FRIEDRICH CARL VON SAVIGNY

The ancient family to which Friedrich Carl von Savigny belonged was of Lorraine origin, deriving its name from the Castle of Savigny, near Charmes, in the valley of the Moselle, and Paul de Savigny, an ancestor of the jurist, was born at Metz in 1622. The family were Calvinists, and retained their German allegiance on the transfer of Lorraine to France. Paul entered the Swedish army, and settled in a military capacity in Germany, dying at Kirchheim in 1685. His son Louis-Jean became a lawyer, and served the Prince of Nassau. In 1692 he published a work attacking the ambitious wars of Louis XIV. He died in 1701. His son Louis, who was born in 1684 and died in 1740, also held a political office. Chrétien-Charles-Louis, the son of Louis, was born in 1726 at Trabens on the Moselle, and attained to a considerable position in diplomatic and political circles. He was a member of the assembly which met at Frankfort to represent one of the ten Circles of the Empire, the Circle of the Upper Rhine. On this body he was a representative of various princes. Friedrich Carl von Savigny (to adopt the German form of the name) was born at Frankfort on February 21, 1779. The father of the jurist was a Lutheran, the mother a Calvinist. In those days the Calvinists were not allowed to worship in Frankfort, though the ministers were very gifted men. The town was dominated by the Lutherans, who made up for the inefficiency of their clergy by the sufficiency of their police. The Calvinists were obliged to worship out of the town at the village of Bockenheim, and thither, Sunday by Sunday, the little fellow was taken by his mother, despite the father's adherence to the popular faith.

His mother watched over the child's early education with exemplary care. M. Charles Guenoux tells us that "she taught him French with the tragedies of Racine and Les Veillées du Château of Madame de Genlis. He had hardly reached the age of three years when she was already reading the Bible to him,
and perhaps we ought to attribute to her lessons and to her example that truly religious spirit which formed one of the salient traits in the character of her son.” Her life had many sorrows to foster her natural piety. All her children except Frédéric died young, and in 1791 her husband died. In 1792 she herself passed away, and at the age of thirteen Friedrich Carl von Savigny was left an orphan without sisters or brothers. His father’s best friend, a famous lawyer, M. de Neurath, the Assessor of the Imperial Chamber at Wetzlar, became another father to the boy, and personally superintended the education of his son and Friedrich von Savigny. When they reached the age of fifteen he plunged them into a terrible course, comprising the science of law, natural law, international law, Roman law, German law, and so forth. The principles were driven into the boys’ minds by the system of question and answer, and finally they were induced to commit to memory a vast volume of speculative thought. It was an extraordinary training, recalling to some extent the aridity of Mill’s early life, but it was modified by the abiding influence of his mother and the personal tenderness of M. de Neurath. We are told that Savigny revolted against the unreality of this shadow-land of thought. Indeed his whole after-life of work was in a sense a protest against the unhistoric school of thought which robed in unreality his earliest period of intellectual effort. Neurath’s lessons must, however, have been extraordinarily effective, for they turned the entire interests of the youth into the direction of the theory and history of law. At the age of seventeen (Easter, 1796) he joined Marburg University, and attended successive courses by Erxleben and Weiss on the Pandects.

Weiss was a dramatic and effective teacher, and he placed his fine library at the disposal of Savigny, who became one of his private pupils. Indeed, though not a lawyer of great fame, he really turned the mind of Savigny in the direction of the change of method that was then in the air. Weiss was a bitter opponent of Wolff and other standard authors, and though he did not accept the entire views of Hugo and Naubold, he felt that a sense of history or evolution was a necessary element in the study of law. Savigny, who had suffered as a boy many things from what we may call the a priori school of law, drank in the new doctrine with avidity, and, passing in October, 1796, to the University of Göttingen, his historical leanings were confirmed by the brilliant
lecturing of Spittler on universal history. Göttingen had nothing else worth having to give this student, but it did, in fact, give him the one thing needful at the moment. An illness in the spring of 1797 interrupted work, and in October Savigny returned to Marburg for further study. From 1799 to 1800 he travelled through Germany, visiting various universities, including Leipzig and Jena, and devoting his entire time to study. In the year 1800 he received the degree of doctor at Marburg, his dissertation on the occasion being entitled De concursu Delitorum formati (Vermischte Schriften, iv. 74). The same year he became an authorized teacher (Privatdocent) at Marburg, and lectured on criminal law. He also lectured (as an additional or extraordinary professor) on the ten last books of the Pandects Ulpian, the Law of Succession, Obligations, the Methodology of Law, and the History of Roman Law. In these courses we indeed see laid out the ground-plan of his life's work. M. Guenoux (from whose work this life of Savigny is largely derived) tells us of the growth of his attitude towards history. He says:

"L'Histoire du droit romain de Hugo avait excité vivement l'intérêt de Savigny, et par ses formes souvent énigmatiques, plutôt éveillé que satisfait sa curiosité. Les améliorations de onze éditions successives ont plus que décuplé l'ouvrage original sans faire disparaître entièrement ce caractère. Au reste, Savigny a toujours professé une respectueuse reconnaissance pour les travaux de Hugo, et quoiqu'il n'ait jamais suivi ses cours, c'est peut-être le seul juriste consulte moderne qui ait eu de l'influence sur son développement."

No doubt this is largely true, but in fact Savigny came upon the scene at a moment when there was a struggle in progress between the supporters of the school of traditional learning and thinkers of the Hegelian type who desired to demonstrate and share in the processes of evolution or history. It must be remembered that Savigny represents a stage in a movement that is really a Renaissance movement, and that the eighteenth-century theories of law as put forward by Wolff and Vattel and many of their followers was rather an intellectual interlude than a

1 Histoire du Droit Romain au Moyen-Âge, par M. de Savigny, traduite de l'Allemmand sur la dernière édition et précédée d'une notice sur la vie et les écrits de l'auteur par M. Charles Guenoux (four volumes, one and two in one, Paris, 1839). But see also for the life and works of the jurist, Friedrich Carl von Savigny: sein Wesen und Wirken, by Professor Rudorff (Weimar, 1862), and a paper by Mr. William Guthrie in the Law Magazine and Review for May, 1863; Ilhoring, Gesammelte Aufsätze; Mignet, Nouveaux Éloges Historiques, 1877.
definite disturbance of the Renaissance movement. The pre-Renaissance jurisconsults from the twelfth to the fifteenth century, the Glossators as they are called, had been engaged in the practical work of deriving from Roman law a working code that should destroy and replace the rapidly forming feudal law. With the Renaissance came Italian and French thinkers destined to do more than this—Andrea Alciati (1492-1550) and Jacobus Cujacius (Jacques Cujas) of Toulouse (1522-1590). Joseph Scaliger said of these two men, “Ce qu’Alciat a commencé, Cujas l’a accompli.” Alciati gave new life, new literary form, to the study of jurisprudence; but Cujas did more than this, he penetrated into the very spirit of Roman law. M. Lerminier, in his Introduction générale à l’Histoire du Droit (1829, cap. v., pp. 43-46), says of Cujas:

“Ne craignons pas de le dire, il a aimé le droit romain en poète, il a nourri le sentiment le plus profond de sa réalité, et, pa l’énergie qu’il a déployée dans cette voie, il s’est fait le véritable fondateur de l’école historique du droit : c’est de lui que procède l’école historique allemande en ce qui touche le droit romain . . . Son génie : c’est un esprit d’historien, c’est une imagination d’artiste ; sous sa plume, tout est historique, individuel ; aussi dans la volumineuse collection de ses œuvres vous ne trouverez pas un ouvrage qui ne soit un commentaire, une explication, une note sur les vestiges de l’antiquité. Cujas est le modèle de l’exégèse.”

