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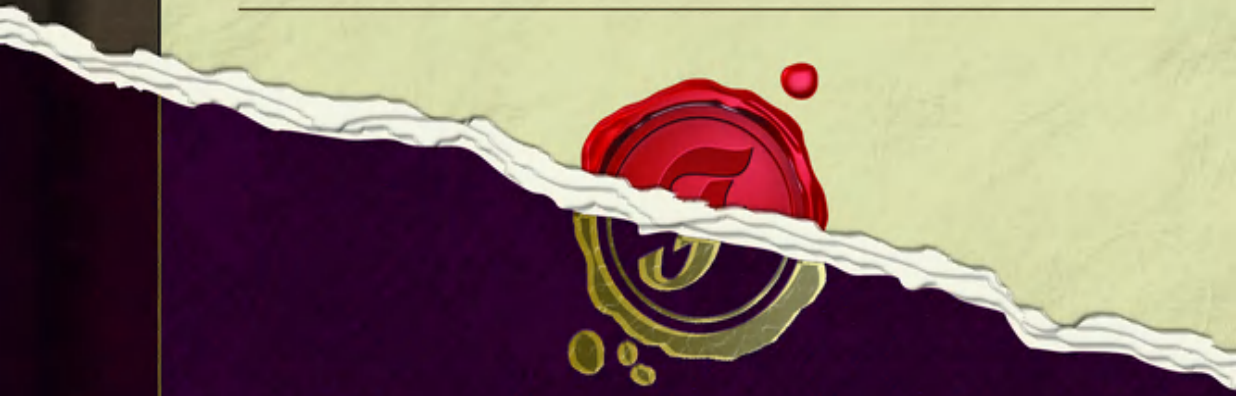

by
William Wirt Howe

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Alchemy

"In changing the base metals into gold and silver by the projection of the Stone, it follows (by an accelerated process) the method of nature, and therefore is natural."

The New Pearl of Great Price, by Peter Bonus, 1338 AD

THE COLUMBIAN UNIVERSITY,

WASHINGTON, D. C.

SCHOOL OF COMPARATIVE JURISPRUDENCE AND DIPLOMACY.

SECOND YEAR CLASS.

1899–1900.

COURSE IN COMPARATIVE JURISPRUDENCE.

BY

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SYNOPSIS.

LECTURES ON COMPARATIVE JURISPRUDENCE.

LECTURE I.

Uses and Methods of the Study of Comparative Jurisprudence and Legal History.—Law, a science in its theory and an art in its application, and the more exact our knowledge of it is as a science the more precise and effective will be its application as an art. Jurisprudence has been developed from archaic times by a very slow but distinctly continuous growth. We need not undervalue the labors of analytical jurists, but the fact remains that the historical method is indispensable and becomes the more so as modern research is extended into the origin of all kinds of human life and human institutions. Reference to the views of Professor Paulsen, of Berlin, that law is not an invention of jurists and legislators, but has grown up with the social life of the people as the external form of their union. Originally it is custom; then at a certain stage of development it is separated from the collection of universal obligatory forms of life and action, and becomes a separate field of social compulsion. From that stage on it becomes possibly an object of conscious consideration, and may be even expressed in written statutes and codes and come to look like an artificial product; but whoever considers the subject historically will easily observe that the legal system as a whole is not made. All that is done is to incorporate in a system what has been current and traditional. Occasionally slight adaptations to the changing life and conditions of the people are made. We may say of the legal codes, then, they are not made; they grow. Primitive people did not meet in convention and say, "Let us make a constitution, a civil code, and a code of practice." Such things may be said sometimes today in communities which have behind them thousands of years of legal experience; but even then they can make very little that is new, but generally rearrange and adapt what is immemorially old. If we wish to understand their work fully we must study its sources. As a matter of psychology merely, the work of comparing laws and institutions is very necessary, for the only way to perceive any

object clearly is to compare it with something else. The wider and more exact a science, the finer and more precise will be the application of it in any art or profession. Emerson said that he that will do anything well must come to it from a higher ground, meaning, presumably, that it is from the lofty plane of thorough culture that we may most easily view our work and most successfully lay it out and perform it. Views of Sir William Markby in his Elements of Law. He points out that most of the law of England, for example, lies outside of the councils of sovereigns and the deliberations of the legislature, and is mostly to be found in the law reports and in a few leading treatises. This great mass of law consists of certain principles, expressed for the most part in technical terms. These terms are the common property of what we call the Western Nations of Europe, and of their descendants scattered throughout the world. They have spread into strange countries. The French Civil Code, for example, has been resorted to in Russia, Turkey, and Japan as a foundation of principles. Almost every topic of jurisprudence has been discussed by the lawyers of every country in Europe and in the colonies which have swarmed through other parts of the world; hence Sir William Markby concludes that we seek in the law and literature of other countries enlightenment as to the law of our own, and with this aid we endeavor to acquire and to express our legal principles and to define accurately our technical terms, and it is such a method of research that elevates law into a science. Practicing lawyers may be made without such studies, but such jurists as Hale, Mansfield, and Kent attained their special eminence in good part, at least, because they were eager students of legal history and diligent to trace the origin of principles to their higher sources. Hale was a devoted student of the Civil Law. The range of studies of Lord Mansfield was very wide and gave an abiding interest to his opinions. An example found in Moses *vs.* McFarlane, 2 Burr., 10, involving a question of obligations arising *quasi ex contractu.* The Commentaries of Chancellor Kent exhibit the same results of broad study. Further value of such studies to the professional lawyer is pointed out by Savigny in the fact that they lift his profession above the level of a mere trade. Such studies may also teach the American the valuable lesson of modesty and remind him that many

ideas that have been claimed as indigenous products of our native genius have really come down to us from ancient sources. Practical value of these studies is also found in the fact that we are acquiring new territories with vast populations whose laws and jurisprudence we ought to understand, as will be shown in a future lecture; and generally in the fact that we are being brought more and more in contact with trade and commerce throughout the world and in competition with the highly trained diplomatic and consular agents of the leading nations.

Methods of Study.—Students should have a general knowledge of history. Progress of humanity consists largely in the storing up of experience and a transmission of it to successive generations, and the human intellect may be defined as the faculty of profiting by experience, both of the past and the present. We may begin with the law of primitive people and examine it, according to the ancient definition of Gaius, as it concerns persons, property, and procedure. We may eliminate that period when possibly mankind existed in mere hordes; and further eliminate by confining ourselves to the two races with which we are connected, and which for convenience may be called the Aryan and the Semitic. In studying the law of persons we may begin with the family as the unit, and note the resemblances which have been discovered in this primitive institution, whether in India, Egypt, Palestine, Greece, Rome, Germany, Gaul, Iberia, Britain, or Ireland; the influence on legal concepts of the worship of ancestors around the sacred fire; the office of the house father as teacher, priest, and ruler; the advisory family meeting; the theory of kinship; and the rules of adoption by which the agnatic family might be preserved for the celebration of its religious ceremonies and the administration of its secular affairs. We may then trace the extension of the family into the gens and the tribes, the formation of the village community, and the final establishment of the ancient city as a type of government, and the various personal relations resulting from such development. The law of property may be pursued in the same way, noting the archaic concepts on this subject as to the property of the family, of the gens, of the community, and of the city; the growth of rules in regard to individual property, in regard to succession, whether intestate or testamentary, and, finally, the development of the law of obligations, whether aris-

ing from contract or tort. The development of procedure may be traced in the same general way from primitive times—the blood-feud, the compensation by money for injuries, the arbitration before the elders; the technical actions before a magistrate, whether by wager or other device; the growth of the formulary procedure; the employment of referees and jurors, and, finally, the practice which underlies all our methods of pleading, namely, a written petition or complaint of the plaintiff, and the exception or answer of the defendant. Such a course is very elementary, but it should include at least a statement of the rules upon these subjects in India, Egypt, Palestine, and Greece, so far as they can be formulated with some precision, and in this way the student may be brought down in the natural order of time to a study of the elements of Roman law, which, to a greater or less extent, underlie the jurisprudence of all modern civilized nations. This may be followed by a consideration of the development of law in mediæval Europe, and the formation of the different systems which prevail in the nations of modern Europe, and which have been transmitted to America. In this connection it would be useful to glance at least at the modern codes of law, from that of Sweden, in 1734, down to that of Germany, which is to take effect January 1, 1900.

LECTURE II.

Primitive Law.

We do not enter into the disputes of ethnologists in regard to the origin of races or the special scientific names which should be given to them, or whether in some cases the apparent difference in lineage may be only a difference in language. For this course we accept the usual terminology by which the two races we are considering are called Aryan or Indo-Germanic, or Indo-European on the one hand, and Shemitic or Semitic on the other. Originally the homes of these two races were probably not far apart, and they probably all came from the table-lands of Asia. Aryans went southward into India and northward and westward into Europe, where it is generally believed they became Greeks, Italians, Romans, Iberians, Celts, Germans, Scandinavians, Britons, and Slavonic people. Semitic people, going to the west and southwest, became known as Chaldeans, Arabians, Egyptians, Hebrews, Phœnicians, and the like. Some differences between these two races, with much resemblance in primitive customs, and tendencies to assimilate by contact with each other in war and piracy, as well as in trade and commerce. In primitive times religion and law were not differentiated. Going back to some period when there was nothing like what we call the State, and prior to the time when the special sanction of what we call law today were known, we find a large amount of customary observance derived from the worship of ancestors. Departed ancestors were supposed to still exist as members of the family, near or about their tombs, which, as Gaius says, were in Roman law still considered as religious places, dedicated to the gods of the Under World. Question considered by Louisiana court as late as 1847, whether this idea of Roman law still prevailed in Louisiana, it being held that it had become extinct. Custom of the sacred fire on the domestic hearth, which was not a mere convenience, but an object of reverence, and the common meal in the presence of this domestic altar became sacramental in its character. Household gods, represented by small images, became a very important

part of the family possessions. They are mentioned in the book of Genesis and in other parts of the Old Testament, and mentioned by Horace in his ode to Phidyle. We find them enduring as objects of reverence down to mediæval times, in Europe as well as Asia. They became the Little People, the Brownies the House Spirits, the Hob-goblins; frowned upon by the Church, a good deal reduced in circumstances, but still cherished and believed to be ready to help those who were kind to them. Some have thought that All Saints' Day was founded upon this idea and allowed by the Church as a kind of compromise. (See Hearn's Aryan Household, page 62.)

