

15
Francis Hungrove

PRELIMINARY LECTURE

TO THE

COURSE OF LECTURES

ON THE

INSTITUTIONS OF JUSTINIAN.

TOGETHER WITH

AN INTRODUCTORY DISCOURSE.

BY JOHN WILDE, ESQ. ADVOCATE,
FELLOW OF THE ROYAL SOCIETY, AND PROFESSOR OF CIVIL
LAW IN THE UNIVERSITY, OF EDINBURGH.

Justitiæ prius mirer, belline laborum! VIRG.

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PRELIMINARY LECTURE

OF THE

COURSE OF LECTURES

OF THE

INSTITUTIONS OF BRITAIN

LECTURE

AT THE ROYAL INSTITUTION



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IN the spring of 1792, it was suggested to me by some most dear and intimate friends, that, from the age and long services of the professor of civil law in this university, it might be a measure both agreeable to him, and acceptable besides to all concerned in the nomination, were the active duties of that chair to be discharged, in time coming, by another; who should, upon that gentleman's resignation, be appointed joint professor with the right of survivancy: and, for this purpose, they kindly thought that the choice, without any impropriety, might

a

fall

fall on me. I certainly had no rash confidence in my qualifications otherwise; and my friends besides knew, as well as I did myself, that neither my habits nor inclinations were greatly academical. Yet the station was most honourable: and in my circumstances also (if my abilities could at all compass the duty) to decline the offer would have been a crime. I did not deliberate long: and I lost less time still in taking the necessary measures upon my resolution. So far as in a most insignificant person, and in a still more insignificant life, any thing could have been done by me to create either enmity or favour, there was nothing that I had to hope (as I was well aware) from the ruling political interest in Scotland. It was then with me just as it is now; in power equally and in wishes. Neither was want

of influence on the one side of Scottish politics (*then* more than *now*) made up by any weight in the opposite scale. If I had ever been counted (which is more than I know) I had ceased to make any part of the calculation. Yet it so happened, that the exertions of personal friendship were as efficacious, and even as speedy, as if I had been whirled in the political gig: and it was understood on all hands, that the election would take place, and be over, as to all parties, in the ensuing summer.

It fell out somewhat otherwise. In the month of June of the same year, some opposition began to be made; and strong things were even said that the appointment should never happen. The nomination was, in the first instance, with the faculty of advocates; indeed, as in effect,

was with them exclusively. The mode was to name two persons out of their body ; one of whom the patrons of the university were then to chuse to fill the office. The reality of appointment was thus with the faculty. My friends thought it advisable (in the circumstances of opposition said to exist elsewhere) that a meeting of that body, as on this business, should be immediately held. In the beginning of July the faculty unanimously named me, together with a confidential friend*: They further recommended to me, and I accordingly began, the preparation of a course of lectures.

My general studies of the civil law, became now more pointed and particular. In the ensuing November, the town council

* Mr. Adam Gillies,

cil of Edinburgh, as patrons of the university, did me the honour of confirming the nomination made by the faculty of advocates. A few days afterwards I entered on the duties of my station.

In an introductory discourse, I endeavoured to set forth, in a general view, what I thought to be the nature, authority, and use, of the civil law; describing, at the same time, the method I was myself to adopt in its explanation. I repeated the same discourse, with a few variations, in beginning my lectures this winter likewise. And I now give it to the world, nearly as it was delivered; or with some slight and not important changes.

I have done the same as to what I said in introducing my lectures on the Pandects.

defts. And as the lectures in that course are given in Latin, I have ventured, in that language, to submit, with much humility, to the judgment of the learned, my general opinions on the civil law: upon which they will decide, as well as on the stile in which these opinions are delivered.

As these publications are not the same, so neither are the things said in them. Yet had there even been more similitude and coincidence than there is, I should still have made them separate treatises. While I intend them to serve the same common purpose, they will serve it each in their own way. I wish the learned to resume; I wish the unlearned to begin; these studies. Yet by *unlearned* I do not mean *ignorant*: and still less do I mean those

those unwilling to learn. Only ; a popular address may be necessary to some : to others I may speak on the civil law in the language itself of the civil law.

My reasons for giving both these things to the world will be very apparent to those who read them. The civil law has fallen. It is our interest greatly that it should be restored. My station imposes on me the duty to do what I can in this great work. It can be but little. But if it be *any* thing ; to *that* I am bound. Nothing can absolve me from the obligation, unless a consciousness of total incapacity ; which (had I felt it) should have made me reject the situation in which the obligation could exist.

It would be a great duty at any time to revive this beautiful science. In these

times, and in circumstances like mine, it is indispensable wholly. Men are running mad after their own conceits. These visions of this night of Europe can be dispelled only by the realities of day. And in the light that shone, before our sun had set, nothing was brighter than the Roman jurisprudence.

In my unintermitted labours (unintermitted from the necessity of the thing; with so much to do, and so little space to do it in) I have felt at times great animation, and at others much depression. Despondency is not a natural inmate of my mind; but who could look at what surrounded him, and not be terrified and dismayed! What delight could there be likewise even as to literary fame, in the ungrateful labours of science soon to perish,

in a barbarism not fabled even of the Saracens or Huns! *Silent leges inter arma.* This was an old saying. It was now to be accomplished in a new manner. The very notion of justice was to be destroyed, and all its principles subjected to casual will. When this will made evil cease, it was only to create evil. "Alps rose on Alps," in this war against heaven; and the wearied eye could see no end. "The morning cometh;" but immediately it was added; "and also the night." In the intermitting flashes of this terrible tempest, confounding earth and heaven, the momentary gleam was only upon scenes of unceasing and renewing horrors. In these "days of trouble and of treading down," the mind naturally fixed itself upon any thing else than the researches of science and the charms of the muses. Looking at
and

and looked upon by danger in the face; in mingled fear, courage, duty, and revenge; the heart beat to arms alone: crying, with the prophet, and in his spirit;—" Arise, ye princes, and anoint the " shield."

Yet it is a dreadful war, a cruel and exterminating war; a war that, in all its parts, and on every side, humanity cannot view without insufferable pangs: and (what enlarges the horror almost to despair) it may be an unsuccessful, or to us, and in our times, an endless war. But a peace (that is what men call a peace) would be more cruel, more destructive, bloody, inhuman, than even this (this very) war: which is, THEREFORE, just; which is, THEREFORE, necessary; which must, THEREFORE, be favoured by Heaven
itself:

itself: and, in its issue (should *our* eyes close on these *our* miseries, ere they pass away) yet redound, in the counsels of a good Providence, and as being even a direct means, to the felicity (perhaps permanent) of the human race.

We have no patent, no privilege, to escape from evils. *Our* duty is to resist what we can, and, what we cannot resist, to bear. Perhaps in doing our duty, the reward of our duty may come sooner than human hope. Let us not anticipate it by delusions; but work for its coming by patient manliness. When it arrives *thus*, it will arrive with all its blessings. Wise diffidence is not base despair. Even in common things pleasure is diminished by too anxious expectation. *Grata superveniet quæ non SPERABITUR hora.*

Surely

Surely it will come. But I am earnest, earnest indeed, that we should neither deceive others nor be ourselves deceived. If it is to be a long struggle, why should we make ourselves less able to sustain it, from want of being prepared ! It is a necessary struggle.

Ye people ! I am one of yourselves. If this be a title of confidence, a presumption of virtue ; believe me worthy of your confidence, believe me virtuous. I myself think this to be no such title at all ; and those who have claimed upon it have always claimed to your ruin. Oh ! that I had no such claim to make ! I do not love the aristocracy of plebeianism. The ignoble patriciate has no charms for me. But I *am* one of yourselves ; and one of yourselves I am likely to remain. More likely

likely so, than any one competitor for your favour. It is a truth; and to me a very *melancholy truth*. I most sincerely wish it were otherwise. But it cannot be. My politics have, and must throw me back. I have to dash with unceasing oar against the stream. What loses me favour with you, gains me none elsewhere; that is, with power, or in permanency. I do not mean general liking or good will: but *that* was never match, even for mere *private* grudge: against the grudge of *power* it is nothing. Yes: I am one of yourselves; and likely to remain such. I might *thus* plead your confidence as *others* do. I can plead it on *better* grounds: unless the rarity of the thing argue a pravity of intellect; on a bold sacrifice (I hope not unwife) of interest to duty. What I *have said and done* has not profited me. What
I am

I am to say and do, will profit me as little : *Less* cannot be.—Hear me, then !—*Elsewhere* I look not : unless indeed very high. From *you*, if I cannot gain favour, I am entitled to attention. Hear a man, who must either speak wisdom or madness ; for he has thought, and he is sincere.

Yet I wish you not to imagine, that sincerity and truth do not dwell with others : that they are not in sober ordinary life, and in the places of fair and honest office. A courtier, believe me ; even the worst of them ; is much better than a demagogue : and for a man to be in office would be a presumption with me (except in very depraved times) of his being a worthy character. It is a terrible delusion and mischief, the believing, that virtue abounds as money fails ; and that a man performs
his

his duty the better for wanting the means of duty. Men (as men) are not made for these strainings. Neither should I allow the men of means to hold themselves out as the only men of performance. Especially, men whose means are not more than their insolence. Means are not *therefore and always* ends. I should certainly not permit those men to be too proud, who defend at once the constitution and their salaries; and who, by displaying their loyalty, display their power. Interest may be, and (for the honour of humanity) it often is, joined with duty. But it cannot well be denied (and after all) that, when your duty is your interest, your duty is the easier. Even I myself do not go quite so far, as to maintain, that a man is *therefore* disinterested, *because* he is PAID for it.

Still

Still less are those who EXPECT TO BE PAID; and to be paid in a coin that never yet issued from a king's treasury: they who are to have your fortunes, your lives; your actions, your thoughts; your sleeping, your waking; ALL THEIRS: who are to be enfeoffed in you as their estate, whose title is to be strengthened in your blood, in whose merciless law, possessing and destroying you, in an inheritance of everlasting murder, *mortuus fasit vivum!* They dare not yet avow to you their league with those, who "have made a covenant with death, and with hell are at agreement." They (yet) make "lies their refuge, and under falsehood hide themselves." They extol peace with the minds of war; they talk of brotherhood and think of carnage. They dare not praise the French leaders; but they
praise

praise the French revolution. They describe your war, as injustice more unjust than any thing charged against France. And giving common places a guilty dignity, they compare (in their arithmetic of crime and blood) the slaughter of the sword and the guillotine. These are their arts of deceit, leading directly to their practices of violence. Let us consider this war; of which they talk less ignorantly than criminally; although their talk is wholly without knowledge.

I do not include all who condemn the war in this society of devils. *Wickedness* has never been able to do much mischief among men but with *weakness*. The deceived (it is honourable to human nature, and it is also its shame) are always more in number than the deceivers.

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Nations

Nations are moral persons. With this I begin. With this I shall end. They ought to be impelled by the same feelings of nature ; they ought to be restrained by the same government of reason ; by which *individuals* are restrained and *individuals* impelled. What a good man *would* not do, a good nation *should* not do. What a good man *would* undertake, a good nation *should* undertake. They should do it the more, for their more power : and because with *them* to undertake is more frequently to accomplish. Like a good man they should study the welfare of their neighbours. Like a good man they should study their own welfare. They should (like him) hold their prosperity and power not worth the having without the generous use ; and they should remember (like him) that the use cannot be, unless
with

with prudent self-safety. He who risks unwisely destroys himself, and does not preserve others. Let, therefore, nations be prudent as wise *individuals* are prudent; and generous with the generosity of generous *individuals*: FOR NATIONS ARE MORAL PERSONS.

There are people who dare to tell Englishmen, that while they can wring a sixpence of profit from blood, that blood should mercilessly and unceasingly flow. It is not the carnage of the war that they lament, but that the carcases of the slain do not yield us a per-centage. Let Germans and French march and murder; but let them march in English shoes, and murder with English musquets. " Arms !
" arms and cloathing ! re-echoed from

“ Picardy to Provence*.” Let English hammers beat on English anvils, — and — (no matter for it!)—let this be the forge of utter destruction for the human race; beyond the natural endurance of human existence, and the natural limits of human power. Let there be a market for England; though it were of case-shot, to murder thousands, quicker than the minutes fly; loading and re-loading, in slaughter even more dreadful than swift; while the English flint strikes true to the French will of death, in the streets, impassable with carcases and deluged with blood, of miserable Lyons or Toulon! What of it all! It is “our true policy;” they say. Thus “the French gold and “silver might have rested with us.” For “these demands could ONLY be supplied
“ by

* See a pamphlet said to be written by one Jasper Wilson.

“ by England.” My sickening frame !
Such words ! How terrible ! Our nation
shall not be so belied. No ! Our mer-
chants are indeed THE HONOURABLE OF
THE EARTH *. No such counsel shall be
taken against them !

“ Perish our commerce, let our consti-
tution live !” If these words are taken ab-
solutely, they are indeed foolish words.
But none will take them absolutely, un-
less a great fool ; or unless he, who should
be a great fool. They were the words of a
most eloquent and still wiser man ; and I
beg leave here to repeat them after him. He,
indeed, only repeated them after another.
But I should be proud to repeat them,
were they merely his own. “ Perish our

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“ com-

* See the title-page of the same pamphlet of the
same Wilson.

“ commerce, let our constitution live ! ”
The feeling that leads to the expression of this wish, is the great security of our commerce. Without our constitution, our commerce is not. With it, our commerce would grow up and spread from annihilation. While it branches from our constitution as its root, while we have it at once the tree of commerce and of freedom, its boughs will continue to seek the heavens, its cover to be the resting place of the nations. Even if in the inclement days of war, it should, for a while, stand leafless and bare (a thing that has never happened heretofore, and is as little likely to happen now) it would only be to bud and bring forth again, in the better skies of a milder season. But if the root shall be once gone, the sapless remains will speedily die away beyond all
hopes

hopes of revival. They will only crackle in the French furnace ; and be dissipated, in a moment, and for ever, in the stench and vapour of their noisome revolutions. Hitherto, in the sunshine, in the genial air, of our constitutional liberty, our commerce has been an ever-green. With a revolution of our system, there would be a revolution of our climate. It would be the dreadful sign, at once, and the fatal completion, of our remediless fall.

