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## Lawson: A Common Lawyer Looks at the Civil Law

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## RECENT BOOKS

A COMMON LAWYER LOOKS AT THE CIVIL LAW. By *F. H. Lawson*. Ann Arbor: University of Michigan Law School. 1955. Pp. xvii, 238. \$4.

The Cold War has made it evident that the fate of any people depends as much upon international as domestic factors. This means that any lawyer who would be effective in governmental service, either as a legislator, a civil servant or a Secretary of State, must know something about the cultural and legal mentalities of other nations. In short, comparative cultural philosophy and comparative law are becoming more and more necessary in legal education.

This is already recognized in the case of Soviet law. The introduction of Western political and legal forms into Asian and Islamic societies makes comparative studies of the modern Western and the classical Asian and Mohammedan cultural and legal mentalities equally important. Recent misunderstandings between the British and Continental statesmen with respect to political and legal collaboration in a European Union at Strasbourg and between American and French statesmen with respect to EDC demonstrate an equal need for a comparative understanding of the identities and differences between Anglo-American common law and Continental European civil law. The latter consideration gives practical as well as theoretical significance to the recently published Fifth Series of Thomas M. Cooley Lectures at the University of Michigan Law School. This series is by the Professor of Comparative Law of Oxford University and bears the title, *A Common Lawyer Looks at the Civil Law*.

Professor F. H. Lawson's comparative study has special significance for judges and lawyers in the United States. The civil law, as Professor Lawson shows, has unique formal scientific properties which derive from Roman law. When one relates these formal properties, as described by Professor Lawson, to Stoic Roman philosophy and to the Greek philosophy and mathematical physics by way of Scaevola and the later Roman and Byzantine jurists, it appears that the formal scientific properties which distinguish Roman and civil law from the common law depend upon a particular legal philosophy which affirms the thesis that moral and legal man is universal man. The effect of this Greek and Stoic Roman natural law philosophy upon Roman law was, through the idea of the *jus gentium*, to break moral and legal man free from the various family-centered and tribally-centered men of each particular *jus civile*, to identify the morally and the legally good with any man whatever regardless of his family and tribal status as determined by his color of skin. This legal philosophy, given modern content by Newton and the early John Locke of the *Lectures on Natural Law*, *The Letter Concerning Toleration*, and the treatise *Of Civil Government*, went into the Declaration of Independence through the mind and pen of Jefferson and into the Bill of Rights of the written Constitution of the United States due to the initial insistence of Jefferson.

It is from this natural law philosophy of Jefferson, the early John Locke and the Stoic Romans that the legal tradition for the judicial review of majority legislation in the light of the Bill of Rights derives. In fact it is very difficult to see how the recent unanimous decision of the Supreme Court of the United States with respect to segregation in education can be justified except by appeal to this natural law theory.

The analytical proof of this conclusion is as follows: The thesis that moral and legal man is universal man is the assertion that for anything to be good or just it must hold for any person whatever. Expressed symbolically, this gives:

$(p) : x$  is just =  $(p) x$ , where  $(p) x$  means that  $x$  holds for any person.

Substituting "The public educational system of any state in the United States" for  $x$  in the foregoing expression gives:

$(p) : \text{The public educational system of any state in the United States is just} = \text{This educational system must hold for any person.}$

It appears, therefore, that if contemporary judges and lawyers in the United States are to understand their own legal system and justify some, at least, of its contemporary Supreme Court decisions, they must understand Roman law as well as the common law. In fact, the early legal system of the United States and at least part of its present constitutional law have a content which is that of a theory of justice appearing first in Stoic Roman law and a form which is that of the common law.

In what do the differences between the form of the common law and that of the Civil law and Roman law consist? The major importance of Professor Lawson's book is that it provides an answer to this question.

His first general specification of the difference between the common law and the civil law is that the former is largely the creation of practical lawyers and judges in their handling and settling of disputes; whereas the latter, since the time of the Scaevolae, is largely the work of jurists, i.e., of legal scientists and professors rather than merely of practical dispute settlers.<sup>1</sup> This does not mean that the common law does not have theorists and theory or that the civil law and later Roman law did not have practicing lawyers and judges. What it does mean, however, is that in the common law, because of the primary role of the lawyers and judges in its creation, the cases tend to be at the focus of attention and to predominate over the generated and generalized principles; whereas in the civil law the reverse tends to be true. This difference shows in the fact that in the common law there are always cases for which no satisfactory principles are at hand and always principles for deciding certain cases which do not lie down comfortably with the principles used for deciding other cases. In the civil law, on the other hand, the theory, as in certain portions of mathematical

<sup>1</sup> LAWSON, A COMMON LAWYER LOOKS AT THE CIVIL LAW 69 (1953). References to Professor Lawson's book are hereafter included in parentheses following the quotation

physics, tends to outrun the cases or the facts, enabling one to construct and predict certain possible facts and cases which have never been found in fact.

