

**AN INTRODUCTION TO THE STUDY
OF JUSTINIAN'S DIGEST:
CONTAINING AN ACCOUNT OF ITS
COMPOSITION AND OF THE JURISTS
USED OR REFERRED TO THEREIN**

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PREFACE.

THIS book is the first part of the work published in 1884 and entitled 'An Introduction to the Study of Justinian's Digest, containing an account of its composition and of the jurists used or referred to therein, together with a full Commentary on one title (*de usufructu*)'.

In compliance with a wish expressed in several quarters, the two parts, viz. the Introduction properly so called, and the Commentary on the title *de usufructu*, are now issued separately. The work can however still be obtained in its complete form as originally published.

'This first part', as I stated in the original Preface, 'gives an account of the composition of the Digest and a brief notice of each of the jurists, both those from whose writings the Digest has been compiled and those who are cited or referred to in it. Some information of this kind is given in Histories and Institutional treatises on Roman law, but neither the order of the titles nor the order of the extracts seems to me treated satisfactorily. On the latter point no doubt everyone mentions Bluhme's discovery, but I am not aware of any exposition of it, except Bluhme's own, going into sufficient detail to shew its importance in the practical study and interpretation of the Digest. Further, I have thought it well to shew clearly by juxtaposition of some extracts with the originals, what the character of Tribonian's revision was.

'The account of the Jurists is fuller than is found in general histories of Roman law. That this account is after all in many cases very meagre, is due, mainly at least, to the want of trustworthy materials. I have refrained here and elsewhere from giving reins to imagination, and have endeavoured to let my readers see what may fairly be treated as known and what is matter of inference and conjecture'.

Preface.

The Table of Contents is retained in its original form, and the work is unaltered in other respects also.

References to pages with roman numerals are to this first part: those to pages with arabic numerals are to the second part.

Attention is requested to the list of *Corrigenda*.

H. J. ROBY.

„Und was darfst viel Worte? das kaiserliche Recht nach welchem das Römische Reich noch heutiges Tage regiert wird, ist ja Nichts andres denn heidnische Weisheit, welches die Römer, ehe denn Roma von Christo gehört hat, gelehrt und geordnet haben. Und ich acht wohl wann ihr alle Juristen in einen Kuchel gebakten und alle Weisen in einen Trant gebraut würden, sie sollten nicht allein die Sachen und Sätze unangefasset lassen, sondern auch nicht so wohl davon reden noch denken können. Denn solche Leute haben sich in großen Handeln müssen üben, sind darzu mit großer Verunft und Verstand begabet gewest. Summa sie haben gelebt und werden nicht mehr leben, die solche Weisheit im weltlichen Regiment gehabt haben.“ LUTHER¹ (*Opp. Altend.* T. 6. f. 203 sq. *Teu.* 6. p. 156).

“Dixi saepius post scripta geometrarum nihil extare quod ut eo subtilitate cum Romanorum Iureconsultorum scriptis comparari possit, tantum nerni inest, tantum profunditatis.“ LEIBNITZ¹ (*Op.* 4, 3. 267).

Unter ungünstigen Verhältnissen wurden Justinians Sammlungen unternommen, und dennoch geschah die Auswahl mit so viel Eifer und Liebe, daß wir nach Dreihundert Jahren fast noch aus diesen Büchern, und bei großen Eiden unserer historischen Kenntniß, den Geist des Römischen Rechts begreifen können....Die eigenen Constitutionen Justinians sind allerdings von verschiedenem Werthe, aber ein großer Theil derselben verdient das Lob der vollständigen Einsicht und Zweckmäßigkeit, und Vieles, was uns als Bekanntheit des alten Rechts erscheint, ist nur der verhängige Ausdruck der Aenderungen, welche ganz von selbst, und ohne Zutun eines Gesetzgebers, eingetreten waren. SAVIGNY (*Grich.* I. § 5).

“With all their errors and imperfections, the Pandects are the greatest repository of sound legal principles applied to the private rights and business of mankind that has ever appeared in any age or nation.“ CHANCELLOR KEAY (*Comm.* i. p. 641).

“Hoc non ignoro ueram utilitatem libri pendere ab uniuersa horum studiorum condicione, maxime a felici iuris prudentiae litterarumque Latinarum communione, quae hodie facit, nec iuri magis operam dant Latine docti quam iurisprudentes Latine sciunt. sunt qui dum huic mense operae fauent putant fieri posse ut studia resuscitentur: nec desperandum est. uideant qui hodie iuri operam dant adulescentes ingenui: apud eos enim stat, utrum perduratura sit ars iuris nobilis et liberalis an in artificium sordidum degeneratura. in a Romanum creatum ingenio populi ad id ipsum nati, perpolitum decursu illo mirabili per ulginti saecula nationesque quae fuerunt quaeque sunt omnium principes, tamquam nobile aurum identidem decoctum splendet hodie splendore non imminto aetate, sed aduucto; et ut casuarum patroni idonei iudicesque sagaces et religiosi etiam eo non adhibito institui possint, tamen ut studium effluatur liberali homine dignum, id est eo qui hoc intellexit neminem plane niuere diem praesentem nisi memorem dierum praeteritorum, opus est iure Romano, coniuncto cum ipsorum populorum tam Romani quam nostri creatione et formatione, uitae communi artem neque ita applicato ut animus adulescentis a libero motu statim in sordium eius uincula abripiatur neque ita ab eo alieno ut ex tirocinio ad arua diffidilis transitus sit.“ TH. MOWATEN (*Praef. ad Digest.* p. lxxx).

¹ These two passages are given as quoted by Radloff, *Gesch.* i. p. 364.