THE GROWTH OF CIVIL LAW

(By S. CAMILLERI)

"THERE is nothing new under the sun" , declared wise Solomon. The truth of this dictum can be tested by its application to the various things and institutions that man has contrived to invent. There is a sort of 'continuum' going on around us — a 'continuum' taking place not only in the realm of beings that go to form the Creator's Universe, but also in the realm of things which, taken together, make up our homes, our cities, our nations, our world. In conformity with his nature, man follows the line of least effort so that he finds it more easy to improve that which already exists than to invent new things. To any one who cares to go to the bottom of things, a marked similarity exists between Past and Present, not only as regards the way of life and the relations amongst human beings, but also with respect, to objects, institutions and systems which men make use of. To illustrate what we mean by an example which immediately leads to the theme of this brief composition, the legal institutions obtaining in our clays are no more than an evolution — at times a repetition — of old ones. Our laws on Usufruct, on Emphyteusis and Consortium for instance, bear a strong resemblance to those of Roman Law. The similarity between past and present institutions is not always as pronounced as in the cases abovementioned for the simple reason that Law is not static — that it is an organism which is continually growing.

Law is a social science having for its object the government of human relations. The attribute 'social' immediately denotes this purpose: it correctly conveys the idea that law, like ethics, economics, politics, exists to regulate the dealings going on amongst the individuals forming a community. The social sciences reflect the conditions obtaining in a particular community ; they change, in fact, with the changing of these conditions, precisely because the object of these sciences is to make life better. The primary end of law is to ensure peace and order amongst the people, and this for the greater benefit, the greater freedom and well-being of the people themselves. Peace and order, as well as the welfare of the people can only be secured if the laws are equitable and just.

The growth of law is nothing but the development of the principle of justice as it evolved through the ages, the evolution of a few principles of conduct into a Code of Laws governing man's relations with man in all their aspects.

The present codes have their origin in past laws: past laws, of course, have been modified to suit the exigencies of the times; have been enlarged upon to contemplate new contingencies, have increased and become numerous just as life has become more complicated. Hence the importance of studying the 'Historical' part of the law. To know the law as a law student should know it, is to follow its growth, to examine the different phases through which it passed, to compare these phases and seek the reasons for the changes: by so doing the student becomes truly acquainted with the law. Leaving aside the historical part of his studies, the student would acquire a knowledge that is simply empirical. The historical aspect of the law is not only a fascinating subject itself ; it is not only important for the comprehension of past institutions, municipal, political, judicial and legal, as well as for the interpretation of old texts and systems of law, but it has equally a bearing on the study of the

juridical and scientific, of the purely positive or arbitrary part of the law. For past laws contain the germs of the present; they are the seeds out of which grew and flourished the tree of legal science.

To enter upon a study of the historical aspect of the law, however, may not always seem a paying job — indeed, it is often looked upon by many as waste of time and energy. Such a study entails a profound knowledge of old texts and a minute examination of the knowledge acquired : the results obtained by such study comprise much which, like a dead language, is not directly useful to the business and interests of mankind in the present days. But such study is not fruitless : through it one gets to the bottom of things, enters into the spirit of the laws existing in different eras, discovers the why and wherefore of such laws and the grounds upon which the same are based.

The study above referred to involves a knowledge of Roman Law : Roman Law is a necessary part of any general study of legislation and its growth ; for the student of Civil Law in particular, it is indispensable. We shall, therefore give a brief sketch of the beginning and growth of Roman Law, with a view to showing its influence on what may be called 'Modern Civil Law'.

