

The Nineteenth Century Revival of Roman Law Study in England and America

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THE present revival of Roman law study in England and America is largely due to Sir Henry Maine. Sheldon Amos' loyal tribute deservedly extols the genius of Maine who "rescued the laws of Rome from the neglect into which they had fallen in England and established forever their essential relation to every system of law having an European parentage."¹

During the twelfth and thirteenth centuries Roman law had been received into England in no small measure.² And this was followed by the gradual development of a native law — the English Common Law. But the "overweening pretensions of popes and emperors" aggravated the narrowing influences of England's geographical isolation from the continent, and the result was not only rivalry between the civil and the common law, but also English hostility to the former as a foreign system.³ The suppression of the study of canon law in the sixteenth century by Henry VIII, followed by the Protestant Reformation, put the study of Roman law into disfavor.⁴ By the time of James I in the seventeenth century little or no attention was paid to it. During the eighteenth and early in the nineteenth centuries the study of Roman law in England almost ex-

pired. In 1852 there was scarcely any Roman law teaching at Oxford University — that ancient English seat of the civil law.⁵ England had become isolated from the current of European juridical thought and legal practice.

Not until very modern times when the isolation of England and the greater isolation of America were diminished by improved and frequent means of communication did the prejudice of English and American lawyers against Roman law disappear. And even now the tradition of such prejudice and indifference still lingers too potently in some parts of the United States.

The year 1870 marks this latest revival of Roman law study in England — a movement second only in importance to the Bologna revival of the thirteenth century in its ultimate influence on the developing English law into a codified jurisprudence. England is now in a position to catch up in law with the rest of civilized Europe. That the law of England has progressed in the last quarter century is proved, ignoring all else, by the familiar codifications of portions of English law.

Very fruitful have been the labors of the modern English Romanists such as Bryce,⁶ Muirhead,⁷ Amos,⁸ Williams,⁹

¹ See Amos, "The History and Principles of the Civil Law of Rome" (dedication to Maine).

² See Vinogradoff, "Roman Law in Medieval Europe," pp. 84 *et seq.*; Scrutton, "Roman Law," pp. 79-124; Guterback, "Bracton and His Relation to the Roman Law"; Hunter, "Roman Law" (4th ed.), pp. 107-116.

³ Bryce, "Essays," pp. 862-863.

⁴ See Bryce, "Essays," pp. 861-862.

⁵ See Bryce, "Essays," p. 890.

⁶ James Bryce, now British Ambassador to the United States, whose twenty-three years of activity as Regius Professor of the Civil Law at Oxford from 1870 to 1893 will long be remembered.

⁷ James Muirhead, Professor of Roman Law at the University of Edinburgh.

⁸ Sheldon Amos, Professor of Jurisprudence and Roman Law in the Inns of Court, London.

⁹ James Williams, Professor at Oxford.

Hunter,¹⁰ Roby,¹¹ Clark,¹² and the Scotch civilians, Mackenzie¹³ and Colquhoun.¹⁴

One result of this movement in England is that the Roman Institutes of Justinian are now a required subject for admission to the English bar. England has joined hands with Scotland¹⁵ in requiring a knowledge of Roman law to form an essential part of a legal education. No longer is the English lawyer totally ignorant of the world-current of jurisprudence.

This nineteenth century revival of Roman law study soon passed across the Atlantic into America. Ground had already been broken for this movement in the United States by the illustrious Chancellor Kent, who was the earliest American jurist to frankly confess the great debt owed by English law to Roman jurisprudence and whose "Commentaries" with their Roman influence, have greater authority in America than those of Blackstone.

Roman law seems to have been first taught at Yale: it was "the first American law school in America or England to establish a course leading to the degree of Doctor of Civil Law."¹⁶ The pioneer teachers of Roman law at Yale include the late Professors Hadley¹⁷ and

Wheeler.¹⁸ The revival of Roman law study has spread to other law schools — Columbia, Pennsylvania, the Catholic University, Chicago, Stanford, Harvard and others. One result of this movement is bound to benefit certain American law schools: it will sooner or later destroy the present over-emphasis by them on the "case method" as the exclusive method of teaching American law.

As compared with the literary productions of the English Romanists, very little as yet has been done by American Romanists. But there are a few who rank with their English brethren, such as Morey,¹⁹ Howe,²⁰ Robinson,²¹ and the Canadian, Walton.²²

Two states now require a knowledge of Roman law for admission to the bar — Louisiana²³ and Kansas.²⁴ That it should be made requisite in Louisiana is not surprising; that it is necessary in Kansas — a common law state — is proof of the progress of the present revival of Roman law in the United States.