The primitive races with whom we are dealing had, as a rule, the institution we know as the agnatic family, a group in which kinship was reckoned through the male line. At the head of this family was the father, with that paternal power which is such a prominent feature in ancient law. The father of the family, in relation to the group, was prophet, priest, and king, As prophet, he was a teacher, and handed down the experience of the past; as priest, he conducted the family worship; as king, he was the sovereign of the group—a fact that explains at once the paternal power which sometimes appears so strange. To understand the essentials of the primitive family, its organism as a kind of corporate body must be remembered. The house father was indeed head and master, and as such held a kind of office, but all the members were interested and had their rights. The family council or family meeting was probably based on the idea that the family was a kind of body corporate, and that in some cases the members or corporators should be consulted. The family meeting still exists in almost all civil-law countries and in our new possessions, and is a survival of what was found among many primitive people. As a rule, the number of members is the same as in primitive times—that is, five—perhaps suggested by the five fingers of the hand. We are told that family councils existed among primitive people in India, Greece, Gaul, and Ireland. Some have thought that the Reeve and four men, or five in all, who governed the early English township, was a body of this sort. The family meeting or family council plays a great part in Roman history. In early times of hardship and famine, when the custom of exposing children prevailed, the rule was that a father could not thus expose his

son or eldest daughter except on the advice of a family meeting. So also we see why the paternal power of life and death, which was considered by Gaius as something remarkable, was logical enough in its origin. It was the sovereignty over the family group relating back to a time when this group was a little state, and the power of life and death resided in the sovereign head, the *pater familias*. Such a power must reside somewhere. It is not likely that it was often exercised in any cruel way. We see also the meaning of adoption, which played so great a part in law in the agnatic family. Descent and kinship being reckoned through the male line, if there was no son of the family one was adopted with suitable ceremony, and the agnatic family preserved both for sacred rites and secular administration. From the concept of the corporate nature of the family came the idea not only of the devolution of property in case of intestacy, but the rule, which prevails today in many civilized countries, of forced heirship, whereby the head of the family is prohibited from leaving away from it more than a limited portion of the estate, called the disposable portion.

The primitive family included among its members such dependents and slaves as belonged to it, and who were sometimes very numerous, and probably the stranger within its gates for the time being, and it is quite likely that the relation of patron and client had its origin under such circumstances. As the family multiplied and was subdivided into collateral stocks, there came to be formed what the more critical modern writers called the gens, a group of families claiming agnatic consanguinity. The word gens is perhaps the most accurate, some writers, however, using the word clan, and others the word kin. The gens in turn had its recognized leadership, its common worship of some hero who was claimed as ancestral founder, its special funeral rites, its jurisdiction over common property and common concerns and morals. Heads of families in each gens known as Gentiles. It is said that Patrician Rome in its earliest days was a collection of gentes, organized into three tribes. Some have thought these gentes were like what we call great houses in England—the House of Cavendish, the House of Howard, or the House of Percy. Next in order of development and regimentation came the village community, and next the ancient city, formed by a union of smaller bodies. Sir H.

S. Maine claims that the city of Rome was formed by the union of the village communities that had grown up around the Tiber, communities resembling those which existed in India, Greece, Germany, and Britain, and still survive in some places down to the present day. The ancient city was the highest development of government in ancient times, and had its common worship and its sacred hearth in prytaneum or vestal temple.

Other primitive ideas of the law of persons, including in the earliest times some customary rules concerning husband and wife, parent and child, guardian and ward, master and servant, will be noticed hereafter.

Primitive Ideas of Property.—Family estate, lands, slaves, and domestic animals, objects of property considered essential to family life, called in early Roman law *res mancipi*, and only acquired and alienated by various ceremonies which seem very technical but had at least this meaning, that the property belonged to the family, and many persons were interested in it, either immediately or remotely. The word family in ancient times meant more in a juristic sense than it does today. It signified an aggregation of persons, duties, rights, and property, at the head of which was the house father, who was the only person *sui juris*, all the rest being under his power, tutelage, or guardianship. Whatever was acquired was acquired for him in virtue of his office, not strictly in his private, but in his representative, capacity. The gens might also have common property and so eventually might the city. With the city came the concept of the difference between public and private property and between property in commerce and property out of commerce. One of the most common ways of acquiring or losing the dominion over property is by the effect of obligations. In primitive times we find the beginning of obligations both in contracts and in torts. The contract of sale and the contract of exchange make their appearance, and we also find contracts of pledge, hypothecation, and deposit, and now and then a glimpse of rules in regard to the duties of carriers. The Greeks were a very busy, commercial people. Many words we use today in connection with pledges and mortgages are derived from the Greek language.

Ideas of Primitive Procedure.—It was difficult for primitive people to attain to the conception of some outside power that

might be appealed to in order to arbitrate a dispute. In the family the house-father exercised a large and useful jurisdiction. In the village community the elders would do the same. Soon there came to be some development of criminal justice. Composition of personal injuries by payment of money. Trial scene delineated on the shield of Achilles, as described in the Iliad, resembling the early Roman action called *sacramentum*. Primitive process by which plaintiff seized the defendant and took him before the magistrate, as mentioned in the Twelve Tables and alluded to in the Sermon on the Mount, a method which probably was known among many primitive people. Early procedure very technical. Examples from the early law of Rome and the early law of Iceland. Gradual reform of procedure in the direction of simplicity.

One kind of line may be drawn between ancient and modern times. In ancient times what was called religion, with its ceremonial observances, was hardly distinguished from what we should call law. It might be said that modern times begin with a full recognition of the distinction between the jurisdiction of God and the jurisdiction of Cæsar; with a full reception of the doctrine that the Kingdom of God is not of this world, and that the power of the State is to be confined to the plane of what we know as public and private law.

LECTURE III.

Hindu Law.

The word India in classical times referred mainly to the valley of the Indus and its tributary streams. In this lecture we consider chiefly the early law of the territory lying north of a line drawn from the mouth of the Indus to the mouth of the Ganges, Indus meaning "a river" and Hindus the "river people." This territory was conquered perhaps 2,000 years before our era by a northern race descending from central Asia through the mountain passes, pushing the savage races before them. Religion and law not being clearly distinguished, mention should be made of the successive waves of religious customs, opinions, or enthusiasm that rolled over India, namely, Brahmanism, at once a system of religion, philosophy, and law; Buddhism, a system of morality, and finally Mohammedanism. The influence of the last was rather political than legal It may be said in general terms that the science of Hindu law is found chiefly in what are called the Brahmin Codes, of which we may refer to (1) the Sutras, written in prose; (2) the Institutes of Manu, written in verse about the fifth century B. C.; (3) the code called Yajnavalkia, written in verse about the second century of our era, and (4) the Institutes of Narada, also in verse and belonging to a later period. Reference to English translations of the sacred books of the East made under the direction of Prof. Max Muller, and to "Hindu Law and Usage," by John D. Mayne.

Persons in Hindu Law.—Institution of the four castes representing at once religious hierarchy and military conquest. Passing next to the family, we find the same ideas which descended into Asia Minor and Europe. The Hindu family a unit of civic and governmental, as well as domestic, life; a body or group with a directorate, a common property, and even a kind of territorial jurisdiction. Legitimate marriage was monogamous. The law declared, therefore, that the perfect man from this point of view consisted of himself, his wife, and his son. There could be but one legitimate wife, and a son, who was to perpet-

uate the family ceremonies and eventually to administer the family government and property, must also be legitimate. The wife as house-mother was the subject of much respect. Manu sings her praises and seems to lay down the doctrine that it is only by maintaining the family in its integrity that any of its members can attain immortality. It must not be allowed to fail, lest those here present and those who had gone before should alike miss the benefit of this associated life. Hence the desire to have a legitimate son who could maintain the institution and its work as a matter of worship, government, and administration, and hence three methods not unknown among other branches of the race of perpetuating the family in case the house-mother was so unfortunate as to have no son: (1) the substitution of a relative of the husband; (2) the repudiation of the wife and the marriage of the husband to another woman, as in the case of Napoleon and Josephine, and (3) the adoption of a son, the elaborate details in regard to which indicate its importance and perhaps its frequency. The institution of Leviration, well known in India, being the same alluded to in the gospel of Mark, 12: 19, in the problem propounded to Jesus by the Sadducees. If the husband died leaving no son, the widow would marry his brother, and in the problem referred to the woman had thus married seven brothers in succession. The paternal power existed in a large way [illegible] law, as in almost all systems among Aryan and Semitic people, and embraced religious supremacy and governmental control in the family jurisdiction. The family was agnatic, being reckoned through the male line. The institution known as Novitiate sprang from the relation of teacher and disciple, so intimate among early people and so notable in Palestine and Greece. A novice placed under the instruction of a teacher might become like a son, and under some circumstances become the teacher's heir, and the teacher might under some circumstances inherit from the disciple. The tutorship or guardianship of minors was fully developed in early India. As a rule, the age of sixteen was the age of majority, and up to that time minors were under the guardianship of their nearest male relative. It is said that wills and testaments were unknown among these primitive people (Dareste, page 74). It is also said that there was no word in Sanscrit corresponding to the idea of a will and testament (Eschbach

page 605). The reason of this may be found in the character of the family as quasi-corporate, and the fact that its heirs, whether by birth or adoption, were well known.