“ Perish our commerce ; live our constitution.” So spoke Mr. Grattan in the Irish House of Commons, on the business of the Irish propositions, several years ago. He was not accused of undervaluing the commerce of Ireland. Yet it is not this gentleman to whom I referred, as the great and original authority. This is

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older still. It belongs to the times of the American war. With the applause (affected or ignorant) of all the democratisers of the kingdom, the House of Commons heard it *then* declared, that your commercial ordinances were “dead instruments, passive tools;” that “it was the spirit of English communion that gave all their life and efficacy to them:”—That “it is the spirit of the English constitution, which infused through the mighty mass, pervades, feeds, unites, invigorates, vivifies every part of the empire, even down to the minutest member.” The applauses of democracy could add nothing to the weight of these sentiments *then*. Its reproaches and howlings can *now* take nothing from their weight. The conclusion of truth *then* was, as the conclusion of truth *now* is. “Let us get an
Ame-

“ American revenue as we have got an
“ American empire.”—This was the lan-
guage of wisdom in those times.—*Let us
preserve an English commerce as we have
created an English commerce.*—This is the
language of wisdom in these times.—“ Eng-
“ lish privileges have made it all that it
“ is : English privileges alone will make
“ it all it can be !”

No man was *then* so senseless as to tell the people, that he who spoke thus was the foe of commerce, that his ideas were fitted only for “ the Gothic gloom of a
“ darker age.” The foolish reproach of
“ chivalry” was not then bandied about among the multitude. Commerce and honour were not held forth as separate things. It was not reckoned necessary to the prosperity of trade, that we should
trample

trample on the titles of a gentleman, as they are said to trample on the cross of our Saviour in Japan. Chivalrous ideas were even held as prospering commerce. Hence epic song had recorded Gama. Hence Europe gloried in her Columbus. Hence the noble struggles for our unfortunate Scotland of the high-minded Paterfon ; he who was to join world to world, and stretched his trading arm, and by his own might alone, from ocean to ocean. Filled with the conviction of these truths, with the energy of these principles, the language I have quoted was held by the great statesman, who, in the perilous times of that dreadful American controversy, represented in parliament, by *their* free choice not by *his* solicitation, one of the first trading cities in the empire ; an honour altogether unknown in his age, likely

ly to be known in no after age; which, in all its circumstances, has no parallel in the history of the world. This selected guardian, this chosen defender, of the greatest trading interests of this great trading nation, declared your commerce to be nothing without your constitution. The hollow applauses of democracy (I have said) could not then make his opinions wrong. I grant (as I have also said) that their open derision, now, does not make his opinions better.

This was, and is, the great authority. From him, and in his spirit, the eloquent and noble-minded Windham has said* ;—“ Perish our commerce, let our constitution live !” He has spoken wisely. Let us
keep

* This (with what goes before, and what follows for a page or two) was written long before Mr. Windham was a minister. It is equally a truth at all times.

keep our old constitution, our old manners, our old principles. Let us not, for any new-fangled mummeries (even if they were innocent mummeries) forget the name of *Old England*, and the spirit that belongs to the name. With our old principles our old wealth will remain, and new wealth flow in upon us. Of these old principles, that which has been supreme, which has guided all our national acts, and won us all our national glory, was the principle on which this present war, this war of honourable safety, is (in its grand and ultimate views) so eminently placed, that *nations are moral persons*. Our misfortune has been, in these days of evil, that ignorance of events, that blindness to circumstances, prevented the operation of this principle, when its exertions could have been best made. Indeed the
season

season of exertion had nearly passed away. The war was not nearly so much on that principle, as, according to all our old practice, it should have been. We had almost no merit, unless that of self-defence against most dreadful and most imminent self-danger. We were even slow to perceive this; and had nearly been smothered before our awaking. If circumstances could not account for this strange deviation from our antient spirit, I should see in it our speedy and inevitable ruin. A spiritless nation must soon be an undone nation. And that nation is spiritless indeed, which could see a great people most foully oppressed, without interposing against the oppressors. If such could be the conduct of this country, in oppression palpably known and seen, such a people of dastards would soon loose trading enterprize, with

other enterprife. There would speedily not be found among them a taylor's goofe, nor a weaver's fhuttle. But they did not *fee* the oppreffions. While the fmoke of hell was obfcuring the heavens, they were told it was the incenfe of liberty afcending in grateful homage to the Moft High! Our old generofity was duped by our old generofity. It was an error of facts, not of principles. Englifhmen had not forgotten their fathers' fpirit ; but they had loft the difcernment of their fathers. It is thus we juftify our nation.

Had the facts been known ; upon all the old principles, there muft have been war, infant war, on the firft news having arrived among us of the proceedings of October 1789. The fhout of hostile juftice, unlefs we renounced our fathers,

must have been heard from the channel to
 the Deucalionian sea. When was it that
 England did not arm for the salvation of
 Europe? Yes! I forget. There are mo-
 dern instances. "Such was the conquest
 " of Corsica, by the professed enemies of
 " the freedom of mankind, in defiance of
 " those" (of us, the subjects of the king
 of Great Britain) "who were formerly its
 PROFESSED DEFENDERS." Such was al-
 so our stupid and guilty gaze at the parti-
 tion of Poland. These abandonments of
 duty had their causes also; not matters of
 this place. They had their punishments
 too; not matters of this place neither.
 But the very abandonment of the duty
 was an acknowledgement of the duty. It
 was universally reproached to these admi-
 nistrations, that it was *duty* which they
 had abandoned. The private feelings (ra-
 ther

ther the public feelings) and inclinations of Englishmen, were well known, and strongly manifested. Yet, in the one case, it was only a small opening to a family scheme of political aggrandisement ; from which, in the situation of Europe, great evil was not to be feared. In the other, it was a plan of tyrannic plunder, shocking indeed to the moral sentiments ; but, from distance and inconnexion, little allied to our politics, and not affecting our *immediate* interests *at all*: perhaps, in point of *general interest*, not of disservice to us even remotely ; unless it were that disservice, which, in the “ even-handed ” dispensations of a good providence, arises from not resisting what is wicked and immoral. Virtue is a principle of chivalry ; and being thus allied with wisdom, is allied with advantage too. But such were
these

these two instances; the first in which we had given up our character of the PRO-FESSED DEFENDERS of Europe: Such were these two instances; in which this abandonment of our character was loudly reproached; in which our national interference was by the nation loudly called for. Such were *these* instances of *general* duty, neglected fatally. After the sixth of October 1789, it was not *general duty merely* that gave the summons. Each particular energy belonging to our nature was called out, every nerve of sensibility was touched; every string of our heart ought to have vibrated. *Now*, it was not the *measured* ambition of family aggrandisement; nor the *hurried* rapacity of despotic plunder, sudden to seize and quick to be satisfied. It was the long cool plan of a voyage of blood; endless in its progress

gress, unfatiated in its victims. It was an ambition not to be filled up by the common measure of crime, nor to be contented with ordinary victory. ENGLISHMEN did not rise against this ! Their faces did not flash indignation. Their arms were not lifted for overthrow. Why !—I have told the reason—THEY HAD NOT FORGOTTEN THEIR FATHERS' SPIRIT ; BUT THEY HAD LOST THE DISCERNMENT OF THEIR FATHERS.

This is the best place for putting some authorities. They are good for this place ; considering the immediate argument I am upon. They are good for it ; considering the character in which I at present address the public. They are good for it ; as being derived from that law, the teaching of which is my duty, and of which

which what follows afterwards (alas! why should it need it!) is the recommendation.

I shall here, too, save myself some trouble. So much time has intervened, since what is now to be read began to be printed, that I have delivered as part of a lecture (about the middle of last winter) what I intended to have put here. I shall now replace it. Perhaps those who heard it, may be as well pleased to see it in this way as to hear it again. It shall be very nearly as they heard it.

Instead of saving myself trouble I have given myself some; for, what I had to seek has been more difficult to be found, among a mass of papers, confused by myself or by others, than it would have been

to write the same things over again three times. However, this is nobody's business but my own: and so I go on. It is a good thing, sometimes, that a man can carry his ideas about him like his shirt.

Mr. Fox has spoken much absurdity on this matter. In a man who was born only to speak wisdom; wisdom, I mean, suited to the occasion of speaking; this is a matter melancholy as to himself, calamitous as to his country. Whatever *other* calamities she may have, I trust, she will not have *this* long. And, I trust too, that *her* calamities will never cease, but as bringing with their end *Mr. Fox's* felicity. He is surely a man, concerning whom it is honourable to be interested in his fortunes.

By a grand principle of original equity (of which the maxims are most beautifully delineated in the jurisprudence of Rome) every individual is entitled not only to repel injuries begun, but to guard himself against injuries dreaded. He has a *legal* course for the one, as for the other; and the prætor as readily granted the *cautio de damno infecto*, as he entertained the *actio injuriarum*. This principle of private equity was applied equally, in their jurisprudence, to public concerns. In the same manner, too, the principle has been received by the great writers, in modern times, on the law of nations.

When any state, therefore, by whatever means, by its doctrines, or by its arms, or by both, attempts that which *may* endanger (on the measurement of *rational fear*)

the safety and interests of any other state, the state rationally fearing is entitled, *on that ground*, to make war, if it do not obtain, or for the purpose of obtaining, rational security. There may be errors here, as there are errors elsewhere. But that is not our thesis. It is the *right* to make rational *war*, from rational *fear*. Allow the right; and I forbid you not to examine the circumstances. For, *all* that I contend for is, that it *should be a question of circumstances*. This granted, my cause is won.

There is a most beautiful antient saying, which has been said again by Grotius. *Quis tibi sic timere permittit!* Had this fallen in the way of Mr. Fox, what a beautiful declamation would he have fastened on it! But it is truth, simple truth, that is wanted now. The dainties of oratory

tory will not make amends for the famine of reason. *Pane egeo jam mellitis potiore placentis.*

The saying that I have quoted, in its own unperverted sense, is not finer than it is true. It is full of law, full of morality, full of religion, full of true statesman policy. The danger resisted must be *in itself* danger. No man is entitled to make his own fear the ruin of others, and the calamity of nations.

Yet where the fear is rational and wise (whether in the case of individuals or states) it is not only the justification of resistance to death; but not to proclaim the fear, not to spread the alarm, is a base desertion of a man's self, and a baser desertion of his nation. To fear to be afraid,

is want of courage ; and not to tell your fears (in prudent telling) want of sense. *This* holds in individual conduct, and as to matters of private life. In the concerns of nations, the enlargement of the duty is manifest. Let us all make it up (as far as we can make it up) to its compass.

In times of danger, every citizen has his public duty. He is to watch for himself ; and for his country. Let us not have the curse bewailed by the prophet of old. “ His watchmen are blind : they
 “ are all ignorant, they are all dumb dogs,
 “ they cannot bark ; sleeping, lying down,
 “ loving to slumber.” Let us not have the selfish spirit equally bewailed, in the same place, and by the same authority.
 “ They all look to their own way, every
 “ one for his gain from his quarter.”

Perhaps,

Perhaps, in the dispensations of a good providence, it has been decreed that our public spirit, which, in a corrupted age, could be awakened by nothing else, should be awakened by our public fear.

The authorities that I am to cite from the writers on public law, are now (since this began to be wrote), some of them, somewhat fusty. One or two of them have been wholly untouched. The touched and untouched equally are full of wisdom. None of them have yet lost their virtues; even those that have been most used. They are able yet to season and preserve even such writing as mine, and save it from its own perishableness.

I shall begin with some never used. They are to be found in the admirable treatise of Ulric Huber, "De Jure Civitatis."

Videndum

Videndum, ne non ex eodem fundamento recte statuatur, posse vicinum impediri, ne in suo solo, sine alia causa, suaque evidenti utilitate, munimentum nobis propinquum extruat, aut aliud quid faciat, unde justa formido periculi oriatur; idque non minus quam quilibet recte prohibetur aliquid in suo, re sua non postulante, facere, quo damnum rebus nostris inferatur.*

Here the principle is clearly laid, that fear of danger (*rational fear*) is just ground of war; and from *whatever* cause the fear may proceed. The stupid principle (*stupid, as it is maintained*) of the *independence* of nations, never once came into this learned man's head. He thought, that nations, among each other, had just the same

* Lib. 3. Cap. 7. §. 4.

same laws as other moral persons. It was not enough that what a nation did was *within its own territory and jurisdiction*. It was obliged to manage its own territory, and use its own jurisdiction, in a way that should not hurt its neighbours. Otherwise, it was not independence but superiority. It had a servitude against other nations, or it held them in a vassalage. This claim of servitude or vassalage might be resisted to blood. An individual, as in the same case, against an individual, might go to a court of law. A nation against a nation was to go to the field. Each, in each instance, went to the place of decision.

The same wise man adds, in the same place, the following wise reservation.

Quod

Quod tamen usque eo non extendendum, ut bellum promiscue ad alterius minuendam potentiam movere liceat, quomodo aliqui disputant, eodem argumento; quod scilicet, ex tacito generis humani pacto, idem ad securitatem procurandam quod ad damnum avertendum liceat; enim vero factum aliquod speciale opus est ut accedat, unde animus lædendi probabiliter colligi possit.

Huber is right. *That* fear cannot be *rational*, which proceeds only upon indefinite notions of providing for our own advantage. Such a system of mind is, in truth, the absence of fear. It is the cool look of ambition. And no *tacit pact* is admissible, by which, on the principle of doing good to *ourselves*, we should perpetually be led to do wrong to *others*. In fact, this claim would be of superiority,

on *our* part ; and, creating rational fear, would justify strong resistance, in *others*.