The difference between the legal positivism of Austin and that of the continentally-trained Kelsen comes to the reviewer's mind in this connection. For Kelsen, the fundamental thing in the legal system is the *grundnorm*. This fits in with the mathematical physicist's deductively formulated conception of scientific method in which all the facts of a given subject matter are brought under a single set of minimum basic assumptions. British legal positivists, in the common law tradition, however, are very critical and suspicious of a single *grundnorm*. This shows even in the British trained Italian defender of natural law philosophy, Professor A. P. d'Entrevès of Oxford.<sup>2</sup>

The conception of scientific method of British legal positivists and of lawyers in the common law tradition, apart from the late Underhill Moore, is the more piecemeal, purely inductive natural history method of the traditional biological and descriptive natural history sciences. These sciences obtain principles, to be sure, and thus have theory, but the theories tend to be as complex in their basic concepts and generalizations as are the inductive data. Furthermore, the concepts and principles do not reduce to a small number of elementary notions and primitive postulates. Hence the British legal positivist's and the common lawyer's suspicion of a single *grundnorm*.

Professor Lawson points out, however, that there are exceptions in the common law world to this general conclusion. It is not, he adds, until we put the small number of precise legal concepts of Hohfeld under the analytical jurisprudence of *Williston on Contracts* that we obtain the type of legal thinking in Anglo-American common law that is comparable to the legal mentality of the later Roman jurists and the modern civilians. This type of legal thinking comes very late in the common law tradition.

This distinction between the different conceptions of scientific method in the common law and the civil and Roman law traditions has considerable historical and philosophical importance. It means that the conceptual generalization in the *jus gentium* of Roman law and the eventual triumph of the concepts of the *jus gentium* over those of the *jus civile* in the Digest of Justinian did not have its origin solely in the practical needs of the Romans to carry on trade with non-Romans, as some legally positivistically minded students of Roman law would like to suggest. It finds its basis instead in a novel scientific way of thinking about these and all other practical transactions and disputes.

For this and other reasons, Professor Lawson affirms that it is necessary to put oneself inside the content of Roman law to understand either it or the civil law. A mere viewing of Roman law from the outside, from the

<sup>2</sup> See the comment on Professor Kelsen's *grundnorm* in his 1955 Notre Dame lectures to appear in the first issue of the NATURAL LAW FORUM.

standpoint of British common law, legal positivism, German *historismus*, Ihering's psychological theory of interests or any other modern mentality will not do. Nor will dictionary renderings of words in the Latin text suffice. Commenting upon the suggestion of Dean Roscoe Pound that the "essential difference between the Civil Law and the Common Law is one not of substance but of method," Professor Lawson says, "I think it is time for English and American comparative lawyers to shed this preoccupation and study more closely the chief components of the substantive Civil Law." (p. 45) Nor does Professor Lawson believe that codification is the key to the difference between the common law and the modern civil law or Roman law, since "a code is not a necessary mark of a Civil Law system nor the absence of one a mark of a Common Law system . . . ." (p. 46) What is important, instead, with respect to codification as it bears on this question, is the "type of mind" of the civil law system which, while more "favorable to codification," is also "more important than codes." (p. 46)

Turning to the substantive content of the Roman law of contract of the Institutes of Gaius and Justinian, he notes that contracts are of four types: (1) real, (2) verbal, (3) literal, and (4) consensual, together with a miscellaneous "innominate" group.

