JOHN LORD

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Содержание

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GOVERNMENTS AND LAWS

GREEK AND ROMAN JURISPRUDENCE

624 B.C.-550 A.D

There is not much in ancient governments and laws to interest us, except such as were in harmony with natural justice, and were designed for the welfare of all classes in the State. A jurisprudence founded on the edicts of absolute kings, or on the regulations of a priestly caste, is necessarily partial, and may be unenlightened. But those laws which are gradually enacted for the interests of the whole body of the people,–for the rich and poor, the powerful and feeble alike,–have generally been

the result of great and diverse experiences, running through centuries, the work of wise men under constitutional forms of government. The jurisprudence of nations based on equity is a growth or development according to public wants and necessities, especially in countries having popular liberty and rights, as in England and the United States.

We do not find in the history of ancient nations such a jurisprudence, except in the free States of Greece and among the Romans, who had a natural genius or aptitude for government, and where the people had a powerful influence in legislation, until even the name of liberty was not invoked.

Among the Egyptians, Assyrians, and Babylonians the only laws were the edicts of kings or the regulations of priests, mostly made with a view of cementing their own power, except those that were dictated by benevolence or the pressing needs of the people, who were ground down and oppressed, and protected only as slaves were once protected in the Southern States of America. Wise and good monarchs doubtless issued decrees for the benefit of all classes, such as conscience or knowledge dictated, whenever they felt their great responsibilities, as in some of the absolute monarchies of Europe; but they never issued their decrees at the suggestions or demands of those classes for whom the laws were made. The voice of the people was ignored, except so far as it moved the pity or appealed to the hearts and consciences of their rulers; the people had, and claimed, no *rights*. The only men to whom rulers listened, or

by whom they were controlled, were those whom they chose as counsellors and ministers, who were supposed to advise with a view to the sovereign's benefit, and that of the empire generally.

The same may be said in general of other Oriental monarchies, especially when embarked in aggressive wars, where the will of the monarch was supreme and unresisted, as in Persia. In India and China the government was not so absolute, since it was checked by feudatory princes, almost independent like the feudal barons and dukes of mediaeval Europe.

Nor was there probably among Oriental nations any elaborate codification of the decrees and laws as in Greece and Rome, except by the priests for their ritual service, like that which marked the jurisprudence of the Israelites. There were laws against murder, theft, adultery, and other offences, since society cannot exist anywhere without such laws; but there was no complicated jurisprudence produced by the friction of competing classes striving for justice and right, or even for the interests of contending parties. We do not look to Egypt or to China for wise punishment of ordinary crimes; but we do look to Greece and Rome, and to Rome especially, for a legislation which shall balance the complicated relations of society on principles of enlightened reason. Moreover, those great popular rights which we now most zealously defend have generally been extorted in the strife of classes and parties, sometimes from kings, and sometimes from princes and nobles. Where there has been no opposition to absolutism these rights have not been

secured; but whenever and wherever the people have been a power they have imperiously made their wants known, and so far as they have been reasonable they have been finally secured,–perhaps after angry expostulations and, disputations.

Now, it is this kind of legislation which is remarkable in the history of Greece and Rome, secured by a combination of the people against the ruling classes in the interests of justice and the common welfare, and finally endorsed and upheld even by monarchs themselves. It is from this legislation that modern nations have learned wisdom; for a permanent law in a free country may be the result of a hundred years of discussion or contention,–a compromise of parties, a lesson in human experience. As the laws of Greece and Rome alone among the ancients are rich in moral wisdom and adapted more or less to all nations and ages in the struggle for equal rights and wise social regulations, I shall confine myself to them. Besides, I aim not to give useless and curious details, but to show how far in general the enlightened nations of antiquity made attainments in those things which we call civilization, and particularly in that great department which concerns so nearly all human interests,–that of the regulation of mutual social relations; and this by modes and with results which have had their direct influence upon our modern times.

When we consider the native genius of the Greeks, and their marvellous achievements in philosophy, literature, and art, we are surprised that they were so inferior to the Romans in

jurisprudence,–although in the early days of the Roman republic a deputation of citizens was sent to Athens to study the laws of Solon. But neither nations nor individuals are great in everything. Before Solon lived, Lycurgus had given laws to the Spartans. This lawgiver, one of the descendants of Hercules, was born, according to Grote, about eight hundred and eighty years before Christ, and was the uncle of the reigning king. There is, however, no certainty as to the time when he lived; it was probably about the period when Carthage was founded by the Phoenicians. He instituted the Spartan senate, and gave an aristocratic form to the constitution. But the senate, composed of about thirty old men who acted in conjunction with the two kings, did not differ materially from the council of chiefs, or old men, found in other ancient Grecian States; the Spartan chiefs simply modified or curtailed the power of the kings. In the course of time the senate, with the kings included in it, became the governing body of the State, and this oligarchical form of government lasted several hundred years. We know but little of the especial laws given by Lycurgus. We know the distinctions of society,–citizens and helots, and their mutual relations,–the distribution of lands to check luxury, the public men, the public training of youth, the severe discipline to which all were subjected, the cruelty exercised towards slaves, the attention given to gymnastic exercises and athletic sports,–in short, the habits and customs of the people rather than any regular system of jurisprudence. Lycurgus was the trainer of a military brotherhood rather than

a law-giver. Under his régime the citizen belonged to the State rather than to his family, and all the ends of the State were warlike rather than peaceful,–not looking to the settlement of quarrels on principles of equity, or a development of industrial interests, which are the great aims of modern legislation.

The influence of the Athenian Solon on the laws which affected individuals is more apparent than that of the Spartan Lycurgus, the earliest of the Grecian legislators. But Solon had a predecessor in Athens itself,–Draco, who in 624 was appointed to reduce to writing the arbitrary decisions of the archons, thus giving a form of permanent law and a basis for a court of appeal. Draco's laws were extraordinarily severe, punishing small thefts and even laziness with death. The formulation of any system of justice would have, as Draco's did, a beneficial influence on the growth of the State; but the severity of these bloody laws caused them to be hated and in practice neglected, until Solon arose. Solon was born in Athens about 638 B.C., and belonged to the noblest family of the State. He was contemporary with Pisistratus and Thales. His father having lost his property, Solon applied himself to merchandise,–always a respectable calling in a mercantile city. He first became known as a writer of love poems; then came into prominence as a successful military commander of volunteer forces in a disastrous war; and at last he gained the confidence of his countrymen so completely that in a period of anarchy, distress, and mutiny,–the poor being so grievously oppressed by the rich that a sixth part of the

produce of land went to the landlord,–he was chosen archon, with authority to revise the laws, and might have made himself king. He abolished the custom of selling the body of a debtor for debt, and even annulled debts in a state of general distress,–which did not please the rich, nor even the poor, since they desired a redivision of lands such as Lycurgus had made in Sparta. He repealed the severe laws of Draco, which inflicted capital punishment for so many small offences, retaining the extreme penalty only for murder and treason. In order further to promote the interests of the people, he empowered any man whatever to enter an action for one that was injured. He left the great offices of state, however, in the hands of the rich, giving the people a share in those which were not so important. He re-established the council of the Areopagus, composed of those who had been archons, and nine were appointed annually for the general guardianship of the laws; but he instituted another court or senate of four hundred citizens, for the cognizance of all matters before they were submitted to the higher court. Although the poorest and most numerous class were not eligible for office, they had the right of suffrage, and could vote for the principal officers. It would at first seem that the legislation of Solon gave especial privileges to the rich, but it is generally understood that he was the founder of the democracy of Athens. He gave the Athenians, not the best possible code, but the best they were capable of receiving. He intended to give to the people as much power as was strictly needed, and no more; but in a free State

the people continually encroach on the privileges of the rich, and thus gradually the chief power falls into their hands.

Whatever the power which Solon gave to the people, and however great their subsequent encroachments, it cannot be doubted that he was the first to lay the foundations of constitutional government,–that is, one in which the people took part in legislation and in the election of rulers. The greatest benefit which he conferred on the State was in the laws which gave relief to poor debtors, those which enabled people to protect themselves by constitutional means, and those which prohibited fathers from selling their daughters and sisters for slaves,–an abomination which had long disgraced the Athenian republic.

Some of Solon's laws were of questionable utility. He prohibited the exportation of the fruits of the soil in Attica, with the exception of olive-oil alone,–a regulation difficult to be enforced in a mercantile State. Neither would he grant citizenship to immigrants; and he released sons from supporting their parents in old age if the parents had neglected to give them a trade. He encouraged all developments of national industries, knowing that the wealth of the State depended on them. Solon was the first Athenian legislator who granted the power of testamentary bequests when a man had no legitimate children. Sons succeeded to the property of their parents, with the obligation of giving a marriage dowry to their sisters. If there were no sons, the daughters inherited the property of their parents; but a person who had no children could bequeath his property to whom he

pleased. Solon prohibited costly sacrifices at funerals; he forbade evil-speaking of the dead, and indeed of all persons before judges and archons; he pronounced a man infamous who took part in a sedition.

When this enlightened and disinterested man had finished his work of legislation, 494 B.C, he visited Egypt and Cyprus, and devoted his leisure to the composition of poems. He also, it is said, when a prisoner in the hands of the Persians, visited Croesus, the rich king of Lydia, and gave to him an admonitory lesson on the vicissitudes of life. After a prolonged absence, Solon returned to Athens about the time of the usurpation of his kinsman Peisistratus (560 B.C.), who, however, suffered the aged legislator and patriot to go unharmed, and even allowed most of his laws to remain in force.

The constitution and laws of Athens continued substantially for about a hundred years after the archonship of Solon, when the democratic party under Cleisthenes gained complete ascendency. Some modification of the laws was then made. The political franchise was extended to all free native Athenians. The command of the military forces was given to ten generals, one from each tribe, instead of being intrusted to one of the archons. The Ecclesia, a formal assembly of the citizens, met more frequently. The people were called into direct action as *dikasts*, or jurors; all citizens were eligible to the magistracy, even to the archonship; ostracism,–which virtually was exile without disgrace,–became a political necessity to check the ascendency

of demagogues.

Such were the main features of the constitution and jurisprudence of Athens when the struggle between the patricians and plebeians of Rome began, to which we now give our attention. It was the real beginning of constitutional liberty in Rome. Before this time the government was in the hands either of kings or aristocrats. The patricians were descendants of the original Latin, Sabine, and Etruscan families; the plebeians were the throng of common folk brought in by conquest or later immigration,–mostly of Latin origin. The senate was the ruling power after the expulsion of the kings, and senators were selected from the great patrician families, who controlled by their wealth and influence the popular elections, the army and navy, and all foreign relations. Consuls, the highest magistrates, who commanded the armies, were annually elected by the people; but for several centuries the consuls belonged to great families. The constitution was essentially aristocratic, and the aristocracy was based on wealth. Power was in the hands of nobles, whether their ancestors were patricians or plebeians, although in the early ages of the Republic they were mostly patricians by birth. But with the growth of Rome new families that were not descended from the ancient tribes became prominent,–like the Claudii, the Julii, and the Servilii,–and were incorporated with the nobility. There are very few names in Roman history before the time of Marius which did not belong to this noble class. The *plebs*, or common people, had at first no political privileges whatever, not even the

right of suffrage, and were not allowed to marry into patrician rank. Indeed, they were politically and socially oppressed.