But with all the advance made by this movement there is still room for further progress. The rank and file as well as a favored few of the great army of nearly 19,000²⁵ law students scat-

¹⁰ William A. Hunter, whose "Roman Law in the Order of a Code" has never been equaled in English.

¹¹ Henry John Roby, Professor at University College, London.

¹² Regius Professor of the Civil Law at Cambridge.

¹³ Lord Mackenzie, a judge of the Court of Sessions, whose "Studies in Roman Law with Comparative Views of the Laws of France, England and Scotland," is renowned.

¹⁴ Patrick MacChombaich De Colquhoun, whose elaborate "Summary of the Roman Civil Law" is the pioneer work in English.

¹⁵ See Mackenzie, "Roman Law" (7th edition), p. 47.

¹⁶ Yale Law School Bulletin, 1910-11, p. 6.

¹⁷ James Hadley, father of President Arthur T. Hadley of Yale, author of "Introduction to Roman Law."

¹⁸ Albert Sproull Wheeler, who established by will in 1905 the Wheeler Library of Roman Law.

¹⁹ William C. Morey, Professor at Rochester University, author of "Outlines of Roman Law."

²⁰ Judge William Wirt Howe of New Orleans, author of "Studies in the Civil Law."

²¹ William C. Robinson, formerly Professor Yale University and now Dean of the Catholic University Law School. His "Elementary Law," the nearest approximation to a true code of American law, reflects much of the spirit of the *Corpus Juris*.

²² Frederick Parker Walton, Professor and Dean at McGill University Law School, author of "Historical Introduction to Roman Law."

²³ See "Rules for Admission to the Bar" (5th ed.), 1909, West Pub. Co., "Louisiana."

²⁴ *Id.* "Kansas."

²⁵ Estimated Figures, 1909. See "World Almanac for 1911," p. 481.

tered in 109 American law schools sadly need the uplifting professional and scientific impulses which result from contact with Roman law. Our present system of legal education is defective because it does not give sufficient attention to or ignores Roman law. That distinguished Englishman, Professor Dicey, from his observation of American Rhodes scholars in law at Oxford, recently made the following very pertinent comment, that "there ought to be a wider knowledge of the law of Rome than is given in the celebrated law schools of America, and also an acquaintance, which can hardly be obtained from cases alone, with the principles to be gathered from the works of the best . . . legal writers of England and America."²⁶

Roman Law, as in England, should be required for admission to every

²⁶ A. V. Dicey, "The Extension of Law Teaching at Oxford," 24 Harv. Law Rev. p. 3 (Nov. 1910).

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American bar. It would lead, among other benefits, to a diminution of the present professional incompetency²⁷ of too many men called to the bar, and would impart an altogether too much needed ethical uplift to the profession as a whole.

The American lawyer, as well as his English brother, must no longer remain ignorant of the world-current of jurisprudence and the mission of modern Roman law. Then will he perforce naturally plan and strive for the scientific betterment of American law through codification along the lines of the best modern codes — that Herculean but not impossible task of the immediate future. The American revival of Roman law study will then reach its full fruition.

²⁷ On this subject, see address of Frederic R. Coudert, "The Crisis of the Law and Professional Incompetency," Am. Bar Association Convention, Boston, Aug. 30, 1911.

Sir Frederick Pollock on "The Genius of the Common Law"¹

A SERIES of eight lectures on "The Genius of the Common Law" was given at Columbia University October 2-13, by Sir Frederick Pollock. The lectures were the fifth course on the James S. Carpentier foundation, on which James Bryce, Prof. John C. Gray, Arthur Lionel Smith, and David Jayne Hill have already lectured, and were well reported in the *New York Times*. It is of course impossible to publish here

¹ With acknowledgments to the *New York Times*, from whose reports of the lectures this abridgment has been prepared.

a condensed summary of them with any hope of doing justice either to their substance or to their form. At the same time, an abridged statement may succeed in presenting some of the most salient thoughts of each lecture, and in indicating the main drift of an extremely interesting discussion.

In the opening lecture, the speaker declared that it was his purpose to follow the adventures of Our Lady of the Common Law, and to find out how she had fared in all her varied adventures since the Middle Ages. It would