A contract is real when one party hands over a thing to the other party. A "verbal contract" was called by the Romans a "stipulation" and took a question and answer form. It contained two elements: form and agreement. The form required that the same principal verb be used in the question put by the questioner and in the answer given that sealed the commitments of the agreement as expressed in the question. The stipulation or verbal contract had two important implications quite apart from the verb constancy of its form. First, it placed the burden of specifying the contract upon the questioner. Second, it required the agreement of the person who answered. This has the consequence in civil law societies of making all donations devoid of legal validity unless there is a verbal acceptance from the recipient of the donation by the donee. Because of this requirement, Professor Lawson notes that in Quebec some lawyers have rejected trusts for unborn persons on the ground that a trust to be legal requires the acceptance by the actual person who receives it. The key, however, to the mentality of Roman law and civil law shows in another characteristic of the stipulation which Professor Lawson describes as follows:

"If we consider the content of the stipulation, we shall see at once that it must have been infinitely variable. The stipulation was not a contract but a contractual form, a mould for contracts." (p. 116)

Expressed in terms of mathematical logic, this means that the stipulation in Roman law entailed two technical concepts: (1) the concept of the variable, designated in modern mathematical and logical notation by the symbol "x" and meaning "any one" as opposed to the proper name of a specific one, on the one hand, and to the class concept of all the similar ones on the other hand. (2) The concept of the matrix, or propositional form, in which the material common sense concepts, called by modern

logicians "material constants" are replaced with variables. The scientific importance of these two logical concepts is that they break scientific statements loose from specific material examples of the formal properties of the statements. This is precisely what the stipulation did with respect to the rigid codes with their specific law-of-status content of the pre-Stoic Roman Twelve Tables. Anything whatever could be contracted regardless of its common sense material content providing that the form by which the content was specified possessed certain formal properties. The second scientific importance of the notion of the variable is that it enables one to achieve generality for more than one individual or instance while at the same time preserving the fact that one is dealing with one particular individual and one particular instance. Thereby justice is done to the individuality of the case as well as to its generality. In short, the concept of the variable brings both the concept of universal formal lawfulness and the notion of equity into Roman legal science. This occurred in the stipulation.

The third type of Roman contract, the literal contract, need not concern us since it disappeared very soon. The fourth type, the consensual contract, is exceedingly important. It arose, Professor Lawson suggests, because the stipulation, due to its infinite variability, was ideal for dealing with "odds and ends," but lacked the standardization for the easy handling of transactions which constantly occurred. The consensual contracts met this deficiency of the stipulation. They covered four species—sale, hire, partnership and mandate. They were called "consensual" because "they were quite informal and . . . were binding from the moment of agreement . . ." (pp. 116, 117)

The consensual contracts were distinguished from stipulation in one other respect. As previously noted, the stipulation had to specify in the question all that was legally valid and enforceable. The consensual agreements, on the other hand, even though informal, entailed legally what was "naturally implied" as well as what was literally said. How, in the case of the consensual contracts, is the naturally implied to be determined?

We are prepared for the Roman's answer to this question if we note a logical property of the literal character of the stipulation. Professor Lawson expresses this logical attribute as follows, using the words of a judge, "But you are asking us to interpret something which can have only the specific shape which you give to it by your formal act." (p. 126) The point here is that, in the stipulation, one is entering not into a standardized and familiar transaction but into an agreement which is unusual and exceptional, or what Professor Lawson has described as "odds and ends." Hence, the judge can only interpret what one entered into if one specifies what it was. This specification, the stipulation requires. In other words, the law has, in the case of the stipulation, "the specific shape which you give to it by your formal act." (p. 126)

But how, then, could Roman law make so much use of the consensual contract with its "naturally implied," as well as explicitly stipulated, mean-

ings? Again the answer of the Roman jurists is a formal logical answer rather than an intuitive, material and merely inductive one. "The consensual contracts," Professor Lawson writes, "were not so much contracts as what have been called contractual figures . . ." (p. 126) They were standardized forms with formal relations and implications quite independent of any stipulated material content which may illustrate them, after the manner of the four figures of the Aristotelian syllogism. These four contractual figures were, let it be recalled, sale, hire, partnership and mandate. But they were these four standardized transactions in their formal properties, not in their merely concrete, inductively given material content. In short, the consensual form of Roman contract is formalized legal knowledge rather than merely the material content of that knowledge. Being thus formalized, each of the four species of the Roman consensual type of contract had its formal logical implications. The pursuit of these formal logical implications specified the method to be used by the judge in determining what was "naturally implied" in the standard contractual figure in question in any legal case.