The first great event which gave the plebs protection and political importance was the appointment of representatives called "tribunes of the people,"–a privilege extorted from the patricians. The tribunes had the right to be present at the deliberations of the senate; their persons were inviolable, and they had the power of veto over obnoxious laws. Their power continually increased, until they were finally elected from the senatorial body. In 421 B.C. the plebs had gained sufficient influence to establish the *connubium*, by which they were allowed to intermarry with patricians. In the same year they were admitted to the quaestorship, which office entitled the possessor to a seat in the senate. The quaestors had charge of the public money. In 336 B.C. the plebeians obtained the praetorship, a judicial office.

In the year 286 B.C. the distinctions vanished between plebeians and patricians, and the term *populus* instead of *plebs*, was applied to all Roman people alike. Originally the *populus* comprised strictly Roman citizens, those who belonged to the original tribes, and who had the right of suffrage. When the plebeians obtained access to the great offices of the state, the senate represented the whole people as it formerly represented the *populus*, and the term *populus* was enlarged to embrace the entire community.

The senate was an august body, and was very powerful. It

was both judicial and legislative, and for several centuries was composed of patricians alone. Its members always belonged to the aristocracy, whether of patrician or plebeian descent, and were supposed to be rich. Under Augustus it required one million two hundred thousand sesterces annually to support the senatorial dignity. The senate, the members of which were chosen for life, had the superintendence of matters of religion and foreign relations; it commanded the levies of troops; it regulated duties and taxes; it gave audience to ambassadors; it determined upon the way that war should be conducted; it decreed to what provinces governors should be sent; it declared martial law in the appointment of dictators; and it decreed triumphs to fortunate generals. The senators, as a badge of distinction, wore upon their tunics a broad purple stripe, and they had the privilege of the best seats in the theatres. Their decisions were laws *(leges).* A large part of them had held curule offices, which entitled them to a seat in the senate for life. The curule officers were the consuls, the praetors, the aediles, the quaestors, the tribunes; so that an able senator was sure of a great office in the course of his life. A man could scarcely be a senator unless he had held a great office, nor could he often have held a great office unless he were a senator. Thus it would seem that the Roman constitution for three hundred years after the expulsion of the kings was essentially aristocratic. The *plebs* had but small consideration till the time of the Gracchi.

But after the institution of tribunes a change in the constitution

gradually took place, so that it was neither aristocratic nor popular exclusively, but was composed of both elements, and was a system of balance of power between the various classes. The more complete the balance of power, the closer is the resemblance to a constitutional government. When one class acted as a check against another class, as gradually came to pass, until the subversion of liberties by successful generals, the senate, the magistrates, and the people in their assemblies shared between them the political power, but the senate had a preponderating influence. The judicial, the legislative, and the executive authority was as well defined in Roman legislation as it is in English or American. No person was above the authority of the laws; no one class could subvert the liberties and prerogatives of another class,–even the senate could not override the constitution. The consuls, elected by the centuries, presided over the senate and over the assemblies of the people. There was no absolute power exercised at Rome until the subversion of the constitution, except by dictators chosen by the senate in times of imminent danger. Nor could senators elect members of their own body; the censors alone had the right of electing from the ex-magistrates, and of excluding such as were unworthy. The consuls could remain in office but a year, and could be called to account when their terms of office had expired. The tribunes of the people ultimately could prevent a consul from convening the senate, could seize a consul and imprison him, and could veto an ordinance of the senate itself.

The nobles had no exclusive privilege like the feudal aristocracy of mediaeval Europe, although it was their aim to secure the high magistracies to the members of their own body. The term *nobilitas* implied that some one of a man's ancestors had filled a curule magistracy. A patrician, long before the reforms of the Gracchi, had become a man of secondary importance, but the nobles were aristocrats to the close of the republic, and continued to secure the highest offices; they prevented their own extinction by admitting into their ranks those who distinguished themselves,–that is, exercising their influence in the popular elections to secure the magistracies from among themselves.

The Roman constitution then, as gradually developed by the necessities and crises that arose, which I have not space to mention, was a wonderful monument of human wisdom. The nobility were very powerful from their wealth and influence, but the people were not ground down. There were no oppressive laws to reduce them to practical slavery; what rights they gained they retained. They constantly extorted new privileges, until they were sufficiently powerful to be courted by demagogues. It was the demagogues, generally aristocratic ones, like Catiline and Caesar, who subverted the liberties of the people by buying votes. But for nearly five hundred years not a man arose whom the Roman people feared, and the proud symbol "SPQR," on the standards of the armies of the republic, bore the name of the Roman Senate and People to the ends of the earth.

When, however, the senate came to be made up of men

whom the great generals selected; when the tribunes played into the hands of the very men they were created to oppose; when the high-priest of a people, originally religious, was chosen politically and without regard to moral or religious consideration; when aristocratic nobles left their own ranks to steal the few offices which the people controlled,–then the constitution, under which the Romans had advanced to the conquest of the world, became subverted, and the empire was a consolidated despotism.

Under the emperors there was no constitution, since they combined in their own persons all the great offices of state, and controlled the senate, the army, the tribunals of the law, the distant provinces, the city itself, and regulated taxes and imposed burdens as they pleased. The senate lost its independence, the courts their justice, the army its spirit, and the people their hopes. And yet the old forms remained; the senate met as in the days of the Gracchi, and there were consuls and praetors as before.

However much we may deplore the subversion of the Roman constitution and the absolute reign of the emperors, in which most historians see a political necessity, there was yet under these emperors, whether good or bad, the reign of law, the bequest of five hundred years' experience. The emperors reigned despotically, but under the forms of legislation. Nor did they attempt to subvert laws which did not interfere with their own political power. What is called jurisprudence they even improved, as that later imperial despot Napoleon gave a code to the nation he ruled. It is this science of jurisprudence, for

which the Romans had a genius, that gives them their highest claim to be ranked among the benefactors of mankind. They created legal science. Its aim was justice,–equity in the relations between man and man. This was the pride of the Roman world, even under the rule of tyrants and madmen, and this has survived all the calamities of fifteen hundred years. The Roman laws–founded by the Republic, but symmetrically completed by the Empire–have more powerfully affected the interests of civilization than have the philosophy and arts of Greece. Roman jurisprudence was not perfectly developed until five hundred years after the Christian era, when Justinian consolidated it into the Code, the Pandects, and the Institutes. The classical jurists, like Gaius, Ulpian, and Paulus, may have laid the foundation, but the superstructure was raised under the auspices of the imperial despots.

The earliest code of Roman laws was called the Twelve Tables, framed from the report of the commissioners sent to Athens and other Greek States, to collect what was most useful in their legal systems. The laws of the Twelve Tables were the basis of all the Roman laws, civil and religious. But the edicts of the praetors, who were the great equity judges as well as the common-law magistrates, proclaimed certain changes which custom and the practice of the courts had introduced; and these, added to the *leges populi*, or laws proposed by the consul and passed by the centuries, the *plebiscita*, or laws proposed by the tribunes and passed by the tribes, and the *senatus consulta,* or

decrees of the senate, gradually swelled the laws to a great number. Three thousand engraved plates of brass containing these various laws were deposited in the capitol.

Subtleties and fictions were in the course of litigations introduced by the lawyers to defeat the written statutes, and jurisprudence became complicated as early as the time of Cicero. Even the opinions of eminent lawyers were adopted by the legal profession as authoritative, and were recognized by the courts. The evils of a complicated jurisprudence were so evident in the seventh century of the city, that Q. Mucius Scaevola, a great lawyer, when consul, published a scientific elaboration of the civil law. Cicero studied law under him, and his contemporaries, Varus and Aelius Gallus, wrote learned treatises, from which extracts appear in the Digest made under the Emperor Justinian, 528 A.D. Julius Caesar contemplated a complete revision of the laws, but did not live long enough to carry out his intentions. His legislation, so far as he directed his mind to it, was very just. Among other laws established by him was one which ordained that creditors should accept lands as payment for their outstanding debts, according to the value determined by commissioners. In his time the relative value of money had changed, and was greatly diminished. The most important law of Augustus, deserving of all praise, was that which related to the manumission of slaves; but he did not interfere with the social relations of the people after he had deprived them of political liberty. He once attempted, by his *Lex Julia*, to

counteract the custom which then prevailed, of abstaining from legal marriage and substituting concubinage instead, by which the free population declined; but this attempt to improve the morals of the people met with such opposition from the tribes and centuries that the next emperor abolished popular assemblies altogether, which Augustus had feared to do. The senate in the time of the emperors, composed chiefly of lawyers and magistrates, and entirely dependent upon them, became the great fountain of law. By the original constitution the people were the source of power, and the senate merely gave or refused its approbation to the laws proposed; but under the emperors the *comitia*, or popular assemblies, disappeared, and the senate passed decrees which had the force of laws, subject to the veto of the Emperor. It was not until the time of Septimus Severus and Caracalla (second century A.D.) that the legislative action of the senate ceased, and the edicts and rescripts of emperors took the place of all legislation.

The golden age of Roman jurisprudence was from the birth of Cicero to the reign of the Emperor Alexander Severus, 222 A.D.; before this period it was an occult science, confined to praetors, pontiffs, and patrician lawyers. But in the latter days of the republic law became the fashionable study of Roman youth, and eminent masters arose. The first great lawyer who left behind him important works was Q. Mucius Scaevola, who wrote a treatise in eighteen books on the civil law. "He was," says Cicero, "the most eloquent of jurists and the most learned of

orators." This work, George Long thinks, had a great influence on contemporaries and on subsequent jurists, who followed it as a model. It is the oldest work from which there are any excerpts in the Digest.

