has for some time been well known to the learned of Germany. Our readers, we persuade ourselves, will pardon us, if we detain them a few moments upon this subject.

The commonly-received opinion has been, that the agrarian laws were resorted to for the purpose of making an equal division of the private property of individuals, and restricting all landholders to five hundred jugera, or about 350 acres; an opinion, which has been adopted even by such men as Machiavelli, Montesquieu, and Adam Smith. But the original object of these laws was, the distribution of the *public* lands, which had become the property of the nation either by conquest, or purchase with the public money, or otherwise. We must not, however, infer as some writers have hastily done from Mr. Niebuhr's remarks, that the agrarian laws did not

interfere at all with *private rights*; this would be only escaping from one error to fall into another, and would be irreconcilable with Cicero's severe animadversions upon the demagogues who promoted laws of that kind. The manner in which private rights were violated would require some detail, and will be explained on a future occasion. In the mean time we will inform our readers, that we understand an article on this subject is to appear in that valuable German work, the *Conversations-Lexicon*, to which we referred in our last, and the first volume of which will be published in this city before the next number of our journal. (a)

The second work at the head of our article will require but a brief notice on this occasion, as it has already been well translated and published entire in a valuable law journal, which was begun at New York in 1822, but was soon afterwards discontinued; we mean the *United States Law Journal and Civilian's Magazine*. Mr. Dupin, the author of the work before us, is well known in Europe as an eminent advocate at the Paris bar, and as the author of various works on jurisprudence. We find at the end of his present volume a list of no less than twenty-seven different publications by him, comprising forty-six volumes of different sizes, and among them twelve quartos of *Plaidoyers* and *Consultations*, answering to what we call *arguments* and *opinions*. The translation of the present little work, to which we have just alluded, was made from the edition of 1821. We have before us the *fourth* edition, 1822, which, so far as we can decide by the translation, does not differ materially from the former. The work is divided into eight short chapters, on the following subjects:—1. The Roman law under the kings; 2. The Roman law to the time of the Twelve Tables; (b) 3. From the time of the Twelve Tables to the time of Augustus; 4. From Augustus to Constantine; 5. From Constantine to Justinian; 6. The compilation of the *corpus juris*, or body of Roman law; 7. The

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(a) A concise account of these laws has also been given in the *North American Review*, vol. 16, p. 439 of the review of Niebuhr's work.

(b) At the end of this chapter we find a short paragraph which is not in the New York translation, and which is as follows; 'Several authors advise beginning a legal course of study with these laws [the Twelve Tables], which in fact indicate the origin and principles of many established regulations; but others, with whom I myself agree, think, on the contrary, that the study of them is only advantageous to those who wish to sound the depths of the science; and that to common readers we must say—procul, ô, procul este profani!'

Roman law after Justinian, and the fate of his legislation ; 8. The Roman law in the 19th century. The work is concluded by an Appendix, explaining the *abbreviations* used by the civil lawyers in citing the Roman law and the writers upon it. We need only add, that from the very limited extent of this work, which is not longer than a single lecture of a professor, the reader will not expect anything more than a mere outline of the history of the Roman law ; but it is clearly and distinctly drawn. The author, as we have observed, is a friend of liberal principles in government ; so much so, indeed, that we find, by the following notice prefixed to this edition, that his work has come under the censure of the police of France : ‘The first edition of this historical summary had the honor to be seized by the police in 1809 ; the reason of this will be easily guessed by reading the fourth chapter ;’ where, it is true, he uses a boldness of language which we should suppose would be deemed offensive by the officers of the police.

We conclude this article with a few general remarks upon the study of the civil law.

The history and constitution of Rome, as a republic, must ever be highly interesting and important to us who also live under a republican government ; for, if there is any such thing as learning wisdom by the history of other governments, it can only be when we obtain an accurate knowledge of them ; and this demands a careful and exact study of their constitutions and laws. Apart from these more general considerations, however, the utility of the civil law as an important aid in the study of our own, cannot now be questioned.

But if we extend our views beyond the confines of *municipal* law, we find the civil law to be the basis of that *international* code, which governs us and all the nations that constitute the great community of Europe. The interpretations given to that law, the reasoning of foreign nations upon it, and the instruction we have in the works of its elementary writers, all proceed from foreign statesmen and jurists, who have been taught in the schools of the civil law ; whose modes of thinking and language, particularly their technical language, will not be intelligible to us without some acquaintance with the same code. Our statesmen at home, therefore, our diplomatic agents abroad, and our practising lawyers of eminence, who are daily called to the examination of important questions more or less intimately connected with the rights and duties

of foreign nations, must make themselves in some degree acquainted with foreign laws; and for this purpose a knowledge of the civil law is indispensable.