A good system of laws presupposes an organised Society : a primitive community possesses no laws as the term is understood to-day. Rome, in its infant days, was no exception. In its early days Rome was governed by a Rex who, though possessing a degree of power and authority, could by no means act arbitrarily; on many points the people or their representatives had to be consulted. Under the 'reges', there was practically no literature, no music, no artistic achievements. Those that could afford it, got what learning could then be acquired from Etruria — this learning was far from being adequate and was not such as to influence anything carried on in Rome; it did not influence the 'laws' of Rome. These 'laws', if indeed one may so call them, were a set of customs and usages, mostly religious, which the superstitious mind of the Romans respected and obeyed. For about three centuries, these were the only rules of conduct in Rome. During this period, the said customs and usages were undergoing slow and gradual, yet steady, changes—changes necessitated by the change of conditions by the need of determined, well-defined rules for the government of human relations. Rome felt such necessity and Rome was not slow in providing the remedy. The said usages, often referred to as the 'leges regiae' fell into desuetude as Roman civilisation progressed. Very little is known of the 'leges regiae', of which, it is commonly believed, Papirius has left a collection known as the 'Ius Papirianum'. Gibbon questions the genuineness of this collection ; he seems to incline to the opinion that there existed no such collection at all, that what is referred to as 'Ius Papirianum' was not a commentary on old laws but an original work written at the time of the Caesars. In any case, only small fragments of the Collection remain ; it is moreover commonly believed that, the 'leges regiae' exercised no influence at all on the growth and development of Roman Law: they came to an end with the establishment of the Republic, 510 B.C., when a new era in the History of Roman Law started.

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The Republic having been established, power passed to the consuls, who were patricians ; the patricians administered the uncertain and unwritten law, of which they had the secret, rather oppressively. A demand arose for limiting consular power and for defining the existing laws. As a consequence of this demand we have the first real act of legislation — the XII Tables. As Buckland remarks, the XII Tables, consisting mainly of Latin custom with a certain infusion of Greek law became the bases of Roman Law. Though the first act of legislation, the XII Tables were by no means the only act of legislation under the Republic. There existed at the time the 'comitiae' of which the 'Comitia Tributa' together with the 'Concilia Plebis Tributa' was in the later years of the Republic, the most important as regards legislation. Comitial legislation, however, is not regarded as a main source of Private Law : all the 'leges' enacted by the 'comitiae', or nearly all, were political and constitutional in character ; in the later years of the Republic, they mainly dealt with criminal matters.

Of the greatest importance as a source of legislation were the 'edicts Magistratuum'. Originally, the edicta were more or less statements on administrative rules already established as law. Gradually they were used as a mode of legislation and in the last century of the Republic, the 'edictum' was by far the most important source of new law. Buckland emphasises the; fact that by means of the 'edictum', the preator and other magistrates did not directly change existing laws or create new ones : outwardly, they were unconcerned with rights and obligations ; they speak in terms of procedure ; they do not give or deny rights, they grant or withold actions — actions, however, having for their object the enforcement of rights, they were in effect changing the law of rights and obligations. In this indirect manner, the praetors reformed the law in almost every branch, setting aside most of the crude and formalistic law which had become inadequate for the times.

It was through the 'edictum' that the greater part of the 'Ius gentium' came into being. By the middle of the third century B.C., Rome had attracted many foreigners, to whom the strict Civil Law, with all its forms and solemnities, did not apply. A Praetor Peregrinus was appointed to deal with the relations amongst such foreigners. This magistrate played an important part in the formation of the 'Ius gentium' : he set up a law, simple and unencumbered by useless formalities — a law, which, incorporating the simpler parts of the strict Civil Law, discarded its unnecessary forms.

The power of the praetor to effect such changes in the law comes to an end under Hadrian in the first half of the II Century A.D., when the edicts were given a permanent form. The 'Ius Honorarium', as the law created by the edict is generally called continued to exist side by side with the 'Ius Civile' until the VIth Century, when the two systems were practically fused together.