Servius Sulpicius, the friend of Cicero and his fellow-student in oratory, surpassed his teachers Balbus and Gallus, and was the equal in reputation of the great Mucius Scaevola, the Pontifex Maximus, who said it was disgraceful for a patrician and a noble to be ignorant of the law with which he had to do. Cicero ascribes the great superiority of Servius as a lawyer to the study of philosophy, which disciplined and developed his mind, and enabled him to deduce his conclusions from his premises with logical precision. He left behind him one hundred and eighty treatises, and had numerous pupils, among whom A. Ofilius and Alfenus Varus, Cato, Julius Caesar, Antony, and Cicero were great lawyers. Labeo, in the time of Augustus, wrote four hundred books on jurisprudence, spending six months in the year in giving instruction to his pupils and in answering legal questions, and the other six months in the country in writing books. Like all the great Roman jurists, he was versed in literature and philosophy, and so devoted to his profession that he refused political office. His rival Capito was equally learned in all departments of the law, and left behind him as many treatises as Labeo. These two jurists were the founders of celebrated schools, like the ancient philosophers, and each had distinguished followers. Gaius, who flourished in the time of the

Antonines, was a great legal authority; and the recent discovery of his Institutes has revealed the least mutilated fragment of Roman jurisprudence which exists, and one of the most valuable, which sheds great light on ancient Roman law; it was found in the library of Verona. No Roman jurist had a higher reputation than Papinian, who was praefectus praetorio under Septimius Severus (193 A.D.),–an office which made him second only to the Emperor, a sort of grand vizier, whose power extended over all departments of the State; he was beheaded by Caracalla. The great commentator Cujacius declares that he was the first of all lawyers who have been, or who are to be; that no one ever surpassed him in legal knowledge, and no one will ever equal him. Paulus was his contemporary, and held the same office as Papinian. He was the most fertile of Roman law-writers, and there is more taken from him in Justinian's Digest than from any other jurist, except Ulpian. There are two thousand and eighty-three excerpts from this writer,–one sixth of the whole Digest. No legal writer, ancient or modern, has handled so many subjects. In perspicuity he is said to be inferior to Ulpian, one of the most famous of jurists, who was his contemporary. Ulpian has also exercised a great influence on modern jurisprudence from the copious extracts of his writings in the Digest. He was the chief adviser of Alexander Severus, and like Paulus was praefectus praetorio. The number of excerpts in the Digest from him is said to be two thousand four hundred and sixty-two, and they form a third part of it. Some fragments of his writings

remain. The last of the great civilians associated with Gaius, Papinian, Paulus, and Ulpian, as oracles of jurisprudence, was Modestinus, who was a pupil of Ulpian. He wrote both in Greek and Latin. There are three hundred and forty-five excerpts in the Digest from his writings, the titles of which show the extent and variety of his labors.

These eminent lawyers shed great glory on the Roman civilization. In the earliest times men sought distinction on the fields of battle, but in the latter days of the republic honor was conferred for forensic ability. The first pleaders of Rome were not jurisconsults, but aristocratic "patrons," who looked after their "clients,"–men of lower social grade, who in return for protection and assistance rendered service, sometimes political by voting, sometimes pecuniary, sometimes military. But when law became complicated, a class of men arose to interpret it. These men were held in great honor, and reached by their services the highest offices,–like Cicero and Hortensius. No remuneration was given originally for forensic pleading beyond the services which the client gave to a patron, but gradually the practice of the law became lucrative. Hortensius, as well as Cicero, gained an immense fortune; he had several villas, a gallery of paintings, a large stock of wines, parks, fish-ponds, and aviaries. Cicero had villas in all parts of Italy, a house on the Palatine with columns of Numidian marble, and a fortune of twenty millions of sesterces, equal to eight hundred thousand dollars. Most of the great statesmen of Rome in the time of

Cicero were either lawyers or generals. Crassus, Pompey, P. Sextus, M. Marcellus, P. Clodius, Asinius Pollio, C. Cicero, M. Antonius, Julius Caesar, Caelius, Brutus, Catullus, were all celebrated for their forensic efforts. Candidates for the bar studied four years under a distinguished jurist, and were required to pass a rigorous examination. The judges were chosen from members of the bar, as well as in later times the senators. The great lawyers were not only learned in the law, but possessed great accomplishments. Varro was a lawyer, and was the most learned man that Rome ever produced. But under the emperors the lawyers were chiefly distinguished for their legal attainments, like Paulus and Ulpian.

During this golden age of Roman jurisprudence many commentaries were written on the Twelve Tables, the Perpetual Edict, the Laws of the People, and the Decrees of the senate, as well as a vast mass of treatises on every department of the law, most of which have perished. The Institutes of Gaius, already mentioned, are the most valuable that remain, and have thrown great light on some important branches previously involved in obscurity. Their use in explaining the Institutes of Justinian is spoken of very highly by Mackenzie, since the latter are mainly founded on the long-lost work of Gaius. The great lawyers who flourished from Trajan to Alexander Severus, like Gaius, Ulpian, Paulus, Papinian, and Modestinus, had no successors who can be compared with them, and their works became standard authorities in the courts of law.

After the death of Alexander Severus, 235 A.D., no great accession was made to Roman law until Theodosius II., 438 A.D., caused the constitutions, from Constantine to his own time, to be collected and arranged in sixteen books. This was called the Theodosian Code, which in the West was held in high esteem. It was very influential among the Germanic nations, serving as the chief basis of their early legislation; it also paved the way for the more complete codification that followed in the Justinian Code, which superseded it.

To Justinian belongs the immortal glory of reforming the jurisprudence of the Romans. "In the space of ten centuries," says Gibbon, "the infinite variety of laws and legal opinions had filled many thousand volumes, which no fortune could purchase, and no capacity could digest. Books could not easily be found, and the judges, poor in the midst of riches, were reduced to the exercise of their illiterate discretion." The emperors had very early begun to issue ordinances, under the authority of the various offices gathered into their hands; and these, together with the answers to appeals from the lower courts made to the emperors directly, or to the sort of supreme court which they established, were called *imperial constitutions* and *rescripts*. Justinian determined to unite in one body all the rules of law, whatever may have been their origin; and in the year 528 appointed ten jurisconsults, among whom was the celebrated Tribonian, to select and arrange the imperial constitutions and rescripts, leaving out what was obsolete or

useless or contradictory, and to make such alterations as the circumstances required. This was called the *Code*, divided into twelve books, and comprising the constitutions from Hadrian to Justinian. It was published in fourteen months after it was undertaken.

Justinian thereupon authorized Tribonian, then quaestor, *vir magnificus magisteria dignitate inter agentes decoratus,*--"for great titles were now given to the officers of the crown,"–to prepare, with the assistance of sixteen associates, a collection of extracts from the writings of the most eminent jurists, so as to form a body of law for the government of the empire, with power to select and omit and alter; and this immense work was done in three years, and published under the title of Digest, or Pandects. Says Lord Mackenzie:

"All the judicial learning of former times was laid under contribution by Tribonian and his colleagues. Selections from the works of thirty-nine of the ablest lawyers, scattered over two thousand separate treatises, were collected in one volume; and care was taken to inform posterity that three millions of lines were abridged and reduced in these extracts to the modest number of one hundred and fifty thousand. Among the selected jurists only three names belonged to the age of the republic,– the civilians who flourished under the first emperors are seldom appealed to; so that most of the writers whose works have contributed to the Pandects lived within a period of one hundred years. More than a third of the whole Pandects is from Ulpian,

and next to him the principal writers are Paulus, Papinian, Salvius Julianus, Pomponius, Q. Cervidius Scaevola, and Gaius. Though the variety of subjects is immense, the Digest has no claims to scientific arrangement. It is a vast cyclopedia of heterogeneous law badly arranged; everything is there, but everything is not in its proper place."

Neither the Digest nor the Code was adapted to elementary instruction; it was therefore necessary to prepare a treatise on the principles of Roman law. This was intrusted to Tribonian and two professors, Theophilus and Dorotheus. It is probable that Tribonian merely superintended the work, which was founded chiefly on the Institutes of Gaius, divided into four books. It has been universally admired for its method and elegant precision. It was intended merely as an introduction to the Pandects and the Code, and was entitled the Institutes.

The *Novels*, or *New Constitutions, of Justinian* were subsequently published, being the new ordinances of the Emperor and the changes he thought proper to make, and were therefore of high authority. The Code, Pandects, Institutes, and Novels of Justinian comprise the Roman law as received in Europe, in the form given by the school of Bologna, and is called the "Corpus Juris Civilis." Savigny says:–

"It was in that form that the Roman law became the common law of Europe; and when, four centuries later, other sources came to be added to it, the *Corpus Juris* of the school of Bologna had been so universally received, and so long established as a basis

of practice, that the new discoveries remained in the domain of science, and served only for the theory of the law. For the same reason, the Ante-Justinian law is excluded from practice."

After Justinian the old texts were left to moulder as useless though venerable, and they have nearly all disappeared. The Code, the Pandects, and the Institutes were declared to be the only legitimate authority, and alone were admitted to the tribunals or taught in the schools. The rescripts of the early emperors recognized too many popular rights to suit the despotic character of Justinian; and the older jurists, like the Scaevolas, Sulpicius, and Labeo, were distasteful from their sympathy with free institutions. Different opinions have been expressed by the jurisconsults as to the merits of the Justinian collection. By some it is regarded as a vast mass of legal lumber; by others, as a beautiful monument of human labor. After the lapse of so many centuries it is certain that a large portion of it is of no practical utility, since it is not applicable to modern wants. But again, no one doubts that it has exercised a great and good influence on moral and political science, and introduced many enlightened views concerning the administration of justice as well as the nature of civil government, and thus has modified the codes of the Teutonic nations that sprang up on the ruins of the old Roman world. It was used in the Greek empire until the fall of Constantinople. It never entirely lost authority in Italy, although it remained buried for centuries, till the discovery of the Florentine copy of the Pandects at the siege of Amalfi in 1135.

Peter Valence, in the eleventh century, made use of it in a law-book which he published.

With the rise of the Italian cities, the study of Roman law revived, and Bologna became the seat from which it spread over Europe. In the sixteenth century the science of theoretical law passed from Italy to France, under the auspices of Francis I., when Cujas, or Cujacius, became the great ornament of the school of Bourges and the greatest commentator on Roman law until Dumoulin appeared. Grotius, in Holland, excited the same interest in civil law that Dumoulin did in France, followed by eminent professors in Leyden and the German universities. It was reserved for Pothier, in the middle of the eighteenth century, to reduce the Roman law to systematic order,–one of the most gigantic tasks that ever taxed the industry of man. The recent discoveries, especially that made by Niebuhr of the long-lost work of Gaius, have given a great impulse to the study of Roman law in Germany; and to this impulse no one has contributed so greatly as Savigny of Berlin.

The great importance of the subject demands a more minute notice of the principles of the Roman law than the limits of this work properly allow. I shall therefore endeavor to abridge what has been written by eminent authorities, taking as a basis the late work of Lord Mackenzie and the learned and interesting essay of Professor Maine.

The Institutes of Justinian began with the law of persons, recognizing the distinction of ranks. All persons are capable of

enjoying civil rights, but not all in the same degree. Greater privileges are allowed to men than to women, to freemen than to slaves, to fathers than to children.

In the eye of the law all Roman citizens were equal wherever they lived, whether in the capital or the provinces. Citizenship embraced both political and civil rights. Political rights had reference to the right of voting in the comitia; but this was not considered the essence of citizenship, which was the enjoyment of the *connubium*, and *commercium*. By the former the citizen could contract a valid marriage and acquire the rights resulting from it, particularly the paternal power; by the latter he could acquire and dispose of property. Citizenship was acquired by birth and by manumission; it was lost when a Roman became a prisoner of war, or had been exiled for crime, or became a citizen of another State. An unsullied reputation was required by law for a citizen to exercise his rights to their full extent.