Professor Lawson suggests also how the formal properties of the four contractual figures which define the possible consensual contracts were determined. These contractual figures were not merely four different, inductively observed classes of transactions frequently entered into by men in an informal way, they were also internally related due to the fact that they were the products of a deeper analysis of the subject matter of law. Professor Lawson writes:

"The consensual contracts were not so much contracts as what have been called contractual figures [which were] the products derived from an analysis of movement in the legal world . . . . It is as if the Roman jurists of about 100 B.C. had said, Go where you will, you will find that almost everything can be reduced to four processes: (1) shifting goods permanently from one man's estate to another for a money price; (2) placing one person's property or services temporarily at the disposal of another for a consideration usually in money; (3) the pooling of property, skill, or experience by several persons for a common purpose; and (4) the gratuitous performance of a task by one person on the instructions of another." (p. 127)

One is reminded of the derivation of the four figures of the Aristotelian syllogism as products from the four *A*, *E*, *I* and *O* propositional forms in which any syllogistic argument on any material subject matter whatever must be expressed. In this connection it is to be noted that the most important Roman jurist "of about 100 B.C." was Scaevola, the first systematic formulator of Roman law who died in 95 B.C. Scaevola and his colleagues were primarily jurists rather than merely practicing lawyers and judges. They were also dominated in their thinking by Stoic philosophy.<sup>3</sup> The latter philosophy was permeated with the logical categories and formalism of Aristotle. These Stoic philosophers and legal thinkers also

<sup>3</sup> ARNOLD, ROMAN STOICISM 383 ff. (1911); also chapter 12.

affirmed that their theory of ethics and law derived from their logic and from their physics.<sup>4</sup> Their physics was Greek. Greek physics was dominated by mathematics. In short, it exemplified the logically and mathematically formalized, the universally quantified use of variables, and the deductive formulation in terms of a minimum set of basic assumptions.

Although Professor Lawson does not go outside his description of the formal, logical and analytic character of the substantive content of the Roman law into Roman Stoic philosophy and Greek mathematical physics, it is not irrelevant to note that ethical and legal thinkers like the Scaevolus and their Roman and Byzantine successors, who referred to Greek physics as the source of their theory of ethics and law,<sup>5</sup> must have been aware of the greatest achievement of Greek mathematical physics. This achievement was the solution of the problem produced by the discovery of arithmetically incommensurable geometrical magnitudes. The solution was achieved in Eudoxus' definition of the equality of ratios for any magnitudes whatever, which has come down to us in Definition V of Book V of Euclid's *Elements*. The importance of this definition is that for the first time in the history of science the notion of the universally quantified variable ( $x$ ) is used to define a technical scientific concept. This is precisely what occurs with the Greek and Stoic Roman philosophers and lawyers when they use the universally quantified variable ( $p$ ), where  $p$  is a person, to define the ethically and legally good, thereby arriving at the notion that moral and legal man is not the old family and tribal man of the law of status of the Twelve Tables, but is instead any tribe, and, even more, any man whatever. It is this use of the universally quantified free variable to define the words "good" and "just" which gives the aforementioned formula:

$$(p) : x \text{ is good or just} = (p) x.$$

Furthermore it is this formula which enables the Roman Empire, when the tribe of Rome conquers the tribes of other city-states, to put the *jus civile* of any other tribe and state on the same footing of equality under Roman law as is enjoyed by the *jus civile* of the local law of Rome. Furthermore, it is the universal quantification of the individual as well as the tribe which eventually in the *jus gentium* begins to break down the *patria potestas* of any law of status-*jus civile* whatever to inaugurate the lengthy effort, which the recent Supreme Court decision in the United States on segregation in education is attempting to complete, in which not merely all families, but also any individual regardless of his family or tribe of birth has an equal right before the law to any public education or any other public thing if that thing is to be publicly good, or just.

Need one wonder, therefore, that Professor Lawson concludes his chapter on "The Form and Sources of the Civil Law" as follows:

<sup>4</sup> Id., chapter 6.

<sup>5</sup> Id., chapters 6 and 7. See also H. Rackham's Introduction to *CICERO DE NATURA DEORUM ACADEMICA* vii (1933).

