Roman Legal Thinking and the Modern World

THERE are several aspects of this subject which immediately spring to mind. The part played by the various schools of thought of the Middle and subsequent ages in the transmission of Roman law to the modern world might be profitably discussed at length. Or one might examine in systematic detail the various aspects of the different systems of modern law which have derived from Rome marking particularly the details in which they are similar or different from the original Roman law, or the study might be confined to one particular system of law such as our own and a detailed analysis made of its Roman basis. Or one might even make an analysis of the basic concepts of Roman law and compare them with analogous ideas in modern systems. In short the field that can be covered is vast and varied. But in this paper it is proposed to consider in a general way the three broad aspects of Rome's influence on modern law which may be said to be most important. The matter for consideration may be formulated as follows :—

First, we shall examine the influence of Roman ideas in the field of Public law, that is in that area of law which governs the relation between the individual and the State and between States themselves.

Second, we shall consider briefly the influence of Roman law in the realm of private law, that is that part of law which regulates the relation between individuals. Particular attention will be paid to this aspect, as it would appear to be especially significant for us in Ceylon.

Third, of no less importance is the impact that the method and mechanism of Roman legal thinking have had on modern jurisprudence and the value of Roman law as a subject of study.

(1) *The influence of Rome in shaping Public Law.*

This is an area in which Roman law has had little detailed influence. Roman ideas have had a general influence in shaping basic structure and direction but the working out of details has depended on other considera-

tions and factors. As Sir Arthur Goodhart points out, one reason for the popularity of Roman law is that "it is primarily concerned with private law as contrasted with public law."[1] However, there are three great conceptions in modern Public law which owe their origin to Rome.

First, we have the idea of the state which developed out of, but was not identical with, the Greek notion of the city-state.

Second, the idea of national sovereignty came from Rome.

Third, the aspiration towards an international polity and universalism was cradled in Rome.

The ideas of the state and national sovereignty are related. We can consider them as two facets of the same phenomenon.[2] In Rome there was never any doubt that the source of public authority was the people. The people alone had the right to make laws and issue commands—the people alone could defend the interests of the city. The whole public law of Rome was based on this notion of popular sovereignty.

At the same time the organ of the people was the Roman state, the *Respublica*, which was superior to each individual that composed the state. The State had unlimited authority over the Roman people and the individual and had the power to exact the sacrifice of the individual's personal interests for the common good. The State could impose social discipline. Even when the city grew into the Empire the State retained the same characteristics. The absolute authority of the State was as noticeable in the later Empire as under the kings. As a result, for instance, a man could be made *curialis* (a member of court) even against his own wishes. Indeed, it was this conception of the State that made possible the kind of State socialism found after the time of Diocletian. Essentially, then, the State was for the people, representative of the people and operated with the consent of the people.

The Roman idea of the state as an instrument of the people gave rise to the idea of the civil servant as a servant of the state to whom the power of the state was delegated for the purpose of its exercise. As a consequence the civil servant partook of the *maiestas* (sovereign power) of the *respublica*.

1. "What is Common Law ?", 76 Law Quarterly Review (1960), p. 45.

2. For much of the material on this aspect I am indebted to Meynial, "Roman Law", in *Legacy of the Middle Ages* (ed. Crump & Jacob), p. 363.

The Emperor, who was the arch-civil-servant, became absolute master with *maiestas* from the time absolute or imperial power was confided to him. Another consequence was that the authority of the civil servant was regarded as belonging to his office and not to his person. He had no right of transmitting his powers by succession or otherwise nor could he extract profit from his office as from private property. His office was exercised in the name of all the people and in the interests of all the people. This conception of the civil servant as a public official is fundamental to Roman thinking.

It is true that later, in the case of the emperor, the pure conception of delegation was corrupted by the influence of oriental ideas of personal power so that the hereditary transmission of the throne became possible as did the use of the *fiscus* (treasury) as the Emperor's privy purse. But these were practical deviations allowed by way of compromise. No serious doctrinal consequences followed, nor did they affect the position of the civil servant in general.

One might have observed already that these ideas of public law, the sovereignty of the people, the representative state and the civil servant-delegate are fundamental to modern democratic systems. In the case of the Communist State or the Fascist dictatorship we must confess that the basic notion of popular sovereignty has suffered something of an eclipse. Thus, it is in the modern democratic state that we find the real Roman ideas perpetuated.

However, it was not without competition that the Roman ideas survived. In the course of the medieval invasions the Roman public system broke down. The basic notion of feudalism, namely personal fealty, obtruded itself. The structure of feudalism had for its central figure the chieftain to whom the people, organised in tribes or semi-nomadic bands, owed their loyalty because he was born into his position of chief. There was no delegation of power, no notion of popular sovereignty. The King was merely the arch-chieftain to whom the chieftains owed allegiance *ipso iure* and *ipso facto*. It is on this barbarian conception of social structure that those Royal houses which still exist in Europe sprang up.

When the renaissance of Roman law was inaugurated in the 11th and 12th centuries, the abstract conception of the Roman state reappeared. The Church with its expanding range had prepared the minds of men for this idea. The King and the chieftain had been weaned from their selfish

desires by the insistence of the Church on the duties and responsibilities of their *office* to God. The Church had emphasised the reign of peace on earth, the fundamental importance of justice and equity, charity and love and the protection of the weak. The substance of the Church's teaching was the same as the Roman idea, though in form it was different. Its effect was to make the king and the chieftain the servant of the public interest. But it is important to emphasize that the change from the feudal idea to the older Roman idea, although facilitated by the Church, was theoretically accomplished by reference to Roman legal doctrine. It was a text of Justinian that was used to supply the exact foundation of the doctrinal change.

The text reads as follows :—

> "Sed et quod principi placuit, legis habet vigorem, cum lege regia, quae de imperio eius lata est, populus ei et in eum omne suum imperium et potestatem concessit."[3]

(Translation)—But what the Emperor has decided has the force of law, because by the Royal law which has been passed concerning his authority, the people has transferred to him and placed in him all its authority and power.

This text reconciles two phases of constitutional doctrine. First, it embodies the principle of popular sovereignty which can be traced back to the earliest period and is found concretely expressed in the formula of legislation *senatus populusque Romanus*, the senate and the people of Rome. The right to command and make law was vested in the people alone. The second principle expressed therein recognizes the supremacy of the Imperial will which took the place of popular sovereignty in the later Empire. The two principles were reconciled by reference to the concepts of delegation and respresentation. Delegation was at first an actuality when the *Lex Regia* was passed at the beginning of the reign of each Emperor which expressly authorised the delegation. Later it became a fiction and the delegation was regarded as implied. Thus Imperial absolutism was made compatible with the basic doctrine of Roman public law.