The learned writer (M. Rapetti) of the article on Cujas in the Nouvelle Biographie Générale, after quoting the opinion of M. Lerminier, adds this important reflection:

“L’œuvre de Cujas ne fut pas seulement une explication plus habile de la loi romaine, un modèle d’exégèse, une révélation du vrai génie de la législation latine : en étudiant la loi romaine comme un objet de restauration historique, Cujas a obtenu un autre avantage ; le premier, il a suscité cette idée, à savoir qu’il est pour chaque civilisation une loi propre, et par là il a contribué à reléguer la loi romaine dans son antiquité vénérable ; il a émancipé de l’empire trop absolu de cette loi l’autonomie des nouvelles sociétés.”

Cujas in the immense output of his work foreshadows the industry of Savigny. The six great folios of his collected

1 The jurisconsults of the school of Bologna, Accurso, Bartele, Vinerius, etc. (voir Nouvelle Biographie Générale, tome xii., art. de Cujas, col. 592).
works\textsuperscript{1} overwhelm the mind. The first folio deals fully with four books of the Institutes of Justinian, twenty-nine titles from Ulpian, and with Julius Paulus. The second folio contains the brilliantly restored works of Papinian. The third gives us Paratitla in nine books of the Codicis Justiniani and a commentary on the three last books (x., xi., xii.) of the Codex, an exposition of the Novels and of the five books relating to Feuds, together with twenty-eight books of observations and emendations. The fourth folio gives us Paulus on the Edict and his books of Questions, and also the Responsa of Paulus, Neratius, Marcellus, Ulpian, Modestinus, and Scaevola; Notes on Modestinus and the works of Salvius Julianus. Folios v. and vi. contain the post-mortem publications (edited by T. Guerinus and C. Colombet), comprising Commentaries on no less than seventy-six titles of the Digest and innumerable notes on the Codex of Justinian and on Books ii., iii., and iv. of the Decretals of Gregory IX. Cujas was rightly called Jurisconsultus, for he placed Roman law on a new footing and brought it into line with the laws that it was destined to affect. This sturdy and genial scholar\textsuperscript{2} and his bitter but brilliant opponent Hugues Doneau (Donellus) (1527-1591) were (in the matter of the study of law) the forerunners of Leibnitz (1646-1716), whose juridical works mark a definite stage in the study of the law, works such as \textit{Novae methodus discendae docendaeque jurisprudentiae} (Frankfort, 1667) and \textit{Codex juris gentium diplomaticus} (1693) with its supplement \textit{Mantissa Codicis Jurs diplomatici} (1700); of the universal-minded Jean-Etienne Pütter (1725-1807), who at Marburg, Halle, and Jena became deeply proficient in classics, mathematics, philosophy, Roman, feudal, and public law, who lectured on law (1746) at Göttingen, who produced between 1776 and 1783 his \textit{Bibliographica du droit public allemand}, who wrote his \textit{Manuel de l’histoire d’Allemagne} in 1772 and his \textit{Développement historique de la constitution de l’empire d’allemaagne} in 1786. In Pütter we see the exact spirit of the historical school. A descendant of these men was Gustave Hugo (1784-1844), who deliberately based his methods on Leibnitz and

\textsuperscript{1} Jacobi Cujacii, \textit{IC. Operum quae de jure fecit}, Paris, Apud Heretum de Mosnul, 1637. Four volumes in six, prefaced by a life of, and many epitaphs on Cujas.

\textsuperscript{2} "Vir quadrato corpore, firmoque ac bene constituto, adeo ut ex eo manans sudor non insuavis esset odoris (quod illo natura beneficium cum Alexandre Macedone commune so habero ludens nonnunquam inter amicos iactavit), statura brevi, barba tum longa et cana, sed in juventate nigerrima, capillitio simili, colore candido, voce firma et clara" (\textit{Vita}).
Pütter. He devoted much time to the historical documents and legislation connected with Roman law, and in 1788 published *Les Fragments d'Ulpian*, and was at once called to a professorship at Göttingen. Hugo classified law into persons (their state, their relations to the family and the city, their nature, character, and the method of acquiring and losing property) and the actions necessary for establishing or defending rights. This classification was adopted in the Civil Code. This was a philosophical classification. But Hugo did not neglect history. He divided Roman law into three periods: the period up to the xii. Tables, the Prætorian, and the Imperial periods. In 1790 he issued a History of Roman Law, in 1812 a Manual of Roman Law since the Time of Justinian, and between 1818 and 1829 he published his Elements of the History of Roman Law up to the Time of Justinian.¹ Through Hugo the whole historic school from the days of the Renaissance concentrated on Savigny.

At Marburg Savigny instantly made his mark as a teacher. We have the testimony of Jacob and Wilhelm Grimm (who both were pupils of his in 1802 and 1803) as to his capacity. Wilhelm Grimm wrote in his autobiography (pp. 170-1) as follows:

"Je me sens si puissamment captivant que ses auditeurs, c'était la facilité et la vivacité de sa parole jointes à tant de calme et de mesure. Les talents oratoires peuvent éblouir quelque temps, mais ils n'attirent pas. Savigny parlait d'abondance et ne consultait que rarement ses notes. Sa parole toujours claire, sa conviction profonde et en même temps une sorte de retenue et de modération dans son langage faisaient une impression que n'aurait pas produite l'éloquence la plus abondante, et tout en lui concourait à l'effet de sa parole..."

"Il nous fit comprendre la valeur des études historiques et l'importance de la méthode. Ce sont là des obligations que je ne saurais trop reconnaître, car sans lui je n'aurais peut-être jamais donné à mes études une bonne direction. Pour combien de choses n'a-t-il pas éveillé notre intérêt! Combien de livres n'avons-nous pas empruntés à sa bibliothèque! Avec quel charme ne nous a-t-il pas lu quelque-fois des passages de Wilhelm Meister, des poésies de Goethe! L'impression que j'en ai conservée m'est encore si présente qu'il me semble l'avoir entendu hier."

It is a charming picture, bringing out not only the learning

¹ The influence of Haubold (1766—1824) on Savigny must also be kept in mind.
and the clarity of the man, but his humanity and charity. One
impression conveyed by the lectures is the impression that all
great lecturers indelibly impress on the minds of their pupils.
Who that heard Maitland lecture can think of it as having been
farther away than yesterday? But Savigny was only twenty-
three when he so impressed the great Grimm brethren!

Thirty years later he made a similar impression on M. Charles
Guenoux. He wrote in 1839:

"Ce qui m'a surtout frappé, c'est la vivacité et la chaleur d'un
cours qu'il répétait alors pour la vingt-cinquième fois. Son
enseignement offre chaque année un intérêt nouveau, parce
que chaque année on y retrouve le fruit de nouvelles études,
les découvertes les plus récentes et le dernier état de la science.
Aussi Savigny n'est-il pas insensible à l'intérêt qu'il excite dans
son nombreux auditoire, et c'est ce qui lui fait continuer ses
leçons quand des travaux plus importants peut-être sembleraient
demander tout son temps. Sa parole abondante et précise
éclaire si bien les matières les plus obscures que ses élèves n'en
soupçonnent la difficulté, que si plus tard ils ont besoin de cher-
cher une solution qui leur est échappée. Sa méthode est surtout
remarquable lorsqu'à propos de matières controversées, il a
occasion d'exposer des doctrines nouvelles. Sa parole, alors plus
simple et plus grave, exprime une conviction profonde jointe à
une modestie sincère; bien différent de ces professeurs qui, pour
persuader leur auditoire, recourant à tous les artifices de l'avocat
comme s'il s'agissait d'un plaidoyer, et font d'une question scien-
tifique une question d'amour-propre et de personnes."

