

**THE STUDY OF THE CIVIL AND CANON
LAW CONSIDERED IN ITS RELATION TO
THE STATE, THE CHURCH, AND THE
UNIVERSITIES, AND IN ITS CONNECTION
WITH THE COLLEGE OF ADVOCATES**

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The study of the civil and canon law considered in its relation to the State, the Church, and the universities, and in its connection with the college of advocates by Robert Phillimore

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ROBERT PHILLIMORE

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BY

ROBERT PHILLIMORE,

BARISTER OF THE MIDDLE TEMPLE, ADVOCATE IN DOCTORS COMMONS,
AND LATE STUDENT OF CHRIST CHURCH.

"The study of the Ecclesiastical Law requires an accurate acquaintance with the principles of the Civil Law, upon which the Law of the Admiralty is founded, and the Civilian is led to the investigation of those principles of general jurisprudence by which the intercourse of nations is governed, and the rights and obligations of belligerents and neutrals in time of war is defined."—*Report of Commissioners for inquiring into the Ecclesiastical Courts.*

"It is the very Law by which the two Universities are governed, by which all Civil controversies, excepting pleas of frank tenements, are directed to be decided."—*Halsbury on the Civil Law*, Preface, xvii.

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TO
THE RIGHT HONOURABLE
C. W. WILLIAMS WYNN, M.P.

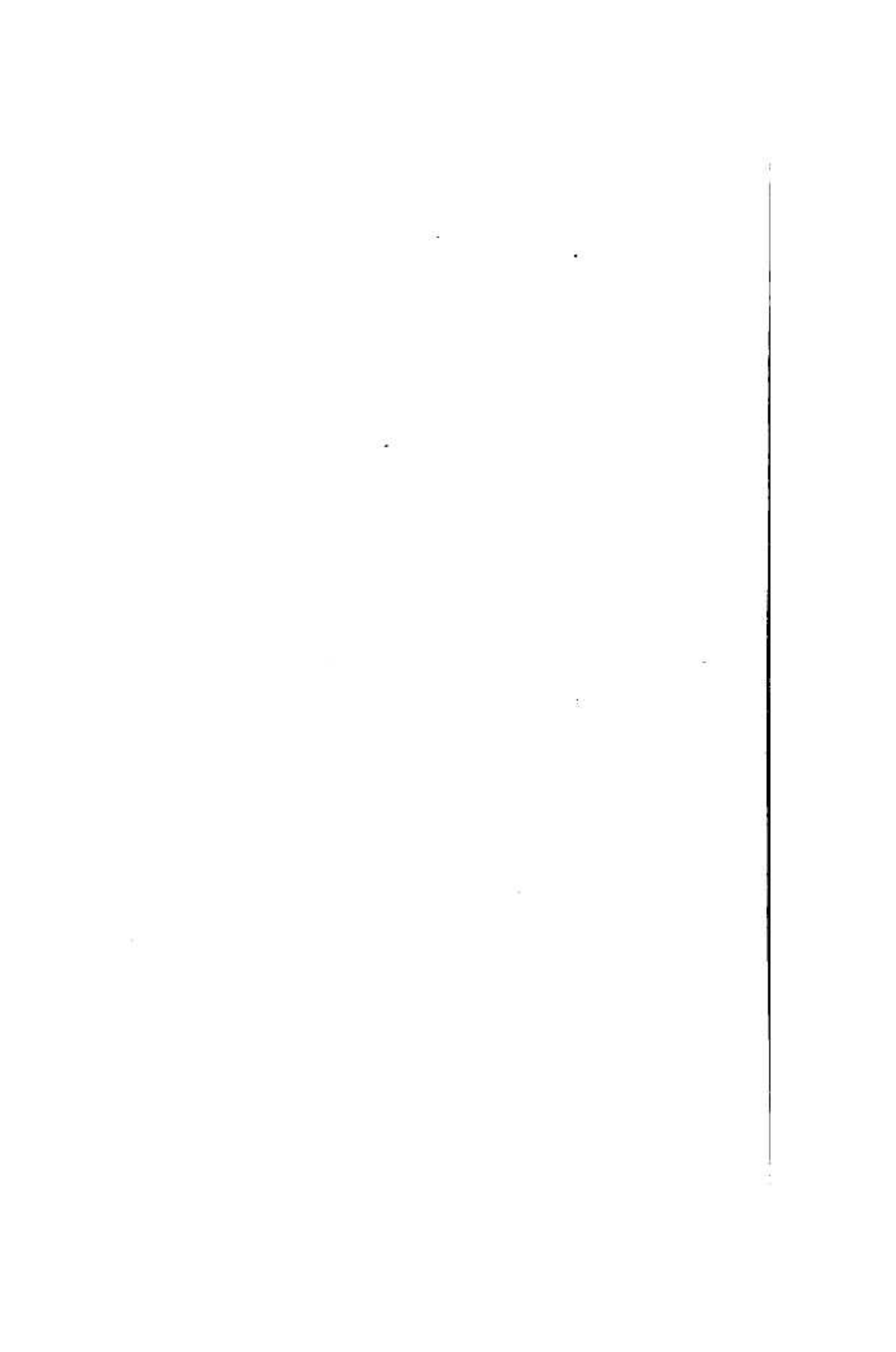
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THE AUTHOR.