We might add to these considerations, that in a liberal course of professional studies, general or *comparative jurisprudence* must be a constituent part; and in this point of view the Roman law is of far greater importance than that of any other nation. The remarks of Blackstone on this subject (which we fear are not so much read as many other parts of his book) deserve the serious attention of the profession :

‘The evident want of some assistance in the rudiments of legal knowledge has given birth to a practice, which, if ever it had grown to be general, must have proved of extremely pernicious consequence. I mean the custom by some so very warmly recommended, of dropping all *liberal* education, as of no use to students in the law; and placing them, in its stead, at the desk of some skilful attorney, in order to initiate them early in all the depths of practice and render them more dexterous in the mechanical part of business. . . . Making, therefore, due allowance for one or two shining exceptions, experience may teach us to foretell that a lawyer thus educated to the bar, in subservience to attorneys and solicitors, will find he has begun at the wrong end. If practice be the whole he is taught, practice must also be the whole he will ever know; if he be uninstructed in the elements and first principles upon which the rule of practice is founded, the least variation from established precedents will totally distract and bewilder him; *ita lex scripta est* is the utmost his knowledge will arrive at; he must never aspire to form, and seldom to comprehend any arguments drawn à priori from the spirit of the laws and the natural foundations of justice.’ (a)

The example of lawyers in other nations, one would think, needs but to be known, to stimulate us to the liberal course of study here recommended. They think it useful to study the laws of other nations besides their own. We accordingly find that the admirable Commentaries of Blackstone have been already translated into French and German; and we have now before us an excellent French Law Journal, in which there are many discussions on points of English law as compared with the civil law. We have also before us a learned history of the English law, in German, written by a professor at Berlin; (b) and there are doubtless many other works of a

(a) 1 Black. Com. 31, 32.

(b) The title of this learned work is, *Englische Reichs und Rechtsgeschichte*, etc. By Dr. Geo. Phillips. 2 vols. 8vo. Berlin, 1827.

similar description which have not yet come to our knowledge.

While, then, we are endeavoring to advance the *science* of law in our own country, particularly by means of law schools and lectures on the *common* law, we ought at the same time to take care that the *civil* law should not be wholly neglected. We have just had an illustrious example of professional liberality in the donation made by our learned countryman, Dr. Dane, to the University of Cambridge, for the advancement of *American* law. And we earnestly hope, that some benefactor of equal liberality will soon be found, who will devote a portion of the well-earned fruits of an honorable life to a chair for the civil law in that ever-cherished institution. This would complete the department of jurisprudence in our university law school, and at once give it the preference over every other.

Need we fortify the argument in favor of this interesting and useful study by examples of its fruits? Both England and our own country, happily, can furnish them. Great as the talents of Lord Mansfield were, he owes no inconsiderable part of his professional reputation to the constant use which he made of the civil law, particularly in the application of it to contracts of a mercantile nature. And who, we may ask, has not read with delight and wonder the finished work of Sir William Jones above cited; which, however, as every student of the civil law knows; and as he himself admits, is *nothing* more than a summary of principles drawn directly from the writers in that law; principles, which, though new at that period in England, had been settled for centuries on the continent of Europe. And, as that inimitable writer observes,—‘in questions of *rational* law, no cause can be assigned, why we should not shorten our own labor by resorting occasionally to the wisdom of ancient jurists, many of whom were the most ingenious and sagacious of men. What is good sense in one age must be good sense, all circumstances remaining, in another; and pure, unsophisticated reason is the same in Italy and in England, in the mind of a Papinian and of a Blackstone.’ (a)

In our own country too we can exhibit honorable examples of high professional distinction, which has been in some degree at least obtained by this study. Among our advocates we may

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(a) Law of Bailments, 14.

mention that eminent jurist of the Philadelphia bar, who has enriched our law with his able Dissertation on the Jurisdiction of the United States' Courts; and among our judges every man will point to the illustrious chancellor of New York, whose opinions from the bench, and whose lectures from the university chair are alike imbued with the wisdom of the Roman law, skilfully adapted and applied by the native energy of his discriminating mind to the interpretation and improvement of our own.

With this strong conviction of the high value of the Civil Law—its great utility in our legal studies and its essential importance in the administering of our own, particularly the equity, mercantile, and testamentary law of the several states, and the equity, admiralty, and international law as administered in the courts of the United States—we cannot but earnestly hope soon to see the proper rank assigned to this branch of jurisprudence both in our law schools and among our practisers at the bar.

The following list of Roman Jurists is extracted from the work first named at the head of this article.