Another body influencing the growth of Roman Civil Law was the Senate. This body existed under the 'Rex', the Republic and the Emperors. Its character and its functions varied under the different constitutions : originally it was simply an advisory council of the 'Rex' ; so was it under the Republic, the advice being tendered to the magistrates : in this era, how ever, its authority steadily increased in such a way that by the first half of the third Century B.C., it dictated rather than tendered advice. On the other hand it had no authority to legislate : its

influence on the law was indirect — exercised through its hold on the magistrates. The authority of the Senate over the magistrates was favoured by Augustus and his successors. Under the emperors it was, outwardly at least, a very powerful , body. By the time of Hadrian it had the power to alter the law. The legislative function was exercised by the Senate, from the time of Hadrian, early in the second Century A.D., to the time of Probus, late in the third Century A.D., by means of Senatusconsulta. The word 'outwardly' above is used purposely ; though, to all appearances the Senate was legislating, the emperor, as Princeps Senatus, determined what legislative acts were to be considered. Augustus, following his method of appearing to the people as a real democrat rather than a powerful emperor, saw to it that power actually vested in him, not in the Senate. As legal historians point out, this practice of Augustus was continued by his successors until such time when the authoritative position of the Emperor was sufficiently asserted. Hadrian was the first emperor to claim legislative power ; his successors followed suit and the legislative function was discharged concurrently by the Emperor and the Senate for about a century afterwards. As already said, senatusconsulta ceased by the third century and henceforth the only legislator was the emperor, who discharged his function through 'edicta', 'rescripta' and 'decreta'. It is unnecessary to distinguish between these three forms of imperial legislation, since the emperor, as the sole legislator, could pass whatever law he liked.

We have so far dealt with the enactment of law by the various legislative bodies. Law, however, being so closely knit with the everyday doings of the people, one has to go further to discover its real import and significance : one has to examine the relations passing between the people and the way in which any litigation arising therefrom is settled : in other words an inquiry is to be made as to how the laws are applied in practice, how justice is administered. In the study of Roman Law, this can be achieved by perusing juristic literature.

As we have already remarked, the early usages and customs of Rome were religious in character. These customs were interpreted by priestly officials, members of the Collegium of Pontiffs, who made a professional secret of the rules elaborated by them. In the third Century B. C., Tiberius Coruncanius, the first plebeian Pontifex Maximus, divulged to the public the hitherto unknown laws. This step of Coruncanius marks a turning point in the growth of the law : in a short time, persons came forward from amongst the people, patrician and plebeian alike, who studied the law, and who, by giving advice on points of law, guided the growth and development of the law. The 'iurisprudentes', as they were called, held no official position; they did not act as advocates in Courts of law, but they prepared legal documents, pointed out the precautions to be taken in legal transactions and taught the practical part of the law to law students. More important still, many 'iurisprudentes' took to legal writing. They gave explanations of various provisions of law, at first not in a very systematic way ; but it was not long that juristic literature began to take a more comprehensive outlook and in a short time it assumed a definitely scientific aspect.

The literary work of the jurists was abundant : it is from their works rather than from express legislation that the laws of the 'classical' period are known. Already active under the Republic, the jurists became more and more so under the Emperors; their prominence and their influence on the law increased proportionately. It is the period from Hadrian to Caracalla that

is commonly known as the 'classical' age of Roman Law, but many writers, more correctly perhaps, regard as the classical age the period from Augustus right up to the third century, the last of the great jurists passing away at about A.D. 250.

The abundant juristic literature, coupled with the increasing number of imperial enactments made the legal practitioner's job quite a difficult one. As things stood then it was unreasonable to expect the practitioner or the law student to possess more than a confused knowledge of the vast legal writings and legislation. It was due to Justinian's Codification Scheme—the Corpus Iuris Civilis—that the bulk of the law was crystalised, collected and given a systematic form. Before entering on this scheme Justinian effected a number of law reforms by means of enactments known as the 'Quinquaginta Decisiones'.

Justinian's scheme had for its object not only the collecting together of the various laws, the introduction of an ordered and systematic text of juristic works, but also the bringing up to date of the said laws and works. It was done in the belief, it is said, that it was to be permanent and, though laws were passed in the years that followed they did not influence the further growth of Roman Law. The apex in that development had been reached in the classical period. Justinian, though himself a good administrator and a wise legislator, owes his greatness in the history of the Law to the Codification scheme : so does Tribonian and the other members called by Justinian to prepare the Digest.