I forbear to quote the two sections that follow. They well deserve to be read. Among other excellent things, it is excellently said, that if a Prince oppresses his people, and even in cases where that people itself could not *constitutionally* resist the oppression, this *constitutional* impediment is yet no bar to a *foreign* nation arming, *by the common rights of humanity*, for the purpose of rescuing the oppressed and destroying the oppressor. We find, here, that *chivalry is law*. In truth, it is the history of our own glorious revolution. Surely if the people oppresses kings, the same law holds. Oppression does not change its nature by its objects. While further, in this new oppression of kings, the oppression of the
people

people is more dreadful too. Its degrees are enhanced beyond calculation.

In another work (of which the principal divisions are named *sections*, and the subdivisions *chapters*; and of which the title is “*Institutionis reipublicæ liber singularis*”) the doctrine just now stated is laid down by Huber, in very short and very precise terms. I shall, therefore, quote the words.—*Imo et pro subjectis alienis licere bellum suscipere, si manifesta sit imperantis injuria, generis humani refert**. And shall not the wrong of the subjects be an equal cause !

There is placed, immediately before this, a general rule, which comprehends all equally ; kings and subjects. He had
been

* Sect. 3. cap. 13.—“*De Causis et Jure Belli.*”

been speaking of the right of just revenge and punishment ; and adds as a corollary —*Videtur et ad punitionem referri posse causa belli, quod pro auxilio innocentium suscipitur, qui ab aliis, quibus subjecti non sunt, injuria afficiuntur.* Indeed this, more peculiarly, is applicable to the principle I am now pressing. I do not know that Huber thought of Sovereign Princes. He was a lawyer, not a prophet ; and yet he had seen, or might remember, the exiled court of our Charles the Second. But whatever was the direction of his thoughts, the scope of his doctrine is broad and ample. *Suffering innocence* (whoever be the sufferer) has a refuge in law as much as in knighthood. And when nations are lawyers, they are knights too.

I find the same passage is placed (as indeed my general memory told me, though I could not put my finger on it) in the book *De Jure Civitatis*. It is the sixth paragraph of the eleventh chapter of the third book. By saying the same thing twice, and in different works, Huber has given his opinion, were it needed, a double authority. This it needs not. Once said, it is an hundred times said.

We have thus, then, two grand principles, justificatory of war; *rational fear*, and *generous succour*: fear of danger to ourselves, the existence of danger to others. The one is selfish; the other social: and they follow (each) the rule of selfish and social duties. *Less* justifies the one than the other; because we owe more, *immediately*, to ourselves than to our neighbour.

neighbour. Both are good causes of war ; because we owe every thing to our neighbour that is not directly, or in its proper consequences, destructive to ourselves. A true (that is a Christian) philosopher may, perhaps, think that I do not carry the matter sufficiently far. The precept of the gospel is—*to love our neighbour as ourselves.* I speak it with humility, and all due diffidence ; but I conceive that this precept does not invert the *naturally moral* order of duties. We ought to love our neighbour as ourselves, *after* we have loved ourselves ; not in the order of *time, merely taken*, it is true, for he who is merely selfish, at any time, or in any act, is purely wicked ; but in the order of time as creating *strong efficiency*. A man must arrive at the natural size, before he is fit for the natural operations. There is a

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moral

moral stature also ; and the moral energies are then only fully displayed, when the social passions, under due self-command, have thus been reared to their maturity. Man exists wholly for others. This I do not deny. No being has the end of his being in himself, save the ineffable Being that is Supreme ! No being can attempt to make it for himself, but in imitating him who is the enemy of us all. A merely selfish being is the Devil. *Men*, therefore, exist for *others*. But they cannot exist for others, unless in taking care of their *own* existence. Selfishness is not the *greatest* duty, but it is the *first*. This is the meaning of the evangelic precept. Means are before ends, though not better than ends. Thus morality and the gospel are the same, and the natural voice of God is the same with his revealed voice.

Every

Every thing that was selfish and every thing that was social demanded the war against the French. ALL morality, ALL justice, was for it. There was *rational fear*; there was *generous succour*. There is less of the last *now*. I own it; and I own it with a grief mixed with rage, and most strongly filled with revenge. There is *now* more of the former.

But let us go on with our authorities. I now go to Vattel: an author who has been, of late, much quoted, and deserves to be much quoted.

The general principle is very well laid down in the following words, where he speaks of the *droit de sûreté*, the right which a nation has to secure itself against all hurt. *Le plus sûr* (says Vattel) *est de*

prevenir le mal, quand on le peut. Une nation est en droit de résister au mal qu'on veut lui faire, d'opposer la force, et tout moyen honnête, à celle qui agit actuellement contre elle, et même d'aller au devant des machinations en observant toutefois de ne point attaquer sur des soupçons vagues et incertains, pour ne pas s'exposer à devenir elle-même un injuste agresseur*.

This doctrine is the same with that of Huber, and that of reason. Vague and uncertain suspicion is no ground of war, as it is no ground of any thing. He who bottoms any part of his conduct on such footing, will be sure to slide and fall either in this world or in the next. But *rational suspicion* justifies war, demands war, in the cases where war is the means, as it justifies and demands all other relative

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* Le droit des Gens, liv. ii. c. 4. f. 50.

tive measures in the several corresponding situations.

Almost immediately following the general principle, Vattel has placed a particular example. It is strong in itself; in the present circumstances it is irresistible. It does not sufficiently describe the French nation; for Vattel had only his imagination, and we have the facts. But what could be done for less reason, can surely be done for more.

Si donc il étoit (he says) quelque part une nation inquiète et malfaisante, toujours prête à nuire aux autres, à les traverser, à leur susciter des troubles domestiques; il n'est pas douteux que toutes ne fussent en droit de se joindre pour la réprimer, pour la châtier, et même pour la mettre à jamais hors d'état de nuire.

Looking for resemblances in the past, of the wickedness he had stated, Vattel finds Cæsar Borgia and Philip the Second of Spain. As an example of the virtue which was to resist this wickedness, he finds Henry the Fourth of France. Oh! had Henry of Navarre lived in our days! “Ten thousand swords must have leaped from their scabbards;” and they would not have gleamed in vain. He would have done it for less than a Queen. Had a hand of insult touched a hair of the head of his fair Gabrielle, he would have laid all France in ashes and blood from the Pyrenees to the Channel, and from the Rhine to the Ocean. And this he would have done from the very spirit, that made him courteous, mild, and gentle; that made him the darling of his subjects, and his subjects’ blessing. The

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fame

fame voice that made the trumpet sound to battle, made the peasant dance to his tabor on the plains. One king in Europe has done his duty ; but he does not reign in heroic times.

Yet I mean no *censure* elsewhere. Honestly, I do not. Ignorance of facts may be a reason to abstain from praise. It can never be a ground of crimination. As to the first soldier in Europe, his long and well-earned fame is a broad and a sufficient buckler. Marius fought three days with the Cimbri, who had no successive hordes. The battles on the Rhine were for twenty continued days, with each day a new army. Marius overcame. The Duke of Brunswick led back his troops in safety.

I have other honest feelings also ; and at the very same time. My heart bleeds for the French nobility. I mean for the real, high, military, aristocracy of France: not author-nobles, or nobles that lived with authors. The miseries of a *royal* line I must not debase, by any mingling of *my* feelings. It is not for *me* to bewail the degradation of the brothers and descendants of kings. They have insult enough without this. I know not the facts. I wish not to know them. If honour was brought too late into the field for energy, I will curse the general policy ; and I will do no more.

There are many other passages in Vattel. The whole book deserves to be read. Especially, this chapter of the independency of nations deserves to be read. Those who read it, if not born to
 speak

ſpeak nonſenſe, will ſpeak leſs nonſenſe, after they have read it, than before.

Before going to Grotius (the laſt authority, certainly not the leaſt, whom I mean to quote), and to juſtify myſelf, in this cold age, from a heat that many may pronounce madneſs, I ſhall put here ſome words of Cicero. They are to be found in his delightfully ſober work of morals; the book *de officiis*; that beſt remnant of all antiquity, except the bible. The *ſobriety* of Cicero is as extravagant as my *frenzy*. Vattel has the paſſage too.

Magis eſt SECUNDUM NATURAM (ſays the firſt of moralifts) *pro omnibus gentibus, ſi fieri poſſit, conſervandis aut juvandis, maximos labores moleſtiasque ſuſcipere; imitantem Herculem illum, quem hominum fama,*

fama, beneficiorum, memor, in concilium Caelestium collocavit; quam vivere in solitudine, non modo sine ullis molestiis, sed etiam in maximis voluptatibus, abundantem omnibus copiis, ut excellas etiam pulchritudine et viribus. Quocirca optimo quisque et splendidissimo ingenio longe illam vitam huic anteponit. Cicero, in cool morality, prefers the life of a knight-errant, not to a life of indolence merely, but to a life of the most fashionable pleasure, with all the means, artificial and natural, of procuring and enjoying pleasure. Neither was this illustrious Roman a person of so little taste, as to despise the elegant delicacies of polished society. He was himself, and lived among the most fashionable men of Rome. But this neither drew him, in his conduct nor his theory, from the practice and the admiration of the high virtues.

virtues. He knew (and he has said) that every virtuous man was a Paladin. Only, as virtue is sense, the man of virtue attacks no monsters but those of his own days. *His* is a present and living virtue. It is a virtue, too, much more of nations than individuals; because (as I said in the beginning) nations have much more power.

A French word meaning what we call knight-errant, & said to be derived from palatin, or to be a corruption of it.

I hope I have proved my sobriety. It is a melancholy matter that I have to prove it. We shall now hear Grotius, who speaks the same things. He is as mad as the best of us.

He draws his principles (where that doctrine is applicable; and it is widely applicable) from the jurisprudence *de damno infecto* of the Roman system. This is to

to be found in the second paragraph of the first chapter of his second book. He most truly says, that there are just as many good causes of going to war, as there are of going to law ; and that when we cannot have the one remedy we must take the other. *Nam ubi judicia deficiunt, incipit bellum.* We lift the sword, when we throw off the gown.

He states (proceeding onward from the place I have mentioned) that war is justified by self defence ; that it is justified as a means of recovering what we have lost, or of obtaining what we have a right to receive ; and further, that it is justifiable for the end of punishment and moral vengeance : in which last cause of war a holy father of the primitive church agrees with him entirely. It is no less a man than St. Augustine,

tine,

tine, who says—*Justa bella definiiri solent, quæ ulciscuntur injurias.* Grotius then goes on to the doctrine of *fear*. It is quite needless to make quotations. They are just to the same purpose with those that went before. He blames foolish fear, and gives all its due weight to the fear that is rational.

I believe it is as well to make no more quotations. The selection is difficult among a number equally weighty. I refer to the whole twenty fifth chapter, in particular, of the second book. Its rubric is an authority :—*de causis belli pro aliis suscipiendi.* *Generous succour* is his doctrine, as it is of the rest.

I must also refer to the fortieth paragraph of the twentieth chapter of the same
book.

book. The beginning sentence is—*Scien-
dum quoque est, reges, et qui par regibus jus
obtinent, jus habere pœnas poscendi non tan-
tum ob injurias in se aut subditos suos com-
missas, sed et ob eas quæ ipsos peculiariter
non tangunt, sed in quibusvis personis jus
naturæ aut gentium immaniter violantibus.*
And he quotes from Isocrates a passage
most applicable to the French—*justissimum
esse bellum in belluas, proximum in homines
belluis similes.* Indeed, this is not enough
for France.

Here I close my authorities. Let me
now make their application. Is it not
strange, that great names should have
gravely maintained in grave places, that
the confederacy against the French was in
opposition to the opinions laid down by
the writers on the law of nations !

Rebellion

Rebellion in subjects against their sovereign, is the same thing as oppression by the Prince against his subjects. In all cases, such violent *mutations* must, more or less, excite well-grounded fears in the other states; and such great *calamities* must, in all cases, call, more or less, for generous interposal. In the case of France, the *principles* on which they proceeded were full of the most imminent danger, to rouse our fears; the *acts*, that were the consequences of these principles, were equally full of crime, which humanity abominated with all its indignation. It was impossible that there should not be war, unless there ceased to be justice.

Few men now will say, that it was no rebellion. We now understand the word *revolution*. We know that the French
 sense

sense is the opposite of the English sense of the word: that it does not mean establishing lawful authority, but pulling down lawful authority. As to those who still hold the contrary, let me speak a few facts.

It may be necessary to premise, that there may be rebellion (that is, what may be called rebellion) which would not wholly justify foreign interference against the rebellious nation. This is a question of passion and mixed moral modes. I certainly venerate Lord Faulkland much more than I do Hampden; and my reverence for Hampden is great. In *action*, I assuredly should have *fought* (and even with a foreign force) *against* the Parliament and on the side of Charles. I mean after his concessions had made *him* a lawful king,
and

and their assumption of illegal powers had made *them* usurpers. Yet, at present, and in all the *complex* circumstances of that period, I will not put it down *as a juridical thesis*, that foreign nations should have interfered *with direct hostility*. It is not, that I do not see the question of right; but I see many other things also. One great differential fact I see. The English claims (good and bad) were wholly within themselves. They fought not to make proselytes of other nations. There are others too; but I leave them. There is one fact (it branches into a series of facts) of most mighty value.

In France, there was *no charge of oppression against the prince*. Indeed the comparison between our unfortunate Charles and the Sovereign of France is
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striking;

striking; in the way of *contrast*, I mean, not of *analogy*. Charles changed the constitution, to infringe its liberties. The King of France reformed the constitution, to restore them. Charles, afraid of their spirit, discontinued his parliaments. The King of France, cherishing their spirit, assembled his states, after the discontinuance of nearly two centuries. Charles, in opposition to the known law of the land, claimed and exercised an inherent right of taxation. The King of France completely divested himself of this right, though exercised by his predecessors, (in many instances *actually*; acknowledged by his *jurists* as *rightfully to be* exercised) from the foundations of the monarchy. The King of France gave up every claim which the King of England made; and he received as his reward to be de-

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throned

throned without the firing of a musket.