Medieval thinkers were impressed by the former principle—the principle of popular sovereignty and it finds a prominent place in the thinking of Aquinas and Bartolus, for instance. But the wars of the 16th century made plain the dangers of the extreme democratic view and in-

3. Justinian, Institutes 2.1.6.

clined the mind of man towards the problem of justifying the absolute powers of the prince. Thus Hobbes exalted despotism but only because it was based on the delegation of power by the people. Hobbes' notion is basically the same as that to be found in Justinian. But in the 18th century the theory of absolute sovereignty was breached and Rousseau led the way in proclaiming that popular sovereignty was inalienable and that royal power was limited and revocable. This was a recognition of the theory of delegation which logically led to a qualification of absolutism. And, strange as it may sound, all these theories were based on that same text of Justinian.

The present theory of the democratic state also stems from the Roman idea of popular and national sovereignty, though it has modified, in line with Rousseau's thinking, the absolute power of the ruler or the governing body.[3a]

The third idea, that of Universality, was also given to the world by Rome. It was brought to fruition in the development of her legal system. Other cities of classical times were committed to the narrowest parochialism. Rome resisted this tendency. Rome brought together under her aegis thousands of cities united in a bond of peaceful progress and mutual respect. By regular steps she led up to the same degree of civilization men of widely different races. She satisfied local peculiarities, while at the same time the traits common to all humanity were exalted. With the whole known Western world subjected to her laws she went far towards realizing the ideal of a universal rule of equality over all its races. Christianity merely gave a different spiritual meaning to an ideal which Rome inaugurated.

The unity achieved by Rome's empire was broken up by the Germanic invasions. They created a forest of petty local sovereignties jealous of their autonomy and in a perpetual state of war with each other. But the subjugated people cherished the idea of the *Pax Romana*. As a result of the Church's influence an effort was made to restore the universal bond. First, the Roman Empire of the West and then the Holy Roman Empire expressed this aspiration. But stuborn facts obstructed these efforts and national kingdoms developed where there prevailed highly distinctive features distinguishing them individually from the world without. Roman law, i.e. Roman private and public law, then filled the role of the unifying agent.

3*a*. Otto Kiefer, however, sees the will to power behind Roman ideas: *Sexual Life in Ancient Rome*, pp. 65, 67. It is submitted that this does not affect the theory commonly held and reflected in the text here.

The universal compass of its moral authority and its practical usefulness made it appealing to all. It also ensured the acceptance of the same ideas of equity and social justice, discipline and administrative order. It brought the kingdoms together in a common civilization. It united scholars in a great commonwealth of thought. Education was open to all from all parts, universities were universal and there came a renaissance of Roman law. The second renaissance came about after the local wars and jealousies of the 16th century. The ideal of a universal republic came back to life. This is what fired the French Revolution.

The idea of universality found its quickest and fullest development in the middle ages in spite of local feuds and wars in the internal life of certain countries. For instance, in France the 13th and 14th centuries saw the educated classes drawn closer by the intercourse of common universities. The Royal houses, moreover, called to their councils the intellectual pick of every province and sent them forth as governmental representatives into the country. The idea of the Roman Empire developed into a model for a central bureaucracy for the government of the provinces. Absolute monarchy was inaugurated and it went forth in the footsteps of the Roman state. Centralization was brought about and it was this beginning that the revolutionary leaders, intoxicated with the strong wine of classical democracy, made more complete.

The modern democratic state progresses along the same lines and the modern aspiration for universal unification is to be traced back to the much simpler Roman ideal. The League of Nations, the United Nations, indeed, the growing respect for international law and order are merely fruits of a seed sown over twenty centuries ago.

Apart from the *ideal* of universality, the Roman contribution to the formation of the conception of international law *cannot* be overestimated. The Greeks had developed the idea of the city-state *par excellence* but they also demonstrated that provided independent and sovereign states had common interests, they could live together in a community. However, the rules binding upon such states in their mutual relations were conceived as of religious significance and not of a particularly legal quality. The Romans, on the other hand, were both keenly conscious of the *legal* character of law and paid special attention to their relations with foreign nations. Although ambassadors were always regarded as inviolable, an idea that survives today, the relations of Rome with a foreign state depended

on whether or not there existed a treaty of friendship between it and Rome. These treaties were regarded as binding and often contained a provision according to which future controversies should be settled by arbitration of the so-called *recuperatores*. Roman law regarded war as a legal insitution. There were four different "just" reasons for war. (i) violation of the Roman dominions; (ii) violation of ambassadors; (iii) violation of treaties; (iv) support given during wars to an opponent by a hitherto friendly state. But war could only be declared if satisfaction was not given by the foreign state. There were no rules governing the conduct of the war but as regards its termination some rules existed. Moreover, treaties with foreign states had special effects in Roman municipal law. To sum up one might quote Oppenheim :

"It thus appears that the Romans gave to the future the examples of a state with legal rules for its foreign relations. As the legal people *par excellence*, the Romans could not leave their international relations without legal treatment. And though this legal treatment can in no way be compared to modern International Law, yet it constitutes a contribution to the Law of Nations of the future, insofar as its example furnished many arguments to those to whose efforts we owe the very existence of our modern law of nations."[4]

Later the civilians were in their commentaries on the *Corpus juris Civilis* to touch upon many questions of the future international law, which were discussed from the basis of Roman law. The Roman stock of conceptions was initially accepted as the basis of international law by Grotius and his successors.[4a] Private law analogies from the Roman law have been used in the formation of rules for international law.[5] For example, the Roman law notion of servitude, a right over property belonging to another, has provided the basis for a similar concept in international law so as to enable one State to have certain rights *in rem* over the territory of another State.[6] Also the law relating to the acquisition of territory by a State has been cast in a Roman mould.[7] In most cases, however, developments and

4. Oppenheim-Lauterpacht, *International Law* Vol. I (8th. edn.), p. 77.

4a. Yntema, "Roman Law as the Basis of Comparative Law," in *Law: A Century of Progresse* Vol. II, pp. 346-349.

5. See Lauterpacht, *Private Law Sources and Analogies, passim*. See also a note on "The Influenc, of Roman Law on International Law" in 1 Tulane L. R. 120.

6. *The Aaland Island's Controversy*, League of Nations Official Journal, Special Supplement No. 3, p. 17.

Oppenheim-Lauterpacht, *op.cit.* note 4, p. 535; Mcnair, "So Called State Servitudes," 6 *British Yearbook of International Law* (1925), p. 111.