The custom of adoption, when necessary, amounted to the institution of an heir. The estate, as a rule, would be entirely a tangible one, having no incorporeal property or choses in action and requiring no administration. If wills were unknown, it was because they were not required. When the house-father passed away his sons succeeded to the estate, and to all its duties and liabilities, religious or secular, just as in Rome and in modern civil-law countries when heirs accept the succession of a deceased person pure and simple, without the comparatively modern protection known as the benefit of inventory, they become liable for all its debts, no matter how large the debts and how small the assets. If there were more than one son, the elder received the larger share of the estate, the rule being the same referred to in the story about Esau's birthright. Sometimes the house-father would divide the estate before his death, and, as it were, abdicate his office in whole or in part. A notice of this custom, which prevailed elsewhere, is found in the parable of the Prodigal Son. The Hindu wife might have a kind of separate or paraphernal property called stridhana, consisting of the gifts made to her at the time of the marriage and which were often very large. The order of succession to estates of deceased persons in early India is strikingly like that of early Rome, being first to son or sons, then to grandson or grandsons, then to agnatic collaterals, then to what were called Gentiles in Roman law, who claimed descent from the common ancestor. After this we find the surviving wife as a sort of irregular heir, and finally escheat to the king. It may be said that juridical persons or corporations and the binding force of their statutes or by-laws were recognized in Hindu law, the principal ones being village communities, guilds of artisans, and societies of trades people.

Hindu Law of Property.—Brahmin codes in this respect quite precise and scientific. It was said that one became owner or proprietor by succession, by purchase, by partition, by seizure, and by finding. To these methods were sometimes added the following: By gift to a Brahmin, by conquest by one of the military class, and by the labor of the two lower castes. Title

might also be acquired by prescription of ten years if the true owner stood by and made no objection, unless such true owner was a minor or an imbécile. We also find a title by prescription of twenty years, and also the rule that where possession has lasted for three consecutive generations the fourth possessor is reputed to be the owner, even without any written title.

Many of the obligations by the force of which we acquire or lose dominion over property are found in early Hindu law.

Pledges of personal properties were common, and in early times at least the pledge would be forfeited to the pledgee if the debt were not paid. The pledge of real estate, called in modern civil law antichresis, was also known, but the property was not ferfeited to the pledgee by non-payment of the debt, but must be sold by a process something like foreclosure. Sales of personal property had some familiar features. As a rule, a just title would prevail over a mere possession, especially when the object had been stolen. We see a glimpse of the English rule of Market Overt, for we are told that possession of personal property was equivalent to a title when it concerned a movable bought in market before witnesses. Rules are also found as to partnerships; the letting and hiring, whether of property or labor; the duties of depositaries of all kinds, and the penalties denounced against unfaithful bailees. Carriers by water were held responsible for the loss of goods loaded on their ships and lost or injured by their fault. Probably, as in the modern civil law, the burden was on the carrier to prove that he was without fault. Rules are also found respecting *res adjudicata*. A dispute finally settled in court is not to be reopened. A judgment, however, might be annulled by proper proceedings, probably for fraud and possibly for want of jurisdiction.

Procedure began in India, as among other primitive people, with something like criminal process, and was slowly extended to civil matters. We notice a proceeding for the collection of a debt like that seen in early Rome and early Judea. The plaintiff was seized by the defendant and taken bodily before the magistrate. "Sitting Dharna" was a curious procedure by a creditor which is said to have been practiced in ancient Ireland. The creditor sat on the threshold of the debtor's house and there fasted until the debt was paid. We are told that by the time of the Institutes of Manu there were eighteen different

kinds of actions, either of contract or tort, one of which resembled the lawsuit depicted on the shield of Achilles and the *sacramentum* of Roman law. Procedure became more scientific; written statements or pleadings were introduced; ample notice given to defendant, and proof made by witnesses or, if necessary, by the oath of the parties. We find actions of partition and actions of boundary. We may also notice something like the public or authentic acts which are passed before notaries in civil-law countries. In India these were drawn up by a scribe and signed by the parties, the witnesses, and the scribe himself.

Courts in India at the time of the Institutes of Narada were the family council, the council of guilds of artisans, the councils or tribunals of village communities, the superior tribunals appointed by the king, and finally the king himself, to whom, as to a Roman emperor, there might be a final appeal.

The English government, through the East India Company, or of late acting directly, has made some changes in the law of India, more especially in the matter of the organization of courts and in procedure, evidence, and criminal law, but the customary law of the country, its true common law, has been largely respected and remains, and it is still necessary for the courts in India to refer to the ancient Brahmin codes above mentioned. These codes are still interesting also because they carry us back to the sources of a civilization which is to some extent the source of our own.

LECTURE IV.

Analysis and review of the preceding lectures, and discussions and questions by the class.

LECTURE V.

Law of Ancient Egypt.

Remark of Walter Pater that Egypt is "that half-known immemorial birthplace of all wonderful things." It was open to Greek visitors quite freely about the middle of the 7th century B. C., and they saw and learned many things. Long before that time Egypt appears as a society governed by a monarchy which rested on a system of caste like that of India. It is not known whether Egypt derived her institutions from India or India from Egypt. Perhaps in travel and trade they interchanged ideas.

Taking up the question of personal relations, we find in Egypt the patriarchal family. The house-father is the chief, and the paternal power unquestioned in its proper sphere, though tempered by an early civilization and the development of larger forms of social organization and compulsion. The house-mother is an important figure. Marriage appears as mainly a civil contract between two persons, stipulating in full liberty of choice and agreement. The woman contracts in her own name, and the future husband agrees to treat her as lawful wife, gives her earnest-money, and stipulates the amount of her allowance for dress and domestic expenses. If she has property of her own it remains her separate property, or, as civilians say, her paraphernal property, and in order better to secure it in case of the insolvency of the husband, there is a mortgage or lien for its inventoried value on the property of the husband, present and future, resembling that we find in modern civil-law countries—say in our new possessions. We are told that in dotal contracts passed between private persons it was always stipulated that the supremacy over the man should belong to the woman, the husband engaging to obey the wife. This meant probably in matters of the administration of the dowry intended to support the housebold expenses.

The respect paid by Egyptians to lawful marriage in early times may be illustrated by the story of Pharaoh related in the book of Genesis, chap. 12, v. 14–20, where Pharaoh restored

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ment making a loan by the vendor to the purchaser of the credit portion of the price.

Pledges and mortgages were known as security for debt, and there appears to have been a custom of raising money by a sale of property with the right of redemption. Loans were made either of money or of various kinds of grain, and rates of interest regulated by law. The establishment of Alexandria under the Macedonian conquest stimulated international commerce; Greek notaries were well known in that city, and the business of drawing up written contracts of various kinds was largely developed.

Coming to procedure, the supreme court was composed of one president and thirty judges, selected from the cities of Heliopolis, Memphis, and Thebes. Its jurisdiction was both civil and criminal. It seems that cases were submitted, as we might say, on written briefs. No opinion was pronounced, but the president of a court delivered the judgment by turning the image of truth toward the successful party. Inferior tribunals existed in each province, and below them came domestic tribunals of the family group or groups, which in early times would probably dispose of many controversies. Questions of commercial law became abundant as commerce increased, and also questions of private international law. Dareste, page 14, describes an ancient papyrus which has been discovered and deciphered. It is the record of a suit about 117 years before the Christian era. A Greek named Hermias was plaintiff and an Egyptian religious corporation defendant, and the suit was apparently like an action of ejectment or a petitory action concerning the title and possession of a house in Thebes. The court was composed partly of Greek and partly of native officials. The names of counsel on both sides are given. Both parties produced their written titles, but the defendant not only exhibited some that seemed to be better than those of the plaintiff, but also claimed the benefit of prescription arising from long possession. The court gave judgment in favor of defendant and enjoined the plaintiff from undertaking further to disturb its possession. Under Roman domination the customs and laws of Egypt in private matters were largely respected, and some of its administrative machinery was even adopted. An edict of the Roman prefect in the year 68 A. D. recognizes the fact that by Egyptian

law the wife has the right to recover her dowry—we may presume in the case of the embarrassment of her husband's affairs—and with a mortgage or privilege to secure it, and that her dotal property could not be seized by her husband's creditors. Roman law, however, was slowly extended in Egypt, and by the seventh century of our era Roman forms and phrases came in and Roman law was studied by scholars. In 1880 fragments of Roman law were discovered in the Convent of Sinai, and Dareste states that in 1882 the Museum of the Louvre acquired some Egyptian manuscripts or parchments containing some fragments of Papanian, with notes by Paul and Ulpian.