Savigny's success as a teacher did not check, nay, rather
encouraged, his efforts as a student. His business as yet was
not to write books, but to study texts, and so to make possible
a real revival in the scientific study of law. His master Hugo
had already done much in this direction. M. Guenoux points
out, as I have ventured to point out above, the value of Hugo's
work. He found a lifeless and arbitrary school of Roman lawyers
at work, men who never recognized the heredity, so to speak, of
Roman law, men who had forgotten the lessons of the Renaissance.

"Mais en 1788, Hugo appela l'attention sur Ulpien et commença
une réforme semblable à celle que Cujas avait accomplie au
seizième siècle. Animé du même esprit que ce grand homme, il
replaça la science du droit sur ses véritables bases en lui restituant
le secours de la philosophie et de l'histoire. Haubold et Cramer
partagent avec Hugo la gloire de cette régénération de la science."
M. Guenoux goes on to protest against the belief in his time (1839) that German jurists fell into two schools, the historical school and the philosophical school. The distinction was merely one of pace; all followed the Cujacian School and refused to isolate jurisprudence from either philosophy or history. That may have been the case in 1839, but it certainly was not the case in the mid-eighteenth century, when eminent jurists, men such as Wolff and Vattel, did in fact base new jurisprudence on *a priori* theories. The great triumph of the school of which Savigny is the shining and immortal light was the absolute destruction of the *a priori* method and the establishment on an impregnable basis of the vital and vitalising principles of the Renaissance.

In 1803 appeared Savigny’s famous work on the Right of Possession, *Das Recht des Besitzes*. It is not possible (from considerations of space) here to supply an analysis of this treatise, but something must be said as to the scope and value of a work which Austin in his *Province of Jurisprudence Determined* (ed. 1832, App., p. xxxviii) declared to be “of all books upon law, the most consummate and masterly.” It is divided into six books. The first deals at length with the notion of Possession. Savigny says that “by the possession of a thing, we always conceive the condition, in which not only one’s own dealing with the thing is physically possible, but every other person’s dealing with it is capable of being excluded.” The exercise of property takes place by virtue of this condition of detention. Savigny’s object was to consider the rights of possession (*jus possessionis*), and not the right to possess (*jus possedendi*), and in the first book he defines the notion in form and in substance: “in *form* by describing the rights which require possession for their foundation, thus giving the meaning which the non-juridical notion of Detention acquires in jurisprudence so as to allow it to be understood as a legal entity, as Possession; in *substance* by enumerating the conditions which the Roman law itself prescribes for the existence of Possession, and thus pointing out the precise modifications under which Detention operates as Possession.” The second book deals with the acquisition of possession, the third with its loss; the fourth treats of the interdicts that act as remedies for the protection of possession; the fifth deals with possession in relation to legal rights that are separated from actual property (*juris quasi possessio*), such as personal and real easements and superficies (buildings). The last book deals with
a subject which was necessary from Savigny's point of view to complete anything like exhaustive treatment of so important a branch of law as the doctrine of Possession. He says: "The theory of Possession has been discussed in the first five books of this work without any reference whatever to anything that may have been incorporated into the Roman law in modern times; and this method of inquiry is always necessary when we do not desire, by confounding the old law with the new, to misunderstand both together." It is important not to pass over the historical question, for "of all the important errors which are commonly entertained as to the Roman view of Possession, there is perhaps not one which has not also been raised in the Canon and German law." He goes on to point out as to the notion of Possession that, while in Roman law it referred only to property and jura in re, subsequently and especially by the Canon law it was extended to every possible right, including rights of personal status and obligations. Thus the Roman law has been expanded to meet new objects. The forms by which Possession is protected were also modified in post-Roman times. The Spoliatory Suits in so far as they applied to prædial servitudes were a legitimate extension of the Roman law to meet cases that had not arisen when that law was in its prime. Savigny agrees with Mühlenbruch that these suits in so far as they were legitimate were an extension of the interdict de Vi to a third mala fide possessor.

It is in this final passage of his work that Savigny turns on the opponents of the new jurisprudence, and gladly cites in his favour Mühlenbruch, the author of the Doctrina Pandectarum. "An empty cry is often raised against the endeavours of what is called the historical school, to clothe every right exclusively with Roman forms, and thereby to do injustice to the original inventions of practice, and to the development of modern scientific intelligence." This attack from first to last irritated, by its obvious injustice, Savigny, and it is with a cry of delight that he shows how Mühlenbruch shares his views as to Spoliatory Suits: "Could this author have been a prophetic disciple of the German historical school?" Savigny goes on to show that the "absurd and vexatious" possessory suit used in Germany, Italy, Spain, and France from the thirteenth century down to his own day,

1 I may note here that an analysis and summary of Savigny's latest work —that on Obligations in Roman Law (1851-3)—was published by Mr. Archibald Brown in 1872.
a suit called *Possessorium summarium* or *summarissimum* (a suit in which he once acted as a judge), could not be fitted into any scientific evolution of Roman law. He adds: “In modern times undoubtedly legal rules have been adopted which were unknown to the Roman law; but the whole Roman theory is so far from being broken in upon by the above rules, that on the contrary they cannot be understood except by treating them as additions to the above theory [of possession], the validity of which is thereby clearly recognised.” To-day in dealing with Savigny’s work on Possession it would be wise to preface the study of it by a close perusal of Dr. Roby’s lengthy treatment of the doctrine of Possession as understood in the times of the Antonines. Savigny would have appreciated the need for a full study of this elaborate portion of Dr. Roby’s work.

It is valuable to read what Savigny’s pupil Guenoux said of his treatise on Possession in 1839:

“On sait que dans ce traité, après avoir passé en revue les quarante-quatre ouvrages qui composent la littérature de cette partie du droit, l’auteur s’est livré à une étude profonde et originale des textes, et qu’à l’aide de la philologie et de l’histoire, il a établi sur cette matière si difficile des doctrines entièrement nouvelles, ou plutôt a retrouvé les doctrines des anciens jurisconsultes romains ; mais ce qu’on ne sait pas, c’est qu’un travail aussi immense a été achevé en cinq mois. Cette heureuse fécondité prouve que malgré sa jeunesse Savigny ne s’était pas trop hâté de produire ; et cette fécondité ne s’est pas tarie, parce que, semblable aux grands fleuves, il avait attendu pour couler que sa source fût pleine.

“L’histoire et la science du droit ont certains problèmes qui sont éternellement livrés aux disputes des hommes, et dont il paraît impossible de donner une solution définitive. Dans la polémique à laquelle ces questions ont donné lieu, Savigny n’a pas montré moins de sagacité que de candeur et de bonne foi, en rétractant ses opinions dès qu’un de ses adversaires en avançait une plus probable. Mais il est une foule de points où Savigny a eu la gloire de réunir tous les suffrages, et son livre, quoique purement théorique, a déjà eu la plus heureuse influence sur la pratique du droit en Allemagne, influence destinée à s’accroître, car pour la possession comme pour tant d’autres, le droit romain est souvent la raison écrite, la loi véritable, c’est à dire l’expression des rapports nécessaires qui dérivent de la nature et des choses.”

This remarkable testimony to the gifts, the serious nature, and the abiding influence of Savigny written in 1839 might have
been written to-day, for the greatness of Savigny increases with
the passing years. The vigour of his patriotism, and his efforts
on the behalf of the poor (as in the cholera outbreak of 1831)
were scarcely less noticeable than his efforts as a teacher.