The Roman jurists acknowledged all persons originally free by natural law; and while they recognized slavery, they ascribed the power of masters entirely to the law and custom of nations. Persons taken in war were considered at the absolute control of their captors, and were therefore, *de facto*, slaves; the children of a female slave followed the condition of their mother, and belonged to her master. But masters could manumit their slaves, who thus became Roman citizens with some restrictions. After the emancipation of a slave, he was bound to render certain services to his former master as patron, and if the freedman died

intestate his property reverted to his patron.

Marriage was contracted by the simple consent of the parties, though in early times equality of condition was required. The *lex Canuleia*, A.U.C. 309, authorized connubium between patricians and plebeians, and the *lex Julia*, A.U.C. 757, allowed it between freedmen and freeborn. By the *conventio in manum*, a wife passed out of her family into that of her husband, who acquired all her property; without it, the woman remained in the power of her father, and retained the free disposition of her property. Polygamy was not permitted; and relationship within certain degrees rendered the parties incapable of contracting marriage. (These rules as to forbidden degrees have been substantially adopted in England.) Celibacy was discouraged. Concubinage was allowed, if a man had not a wife, and provided the concubine was not the wife of another man; this heathenish custom was abrogated by Justinian. The wife was entitled to protection and support from her husband, and she retained her property independent of him. On her marriage the father gave his daughter a dowry in proportion to his means, the management of which, with its usufruct during marriage, belonged to the husband; but he could not alienate real estate without the wife's consent, and on the dissolution of marriage the *dos* reverted to the wife. Divorce existed in all ages at Rome, and was very common at the beginning of the empire; to check its prevalence, laws were passed inflicting severe penalties on those whose bad conduct led to it. Every man, whether married or not, could adopt children

under certain restrictions, and they passed entirely under paternal power. But the marriage relation among the Romans did not accord after all with those principles of justice which we see in other parts of their legislative code. The Roman husband, like the father, was a tyrant. The facility of divorce destroyed mutual confidence, and inflamed every trifling dispute; for a word or a message or a letter or the mandate of a freedman was quite sufficient to secure a separation. It was not until Christianity became the religion of the empire that divorce could not be easily effected without a just cause. This facility of divorce was a great stigma on the Roman laws, and the degradation of woman was the principal consequence. But woman never was honored in any Pagan land, although her condition at Rome was better than it was at Athens. She always was regarded as a possession rather than as a person; her virtue was mistrusted, and her aspirations were scorned; she was hampered and guarded more like a slave than the equal companion of man. But the progress of legislation, as a whole, was in her favor, and she continued to gain new privileges until the fall of the empire. The Roman Catholic Church regards marriage as one of the sacraments, and through all the Middle Ages and down to our own day the great authority of the Church has been one of the strongest supports of that institution, as necessary to Christianity as to civilization. We Americans have improved on the morality of Jesus, of the early and later Church, and of the great nations of modern Europe; and in many of our States persons are allowed to slip out of the marriage tie about

as easily as they get into it.

Nothing is more remarkable in the Roman laws than the extent of paternal power. It was unjust, and bears the image of a barbarous age. Moreover, it seems to have been coeval with the foundation of the city. A father could chastise his children by stripes, by imprisonment, by exile, by sending them to the country with chains on their feet. He was even armed with the power of life and death. "Neither age nor rank," says Gibbon, "nor the consular office, could exempt the most illustrious citizen from the bonds of filial subjection. Without fear, though not without danger of abuse, the Roman legislators had reposed unbounded confidence in the sentiments of paternal love, and the oppression was tempered by the assurance that each generation must succeed in its turn to the awful dignity of parent and master." By an express law of the Twelve Tables a father could sell his children as slaves. But the abuse of paternal power was checked in the republic by the censors, and afterward by emperors. Alexander Severus limited the right of the father to simple correction, and Constantine declared the father who should kill his son to be guilty of murder. The rigor of parents in reference to the disposition of the property of children was also gradually relaxed. Under Augustus, the son could keep absolute possession of what he had acquired in war; under Constantine, he could retain any property acquired in the civil service, and all property inherited from the mother could also be retained. In later times, a father could not give his son or daughter to another

by adoption without their consent. Thus this *patria potestas* was gradually relaxed as civilization advanced, though it remained a peculiarity of Roman law to the latest times, and was severer than is ever seen in the modern world. Fathers were bound to maintain their children when they had no separate means to supply their wants, and children were also bound to maintain their parents if in want. These reciprocal duties, creditable to the Roman lawgivers, are recognized in the French Code, but not in the English, which also recognizes the right of a father to bequeath his whole estate to strangers,–a thing which Roman fathers had not power to do. The age when children attained majority among the Romans was twenty-five years. Women were condemned to the perpetual tutelage of parents, husbands, or guardians, as it was supposed they never could attain to the age of reason and experience. The relation of guardian and ward was strictly observed by the Romans. They made a distinction between the right to govern a person and the right to manage his estate, although the tutor or guardian could do both. If the pupil was an infant, the tutor could act without the intervention of the pupil; if the pupil was above seven years of age, he was considered to have an imperfect will. The youth ceased to be a pupil, if a boy, at fourteen; if a girl, at twelve. The tutor managed the estate of the pupil, but was liable for loss occasioned by bad management. He could sell movable property when expedient, but not real estate, without judicial authority. The tutor named by the father was preferred to all others.

The Institutes of Justinian pass from persons to things, or the law relating to real rights; in other words, that which pertains to property. Some things common to all, like air, light, the ocean, and things sacred, like temples and churches, are not classed as property.

Two things were required for the transfer of property, for it is the essence of property that the owner of a thing should have the right to transfer it,–first, the consent of the owner to transfer the thing upon some just ground; and secondly, the actual delivery of the thing to the person who is to acquire it. Movables were presumed to be the property of the possessors, until positive evidence was produced to the contrary. A prescriptive title to movables was acquired by possession for one year, and to immovables by possession for two years. Undisturbed possession for thirty years constituted in general a valid title.

When a Roman died, his heirs succeeded to all his property by hereditary right. If he left no will, his estate devolved upon his relatives in a certain order prescribed by law. The power of making a testament only belonged to citizens above puberty. Children under the paternal power could not make a will. Males above fourteen and females above twelve, when not under power, could make wills without the authority of their guardian; but pupils, lunatics, prisoners of war, criminals, and various other persons were incapable of making a testament. The testator could divide his property among his heirs in such proportions as he saw fit; but if there was no distribution, all the heirs

participated equally. A man could disinherit either of his children by declaring his intentions in his will, but only for grave reasons,– such as grievously injuring his person or character or feelings, or attempting his life. No will was effectual unless one or more persons were appointed heirs to represent the deceased. Wills were required to be signed by the testator, or some person for him, in the presence of seven witnesses who were Roman citizens. If a will was made by a parent for distributing his property solely among his children, no witnesses were required; and the ordinary formalities were dispensed with among soldiers in actual service, and during the prevalence of pestilence. The testament was opened in the presence of the witnesses, or a majority of them; and after they had acknowledged their seals a copy was made, and the original was deposited in the public archives.

According to the Twelve Tables, the powers of a testator in disposing of his property were unlimited; but in process of time, laws were enacted to restrain immoderate or unnatural bequests. By the Falcidian law, in the time of Augustus, no one could leave in legacies more than three fourths of his estate, so that the heirs could inherit at least one fourth. Again, a law was passed by which the descendants were entitled to one third of the succession, and to one half if there were more than four. In France, if a man die leaving one lawful child, he can dispose of only half his estate by will; if he leaves two children, he can dispose only of one third; if he leaves three or more children,

then he can dispose by will of only one fourth of his estate. In England, a man can disinherit both his wife and children. These, and many other matters,–bequests in trust, succession of men dying intestate, heirs at law, etc.,–were regulated by the Romans in ways on which our modern legislators have improved little or none.

In the matter of contracts the Roman law was especially comprehensive, and the laws of France and Scotland are substantially based upon the Roman system. The Institutes of Gaius and Justinian distinguish four sorts of obligations,–*aut re, aut verbis, aut literis, aut consensu*. Gibbon, in his learned chapter, prefers to consider the specific obligations of men to each other under promises, benefits, and injuries. Lord Mackenzie treats the subject in the order of the Institutes:–

"Obligations contracted *re*--by the intervention of *things*--are called by the moderns real contracts, because they are not perfected till something has passed from one party to another. Of this description are the contracts of loan, deposit, and pledge,–security for indebtedness. Till the subject is actually lent, deposited, or pledged, it does not form the special contract of loan, deposit, or pledge."

Next to the perfection of contracts by *re*,–the intervention of things,–were obligations contracted by *verbis*, spoken *words*, and by *literis*, or writings. The *verborum obligatio* was contracted by uttering certain words of formal style,–an interrogation being put by one party, and an answer given by the other. These stipulations

were binding. In England all guarantees must be in writing.

The *obligatio literis* was a written acknowledgment of debt, chiefly employed when money was borrowed; but the creditor could not sue upon a note within two years from its date, without being called upon also to prove that the money was in fact paid to the debtor.

Contracts perfected by consent, *consensu*, had reference to sale, hiring; partnership, and mandate, or orders to be carried out by agents. All contracts of sale were good without writing.

Acts which caused damage to another opened a new class of cases. The law obliged the wrong-doer to make reparation, and this responsibility extended to damages arising not only from positive acts, but from negligence or imprudence. In cases of libel or slander, the truth of the allegation might be pleaded in justification. In all cases it was necessary to show that an injury had been committed maliciously; but if damage arose in the exercise of a right, as killing a slave in self-defence, no claim for reparation could be maintained. If any one exercised a profession or trade for which he was not qualified, he was liable to all the damage his want of skill or knowledge might occasion,–a provision that some of our modern laws might advantageously revive. When any damage was done by a slave or an animal, the owner of the same was liable for the loss, though the mischief was done without his knowledge and against his will. If anything was thrown from a window giving on the public thoroughfare so as to injure any one by the fall, the occupier was bound to repair

the damage, though done by a stranger. Legal claims might be transferred to a third person by sale, exchange, or donation; but to prevent speculators from purchasing debts at low prices, it was ordered that the assignee should not be entitled to exact from the debtor more than he himself had paid to acquire the debt, with interest,–a wise and just regulation.

By the ancient constitution, the king had the prerogative of determining civil causes. The right then devolved on the consuls, afterward on the praetor, and in certain cases on the curule and plebeian ediles, who were charged with the internal police of the city.

The praetor, a magistrate next in dignity to the consuls, acted as supreme judge of the civil courts, assisted by a council of jurisconsults to determine questions in law. At first one praetor was sufficient, but as the limits of the city and empire extended, he was joined by a colleague. After the conquest of Sicily, Sardinia, and the two Spains, new praetors were appointed to administer justice in the provinces. The praetor held his court in the comitium, wore a robe bordered with purple, sat in a curule chair, and was attended by lictors.