7. Oppenheim-Lauterpacht, *op.cit.* note 4, p. 545; Maine, *International Law*, p. 20; Jenks *Common Law of Mankind*, p. 417.

additions of international life require that legal ideas proceed far beyond the confines of the original Roman analogies. It may be mentioned here that the veto in the Security Council has been traced to the Tribunicial veto by Rome.

"The principle of unanimity or the veto powers of the five permanent members of the Security Council of the United Nations may be said to derive historically from this development of Roman law, particularly from the institution of the veto or negative power (intercessio) of the plebians."[8]

As Maine points out, in general

"a great part .... of international law is Roman law, spread over Europe by a process exceedingly like that which, a few centuries earlier, had caused other portions of Roman law to filter into the interstices of every European legal system."[8a]

(2) *The influence of Roman Law on Modern Private Law.*

The private law systems of the world, whether in the East or the West can be broadly divided into three main categories. There are those which derive from the systems of the European continent, which might be termed the Civil law systems of law, there are those developed out of the English law, known as common law systems and finally we have the Communist system of law.

In the present connection, the latter does not call for particular consideration. In so far as revolutionary ideas based on Marxist theories of society were introduced into the countries in which the system prevails, those legal systems have no relation to Roman law as such, while in the case of many of these countries in so far as they retained some vestiges of the system previously obtaining in them, their systems would be direct derivatives of the civil law systems.

That leaves us with the other two categories of legal systems—the Civil law systems and the Anglo-Saxon systems. The Civil law systems are truly based on Roman ideas while the systems of English vintage only felt the touch of Roman ideas.

8. Franklin, "The Roman origin and the American Justification of the Tribunitial or Veto Power in the Charter of the United Nations," 22 Tul. L.R. (1947), 24.

8a. *International Law*, p. 20. See also Westlake, *International Law, Part I*, p. 15, Anzilotti, 1 *Cours de Droit International* (translation by Gidel), p. 2. and Jenks, *Common Law of Mankind*, pp. 13 and 146.

Other systems which existed in the past have, for the most part, only a piecemeal existence today, being generally valid only in well-defined areas of private human relations mainly personal and testamentary law. I refer to such systems as Muslim and Hindu law, Jewish law, Kandyan law and the Thesavalamai. The Scandinavian systems are a notable exception. They have a personality of their own, but even there the Roman influence has been felt.[9]

(*a*) *The Civil Law Systems.*

Of the leading systems, let us consider the Civil law systems first. Here we find a further bifurcation. Most Civil law systems have been codified whether such codification was originally adopted or imposed by force. Thus, in the former colonies of such powers as France and Germany we find the codified civil law. Though largely based on Roman ideas these codes contain several modifications and novelties. However, there is still the system which obtained in Holland before the codification in that country which survives uncodified in South Africa and Ceylon. The modern Roman-Dutch system is a combination of Roman law and Teutonic custom with some injection of English legal ideas. But the Roman element is still quite strong.

Surveying the prevalence of the Civil law systems in the world, one could make the following observations.

In Europe, the Roman law forms the basis of the systems established in Scotland (although here since the Act of Union the influence of the English common law has been strong), the Channel Islands, France, Belgium, Holland, Germany, Switzerland, Spain and Italy. In all these countries except the Channel Islands the law has been codified in one form or another. The Roman law even had an influence in forming the pre-revolutionary law of Russia. Roman law is also the basis of the law of Malta which has now adopted the Italian Civil Code.

In Asia, the Roman Dutch system survives in Ceylon and Roman law is the basis of the legal systems of the former American, Dutch, French and Spanish colonies.

9. See Gomard, "Civil Law, Common Law and Scandinavian Law", *Scandinavian Studies in Law*, (1960), p. 27. Certain sections of the Middle East are also exceptions in that they are governed by Islamic law: See Bryce, 1 *Studies in History and Jurisprudence*, p. 74.

The Mediterranean coast of Africa follows the Roman tradition, while Egypt has a Civil code on the French model. Mauritius and the Seychelles, the Ile de Bourbon and Madagascar have Civil systems. The Roman-Dutch law prevails in South Africa, Southern Rhodesia and South West Africa.

South America and Mexico belong to the Civilian tradition with the exception of British Guiana where the common law has superseded the Roman Dutch law, and British Honduras. In the West Indies, the island of St. Lucia has a Roman system. North America consists largely of common law jurisdictions with the exception of the province of Quebec in Canada and the State of Louisiana in the United States which retain their Roman ancestry.

It is significant that as between the Civil law and the common law where a country has had a choice, the Civil law has been preferred. One might be permitted to quote a leading exponent of the common law, Sir Arthur Goodhart, at this point:

"When Turkey, in 1926, decided to replace its antiquated legal system by a modern one, it took its criminal law from the Italian Code and its civil law from the Swiss and German ones. In the same way, Japan based its new system on Continental law, in spite of its close commercial relationship with Great Britain and the United States. These are only two illustrations of the fact that whenever there has been a choice between the common law and the Roman law which is, of course, the basis of the modern continental codes, the decision has always been in favour of the Roman law."[10]

For our purposes, we might consider the general influence of Roman law on the development of the Civil law systems as such, looking for the more significant trends since only a general account can be given here. We might summarise the position by saying that there is almost no legal field in which the influence of Roman law has not been felt while there is none in which it has operated unalloyed.[11]

10. *Op. cit.* note 1, p. 45.

11. A few detailed and specialist works on the survival of Roman law in the civil law systems might be mentioned: Sherman, *Roman Law in the Modern World*, 3 vols; Lee ,"Civil Law and the Common Law—A World Survey," 14 Michigan Law Review (1915), p. 89; Lee, "Roman Law in the British Empire," Atti de Congresso Internationale de Diritto Romano (1935), p. 265; Lee, "Modernus Usus Juris Civilis," 22 Tulane Law Review (1947), p. 131; Bryce, Studies in History and Jurisprudence, Vol. I, 85 ff; Wood Renton, "Foreign Law in the British Empire," 23 Round Table (1933), p. 362; Lawson, *A Common Lawyer looks at the Civil Law*, p. 91 ff; Wylie, "Roman Law as an Element in European Culture" 65 *South African Law Journal*, (1948), p. 4 ff, 349 ff, Beinart, "Roman Law in South African Practice" 69 *South African Law Journal* (1952), p. 145; Fisher, "Scotland and the Roman Law," 22 *Tulane Law Review* (1947), p. 13; Stein, "The Influence of Roman Law on the Law of Scotland" (Mimeographed).