Alas! the firing that was afterwards, has been chiefly a firing in the air; not from want of conduct or courage, but from ill-timing. It is only by perseverance, that it can now be well-timed: *and let us persevere.*

I heard Mr. Fox, in the House of Commons, maintaining that any peace was better than a war. As he forsook, in this, his own manliness of understanding it seemed to me a sort of equitable penalty, that he was constrained to seek his authority from the book of his child-hood. He quoted his *grammar* for the passage. I requested a person to find it out for me in Cicero; where I knew it was; and he

found it. I forgot to take a note of the passage (it was in London); and I have not time to seek it now. It is, somewhere, in the Epistles; where Cicero says to his friend—*iniquissimam pacem justissimo bello antepono*. He was speaking of the political differences among the great men of his time; and he said (what was most true) that even those, who were most in the right, could not yield too much to their opponents, for the sake of avoiding a civil war. He was for a coalition of parties; for the extinction of all strife in necessary concord: and, to obtain this desirable purpose, he would not stand nicely on the balance of right and wrong in their several claims. *Civil convulsions* were to be avoided on any terms. The authority is *against* Mr. Fox; not *for* him: against him as he *now* speaks and acts, for
it

it was his own doctrine and practice *formerly*. It was the justification of his coalition with the Earl of Guildford, and it is the condemnation of his present opposition to Mr. Pitt. On the ground of this authority, he should have followed the old Rockingham connexion in the union they have formed with this gentleman ; a junction which has made an administration, more than equal in talents, more than equal in integrity, more than equal in business and efficiency, to any that has, at any time, conducted the affairs of this great and prosperous empire : an administration which gives to the Crown all its strength, and secures to the people all their privileges. Upon this perverted maxim brought out by Mr. Fox (and upon other good grounds also) this salutary union has been formed. The absurd sense put upon the

passage,



passage, was not of the statesman but the school-boy.

To say that there should be no war (which is said in this absurdity) is to say that there should be no justice. It has been proved already (did it need proving) that war is the justice of nations. They hold their courts in the field; and their maces are cannons and musquets. Soldiers are their lawyers; and their crier is the drum. The decision may be wrong (as of other judges;) but there exists no other tribunal. Providence indeed is over all, But Providence is not of man but of God.

The cowardice of the King of France was the great cause, why all Europe has thus been called into "the valley of decision."



“ sion.” Through his base desertion of his own rights “ have the sun and the moon “ been darkened, and the stars withdrawn “ their shining.” Yet while, through these means, “ the heavens and the earth shake,” let not our just confidence be shaken. Even in these very shakings, it is said — “ But the LORD will be the hope of his “ people, and the strength of the chil- “ dren of Israel !”

I lament the King of France. Who would not lament him ! He was an innocent man foully murdered. He was a good-natured man cruelly betrayed. He had many virtues ; though none that belonged to a King. His last days were pious ; almost noble. But he should never have been the husband of Marie Antoinette of Lorraine and Austria ! He de-

served her less than he deserved France.
Fatal marriage! Cruel union!

Non Hymenæus adest illi, non gratia, lecto.
Eumenides tenuere faces, de funere raptas;
Eumenides stravere torum.

The noblest lady in all Europe came, in all the gaiety of innocence and youth, to be the Queen of the oldest European kingdom. She came to her early grave. The marriage sheets that covered her lovely limbs, were cursed by the demons of hell for her winding sheets. The nuptial couch that yielded to the soft pressure of her body, was doomed in their incantations to be her bier. The unhallowed voices of the abyss rose up in execrations, and their impure feet trod around her their dance of death. That head formed at once for love and for command, was

to fall under the axe, and be polluted by the gripe, of the common executioner. The scaffold of democracy was to be sprinkled with that blood, which, full of all the royalty and nobility that had ever existed, barbaric and civilized, run in her veins, from the united sources of the Julian family and Attila the Hun ! I never will forgive the King of France for the destruction of this Queen. I would sooner forgive him the ruin of his nation, and the devastation of all Europe. He should have seen all his people die like rotten sheep, before she could be brought into such hazard. This spirit (HER spirit) would have made him, HER, his *people*, Europe, the world, happy !

He was not guilty *alone*. We are ALL guilty. Iniquities were suffered to accumulate

mulate on iniquities, till a mound of crime was raised, through which the sword of revenge and justice could not make its way. When the voice of war at last was raised, it could not pierce the walls of her dungeon. She had not the consolation to know that banners waved, and cannon roared, for HER. She had but her own mind, in the abandonment of the universe: that mind meek as it was heroic, made for suffering, as it was made for triumph. She never would have willingly suffered. *Clouez moi à ces murailles!* She was of too high a cast to have voluntary patience. When patience was necessary, it became her; as every thing became her. But, oh! had the palace been defended that day, and by her counsels! She might have again shone out at Versailles the light and ornament of Europe; and, as for the
lapse

lapse of ages, so also still, nothing would yet have dimmed the star of the House of Austria.

But HER mind did not rule ; and the French monarchy fell ; and SHE fell. She is not to be *lamented*. Who dares to lament her ! They threw her lovely body into a malefactor's grave, and raked dirt upon it. They calcined it into powder ; and the Queen of France was in a few hours only dust. What of it ! They carried her to execution on a cart. They had laid her before, on straw, in a dark dungeon. What of it all ! Are womens' tears to be shed for this ! No ! These are not the obsequies of Marie Antoinette of Lorraine and Austria ! Her knell is to be rung over the carcases of the dead, and in the groans of the dying. The alarm of
war,

war, and the shout of battle, is HERS. Indignation that makes vengeance, and vengeance that is death; these are her obsequies.

And ever and anon he beat
The doubling drum with furious heat.

The camp and the field are the places of her mourners; and honour and revenge support the pall!

Her funeral honours thus performed, will be the performance also of the will of heaven. When it is completed in the destruction of evil, we may then grieve, with sober dignity, over a Queen of France. The source of tears may then be opened, and we may solace our nature by their flow. It is not yet the time; nor
can

can the thing yet have place in any true feeling.

While she was alive, there could, indeed, be sensations of another sort than those I have described, but mingled up with those I have described, and subordinate to them. I never shall forget the escape from Paris. That brief space was certainly the happiest of my life : that in which earth approached nearest to heaven. No happiness of my own, even proceeding from or mingled with the happiness of others, ever filled my soul with such delicious sensations, as were in the rapturous enjoyments of these fleeting hours. Even afterwards, hopes would spring up, and overflowed my heart before they were dried. Often, in solitary rambling, I have forgotten my own woes, in the pleasing
visions

visions that there might be yet a rescue. I thought of the young and gallant George Douglas, whose heart (in the matchless description of Stuart) “ was big with love, “ generosity, and the spirit of adventure.” I thought that such a man, and such circumstances, might exist again. What had been done for Mary of Scotland, I thought might be done for the Queen of France, and to a better issue of fortune than in *our* lovely and murdered Queen. I saw her again a Sovereign, and my eyes strained at the vision almost to delirium. These imaginations can come no more. I could weep like a woman ; did I not rage. The time of tears will come.

The happiness of Europe will come also. This war of feeling and reason must have a prosperous end. Our own safety
is

is combined in it, with the DUTY of just vengeance. This is an union of offices which heaven will not gainfay. England's minister, and his noble associates, will plan wisely, and execute with vigour. Βελάς τ' ἐξάρχων ἀγαθὰς, πόλεμόν τε κορύσσων.

We will then know better than even we have yet known, the blessings of a *monarchy*; and will consult its preservation with even more than the old zeal. *This* was the government of the Romans (I have proved it in my lectures, as some may remember) as well as our own: for the *Senate* was the *King* of Rome, and the *Consuls* were its *Ministers*. It is (with the controuls essential to its definition) the *only* good government.

vernment. I hope, the time it not far distant, when our Monarch will be the King of all his dominions. I speak not to the dispraise of any individual ; still less to that of individuals of much merit and service. If it has been ever known that, in foolish youth, I have ever spoken otherwise (never, I am sure, unless foolishly) I now renounce these follies. *Nunc ego mitibus mutare quæro tristia.* I have no *politically* personal grudges. Any personal enmities which remain are enmities of honour ; honourably maintained, and which I shall be happy to have honourably ended. I speak of the *system* ; begun not in the times of any man alive, but which should cease in the times of those that are living. The King is less the King of Scotland, than he is the King of any county in England. We have no real aristocracy

tocracy in Scotland, and no real royal power. Not that we want the elements; but they are jarring, and go in ill direction. I propose no plans of reformation. In the present circumstances, I know not well *what they should be*; and, unless in full knowledge, there should, on such matters, be the deepest silence. Wise inactivity, as for the present, may produce all the effects of wise exertion. I only require that natural interests should get all their play, and that all the energies of our government should be known in all their efficacy; and in their places and portions. I require that the government of *will* should be less, and that Scotland, though not an independent kingdom, should yet be a *kingdom* and not a *department*. Especially, it should not be, that the royal influence is less felt here than in any shire of the

fouthern kingdom. We ought not to be thus far "from the sun and summer gale." It is time for us to give up every thing that is French. The government of *Intendants* was much mitigated in that country (at least in several instances) by the assembly of provincial states. Where any thing is to be of any peculiar description, it should have the requisites of that description. A province, *really such*, with the provincial evils, has the provincial advantages. A mongrel existence (the present existence of Scotland) has no advantages at all; and is liable to all sorts of evils. The remedy is obvious; and is as safe as it is plain. The rays of royalty must, no doubt, be refracted in their course. It is of the essence of a free constitution that there should be such interventions; and the diverging must be the more, the more

remote the object. I only wish the medium not to be made purposely dense. As to its qualities, I wish it to be those of an aristocracy connected with the people and with the throne, the medium through which the sunshine of royalty has long enlightened and fructified England. I wish for a system in which there shall be its due honour to rank and descent, its due weight to riches, and their due scope to talents and virtue. I wish an aristocracy strong in present existence, certain of reparation against future decay. Any other system is French ; in its texture or in its consequences.

This is good counsel, although it came from a person interested. It can hardly come from one more disinterested than myself. I have said (in the beginning of
f 2 this)

this) that my politics were not the road of fortune. What is *there* said was indeed written several months ago. It was connected both with the then state of things; and, especially, alluded to the politics (such as they were, I hope are not to be) of Scotland. Were I to speak in this way *generally*, and in the *present* state of things, I should give myself an exclusion that might be both unjust *in itself*, and that might not *also* be agreeable to the real matters of fact. Yet still, hardly any person can be less interested than I am in this good counsel, that ought so speedily to be taken. I do not say that I have no wishes nor hopes. I should be a bad citizen and subject, if I said so. To support the present administration, and, through them, the people and the throne, is, as a citizen and subject, my duty; and I need, in my
own

own weakness, to be *strengthened* for the duty. The measure of strength to be given, and the mode of giving it, if *any* is to be given, is a matter in the judgment of others. Should *none* be given, I will do the best I can. My disinterestedness will be much the same, with or without it.

Let me express regrets here, suggested by the subject; and which frequently dwell upon my mind. It is, that with this administration, of such admirable composition, there should still be an opposition, not of detailed measures, but of absolute principle; and that this opposition should consist of such rare talents and worth. Three such men, as Mr. Fox, Mr. Sheridan, and Mr. Francis, seldom come together in one age. The first among them,

and in almost all ways, is assuredly Mr. Fox. The talents of Mr. Sheridan are known to all mankind; and why should I speak of them! Among his other praises, he is certainly the most graceful speaker in parliament, except Mr. Pitt, who is grace, and elegance, and dignity itself. As to Mr. Francis, his comprehensive accuracy and reach of mind are what rarely fall to the lot of man; and he is covered over with honour gained in a place, where dishonour has often tarnished even the best natures. There is another gentleman, not of an age yet to be named with these. But it is impossible to look at or hear Mr. Grey, without the instant conviction that he has the soul of intellect, and an heart of honour. His speaking is in his own stile; that of a gentleman. No sorrow nor anger (and I have both) shall make
me

me do personal injustice to such men. There are others too elsewhere, whose conduct there is reason for regretting. The richest nobleman in England, and whose wealth is as nothing to his lineage and name, has, without the due political training, entered on the political course, and in a wrong direction. There is another nobleman of high race, and also of high spirit, and of great acquired family consideration in Scotland ; certainly far from unpractised in politics, but not, at present, in the way of practising them well. There are still others ; men of high name, and no small talents ; few indeed, but yet too many. If we cannot have their assistance, we must beware of their hostility. Let us pray, for their sakes and our own, that it soon may cease.

I return from this, and for a little time, to a lesser subject ; to myself. It is needful that I should say a few words more. It is right (having nothing else to recommend my opinions) that I should yet speak of my disinterestedness.

I cannot be placed, by any change, in a more honourable situation than that which I hold ; a member of the first (or nearly the first) University in Europe, and filling the chair of, undoubtedly, the first science upon earth—of jurisprudence—and that too the jurisprudence of Rome. I cannot belong to a more honourable body than that learned faculty, whose fame has been so long known over the continent, as at home ; and which is the only *body* of *Gentlemen*, practising the law, that exists
any

any where in the world*. It is by their gift (under the necessary forms) that I hold my other dignified situation; and it is as a member of their body that I am alone *qualified* to hold it. As to qualifications
of

* I am sure I mean no offence elsewhere; and it would be an injustice mingled up with great folly, to take it. England (let this be the instance) has not a *Body* of lawyers such as ours, although there have been individual lawyers, and *many* there, who, in the greater *course* set before them, have far outrun all Scottish fame. But this circumstance is the very reason, why, as a *Body*, our faculty should be preserved as pure as it has existed hitherto. There is not field for such ambition, nor are these *gradations* of ambition here, that are in England. In climbing to such heights, a man becomes a gentleman (if not such at his entry to his profession) long before he attains, and in attaining them. The same process cannot be in Scotland, to the same extent, in *any* case; and the *cases themselves* are fewer, in correspondence with the attainable objects. He who comes to our bar should, therefore, be a gentleman at the outset, by his birth, or by his education and habits; because he has less means, or may have no means, of becoming such in his progress,

of another sort, what are necessary, not for holding the office, but performing its duties, *those* who have heard the things said there are entitled to judge; and I leave them to tell.