In 1804 Savigny married Fräulein Kunigunde Brentano,
daughter of a Frankfort banker, a member of a family well known
in German literature from the correspondence between her brother
and sister, Clemens Brentano and Bettina von Arnim, with the
poet Goethe. This marriage was an ideal union, since the wife,
herself an orphan, had every thought in common with her
husband. There were six children of the marriage. Two of
them died in infancy. The only daughter married M. Constantin
de Schinas, Minister of Education at Athens, where she died in
1835. She was full of brilliant promise, and her early death was
the abiding grief of Savigny’s life. It is said that the enormous
work known as the System of Modern Roman Law was under-
taken to help him to pass through this sorrow.

Shortly before his marriage Savigny had severed his con-
nection with the University of Marburg, and, refusing tempting
offers from the Universities of Heidelberg and Greifswald, he set
out with his wife on a tour of research to certain famous libraries,
to the libraries of Heidelberg, Stuttgart, Tubingen, Strasbourg,
and Paris. In Paris he had the misfortune to lose (by robbery)
all the material that he had collected through Germany. He
called his old pupil Joseph Grimm to his aid, and with his help
and the help of his wife and one of her sisters they conquered
the abundant French manuscript material, including the un-
published and almost indecipherable letters of the great Cujas.
In 1808 he took up for a year and a half professorial work at the
University of Landschut. When he left for Berlin the grief of
the students was unaffected. His sister-in-law Madame von
Arnim, who was staying with him at the time of the change,
wrote to Goethe:

"Que Savigny soit savant tant qu’il voudra, la bonté de son
caractère surpassé encore ses qualités les plus brillantes. Les étu-
diants l’adorent, ils sentent qu’ils perdent en lui un bienfaiteur.
Les professeurs le chérissent également, surtout les théologiens. . . .
Savigny avait donné une vie nouvelle à l’université, qu’il avait
su réconcilier les professeurs ou du moins calmer leurs inimitiés,
mais que son influence bienfaisante s’était fait surtout sentir
aux étudiants dont il avait augmenté la liberté et l’indépendance.
Je ne saurais vous exprimer le talent de Savigny à traiter avec la jeunesse. Les efforts, les progrès de ses élèves lui inspirent un véritable enthousiasme il se sent heureux s’ils réussissent à traiter les sujets qu’il leur propose; il voudrait leur ouvrir le fond de son cœur; il s’occupe de leur sort, il pense à leur avenir, et leur trace la route qu’éclaire son zèle bienveillant. On peut dire de Savigny que l’innocence de sa jeunesse est devenue l’ange gardien de sa vie. Le fond de son caractère est d’aimer ceux auxquels il consacre toutes les forces de son esprit et de son âme, et n’est-ce pas là ce qui met le sceau à la véritable grandeur? La simplicité naïve avec laquelle sa science descend au niveau de chacun le rend doublement grand.”¹

On the foundation of the University of Berlin in 1810, one of the first-fruits of the great educational campaign that sprang out of the disastrous field of Jena, Wilhelm von Humboldt, the head of the new Prussian educational system, offered Savigny the chair of law, which, chiefly from patriotic motives, he accepted. The jurist held this chair until 1842. It was his practice to lecture on the Pandects (excluding the law of succession) in the winter Semester and the Institutes in the summer Semester. He also lectured on Ulpian, Gaius, and the Prussian Landrecht. Among his pupils at Berlin were Hollweg, Klenze, Göschen, the editor of Gaius, Blume, Rudorff, Keller, Dirksen, Barkow, Böcking, and Puchta. He also sat on the University Appellate Tribunal, known as the Spruch-Collegium, to which questions of law were referred for decision by other tribunals. At Berlin Savigny became an intimate friend and pupil of the great Niebuhr, whose mind and character so closely coincided with his own, and who pays him a just tribute in the preface to his History of Rome.

In 1811, Savigny was elected a member of the Berlin Academy, a precedent followed by most of the Academies of Europe in later years, and to this body he read papers on the Roman written contract, on the Voconian law, on the lawsuit relating to the loan of money by Marcus Brutus to the town of Salamina, on the Protection of Infants and the lex Plautoria, on the Rights of Creditors under the old Roman law, on the History of the Nobility in Modern Europe.

In 1814 the jurist (who was then acting as law tutor to the Prince Royal of Prussia) issued a brief work entitled De la Vocation de notre siècle pour la législation et la science du droit, in which he closely and brilliantly criticized the proposed Civil Code as

¹ Goethe's Briefwechsel mit einem Kinde, vol. ii., pp. 171-188 (2nd ed.).
not in fact adopting, as it proposed to adopt, the principles of the Roman law at all. In 1817 he was given the honorary title of Geheimer Justiz-Rath in recognition of his work on the Council of State.

In 1819 he was appointed Counsellor to the Court of Revision and Cassation at Berlin which had been formed to take the place of the Courts at Düsseldorf and Coblenz. This practical work was of the greatest benefit to his juridical studies. A little later a nervous breakdown, the result probably of years of close work, became imminent, and in fact from 1822 to 1828 he was subject to a form of nervous illness that rendered at times all work impossible. M. Guenoux attributes to this illness the delay in the publication of the History of Roman Law in the Middle Ages. The first volume appeared in 1815, but the sixth was not issued until 1831.

Savigny laid the greatest stress on the necessity of tracing the course of Roman law through the Middle Ages. He writes to M. Guenoux: "Ignorer ce que les siècles intermédiaires ont ajouté au droit romain primitif est absolument impossible, tout ce que nous apprennent nos professeurs et les livres modernes en est imbu." No student of, let us say, Bracton could doubt this, and Maitland in his brilliant papers on "The Beatitude of Seisin" (Law Quarterly Review, vol. iv.) has shown how the doctrine of possession in English law completely changed as the pressure, so to speak, of the Roman lawyers died away. Consequently Savigny determined to deal exhaustively with the history of Roman law in the Middle Ages. His great work falls into two parts: the period before and the period after the foundation of the School of Bologna about the year 1100. In the first two volumes he deals with the earlier period, first in general and then in detailed form. He begins with the sources of law and judicial organization in Rome and the provinces in the fifth century. He follows this by treating the same themes in relation to the states that arose on the ruins of the Western Empire. In the second volume he deals with Roman law in the kingdoms of Burgundy, of the Visigoths, in the German Empire, in Saxon England, in the kingdom of the Ostrogoths, in Italy under the Greek domination and under the Pope and the Emperor in Lon-

1 Geschichte des römischen Rechts im Mittelalter (6 vols., 8vo., Heidelberg, 1815-31). A second edition began to be issued from Heidelberg in 1834. The last and seventh volume appeared in 1851, with a preface dated in May of that year.
bardy. He finally shows the part played by the Church in preserving the Roman law. In the third volume he collects much material on the literature of Roman law after the foundation of the School of Bologna, and has an important chapter on the history of the European Universities. Indeed this general volume dealing with the history of Roman law from the twelfth century to the end of the Middle Ages is professedly a literary history of law, since Savigny found that such a history was indispensable for the comprehension of the evolution of the law. He says on this point:

"Le but de toute composition historique est d’offrir une représentation complète et vivante du passé. Plus ce passé est éloigné, moins on a de moyens d’arriver à ce but. Ainsi l’on découvre un détail, mais on ne sait comment le rattacher à l’ensemble, ou il lui manque cette lumière qui éclaire un fait historique comme un fait contemporain. Si le but de l’histoire ne peut être atteint complètement, on ne doit rien négliger de ce qui nous en rapproche ; l’on ne doit donc rejeter aucun détail comme peu important en lui-même, ou comme étranger à l’objet direct de notre étude."