In the law of property Roman influence appears most clearly. The whole conception of ownership, its attributes and its bounds is taken directly from Roman sources, though the distinction currently made between movables and immovables is not basically Roman.[11a] Similarly, the analysis of the distinction between ownership and possession is of Roman origin. The action and sanctions pertaining to the right of ownership derived from the Roman *rei vindicatio*. But these basic ideas of property law did not find acceptance without a struggle. In France, for instance, it was not until 1789 that the simple Roman conception of indivisible ownership triumphed over the piecemeal tendencies of the feudal doctrine of estates. In other parts of Europe it took even longer.

The Roman notion was that ownership was absolute in the sense that the owner's title was not merely better than others but the only title to a thing. A person was either an owner or not an owner. The doctrine of estates is built on a notional entity which can be carved up according to various principles. The object is to permit a settlor to prevent permanent alienation of property, whilst permitting its alienation for limited periods. Roman law made provision for the temporary use of things, especially land and slaves, by resort to three methods:

(*a*) the contract of hire which permitted a tenant to rent the land;

(*b*) the usufruct which permitted life interests in property ;

(*c*) the *fideicommissum* which permitted the settlor to leave property with a restriction that it should not be alienated but should pass on to the heirs of the beneficiary.

The first alternative was entirely contractual and had no repercussions on the law of property. The second created a real right or right *in rem* which was protected against any person who acquired the ownership of the land. The third method originally operated strictly *in personam* and had no effect on the property aspect, but later the prohibition against alienation was given effect *in rem*, though not against a *bona fide* purchaser for value. This modification of absolute ownership facilitated the construction of family settlements. The *usufruct* on the other hand was conceived essentially as a right *in rem* to use a thing and appropriate its fruits. It was used particularly to provide for a widow and was thought of as a right in some one else's property. But sometimes it was regarded as part of the ownership into which it could merge without express conveyance

11*a*. The distinction existed in Roman law but was not of importance; see e.g. Digest 41.1.60 43.16.1.6 and 7, 43.20.4.

to the owner. However, the usufructuary did not have legal possession of the thing, although a remedy was given him to protect his possession. It would seem that the usufruct was more or less an estate.

The modern civil notion of property follows this pattern as far as ownership is concerned. Absolute ownership, usufruct and *fideicommissum* all survive in more or less the same way in which they existed in Roman law. This structure has been criticised on conceptional grounds[12] but it still persists as the basic structure of the Civil law of property.

Further, the Roman law of property is still referred to in particular details especially in the Roman-Dutch systems. For example, the rule that a servitude once constituted can only be altered by mutual consent which is not the case where a servitude is created *simpliciter* is fully recognised, as in the old Roman law.[13] The Roman interpretation of constructive delivery for the purpose of transfer by *traditio* is also current in the acceptance of the notions of *constitutum possessorium* and *traditio longa manu*,[14] i.e. respectively, the notion that delivery takes place where the transferor already holds the thing on agreement between the parties to the transfer that the transferor should continue to keep the thing as a bailee and the notion that delivery takes place where the transferee already holds the thing when there is agreement between the parties to the transfer that the transferee should continue to hold the thing as owner.

Yet in the field of property there have been modifications of the Roman law as in the case of the lease. In some fields the law has been extended as where a trustee of a Mosque has been held to have possession sufficient for the issue of the possessory interdict *unde vi*[15], a position unknown to the Roman law. The Roman law of mortgage, on the other hand, has suffered considerably under the influence of the Teutonic law and statute in the Roman-Dutch jurisdictions.[16]

The law of obligations fell more quickly under Roman sway. Barbarian practices and theory were rudimentary and inadequate for the widespread juristic relations of trade and industry. In its fine analysis of

12. Lawson, *A Common Lawyer looks at the Civil Law*, pp. 112 and 205.

13. Digest 8.1.9 in *Gardens Estate Ltd.* v. *Lewis* 1920 Appellate Division, p. 1144 (South Africa).

14. Digest 6.7.7 and 41.2.18 in *Goldinger's Trustee* v. *Whitelaw and Son* 1917 Appellate Division, p. 66 (South Africa) and Digest 41.2.1.41 in *Groenewalde* v. *Vander Merwe*, 1917 Appellate Division p. 233 (South Africa).

15. *Abdul Azeez* v. *Abdul Rahiman Mudliyar* 1911) Appeal Cases p. 746.

16. See Lee, *Introduction to Roman-Dutch Law*, (1953) p. 183 ff, and the Mortgage Act No. 6 of 1950 in Ceylon.

the intention of the parties, its reasoned elaboration of the elements and effects of contracts Roman law stood alone and without rival in the Middle Ages. Roman law was studied and applied in this field so that customs were superseded by it and by the 13th and 14th centuries we find the Roman law of obligations fully accepted.

In the field of contract, the Roman jurists had worked out a system which required something more than mere agreement for the creation of a binding legal relation. This something more was identified either in terms of form as in the stipulation or by reference to particular situations of fact which were given legal significance. A bare agreement (a *nudum pactum*) was not legally valid in general. So much so that Ulpian could say "Sed cum nulla subest causa propter conventionem hic constat non posse constitui obligationem."[17] ("But when no *causa* obtains, it is accepted in this case that on account of the mere agreement an obligation cannot be formed".) *Causa* was a legal figure, not generally defined but having concrete significance. As Lawson points out the four consensual contracts, sale, hire, partnership and mandate were the product of analysis which reduced "the greater part of normal business activity to four simple processes" and worked out their implications.[18] Apart from these, stipulation or the formal contract was the most important recognised form of contracting. Other recognised *causae* for contracting also required something more than mere agreement.

However, the legally recognised *causae* were well settled. The modern civil law systems while accepting much of the Roman law on the implications of the consensual contracts have advanced beyond the Roman conception of *causa* and generalised it to such an extent that it means no more than a voluntary, serious and deliberate intention of the parties to enter into contractual relations.[19] The English notion of consideration or *quid pro quo*, on the other hand, is distinctly not identified with the modern meaning of *causa*.[20]

In the application of what is basically the Roman law of contract, English and American decisions were often cited in South African and Ceylon courts but this is generally not at the expense of the Roman law. This is so especially in commercial and maritime matters. In Ceylon, of

17. Digest 2.14.7.4.
18. Lawson, *op. cit.* p. 133.
19. *Conradie* v. *Rossouw*, 1919 Appellate Division p. 179 (South Africa).
20. *Jayawickreme* v. *Amarasuriya*, (1918) Appeal Cases p. 869 (P.C.), 20 New Law Reports p. 289.

course, statute has replaced the Roman-Dutch law in many matters classified as contractual, e.g. partnership and sale of goods. But this is in particular fields. The general principles of the law of contract remain basically Roman.