LECTURE VI.

Law of the Hebrews.

One of the principal sources of our knowledge of Hebrew law is the collection of writings which we call the Bible, representing a development extending through many centuries. The Hebrews divide their law into two parts, Mosaic and Sopheric. The Mosaic would be found in the Pentateuch, or, if we include the book of Joshua, the Hexateuch, and also in such indications as are found in the other writings of the Old Testament. The Sopheric included the doctrines and traditions of the scribes or Sopherim. On these categories was based the Mishnah, a work that undertook to exhibit the development of the law and its application to social and individual life, said to have been compiled by the Rabbi Jehuda in the second century of our era. The Gemara, we are told, signifies a teaching or commentary; and that brings us to the Talmud, which may be described as made up of Mishnah and Gemara—that is, of law and commentary. There have been two Talmuds, the one completed in Palestine in the fourth century of our era and the other in Babylon in the fifth century. Their contents, of course, relate back to earlier dates.

The history of the Hebrews is a long story of a primitive people slowly reaching a condition of ancient civilization. It is not necessary as students of law to attempt to reconcile the many points of dispute in regard to this history. It may be assumed that there was a family of Abraham that moved from the eastward toward the southwest through Canaan and visited Egypt perhaps twenty-four centuries before our era; that a Hebrew called Joseph was prime minister of Egypt in the eighteenth century of our era; that his father and brethren were invited to settle in Egypt and remain there until what we call the Exodus took place, probably in the fourteenth century before our era; that Moses was leader and law-giver of the Hebrew people and so remained until his death; that the people, after many years of wandering and war, effected a conquest of Canaan and were under the rule of what were called judges, a kind of officer

known among other Semitic people; that about the tenth century before our era the office of king was introduced under Saul, who was succeeded by David during a period of war, and then by Solomon during a period of peace, commerce, and luxury; that after the death of Solomon the great division took place, the two tribes of Judah and Benjamin remaining loyal to the house of David and being known henceforward as the Kingdom of Judah, and the other ten tribes establishing the Kingdom of Israel. In the eighth century B. C. the Kingdom of Israel fell before the Assyrian power, and its people, being scattered abroad, became known as the Lost Tribes. Some joined their brethren of Judah, some settled in Babylon, and the rest were probably absorbed among their neighbors. The Kingdom of Judah, lying farther south and less exposed, survived another century and fell before the arms of Babylon. Jerusalem was destroyed and the first temple razed to the ground and the people were carried off as captives 598 B. C. When Babylon fell before Cyrus the Hebrews were allowed to return to Jerusalem and rebuild their temple, 537 B. C., but never regained any independent nationality, being ruled in succession by Persia, by Alexander of Macedon, by Ptolemy, by Assyrian princes, and finally by the Roman power, which took possession under Pompey, 63 B. C. The events of this history exercised a marked influence over Hebrew life and thought. From a pastoral and agricultural people, whose ideal was a land flowing with milk and honey, they became a race of dispersed people, artisans, travelers, traders, merchants, and bankers.

Persons in Hebrew Law.—We find first a primitive family as the social unit, with many of the same features that we have found among other primitive people. A large figure called Abraham is at the head of it. We catch a glimpse of the difference between Sarah, the legitimate wife, and her legitimate son, Isaac, who had been promised, on the one hand, and the concubine Hagar and her son, Ishmael, on the other. Abraham dotes on Ishmael, his brilliant boy, and he prays to the family God, "O! that Ishmael might stand before Thee"—that is, that he might have the status of a real son of the family and perpetuate its worship, as well as its affairs. The prayer is denied. Isaac is born and assumes the office, and Ishmael is finally sent away to found a different family. The same ideas run

through the history of Isaac, of Jacob, and of his twelve sons, who are said to have founded twelve tribes. The same idea of a family group is expressed in the injunctions of the Ten Commandments, where the solidary obligations of its members are said to extend to the third and fourth generations; where reverence to the house-father and house-mother is made the subject of a special command; where an order is addressed to the head of the house, and his son, and his daughter, and his manservant, and his maidservant, his cattle, and the stranger within his gates, and where the people are forbidden to covet a neighbor's house, or his wife, or his manservant, or his maidservant, or his ox, or his ass, or anything that is his. The idea of a Divine Being was largely ancestral, and with the concept of one God, who was the great house-father, the Lord of truth and righteousness, came the concept of his children as being equal in right if not in worldly condition. The Hebrew law was therefore very democratic, so far as the members of its own family were concerned. Rules in regard to strangers, proselytes, and slaves were somewhat different. Yet in these we see a great advance on primitive notions with respect to the stranger and the sojourner. The Outlander is to have the same public justice as the children of Israel. A curse is pronounced on him who shall pervert the judgment of the stranger.

Marriage was the subject of high regard. It was a civil contract in this respect, that it was not celebrated by any minister of worship, but by the house-father, who placed the hand of his daughter in that of her future husband. Marriage of very near relatives, such as Moses might have known of in Egypt, was forbidden by rules that lie at the foundation of our modern ideas on the subject of prohibited degrees. The long contest in England concerning marriage to a deceased wife's sister was founded on Mosaic law, and perhaps on a misinterpretation. The paternal power was in full force among the early Hebrews, and when Abraham thought himself called upon to slay his only son he was proposing to exercise the power of a family sovereign. Case of Jephthah's daughter. Moses prohibited such acts, but severe punishments were provided for a rebellious son. The age of majority was early—for males, 13; for females, 12—and tutorship or guardianship was known for minors who had lost a father.

There does not seem to have been any testamentary succession, at least in the earlier times. The birthright which Jacob bought from his elder brother was a right to a larger portion of the family estate—perhaps a double portion. On the death of the house-father the sons would first succeed under Mosaic law; but if there were no son or grandson the daughters inherited, but with the restriction, based upon the family idea, that they must not marry, and so carry off the property, outside the tribe.

Property and Obligations.—Personal property among the Hebrews was transferred by agreement of sale and actual delivery, as in Roman law. The transfer of real estate was complete only after a payment of the agreed price and an actual or symbolical delivery of possession. An example of sale and symbolical delivery is found in the book of Ruth, and there referred to as having been executed according to ancient custom. The right to land of Ruth's deceased husband and the right to marry Ruth herself is transferred to Boaz by public agreement at the gate of the town, and the vendor makes a symbolical delivery by pulling off his shoe and giving it to Boaz.

The institution known as the "jubilee" at the end of each half century seems to have been intended to preserve a sort of equality of fortune among the people (Leviticus 25: 8–11) by means of a redistribution in each fiftieth year, whereby every man should re-enter into the family property and status on certain conditions. It was an institution probably for a pastoral people, and seems to have fallen into disuse after the Babylonian exile.

The principal contracts are sale, pledge, loan, lease, and deposit. The unfaithful depositary is considered as a thief. The first recorded sale is the purchase by Abraham of a cave and plot of ground in which Sarah was buried. A curious example of the formalities of sale is given in the book of Jeremiah, 32: 8–14, where the ceremony resembled one mentioned in Roman law, the deed being folded and sealed in such a way that the witnesses could sign their names and yet not see or know its contents. This may not appear very clearly in the English version, but we are told that it is the meaning of the original.

The Hebrews, when dispersed, began to exercise their talents for business and finance. They made use of orders for money which resembled bills of exchange. Agrippa, a friend of the

Emperor Caligula, was a famous banker. Babylonian Jews had dealings with maritime people. There are discussions in their Talmud about freight, jettison, and contribution in general average, and also in regard to a kind of mutual marine insurance.

Procedure.—We find in Hebrew law and in primitive times the same ideas regarding the "blood-feud" and the same effort to replace private vengeance by some kind of public procedure. It seems difficult for primitive people to draw the line between a willful murder and manslaughter or even accidental homicide. The Mosaic law seems to have been a progress in this matter. Willful murder was punished with death, but for involuntary homicide there were cities of refuge (Numbers, 35; Deuteronomy, 4). The unfortunate man who thus sought asylum from the avenger of blood—that is, from some member of the family of the deceased—was submitted to a judicial investigation and allowed to remain in asylum on conditions and for a certain time. His temporary status seemed to be a kind of exile from home as a punishment for carelessnes rsesulting in death, but without malice.

Beside the family tribunal, which probably exercised authority in many cases, there were three kinds of courts. The lowest was the tribunal of three judges sitting at the gate of each city and having both civil and criminal jurisdiction. Next above came the tribunal of twenty-three judges in each of the larger towns. There were two such in Jerusalem. These courts entertained appeals and had original jurisdiction in capital cases. Finally, at the head came the Sanhedrim or great assembly, mentioned in Numbers, chapter 2. This has been compared to the Parlement of Paris, having both judicial and political powers. Hebrew law contained many maxims worthy of study. It declared that the burden of proof is on the plaintiff; that a man should use his property in such a way as not to injure his neighbor; that he whose duty it is to guard a thing is liable for the damage that may be done by such thing; that acts done under duress or resulting from inevitable accident may be excused; that if, however, damage begins in our fault but culminates by accident we are liable; that while the agent represents the principal in lawful acts, there is no lawful agency in committing a wrong; that intent is the important element in crime,

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LECTURE VII.

Law of Greece.