So, having given us the means of studying the legal literary history of the period, a bibliography of the subject (with full reference to the work of, amongst others, Johannes Andreae of Bologna, Pastrengo the friend of Petrarch, Severinas, Trithemius, Diplovataccius, Johann Fichard, Benaviudus, Paneirolus, Taisand : we miss in this place the name of Aymanns Rivallius, whose important history of the Civil Law in five books was published at Mainz in 1539†), and treated of the Universities, he passes on to the legal sources possessed by the Glossators and considers at length their work. In the fourth volume we get the elaborate detail foreshadowed in the previous volume. Here we can read at large in more than five hundred closely printed pages of Innenius, of the four famous jurisconsults of Bologna (Bulgarus, Martinus, Jacobus, and Hugo), of Rogerius, the pupil of Bulgarus, Placentinus, Johannes Bassianus, Pillius, and many other Glossators, including the famous Vacarius and scarcely less famous Azo. In the middle of the thirteenth century a new and dismal

† There is a copy of this work in the fine civil law section of Lincoln’s Inn Library. Savigny gives a brief note on Rivallius in his fourth volume (pp. 256-7) and declares this work to be "remarquable, malgré ses défauts, comme le premier qui ait été fait sur l’histoire du droit."
era opened for the study of law: the text was swallowed up in
detailed comment and the true treatise disappeared. Indeed
the School of the Glossators was dead. In the fourteenth century
fortunately a partial revival of scientific method came which
carried the science of law on to the time of the Renaissance, when
it was able to assert its place in the thought of the world. Savigny
traces in detail this long movement, and illustrates each step
with ample reference to the works of the jurisconsults of the
fourteenth and fifteenth centuries. In this work he throw open
a field of research that will occupy jurists for centuries to come.
Maitland's work in England is but a sample of what has to be
done throughout Europe.

Savigny's work on The Vocation of our Age for Legislation
and Jurisprudence, issued in 1814 and passing to a second edition
in 1828, was a notable publication. It was neither more nor less
than an attack on the system of the Code imposed upon Europe.
Napoleon's Code he declares "served him as a bond the more
to fetter nations: and for that reason it would be an object of
terror and abomination to us, even had it possessed all the
intrinsic excellence which it wants." He attacks the Code, however,
chiefly from the point of view of a juridical thinker, since
at the overthrow of Napoleon in 1814 his Code, which had been
in force "in parts of Bavaria, Hesse Darmstadt, the Rhenish
provinces of Prussia, the kingdom of Westphalia, Baden, the
Hanseatic towns, and some other ultra-Rhenish provinces,"
was discarded by all Germany with the exception of the Rhenish
provinces. The danger from a foreign Code no longer existed;
but there still existed the danger of a Code at all. The eminent
lawyer Thibaut of Heidelberg advocated the establishment of
a German Code, and Savigny determined to throw his great weight
in the other scale and restore a natural evolution of law. He
attacked the demand for a Code first on the ground that the times
being as they were, and the preparation for a Code (thanks to
the paucity of great German jurists in the eighteenth century)
inadequate and the language juridically undeveloped, it was
not then practicable to construct a Code; and secondly on the
ground that the three great existing Codes—the Code Napoléon,
the Prussian Landrecht, and the Austrian Gesetzbuch—proved
that in practice Codes were not successful. Savigny's attack
on the Code Napoléon was just, though he admits that its form
was embittered by patriotic feelings. He says:
"The Revolution, then, had annihilated, together with the old constitution, a great part of the law; both, rather from a blind impulse against everything established, and with extravagant senseless expectation of an undefined future, than in the hope of any definite improvement. As soon as Napoleon had subjected everything to a military despotism, he greedily held fast that part of the revolution which answered his purpose and prevented the return of the ancient constitution—the rest, which all were now sick of, and which might have proved an obstacle to himself, was to disappear; only this was not altogether practicable, as the effects of the years that had elapsed upon the modes of thought, manners and feelings of the people, were not to be effaced. This half-return to the former state of tranquillity was certainly beneficial, and gave the Code, which was founded about this time, its principal tendency. But this return was the result of lassitude and satiety, not the victory of nobler thoughts and feelings; nor, indeed, would there have been any opening for such in that condition of public affairs which, to the plague of Europe, was preparing. This want of a sound basis is discernible in the discussions of the Conseil d'État, and must impress every attentive reader with a feeling of despondency. To this was now added the immediate influence of the political constitution. This, when the Code was framed, was, in theory, republican in the revolutionary sense; but all, in reality, inclined to the recently developed despotism. The elements of uncertainty and change were consequently mixed up with its fundamental principles. Thus, for example, in 1803, Napoleon himself, in the Council of State, pronounced those same Substitutions to be injurious, of a bad moral tendency and unreasonable, which were re-established in 1806, and, in 1807, adopted into the Code. But as regards the state of public feeling, a far worse consequence of this quick succession was, that the last, so often sworn to, object of belief and veneration was in its turn, annihilated, and that expressions and forms came more and more frequently into collision with ideas, whereby, in the greater number, even the last remains of truth and moral consistency were necessarily extinguished. It would be difficult to imagine a state of public affairs more unfavourable for legislation than this."

Turning to the technical side of the Code, Savigny argues that the Conseil d'État could have, from its ignorance of general juridical doctrines, little influence on the Code. It was, as a matter of fact, the work of jurists who, so far as Roman law

1 I use the translation made from the 1828 edition by Mr. Abraham Hayward in 1831. (London: printed but not for sale.) A copy, here used, is in the Acton Library at Cambridge (C. 48, 929). There is another copy in the Middle Temple Library.
was concerned, necessarily based their work upon Pothier. Dupin declared that three-fourths of the Civil Code was literally extracted from his treatises. "A juridical literature in which he stands alone, and is almost revered and studied as the source, must, notwithstanding [the real value of Pothier], be pitiable." Savigny proceeds to eviscerate the framers of the Code, Bigot Preameneu, Portalis, and Maleville. Certainly they were not supremely intelligent jurists. The results of their work were bad in the extreme. In the selection of subjects "the most palpable defects are to be found by wholesale." But worse was to follow. "Far more important in this respect, and much more difficult in itself, is the selection of rules on the subjects actually treated of; consequently the finding of rules, by which particular cases are to be governed in future. Here the object was to master the leading principles, on which all certainty and efficacy in juridical matters depend, and of which the Romans afford us so striking an example. In this point of view, however, the French work presents a melancholy spectacle." The fundamental and precise notions—the rights of things and of obligations—upon which the Roman law of Property depends are in the Code vague and ill understood, and this leads to a confusion of ideas which in the form of a Code is dangerous to the public. Last, Savigny attacks the provisions in the Code for dealing with cases that are not in fact covered by a precise section of the Code. It was not possible to regard the rules dealing with such cases as organic developments out of the Code—with which we may compare, though Savigny does not give the parallel, the growth of the English common law to meet new cases—since the Code itself had no organic unity. The Code is only a mechanical mixture of the Revolution and pre-Revolution laws, and the mixture is not even a logical whole, a formal unity that might be logically developed to meet new cases. Consequently the supplemental rules had to be supplied from outside sources, such as (that vague thing) the law of nature, the Roman law and local pre-existing laws, and the general theory of law. This introduction of an abrogated law into the Cour de Cassation is a real evil. A practice of the Courts could grow up, but no real juridical growth. The rules could indeed be applied at the tyrannical discretion of the judges. This indictment of the French Code, if we except the political note at the beginning, is effective in the extreme, and should be considered in every step towards
codification. Before considering his general notion of legal reform it will be well to say something of Savigny’s criticism of the German and Austrian Codes.