Some examples may be given of reference to Roman texts in the application of contractual law in the Roman-Dutch systems.

(i) In a contract of lease, where a landlord fails to execute those reasonable repairs which the common law requires him to do, the tenant may effect such repairs himself and deduct the cost from the rent.[21] This is a rule stated in the Digest 19.2.25.2.

(ii) Where there are redhibitory defects in a thing bought, the buyer could in Roman law bring an *actio quanti minoris* for recovery of a part of the price which was apparently the difference between the price paid and the price the buyer would have paid if he had known of the defect.[22] In the modern Roman-Dutch law the buyer has the same action but the amount recovered is the difference between the price paid and the value of the defective article.[23]

(iii) In the contract of pledge a *pactum commissorium* is illegal, because it is too oppressive to debtors following Code 8.34.3.[24]

In the allied field of quasi-contract modern civil law systems have generalised a doctrine of unjust enrichment from Roman models.[25] In a South African case reference was made to several Roman texts when an action was allowed in quasi-contract.[26]

Of delict especially in the codified systems it might be said that there has been generalisation beyond recognition. The position is best described in the words of Lawson :

21. *Paynton v. Cran*, 1910 Appellate Division p. 205 (South Africa), *Caneyenagem* v. *Dixon*, (1859) 1 Lorenz p. 2.

22. Digest 19.1.13; 21.1.61.

23. *S. A. Oil and Fat Industries, Ltd.* v. *Park Rynie Whaling Co. Ltd.* 1916 Appellate Division p. 400 (South Africa).

24. *Mapenduka* v. *Ashington*, 1919 Appellate Division p. 343 (South Africa).

25. See Dawson, *Unjust Enrichment* and Buckland and Mcnair, *Roman Law and Common Law*, p. 336, See also *Hassanally* v. *Cassim*, (1960) 61 New Law Reports p. 529 (P.C.).

26. *Van Rensberg* v. *Straighan*, 1914 Appellate Division p. 400 (South Africa). Texts refered to were Digest 12.6.14, 26. 8. 5. pr., 50.17.20.6.

"But nowhere does the law look very Roman. For the Roman law of delict, like the common law of tort, is based on separate actions designed to enforce liability for specific delicts. There are actions for various kinds of theft, another one for robbery, another for insult and personal injury, and a number of actions for negligent damage to property, to say nothing of actions for fraud, intimidation and the like. There is also a separate head of quasi-delict, under which are grouped several actions which seem, though by no means certainly, to have for their object the enforcement of vicarious liability on a strict basis.

The modern law seems to be a compound of customary and Roman elements fused together by the natural lawyers. The standards of conduct which it enforces and failure to conform to which it stigmatizes as fault, come from Roman Law and especially from the Roman law of damage to property, which had grown up around the Lex Aquilia. That statute had made persons liable for certain kinds of damage done contrary to law, which by the classical period had come to mean intentionally or negligently. This requirement of fault was maintained in all the other actions which gradually extended the scope of liability to almost all other kinds of damage. It has been retained in the modern law, which, as has already been stated, bases liability clearly on fault.

On the other hand, the modern civil law has no forms of action in delict or indeed anywhere else. The Roman actions have entirely disappeared, theft and robbery are no longer regarded as belonging to Civil law; they have passed over entirely to criminal law."[27]

In the Roman-Dutch jurisdictions the Roman action for *iniuria* survives in a developed form and liability for animals is still referred to the old Roman actions, while there have been interpolations from the Teutonic law such as the action for loss of services caused by death which was not recognised in the Roman law.[28]

Some examples of direct reference to Roman law in these jurisdictions may be mentioned:

(i) Under the Lex Aquilia, liability was limited to responsibility for commissions, omissions being excluded: Digest 9.2.7.8. This is the modern law: if a road authority does nothing to repair a road it is not liable, whereas if repairs are done there is liability for a negligent misfeasance.[29]

27. Lawson, *op. cit.* p. 153.

28. *Union Government* v. *Warneke*, 1911 Appellate Division p. 157 (South Africa), rejecting Digest 9.3.1.5; See *Carolis* v. *Don Bastian*, (1819) 2 Supreme Court Circular p. 184.

29. *Halliwell* v. *Johannesburg Municipal Council*, 1912 Appellate Division p. 659 (South Africa).

(ii) The law of contributory negligence is based on the Roman concept of *culpa compensatio* found in Digest 9.2.9.4.[30]

(iii) The diversion of underground water, if done maliciously, has been held to be unlawful if it causes damage to a neighbour, following Digest 39.3.1.12.[31]

(iv) Recently in relation to liability for animals the *actio de pastu* of the Roman law was referred to as a basis of liability.[32]

(v) Joint wrongdoers are liable severally and jointly *in solidum*, following Digest 9.2.11.4.[33]

Family law, however, was shaped more by Christian and Teutonic conceptions than by Roman law. The Roman family was founded on narrow bases. Power and authority, imperative, absolute and unyielding of the *pater familias* formed the central core. An insufficient place was alloted to marriage and the common affections of the two parents one for another and for their children. The Christian idea of the family was much more attractive than the mechanical idea of Roman law.[33a] The Christian family was based entirely on natural ties of blood and mutual affection, the kinship of all whom those ties united was upheld and the personality of the child was reverenced even in the attitude towards discipline. Although Roman law had in the course of its development softened some of the harshness of its early conceptions, its foundations remained unchanged. The Teutonic family was more open to Christian influences than to the Roman because the feeling of common interest was regarded as more important than the dry, categorical imperative of discipline. The ordinance of marriage and the regulation of property arrangements within the family came under the influence of Canon law. The entire separation of interests between spouses and the unqualified protection of the property rights of married women as at Rome was rejected. The Church made the wife a partner for richer and poorer, for better or for worse, in the management of

30. *Lennon, Ltd.* v. *British South Africa Co.* 1914 Appellate Division p. 1 (South Africa) ; See *Vander Porten* v. *Morris* (1915) 18 New Law Reports p. 498.

31. *Union Government* v. *Marais*, 1920 Appellate Division p. 240 (South Africa).

32. *Van Zyl* v. *Kotze*, 1961 (4) South African Law Reports p. 214 (T) (South Africa).

33. *Naude and Du Plesis* v. *Mercier*, 1917 Appellate Division p. 32 (South Africa). For the Ceylon law see *Mack* v. *Perera*, (1931) 33 New Law Reports p. 179, and *Appuhamy* v. *Appuhamy*, (1928) Ceylon Law Recorder p. 36.