My situation in a pecuniary view might, no doubt, be bettered, either by other appointments; or by giving me what should be equivalent to the salary, reserved, by the public deed of my nomination, to the *Emeritus* Professor, during his life. But such a measure would create no charge upon my disinterestedness; and for two grounds. I should think it no matter of favour, in the circumstances, and little else than bare justice. And there are others, perhaps, who, on this subject, would be much of the same mind; and not without their reasons. And, next, it would re-
quire

quire much more to buy me; as all those will find who try.

But I am weary of such talking; short as it has been. I have been speaking in another stile, and of other subjects. I have been discoursing of nations, and celebrating a Queen. I hope I have a portion of her spirit. For one drop of her blood in my veins, I should submit myself to torments for ages!

It is not unworthy of him who dares to admire her, to teach, in an endowed university, the jurisprudence of the Romans. It was the law of her kingdoms; of the kingdoms of her ancestors, and of that in which she reigned. There are other things I should like to do better than

than this ; but it is from habits and inclinations, not for the dignity.

The discourse that follows will explain my thoughts on this great subject ; a greater there cannot be in the whole range of political and moral science. I have put as little of my own in my lectures as I could ; but unfortunately that has been a great deal. I am exceedingly sorry that there are more things new in them (new by being old, and having been forgotten) than are to be found in all the commentators of Europe (and I have studied them well) for two centuries back ; many of them not to be found in any commentator of any century. Yet there is not a thought, nor half a thought, that is not to be found in the *Corpus juris* ; in its source there, if not in all its derivations.

My

My only consolation, in my grief for having been compelled to say so many things new (and deplorable it is indeed, that the civil law should have so fallen), is, that there may be less occasion for saying any things new after me.

In doing my duty in this station, or in any other station, I shall not easily be discouraged. I have had no occasion, indeed, hitherto, to try, in this way, my own strength ; for the support I have received has been great and flattering. I hope those who did me the honour to seek instruction at my hands, found what they came for. Those who come after them, will find it in like manner. At all events, I shall go on ; with support chearfully, not unchearfully without it.

This

This is the age for a man doing his duty, and doing it chiefly because duty is danger. There are a thousand enmities that a man thus acting rubs against on all sides. Yet they may all be smoothed, by firmness and prudence, into a surface at least harmless. Where they have been taken up mistakenly, not willingly, such conduct may even, by a moral chemistry, change them into qualities of esteem and friendship. What is most difficult to get the better of, is pride, and jealousy, and envy. The surest means of victory, is to indulge no such passions yourself. I am speaking here on a large scale, and not as in any contracted view of a profession. "How
" a character of the most exalted virtue"
(a very wise man has said this, speaking of London) "or of the basest depravity may
" be made for any man, are things well
" known

“ known to every one, who knows any
“ thing of this Town. A multitude of
“ voices employed about one person and
“ repeating the same falsehoods; a mul-
“ titude of pens, or even the same pen,
“ under a variety of signatures, incessant-
“ ly practising on the public credulity, are
“ sufficient, for a time, to raise or to ruin
“ the reputation of any individual. *” He
who embarks on the sea of politics (and,
in these times, who but a coward would
not!) must expect to meet with these
storms. If he be a raw mariner, they will
appear the more terrible that they are un-
usual, and should he grow unsteady from
the fright, he will be washed, without as-
sistance and without lamentation, over-
board. No man, therefore, should adven-
ture

* Speech of Mr. Francis, 19th April 1787.

ture unprepared. If it be his duty to take a part, it is still more his duty to know how to take it. With the requisite knowledge and firmness he will weather the storm. Above all (as I have said, and cherishing in no case any malignant passion) let him have a good conscience, in his ends, and in his means. Let him not despise human praise, but let not human praise be his first object. In the great cause of heaven, that is now depending among the nations, our minds should, even more than ordinarily, be fixed, and have their resort, in heaven. We will thus find a strength not our own, and a courage beyond that of man. When God Himself dwelt on our earth, he did not work miracles primarily, nor in almost any instance, to prove the truth of his mission. Our Saviour even *refused* to give such proofs

proofs to an incredulous generation. It is one of the poorest contrivances of infidelity (though it has been among the most successful) to represent the wonders he did, *in this view*. Hence they exult in the fewness of the witnesses, and laugh as ignorantly as blasphemously at miracles done in secret. They were the *consequences* of his doctrine (generally) not the *evidences* of it. Peter walked on the waves while he had faith and courage. He sunk as his faith failed within him. It was a *moral* lesson of *christianity*. He who trusts in heaven will find himself more than man, even while he is clothed with humanity. It must not, indeed, be a foolish trust. It must be as wise as it is humble. The danger is not to be sought causelessly. This is in the spirit of the Devil, who (perverting the Scriptures) tempted our

Lord to throw himself from the battlements of the temple. But when it has come upon you, in the search for, or in the performance of, duty, after having thus used wise precaution, use unlimited trust. You will be like Elisha with the host of the Syrians. "He that dwelleth in the secret place of the Most High;" whose lowly confidence, not vain presumption, is placed in aid not known to man, though using also all human means; "shall abide under the shadow of the Almighty."

For myself, my resolution has long since been taken, and my conduct and my measures settled and prepared. They are sobriety and steadiness. They are want of fear, and reasonable openness to reasonable persuasion. "Minantibus intrepidus, adversus blandientes incorruptus." They
are

are setting a curb on my passions, and yet giving them the gallop while I hold the reins. They are to go on as far I can with my own strength, and, where that strength has carried me rightly, to trust in higher strength, as my own fails, for carrying me farther. This is the creed, and it is the duty, of a christian; and I am not ashamed of the religion of my fathers. To have my conduct approved by men, and to meet the reward of that conduct, is my earnest wish, and would be my great happiness. Yet if I meet it not here, I shall meet it elsewhere. True glory will even come, in its own time, on this earth. It is the eternal law of providence. I am of the same mind with the hero of old. “ Igitur alte spectare si voles, atque hanc fedem et æternam domum contueri, neque sermonibus vulgi dederis te, nec in
 “ præmiis

(c)

“ præmiis humanis spem posueris rerum
“ tuarum ; suis te illecebris oportet ipsa
“ virtus trahat ad verum decus. Quid de
“ te alii loquantur IPSI VIDEANT : sed
“ LOQUENTUR TAMEN.”

LECTURE

LECTURE, &c.

THE Roman law has now, for a long course of centuries, been spread over nearly all Europe. In some countries it has formed the whole (or almost the whole) law of the state; both as to public government, and private rights. And there is no country (not excepting even England itself; where, at many memorable periods, a signal opposition has been made to the public reception of this system), in which it does not, in a very considerable
A . . . degree,

degree, influence the spirit, and direct the course, of the municipal laws themselves. Where it is not directly authoritative, as in so many countries it is, yet in all it is received as a collection and body (so it has long ago been called), of WRITTEN REASON. With us also in Scotland; and although the history of its reception, establishment, and progress in this country, is (like all the other matters regarding our antiquities) exceedingly obscure, yet it is certain, from the general history of Europe, from undoubted documents belonging to ourselves, and from express statutes, that this body of jurisprudence was known as early as we had any regular law among us; and, in times far remote, was directly acknowledged as the *common* law of the land. What the meaning of *this* expression is, and whether it gives, or what, additional

ditional authority, it gives, to the establishment of the Roman law in this kingdom, will be spoken of (as in a general manner) afterwards in this lecture; and appear more fully (and as in a detailed manner) in the progress of the course.

With all this antiquity and authority of the Roman law, various causes however have contributed to render its study much less a general object than formerly; and not only among ourselves, but on the Continent of Europe. The disrepute into which it has fallen on the Continent (not as a matter of authority and establishment; for, over the whole European Continent, there is no other general law; but as matter of study), was to be attributed almost solely to the progress of that new philosophy, which has spread so extensively, and

produced such wonderful effects in our days ; and which, as one of its first principles, held all the old jurisprudence to be, from its antiquity alone, wrongful and unfounded, as to those consequences, and in those principles, which regarded the *political* and *social* nature of man. No examination indeed was made of the principles of jurisprudence contained in the Roman law ; and for the best of all reasons ; that the new sectaries knew nothing of the *Roman* jurisprudence at all. Their *historical* knowledge went indeed far enough back to know, that Justinian, in the sixth century, a Greek Emperor and a despot, had collected and sanctioned a system of this science ; and considering *him* as its *author*, they held its *principles* to be as despotic as its *origin*. Perhaps it was natural enough that the one error should produce

duce the other ; and the *imperial* law, as it was called on the Continent, was thus esteemed by ignorance as the offspring of ignorance, and held to be slavish and wicked, without being at all known (unless as in a text or two, founded in the ears of the people, without end, meaning, or measure) by any of those who pronounced upon it this severe doom. However, this (as I have said) was only as to *study* and *favour* ; in point of *authority*, things still remained as they were. With ourselves at home, much of the same spirit (though not proceeding as directly from the same causes) took place ; and there were other subordinate matters which *here* rendered, not only the study, but the allowed authority of this law, less and less every day. I say the *allowed* authority ; because it is impossible, unless by a system of direct iniquity

and wrong, to get out of the great principles of the Roman law; which must always govern in all civilized countries, whether the *name* be of reputation or not; although they must govern with an unsteady, and sometimes an unprincipled sway, when they are not studied as they ought to be studied, nor known as they should be known.

It is impossible not to lament the fall of this law in the kingdoms of the Continent. It is real and grievous. One country which has produced the greatest civilians (out of all fight) that have appeared in Europe, seems likely to produce nothing of that description for a long course of time; perhaps at no time. In the other countries, there has been nothing now for many years, even of that heavy and unwieldy
erudition

erution in which the later mechanists of this jurisprudence cased up and confined the civil law. Burying their dead out of their sight, they have ceased even the fruitless labour of embalming its remains. I certainly am not sorry that *these* civilians have ceased. Commentaries even upon commentaries must have an end; and when their end comes, it is a great deliverance. These endless creepings of purblind learning flime our walls no more. Yes; the civilians have ceased; and I am not sorry for it: but they have ceased (and this is matter of lamentation to us all) because the civil law has ceased. Its bloodless, marrowless, unmoistened trunk, is not a nidus now even for insects.

But I am not to speak of the Continent; and shall not (as I ought not to) go from

home. I shall say a few words on the causes, more general and particular, which have rendered this study less valued in our times; and I shall begin (as with a view especially, almost solely, to ourselves) with that great cause, to which I have alluded, of this law being thought hostile to the principles of a free constitution.

This notion of the hostility between the Roman law and the constitution of a free government, was taken up (you all know) at a very early period in England; where this law came to be known (even in times much remote) under the name of the *Cæsarean* law; an appellation which was very well chosen in the meaning those who used it intended to convey; for it certainly was *not* the *Roman* law that contained the reprobated doctrines; and as to that
part

part of the compilation of Justinian (a very small part), which is only *Cæsarean* law; that is, contains only the *naked* wills of the Emperors, wholly loose from the principles of the old jurisprudence, and no way bound up by their authority or force; unless as matter of historical record or inquiry, *it* can have no sort of connexion *with us* at all; or with any other nation.

This spirit of resistance to the Roman law in England was singularly displayed in a Parliament held at Merton, many hundred years ago. It was proposed to introduce the regulations of the civil law upon a business, which, according to the manners of the times, should have been received with great satisfaction. It was backed also (it is said) with the whole authority of the clergy; who, wishing greatly what
they

they thought and held as the Roman law, to be established in the kingdom, imagined that *this* could be most easily brought about, by having its authority acknowledged in a matter to which (as they fondly augured from the manners and maxims of the age) no opposition could be given. This was the practice of legitimation by subsequent marriage; which, though no part of the original Roman law (and accordingly not to be found in the Pandects) had yet been introduced into its system by the Emperor Constantine, and, as the clergy thought, would be very acceptable to the barons of *their* days. It is thus that the story is told by an admirable writer of *our* days; and told undoubtedly in its true causes and spirit. Yet this proposal, made with such authority, and carrying with it such favour and power, was, notwithstanding,

standing, from the general spirit of opposition to the Roman system, as conceived to be a sort of digest of tyranny, rejected by the barons, with one voice; in the famous declaration so well known, and so frequently since repeated, of *nolumus leges Angliæ mutari*. It was thought by these high spirited nobles, that the system itself (of which this enactment was a part) was inimical to English freedom; and they accordingly, with all its blandishments, threw it from them with a surly disdain. And the old barons of England did exceedingly right, when they thus rejected the Roman system (even in this equitable innovation), and as it was thus sought to be introduced into their country; when it was sought to be introduced, not as a system of law, regulating, upon general principles of reason, illustrated and explained by numerous

merous examples, the private rights of individuals in the state (in which respect, it had been introduced and known from the first civilization of the island) ; but, as in subversion of our own established rights and forms, as the constitutional law of the government : When it was thus imagined, that this establishment of the imperial practice might only be the opening to the general establishment of the imperial doctrines ; and especially those of a political nature ; which were then, as in the character of the times, of all others the *best known*, and vulgarly its *only known* maxims.

For it is proper to observe here (and it deserves much to be remarked), that, in those ages (much more ignorant than what had gone before them) some prominent

minent maxims of the Roman law, or supposed to be of the Roman law, were the only things commonly known or much attended to; and it being imagined (in the general neglect of its real principles as a system of jurisprudence), that some straggling texts, regarding the imperial government of Rome, although themselves much misunderstood, and greatly carried from their true meaning, were the real doctrines of that law—its general authority over the whole West was attempted, in this way, and by ill-designing men, to be made the pretence, even in those early times, of establishing what *they* thought the Roman code, as the rule for the constitutional government of Europe. Too much of this thing happened on the Continent; and it was well it was resisted in this island. A very
 singular

singular doctrine is recorded in the case of the first civilians ; who, after the revival of this law in Italy, rose as lights upon the darkness of former times. They very soon split into sects ; and the chief heresy (for reason *here*, as among well informed men, was with the *majority*), was that the German emperors (and their law might thus truly be called *Cæsarean* law) were, as in the right of the old Emperors of Rome, the true proprietors of the soil and of the estates of their subjects ; that they had *dominium* as well as *imperium* in all things ; and that the state thus (that is, themselves) was the only and absolute proprietor of what the subjects, individually, or as corporate bodies, held as under them ; really (according to this Cæsarean sect) in the character of *tenants at will*, though, in the courtesy of common language,

guage, they might be called *proprieters*. This heresy was first broached by a celebrated lawyer of the older times, *Martinus*; who was in high favour (as was natural from his doctrines) with the Emperor Frederick Barbarossa. Notwithstanding the celebrity of the teacher, and the power of the patron, this despotic heresy appears not to have lasted long. It has been revived in theory, and put in complete practice, in our days.