The Greeks were an Aryan people, supposed to have come from the mountains of Asia, crossing, perhaps, the Hellespont, and pushing before them or subjecting the primitive inhabitants of the peninsulas and islands that we call ancient Greece. There are many legendary stories of law-givers, such as Minos, king of Crete. It is thought that some of his legal institutions were incorporated into Lacedæmonian law; but we do not dwell on this. The principal branches of the Hellenic race to be considered are those usually referred to as the Dorians and the Ionians. The Dorians may be represented by Sparta and the laws of Lycurgus; the Ionians, in their later development, by Athens and the laws of Solon and Cleisthenes, and the indications found in such works as those of Plato, Aristotle, Theophrastus, Plutarch, Athenæus, and Pausanius.

We do not dwell long on Lycurgus and his organization of Sparta. He may be called a student of comparative jurisprudence belonging to the ninth century B. C., who traveled in Crete, Egypt, and possibly in India, to gather up the results of experience in legal matters. He procured the adoption of a system in Sparta which probably suited the condition of the people at the time. Sparta was in a sense a military camp, and their system of law and discipline was suited to their station.

When we come to Athens we are in a different atmosphere. While the Athenians were, in case of necessity, a military and naval people, they were much more than mere fighters, having a great genius for art, letters, and commerce. They were never fortunate in their political organization and extension. If Alexander the Macedonian, who seems to have had a genius in matters of public policy and to have added to an unusual gift of military skill an unusual ability in the arts of peace, could have lived a few years longer he might have taken up the subject of jurisprudence, as Julius Cæsar, Justinian, and Napoleon did, and we might have looked to a codified law of Greece as we now look to the law of Rome. Nevertheless, the Greeks

contributed largely to juristic ideas in Rome, as well as to ideas of philosophy, art, and letters. The story that when the twelve tables f Rome were planned a commission was sent to Greece to study its laws is quite worthy of belief.

Solon became archon or chief magistrate in Athens 594 B. C. and undertook to reform the constitution and laws. He had been a merchant and traveler, had taken part also in some investigations in natural science, was a writer of verses, a jurist, and a statesman, and reminds one sometimes of Benjamin Franklin. It is difficult to state precisely his entire system of laws, because in after times his name was used as a general type, and the phrase "Laws of Solon" referred sometimes to a period rather than an author.

Personal Relations.—We find first the primitive family of Aryan descent, the composition of which may be perceived in the Homeric poems. Reference may be made to Fustel de Coulanges' "Ancient City" and Hearn's "Aryan Household." We find the ancestral worship, the sacred hearth, the common meal, and the solidary obligations of the family group. The Odyssey acquires a new meaning when we recognize these rules. Penelope was faithful to more than a mere sentiment. She was devoted to the law and worship of a primitive family.

In Greece, as elsewhere among such people, the family developed into the gens and tribe, and village communities appeared. Clusters of such communes existed in the suburbs of Athens, and were slowly united into that form called the ancient city. Remains of them were seen by Pausanias. Marriage among these people was monogamous, and celibacy was looked upon with disfavor. In early times men were married as soon as the age of 18, and women at the age of 15. The bride was given away by her nearest male relative, and the question, "Who giveth this woman to be married to this man?" may date back to early Greece. A wedding feast was part of the ceremony, and the institution of the dowry was well known. Details on this subject. The status of an orphan heiress resembled in its rules the Hebrew law. The paternal power existed, but was modified by a rapidly advancing civilization. Solon limited this power; but we may suppose it existed in early times to an extent quite as great as it exhibited in Rome. The proposed sacrifice of Iphigenia by her father, Agamemnon, may be re-

ferred to this power. Children owed the duty of support to their parents, but not where the father had failed to teach some trade or business to his son or had dishonored him in some way. The quasi-corporate nature of the family estate is shown by the fact that a prodigal father might be removed from its administration. On the other hand, a father might disinherit his son for just cause, and this rule of Greek law is alluded to as such in the code of Justinian. Adoption was a part of family law in Greece for the same reasons as those we have found among other people of the East, and was minutely regulated. A person adopting must be a citizen, *sui juris*, at least fourteen years older than the one adopted, and must have no male child at the time. If after adoption he had a legitimate male child, this child and the adopted one would divide the inheritance.

In Attic law, as afterwards in Roman, succession to the property of a deceased person was either legal or testamentary. In early times, at least, one could not dispose of his patrimony by will except where he left no lawful heirs of the immediate family. While these heirs could not be disinherited, neither could they reject an estate, but took it with its burdens. If there were sons they were preferred in heirship, but in default of sons the daughters were called to inherit and became the heiresses alluded to above. This consideration for women may have been derived from Egypt. In default of descendants there was the heirship of collaterals, with a marked preference for the agnatic line.

Property and Obligations.—In early times ideas on these subjects were not unlike those of other Aryan people. The Athenians, however, joined the letters and learning of Egypt and Phœnicia to their own and made rapid progress in the details of conveying and recording titles of real property and in utilizing personal property for purposes of business credit. They even acquired the reputation among their duller neighbors of being too acute. However this may be, they were very accomplished scriveners and conveyancers. Titles of property were matters of public registry and classification. Mortgages were notified to the world by monuments erected on the land itself. Pledges of personal property were known and the pledge of real estate was called by the Greek name of antichresis. We find traces of that doctrine of the police power which declares

that all property is held subject to certain obligations to the public and to one's neighbor. Hence the rules laid down by Solon, and which we are told by the classical jurists of Rome came to Rome from Solon's system, in regard to boundaries of land, the rights of adjoining proprietors, the building of walls and the planting of trees, the digging of wells and cesspools and the situation of graves near a property line.

Greek merchants were famous from early days. Their ships visited every country that could be reached by the methods of navigation then practicable. Hence grew up a kind of commercial and maritime law resembling the growth of what we know as the law merchant of England. It was the law of merchants resulting from their customs of trade. The Island of Rhodes was famous for its commerce, being an entrepôt of business between the East and West. The Rhodian law, as it has been called, was probably a system that concerned this extensive trade. It is not extant in any large degree. There was one important provision in regard to general average. Barnard *vs.* Adams, 10th Howard, 270. We are told that when such a question of contribution was laid before the Emperor Antoninus he directed it to be decided according to the Rhodian law. It is claimed that by the same system the owner of a ship might be held for the acts of the master within the scope of his employment. Another part of the system seems to have made carriers by sea responsible to the owners of the goods; and another is said to have regulated laws on bottomry and respondentia, and still another to have visited the plunderer of a vessel with fourfold damages.

Procedure.—Many cases were decided in Athens by voluntary arbitration, and the decision was final. There were also public or official arbitrators who had jurisdiction of civil cases, both of contract and tort, to any amount and without regard to the citizenship of the parties. This looks like a great advance in ancient law. It is interesting to notice also that in some instances the case was referred to these official arbitrators by the magistrate, a practice resembling the formulary procedure afterwards adopted in Rome, in which the prætor formulated the issue and sent it to the judex or referee. Next came the tribunals, in which the people took such an active interest, the Heliasts, or, as we might say, the jury sections, for which 6,000

citizens were drawn and divided into five sections of 500 each, the rest forming a reserve. Some of these sections decided ordinary cases, others were special juries acting as experts. There were also tribunals that went on circuit in the provinces, and there were also tribunals of commerce. The Areopagus was composed of distinguished citizens who had held office with honor. It is not to be confounded with Solon's senate, but was a body with judicial power as archaic in Attica as that of the House of Lords of England. It was an interesting link between the rude procedure of primitive times and the refined process and the elaborate oratory of the classical period. Saint Paul delivered his sermon on Mars hill, the place of its sittings, though we cannot say that his audience was the court itself. It might have been, for the Areopagus is said to have had control of public morals and of the always interesting question of the introduction of new religions. Criminal cases were heard before it, and cases involving important civic questions of public order or public policy.

The development of Greek political history and Greek law in some respects is like that of Rome. In both we find at first a monarchy, so called, a line of kings. In time there is dissatisfaction and a tendency to form a republic. In Athens we find in the eighth century B. C. that the archonship is held for a period of ten years. During the seventh century B. C. it becomes an annual office. The same development appears afterwards in Rome when the monarchy is replaced by a republic and the kings by consuls, holding an annual office. The Greeks were teachers of the Romans in many things, and the Romans were keen to avail themselves of such teaching, and may have done so in their constitution as they did in the matter of private law.

LECTURE VIII.

Review of three preceding lectures. Comparison of Egyptian, Hebrew, Phœnician, and Greek laws and their influence on the growth of Roman law. Debate by the class.

LECTURE IX.

Roman Law—Introductory.

The text books are Sandar's Institutes, with Hammond's Introduction and Muirhead's Roman Law, 2d edition. Howe's Studies in the Civil Law may also he reviewed. Before taking up a discussion of the text of the Institutes, some introductory lectures are to be given.

Romans an Aryan people, having primitive ideas of custom and law similar to those of other peoples of same stock. The development of civilization and law later in Rome than in Greece and in other countries to the eastward, and thus Rome largely indebted to earlier systems in letters, philosophy, and law.

The Roman family had the general features of the Aryan household. Its agnatic character. The paternal power a large and persistent feature. The formation of the gens. The regimentation into tribes. The village communities around the Tiber and their union in the city of Rome.

The fundamental distinction between the Populus and the Plebs. The populus represented, in theory at least, the outgrowth of the primitive families. They preserved their family customs; they maintained their religious ceremonies; they claimed for long a monopoly of sacred rites and legal knowledge. Tribes divided into curiæ and curiæ into decuriæ. The heads of these burgher families composed the comitia curiata. A smaller body, said to have corresponded in number to the gentes, composed the Senate.