"I must end this chapter by describing the way in which the Roman instinct for sharpness of outline, intensified in its operation by the natural lawyers, marked off the Civil Law itself from all other parts of their law . . . . The Civil Law was essentially a law between equals. That is why the *patria potestas*, the absolute power of the father over all his descendants in the male line, interested the jurists only incidentally, as something by getting out of which one became the equal of other citizens and as affording the *paterfamilias* useful ways of doing business through others, often with limited liability." (pp. 88, 89)

Similarly, in the chapter on "The Contribution of Roman Law," Professor Lawson speaks of its "universal tendency." The *jus civile* of the citizens of Rome became restricted largely to family law and the law of succession with respect to family property. As the Empire expanded, such laws, Professor Lawson notes, "were no concern of the Roman state or its courts; but the greater part of the law of contract was universal, and so were in substance the whole of the law of tort and of property." (p. 95) By the time of the Edict of Caracalla in 212 A.D.,

". . . almost all the free inhabitants of the Empire were Roman citizens, and by a parallel process the more formal and less rational elements of Roman Law disappeared, leaving the universal elements, which were also the more rational, to stand alone. There is little or nothing that is purely national in the Roman Law contained in Justinian's *Corpus Juris*." (p. 96)

Clearly, Professor Lawson has established his general conclusion that civil and Roman law are to be distinguished from the common law due to a difference in their form and that this difference in form has its source in a difference in the legal mentalities that created the two systems. When we place his findings concerning the formal properties of the substantive Roman law of contract in the historical contexts of its creators, *vis-à-vis* Stoic Roman philosophy, Aristotelian logic and Greek mathematical physics, we are able to describe the mentality of Roman and civilian lawyers with more precision. It is the mentality of men who have taken deductively formalized Greek mathematical physics as their criterion of scientific method and its concept of the universally quantified variable as their definition of the morally good and the legally just.

Our more precise specification of the legal mentality behind the civil law, so far as it derives from the Roman law of the jurists, requires a qualification to be placed upon one conclusion of Professor Lawson. He questions the well-known thesis that the difference between the civil law and the common law is that between deduction and induction, pointing to the fact that the common lawyer has generalizations going beyond the inductive cases, from which he reasons deductively, just as does the civilian. This, of course, is true. Nevertheless, there is a more important sense in which the civilian is deductive in a technical scientific sense in which the traditional common lawyer is not. The common lawyer, as previously noted, has principles to which he appeals, as well as his cases. But his

principles are more piecemeal inductions from a natural history type of scientist's description of his particular facts and cases. He does not have theory in the sense of the logically and mathematically formalized, deductively formulated theory of mathematical physics. Nor does he take this type of scientific theory and method as his model for legal science. It is in this latter sense of the word "deduction" that the mentality of the civil lawyer is deductive and that of the common lawyer is not.

After his emphasis upon the universalizing tendency of Roman law, Professor Lawson stresses that it has another "remarkable characteristic;" it is a "law of movement." By this he means that Roman law is not "concerned to describe what *is*;" instead it asks the question concerning how "a particular legal situation come[s] into existence and how [it will] disappear." (p. 96) An example occurs in the law of property where "the Roman bias is for studying the acquisition rather than the transfer of property. The Romans never discuss the nature of ownership or possession." (p. 99) Expressed more formally, this means that Roman law finds the key to law in verbs rather than in nouns. Recall how the stipulation requires the questioner and answerer to use the same form of the verb. It means also that the formal properties of the law refer to relations or operations, after the manner of the function of mathematics, rather than to things. Things are thrown, as in mathematics, into the realm of the material constants. It is the formal properties of the relations or functional operations with respect to the quantified variables that matter.

Is it not precisely at this point that Roman law and the civil law, following it, receive their theoretical unity? Relations or functional operations, considered in their formal properties, have a range of application far wider than that of inductively given and classified things. Thus, by concentrating attention on the formal properties of functional relations, Roman legal science appears to have found, or to have come near to finding, the primitive concepts of its axiomatically or contractually constructed deductive theory. This way of thinking had two consequences. One appeared immediately. In any axiomatically constructed theory, the primitive operations or relations are, by definition, ultimate; they are never regarded as abstractions from a wider context. In natural history deductive science, on the other hand, because of its use of sensed material qualities in the definitions of its objects and classes, any relation is always an abstraction from a wider context. This difference shows in Roman law. Professor Lawson describes it as the "isolation of the relation between the parties from its surrounding circumstances and problems . . ." (p. 123) He describes this as "artificial." It is only artificial for the natural history descriptive, more purely inductive, type of science. For axiomatically constructed theory, and particularly for the primitive operations of such theory, it is the only non-artificial scientific procedure.