You will find afterwards, that these doctrines and maxims (I do not allude merely to the particular heresy I have mentioned just now, but to the whole despotic doctrines said to be found in this system) formed no part whatever of the Roman law. Even if they had formed any part of it (as coming from late and degenerate

degenerate times) this would have been of no consequence to the question of its study as a system of jurisprudence; nor should, in any way, have impaired the credit of this law, as under this great consideration. The maxims of the imperial government (allowing them to be what they were said to be) *could* (as they most certainly *ought* to) have been rejected, without any injury to the principles of reason and equity, on which the Roman law, as a system of justice, and regarding the concerns of individuals, or bodies of men, in other matters than government, was placed. The two things were completely distinct, had the law of Rome even been chargeable with this high crime. It was not chargeable. The Roman despotism, was not like other tyrannies of which we have heard, or have seen.

seen. Its injustice or wrongs, were known only in its *practice*. Yet this (which was excusable in an ignorant age) has been a challenge, and even a cause of reprobation, down to our own days. It was even said (by a noted writer of the day) of a noble and venerable judge; who, upon the equity of the Roman system, has established the mercantile law of England; that he would have made an admirable *Prætor* under *Justinian*. And the same popular writer, for the same purposes of popular abuse, has (and in the same place) mentioned this civil law; which grew up, which chiefly flourished, which came to its maturity, (having not the blossoms only but the fruit) in the republican times, and by the labours and science of the republican men of Rome; he has represented it, in conformity with

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the prejudices of the people on which he was to work ; this jurisprudence itself, this very republican jurisprudence, as cultivated in the decline of their empire, and contributing to its fall. How strangely this was said ! It was this jurisprudence which preserved personal liberty at Rome, when political liberty was wholly gone. It was this jurisprudence which always mitigated, which often controuled, the imperial despotism. There are fewer instances of illegal proceeding by law, (and nothing was done there but by law, where it was not military execution) in the despotism of imperial Rome, than in any nation, enslaved or free, that has been known in the world. This was the effect of its jurisprudence ; of its republican justice, never lost, and seldom obscured, in its most tyrannic times. The proofs of this are
not

not to be mentioned here. You will find them, many and signal indeed, as we go along, and in our after journey. Thus what was said of the great judge, so far from reproach, was panegyric. Such things being said, for the purposes of abuse, may, however, teach us one lesson; how much guard there ought to be in the minds of all men, against allowing any opinion, however absurd, to be received in discourse and propagated by tradition; when it may be the means (by being uncontradicted) of retarding the progress of jurisprudence, *as here*; (and in other cases, other evil effects may be produced) and preventing its establishment from being early, or perhaps from being ever, made complete and durable. It is thus, that the noble system of philosophical reason contained in the Roman law,

which, even where it is least seen (in England itself) pervades the whole body of jurisprudence in every European kingdom, has been confounded with the tyrannical maxims of the usurped Roman *government* under the Emperors; or, as the real truth is, with the maxims framed in *later* times to justify tyranny in *others*, as if descendible, and actually descending in inheritance, from the old Emperors of Rome. It would have been a singular fancy indeed, to have established that the adoption of the legal rules of the Roman system of jurisprudence, the accumulated wisdom (as you will find in the history I am afterwards to deliver) of some of the greatest men that ever lived, should have been, of necessity, followed by the adoption of the wrongs, established in the pride of their domination, by some of the worst men

men that ever disgraced humanity. Yet it is this ridiculous conceit, that has induced many writers (who ought to have been better informed) to reprobate this law under every consideration. Too much of this error (for, as has been observed in another case, very little is *here* too much) is discernible even in the writings of a great author still living; the two beautiful dialogues on the English constitution by the bishop of Worcester.

Let me not however dismiss this subject, without a very necessary observation. Much of the Roman legal system (and by no means of the least excellence) belongs to the Emperors. The imperial rescripts especially, make no small part of the noblest jurisprudence of Rome. Nor are *their constitutions*, and *placita* (as they

are called) in many cases to be held in small estimation, by the student of this law. But (as will be fully explained and seen in the progress of these lectures) these imperial portions of our law, are not the work of the Emperors, considered as the masters of Rome and of the earth; but their *interlocutors* or *adjudications*, as sitting in judgment, with the most learned men that have at any time flourished in the world, as their assessors; so that these *decrees* of the Emperors are truly to be considered, as the most grave and deliberate portion of the whole Roman law; being judgments, in the last resort, and settling definitively (and with such men as the real judges) the principles that were to guide in the decision of affairs. It is, accordingly, a very wrong notion, though natural at first view, and excusable enough,

that less weight is due to the *rescript* of an Emperor in the *code*, than to the *opinion* of a lawyer in the *Pandects*. A rescript or decree, was the united opinion of many lawyers. It is evident here, that I speak of times antecedent much to the last sinking of the Roman power; excepting only the times of Justinian. And the times of Justinian I except; not from the character of the prince; nor from that of his *changeable personal legislation*; but from the nature and necessary character of his *jurisprudence*. Collecting and sanctioning the old law, he could not do otherwise, than *judge* by the old law.

It is not accordingly of these things (as regarding principles of jurisprudence) that we ought to think ill, or to hold as no part of the Roman system. What we ought thus to reject, are matters regard-

ing constitutional government, mere forms of process, and regulations of police (which yet may be adopted, when wise and salutary, as of good example, though not of binding authority;) or they are the punishments ordained for crimes; or the definitions (where these hold more of the *government* than of the *jurisprudence*; for where they hold of the *jurisprudence*, they are admirable) of these crimes themselves. To call this part of the Roman system *our law*, or any other nation's law, is to re-establish, not the Roman *law* but the Roman *empire*.

And this may lead to a right understanding of what authority, in our *criminal law*, this system ought to possess. To imagine that the *lex Cornelia de sicariis*, or *Julia de adulteriis*, and so on (which were just so many Roman statutes, enacted

on particular emergencies, and with particular views) make any part of our law, more than the statutes of France, Spain, or the Empire, would be absurd to a degree that cannot be named; and if by *these* is meant the *criminal* law of Rome, that law can, in no case, be considered, and upon no principle, as forming in any respect the criminal law of Scotland. But if the general maxims of Roman jurisprudence only, be considered; there is then no question, that, (saving entire our local privileges and customs, and following the train of such decided cases as we know) we either have *that* as our law, or we have *no* law. It is in this way, therefore, of considering this system; and by making the proper discriminations, arising from a comprehensive view of its genius and principles; that we can at all ascertain what ought to be considered as belonging to the

Roman

Roman *jurisprudence*, and what belongs merely to the Roman *government*, or to peculiar Roman institutions. The one is ours, and wholly ours; with the other we have nothing to do.

Here, likewise, I may mention; what I promised to take some notice of; as to the Roman law being termed, in certain old statutes, and in ordinary discourse with us at this day, our COMMON LAW: an expression which being foolishly and absurdly over-rated by *some*, has led *others* to a still more foolish and absurd denial, of its weight, authority, and establishment with us, in any way at all. Some use this phrase of common law as if they held every Roman institution to be our law, of whatever description or nature it might be, if not merely local on the very face of it; and thus, without comprehending either

ther the principles or revolutions of law among the Romans, make its whole mass and fabric (confused in point of time, and jarring in respect of principle) their common rule of legal judgment; from scattered texts, selected at pleasure, throughout the whole *corpus juris*; and have thus not only tied down our legislation to what cannot bind us, but to what cannot even be well understood by any man at this day. This absurdity, however, is more rare. Others again (and this is the prevailing vice), holding up our legislative independence, and ridiculing the notion of having such a system (as that I have described) for our *common law*, maintain (in the other extreme) that the Roman jurisprudence is of no farther weight, than as it appears just and reasonable; in which case, if not contrary to our own laws, we would
equally

equally adopt the laws of France or Russia; while the study of the one system is, therefore, in their eyes, no more necessary, (unless in a general view, and as a general accomplishment) than the study of the other. It is needless in this place (and the matter will be seen more clearly afterwards) to enter into any farther consideration of this subject, than merely to remark; that the Roman law is not *our* law from any authority either of the *republic*, or of the *Emperors*; that it is not *our* law, so as to derogate from our own institutions, do away our own manners, subvert our principles, or our forms, political or religious; but that it is, by statute, and by long received, and truly immemorial, usage (much better than statute), in its equitable principles, in its general justice, and in all the cases which are
decided

decided on these principles, and by that justice, the source of our law, and its very essence and body. Take it away; and your statute law will be reduced more than half. Take it away; and you will have no common law whatever.

For I may farther observe here, (and to conclude this part of the subject) that many of our statutes, enacting the same things which are delivered in the jurisprudence of Rome, did not introduce these matters for the first time; but only, by this voice of legislative proclamation and authority, promulgated *that* to the whole land, which had been the practice long before; *confirming* that practice for the *future*, as it thus *authenticated* it for the *past*. Such, as one very remarkable example, is the statute regarding the doctrine
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of compensation. This so philosophically equitable doctrine was not *then*, and for the *first* time, introduced into our law, as many have said ; or (to speak more properly) the Roman law (of which this was so signal a part) was not unknown among us till that period ; but the statute (most certainly, and this was its whole scope) authenticated the doctrine *as having existed*, and confirmed it *as to exist*.

Much more might be said on this subject ; and of the mistaken notions that have so long and extensively been current, as to the genius and principles of the Roman jurisprudence. But here, and at this time, I cannot enter into this great view farther. I have considered it at much length, and in its separate portions, as they
each

each arise, in what you are to hear afterwards in these lectures.

I shall proceed accordingly, now, to the other great complaint against the Roman system ; a complaint which is peculiar to this kingdom ; that it has prevented (or tends to prevent) the study of the feudal institutions.

Indeed, both these studies have been too much neglected among us. But there is no sort of incompatibility between them. Ignorance of both, and of each, can be the only ground for such a charge.

It is no doubt true, that these studies have, for the reasons just now mentioned, been confounded and mingled (by persons equally ignorant of both) to their
mutual

mutual and grievous injury. But this is no sort of charge against any thing else, than that impropriety of thinking, and deficiency of knowledge, which occasioned the mistakes, and created the confusion. And the accuracy and knowledge, that are to remedy this evil, can be found only in the regular study of the civil law; and in that thorough acquaintance with its system, which would have rendered such mistakes, and any mischiefs that they have caused, wholly impossible.

Many things have been laid down by our lawyers (and our great feudist Craig himself, has not always escaped this error) as arising immediately out of the feudal and the Roman law, which are, in reality, connected essentially with neither; though susceptible, from both, of many and important

portant illustrations. This has been the case especially as to the feudal law; which had almost ceased to have any sort of influence among the modern nations, before that part of our law, which *we call* FEUDAL, had a being. With regard to *the history of deeds*, both in this and in our neighbouring country, and which is that part of our law, that is most connected with the feudal customs, though it is foolish to call it feudal law; this even, itself, is susceptible of great illustration, from the history of the jurisprudence of the Romans. Both this portion, however, of our legal studies (even were the connexion less between it and the law of Rome) and whatever else, in our law, derives its origin and establishment from peculiar circumstances, operating in a peculiar manner; and to such causes much of our law

(as of all law) must be referred ; can receive, if no illustration, at least (and most assuredly) no hindrance, from the study of the great and general principles of jurisprudence ; which themselves indeed must regulate, in conformity with the usages to which they are to be applied, every sort of question, that is not bound up in mere forms and solemnities ; while, at the same time, many of these forms and solemnities are themselves of *Roman* (as is well known to the learned, and) not *Gothic* original.

I do not believe, that there is any person, now existing in Europe, who, more than myself, reverences the feudal law and all that belongs to it. I cannot in my mind conceive, nor, if the civil law ever comes to be studied in this country (which it *never* yet has been) do I think it will
be

be believed, that a notion had at any time prevailed, of there being any opposition between the study of the Roman and the feudal laws. The Roman law (were I even to go upon this absurd and silly ground) was the very law of forms, deeds, and instruments; derived from, consolidated with, preserving and preserved, by *its* principles. The feudal law adopted those Roman forms that were fitted to its genius; and, where it did not find fitting forms, it invented others. The most ancient feudal style book (or book of forms) is *Marculfus*; nearly fourteen centuries old; and greatly Roman. He who is addicted to the one study, can scarcely fail of being addicted to the other; that is, if he begins with principles; and, having understanding at the outset, has it

likewise in the progress. In any other way even strong genius will only flounder.