Savigny’s criticism of the Prussian Landrecht designed by Frederick II. in 1746 is not less penetrating though his natural if somewhat unjudicial hatred of France and all her works induces him to attribute to the Prussian jurists a far nobler outlook than that which inspired Napoleon and the unhappy framers of the Code. We may doubt if Suarez was a greater man than Pothier, or Volkmar (or Pachaly) than Portalis, but in any event Savigny declares that if “we regard the composition of the Landrecht, it confirms my opinion that no Code should be undertaken at the present time.” Frederick II. designed a Code that should abolish judge-made law altogether; but, in fact, the Landrecht in its latest form gave the judge full powers of interpretation. But still this was, after all, only for particular cases. “With the Romans all depends on the jurist, by his thorough mastery of the system, being placed in a condition to find the law for every case that may arise. This is effected by the precise individual perception of particular legal relations, as well as by the thorough knowledge of the leading principles, their connection and subordination; and where, with them, we find law cases in the most restricted application, they, notwithstanding, constantly serve as the embodied expression of the general principle.” This was not the case with the Landrecht, the provisions of which “neither reach the height of universal leading principles, nor the distinctness of individuality, but hang wavering between the two, whilst the Romans possess both in their natural connection.” Savigny goes on to criticize the German language, “which generally speaking, is not juridically formed, and least of all for legislation.” The French language, he adds, has a great advantage in this respect: that it had not been better used “is accounted for by the low state of knowledge” in France. The Austrian Gesetzbuch was begun in 1753; by 1765 the groundwork of the Code, “a manuscript work of eight large folios, mostly extracted from the commentators on the Roman law,” was complete. This was abstracted by Horten, digested into code form by Martini, published, submitted to the provincial authorities and the Universities, and, slightly revised, issued as the Gesetzbuch in three parts, covering 561 widely printed pages. The Empress Maria Theresa directed the draughtsmen to employ “natural equity”
as well as Roman law. In fact, there was no attempt to cover all particular cases. The notions of legal relations were defined, and the most general rules laid down. Savigny considered these notions as too general and undefined, and often based on an imperfect appreciation of the Roman authorities. The Roman clarity of definition is absent. Moreover, the practical rules of the Gesetzbuch are as incapable as the rules of the Code Napoléon of meeting particular cases. The Gesetzbuch falls back for the solution of particular cases on cases analogous to those provided for, and on "natural law"; the principle carries one but a short way, and the use of "natural law" is "fraught with danger to the administration of justice." The Gesetzbuch, like the Code and the Landrecht, therefore confirms Savigny's argument "that the present time has no aptitude for the undertaking of a Code." The unsucces of three such efforts shows that "there must be some unsurmountable obstacles in the juridical state of the whole age."

What then, asks Savigny, are we to do when there are no Codes? He would hold to the "same mixed system of common law and provincial law, which formerly prevailed throughout the whole of Germany... provided [that] jurisprudence does what it ought to do, and what can only be done by means of it." We have inherited "an immense mass of juridical notions and theories... At present, we do not possess and master this matter, but are controlled and mastered by it, whether we will or not. This is the ground of all the complaints of the present state of our law, which I admit to be well founded: this, also, is the sole cause of the demand for Codes." Savigny adopts the Hegelian position: "It is impossible to annihilate the impressions and modes of thought of the jurists now living—impossible to change completely the nature of existing legal relations; and on this twofold impossibility rests the indissoluble organic connection of generations and ages; between which, development only, not absolute end and absolute beginning, is conceivable." Savigny with a brilliant flash of juridical insight turns the indestructibleness of legal notions to permanent gain. He says: "There is consequently no mode of avoiding this overruling influence of the existing matter; it will be injurious to us so long as we ignorantly submit to it; but beneficial if we oppose to it a vivid creative energy—obtain the mastery over it by a thorough grounding in history, and thus appropriate to ourselves the whole
intellectual wealth of preceding generations." In any other
process the law may lose its consciousness of nationality, and only
through history "can a lively connection with the primitive
state of the people be kept up; and the loss of this connection
must take away from every people the best part of its spiritual
life." Savigny goes on to say that the object of the strict
historical method of jurisprudence is to trace every established
system to its root, and thus discover an organic principle, whereby
that which still has life may be separated from that which is
lifeless and only belongs to history." The importance of Roman
law is that "by reason of its high state of cultivation" it serves
as a pattern for the labours of the modern jurist. The importance
of the local or customary law is that "it is directly and popularly
connected with us." The modifications of these two primitive
systems are important as showing how both Roman law and local
law have varied under the stress of actual needs and the applica-
tion of legal theory. Roman law must be grappled with at the
root; we must enter into the minds of the Roman jurists if we
are to appreciate it and apply it to modern uses. Do not be
afraid because the textbooks are as yet imperfect: "Everything
which Thibaut here says of the uncertainty of our textbooks
is equally applicable to the Scriptures. In these, also, the
critic will never find an end; but he who, on the whole, is able
to find nourishment and joy in them, will certainly not be troubled
upon that account." Savigny's appreciation of the spiritual
weakness of the Higher Criticism of the Bible then growing into
a force of negation is an important phase of his high and spiritual
nature.

Savigny, with his habitually long vision, insisted that "this
diffusion of legal science ought to take place, not only amongst
the jurists of the learned class, the teachers and writers, but
even amongst the practical lawyers." He demands the approxi-
mation of theory and practice, and applauds a proposal for free
communication between the Faculties of Law and the Courts.
Mr. Hayward in a note (p. 149) points out that "from the time
of Maximilian, the immediate predecessor of Charles V., the Law
Faculties, consisting of the Professors of the German Universities,
have constituted Courts of Appeal in the last resort. The
appellants, I believe, may select any University they please;
for instance, a case decided in Hanover may be sent to a Prussian
University." It will be remembered that Savigny's father
sat on one of these University Courts. But Savigny says that in his time these University Courts had become even more mechanical than the regular Courts.

Savigny having shown how the texts or legal authorities can be based "on a profound and comprehensive science," and how the judges may be made efficient, proceeds to deal with the third necessity of an efficient legal system, good procedure. To reform procedure, he says, we must have recourse to the legislature. The legal system so established would moreover derive great assistance from the legislature, which would settle disputed points of law (acting through Orders of Court) and record old customs that have received validity in practice. Then at last the historical matter of law will be transformed into national wealth, and the nation will possess a national system of its own and not "a feeble imitation of the Roman system." Savigny goes on to ask what is to be done under these circumstances with the Landrecht and the Gesetzbuch. It seemed clear that no "real, living jurisprudence" could be founded upon any one of the three Codes or upon the then proposed new German Code. The study of law must go on as if the Codes did not exist; the study, that is, of both the common law and the provincial laws; it must go on in the Universities, and there must be intimate intercourse between all the German Universities.

No one can read Savigny's attack on the Code movement of his age without feeling the immense weight that is due to his opinions. Step by step he urges an unanswerable argument and lays the foundation of the only true system of practical jurisprudence. To-day this work is of peculiar value and interest, for on the one hand we have England, a country that has in fact followed, unconsciously enough but in most exact detail, the lines of development suggested by Savigny, and on the other hand we have the rest of Europe under the dominance of that very system of Codes denounced by the greatest jurist that Europe has produced. Who is right? Savigny, England, and the Anglo-Saxon nations throughout the world, or Napoleon and his Europe?