As regards the substance, the contents of the law itself, the Civil Law of Rome hardly gains anything after the reign of Justinian. But its influence continued to be felt. It stimulated thought not only on the part of the Romans and the other peoples of Italy, but also amongst foreigners. It is long after the great days of Rome that Roman Law began to be studied as a science. In other words, though the body of rules and subtle decisions were there, yet Roman Law lacked scientific and academic treatment. This does not in the least detract from the excellence of the law as it then stood : such excellence has borne the test of Time : indeed it has asserted itself as time passed by. Roman Law has always been respected; it has been revered for the magnificent principles it lays down : in it one finds, above all, the profound reason, the wonderful common sense, of which it is a rich and apparently an inexhaustible mine. It is far this reason that the great English Judge. Lard Justice Bruce said that the decisions in the Pandects were such as an acute, wise, practical man would came to by the use of the rarest of 'common' things—Common Sense.

Roman Law, then, lacked the academic and scientific element and this, perhaps, because of the very character of the Romans themselves. The Romans, so it is often said of them, had a distinctive characteristic : they were practical in all their doings ; this tendency contributed much to that lustre which crowns their Civil Law. But, in a way it limited its growth : law, like other sciences, has a practical and a theoretical side : Roman jurists paid great attention to the former and neglected the latter. Even the way in which law students were taught denotes that the theoretical, side was completely disregarded in the study of Roman Law.

The academic element was made good in the years that followed the fall of the Roman Empire. The progress in this direction extends over a long period of years : once set on the

move, through the agency of the School of Bologna, commenced by Irnerius, it kept pace with the march of civilisation, with the growing needs of the expanding population, with the increasing transactions, with the complexities of human affairs, with the augmentation of legal knowledge in general, resulting from the progressive improvement of human society. After Irnerius followed the school of Accursius, that of Bartolus in the fourteenth century. that of Aciatus in the fifteenth century, followed in turn by the school of that great lawyer Cujacius in the sixteenth century. It is impossible to enumerate here the great jurists and commentators that followed in France, in Germany, in Italy, in Spain in all countries of Europe.

By the XVI Century, Roman Law occupied a very privileged position all over the Continent : in some countries, e.g. Germany, a 'reception' of R.L. took place; where this did not happen, Roman Law was all the same looked upon as the supreme achievement of human reason and its principles when not expressly excluded by local laws were appealed to. All over Europe it was studied and everywhere held in high esteem. This is why it plays so important a part in the growth of the laws of the several countries of Europe; this is why international Law, in its embryonic stages, turned to the rich mine of principles embodied in Roman Law; this is why some writers, such as Sir G. Bowyer, consider 'Modern Civil Law' to have been either directly or indirectly inherited from the Romans. Note that 'Modern Civil Law' is used as applying generally to the Civil Law of any and every country in Europe. Savigny to the same effect states : "Il diritto civile e il solo di cui si possa indicare istoricamente il passaggia negli *stati* moderni.....".

This glance at the preservation of the Law on the Continent shows the importance attached to Roman Law through the centuries, the great minds its study attracted, the influence it exercised in the formation of the various European systems of law which, as we have already remarked, derive either directly or indirectly from Roman Law. As a consequence the Law of the Romans was not simply preserved : it kept on growing and maturing towards perfection; its growth was strengthened by various factors. Besides remaining in force throughout Italy it was, in certain countries of Europe, declared to be the law of the land. Indeed, changes and modifications took place—we have said that its development continued—precisely because the needs of civilisation made such changes necessary. Roman Law was thus not only preserved as an academic subject; it was not simply studied by law students in order that their legal studies should be complete, but it was further applied in practice : for a number of centuries the great jurists and profound thinkers all over the Continent devoted their time to the interpretation of the law : the law courts of many States administered it ; the legal writers moulded it in a scientific form; the law courts gave it the practical life which springs from the needs of civilisation and society. Consequently, as Bowyer points out, what Europe inherits is a Civil Law, essentially based, substantially consisting of one might say, the notions the principles and rules of Roman Private Law, but modified and perfected by the labours of the several jurists that flourished at different times in the various countries of Europe.