The feudal law has never yet been studied (as it ought to have been studied) in Scotland. Craig, learned as he was, had certainly no genuine knowledge of the antiquities of the feudal law, or the origin of the feudal customs. Greatly learned he unquestionably was (and I have said it elsewhere) with regard to the later times. As he is the first, so he is the only, feudist we have had in Scotland; that is, strictly speaking, and in the professional line of the law. In this respect, we have been much behind the lawyers of England, (the lawyers of the last century, I mean; the present will not carry down so great fame with them); and still farther behind the lawyers on the Continent: who have in
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our age degenerated still more. From this scantiness of legal science, it has arisen in Scotland, that our law, as it now exists, cannot be traced back more than a century. It is needless to speak of what happened before; of Balfour, Durie, Hope, and Haddington. They have their merit; and great merit; but we do not go to them (as generally) to seek our law. It is a very singular thing, that the age of the greatest political and personal tyranny in Scotland (the times of Charles and James the II. and the administration of the Duke of Lauderdale himself) was the great age of its jurisprudence; its beginnings and almost its consummation. The decisions of our Courts, since the times of Dirleton and Stair, have been gradually forming a law; which great feudal knowledge, and, still more, great knowledge in

the Roman jurisprudence (especially as society now exists, and, if our civilization be not destroyed, is in future to exist) can alone enlarge, illustrate, and establish; as to perpetuity and coming generations; for individual and for public prosperity; upon those fixed and systematic rules, that, while they comprehend all cases, settle each; and that leave nothing to vague interpretation, or arbitrary obscurity. It is a real truth, (and it is right to say it over again) that while statutes of old declare the *Roman* jurisprudence, to be the *Scottish* jurisprudence, yet we have been, till this day, greatly unacquainted with it. The old lawyers knew it better than we; especially they knew it better, in the great age of jurisprudence I have mentioned; but they never knew it as it should have been known. Will it be believed, that in a country,

country, where acts of parliament, from the most early times, declared the civil law of Rome to be the common law of the land, there yet have existed only two civilians; Scrimgeour and Barclay; of whom the one died, not far past the middle of the sixteenth, and the other not long after the beginning of the seventeenth century; and who died also, as they had lived, far from home! In Scotland, none of the famous men on the Continent ever came to teach the civil law. In England, this was done from its very beginnings; while, in a later period, Edward the I. himself (he, under whom the statute of tallage passed) not only encouraged, but pensioned publicly, the great teachers of that law, whom he called for this very purpose into his realm. The civil law was early known in Scotland, and

imperfectly known. The circumstance of its being early known, occasioned it to be brought ignorantly as the illustration of many things, and as connected even with many things, with which it had nothing at all to do. The circumstance of its being imperfectly known, continued the abuse thus once begun; and begot other abuses. I durst not venture to say it formerly, when I, for the first time, addressed a public audience here in the character of a professor, (though even my first studies for this place made me suspect it greatly) but I now think my *duty* even requires me to say, when I can say it on the authority of more intimate knowledge, that the erudition in the civil law, has never hitherto been brought from this imperfect state in this country. Nor is it by any silly desire of amplifying what it has fallen to my province

vince to teach and explain (a thing to which I am averse, to the extreme perhaps of the opposite censure, in all cases, and by my natural disposition ; it is from nothing of this sort) that I have said this here ; which I yet could almost be led to unsay, on account of the great difficulty such a declaration imports of fulfilling what belongs to the duty ; but it is a consideration that should lead both you and me to a very attentive and serious investigation of the matter which lies before us. I think I may venture to assert, not only of the law of Scotland, but of all law every where, and in whatever shape society may exist in future times (even were forms of government made to be of the mere caprice and will of man) ; that no system of equitable jurisprudence will ever be known in the world, unless by the knowledge of
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the Roman law ; and that the knowledge of this law, alone, can give to such a system either bottom or perpetuity. I wish to be understood as saying this in the fullest latitude of expression ; so ample indeed, that neither my endeavours, nor my hopes, can reach that point of completion (perhaps at any time) the attainment of which would place either myself, or my hearers, in the full view of this comprehensive system. I see its vastness lying before me, dark and undefined. I shall do what is in my power to explain its most essential portions and chief outlines ; those particularly that are most necessary (though what parts are not necessary ?) in practical purposes to ourselves. By unpresuming and repeated endeavours, the system itself may, perhaps, in some generations of men, be restored to what it was, long before the

compilations of Justinian ; when Papinian, Paulus, and Ulpian, were the living oracles of this law ; and while it still spoke in the writings of the juriconsults of old, in the science, and with the vigour, of the republic.

There is, accordingly, no sort of opposition between the study of the civil and of the feudal laws : They are both necessary to the Scots lawyer. They are both necessary to the man of scientific legal research. They have each their distinctive praises and utilities. The civil law may appear in its grasp more universal. And as furnishing principles and maxims of legal equity, it is much more universal certainly. But the feudal law is connected (besides the local law in many cases) with the governments and constitutions of modern

dern Europe ; and in this way is of eminence and utility perhaps equal. At all events, and without settling their comparative claims, they are both objects of most necessary study, and most important research ; of which the investigation affords mutual light, and can in no case impede, as to the one or to the other, if they should not in every case enlighten, the mutual progress.

The Roman law, such as I shall deliver to you in these lectures (confining my endeavours within my abilities and knowledge) you will thus perceive I consider to be, a great body of universal justice ; which, in this kingdom of Scotland, both by usage and statute, is to be the rule of administering the law in all cases, where usages derived from other established sources,

ces, where the peculiar nature of our government, and where particular statutes, settling the law of the land, do not derogate from its authority, or introduce other rules of decision. This (as I take it) is the full extent of the civil law, as to its direct authority among us. There is still more to be done than in this strictness of view, and as considering it in the range of universal jurisprudence; but it is of that kind which can be rather pointed at by me than explained, and for which the student must be more indebted to himself than his teacher.

This antient law (even in a less limited view than that of universal jurisprudence) is a sort of law of nations, at this day, over all Europe; and it might be no difficult matter to shew, that all that has been
written,

written, of any importance, upon the law of nations, in modern times, has either been derived from the Roman source ; or, where it has not been so derived, that it does not contain a great deal of much value. The system of Grotius is, in a very great degree (*generally* and in its *parts* also) founded on the civil law of Rome. Among modern nations (it is true) a number of new questions have arisen ; in consequence of the splitting of Europe into so many independent states, by the subversion of the Roman Empire, and the subsequent erection of the later kingdoms. What was prophesied by Tacitus long ago, has happened. “ Nam pulsus (quod dii prohibeant !) Romanis,” says Cerealis in his speech to the Gauls, “ quid aliud quam bella omnium inter se gentium existent !” The unity of empire had greater

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er evils ; but it had not this evil. These modern wars, and the treaties consequent upon them, and the whole round of negotiation, before, during, and after them, have made the *jus fœciale* of modern Europe (and which men have dignified with the name of the law of nations) a very different thing, and of a nature much more trivial, and, as trivial things often are, much more complicated, than what the ceremonial of war and peace was among the Romans. But the sense in which, at present, I mean the law of nations, as applicable to the effect of the Roman jurisprudence among the different European states, is separate from this other thing altogether ; being of a nature to apply, by its common principles of justice, to almost all questions that can arise in reconciling the territorial laws of particular communities ;

ties ; and it being (besides this general circumstance) received also, in a greater or in a less degree, among the nations on the Continent, as well as among ourselves, and as their guiding law establishment, a sort of legal inter-community has thus been formed (like the inter-community in religious worship of old) which nothing else could possibly have produced ; and no discussion almost can thus arise (where the judgment is to proceed upon common principles of equity) that does not admit accordingly of an easy (and, in many cases, of an almost instant) decision ; as if the different states of Europe were, in this respect, the provinces of one Empire ; while Rome thus lives in her laws, for ages after the military sword had fallen from her hands ; and thus after her downfall still rules the nations.

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On this subject, however, it is worth while to mention a caution. In quoting foreign authorities ; especially those of the more modern sort ; we ought perhaps to be more on our guard, than we always are, in stating them as supporting this or that opinion in the civil law. In many of the states on the Continent, a number of local usages have grown up, as among ourselves ; and which have been (as in the more formal establishment of that law among *them* than among *us*) incorporated with the body of the Roman jurisprudence, so as to appear original portions of it ; and very frequently to be treated by their writers *as such*. In this way, if care be not taken, we may be very ready to quote some regulation of some petty German magistrate, or the opinion of some little counsel in a provincial court, as a

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rescript

rescript of Antoninus or a response of Papi-
nian. For, over a great part of the Con-
tinent, the Roman law is not merely such
as it is here ; but every thing is arranged
under its name of whatever sort or descrip-
tion it may be : and while thus received,
wholly in *name*, it frequently guides very
little in *principle*. It is, therefore, of much
consequence for the student, the practition-
er, and the judge, to attend most carefully
to what really belongs to the jurisprudence
of Rome, as distinguished from what may
be so called or thought ; and which has
often no foundation, either in that jurif-
prudence, or in any other sound system of
legal justice.

And this leads me to make the last ob-
servation with which I think it necessary
to trouble you at this time ; as upon this
part

part of my subject. By the study of the civil law having fallen so greatly and deplorably in our times; and from no regular and systematic attention being paid to it; considering it rather as some sort of appendage, than as any real part, of our own law; it has come to pass, that we consult *authorities* upon it *at random* and *occasionally*, and on the *emergency* of *each particular case*; without either making the best selection among the authorities, or understanding, even as to these authorities themselves, more than what is put down (if we understand *that*) in the particular place to which the contents or the index point our eyes, in this foolish and stupid consultation. It is impossible, in this way, not only that a knowledge of this law should be acquired; but we must even become more ignorant of it than by not

consulting it at all. By not consulting it at all, we might, from our own natural reason and common sense, light upon those principles of reason and common sense, which constitute the Roman system: and there have been, and are, illustrious examples of this coincidence of *natural* and *systematic* reason. Those who were worthy to be associates of Ulpian, will naturally think as Ulpian thought. But by the random and ignorant consultation I have mentioned, we pervert *our own notions*, without acquiring the knowledge contained in the *notions of others*. And it is in this way, that I would reprobate, as much as any person, the silly ostentation of Roman law learning, by the accumulation of quotations on each other, without end and without purpose; from all the names, strange or familiar, pronounceable or unpronounceable,

pronounceable, that can be swept into the pages of a session paper. Such practices have brought great disgrace on the civil law ; which yet, in fact, has nothing more to do with them, than with any reveries or absurd opinions, taken up on any other matter of learning or research.

As to the selection of authorities ; I do not mean to detract from his usefulness (for he is a very well informed and judicious writer) but with us, now a days, the authority of this whole law seems, in Scotland, to be referred to *Voet*. It is not the *corpus juris* itself that is now held in estimation ; and the authority of this *Dutchman* is now far beyond any authority of Paulus or Ulpian, or any decision of a Roman Emperor, strengthened by the advice of all the lawyers in his states. In

short, the commentaries of Voet are made
 our Roman law. But there can be no
 question that this law will never be known,
 nor a firm and settled jurisprudence be es-
 tablished upon its principles, unless by stu-
 dying *itself*; and, when this has been gone
 through in the proper manner, by the af-
 ter study of the commentators in modern
 times (and of Voet among the rest; for va-
 luable he is, without any question); com-
 paring them all along with the knowledge
 of the classic originals, in the system itself,
 and as already fully acquired; and throw-
 ing away, most especially, all their modern
 subtleties and meagre metaphysics; which
 have nothing to do with the civil law: For,
 be assured, that gross ignorance alone could
 ever have produced the gross error, that
 the Roman law was intricate, and perplex-
 ed, and abstruse; when its very character-
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istic and essence (as existing in the pandects, and in that great part of the code, which is of the same jurisprudence with the pandects) is the being made up of plain natural justice and obvious common sense; natural justice and common sense expressed, it is true, in precise and accurate language; as such things ought to be; but with none of the tricks and devices and deformities either of a clumsy or of a flimsy philosophy; neither the heaviness of lumpish commentators, nor the skipping levities of overweening Sciolists. Every thing is accurate, that there may be no confusion; and every thing is plain; that there may be no intricacy.

It is therefore a very important study, that upon which we are now to enter; being no less or other, than the study of a

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system

system of laws, collected with wonderful industry from the writings of the most learned and remarkable men, both employed in affairs and deeply skilled in science; the affairs and the science of republican Rome, or of Rome, in the times of such men as the Antonines, not fallen from her arts and learning of former times; and drawn in this manner from the practice of a great and wise people, among whom such men had flourished, in an uninterrupted and as it were corporate succession, for many hundred years; purifying and enlarging and explaining their legal institutions. I am earnest, much more earnest than in my first lecture from this place, to have it thoroughly understood what sort of a thing the study of this great science is. I thought highly of it always. I cannot express to you how I now think.

Even

Even if I could ; I would assuredly refrain from it. These high eulogies, in circumstances not relatively known, instead of panegyric are depreciation. My wishes will be fully accomplished, (for wishes ought always to be bounded by powers) not by *instructing* you (as I have said) in this great system, but by making you earnest to *instruct yourselves*.

How this is best to be accomplished, I shall now very shortly lay before you ; and, in doing this, I shall have finished all that I mean to say at this time, and that can be considered as introductory to our after labours.

In this course of the institutions, I intend to follow a greater variety of objects, and to take a wider range than

has been done hitherto. At the same time, this range will be itself completely bounded and circumscribed by my proper subject. I shall not go an inch beyond the territories of the Roman law. But in this circle there is room enough for much and extensive inquiry ; and of a very important and useful kind.

It has not hitherto been made a part of the course of lectures in this university ; nor of any other university so far as I know ; to give a history of the beginnings and the progress of the Roman law, and of its various fortunes, both among the Romans themselves, and in the several kingdoms of modern Europe. I propose to employ a considerable part of this course upon this subject.

There

There can be no doubt that it is a subject of great importance ; nor can I well guess the reason why it has not heretofore been considered as a very necessary part of the duty of the chair of civil law. I shall submit to your judgment a few thoughts upon it.

It has frequently been esteemed (and it has unquestionably, and in some instances, been executed with great success) a necessary part of lectures on the civil law, to give an account of what is called the progress of law ; or, in other words, a view of the beginnings and progression of society ; or, in other language still, an history of man ; or sometimes also an history of government. Such subjects are great and vast and comprehensive indeed ; and of as much dignity as can belong to
any

any human study. They require the hand of a master. Yet men very little qualified for the task, and in no degree worthy to assume this name, have had the temerity to put their hands to it. I do not say (because I do not know it to be the fact) that this has been done (I mean by such men as these) in the chairs of universities. The matter certainly has been introduced there; and by men (as I have already said) not unworthy so to introduce it. It is not of them that I speak in this language of just condemnation. But whatever be the dignity and grandeur of the subject, or whatever the abilities of the men, it is, without question, a matter which does not belong to the duty of a professor of civil law. Yet I must explain myself more fully here; that I may not be mistaken, either as to things or persons;

fons; and indeed, in this case, it would give me much more *immediate*, and even much more *real* pain, to be misunderstood as to *persons* than as to *things*; let the things be what they may, and of whatsoever value.