The second consequence of basing law upon the operations rather than the objects in legal transactions was to set the specification of a few elementary ideas, from which everything else is derived deductively, as the

ultimate goal of legal science. Professor Lawson makes it clear that Roman law realized this ideal only in part, not having a "general law of contract" and that this process of generalization went on with the modern civilian, reaching its most perfect expression in the German civil code of the late nineteenth century.

The application of the Roman legal ideal and way of thinking to the modern national states brought with it certain conflicts and complexities. There were the local living laws of the different peoples to be reckoned with. Even in France today, the living law of its southern portion differs from that of the north. The old law of status-familial ways still carry on. In fact, as Professor Lawson notes, the French democratic reformers used the French Revolution to wipe out the political control of the aristocracy and to preserve in considerable part the law of status of the peasants. Consequently the move toward a single, unified, analytically axiomatized and deductive theory of law did not go as far in France as it did in Germany. These considerations, put into perspective by Professor Lawson's lectures, show that the contemporary legal institutions of the Western world become intelligible only if one pays attention to the Roman factor in positive civil law as well as to the positive common law and relates the positive law in each case to the local living law of sociological jurisprudence.

In this connection, it is of interest to note that the predominant religious living law of most common law nations today is Protestant; whereas that of most civil law communities is Roman Catholic. With the fall of the Roman Empire the mentality of Greek mathematical physics and philosophy and of Stoic Roman law passed into Roman Catholic and Greek Orthodox Christianity. One of the consequences of the Protestant Reformation was that, in throwing off Rome in religion, it tended also to throw away the ethical, legal and scientific mentality of ancient Greece and Stoic Rome in law and politics. Also Rome, even in the days of its Empire, never dominated Britain to the extent, or for the length of time, that it commanded the people of the Western portion of the Continent. It is likely also that it was the strength of the diverse living laws of Angles, Saxons, Jutes and Celts in Britain which enabled Roman legal terminology and the Roman substitution of the law of contract for the law of status to pass into English law in the Roman period without its Greek scientific and Stoic Roman formalism going there also.

Also, with the modern scientific and philosophical revolution, led by Galileo, Descartes, Newton and Locke, modern British philosophy, following Locke, took the form of British empiricism with its final insistence upon the nominalistic and more purely inductive source of all conceptual meaning; whereas the modern philosophy of the Continental peoples, originating in Descartes, was the creation of the mathematical physicists, Descartes, Leibnitz and Kant, and took the form of Continental rationalism with its emphasis on the *a priori* and the deductively formal rather than upon the merely nominalistic and more purely inductive factor in scientific method and knowledge. Thus the religious living law, the success of

the Counter Reformation and their particular modern philosophy reinforce the Roman legal mentality in the Civil law peoples; whereas the lesser influence of the Roman Empire, the success of the Protestant Reformation and the excessively nominalistic and more inductively empirical form of modern British philosophy probably accounts for the difference between the common law in England and the civil law elsewhere notwithstanding the shift from status to contract and the technical Latin legal terminology which is common to both systems.

In the case of England there is one important thinker, noted by Professor Lawson, whose mentality is an exception. His name is Newton. To read his *Principia* is to be confronted with something like Euclid's *Elements*. His is the concept of scientific method of the Greek mathematical physicists and philosophers and the Stoic Roman and civilian lawyers. The mentality of the early Locke, who was a friend of Newton and who lectured on natural law at Oxford and wrote the aforementioned *Letter on Toleration* and treatise *Of Civil Government*, was undoubtedly similar. It was to the mentality of Newton and this early Locke and a Bacon undoubtedly conceived in harmony with them, to whom Jefferson referred when he said that his three gods were Bacon, Newton and Locke.<sup>6</sup> Hence it is this mentality of the mathematical physicist's concept of scientific method and of universally quantified natural law, going through Jefferson into the Declaration of Independence and the Bill of Rights, only to be submerged with the triumph of the nominalism of the later Locke's *Essay Concerning Human Understanding* and its attendant psychological theory of ethics of Hume and positivistic theory of law of Austin, that reappears again in the recent Supreme Court decision on segregation in education to give the comparative study of the common law, civil law and Roman law its peculiar significance for everyone in the United States today.

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<sup>6</sup> 7 JEFFERSON, THE WRITINGS OF THOMAS JEFFERSON (H. A. Washington ed.) 139 (1854).

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