The praetor delegated his power to three classes of judges, called respectively *judex*, *arbiter*, and *recuperator*. When parties were at issue about facts, it was the custom for the praetor to fix the question of law upon which the action turned, and then to remit to a delegate, or judge, to inquire into the facts and pronounce judgment according to them. In the time of

Augustus there were four thousand judices, who were merely private citizens, generally senators or men of consideration. The judex was invested by the magistrate with a judicial commission for a single case only. After being sworn to duty, he received from the praetor a formula containing a summary of all the points under litigation, from which he was not allowed to depart. He was required not merely to investigate facts, but to give sentence; and as law questions were more or less mixed up with the case, he was allowed to consult one or more jurisconsults. If the case was beyond his power to decide, he could decline to give judgment. The arbiter, like the judex, received a formula from the praetor, and seemed to have more extensive power. The recuperators heard and determined cases, but the number appointed for each case was usually three or five.

The *centumvirs* constituted a permanent tribunal composed of members annually elected, in equal numbers, from each tribe; and this tribunal was presided over by the praetor, and divided into four chambers, which under the republic was placed under the ancient quaestors. The centumvirs decided questions of property, embracing a wide range of subjects. The Romans had no class of men like the judges of modern times; the superior magistrates were changed annually, and political duties were mixed with judicial. The evil was partially remedied by the institution of legal assessors, selected from the most learned jurisconsults. Under the empire the praetors were greatly increased; under Tiberius there were sixteen who administered

justice, besides the consuls, six ediles, and ten tribunes of the people. The Emperor himself became the supreme judge, and he was assisted in the discharge of his judicial duties by a council composed of the consuls, a magistrate of each grade, and fifteen senators. At first, the duties of the praetorian prefects were purely military, but finally they discharged important judicial functions. The prefect of the city, in the time of the emperors, was a great judicial personage, who heard appeals from the praetors themselves.

In all cases brought before the courts, the burden of proof was with the party asserting an affirmative fact. Proof by writing was generally considered most certain, but proof by witnesses was also admitted. Pupils, lunatics, infamous persons, interested parties, near relatives, and slaves could not bear evidence, nor any person who had a strong enmity against either party. The witnesses were required to give their testimony on oath. In most cases two witnesses were enough to prove a fact. When witnesses gave conflicting testimony, the judge regarded those who were most worthy of credit rather than those who were most numerous. In the English courts the custom used to be as with the Romans, of refusing testimony from those who were interested; but this has been removed. On the failure of regular proof, the Roman law allowed a party to refer the facts in a civil action to the oath of his adversary.

Under the Roman republic there was no appeal in civil suits, but under the emperors a regular system was established. Under

Augustus there was an appeal from all the magistrates to the prefect of the city, and from him to the praetorian prefect or even to the Emperor. In the provinces there was an appeal from the municipal magistrates to the governors, and from them to the Emperor, as Paul appealed from Festus to Caesar. Under Justinian no appeal was allowed from a suit which did not involve at least twenty pounds in gold.

In regard to criminal courts among the Romans during the republic, the only body which had absolute power of life and death was the *comitia centuriata*. The senate had no jurisdiction in criminal cases, so far as Roman citizens were concerned. It was only in extraordinary emergencies that the senate, with the consuls, assumed the responsibility of inflicting summary punishment. Under the emperors, the senate was armed with the power of criminal jurisdiction; and as the senate was the tool of the imperator, he could crush whomsoever he pleased.

As it was inconvenient, when Rome had become a very great city, to convene the comitia for the trial of offenders, the expedient was adopted of delegating the jurisdiction of the people to persons invested with temporary authority, called *quaestors*. These were finally established into regular and permanent courts, called *quaestores perpetui*. Every case submitted to these courts was tried by a judge and jury. It was the duty of the judge to preside and regulate proceedings according to law; and it was the duty of the jury, after hearing the evidence and pleadings, to decide on the guilt or innocence of the accused.

As many as fifty persons frequently composed the jury, whose names were drawn out of an urn. Each party had a right to challenge a certain number, and the verdict was decided by a majority of votes. At first the judices were chosen from the senate, and afterward from the equestrians, and then again from both orders. But in process of time the quaestores perpetui gave place to imperial magistrates. The accused defended himself in person or by counsel.

The Romans divided *crimes* into public and private. Private crimes could be prosecuted only by the party injured, and were generally punished by pecuniary fines, as among the old Germanic nations.

Of public crimes the *crimen laesae majestatis*, or treason, was regarded as the greatest; and this was punished with death and with confiscation of goods, while the memory of the offender was declared infamous. Greater severity could scarcely be visited on a culprit. Treason comprehended conspiracy against the government, assisting the enemies of Rome, and misconduct in the command of armies. Thus Manlius, in spite of his magnificent services, was hurled from the Tarpeian Rock, because he was convicted of an intention to seize upon the government. Under the empire not only any attempt on the life of the Emperor was treason, but disrespectful words or acts. The criminal was even tried after death, that his memory might become infamous; and this barbarous practice was perpetuated in France and Scotland as late as the beginning of the seventeenth

century. In England men have been executed for treasonable words. Besides treason there were other crimes against the State, such as a breach of the peace, extortion on the part of provincial governors, embezzlement of public property, stealing sacred things, bribery,–most of which offences were punished by pecuniary penalties.

But there were also crimes against individuals, which were punished with the death penalty. Wilful murder, poisoning, and parricide were capitally punished. Adultery was punished by banishment, besides a forfeiture of considerable property; Constantine made it a capital offence. Rape was punished with death and confiscation of goods, as in England till a late period, when transportation for life became the penalty. The punishments inflicted for forgery, coining base money, and perjury were arbitrary. Robbery, theft, patrimonial damage, and injury to person and property were private trespasses, and not punished by the State. After a lapse of twenty years without accusation, crimes were supposed to be extinguished. The Cornelian, Pompeian, and Julian laws formed the foundation of criminal jurisprudence. This however never attained the perfection that was seen in the Civil Code, in which the full maturity of Roman wisdom was reached. The emperors greatly increased the severity of punishments, as was probably necessary in a corrupt state of society. After the decemviral laws fell into disuse, the Romans in the days of the republic passed from extreme rigor to great lenity, as is observable in the transition

from the Puritan régime to our own times in the United States. Capital punishment for several centuries was exceedingly rare, and was frequently prevented by voluntary exile. Under the empire, again, public executions were frequent and revolting.

Fines were a common mode of punishment with the Romans, as with the early Germans. Imprisonment in a public jail was rare, the custom of bail being in general use. Although retaliation was authorized by the Twelve Tables for bodily injuries, it was seldom exacted, since pecuniary compensation was taken in lieu. Corporal punishments were inflicted upon slaves, but rarely upon citizens, except for military crimes; but Roman citizens could be sold into slavery for various offences, chiefly military, and criminals were often condemned to labor in the mines or upon public works. Banishment was common,–*aquae et ignis interdictio*; and this was equivalent to the deprivation of the necessities of life and incapacitating a person from exercising the rights of citizenship. Under the emperors persons were confined often on the rocky islands off the coast, or in a compulsory residence in a particular place assigned. Thus Chrysostom was sent to a dreary place on the banks of the Euxine, and Ovid was banished to Tomi. Death, when inflicted, was by hanging, scourging, and beheading; also by strangling in prison. Slaves were often crucified, and were compelled to carry their cross to the place of execution. This was the most ignominious and lingering of all deaths; it was abolished by Constantine, from reverence to the sacred symbol. Under the emperors, execution

took place also by burning alive and exposure to wild beasts; it was thus the early Christians were tormented, since their offence was associated with treason. Persons of distinction were treated with more favor than the lower classes, and their punishments were less cruel and ignominious; thus Seneca, condemned for privity to treason, was allowed to choose his mode of death. The criminal laws of modern European States followed too often the barbarous custom of the Roman emperors until a recent date. Since the French Revolution the severity of the penal codes has been much modified.

The penal statutes of Rome however, as Gibbon emphatically remarks, "formed a very small portion of the Code and the Pandects; and in all judicial proceedings the life or death of the citizen was determined with less caution and delay than the most ordinary question of covenant or inheritance." This was owing to the complicated relations of society, by which obligations are created or annulled, while duties to the State are explicit and well known, being inscribed not only on tables of brass, but on the conscience itself. It was natural, with the growth and development of commerce and dominion, that questions should arise which could not be ordinarily settled by ancient customs, and the practice of lawyers and the decisions of judges continually raised new difficulties, to be met only by new edicts. It is a pleasing fact to record, that jurisprudence became more just and enlightened as it became more intricate. The principles of equity were more regarded under the emperors than in the

time of Cato. It is in the application of these principles that the laws of the Romans have obtained so high consideration; their abuse consisted in the expense of litigation, and the advantages which the rich thus obtained over the poor.

But if delays and forms led to an expensive and vexatious administration of justice, these were more than compensated by the checks which a complicated jurisprudence gave to hasty or partial decisions. It was in the minuteness and precision of the forms of law, and in the foresight with which questions were anticipated in the various transactions of business, that the Romans in their civil and social relations were very much on a level with modern times. It would be difficult to find in the most enlightened of modern codes greater wisdom and foresight than appear in the legacy of Justinian as to all questions pertaining to the nature, the acquisition, the possession, the use, and the transfer of property. Civil obligations are most admirably defined, and all contracts are determined by the wisest application of the natural principles of justice. Nothing can be more enlightened than the laws which relate to leases, to sales, to partnerships, to damages, to pledges, to hiring of work, and to quasi-contracts. The laws pertaining to the succession to property, to the duties of guardians, to the rights of wards, to legacies, to bequests in trust, and to the general limitation of testamentary powers were singularly clear. The regulations in reference to intestate succession, and to the division of property among males and females, were wise and just; we find no laws of

entail, no unequal rights, no absurd distinction between brothers, no peculiar privileges given to males over females, or to older sons. Particularly was everything pertaining to property and contracts and wills guarded with the most jealous care. A man was sure of possessing his own, and of transmitting it to his children. In the Institutes of Justinian we see on every page a regard to the principles of natural justice: but moreover we find that malicious witnesses should be punished; that corrupt judges should be visited with severe penalties; that libels and satires should subject their authors to severe chastisement; that every culprit should be considered innocent until his guilt was proved.

No infringement on personal rights could be tolerated. A citizen was free to go where he pleased, to do whatsoever he would, if he did not trespass on the rights of another; to seek his pleasure unobstructed, and pursue his business without vexatious incumbrances. If he was injured or cheated, he was sure of redress; nor could he be easily defrauded with the sanction of the laws. A rigorous police guarded his person, his house, and his property; he was supreme and uncontrolled within his family. This security to property and life and personal rights was guaranteed by the greatest tyrants. Although political liberty was dead, the fullest personal liberty was enjoyed under the emperors, and it was under their sanction that jurisprudence in some of the most important departments of life reached perfection. If injustice was suffered it was not on account of the laws, but owing to the depravity of men, the venality of the

rich, and the tricks of lawyers; the laws were wise and equal. The civil jurisprudence of the Romans could be copied with safety by the most enlightened of European States; indeed, it is already the foundation of their civil codes, especially in France and Germany.

