

**THE ACADEMICAL STUDY OF
THE CIVIL LAW: AN INAUGURAL
LECTURE, DELIVERED AT
OXFORD, FEBRUARY 25, 1871**

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JAMES BRYCE

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THE ACADEMICAL STUDY

OF THE

CIVIL LAW.

AN INAUGURAL LECTURE,

DELIVERED AT OXFORD, FEBRUARY 25, 1871.

BY

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THIS Lecture is printed as it was delivered. It makes no pretensions to be a complete examination of the reasons for studying the Roman law, and of the place which that subject ought to hold in the University curriculum. To do this a long essay would be needed; and as the subject of law studies is at this moment under the consideration of the University, it seems advisable rather to say something now, than to lose the present opportunity in the hope of being able to say it better and more fully at some future time.

LINCOLN'S INN, *March 6, 1871.*

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THE STUDY OF THE CIVIL LAW.

NARROW as is the sea that parts England from the continent of Europe, it has cut her off as effectually from many continental influences as if she lay far out in mid-Atlantic. When it is considered how close are our affinities of blood with the Low-German races, and how intimate during the middle ages were our relations, intellectual as well as political, with the whole of Western Europe, the individuality of the English people and its institutions appears singularly well-marked; and one is surprised to see in how many points the great nations of the continent resemble one another and understand one another, while all alike differ from us, and are comparatively incomprehensible to us. This strangeness of England is what most strikes the foreigner who comes among us; be he Frenchman, German, Spaniard, or Italian, he seems less at home in England than anywhere else in Christendom. As in the woodland wealth of our country, as in the architecture of our towns and the structure of our houses, so also in the social usages and mental habits of Englishmen one discovers something peculiar, something bearing witness to a prolonged isolation, to an exemption

from those influences, speculative as well as practical, which have operated on all or nearly all the other members of the European commonwealth.

Such isolation has been in no respect more marked or more fruitful in results than in the case of our law. In spite of the immense power of the mediæval church, in spite of the influence of the universities, and of the strangers who flocked to them from all quarters, the Roman jurisprudence exerted a comparatively slight and fleeting influence upon the technical development of our law and the formation of our habits of thought. Here, where the language, and to a great extent the customs of the people, were of Teutonic origin, it may perhaps have found a less congenial soil than in Italy or France, while there were no such political associations with the Roman name as those which gave the *Corpus Juris* its authority in Germany. Whatever be the cause, it is clear that Roman law was never thoroughly domesticated in England. True it is that one of the first notices we have of the existence of our University is that which mentions the Lombard Vacarius as lecturing on law (doubtless on the *Pandects*) at Oxford, under the patronage of Archbishop Theobald, in the days of King Stephen¹; and there is abundant

¹ 'Oriuntur discordiæ graves, lites et appellationes antea inauditæ. Tunc leges et causidici in Angliam primo vocati sunt, quorum primus erat magister Vacarius. Hic in Oxenefordia legem docuit, et apud Romam magister Gracianus et Alexander, qui et Rodlandus, in proximo papa futurus, canones compilavit.'—(Gervas. Dorob. ; *Act. Pontif. Cantuar. ; Theobaldus.*)

evidence that the study was regularly pursued here down till the sixteenth century. The statutes of the older colleges make provision for some of the fellows proceeding to degrees therein; and indeed the only law degrees we have given, since those in canon law were abolished, have been degrees in civil law. But the customary or common law, unrecognized in the universities, gained exclusive possession of the seats of legal study in London; that hostility to the pretensions of the foreign laws which had been so forcibly expressed by the barons at Merton in Henry the Third's time, and again by the Parliament of Richard the Second, maintained ever after a watchful and jealous attitude; those who had mastered Roman law at Oxford were obliged, when they practised in the courts at Westminster, to disguise or disclaim any appeal to its authority; and when the Reformation finally broke the link, not only between England and Rome, but between English men of letters and the general movement of European learning and thought, the study of the civil as well as of the canon law virtually expired among us¹. Its practical utility (except to practitioners in the ecclesiastical courts) was apparently at an end; and in the cloud of dulness and sluggishness that settled down upon Oxford and Cambridge at the end of the seventeenth century, it only shared the fate of other studies which had more

¹ For some time after the breach Englishmen used to resort to continental universities, and there, of course, they found Roman law taught; but this practice died out before very long.

to commend them to an active and curious intellect. A few distinguished publicists and lawyers, such as Duck, Selden, Hale, Holt, and those two brightest ornaments of the English bench, Lord Hardwicke and Lord Mansfield, were well versed in its rules, but the great mass of English lawyers regarded it with suspicion and dislike, and the very praise which Hale bestows testifies to the slight interest felt in it. 'He set himself much,' says Bishop Burnet his biographer, 'to the study of the Romane law, and though he liked the way of judicature in England by juries much better than that of the civil law, where so much was trusted to the judge, yet he often said that the true grounds and reasons of law were so well delivered in the Digests, that a man could never understand law as a science so well as by seeking it there, and lamented much that it was so little studied in England'.¹

The ancient rivalry of the Civil and the Common law proved eventually the cause of mischief to both. Having reigned supreme in the universities, the civil law had never taken root in the Inns of Court, and when it fell in the universities it fell utterly. On the other hand, the common lawyers, originally excluded from Oxford and Cambridge, were well enough content with the position they had obtained for their study in London, and do not seem to have seen how much was to be gained by introducing it into the

¹ *Life*, by Burnet.

ancient seats of learning. Thus both systems, to the loss as well of the profession as of the universities, came to be neglected in the very places where they might best have been cultivated in a philosophical spirit; and it was not until Mr. Viner's foundation in A.D. 1756 that English law was recognized here as an academical study, while in Cambridge no provision was made for the teaching of it until the beginning of the present century.

That isolation of England to which the neglect of the civil law may be ascribed has of late years perceptibly diminished. Owing partly to the more frequent and easy intercourse which improved means of communication have produced, partly to the removal of old national prejudices, partly to that increased recognition of the power of ideas which comes with the growth of democracy, civilized Europe has within the last eighty or ninety years become much more of a single intellectual commonwealth than it has been at any time since the Reformation, perhaps, indeed, since the fall of the Roman Empire. Our long-standing jealousy of the civil law as a foreign system, associated with the overweening pretensions of emperors and popes, has at last vanished. A century ago this feeling was still so active, that Lord Mansfield's enemies found it worth while to charge him with having, as a Scottish lawyer, an undue partiality for the Roman law, and designing, by means of its despotic principles, to sap the liberties of Englishmen—'corrupting by treacherous arts the noble