An important phase in the history of Civil Law starts with hat may be called the era of Codes, commencing with the Code Napoleon, 1804. The influence of this Code was felt in a

number of countries. To give one or two historical illustrations : the Italian Civil Code is derived directly from the Code Napoleon ; the Spanish Civil Code, published July 1889, as Bianchi (Studio analitico sul Codice Civile Spagnuola...) and Lehr (Le Neouveau Code Civil Espagnuol) point out, is a reproduction of the Code Napoleon, revised of course and modified to suit the needs of Spain at the time of the Code's promulgation. Again, the Swiss Civil Code of 1907 was, to a certain extent, influenced by the Code Napoleon : the Swiss legislator, it is true, incorporated in the said Code, most of the laws and customs in force in the different Swiss cantons; but did not hesitate to borrow from French and German legislation.

In the study of what may be called Modern Civil Law, the influence of the Code Napoleon cannot be belittled : another Code which likewise, not to say to a greater extent, brought to bear on the growth and codification of Modern Civil Law is the German Civil Code, which came in force in 1909—a colossal achievement which is considered by Mazzoni as the 'ratio scripta', the most complete work of German jurisprudence, and the representation of the most perfect system of Modern Civil Law. No wonder, therefore, that these two Codes which for so many years have been the subject of so much praise, are the immediate source of the Civil Laws in force practically in all the civilised countries of Europe and America. As a consequence, the codes of the different nations broadly speaking do not differ greatly in substance since they owe their origin to the same source : there are noteworthy differences, however, in the systematic treatment of the matter as well as in the moulding of the various provisions.

It follows that the Civil Code of Germany or that of France is not a work representing national laws. They hardly could Modern Civil Law, we said, has its origin in Roman Law and, as Mazzoni observes, Roman Law itself , in its most elaborate form — as it was shaped by the 'ius gentium' — was applicable to all persons irrespectively of race or creed. It was a law for human beings rather than the law of the City of Rome — "romana fattura", says Mazzoni, "pel genere umano. Roma mise il lavoro, l'umanita la materia". The growth of Roman Law never ceased. As it went on developing throughout the existence of the Roman Empire, so, through the agency of the 'ius gentium', its development continued after the fall of Rome, such development conforming to the progress of humanity in its intellectual, moral and juridical spheres. To return to the German Civil Code, a 'reception' of Roman Law took place in (inter alia) the German States. Local laws and consuetudinary rules in the said States were not completely driven out : indeed, even if they had been, new customary rules would have come into being, and new customs, as one expects, did spring in the years following the reception. Civilisation had moved ahead; conditions, social, economic, and political had become definitely better ; the influence of Christianity had tempered the severity of the Past : these factors tended to modify the laws inherited from the Romans not only in Germany, but all through the civilised world. The unbending severity which characterises early Roman Law relaxed; the strict rules of law were mingled with rules of humaneness and by the XVIIIth Century, German legislation (as well as that of France and other States) though based on the general principles of Roman Law was modified to a great extent by the spirit of humaneness and the consideration for individual liberty which began to be strongly felt. The laws passed in Germany in the XVIIIth Century and subsequently are a fusion of the strict rules of Roman Law with the rules of equity — a mixture of Roman and local rules (as regards Civil Law). We

find such a mixture in the Codes of the different German States : in the 'Codex Maximilianus', enforced in Bavaria, 1756; in the 'Allgemeines Landrecht', promulgated in Prussia, 1794, and in the Austrian Civil Code, 1811. The Codes of the various German States were substituted in 1900 by the German Civil Code of that year which was imposed on the whole German Empire.