That there were some features in the Roman laws which we in these Christian times cannot indorse, and which we reprehend, cannot be denied. Under the republic there was not sufficient limit to paternal power, and the *pater familias* was necessarily a tyrant. It was unjust that the father should control the property of his son, and cruel that he was allowed an absolute control not only over his children, but also his wife. Yet the limits of paternal power were more and more curtailed, so that under the later emperors fathers were not allowed to have more authority than was perhaps expedient.

The recognition of slavery as a domestic institution was another blot, and slaves could be treated with the grossest cruelty and injustice without possibility of redress. But here the Romans were not sinners beyond all other nations, and our modern times have witnessed a parallel. It was not the existence of slavery, however, which was the greatest evil, but the facility by which slaves could be made. The laws pertaining to debt were severe, and were most disgraceful in dooming a debtor to the absolute power of a creditor. To subject men of the same race to slavery for trifling debts which they could not discharge, was the great defect of the Roman laws. But even these cruel regulations were

modified, so that in the corrupt times of the empire there was no greater practical severity than was common in England as late as one hundred years ago. The temptations to fraud were enormous in a wicked state of society, and demanded a severe remedy. It is possible that our modern laws may show too great leniency to debtors who are not merely unfortunate, but dishonest. The problem is not yet solved, whether men should be severely handled who are guilty of reckless and unprincipled speculations and unscrupulous dealings, or whether they should be allowed immunity to prosecute their dangerous and disgraceful courses.

Moreover, the penal code of the Romans in reference to breaches of trust or carelessness or ignorance, by which property was lost or squandered, may have been too severe, as is still the case in England in reference to hunting game on another's grounds. It was hard to doom a man to death who drove away his neighbor's cattle, or even entered in the night his neighbor's house; but severe penalties alone will keep men from crimes where there is a low state of virtue and religion, and general prosperity and contentment become impossible where there is no efficient protection to property. Society was never more secure and happy in England than when vagabonds could be arrested, and when petty larcenies were visited with certain retribution. Every traveller in France and England feels that in regard to the punishment of crime, those older countries, restricted as are their political privileges, are in most questions of secure and comfortable living vastly superior to our own. The

Romans lost under the emperors their political rights, but gained protection and safety in their relations with society. Where quiet and industrious citizens feel safe in their homes, are protected from scoundrels in their dealings, have ample scope for industrial enterprise, and are free to choose their private pleasures, they resign themselves to the loss of electing their rulers without great unhappiness. There are greater evils in the world than the deprivation of the elective franchise, lofty and glorious as is this privilege. The arbitrary rule of the emperors was fatal to political aspirations and rights and the growth of a genuine manhood; yet it is but fair to note that the evils of political slavery were qualified and set off by the excellence of the civil code and the privileges of social freedom.

The great practical evil connected with Roman jurisprudence was the intricacy and perplexity and uncertainty of the laws, together with the expense involved in litigation. The class of lawyers was large, and their gains were extortionate. Justice was not always to be found on the side of right. The law was uncertain as well as costly. The most learned counsel could be employed only by the rich, and even judges were venal, so that the poor did not easily find adequate redress. But all this is the necessary attendant on a factitious state of society, and by many is regarded as being quite as characteristic of modern, civilized Christian England and America as it was of Pagan Rome. Material civilization leads to an undue estimate of money; and when money purchases all that artificial people desire, then all

classes will prostitute themselves for its possession, and justice, dignity, and elevation of sentiment will be forced to retreat,–as hermits sought a solitude when society had reached its lowest degradation, out of pure despair of its renovation.

AUTHORITIES

The authorities for this chapter are very numerous. Since the Institutes of Gaius have been recovered, many eminent writers on Roman law have appeared, especially in Germany and France. Many might be cited, but for all ordinary purposes of historical study the work of Lord Mackenzie on Roman Law, together with the articles of George Long in Smith's Dictionary, will be found most useful. Maine's Treatise on Ancient Law is exceedingly interesting and valuable. Gibbon's famous chapter should also be read by every student. There is a fine translation of the Institutes of Justinian, which is quite accessible, by Dr. Harris of Oxford. The Code, Pandects, Institutes, and Novels are of course the original authority, with the long-lost Institutes of Gaius.

In connection with the study of the Roman law, it would be well to read Sir George Bowyer's Commentaries on the Modern Civil Law. Also Irving, Introduction to the Study of the Civil Law; Lindley, Introduction to the Study of Jurisprudence; Wheaton's Elements of International Law; and Vattel, Le Droit des Gens.

THE FINE ARTS

ARCHITECTURE, SCULPTURE, PAINTING

500-430 B.C

My object in the present lecture is not a criticism of the principles of art so much as an enumeration of its various forms among the ancients, to show that in this department of civilization they reached remarkable perfection, and were not inferior to modern Christian nations.

The first development of art among all the nations of antiquity was in architecture. The earliest buildings erected were houses to protect people from heat, cold, and the fury of the elements of Nature. At that remote period much more attention was given to convenience and practical utility than to beauty or architectural effect. The earliest houses were built of wood, and stone was not employed until temples and palaces arose. Ordinary houses were probably not much better than log-huts and hovels, until wealth was accumulated by private persons.

The earliest monuments of enduring magnificence were the temples of powerful priests and the palaces of kings; and in Egypt

and Assyria these appear earliest, as well as most other works showing civilization. Perhaps the first great monument which arose after the deluge of Noah was the Tower of Babel, built probably of brick. It was intended to be very lofty, but of its actual height we know nothing, nor of its style of architecture. Indeed, we do not know that it was ever advanced beyond its foundations; yet there are some grounds for supposing that it was ultimately finished, and became the principal temple of the Chaldaean metropolis.

From the ruins of ancient monuments we conclude that architecture received its earliest development in Egypt, and that its effects were imposing, massive, and grand. It was chiefly directed to the erection of palaces and temples, the ruins of which attest grandeur and vastness. They were built of stone, in blocks so huge and heavy that even modern engineers are at loss to comprehend how they could have been transported and erected. All the monuments of the Pharaohs are wonders, especially such as appear in the ruins of Karnak,–a temple formerly designated as that of Jupiter Ammon. It was in the time of Sesostris, or Rameses the Great, the first of the Pharaohs of the nineteenth dynasty, that architecture in Egypt reached its greatest development. Then we find the rectangular-cut blocks of stone in parallel courses, the heavy pier, the cylindrical column with its bell-shaped capital, and the bold and massive rectangular architraves extending from pier to pier and column to column, surmounted by a deep covered coping or cornice.

The imposing architecture of Egypt was chiefly owing to the impressive vastness of the public buildings. It was not produced by beauty of proportion or graceful embellishments; it was designed to awe the people, and kindle sentiments of wonder and astonishment. So far as this end was contemplated it was nobly reached; even to this day the traveller stands in admiring amazement before those monuments that were old three thousand years ago. No structures have been so enduring as the Pyramids; no ruins are more extensive and majestic than those of Thebes. The temple of Karnak and the palace of Rameses the Great were probably the most imposing ever built by man. This temple was built of blocks of stone seventy feet in length, on a platform one thousand feet long and three hundred wide, with pillars sixty feet in height. But this and other structures did not possess that unity of design which marked the Grecian temples. Alleys of colossal sphinxes formed the approach. At Karnak the alley was six thousand feet long, and before the main body of the edifice stood two obelisks commemorative of the dedication. The principal structures of Egyptian temples do not follow the straight line, but begin with pyramidal towers which flank the gateways; then follow, usually, a court surrounded with colonnades, subordinate temples, and houses for the priests. A second pylon, or pyramidal tower, leads to the interior and most considerable part of the temple,– a portico inclosed with walls, which receives light only through the entablature or openings in the roof. Adjoining this is the cella

of the temple, without columns, enclosed by several walls, often divided into various small chambers with monolithic receptacles for idols or mummies or animals. The columns stand within the walls. The colonnade is not, as among the Greeks, an expansion of the temple; it is merely the wall with apertures. The walls, composed of square blocks, are perpendicular only on the inside, and bevelled externally, so that the thickness at the bottom sometimes amounts to twenty-four feet; thus the whole building assumes a pyramidal form, the fundamental principle of Egyptian architecture. The columns are more slender than the early Doric, are placed close together, and have bases of circular plinths; the shaft diminishes upward, and is ornamented with perpendicular or oblique furrows, but not fluted like Grecian columns. The capitals are of the bell form, ornamented with all kinds of foliage, and have a narrow but high abacus. They abound with sculptured decorations, the designs of which were borrowed from the vegetation of the country. The highest of the columns of the temple of Luxor is five and a quarter times the greatest diameter.

But no monuments have ever excited so much curiosity and wonder as the Pyramids, not in consequence of any particular beauty or ingenuity in their construction, but because of their immense size and unknown age. None but sacerdotal monarchs would ever have erected them; none but a fanatical people would ever have toiled upon them. We do not know for what purpose they were raised, unless as sepulchres for kings. They

are supposed to have been built at a remote antiquity, between two thousand and three thousand years before Christ. Lepsius thought that the oldest of these Pyramids were built more than three thousand years before Christ. The Pyramid of Cheops, at Memphis, covers a square whose side is seven hundred and sixty-eight feet, and rises into the air nearly five hundred feet. It is a solid mass of stone, which has suffered less from time than the mountains near it. Possibly it stands over an immense substructure, in which may yet be found the lore of ancient Egypt; it may even prove to be the famous labyrinth of which Herodotus speaks, built by the twelve kings of Egypt. According to this author, one hundred thousand men worked on this monument for forty years.

The palaces of the kings are mere imitations of the temples, their only difference of architecture being that their rooms are larger and in greater numbers. Some think that the famous labyrinth was a collective palace of many rulers.

Of Babylonian architecture we know little beyond what the Hebrew Scriptures and ancient authors tell us. But though nothing survives of ancient magnificence, we know that a city whose walls, according to Herodotus, were eighty-seven feet in thickness, three hundred and thirty-seven in height, and sixty miles in circumference, and in which were one hundred gates of brass, must have had considerable architectural splendor. This account of Babylon, however, is probably exaggerated, especially as to the height of the walls. The tower of Belus, the

Palace of Nebuchadnezzar, and the Obelisk of Semiramis were probably wonderful structures, certainly in size, which is one of the conditions of architectural effect.

The Tyrians must have carried architecture to considerable perfection, since the Temple of Solomon, one of the most magnificent in the ancient world, was probably built by artists from Tyre. It was not remarkable for size,–it was, indeed, very small,–but it had great splendor of decoration. It was of quadrangular outline, erected upon a solid platform of stone, and bearing a striking resemblance to the oldest Greek temples, like those of Aegina and Paestum. The portico of the Temple as rebuilt by Herod was one hundred and eighty feet high, and the Temple itself was entered by nine gates, thickly coated with silver and gold. The inner sanctuary was covered on all sides with plates of gold, and was dazzling to the eye. The various courts and porticos and palaces with which it was surrounded gave to it a very imposing effect.