*List of the Principal Roman Jurisconsults, with the number of times they are quoted in the Digest, and the number of Fragments, (commonly called Laws) there inserted, which are taken from their works.*

### *I. Jurisconsults anterior to the Age of Cicero.*

| No.   | No. of times quoted in the Digest. | No. of Fragments of the Digest, extracted from their works. |
|---|------------------------------------|---|
| 1 P. or C. Papyrius . . . . .                   | 2                                  | “   |
| 2 Appius Claudius (Decemvir) . . . . .          | 2                                  | “   |
| 3 App. Claudius Centumanus }<br>Cæcus . . . . . | 3                                  | “   |
| 4 Cn. Flavius . . . . .                         | 2                                  | “   |
| 5 P. Sempronius Longus Sophus . . . . .         | 1                                  | “   |
| 6 Tiberius Coruncanus . . . . .                 | 2                                  | “   |
| 7 Q. Mutius . . . . .                           | 1                                  | “   |
| 8 Sext. Ælius Pætus Catus . . . . .             | 6                                  | “   |
| 9 P. Attilius . . . . .                         | 1                                  | “   |
| 10 P. Scipio Nasica . . . . .                   | 1                                  | “   |
| 11 M. Cato . . . . .                            | 5                                  | “   |
| 12 P. Mucius Scævola . . . . .                  | 4                                  | “   |
| 13 M. Manilius . . . . .                        | 3                                  | “   |

| No.                           | No. of times quoted<br>in the Digest. | No. of Fragments of<br>the Digest, extract-<br>ed from their works. |
|-------------------------------|---------------------------------------|---|
| 14 M. Brutus . . . . .        | 7                                     | "   |
| 15 C. Livius Drusus . . . . . | 1                                     | "   |

*II. Jurisconsults of the latter period of the Republic.*

|   |    |   |
|---|----|---|
| 16 Cicero . . . . .                       | 7  | " |
| 17 P. Rutilius . . . . .                  | 5  | " |
| 18 Q. Ælius Tubero . . . . .              | 1  | " |
| 19 Q. Mucius Scævola (Pontiff) . . . . .  | 50 | 4 |
| 20 C. Aquilius Gallus . . . . .           | 16 | " |
| 21 S. Sulpicius Rufus . . . . .           | 93 | " |
| 22 Q. Cornelius Maximus . . . . .         | 2  | " |
| 23 Antistius Labeo (the father) . . . . . | 1  | " |
| 24 Granius Flaccus . . . . .              | 1  | " |
| 25 Ælius Gallus . . . . .                 | 2  | 1 |

*III. In the time of J. Cæsar and of Augustus.*

|   |     |    |
|---|-----|----|
| 26 A. Offilius . . . . .                        | 73  | "  |
| 27 A. Cascellius . . . . .                      | 16  | "  |
| 28 Trebatius Testa . . . . .                    | 96  | "  |
| 29 Q. Ælius Tubero, pupil of Offilius . . . . . | 17  | "  |
| 30 Cinna . . . . .                              | 3   | "  |
| 31 Alfenus Varus . . . . .                      | 19  | 54 |
| 32 Aufidius Namusa . . . . .                    | 6   | "  |
| 33 C. Ateius Pacuvius . . . . .                 | 1   | "  |
| 34 P. Gellius . . . . .                         | 1   | "  |
| 35 Antistius Labeo (the son) . . . . .          | 541 | 63 |
| 36 Ateius Capito . . . . .                      | 7   | "  |
| 37 Blæsus . . . . .                             | 1   | "  |
| 38 Vitellius . . . . .                          | 1   | "  |

*IV. From Tiberius to Vespasian.*

|                                       |     |    |
|---------------------------------------|-----|----|
| 39 Massurius Sabinus . . . . .        | 220 | "  |
| 40 Cocc. Nerva (the father) . . . . . | 34  | "  |
| 41 C. Cassius Longinus . . . . .      | 160 | "  |
| 42 Sempronius Proculus . . . . .      | 136 | 37 |
| 43 Falcinius (Priscus) . . . . .      | 16  | "  |
| 44 Fabius Mela . . . . .              | 39  | "  |
| 45 Cartilius . . . . .                | 2   | "  |
| 46 Cocc. Nerva (the son) . . . . .    | 15  | "  |
| 47 Attilicinus . . . . .              | 27  | "  |