Where a law college is employed as a sort of general institution, in science, history, and philosophy; delivered under the general name of LAW; which is a term most wide and comprehensive; of most universal and unlimited range; and to which (so far as regards the moral part of man's nature, whether considered as an individual or as the member of a politic community) no bounds whatever can be set; where a system of education, such as this, is expected or designed, the teacher is, in that case, not only warranted, but of necessity

necessity must, and merely in doing his duty, endeavour to give those, who put themselves under his charge, that broad and general instruction, for the attainment of which they resort to him. But this is not the case with me. There are other institutions in this university, where that knowledge may be amply acquired. My duty is to instruct you only (so far as my own abilities and knowledge go) in the principles of the Roman law.

And let me here (I am sure with no design of dispraise, which, I think, is far removed from my disposition, let me here, gentlemen), mention to you that this sort of instruction, to which I have alluded, unless when both delivered and heard with great science, and also great sobriety, is very dangerous ground to tread upon.

Both

Both the speaker and the hearer, have need to impose a very strong curb upon their mind. Nothing is more difficult than for even the best judgments to rein themselves in, when once got upon this course ; and when they have once snuffed up the wild and piercing air in these regions of political metaphysics. I am glad that the consideration of them does not belong to me.

Accordingly, pursuing the line of my duty, and confining myself within its limits, I shall give you no sort of dissertation whatever either about the origin of human society, or of its various establishments ; neither of the men in the woods, or of the men in cities and nations. But I certainly should not fulfil my duty (as I take that duty to be) if I were not to give
you

you an account of the origin and establishments of the Roman law: of the Roman law, as the great and universal system of private rights; BUT mingling with it no general theories of policy or government; which do not belong to *me* (in the arrangements of study in *this* university) nor to *my* office at all. The policy indeed of the Roman state, as belonging to the revolutions of their jurisprudence, is, and most intimately, of my province; and will be treated of as such, in all its general extent; though not in the detail.

Perhaps one of the great reasons of the civil law having fallen into such disrepute among us, has been an ignorance of its rise, progress, and authority, in this, and the other countries of modern Europe.

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The student is introduced, all at once, to the study of a system, in itself exceedingly deep and comprehensive, without any of that previous training, which is necessary to give him proper ideas of the subject to which he is to apply his mind. It appears before him as a vast and confused object, of which his perceptions are exceedingly indistinct and uncertain. On the other hand, when he is led up to it through the avenue of historical knowledge, and when the prospect opens upon him easily and by degrees, his after acquaintance with it will be both more accurate, and more lasting. Accordingly, this, of itself, is a great and a powerful reason for introducing the study of the principles of the civil law by the study of its history.

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But strong and powerful as this reason is, there are others, perhaps, of almost equal importance; and that equally lead to and recommend this plan of study.

The study of the civil law is connected, not only with philosophical science, but with the liberal and politer studies of classical literature. Indeed, without a very considerable knowledge of the Roman language, institutions, and manners, it is impossible to comprehend fully the spirit and the maxims of their law. A particular explanation of these institutions and manners does not indeed belong to my province. *This* is not the class of *Roman antiquities*. Perhaps, to do this subject its full justice would require a separate institution altogether. At the same time, an explanation of some parts of them, and a

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general

general illustration of that subject, is most intimately and essentially connected with the duties of this place. And this account can in no way be formed into a part of the system I am here to deliver, unless by being interwoven and connected with the *history* of this law. As to a more particular and detailed account of the usages, customs, and institutions of antient Rome, a production has lately been given to the world, extracted from the best authorities and most authentic sources, and which I shall certainly take upon me to recommend as the best guide, in this sort of studies, to the young inquirer; or to those, whose inclinations and pursuits do not lead them to the perusal of the many and bulky volumes, in which this knowledge is closed and wrapped up. I mean the very accurate and useful compilation late-

ly published by Dr. Adam. A grateful remembrance of my old preceptor, and of the joys and little studies of my boyish days, has no share in this recommendation. This makes it more pleasurable certainly; but the truth of praise is still the same, in that utility which is its own praise.

In the history that I am to give you of the Roman law, without entering (unless where it is necessary for the interpretation of particular texts, or for the explaining particular usages) into any minute detail of the antiquities of Rome, I shall, however, give a comprehensive view of every thing relating to the government and laws of that people. The utility of such a course of study is, in my opinion, exceedingly great; more so, perhaps, and certainly

tainly as much, as even the advantages which result, from its gradually leading to the view, and opening up the prospects, of the civil law.

Its advantages are twofold ; as they relate to the communication and continuance of a classical spirit of study ; and as such accounts of the government, and legal institutions of a renowned people, form by far the best and surest means of studying and imbibing the real principles (delivered in their proper length and science elsewhere) of *even* public law and government.

As to the imbibing a classical spirit of study, and the advantages or evils resulting from this spirit ; this has been the subject of much common-place discourse,

both in the way of invective and of panegyric. My mind is clear on the matter ; but it would require many words to say every thing. I shall say only one thing. This learning embraces, almost all the intellectual, certainly all the moral, part of our nature. Not only the *principles* of moral science are to be found in it ; but all the great and noble *examples* of strength and freedom of mind, of social, domestic, and political duties, are to be found there, in the fullest perfection : and *there* also are to be found those lessons of wisdom and generosity, which improve and exalt the mind more than any thing else in the whole scope of study. In the light, therefore, of a general moral institution, for forming, improving, and directing our minds, nothing can be of such consequence, as that these studies should be
preserved

preserved or revived : and though it is not my business to consider them in this extensive view ; or even, in this way, to speak of them at all ; yet it gives me no small degree of satisfaction, that I find it necessary, in doing my own peculiar duty, not only to recommend these studies, but to assure you that, without a competent stock of this learning, no progress can be made in the knowledge of the civil law : And my satisfaction is still farther increased, by the conviction, that those who have once made the progress necessary for profiting, by what is said in this place, (here and in the other course) will not stop short at these acquisitions ; but proceed to higher and more eminent acquirements still. As to the study of the civil law ; to suppose that it can be known in any degree worthy the appellation of knowledge,

without a very thorough acquaintance with the institutions and policy of the people who were governed by these laws, is to suppose, that law has no sort of connexion with, or relation to the manners, situation, and circumstances of the people that live under it. This knowledge, besides, is the only (at least the chief) way of making that essential distinction, of which I have formerly spoken; of what belongs to the Roman law merely as a system of reason, and is accordingly of direct authority among us; and what is peculiar to the Roman government itself, and ought not to be allowed to interfere or clash with the institutions and laws of independent nations.

Yet I am far from meaning, in what I have thus said, to represent the civil law

under a difficult and uninviting aspect, to those who may have hitherto paid little attention to classical studies. I should then do a very great evil ; and likewise commit a very great error. One of my chief-objects in adopting the plan which I have mentioned to you, is, that the study of the civil law may be rendered more alluring, than it has hitherto been, to those who have not turned their attention to the subject, in any great, or perhaps in any, degree. I mean to convince them, that it is worthy of their diligent and assiduous investigation, both as a matter of liberal inquiry and of professional knowledge ; and to encourage them to begin, and to proceed in those collateral studies, which will both render them more intelligent in professional business, and, at the same time, furnish more improvement to their minds.

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This I wish to accomplish, not by rendering the study frivolous, but by making it interesting.

The second great advantage to be derived from the plan of an historical introduction to the principles of the civil law, is the knowledge that is from thence to be obtained of the policy of the Roman people. I do not mean the minute parts of their government, with which I have nothing to do ; but the great and distinguished aspects which it has exhibited in the progression or revolutions of law among that people. There is no subject more fruitful than this of solid instruction. The science of law and government can only be studied, by what has taken place among embodied communities of men ; whose history affords the lessons and maxims, which

which a severe and abstract philosophy may then, with safety, examine and search; and compound into the original principles of government. The science of government is just the same as the art of criticism. Aristotle was after the poets, not before them; and *this* is the reason why his laws of poetry must stand forever. It is thus, that the laws of government must stand too. While if, on the other hand, these principles are taken up and explained, upon the fancied inventions of theorists; who either do not know or disdain historical wisdom; it then requires nothing more than a small portion of acuteness (less than what you see employed in private causes at the bar every day) to maintain, and render sufficiently plausible, any set of opinions whatever; and if, by art or by accident, power is given or obtained,

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ed, to make the weakest, or most frivolous, of these opinions, the engine of overturning or erecting empires. Certainly it does not belong to me to consider, at any length, even this limited view of public law. But it will, naturally and necessarily, make a part (and not any thing separate or distinct) in the historical account of the laws of Rome, and of their progress and authority in modern Europe.

This historical account however, (it is necessary to mention) will neither be taken up altogether, nor even chiefly, in such matters as these. It will be more intimately connected with the real business of the civil law. An account of the most eminent lawyers, who flourished at its different periods, of their distinctive opinions; of the sects into which they were

were formed (for this law had its sects as well as philosophy and religion); of the way in which these sects came to be consolidated in the systems of the last and great lawyers in the times of the Antonines, and immediately subsequent to their times; systems yet in part preserved in the compilation of Justinian; and of the manner in which this system (thus preserved) has become, more or less, the law of modern nations: and (along with this) an account of the chief civilians who have flourished in the kingdoms of modern Europe; *their* distinctive opinions also; *their* sects (for they had sects *likewise*); and observations both as to their writings, and the men among them, with whom it is most necessary that you should form an acquaintance in the pursuit of your studies; *these* matters will form the most considerable,

able, and certainly not the least useful portions of those beginning lectures, which I design as introductory to the study of the principles of the Roman law : although this very introductory matter will, itself, contain these principles in a very considerable degree.

The remainder of this course (our chief labour) will be employed in explaining the general principles of the civil law, contained in the four books of the institutions ; as they are *there* delivered, and according to the plan of the institutions themselves : that is, without introducing (at least in much detail) any of those nicer questions or discussions that belong only to the more advanced student, and which are to form the course of the Pandects.

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By such means as I have here described, employed on your part and on mine, and by following out this plan and method, the studies of the civil law may be revived, and its knowledge spread among us. In this century men have been gradually advancing in ignorance. Some of the greatest men that ever lived may, and indeed must, have existed; but the *mass* must likewise have been growing hourly more ignorant; and for the self same reason. In the sunshine of knowledge, those who could not bear its brightness gazed and were blind. This darkness of the understanding is to be prevented only in one way: by modest and regular approaches to the source of light, which will thus rise "with healing under its wings." Of all human sciences, that which prescribes, constrains, this modest and wise course of study

study the most, is the science of the civil law of the Romans. He who hastens here must stumble ; and experience joining itself to advice, must also, in the end, here produce caution. In this way, and by a slow, but steady, and well sustained progress, the elements of all private, of all public, law will be known to us : of that which administers the concerns of peace, which justifies and terminates the actions of hostility. In this way (and as a particular thing) we may be taught one great truth, most necessary and most applicable to our days ;— how the God of Christians is the God of Battles as much as he whom the blasphemers of the times have called the God of the Jews. It is said in reference to HIM (and thus said that it might be the stronger said, to him) whose peculiar name is the “ Prince of Peace,” that “ in RIGH-

“ PIOUSNESS

“ PIOUSNESS he doth *judge* and *make* “ *war*.” If the principles of this “righteousness” have been ever explained and settled among men, this has been in the system of the Roman jurisprudence. I have said already that in *it* alone is to be sought the whole doctrine of the *law of nations*.

I shall make one observation more. High as the jurisprudence of Rome is to be held, I should yet be sorry indeed, were what I have said as to its uses and necessity in our *municipal* law, to be construed as inferring any thing against the separate and detailed study of the law of Scotland. What I have said is, on the contrary, the very recommendation to this study. It is not long ago, since there was no distinct establishment for teaching our municipal law:

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and it was a very fore defect. There are persons yet living (I believe), and both on the bench and at the bar, to whose admission into the faculty of advocates, attendance on the Professor of the Civil Law was alone necessary. Things are better ordered now, in requiring attendance upon both for this purpose: only, let both studies be attended to, as they should be. Perhaps, by a sort of mechanical justice, which also often becomes injustice, the former discountenance to the municipal law has occasioned the more recent dislike to its source and parent. Let this injustice end as the old injustice has ended. The study of the municipal law has now every allurements and authority that it can require, as a distinct and lasting establishment. To reach its full glories as a science, nothing is wanting but the greater
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knowledge and spread of the Roman law. On this I have already spoken my sentiments at large, I should speak likewise of him who is placed in that station of duty: but two things restrain me. Literary praise, in such cases especially as his and mine, is, for the most part, doubtful and suspected praise. *That* praise is not becoming for *this* occasion, which is not altogether pure and unmixed. And further (which is my other reason) the praise itself is wholly needless, where a supernumerary voice is only lost and hid in the general acclamation. I have stated to you what I think my own duty; and I shall imitate the best examples in endeavouring to fulfil it.

Such is the plan, gentlemen, that I have formed ; and which I shall bestow all the pains and attention that I am capable of, to render as advantageous to you as possible in the execution : Time will unquestionably suggest improvements. I do not mean any idle parade of words, in taking or seeking advice. A man's best adviser is certainly himself ; if he act with any deliberation. Yet, at the same time, nothing can be of more importance than to receive, and (when not contrary to your own decided judgment) to follow, what may be suggested as improvements or alterations by those who attend such a course as this ; and who are capable of forming an opinion upon it. Much must depend for my success, in this attempt of restoring the study

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dy of the civil law, upon the attention and indulgence and communications of my hearers. I am yet but ignorant ; at least in many respects uninstructed ; myself. I have to learn as well as you ; although with more immediate, and compulsory, incentives to my progress. I shall advance as I best can ; but I need encouragement and assistance. After doing all that lies in my own power, I shall still owe much to you.

FINIS.

by of the civil law, upon the attention and
indulgences and commendations of my
honourable I am your obedient servant
to my right honourable
LORDS OF THE
MUSEVM
BRITANNICVM