WHEN in less enlightened times Mr. Burke undertook his arduous task of Economical Reform, he conceived an experimental acquaintance with the subject, and a patient and laborious investigation into its history, object and effects, to be the necessary basis of his great labour. It would be difficult to say why such qualifications should no longer be held requisite in those who are to adjudicate upon any important subject. But in our own age the order of things seems reversed; every existing institution is called upon, in legal phrase, "to show cause" why it should not be destroyed; the burthen of proof is shifted in a manner so contrary to common sense, equity and reason, that those who defend what is established are required to demonstrate that it is *not*, instead of those who attack that it *is*, injurious to the public weal; every possessor of a few current phrases, easily learnt and glibly enunciated, and every retailer of a few resuscitated fallacies (innocently believed to be new truths), entertains no

doubt as to his full competency to criticise and condemn what the wise and learned of former times have cherished and upheld; every conceited sciolist tries his 'prentice hand upon the Church or the State; it can therefore be no matter of astonishment that the ancient society of which I am a member should be threatened with their condign displeasure. Nor would it be worth the while of any sober-minded and thinking person, especially one who relies, as I do, on the firmness, strength, and wisdom of the present government, to expostulate with persons who substitute clamour for argument, were it not that unrefuted calumny does sometimes pass for truth, and that occasionally persons of the best intentions are entrapped, from various causes, into abetting and furthering a measure productive of results which they are among the first to deplore. It is announced that an attempt will be made, while a most important measure (the reform of the Ecclesiastical Courts) is passing through Parliament, to—what is termed, in the usual *ad captandum* language—destroy the monopoly of civilians, and throw open the Courts, in which they have practised exclusively for many centuries, indiscriminately to all Barristers. I do not for a moment believe that the Government will allow any such mischievous project to succeed; but as I have perceived that a great misconception is generally prevalent upon this subject, both as to the pri-

vileges and rights of Advocates of the College at Doctors' Commons, and as to the advantage accruing to the State from the establishment and maintenance of their distinct profession, I have thought it might not be an unacceptable service to the College, and to the general interests of society, to make some observations upon this subject. It seems to me that it may be demonstrated to the satisfaction of any impartial and competent judge, that an attempt, which, if successful, would achieve the destruction of the College of Advocates of Civil Law, ought to be discountenanced by every wise statesman, and deprecated by every educated and liberal lawyer capable of raising his views beyond the visible horizon of the Court in which he practises.

The object I have in view will perhaps be best attained by considering, though necessarily in a cursory manner, the degree of influence which the Civil Law has exercised in this kingdom, and the advantage which the State has derived from the profession which cultivated that law during the principal epochs of our history.

These remarks, especially such as relate to the period which elapsed between the conquest of the Romans and that of the Normans, shall be confined within very narrow limits, although some acquaintance with this subject is by no means historically uninteresting, and surely far from being unimportant to those who are about