33*a*. A different view of Roman law is taken by Warde Fowler in *Rome* pp. 38, 41, 42. But the view stated in the text seems to be the better view.

the conjugal patrimony. Indeed, in places we see the Roman law specifically abrogated. Thus the rule in the modern Roman-Dutch law is that two persons who commit adultery may marry when free to do so contrary to Digest 4.9.13 and Novel 134.12.[34]

But this is not to say that Roman law played no part in family law. For instance the institution of guardianship[35] and the doctrine of *restitutio in integrum ob aetate* in the case of incapacities progressed in the Middle Ages and survived in modern law because of Roman law.

In the field of succession, Roman law forced intestate succession into the background. Normal succession was by will. Death was regarded as a misfortune which required providing for in advance and it was a significant point of departure for changes in property and other rights. The will was all important, for it was a starting point and it is significant that in testate succession assumption of title by the heir and the commencement of administration were not automatic but depended upon some act of the heir himself.

The Roman idea that a man's property devolves as a single whole has been accepted into the modern law while the law of testate succession has hardly changed since the time of Justinian. The theories governing the payment of the debts of the deceased and the rights of legatees are also Roman. A significant departure from the Roman law is to be found in the treatment of *legitim* or the reserved portions. The modern Roman-Dutch systems have accepted the non-Roman principle of complete freedom of testation, while the rules governing *legitim* in continental systems are not Roman at all. Moreover, in South Africa and Ceylon the figure of the English type of executor has infiltrated from the English law and the heir has become more or less a residuary legatee.[35a] The law of intestacy is, on the other hand, almost totally of non-Roman origin in all civil law systems.

As examples of direct reference to Roman law in Roman Dutch law in the field of testate succession one might refer to:

(i) the rule that advances even though they are debts must be accounted for when a *collatio bonorum* of property is made,[36] and

34. *Estate Heinamann* v. *Heinamann*, 1919 Appellate Division p. 99. (South Africa) ; *Rabot* v *De Silva*, (1909) 12 New Law Reports p. 81.

35. For an outline of the Roman-Dutch law see Lee, *Introduction to Roman Law*, (1953), p. 98 ff.

35a. *Malliya* v. *Ariyaratne*, (1963) 65 New Law Reports p. 145.

36. *Estate Van Noorden* v. *Estate van Noorden*, 1916 Appellate Division p. 175 (South Africa) following Digest, 6.20.20.

(ii) the rule that a person who writes a will for another cannot take any benefit under it.[37]

There are examples also in the Roman-Dutch law of the Roman law being clearly modified or rejected. Thus the rule that an adulterine child has a right to succeed to its mother is directly contrary to the Roman law rule in Code 5.5.6.,[38] while Dutch practice has been admitted to permit a *fideicommissum* of property to be created by act *inter vivos* duly registered.[39]

As for legal procedure, barbarian theories of wager of law, narrow formalism and disingenuous subtleties gave rise to a shapeless mass totally unfit to stand up against the simple, clear orderly procedural mechanism of the Roman *formulae*. The Church played its part in securing the acceptance of Roman procedural methods but it was essentially their attraction that accounted for their easy acceptance. In Ceylon, however, procedure and evidence are governed by statute.

To formulate the leading idea in the part played by Roman law in the development of the modern civil law systems is not easy. But seen as a social phenomenon in a social context, Roman law may be said to have facilitated more than any other theoretical factor the passage of European societies from the economics of the agricultural family to the rule of commercial and industrial individualism, though it was not the sole factor. Roman law took the lead, which was crowned only in the French Revolution, for the emancipation of individual property from the ties of family and seigneurial collectivism—a primitive stage of development which Rome had left far behind when the impact of the Germanic invasion was felt. The Roman legal system was fully individualistic at the time of the Germanic invasions, although traces of the family concept still remained. The individual had absolute power over his property and the law of obligations in particular applied principles of individual consent and responsibility. These conceptions had been more or less fully worked out by the jurists. But there was a peculiar contradiction in Roman law. There was a veneration for the family incarnate in its chief, while at the same time

37. *Benischowitz* v. *The Master*, 1921 Appellate Division p. 589 (South Africa), following Digest 48. 10 and Code 9.2.3.2. and 3, *Arulampikai* v. *Thembu* (1944) 45 New Law Reports 457.

38. *Green* v. *Fitzgerald*, 1914 Appellate Division p. 88 (South Africa), *Wickramanayake* v. *Perera* (1908) 11 New Law Reports p. 171.

In Ceylon the rule is embodied in section 33 of the Matrimonial Rights and Inheritance Act 1876.

39. *British South Africa Co.* v. *Bulawayo Municipality*, 1914 Appellate Division p. 84 (South Africa).

See also *Ahamaddu Lebbe* v. *Sulerigamma*, (1916) 2 Ceylon Weekly Reports p. 208.

individual discretion was sanctified. The *pater-familias* became the champion of individualism although the members of the family were submerged. This archaic element was eliminated only by the acceptance of the Christian idea of the family. Roman individualism was the challenge that the Teutonic organisation of Europe based on feudal ownership and domination had to meet. Ultimately in the twelfth century the Italian renaissance brought back the principles of the Roman law and they came to stay, although it took seven centuries before their triumph was achieved in certain parts of Europe. In the case of the Roman-Dutch law, the reception of the individualistic elements of Roman law was achieved quite early.

Codification, although it deprived Justinian's jurists of their binding force, has not prevented continued reference to them, and the Roman law continues to be present in spirit. It is important, however, that in the Roman Dutch systems Roman law is still a living artery.

(*b*) *The Common Law Systems*

Anglo-Saxon law, on the other hand, has preserved its identity, though it too has felt the incidental influence of Roman law.[40] A cultural interest in Roman law was first shown in the time of the first Italian renaissance. It was studied certainly at Canterbury and perhaps at Oxford. Indeed, this led to the use of Roman classifications by one of the earliest English legal writers, Bracton.

But in the 12th and 13th centuries the operative influence of Roman law was significant. A clear instance of borrowing is to be found in the Assize of *novel disseisin* which originated from the Roman action *unde vi*. This action related to the protection of possession.

English Law experienced a bifurcation in the 14th and 15th centuries. The jurisdiction of the chancellor to administer law was recognised. This jurisdiction existed apart from the authority of the ordinary courts of the common law. In a very real sense the scope of the chancellor's jurisdiction, known as Equity, was to supply the inadequacies and correct the errors of the common law of England. Indeed, we find that some very important areas and concepts of modern English law are to be attributed to Equity which has now been fused into a corporate system with the common law.