Architectural art in India was not so impressive and grand as in Egypt, and was directed chiefly to the erection of temples. Nor is it of very ancient date. There is no stone architecture now remaining in India, according to Sir James Fergusson, older than two and a half centuries before Christ; and this is in the form of Buddhist temples, generally traced to the great Asoka, who reigned from 272 B.C. to 236 B.C., and who established Buddhism as a state religion. There were doubtless magnificent buildings before his time, but they were of wood, and have all

perished. We know, however, nothing about them.

The Buddhist temples were generally excavated out of the solid rock, and only the façades were ornamented. These were not larger than ordinary modern parochial churches, and do not give the impression of extraordinary magnificence. Besides these rock-hewn temples in India there remain many examples of a kind of memorial monument called *stupas*, or *topes*. The earliest of these are single columns; but the later and more numerous are in the shape of cones or circular mounds, resembling domes, rarely exceeding one hundred feet in diameter. Around the apex of each was a balustrade, or some ornamental work, about six feet in diameter. These topes remind one of the Pantheon at Rome in general form, but were of much smaller size. They were built on a stone basement less than fifty feet in height, above which was the brickwork. In process of time they came to resemble pyramidal towers rather than rounded domes, and were profusely ornamented with carvings. The great peculiarity of all Indian architectural monuments is excessive ornamentation rather than beauty of proportion or grand effect.

In course of time, however, Indian temples became more and more magnificent; and a Chinese traveller in the year 400 A.D. describes one in Gaudhava as four hundred and seventy feet high, decorated with every sort of precious substance. Its dome, as it appears in a bas-relief, must have rivalled that of St. Peter's at Rome; but no trace of it now remains. The topes of India, which were numerous, indicate that the Hindus were acquainted with

the arch, both pointed and circular, which was not known to the Egyptians or the Greeks. The most important of these buildings, in which are preserved valuable relics, are found in the Punjab. They were erected about twenty years before Christ. In size, they are about one hundred and twenty-seven feet in diameter. Connected with the circular topes are found what are called *rails*, surrounding the topes, built in the form of rectangles, with heavy pillars. One of the most interesting of these was found to be two hundred and seventy-five feet long, having square pillars twenty-two feet in height, profusely carved with scenes from the life of Buddha, topped by capitals in the shape of elephants supporting a succession of horizontal stone beams, all decorated with a richness of carving unknown in any other country. The Amravati rail, one of the finest of the ancient monuments of India, is found to be one hundred and ninety-five by one hundred and sixty-five feet, having octagonal pillars ornamented with the most elaborate carvings.

From an architectural point of view, the rails were surpassed by the *chaityas*, or temple-caves, in western India. These were cut in the solid rock. Some one thousand different specimens are to be found. The facades of these caves are perfect, generally in the form of an arch, executed in the rock with every variety of detail, and therefore imperishable without violence. The process of excavation extended through ten centuries from the time of Asoka; and the interiors as well as the façades were highly ornamented with sculptures. The temple-caves are seldom more

than one hundred and fifty feet deep and fifty feet in width, and the roofs are supported by pillars like the interior of Gothic cathedrals, some of which are of beautiful proportions with elaborated capitals. Though these rock-hewn temples are no larger than ordinary Christian churches, they are very impressive from the richly decorated carvings; they were lighted from a single opening in the façade, sometimes in the shape of a horseshoe.

Besides these chaityas, or temples, there are still more numerous *viharas*, or monasteries, found in India, of different dates, but none older than the third century before Christ. They show a central hall, surrounded on three sides by cells for the monks. On the fourth side is an open verandah; facing this is generally a shrine with an image of Buddha. These edifices are not imposing unless surrounded by galleries, as some were, supported by highly decorated pillars. The halls are constructed in several stories with heavy masonry, in the shape of pyramids adorned with the figures of men and animals. One of these halls in southern India had fifteen hundred cells. The most celebrated was the Nalanda monastery, founded in the first century by Nagarjuna, which accommodated ten thousand priests, and was enclosed by a wall measuring sixteen hundred feet by four hundred. It was to Central India what Mount Casino was to Italy, and Cluny was to France, in the Middle Ages,–the seat of learning and art.

It was not until the Mohammedan conquest in India

that architecture received a new impulse from the Saracenic influence. Then arose the mosques, minarets, and palaces which are a wonder for their magnificence, and in which are seen the influence of Greek art as well as that of India. There is an Oriental splendor in these palaces and mosques which has called out the admiration of critics, although it is different from those types of beauty which we are accustomed to praise. But these later edifices were erected in the Middle Ages, coeval with the cathedrals of Europe, and therefore do not properly come under the head of ancient art, in which the ancient Hindus, whether of Aryan or Turanian descent, did not particularly excel. It was in matters of religion and philosophy that the Hindus felt most interest, even as the ancient Jews thought more of theology than of art and science.

Architecture, however, as the expression of genius and high civilization, was carried to perfection only by the Greeks, who excelled in so many things. It was among the ancient Dorians, who descended from the mountains of northern Greece eighty years after the fall of Troy, that architectural art worthy of the name first appeared. The Pelasgi erected Cyclopean structures fifteen hundred years before Christ, as seen in the massive walls of the Acropolis at Athens, constructed of huge blocks of hewn stone, and in the palaces of the princes of the heroic times. The lintel of the doorway of the Mycenaean treasury is composed of a single stone twenty-seven feet long and sixteen broad. But these edifices, which aimed at splendor and richness

merely, were deficient in that simplicity and harmony which have given immortality to the temples of the Dorians. In this style of architecture everything was suitable to its object, and was grand and noble. The great thickness of the columns, the beautiful entablature, the ample proportion of the capital, the great horizontal lines of the architrave and cornice predominating over the vertical lines of the columns, the severity of geometrical forms produced for the most part by straight lines, gave an imposing simplicity to the Doric temple.

How far the Greek architects were indebted to the Egyptian we cannot tell, for though columns are found amid the ruins of the Egyptian temples, they are of different shape from any made by the Greeks. In the structures of Thebes we find both the tumescent and the cylindrical columns, from which amalgamation might have been produced the Doric column. The Greeks seized on beauty wherever they found it, and improved upon it. The Doric column was not probably an entirely new creation, but shaped after models furnished by the most original of all the ancient nations, even the Egyptians. The Doric temples were uniform in plan. The columns were fluted, and were generally about six diameters in height; they diminished gradually upward from the base, with a slightly con vexed swelling; they were surmounted by capitals regularly proportioned according to their height. The entablature which the column supported was also of a certain number of diameters in height. So regular and perfect was the plan of the temple,

that "if the dimensions of a single column and the proportion the entablature should bear to it were given to two individuals acquainted with the style, with directions to compose a temple, they would produce designs exactly similar in size, arrangement, and general proportions." The Doric order possessed a peculiar harmony, but taste and skill were nevertheless necessary in order to determine the number of diameters a column should have, and also the height of the entablature.

The Doric was the favorite order of European Greece for one thousand years, and also of her colonies in Sicily and Magna Graecia. It was used exclusively until after the Macedonian conquest, and was chiefly applied to temples. The massive temples of Paestum, the colossal magnificence of the Sicilian ruins, and the more elegant proportions of the Athenian structures, like the Parthenon and Temple of Theseus, show the perfection of the Doric architecture. Although the general style of all the Doric temples is so uniform, hardly two temples were alike. The earlier Doric was more massive; the later was more elegant, and its edifices were rich in sculptured decorations. Nothing could surpass the beauty of a Doric temple in the time of Pericles. The stylobate, or general base upon which the columnar story stood, from two thirds to a whole diameter of a column in height, was built in three equal courses, which gradually receded upward and formed steps, as it were, of a grand platform. The column, simply set upon the stylobate, without base or pedestal, was from four to six diameters in height, with twenty

flutes, having a capital of half a diameter. On this rested the entablature, two column-diameters in height, which was divided into architrave (lower mouldings), frieze (broad middle space), and cornice (upper mouldings). The great beauty of the temple was the portico in front,–a forest of columns supporting the triangular pediment, about a diameter and a half to the apex, making an angle at the base of about fourteen degrees. From the pediment projects the cornice, while in the apex and at the base of the flat three-cornered gable are sculptured ornaments, generally the figures of men or animals. The whole outline of columns supporting the entablature is graceful, while the variety of light and shade arising from the arrangement of mouldings and capitals produces a grand effect.

The Parthenon, the most beautiful specimen of the Doric, has never been equalled, and it still stands august in its ruins, the glory of the old Acropolis and the pride of Athens. It was built of white Pentelic marble, and rested on a basement of limestone. It was two hundred and twenty-seven feet in length, one hundred and one in breadth, and sixty-five in height, surrounded with forty-eight fluted columns, six feet and two inches at the base and thirty-four feet in height, while within the peristyle, at either end, was an interior range of columns standing before the end of the cella. The frieze and the pediment were elaborately ornamented with reliefs and statues, and the cella, within and without, was adorned with the choicest sculptures of Phidias, The remains of the exquisite sculptures of the pediment and the frieze were in

the early part of this century brought from Greece by Lord Elgin, purchased by the English government, and placed in the British Museum, where, preserved from further dilapidation, they stand as indisputable evidence of the perfection of Greek art. The grandest adornment of the temple was the colossal statue of Minerva in the eastern apartment of the cella, forty feet in height, composed of gold and ivory; the inner walls of the chamber were decorated with paintings, and the whole temple was a repository of countless treasure. But the Parthenon, so regular to the eye with its vertical, oblique, and horizontal lines, was curved in every line, with the exception of the gable,–with its entablature, architrave, frieze, and cornice, together with the basement, all arched upwards; and even the columns had a slight convexity of vertical line, amounting to 1/550 of the entire height of shaft, though so slightly as not to be perceptible. These curved lines gave to the structure a peculiar grace which cannot be imitated, as well as an effect of solidity.

Nearly coeval with the Doric was the Ionic order, invented by the Asiatic Greeks, still more graceful, though not so imposing. The Acropolis is a perfect example of this order. The column is nine diameters in height, with a base, while the capital is more ornamented than the Doric. The shaft is fluted with twenty-four flutes and alternate fillets (flat longitudinal ridges), and the fillet is about a quarter the width of the flute. The pediment is flatter than that of the Doric order, and more elaborate. The great distinction of the Ionic column is a base, and a capital

formed with volutes (spiral scrolls), the shaft also being more slender. Vitruvius, the greatest authority among the ancients in architecture, says that "the Greeks, in inventing these two kinds of columns, imitated in the one the naked simplicity and dignity of man, and in the other the delicacy and ornaments of woman; the base of the Ionic was the imitation of sandals, and the volutes of ringlets." The discoveries of many of the Ionic ornamentations among the remains of Assyrian architecture indicate the Oriental source of the Ionic ideas, just as the Doric style seems to have originated in Egypt. The artistic Greeks, however, always simplified and refined upon their masters.