Savigny's Preface, written in September, 1839, to his great work System des heutigen römischen Rechts (in eight volumes, five published in 1840-1 and the rest in 1847-9) amplifies with even a broader outlook the views expressed in the first edition of The Vocation of our Age for Legislation and Jurisprudence (1814).
and repeated in the second edition (1828) of that finely critical essay. The material for the work on *Modern Roman Law* had been "gradually collected and worked up in the courses of instruction" delivered by Savigny for a period of forty years, and the work itself is his ripe and incomparable judgment on the subject. Pleading as he does for "the continuous cultivation" of the science of law, he feels the danger of the accumulation of material.

"To prevent this danger we must desire that from time to time the whole mass of that, which has been handed down to us, should be newly examined, brought into doubt, questioned as to its origin. This will be done by placing ourselves artificially in the position of having to impart the material transmitted, to one unskilled, doubting, controverting. The fitting spirit for such a testing work is one of intellectual freedom, independence of all authority; in order, however, that this sense of freedom may not degenerate into arrogance, there must step in, the natural fruit of an unprejudiced consideration of the narrowness of our own powers, that wholesome feeling of humility which can alone render that freedom of view fruitful of performances of our own. From two wholly opposite standpoints, we are thus directed to one and the same need in our science. It may be described as a periodically recurring examination of the work accomplished by our predecessors, for the purpose of removing the spurious, but of appropriating to ourselves the true as a lasting possession, which will place us in the condition, according to the measure of our powers in the solution of the common problem, of coming nearer to the final aim. To institute such an examination for the point of time, in which we actually are, is the object of the present work."

He goes on to defend "the historical school" (of which he was certainly the most distinguished representative) from the unjust criticism to which it had been subjected. The aim of that school was not (and one may add is not, for to-day the historical school is one of the most important agents of thought in Europe) to "subject the present to the government of the past." The historical view of legal science (and we may say of any science) "consists in the uniform recognition of the value and the independence of each age, and it merely ascribes the greatest weight to the recognition of the living connection which knits the present to the past, and without the recognition of which we recognize merely the external appearance, but do not grasp the inner nature, of the legal condition of the present."
Savigny's object was certainly not to assign an "immoderate mastery" to Roman law, but he claims that a thorough knowledge of that law is indispensable for a comprehension of existing legal conditions. The natural unity between the theory and the practice of law finds its expression in the Roman law, and the study of that law can do much to avoid the disastrous divergence of the practical and the theoretical. But to make the Roman law produce this result we must turn, not to summaries or general principles, but to the writings of the Roman jurists. Such a study will eliminate from law subjective and arbitrary aberrations, and give to law new life even where it exists in the form of a Code. "This is markedly shown by the example of the modern French jurists who, often in a very judicious manner, illustrate and complete their Code from the Roman law." Even in the case of the Prussian Code, if there could be at least a partial re-establishment of "the dissolved connection with the literature of the common law, the result now could be nothing but the arising of a beneficial influence upon practice, and the mischiefs, so sensibly felt at an earlier time, would certainly not recur." The effort to employ Roman law "constantly as a means of culture for our own legal condition" is no depreciation of "our time and our nation," for in view of the enormous accumulation of material we have a greater task than lay before the Roman jurists and we may rightly use their methods. "When we shall have been taught to handle the matter of the law presented to us with the same freedom and mastery as astonishes us in the Romans, then we may dispense with them as models and hand them over to the grateful commemoration of history." Till then we must use a means of culture that we are incapable at present of creating.

With such views in mind, Savigny proceeds to his critical and systematic treatment of Roman private law as it existed in his time. He searches out and rules out all that is dead in Roman law, and then he proceeds to demonstrate the great and living unity of what remains. "In the richness of living reality, all jural relations form a systematic whole." His business is to demonstrate this deep and fundamental relationship, which is apt to disappear when particular fields of law are momentarily in view. The fact of this relationship causes him to give in 1839 an "entirely different shape" to the doctrine of Possession from that presented by him in 1803. For this we must get back to the old jurists. From them we may secure "a vitalizing and
enriching of our own juristic thought obtainable in no other way." Savigny says that the work he here performs he would have performed more thoroughly had he begun it in his earlier years. He would have checked his system by exegesis beginning from the Glossators and on through the French school, and by practical examples also derived from the authors of the numerous Consilia responsa, etc., also beginning from the Glossators. In this way his system would be checked in detail, and he suggests that some successors of his might undertake this work and give it literary completeness. With some pathos he suggests that it might be done piece by piece. He does not anticipate the coming of giants, of Cujas or another. So he gives his work to the world. The first volume deals with the problem before him, with the nature of law sources in general, with the sources of the modern Roman law, with the interpretation of written laws. The second book deals entirely with jural relations, and the first chapter treats of the nature and kinds of the jural relations. Up to this point we have a translation by Mr. William Holloway, formerly a judge of the Madras High Court. This was issued at Madras in 1807. The eighth volume of the work, a complete treatise on the conflict of laws and private international law, was translated by Mr. William Guthrie of the Scots Bar and published in 1869 (2nd ed. 1880) by Messrs. Clark of Edinburgh. In 1884 Sir William (then Mr.) Rattigan published a translation of the residue of the second book, in which are elaborately discussed "persons as subjects of jural relations." This translation exhibits the thoroughness of Savigny's investigations and his power of systematic grouping of material. For the purposes of this article it is not possible or desirable to discuss the details of a work such as this, with its close investigation into the facts and doctrine of legal capacity, of Capitis Diminutio and juristical persons, or as we should say artificial persons (such as corporations) possessing jural relations.

The pressure of public judicial and diplomatic work had long burdened the jurist. Dr. Reddie, in his very admirable volume entitled Historical Notices of the Roman Law and of the Recent Progress of its Study in Germany, published at Edinburgh in 1826, a work that traces in valuable detail, based on personal knowledge, the universal activity of the study of law throughout Central Europe at this date, says of Savigny: "A man of genius, he is not only a celebrated professor and judge, but a profound states-
man. . . . Unfortunately for the study and the science in general, the time of von Savigny is too much occupied with the discussion of petty disputes in a kingdom, the attention of whose government is almost entirely directed towards military affairs, and where his labours, however highly valued, can be of little service to mankind at large" (pp. 111-114). It is certain that Savigny did not look at his judicial work in this light. He was descended from a family of soldiers, diplomatists, and lawyers, his son was an eminent diplomatist, and he continually dwells on the need for the closest touch between the theory and the practice of law. As a judge he certainly gave practical law something, but as a jurist there can be little doubt that he gained immense power from it. It kept his theory of law alive, and made the jurist feel in the most vivid sense the reality and the personal importance of his speculations. So important did he regard this class of work that in 1842 he resigned his chair at the University of Berlin and became the Prussian Minister of Justice, a post which he filled with rare ability until the year 1848, when the wave of revolution passed across Europe. In that year he retired and set to work to revise his publications and papers. Fortunately he was allowed long leisure in which to fulfil this important work of revision. Many of his papers are to be found in the Zeitschrift für geschichtlichen Rechtswissenschaft, the journal for historical jurisprudence which he founded with the help of Eichhorn and Göschens in 1815, and superintended for many years.¹ Before the great jurist died at Berlin on October 25, 1861, in his eighty-third year (his devoted wife his helper to the last), he could look back over a long vista of accomplished work, and could believe that the future of his beloved science was assured.