40. On this subject see *inter alia* Lee "The Introduction of Roman and Anglo-Saxon Law," 61 South African Law Journal (1944), p. 153; Holdsworth, *The Influence of Roman Law on Equity, passim* Lévy-Ullman, *English Legal Tradition, passim*; Plucknett, *A Concise History of the Common Law, passim.*

In the early period of Equity, at its very inception in fact, we find that Roman law had some influence in determining its development. Some of the fundamental concepts of Equity, such as the Trust, are clearly and purely English, but when equity assumed the jurisdiction over legacies and the administration of wills from the ecclesiastical courts certain Roman concepts were also taken from them. In the discussion of cases arising in this field frequent reference was made to the Roman law. Moreover, there was another source of indirect influence. The Chancellor and lawyers in the courts of equity were learned in the Roman authorities which, if not consciously, at any rate, unconsciously guided their thinking. On the other hand while admitting that the Roman law had some influence on the development of English equity we must take care not to overemphasize this influence. On the whole, English Equity is peculiarly English and was framed in an English mould.

It has been said that during the period 1600 to 1900 Roman law found some place in English law and that Lord Mansfield in particular used Roman sources in the application and development of English private law. However, the evidence seems to show that this was not really the case. Even in the Admiralty Courts which administered the Law Merchant, only the Roman law origins of that system could be detected. The particular form it took in those centuries was not affected by Roman authorities. In short, even in these courts where Roman law showed signs of survival, it was merely one of the many features in a constantly receding background. There was little direct use of the Roman law even in this department.

English law, on the whole, remained stubbornly English and persistently resisted the overpowering attraction of the Roman system. The more English law developed the less use did it make of Roman models. Indeed, Roman law was strictly relegated to the precincts of the Universities, a subject for academic study and comparison at best.

(3) *Roman Legal Method in Modern jurisprudence and the Study of Roman Law.*

Finally, we come to a consideration of the Roman legal method in modern jurisprudence and of the value of the study of Roman law. Roman law in its essential and fundamental aspects was not developed by legislation. There were important statutes such as the Twelve Tables but the private law of Rome developed primarily through the progressive interpretation and gradual formulation of custom. Enactment as such was definitely

regarded as a much less important source of development. Even the Praetorian edict which played a large part in the later development of the law was based on what may be called the common or customary law. Moreover, even in the application of statute law, the same method of juristic interpretation was used.

The unenacted law was not a confused mass but the steady tradition of a learned class, a tradition which was becoming more scientific and systematic. What was originally the department of the priestly class became later the function of a specially educated group of lawyers or *prudentes*. These were distinct from pleaders or advocates in the courts of law who did not necessarily have a technical knowledge of the law. As De Zulueta says "But the *prudentes*, as a class stood a little apart and distinct from the advocates; thus Cicero, though a good lawyer, was not *prudens*".[41] This class of jurist developed Roman law by reference to reason and logic. As time went on skilled jurists were given special authority in the courts of law so much so that at one time a law was required to settle conflicts in the opinions of those *prudentes* who had authority.[41a] Many of these jurists such as Proculus and Sabinus were teachers of the law and created schools of thought. Indeed, legal training was probably regarded as almost a specialized university training and these schools were more or less minor universities. Legal training was a science and a precise science at that. No doubt, the social aspect of this science was at the time eqully important. Whatever one may say about the Roman system it cannot be doubted that a proper legal training did not consist of a mere mechanical knowledge of the letter of the law. It was a constructive formation with a view to the development of law. The basic technique was that of using precedent and decided cases to extract principles applicable to a further case. This also is different from the construction of abstract principles derived from a philosophy.

The Roman spirit of logical reasoning infected the continental societies when Roman law was received into their structure. In spite of the codification that took place in the 19th century the same spirit prevails, although classical texts may not be binding authorities. In the Roman-Dutch systems they still are, where the law has not been modified by Dutch ideas. The attitude to law which regards it as a social science based on precedent and not a mere matter of letters or words is originally Roman.

41. "The Science of Law," in *The Legacy of Rome* (ed. Bailey), pp. 173, 193.

41*a*. The Law of Citations passed in the reign of Theodosius II and Valentinian III in 426 A.D.

In England, the study of Roman law in the universities, if it had little substantive effect on the law itself, yet infused a spirit of legal consciousness and responsibility into the training of legal minds and has certainly influenced the development of the common law through the actual process and methods of judicial decision. It will be noted that in the common law the inductive process is just as prominent as it was in Rome.

. This attitude to law as a living and growing organism is a true legacy of Rome: it might be called the science of law. The tradition has been transmitted to us here in Ceylon.

Similarly, the idea that a legal training had educational value was originally a Roman idea. As was mentioned above, there was a world of difference between the jurist and the pleader, between a Sabinus and a Cicero as far as legal education was concerned. The continental and English universities took up the study of Roman law and law in general in the same spirit of scientific interest. A good faculty of law in a university imparts an educational background which produces good lawyers—that is good legal thinkers and jurists, as opposed to mere pleaders, advocates, barristers or notaries. It does more than what a professional institution such as a law college does. The latter imparts a knowledge of the mere letter of the law or some of it, while the university trains the mind to understand the law and its bases, to appreciate its defects and virtues, to see it as an organ of society designed to fulfil certain desired ends. The university gives the lawyer a real *sense* of the law. This is essentially a Roman idea. That of the law college is not Roman.

In addition to the influence that Roman law has had on modern legal technique and also on the character of legal studies, Roman law has its own value as a subject of study for several reasons, particularly to us in Ceylon.

(i) Naturally, it demands study as the basis of a legal system still prevailing in a country such as Ceylon. As Holmes said, "the way to gain a liberal view of your subject is not read something else, but to get to the bottom of the subject itself."[42]

(ii) For a student of law, even apart from any direct practical value it may have, its "educational and scientific worth as forming and strengthening those habits of mind in which a lawyer's excellence consists"[43] cannot be overemphasized. Unlike English law, its chief rival, the Roman legal system had great coherence. As Viscount Bryce says,

42. Holmes, *Collected Legal Papers*, p. 197.

43. Bryce, *op. cit.* note 11, p. 488.

"There are two capacities or mental habits on which the distinctive excellence of a legal intellect chiefly consists—the power of applying general principles to concrete cases, and the power of enunciating a legal proposition with clearness and precision. Towards the formation of both of these the writing of the Roman jurists supply more aid than do those of their modern English rivals."[44]

The manner in which a Roman jurist handles a case, moving from concrete fact to principle and from theory to hard reality is a lesson in itself, so much so that Savigny could compare him to a mathematician calculating with his ideas.[45] The Roman jurist's mastery of understanding principle in terms of particular examples and of detecting in the individual case the governing principle was, one might say, unparallelled.[45a] Roman law has technical precision and in this sense it has value as a dialectical training.[46]

(iii) To the student of legal history and institutions it is indispensable. Not only does it exemplify a degree of maturity which is remarkable for a system that existed at such an early age of civilization but in its lucidity and breadth it affords a standard by which to judge the character of a civilization. The history of its own development shows how immutably law is geared to social conditions and how a system can sow its own seeds of change, while still avoiding caprice and arbitrariness. We can observe with Girard that,

"There is no teaching better calculated to prevent people looking upon the law of a given moment of history as either an artificial arbitrary accident at the mercy of the caprices of the legislator (the mistake of minds which are purely logical and ignorant of the mechanism of social life) or (as is rather the mistake of mere practitioners) as an immutable and eternal product."[47]

The history of Roman law over a period of over a thousand years affords a study of legal development through the application of the juristic method.