The Corinthian order exhibits a still greater refinement and elegance than the other two, and was introduced toward the end of the Peloponnesian War. Its peculiarity consists in columns with foliated capitals modelled after the acanthus leaf, and still greater height, about ten diameters, surmounted with a more ornamented entablature. Of this order the most famous temple in Greece was that of Minerva at Tegea, built by Scopas of Paros, but destroyed by fire four hundred years before Christ.

Nothing more distinguished Greek architecture than the variety, the grace, and the beauty of the mouldings, generally in eccentric curves. The general outline of the moulding is a gracefully flowing cyma, or wave, concave at one end and convex at the other, like an Italic *f*, the concavity and convexity being exactly in the same curve, according to the line of beauty which Hogarth describes.

The most beautiful application of Greek architecture was in the temples, which were very numerous and of extraordinary grandeur, long before the Persian War. Their entrance was always from the west or the east. They were built either in an oblong or round form, and were mostly adorned with columns. Those of an oblong form had columns either in the front alone, or in the eastern and western fronts, or on all the four sides. They generally had porticos attached to them, and were without windows, receiving their light from the door or from above. The friezes were adorned with various sculptures, as were sometimes the pediments, and no expense was spared upon them. The most important part of the temple was the cell (*cella,* or temple proper, a square chamber), in which the statue of the deity was kept, generally surrounded with a balustrade. In front of the cella was the vestibule, and in the rear or back a chamber in which the treasures of the temple were kept. Names were applied to the temples as well as to the porticos, according to the number of columns in the portico at either end of the temple,–such as the tetrastyle (four columns in front), or hexastyle (when there were six). There were never more than ten columns across the front. The Parthenon had eight, but six was the usual number. It was the rule to have twice as many columns along the sides as in front. Some of the temples had double rows of columns on all sides, like that of Diana at Ephesus and of Quirinus at Rome. The distance between the columns varied from one diameter and a half to four diameters. About five eighths of a Doric temple were occupied

by the cella, and three eighths by the portico.

That which gives to the Greek temples so much simplicity and harmony,–the great elements of beauty in architecture,–is the simple outline in parallelogrammic and pyramidal forms, in which the lines are uninterrupted through their entire length. This simplicity and harmony are more apparent in the Doric than in any of the other orders, but pertain to all the Grecian temples of which we have knowledge. The Ionic and Corinthian, or the voluted and foliated orders, do not possess that severe harmony which pervades the Doric; but the more beautiful compositions are so consummate that they will ever be taken as models of study.

There is now no doubt that the exteriors of the Grecian temples were ornamented in color,–perhaps with historical pictures, etc.,–although as the traces have mostly disappeared it is impossible to know the extent or mode of decoration. It has been thought that the mouldings also may have been gilded or colored, and that the background of the sculptures had some flat color laid on as a relief to the raised figures. We may be sure, however it was done, that the effect was not gaudy or crude, but restrained within the limits of refinement and good taste by the infallible artistic instinct of those masters of the beautiful.

It is not the magnitude of the Greek temples and other works of art which most impresses us. It is not for this that they are important models; it is not for this that they are copied and reproduced in all the modern nations of Europe. They were

generally small compared with the temples of Egypt, and with the vast dimensions of Roman amphitheatres; only three or four would compare in size with a Gothic cathedral,–the Parthenon, the Temple of Olympian Zeus at Athens, and the Temple of Diana at Ephesus; even the Pantheon at Rome is small, compared with the later monuments of the Caesars. The traveller is always disappointed in contemplating the ruins of Greek buildings so far as size is concerned. But it is their matchless proportions, their severe symmetry, the grandeur of effect, the undying beauty, the graceful form which impress us, and make us feel that they are perfect. By the side of the Colosseum they are insignificant in magnitude; they do not cover acres, like the baths of Caracalla. Yet who has copied the Flavian amphitheatre; who erects an edifice after the style of the Thermae? All artists, however, copy the Parthenon. That, and not the colossal monuments of the Caesars, reappears in the capitals of Europe, and stimulates the genius of a Michael Angelo or a Christopher Wren.

The flourishing period of Greek architecture was during the period from Pericles to Alexander,–one hundred and thirteen years. The Macedonian conquest introduced more magnificence and less simplicity. The Roman conquest accelerated the decline in severe taste, when different orders began to be used indiscriminately.

In this state the art passed into the hands of the masters of the world, and they inaugurated a new era in architecture. The art was still essentially Greek, although the Romans derived their first

knowledge from the Etruscans. The Cloaca Maxima, or Great Sewer, was built during the reign of the second Tarquin,–the grandest monument of the reign of the kings. It is not probable that temples and other public buildings in Rome were either beautiful or magnificent until the conquest of Greece, after which Grecian architects were employed. The Romans adopted the Corinthian style, which they made even more ornamental; and by the successful combination of the Etruscan arch with the Grecian column they laid the foundation of a new and original style, susceptible of great variety and magnificence. They entered into architecture with the enthusiasm of their teachers, but in their passion for novelty lost sight of the simplicity which is the great fascination of a Doric temple. Says Memes:–

"They [the Romans] deemed that lightness and grace were to be attained not so much by proportion between the vertical and the horizontal as by the comparative slenderness of the former. Hence we see a poverty in Roman architecture in the midst of profuse ornament. The great error was a constant aim to lessen the diameter while they increased the elevation of the columns. Hence the massive simplicity and severe grandeur of the ancient Doric disappear in the Roman, the characteristics of the order being frittered down into a multiplicity of minute details."

When the Romans used the Doric at all, they used a base for the column, which was never done at Athens. They also altered the Doric capital, which cannot be improved. Again, most of the

Grecian Doric temples were peripteral,–surrounded with pillars on all the sides. But the Romans built with porticos on one front only, which had a greater projection than the Grecian. They generally were projected three columns, while the Greek portico had usually but a single row. Many of the Roman temples are circular, like the Pantheon, which has a portico of eight columns projected to the depth of three. Nor did the Romans construct hypaethral or uncovered temples with internal columns, like the Greeks. The Pantheon is an exception, since the dome has an open eye; and one great ornament of this beautiful structure is in the arrangement of internal columns placed in the front of niches, composed of antae, or pier-formed ends of walls, to carry an entablature round under an attic on which the cupola rests. The Romans also adopted coupled columns, broken and recessed entablatures, and pedestals, which are considered blemishes. They again paid more attention to the interior than to the exterior decoration of their palaces and baths,–as we may infer from the ruins of Hadrian's villa at Tivoli and the excavations of Pompeii.

The pediments (roof-angles) used in Roman architectural works are steeper than those made by the Greeks, varying in inclination from eighteen to twenty-five degrees, instead of fourteen. The mouldings are the same as the Grecian in general form, although they differ from them in contour; they are less delicate and graceful, but were used in great profusion. Roman architecture is overdone with ornament, every moulding carved, and every straight surface sculptured with foliage or

historical subjects in relief. The ornaments of the frieze consist of foliage and animals, with a variety of other things. The great exuberance of ornament is considered a defect, although when applied to some structures it is exceedingly beautiful. In the time of the first Caesars Roman architecture had, from the huge size of the buildings, a character of grandeur and magnificence. Columns and arches appeared in all the leading public buildings,–columns generally forming the external and arches the internal construction. Fabric after fabric arose on the ruins of others. The Flavii supplanted the edifices of Nero, which ministered to debauchery, by structures of public utility.

The Romans invented no new principle in architecture, unless it be the arch, which was known, though not practically applied, by the Assyrians, Egyptians, and Greeks. The Romans were a practical and utilitarian people, and needed for their various structures greater economy of material than was compatible with large blocks of stone, especially for such as were carried to great altitudes. The arch supplied this want, and is perhaps the greatest invention ever made in architecture. No instance of its adoption occurs in the construction of Greek edifices before Greece became a part of the Roman empire. Its application dates back to the Cloaca Maxima, and may have been of Etrurian invention. Some maintain that Archimedes of Sicily was the inventor of the arch; but to whomsoever the glory of the invention is due, it is certain that the Romans were the first of European nations to make a practical application of its wonderful qualities. It enabled

them to rear vast edifices with the humblest materials, to build bridges, aqueducts, sewers, amphitheatres, and triumphal arches, as well as temples and palaces. The merits of the arch have never been lost sight of by succeeding generations, and it is an essential element in the magnificent Gothic cathedrals of the Middle Ages. Its application extends to domes and cupolas, to floors and corridors and roofs, and to various other parts of buildings where economy of material and labor is desired. It was applied extensively to doorways and windows, and is an ornament as well as a utility. The most imposing forms of Roman architecture may be traced to a knowledge of the properties of the arch, and as brick was more extensively used than any other material, the arch was invaluable. The imperial palace on Mount Palatine, the Pantheon (except its portico and internal columns), the temples of Peace, of Venus and Rome, and of Minerva Medica, were of brick. So were the great baths of Titus, Caracalla, and Diocletian, the villa of Hadrian, the city walls, the villa of Mecaenas at Tivoli, and most of the palaces of the nobility,– although, like many of the temples, they were faced with stone. The Colosseum was of travertine, a cheap white limestone, and faced with marble. It was another custom to stucco the surface of brick walls, as favorable to decorations. In consequence of the invention of the arch, the Romans erected a greater variety of fine structures than either the Greeks or Egyptians, whose public edifices were chiefly confined to temples. The arch entered into almost every structure, public or private, and superseded the

use of long stone-beams, which were necessary in the Grecian temples, as also of wooden timbers, in the use of which the Romans were not skilled, and which do not really pertain to architecture: an imposing edifice must always be constructed of stone or brick. The arch also enabled the Romans to economize in the use of costly marbles, of which they were very fond, as well as of other stones. Some of the finest columns were made of Egyptian granite, very highly polished.

The extensive application of the arch doubtless led to the deterioration of the Grecian architecture, since it blended columns with arcades, and thus impaired the harmony which so peculiarly marked the temples of Athens and Corinth; and as taste became vitiated with the decline of the empire, monstrous combinations took place, which were a great fall from the simplicity of the Parthenon and the interior of the Pantheon.

But whatever defects marked the age of Diocletian and Constantine, it can never be questioned that the Romans carried architecture to a perfection rarely attained in our times. They may not have equalled the severe simplicity of their teachers the Greeks, but they surpassed them in the richness of their decorations, and in all buildings designed for utility, especially in private houses and baths and theatres.

The Romans do not seem to have used other than semicircular arches. The Gothic, or Pointed, or Christian architecture, as it has been variously called, was the creation of the Middle Ages, and arose almost simultaneously in Europe after the first

Crusade, so that it would seem to be of Eastern origin. But it was a graft on the old Roman arch, in the curve of the ellipse rather than the circle.

Конец ознакомительного фрагмента.