*V. From Vespasian to Hadrian.*

|                             |    |   |
|-----------------------------|----|---|
| 48 Cælius Sabinus . . . . . | 18 | " |
| 49 Pegasus . . . . .        | 28 | " |

| No. |                             | No. of times quoted<br>in the Digest. | No. of Fragments of<br>the Digest, extract-<br>ed from their works. |
|-----|-----------------------------|---------------------------------------|---|
| 50  | Juvent. Celsus (the father) | 5                                     | "   |
| 51  | Priscus Javolenus . . . . . | 11                                    | 206   |
| 52  | Aristo . . . . .            | 81                                    | "   |
| 53  | Neratius Priscus . . . . .  | 128                                   | 64  |
| 54  | Arrianus . . . . .          | 6                                     | "   |
| 55  | Plautius . . . . .          | 4                                     | "   |
| 56  | Minutius Natalis . . . . .  | 3                                     | "   |
| 57  | Urseius Ferox . . . . .     | 4                                     | "   |
| 58  | Varius Lucullus . . . . .   | 1                                     | "   |
| 59  | Fufidius . . . . .          | 3                                     | "   |
| 60  | Servilius . . . . .         | 1                                     | "   |

*VI. Hadrian and Antoninus Pius*

|    |                                 |     |     |
|----|---------------------------------|-----|-----|
| 61 | Lucius Celsus (the younger)     | 173 | 142 |
| 62 | Salvius Julian . . . . .        | 778 | 457 |
| 63 | Aburnius Valens . . . . .       | 4   | 20  |
| 64 | Lælius Felix . . . . .          | 2   | "   |
| 65 | Vindius Verus . . . . .         | 4   | "   |
| 66 | S. Cæcilius Africanus . . . . . | 3   | 131 |
| 67 | Volus. Mæcianus . . . . .       | 18  | 44  |
| 68 | Ulp. Marcellus . . . . .        | 256 | 158 |
| 69 | Val. Severus . . . . .          | 4   | "   |
| 70 | Ter. Clemens . . . . .          | 1   | 35  |
| 71 | Publicius . . . . .             | 3   | "   |
| 72 | Pactumeus Clemens . . . . .     | 1   | "   |
| 73 | Campanus . . . . .              | 2   | "   |
| 74 | Octavenus . . . . .             | 23  | "   |
| 75 | Vivianus . . . . .              | 23  | "   |
| 76 | S. Pedius . . . . .             | 60  | "   |
| 77 | Tuscus Fuscianus . . . . .      | 1   | "   |

*VII. M. Aurelius and Commodus.*

|    |                                |     |     |
|----|--------------------------------|-----|-----|
| 78 | Caius or Gaius . . . . .       | 4   | 536 |
| 79 | S. Pomponius . . . . .         | 409 | 588 |
| 80 | Q. Cervidius Scævola . . . . . | 63  | 307 |
| 81 | J. Mauricianus . . . . .       | 6   | 4   |
| 82 | Papyrius Justus . . . . .      | "   | 16  |
| 83 | Papyrius Fronto . . . . .      | 4   | "   |
| 84 | Claudius Saturninus . . . . .  | "   | 1   |
| 85 | Tarruntenus Paternus . . . . . | 1   | 2   |

*VIII. From Severus to the Gordians.*

|    |                        |     |     |
|----|------------------------|-----|-----|
| 86 | Callistratus . . . . . | "   | 101 |
| 87 | Æm. Papinian . . . . . | 153 | 596 |

| No.                            | No. of times quoted<br>in the Digest. | No. of Fragments of<br>the Digest, extract-<br>ed from their works. |
|--------------------------------|---------------------------------------|---|
| 88 Arrius Menander . . . . .   | 5                                     | 6   |
| 89 Tertullian . . . . .        | 3                                     | 5   |
| 90 Jul. Paulus . . . . .       | 45                                    | 2087  |
| 91 Dom. Ulpian . . . . .       | 20                                    | 2461  |
| 92 Venul. Saturninus . . . . . | 4                                     | 71  |
| 93 Messius . . . . .           | 1                                     | "   |
| 94 Ælius Marcianus . . . . .   | 6                                     | 282   |
| 95 Cl. Triphoninus . . . . .   | 21                                    | 79  |
| 96 Lic. Rufinus . . . . .      | 1                                     | 17  |
| 97 Æm. Macer . . . . .         | "                                     | 62  |
| 98 Heren. Modestinus . . . . . | 2                                     | 345   |
| 99 Florentinus . . . . .       | "                                     | 42  |

*IX. From the Gordians to Justinian.*

|   |   |     |
|---|---|-----|
| 100 Hermogenianus . . . . .               | " | 107 |
| 101 Aurelius Arcadius Charisius . . . . . | " | 6   |
| 102 Julius or Gallus Aquila . . . . .     | " | 2   |

*X. Uncertain.*

|                                |   |   |
|--------------------------------|---|---|
| 103 Puteolanus . . . . .       | 1 | " |
| 104 Paconius . . . . .         | 1 | " |
| 105 Furius Antianus . . . . .  | " | 3 |
| 106 Rutilius Maximus . . . . . | " | 1 |
| 107 Antæus . . . . .           | 1 | " |