44. *Idem.*, p. 878.

45. As quoted by Byrce, *ibid*, from *Vom Beruf userer Zeit fur die Gesetzgebung und Rechtswissenschaft*, ch. 4.

45*a*. This is to be seen in the evolution of the *ius gentium* under the direction of the Roman jurists. Friedmann, *Legal Theory* (4th ed.), p. 50 and Moyle, *Imperatoris Justiniani Institutionum Libri Quattuor*, p. 61 deal with this point.

46. Girard, *Manuel Elementaire de Droit Romain* (trans. Lefroy and Cameron), p. 13.

47. *Idem.*, p. 15.

(iv) As a subject for comparative study or as a basis for comparative studies in law, it has several uses.

(*a*) First, it helps to give new insights into familiar conceptions of one's own law, just as visiting foreign countries illuminates one's appreciation of one's own country. As Lepaulle said,

"To see things in their true light we must see them from a distance, as strangers, which is impossible when we study any phenomenon of our own country. That is why comparative law should be one of the necessary elements in the training of all those who are to shape the law for societies in which every passing day brings new discoveries, new activities, new sources of complexity, of passion and of hope."[48]

(*b*) Second, it helps in the understanding of foreign legal doctrines and conceptions especially if these are based on the Roman law. In any event the training acquired in handling a different system of law which is adequately advanced and systematized, such as the Roman, will certainly facilitate the approach to other systems which may be necessitated in international trade and intercourse, not to mention the conflict of laws.[49]

(*c*) Third, it could provide a happy basis for a rapprochement between legal systems, especially between the English and Civil systems of law. Unification of law has practical value in facilitating international trade and intercourse. Ultimately, this is a desirable end in regard to all systems of law, and Roman Law, being such an important factor in modern legal systems can be of special value.

"Travailler au rapprochement des peuples en facilitant leur mutuelle intelligence" declares Lévy Ullman, "tel doit être aujourdhui l'objectif essentiel, telle est l'utilité fondamentale des etudes comparatives .. La legislation comparée doit tendre de toutes ses forces, dans le domaine plus vaste de la civilisation, dont elle est l'un des facteurs vitaux, à realiser l'idéal de cette Paix universelle pour laquelle ont versé leur sang les meilleurs des notres et, à laquelle jamais les hommes de toutes nations n'ont tant aspiré qu' aujourdhui."[50]

48. "The Function of Comparative Law" 35 Harvard Law Review (1922), pp. 838, 858.

49. For the value of comparative law for this purpose see Yntema, "Roman Law as a Basis for Comparative Law" in *Law: A Century of Progress*, Vol. 2, pp. 346, 366.

50. "D'Utilité des Etudes Comparatives" 1 La Revue du Droit (1923), pp. 385, 388.

(Translation:) "To work for the rapprochement of peoples by facilitating their mutual understanding, such ought to be the essential objective today, such is the basic utility of comparative studies .. Comparative law ought to lend all its powers, in the wider arena of civilization of which it is one of the vital forces, for realizing the ideal of this universal peace for which the best of our ancestors have shed their blood, and for which never have men of all nations longed for so much as today."

(*d*) Finally, foreign legislative experience is one of the most fruitful sources of suggestion in the formulation of new laws. This need for acquaintance with foreign legislation has led to the formation of various societies for Comparative Legislation. This is a purely utilitarian objective but, as Professor Yntema points out, it has been in use "from the time when the pristine Romans sent a delegation to Greece to examine the laws of the Hellenic cities as a preliminary to the drafting of the Twelve Tables, to more recent days when proposed legislation is often motivated by consideration of analogous provisions in foreign legal systems."[51]

(v) Of course, the study of Roman law as a part of a liberal education, whether in its historical, sociological, ethical or political aspect, is not something that should be discouraged. Roman law has its historical perspective in the context of the great civilizations that flourished. For the sociologist, it brings to light interesting facts of the structure of Roman society in many ways. Its ethical value is best attested by the opening passage of Justinian's Digest which cites Ulpian as saying,

"Iustitiam namque colimus et boni et aequi notitiam profitemur, aequum ab iniquo separantes, licitum ab illicito discernentes, bonos non solum metu poenarum, verum etiam praemiorum exhortatione efficere cupientes, veram nisi fallor philosophiam, non simulatam affectantes."[52]

(Translation:) "For we cultivate justice and we profess a knowledge of goodness and justice, distinguishing the fair from the unfair, discriminating between what is permitted and what is not, desiring to make people good not only by fear of punishments but also by encouragement through rewards, pursuing a philosophy which is true, if I am not mistaken, and not one which is specious."

51. Yntema, *op. cit.* note 49, p. 369.

52. Digest. 1.1.1.

The student of politics also will find much of interest in Roman law as a concrete product of a society striving to organize itself on a satisfactory political basis.

An attempt has been made to show very briefly and in outline how Roman law has influenced the modern world and consequently how important it is for us today, especially in Ceylon where the Roman-Dutch system still prevails. A description has also been given of the contribution that the Roman science of law has made and the justification, flowing from many factors, for the proper study of Roman law whether for the purposes of a correct knowledge of legal systems such as ours or in the context of wider objectives concerned with legal education, liberal training and progressive goals in a developing world.

As a fitting conclusion to this study, one may be permitted to quote the words of one of the greatest Romanists of our time, W. W. Buckland, one time Regius Professor of Civil Law in the University of Cambridge.

"Roman law, next to Christianity, was the greatest factor in the creation of modern civilization, and it is the greatest intellectual legacy of Rome."[53]

C. F. AMERASINGHE

53. Journal of the Society of Public Teachers of Law, (1931), p. 25.