The Plebs, on the other hand, broadly speaking, included the large number of inhabitants who did not at first possess any claim to the peculiar privileges from family descent, real or assumed. Whether they were subjugated people, strangers who had come to Rome as immigrants, or dependents who had left their condition of clientage, they belonged to no gens, at least

in the primitive sense; had no share in the religious ceremonies or in the jus sacrum; no place in the comitia curiata; no share in the executive or legislative government. In the language of today, they might be called Outlanders.

Under the Servian constitution the comitia centuriata, based on a theoretical division into groups of one hundred, opened a door to the plebs by making the two orders meet on the common ground of a graduated scale of property.

We next find the comitia tributa, the assembly of the tribes, and then from this, as an outgrowth, the consilium plebis, summoned and presided over by plebeian magistrates, and legislating, as will be seen hereafter, firstly for their own government, and finally for the purposes of general control.

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LECTURE XI.

ROMAN LAW—CONTINUED.

The Twelve Tables.—Ten of them enacted by comitia centuriata in 303 A. U. C., and the remaining two about a year after. It is now believed that they summed up for the information of the public the leading principles of law as then understood, and that they contained many provisions derived from Greece or from the Greek colonies of Italy. (See Muirhead, 2d edition, 1899, pp. 44 *et seq.*) The contents of the Twelve Tables collated from classical and juristic writings; their arrangement conjectural. If the prætorian edict followed the same general plan and the digest pursued the same arrangement as the edict, we may derive a theory as to the manner in which the tables were arranged. Mr. Ortolan, in his work on Roman legislation, adopts the theory of Dircksen and Zell, and this conjectural reconstruction will be found in the appendix to Howe's Studies in the Civil Law. Professor Voight, of Leipsic (1883), proposes another plan, which Professor Muirhead thinks should be received with "caution" (p. 100). Mr. F. Goodwin (London, 1886) has published an edition. Reference may also be made to the version of Schoell as adopted by Bruns and printed as an appendix to Muirhead (2d edition, 1899, p. 434).

The law of the Twelve Tables modified, expanded, and amended by subsequent legislation. The activity of the emperors through their judicial councils. The tendency to new codifications. The perpetual edict under Hadrian. The Gregorian Code. The Hermogenian Code. The Code of Theodosius II, A. D. 438. The compilations of Justinian begun, A. D. 528. The first Code of Justinian, A. D. 529, replaced by that of A. D. 534. The Digest or Pandects, a sort of cyclopedia of law, in which the writings of the classical jurists were edited and preserved. The Institutes, a text book for law schools, A. D. 533. The Novells, or new Constitutions of Justinian. The 118th and 127th Novell still the basis of intestate succession.

LECTURE XII.

Review of the three next preceding lectures, with recitation and discussion by the class.

LECTURE XIII.

The Institutes of Justinian.

General arrangement of the work. The general definitions of law and justice. The sources of Roman law, as already noted in previous lectures. The recognition of jus gentium, the law of other civilized peoples, and its incorporation through commercial intercourse. Resemblance to the development and adoption of the law merchant of England and our own country.

The division of law as it concerns persons, things, and actions. The law of persons in Rome as laid down in the first book of the Institutes; as free or unfree; as sui juris or alieni juris; as related by marriage; as connected by adoption; as subject to tutelage, and as possessing a status or caput that might be dimished. The law of natural persons and juridical persons, guilds,societies, and corporations.

LECTURE XIV.

The Institutes—Continued.

The second book, concerning things or property, and various methods of acquiring or losing dominion over property. Public and private property. Things common to all. Sacred, religious, and holy things. Acquiring property by occupancy, capture, and finding. Law as to wild animals. Acquiring property by accession. Law of alluvion as an example. Fruits of property. Translation of property by delivery.

Things also either corporeal or incorporeal. The rights called Servitudes, resembling the easements of English law. Usufruct, use and habitation.

Usucaption. The possession of property by detention and the animus of ownership. The prescription acquirendi causa of modern civil law. Adverse possession.

LECTURE XV.

The Institutes—Continued.

Further methods of acquiring things as contained in second book. Donations mortis causa and inter vivos. Voluntary alienation. Some persons having title cannot sell because they are prevented by some rule of law. Others, as factors, not having title, may yet sell in virtue of the relation they occupy. Acquisitions through the legal agency of another.

Acquisition by testament. The ancient methods of making wills: in comitia calata; in procinctu, and per æs et libram. The prætorian method, in writing with the seals of seven witnesses. The military testament. The disinheriting of children. Origin of the idea of "cutting off with a shilling." Of substitutions by testament. The vulgar substitution. The pupillary.

The revocation of testaments by fact or law. Of inofficious testaments. Of the institution of heirs. Heirs classified as necessary, sui et necessarii, and extraneous or collateral. The ideas of primitive law, dwelt on in the earlier lectures, repeated in the Institutes (2, 19, 2) that sui heredes are in a sense owners in the family estate, and quasi-corporators.

Legacies; the different kinds; their interpretation and effect. Fidei Commissa considered as testamentary trusts and their relations to the English law of Trusts. Views of Mr. Kent and opposite views of Chief Justice Holmes.

Revocation of legacies. Limitations on the quantum of disposition. Falcidian law. Modern rules as to forced heirship and disposable portion.

LECTURE XVI.

Review of next three preceding lectures and discussion by the class.

LECTURE XVII.

INSTITUTES—CONTINUED.

The third book continues the subject of the acquisition of Things, and takes up at first the topic of Intestate Succession. A person dies intestate who has either made no testament at all or has made one not legally valid, or, if the testament he has made is revoked or made useless, or if no one becomes an heir under it. By the Twelve Tables the inheritance of intestates belongs firstly to the sui heredes—that is, those who at the death of the deceased were in his "power": then in default of such to the agnates; then in default of agnates to the gentiles. In time and by prætorian law cognates, related through the feuale line, displaced the gentiles. The definition and rights of sui heredes. Emancipated children. Adopted children. The prætorian right accorded to children ignored or illegally disinherited, to whom the prætor gave contra tabulas. Provisions as to succession of agnates. The gradual change in favor of women and cognates. The senatus-consultum Tertullianum concerning rights of mother, A. D. 158. The senatus-consultum orphitianum, A. D. 178, giving reciprocal right to children as to goods of intestate mother. Agnates, it is to be remembered, are persons related to one another through males, whether the relationship be natural, adoptive, or quasi-adoptive; and agnation is the tie between two or more persons which is based on the Paternal Power or Manus, to which all of them would be subject if the head of the "familia" were still alive. Cognation, on the other hand, is what we call relationship by blood. All those persons are cognates of each other who are sprung from one and the same person, whether male or female; and the relationship may be either lineal, as between parent and child, or collateral, as between brother and sister. Those who are of the same blood by both parents are called germani; those who were born of different mothers by a common father are consanguinei; those born of the same mother by different fathers, uterini. Different grades of cognation set forth in the 6th Title, 3d Book.

The system of bonorum possessiones, introduced by the prætors in conformity to principles of equity, "ex bono et æquo." 3, 9, 2–10.

The changes made after the publication of the Institutes by the 118 Novell, A. D. 543, and the 127 Novell, A. D. 547, are important and must be carefully studied. The difference between the legal succession or hereditas and the prætorian bonorum possessio and those still remaining between agnates and cognates are swept away. Three orders of intestate succession are established: (1) That of descendants; (2) that of ascendants; (3) that of collaterals. The details are given by Sandars, p. 389.

Acquisition by arrogation, Tit. 10, and by slaves in certain cases, Tit. 11. Succession of creditors by adjudication in certain cases, Tit. 12.

Acquisition of property or rights by the effect of Obligations. Importance of this topic in both Roman and modern civil law. The law of our new possessions cannot be understood without a knowledge of this subject. Such knowledge also throws a flood of light upon the law of contracts, quasi-contracts, and torts in English and American law. The Institutes (3, 13, 1) first divide obligations into civil and prætorian; the former being the ones recognized in the early jus civile, and the latter recognized and enforced by the prætor as the honorary law expanded. They also point out the sources of obligations. We must carefully distinguish between an obligation, on the one hand, and a contract, for example, on the other. They are related as effect and cause. All valid contracts produce obligations, but all obligations are not produced by contracts. The Institutes recognize that obligations are legal ties proceeding from four sources: (1) Ex contractu, (2) quasi ex contractu, (3) ex maleficio, and (4) quasi ex maleficio, or, as we may say in modern terms, from contract, quasi-contract, tort, and neglect. To this civilians add a fifth source, namely, the direct operation of law, in the absence of any of the above four.

Contracts. In early Roman law, as in the law of all primitive people, contracts were few and made with many ceremonies, which had their origin in the theories of religion and family law or custom. Nexum. Mancipation. The writers of the Institutes, following Gaius, take up contracts as they are—(1) real, (2) verbal, (3) literal, and (4) consensual. The real contract implies the actual delivery of the thing, as in mutuum, commodatum, depositum, and pignus. So it is said "re contrahitur obligatio." (3, 14, 1–4.) The verbal contract was somewhat different and

much more technical than the epithet would imply today. The ancient stipulation was made by a special form of question, responded to by a special form of answer. The literal contract was formed by entries in a ledger, which every Roman householder was expected to keep. The consensual contract belonged to a class recognized as springing from the consent of the parties—sale, letting and hiring, partnership, and mandate. They belonged to a period later than the jus civile and were jure gentium (Inst., 1, 2, 2).