It is not possible even yet, half a century after the death of Savigny, to indicate fully his work in the history of the evolution of law, his place among the great jurists of the world. The depository, so to speak, of so many centuries of juristic activity, the forerunner of detailed juristic investigation of so manifold

¹ In October, 1850, on the occasion of the universal congratulations upon the completion of the fiftieth year of his doctorate, he issued as a thank-offering and memorial a collection of all the detached papers he had written in that period. The volume was entitled Vermischte Schriften. The only omission from it was a review of Glück's Intestaterfolge which appeared in 1804 in the Jenaische Literaturzeitung. (See Law Magazine and Review, May, 1863, and biographies by Rüdorff and Bethmann-Köllweg.)
a character, it is perhaps as easy to undervalue as to overvalue his services to a science that mysteriously superintends the health and welfare of the social world. For my own part (but I write with hesitation, as one who dares not claim to have entered in any real sense into even a minute portion of the fruits of his cheerfully titanic labours), for my own part I should be tempted to call him the Newton or the Darwin of the science of law. His achievements resemble the achievements of both of these mighty men. He found, as Newton found, a world of phenomena, in his case of juristic phenomena, and he wrestled with it in the true hardihood of the Renaissance through the dark night until the Spirit of the Law cried out, "Let me go, for the day breaketh." It was reserved for Savigny to bring the daylight of the Renaissance to the science of law. He showed us that law itself is subject to law, that it is no arbitrary expression of the will of a law-giver, but is itself a thing obedient to a cosmic process. To show that law is itself the expression of a juristic process that runs through the ages was in itself an achievement of the highest order; but to go on to trace, as Savigny traced, what we may call the natural history of law, to trace its organic growth as a living thing, evolving with the evolutions of races and kingdoms and tongues, was a still greater triumph. When we think of the apparently chaotic mass of material into which Savigny introduced an evolutionary law, or, rather, indicated the processes by which, operating through and in this material, juristic forces adjusted themselves to the needs of successive ages, it is difficult to resist the decision that he stands in the forefront of European thinkers. It is true that his guiding star in his investigations and reductions was the Roman law, but he himself fully realized the importance of other systems of law, the common laws of general and particular customs of European nations, in arriving at general results. But while individual nations had their respective systems of common law, it must be remembered that, down to the Renaissance at any rate, Roman law was the common law of all Europe, a general system of law upon which local systems were more or less successfully grafted. To trace the natural history of Roman law in Europe was the only possible method of arriving at the secret that underlay the whole evolution of law. When once the secret was disclosed, then it was time enough for Savigny himself and his successors to retrace the ground, to reinvestigate sources, to turn the newly discovered
processes on those sources, and so to bring into the field of juristic science material of every kind that, until then, had seemed beyond the control or operation of any general law of evolution.

There is no need to claim too much for Savigny. As we have seen, he was not the inventor of the historic method, nor can he claim to have carried that method to its scientific height. Newton and Darwin entered into the ideas and labours of their predecessors, and their supreme conceptions have certainly been applied with a thoroughness that would possibly have astonished the masters themselves. So it was and has been with Savigny. Of his forerunners we have seen something; and even while he was toiling, Semester by Semester, in the congenial work of teaching and judging at Berlin, his fellow workers and pupils were applying his methods and were methodizing material to his hand. And his and their successors in Germany and England and France have gone far. His friend Niebuhr in 1816 discovered in the chapter library at Verona the priceless palimpsest manuscript of the Institutes of Gaius, the work on which the Institutes of Justinian were based. In 1820 Savigny's pupil Göschen published the first edition of this manuscript. Another pupil, Blume, obtained some further readings from this almost indecipherable palimpsest in 1822-3, and these were included in Göschen's second edition of 1824. The study of this manuscript has gone on until quite recently. Dr. Roby tells us that "Wilhelm Studemund in 1866-68 made a fresh copy of the MS., containing much that had not been previously read, and he published a kind of facsimile in 1874, and in conjunction with Paul Krüger a very careful and convenient edition in 1877. In 1878 and 1883 Studemund re-examined the MS., and thus obtained additions and corrections of some importance, which were published in subsequent editions of his and P. Krüger's book." Here, then, was one line of investigation worked out that must have been after the very heart of the master. Another investigation, of perhaps even greater importance from the point of view of the history of evolution of law, has been the work, one might almost say the life work, of that eminent English scholar Dr. H. J. Roby in reconstructing, with an infinitude of labour that recalls the toil of Cujas and of Savigny, Roman Private Law as it existed in the times of Cicero and of the Antonines. It is a marvellous piece of work, and gives us substantially, if not actually clear of "Byzantine modifications," Roman Private Law as it stood at
the time of its highest development (say A.D. 161 to 228). Savigny would have been the first to recognize the supreme importance of establishing this basis from which to trace the long centuries of modification, down even to the law of Holland or Scotland, Ceylon, Egypt or the Cape to-day; and he, too, would have been glad to know of the substantial assistance afforded to Dr. Roby by German scholars, and probably would have enjoyed some of Dr. Roby's not unkindly criticism of certain modern German critical methods. Beside Roby's work must be placed the tireless labours of the immortal Mommsen and his school in unravelling the texts of "law-books, authors, and inscriptions." No doubt vast fields lie open for future scholars in the period behind the Antonines, though much work has already been done in those dark ages. And, again, the field of Roman law in the Middle Ages calls for workers. Maitland's brilliant treatment of Bracton shows how much remains to be done to bring into cultivation the immense field over which Savigny cast his measuring-rod. This is not the place in which even to indicate the area of work, or to mention the work now in progress. But that work and the appreciation of its intensity and its range by great modern scholars show how thorough and how sound were the principles that Savigny laid down. His actual work was titanic, but it is plain enough (now that he has given us the guiding principle) that he but threw open an almost illimitable domain of investigation. As it was with Newton and Darwin, so was it with Savigny.

Sometimes it has caused wonder that a man of such vast intellectual powers should have devoted to law, and Roman law, gifts that might have seemed intended for mankind; for mankind, that is, in some practical and immediate way. The answer, however, is surely not far to seek. Man cannot live by bread alone; and even breadwinners cast their bread upon the waters that it may return after many days. A lawyer, even a jurist, does not appeal to the popular mind. To be a Napoleon does so appeal. Yet probably Napoleon's greatest work was one that brought Savigny, so far as intellect clashes with intellect, into direct conflict with the victor of Jena. The Code Napoléon was attacked by Savigny with a vigour, a swiftness, and a certitude worthy of the great captain himself. And Savigny's pungent criticism stands to this day. In so far as Napoleon's Code has survived and permeated Europe it has tended to diminish
the efficiency of law as a thing that grows with a people's growth and reacts on their efficiency. Napoleon's successful enemy, England, strenuously maintained that identical system of legal development advocated by Savigny, with the result that we are approaching an age when codification slowly becomes possible in the sense anticipated by the jurist of Berlin. This illustration of the relation of a jurist to daily life is not without its value. The jurist is greater than the legislator. His function is so to lay down general laws of juridical development that nations in the course of remedial legislation may have a guide which will show them how to adapt that legislation to the needs of the people; how to evolve it from a living legal system; and how to make it stage by stage an expression of the life of the people, and at the same time a guiding force that will lead not only individual peoples but all nations to adopt ever higher standards of conduct, ever closer and closer approximations to the divine laws of righteousness and equity that stand like Platonic patterns towards which the nations turn their eyes. If this is the function of the jurist, then he stands among the great benefactors of the world, and few will doubt that Savigny, whose soul was a very pattern of clarity and charity, will remain a bright particular star as we move farther away from the great nineteenth century and watch through Time's impartial glass the fixed stars that brood over it and by which we guide our fate. The motto of Savigny's family, Non mihi, sed aliis, had had a real meaning in the lives of his ancestors. In the case of Savigny himself the words reveal his character, his ideals and his daily task. One of the very greatest of the jurists, he saw underlying all law the law of love.