The growth of Civil Law in France followed much the same lines. Before the Revolution, the different cantons had their own laws : some of the cantons were governed by written law, others by customary law. As regards Civil Law, the former consisted mainly of Roman Law, the latter, of the different usages observed in the various localities. This state bf the law could hardly survive the Revolutionary era. France felt the need of having one single system of law, applicable throughout the length and breadth of the country. In an age when liberty and equality were being preached, praised and claimed by every citizen, one cannot reasonably think that any citizen would suffer a kind of legal protection in one place, and another kind in another — even though such protection could not always be relied upon in that era of reform.

The need for introducing a uniform system of law was felt by the Constituent Assembly, the Convention and the Directory: all three bodies planned to modify and unify the various laws into a single Code ; but the times were troublesome and violent, not altogether suitable for carrying out a systematic law reform. It was not long, however, that the wave of violence somewhat subsided and the law reform attempted previously by the said three bodies was successfully carried out under Napoleon. The Code Napoleon was published in 1804 : it is substantially, the one now in force ; alterations made since then are few and such as were necessitated by the change of conditions : in 1807, for instance, the Republic being replaced by the Empire, some alterations were made ; so also with the fall of Napoleon in 1814 and with the advent of the Constitution of 1848. But these alterations affected the form rather than the substance of the law. As in the case of the German Civil Code, so in the Code Napoleon we find the principles and rules of Roman Law modified by rules of equity which had developed in France. As Mazzoni points out, the best authorities and commentators of the French Civil Code declare that the source of its contents is Roman Law as modified by the rules of equity found in the customary law of France.

The Code Napoleon is a manifestation of the genius of its compilers : their wisdom in selecting the many provisions and in wording them, in the systematic treatment of the whole subject deserves praise, but — so Romano says — one should not lose sight of the fact that the editors of the Code Napoleon were guided by the works of Domat and Pothier. Often, they copied whole provisions from Domat and Pothier, (whose, writings deal with Roman Law, both as it originally existed and also as later modified by rules of equity). The debt of French Civil Law to Roman Law is thus apparent. Pisanelli says : "Il Codice Civile Francese, nelle principali sue parti, e la rappresentazione piu splendida della sapienza romana". Praising the, sound, principles and the common sense rules of the Code Napoleon, Professor Buonamici enumerates among the causes that contributed towards making the Code Napoleon the great work it is "l'unione feconda del passato col presente". The nature of the provisions of the Code Napoleon emerges clear from the following comment of Mazzoni : "..... la Rivoluzione Francese, la piu generale e profonda riformatrice della societa moderna, compie e scrisse

prima in codice la sintesi, l'ultims elabbrazione del diritto romana fatto, per l'influenza del ius gentium, equo piu che non fosse all'epoca Giustinianea : e v'introdusse l'elemento politico e l'elemento economico : in una parola, vi riassunse ed espresse i grandi principii della civilta, moderna."

A few words may here be said about the growth of Civil Law in Italy. Up to the French Revolution, the provinces of Italy were broadly speaking governed by Roman Private Law which, as in many other States of Europe, came to be regarded as the Common Law of the land : in certain provinces Canon Law was observed, in others, the enactments of some of the Conquerors of the several provinces were in force. It should be emphasised, however, that it was Roman Law that was the Common Law of the land in the majority of the provinces. Reform came with the French Revolution., the effects of which, felt in most of the State of Europe, extended to Italy. First applied to the provinces comprised in the Kingdom of Italy in 1805, the Code Napoleon was gradually introduced in practically all Italian provinces, some of which applied it in its entirety, others compiled codes on its pattern. With the unification of Italy, the need for one single code was felt. After elaborate discussions a code was compiled : the Italian Civil Code was first put in force in 1866. As Mazzoni points out, the sources of the Italian Civil Code are:

(i) Roman Law as modified with rules of equity and the passage of years—what we have called Modern Civil Law;

(ii) The French Civil Code—the immediate source of the Italian Civil Code;

(iii) The codes existing in the various provinces of the peninsula before the Unification of Italy ; and to a certain extent.

(iv) Canon Law.

A few words should be said about the development of Civil Law in Malta.