The writers in title 20 discuss the law of the accessory obligation by fide jussores. The principles underlie the law of suretyship. For an English case where the court seems to have relied entirely on Roman law as a rule of decision see Bechervaise *vs.* Lewis, L. R. 7 Common Pleas, 372.

LECTURE XVIII.

INSTITUTES—CONTINUED.

Consensual obligations further considered. The progress of prætorian law in such matters. Emptio et venditio. Formation of contract of sale jure gentium. Classification by civilians, which is very useful today in determining the character of a contract, by considering those elements which are *essential*, those which are *natural*, and those which are *accidental*. In the contract of sale as now considered, there are three essentials without which it will not exist at all, *as a sale*, namely, a thing, a price, and a consent. On the other hand, there are elements of the nature of a contract—that is, which exist unless specially excluded, as warranty in sale, in those countries where it is implied, unless excluded. Finally, there are accidental stipulations which are not of the essence of a contract nor of its nature, but may be added at the will of the parties, if lawful, as, for example, a special place or time of payment.

Sales may be conditional or unconditional. A purchase of property out of commerce by one knowing its character is void. (3, 23, 4, 5.)

The contract of letting and hiring and its rules. (3, 24, 1–6.)

The contract of partnership, its formation, and dissolution.

The contract of mandate and its reference to modern ideas of agency. It was essentially gratuitous in Roman law, but an honorarium like that given to an English barrister was sometimes presented.

Obligations arising quasi ex contractu. The importance of the fundamental rules of Roman law on this question as related to the modern English and American doctrine of quasi-contracts. Such obligations arise from certain lawful and beneficial acts in the absence of contract or from some controlling consideration of justice. Beneficial expenses incurred in preservation of property of an absentee. Expenses of a tenant in common concerning the common property. Funeral expenses under certain circumstances. Obligation to refund money paid in error. But a voluntary payment, with knowledge or where knowledge should have existed, should not be recovered. Salvage and general average in the admiralty, derived from the civil law, are examples of obligations quasi ex contractu, being based on beneficial acts in the absence of agreement. (See Howe's Studies on the Civil Law, pp. 170 *et seq.*)

The extinguishment of obligations (3, 29, 4). The methods mentioned in the Institutes are not so numerous as those of modern civil law and may be considered as examples. Payment. Acceptilation or formal release. The Aquilian general release. Novation and its relations to modern law, being the substitution of one obligation for another and the extinguishment of the latter, or even the substitution of one debtor or one creditor for another. Voluntary remission. To these may be added (1) the loss of the object of the contract without fault of the parties; (2) confusion where the qualities of debtor and creditor become united in the same person or representatives; (3) compensation in some cases; (4) death of a party whose obligation was purely personal; (5) the occurrence of a dissolving condition when it operates; (6) the expiration of a term which may operate an extinguishment; (7) rescission, and (8) prescription when pleaded and so operating. (See Howe's Studies on the Civil Law, pp. 149 *et seq.*)

Obligations arising ex delicto and quasi ex delicto (4, 1–5). The subject of what we may call in modern terms torts and neglects briefly dealt with in the Institutes. The early division of torts into (1) furtum, (2) vi bona rapta, (3) damni injuria, and (4) injuria. The Aquilian law in regard to injury to the property of another, a plebiscite adopted, probably, about the year 467 A. U. C., on the proposal of the tribune Aquilius. Its provisions lie at the foundation of many modern concepts. The faute aquilienne of the French writers. See also Grueber on

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and actions either real or personal (4, 6, 1). Actions also classed as civil and prætorian (4, 6, 3). Prætorian actions, either fictitia in jus concepta or in factum concepta (Sandars, p. 513). Important example of former class, in jus concepta, is the Actio Pauliana to rescind an act in fraud of creditors (4, 6, 6). Another is the Actio Serviana for rent, with enforcement of landlord's lien or privilege; also the quasi Serviana to foreclose a pledge or mortgage. Both called also hypothecaria (4, 6, 7). Actions concerning personal status, called prejudicial or preliminary (4, 6, 13). Division of actions as to object into those (1) to recover the thing, (2) to recover the penalty, (3) to do both (4, 6, 16–27).

Another division of actions into (1) of good faith which were prætorian; (2) of strict law, under jus civile, and (3) those called arbitrary being submitted to the arbitrium or large equitable discretion of the judge (4, 6, 28–32).

Provisions as to errors and amendments, in pleadings (4, 6, 33–35.) The doctrine of compensation or set-off (4, 6, 39 and notes. See Howe's Studies in Civil Law, pp. 159 *et seq.*)

Actions on contracts made by persons alieni juris by order or for the benefit of master or parent (4, 7, 1–8). Noxal actions (4, 8, 1–7). *Id.*, (9, 1).

Management of actions by procurators; proctors; attorneys (4, 10, 1, 2). Security in suits (4, 11, 1–7).

Prescription or limitation of actions (4, 12, 1–2).

Exceptions, which may be either dilatory or peremptory (4, 13, 8). An example of a dilatory exception would be the plea of prematurity; of a peremptory exception, a plea that bars the action perpetually (4, 13, 1–10). Replication thereto (4, 14, 1–4) and further pleading.

Interdicts, or special orders by magistrate, prohibitory, restitutory, and exhibitory, the forms of which may be represented by injunctions and writs of habeas corpus (4, 15, 1–8).

Methods of preventing rash suits or frivolous defenses. The affidavit of merits (4, 16, 1–3).

The duty of judges and the form of decrees (4, 17, 1–7).

The prosecution of crimes (4, 18, 1–11).

LECTURE XX.

Review of four next preceding lectures, with class debate.

LECTURE XXI.

The Law of Italy.

What we now call Italy may be considered as specially and immediately the successor of Rome in matters of law. The history of Italy, for the purpose of these studies, may be divided into four periods:

1. The period of barbarian conquest and domination. Theodoric the Great and his Ostrogoths, A. D. 489–526. The edict of Theodoric, A. D. 500 or 506 (Muirhead, p. 371). The reconquest of Italy for Justinian by Narses, A. D. 553, and the predominance of the laws of Justinian. The Lombards under Alboin, A. D. 568–573. The fall of the Lombard power, A. D. 774. The crowning of Charlemagne as Emperor of the Romans, A. D. 800.

2. The second period, extending to about the middle of the 14th century, may be termed that of communes, republics, and maritime cities. Rise of the five great powers—Milan, Venice, Florence, the Papal States, and Naples.

3. The third and succeeding period one of political decadence, though illustrated by much that was interesting in art, science, and jurisprudence.

4. The fourth period may be said to extend from the rise of the House of Savoy to the present time. Under the leadership of that house and with the patriotic labors of such men as Cavour and Garibaldi, Italy became reunited into the present nation.

Roman law remained in Italy, and its study was revived in the twelfth century with the renaissance of other studies. Schools of Bologna, Padua, Pisa, Pavia, and other cities, with scholars from other countries as well, such as England. The school of Bologna. Irnerius of Bologna as a leader. Azo; Francesco Accorso and his son of the same name. The latter lectured at Oxford about A. D. 1276. The school of Bartolus, 1350. The school of the eighteenth century. Gravina; Vico of Naples and

his theories of legal history and development, which in a sense lie at the foundation of the modern historical method.

Influence of the French law under Napoleon I. Code of Naples, 1819. Code of Sardinia, 1827. The Code of Italy of 1866, illustrated by extracts. It resembles the Institutes of Justinian and of Gaius in its arrangement as to the law of persons, property, and obligations. The law of suretyship translated from this code, and the resemblances to English and Spanish law pointed out and differences noted.

LECTURE XXII.

Law of Spain, Puerto Rico, Cuba, and the Philippines.

Present importance of the subject. Sketch of early history of Spanish Peninsula. Phœnician and Greek colonies. Roman domination and era of municipalities. The Visigoths in the 4th century, A. D. The Visigothic kingdom of the 5th century. The Breviary of Alaric II in the 6th century, a codification of Roman law as then existing, prior to Justinian, for the people of southern Gaul and northern Spain. The Fuero Juzgo, or Code for Judges of the 7th century, praised by Gibbon and Guizot and criticised by Montesquieu. It is of historic value as representing an amalgamation of Roman law and Teutonic customs. The ruin of the Visigothic kingdom in the 8th century by Saracen invasion. The building up afterward in northern Spain of Christian States, such as Castile, Aragon, and Navarre, and the growth of local rights under Fueros or charters. The Saracens expelled in 15th century.

Beginning of mediæval codes in Spain. The Fuero Viejo, or ancient code of 10th century. The Fuero Real of 13th century resembling the Institutes of Justinian. The Siete Partidas, promulgated 1348 by Alphonso II. It is arranged in seven parts, as its name implies. Synopsis of its contents. Reference to its translation into English by Moreau and Carleton, 1820. The New Recopilacion of 1567, under Philip II. The Novissima Recopilacion of 1805, under Charles IV. The prominence of Spanish jurists, Ayala and Suarez. Commercial law in Spain and its high character. The Barcelona code of commerce, called El Consulado or Consolato del Mare, 1258. The Code of Com-

merce of 1829. Colonial laws and decrees. Recopilacion de Indias, 1680.

The free cities of Spain and Barcelona as an example. The idea of an elected monarch bound to obey the law. The rights of the Cortes in Aragon. The writ of manifestion resembling habeas corpus, and probably imitated from the exhibitory interdict of Roman law.

