

**SOURCES OF THE ROMAN
CIVIL LAW: AN
INTRODUCTION TO THE
INSTITUTES OF JUSTINIAN**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649525164

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Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

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BY
WILLIAM GRAPEL, ESQ., M. A.,
OF LINCOLN'S INN, BARRISTER-AT-LAW,
PROFESSOR OF JURISPRUDENCE, AND OF ENGLISH LITERATURE,
IN THE PRESIDENCY COLLEGE, CALCUTTA.

CAMBRIDGE:
MACMILLAN & CO.,
LONDON:
BELL AND DALDY, 186, FLEET STREET.
1857.



P R E F A C E.

THE Roman Civil Law, as a Branch of Professional Education, has now in England claimed its rightful place. Thinkers, in the present day, maintain that the training of the Lawyer should be something more than a conventional heaping up of forms, and precedents, and technical results. That the attempt to solve the great problems of General Justice and Morality, which underlie each special System, is essential to the framing of a legal and a judicial mind. "By mastering principles," say the Members of the late Commission, "the Student becomes more interested in, and obtains a steadier grasp of practical details."

It is futile to brand as unreal, or of secondary worth, studies which have ever ranked so high in every Continental Scheme of Education; studies which, from the day when Theobald first brought Vacarius to Oxford, have never ceased to be followed in our own great Universities. It is worse than futile to carp at as unpractical, and a real hindrance, that which has been deliberately revived by the several

Inns of Court in England ; and which, as well by those to whom has been entrusted the power of admission to the Bar, as by a Committee of our greatest living Jurists, has been declared a necessary element in the training of every Student of the Law.

In May, A. D. 1854, a Royal Commission was addressed to eleven Commissioners, among whom were Vice-Chancellor Sir W. Page Wood, Mr. Justice Coleridge, the Right Honorable Jos. Napier, the Attorney, and the Solicitor General, Sir Erskine Perry, and Mr. Shaw Lefevre. The appointment and authority was "To inquire into the arrangements in the Inns of Court for promoting the Study of the Law and Jurisprudence, the Revenues properly applicable, and the Means most likely to secure a systematic and sound Education for Students of Law, and provide satisfactory Tests of fitness for admission to the Bar." The Report, which was published in August, A. D. 1855, contains a recommendation that the several Inns of Court should be united in a Legal University. After laying down a general scheme for the constitution of such University, the Commissioners proceed to consider the nature of the studies, and of the tests to be demanded of Candidates for Degrees. And here it is well to remark that they consider the study of the Law as divisible into two distinct Branches. The one, speculative and extra professional ; the other practical and professional. While acknowledging the benefits which are, or may be, derived from

the system of pupillage in a Barrister's Chambers, the Commissioners insist on the value of a previous systematic study of the Law considered as a Science rather than an Art. In so doing they endorse the opinion of Professor Maine, Reader to the Middle Temple, who, in his evidence (1108) expresses his anxiety, "That the more speculative branches of study should be engaged in before proceeding to the more practical. The minds of young men," he continues, "are never in a worse condition to consider the higher principles of Law, than when they are on the eve of embarking in actual practice. Just then the necessity for shaping every question with a view to immediate success is apt to take precedence of all other considerations."

The two Branches suggested by the Commissioners consist of the following subjects :—

FIRST BRANCH :

- a. Constitutional Law, and Legal History.
- b. Jurisprudence.
- c. The Roman Civil Law.

SECOND BRANCH :

- a. Common Law.
- b. Equity.
- c. The Law of Real Property.

The Report further suggests, "That no Person shall be called to the Bar unless he shall receive a Certificate from the Senate of having passed a satis-

“ factory Examination in at least one subject, in each
“ of the above Branches.”

It were needless to insist on the worth of that which bears the stamp of men, whom all confess to be so able to advise. It may, however, be doubted whether the objections which have been, by some, advanced to a compulsory study of the Roman Civil Law, have not, in most cases, sprung from a misconception of the meaning of the term as used by its supporters. If it were narrowed to the Letter of the Pandects, or the Code, a study of the Roman Law would have all the dangers, with but few of the benefits attendant on that of any other technical System. But, besides being, what no modern System can be, an unshifting standard of comparison, the Roman Civil Law has a special worth and meaning of its own. The term, when used aright, implies not alone the Municipal Law of the Empire, with its several modifications, in old times and in new ; but includes a handling of the great questions of Morals, and of Polity. Ethics, on the one side, bounds its province ; and, on the other, such History as serves to shew the working of its principles. It rises, so to say, to the unseen from the seen ; and is the one System which both craves and furnishes, that union of metaphysical and of historical knowledge in lack of which, says Bolingbroke, none may deserve the name of Lawyer. “ I might instance,” writes that splendid declaimer,* “ in other Professions, the obligation

* Letters on History ; No. 5.

“ men lie under of applying themselves to certain
“ parts of History; and I can hardly forbear doing
“ it in that of the Law, in its nature the noblest and
“ most beneficial to mankind, in its abuse and debase-
“ ment the most sordid and the most pernicious.
“ A Lawyer now is nothing more, (I speak of ninety-
“ nine in an hundred at least), to use Tully's words,
“ ‘ Nisi leguleius quidam cautus et acutus, præco
“ actionum, cantor formularum, aniceps syllabarum.’
“ But there have been Lawyers that were Orators,
“ Philosophers, Historians. There have been Bacons
“ and Clarendons. There will be none such any
“ more, till, in some better age, true ambition, or the
“ love of fame, prevails over avarice, and till men
“ find leisure and encouragement to prepare them-
“ selves for the exercise of their profession by
“ climbing to the ‘ vantage ground,’ so my Lord
“ Bacon calls it, of science instead of grovelling all
“ their lives below in a mean but gainful application
“ to all the little arts of chicane. Till this happens,
“ the Profession of the Law will scarce deserve to be
“ ranked among the learned Professions, and when-
“ ever it happens one of the vantage grounds to which
“ men must climb is metaphysical and historical
“ knowledge.”

The principle of a division of Legal studies, suggested by the Commissioners in England has already been, in some sort, carried out in India. The Presidency College of Calcutta has its Chair of Jurisprudence, for the handling of the subjects con-