In tracing the growth of Civil Law in our island one practically finds a repetition of the process occurring on the Continent. The history of the Island differs from that of other European countries; but historical events in Malta ultimately led to similar results (at least as regards Civil Law). It is, in fact, correct to say that our Civil Law, like that of France, Germany, Italy, consists of the principles and rules of Roman Law as modified by rules of equity introduced from time to time as the spirit of greater liberty and humaneness assumed importance in the administration of Justice.

Roman Law found its way to Malta at a very early date—earlier perhaps than in any other European country with the exception of the provinces of Italy—and at that early date the foundations of our present laws were laid down. The Phoenicians, the first known settlers of Malta, might or might not have brought their customs, religious or otherwise, to the Island : indeed it is useless to try and ascertain whether they did or not. Life was then very primitive and so were the customs : the Phoenician customs could not have survived the introduction of Roman Law—the said customs, one might assume, fell into desuetude and ultimately perished before the superior qualities, the better common sense, the more practical laws of the Romans. Historians agree that Malta fully absorbed Roman civilisation and Roman Law. By the IInd Century B.C. Rome had already founded her empire. The countries bordering the

Mediterranean succumbed to powerful Rome and the Mediterranean Sea became a Roman lake.

The Romans were better colonisers than the Carthaginians who governed Malta before them; Roman laws were more humane and equitable and were gladly accepted in all countries conquered by the Romans. In Malta—which it is commonly believed, formed an integral part of the Roman province of Sicily (as such the Maltese were regarded as Roman citizens proper and treated accordingly)—the prevalent laws were those of Rome. The said laws were not imposed on the Maltese; they were gradually adapted by the inhabitants until, in the VIth Cenury, the Corpur Iuris Civilis was expressly declared to be in force in Malta, so that as Judge Debono remarks, Roman Law did *not simply influence* the growth of our Civil Law; it *formed,* and to an extent *still forms*, part of our written law.

The character of our civil laws, then, was determined at the time of the Roman domination, which came to an end in 870 A.D. For a period of ten centuries from the IInd Century B.C. to 870 A.D.; the Island was governed by Roman Law purely and simply. After the Roman domination our Civil Law suffered such alterations and modifications only as were necessitated by the change of circumstances. During the Arab Domination, 870-1090, there was almost no change at all : no traces of Arab law are found in our laws. From 1090 to the coming of the Knights of St. John to Malta there were only a few changes as a result of the introduction of the feudal system. The Grandmasters left the laws of Malta substantially as they found them and under the British rule, it being the practice of Great Britain to meddle as little as possible with the laws of a newly conquered or ceded colony whenever such colony happens to possess laws of its own, our Civil Law was almost unaffected although many alterations were effected in Criminal Law and in the Laws of Procedure.

Up to the time when our civil laws were collected in two Ordinances, viz : Ordn. VII of 1868 (relative to Things) and Ordn. I of 1873 (relative to Persons) we were directly the heirs of Roman Law. In compiling these two ordinances, our legislator turned to the French Civil Code. Like the Italian Civil Code, our Civil Laws have their immediate source in the French Code. As we have remarked above, however, the French Civil Code was itself founded on Roman Law so that the Civil Law of Malta like that of almost all civilised States may be ultimately traced back to the laws of the Romans.

The aim of the above sketch of the Development of Civil Law in the leading countries on the Continent is to show how the systems of Civil Law in Europe are all based an Roman Law. Though differing in details, they consist substantially of the same general principles of law : they may vary in form but not, broadly speaking, in substance. This holds good not only as regards the Civil Laws of Germany, France, Italy and Malta, but practically as regards those of all civilised States in Europe and America. It is such a consideration that lead many legal writers, such as Bowyer, to speak of Modern Civil Law generally, treating the Civil Laws of the civilised countries as if they made one single system of law ; it is this consideration that lead the same authors to state that Modern Civil Law is not the creation of any one single nation or of any one single age, that it is the product of the best minds living in different countries at different times—a product mature and perfected by the passage of centuries.