The modern codes of Spain. The Code of Civil Procedure of 1881. The amended Code of Commerce of 1886. The Civil Code of Law of 1889. The Hypothecary Code of 1893. Analysis of their different provisions. They have been extended within the last decade to Puerto Rico, Cuba, and the Philippines, and are the present law of those regions.

The example of the Louisiana Purchase of 1803, which had been a Spanish colony for about forty years prior to the cession to the United States. In the Territory of Orleans, constituting nearly the present State of Louisiana, while we promoted a reform in criminal jurisprudence and based it on common-law principles, we wisely refrained from interfering with private law in civil matters.

The excellence of Spanish law as a scientific development. The Code of 1889 superior in some respects to the Code Napoleon. The trouble has been in the administration of justice in Spanish colonies, which we are called on to carefully consider and reform.

Methods of study of Spanish law as a practical matter.

LECTURE XXIII.

The Law of Germany.

In noticing the development of the law of Germany, we should recall the leading events in its history; the character and customs of the primitive Teutonic peoples; the effect of their conflicts with Rome; the work of Charlemagne and his successors; the meaning of the Holy Roman Empire; the barbarian laws; the institution of Feudalism, and the influence of the Church.

The reception in Germany of Roman law in the sixteenth century. It was the Roman law of the Renaissance, revived by the jurists of Italy, and spreading thence over Europe.

There was no strong central power then in Germany to protect and develop national law, and so the revived Roman law came in as a scientific foundation. (Sohm's Institutes, p. 1; Howe's Studies in the Civil Law, p. 318.)

The Codes of Germany and other Teutonic people. Code of Bavaria, 1756; of Prussia, 1794; of Austria, 1810; of Holland, 1838.

The new Code for the German Empire, which is to take effect January 1, 1900. Its spirit as compared with the Roman system received in the sixteenth century. Views of Professor Sohm, as expressed in *The Forum* for October, 1899. He was a member of the commission that prepared this code. Roman law will be retained in Germany as a university study, as historical and fundamental. The national law of Germany, however, will be found in the new code. Henceforth German juristic science will be devoted to the elucidation of this new code, and probably in the same way that the Code Napoleon has been the subject of so much learned and acute commentary in France and Belgium

Analysis of the new German Code. It consists of five divisions or books, the arrangement of which differs somewhat from the method of Gaius, of the Institutes, and of the other codes we have considered, such as those of Italy, France, and Spain. The first book contains general dispositions as to persons, whether natural or juristic, including status, capacity, domicile, absence, and death. It also treats in a general way of contracts by persons, of agency, prescription, the right of "self-help," the effect of prescription, and the suretyship of one person for another.

The second book takes up the subject of obligations in the first instance as arising from contract, and the various methods by which obligations are extinguished; specific contracts are dealt with, such as sale, gift, lease, factorage, partnership, aleatory contracts—"futures," where there is no purpose of actual delivery, being declared invalid—suretyship, compromise, and the assignment of rights. Torts are also dealt with as a source of obligations.

The third book contains specific provisions concerning the law of things or property, whether real or personal; the various methods of acquisition and loss of each, of delivery, prescription, mixture and accession, reduction to ownership, as of wild

animals, and finding. It also treats of qualifications of ownership, servitudes, contracts to purchase as a burden, mortgage, and pledge.

The fourth book deals with family rights, betrothal, marriage, divorce, relationship, and guardianship.

The fifth book deals with succession or inheritance, whether legal or testamentary; the form and execution of wills, whether by public act or in olographic form; the limitations on the disposable portion, and the right to disinherit unworthy heirs for lawful reasons.

LECTURE XXIV.

The Law of France.

It is but natural that the Roman law should have contributed largely to the present law of France; yet there are other elements to be considered. As pointed out by Ortolan in his history of Roman Legislation, we must not forget the barbarian law, the feudal law, the canon law, and the customs.

Influence of the Edict of Theodoric the Great. Influence of the Breviary of Alaric II in southern Gaul, which was also a part of the Visigothic domain. The Lex Romana Burgundionum, sometimes called Papinianus, prevailing in upper Alsace, Burgundy, Franche-Compté, and Switzerland. (Muirhead, 371–373; Eschbach, 228.)

The laws of the Salian Franks; the Ripuarian Franks; the Alemanni; the Bavarians; the Burgundians, and the Frisians.

The capitularies, being ordinances, or what in Rome might have been called constitutions, issued by the kings of the first and second race, in the national assembly of the Franks.

The early division of France into the Pays de droit ecrit and the Pays de coutumes, the former, or southern portion, retaining Roman law, the latter, or northern portion, having a system largely influenced by the customs of the barbarian invaders. Yet the Roman law, though greatly modified down to 1789 by interpretation, jurisprudence of the parliaments, and royal ordinances, remained as a sort of underlying common law in all France. (Eschbach, p. 195.)

The canon law and the feudal law.

The ordinances of the kings of the third race, from Hugh

Capet to the revolution of 1789, among which we may notice that of Louis XIV, concerning maritime law and commerce.

The codifications under Napoleon. Their importance and influence. The Constituent Assembly in 1791 promised the preparation of a civil code which should be uniform throughout the whole kingdom, but nothing was then done. The project revived in 1793, a commission appointed in 1800, a draft printed in 1801, and the Code Civil promulgated as a whole in 1804. The other codes of France are five in number—of civil procedure, commerce, criminal law, criminal procedure, and forests.

Analysis of the French Civil Code with its existing amendments. Mainly a code of private law in civil matters. Its general arrangement like that of the Institutes of Gaius and Justinian, so far as civil matters are concerned.

It contains three books. The preliminary title treats of laws and their promulgation and effect. The first book treats of persons and personal relations, status, domicile, absence, marriage, divorce (as now allowed), paternity and filiation, adoption, paternal authority, minority, guardianship, emancipation, majority, interdiction, and judicial counsel. The second book treats of things—property and the different kinds of ownership, whether perfect or modified—possession and accession, usufruct, use, habitation, and servitudes and other burdens. The third book continues the subject of acquisition of property by succession, by donation and testament, and by the effect of obligations. It discusses obligations and their sources in contract, quasi-contract, offense and quasi-offense, and the operation of law, and the different kinds of obligations and their extinguishment. It lays down rules for their proof. It then treats of marriage contracts and their effects, and follows this with specific treatment of sale, exchange, lease, partnership, loan, deposit, aleatory contracts, mandate, suretyship, transaction, execution against the person, pledge, privilege and mortgage, proceedings by creditors against property of debtor and the rank of creditors, and finally the rules of prescription, whether as a means of acquiring property or barring the right to enforce an obligation by suit.

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REFERENCES.

Hearn: The Aryan Household.
Maine's Works.
J. D. Mayne: Hindu Law and Custom.
Seebohm: Village Community in England.
Eschbach: L'Etude du Droit.
Dareste: Etudes d'Histoire du Droit, La Science du Droit en Grece.
Schulte: Law and Institutions of Germany.
Fournier: Translation into French of same.
Viollet: Histoire du Droit Civil Français.
Huc: Italian Civil Code and Code Napoleon.
Levé: The Spanish Civil Code of 1889, in French, with notes.
Walton: Same in English.
Moreau and Carleton: The Spanish Partidas.
White: The Recopilacion.
Muirhead: Roman Law, 2d edition.
Sohm: Roman Law.
Hunter: Roman Law.
Poste: Gaius.
Sandars: Institutes of Justinian, with Hammond's Introduction.
Howe: Studies in the Civil Law.
Jenks: Law and Politics in Middle Ages.
Wilson, W.. The State, 2d edition.
Coulanges: The Ancient City.
Social England: Edited by H. D. Traill.

LECTURE XXVI.

Law in the Two Americas.

History of law in Canada. Introduction by the French of the laws and ordinances of France and the custom of Paris. Cession to England in 1763. Introduction of English law in criminal matters (14 Geo. III, ch. 83). Division into Lower and Upper Canada (31 Geo. III, ch. 31). Reunion in 1840. What was known as Lower Canada retained the French system as fundamental in private law in civil matters. Civil Code of Lower Canada of 1866 contains three books resembling the Code Napoleon, and a fourth of commercial law. The legislature of Upper Canada adopted English law as a basis. The establishment of the Dominion in 1867, the additions to its domain down to the present time, and its system of public and private law.

English law in the United States. Its introduction into the thirteen Colonies. Its adoption or recognition in the "common law" of States and Territories established since our War of the Revolution. How far the general principles of equity, admiralty, the law merchant, and the ecclesiastical law were also brought in. Views of the courts: in Massachusetts, Com. *vs.* Knowlton, 2 Mass., 530; North Carolina, Crump *vs.* Morgan, 3 Iredell, Eq., 91; Vermont, Le Barron *vs.* Le Barron, 35 Vt., 364; Pennsylvania, Pennock's Estate, 20 Pa. St., 268; Illinois, Cook *vs.* Renick, 19 Ills., 598; Michigan, Matter of Lamphere, 61 Mich., 105; Wisconsin, Coburn *vs.* Harvey, 18 Wis., 147; New Mexico, Browning *vs.* Browning, 3 New Mex., 371.

History and development of law in Mexico. Its Spanish origin. The present constitution of that Republic. The Federal Civil Code and its adoption by most of the States. General view of the law of Central and South America.

LECTURE XXVII.

General review of the course.